

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
PULASKI COUNTY, ARKANSAS FOR)	
AUTHORITY TO CONSTRUCT A NET-)	DOCKET NO. 20-062-U
METERING FACILITY HAVING A)	ORDER NO. 4
GENERATING CAPACITY IN EXCESS OF ONE)	
THOUSAND KILOWATTS (1000 KW) IN)	
PULASKI COUNTY, ARKANSAS)	

ORDER

In this Order, the Arkansas Public Service Commission (Commission) approves the Application of Pulaski County, Arkansas (County or Applicant) seeking authority to construct a Net–Metering Facility in excess of 1,000 kilowatts (kW) under the Arkansas Renewable Energy Development Act of 2001 (Ark. Code Ann. §§ 23-18-601 *et seq.*) (AREDA), with certain conditions as set forth in this Order.

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I. Procedural History

On December 29, 2020, the County filed with this Commission an Application for authority to construct a Net-Metering Facility for the production of electric energy using solar resources that will have a generating capacity in excess of 1,000 kilowatts (kW) and less than 5,000 kW. In support of its Application, the County also filed the Direct Testimonies of Adam B. Fogleman and Justin D. McCann. On January 29, 2021, Entergy Arkansas, LLC (EAL or the Utility) filed a *Petition to Intervene*, which was granted by Order No. 1. On March 4, 2021, EAL filed the Direct Testimonies of D. Andrew Owens and Matthew S. Klucher and the General Staff (Staff) of the Commission filed the Direct Testimony of Marty D. Risner. On March 11, 2021, the County filed the Rebuttal Testimony of Mr. Fogleman. On March 18, 2021, EAL filed the Surrebuttal Testimony of Mr. Owens and Staff filed that of Mr. Risner. On March 25, 2021, the County filed the Sur-Surrebuttal Testimony of Mr. Fogleman. On April 4, 2021, the Parties filed their *Joint Issues List*. On April 6, 2021 they submitted their *Joint Motion for Hearing Procedures*, which was granted by Order No. 3 on April 7, 2021. On April 13, 2021, the County, EAL, and Staff each filed their respective *Opening Statements*.

II. Summary of Testimony

A. County Direct Testimony

Adam Fogleman Direct

Mr. Fogleman states that Pulaski County was established in 1818. Fogleman Direct at 5 (Doc. #2). Mr. Fogleman testifies that two solar generating facilities with a combined generation capability of 4,875 kW_{AC} comprise the Solar Project: the County Jail Facility and the Zeuber Road Facility. He testifies that the Solar Project will meet

the definition of a Net-Metering Facility pursuant to Ark. Ann. Code § 23-18-603(8) in that it will use solar resources to generate electricity, is located in Arkansas, can operate in parallel with the existing transmission and distribution facilities of the utility, and is intended to offset only a portion of the electricity requirements of Pulaski County.¹ He asserts that the primary goal of the Applicant in constructing the Solar Project is to lower annual electricity costs and also to further its commitment to pursue clean energy and sustainability projects to reduce its carbon footprint and combat climate change. *Id.* at 5-6.

Mr. Fogleman states that the County Jail Facility will be located on Brown Street adjacent to and west of the Applicant's County Regional Detention Facility, on surplus acreage. The Applicant owns adjacent buildings and campuses and it was determined that the Net-Metering Facility would serve existing load centers of the Applicant. *Id.* at 6.

Mr. Fogleman testifies that the Zeuber Road Facility will be located on Zeuber Road at the Little Rock Port Authority (LRPA). He states that the location was identified in partnership with the LRPA Board of Directors as suitable to serve adjacent load centers and as a location that would foster economic development for industries who have corporate renewable goals established. He testifies that Today's Power, Inc. (Today's Power)² has an option on this property. *Id.* at 6-7.

Mr. Fogleman testifies that the Solar Project is designed to meet only a portion of the energy needs of the County and that none of the energy produced is intended for

¹ The County is a customer of EAL.

² Today's Power will finance, construct, own, and operate the Solar Project.

resale. He discusses the process Today's Power used to determine that the County Jail Facility would provide approximately 96 percent of the consumption for eighteen Applicant-owned meters assigned to it. He describes the similar process used by Today's Power to determine that the Zeuber Road Facility would provide approximately 86 percent of the consumption for 29 Applicant-owned meters assigned to it. He asserts that the combined solar generation would result in an annual kWh offset of approximately 86 percent during the 12 month period evaluated. *Id.* at 7-8. He testifies that Today's Power was selected through a Request for Proposal procedure and will finance, construct, own, and operate the Solar Project pursuant to a Solar Power Services Agreement (Services Agreement) dated June 2, 2020. *Id.* at 8-9.

Mr. Fogleman testifies that Preliminary Interconnection Site Review Requests (PISRRs) were submitted for both net-metering facilities and that the utility has responded to each of those PISRRs. He provides copies of each PISRR as an exhibit to his Direct Testimony.³ He states that the PISRR for the County Jail Facility has been approved by the Utility. He states that the Utility responded to the Zeuber Road Facility PISRR and stated that an Impact Study will be required to evaluate the interconnection request. *Id.* at 9-10.

Mr. Fogleman states that the County is requesting grandfathering for the Solar Project under the current 1:1 Net-Metering retail rate credit rate structure with a grid charge of zero dollars for a period of 20 years from the date the Solar Project is interconnected with the Utility's system. *Id.* at 10.

³ Two of the PISRRs are dated June 2, 2020; the third is undated and not signed.

Mr. Fogleman asserts that the Solar Project will provide multiple benefits, including distribution system, environmental, public policy, and economic benefits. He asserts that it is in the public interest to allow an increased generating capacity for the Solar Project. *Id.*

Mr. Fogleman states that distribution system benefits will result from lower system losses due to the location of the Solar Project in existing load centers. *Id.* at 11.

Mr. Fogleman asserts that the Solar Project will reduce carbon dioxide (CO₂) emissions by generating electricity onsite without the mining or combustion of coal or natural gas or mining and disposing of radioactive material. He states that the EPA.gov online calculator was used to predict the 7,205 metric tons of carbon dioxide reductions. He asserts that the Solar Project will not use water and will not produce noise pollution in the generation of electricity. *Id.*

Mr. Fogleman testifies that the County has introduced several programs aimed at improving sustainability and promoting clean energy initiatives and is committed to maintaining an energy efficient and environmentally friendly community. He states that the Applicant has achieved tax savings by updating all but one County-owned building to improve efficiency and reduce energy consumption through participating in Arkansas's Performance Contracting program. He provides exhibits of statements from multiple public officials in support of the Solar Project, including a statement from the Executive Director of the LRPA who was instrumental in the City of Little Rock's Roadmap towards Sustainability which includes the promotion of renewable energy resources. *Id.* at 11-12.

Mr. Fogleman testifies that state and local economic development activities will be supported by the Solar Project in addition to the construction jobs that will be created by the Solar Project. He states that the Solar Project will serve as a good economic development tool for the LRPA and Pulaski County and that many inquiries are received from prospective businesses who are considering locating at the LRPA from other countries concerning the availability of renewable energy options at the LRPA. *Id.* at 12-13.

Mr. Fogleman testifies that the Solar Project will provide economic and environmental benefits which are consistent with AREDA's public interest benefits of renewable energy development. He argues that the air quality and health conditions of the public close to the Solar Project will improve, and the local school district may benefit from educational opportunities provided to students in addition to benefits to its tax base. *Id.* at 13.

Mr. Fogleman testifies that the County will see a reduction in its annual electricity costs as a result of the energy produced by the Solar Project and that the savings will be used to support other public initiatives, including potentially adding employees. He states that the Zeuber Road Facility is expected to provide average annual savings of approximately \$77,300, or a total of approximately \$1.5 million over the twenty-year term. *Id.* at 13-14.

Mr. Fogleman testifies that the County understands that the Commission's rules prohibit gaming. He states that the Solar Project should be grandfathered under the current 1:1 Net-Metering retail rate credit and rate structure with an initial grid charge

of zero dollars for a term of twenty years from the date of interconnection and net-metering with the Utility's system. *Id.*

Justin McCann Direct

Mr. McCann describes the Solar Project and how it complies with Ark. Code Ann. § 23-18-603(8). McCann Direct at 4-5 (Doc. #3).

Mr. McCann testifies that the County Jail Facility is located within EAL service territory and is designed to use fixed-tilt racking system, with nameplate capacity of 250 kW_{AC}. He confirms that the annual generation output of the facility is modeled to be 425,981 kWh, which results in an annual capacity factor of 19.5 percent. The facility will interconnect with the Utility-owned electric distribution system and is consistent with Rule 3.01(B). *Id.* at 5-7.

Mr. McCann testifies that the Zeuber Road Facility is also located within EAL's service territory and designed to use fixed-tilt racking system, with a nameplate capacity of 4,625 kW_{AC}. He confirms that the annual generation output of the facility is modeled to be 9,764,110 kWh which results in an annual capacity factor of 24.1 percent. He testifies that the facility will interconnect with the Utility-owned electric distribution system and is consistent with Rule 3.01(B). *Id.* at 7-9.

Mr. McCann testifies that the combined generation capacity of the County Jail and Zeuber Road Facilities is 4,875 kW_{AC}. He testifies that the Solar Project is intended for non-residential use. *Id.* at 9.

Mr. McCann testifies that for the eighteen County-owned meters assigned to the County Jail Facility, the facility would provide 96 percent of Applicant's consumption resulting in no excess generation over a 12-month period for these eighteen meters. He

testifies that for the 29 County-owned meters assigned to the Zeuber Road Facility, the facility would provide approximately 86 percent of the County's consumption resulting in no excess generation over a 12-month period for these 29 meters. He provides monthly electric bills for the 12 months prior to December 2020. He concludes that the combined solar generation results in an annual kWh offset of approximately 86 percent during the evaluated 12-month period. *Id.* at 9-10.

Mr. McCann states that the Solar Project's distribution benefits reduce daytime distribution loading by offsetting power flows adjacent to the proposed solar facilities; reduce distribution losses; reduce operating costs of the distribution system; reduce wear of certain distribution equipment and facilities such as distribution substation power transformer; and extend the useful life of the equipment and defer replacement of and the cost incurred to replace said equipment. *Id.* at 10-11.

Mr. McCann asserts that the Solar Project provides environmental benefits. He testifies the Solar Project will reduce CO₂ emissions and mining activities related to fossil fuels. He testifies that the Solar Project provides public policy benefits by supporting the County's sustainability and clean air initiatives such as the Applicant's Property Asset Clean Energy (PACE) program. He also states that the Solar Project will increase the state's ability to attract business to Arkansas and support state and local economic development activities. He concludes that the Solar Project is in the public interest by having both environmental and economic benefits consistent with public interest benefits of renewable energy development codified in AREDA. *Id.* at 11.

Mr. McCann provides the PISRR submitted on June 15, 2020, and testifies that a revised PISRR was submitted for the Zeuber Road Facility original nameplate capacity

of 5.38 MW_{AC}. He provides the revised PISRR and testifies that EAL received notice to proceed with the Zeuber Road Impact Study. He testifies that on behalf of the County, Today's Power paid a \$20,000 Cost-of-Impact Study on August 24, 2020. He confirms that the impact study was completed by EAL and provided to Today's Power on November 22, 2020, and provides the Impact Study. *Id.* at 11-13.

Mr. McCann summarizes the Impact Study, for a nameplate capacity of 5.38 MW_{AC}, and concludes that the Zeuber Road Facility would not present impacts to the distribution system operating voltages; would present thermal loading and fault current contributions in excess of the local distribution system capacity planning criteria; presented a risk of islanding the distribution; and that certain substation and transmission system improvements would be required according to the EAL's Transmission Standard since the interconnection capacity exceeded 5 MW_{AC}. *Id.* at 13-14.

Mr. McCann states that the Impact Study recommended the following:

- upgrading approximately 0.5 miles of distribution conductor to mitigate the identified excess thermal loading conditions;
- a protective device coordination review to mitigate the simulated increase in the available fault current contributions from the proposed facility; and
- installation of a direct transfer trip, substation, and transmission relay and improvements.

He explains that EAL has indicated that the interconnection is feasible and can be completed given the requested 5.38 MW_{AC} and stated mitigations recommended. He testifies that if the normal configuration distribution has been altered or upgraded at the

LRPA, the distribution conductor upgrade may be reduced. He testifies that EAL indicated that if the interconnection capacity were reduced to below 5 MW_{AC} most of the substation and transmission relay and related equipment improvements would not be required and the revised interconnection capacity would be accepted as part of the ongoing Zeuber Road Facility Study process. He testifies that EAL stated a revised PISRR would need to be submitted but should not impact the Utility study requirements since the interconnection capacity would be reduced and not increased. He concludes that the Zeuber Road Facility has been reduced from 5,380 kW_{AC} to the 4,625 kW_{AC} as detailed in the Application. Mr. McCann testifies the revised PISRR for the Zeuber Road Facility with a nameplate capacity of 4,625 kW_{AC} was submitted to the Utility on December 21, 2020. *Id.* at 14-15.

Mr. McCann summarizes operational characteristics being that the Solar Project will operate in parallel with Utility's existing transmission and distribution facilities; the Solar Project complies with Rule 3.01(B) to provide additional protection against a back-feeding scenario; will be designed, constructed, and operated to meet safety and performance standards established by local and national codes; and will meet the Utility's requirements including the safety and performance standards adopted by the Utility. He affirms that the County understands the cost to complete the required interconnection facilities is its responsibility. Finally he summarizes the County's understanding of its and EAL's responsibilities. *Id.* at 15-19.

Mr. McCann affirms the Solar Project, as presented, will not be modified or configured in a manner that is intended to avoid statutory or Commission limits or rules. He affirms the County understands that gaming of the Commission Net-Metering

Rules is prohibited. He affirms the County understands that the penalties for gaming may result in its qualification as a net-metering customer being suspended or terminated. *Id.* at 19-20.

Mr. McCann affirms the County's request that the Solar Project be grandfathered under the current 1:1 Net-Metering retail rate credit and rate structure with a grid charge of zero dollars for a term of twenty years from the date of interconnection and net-metering with Utility's system as permitted by Rule 2.07. He confirms that the County has not submitted a Standard Interconnection Agreement (SIA), but is prepared to submit the SIA to the Utility before December 31, 2022, as permitted by Rule 2.07. He testifies the Solar Project will have an expected useful life greater than twenty years. He testifies that much of the equipment and materials specified for the Solar Project have a manufacturer warranty period of twenty years or more. He summarizes the different ways the Solar Project will support an expected useful life greater than twenty years with the structure designed to withstand corrosion from the soil. He testifies that Today's Power has procured the necessary equipment to complete interconnection on behalf of the Applicant. He provides a summary of the County's understanding of various Grandfathering terms, including a potential change in rates. He concludes that the Solar Project qualifies to be approved as a grandfathered Net-Metering Facility under Rule 2.07. *Id.* at 21-24.

B. EAL Direct Testimony

Andrew Owens Direct

Mr. Owens testifies that Act 464 of 2019 lists several criteria that must be met for the Commission to approve a net-metering project that is greater than 1,000 kW, but

less than 5,000 kW. He testifies that EAL has noted across multiple net-metering dockets, the evidentiary bar in proceedings such as the instant one cannot be set so low that it will harm the public interest and grant broader Commission discretion than that granted by the Arkansas General Assembly. Owens Direct at 6-7 (Doc. #13).

He recites the requirements of Ark. Code Ann. § 23-18-604(B)(9)(A) and points to orders in Docket Nos. 20-015-U, 20-007-U, and 20-013-U. He states that the County's Application presents the Commission with the first instance of a party seeking approval for a net-metering project greater than 1,000 kW_{AC} that did not submit its PISRR request(s) to the utility prior to the June 1, 2020, the deadline established in Order No. 28 to retain some level of automatic grandfathering. He suggests that the Commission has a clear opportunity as well as obligation to address whether or not grandfathering is appropriate; and if the Commission determines that grandfathering is appropriate, for how long, given the significant savings that the County will achieve under the long-term Purchase Power Agreements (PPAs) that it executed with Today's Power in conjunction with the 1:1 full retail credit framework. *Id.* at 7-10.

Mr. Owens testifies that Mr. McCann reiterates the grandfathering request of Mr. Fogleman and briefly discusses the expected useful life of the equipment, but does not address the grandfathering-related provisions of Order No. 28. He testifies that the County submitted two PISRRs to EAL on June 15, 2020. He asserts that due to the County submitting its two initial PISRRs after June 1, 2020, the Project is not automatically eligible for grandfathering treatment, nor does the County meet the conditions from Order No. 28. *Id.* at 10-12.

Mr. Owens testifies that the County would be reducing its EAL bills by more than \$500,000 annually, which would presumably escalate higher over time as rates change. He testifies the County did provide a cost-benefit analysis in response to discovery but made a number of simplifying assumptions about existing rates that are incorrect in addition to a mistake in a formula. He concludes that the County would be paying more after the solar systems are installed than they would otherwise. *Id.* at 12-14.

Mr. Owens recommends that any grandfathering of the Project under the 1:1 full retail credit rate structure be limited to the earlier of (1) Commission approval of a Grid Charge, or implementation of some other successor net-metering rate structure; or (2) no more than ten years from the date of any Commission order approving the Project. *Id.* at 14-15. He testifies that if the Commission were to allow grandfathering of the Project for any period of time, the County will not be paying any rider charges that are billed on a volumetric basis as well as a significant portion of percentage-based riders that apply to volumetric rates. He recommends that the Commission make a specific finding that approval of the Project consisting of the Applicant's two solar systems is conditioned upon the continued payment by the County of such riders as the Commission may determine, in a future proceeding, are non-bypassable and payable by net-metering customers. *Id.* at 15-16.

Matthew Klucher Direct

Mr. Klucher explains that the County has requested to take advantage of meter aggregation and has identified eighteen meters that it intends to offset with the kWh output from the County Jail Facility and thirty meters that will be offset by the output from the Zeuber Road Facility. He notes that in light of Order No. 7 in Docket No. 20-

015-U, EAL is not presenting a cost-shift analysis based on the impact of this individual Application. He testifies that the remainder of his testimony is intended to quantify the potential bill savings that the County will potentially achieve as a net-metering customer based on its historical billing and the expected solar generation as provided by the County. Klucher Direct at 4-6 (Doc. #14).

Mr. Klucher assumes that for the Zeuber Road Facility, the twenty-one SGS meters will be offset first, the four LGS meters would then be offset, and the five GST meters will be offset last. For the County Jail Facility all eighteen meters are SGS. He testifies that the County will potentially offset approximately 85 percent of its annual usage and that for the next 20 years the Applicant will potentially have a cumulative bill savings of over \$9.6 million. *Id.* at 6-10.

Mr. Klucher concludes that his analysis demonstrates that the total potential bill savings will be more than \$9.6 million over the next 20 years, with the SGS meters receiving the largest savings as a percentage of the current bill at 77 percent. He testifies that in the nine dockets he has provided testimony, the cumulative total of these nine requests customers have or will install approximately 32.4 MW_{DC} of solar that would result in a first year bill savings over \$3.5 million and a 20-year cumulative bill savings of over \$71.8 million. *Id.* at 10-11.

C. Staff Direct Testimony

Marty Risner Direct

Mr. Risner testifies that his review was based on AREDA, the NMRs, and guidance found in Commission Order Nos. 28 and 33 in Docket 16-027-R and Order No.

7 in Docket No. 20-015-U. He states that the scope of his review included an analysis of the Applicant seeking “authority to construct a net-metering facility with a generating capacity that exceeds the limits provided under Arkansas Code § 23-18-603(8)(B)(ii); ” an analysis of the Applicant’s grandfathering request; and an analysis and recommendations concerning if Applicant must seek approval for the 250 kW County Jail Facility. Risner Direct at 4-7 (Doc. #11). Mr. Risner testifies that the County provided evidence that it will meet the definition of a net-metering customer under Ark. Code Ann. § 23-18-603(7)(C). He states that the County testified that Today’s Power will own the Solar Project, and that in response to a Staff data request, the County provided a copy of the signed standard form affidavit pursuant to NMR Rule 2.08 and Ark. Code Ann. § 23-18-603(7). *Id.* at 7-8.

Mr. Risner testifies that evidence was provided in the testimony of County witness Fogleman that the Solar Project will support state and local economic development activities and will immediately generate construction jobs and support a fast growing industry in Arkansas. Mr. Risner testifies that because the 250 kW County Jail Facility does not exceed the 1,000 kW threshold specified in NMR Rule 2.06.A.1, the County is not required to seek approval to construct it. He asserts that the County must obtain Commission approval to construct the 4,625 kW Zeuber Road Facility because the aggregate generating capacity of the combined Net-Metering Facilities will exceed the 1,000 kW within the Utility’s service territory prescribed by NMR Rule 2.06.A.2 and clarified by the Commission in Order No. 33 in Docket No. 16-027-R. He states that Staff supports the clarification provided by the Commission in that order. *Id.* at 8-10.

Mr. Risner asserts that the County provided evidence that the Zeuber Road Facility will meet the definition of a Net-Metering Facility under Ark. Code Ann. § 23-18-603(8) by indicating that it will generate electrical energy using solar resources; will operate in parallel with EAL's existing transmission and distribution facilities; is intended to offset a portion, but not all, of the County's electricity requirements; and is not for residential use. *Id.* at 11.

Mr. Risner states that the County provided evidence that the Zeuber Road Facility will have a generating capacity of less than 5,000 kW based on the combined generating capacity of both Net-Metering Facilities being 4,875 kW. He asserts that he reviewed the electrical billing statements and determined that there were no residential accounts included. He testifies that the Applicant also provided the results of the EPA's Greenhouse Gas Equivalencies Calculators (GGEC), which documents that environmental benefits will be provided based on the energy output for both of the County's proposed Net-Metering Facilities. He asserts that the Commission found in Docket No. 20-015-U, Order No. 7 that the Applicant need not prove environmental benefits with any more specificity and that the environmental benefits are not altered by the ownership status of the Renewable Energy Credits (RECs). *Id.* at 11-14.

Mr. Risner agrees that County witness Fogleman provided support for the elements of attracting business to Arkansas and public policy benefits, including a letter of support from LRPA Executive Director because of the Project's ability to attract new business. He notes that many prospective businesses inquire about the availability of renewable energy options. He agrees that the Project will create new construction jobs and provide support to a growing industry. He affirms that the County provided

evidence that the Solar Project will enhance the County's commitment to improve sustainability and promote clean energy initiatives. He states that evidence of support for the Solar Project was provided from a number of local officials. He notes that County witness Fogleman testified on the average annual savings of the Zeuber Road Facility and that the cost savings will free-up those funds for other important public initiatives. *Id.* at 14-16. He contends that the County has provided evidence required by Ark. Code Ann. § 23-18-604(b)(9)(A)(ii) that increasing the generating capacity above 1,000 kW for the Zeuber Road Facility will provide environmental and public policy benefits and will increase the state's ability to attract business to Arkansas. *Id.* at 16.

Mr. Risner testifies that the County provided evidence required by Ark. Code Ann. § 23-18-604(b)(9)(A)(iii) through the testimony of Mr. Fogleman that it is in the public interest to increase the generating capacity for the Zeuber Road Facility. He states that the evidence provided emphasized how the eco-health of the County will be improved and taxpayer money will be saved; air quality and health conditions near the Net-Metering Facility will improve; and educational opportunities will be provided to the students of the area school district and the tax base. *Id.* at 16-18.

Mr. Risner testifies that his evaluation was limited to the Zeuber Road Facility because the County Jail Facility is under 1,000 kW and does not require approval by the Commission under Rule 2.06.A.1. *Id.* at 18. He affirms that the proposed Zeuber Road Facility has a generating capacity of 4,625 kW_{AC}; will be located on Zeuber Road at the LRPA; will have a capacity factor of 24.1 percent; and is a three-phase Net-Metering Facility that is designed to disconnect from the utility if utility service is lost. He testifies that the exact interconnection point with EAL is not yet known. *Id.* at 18-20.

He testifies that based on his analysis of evidence provided by the County, the Zeuber Road Facility will produce 9,764,110 kWh/year and is not intended to exceed the 11,380,476 kWh/year electricity requirement of the County. *Id.* at 20-21.

Mr. Risner testifies that the County submitted a PISRR for the Zeuber Road Facility dated June 2, 2020, that listed a 5,380 kW_{AC} generating capacity, and he explains why the County reduced the generating capacity of the Zeuber Road Facility to 4,625 kW_{AC} and submitted a revised PISRR for 4,625 kW_{AC} on December 21, 2020. *Id.* at 21-23. He asserts that the revised PISRR indicates that the location of the proposed Net-Metering Facility has not changed and that the only material changes are a reduction in the generating capacity and increased the number of accounts to be aggregated to the Zeuber Road Facility. He testifies that it is not necessary to wait for EAL's response to the revised PISRR or EAL's completion of the Facilities Study to make a recommendation concerning the Zeuber Road Facility because the County will be responsible for any such costs. He states that a SIA has not been submitted but that the County is prepared to submit the SIA after the Net-Metering Facilities are constructed and inspected "given Commission grandfathering approval of the Solar Project[s] contingent upon the submission of the Standard Interconnection Agreement to the Utility." *Id.* at 23-26.

Mr. Risner concludes that based on the Commission's findings in Order Nos. 28 and 33 in Docket No. 16-027-R, the County Jail Facility is automatically grandfathered under the current 1:1 rate structure until June 1, 2040, as long as it submits a signed SIA to EAL by December 31, 2022. He also concludes that the gaming provisions of Order No. 28 in Docket No. 15-027-R do not indicate that a separate ruling on grandfathering

is required for facilities that are under the statutory limit; therefore, the grandfathering of the County Jail Facility up to the 1,000 kW statutory limit should be automatic. *Id.* at 25-27. Mr. Risner testifies that the County requested that the Solar Project be grandfathered for twenty years from the interconnection date at the current 1:1 Net-Metering retail rate credit and rate structure for that term, with an initial grid charge of zero dollars. He asserts that the County provided proof to be eligible to be grandfathered under the terms of Order No. 28 in Docket No. 16-027-R, which was issued on June 1, 2020. He states that the initial PISRR for the Zeuber Road Facility was submitted on June 2, 2020; therefore, it is eligible to be grandfathered with an initial grid charge set at zero dollars. *Id.* at 27-29.

Mr. Risner notes that the County requested a twenty year grandfathering term. He affirms that the term of the Services Agreements is twenty years and allows for extension of the Agreement, and expressly considered the useful life of the Facility. He states that the County also provided testimony that much of the equipment and material will have a manufacturer warranty period of twenty years or more; a 25-year warranty of the photovoltaic solar modules; and data supporting a 25-year useful life of the racking systems; and an industry-accepted useful life greater than 30 years for other parts and materials. *Id.* at 29-31.

Mr. Risner reviews the County's testimony supporting grandfathering and notes that the Commission has indicated that it will consider the useful life, the payback period, and the common warranty period when determining the appropriate grandfathering term of a Net-Metering Facility. He testifies that he reviewed data sheets in County witness McCann's testimony which indicated that the solar modules

have a 25-year power output warranty and the inverters have a 5-year standard warranty with an optional warranty of up to twenty years available. *Id.* at 31-33.

Mr. Risner concludes based on his review of the Application and the Direct Testimony of County witnesses Fogleman and McCann that:

1) The County meets the definition of a Net Metering Customer per Ark. Code Ann. § 23-18-603(7);

2) The County's proposed Zeuber Road Facility meets the definition of a Net-Metering Facility per Ark. Code Ann. § 23-18-603(8);

3) The County has provided substantial evidence that the proposed Zeuber Road Facility (4,875 kW) will have a generation capacity of less than 5,000 kW in accordance with Ark. Code Ann. § 23-18-604(b)(9)(A);

4) The County has provided substantial evidence in support of its assertion that the Zeuber Road Facility is not for residential use in accordance with Ark. Code Ann. § 23-18-604(b)(9)(A)(i);

5) The County has provided substantial evidence in support of its assertion that the Zeuber Road Facility will result in both environmental and public policy benefits, and allowing increased generating capacity should increase the state's ability to attract businesses to Arkansas and, thus complies with Ark. Code Ann. § 23-18-604(b)(9)(B)(ii);

6) The County has provided substantial evidence in support of its assertion that allowing increased generating capacity for its proposed Net-Metering Facility is in the public interest, and thus the County's proposed Zeuber Road Facility complies with Ark. Code Ann. § 23-18-604(b)(9)(A)(iii);

7) The County has provided substantial evidence that the electrical energy generated by the proposed Zeuber Road Facility is not intended to exceed the amount of energy necessary to offset part or all of the Applicant's requirement for electricity as required by the Commission's NMRs.

8) The County has provided substantial evidence in support of its assertion that Commission approval of its request for grandfathering of the current 1:1 full retail credit rate structure for net excess generation of energy with an initial grid charge of zero dollars, for a period of twenty years, as allowed for by Ark. Code Ann. § 23-18-604(b)(10)(A), is in the public interest.

Id. at 34-35.

Mr. Risner makes the following recommendations:

1) The Commission find that the County is not required to seek Commission approval for the County Jail Facility since the generating capacity is less than or equal to the 1,000 kW generating capacity limit defined by Ark. Code Ann. § 23-18-603(8)(B)(ii) and in Rule 2.06.A.1 of the NMRs, pursuant to all other applicable laws and rules of the Commission.

2) The Commission find that the proposed County Jail Facility in EAL's service territory is automatically grandfathered pursuant to Commission Order No. 28 in Docket No. 16-027-R, so long as the County submits its signed SIA to EAL by December 31, 2022.

3) The Commission approve the County's request to construct the Zeuber Road Facility, to be located within EAL's service territory with a generating capacity of approximately 4,625 kW_{AC}; and

4) The Commission approve the County's request to grandfather the proposed Net-Metering Facility for twenty years under the current rate structure of 1:1, with an initial grid charge of zero dollars, and with the twenty year term beginning on the date of the Commission's order approving grandfathering.

Id. at 35-36.

D. County Rebuttal Testimony

Adam Fogelman Rebuttal

Mr. Fogleman clarifies that the County is seeking the following: (1) the Commission's waiver of the 1.0 MW_{AC} size limit for the Net-Metering Facility planned for Zeuber Road (4,625 kW_{AC}); and (2) the Net-Metering Facility planned for the County Jail (250 kW_{AC}) was approved by EAL, is below the non-residential statutory size limits, and should be categorically approved and grandfathered into the existing rate structure, pursuant to the Net Metering Rules 2.06(A)(1) and 2.07(A)(1). He also clarifies that the generating capacity of the County Jail Facility is included in the Application because NMR Rule 2.06.A.2 requires inclusion. Mr. Fogleman contends that EAL did not provide material factual evidence to dispute the County's evidence in support of net metering. He provides criteria required pursuant to NMR Rule 2.06.B.1 and Ark. Code Ann. §23-18-604(9)(A). Fogleman Rebuttal at 3-4 (Doc. #15).

Mr. Fogleman confirms that the County did not intend to request grandfathering approval evaluated on a case-by-case basis for both net-metering facilities in the Solar Project. He testifies that since NMR Rule 2.06.A.2 requires the County Jail Facility to be categorically approved and grandfathered, the County intended to request grandfathering approval evaluated on a case-by-case review of the Zeuber Road Facility

only. He does not agree with Mr. Owens that the County is not eligible for Grandfathering. He explains that consistent with Order No. 28, the County submitted an initial PISRR for the Zeuber Road Facility on June 15, 2020,⁴ after Order No. 28 was issued. He continues that since the County submitted the PISRR after June 1, 2020, the Zeuber Road Facility is eligible to be grandfathered with an initial grid charge of zero dollars pursuant to the terms of Order No. 28. *Id.* at 5.

Mr. Fogleman does not agree with Mr. Owens's recommendation that the Commission should approve non-bypassable charges, remote generation charge, or other rate structures other than an initial grid charge set to zero dollars and 1:1 full retail credit net-metering framework as a part of the requested grandfathering approval. He testifies that the County requests grandfathering approval for the Zeuber Road Facility for twenty years under the current rate structure of a 1:1 kWh credit, with an initial grid charge of zero dollars. *Id.* at 5-6.

E. EAL Surrebuttal Testimony

Andrew Owens Surrebuttal

Mr. Owens explains that the Commission has issued orders approving several net-metering projects and that those orders address issues that may overlap to some degree with those arising in this proceeding. He continues that the County as well as applicants seeking Commission approval in other net-metering proceedings are quoting extensively from these orders. He testifies that EAL respects the Commission's authority to decide these cases, subject to applicable law, and does not make its recommendations on the issues in these proceedings for purposes of obstruction or

⁴ The Commission notes that June 2, 2020 appears to be the date of the initial PISRR.

delay. He testifies that the Commission's recent approval orders have not yet addressed (1) the Commission's gaming rules and the Commission has yet to issue a decision in a net-metering proceeding where that issue is being considered, and (2) the timing of an applicant's submittal of its PISRR relative to Order 28's grandfathering cut-off date of June 1, 2020, relative to Net-Metering Facilities in excess of 1,000 kW_{AC}. Owens Surrebuttal at 3-4 (Doc. #17).

Mr. Owens testifies that Mr. Risner does not address that the County submitted two PISRRs on June 15, 2020. He testifies that Mr. Risner does state in his grandfathering recommendation for the Zeuber Road Facility that the grid charge would apply should one be approved. He concludes that the Commission has not yet issued a decision in an individual net-metering application where gaming is an issue and EAL respectfully believes that the Commission must enforce the gaming provisions included in its orders and NMRs. He continues that EAL also suggests that several important conditions be attached to any approval of the Project in order to protect the interests of EAL's other customers. *Id.* at 4-5.

Mr. Owens affirms he did not believe that the County's original Application indicated that it was seeking to "game" the Commission's NMRs. He testifies that whether or not the County is now attempting to bypass NMRs by arguing that the smaller of its two planned solar systems does not require Commission review is a determination for the Commission to make in this proceeding. He reads Order No. 33's language regarding a customer who has an existing Net-Metering Facility and decides to pursue a second or third project as a very different fact pattern than a customer that has no existing Net-Metering Facility(ies), but is simultaneously pursuing installation of two

net-metering facilities that in the aggregate would exceed a threshold triggering Commission review. *Id.* at 5-6.

Mr. Owens does not agree with Mr. Fogleman's assertion in his Rebuttal Testimony that the County is eligible for grandfathering treatment. He concludes that his reading of Order No. 28's automatic eligibility language is that the County's Project is not automatically eligible for grandfathering treatment because the PISRRs were clearly submitted to EAL after the June 1, 2020, cut-off date. *Id.* at 7-8.

Mr. Owens testifies that in regard to Mr. Fogleman's assertion that the bill savings are "irrelevant, as well as inaccurate," for the benefit of its taxpayers and citizens the County may want to consider what Mr. Klucher was describing as far as the portions of its bills that are actually avoidable. He testifies that the County is assuming in its modeling that it will achieve a certain level of savings that is unlikely to occur, and in fact it appears that the County will actually pay more than its current rates (with the exception of its SGS accounts). He testifies that whether or not the County would experience net savings hinges on comparing the total payments they would make to Today's Power under the two twenty-year power purchase agreements⁵ versus the level of savings on the County's electric monthly bills. *Id.* at 8-10.

Mr. Owens concludes that based on Mr. Klucher's analyses, provided to the Parties as workpapers, for both systems the County should expect to experience a net increase in its total electricity costs given the average volumetric rates it is avoiding for its accounts that take service under the LGS and GST rate structures. He concludes that rather than saving money, it appears and separately accounting for the expectation that

⁵ Today's Power refers to the PPA as SPSA.

the smaller County Jail Facility will produce net savings, the County will instead be increasing its overall electricity costs for the foreseeable future if the Project is approved and constructed. *Id.* at 12-13.

Mr. Owens explains that the Commission has not yet initiated a new proceeding to address whether or not certain charges (riders) should be treated as non-bypassable. He recommends that the Commission, if it were to approve the proposed Solar Project, make it clear that the Project would be subject to continued payment of any riders that the Commission may eventually order to be treated as non-bypassable. *Id.* at 13-14.

F. Staff Surrebuttal Testimony

Marty Risner Surrebuttal

Mr. Risner testifies his Direct Testimony recommendation for the County Jail Facility is for the Commission to find that the County is not required to seek Commission approval and it is automatically grandfathered. Risner Surrebuttal at 4 (Doc. #16)

Mr. Risner testifies that he revises his recommendation for the Zeuber Road Facility for a twenty-year grandfathering term beginning on June 1, 2020, to align with the Commission's previous orders regarding grandfathering. *Id.* at 5.

Mr. Risner disagrees with Mr. Owens' assertion that Order No. 28 requires that a PISRR be submitted prior to June 1, 2020, in order to receive grandfathering treatment for some time frame up to twenty years. He testifies that a PISRR submitted to a utility prior to the June 1, 2020, is only required for the Commission to consider grandfathering of the current net-metering rate structure without a grid charge. He states that a net-metering customer may petition the Commission for grandfathering

even though the PISRR is submitted on or after June 1, 2020, but will be subject to a grid charge, initially set at zero if the Standard Interconnection Agreement is signed by December 31, 2022. The Commission may still consider a grandfather term of up to twenty years even if the PISRR is signed on or after June 1, 2020. *Id.* at 5-7.

Mr. Risner opines that the 250 kW County Jail Facility is below the 1,000 kW statutory limit and should not be subject to a grid charge pursuant to Order No. 28. Citing to Order No. 7 in Docket No. 20-015-U, he testifies that the 4,625 kW_{AC} Zeuber Road Facility qualifies for an initial grid charge of zero dollars since the PISRR was submitted to EAL on June 15, 2021, (which is after the June 1, 2020 cut-off date prescribed by Order No. 28) if the SIA is signed by December 31, 2022. *Id.* at 7.

Mr. Risner cites to Rule 2.07.B.1 of the NMRs that states any altering of the net-metering rate structure after the rate structure has been “grandfathered” would violate the grandfathering provisions of the rate structure. Again citing to Order No. 7 in Docket No. 20-015-U, he opines that any new net-metering rate structure would apply to any net-metering customer who does not have an approved grandfathering provision from the Commission. *Id.* at 7-8.

Mr. Risner states that based on the Commission’s previous findings on grandfathering, Mr. Klucher’s bill savings analyses alone are insufficient to support a conclusion of unreasonable cost-shifting, noting that EAL did not present cost-shift analyses based on the impact of this individual Application. He opines that none of Mr. Owens’s grandfathering recommendations appear to be viable options. *Id.* at 8-9.

Mr. Risner notes that the delay in the determination of non-bypassable riders should not impact the Application to exceed the statutory limit and grandfathering request under AREDA. *Id.* at 9-10.

Mr. Risner testifies that pursuant to Order No. 6 in Docket No. 16-089-U, cost savings to a specific customer are not a factor in determining whether the Solar Project qualifies under the AREDA requirements to exceed the 1,000 kW_{AC} statutory limit. He confirms Mr. Klucher did not provide analysis of unreasonable cost shift pursuant to the Commission's guidance in Order No. 7 of Docket No. 20-015-U and Mr. Klucher's "cumulative bill savings" from his Direct Testimony did not demonstrate an unreasonable allocation of cost to other utility customers, as required by Order No. 28. *Id.* at 11-13.

Mr. Risner testifies that Mr. Klucher did not present any results of a cost-of-service study and no plans for such a study are ever discussed, that Mr. Klucher's references are for Net-Metering Facility projects that have not yet been placed on-line therefore real-time cost shifting has yet to be demonstrated, and that Mr. Klucher did not include analysis of direct benefits. *Id.* at 13-14.

Mr. Risner maintains the same recommendations from his Direct Testimony except for the revised beginning date of June 1, 2020, for the 20-year grandfathering term for the Zeuber Road Facility. *Id.* at 14-17.

G. County Sur-Surrebuttal Testimony

Adam Fogelman Sur-Surrebuttal

Mr. Fogelman does not agree with Mr. Owens's assertion the Applicant is gaming the Commission. He testifies the Applicant is not seeking to "bypass" anything. He

testifies to the following description of the Application:

- These are two distinct projects;
- The County Jail Facility is only 250 kilowatts (kW) AC;
- The proposed Zeuber Road Net-Metering Facility will be 4,625 kW_{AC};
- The Applicant is seeking the Commission's waiver of the 1,000 kW_{AC} size limit for the planned Net-Metering Facility located at Zeuber Road;
- In the interest of full disclosure and pursuant to the Commission's previous orders, Applicant included the County Jail Facility in its Application;
- Construction began on the County Jail Facility in November of 2020;
- Applicant filed its Application with the Commission for the Zeuber Road Net-Metering Facility on December 29, 2020;
- Construction should be complete on the County Jail Facility by April 6, 2021;
- and
- Applicant is awaiting the Commission's approval before commencing construction on the Zeuber Road Facility.

Fogleman Sur-Surrebuttal at 3-4 (Doc. #18).

III. Findings and Rulings

In order to prevail on the merits under AREDA, the County has the burden of proving that it is a Net-Metering Customer as defined by Ark. Code Ann. § 23-18-603(7) and that it is constructing a Net-Metering Facility as defined by Ark. Code Ann. § 23-18-603(8). Further, since the County's proposed second Net-Metering Facility will be in excess of 1 MW but less than 5 MW, the Commission must therefore approve the second

Net-Metering Facility pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A). The Parties have asked the Commission to also determine if the County is required to seek approval for the first 1 MW Net-Metering Facility if it is currently applying to construct a second facility which, in the cumulative, puts it over the 1 MW threshold and if such an action is in violation of the Commission's NMRs on gaming.⁶ Additionally, the County requested that its rate structure be grandfathered. Thus, the Commission must determine if the facility is eligible for grandfathering, and if so, for what amount of time. The Commission finds it necessary to resolve the following issues:

1. **Is the County required to seek approval for the first 1 MW Net-Metering Facility that has not been constructed and interconnected if it is currently applying to construct additional facilities which, in the cumulative, put it over the 1 MW threshold? Is the County in violation of the gaming provision of the Net Metering Rules §5.01 et seq. by constructing the first Net-Metering Facility without Commission approval?**

As clarified by Order No. 5 in Docket No. 20-019-U, the Commission finds that the County has the right under Act 464 to construct up to 1 MW of Net-Metering Facilities without seeking Commission approval, as does any non-residential customer receiving service under a rate with a demand component.⁷

2. **Does the County qualify as a Net-Metering Customer under AREDA?**

Arkansas Code Annotated § 23-18-603(7) defines a net-metering customer as follows:

“Net-Metering customer” means a customer of an electric utility that:

(A) Is an owner of a net-metering facility;

(B) Leases a net-metering facility subject to the following limitations:

⁶ The Commission has made this determination in Docket No. 20-019- U, Order No. 5 at 63-67.

⁷ As long as the Net-Metering Facility meets all other statutory tests such as not exceeding the customer's usage.

- (i) A lease shall not permit the sale of electric energy measured in kilowatt hours or electric capacity measured in kilowatts between the lessor and lessee; and
 - (ii) A lease shall not include any charge per kilowatt hour or any charge per kilowatt; or
- (C) Is a government entity or other entity that is exempt from state and federal income tax, and that, for the sole purpose of this subchapter, obtains electric energy from a net-metering facility under a service contract qualifying for safe-harbor protection as provided under 26 U.S.C. § 7701(e)(3)(A), as in effect on July 24, 2019[.]

The Commission finds that Pulaski County qualifies as a “Net-Metering Customer” under Ark. Code Ann. § 23-18-603(7) based on Mr. Fogleman’s testimony that Pulaski County is a government entity which selected Today’s Power to finance, construct, own and operate the Solar Project pursuant to an Agreement dated June 2, 2020.⁸ The Commission further finds that, pursuant to its compliance with Ark. Code Ann. § 23-18-603(7)(C), Pulaski County as a governmental entity qualifies for safe harbor protection under 26 U.S. Code § 7701(e)(3)(A).

3. Does the record support that the proposed project meets the definition of a Net-Metering Facility pursuant to Ark. Code Ann. § 23-18-603(8)?

Arkansas Code Annotated § 23-18-603(8) defines a Net-Metering Facility as a facility for the production of electric energy that:

- (A) Uses solar, wind, hydroelectric, geothermal, or biomass resources to generate electricity, including, but not limited to, fuel cells and micro turbines that generate electricity if the fuel source is entirely derived from renewable resources;
- (B) Has a generating capacity of not more than:
 - (i) The greater of twenty-five kilowatts (25 kW) or one hundred percent (100 percent) of the net-metering customer's highest monthly usage in the previous twelve (12) months for residential use;

⁸ Fogleman Direct at 8-9.

- (ii) For customers of electric utilities, one thousand kilowatts (1,000 kW) for use other than residential use unless otherwise allowed by a commission under § 23-18-604; or
- (iii) For customers of a municipal utility, the limits established by the governing body of the municipal utility under § 23-18-605;
- (C) Is located in Arkansas;
- (D) Can operate in parallel with an electric utility's existing transmission and distribution facilities;
- (E) Is intended primarily to offset part or all of the net-metering customer requirements for electricity; and
- (F)(i) May include an energy storage device that is configured to receive electric energy solely from a net-metering facility.

According to County witness Fogelman, the Project consists of two solar generating facilities that will use solar resources to generate electricity. They will be located in Arkansas, will operate in parallel with the existing transmission and distribution facilities of EAL, and is intended to offset part of the electricity requirements of Pulaski County.⁹

Based on the evidence presented, the Commission finds that the County's proposed 4,625 kW_{AC} Zeuber Road Facility meets the definition of a Net-Metering Facility and must obtain Commission approval under AREDA because it exceeds the 1 MW threshold.

4. Does the record support that the proposed Net-Metering Facility meets the requirements to exceed a generating capacity of over 1 MW pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(i), (ii), (iii)?

Under Ark. Code Ann. § 23-18-604(b)(9)(A), there is a three-prong test that the County must meet in order for its proposed Net-Metering Facility to exceed a generating capacity of over 1 MW:

- (i) The net-metering facility is not for residential use;

⁹ *Id.* at 5-6.

- (ii) Increasing the generating capacity limits for individual net-metering facilities results in distribution system, environmental, or public policy benefits or allowing an increased generating capacity for the net-metering facility would increase the ability of the state to attract business to Arkansas; and
- (iii) Allowing an increased generating capacity for the net-metering facility is in the public interest.

For the second prong, an applicant need only meet one of the criteria set forth in the statute; that is, an applicant only need prove that increasing the generating capacity limits results in distribution system benefits or results in environmental benefits or results in public policy benefits or lastly, or would increase the state's ability to attract business. However, meeting more than one of the criteria affects the balance in measuring whether the net metering facility is in the public interest - the third prong. Therefore, the Commission will evaluate each criterion separately.

- a. **Has the County proven that the proposed Net-Metering Facility is not for residential use pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(i)?**

Pulaski County witness Fogleman testified that the Applicant is a County governed by the Pulaski County Quorum Court.¹⁰ Mr. Risner testified that he reviewed the electric billing statements provided in response to a Staff data request and determined that there were no residential accounts included¹¹ thereby meeting the requirements of Ark. Code Ann. § 23-18-604(b)(9)(A)(i). Mr. McCann also testified that the facility is for non-residential use.¹² Based on this evidence, the Commission finds that the proposed Net-Metering Facility is not for residential use.

¹⁰ *Id.* at 5.

¹¹ Risner Direct at 11-14.

¹² McCann Direct at 9.

b. Has the County proven that the proposed Net-Metering Facility results in distribution system benefits pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii)?

Mr. Fogleman and Mr. McCann testified that the Project will provide distribution benefits.¹³ Mr. Fogelman stated that Today's Power determined that the combined solar generation would result in an annual kWh offset of approximately 86% during the 12 month period evaluated and that the distribution benefits will result from lower system losses due to the location of the Project in existing load centers. Likewise, Mr. McCann stated that Project's distribution benefits are reduced daytime distribution loading by offsetting power flows adjacent to the proposed solar facilities; reduced distribution losses; reduced operating costs of the distribution system; reduced wear of certain distribution equipment and facilities such as distribution substation power transformer; and extend the useful life of the equipment and defer replacement of and the cost incurred to replace said equipment.¹⁴

The Commission finds that based on the evidence and testimony presented herein the County's Net-Metering Facility will result in distribution system benefits.

c. Has the County proven that allowing an increased generating capacity of its proposed Net-Metering Facility results in environmental benefits pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii)?

According to Mr. Fogleman, the Project will reduce carbon emissions by generating electricity onsite without the use of fossil fuels or mining or disposing of radioactive matter. He testified that the EPA.gov online calculator was used to predict

¹³ Fogleman Direct at 7-8, 11; McCann Direct at 10-11.

¹⁴ McCann Direct at 10-11.

7,205 metric tons of carbon dioxide reduction.¹⁵ Likewise, Mr. McCann affirmed the environmental benefits.¹⁶ Mr. Risner on behalf of Staff found environmental benefits of the project through a data request that provided the results of the EPA's GGEC. He further stated that that the Commission found in Docket No. 20-015-U, Order No. 7 that the Applicant need not prove environmental benefits with any more specificity and that the environmental benefits are not altered by the ownership status of the RECs.¹⁷

Based on the testimony provided, the Commission finds that the County's Net-Metering Facility will result in environmental benefits, and reiterates its previous position that RECs and what the County does with them is not part of this consideration.

d. Has the County proven that allowing an increased generating capacity from its proposed Net-Metering Facility results in public policy benefits pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii)?

With respect to public policy benefits, Mr. Fogleman testified that the County has introduced several programs aimed at improving sustainability and promoting clean energy initiatives such as the PACE program and is committed to maintaining an energy efficient and environmentally friendly community. He stated that the County has achieved tax savings by updating all but one of its buildings to improve efficiency and reduce energy consumption through participating in Arkansas's Performance Contracting program. He provided exhibits of statements from multiple public officials in support of the Solar Project, including a statement from the Executive Director of the LRPA who was instrumental in the City of Little Rock's Roadmap towards sustainability

¹⁵ Fogleman Direct at 11.

¹⁶ McCann Direct at 11.

¹⁷ Risner Direct at 11-14.

which includes the promotion of renewable energy resources.¹⁸ Mr. McCann offered that the Solar Project supports the Applicant's sustainability and clean air initiatives such as the Applicant's PACE program.¹⁹ Mr. Risner confirmed that that the Project supports the Applicant's sustainability and clean air initiatives such as the Applicant's PACE program. Mr. Risner confirmed the sustainability benefits and confirmed that County witness Fogleman testified that the average annual savings of the Zeuber Road Facility is expected to be approximately \$77,300 and approximately \$1.5 million over 20 years and that the cost savings will free-up those funds for other important public initiatives.²⁰ He testified the evidence provided emphasized how the eco-health of the county will be improved and taxpayer money will be saved; and educational opportunities will be provided to the students of the area school district and the tax base.²¹

As noted in Order No. 6 in Docket No. 16-089-U (Stratton Seed), the General Assembly did not include a specific, quantifiable test of what constitutes "public policy benefits" under Ark. Code Ann. § 23-18-604(b), and the Commission declined to adopt one therein. Generally speaking, the public policy apparent in AREDA can be found in the Legislative Findings in Ark. Code Ann. § 23-18-602. Realistically, a finding of public policy benefits will overlap with some of the other required findings. For example, "increasing the State's ability to attract business to Arkansas" is only a subset of the larger public policy goal of fostering investments in emerging renewable technologies to stimulate economic development and job creation in the state. Similarly, although

¹⁸ Fogleman Direct at 11-12.

¹⁹ McCann Direct at 11.

²⁰ Risner Direct at 15-16.

²¹ *Id.* at 16-18.

reducing environmental stresses from energy production can be subsumed into the Commission's required evaluation of environmental benefits, they remain an overall public policy benefit nonetheless. Therefore, some economic or environmental benefits, such as the health benefit of cleaner air, can also properly be considered as over-all public policy benefits.

Based on the testimony that the Project will demonstrate the County's commitment to develop new, clean technology and deploy environmentally sustainable energy resources on a market basis, the Commission finds that allowing the County to exceed the 1 MW threshold will result in public policy benefits pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii).

- e. **Has the County proven that allowing an increased generating capacity from the proposed Net-Metering Facility would increase the ability of the state to attract business to Arkansas pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii)?**

Mr. Fogleman testified that state and local economic activities will be supported by the Project in addition to construction jobs that will be created. He discussed statements from County Officials that the Project will be a good economic tool for the LRPA and Pulaski County. He stated that the LRPA Executive Director had received many inquiries from prospective businesses concerning the availability of renewable energy options at the LRPA.²² Mr. McCann affirmed that the Project will increase the state's ability to attract business.²³ Mr. Risner stated that evidence was provided that the Solar Project will support state and local economic development activities and will

²² Fogleman Direct at 12-13.

²³ McCann Direct at 11.

immediately generate construction jobs and support a fast growing industry in Arkansas.²⁴

Based on the testimony provided, the Commission finds that allowing an increased generating capacity of 4,625 kW from the proposed the County's Net-Metering Project results in the ability of the state to attract business to Arkansas pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(ii).

f. Has the County proven that allowing the increased generating capacity from its proposed 4,625 kW Net-Metering Facility is in the public interest pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(iii)?

The Commission finds that the evidence in this Docket which has been previously discussed supports that a facility that benefits the environment, creates jobs, reduces load on the distribution system, and fulfills the County's public policy adopted by its elected leaders is in the public interest. Furthermore, the Commission finds that it is benefits like these that were explicitly contemplated by the General Assembly when it enacted AREDA,²⁵ and notes that the "public interest" is a broad category that must reasonably weigh the totality of all of the ways that such a Project affects the public. The Commission therefore finds based on the testimony presented that allowing the increased generating capacity from the County's proposed Net-Metering Facility is in the public interest pursuant to Ark. Code Ann. § 23-18-604(b)(9)(A)(iii).

5. Are there any additional conditions or charges necessary to conclude that the County's Net-Metering Facility is in the public interest?

²⁴ Risner Direct at 15-16.

²⁵ See Ark. Code Ann. §§ 23-18-602.

The Commission has previously declined to adopt EAL's recommendation that it condition its findings and approval on the treatment of an Applicant's RECs.²⁶ As for the other issues raised by EAL, such as the asserted non-bypassable charges, the Commission need not make specific findings on issues that are beyond the scope of what is necessary to support the Commission's findings under AREDA. In Order No. 1 of this Docket, the Commission did not limit EAL's intervention, but cautioned EAL and all parties to address only those issues relevant to the County's Application and not to use Commission procedure(s) to drive up costs or cause undue delay. This Docket is limited to the question of whether or not the County's Application has complied with the statutory requirements of Ark. Code Ann. § 23-18-603(7), Ark. Code Ann. § 23-18-603(8), and Ark. Code Ann. § 23-18-604(b)(9)(A). As previously noted, the Commission need not make specific findings on issues that are beyond the scope of what is necessary to support the Commission's findings under AREDA, nor will the Commission add pre-requisites, co-requirements, or post-requisites to the statutory language of AREDA.²⁷

6. Does the record support grandfathering treatment for the County, and if so, what are the terms and conditions under which that treatment should be provided?

Arkansas Code Annotated § 23-18-604(b)(10), which was added to AREDA by Act 464 of 2019, provides:

(b) Following notice and opportunity for public comment, a commission:

...
(10)

²⁶ The Commission also notes that EAL withdrew its appeal of Order Nos. 28 and 33 of Docket No. 16-027-R which included issues such as RECs.

²⁷ This includes the issue of non-bypassable riders, which has been addressed in previous Commission orders and which is unnecessary for a determination under AREDA.

(A) Shall allow the net-metering facility of a net-metering customer who has submitted a standard interconnection agreement, as referred to in the rules of the Arkansas Public Service Commission, to the electric utility after July 24, 2019, but before December 31, 2022, to remain under the rate structure in effect when the net-metering contract was signed, for a period not to exceed twenty (20) years, subject to approval by a commission.

(B) A net-metering facility under subdivision (b)(10)(A) of this section remains subject to any other change or modification in rates, terms, and conditions.

Order No. 10 in Docket No. 16-027-R discusses the justification for grandfathering:

The Commission finds that the use of grandfathering allows for phase-in of any new rate structure and appropriately transitions customers to any new NM rate structure. This ruling provides a fair, stable, and predictable cost environment, which creates certainty for existing NMCs [net-metering customers] and for the market until new tariffs are established, and clarity and simplicity for all parties thereafter. It also appropriately balances the interests of existing NMCs, potential NMCs, and other utility customers, along with the interests of the utility.

The Commission agrees that the general intent of AREDA is to promote the development of renewable energy NM, and that a long period of uncertainty would chill such development.

...

The Commission finds that a period of advance notice to customers commensurate with the useful life of the assets in question (but also balancing questions of administrative efficiency and fairness to all ratepayers) is essential in implementing a statute which has the fundamental purpose of incenting customer investment in such assets.²⁸

In the Direct Testimony of Mr. Fogleman, the County requested approval of grandfathering for its additional 4,625 kW facility under Ark. Code Ann. § 23-18-604(b)(10)(A).²⁹ The County submitted a PISRR dated June 2, 2020, for 5,380 kW³⁰ (which it later revised to a lower Generator Rating). The County also submitted a PISRR

²⁸ Order No. 10 at 142-43.

²⁹ Fogleman Direct at 5.

³⁰ Exhibit JDM-3.

dated June 2, 2020, for another 250 kW. A PISRR dated December 21, 2020, was submitted for the 4,625 kW Net-Metering Facility, which is at issue.³¹

EAL witness Owens raised questions regarding the County's eligibility for grandfathering, given the original PISRRs submitted on June 15, 2020. He argued that the Project is not automatically eligible for grandfathering treatment and neither do the three conditions apply making the City ineligible for twenty years at 1:1 full retail credit rate structure, and that the County would be subject to a Grid Charge should it be approved by the Commission.³² Mr. Owens also requested the Commission make a specific finding that approval of the Project are conditioned upon the continued payment by the County of such riders that the Commission may determine in a future proceeding are non-bypassable and payable by net-metering customers.³³

In response to EAL's concerns, Mr. Fogleman testified that the 4,625 kW facility is eligible for grandfathering with an initial grid charge of zero dollars pursuant to Order No. 28 in 16-027-R. He also disputed Mr. Owens's recommendation for a non-bypassable, remote generation, or other rider/rate charge. He reiterates that the County requests grandfathering for twenty years under the current rate structure of 1:1 kWh credit, with an initial grid charge of zero dollars.³⁴

Staff witness Risner stated that the Zeuber Road Facility is eligible for grandfathering, but will be subject to a grid charge initially set at zero if a SIA is signed by December 31, 2022, and that the Commission may still consider a grandfather term

³¹ Exhibit JDM-4.

³² Owens Direct at 10-15.

³³ *Id.* at 15-16.

³⁴ Fogleman Rebuttal at 5.

of up to twenty years, beginning June 1, 2020.³⁵ He discussed that the Commission has found twenty years reasonable unless the utility provides sufficient evidence of a unreasonable cumulative cost shift.³⁶ He states that the 250 kW County Jail Facility is below the 1 MW statutory limit and should not be subject to a grid charge.³⁷

Having considered the testimony of the County, Staff, and EAL, the Commission finds that the 250 kW County Jail Facility is eligible for grandfathering at 1:1 without a grid charge³⁸ according to the terms of Order No. 28 in Docket No. 16-027-R so long as the SIA is signed before December 31, 2022.³⁹ In addition, the 4,625 kW Zeuber Road Facility is eligible to be grandfathered at the rate structure in effect when the SIA is signed, which is currently 1:1 with a grid charge (which is currently set at zero dollars for EAL), so long as the SIA is submitted by the County to EAL before December 31, 2022.⁴⁰

The remaining issue for the Commission to decide is the term of the grandfathering period. The County proposes a twenty-year term for grandfathering.⁴¹ Mr. McCann testifies that the Project will have an expected useful life of greater than twenty years with a warranty of twenty years, and the County is prepared to submit the SIA before December 21, 2022, as permitted by Rule 2.07.⁴² Staff witness Risner

³⁵ Risner Surrebuttal at 5-7.

³⁶ *Id.* at 8-9.

³⁷ *Id.* at 7-8.

³⁸ The rate in effect at the time the SIA is signed.

³⁹ The rate structure set by Order No. 28 for non-residential facilities under 1 MW is 1:1 credit.

⁴⁰ The Commission "Shall allow the net-metering facility of a net-metering customer who has submitted a standard interconnection agreement, as referred to in the rules of the Arkansas Public Service Commission, to the electric utility after July 24, 2019, but before December 31, 2022, to remain under the rate structure in effect when the net-metering contract was signed, for a period not to exceed twenty (20) years, subject to approval by a commission." Ark. Code Ann. § 23-18-604(b)(10)(A).

⁴¹ Fogelman Direct at 10; McCann Direct at 21.

⁴² McCann Direct at 16-22.

testifies that the County's request for grandfathering for twenty years meet the requirements of AREDA and the NMRs.⁴³

Order No. 10 in Docket No. 16-027-R explains the factors to be considered when determining the term of the grandfathering period:

The parties' suggestions for a period of grandfathering range from a defined period of years to perpetual grandfathering of existing NMCs [net-metering customers], with twenty to twenty-five years as a common proposal. Grandfathering terms are usually based on the typical useful life of the NMF [net-metering facility], the typical time needed to recoup the capital investment (the payback period), and/or the common warranty period for NMFs. The testimony is that early NMFs had a 25 year payback, but today the payback is about 12 years for residential NMFs. Evidence also supports a twenty-year life for NMFs and a common warranty period of 25 years.

The Commission adopts a grandfathering term of twenty years. Twenty years considers the impact on existing NMCs by taking into account the useful lives of NMFs, reasonable payback periods, and warranty periods. The term also appropriately balances the impact to other customers.⁴⁴

For customers who petition to exceed the statutory size limit, Order No. 10 found that:

because Waivers by definition are to exceed statutory limits, and because larger NMFs potentially have more effects (costs or benefits to other customers) on the system, each request for a Waiver should individually address whether it is in the public interest for that Waiver to be grandfathered, to the extent it meets all other criteria for grandfathering⁴⁵.

After a review of the evidence in this Docket, in which a Net-Metering Customer has requested approval for the Zeuber Road Facility which exceeds the 1 MW size limit to be grandfathered, the Commission finds that the evidence presented herein supports

⁴³ Risner Direct at 4.

⁴⁴ Order No. 10 of Docket No. 16-027-R at 147.

⁴⁵ *Id.* at 150.

that the appropriate term of grandfathering in this Docket should be twenty years for the Zeuber Road Facility.

The Commission notes that the intent of AREDA is to promote the development of renewable energy net metering. The Commission finds that a twenty-year period allows for phase-in of any new rate structure and appropriately transitions customers to any new net-metering rate structure. A twenty-year grandfathering term functions as a “bridge” to moving to the new rate structure.

Consistent with Order No. 10 in Docket No. 16-027-R quoted above, the Commission has considered the useful life of the proposed Net-Metering Facility. The Commission notes that this factor is a fairly objective standard, is common knowledge, and is not highly variable among projects. The evidence here shows the useful life is approximately 20-30 years, which is consistent with similar net-metering facilities.

The Commission finds that a twenty-year period provides a fair, stable, and predictable cost environment. Further, the Commission finds that a twenty-year period appropriately balances the interests of existing net-metering customers, potential net-metering customers, and other utility customers, along with the interests of the utility.

Order No. 10 in Docket No. 16-027-R observed:

Determining the time to apply new rate structures to NMCs [Net-Metering Customers] is an appropriate exercise of the Commission’s discretion as it balances AREDA’s directives with concerns raised for existing NMCs. Because of the small number of existing NMCs, grandfathering should have minimal effect on other customers.

...

With regard to ratepayers in general, this approach appropriately considers evidence of the minor impact of current NMCs on other

ratepayers and the adverse impacts on NMCs of not adopting a grandfathering period.⁴⁶

The Commission further finds that maintenance and repair of the existing Net-Metering Facility or replacement and repair of system parts with comparable parts, even if those parts increase a system's output due to increases in the efficiency of the equipment or other technological changes, should not be a triggering event which ends the grandfathering period, so long as the Net-Metering Facility still falls under the statutory definition. However, upgrades which significantly increase the system's output may trigger the end of the grandfathering period because such upgrades may affect the factors considered in approving the term of the grandfathering.

Therefore, as conditioned herein, the Commission finds it in the public interest and grants Pulaski County's request for grandfathering for the net metering of the excess energy generated by the Zeuber Road Facility onto the electric grid of EAL at the rate structure⁴⁷ in effect when the SIA is signed, which is currently 1:1 with a grid charge,⁴⁸ so long as the SIA is submitted by the County to EAL before December 31, 2022. The approved term of the grandfathering shall be twenty years from June 1, 2020, consistent with Order No. 10 in Docket No. 16-027-R.⁴⁹

⁴⁶ Order No. 10 of Docket No. 16-027-R at 144-45.

⁴⁷ The Commission notes that this decision grandfathers only the current net metering rate structure; the Commission may consider in a separate future docket whether certain riders should be bypassable or non-bypassable by utility customers including current Net-Metering Customers.

⁴⁸ The current grid charge is set at zero dollars but is subject to change.

⁴⁹ See Order No. 10 at 146, where the Commission stated: "In addition, that order date will determine the start of the 20-year grandfather period. Although it is possible to tie that period to the date of interconnection of each individual NMF, using the order date is more administratively efficient for the utilities and the Commission. Otherwise, each utility would have to keep up with a specific date for each NMF. The grandfather period for all customers will begin – and end – on the same dates."

Having considered the County's Application and the testimony, exhibits, and recommendations of its witnesses, and the testimony, exhibits, and recommendations of EAL and Staff, the Commission orders and directs as follows:

1. The Commission approves Pulaski County's 4,625 kW Zeuber Road Net-Metering Facility to exceed 1 MW and to interconnect with EAL's distribution facilities.

2. The Commission approves, as conditioned herein, Pulaski County's request for grandfathering for the net metering of the excess energy generated by the Zeuber Road Facility onto the electric grid of EAL at the rate structure in effect when the SIA is signed, which is currently 1:1 with a grid charge (which is currently set at zero dollars for EAL), so long as the SIA is submitted by the County to EAL before December 31, 2022. The approved term of the grandfathering shall be twenty years from June 1, 2020, which is consistent with Order No. 10 in Docket No. 16-027-R.⁵⁰

3. Pulaski County is directed to file in this Docket a report within two weeks after the approved Net-Metering Facility's completion and the interconnection is made with the electric utility grid of EAL. The report shall provide the dates the facility was completed and interconnected to EAL's system. The report will identify any changes made to the facility. The report may be filed in the form of a letter from a County employee or agent. The Commission expects Pulaski County to use its best efforts to promptly complete the project.

⁵⁰ The County's 250 kW Net-Metering Facility is statutorily and automatically grandfathered at 1:1 retail rate for 20 years.

BY ORDER OF THE COMMISSION.

This 16th day of September, 2021.



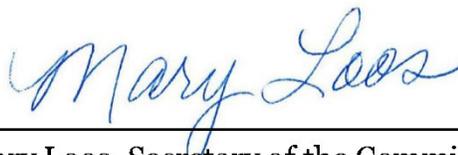
Ted J. Thomas, Chairman



Kimberly A. O'Guinn, Commissioner



Justin Tate, Commissioner



Mary Loos, Secretary of the Commission

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.