ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A NOTICE OF INQUIRY REGARDING THE EXPANDED DEVELOPMENT OF SUSTAINABLE ENERGY RESOURCES IN ARKANSAS	))))	DOCKET NO. 08-144-U ORDER NO. 17

ORDER DEFINING "COMPREHENSIVE"
IN THE PLANNING, APPROVAL AND IMPLEMENTATION OF
ESSENTIAL ENERGY EFFICIENCY SERVICES

On September 1, 2010, the Arkansas Public Service Commission ("Commission") conducted a public hearing in this Docket on the subject of the meaning of "comprehensive" in energy efficiency ("EE") portfolio and program planning and implementation under the Commission's *Rules for Conservation and Energy Efficiency Programs* ("C&EE Rules") adopted in Docket No. 06-004-R. The hear ing was the culmination of the Commission's consideration of Issue No. 1 -- Defining the term "Comprehensive," which was referred to this Docket by the Commission's February 3, 2010 omnibus Energy Efficiency "Roadmap" Order issued in identical form in the 10 pairs of Energy Efficiency Tariff Filing ("TF") and Reporting ("RP") dockets.[1]

The Roadmap Order stated that the Commission "recognizes the importance of providing directives regarding what is expected of the utilities in designing and implementing EE plans, programs, and portfolios to achieve the maximum cost-effective EE for the ratepayers of Arkansas," noting that the EE Utilities[2] "would benefit from

[1] *See*, for example, Order No. 14 in Docket 07-075-TF (Oklahoma Gas & Electric Co.), which contains the full listing of the 20 energy efficiency TF and RP dockets in which the Roadmap Order was filed.
[2] Entergy Arkansas, Inc. ("EAI"), Southwestern Electric Power Company ("SWEPCO"), Oklahoma Gas and Electric Company ("OG&E"), Empire District Electric Company ("Empire"), CenterPoint Energy Arkansas Gas ("CenterPoint"), Arkansas Western Gas Company ("AWG"), and Arkansas Oklahoma Gas Corporation ("AOG"), and The Arkansas Electric Cooperatives.

additional guidance from the Commission regarding what is meant by the term 'comprehensive' when applied to their EE planning processes." (*Id.* at 10). The Commission thus directed the Utilities to file comments, testimony, and legal pleadings, as appropriate, on this issue, taking into consideration the long-term aspirational goal of the National Action Plan for Energy Efficiency ("NAPEE") "to achieve all cost effective energy efficiency by the year 2025." (Roadmap Order at 10). The Commission noted that this goal "is entirely consistent with the Arkansas General Assembly's recognition in the [Energy Conservation Endorsement Act of 1977, ("ECEA")] that energy conservation is a 'high-priority national goal' and that there is 'an overriding public interest in the conservation of natural gas and oil, as well as the use of alternative forms of energy...,'" citing Ark. Code Ann. §23-3-402. (*Id.* at 7).

The Commission further directed the Parties to this Docket to take into consideration four tasks recommended for NAPEE utilities and applicable agencies under this goal:

- Create a process, such as a state or regional collaborative, to explore the EE potential in the state, and commit to its full development;
- Regularly identify cost-effective achievable EE potential in conjunction with ratemaking bodies;
- Set energy-savings goals or targets consistent with the cost-effective potential; and
- Integrate EE into energy resource plans at the utility, state, and regional levels, and include provisions for regular updates.

(*Id.* at 8).

The Roadmap Order and Order No. 13 in this Docket directed all Parties to file comments, testimony, and legal pleadings by March 2, 2010, and responsive pleadings by March 16, 2010. The Commission stated that following its review of the filings and an evidentiary hearing, it would issue an order defining what is meant by the term "comprehensive" and setting standards for the utilities and timetables for meeting the appropriate criteria for comprehensiveness by December 31, 2012. (*Id.* at 10).

By Order No. 14, issued on August 6, 2010, the Commission also directed that the Parties respond to a series of questions:

1. What level of energy efficiency service provision or achievement should be regarded as "essential" under Ark. Code Ann. § 23-3-403?

2. Which, if any of the following definitional elements are relevant in defining "comprehensiveness" as it applies to a utility energy efficiency portfolio?

   a. The provision of adequate budgetary, management, and technical resources to plan, design, implement, oversee and evaluate energy efficiency programs;

   b. The proposal of a program portfolio designed to maximize net program benefits;

   c. The proposal of a program portfolio designed to deliver all achievable, cost-effective energy efficiency within a reasonable period of time;

   d. The identification or provision of any needed education, training, marketing, outreach, or customer financing services.

   e. The provision of services that address substantially all major end-uses of electricity or gas, as appropriate.

f. The inclusion of measurement, verification, and evaluation procedures adequate to support program management and improvement, calculation of revenue impacts, and resource planning decisions.

3. Are the levels of cost-effective energy efficiency savings recommended in the ACEEE Report [American Council for an Energy Efficient Economy] unachievable in any utility territory within the time period recommended?

Comments, testimony, legal pleadings, and responses to the foregoing questions posed by the Commission were filed by the EE Utilities, as well as the General Staff ("Staff"), the Attorney General ("AG"), and intervenors Wal-Mart Stores, Arkansas LLC and Sam's West ("Wal-Mart"), National Audubon Society, Inc. dba Audubon Arkansas ("Audubon"), and the Arkansas Community Action Agencies Association ("ACAAA"). These filings addressed the Parties' general positions and approach to defining "comprehensive" and components thereof, including the relationship to "comprehensiveness" of the statutory definition of conservation and energy efficiency as an "essential function" of public utilities under the ECEA [Ark. Code Ann. § 23-3-404] ; the subject of goal- and target-setting on an individual utility or statewide basis; and the types and metrics that should be applied to goals and/or targets (qualitative, quantitative, etc.). A summary of the positions of the Parties on these matters is contained in the next section.

Positions of the Parties.

General Staff ("Staff"): In its Initial Comments in this Docket the General Staff of the Commission defined "comprehensive" as meaning "each electric and natural gas utility should provide a portfolio of cost effective and economically beneficial energy efficiency, conservation, and other demand side resources." (Staff's Initial Comments at 1 (March 2, 2010)). To identify the portfolio of programs and measures to offer, Staff stated that each utility should screen the entire portfolio of measures that "have technical potential in order to identify which ones could provide economic benefits." (*Id.* at 1-2). Those measures should then be subjected to more detailed screening to establish which have the highest benefit cost ratios, which provide the greatest impact, which are most long-lasting, and which can be implemented most rapidly given the current market condition. Staff stated that to ensure successful implementation, "the programs should have input and acceptance from all major groups of stakeholders." Staff also recommended that priority should be given to programs that have sustained effects (i.e., that have a reasonable prospect of lasting for a decade or more and becoming a permanent part of the energy industry as a whole). (*Id.* at 1-2).

Staff also commented on the use of conservation and energy efficiency in resource planning, noting that Rule 4.3 of the Commission's *Resource Planning Guidelines for Electric Utilities* requires that "[t]he utility should assess existing resources based on their cost effectiveness and considering the utility's planning objectives." (*Id.* at 2).To meet comprehensive energy efficiency objectives, Staff proposed that utilities should evaluate cost- effective measures to improve operational efficiencies in generation, transmission, and distribution facilities. According to Staff, "Energy efficiency consists of comprehensive improvements throughout the integrated utility whether it comes from improved heat rates, reductions in line losses, or the development of smart grids." (*Id.* at 2).

In response to the questions posed by the Commission in Order No. 14, Staff stated that "the level of energy efficiency service provision or achievement that should be regarded as 'essential' is the greatest amount of robustly cost effective conservation and energy efficiency programs and other demand side resources that a utility can effectively deliver to its customers." (Staff Comments at 4 (August 20, 2010)). "A critical component of meeting this goal is the comprehensiveness of the utility's offerings." (*Id.* at 4). Staff further noted that the definition of "cost effective" is "critical," stating:

> In its *Promotional Practices Rules* and its *Rules for Conservation and Energy Efficiency Programs,* the Commission has already recognized the California Tests that seek to measure the cost effectiveness of conservation and energy efficiency programs and other demand side programs relative to the utilities' supply side resource costs as good barometers of cost effectiveness. Those tests provide an established methodology for evaluating the cost effectiveness of demand side programs and great care should be taken in the definition of the costs to be included, the lifetimes of the measures and the required payback periods. In general, customers have much shorter payback requirements than do utilities and consequently customers may require benefit-cost ratios that are significantly greater than one. The calculation of the benefit-cost ratios used in the California Tests should give significantly greater weight to readily quantifiable, known and measurable costs and benefits over indirect costs and benefits, qualitative costs and benefits, and externalities.

(*Id.* at 3).

With regard to the 2010 ACEEE Report on Arkansas's energy efficiency potential, Staff agreed with the Report's suggestion of "starting slowly and ramping up the Energy Efficiency Resource Standard (EERS) targets and allowing the targets to be modified as experience is gained." (*Id.* at 6). Staff stated that it may be reasonable "to establish the levels of savings in the ACEEE Report with incentives for meeting or exceeding those targets." However, Staff did not support "establishing negative consequences for not meeting targets at this time, because there is insufficient information available to know with certainty that the targets are achievable." (*Id.* at 6).

Staff concluded that, "It may be more appropriate to set aggressive goals and be flexible in adjusting them as evidence necessitates than to set lesser goals and never fully realize the potential of conservation and energy efficiency programs and other demand side resources." (*Id.* at 6).

The Attorney General ("AG"): The AG did not file Initial Comments but in Reply Comments stated its belief that the comments of Audubon and ACAAA taken together, provide two important dimensions of the term 'comprehensive' that should be incorporated into the Commission's use of the term:

> First, the portfolio (or suite) of programs offered must be comprehensive. It must be available to all classes; it must provide financial, technical, and/or other support to customers; it must include necessary training and education; and must allow for *verified* energy and demand savings. Second, individual programs must be comprehensive. This would immediately exclude 'cream skimming' (only going after the cheapest and easiest retail customers and EE savings, *e.g.*, lighting only programs). This would also exclude programs that create 'lost opportunities' (energy efficiency savings that become stranded because they were not picked up with the first EE activity and are too costly to go back and realize through subsequent programs or customer contacts).

(Reply Comments of Attorney General at 3-4 (March 16, 2010)).

In response to Staff's comments, the AG noted that although it should be a dimension of "comprehensive", "cost effectiveness" should not be equated with "comprehensive", pointing out that "Programs may appear, on paper, to be 'cost effective', while in fact promoting cream skimming and creating lost opportunities," citing stand-alone electric and natural gas utility programs serving the same customers. (*Id.* at 4).

In its Initial Comments in Response to Order No. 14, the AG took the position that the level of EE service provision or achievement that should be regarded as "essential" is "that which is cost-effective relative to the equivalent supply-side avoided cost." citing to the ECEA and Section 1, "Purpose," of the Commission's C&EE Rules. The AG also asserted that "all of the definitional elements outlined in items a-f [of the Commission's Question 2 above] are relevant in defining 'comprehensiveness' as it applies to a utility's energy efficiency portfolio." Finally, the AG stated that "[t]he levels of cost-effective energy efficiency savings recommended in the ACEEE Report should be achievable in all Arkansas utility territories within the time period recommended."

Entergy Arkansas, Inc. ("EAI"): EAI would define "comprehensive" as "a level of cost-effective" EE programs that is "reasonable and appropriate for the utility," considering its Integrated Resource Plan ("IRP"), customer base, cost recovery structure, and any other relevant issue. EAI asserts that the Commission's discretion to define comprehensiveness is limited by cost effectiveness and the statutory requirement that programs benefit utilities under the ECEA. EAI argues that a statewide energy and demand savings target is inappropriate because of differences in utilities' avoided costs, resource portfolios, and customer base. (EAI's Initial Comments of EAI at 3-5 (March 2, 2010)).

Noting that Audubon alone sought "arbitrary" numeric EE achievement targets, EAI asserts that goals should fit each utility. (EAI Reply Comments, at 5 (March 16, 2010)). EAI asserts that "essential" has no relationship to comprehensiveness under the C&EE Rules, and "the definition of 'comprehensive' effectively is delegated to the Commission." (*Id.* at 3). EAI asserts that the ECEA language merely establishes that the legislature elevated conservation and energy efficiency as "a legally recognized utility service," "to a role on par with more traditional utility functions." (*Id.* at 2).

Regarding goalsetting, EAI notes that the EE Utilities' comments reflect general agreement that goals or targets for cost effective energy efficiency resources are best set at the utility level and agrees with CenterPoint that there is no "one size fits all" approach to defining "comprehensive." (*Id.* at 5). EAI concurs with AOG that "to fully comply with the intent and requirements of the NAPEE, the Commission must view 'comprehensive' programs as those that are beneficial to the ratepayers and the utilities as well." (*Id.* at 6).[3]

With respect to the definitional elements set forth in the Commission's Question 2, EAI finds them to be relevant to evaluating program design. However, EAI recommends that the Commission consider a broader definition of "comprehensive", taking into account the utility's IRP, customer base, cost structure, and other relevant issues specific to the utility. (*Id.* at 4).

In response to the Commission's question about the ACEEE EE Potential Report, EAI notes that "the most obvious reason" ACEEE's and EAI's analyses of energy efficiency potential "may not match up" is that ACEEE uses the customer perspective, while EAI uses the Total Resource Cost ("TRC") perspective. EAI suggests that the

3 The Commission notes that the interaction of energy efficiency targets with the issue of utility shareholder performance incentives is being addressed in Order No. 15 of Docket No. 08-137-U (the Incentives Order").

ACEEE methodology is similar to the Participant Cost Test and does not always produce the lowest cost resource option for all customers. (*Id.* at 8).

Southwestern Electric Power Company("SWEPCO"): SWEPCO urges that in defining "comprehensive" the Commission should account for all activities by private individuals and industry, government (building codes and stimulus funded rebates), and both customer- and utility-side EE. SWEPCO asserts that the policy goal of "all cost-effective" EE must acknowledge the reality that consumers won't always implement even cost-effective solutions. (SWEPCO's Initial Comments at 1-2, 7 (Mar. 2, 2010)).

SWEPCO opposes "arbitrarily-determined" mandated goals or "indiscriminant comparisons" with other jurisdictions, believing instead that the level of investment in ratepayer-funded programs should be driven by utility-specific Market Potential Studies ("MPS"). (*Id.* at 5). Other factors, such as the utility's IRP and rate impacts to customers from EE programs, should be taken into account when determining the appropriate EE programs for each utility and its customers. SWEPCO points out the distinctions between technical, economic, and achievable EE potential and notes that to overcome market barriers that impede achievement of higher levels of EE, utilities must often subsidize the costs of EE measures. (*Id.* at 5-7). SWEPCO notes that the higher the subsidy for participants, the greater the rate impact on non-participating customers, stating:

> Because much of the cost-effectiveness inherent in energy efficiency results from energy (fuel) savings, it is typically the participant in these programs who benefits at the expense of the non-participants. Regardless, customer rates for these programs will increase with the implementation of utility sponsored EE programs. Aggressive targets require higher levels of subsidization which will exacerbate this effect. Such subsidization

> impacts the costs of the programs and the rate impacts on customers' bills. This reality has to be a factor when deciding how much and how fast energy efficiency programs should be implemented.

(*Id.* at 9).

SWEPCO agrees with Staff that utility-side energy efficiency is important and seeks discussions with Staff and other stakeholders regarding cost recovery in its Energy Efficiency Cost Recovery ("EECR") rider for internal measures. (SWEPCO's Reply Comments at 1 (March 16, 2010)).

SWEPCO states that the "essential" level of EE service must be determined on a utility-by-utility basis (as opposed to a one-size-fits-all target, noting that the electric investor-owned utilities ("IOUs") urge that any required level of service be based on a utility-specific market potential study and/or IRP for each individual utility, with the utility proposing and defending any goal. (SWEPCO's Initial Comments to Questions at 1-2 (August 19, 2010)). In particular, SWEPCO does not support any type of utility financing and thus does not believe it should be considered "essential". However, SWEPCO believes cost-effective programs and tariffs which encourage customers to improve their load factors, reduce peak power demands, and promote efficient load management, including the adoption of interruptible or curtailable tariffs, should be considered as "essential" under the ECEA, as should programs that encourage the use of renewable technologies, provided they are cost effective. (*Id.* at 2). Advanced Metering Infrastructure ("AMI") is still in the pilot stage and thus should not be considered "essential." (*Id.* at 3).

SWEPCO agrees that the definitional elements itemized in Commission Question No. 2 are relevant in defining EE comprehensiveness, but points out some differences and concerns the company has with the particular elements. (*Id.* at 3-7). Finally, SWEPCO opines that the ACEEE estimates of EE potential seen "overly optimistic" and are "probably unachievable" in Arkansas within the time period recommended. (*Id.* at 11).

Oklahoma Gas and Electric Company ("OG&E"): OG&E believes that both its Quick Start and Comprehensive EE program filings meet the definition of "comprehensive" in that they have demonstrated positive net benefits to customers for all customer classes under the C&EE Rules. (Gary Marchbanks' Testimony at 4).

OG&E does not believe that utility financing should be considered an "essential" function. The Company agrees with other electric IOUs that the definitional elements in Commission Question No. 2 are relevant to defining "comprehensiveness" as it applies to the utility EE portfolio. Finally, OG&E believes that each utility should be permitted to establish its own EE goals through a market potential study and defend those goals in the regulatory process. OG&E opposes a statewide goal. (OG&E Response to Order No. 14 at 6-7 (August 20, 2010)).

Empire District Electric Company ("Empire"): Empire states that programs that meet the TRC test and "meet the needs of customers" will be comprehensive and that EE programs should develop as part of IRP, after the utility has conducted a market potential study. (Empire's Initial Comments at 1 (March 2, 2010)).

In response to Question No. 2 posed in Order No. 14, Empire states its general agreement that items a-f are important components of a comprehensive EE portfolio, but notes that some of the components of the definition do not always have the same meaning to all Parties. Empire also opposes utility financing of EE programs. Finally, given its customer base (83% residential), Empire believes the ACEEE potentials would be difficult, if not impossible, to meet. (Empire's Response to Order No. 14 at 2-4 (August 20, 2010)).

Arkansas Electric Energy Cooperative and The Arkansas Electric Cooperatives (the "Co-ops"): The Co-ops filed brief Initial Comments noting that while it is their desire that all economically justifiable EE measures ultimately be implemented, they recognize that in any given year resources are limited, so utilities should focus on EE programs that are long-term in duration and broadly based, yield the most energy savings per dollar, and produce the best long-term results and preserve utility flexibility. (Co-ops' Comments at 2 (March 2, 2010)). In response to the questions posed in Order No. 14, the Co-ops note that the word "essential" is used only once in the ECEA and that the statute does not provide that any certain level of energy efficiency service provision by electric utilities is essential. Utilities differ greatly in their load characteristics and the needs of their consumer classes; it is not possible to achieve the same level of EE across all utilities. (Co-ops' Comments at 1 (August 20, 2010)). Therefore, the Co-ops do not believe the Commission should establish any particular level of energy efficiency service as essential. (*Id.* at 2). The Co-ops also oppose the use of the ACEEE Report's estimates for their planning purposes. (*Id.* at 8).

CenterPoint Energy Arkansas Gas ("CenterPoint"): CenterPoint notes that the existing C&EE Rules do not define "comprehensive," although Section 8 of the Rules requires utilities to file "a comprehensive set of program plans" and states that the plans may continue to include the Quick Start plans listed in Section 8.A. CenterPoint also states that the Commission has provided guidance on how it views "comprehensive" by indicating its approval of the National Action Plan for Energy Efficiency ("NAPEE") goal to achieve all cost-effective energy efficiency by the year 2025. CenterPoint notes that NAPEE's *Vision for 2025* recognizes that effective EE program development "is not just about maximizing cost-effective energy and capacity savings." (Richard Leger's Testimony at 2 (March 2, 2010)). CenterPoint cites NAPEE's recommendation of additional criteria that must be considered, such as ensuring: (1) there are programs for all customer classes and for hard-to-reach customers; (2) that programs have continuity; that programs are provided for education; and (4) that other utility, regional, or policy factors are considered. (*Id.* at 2).

CenterPoint also states that the market potential study performed by ACEEE for the Arkansas Energy Office ("AEO") "will play an integral part in helping CenterPoint Arkansas further refine its comprehensive portfolio of programs in keeping with the four tasks outlined in the Commission's Order No. 13 in this Docket. (*Id.* at 3).

CenterPoint cautions the Commission not to take a "one-size-fits-all" approach to defining "comprehensive," particularly by establishing statewide energy savings goals or spending targets, which "ignore the fact that utilities and ratepayers within a single state may be diverse and require unique consideration by policy makers." (*Id.* at 3). CenterPoint's Rebuttal Testimony notes that all of the electric utilities and the electric cooperatives agree that there is no "one size fits all" approach that can be used to determine whether programs are "comprehensive." (*Id.* at 1-2).

CenterPoint contends that, having expanded its Program Year 2009 EE budget by over $2 million for 2010 (an increase of 297%), its existing portfolio is comprehensive and compliant with the four NAPEE criteria. (*Id.* at 3). The Company also notes that its EE portfolio not only includes measures to reduce energy consumption by all major natural gas appliances, but also "will offer energy solutions that reduce the overall use of energy by promoting the direct use of natural gas" (*Id.* at 3-4).

CenterPoint also discusses points of agreement in the testimony of Audubon witness Paul Chernick with respect to the Company's proposal that the Commission adopt a Full Fuel-Cycle Efficiency ("FFCE") perspective for EE programs. Quoting Mr. Chernick, CenterPoint asserts that Audubon supports its position on FFCE when he says, "[a]part from long-term bill savings for ratepayers, the major objective of energy efficiency programs is to provide lower cost electric resources that can reduce the need for large capital investments in new generation and other infrastructure." (*Id.* at 2).

CenterPoint discusses at length and mostly with approval, Mr. Chernick's proposed definition of "comprehensive," but argues that resource planning and EE are not so closely aligned in the natural gas industry as in the electric industry. This is because a reduction in natural gas consumption caused by EE programs may decrease a gas utility's costs for upstream pipeline capacity for its general system supply customers, but the savings would not be as significant as they would be for an electric utility, according to Mr. Leger. Therefore, CenterPoint does not believe that resource planning and EE should be as closely linked in Arkansas for the natural gas industry as for the electric industry. (*Id.* at 3-6).

In response to the Commission's questions posed in Order No. 14, CenterPoint's comments begin by noting that "[t]he traditional role of public utilities as mere energy providers is in a state of transition as utilities increasingly partner with customers to make the most efficient use of energy and our natural resources" noting that the ECEA anticipated this transition in 1977, when it declared that EE programs are a "proper and essential function of public utilities in Arkansas." Further discussing this paradigm shift, CenterPoint states:

> Fundamentally, energy efficiency programs, whether they are minimal or aggressive, should not interfere with a utility's reasonable opportunity to achieve its approved rate of return. [Footnote omitted.] Recognizing this fact, state commissions are proactively seeking ways to foster positive regulatory environments for energy efficiency. CenterPoint Energy believes such environments are created through the use of mechanisms that ensure the utility is held whole for program costs and lost revenues and mechanisms that reward the utility for embracing its role as an energy efficiency resource for customers.
>
> (*Id.* at 2).

That said, CenterPoint believes that the collaborative approach taken in Arkansas has thus far successfully accommodated and incorporated diverse perspectives within the utilities' energy efficiency programs. However, CenterPoint witness Leger states, "[r]ather than set arbitrary, generic savings goals, each utility's energy efficiency portfolio should be examined by all Parties and by the Commission on a case-by-case basis, considering the utility and its customers' unique circumstances." (*Id.*).

With respect to the definitional elements in Commission Question No. 2, CenterPoint is mostly in agreement that they are relevant to the meaning of "comprehensive," albeit with some conditions. In particular, CenterPoint, like several other utilities, does not support the use of utility financing of customer EE services, neither does CenterPoint find it to be relevant to the definition of "comprehensive," believing that third-party financiers are better equipped to offer this type of service. (*Id.* at 3-5).

CenterPoint states that while it is "not necessarily opposed to an Energy Efficiency Resource Standard ("EERS"), we cannot support the level of energy savings recommended in the ACEEE Report without further information." (*Id.* at 5-6). The CenterPoint expresses concern that certain assumptions made by ACEEE concerning consumption forecasts are not based on Arkansas-specific data, and that "these inaccurate consumption forecasts, which form the foundation of ACEEE's recommendations, do not produce reasonable savings targets for natural gas utilities." (*Id.* at 6). In particular, CenterPoint cites historical data that "supports a *decrease* in the annual growth rate" rather than the 0.4% total natural gas consumption annual growth rate estimate for Arkansas used in the ACEEE Report, which CenterPoint calls "implausible and unsupported." CenterPoint states that since 1994 CenterPoint has experienced a significant decline in residential customer count, use per customer, and overall weather normalized volumes. (*Id.*).

Finally, CenterPoint reasserts its position that the Commission should not defer a decision on or reject its proposal to engage in fuel switching, using FFCE analysis. (*Id.*).

Arkansas Western Gas Company ("AWG"): AWG believes its EE programs are "comprehensive" because they "broadly cover all customers and gas end-uses," will cost effectively reduce energy consumption, save customers money and increase their awareness of EE measures, conserve non-renewable resources, reduce carbon dioxide emissions and other air pollutants, and support a robust local and statewide economy. (Paul D. Smith's Testimony at 3 (March 2, 2010)). In addition, AWG's EE programs meet the benefits and objectives prescribed in Section 2 of the *C&EE Rules*, and the

Company's four new EE programs for 2010 result in additional cost effective savings and meet the Commission's intended definition of "comprehensive." (*Id.* at 6).

AWG opposes including a specific spending or savings target in the definition of comprehensive. According to AWG, adjustments to programs can be made in future filings as the EE market matures. AWG also believes its programs meet the NAPEE goals and criteria. (*Id.* at 7). As did CenterPoint, AWG states that the trend of the natural gas industry in general, and AWG in particular, is that of "naturally occurring conservation for the past 40 years," noting that AWG's average residential use has declined approximately 50% from over 140 MCF per year to approximately 70 MCF per year. According to AWG, this makes natural gas energy conservation much harder to obtain than electric energy savings. (*Id.* at 8).

In Responsive Testimony, AWG agrees with Audubon witness Hale Powell that "spending levels alone do not indicate the quality of programs or their effectiveness" and that with respect to energy savings targets, "this metric alone is also insufficient to determine the comprehensiveness of programs." (Paul D. Smith's Responsive Testimony at 2 (March 16, 2010)). AWG also disagrees somewhat with Staff on the importance of emphasizing long-lived EE measures and programs, stating that "[i]t would be a mistake to exclusively choose less cost effective measures just because they have a longer measure life. A good plan and portfolio will contain both long-lived and short-lived measures as does AWG's plan." (*Id.* at 3).

In response to the questions posed by the Commission in Order No. 14, AWG states that "it should be left to each utility, with the approval of the Commission, to determine what level of energy efficiency service provision or achievement is essential for its EE programs, given that utility's industry and mix of customers." (AWG's Initial Comments at 1-2 (August 20, 2010)).

With respect to the definitional elements Commission Question No. 2, AWG finds most of them to be relevant to the meaning of "comprehensive", but states that the maximization of net program benefits using the TRC test should not be a factor in determining whether a program portfolio is comprehensive, since it could result in cream skimming and thus under-serving some market segments. (*Id.* at 3).

Finally, AWG asserts that the ACEEE projected levels of EE savings are "not likely achievable within the time frame recommended," although "they should be carefully studied, discussed and properly adjusted prior to this Commission making use of them in any regulations or orders." (*Id.* at 8).

Arkansas Oklahoma Gas Corporation ("AOG"): AOG contends that "the C&EE Rules in their current form provide significant instructions and guidelines as to the meaning of 'comprehensive.'" (AOG's Initial Comments at 3 (March 2, 2010)). AOG also cites to the Commission's adherence to the *NAPEE Vision for 2025: A Framework for Change* as reflecting a "truly 'comprehensive' view of EE" as one "which recognizes that EE programs must simultaneously be beneficial to all stakeholders." (*Id.* at 4).

In its response to the Commission's questions in Order No. 14, AOG stated its belief that "while the ACEEE report could provide a roadmap for energy efficiency savings opportunities for the state of Arkansas, the ACEEE goals are based on insufficient Arkansas data. (AOG's Initial Comments at 6-7 (August 20, 2010)). AOG opposes, along with CenterPoint, AWG, and SWEPCO, to the imposition of statewide EE savings or program funding goals that "are based on arbitrarily determined levels or indiscriminate comparisons with other jurisdictions." (*Id.*)

Arkansas Electric Energy Consumers, Inc. and Arkansas Gas Consumers, Inc. ("AEEC/AGC"): Although a party to this Docket, AEEC/AGC filed no comments, testimony, or briefs on the issue of "comprehensive."

Wal-Mart Stores, Arkansas LLC and Sam's West ("Wal-Mart"): Wal-Mart takes the position in its Initial Comments that a "comprehensive" view should encourage large, sophisticated customer (non-utility) efficiency initiatives by including those achievements in any utility or statewide goals via an appropriately-designed industrial opt-out provision. According to Wal-Mart, the Commission should recognize that these customer-initiated programs do not utilize utility-system funds, yet still benefit all customers. (Wal-Mart's Comments at 4 (March 2, 2010)).

In its Comments in response to Order No. 14, Wal-Mart states that ECEA does not specify any particular level of EE as essential or mandated, only that C&EE programs are essential "functions" to be undertaken by utilities. EE programs that are "complete" and cost effective are comprehensive and should be considered essential. Wal-Mart notes that since the ECEA was enacted in 1977 no further legislation has been passed "that would require the Commission to implement more stringent 'essential' energy efficiency measures." (Wal-Mart's Initial Comments at 3 (August 20, 2010)). Section 4.A. of the current C&EE Rules requiring that each utility "*shall* propose and be responsible for the administration and implementation of *cost-effective* energy efficiency programs..." imposes a "mandatory" obligation on utilities to implement a "comprehensive" set of "cost-effective" EE programs. (*Id.; Emphasis in original.*) Wal-

Mart believes that "this requirement of the current Rules is the appropriate criteria [*sic*] for determining which energy efficiency programs are "essential" under the ECEA." (*Id.* at 3-4).

In response to the Question 2 posed in Order No. 14, Wal-Mart states that definitional elements a-f have some relevance to a "comprehensive" utility EE portfolio; the real question being posed appears to be whether the Commission should prescribe detailed rules for how each of these elements is to be achieved. Wal-Mart observes that there may be valid operational or other reasons for differences between programs rather than mandating a "one-size-fits-all" approach, and allowing different approaches may encourage innovation. (*Id.* at 5) Wal-Mart suggests that one alternative approach that the Commission might consider is to amend Section 8.B. of the Rules to clarify that a "comprehensive" utility EE program is required to exhibit the elements, without necessarily specifying how these elements will be achieved. Each utility would thus bear the burden of showing that its proposed program satisfies these requirements. (*Id.* at 5).

Wal-Mart takes no position on the issue of whether the cost-effective EE savings recommended in the ACEEE Report are achievable in any utility service territory within the time period recommended. (*Id.* at 6). However, Wal-Mart comments that "comprehensiveness" must include recognition of the efforts of customers to implement their own EE and conservation programs, by allowing large commercial customers the flexibility to "opt–out" of utility programs, thereby saving program cost expenditures for those customers' proactive efforts. (*Id.* at 7).

Wal-Mart argues that utility rates and charges must remain just and reasonable and be established only after notice and hearing, citing to Ark. Code Ann. §§ 23-4-101(a), 23-40-103, and 23-4-104(a), which it notes were not repealed by the ECEA. Thus, Wal-Mart encourages the Commission to be mindful of the economic impact of these EE measures on customers and suggests that the costs be considered in the context of a comprehensive general rate case so that changes in all revenues and expenses can be considered. (*Id.* at 8).

Wal-Mart advocates that the costs associated with EE and demand-side management measures should be allocated only to the classes that benefit from the particular measures and/or cause those particular costs. (*Id.* at 8-9).

Finally, Wal-Mart asserts that the ACEEE Report recommends decoupling and/or the recovery of lost revenues by electric utilities as a means of accomplishing the Report's objectives. Although Wal-Mart believes that a properly designed decoupling program can be effective, the retailer argues that current Arkansas law does not appear to allow either of these alternatives suggested in the Report. Wal-Mart goes on to explain that its interpretation of ECEA is that the term "cost" in Ark. Code Ann. § 23-3-405(a) relates only to "expenditures or outlays," arguing that the statute does not appear to extend to foregone revenues or to allow the decoupling of revenues from costs incurred. (*Id.* at 9).

National Audubon Society and Audubon Arkansas ("Audubon"): Audubon submitted extensive testimony through its witness Hale Powell in each round of comments and responses to the Commission's questions in Order No. 14. Audubon's comments elicited the greatest number of responses from the utilities and other Parties, including a significant amount of agreement with Mr. Powell's suggestions and recommendations as to the essential elements of "comprehensive." Mr. Powell offered a detailed and exhaustive definition of the term which, although not set forth verbatim, states that comprehensiveness requires both a robust process and many substantive components such as workforce training and development of Evaluation, Measurement, and Verification ("EM&V") programs, and is constantly evolving. (Hale Powell's Direct Testimony at 6 (March 1, 2010)).

Audubon's position is that several elements going beyond the NAPEE recommendations should be addressed, including: (a) Organization building within and outside the utility; (b) Dedication to collaborative stakeholder involvement; (c) Transparent and robust Demand-Side Management ("DSM") potential studies; (d) Energy savings targets that provide clarity for utilities but also attract investment in broader markets; (e) Commitment to DSM as a key element of IRP; (f) Inclusion of programs for all major segments of each class and all major end uses of energy; (g) Avoidance of "lost opportunities"; (h) Utility allocation of significant budget resources and development of in-house capability; (i) Robust training and technical assistance efforts for contractors and engineers; (j) Inclusiveness of programs proven in other jurisdictions, such as custom commercial and industrial programs that address complex efficiency projects in large customer facilities and agricultural and rural efficiency programs; and (k) Rigorous EM&V of EE programs. (*Id.* at 6-13).

Audubon expressed the view that the process of designing comprehensive EE programs and portfolios requires that a specialized organization such as a utility respond in a dynamic way, over time, to ongoing changes in the energy marketplace, noting that the four NAPEE tasks identified by the Commission confirm the importance of the process perspective. (*Id.* at 6-7).

Mr. Powell stated that the leading utilities in EE spend more than 1% of total annual revenues (and sometimes much more) on DSM programs, noting: "It is difficult to imagine that a fully comprehensive portfolio could be implemented for less than 1% of revenues, but this type of metric alone cannot determine the comprehensiveness of the programs." (*Id.* at 16). Similarly, Mr. Powell noted, "annual program savings as a percentage of total retail MWh sales is also indicative of program scale." (*Id.* at 17). However, he added, estimated savings can vary widely, depending on the level and vigor of evaluation. "Although many utilities report DSM energy savings exceeding 1% of total retail sales, and a comprehensive program would almost certainly reduce retail sales by more than 1% annually, this metric alone is insufficient to determine the comprehensiveness of programs." (*Id.*).

Audubon's position on a specific energy savings target, as stated by Mr. Powell, is that a Commission order establishing such a target would be "useful in providing long-term guidance to utilities, facilitate the tracking of annual DSM progress and serve as the basis for financial incentives for superior DSM program progress." (*Id.* at 17). He stated that he believes that "reasonably aggressive goals would stimulate the sustained implementation of truly comprehensive DSM programs." (*Id.).* Mr. Powell cited to recent consensus targets developed in a formal collaborative process in Ohio and recently approved by regulators: There, AEP Ohio committed to achieving a reduction of 22% of retail sales by 2025. The annual targets agreed to by the collaborative, including the utility, were 0.3% in 2009, 0.5% in 2010, 0.7% in 2011, 0.8% in 2012, and 2% in 2019.

In Reply Testimony, Mr. Powell address some of the comments of other Parties. With respect to calls by some utilities for "flexibility" in designing their programs, he noted that while flexibility is important there can be significant benefits when utility programs can be substantially similar. "For example, similar incentive levels, contractor training requirements and equipment eligibility requirements will reduce consumer and contractor confusion, encourage distributor stocking of eligible equipment and reduce redundant and expensive marketing and training expenses. (Hale C. Powell's Reply Testimony at 2, FN 1 (March 16, 2010)).

Mr. Powell also noted that the March 2 filings by the EE utilities did not address full scale and established DSM programs by utilities in other jurisdictions. In particular, he observed that SWEPCO discussed neither the ambitious energy efficiency programs of its affiliate in Ohio, nor the collaborative process that contributed to their design. (*Id.* at 4). Powell stated, "Ignoring the decades of DSM program experience and 'lessons learned' in other jurisdictions would be a costly mistake for Arkansas ratepayers." In short, Mr. Powell encouraged Arkansas and its utilities to go beyond NAPEE and adopt "programs that reflect prevailing industry best practices." (*Id.* at 3).

Mr. Powell commended Empire, EAI, and SWEPCO for DSM potential studies, but he recommended vetting EE potential or (Energy Marketing Potential) studies prior to reliance on finalized estimates, given that their results appear to be vary widely ranging from 4% to almost 20% of total retail electric sales over a 10 to 15 year period. (*Id.* at 4).

In its response to the questions posed by the Commission in Order No. 14, Audubon begins with an examination of various provisions of the ECEA that bear on the issue of conservation and energy efficiency as an "essential function" of utilities, and quotes Black's Law Dictionary as defining "essential" as "indispensably necessary; important in the highest degree. That which is required for the continued existence of a thing." (Audubon's Comments at 2 (August 20, 2010)).

Audubon suggests that appropriate EE performance standards can entail long term quantitative savings targets (e.g., Energy Efficiency Resource Standards, or EERS) or narrative standards such as the achievement of "all cost-effective energy savings." (*Id.* at 3). "In order to minimize long term ratepayer energy costs, the level of energy efficiency and DSM program activity and savings should be linked to the comparative cost effectiveness of energy efficiency resources as compared to other resource options. As long as energy efficiency and DSM resources are more economic than other options (*e.g.,* fossil fuel generation), the energy efficiency or DSM resource option should be deemed essential to minimizing long-term ratepayer costs." (*Id.* at 4).

Audubon recommended that the Commission establish multi-year targets similar to those adopted in other jurisdictions, providing a table of Energy Efficiency Resource Standards developed by regulators in Massachusetts in 2010, indicating the savings objectives established by regulators in 22 jurisdictions nationwide. (Audubon's Comments at 5, Tr. at 507 (August 20, 2010)).

Massachusetts Department of Energy Resources - DOER Energy Efficiency Resource Standards				
State	Date Established	Goal	Target End Date	Implied Annual % Savings (% of total forecast load)
Texas	2007	20% of load growth	2010	0.5%
Vermont	2008	2.0% per year (contract goals)	2011	2.0%
California	2004	EE is first resource to met future electric needs	2013	2.0% +
Hawaii	2004	0.4% - 0.6% per year	2020	0.5%
Pennsylvania	2008	3.0% of 2009-2010 load	2013	0.6%
Connecticut	2007	All achievable cost effective	2018	2.0% +
Nevada	2005	0.6% of 2006 annually	n/a	0.6%
Washington	2006	All achievable cost effective	2025	2.0% +
Colorado	2007	1.0% per year	2020	1.0%
Minnesota (electric & gas)	2007	1.5% per year	2010	1.5%
Virginia	2007	10% of 2006 load	2022	2.2%
Illinois	2007	2.0% per year	2015	2.0%
North Carolina	2007	5% of load	2018	0.4%
New York (electric)	2008	10.5% of 2015 load	2015	1.5%
New York (gas)	2009	15% of 2020 load	2020	1.5%
New Mexico	2009	All achievable cost-effective, minimum 10% of 2005 load	2020	1.0% +
Maryland	2008	15% of 2007 per capita load	2015	3.3%
Ohio	2008	2.0% per year	2019	2.0%
Michigan (electric)	2008	1.0% per year	2012	1.0%
Michigan (gas)	2008	0.75% per year	2012	0.8%
Iowa (electric)	2009	1.5% per year	2010	1.5%
Iowa (gas)	2009	0.85% per year	2013	0.3%
Massachusetts	2008	All achievable cost effective		2.0% +
New Jersey (electric & gas)	2008	20% of 2020 load	2020	<2.0%
Rhode Island	2008	All achievable cost effective		2.0% +

Given the targets and savings achievements in other states, Audubon believes that the "medium case" targets suggested in the ACEEE Report are reasonable and achievable for Arkansas. (*Id.* at 4).

With respect to the definitional elements listed in Order No. 14, Audubon was generally supportive and referred to its previous testimony for a thorough discussion of the essential elements of EE programs. Regarding element b, "maximizing net program benefits", Audubon stated that the primary objective of comprehensive DSM program portfolios should be to maximize net program benefits for all ratepayers, asserting that "[s]uch a standard would encourage minimizing program costs and maximizing program benefits." (*Id. at 7).*

Regarding element c, calling for a program portfolio "to deliver all achievable, cost-effective energy efficiency within a reasonable period of time", Audubon observed that "a more quantitative performance standard (e.g., a long term EERS savings goal as suggested by ACEEE) might provide utilities with a clear benchmark for measuring subsequent program progress." (*Id.* at 8).

Commenting on program financing assistance by utilities (referenced in element d), which is bluntly opposed by several Arkansas utilities, Audubon noted that enhanced financing options may be particularly important during an economic downturn, when customers may lack the financial ability to invest in even highly cost-effective projects. Audubon recommended that the utilities review the various project financing models offered in other jurisdictions and that they offer a broader array of financing options in their 2011 proposals. (*Id.* at 10).

Audubon strongly supported element e, addressing substantially all major end-uses of electricity or gas, as appropriate, noting that project "cream skimming" is a disservice to participating customers who are trying to maximize their energy savings. Audubon also cautioned against approaches that result in "lost opportunity" savings that may be unlikely to be identified or implemented at a later date if addressed in isolation. (*Id.* at 11).

Addressing element f, the inclusion of evaluation, measurement, and verification ("EM&V") procedures adequate to support program management and improvement, calculation of revenue impacts, and resource planning decisions, Audubon noted that EM&V is "an essential element" of EE programs. According to Audubon,

> EM&V has two primary objectives, the first of which is the post fact measurement of the actual "net" savings that are genuinely attributable to a DSM program. This process can involve statistical analysis of consumption data, site metering, engineering modeling, free ridership surveys and other methodologies. The other objective of EM&V is to conduct "process" evaluations which assess the efficiency of program delivery and the nature of possible enhancements.

(*Id.* at 12).

Audubon also noted that high quality evaluation is also essential to accurately establish the level of lost net revenues and/or utility shareholder incentives that may be associated with program achievements. "If net program savings are inaccurately evaluated there is a high likelihood of inappropriate payments and excessive ratepayer costs." (*Id.* at 12-13). The Commission notes that Lost Contributions to Fixed Costs ("LCFC") and shareholder performance incentive issues are being addressed today in Order Nos. 14 and 15 in Docket No. 08-137-U, and by a new rulemaking docket being opened to develop an EM&V Protocol (Docket No. 10-100-R) as an addendum to the Commission's C&EE Rules.

With respect to the ACEEE Report on EE potential in Arkansas, Audubon stated its belief that, based on its actual program energy savings experience in other states, the "medium case" scenario and goals presented by the ACEEE analysis "are fully achievable in Arkansas." (*Id.* at 14). During the 15-year period from 2010 to 2025, ACEEE's medium-case estimate is that Arkansas can realistically reduce electricity consumption by 14.25% relative to 2009 levels, and that gas consumption could be reduced by 10%. (*Id.* at 14). Audubon noted further that annual savings of approximately 1% of retail sales, similar to the savings potential estimates produced by ACEEE, have been consistently achieved in a variety of other U.S. jurisdictions and have been confirmed by state regulators. (*Id.*). Audubon introduced into evidence the following table prepared in 2009 based on the Energy Information Administration's Form 861 database,[4] which identifies a partial listing of all utilities that reported 2007 annual energy savings greater than or equal to 0.9% of total electric sales. (*Id.* at 15, Tr. at 517):

2007 Utility Efficiency Program Savings, Partial Listing			
Utility Name	State	Utility Type	2007 Incremental MWh Savings as % of Total Retail Sales
Arizona Public Service	Arizona	Investor Owned	0.9%
City of Burlington	Vermont	Municipal	2.5%
City of Breckinridge	Colorado	Municipal	3.5%
Connecticut Light & Power	Connecticut	Investor Owned	1.8%
Glidden Rural Electric Coop	Iowa	Cooperative	2.6%
Laurens Electric Coop	South Carolina	Cooperative	1.3%
Merced Irrigation District	California	Cooperative	1.1%
Madison Gas & Electric	Wisconsin	Investor Owned	0.9%
Massachusetts Electric	Massachusetts	Investor Owned	1.6%
Pacific Gas & Electric	California	Investor Owned	2.1%
Rochester Public Utilities	Minnesota	Investor Owned	1.2%

4 See http://www.eia.doe.gov/cneaf/electricity/page/eia861.html

Finally, Audubon observed that "[w]ithout question, there are a number of regulatory and utility challenges that will require hard work and compromise." (*Id.* at 15). Nevertheless, Audubon stated its belief that, given well designed programs reflecting prevailing "best practices" and appropriate and reasonable regulatory mechanisms, Arkansas utilities and ratepayers will be able to attain energy efficiency savings levels similar to those achieved in other states. Audubon stressed that "full and continuing involvement of stakeholders will be essential for this result." (*Id.*) Concluding on a positive note, Audubon observed that "[i]n terms of the magnitude of achievable savings we suspect that historically low retail energy rates and the comparative lack of past energy efficiency promotion have resulted in low levels of prevailing energy efficiency in customer homes and business facilities in the state. If this is so, then the achievable energy efficiency potential in Arkansas may be actually greater than that in other states with higher historic rate structures." (*Id.* at 15-16).

Discussion and Policy Decision.

As the comments of many Parties suggest, the statutory directive for utilities to provide an "essential" level of energy efficiency services is closely tied to the concept of cost effectiveness. If EE services meet demand more cost effectively than supply-side resources, then they fall within the essential level of service. Staff conveys this idea by stating that "the greatest amount" of cost effective programs is required as an essential service. (Staff's Initial Comments at 4 (August 20, 2010)).

However, Staff also implicitly acknowledges at least two limitations that complicate the conceptually simple economic idea that utilities must implement the most cost-effective solution to meet energy demand. Staff notes that the programs should be "robustly" cost effective, acknowledging that services dependent in part on market conditions, available technology, customer acceptance and program design may appear to be cost effective on paper, but fail in some measure to take hold, either due to flaws in demand or execution, or owing to unforeseen and uncontrollable circumstances. Staff also includes the idea that the utility must be able to "effectively deliver [the services] to its customers." (*Id.*). This phrase may reflect on the resources available to the utility, or the resources reasonably chosen to be devoted to EE services, as all resources are limited at any one time. Many Parties acknowledge these difficulties, and utilities in particular caution against the establishment of an amorphous or arbitrary standard.

Perhaps in this connection, Staff calls "comprehensiveness" in program offerings "a critical component in meeting [the] goal" of delivering the "greatest robustly cost-effective" level of service that is essential." (*Id.*). If a program portfolio is "comprehensive," that is one strong indication that it meets the essential standard.

Yet, "comprehensive," without limitation, is not much less amorphous than "all cost effective." Its common meaning may refer to "knowing all" or "including all," either of which poses considerable challenges for a utility or a commission. This may be why Parties attempt either to reduce comprehensiveness to a process (presumed to develop a comprehensive program portfolio on the front end), or to a number (presuming that robust achievement after the fact must stem from a comprehensive effort). The procedural approach has the strength of emphasizing steps taken to analyze alternative program possibilities and otherwise prove due diligence, but the weakness of having no substantive measure of achievement. The numerical approach substantively measures achievement, but may miss opportunities to do more or to spend less for the same results.

The Commission submits that, in the light of the experience and evidence in this Record, the real difficulty with these amorphous terms arises at the margins. A single, small EE program with a narrow purpose clearly is not "comprehensive," and it does not deliver the greatest amount of cost-effective energy efficiency by anyone's definition. However, when a public utility offers to each of its customer classes a range of attractive energy efficiency programs, funded by a significant budget, planned and implemented by highly-trained staff, and reasonably calculated to deliver energy savings on a scale commensurate with leading programs around the nation, then the question legitimately arises, whether the effort comprehends all cost-effective means of meeting energy demand as an alternative to supply-side resources.

Given Arkansas's early stage in the development of comprehensive public utility energy efficiency programs, the mere posting of significantly growing results is strong evidence of a comprehensive effort. Yet, with program growth, as the demand reductions delivered by program portfolios come closer to the theoretical margin between the greatest amount of activity that is cost effective and that amount which becomes economically unproductive, a more sophisticated exploration of process, effort, and results will be needed to determine whether it is adequate.

Therefore, for an initial period of three years, the Commission adopts the following growing, but modest, achievement numerical targets to move program offerings beyond the initial stages, towards a level where a legitimate debate can be had about whether a comprehensive EE effort is capturing the greatest amount of cost-effective potential that can effectively be delivered. The targets or goals, which are based as a percentage of 2010 energy sales, are listed below:

TARGETS (Energy Savings, as a Percentage of 2010 Energy Sales)			
	2011	2012	2013
Electric Utilities (Savings in kWh)	0.25%	0.50%	0.75%
Gas Utilities (Savings in therms)	0.20%	0.30%	0.40%

These targets respond to the need to provide clear expectations for utilities and for the broader market for the purposes of program planning, design and achievement, to promote the implementation of comprehensive programs, and to serve as the goal for utility incentives based upon exemplary performance.[5]

The EE Utilities are directed to submit in their next round of EE program and portfolio filings tariff applications calculated to meet at least these target levels of program achievement. Having submitted such application, a utility also has the opportunity to demonstrate that the particular circumstances of the utility make achievement of such target infeasible or unreasonable, such that an alternative program portfolio is indicated. In this manner, the Commission can ensure that program planning adequately explores a level of achievement commensurate with expanded development of energy efficiency programs, while still tailoring targets to the circumstances of each utility. While this Order establishes the maximum achievable level of cost effective energy efficiency as the general standard for essential energy efficiency program services, during the next three-year period, these target program

[5] *See* Docket No. 08-137-U, Order No. 15 (December 10, 2010), regarding utility incentives for achievement of cost effective energy efficiency.

performance levels will presumptively satisfy the essential standard and thus may be viewed as a "safe harbor" for EE program development and expansion.

Because three years is a short time, and because the tools, experience and judgment needed to evaluate EE program portfolios are complex, the Commission also establishes a qualitative and process-oriented checklist to help decide whether annual EE program filings are comprehensive. Thus, achievement of the targets will presumptively define "comprehensive" for those three years, during which the Commission, Staff, the Attorney General, the EE utilities and other Parties can gain experience with the checklist to see if it produces the right measures of program effectiveness. At that time, the Commission can determine whether a purely qualitative definition of comprehensiveness suffices, or whether a substantive, numerical component should be renewed and retained.

In today's companion Order No. 15 in Docket No. 08-137-U (the "Incentives Order"), the Commission adopts these same targets for purposes of determining whether to award incentives to utilities for program achievement. A contemporaneous Order No. 14 (the "LCFC Order") in that same Docket directs that utilities may collect LCFC only in the context of significant target achievement and the development of robust EM&V, as detailed in this Order and a new rulemaking Docket that will lead to the adoption of an EM&V Protocol as an addendum to the Commission's C&EE Rules (Docket No. 10-100-R, Order No. 1, the "EM&V Order").

Thus, the Commission, through these Orders, approves a coordinated group of policies reasonably calculated to deliver overall benefits to ratepayers, to utilities, and to society. To summarize, this coordinated group of policies are:

- The establishment as an essential function of, and as the general standard of performance by, the EE Utilities the delivery to customers of the maximum level of achievable, cost-effective energy efficiency services through the implementation of comprehensive EE programs and portfolios, with that achievement being determined by the Commission on the basis of approved interim quantitative energy savings targets and qualitative processes evaluated by a checklist of factors, including those set forth below in this Order;
- The allowed collection of LCFC, linked to target setting;
- The allowed opportunity to earn shareholder incentives for exemplary EE performance, also linked to performance targets; and
- The establishment of a broad and robust EM&V Protocol applicable to each of these elements.

Reasonableness of Targets, Based on the Record.

The record of actual EE program achievement in numerous other states and utility territories is perhaps the strongest evidence supporting the reasonableness of the targets selected today by this Order. While some Parties emphasize the uniqueness of each utility territory, it is the wide variety and dissimilarity of the utilities, states, and types of customer bases that have actually achieved these goals that supports the consensus that energy savings approaching 1% of annual electricity sales (and significantly less for gas utilities) is achievable, and that a ramp-up towards this goal is reasonable. Audubon conveys this point when it notes that similar (but more aggressive) goals recommended in the "medium case" in the ACEEE Report are achievable, not based on the data in the report itself, but rather on "actual program energy savings experience in other states." (Audubon's Comments at 6 (August 20, 2010)). As shown in the table above, Audubon cited U.S. Department of Energy data showing that, in 2007, eleven utility service territories from jurisdictions as diverse in climate and population as Vermont, Arizona, Minnesota, and South Carolina reported annual energy savings at or above one percent of annual retail sales. There are no relevant differences for purposes of EE achievement among utility service territories within Arkansas that are as large as those between Vermont and Arizona, or between Minnesota and South Carolina. In short, it is possible in Arkansas to achieve these goals.

Ohio's recent establishment of electric utility savings goals starting at 0.3% of total sales and rising to 0.7% in the third year (and eventually rising to 2.0% per year by 2019) reinforces the appropriateness of the targets herein adopted. The fact that the Attorney General and Staff (who each favor alternative goal-setting methods) testify or comment that the ACEEE goals (which are higher than the Commission's goals) are or may be reasonable, also supports the reasonableness of the Commission's decision.

The concerns of gas utilities that historic declining sales may place savings targets out of reach must be balanced with several considerations. A significant portion of available energy savings pertains to sealing and insulating buildings, which is not dependent on gas-specific technology. Also, gas prices have declined from historic highs, reducing the incentive for "naturally occurring conservation" and increasing the relative importance of EE programs in delivering savings. Maybe most importantly, the Commission has approved an attractive, coordinated set of policies to financially reward conservation activities and to eliminate financial disincentives to EE program achievement. In this context, gas utilities should be able to produce moderate, rising EE savings.

The Commission thus reasonably places Arkansas on a path towards comprehensive programs that will eventually deliver 1% or more annually in electric energy savings and somewhat less for natural gas. Indeed, given the low past penetration of energy efficiency programs and measures in Arkansas, the high cooling load, and the large industrial load, significantly greater levels of energy savings may be possible.

Comprehensiveness Checklist:

Having clarified, with numerical targets, the scope of essential EE program services for next three years, the Commission attempts to distill the wisdom of the Parties, who provided numerous thoughtful points of comment and testimony regarding program comprehensiveness. The Commission sets forth below a Checklist of Factors it will use when determining whether a utility's proposed EE programs and total EE portfolio are "Comprehensive" pursuant to the C&EE Rules. This Checklist of Factors can be used as a guide by Utilities, Staff, and other stakeholders in the next round of program and portfolio proposals. Those factors include the following:

- Whether the programs and/or portfolio provide, either directly or through identification and coordination, the education, training, marketing, or outreach needed to address market barriers to the adoption of cost-effective energy efficiency measures;

- Whether the programs and/or portfolio, have adequate budgetary, management, and program delivery resources to plan, design, implement, oversee and evaluate energy efficiency programs;
- Whether the programs and/or portfolio, reasonably address all major end-uses of electricity or natural gas, or electricity and natural gas, as appropriate;
- Whether the programs and/or portfolio, to the maximum extent reasonable, comprehensively address the needs of customers at one time, in order to avoid cream-skimming and lost opportunities;
- Whether such programs take advantage of opportunities to address the comprehensive needs of targeted customer sectors (for example, schools, large retail stores, agricultural users, or restaurants) or to leverage non-utility program resources (for example, state or federal tax incentive, rebate, or lending programs);
- Whether the programs and/or portfolio enables the delivery of all achievable, cost-effective energy efficiency within a reasonable period of time and maximizes net benefits to customers and to the utility system; and
- Whether the programs and/or portfolio, have evaluation, measurement, and verification ("EM&V") procedures adequate to support program management and improvement, calculation of energy, demand and revenue impacts, and resource planning decisions.

The Commission urges Parties to keep these factors suggesting comprehensiveness in mind as they undertake the collaborative effort in new Docket No. 10-100-R (the

"EM&V Docket"), with a purpose to develop a rigorous but workable EM&V Protocol for adoption as an addendum to the C&EE Rules.

BY ORDER OF THE COMMISSION.

This 10th day of December 2010.

Paul Suskie, Chairman

Colette D. Honorable, Commissioner

Olan W. Reeves, Commissioner

Jan Sanders
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by electronic mail, using the email address of each part, as indicated in the official docket file.

Secretary of the Commission
Date 12-10-10