
CONFIDENTIAL MEMORANDUM AND REQUEST FOR ASSISTANCE

TO: General Staff
FROM: Arkansas Advanced Energy Association
DATE: November 29, 2021
RE: Electric Cooperative Net Metering Practices and Commission Oversight

BACKGROUND

Over the course of the past year, several electric cooperatives have adopted practices impacting the adoption of renewable technologies in Arkansas. These include: (i) an application fee of \$500, (ii) mandatory insurance coverage of \$1 million to \$25 million, (iii) refusal to interconnect areas deemed by the electric cooperative to be “saturated,” (iv) and the requirement of additional electrical inspection(s).

Figure 1. Estimated Impacts From Reporting Developers

	Fees	Insurance	Saturation	Inspections
Total Customers Impacted	All	87	Too soon	108
Canceled/Delayed Contracts	Unknown	26	Too soon	96
Companies Impacted	All	5	Too soon	6
Total Impact in kW	All	838kW	Too soon	534 kW

APPLICATION FEES

Clay County, Woodruff, Petit Jean, and Rich Mountain each require a \$500 application fee under 7 CFR § 1730.63(a)(1).¹ Because the CFR does not set a specific application fee amount, the Commission retains its jurisdiction to establish an appropriate amount.²

¹ Linked at: [Clay County, Woodruff, Petit Jean, and Rich Mountain](#).

² *E.g. Pharm. Care Mgmt. Ass'n v. Wehbi*, No. 18-2926, 2021 WL 5355916, at *10 (8th Cir. Nov. 17, 2021) (rejecting an argument for federal preemption because the “PCMA has not identified a federal standard that governs who is entitled to keep a copayment”); *In re Veg Liquidation, Inc.*, 516 B.R. 545, 554 (Bankr. W.D. Ark. 2014) (applying state law regarding the amount of available interest to be charged because “while the PACA statute allows for the payment of the sums owing in connection with the transaction, it is silent with regard to the amount of interest a party

It is within the Commission’s jurisdiction to establish “rates, terms and conditions for net metering.”³ An application fee is both a rate⁴ and a term and condition of net metering⁵ and therefore requires prior notice by the electric cooperative to the Commission and other interested parties to allow a just and reasonable analysis.⁶ If the rate or term and condition is found to be unreasonable, the Commission is authorized to fix a reasonable one.⁷

An application fee is also a new or additional charge. New or additional charges that have not been approved by the Commission under a properly submitted tariff cannot be assessed against a customer.⁸ In fact, AREDA is clear that the Commission may only allow a new or additional charge following the cost/benefit analysis described more fully in Ark. Code Ann. § 23-18-604(b)(4).⁹ If approved by the Commission, such charge must be listed on a separate sheet entitled “charges related to customer activity”¹⁰ in the electric cooperative tariff.

Based upon knowledge and belief: (i) notice of an application fee was not provided by any electric cooperative to the Commission, (ii) no electric cooperative provided a cost/benefit analysis for the Commission’s review, (iii) the Commission did not approve any application fee, and (iv) no applicable tariff contains a net metering application fee in the “charges related to customer activity.”¹¹

Accordingly, a net metering application fee cannot be assessed against any potential net metering customers.

INSURANCE

Clay County, Woodruff, Petit Jean, and Rich Mountain also require up to \$25 million in insurance coverage under 7 CFR § 1730.63(c)(1).¹² Because the CFR does not set a specific

can charge under the parties’ contract”; *Springfield Television, Inc. v. City of Springfield, Mo.*, 428 F.2d 1375, 1380 (8th Cir. 1970) (noting where the FCC is silent, there is no compelling national interest in uniformity which would prohibit state and local regulation, even as to matters held to be within the power of the FCC to regulate[.]”)

³ See Ark. Code Ann. 23-18-604(b)(1).

⁴ See Ark. Code Ann. § 23-1-101(10)(defining rate to include “compensation [or] charge . . . collected by [a] public utility for any service, product or commodity . . .”)

⁵ See Ark. Code Ann. 23-18-604(b)(1).

⁶ See Ark. Code Ann. § 23-4-402; Ark. Code Ann. 23-4-410(a).

⁷ See Ark. Code Ann. § 23-4-101(a) and (b).

⁸ APSC Docket No. 20-015-U, Order No. 7 at 93 (December 16, 2020) (declining to impose a charge that the utility did not submit as part of utility specific tariff filing.)

⁹ See Ark. Code Ann. 23-18-604(b)(4); NMR 2.03.

¹⁰ RPP 7.03 (c)(2)

¹¹ See Clay County (Part III, Schedule No. 19), Woodruff (Part III, Schedule No. 28), Petit Jean (Part III, Schedule No. 18), and Rich Mountain (Part III, Schedule No. 11).

¹² Clay County, Woodruff, Petit Jean, and Rich Mountain. It has been reported that Craighead Electric and Arkansas Valley Electric Cooperative also have such a requirement, but as of the date of this memorandum such a requirement cannot be found on each respective website.

insurance coverage amount, the Commission retains its jurisdiction to establish an appropriate amount of coverage.¹³

Without repeating the analysis above, insurance coverage is a term and condition of net metering.¹⁴ Moreover, the “requirement for a net-metering customer to purchase insurance [is] a greater fee or charge.”¹⁵

Based upon knowledge and belief: (i) notice of insurance coverage was not provided by any electric cooperative to the Commission, (ii) no electric cooperative provided a cost/benefit analysis for the Commission’s review, (iii) the Commission did not approve an appropriate level of insurance coverage, and (iv) no tariff contains applicable coverages in the “charges related to customer activity.”¹⁶

SATURATION AREAS

Craighead Electric has indicated as of November 22, 2021, that it will no longer interconnect net metering facilities in certain areas of its service territory based on purported levels of saturation. *See* Exhibit 1. It is unclear from Craighead what constitutes saturation, or whether such a claim is valid. However, Arkansas law requires electric cooperatives to allow net metering¹⁷ and any decision to limit that offering should have been brought before and overseen by the Commission.

INSPECTION

Several electric cooperatives require a state electrical inspection in rural areas where there is no city or county inspector. However, the standard interconnection agreement only calls (and the Commission only approved) for city and county inspections.¹⁸ Moreover, there are only two state inspectors, neither of which are charged to perform solar inspections and both of which have a current back log of 200 + solar inspections. In fact, as of October of 2021, these state inspectors anticipate a 90-to-120-day delay. *See* Exhibit 2.

¹³ *See* fn. 3.

¹⁴ *See* fn. 5.

¹⁵ APSC Docket No. 12-001-R, Order 6 at 23 (June 15, 2012); compare with Ark. Code Ann. 23-18-604(b)(4) (noting the Commission “may authorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility’s direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility’s entire customer base.”)

¹⁶ *See* fn. 12.

¹⁷ Ark. Code Ann. § 23-18-604(a).

¹⁸ NMR Appendix A, Section 5.

These delays are potentially harmful to the consumer in so much as a consumer's ability to grandfather is tied to a deadline of December 31, 2022. Nevertheless, as with each issue above, the requirement of a state inspection is a term and condition of net metering and that should have been brought before the Commission prior to being implemented.

CONCLUSION

Each electric cooperative practice identified above hinders the adoption of renewable energy by rendering it uneconomic or needlessly expensive, which is contrary to intent of the General Assembly to "promote the wise use of Arkansas's natural energy resources."¹⁹ Accordingly, AAEEA, on behalf of renewable energy focused Arkansans and potential renewable consumers, seeks General Staff guidance and help in resolving these practices.²⁰

¹⁹ Ark. Code Ann. § 23-18-602(a).

²⁰ Unfortunately, based upon advice of outside counsel the fees to prosecute a complaint against the electric cooperatives will cost the consumer upwards of \$75,000 in estimated legal fees.