

**BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF AMENDMENTS TO THE)
ARKANSAS PUBLIC SERVICE COMMISSION'S) DOCKET NO. 12-060-R
RULES CONCERNING METER AGGREGATION)
AND COMBINED BILLING FOR)
NET-METERING CUSTOMERS)**

ARKANSAS ADVANCED ENERGY ASSOCIATION'S BRIEF

I. Introduction

Order No. 1 in this docket asked the parties to file legal briefs addressing the Commission's legal authority to adopt some form of meter aggregation or combined billing to promote net metering. The Arkansas Advanced Energy Association ("AAEA") petitioned to intervene and was granted intervenor status by Order of the Commission on September 4, 2012.

The AAEA is an industry association comprised of people and companies active in the development of renewable energy markets in Arkansas. The AAEA strongly believes that aggregation of net metering ("ANM") can be an effective tool in promoting and developing renewable energy and the economic benefits for the State of Arkansas that will accompany that development. Without aggregation of meters, net metering will not occur on a scale necessary to achieve these benefits.

Substantial costs are often associated with the production of a net-metering facility by a customer. To attract customers to build net-metering capacity, the up-front costs need to be recaptured over time. That requires allowing the customer to apply the credit or savings generated by the net-metering facility to multiple electric utility meters, not just the meter where the net-metering facility is located. The authority of the PSC to allow ANM is evident in various

statutory provisions. The Arkansas General Assembly has promoted net metering and established the broad authority of the PSC to take steps necessary to promote clean energy resources and renewable energy resources through net metering.

II. Argument

A. The PSC's Authority to Allow Aggregation of Net-Metering is Clear

The Arkansas General Assembly has repeatedly made clear its interest in facilitating renewable and clean energy, and the associated energy independence. The issues of high electric rates and energy independence first arose in the late 1970's. The Arkansas legislature responded to the growing concern about energy resources by enacting the Energy Conservation and Endorsement Act of 1977. In that Act, the General Assembly made the following observation:

The General Assembly finds that the United States is confronted with a severe and very real energy crisis. Simply stated, the demand for fuels has outstripped the available supplies. The President of the United States has established energy conservation as a high-priority national goal and has called on all Americans to participate in and perhaps make sacrifices toward attaining that goal. The General Assembly recognizes that enormous amounts of energy are wasted by consumers of all classes and economic levels due to inadequate insulation of buildings and other inefficiencies in the use of energy. The overriding public interest in the conservation of natural gas and oil, as well as the use of alternative forms of energy, is indisputable.

Ark. Code Ann. § 23-3-402.

The legislature specifically provided the PSC in the 1977 Act with the following broad authority aimed at conservation:

The Arkansas Public Service Commission is authorized to propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels.

Ark. Code Ann. § 23-3-405(a)(1).

The statute's definitions section highlights the legislature's objective of encouraging alternative forms of energy as a part of the conservation efforts:

'Energy conservation programs and measures' may include but shall not be limited to . . .

- (2) Programs which result in the improvement of load factors, contribute to reduction in peak power demands, and promote efficient load management, including the adoption of interruptible service equipment and alternative or additional metering equipment designed to implement new rate structures; and
- (3) programs which encourage the use of renewable energy technologies or sources, including solar energy, wind power, geothermal energy, biomass conversion, or the energy available from municipal, industrial, silvicultural, or agricultural wastes.

Ark. Code Ann. § 23-3-403(3).

These broad powers of the PSC that provide for investing in "renewable energy technologies" are consistent with allowing the means for a customer to pay for a net-metering facility by applying the credits generated by that facility to multiple meters. Aggregation of net meters is clearly something that "will facilitate the financing" of net metering which is compatible with the 1977 Act. Just as the legislature expressly authorized "measures to facilitate the financing" of insulation because it encourages conservation, ANM will facilitate the "financing" of net metering by encouraging customers to build net metering facilities. This promotes conservation as the term is broadly defined in the law. Ark. Code Ann. § 23-3-403.

Again in 2007, the Arkansas General Assembly adopted a statute that emphasized the need for the PSC to exercise its authority to maximize the use of clean energy resources or renewable energy resources. Ark. Code Ann. § 23-18-703. Under Act 755 of 2007, the General Assembly empowered the PSC "to consider clean energy or renewable energy resources, or both,

as part of any resource plan or natural gas procurement plan.” Ark. Code Ann. § 23-18-703(a)(2)(A). The specific authority granted to the PSC could hardly have been broader:

The Arkansas Public Service Commission may consider, propose, develop, solicit, approve, implement, and monitor measures by electric and natural gas public utilities subject to its jurisdiction that cause the electric and natural gas public utilities to incur cost of service and investments that utilize, generate, or involve clean energy resources or renewable energy resources, or both.

Ark. Code Ann. § 23-18-703(a)(1).

Accordingly, the mandate from the General Assembly to the PSC is very clear. The PSC is charged with the task of encouraging renewable and clean energy resources. It clearly has the authority therefore to require ANM which will have the consequence of creating greater incentives for net metering facilities. That in turn will create greater use of renewable and clean energy resources as the General Assembly directed.

Nothing in the rules or the statutes is at odds with this purpose and directive. The AAEEA recognizes that ANM must be done carefully and with an eye toward avoiding manipulation or exploitation. It must also be done with some sensitivity to the overall effect on the ratepayer. These are not insurmountable issues and are not reasons to ignore the legislative directive or otherwise have the PSC fail to use its authority.

B. The General Assembly Has Strongly Favored Net Metering and Aggregation

As Order No. 1 indicates, the Arkansas General Assembly has come down squarely in favor of net metering. Under Ark. Code Ann. § 23-18-604 “electric utilities *shall* allow net metering facilities to be interconnected either in a standard meter capable of registering the flow of electricity in two (2) directions.” More pointedly, the statute further states that the Arkansas

Public Service Commission “may expand the scope of net metering to include additional facilities that do not use a renewable energy resource for fuel or may increase the peak limits for individual net metering facilities, if so doing results in desirable distribution system, environmental, or public policy benefits;” Ark. Code Ann. § 23-18-604(b)(4).

It’s hard to escape the conclusion that this language authorizes ANM. The statute plainly envisions that the PSC has the authority to expand the scope of net metering so as to include “additional facilities that do not use renewable energy resources” when calculating and furthering the “environmental, or public policy benefits.” That is precisely what aggregation does. The only practical way to achieve the expansion of net metering to include additional facilities “that do not use renewable energy resources” is through ANM. Accordingly, the PSC has the authority to expand the “scope” of the benefits of net metering facilities by allowing a net-metering customer to apply renewable energy credit generated at one site to other sites that do not generate renewable energy.

In an attempt to claim that the legislation rejected ANM, the Joint Utilities in their brief in Docket No. 12-001-R focuses on the use of the term “standard meter” as opposed to “meters.” This is a cramped reading of the statute and one that ignores the “expanding of the scope” of net-metering provision outlined above. The statute uses the plural “net metering facilities” that are to be interconnected through a “standard meter capable of registering the flow of electricity in two (2) directions.” The use of “net metering facilities” for one meter is not at odds with the concept of aggregation of the several standard meters where one or more of these meters is at a facility that is not using renewable energy. In other words, that a single meter could serve

multiple net-metering facilities says nothing about the use of multiple meters in facilities if the expansion of net-metering is to serve some facilities that are not using renewable energy, as the statute envisions. Nothing in the statute impliedly or expressly prohibits ANM. On the contrary, the statute expressly authorizes the PSC to expand the scope of net metering by including “additional facilities that do not use renewable energy resources.” That can only be done effectively with ANM.

C. GSR 5.20 Can and Should Be Amended

The Commission notes in its Order that general service rules (“GSR”) generally promote separate metering. The Order highlights GSR 5.20 which is under the section titled “Billing.” Within the general requirements of subsection B of the GSR 5.20, the language clearly contemplates that the order for separate metering and billing is subject to other considerations. The rule explicitly states that “utilities may not combine metering and *billing unless some other part of the rule allows it.*” (Emphasis added). The “strawman” set out as Exhibit A in the Order would clearly fall within Rule 5.20 of subsection D and thereby expressly allow aggregation of net metering within the same rule.¹

In addition, the existing subsection C of 5.20 dealing with exemptions again underscores the mandate of the PSC to approach issues of metering and billing with an eye toward energy efficiency and conservation. Specifically, Rule 5.20(c) sets out conditions where an exemption from the prohibition in (b)(2) against installing master meters or combine the bills of individual

¹The AAEA suggests an important amendment to the Strawman in its Comments that are being filed simultaneously with this brief and in response to the invitation for comments in Order No. 1.

customers should be weighed against “the long term benefits to the utilities ratepayers as a whole.” The rules further states that “benefits to be considered may include, but are not limited to, the following: . . . (3) encouragement of systems using renewable fuel sources other than fossil fuel; . . . (5) other benefits gained from energy efficiency and conservation.” GSR 5.20(c).

III. Aggregation of Net Meters is Prudent Policy for Arkansas

A review of 47 states that have net metering programs shows that 29 states, including Arkansas, have not addressed ANM. Of the 18 states that have addressed ANM, seventeen have allowed it. Only Florida has taken the position of disallowing ANM.

Undoubtedly owners of net metering facilities (NMF) in Arkansas would participate in ANM to take advantage of a NMF that is capable of producing electrical power that exceeds what is consumed at a single meter. This would be particularly attractive at NMFs operated by federal, state, and local governments; commercial facilities; neighborhood associations; and agricultural enterprises.

The classic example to date is the well-known NMF in the city of Burdette in northeast Arkansas where a 50 kw windmill built there has yet to be connected. Without the aggregation of meters, Burdette cannot recover with utility bill credits the federal and local funds used to assist with Burdette’s purchase of the windmill. If Burdette cannot recoup its windmill investment, there will be no reason to deploy the windmill. An opportunity to use renewable or clean energy will be lost.

A municipal central heating and cooling district is another example of a combined heat and power facility. A municipal central heating and cooling district could be solar/wind/water

powered as well as fueled by coal, oil, natural gas or biomass. It is improbable that conventionally generated electricity can be competitive with electricity produced in a combined heat and power facility, provided that a high percent of the heat otherwise released into the atmosphere from the utility plant cooling tower is captured and utilized beneficially.

The impact of any policy that enables a combined heat and power facility to operate by putting power on the grid and taking power from the grid as necessary (net metering) can be measured in lower power cost, energy efficiency, and reduced emissions regardless of the type of fuel employed. The larger the scale the greater the impact.

If the PSC authorizes ANM, the state should witness an expansion of distributive renewal energy generation as has happened elsewhere. In Arizona, a report prepared by Keyes and Fox, LLP, dated September 30, 2010, for the Arizona Corporation Commission summarized comments by parties in support of ANM. Pima County, city of Tucson, and Vote Solar Initiative stated that ANM would allow municipalities to take advantage of the benefits of net metering when their electrical load is distant from their ideal NMF, perhaps a landfill or large open lots.² Pima County said that Arizona's promotion of renewable energy, in particular solar energy via net metering, brought a variety of benefits to the state, including environmental benefits, the avoided cost of additional infrastructure, and increased jobs available in the solar installation industry. Another party, Venture Catalyst, said the larger projects that ANM would likely

²*Aggregated Net Metering In Arizona: Summary of Party Comments*. September 30, 2010. Arizona Corporation Commission. Second Consultant Report. Keyes and Fox, LLP. 15 Pages.

encourage will move the market for solar in a more significant way and have a larger beneficial impact.

In 2001, the Arkansas General Assembly found in its Legislative Findings and Declaration section of the Arkansas Renewable Energy Development Act “net energy metering encourages the use of renewable energy resources [which] promotes the wise use of Arkansas' natural energy resources to meet a growing energy demand; increases Arkansas' use of indigenous energy fuels while reducing dependence on imported fossil fuels; fosters investments in emerging renewable technologies to stimulate economic development and job creation in the state, including the agricultural sectors; reduces environmental stresses from energy production; and provides greater consumer choices.” Ark. Code Ann. § 23-18-602. It is clear that the Arkansas Legislature intended net metering to be a viable energy option for the state, and that reasonable policies to expand the use of renewable energy development would be to the state’s benefit. ANM is sensible policy for Arkansas as it enables a greater use of “indigenous energy fuels.”

AAEA in its separate Comments filed simultaneously with this brief sets out more precisely AAEA’s views with respect to the potential economic impact of ANM on rates. AAEA recommends that Arkansas should allow all rate classes to be eligible for ANM. The state should not establish any ANM capacity limits. And all ratepayers should be able to offset load measured at an unlimited number of meters.

IV. Conclusion

For the foregoing reasons, AAEA respectfully recommends that the PSC exercise the authority conferred upon it by the General Assembly to allow aggregation of net-metering facilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2012 I electronically filed the foregoing with the Clerk of the Commission using the ECF system and a copy was served on all parties via email or first class mail.

/s/ Nate Coulter

Nate Coulter