

**ARKANSAS PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION OF	)	
ENTERGY ARKANSAS, LLC FOR A PROPOSED	)	DOCKET NO. 19-042-TF
TARIFF AMENDMENT REGARDING RATE	)	ORDER NO. 9
SCHEDULE NO. 62, SOLAR ENERGY	)	
PURCHASE OPTION	)	

**ORDER**

By this Order, the Arkansas Public Service Commission (Commission), denies EAL's Application, as proposed, for a tariff amendment to its Rate Schedule No. 62, Solar Energy Power Option (SEPO), because the proposal to implement SEPO Option B constitutes a material change to its original SEPO tariff (SEPO Option A), filed and approved by the Commission in Docket No. 18-037-TF; does not adequately protect the interests of non-participating ratepayers, and is not just and reasonable or in the public interest. However, based upon EAL's commitment in this Docket<sup>1</sup> to evaluate the impact and implications on its SEPO Option B proposal of recent changes in the net-metering rate structure brought about by the Commission's adoption of amendments to its *Net-Metering Rules* in Order No. 28 in Docket No. 16-027-R, the Commission sets forth in this Order the set of conditions and guidelines under which EAL may proceed to revise and re-submit its SEPO Option B offering to demonstrate compliance with the Commission's Findings and Ruling in this Order. Should EAL opt to revise and re-file SEPO Option B, the Commission will determine, following notice and opportunity for comment and hearing, whether the revised offering constitutes a competitive solar product that is more attractive to customers than that originally offered under SEPO Option A; that is more protective of the interests of non-participating ratepayers; that

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<sup>1</sup> See Castleberry Supplemental at 204 (Answer to Question 1)

will enhance the creation and nurturing of a competitive market for renewable energy products and services in Arkansas; and that is just and reasonable and in the public interest.

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### **I. PROCEDURAL HISTORY**

On August 15, 2019, Entergy Arkansas, LLC (EAL) filed with the Arkansas Public Service Commission (Commission) a request to amend its Rate Schedule No. 62, Solar Energy Purchase Option (Rider SEPO) to provide a supplemental offering (SEPO Option B) for additional subscription-based solar exclusively to customers that are either

government entities or entities that qualify to be exempt from federal and state income tax and are eligible to consider newly available net-metering options pursuant to Act 464 of 2019 (Act 464), Ark. Code Ann. §§ 23-18-603, -604, and -605. In support of its requested tariff change, EAL filed the Direct Testimony and Exhibits of Kurtis W. Castleberry, Myra L. Talkington, and Amy Westmoreland. On August 19, 2019, the Office of Arkansas Attorney General Leslie Rutledge (AG) filed her written notice to be an active party in this Docket. Between August 22 and August 30, 2019, the following entities filed Petitions to Intervene (Petitions): Scenic Hill Solar, Inc. (Scenic Hill); William Ball (*pro se*); Arkansas Electric Energy Consumers, Inc. (AEEC); the Arkansas Advanced Energy Association (AAEA); Walmart, Inc. (Walmart); and The University of Arkansas System (UAS). On October 21, 2019, by Order No. 2, the Commission granted intervenor status to all of the petitioners.

On September 4, 2019, Staff filed its *Request for Suspension Pursuant to RPP 7.05*, stating that its investigation of EAL's Application will exceed thirty days and noting that EAL agreed to waive setting a hearing date at this time pursuant to Ark. Code Ann. § 23-4-407. On September 11, 2019, the Commission issued Order No. 1 and suspended EAL's proposed amendment to Rider SEPO pursuant to the provisions of Ark. Code § 23-4-407 and RPP Rule 7.05.

On October 2, 2019, EAL filed a *Request for Approval of Tariff or, Alternatively, to Set a Hearing* (EAL Request), requesting that the Commission approve its proposed tariff "effective immediately" or, alternatively, set the matter for hearing in two to four days from the date of its filing. On October 14, 2019, AAEA, Scenic Hill, and Staff filed Responses to EAL's Request. On October 21, 2019, EAL filed its *Reply* to the Responses.

By Order No. 3 issued on November 3, 2020, the Commission denied EAL's Request, set the procedural schedule for the filing of testimony, and set the hearing for April 16, 2020.

On February 11, 2020, in accordance with the procedural schedule, AAEA filed the Direct Testimony of Karl R. Rabago, Staff filed the Direct Testimony of Robert H. Swaim, Scenic Hill filed the Direct Testimony of William A. Halter, and AEEC, the AG, Mr. Ball, and UAS all filed letters stating that they would not be filing Direct Testimony. On March 10, 2020, EAL filed the Rebuttal Testimony of Mr. Castleberry and Ms. Talkington. Surrebuttal Testimony was filed by Mr. Rabago on behalf of AAEA, Mr. Halter on behalf of Scenic Hill, and Mr. Swaim on behalf of Staff on March 17, 2020.<sup>2</sup> On March 24, 2020, EAL filed the Sur-Surrebuttal Testimony of Mr. Castleberry and Ms. Talkington. On April 6, 2020, certain parties submitted an Issues List.<sup>3</sup>

Due to the State of Emergency Declaration by the Governor on March 11, 2020, the Commission proposed alternative hearing procedures by Order No. 5 issued on April 6, 2020. No party objected. By Order No. 6, the Commission canceled the evidentiary hearing scheduled to begin on Thursday, April 16, 2020, and set forth the procedures for a "paper" or "written" hearing.

On April 10, 2020, Scenic Hill submitted Corrected Surrebuttal Testimony of Mr. Halter. On April 13, 2020, all parties submitted their written opening statements or submitted a filing stating that they would not be filing an opening statement. On April 14, 2020, EAL filed a Motion to Strike the Corrected Surrebuttal Testimony submission of Scenic Hill or in the alternative, have the opportunity to respond thereto with the

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<sup>2</sup> Once again, Mr. Ball, AEEC, UAS, and the AG files letters stating that they would not be filing Surrebuttal Testimony.

<sup>3</sup> Walmart, AEEC, and UAS submitted letters stating that they had no issues.

proffered Supplemental Rebuttal Testimony of Ms. Talkington. By Order No. 7 issued on April 21, 2020, the Commission denied EAL's Motion to Strike, but accepted the proffered Supplemental Rebuttal Testimony of Ms. Talkington to respond to the Supplemental Errata Testimony of Scenic Hill.

On April 22, 2020, the Commission issued Order NO. 8 and propounded questions to certain witnesses of the Parties. The Commission directed that written responses to the questions be in the form of Supplemental Testimony as with other pre-filed testimony in this Docket. The Parties responded as directed on April 27, 2020.

No public comments have been filed in this Docket.

## **II. SUMMARY OF TESTIMONY**

### **A. EAL DIRECT TESTIMONY**

#### **CASTLEBERRY - DIRECT**

Mr. Castleberry describes EAL's proposed amendment to Rate Schedule No. 62, Solar Energy Purchase Option (Rider SEPO), stating that the amendment is intended to provide, only to tax-exempt entities referenced in Act 464 of 2019, an additional option to meet their renewable energy and fiscal objectives. He contends that the proposal is a measure that will help lessen cost shifting to non-participating customers from customers who are now eligible under Act 464 to enter into qualifying service contracts or service agreements that may also elect to net-meter under the current 1:1 crediting mechanism. He emphasizes that EAL fundamentally opposes any 1:1 full retail credit, arguing that it results in unreasonable cost shifts to non-participating customers and produces unjust and unreasonable rates. Castleberry Direct at 7-8.

Mr. Castleberry asserts that while he may refer to some arrangements that EAL is encountering as “net-metered”, some may not qualify as net-metered arrangements as contemplated by Act 464 and his use of the term “net-metered” should not be seen as suggesting that EAL agrees that they would qualify as net-metered arrangements or net-metered facilities. *Id.* at 8-9.

Mr. Castleberry states that EAL believes that Arkansas is strongly positioned to take advantage of solar resource opportunities due to the geographic characteristics found in Arkansas’s Delta region, where abundant sunshine and available land would provide economic development benefits. He notes that several third parties have made the investments necessary to initiate the process of interconnecting planned utility-scale solar projects to the transmission grid via Midcontinent Independent System Operator, Inc. (MISO) and testifies that EAL’s recent requests for renewable proposals have targeted developers of such projects, consistent with EAL’s more recent IRP action plans. He asserts that the Commission raised cautions at the October 4, 2016 hearing in Docket No. 16-27-R about conflicts with the IRP process caused by the expansion of net-metered solar installations. He provides an image reflecting the MISO Generator Interconnection Queue for such projects. *Id.* at 10-11.

Mr. Castleberry argues that the net-metering solar installations being proposed by third-party developers are being built to provide economic benefit to the individual customer involved by using the current 1:1 full retail credit billing framework and meter aggregations. He asserts that even though they are not being built based upon whether they are the most economic source of energy to meet EAL customer load, EAL must take the output generated to serve all other customers even though it is a less economic

renewable option than the utility-scale solar resources pursued by EAL. He provides a chart using data from the 2018 National Renewable Energy Laboratory to illustrate the cost differences. He asserts that the future costs that EAL's customers will pay for electricity will be influenced by the expansion of net-metered solar installations enabled by Act 464 through the expanded caps and lease and Purchase Power Agreement (PPA) options. He argues that the assertion other parties made at the hearing in Docket No 16-027-R that solar penetration in Arkansas is very limited is no longer the case. *Id.* at 12-14.

Mr. Castleberry characterizes as a "clear windfall" the immediate bill savings available to many tax-exempt entities using long-term PPAs under Act 464 in combination with the full retail credit available, the effects of meter aggregation and the current design of EAL's rate schedules. He states that EAL believes that the Rider SEPO amendment it is proposing is a reasonable alternative and should be made available as quickly as possible to protect the interests of all customers until other issues can be addressed. He testifies that EAL will evaluate any revisions needed to Rider SEPO so that it remains consistent with the Commission's direction. *Id.* at 14-15.

Mr. Castleberry describes the existing Rider SEPO as a subscriptions-based green pricing tariff. He states that based on each customer's proportionate share, the customer pays all of the costs of the solar resource and receives all of the benefits of the MISO wholesale market revenues, including the retirement of the associated Renewable Energy Credits (RECs) on the customer's behalf. He asserts that the existing Rider SEPO is one option that allows EAL to meet its customer's interests in accessing a dedicated renewable energy resource to meet those customers' renewable energy goals.

He notes that subscribing customers do not acquire ownership rights under the existing Rider SEPO or proposed changes to Rider SEPO, rather they subscribe to capacity (kilowatt (kW)) blocks that entitle them to a proportionate share of the output of the Designated Solar Resource. He testifies that these types of arrangements are offered by a number of regulated utilities. *Id.* at 15-17.

Mr. Castleberry opines that the renewable energy landscape and options available to customers is highly dynamic. He states that EAL must provide offerings to its customers that will meet their renewable energy and economic needs while also promoting economic development that will keep both EAL and Arkansas competitive. *Id.* at 17-18.

Mr. Castleberry states that he has observed similarities between EAL's proposed amendment to Rider SEPO and options he reviewed of other utilities. The main difference however is due to the type of crediting mechanism, and he states he is not aware of any option of other utilities where a participating customer would receive a full 1:1 retail credit for participating in the green tariff. He testifies that EAL has not found another jurisdiction that combines the lease and PPA options that Act 464 makes available to certain customers, the current 1:1 full retail crediting mechanism, and the ability for the customer to aggregate multiple electric accounts served by the same utility. Mr. Castleberry contends that Act 464 expanded the definition of a "net-metering customer" to include a customer that leases a net-metering facility, subject to certain leasing requirements, and also to include government entities and other entities that are exempt from federal and state income tax that enter into a service contract for a net-metering facility. Mr. Castleberry states that some third parties are using the term



“service contract” or “service agreement” to mean a long-term PPA, but he asserts that it is up to the Commission to determine the correct interpretation of the terms listed in Act 464 as well as what qualifies as a service contract or a service agreement. He suggests that a number of issues, including significant cost-shifting risks for EAL’s customers, are connected to these new terms combined with the ability to aggregate multiple meters and the full 1:1 retail credit. He asserts that EAL will pursue, during Phase 3 of Docket No. 16-027-R, its concerns regarding necessary changes to the Commission’s *Net-Metering Rules* (NMRs) needed as a result of Act 464, but that rulemaking will take time and that the effects of Act 464 and how some customers are interpreting its provisions are being seen right now by EAL and its customers. He testifies that EAL’s proposed amendment to Rider SEPO in this filing is a response only to the ability of a tax-exempt entity to use a long-term PPA for the purpose of participating in net-metering and the ability of those entities to aggregate multiple accounts while availing themselves of the current 1:1 full retail credit mechanism. *Id.* at 20-21.

Mr. Castleberry states that many of EAL’s customers that may be eligible to take advantage of this provision of Act 464 are in the Small General Service (SGS) and Large General Service (LGS) rate schedules. He argues that while both of these rates schedules include a demand component, a substantial portion of the fixed costs is collected through volumetric energy charges along with base rates and other riders. He states that for the SGS accounts approximately 70-75 percent of the fixed costs that are in base rates are recovered through volumetric charges and that every rider that applies to SGS is impacted by volumetric charges. He testifies that a 1:1 full retail credit would

result in a credit amount that substantially exceeds the variable costs that EAL would avoid due to the customers' decision to install or purchase solar generation. He asserts that the problems are made worse by allowing net-metering customers to use solar facilities that offset 100 percent of their annual volumetrically-billed charges and are further compounded by the ability to aggregate multiple accounts through the net-metering billing process and to locate a solar facility remote from the customer's load. He argues that a customer that locates its net-metering facility remotely from its load does not physically offset any of its load. Instead EAL must fully serve its site load and be capable of accepting all of the energy generated by the solar facility. He also points out that tax exempt entities are using Act 464 to enter into long-term PPA arrangements for renewable energy that require essentially no investment on their part. *Id.* at 22-23.

Mr. Castleberry contends that the 1:1 full retail credit mechanism over-compensates customers for the output of their solar project. He asserts that this provides an incentive for them to interpret the provisions of Act 464 in a manner that allows them to reduce their monthly bills immediately and drastically while still obtaining essentially the same level of service from EAL. As a result EAL would no longer be able to cover the fixed-costs from net-metering customers with the revenue it receives from them and other customers would be required to absorb those costs. *Id.* at 23.

Mr. Castleberry states that EAL estimates that SGS customers that may be eligible under Act 464 to sign a solar service agreement representing approximately 28 percent of EAL's annual SGS commercial electric sales. He posits that if 100 percent of the energy sales to those customers were lost it would be approximately \$75 million per

year and that if all sales to the various LGS Rate Schedules were also lost, the annual energy sales lost would be approximately \$126 million per year. He surmises that it is imperative for EAL to be able to offer an alternative for these customers to consider, which will benefit the non-participating customers as well. *Id.* at 23-24.

Mr. Castleberry states that, much like SEPO Option A, customers taking service under the SEPO Option B will subscribe to a capacity (kW) that entitles them to a proportional share of the Designated Resource's energy output each month and would pay a SEPO Energy rate expressed in \$ per kilowatt hour (kWh). He asserts that the benefits of participation are different. Those participating under SEPO Option B would be able to offset their on-site energy use under their standard rate schedule at the full 1:1 retail rate, unlike SEPO Option A subscribers that receive their share of the MISO wholesale market revenues. He states that the associated RECs under either option will be retired on the customer's behalf by EAL. He testifies that the new option would be a voluntary alternative and EAL would not require tax-exempt customers to choose it. He asserts that SEPO Option B provides eligible customers with an alternative to obtain solar energy without a long-term agreement. *Id.* at 24-25.

Mr. Castleberry testifies that SEPO Option B reduces by more than half the costs shifted to EAL's non-participating customers. He states that first, the revenues collected by EAL would help cover some portion of the cost to serve instead of being lost to a third-party developer; and second, the direct assignment of costs to participating tax-exempt entities would reduce the costs shifted. *Id.* at 26-27.

Mr. Castleberry stresses that EAL continues to oppose the 1:1 retail credit mechanism. He emphasizes that the size of the customers that are now attempting to

take advantage of net-metering as a result of Act 464 magnifies the impact of the subsidies. He asserts that SEPO Option B is a narrowly-tailored response to the unique circumstance created by the recent legislation. He notes that the response is not unique in that utilities have requested approval of special rate contracts as an alternative option and performed a Ratepayer Impact Test to illustrate the benefits of the special rate versus losing the customer. He asserts that SEPO Option B seeks to achieve the same purpose of providing an option to certain customers while lessening the bill impacts to other customers if EAL were to not retain those customers and their associated revenues. Mr. Castleberry notes that EAL's proposed change to Rider SEPO does not resolve the cost shifting caused by the 1:1 full retail credit billing framework. He asserts that it also does not resolve the inequities that result if eligible entities take advantage of certain policies but continue to take service under EAL's existing rate structures that currently recover predominantly fixed costs through volumetric charges. Mr. Castleberry testifies that EAL advocated against allowing SGS net-metering customers to receive the 1:1 full retail credit in earlier phases of Docket 16-027-R. He notes that under the facts known at that time and so that Sub-Group 2 members could support a common position, EAL agreed on a position that 2-Channel Billing would only apply to customers on non-demand tariffs. He asserts that Act 464 changed key considerations, such as the ability to lease net-metering facilities or the ability to purchase electric energy from unregulated third-party solar developers seeking to utilize long-term PPAs. He argues that these changes require a fresh look at whether a 1:1 full retail credit methodology is appropriate specifically for EAL's existing SGS and LGS rates, or to any rate class. *Id.* at 27-30.

Mr. Castleberry testifies that EAL is requesting that the Commission approve the amendment that it has proposed to Rider SEPO as promptly as possible. *Id.* at 31.

WESTMORELAND – DIRECT

Ms. Westmoreland discusses the changes needed to the existing Rider SEPO to accommodate the additional pricing option of the proposed changes to Rider SEPO that are discussed by EAL witnesses Castleberry and Talkington. Ms. Westmoreland states that EAL proposes to amend the Rider SEPO offerings to allow qualifying tax-exempt entities the opportunity to take advantage of solar energy with benefits that differ from SEPO Option A. SEPO Option B would off-set a participant's energy usage (kWh) at the full 1:1 retail rate under its current standard rate schedule. She testifies that in order to qualify for SEPO Option B the following criteria must be met:

- The customer must be a government entity or other entity exempt from federal and state income tax;
- Participating accounts must be demand metered;
- Service must be taken under one of these specific rate schedules
  - Rate Schedule No. 4 (SGS)
  - Rate Schedule No. 6 (LGS)
  - Rate Schedule No. 7 (LGS Time-Of-Use)
  - Rate Schedule No. 8 (Large Power Service)
  - Rate Schedule No. 9 (Large Power Service Time-Of-Use).

Westmoreland Direct at 5-7

Ms. Westmoreland testifies that customers cannot take service for the same account under both SEPO Option A and Option B and that the following rate schedules are not eligible to participate in SEPO Option B:

- Rate Schedule No. 52 (Net-Metering Service)
- Rate Schedule No. 34 (Small Cogeneration Rider, “SCR”)
- Rate Schedule 35 (Large Cogeneration Rider)
- Rate Schedule No 41 (Optional Interruptible Service)

*Id.* at 7.

Ms. Westmoreland states that each customer account electing SEPO Option B must subscribe to at least one kW and may sign up in additional one kW increments up to the qualifying account’s total usage for the preceding 12-month period. She states that as long as there is unsubscribed availability for the SEPO Designated Resource(s), there is no limit to the number of a customer’s individual qualifying accounts that can take service under SEPO Option B. All accounts for the customer that have a common Tax Identification Number may be included on a single contract. *Id.* at 7-8.

Ms. Westmoreland testifies that a SEPO Option B participating customer’s bill priced under the standard rate and rider schedules would reflect the metered actual kWh usage reduced by the customer’s share of SEPO Energy kWh. The bill would also include a charge for the monthly energy related to the customer’s subscribed share of the Designated Solar Resource billed at the SEPO Option B Energy Rate. She testifies that the nonbypassable Storm Recovery Charges (SRC) would not be adjusted. She states that EAL will require the customer to execute a contract to participate and to provide a tax-exempt determination letter from the Internal Revenue Service and the

Arkansas Department of Finance and Administration documenting exemption from taxation. She states that the proposed contract is the Agreement for Solar Energy Purchase Option B. Customers wishing to include multiple qualifying accounts in a single contract will also be required to include Attachment A to Agreement for Solar Energy Purchase Option B. She provides copies of these items which are additions to Policy Schedule No. 13 Contract Forms. She describes the changes to Sheet Number 13.2.2 of the Table of Contents for Contract Forms and to the currently effective Policy Schedule 13.21.1 that are required to reflect EAL's proposal. *Id.* at 8-10.

Ms. Westmoreland testifies that the SEPO Option B revenues will be booked to Miscellaneous Revenue, Account 456. She states that no changes will be needed to Rate Schedule No. 38, Energy Cost Recovery Rider (ECR), due to this accounting treatment. *Id.* at 10-11.

Ms. Westmoreland states that as of June 30, 2019, EAL had 712,152 retail customers, which includes 591,495 Residential, 113,297 SGS, 2,047 LGS and 5,306 Lighting customers. She testifies that SEPO Option B would only be made available to certain tax-exempt retail customers. She testifies that SEPO Option B is a new offering so no customers currently are subscribed to it so there is no impact to base rates. She refers to the testimonies of EAL witnesses Talkington and Castleberry for the potential revenue impacts. *Id.* at 11.

#### TALKINGTON – DIRECT

Ms. Talkington briefly describes EAL's proposed amendment to Rider SEPO and its intended purpose. Additionally she:

- Quantifies the annualized cost shifting expected to occur due to long-term PPA's with unregulated third-party solar-developers that have been executed by EAL customers.
- Estimates the potential cost shift to non-participating customers if EAL loses a significant amount of kWh sales due to customers continuing to execute such agreements, and then estimates the mitigation of the cost shift by EAL's proposed amendment to Rider SEPO.
- Describes effects of Act 464's unintended consequences on EAL's Rider Formula Rate Plan Rider (Rider FRP).
- Discusses situations EAL is meeting that it believes may not qualify as net-metered arrangements as contemplated by Act 464 or other applicable statutes.

Talkington Direct at 4-6.

Ms. Talkington asserts that an unintended consequence of Act 464 has been created that allows certain customers of EAL to realize immediate and substantial bill savings that hurts other customers. Ms. Talkington claims that EAL will in the near future experience a significant revenue erosion and loss of kWh sales that will result in higher electric rates for non-participating customers without Commission action. She testifies that the loss in revenue and kWh sales are a result of existing Commission policy, that is the 1:1 full retail credit, combined with the interpretation by some parties of the following specific provisions of Act 464:

- Increasing from 300 kW to 1,000 kW the size of the exclusion from APSC approval for a net-metering facility;



- The ability of all customers to enter into lease arrangements which removes the upfront capital investment required by customers; and
- The eligibility of certain tax-exempt governmental and other non-profit entities to enter into a qualifying service agreement with a solar provider.

*Id.* at 6-7.

Ms. Talkington testifies that since the enactment of Act 464, EAL has noticed a marked increase in the number of inquiries concerning interconnection requests, the number of Preliminary Interconnection Site Review Requests (PISRRs), and the capacity (kW) of individual projects. She notes the regular reporting in local media of various entities expressing interest in entering long-term PPAs with solar developers and asserts that many of the reports involve EAL customers. She states that based on EAL's current tracking of requested pre-interconnection reviews, 26.9 megawatts (MW) of solar projects are pending. She asserts that this is more than a 300 percent increase from the approximate 6.4 MW of total solar capacity taking service under net-metering with EAL. She notes that this does not include every publicly announced net-metering project by an EAL customer after the passage of Act 464. *Id.* at 7-8.

Ms. Talkington describes EAL's current net-metering service rate schedule including the ownership requirements for any customer that takes service under standard rate schedules as well as the facility size limitations specific to residential customers. She expresses her understanding that Act 464 now allows for non-residential net-metering facilities up to 1,000 kW without Commission approval and without ownership of the facility. She describes her understanding that Act 464 also allows, with Commission pre-approval, a non-residential use facilities tier between

1,000 and 5,000 kW and also tier between 5000 kW and 20,000 kW. She testifies that she is unaware of any customer of EAL that has filed an application with the Commission since the passage of Act 464 for a net-metering facility that exceeds 1,000 kW, but notes that there have been media reports of potential solar projects that would require Commission approval. She asserts that changes have not been made to reflect what the Commission may interpret as permissible under Act 464 in either the Commission's NMRs or EAL's currently-approved net-metering tariff. *Id.* at 9-10.

Ms. Talkington describes the billing framework that supports the current 1:1 full retail credit process. She explains how meter aggregation allows for the spread of excess kWh from the designated meter associated with the generator to all other qualifying accounts for the customer. She discusses an example that illustrates the billing where ten meters are aggregated and the solar energy generated offsets all actual usage for nine of the meters and half of the usage of the tenth meter. She states that under the design of the SGS rate schedule and certain other rate schedules a large percentage of the rate structure is based on volumetric (kWh) charges that would be mostly avoided in her example. She contends that if the customer locates the net-metering facility in front of the meter, EAL would still be providing electric service at one hundred percent. She argues that the 1:1 full retail crediting results in EAL receiving energy from net-metering customers at a higher rate than it would cost EAL to generate the energy and that costs that are required to serve all customers are born by non-participating customers instead of net-metering customers. *Id.* at 10-14.

Ms. Talkington notes that EAL witness Castleberry described that Act 464 includes two additional types of customers in the definition of net-metering customer.

The first type is a customer that leases a net-metering facility. The second type is a government entity or other entity exempt from federal and state income tax that enters into a service contract for a net-metering facility. She testifies that it is the second type of customer that the proposed amendment to Rider SEPO addresses and that EAL is aware of some such tax-exempt entities that are attempting to utilize third-party PPA arrangements where the facility is located in front of the customer's meter. *Id.* at 14.

Ms. Talkington describes how she quantified the impacts of EAL's customers who she is aware have announced or stated that they have entered into an agreement with an unregulated third-party solar developer. She states that she also projected the potential impact on non-participating customers as the number of such agreements increases. She provides a non-exhaustive list of seven Act 464-eligible EAL customers whose stated interest in entering into long-term PPAs with solar developers has been publicly identified in media reports. *Id.* at 15.

Ms. Talkington testifies that she used recent billing information for a handful of such EAL customers to prepare a quantitative analysis focusing mainly on the SGS rate and developed a weighted average volumetric rate that reflects what is avoided if those customers utilize net-metering. She estimated that approximately 28 percent of EAL's annual SGS electric sales are made to Act 464-eligible customers and estimated that 100 percent of the annual energy sales to them would be lost. She applied the weighted average volumetric rate to those sales to arrive at her approximation of \$75 million in costs per year that would be avoided and absorbed by non-participating customers. She describes this estimate as "conservative" because it only reflects the SGS customers that are all potentially eligible. She asserts that the annual energy sales would be

approximately \$126 million if all potentially eligible customers were included. Ms. Talkington admits that her estimate includes some fuel costs and variable operations and maintenance costs that are avoided, but she testifies that the majority of her estimates do reflect fixed costs that will be shifted to non-participating customers. She states that her weighted average volumetric rate also includes various riders, such as the Energy Efficiency Cost Rate Rider and the Grand Gulf Rider, that will be bypassed by the net-metering customer and those costs will be borne by other customers through higher rates. She asserts that other exact recovery riders that are recovered through volumetrically impacted rate mechanisms will experience cost shifting. She testifies that fuel and purchased power will not experience a cost shift because the rider recovers variable and generation dependent costs. One final impact she discusses is the reduction in franchise fees and sales taxes collected that will result from the lower volumetric charges on the electric bill. *Id.* at 16-19.

Ms. Talkington testifies that cost shifting may be reduced if the customer rate schedule has a demand charge. She argues that not all such rate schedules are strictly cost-based and that some demand-related costs are typically included in the volumetric rate. She states that the SGS's costs are approximately 94 percent fixed, but that 70 percent of the costs are recovered by volumetric charges. She asserts that this provides the financial incentive for certain tax-exempt customers to take advantage of the net-metering opportunities Act 464 made available. She states that the SGS base rate demand charge collects less than 25 percent of the fixed demand costs required to serve SGS customers and that over 75 percent is collected through kWh charges. She testifies

that for the LGS rate schedule approximately 70 percent of the fixed demand costs are collected through the demand charge. *Id.* at 19-22.

Ms. Talkington testifies that she performed an analysis of the cost shift that will be created under both the proposed Rider SEPO amendment and under the scenario where customers eligible under Act 464 enter into long-term PPAs with unregulated third-party solar developers. She describes assumptions made in her analysis which include using the cost and MISO benefits that were assumed in the existing SEPO offering and an assumption that the entire annual solar output, excluding the portion dedicated to residential customers, will be netted to zero. She found an approximate \$13.7 million first year cost shift to non-participating customers. *Id.* at 22-23.

She continues her analysis using three different scenarios to demonstrate how the proposed Rider SEPO amendment mitigates the cost shift:

Scenario 1 – This scenario assumes that Act 464 does not exist. It also assumes that all customers share in the costs and benefits of the SEPO related solar resource. This scenario assumes that there are \$8.9 million in costs which are offset by MISO market revenues, resulting in a net cost of \$2.9 million that all customers share.

Scenario 2 – This scenario assumes that Act 464-eligible customers contract with an unregulated third-party solar developer for usage equal to the available energy under SEPO, excluding energy reserved for residential customers. These customers would reduce their energy purchases from EAL through net-metering resulting in a reduction in revenue from those customers of \$13.7 million and a corresponding cost shift to non-participating customers. The \$2.9 million of net

costs from Scenario 1 would still be incurred but only be recovered from non-participating customers, resulting in a total net cost to non-participating customers of \$16.6 million.

Scenario 3 – This scenario assumes the same customer set as Scenario 2 except that in Scenario 3 they participate in the proposed SEPO amendment. The same \$13.7 million reduction in net-metering customer bills would occur, but would be partially offset by the estimated MISO revenues, resulting in a net cost shift of \$7.7 million to non-participating customers. She states that in this scenario the participating customers pay the costs of the solar resource, but the market benefits provided through MISO revenues flow directly to the non-participating customers. She asserts that the proposed SEPO amendment reduces the cost shift by approximately \$8.9 million.

*Id.* at 24-27.

Ms. Talkington conservatively estimates that the net impact of costs shifted to non-participating customers would be approximately \$91.3 million in the first year if EAL lost to private solar developers 100 percent of annual SGS energy sales related to tax-exempt governmental and non-profit entities. She compares this to an approximate \$42.4 million net impact if those same customers subscribed to the proposed amendment to Rider SEPO. She asserts that partial mitigation shows that rates for non-participating customers will still increase and may be expected to continue to increase in future years if the 1:1 retail credit continues. *Id.* at 27-28.

Ms. Talkington contends that the cost-shifting impact on non-participating customers will occur mainly through the operation of EAL's Rider FRP. She states that

the reduction or elimination of participating customer's billed energy usage through net-metering, with all else being equal, will cause Rider FRP revenues that must be collected from non-participating customers to increase. She asserts that these increases would not be a result of investments made by EAL for the benefit of all customers. She claims that EAL would be denied timely recovery of such investments in a year where the four percent Rider FRP revenue constraint applies due to the lost revenue consuming a portion of the Rider FRP cap. She states that approximately \$45 million, or 60 percent, of the \$75 million per year cost shift she described earlier is related to base rates and would be recovered through the FRP mechanism. She argues that this would consume well over half of the FRP revenue constraint without any infrastructure of other investments that would benefit all customers. *Id.* at 28-29.

Ms. Talkington concludes by testifying that the proposed SEPO amendment will not impact EAL's currently-approved retail revenue requirement and that it will not result in any change in rate design or change the revenue allocation within or between classes. She asserts that she has demonstrated that the cost shift to non-participating customers will be reduced by approximately \$8.9 million in the first year that the proposed SEPO amendment is available. *Id.* at 30.

**B. AAEA DIRECT TESTIMONY**

**RABAGO – DIRECT**

Mr. Rabago recommends that the Commission reject the application entirely. Rabago Direct at 3-4.

Mr. Rabago contends that EAL is limiting the proposed tariff to governmental entities or entities that are demand metered and are exempt from state and federal

income tax because it intends to compete directly with non-utility competitive service providers for those entities. He asserts that EAL's proposal adds an optional "green-pricing with credit" option to the Rider SEPO tariff for customers that might be interested in engaging with a non-utility competitive service provider for a service contract/purchased power agreement authorized by Act 464. *Id.* at 4-5.

Mr. Rabago adds that EAL's proposal is not a net-metering rate. He discusses ways in which the customer's status under the proposal differs from net metering, which include: the customer would not own or have the ability to obtain an ownership interest in the facility; the customer is obligated for only one year at a time; the cost of the service is the SEPO price per unit of SEPO energy; and the RECs are retired on the customer's behalf, but are not owned by the customer. *Id.* at 5-6.

Mr. Rabago claims that in order to compete with non-utility competitive service providers, EAL is proposing to sell energy to only a select few customers from the "designated solar facility" that was built for all customers. He states that, based on his reading of EAL witness Castleberry's testimony, EAL's proposal seems to be an attempt to undercut the net-metering opportunity created by Act 464 for certain tax-exempt entities. He asserts, again based on his reading of EAL witnesses Castleberry's and Westmoreland's testimony, that EAL is opposed to net metering in any form and that net metering with a full retail credits shifts costs to non-net-metering customers. He asserts that rather than reducing costs for non-net-metering customers, EAL's proposal substantially diminishes the value proposition that is available under net metering to governmental tax-exempt entities under Act 464, and the taxpayers that support them, including low-and moderate-income customers. *Id.* at 6-8.



Mr. Rabago testifies that EAL has provided no evidence that proves a cost shift occurs and he notes that the Commission has not found that net metering causes a cost shift in Dockets No. 16-027-R or in Docket No. 19-055-U. He contends that the cost shift argument is no reason for the Commission to approve the proposed tariff to “fix” a problem not shown to exist. Mr. Rabago testifies that a cost shift cannot occur until the Commission approves new rates based on changes in the allocation of costs to customers or customer classes. He warns that the Commission would become bogged down in regulatory proceedings if it was required to review a new tariff or other proposal every time a potential cost shift was asserted. He states for a cost shift argument, a standard that requires a showing of materiality and undue discrimination is required and the proponent of the new or changed rates must prove that its proposed remedy is just, reasonable, and in the public interest. He asserts that EAL has not done so in this Docket. Mr. Rabago testifies that EAL appears comfortable with cost shifts that result from higher utility sales when it provides discounts and assistance to new businesses and redevelopment in Arkansas, but not those that follow from customers’ own investments that reduce utility sales. He argues that neither the Commission nor the General Assembly have shown any intention that such an unbalanced view should be Arkansas’s policy. He suggests that the growth of non-utility competitive services like net metering appear expressly as an intended result of Act 464. He adds that the General Assembly provided a remedy in Act 464 that can be utilized by EAL to address any purposed cost shifts, but only for rates that do not contain a demand charge. However, he asserts that for tax-exempt entities the General Assembly did not provide for a rate that is not one-for-one retail net metering. He asserts that net metering for

qualifying tax-exempt entities is what the General Assembly wanted and believed it was in the public interest of the entire state of Arkansas. Mr. Rabago asserts that EAL does support a cost shift in this tariff application and is asking the Commission to codify what it believes is a cost shift-creating tariff. He states that EAL witness Castleberry pursues support for the proposed tariff because every customer that signs up for its tariff is one less customer that takes advantage of the net-metering service option created in Act 464 by the General Assembly. He states that it appears that EAL is attempting to use its market power and the Commission to establish a tariff that undercuts the General Assembly's intent and attacks the Commission's prior and on-going regulatory agenda. Mr. Rabago argues new tarified programs are not a good way to address systemic regulatory issues such as cost shift potential. *Id.* at 8-13.

Mr. Rabago takes issue with EAL's attempt to justify its proposed tariff as a "necessary offering to its customers in order to meet their renewable energy and economic needs and more broadly to promote economic development for the State." He contends that in a free-market economy and society there is no rational economic basis to contend that monopolies, such as EAL, should have unrestrained liberty to "compete" with non-utility competitive providers for competitive services by using tarified products and services. He testifies that this would be "antithetical to the goals the General Assembly established for Arkansas in Acts 827 and 474." He asserts that EAL is not proposing competition on a level playing field but instead is proposing virtually unbridled exercise of market power to oppose the net metering authorized by the General Assembly. He adds that EAL is not proposing any conditions or limitations on how it would "compete." He contends that EAL has provided no evidence that the

competitive market cannot or will not provide the services that qualified tax-exempt customers seek. He asserts that EAL's motivations are monopolistic in nature and argues that instead of reinforcing monopoly control of dynamic emerging markets we should be bending towards competitive solutions. *Id.* at 13-15.

Mr. Rabago states that EAL has not provided the substantial evidence needed to sustain its burden of production and proof. He argues that the sole root of EAL's proposal is to reduce net-metering service contracts made available by Act 464 and attack the regulatory agenda of the Commission and the intent of the General Assembly. He asserts that the proposal rests on an assumption that a monopoly utility should be allowed to use regulatory-approved tariffs to weaken the development of competitive markets. He asserts that the deficiencies in the proposal are fundamental. He testifies that there is a legitimate question raised by the application that is unaddressed and unresolved: "whether a franchised monopoly should be able to exercise its market power in emerging generation markets and under what terms." Mr. Rabago recommends that the Commission reject EAL's proposal and establish a separate proceeding to address the terms under which monopoly service providers might be allowed to compete on a non-discriminatory basis with non-utility competitive service providers. *Id.* at 15-16.

### **C. SCENIC HILL DIRECT TESTIMONY**

#### **HALTER – DIRECT**

Mr. Halter recommends that the Commission reject EAL's application. He asserts that SEPO Option B proposed by EAL is very different from the SEPO Option A and is actually a proposal for an entirely new rider. Mr. Halter states that according to

EAL's witnesses, SEPO Option B provides a 1:1 retail energy credit which they liken to the credit available under current net-metering service. He argues that it is not clear though if EAL's proposal is for a 1:1 energy credit similar to net metering or the rate per kWh described in the Revised Rider SEPO. Halter Direct at 2-4.

Mr. Halter testifies that a PPA is the type of arrangement that Scenic Hill and others provide to tax-exempt entities and is the type of arrangement that EAL argues is prompting the need for EAL to propose the amendment to Rider SEPO in order to avoid cost-shifting. He contends that a cost-shift has not been proven. He testifies that Mr. Castleberry states that EAL's proposed SEPO Option B provides the same 1:1 retail credit to customers, so it is not clear why the claimed impact of the 1:1 retail credit would be different under a PPA versus SEPO Option B. Mr. Halter states that the ability of tax-exempt entities to enter PPAs was added by Act 464 of 2019 by the Arkansas General Assembly. He attests that tax-exempt entities cannot use the Investment Tax Credit (ITC), but that the PPA structure allows the third-party to take the tax credit and pass along much of the benefit to the tax-exempt entity in the form of lower-cost energy than the tax-exempt entity could realize on its own. He argues that AREDA does not envision utility options to net metering for tax-exempt customers. He asserts that it is clear from the legislative findings and declarations of Ark. Code Ann. § 23-18-602 that the primary intent of AREDA is to foster net metering to provide the benefits discussed in that section to all of Arkansas. He contends Act 464 furthered that primary intent by expanding AREDA to allow tax-exempt entities to cost-effectively net meter through the use of PPAs. *Id.* at 4-6.

Mr. Halter asserts that the net-metering option made available by Act 464 offers more benefits in the long term than the short-term benefit being offered through SEPO Option B, including:

- Net metering allows a real benefit through the opportunity for the customer to reduce demand charges by shifting load to times of solar generation. He admits this benefit is hard to quantify;
- SEPO Option B is only offered on a year-to-year basis and could be canceled by EAL at any time; and
- A PPA structure typically includes a purchase option that locks in the energy cost savings for the lifetime of the facility.

*Id.* at 6.

Mr. Halter testifies that EAL stated that it is has discussed the proposed new rider with “well over one hundred customers.” He suggests this may have caused some municipalities to delay entering a PPA until the outcome of the EAL rider is determined by the Commission. He believes that SEPO Option B is already impacting Scenic Hill’s business. He asserts that EAL’s criticism of PPA’s seems to be that the benefits offered by a long-term PPA are not guaranteed. He states that EAL’s messaging to tax-exempt customers is that they “may be unaware of the rate consequences associated with these third-party facilities as decisions are being made that will directly impact such constituents.” He argues that EAL “leads the charge on proposing such rate consequences.” *Id.* at 7.

Mr. Halter testifies that the cost-shift estimates provided by EAL witness Talkington are not reasonable in that they assume that 100 percent of all sales to tax-

exempt SGS customers will be lost. He notes that Ms. Talkington did not provide her calculations, provided no evidence of the actual number of customers that have even proposed to net meter, and ignores the fact that much of a typical municipality's load is served under LGS. He contends that this Docket is not the correct forum to relitigate cost-shifting and EAL should be prevented from making cost-shifting claims in this Docket. *Id.* at 8.

**D. STAFF DIRECT TESTIMONY**

**SWAIM – DIRECT**

Mr. Swaim provides background information on Rider SEPO by explaining that a requirement in the Joint Stipulation and Partial Settlement Agreement approved by the Commission in Docket No. 17-041-U required EAL to submit “an optional voluntary renewable energy tariff.” He states that in that Partial Settlement Agreement, EAL made commitments regarding marketing the tariff and filing a detailed plan for those marketing efforts. Additionally, EAL also agreed to provide an annual report on the anniversary of the tariff's effective date addressing those marketing efforts and the results, which the parties could then use to recommend changes to the tariff or the marketing efforts. He states that Rider SEPO was proposed and approved in Docket No. 18-037-TF and maintained these directives and commitments. He delineates the specific commitments found in Sections 62.1, 62.3 B, 62.5 and 62.3A of the tariff. Swaim Direct at 4-6.

Mr. Swaim testifies that the one-year anniversary of the effective date of Rider SEPO is not until March 13, 2020, and as a result, the annual report EAL committed to provide has not been submitted. He argues that by proposing the changes to Rider

SEPO before providing the first annual report, EAL has failed to give the parties the agreed-upon opportunity to properly assess its marketing and implementation efforts surrounding Rider SEPO. *Id.* at 7.

Mr. Swaim states that EAL is proposing to add a new option called “SEPO Option B” to the existing tariff and rename the existing offering as SEPO Option A. He notes that SEPO Option B will be restricted to customers meeting the following criteria:

- Governmental entities or other entities that are exempt from state and federal income taxes;
- Have participating accounts that are demand metered; and
- Take service under one of the SGS, LGS, LGS Time-of-Use, Large Power Service, or Large Power Service Time of Use rate schedules.

*Id.* at 7-8. Mr. Swaim states that customers which subscribe to SEPO Option B would be required to enter into a contract for a one-year term that would be automatically extended until terminated. Participants would receive an off-set to their energy usage (kWh) under their current standard rate schedule at the full 1:1 retail rate. Mr. Swaim notes that as a result of the offset, participants would not receive a proportionate share of the MISO wholesale market revenues. He highlights that the amendments to Rider SEPO proposed by EAL include amending Rider SEPO Section 62.1 to remove the 50 percent offering and amending the subscription levels for all classes eligible under either SEPO Option A or Option B. *Id.* at 8-9.

Mr. Swaim testifies that both of the SEPO options are intended to provide customers with greater access to solar energy. He states that under both options the customer elects a capacity (kW) subscription for a proportionate share of the Designated

Resource's energy output for the month subscribed and that the subscriber receives the associated RECs under both options. He discusses differences between the SEPO options. He notes that SEPO Option B is restricted to tax-exempt entities that meet specific criteria, as he discussed earlier. Mr. Swaim states that under SEPO Option A the subscriber pays the full retail rate per the applicable rate and rider schedules for all of its energy requirements, and is paid or credited for its pro-rata share of the energy output of the SEPO Designated Resource at the SEPO rate less the MISO Market Settlement Rate. *Id.* at 9.

He states that under SEPO Option B the kWh used during the month by the subscriber are offset by the monthly SEPO Energy, with any excess SEPO Energy credited and carried forward indefinitely. The subscriber is billed at the SEPO Energy Rate (\$0.05435) for their pro-rata share of the energy output from the Designated Resource. *Id.* at 10-11.

Mr. Swaim provides examples of a mock bill for a customer reflecting the net benefit or cost to the customer under each option.

Table 1

SEPO Option A Mock Bill for a Small General Service Customer Subscribed to 200 kW and using 25,000 kWh/Month with 30 kW Demand			
	Annual	Avg/Mo	
1 Customer Charge	\$291	\$24	
2 Demand Charge	\$901	\$75	
3 Energy Charge	\$14,643	\$1,220	
4 Energy Cost Recovery Rider	\$4,386	\$366	
5 SEPO Energy Charge @ 0.05345	\$23,411	\$1,951	
6 Total MISO Energy Revenue	(\$10,950)	(\$913)	
7 Total MISO Capacity Revenue	(\$1,278)	(\$106)	
8 Subtotal	\$31,405	\$2,617	
9 FRP Revenue Adder	\$4,516	\$376	
10 Total Base Rate Bill	\$35,921	\$2,993	
11 SEPO A Net Benefit or (Cost)	(\$11,184)	(\$932)	
12 SEPO A % Net Benefit or (Cost)	(31.13%)		

Table 2

SEPO Option B Mock Bill for a Small General Service Customer Subscribed to 200 kW and using 25,000 kWh/Month with 30 kW Demand			
	Annual	Avg/Mo	
1 Customer Charge	\$291	\$24	
2 Demand Charge	\$901	\$75	
3 Energy Charge	\$14,643	\$1,220	
4 Energy Cost Recovery Rider	\$4,386	\$366	
5 SEPO Energy Charge @ 0.05345	\$23,411	\$1,951	
6 SEPO Energy Charge Offset	(\$21,379)	(\$1,782)	
7 SEPO ECR Rider Offset	(\$6,404)	(\$534)	
8 Subtotal	\$15,850	\$1,321	
9 FRP Revenue Adder	\$2,279	\$190	
10 Total Base Rate Bill	\$18,129	\$1,511	
11 SEPO B Net Benefit or (Cost)	\$4,371	\$364	
12 SEPO B % Net Benefit or (Cost)	24.11%		



*Id.*

Mr. Swaim discusses several concerns raised by the proposed changes as they related to commitments contained in the Settlement Agreements and Orders in Docket Nos. 17-041-U and 18-037-TF. He asserts that in supporting the Settlement Agreement in Docket No. 18-037-TF, the Parties expressed their understanding that the proposed amendments to the tariff would come after the annual report. He states that the proposed changes to Section 62.1 regarding the solar energy offering and subscription levels conflict with the Commissions instructions in Order No. 4 in Docket No. 17-041-U and the commitments made by EAL in the Partial Settlement Agreement in that Docket. He notes that Rider SEPO had only been in effect for five months before EAL's proposed changes were submitted and that the first annual report has not been provided. He asserts that without the report, the Parties and the Commission cannot evaluate the costs and benefits of Rider SEPO, determine if the proposal or if any changes to any sections of Rider SEPO are needed, or draw a conclusion as to EAL's "good faith effort" to market Rider SEPO. Additionally, he testifies that EAL has stated that the proposed changes to Rider SEPO are a response to amendments to net-metering legislation and are not related to the costs and benefits of Rider SEPO. He asserts that the tables that he provided earlier demonstrate that SEPO Option B is a more cost-effective option for customers and no amount of good faith marketing by EAL will persuade customers eligible for SEPO B to choose SEPO A. He testifies that the proposed amendments should be denied because they contradict the Commissions Orders that approved Rider SEPO. He requests that EAL be required to file any proposed changes to Rider SEPO in Docket No. 18-037-TF after it submits the required annual reports. *Id.* at 12-15.

Mr. Swaim testifies that the amendments to Arkansas Renewable Energy Development Act, Ark. Code Ann. §§ 23-18-601 *et seq.* (AREDA) made by Act 464 of 2019 include allowing third-party leasing and for governmental and tax exempt entities that enter into qualifying service contracts to be net-metering customers. Mr. Swaim testifies that Act 464 did not change the net-metering rate structure, currently the 1:1 full retail credit, and that meter aggregation was available under AREDA to net-metering customers before Act 464. Mr. Swaim testifies that EAL customers can acquire renewable solar energy under AREDA and also Rider SEPO. He states that EAL customers that are unable or unwilling to obtain a net-metering facility can gain access to renewable energy through Rider SEPO. He notes that EAL asserts that changes to AREDA by Act 464 prompted the changes it has proposed to Rider SEPO. He observes that in testimony, EAL witness Castleberry expressed “EAL’s need to align with the crediting mechanism available to qualifying tax exempt entities under Act 464 and existing Commission rules...”, and that Mr. Castleberry also expressed concern that if those entities enter into such agreements they will decrease their electric energy service with EAL, thereby reducing their contribution to fixed costs. He states that in Phase 3 of Docket No. 16-027-R, the Commission is addressing Act 464 and he asserts that any action taken by the Commission will not impact the currently effective Rider SEPO. He asserts that EAL intends for the proposed SEPO Option B to be a stop-gap for a select customer set until the Commission has completed that proceeding and that EAL will evaluate if any changes are needed to Rider SEPO after that time. *Id.* at 15-18.

Mr. Swaim testifies that EAL provided the following reasons for the proposed changes to Rider SEPO:

- To provide the tax exempt entities referenced in Act 464 with an additional option to purchase solar energy; and
- To lessen the effects of the cost shifting to non-participating customers it alleges occurs as a result of the 1:1 full retail credit net-metering rate structure.

*Id.* at 18.

Mr. Swaim testifies that it is unclear why it would be in the public interest to allow EAL to provide the option of subscribing to SEPO Option B to only a subset of customers. He notes that the 1:1 full retail credit and the ability to aggregate meters is available to all customers who net-meter, not just the entities targeted by EAL for SEPO Option B, and was available prior to Act 464. He states that one reason given by EAL in support of only offering SEPO Option B to governmental and tax-exempt entities is that those customers are in the SGS or LGS rate schedules which contain a demand component and a large portion of the fixed costs are collected through the volumetric component of the rate. He states that EAL suggests that if such a customer net meters, EAL will not be collecting those fixed costs through the energy that would have been sold to the customer in the past. However, Mr. Swaim testifies that it is not uncommon for some level of fixed costs to be recovered through an energy charge, though the level varies among rate classes and schedules. *Id.* at 19-20.

Mr. Swaim contends that the Commission's *Promotional Practice Rules* (PPRs) are implicated by EAL targeting a specific customer or customers within a class with a special rate offer because they apply to any consideration offered by a utility designed to induce the customer to select the service. He asserts that SEPO Option B as proposed will not be offered uniformly and contemporaneously to all persons in a reasonably

defined class. He states that these rules have not been used for a utility's proposal for a special rate as an alternative to customer-owned solar facilities that qualify for net-metering under AREDA. He states that when the PPRs are implicated, they require the utility to submit a Total Resource Cost Test, Participant Test, Utility Cost Test and Ratepayer Impact Measure test to determine if the special rate contract is in the public interest and whether all customer would actually be better off if EAL is permitted to offer SEPO Option B to only selected SGS or LGS customers. He testifies that EAL did not provide a reason why the PPRs are not implicated in this case, and in response to Staff's data request, EAL informed it did not perform these tests with respect to SEPO Option B. He testifies that EAL also did not address how SEPO Option B is not anticompetitive. Mr. Swaim testifies, even as recognized by EAL witness Castleberry, the rate design proposed in SEPO Option B will not resolve the cost shifting that EAL complains of for any rate schedule that recovers fixed costs mainly through the volumetric charge. *Id.* at 21-24

Mr. Swaim asserts that EAL witness Talkington does not provide information regarding any actual cost shift as a result of customers entering into PPAs with third party solar developers. He states that in her analysis she assumes that all eligible customers sign a long-term PPA for solar to calculate the estimated annual energy sales lost and that this is the same analysis EAL provided in Phase 3 of Docket No. 16-027-R. He testifies that it is Staff's position that the assumption that all customers of any class will elect to net-meter is unreasonable, and that her scenario is not based on actual experience adjusted for known and measurable changes. He confirms that Staff cannot rely on the analysis provided to recommend approval of SEPO Option B. He testifies

that Staff requested information be provided in an Excel template that would allow Staff to attempt to quantify the actual energy sales lost by EAL due customers electing to net-metering under AREDA. He states that EAL objected to the data request and also stated that it does not have some of the information requested. He agrees that EAL does not have the actual energy generated by a customer's net metering facility. He contends that EAL should be able to estimate the number and that it is the estimate of the energy sales EAL claims to have lost due to net metering that is the cause of the alleged cost shift. He testifies Staff does not support the setting of rates without the required element of actual information as its foundation. Mr. Swaim concludes that:

- The proposed amendments do not adhere to the Orders that approved Rider SEPO and provide a disincentive for subscriptions to SEPO Option A.
- The complaints asserted by EAL are matters included in Docket No. 16-027-R.
- It is not clear why additional solar options under Rider SEPO should be limited to only certain entities in certain classes. The issues related to the rate structure for net-metering customers under AREDA are not limited to entities in the SGS and LGS classes that are also governmental entities.
- The PPRs may be implicated in EAL's offering to a discrete customer set. If they are implicated, EAL has not met its burden of proof that SEPO Option B is not unduly discriminatory, or anticompetitive, and is in the public interest.
- The issues related to the rate structure and meter aggregation for net-metering customers under AREDA are not resolved by SEPO Option B.
- EAL has not provided substantial evidence to support the cost-shift that it alleges is being caused by Act 464 as it is based on unrealistic scenarios and

assumptions. Further EAL thwarted Staffs attempts to quantify actual cost-shifting, which left nothing for the Parties or the Commission to rely on.

*Id.* at 26-27.

He recommends that the Commission:

- Deny the changes EAL proposed to Rate Schedule No. 62, Rider SEPO; and
- Instruct EAL to file any proposed amendments to Rider SEPO in Docket No. 18-037-TF after it has submitted the required annual reporting and in compliance with any of the Commission's applicable rules.

*Id.* at 27.

## **E. EAL REBUTTAL TESTIMONY**

### **CASTLEBERRY REBUTTAL**

Mr. Castleberry testifies that the Commission approved EAL's use of utility scale renewable resources to structure offerings to customers when it approved SEPO Option A in Docket No.18-037-TF, which the Commission had directed EAL to file as a result of the settlement in Docket No. 17-041-U. He argues that the discussions and facts presented in those proceedings is evidence that supports that EAL needs to have these types of offerings. He believes that removing utility options and only allowing third-party arrangements contradicts the plain language of AREDA and would disadvantage Arkansas relative to other states that allow access to grid-scale renewable energy resources, thereby leveraging economies of scale and minimizing customer risk through retail tariff offerings. Castleberry Rebuttal at 3-5.

Mr. Castleberry argues that Mr. Rabago and Mr. Halter have an interest in promoting their third-party solar options and he disagrees with their assertion that

SEPO Option B proposed by EAL is an abuse of EAL's monopoly or market power. He states his understanding of monopoly power and market power is that an entity has unrestrained ability to set prices above a competitive level. He argues that this is not the situation for EAL as a regulated utility whose rates, terms, and conditions of electric service are subject to the Commission's authority. He notes that the Commission does not have such authority over private solar developers. He states that Mr. Halter "appears to largely seek to protect his market power within the unregulated third-party business model." *Id.* at 5-7.

Mr. Castleberry testifies that EAL cannot simply enact a tariff and it does not control the interconnection process and economic incentives as Mr. Rabago alleges. He states that SEPO Option B cannot even be offered to customers without Commission authorization. He notes that EAL administers the interconnection process for net-metering facilities, but does so in accordance with terms and procedures established by the Commission and applicable law. He states that Mr. Rabago fails to even identify the "economic development incentives" he claims EAL controls. He mentions that if Mr. Rabago is referring to EAL's two economic development riders or to special rate contracts, EAL does not solely control those as they require Commission approval. He casts as a "red herring" or a "fundamental lack of understanding of EAL's status as a regulated public utility" Mr. Rabago's assertion that EAL has not included "any conditions or limitations on how it would 'compete' with non-utility net-metering service providers." He testifies that the proposed SEPO Option B contains many restrictions on pricing, the amount of any offering the Company can make, and the customers to whom the offering can be made. *Id.* at 7-8.

Mr. Castleberry responds to Mr. Rabago's and Mr. Halter's belief that public utilities should be prevented from providing offerings to their customers that would compete with the offerings of non-utility electric service providers by stating that it is a fact that "this is not a competitive market." He details how EAL is a regulated utility and that EAL is still obligated to serve the customers that are considering private solar options. He claims that it is this obligation to serve by EAL that fundamentally enables there to even be a private solar transaction option. He states that he believes the main purpose of AREDA is to increase the consumption of renewable resources and he does not see language in the law that limits the offering of those resources to be only by unregulated third parties. He claims that Mr. Rabago and Mr. Halter seem to want to limit customer choices to only a single choice that benefits the unregulated third-party business model, which he asserts, seems to be truly "antithetical" to AREDA. He testifies that SEPO Option B in no way limits products that can be offered or the prices that they can be offered at by third-party solar developers. *Id.* at 9-11.

Mr. Castleberry contends that Mr. Halter's and Mr. Rabago's attempt to impede EAL from providing valuable offerings to its customers is "antithetical" to the following Commission statements, citing statements made by the Chairman of the Commission at a prior hearing in Docket No. 16-027-R, where he stated:

First of all, we live in a vertically integrated state. Resources are planned for our load expectations. When resources are committed to, there's a financial obligation that just doesn't belong to the utility. It also belongs to ratepayers. This is why Tyson can't call over to Oklahoma City and say what have you got for me -- I want to leave -- because if they left, these resources that were planned to meet their load have to be paid for by the remaining folks. That's a vertically integrated world.<sup>4</sup>

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<sup>4</sup> See, Hearing conducted on October 4, 2016, in Docket No. 16-027-R, Transcript at 562.



Mr. Castleberry notes that at the same hearing, Chairman Thomas questioned Mr.

Halter along these lines:

Q. We're going to let them try to fill this part of the bucket, and we're going to let net metering try to fill this part of the bucket. The bucket doesn't get filled, but the obligation remains on the utility side, and by the way, if the utility wants to fight them, they can get in the solar business and compete and let business have a segment of it and come up with some expectation set and use that to manage the wall.<sup>5</sup>

*Id.* at 11-12.

Mr. Castleberry testifies that before the Arkansas Senate's Insurance and Commerce Committee, Chairman Thomas expressed his expectations that public utilities in Arkansas would offer renewable energy options for their customers while non-utility service providers were doing the same. He believes AREDA is intended to promote more, not fewer, options to customers. He testifies that it cannot be shown that Act 464 precludes EAL from offering such options. Mr. Castleberry testifies that EAL is the largest provider of solar energy in Arkansas, is uniquely positioned to offer grid-scale solar resources through the SEPO options, and is the only entity here that can avail itself of the nearly 3,000 MW of potential grid-scale solar projects in the state currently identified in the MISO Generator Interconnection Queue. He argues that the greatest potential for solar to provide a great economic development opportunity for Arkansas is with grid-scale resources that leverage economies of scale. He asserts that EAL's record of competitive market solicitations has resulted in proven economic resources. *Id.* at 12-14.

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<sup>5</sup> *Id.* at 568.

Mr. Castleberry states that Mr. Rabago's concern that a REC<sup>6</sup> would only benefit a SEPO subscriber is illogical because the scenario already exists today under SEPO Option A. He states that the REC confirms to the customer that they have "purchased" kilowatt hours from a renewable energy resource. *Id.* at 14-15.

Mr. Castleberry states that, contrary to Mr. Rabago's claim, EAL has never represented in any proceeding to his knowledge that EAL believes customers should not take advantage of net metering in any form. He calls Mr. Rabago's statement a "blatantly false characterization" of EAL's actual point in this Docket and Docket No. 16-027-R that Commission action is necessary to ensure that these arrangements result in a fair allocation of the costs of maintaining the grid which self-generating customers continue to rely upon. *Id.* at 15.

Mr. Castleberry testifies that EAL in its direct testimony in this Docket has shown that non-participants would be better off under SEPO Option B than under an equivalent amount of capacity under the existing net-metering model. He contends that Mr. Rabago incorrectly concluded that EAL asserted that net-metering customers "...created increased costs." He states that the accurate representation EAL made in direct testimony was that under the existing 1:1 full retail credit net-metering model infrastructure and other fixed costs are shifted by net-metering customers to other customers. He reiterates that SEPO Option B does not completely resolve the cost-shifting issue. He asserts that Mr. Rabago's claim that EAL's cost shift argument is not a rational basis for approving SEPO Option B is senseless and that he largely ignores the evidence EAL presented demonstrating the existing cost-shift occurring under 1:1 full

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<sup>6</sup> As defined in AREDA (Ark. Code Ann. § 23-18-603(10)), "Renewable energy credit" means the environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour, generated from renewable fuels that can be sold or traded separately.

retail net-metering. He states that if Mr. Rabago truly believes that no cost-shift is occurring under the current net-metering model, then EAL cannot be said to be perpetuating some unrealized harm by offering SEPO Option B to customers. Mr. Castleberry disagrees with Mr. Rabago's insinuation that the General Assembly intended a cost-shift to occur unchecked or that EAL is prevented from developing and offering to its customers a new option. He argues that offering SEPO Option B to qualifying customers is not a collateral attack on the Commission's agenda and it does not undercut the General Assembly in any way relative to the passage of Act 464. He confirms, however, that EAL would reassess SEPO Option B if the Commission makes a change to net-metering in another proceeding. *Id.* at 16-18.

Mr. Castleberry states that in Docket No. 18-037-TF, no party, including AAEEA member Audubon, asserted that with SEPO Option A EAL was seeking to unfairly or improperly compete against non-utility providers of renewable energy resources. He testifies that he does not see the difference that raises such alarms for Mr. Rabago with SEPO Option B. Mr. Castleberry states that nothing could be further from the truth than Mr. Rabago's assertions that EAL's motivations are not customer-centric. He argues that protecting non-participating customers from cost-shifting has been EAL's goal all along and this resulted in the development of an offering that governmental and tax-exempt customers may find attractive. *Id.* at 18-19.

Mr. Castleberry testifies that Mr. Halter appears to be concerned that EAL's option may be deemed by some customers to be preferable to any option that he is providing. He does not believe that Mr. Halter's criticisms found on page six of his direct testimony are even relevant for the Commission to consider when deciding if

SEPO Option B should be approved. He argues that customers will avail themselves of other available alternatives if indeed they offer more benefits than SEPO Option B. *Id.* at 19-20.

Mr. Castleberry states that he does not believe SEPO Option B meets any of the criteria in the definition of promotional practices found in the Commission's rules. He argues that SEPO Option B offers no special inducement, but instead proposes to apply an existing Commission-approved tariff rate and it does not set forth a purpose that is intended to increase or conserve the use of electric service. He testifies that EAL expects that customers will probably continue using the same amount of energy under SEPO Option B that they do today. He argues that the Commission's PPRs do not apply for the following reasons:

- A special rate contract with a single retail customer is not being proposed;
- SEPO Option B is extended to all persons in a reasonably defined class because any customer that is eligible to take service under it can do so;
- SEPO Option B is not unduly discriminatory;
- SEPO Option B is not anti-competitive because participation is completely voluntary and customers are free to choose other renewable options.

*Id.* at 20-21.

Mr. Castleberry states that he disagrees with Mr. Swaim's position that it is unclear why preventing other customers from subscribing to SEPO Option B would be in the public interest. He opines that EAL's preliminary interconnection review requests have increased dramatically and many of the projects are being proposed by governmental and tax-exempt entities seeking to interconnect solar resources under Act

464. He asserts that allowing qualifying customers to enter into long-term PPAs that allocate operational and other risks to the solar developers is a critical policy change for Arkansas. He states that SEPO Option B is intended to mitigate the cost-shifting impacts from those customers and to give them another renewable energy option to meet their expectations created by Act 464. Mr. Castleberry testifies that expanding the availability of SEPO Option B to other customers would intensify the cost-shifting to non-participating customers and would eliminate SEPO Option B's benefits to non-participating customers. *Id.* at 22-23.

Mr. Castleberry expresses agreement with Mr. Swaim's general premise that some fixed costs are recovered through the energy charge. He argues that the issue here is the level of fixed costs that are being recovered through the energy charge. He asserts that for the SGS class, a significant portion of the fixed costs are recovered through the energy charge and asserts that Mr. Swaim overlooks this fact. *Id.* at 23-24.

Mr. Castleberry testifies SEPO Option B is a voluntary subscription-based tariff offering that is available for an entire class of customers and it specifies rates, terms, and conditions for service that are applied on a nondiscriminatory basis across the subscribing customers. Therefore he disagrees with the contention that SEPO Option B is a special rate contract. *Id.* at 24.

Mr. Castleberry rebuts Mr. Swaim's claims that SEPO Option B will not be offered uniformly and contemporaneously to all persons in a reasonably defined class by testifying that it will be available to all qualifying customers in a class defined under Act 464 as governmental and tax-exempt entities. He points to EAL's Commission-approved Rate Schedule No. 27, Modification of General Service Minimum Rider (Rider

GSMR), which he contends has an even more restrictive defined class than does SEPO Option B. He asserts that Staff's position that SEPO Option B may not be consistent with the PPRs or not in the public interest does not account for established Commission policy or the plain language of the tariff EAL has proposed. *Id.* at 25.

Mr. Castleberry states that EAL intends to file on March 13, 2020, the annual report that it agreed to submit as part of the Settlement Agreement in Docket No. 18-037-TF. He testifies that EAL expects that after reviewing the report the parties will make recommendations regarding SEPO Option A. He asserts that the changes proposed to SEPO Option A in this proceeding are strictly administrative in nature and do not alter SEPO Option A materially. *Id.* at 26-27.

Mr. Castleberry states that it is not relevant if SEPO Option B offers more attractive economics to a customer than SEPO Option A. *Id.* at 28-29.

Mr. Castleberry disagrees with Mr. Swaim's assertion that Act 464 did not really change net-metering in Arkansas. He argues that Act 464 significantly expanded the opportunity for customers to pursue net-metering as follows:

- It increased the limit from 300 kW to 1,000 kW for non-residential projects that do not require pre-approval from the Commission;
- Act 464's language expressly suggests a net-metering facility may be up to 20,000 kW, subject to Commission approval. He testifies that a facility of that size would involve large capital investments, require hundreds of acres of land, and potentially need to be interconnected to the grid at transmission-level voltage through the MISO interconnection process; and

- Act 464 allowed the opportunity for governmental and tax-exempt entities to enter into long-term PPAs with solar developers.

*Id.* at 29-30.

Mr. Castleberry responds to Mr. Swaim's claim that SEPO Option B will not have an impact on EAL's alleged cost-shift by reiterating how EAL has shown that under SEPO Option B, all other customers will be better off than they would be under the current net-metering model, primarily due to the way MISO revenues will flow back to all customers. *Id.* at 31.

Mr. Castleberry disagrees with Staff's argument that the scenarios and assumptions EAL has presented are unrealistic. He testifies that the evidence supports that the interest in net-metering is exponentially greater now and that Act 464 represents a paradigm shift concerning future expectations. He states that it is not unrealistic that a large majority of customers will pursue net-metering under the current rules given falling technology costs and improved performance. *Id.* at 32.

Mr. Castleberry affirmatively states that customers should retain the choice to generate electricity for their own use and to be compensated at an appropriate rate for excess energy that they deliver to the distribution grid. He continues by declaring that action should be taken to guarantee a fair allocation of the costs of maintaining the grid so that non-participating customers are not harmed. He asserts eligible customers should be provided options to consider and that SEPO Option B is a viable alternative to meet their needs. He contends that the Commission has already determined that EAL may structure a retail option using a utility-scale solar resource when it approved SEPO Option A. He testifies that the SEPO Option B rate is just and reasonable because it is

derived from the Stuttgart PPA price which the Commission has approved as just and reasonable and in the public interest in Docket No. 15-014-U. He adds that SEPO Option B also reflects the \$0.05345 per kWh rate approved for Rider SEPO in Docket No. 18-037-TF. *Id.* at 33-34.

Mr. Castleberry confirms that EAL will evaluate any changes needed to Rider SEPO B so that its credit mechanism remains consistent with the Commission's direction should the Commission change the 1:1 full retail bill credit mechanism that is currently available or implement rules that address the manner in which these customers can utilize net-metering. *Id.* at 34.

#### TALKINGTON – REBUTTAL

Ms. Talkington asserts that it is reasonable and necessary for EAL to assume that 100 percent of tax-exempt SGS customers will switch to a third-party PPA because it reveals the full potential magnitude of the cost-shifting that could occur under the current situation for the Commission to consider. She recognizes that 100 percent of eligible SGS accounts will not likely switch at once. She claims that it is reasonable to assume this could occur over a short period of time, based on the number of tax-exempt entities that have expressed interest in pursuing renewable energy under Act 464, and the economic advantages provided through a third-party PPA if no other options are available. She contends that based on the net-metering projects already announced and the opportunities currently available, a substantial cost-shift will occur in the near-term and will continue to grow. She states that SEPO Option B does not completely address the cost-shifting, but it lessens the impact on non-participating customers mainly due to the manner that MISO revenues would flow back to all customers. She notes that under



SEPO Option B, the participating customers pay for a portion of the solar resource directly, yet the allocated MISO capacity and energy-related revenues flow back to reduce all customers' costs through Rider ECR and the MISO Rider. Talkington Rebuttal at 2-5.

Ms. Talkington testifies that EAL has received approximately 133 MW<sub>DC</sub> of requested preliminary interconnection site reviews for solar projects, a stunning increase from the 26.9 MWDC she discussed in her direct testimony. *Id.* at 6.

Ms. Talkington states that SGS recovers more of its fixed costs through volumetric charges than LGS. She asserts that even though SGS accounts have the greatest potential for substantial cost-shifting, there will also be cost-shifting when LGS customers procure net-metering facilities. She declares Mr. Halter's claim that municipalities are serviced mostly by the LGS rate schedule is incorrect and that he provided no support for the claim. She states that all but 796, or 99 percent, of EAL's approximately 71,000 municipal accounts are served under the SGS rate schedule. She adds that approximately 77 percent of the annual kWh usage for these municipal customers was billed under the SGS rate schedule. *Id.* at 6-7.

Ms. Talkington argues that the Commission has always considered cost impacts to customers when it makes decisions and it is appropriate for the Commission to consider cost-shifting when approving SEPO Option B. She asserts that the Commission has a responsibility to minimize potential cost-shifting and that SEPO Option B offers a balanced approach that will lessen some of the cost-shifting to non-participating customers while ensuring the tax-exempt entities receive the same level of benefits available to them under Act 464. She states her view that Act 464 seems to

contemplate the Commission has a role in protecting non-participating customers from cost-shifting that results from net-metering. She testifies that in the aggregate, the net-metering capacity created by eligible tax-exempt entities would be comparable to a utility-scale solar project like Stuttgart Solar and that a finding the SEPO Option B is in the public interest is supported by the potential size of the cost-shift. Ms. Talkington asserts that EAL has produced an abundance of evidence in this Docket and in Docket No. 16-027-R to establish the existence of a material and harmful cost-shift. She argues that the potential cost-shifting requires action and needs to be addressed now. She notes that in Docket No. 16-027-R multiple parties have advocated for grandfathering under existing rate structures for up to 20 years. She testifies that she demonstrated in her direct testimony that SEPO Option B reduces the cost-shift to non-participating customers when compared to the third-party PPA option. She argues that it reduces the cost-shift by approximately 54 percent. Ms. Talkington characterizes as “misguided” Mr. Rabago’s claim that SEPO Option B will offer less value to tax-exempt customers than is made available to them by a third-party provider under Act 464. She expresses that customers should be given the opportunity to determine the option that provides the most value for their specific needs. She states that SEPO Option B provides great value through the same 1:1 retail credit net-metering as a PPA option, but without other terms such as a long-term contract. She testifies that EAL has not claimed that costs will increase because of net-metering in this Docket. She argues that EAL has shown that even where costs to serve customers remain the same a significant cost-shift will result under the existing 1:1 full retail credit net-metering framework and that non-participating customers should be protected from the cost-shift. She states that the

cost-shift will result in higher electric rates than those customers would otherwise been required to pay. Ms. Talkington states that she assumes that Mr. Rabago's insistence that EAL only asserts that net-metering customers create increased costs because they no longer use the same level of electricity is because he is overlooking certain cost-of-service regulation principles. She testifies that EAL's rates are based on cost-of-service regulation and that costs not paid by net-metering customers are ultimately paid by non-participating customers through higher electric rates. She emphasizes that EAL is proposing SEPO Option B to mitigate cost-shifting, not to address increased costs related to net-metering. *Id.* at 9-13.

Ms. Talkington testifies that she sees no reason why the Commission may not consider the maximum potential cost-shifting impact that could occur if SEPO Option B is not approved. She argues that it is possible that all eligible SGS sales will switch to a third-party PPA if the current 1:1 full retail credit policy is retained. She asserts that the cost-shifting that could potentially occur will lead to higher electric rates, which is unfair to non-participating customers. She asserts that Mr. Swaim's claim that EAL should be able to estimate the solar output of the current solar facilities in order to claim to have lost revenues and that there is a resulting cost-shift is irrelevant because SEPO Option B is targeted to customers eligible under Act 464 who have not selected a renewable option yet. She classifies the customers targeted by SEPO Option B as a "new breed of net-metering customer." She reasserts that SEPO Option B is intended primarily to help mitigate the potential cost-shift from this new breed of net-metering customers and also as an alternative that they made find attractive to meeting their needs. *Id.* at 14-16.

**F. AAEA SURREBUTTAL TESTIMONY**

RABAGO – SURREBUTTAL

Mr. Rabago contends that EAL witnesses Castleberry and Talkington failed to rebut his direct testimony findings and conclusions. He asserts that due to this failure, no weight should be given to their rebuttal testimony. He provides a summary of the key points that he made in his direct testimony because he argues that Mr. Castleberry and Ms. Talkington mischaracterize his positions. He provides a short summary of their rebuttal testimony before discussing specific items from those in more detail. Rabago Surrebuttal at 2-5.

Mr. Rabago asserts that Mr. Castleberry does not characterize his testimony correctly regarding monopoly power. He states that he did not say that EAL is not authorized to propose SEPO Option B. Instead he continues to maintain that EAL has not produced substantial evidence to support its proposal and that still remains the case. He argues that the fact that the Commission must approve EAL's prices and tariffs is because EAL is a monopoly. He asserts that in his direct testimony he discussed ways that EAL could use its market power that was obtained through monopoly status to compete unfairly with competitive solar developers through its SEPO Option B proposal. He states that Commission approval of the settlement agreement in Docket No. 18-037-U pre-decided the issues relating to market power abuse by the monopoly utility under SEPO Option B. He further disagrees that he is estopped from arguing against unfair competition risks in this proceeding because another member of AAEA was a party to the Settlement Agreement in Docket 18-037-TF. He states that it "defies logic" that the Commission would be powerless to consider the differences between this proposal that is being offered under substantially different circumstances simply because it had

approved a substantially different program previously. He argues that EAL did not rebut his direct testimony that tariff filings should not be used as a collateral attack on ongoing Commission proceedings. *Id.* at 5-8.

Mr. Rabago states that by repeatedly using the words “proposal” and “proposed” in his direct testimony, he demonstrated his understanding that SEPO Option B must be approved by the Commission before EAL begins offering it. He states that his testimony was to express that EAL should not enact a tariff offering that would undercut or compete with the growth of non-utility competitive services that result expressly as Act 464 intended. *Id.* at 8-9.

Mr. Rabago testifies that even though the Commission approves interconnection process terms and procedures, it does not mean that opportunities do not exist for EAL to unfairly apply those to the detriment of competitive solar developers. By way of example, he discusses EAL’s ability to leverage customer relationships to prefer its offerings. He adds that he cited economic development rates and incentives in his direct testimony to show that EAL seems to be glad to use ratepayer funds to secure load growth and tie customers more closely to its services, but is an adversary to the economic development that results from competitive solar development, even though that economic development was intended expressly by the General Assembly. *Id.* at 9-10.

Mr. Rabago disagrees with Mr. Castleberry’s assertion that his concerns that EAL intends to use SEPO Option B to undercut net metering for tax-exempt customers that the General Assembly created in Act 464 are misplaced. He notes that SEPO Option B would shift allocation of renewable attributes from all customers to just SEPO Option B

customers, that it would not increase the total consumption of renewables and would actually reduce the amount of renewable energy generation that could be claimed as available to all customers. He testifies that he is an attorney and that the principle of statutory construction holds that “when one or more things of a class are expressly mentioned others of the same class are excluded.” He reasserts that the General Assembly did not include in Act 464 provisions relating to cost shifting or utility offers of competitive services. He argues that Mr. Castleberry mischaracterizes his testimony by asserting that AAEA seeks to limit competition. Instead, he testifies that the Commission should not approve SEPO Option B in order to preserve, protect, and enhance solar development competition in Arkansas. *Id.* at 10-11.

Mr. Rabago states that there is not substantial evidence in the record of the existence of a cost shift from net-metering for tax-exempt customers. He argues his testimony regarding EAL’s ability as a monopoly to exercise market power and compete unfairly demonstrates that there is an abundant risk of harm that would result from approval and implementation of EAL’s proposal. He testifies that the proposed SEPO Option B would reduce significantly the savings that tax-exempt customers could realize through net-metering. He asserts that any benefits of alleged avoided cost-shifting could be offset by the opportunity cost of losing real savings that come with net metering for governmental tax-exempt customers. He notes that the utility bills of governmental tax-exempt customers are ultimately paid by taxpayer citizens of Arkansas. *Id.* at 11-12.

Mr. Rabago states that Ms. Talkington’s characterization of his direct testimony regarding cost shifting is inaccurate. He repeats that he was clear that EAL has not

shown a material and harmful cost shift resulting from net-metering, and particularly from tax-exempt customers pursuant to Act 464. He characterizes EAL's proposal as a poor use of regulatory processes. He fundamentally disagrees that a new tariff should be approved with the primary intention of competing with net-metering options and undercutting a new service opportunity for tax-exempt customers that was specifically created in Act 464. *Id.* at 12-13.

Mr. Rabago testifies that the Company has not provided substantial evidence that any reduction in revenues from tax-exempt customers would not be offset by reduced costs to serve those customers and increased benefits to all customers as a result of net-metered generation. He states that in Docket No. 16-027-R the testimony and evidence only established a shifting of costs to non-net-metering customers when the benefits of net-metering are ignored. He argues that the tax-exempt customers that are the subject of this Docket can use the savings from net metering to lower their electric bills which are ultimately paid, in most cases, by all taxpayers. *Id.* at 13-14.

Mr. Rabago contends that Ms. Talkington's claims that cost shifts to non-net-metering customers will result when tax-exempt customers net meter are not supported by any evidence other than her "hypothetical exercise in arithmetic." He asserts that Ms. Talkington's rebuttal arguments that customers should be able to choose SEPO Option B did not actually rebut the fact that SEPO Option B is a lower-value offering than net-metering. He states that both Ms. Talkington and Mr. Castleberry focus on his use of the words "creates increased costs" instead of the fact that his testimony was addressing the alleged increase in costs to non-net-metering customers that the Company alleges will result when net-metering customers reduce their usage. Mr.

Rabago argues that Ms. Talkington confuses fixed costs and sunk costs. He argues that by reducing their electricity usage net-metering customers can contribute to reductions in fixed costs by reducing loading on the grid and extending the useful life of existing fixed cost infrastructure. He contends that Ms. Talkington's allegation that net-metering customers create increased costs for non-net-metering customers through cost shifting seems to rely on the assumption that all fixed costs are sunk and will be inescapably and increasingly recovered from non-net-metering customers due to reductions in use of the utility system by net-metering customers. *Id.* at 14-16.

Mr. Rabago concludes that EAL has failed to rebut his essential position that it has not met its burden to produce substantial evidence that the proposed SEPO Option B would result in just and reasonable rates in the public interest. He continues to recommend that EAL's proposal for approval of SEPO Option B be denied by the Commission. *Id.* at 16-17.

## **G. SCENIC HILL SURREBUTTAL TESTIMONY**

### **HALTER – SURREBUTTAL**

Mr. Halter states that Scenic Hill is not seeking to limit competition in Arkansas as Mr. Castleberry contends. He testifies that Scenic Hill competes in a very competitive solar energy market in Arkansas to offer energy service agreements (ESAs) to governmental and other non-profit entities pursuant to Act 464. He argues that EAL is not proposing to compete but rather to offer a program that others in the market are precluded from offering. He testifies that Scenic Hill and other developers are not allowed under AREDA to offer participation in a 100 MW solar project as EAL proposes. He contends that only EAL can offer one-year subscriptions due to the backstop



provided by customer rates if subscribers cancel. Mr. Halter testifies that he recognizes that EAL is a regulated monopoly and that he is not seeking to exclude EAL from the solar energy market or stifle competition. He notes that according to EAL's own testimony, it has more than ten times the solar development than the private sector has developed. Halter Corrected Surrebuttal at 2-4.

Mr. Halter asserts that 1:1 net-metering for demand-metered customers and the provision of ESAs for governmental and non-profit customers are bedrocks of Act 464. He testifies that AREDA does not provide for utility-owned programs to compete with net-metering. He asserts that EAL through SEPO Option B is seeking to undercut net-metering for governmental and non-profit customers, which are generally demand-metered. He argues that instead of proposing to compete with solar developers, EAL is actually proposing to offer an alternative that true market competitors are prevented from offering. *Id.* at 4-5.

Mr. Halter claims that the Commission has very limited authority under AREDA to institute a grid access charge, therefore EAL's offer to adjust SEPO B based on any fees and charges imposed on demand-metered customers by the Commission in Docket No. 16-027-R is irrelevant. *Id.* at 5-7.

Mr. Halter claims that in Docket No. 16-027-R, Scenic Hill and others have supported their position that demand-metered net-metering almost certainly provides a net benefit to other ratepayers, and that the overall cost-shift is minimal. He declares that EAL's failure to recognize capacity benefits for a daytime peaking utility customer is counter-intuitive. *Id.* at 7-8.

Mr. Halter asserts that the analysis presented by Ms. Talkington is conclusory and confusing. He states that it appears that she does not even credit net-metering for the energy costs avoided or other resultant benefits in that analysis and that she has not demonstrated a cost-shift from demand-metered customers to other ratepayers. He describes her analysis as “opaque and unsupported” and states that it assumes an unreasonable shift of 100 percent. He attaches Exhibit WAH-1 that was prepared by Mr. Tom Beach of Crossborder Energy and adopts this as his own. According to Mr. Halter, this exhibit assumes a full three percent of EAL’s load is net metered -- a level he asserts is a reasonable level of net-metering penetration. He states that the analysis shows the potential cost shift would be no more than 0.01 percent of EAL’s revenues, a level he describes as a modest impact that undermines the need for a grid access charge at this time. Mr. Halter testifies that the Commission should allow 3 percent energy penetration by solar developers and then use the actual data from that net-metering penetration to serve as the basis for analyzing cost-shifting. *Id.* at 8-9.

Mr. Halter testifies that even great products do not achieve 100 percent penetration in any market so it is unrealistic to assume that 100 percent of municipalities will shift to net-metering in “a short period of time”. He asserts that governmental and tax-exempt SGS customers include many individual meters that cannot be aggregated and that the third-party ownership model has had little success across the nation for smaller installations because these small systems cannot cover the legal, financing, and accounting costs that are necessary. He argues that Mr. Castleberry’s testimony that some customers may not desire or have the ability to enter into a long-term contract acknowledges that some SGS customers will not switch to

ESAs. He counters Ms. Talkington's testimony that 77 percent of municipal loads are served under SGS rates (and the remaining 23 percent served by LGS rates) by providing data from three cities that Scenic Hill has reviewed in depth and provided interconnection applications to EAL. He states that he shows that more than 23 percent of the load is served under LGS rates. In the table shown in his testimony, the number of meters includes the meters that were considered based on how much load the cities wanted to offset and the LGS meters include those using LGS rates. Total load and LGS load reflect the most recent 12 months annual load for the meters. He argues that this is evidence that Scenic Hill is offsetting load that is metered under LGS rates and that EAL accepts that LGS energy rates, which are offset under net-metering, are closely aligned with what EAL considers to be energy costs. He contends that when considering even modest capacity and non-energy benefits provided by net metering, a conclusion can be reached that net metering of LGS meters does provide a net benefit to other ratepayers. *Id.* at 9-11.

Mr. Halter contends that a much smaller amount of net-metering projects will be built than the 133 MW of interconnection requests discussed by EAL's witnesses. He states that grid developers are forced to pay for multiple interconnection requests simultaneously due to minimal insight provided by EAL. Mr. Halter discusses that for the three projects, Scenic Hill submitted multiple interconnection applications totaling 51.1 MW even though they plan to build only 18.2 MW for three cities. He states that based on Scenic Hills's experience approximately 25 percent of PISRRs will result in fulfilled projects. This would indicate that approximately 34 MW of the 133 MW of interconnection applications pointed to by EAL witnesses would be built and that EAL's

projected cost shift based on interconnection applications is overstated by a factor of four. He argues that even less will be built if EAL's proposed grid access charge and grandfathering provisions are adopted by the Commission. *Id.* at 11-12.

Mr. Halter states that it appears that the three scenarios Ms. Talkington presents are all based on the 100 MW project that has been proposed to the Commission by EAL. Regarding Scenario 2, he argues that EAL will not incur the energy costs for energy that is not delivered; EAL failed to consider virtually all other benefits; and it is unrealistic to assume that only SGS meters are offset. Regarding Scenario 3, he argues that EAL even argues that SEPO B still entails a cost shift that EAL claims will burden other customers. *Id.* at 13.

Mr. Halter asserts that the analysis presented by EAL for SEPO B is opaque and should never be used for a tariff. He further contends the EAL is proposing single-issue ratemaking and that a general rate case is the appropriate place to consider any rate changes. He states that SEPO B relies on a fixed rate of \$0.05345 per kWh, based on SGS energy rates and that it does not reflect 1:1 crediting competing with net metering. He asserts that the rate is higher than LGS energy rates, which would make it impractical for solar developers to offer under net metering for LGS meters, and is tied to a 100 MW facility which solar developers cannot offer. He asserts that it would be unfair to allow a regulated monopoly to offer what the competitive market cannot offer. *Id.* at 14.

Mr. Halter asserts that SEPO B is more than an administrative rewrite of SEPO A. He discusses differences such as that SEPO B includes a rollover of excess energy credits to the next month not found in SEPO A; and SEPO B being restricted to governmental

and tax-exempt customers. He notes that Mr. Castleberry acknowledges that “SEPO Option B is structured differently than SEPO Option A.” Mr. Halter describes SEPO A as a pilot. He asserts that it was designed to allow customers to share in the production of a large solar energy facility. He testifies that prior to Act 464, there was not a workable net-metering alternative for larger customers. He states that that the legislative intent in Act 464 was to increase size limits to expand net metering, allow approval of large systems, and provide a way for municipalities to access the federal investment tax credit. He contends that the General Assembly would not have spent a year negotiating Act 464 if it intended to allow net metering to be undermined by an “opportunity” like SEPO B. *Id.* at 14-16.

#### **H. STAFF SURREBUTTAL TESTIMONY**

##### **SWAIM – SURREBUTTAL**

Mr. Swaim responds to the rebuttal testimony of EAL witnesses Castleberry and Talkington as he addresses EAL’s proposed changes to Rider SEPO. Mr. Swaim testifies that according to his findings the proposed changes to SEPO A as a result of adding SEPO B would materially alter Rider SEPO and would violate the Partial Settlement Agreement. He argues that the Rider SEPO approved by the Commission does not have an Option A and Option B. He states that nothing in Mr. Castleberry’s rebuttal testimony caused him to change his conclusions that the changes EAL proposed to Rider SEPO would undermine the currently effective Rider SEPO either directly or indirectly. Swaim Surrebuttal at 2-3.

Mr. Swaim contends that the proposed changes to Rider SEPO are material and that EAL has essentially proposed a new tariffed rate that will replace the existing Rider

SEPO. He discusses EAL's proposed removal of the 50 percent offering limit stating that the purpose of the approved 50 percent limit was to preserve the remaining 50 percent of the Designated Solar Facilities for the benefit of *all* ratepayers. He points to the Commission's approval in Docket No. 15-014-U of the Stuttgart Solar PPA and the granting to EAL of an "Additional Sum of 20% based partly upon the savings it would provide to retail customers over the term of the PPA." He contends that removing the 50 percent cap will remove the benefits of the Designated Resource from all ratepayers and direct them to a select few. *Id.* at 4-5.

Mr. Swaim expresses another concern that EAL's proposed amendment to the subscription levels for all classes under either SEPO Option A or B is not scalable. He discusses specifically the amendment converting the 10 percent reservation for Residential Service Rate Schedules to four MW, stating that it would severely limit subscriptions available to this class and thus is not an immaterial change as EAL contends. He argues that the 81 MW Stuttgart Solar PPA is the only Designated Solar Resource eligible for subscription under Rider SEPO, but that EAL's proposal would allow EAL to designate which renewable solar resources would be eligible. He concedes that EAL would be required to submit a filing to blend the rates for additional resources. He asserts that under EAL's proposal the minimum subscription reserved for each class does not increase proportionately. He states that in Docket No. 18-037-TF the issue of imposing size caps as a percentage of total available subscriptions was addressed. *Id.* at 5-6.

Mr. Swaim states that EAL did file an annual report on March 13, 2020, but Staff had not had sufficient time to review it. He notes that an initial review indicated that

EAL reported on its Rider SEPO marketing efforts, but that it did not provide the required reporting on the results of those efforts. As a result, Staff cannot at this time testify that EAL has fully complied with the requirements. *Id.* at 6.

Mr. Swaim testifies that the economic attractiveness of SEPO Option B is of utmost importance because it is the means by which the existing SEPO tariff and the proposed Option A will be eliminated by customer migration. He argues that the SEPO tariff filed by EAL in this docket would sidestep Commission orders in Docket No. 17-041-U and the Commission-approved Settlement Agreement in Docket No. 18-037-TF. *Id.* at 6-7.

Mr. Swaim states that EAL did not provide substantial evidence that the cost shift it alleges will result from net-metering under Act 464 would be lessened by its proposed changes to Rider SEPO. He contends that additional solar capacity and energy regardless of whether it is provided by a customer or a private entity will be available to EAL to sell in the MISO market and that those MISO revenues would flow to ratepayers through Rider ECR and the MISO Rider regardless of who owns the solar capacity or if it is subscribed under SEPO Option B. He acknowledges that if customers leave Option A for Option B, the MISO revenues that would have been paid to the former Option A customers will be available to non-participating ratepayers. He contends that SEPO Option B may mitigate the potential profit and market shift between EAL and third party solar developers due to the SEPO Option B Energy Rate of \$0.05345 per kWh being paid to EAL instead of other developers. He reasserts that EAL has not provided substantial evidence that the proposed SEPO Option B would lessen any alleged costs shifts among retail electricity customers. *Id.* at 8-9.

Mr. Swaim testifies that all Promotional Practices are voluntary and do not contain obligations to participate. He disagrees with Mr. Castleberry's contention that such would prevent Rider SEPO from being a promotional practice. He reasserts that Docket No. 18-037-TF is the proper forum to investigate the proposed Rider SEPO amendments and determine if the Promotional Practice Rules apply. *Id.* at 9.

Mr. Swaim testifies that Ms. Talkington did not support the number of customers who would elect to net-meter or her assumption that 100 percent of tax-exempt customers in the SGS and LGS classes will net-meter under AREDA. He notes that under AREDA, a public interest finding and approval by the Commission is required for facilities over 1 MW. He also points to the pending decision in Docket No. 16-027-R. He asserts that basing a Commission order on Ms. Talkington's testimony would be at risk of being overturned by the Arkansas Court of Appeals pursuant to Ark. Code Ann. § 23-2-423(c). *Id.* at 10-11.

Mr. Swaim notes that Ms. Talkington did not assert that EAL could not estimate the solar output of a customer's net-metering facility, instead she merely stated that estimating the solar output of a customer's net-metering facility was not relevant because SEPO Option B is aimed at customers that have not yet selected a renewable option. He reasserts that this estimate is the basis of EAL's entire application and that "Staff does not support the establishment of rates absent the required element of substantial evidence as its foundation." *Id.* at 11.

Mr. Swaim states that Ms. Talkington did not update the data or analysis she has presented. He argues that EAL has a list of the known net-metering projects and is aware as a result of press releases of other potential projects. Importantly, he states that



Ms. Talkington acknowledges that some of the claimed lost contributions to fixed costs are potentially already being recovered through either the Historical or Projected Years in EAL's FRP. He contends that the FRP tariff is more suited for an analysis of any cost shift that may occur due to customers choosing solar options. *Id.* at 11-12.

Mr. Swaim testifies that his positions remain the same after considering the rebuttal testimony of Mr. Castleberry and Ms. Talkington. He continues to make the same recommendations that the Commission:

- Deny the changes EAL proposed to Rate Schedule No. 62, Rider SEPO filed on August 15, 2019; and
- Instruct EAL to file any proposed amendments to Rider SEPO in Docket No. 18-037-TF after it has submitted the required annual reporting and in compliance with any of the Commission's applicable rules.

*Id.* at 12-13.

## **I. EAL SUPPLEMENTAL REBUTTAL TESTIMONY**

### **TALKINGTON – SUPPLEMENTAL REBUTTAL**

Ms. Talkington responds to Scenic Hill Solar witness Halter's corrected Surrebuttal Testimony, which she characterizes as "purported to be a correct version." She discusses crucial flaws in Mr. Halter's originally provided exhibit. She claims that the corrected version is really a "new" analysis, and asserts that it remains fundamentally flawed. Talkington Supplemental Rebuttal at 14-15.

Ms. Talkington notes that Mr. Halter's Exhibit WAH-1 is an analysis performed by Mr. Beach of Crossborder Energy. She testifies that she reviewed the original analysis and as she stated in her sur-surrebuttal testimony, she does not believe that it is

representative of what occurs from the perspective of cost-shifting. She asserts that her main concern with the original analysis was that it inappropriately applied certain residential rate components. She highlights that Mr. Beach used the Embedded Capacity components of the residential Excess Generation Credit proposed by Sub-Group 2, which she argues is not meaningful to the SGS or LGS rate classes. She testifies that, except for one important correction, she uses the same inputs and methodology as Mr. Beach did in his corrected analysis to derive a worst-case cost-shift that she states is actually quite large. She asserts that the important take-away is that the analysis Mr. Halter adopted as his own analysis demonstrates a cost-shift will be occurring. *Id.* at 15-17.

Ms. Talkington states that she has several concerns with Mr. Beach's new analysis, but her biggest concern is that he does not use the correct Commission-approved avoided cost. She claims he "conjures up a fictitious customer class-specific avoided cost for the SGS and LGS rate classes." She asserts that his avoided cost values have no sound basis in ratemaking and that they seem to be aimed at his objective of ensuring that his "worst-case" analysis no longer supports the possibility of a cost-shift. Ms. Talkington asserts that because Mr. Beach wants to include avoided capacity costs in his analysis, he must use the most recent energy values from the MISO Planning Reserve Auction (PRA) result for Zone 8. She converts the PRA for Zone 8 into a volumetric value for a solar resource to obtain an avoided capacity cost of \$0.0004 per kWh. She then combines the avoided energy value EAL calculated in Phase 3 of Docket No. 16-027-R and the avoided capacity value which yields \$0.0335 per kWh. She states that if Mr. Beach's seven percent avoided line loss value is applied, then the total

avoided cost value is \$0.0358 per kWh. She calculates a total annual cost-shift of \$23.6 million after correcting only for the avoided cost value as she described. *Id.* at 18-19.

Ms. Talkington testifies that she does not agree that the \$23.6 million represents the worst-case scenario. She continues to support the much larger annual cost shift that is possible if a majority of tax-exempt customers were to take advantage of net-metering as she discussed in her previously-filed testimony. She restates her opinion that it is important to note that the analysis Mr. Halter has adopted as his own clearly demonstrates that there is a sizable cost-shift occurring. *Id.* at 17-20.

#### **J. EAL SUR-SURREBUTTAL TESTIMONY**

##### **CASTLEBERRY – SUR-SURREBUTTAL**

Mr. Castleberry discusses what he calls the “intervenors’ unsubstantiated complaints” and the demand EAL sees for its proposed tariff offering. Castleberry Sur-Surrebuttal at 2.

Mr. Castleberry provides an overview of EAL’s proposal. He notes that the terms “SEPO Option A” and “SEPO Option B” are terms that the parties first used to differentiate the current tariff amendment proposal but he states that those terms are not actually used in the SEPO rider. He testifies that EAL foresees that the SEPO rider may be modified to include other options to be responsive to customer needs and expectations. Mr. Castleberry testifies that EAL’s request in this Docket is to provide a supplemental offering (SEPO Option B) to its customers that are either government entities or entities that may qualify to be exempt from federal and state income tax (collectively, tax-exempt entities) and are eligible to consider net-metering options that Act 464 made available. He states that SEPO Option B will provide an option that

responds to EAL's customers' expectations, and also help mitigate shifting of cost to non-participating customers. *Id.* at 4.

Mr. Castleberry refers to the Affidavit filed by EAL witness Michael P. Considine earlier in this Docket<sup>7</sup> documenting discussions that EAL's customers are mostly interested in bill savings that Act 464 and the existing 1:1 full retail credit billing mechanism provides, and are less motivated by other perceived benefits of solar or renewable options such as sustainability. According to the Affidavit, many customers have inquired of EAL often for updates on and the availability of SEPO Option B. Mr. Castleberry asserts that customers should have options to consider, including SEPO Option B, and that SEPO Option B would not hinder the ability of any party, including EAL, to recommend future changes to Rider SEPO. He repeats his position that SEPO Option B is undoubtedly in the public interest as it uses the solar resource approved by the Commission in Docket No. 15-014-U; amends an existing tariff and uses the rate already approved as just and reasonable in Docket No. 18-037-TF; and offers the same credit rate structure that is currently available to these customers under the existing net-metering rules, until it is changed by the Commission. *Id.* at 5-6.

Mr. Castleberry claims that Staff, AAEA, and Scenic Hill do not offer substantive rebuttal to EAL's tariff support or that it is in the public interest. He contends that AAEA and Scenic Hill do not provide any meaningful alternatives in their testimony, which he characterizes as containing mainly unsubstantiated theoretical complaints about why they believe EAL should not be allowed to offer SEPO Option B. He calls Mr. Rabago's contention that EAL has not met its evidentiary burden "absurd." He asserts

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<sup>7</sup> The Affidavit was filed in support of EAL's October 2, 2019 *Request for Approval of Tariff, or Alternatively, to Set a Hearing*. Mr. Considine has not filed testimony in this Docket and thus this Affidavit is not a part of the evidentiary record in this Docket.

that Mr. Rabago's testimony is full of his opinions and theoretical observations and it falls short of any meaningful factual support for the allegations. He asserts that Mr. Rabago's contentions that SEPO Option B is not fair because EAL controls the interconnection process and economic development incentives is overcome because the Commission, not EAL, controls both of these things. Mr. Castleberry points again to the Affidavit of Mr. Considine and its discussion of the level of customer interest in SEPO Option B in refuting Mr. Rabago's claim that EAL has provided zero evidence of customer demand or interest in EAL's proposal. Mr. Castleberry states that he has never taken a position in testimony that EAL is "just another similarly situated solar development market participant" and that he has never described SEPO Option B to be a "lower-quality" service. *Id.* at 7-10.

Mr. Castleberry argues that Mr. Rabago's representation that SEPO Option B is being proposed by EAL to compete with net-metering options does not fully reflect EAL's position contained in his testimony. He explains that the notion of a "competitive market" is misleading, but that EAL does believe SEPO Option B should be offered to its customers along with other net-metering options. He testifies that the business models of private solar developers are not products of a "competitive market" as they are rooted in regulatory subsidies created by the full 1:1 retail credit and investment tax credit provisions. He asserts that Mr. Halter's claim that EAL is attempting to preserve its "monopoly power" is a similar argument to Mr. Rabago's. He testifies EAL has an obligation to serve as a regulated utility. He contends that the issue is how EAL can respond to customers' expectations and how customers that are eligible to consider net-metering or SEPO Option B will continue paying their fair share of costs to serve

customers and to maintain the grid. He emphasizes that Mr. Halter's business is made viable due to EAL's relationship with its customers. *Id.* at 11-13.

Mr. Castleberry refers again to the Affidavit of Mr. Considine and also provides the following table reflecting counts of the types of customers that have signed letters of intent (LOI) to subscribe to SEPO Option B pending its approval by the Commission.

**LOIs for Subscription to EAL's proposed SEPO Option B**

Type of Entity	Count
Chamber of Commerce	2
Church	7
College/University	6
County	17
Education Coop	2
Hospital	3
Municipality	44
Non-profit organizations	6
School District	41
Utility (Water / Sewage)	8
<b>Total</b>	<b>136</b>

Relying on Mr. Considine's Affidavit, Mr. Castleberry contends that EAL has shown evidence based directly on its customers that speaks directly to the market served by EAL rather than generic market research.

*Id.* at 14-15.

Mr. Castleberry testifies that customers have been unable to subscribe to SEPO Option B during this proceeding. He believes that they should be granted an equivalent opportunity for grandfathering that the Commission may grant in Docket No. 16-027-R to other customers. *Id.* at 15.

Mr. Castleberry believes Mr. Swaim's primary complaints are:

- SEPO Option B will undermine SEPO Option A, and therefore undermine the settlements agreements in Docket Nos. 17-041-U and 18-037-TF; and

- EAL has not provided substantial evidence SEPO Option B will mitigate the cost shift EAL contends will result from net-metering under Act 464 and the current 1:1 retail rate structure.

*Id.* at 16.

Mr. Castleberry testifies that Mr. Swaim seems to suggest that customer migration to SEPO Option B because of the economic benefits it provides will eliminate SEPO Option A and replace the currently approved tariff. He states that the customers currently participating in SEPO Option A are not tax-exempt entities and could not migrate to SEPO Option B. He states that under the structure of the SEPO Rider EAL could, working with the Commission and its customers, consider designating additional resources if the availability of SEPO Option B creates a subscriber availability issue in SEPO Option A. He notes that Chicot Solar and Searcy Solar, if approved, may be evaluated by EAL to designate some portion of those resources for SEPO Option A. He states these may present lower cost resources for SEPO Option A than currently exist. Mr. Castleberry testifies that SEPO Option B is more efficient regarding sizing or over-sizing subscriptions than net-metering options and he asserts that EAL is motivated to make certain that as many customers as possible can subscribe to the SEPO tariff. He notes that the small increments available for subscription and the ability to more easily adjust subscriptions under SEPO Option B facilitates a better match to a customers' objectives and load. He asserts that these facts address Mr. Swaim's concerns and also provide additional support that SEPO Option B is in the public interest. Mr. Castleberry testifies that he does foresee opportunities to further adapt the currently proposed SEPO Option B offerings. He points to EAL witness Andrew D. Owens's testimony at

the December 5, 2019 hearing in Docket No. 16-027-R concerning opportunities to explore changes to the SEPO Rider in response to a Commission question regarding the annual term proposed in SEPO Option B. He offers that the annual term may be one such potential change based on at least Scenic Hill's complaints which could be explored through a third option filed as part of any compliance filing in this Docket in response to any concern the Commission has regarding the annual term as proposed currently in SEPO Option B. He asserts that Mr. Swaim is incorrect when he states that subscription levels for all classes eligible under either SEPO option have been amended by EAL through SEPO Option B. He testifies that the 10 percent reservation level for Residential Service Rate Schedules and the SGS reservation (which has already expired) available in SEPO Option A is only associated with the Stuttgart Solar Facility, which is the "initial" Designated Resource Offering of the current tariff. He testifies that the word "initial" was added because any future Designated Solar Resources were not intended to be included in those percentages. He adds that changing the reserved class blocks from a percentage to a MW value does not change the intent of the agreements in Docket No. 18-037-TF and it does not limit available subscriptions to classes when additional Designated Resources are added. Mr. Castleberry asserts that the 50 percent cap agreed to relating to the Chico Solar Partial Settlement in Docket No. 17-041-U is not exempt from recommendations for change. He points to the annual report EAL agreed to provide in Docket No. 18-037-TF, which would provide the parties a chance to recommend changes to the tariff. He also reminds that in Docket No. 17-041-U, AEEC witness Pollock stated that he was willing to support that the PPA as in the public



interest at this time as a result of having “another opportunity to suggest that EAL remove the 50 percent cap.” *Id.* at 17-24.

Mr. Castleberry testifies that EAL believes the evidence it has presented, which is discussed further by Ms. Talkington, shows that the cost shift is real and significant and rebuts the claims made by Mr. Swaim and Mr. Halter discounting that evidence. *Id.* at 25–26.

Mr. Castleberry argues that Mr. Halter provided no principles or how they had been violated to support his claim that EAL’s tariff proposal violates ratemaking principles. He regards Mr. Halter’s discussion of the grid charge as a “red herring” with respect to matters in this case and claims that they have no bearing on whether SEPO Option B sets forth just and reasonable rates and is in the public interest. He testifies that EAL has not double-counted proposed facilities where a customer has submitted multiple site reviews, noting that the 133 MW<sub>DC</sub> he referred to in his rebuttal testimony does not include multiple site reviews, and that EAL has received over 30 MW<sub>DC</sub> of additional Preliminary Interconnection Site Reviews since he filed that testimony. *Id.* at 26-27.

Mr. Castleberry testifies that its customers have shown a clear demand to consider SEPO Option B. He argues that SEPO Option B would reduce the harmful effects to EAL’s customers from service arrangements under Act 464 that developers are rapidly pursuing. He asserts that EAL has presented substantial evidence to support that SEPO Option B is in the public interest. *Id.* at 27.

TALKINGTON – SUR-SURREBUTTAL

EAL witness Talkington responds to the rebuttal testimony of Staff witness Swaim, AEEC witness Rabago, and Scenic Hill witness Halter and addresses claims that she describes as “unfounded” made by these witnesses that EAL has not provided substantial evidence to support its claim of cost-shifting. She disputes the claims made that EAL has not provided sufficient evidence to support that a cost-shift occurs. She chronicles eight pieces of evidence that she has presented in either her direct or rebuttal testimony. She also points to the Affidavit of EAL’s Mr. Considine which discusses the number of conversations that EAL has had with customers concerning their interest in pursuing arrangements for net-metering either with private solar developers or through SEPO Option B. Talkington Sur-Surrebuttal at 2-7.

Ms. Talkington testifies that EAL’s cost benefit analysis supports EAL’s position that SEPO Option B imposes less harm on non-participating customers than third-party solar PPAs even though both options are based on 1:1 full retail credit net-metering.

Table 1

ENTERGY ARKANSAS LLC NEM & SEPO NEM and SEPO Option B Comparison Analysis Example Illustrative Customer First Year Impacts				
Category	1:1 Net Metering	SEPO Option B	Description	
1	Total Benefits \$	70,984 \$	88,415	
2	Total Costs \$	113,743 \$	113,743	
3	Total Benefits Less Total Costs	\$ (42,759)	\$ (25,327)	
4	Benefit to Cost Ratio (ln1 / ln 2)	0.62	0.78	Total Benefits/Total Costs
5	Other Costs Not Reflected in Traditional Cost/Benefit Test: 'Lost Taxes & Franchise Fees from N-M Solar		11,605 \$	11,605 \$ Sum of avoided sales taxes and franchise fees
6	Total Costs Including Taxes & Franchise Fees	\$ 125,348	\$ 125,348	
7	Total Benefits Less Total Costs (Including Other Costs)	\$ (54,363)	\$ (36,932)	
8	Benefit to Cost Ratio (Including Other Costs) (ln 1 / ln 6)	0.57	0.71	Total Benefits/Total Costs (incl taxes and fees)

*Id.* at 7-8.

Ms. Talkington discounts Mr. Swaim's claim that EAL will have additional capacity and energy available for sale through the MISO market with her argument that SEPO Option B does not require the development of additional capacity in that EAL will use its currently available resources for SEPO Option B customers. She acknowledges that there may be some value for the energy generated by customers that net-meter. She states that EAL's position on this issue is reflected in its response to Staff's data request APSC 2-3 shown in EAL Sur-Surrebuttal Exhibit MLT-1. Ms. Talkington responds to Mr. Swaim's contention that the payment to EAL of the SEPO Option B energy rate is the only potential mitigation of cost-shifting. She states that the cost for the solar resource currently available for use under SEPO Option B is already reflected in the costs all customers pay and that those costs will continue if a customer decides to net-meter. She testifies that those costs will be offset by the revenues collected from SEPO Option B thereby reducing the current costs that non-participating customers pay. *Id.* at 9.

Ms. Talkington contends that her analysis only provides the Commission the opportunity to consider the potential magnitude of cost-shifting and does not assume that 100 percent of eligible tax-exempt customer will choose to net-meter. She reasserts that it is not unreasonable to assume that a large number of SGS customers that are eligible tax-exempt customers will eventually choose to net-meter under the current 1:1 full retail crediting available. She asserts that it is clear that customers will have to seek Commission approval for facilities over 1 MW before net-metering. She argues that it is not clear that they will not be able to avail themselves of net-metering. *Id.* at 10-11.

Ms. Talkington describes as “flawed logic” Mr. Swaim’s seeming suggestion that her acknowledgement that some lost contribution to fixed costs may be being recovered by EAL through Rider FRP means that the cost-shifting argument is more suited for Docket No. 16-036-FR. She claims that EAL and other parties have addressed similar arguments by Staff in Docket No. 16-027-R. She contends that Rider FRP is just one mechanism where the cost shift occurs, it does not mitigate the cost shift, and that Rider FRP does not contain a provision to address this scenario. She states that EAL is proposing SEPO Option B mainly to mitigate future cost shifts resulting from Act 464 combined with the existing 1:1 full retail credit billing framework, in addition to providing to EAL’s customers new renewable energy options. *Id.* at 11-12.

Ms. Talkington asserts that Mr. Rabago’s fixed versus sunk costs theory is an attempt to ignore the fact that if the rate design used in Arkansas sent more appropriate price signals then costs would not be shifted from net-metering customers to non-net-metering customers. She claims that it is the net-metering rates not reflecting the costs caused by net-metering customers that is the issue, not that the utility has over-invested in its infrastructure. She testifies that the problem is more evident in the SGS rate structure due to the volumetric rates for SGS collecting more of the fixed costs to serve that class. *Id.* at 12-13.

Ms. Talkington testifies that EAL’s response to data request APSC 2-3 does reflect the fuel savings from net-metering. She states that she did not include any other benefits because the resources being compared would provide the same benefits. She reviewed Mr. Halter’s Exhibit WAH-1, and offers several criticisms of its assumptions and methodology. She states that the analysis was actually prepared by Tom Beach of

Crossborder Energy and seems to attempt to demonstrate a worst-case net cost shift. She notes that EAL has already received PISRRs totaling more than half of the 310 MW of capacity assumed by Mr. Beach. She states that the avoided capacity value Mr. Beach used was the Embedded Capacity component of the residential Excess Generation Credit that was proposed by Sub-Group 2 in Docket No. 16-027-R. She argues it would not be appropriate to apply to the SGS or LGS rate schedules. She continues by arguing that the gross-up of the \$0.025 per kWh capacity value for distribution line losses had already occurred in Phase 2 of Docket No. 16-027-R, thereby Mr. Beach incorrectly grosses it up again for this analysis. Ms. Talkington asserts that Mr. Beach's worst-case cost shift scenario assumes 2-Channel Billing as the revenue baseline. She states that his Net Cost Shift is incremental to the cost-shift inherent with the 2-Channel Billing approach. She argues that the amount of cost shifted to other customers would be much higher than reflected in Mr. Beach's analysis if a more appropriate avoided cost was used. She notes that the \$0.06 per kWh avoided cost used by Mr. Beach is more than four times the actual current fuel rate being billed by EAL to its customers. She argues that Mr. Halter has adopted as his own analysis an analysis that reveals a cost-shift. *Id.* at 13-17.

**K. SUPPLEMENTAL TESTIMONY – RESPONSES TO COMMISSION HEARING QUESTIONS IN ORDER NO. 8**

**CASTLEBERRY – SUPPLEMENTAL TESTIMONY**

**Question:**

In your Rebuttal Testimony (page 18, lines 6-9), you state that if the Commission were to make a change to net-metering in another proceeding, the Company would reassess SEPO Option B. Please discuss what is meant by "reassess SEPO Option B."

Does the Company already have specific changes outlined based on anticipated changes to net-metering? If so, please discuss.

**Answer:**

Mr. Castleberry testifies that EAL does not have specific changes in mind currently and that his rebuttal commitment to reassessing SEPO Option B means that EAL would take into account how the benefits provided by SEPO Option B to EAL's customers would be impacted by any Commission-ordered change to the net-metering rules in Phase 3 of Docket No. 16-027-R. He notes that EAL has proposed making at least one compliance filing in this Docket in line with any grandfathering opportunities that may be provided by the Commission's Phase 3 decision. EAL would make that option available to the "grandfathered" customers irrespective of any other compliance filing for Rider SEPO that the Commission may order. Castleberry Supplemental at 2-4.

Mr. Castleberry states that EAL will evaluate any revisions to Rider SEPO to remain consistent with the Commission's final directives in Docket No. 16-027-R and he discusses two examples.

- First, if a change to the net-metering rules or tariff is made that reduces the cost-shift, such as a grid charge applied to net-metering facilities, then it may be appropriate to change SEPO Option B.
- Second, if the Commission finds that certain riders are non-bypassable, EAL would be open to modify Rider SEPO such that those same riders become non-bypassable.

Mr. Castleberry testifies that EAL believes that EAL may be instructed by an order in this proceeding to make such an evaluation once the findings in Phase 3 of Docket No.

16-027-R are known and propose any changes as an additional compliance filing in this proceeding. *Id.* at 3-4.

**Question:**

In your Rebuttal Testimony (page 23, lines 11-15) you state that expanding the availability of SEPO Option B to customers other than those EAL has asked to include would exacerbate the cost shifting to non-participants and eliminate the benefits of SEPO Option B to non-participants. Please explain why you believe this would be the case and how it would occur.

**Answer:**

Mr. Castleberry testifies that SEPO Option B was designed only for customers that the General Assembly stated are eligible under Act 464 to enter into a third-party PPA with a solar developer. He argues that the General Assembly purposefully limited the ability to enter into long-term PPAs to customers that can meet certain criteria, including being tax-exempt, and that SEPO Option B is offered to that same set of customers. *Id.* at 5.

Mr. Castleberry asserts that, based on customer interest in SEPO Option B as proposed, the available capacity (kW) would sell out quickly if it were open to all customers, and undermine SEPO Option A as Staff had described. He argues that this would result in fewer tax-exempt entities being able to subscribe to SEPO Option B, causing a surge of those customers entering into long-term PPAs and a greater overall level of cost-shifting. He testifies that expanding SEPO Option B would negatively affect all other customers to an even greater extent than EAL demonstrated in this proceeding. *Id.* at 5-6.

**Question:**

With respect to your Sur-Surrebuttal Testimony (footnote 1, page 4), please elaborate on any other options EAL is considering at this time in response to customer needs and expectations?

**Answer:**

Mr. Castleberry states that EAL will consider development of other tariff options based on its continued assessment of customers' needs for additional options and features. He testifies that EAL has reviewed several solar tariff options implemented in other jurisdictions and he contends that most appear to be structured in accordance with resource planning, rate design, and other precedents applicable to the specific utility and their regulatory jurisdiction. He asserts that utilities need the flexibility to develop tariff structures designed for their specific circumstances. He provides a list of options that EAL could potentially adopt in future EAL solar tariffs, though he says the list is not meant to include all of the features that could be included.

- Pricing based on contract duration;
- Pricing that varies with MW subscription amounts;
- Ability to only acquire the RECs;
- Prepayment subscription with limited term;
- Leasing subscriptions that may include annual or monthly payments and limited terms.

Mr. Castleberry testifies that "EAL sees its future as one where it will seek to create utility partnerships with its customers to meet their renewable requirements." *Id.* at 6-8.



**Question:**

Does EAL know with any degree of granularity the gross production for all of the net-metering facilities owned by its customers? Please discuss how EAL knows this information for net-metering customers, as compared with the customers that might subscribe to SEPO B. Will the ability to ascertain generation capacity (kW) and energy (kWh) production of net-metering facilities be enhanced with the completion of deployment of EAL's Advanced Metering Infrastructure? Explain how it will or will not.

**Answer:**

Mr. Castleberry testifies that EAL does not know with any degree of granularity the actual gross production of a net-metering facility that is owned by a customer, or on behalf of such customer, that is located behind the meter. EAL does know what the customer initially projects for annual energy production in its PISRR. He states that for a remote generator and meter aggregation, EAL will be able to better estimate the gross production that the facility is producing because the facility will mainly be output only. He asserts that EAL believes, based on the PISRRs, that many customers that might subscribe to SEPO Option B would otherwise enter a long-term PPA which would not be located behind any of the customer's meters, a remote generator. He contends that EAL would have better insight into the gross production of those facilities and be able to approximate the cost-shifting better once the facilities are online. *Id.* at 9-10.

Mr. Castleberry notes that EAL only records net consumption on Channel 1 for net-metering facilities behind the meter, and net exports on Channel 2. He states that the only customer generation that EAL knows with any certainty is the energy that is exported to the grid and measured on Channel 2. He states that for advanced meters

this information can be known at more frequent intervals than for standard meters, but that advanced meters will not provide EAL with the ability to determine the facility's gross energy production. He testifies that EAL would be able to measure all of the energy generated by a facility that is not behind the customer's meter and the customer uses meter aggregation. He states that EAL would not have the ability to determine the factors that influenced the facility's production, such as weather, for any situation. *Id.* at 10-11.

Mr. Castleberry testifies that the total installed solar capacity in kW is static information that the customer provides with the PISRR and through the Standard Interconnection Agreement. *Id.* at 11.

#### **EAL WITNESS WESTMORELAND – SUPPLEMENTAL TESTIMONY**

##### **Question:**

Why is it appropriate that the Rider SRC is the only rider that is non-bypassable by customer subscribers under SEPO Option B? Why is it appropriate to exclude the other riders from a non-bypassable requirement?

##### **Answer:**

Ms. Westmoreland testifies that Rider SRC is EAL's only rider that is designated as non-bypassable by statute. She states that the Commission designated Rider SRC as non-bypassable in Order No. 6 in Docket No. 10-008-U and that this treatment is consistent with the application of Rider SRC for EAL's net-metering customers. She states that SEPO Option B customers will not be able to bypass Rider SRC charges because the gross kWh will be known, unlike net-metering customers. She explains that Rider SRC was made non-bypassable mainly to maximize the benefits of securitization

and provide those benefits to customers and that non-bypassability of the Storm Recovery Charge was necessary to obtain AAA rating for the bonds. Westmoreland Supplemental at 2-3.

Ms. Westmoreland testifies that EAL agrees it may be appropriate to treat other riders as non-bypassable if that would help maximize customer benefits or guarantee that net-metering customers are not avoiding paying their fair share of the costs EAL incurs in service those customers. She asserts that the Commission should evaluate EAL's various riders separately to determine if the costs they recover should be non-bypassable and whether net-metering customers should avoid paying those charges or receiving those credits. She testifies that if the Commission makes other EAL riders non-bypassable, EAL would be willing to modify SEPO Option B accordingly. *Id.* at 3-4.

**Question:**

Your Direct Testimony (page 10, line 9 – page 11, line 6) and filed exhibits support that the proposed SEPO Option B would not necessitate any tariff revisions to Rider ECR, which suggests that no revisions would be necessary to Rider ECR's currently filed calculation of the Additional Sum associated with the cumulative benefits of the Company's approved PPAs. Furthermore, the Company's proposed tariff permits a reduction to the kWh billed to Rider ECR, as well as other riders, by an amount of energy that an Option B customer has contracted with the Company. Should any Designated Resource(s) qualify for an Additional Sum, will Option B customers be responsible for the amount of the Additional Sum that is proportional to the amount of the Designated Resource(s) being contracted under SEPO Option B? If not, please

explain the potential allocations of the Additional Sum between participating and non-participating customers.

**Answer:**

Ms. Westmoreland testifies that EAL does not believe that an allocation of the Additional Sum is applicable to SEPO Option B customers. She states that under SEPO Option B, the MISO revenue generated by the designated resource stays with the non-participating customers. Therefore, she argues that any Additional Sum, which is designed to share the net benefits between EAL and its customers, that sharing mechanism should be between EAL and non-participating customers. *Id.* at 5.

**AAEA WITNESS RABAGO – SUPPLEMENTAL TESTIMONY**

**Question:**

In your Surrebuttal Testimony (page 6, lines 3-7) you state that you “have serious and legitimate concern about the notion that a monopoly utility with market power should be able to offer a tariffed service aimed at “competing” without conditions with competitive service providers for the purpose of undercutting net-metering service opportunities for tax-exempt customers.” What conditions would you apply to SEPO Option B to remove those concerns?

**Answer:**

Mr. Rabago expresses concerns regarding cross subsidization of competitive service offerings using regulated utility staff, funds, information and billing systems, and assets. He also expresses concern that the utility can leverage long-standing relationships with its customers to obtain market preference in choice of service offerings. He expresses a significant policy concern in this proceeding is that EAL is

seeking to undercut a service option that the General Assembly created in Act 464. Rabago Supplemental at 2-3. Mr. Rabago recommends that the Commission initiate a separate proceeding to address these concerns and to develop measures to counteract and prohibit the utility from unfairly exerting market power when it competes with non-utility competitive service providers. He discusses seven measures or conditions that the Commission should explore and adopt at a minimum:

- Prohibit the use of any regulated utility staff, funds, systems, and assets in the provision of the “competitive” service being proposed.
- In the absence of condition 1’s prohibition, require the utility to establish a schedule of terms and rates for the provision of services or use of resources that include a fair market rate and non-discriminatory terms for the use of such services or resources by non-utility competitive service providers.
- Prohibit any business-related communication, contacts, interactions, or exchanges of information between any persons involved in the provision of the “competitive” service and any persons engaged in the provision of regulated utility services.
- Development of a Commission-approved disclosure document that compares in objective terms the proposed utility offering with offerings by non-utility competitive service providers under net metering. The disclosure document must be provided to any potential customer with whom the utility has direct or indirect contact or discussions.
- Weekly and cumulative monthly reporting by the utility to the Commission that details in publicly available documents all contacts and contacted personnel with

whom the utility has discussions about the proposed tariffed service. The report should include name, contact information, a summary of discussions, and electronic copies of any documents or materials transferred or delivered to the potential customer.

- Detailed monthly accounting reports of all labor and other costs incurred or expended by the utility related to the proposed tariffed service.
- A period of not fewer than 30 days during which any customer may cancel an agreement with the utility to enroll in the “competitive” service.

*Id.* at 3-4.

#### **STAFF WITNESS SWAIM – SUPPLEMENTAL TESTIMONY**

##### **Question:**

Why is it appropriate that the Rider SRC is the only rider that is non-bypassable by customer subscribers under SEPO Option B? Why is it appropriate to exclude the other riders from a non-bypassable requirement?

##### **Answer:**

Mr. Swaim testifies that Rider SRC is, by law and Commission order, the only non-bypassable tariff for EAL or any Arkansas public utility, to his knowledge. He states that the terms of the Rider SRC tariff require charges to be calculated by applying the SRC rate to “**billed** kilowatt-hours or kilowatts whether metered or unmetered.” Mr. Swaim states that subscribers to SEPO Option B would not be “bypassing” Rider SRC. He states that EAL’s proposal is to use the demand and energy prior to any netting under SEPO Option B. He states this is similar to two channel billing. He testifies that he is unaware of any other EAL riders that are non-bypassable by statute and order. He

recommends that the application of other riders to the demand and energy prior to any netting under SEPO Option B should be evaluated on a case-by-case basis. Swaim Supplemental at 2-4.

Mr. Swaim testifies that he continues to support the recommendations he made in his previously filed testimonies. *Id.* at 4-5.

### **III. FINDINGS**

As more fully described in the specific findings below, the Commission denies EAL's Application, as proposed, for a tariff amendment to Rate Schedule No. 62, SEPO Option B, because the proposal does not adequately protect the interests of non-participating ratepayers, and is not just and reasonable or in the public interest. If EAL desires to amend its proposal, the Commission sets forth a set of conditions or guidelines under which EAL may offer a competitive solar product to its customers that is potentially more attractive to customers than that originally offered under SEPO Option A, which was approved by the Commission in Docket No. 18-037-TF; that is more protective of the interests of non-participating ratepayers; and that is just and reasonable and in the public interest. The Commission notes that the underpinning of the creation and nurturing of a competitive market for renewable energy products and services in Arkansas was substantially altered by the Commission's June 1, 2020 issuance of Order No. 28 in Docket No. 16-027-R, adopting amendments to the Commission's *Net-Metering Rules* (NMRs) to implement the provisions of the AREDA and Act 464 of 2019 (Ark. Code Ann. § 23-18-601 *et seq.*) and, for certain large demand-

component Net-Metering Facilities, establishing a new net-metering rate structure and adopting a grid charge, effective as of the date of that Order.

Accordingly, based upon EAL's commitment in this Docket to evaluate the impact and implications of a change in the NMRs and the net-metering rate structure on this Docket and EAL's Application,<sup>8</sup> the Commission sets forth below the conditions and guidelines under which EAL may proceed to revise and re-submit its SEPO Option B offering to demonstrate compliance with the Commission's findings and ruling.

Having reviewed the testimony and exhibits of EAL, Staff, AAEEA, and Scenic Hill, and considered the arguments of the Parties as set forth in the record, the Commission makes the following findings regarding the issues presented by this Docket:

**1. Has EAL met its burden of proof that its proposed SEPO Option B is just and reasonable?**

Finding: The Commission notes that the proposed service to be offered in SEPO Option B is an amendment to EAL Rate Schedule No. 62, known as Rider SEPO -- a subscription solar offering that would be available only to certain tax-exempt entities within the SGS and LGS classes of customers, in contrast to SEPO Option A, which was made available to all customers. The Commission finds that EAL's proposed SEPO Option B, as currently designed, is unjust and unreasonable, as well as contrary to Commission orders in prior related Dockets.<sup>9</sup> The Commission further finds, as argued by Staff, that EAL fails to substantiate its new offering with actual data adjusted for known and measurable changes, which, as Staff notes, is the long-standing ratemaking

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<sup>8</sup> See Castleberry Supplemental at 204 (Answer to Question 1)

<sup>9</sup> Order No. 5 in Docket No. 18-037-TF and Order No. 4 in Docket No. 17-041-U. Concerning Staff's assertion that the proposed tariff amendment is violative of the Commission's *Promotional Practice Rules*, the Commission finds that a ruling on this assertion is not necessary due to other findings that are dispositive of EAL's Application.



standard of analysis in this state. Instead, the Commission finds that EAL has relied on tenuous and speculative assumptions, such as that 100 percent of governmental and tax-exempt entities in SGS and LGS classes will net-meter. The Commission notes that this lack of actual data regarding alleged cost shifting caused by net-metering customers was a foundational element in the Commission's finding in Order No. 28 in Docket No. 16-027-R that:

For demand-component customers installing Net-Metering Facilities with generation capacity from over 1 MW to 20 MW, there is some evidence of potential cost-shifting which justifies a change in the Net-Metering rate structure to 1:1 full retail credit for net excess generation plus the adoption of a grid charge. The grid charge will initially be set at zero. Once the Net-Metering Rules become effective, a utility may request approval of a revised grid charge rate based upon evidence that an unreasonable cost shift to non-Net-Metering Customers is occurring or has already occurred on a cumulative basis, rather than on the basis of an individual Net-Metering Customer's proposed facility(ies).

Order No. 28, Docket No. 16-027-R at 1-2.

If cost shifting is alleged by EAL in a revised SEPO B offering, it must be supported by actual data adjusted for known and measurable changes.<sup>10</sup> The Commission further finds that the SEPO Option B offering as proposed does not reasonably preserve the benefits of the approved utility-scale Stuttgart solar project for the majority of EAL's customers.

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<sup>10</sup> As spelled out in detail in detail in Order No. 28 of Docket No 16-027-R at 546-547 and referenced in the Net-metering Rules at Rule 2.04.A.3. The Commission notes that the issue of cost shifting has been and is being raised by EAL in both the net-metering rulemaking and in a growing number of net-metering facility applications by customers, as well as in this Docket. While the Commission finds that neither SEPO Option A nor Option B constitute a form of net-metering (see, Direct Testimony of Karl Rabago at 5-6), since EAL is asserting that its proposal is definitively designed to compete with net-metering offers to tax-exempt entities made by third parties pursuant to Act 464, it is thus reasonable to apply the same standards and conditions for determining and remedying any alleged unreasonable cost shifting for SEPO as for net-metering. In particular, the Commission finds that in both instances, it is essential to rely upon actual data brought forward by the utility to demonstrate a material, unreasonable cost shift.

**2. Should EAL's proposed changes to SEPO have been filed in Docket No. 18-037-TF and does the proposal to create SEPO B nullify the Settlement Agreement in that docket?**

Finding: Although it may have been proper or even preferable for EAL to file its proposed tariff amendments in Docket No. 18-037-TF, the Commission finds that SEPO Option B as proposed or potentially revised and re-submitted may be considered in this Docket pursuant to RPP Rule 7.02(b)(1) and other precedents indicating that a separate docket may be established for changes to existing tariffs. The terms and conditions approved in Docket No. 18-037-TF can be addressed in this Docket if EAL chooses to submit a revised proposal.

**3. Has the filing of SEPO B materially changed the SEPO tariff and the terms and conditions agreed to under the Settlement Agreement in Docket No. 18-037-TF, given that the SEPO rate approved previously remains unchanged but is not based on EAL's factually demonstrated cost shift, but rather on evidence EAL submitted on the growth in the requests for PISRRs and the signing of 136 LOIs?**

Finding: The Commission finds that EAL's modification of SEPO to extend the SEPO Option B offer only to a select group of tax-exempt SGS and LGS customers and to remove the 50 percent limitation on the available Stuttgart solar resource designation are material changes to the original SEPO offering. The Commission finds that EAL's decision to develop its SEPO Option B proposal was driven by changes to net-metering law made by Act 464 and not by actual data demonstrating that unreasonable cost

shifting has occurred or is occurring as the result of new net-metering options made available by Act 464.

**4. What quantity of generating capacity of the Stuttgart solar facility should be made available for a SEPO Option B offering, given that SEPO Option A has a 50 percent limit?**

Finding: The Commission finds that any revised and resubmitted SEPO Option B offering should also be limited to 50 percent of the 81 MW of generating capacity of the Stuttgart solar facility, or 40.5 MW, which is the same capacity made available under SEPO Option A. The remaining 50 percent is retained for the benefit of all ratepayers consistent with SEPO Option A.

**5. Should the term of SEPO Option B contract be amended from one year to the remaining life of the PPA entered into by EAL for the Stuttgart solar facility?.**

Finding: The Commission finds that the term of any revised and resubmitted SEPO Option B contract should be for the remaining life of the Stuttgart PPA at the time a SEPO Option B contract is executed. This term is consistent with net-metering contracts for customers with which SEPO Option B is intended to compete. Using a one-year term is not reasonable because it depends upon the availability to EAL of a ratepayer backstop for cost recovery of the Stuttgart solar resource, a risk-mitigation strategy which places non-subscribing ratepayers instead of EAL at risk. Such a one-year term does not offer stability for either subscribing or non-subscribing ratepayers of

EAL. Lastly, EAL has demonstrated little success with the use of a one-year term with SEPO Option A.<sup>11</sup>

**6. Should all customers/classes be eligible to participate in SEPO B, including residential customers?**

Finding: The Commission notes that, as proposed by EAL, the SEPO Option B offering would be targeted to a select group of governmental and tax-exempt entities that are able to subscribe to 100 percent of the designated Stuttgart solar resource, whereas SEPO Option A was limited to 50 percent of that resource, with the remaining 50 percent being retained to the benefit of all ratepayers. The Commission finds that, as with SEPO Option A, the 40.5 MW SEPO Option B offering should be made available to all customers who have signed a LOI or customers who switch from SEPO Option A, both of which agree to the revised terms of SEPO Option B as defined by this Order. If those customers do not fully subscribe to the 40.5 MW, the remainder of the 40.5 MW shall be made available to all customer classes.<sup>12</sup> If customers who have signed a LOI and customers who switch from SEPO Option A indicate they intend to subscribe to more than 40.5 MW, EAL shall propose a process for allocating the 40.5 MW as indicated in Issue #10 below.

**7. Should SEPO Option A be closed and existing subscribers to that tariff be moved to SEPO Option B or given the option to remain on SEPO Option A?**

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<sup>11</sup> See EAL Sur-Surrebuttal Exhibit MLT-1.

<sup>12</sup> The process for making that leftover amount available to all customers should be proposed by EAL as indicated in Issue # 10 below.

Finding: Given the paucity of participation in SEPO Option A,<sup>13</sup> the Commission directs that if EAL revises and resubmits SEPO Option B, it should consider closing Option A, or closing Option A to new customers, and offering any existing SEPO Option A customers the option to move to SEPO Option B.

**8. Should EAL's request to "grandfather" its proposal and contingent offering under the SEPO Option B tariff to qualified governmental and tax-exempt entities, as filed but not approved, be approved for customers who have signed a Letter of Intent (LOI) with EAL?**

Finding: The Commission finds that it is not reasonable or in the public interest to allow potential SEPO Option B customers who have signed a LOI to take service under the original terms of EAL's proposal, which have never been approved and which are disapproved by this Order. These potential customers have never taken service under these terms and therefore there are no terms to "grandfather."

**9. How should any grandfathering period for SEPO Option B subscribers be established to align with the grandfathering requirements of the amended NMRs?**

Finding: Assuming EAL files a compliant SEPO Option B proposal, including revising the term of the SEPO Option B contract to the remaining life of the Stuttgart PPA, for the group of tax-exempt entities which have signed LOIs as of the date of this Order, as well as those customers who switch from SEPO Option A, and that may be determined eligible to participate via the process(es) described in Issue #10 below, the Commission

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<sup>13</sup> EAL Sur-Surrebuttal Exhibit MLT-1.

finds that these customers will not be subject to any cost-shifting remedy that the Commission may approve for other future SEPO Option B customers going forward.<sup>14</sup>

**10. If EAL revises and resubmits a compliant SEPO Option B proposal, how should it be determined which eligible customers that have signed LOIs or transferring SEPO Option A customers are allowed to participate in SEPO B and how should possible oversubscription be managed? If those customers do not fully subscribe to the 40.5 MW, how should the remainder of the 40.5 MW shall be made available to all customer classes?**

Finding: The Commission finds that EAL should include in any revised resubmitted SEPO Option B Application a proposal for establishing a process(es) by which customers who have signed an LOI prior to the date of this Order as well as customers transferring from SEPO Option A are determined to be eligible to participate in blocks of SEPO Option B capacity if they indicate they intend to subscribe to more than 40.5 MW.<sup>15</sup> Likewise, if those customers subscribe to less than 40.5 MW, EAL should include a proposed process for making that leftover amount available to all customers. The possibilities include a first-come-first-served process, a lottery approach, or a bidding/auction process, and perhaps others that EAL may consider. EAL's proposal for this eligibility determination process shall address the following:

- a. identifying the terms of the appropriate eligibility process;
- b. establishing kW/MW subscription limits for customers/classes;

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<sup>14</sup> With the exception of any non-bypassable rider determined in the separate docket referenced in Issue #11 below.

<sup>15</sup> As noted, those customers would be subject to the terms adopted herein and therefore would have to indicate that they accepted those revised terms.

- c. establishing a lower pricing limit (presumably the current SEPO price) but allowing for no upper limit on the price a bidder could offer, so as to maximize benefits for non-participants;
- d. addressing pricing and marketing plans, including a mechanism for cost recovery (FRP, rate case, rider);
- e. addressing undersubscription and return of kW/MW for subscription by other customers/classes;
- f. if over-subscribed, requiring a list of all customers seeking to subscribe to the revised terms of SEPO Option B, with requested capacity and customer class.

**11. Should the bypassability of riders be addressed in this Docket or in a separate proceeding, as provided by Order No. 28 in Docket No. 16-027-R?**

Finding: The Commission finds that the bypassable riders issues should be addressed in a separate docketed proceeding, as provided by Order No. 28 at pages 587-588 and 590.

**12. How, and if so, when should RECs be allocated to SEPO Option B customers?**

Finding: Consistent with EAL's testimony that the benefits associated with the Designated Resource remain with non-participants (with any net benefits being shared between EAL and non-participants), the Commission finds that, in EAL's revised rider, non-participants should retain the RECs associated with the Designated Resource.<sup>16</sup>

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<sup>16</sup> The Commission notes that the net benefits tracked by the Additional Sum associated with EAL's PPAs include any MISO revenues, any revenues received from the selling of RECs, as well as any liquidated damages paid pursuant to the PPAs.

The procedure for SEPO B customers to acquire the RECs associated with the Designated Resource can be evaluated in a separate docket that implements a REC tariff or other tariff offerings as discussed by EAL.<sup>17</sup>

**13. What annual reporting requirements should there be for SEPO Option B?**

Finding: The Commission finds that, if EAL submits a revised SEPO Option B proposal, it should include, at a minimum, the filing of annual reports for three years containing the following information by customer class:

- a. Name of the Customer signing the LOI or other Application;
- b. Number of accounts subscribed;
- c. Capacity subscribed;
- d. Energy for the reporting period;
- e. Energy use offset;
- f. Bid amount;
- g. and
- h. Marketing Plan results.

**14. If customers that have signed LOIs or transferring SEPO Option A customers do not fully subscribe to the 40.5 MW, how should low-income customer participation in renewable energy markets be dealt with?**

Finding: The Commission finds that it is proper for renewable energy tariffs such as SEPO to address the inclusion of low-income customers in gaining opportunities to

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<sup>17</sup> See Castleberry Supplemental at 7-8.



access solar and other renewable energy resource benefits in such a situation. The Commission directs EAL to propose options for low-income participation in any revised and resubmitted SEPO Option B proposal and recommends drawing on the work already being done by the Parties Working Collaboratively in the Commission's Energy Efficiency Dockets, as well as the efforts of the working group on customer protection issues in the DER Docket (No. 16-028-U).

**15. Should a separate proceeding be set up to address the terms and conditions under which monopoly utility service providers might be allowed to compete on a non-discriminatory basis with non-utility competitive service providers? If so, under what conditions and under what existing or future Commission rules or statutory provisions?**

Finding: The Commission has directed in Order No. 28 of Docket No. 16-027-R that the Net Metering Working Group (NMWG) consider consumer protections and how codes of conduct could address potential abuses of the interest of all stakeholders in the net-metering process, including possible anticompetitive activities by utilities. The Commission further directed the NMWG's attention to the report prepared for the Commission by the Regulatory Assistance Project in 2018, *Enabling Third-Party Aggregation of Distributed Energy Resources*, and in particular Chapter VI of that report, which is available as Commission Attachment 1 to Order No. 10 in Docket No. 16-028-U: [http://www.apscservices.info/pdf/16/16-028-U\\_118\\_1.pdf](http://www.apscservices.info/pdf/16/16-028-U_118_1.pdf)

#### **IV. COMMISSION RULING AND ORDER**

Accordingly, the Commission orders and directs as follows:

1. The tariff sheets to amend Rate Schedule No. 62 filed by EAL on August 15, 2019, are disapproved. If EAL desires to proceed under the terms of this Order, EAL shall file, within thirty (30) days, a compliance tariff to incorporate the terms and conditions specified herein to bring its proposal into compliance with this Order, thus allowing EAL to expand its offerings under Rider SEPO.

2. Based upon EAL's commitment<sup>18</sup> in this Docket to evaluate the impact and implications on EAL's Application of the Commission's adoption by Order No. 28 in Docket No. 16-027-R on June 1, 2020, of amendments to the NMRs, changes to the net-metering rate structure, and implementation of a grid charge for certain large customers, the Commission affirms the terms and conditions spelled out above under which EAL may proceed to revise and re-submit its SEPO Option B offering in this Docket to demonstrate compliance with the Commission's findings and directives.

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<sup>18</sup> See Castleberry Supplemental, responding to Commission Question 1 at 2-4.

BY ORDER OF THE COMMISSION.

This 15<sup>th</sup> day of June, 2020.

I hereby certify that this order, issued by the  
Arkansas Public Service Commission,  
has been served on all parties of record on  
this date by the following method:

☐ U.S. mail with postage prepaid using the  
mailing address of each party as  
indicated in the official docket file, or  
☒ Electronic mail using the email address  
of each party as indicated in the official  
docket file.

  
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Mary Loos, Secretary of the Commission



Ted J. Thomas, Chairman



Kimberly A. O'Guinn, Commissioner



Justin Tate, Commissioner