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06/30/00

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A GENERIC PROCEEDING	)	
TO DETERMINE IF METERING, BILLING AND	)	DOCKET NO. 00-054-U
OTHER CUSTOMER SERVICES ARE	)	ORDER NO. <u>10</u>
COMPETITIVE SERVICES	)	

ORDER

On May 17, 2000, the Arkansas Public Service Commission (“Commission”) issued Order No. 7 in this docket in which the Commission found that certain identified functions of customer billing may be competitive. The finding was made after the Commission had received the Comments and Reply Comments of the parties<sup>1</sup> and had held a public hearing regarding which customer services “may be competitive,” as stated in its Order No. 6 of this docket.

Having determined that identified functions of customer billing “may be competitive,” the Commission, in Order No. 7, set for hearing the question of whether the identified billing service functions should be declared competitive, pursuant to Arkansas Code Annotated §23-19-501(a)<sup>2</sup> of

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<sup>1</sup>At this phase of the docket all jurisdictional electric utilities, Staff, AEEC, the AG, Nucor and Reliant Energy, Inc. were parties.

<sup>2</sup>Arkansas Code Annotated §23-19-501(a) provides as follows:

At any time on or after the implementation of retail open access, the Arkansas Public Service Commission, after notice and hearing and a finding that it is in the public interest, may declare billing, metering, collection, and any customer service offered by an electric utility as a regulated service to be competitive and exempt from rate regulation. This subsection shall not be construed to require that the commission declare such services to be competitive or to limit the commission's ability to declare such services competitive only in certain areas or only when offered by a particular type of electric utility.

Act 1556 of 1999, the "Electric Consumer Choice Act of 1999" ("The Act or Act 1556"). That hearing was set for June 27, 2000, with the parties to file testimony on June 16, 2000 and rebuttal testimony on June 23, 2000.

On June 14, 2000, Ouachita Electric Cooperative Corporation ("Ouachita") filed Comments on the issue. On June 16, 2000, comments were also filed by Nucor-Yamato Steel Company and Nucor Steel-Arkansas ("Nucor"). Direct testimony was filed, on June 16, by Mr. Daniel Peaco, Lacapra Associates, on behalf of the General Staff of the Commission ("Staff"), Mr. M. Shawn McMurray, Senior Assistant Attorney General, on behalf of the Attorney General of Arkansas ("AG"), Mr. Paul D. O'Rourke, PHB Hagler Bailly, Inc., on behalf of Entergy Arkansas, Inc. ("EAI"), Mr. Alan W. Decker, Senior Regulatory Policy Consultant for American Electric Power Service Corporation<sup>3</sup> ("AEPSC") on behalf of Southwestern Electric Power Company and its parent, American Electric Power Company, Inc., ("SWEPCO/AEP"), Mr. David Ruyle, Manager, Commercial and Industrial Marketing for Oklahoma Gas and Electric Company ("OG&E") on its behalf, Mr. Louis S. Toth, Ledbetter, Toth & Associates, Mr. C., Wayne Whitaker, President and General Manager of Southwest Arkansas Electric Cooperative Corporation, and Mr. Alton Higginbotham, President and Chief Executive Officer of First Electric Cooperative Corporation, collectively on behalf of the Electric Distribution Cooperatives<sup>4</sup> ("Coops"), and Mr. Jerrell Clark,

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<sup>3</sup>AEPSC is the service corporation subsidiary of American Electric Power Company, Inc..

<sup>4</sup>Arkansas Valley Electric Cooperative Corporation, Ashley-Chicot Electric Cooperative Incorporated, C&L Electric Cooperative Corporation, Carroll Electric Cooperative Corporation, Clay County Electric Cooperative Corporation, Craighead Electric Cooperative Corporation, Farmers Electric Cooperative Corporation, First Electric Cooperative Corporation, Mississippi County Electric Cooperative, Incorporated, North Arkansas Electric Cooperative, Incorporated, Ouachita Electric Cooperative Corporation, Ozarks Electric Cooperative Corporation, Petit Jean Electric Cooperative Corporation, Rich Mountain Electric Cooperative, Incorporated, South Central Arkansas Electric Cooperative, Incorporated Southwest Arkansas Electric Cooperative Corporation, and Woodruff

Executive Director of Arkansas Electric Energy Consumers, Inc. (“AEEC”) on its behalf. Additionally, Mr. Randy Minton, a customer and member of First Electric Cooperative Corporation filed Prepared Testimony on behalf of the Coops.

In addition to filing its Direct testimony, EAI also filed a *Motion For Leave To File Legal Memorandum* (“Motion”) requesting Commission approval to file a limited ten (10) page memorandum addressing certain legal issues because “the subject matter of this docket raises several important legal issues that should be addressed by the parties.” On June 19, 2000, the Commission issued Order No. 8 which approved EAI’s Motion and directed those parties wishing to file a pre-hearing legal memorandum (1) to do so at the time of submitting rebuttal testimony, (2) to file any reply memorandum within 24 hours of the close of the June 27, 2000 hearing, (3) to limit the length of the pre-hearing and post-hearing memorandum to ten (10) pages each, and (4) to limit the scope of the memorandum to the legal issues cited in EAI’s Motion.

On June 23, 2000, Rebuttal Comments were filed by Nucor which included, by reference as its testimony in this proceeding, its Reply Comments filed in the previous proceeding in this docket. Additionally on that date, Rebuttal Testimony was filed by Mr. Daniel Peaco for Staff, Mr. M. Shawn McMurray for the AG, Mr. Paul D. O’Rourke for EAI, Mr. Alan W. Decker for SWEPCO/AEP, Mr. David Ruyle for OG&E, Mr. James E. Tidwell, President of Ouachita on behalf of Ouachita, Mr. Louis S. Toth and Mr. Alton Higginbotham for the Coops, and Mr. Jerrell Clark for AEEC. In addition to the Rebuttal testimony, Pre-Hearing Legal Memoranda were filed by Staff, EAI, SWEPCO/AEP, OG&E, and the Coops. On June 28, 2000, the Commission issued Order No.

9 setting out the hearing procedure and order of witnesses. The public hearing was held on June 27, 2000. At the hearing, the Commission directed that Post-Hearing Briefs would be accepted by 4:00 p.m. on June 28, 2000. Post-Hearing Briefs were filed by the Coops, and AEEC.

The purpose of this phase of this docket, as outlined in the Commission's Order No. 7, is to determine "... if it is in the public interest to declare those (identified billing) functions competitive upon the implementation of electric retail open access." Additionally, the Commission asked the parties to address (1) the "... differences in each party's position regarding the appropriate configuration of billing options which should be available to either the retail customer or the energy provider serving that customer ..." and (2) "... the appropriate dissemination of billing data, in either a "Bill-Ready" format or a "Rate-Ready" format or both ... (and) ... which parties (should) be responsible for providing the data and in what format." (Order No. 7 at 8-9)

### **COMMISSION AUTHORITY**

The Commission, in Order No.8, ordered that any party wishing to address the jurisdiction of the Commission on certain limited issues arising in this docket could file legal memorandum and reply memorandum. (Order No. 8 at 1-2) In its Motion requesting the right to file the memorandum, EAI rightly noted that "the subject matter of this docket raises several important legal issues that should be addressed by the parties." (Motion at 1) Comments filed in this docket previously, as well as the currently filed testimony and comments, indicate a disagreement among the parties regarding the Commission's authority (1) to conduct hearings or declare any services competitive prior to retail open access to competitive generation service ("Retail Open Access or ROA"), (2) to continue to

regulate any services declared competitive, and (3) to require regulated electric utilities (“EUs”) to provide consolidated distribution/generation billing at the request of an Energy Service Provider (“ESP”). The Commission, therefore, issued Order No. 8 which provided the parties the opportunity to submit legal memoranda addressing (1) the statutory authority of the Commission to declare certain electric services competitive, (2) the legal and regulatory meaning of declaring a service competitive and exempt from rate regulation, and (3) the jurisdiction and authority of the Commission to require an electric utility to provide a service that has been declared competitive and exempt from rate regulation.

### **Timing of Competitive Declaration**

In the briefs or memoranda filed, all of the parties acknowledge the Commission’s authority to determine and declare any other customer service competitive, citing a portion of Arkansas Code Annotated §23-19-501(a), which states:

At any time on or after the implementation of retail open access, the Arkansas Public Service Commission, after notice and hearing and a finding that it is in the public interest, may declare billing, metering, collection, and any customer service offered by an electric utility as a regulated service to be competitive and exempt from rate regulation.

However, the question at issue in the memoranda and briefs is “when” such determination and declaration is allowed under this section. Staff, EAI, AEEC, and SWEPCO/AEP argue persuasively for the Commission’s authority to hold hearings on this issue and to declare any service competitive. Only the Coops’ memorandum indicates a different interpretation on the issue prior to ROA. The Coops, in previously filed comments, have taken the position that the Commission has no authority to take any action, including to hold hearings, on the issue of whether other services should be

declared competitive prior to ROA. The Coops, in their *Pre-Hearing Legal Memorandum*, acknowledge that this interpretation may not be supported by the statute. The Coops now argue that, although there is no doubt the statute “authorizes the Commission to exercise its discretion in declaring billing, metering, collection, and any other customer service to be competitive,” the Commission is “flatly prohibited from issuing a declaration” on the matter prior to ROA. (*Pre-Hearing Legal Memorandum* of the Coops at 2) This interpretation also seems to be shared by the AG, although the AG did not specifically file Pre- or Post-hearing briefs or memoranda. Previously filed Comments and the testimony of Mr. McMurray indicate that the AG’s legal position is that “declaration” must be made “on or after” ROA. (T. at 346, 355-356)

AEEC, EAI, SWEPCO/AEP, and Staff, all argued that the Commission has authority to make the “declaration” prior to ROA. EAI argued that the pertinent section of the Act “clearly authorizes the Commission to declare billing and other customer services . . . to be competitive upon a finding that such a declaration would be in the public interest.” (*Pre-Hearing Legal Memorandum* by EAI at 2. Emphasis added) SWEPCO/AEP provides an almost identical argument noting that “§23-19-501(a) authorizes the Commission to declare billing and other customer services to be competitive and exempt from rate regulation upon a finding that such a declaration is in the public interest.” (*Pre-Hearing Legal Memorandum* by SWEPCO/AEP at 1, Emphasis added.) AEEC filed in support of this position concluding that “the only constraint placed upon the Commission by §23-19-501(a) is that competition for non-generation services cannot begin prior to the January 1, 2002 beginning date of competition for generation services.” (*Post-Hearing Brief* by AEEC at 2-3)

The most cogent and persuasive argument, however, is provided by Staff. Staff argued that:

In interpreting a statute, the basic rule is that the intent of the legislature must be given effect. *Nelson v. Timberline International, Inc.*, 332 Ark. 165, 964 S.W. 2d 357, 362 (1998), citing *Graham v. Forrest City Housing Authority*, 304 Ark. 632, 893 S.W. 2d 923 (1991). In ascertaining legislative intent, the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the legislative history, and other appropriate matters must be examined. *Nelson*, 964 S.W. 2d at 362, citing *Board of Trustees v. Stodola*, 328 Ark. 194, 942 S.W. 2d 255 (1997). The construction must, if possible, give effect to the act and all parts thereof. *Town of Wrightsville v. Walton*, 255 Ark. 523, 525, 501 S.W. 2d 241 (1973). An interpretation that results in absurdity or injustice, leads to contradiction, or defeats the plain purpose of the law should be rejected. *Weiss v. Central Flying Service*, 326 Ark. 685, 934 S.W. 2d 211, 214 (1996), citing *Ragland v. Alpha Aviation, Inc.*, 283 Ark. 182, 686 S.W. 2d 391 (1985).

(*Initial Brief* of Staff at 2)

Staff concludes that the Coops' interpretation of the Act, which would have prohibited the Commission from taking any action prior to ROA, is not supported by the language of the Act. Nor does the language of the Act support the conclusion that the Commission may not, prior to ROA, declare any service competitive. (*Initial Brief* by Staff at 1-2) Staff argued that there is no indication of a legislative desire to delay implementation of any services the Commission deems should be competitive "on or after the implementation" of ROA and, had that been the legislature's wish, it could have easily so stated in the Act - but it did not. (*Initial Brief* by Staff at 2) A delay in either consideration or declaration of an service deemed competitive by the Commission will result in a minimum delay in implementation of that service on a competitive basis of 18-24 months. (*Initial Brief* by Staff at 2)

Rather, Staff argued that:

A more logical (and necessary) interpretation is that competition for these services may not actually take place until retail open access, but that the Commission can conduct, before retail open access, any preliminary activities leading up to that implementation. Otherwise, under the cooperatives' interpretation, the Legislature

would have been taking away the power of the Commission to consider a subject matter that directly affects whether retail open access may be timely and effectively implemented . . . . Without a decision from the Commission as to what entity or entities will do the billing, collections, and metering at retail open access, the Commission will not be able to put in place all the systems necessary to promote competitive markets at retail open access.

*(Initial Brief by Staff at 3, Emphasis added.)*

The Staff concludes that, absent a finding or declaration at this time, determinations required in other dockets for implementation of ROA cannot be made. The result would require other dockets to be reopened and the issues readdressed, creating an inefficient use of time and resources. “The statute should not be read to reach such an absurd result.” *(Initial Brief by Staff at 3-4)* The Commission agrees.

The Coops and the AG argued that the strict construction of the statute requires a conclusion that the Commission must wait to “declare” any such services competitive until ROA. Those arguments, however, ignore the effect of that construction on the overall intent of Act 1556 which is to implement ROA. Staff witness Peaco, EAI witness O'Rourke, SWEPCO witness Decker, AEEC witness Clark, and even AG witness McMurray have all acknowledged the importance of competitive billing to implementation of ROA. (Order No. 7 at 3-4) To assume that the Commission cannot rule on or “declare,” or even consider prior to ROA, an issue which is a prerequisite for effective ROA is illogical. The Commission, therefore, cannot adopt such an interpretation and finds that, within the meaning of the pertinent section of the Act, it has the jurisdiction to both consider and “declare” on the issues addressed in this docket prior to ROA.

EAI, in its *Pre-Hearing Legal Memorandum*, also argues that no such “declaration” is necessary for ESP-provided billing service for its own generation service. EAI argues that it is not

generation billing service which requires a “declaration” as competitive by the Commission, but, rather, it is the billing of distribution services which is the subject of this hearing. (*Pre-Hearing Legal Memorandum of EAI* at 2)

The Commission finds that no “declaration” is needed to allow an ESP to bill for its own generation service, once ROA has occurred. No party has provided any legal argument to support the need for “Commission-declaration” of that right for an ESP.

### **Meaning of Competitive Declaration**

As to the question of “the legal and regulatory meaning of declaring a service competitive and exempt from rate regulation,” all of the parties filing memoranda and briefs have addressed this issue. All of the those parties agree that the Commission will have jurisdiction over generation suppliers. OG&E argues that exemption from rate regulation “does not mean the Commission cannot promulgate rules or regulations governing the service to which anyone who provides the service must adhere.” (*Pre-Hearing Legal Memorandum* of OG&E at 3) Other parties argue that Commission jurisdiction over customer services which may be declared competitive is derived from those provisions governing consumer protection under Ark. Code Ann. §23-19-401. This section provides, in part, that “A retail customer should be entitled to truthful and reasonable marketing and sales practices . . . as well as non-discriminatory and non-abusive billing credit, collection and service connection practices. . . .” That section of the Act also provides that the Commission “shall adopt appropriate rules . . . to promote” that goal.

Commission jurisdiction over competitive services is advocated by Staff, SWEPCO/AEP, EAI, and the Coops. (*Initial Brief* by Staff at 4-5; *Pre-hearing Legal Memorandum* by

SWEP/CO/AEP at 1 and 2; *Pre-Hearing Legal Memorandum* of EAI at 4-5; and *Pre-Hearing Legal Memorandum* of the Coops at 3-4) Commission jurisdiction over the activities of ESPs, which may include other competitive customer services, is also dictated by statutes covering the Commission's responsibilities for licensing (Ark. Code Ann. §2-19-201) (*Pre-Hearing Legal Memorandum* of the Coops at 4, *Pre-hearing Legal Memorandum* by SWEP/CO/AEP at 2, and *Initial Brief* by Staff at 5). The Commission therefore finds that it is not the intent of Act 1556 to remove Commission jurisdiction or responsibility over all aspects of those services which may be declared competitive and for which other portions of the Act or other statutes dictate Commission intervention.

#### **Commission Authority to Mandate EU Competitive Services**

The parties filing legal memoranda or briefs all address “the jurisdiction and authority of the Commission to require an electric utility to provide a service that has been declared competitive and exempt from rate regulation.” EAI<sup>5</sup>, SWEP/CO/AEP, and OG&E<sup>6</sup> argue that, once declared competitive, any service previously provided by an EU as part of its regulated service will no longer be a service which the EU is obligated to provide. (*Pre-Hearing Legal Memorandum* of EAI at 4, *Pre-hearing Legal Memorandum* by SWEP/CO/AEP at 2) and *Pre-Hearing Legal Memorandum* of OG&E at 2.) Both OG&E and EAI argue that partial regulation of a service determined to be competitive is inconsistent with declaration of that service as “competitive.” (*Pre-hearing Legal*

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<sup>5</sup>Staff, EAI, and OG&E advise the Commission that their arguments in this matter do not apply to those services as provided as part of the standard service package. The three parties agree that EUs, required to provide a standard service package, should also be required to provide any “declared” competitive services, which are integrally a part of that standard package., (*Initial Brief* of Staff at 6, *Pre-hearing Legal Memorandum* of EAI at 4-5, *Pre-hearing Legal Memorandum* of OG&E at 3.)

<sup>6</sup>Ibid

*Memorandum* by EAI at 6-7 and *Pre-hearing Legal Memorandum* by OG&E at 2 and at 3) SWEPCO/AEP additionally argues that Commission reimposition of the burden to provide that service is inconsistent with Act 1556. (*Prehearing Legal Memorandum* of SWEPCO/AEP at 2) Therefore, it is illogical to assume that the Act would allow or expect the Commission to “force” deregulated and competitive services on the regulated EU. (*Pre-hearing Legal Memorandum* by EAI at 6 and *Pre-hearing Legal Memorandum* by OG&E at 3) Further, as noted by OG&E and EAI, a Commission-dictated requirement for EUs to provide a competitive service will result in additional and unnecessary cost to the EU and, absent some method for recovery of the cost, would result in unconstitutional confiscation. (*Pre-hearing Legal Memorandum* of OG&E at 3-4 and *Pre-hearing Legal Memorandum* EAI at 7-8)

Initially, the Coops argued that, in the same manner that EUs are required to provide generation service pursuant to Ark. Code Ann. §23-19-402 as the provider of last resort, “exemption from rate regulation does not preclude the Commission from requiring a (sic) electric utility to provide . . . (billing) service.” (*Pre-Hearing Legal Memorandum* of the Coops at 5) However, in their *Post-Hearing Legal Memorandum*, the Coops reverse that position and now argue that “the Commission cannot dictate that an electric utility provide billing services to an ESP. . . .” (*Post-Hearing Legal Memorandum* of the Coops at 5)

Staff generally agrees with EAI, SWEPCO/AEP, the Coops, and OG&E that “the provision of competitive services should be by competitive providers.” However, Staff also acknowledges that there may exist circumstances “where it is found to be in the public interest to have a regulated company provide a competitive service.” (*Initial Brief* by Staff at 5-6)

The Commission finds the arguments advanced by EAI, SWEPCO/AEP, the Coops, and OG&E persuasive. The purpose of this proceeding is to determine whether billing services should be declared competitive and exempt from rate regulation by the Commission. The Commission must determine if sufficient competitive alternatives for the service are available and if the public interest is served by declaration that the service is competitive. If so declared, it is assumed under the Act that Commission regulation is no longer needed to ensure appropriate service or pricing for that service because the market will dictate price and quality as consumers make their own choices.

The Commission does, however, have an obligation, as dictated by the Act and acknowledged by many of the parties, to ensure that appropriate consumer protections are in place and to ensure “non-discriminatory and non-abusive billing credit, collection and service connection practices.” The Commission notes the Rebuttal Testimony of the Coops’ witness, Mr. Higginbotham. Mr. Higginbotham testifies that “[t]he purpose of Act 1556 . . . is to provide consumer choice in the selection of competitive products. The right of the customer to make the choice (not the provider making the choice) is the title of the Act. . . .” (T. at 97) Further, he notes that denying that right “necessarily restricts the customer’s market choices.” (T. at 97)

It is precisely this restriction in customer choice which is of concern to the Commission. However, the Commission’s concern is not related to the alternatives available for any service it may deem competitive. A Commission finding that any service is competitive must be based on the presence of sufficient competitive alternatives. The Commission’s concern is with certain discrimination or market power implications resulting from the competitive declaration for this particular EU service.

EU/Competitive Affiliate activity is governed by the Commission Affiliate Rules. Affiliate Rule 2.01 A. (2) prohibits EU preferential treatment of its competitive affiliates. The Commission must consider, as observed by Mr. Higginbotham, that the consumer may desire continuation of EU billing, collection, and call-center services. With billing declared competitive, the EU is free to provide those services to third parties if it wishes. Should the EU offer those services to its own affiliate ESP it is required under the Affiliate Rules to offer the service to third parties under the same terms and conditions, and to comply with this Commission's electronic data interchange requirements. The Commission, therefore, finds that declaring a currently regulated service competitive recognizes that alternative suppliers exist and rate regulation of the service is no longer necessary.

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**COMPETITIVE DECLARATION FOR BILLING SERVICES**

Based on the comments filed by the parties previously in this docket, the Commission found that certain specified billing services may be competitive. The Commission, in this phase of this docket, asked the parties to provide testimony to help determine if it is in the public interest to declare those billing functions competitive upon implementation of ROA. The Commission found, in Order No. 7, that the initial billing services, including metering and metering information dissemination either in Bill-Ready or Rate-Ready format, would remain regulated. The Commission asked that the parties address the public interest issue of whether the functions of production and issuance of bills, payment and collections, and the billing center functions related to each (“specified billing functions”) should be declared competitive. (Order No. 7 at 8)

Staff, through witness Peaco, testified it had measured the public benefit issue by determining if the specified billing functions met six separate criteria if opened to competition. Those criteria are: (1) long-run benefits provided; (2) readiness of competitive suppliers; (3) customer readiness; (4) market infrastructure readiness; (5) appropriate cost/benefit ratio; and, (6) reasonable transition to competition is likely. (T. at 370-371) Staff found that competition for the specified billing services met all criteria and recommended that the Commission declare them competitive upon ROA. (T. at 371) OG&E witness Ruyle testified that the Staff had identified the appropriate criteria, but offered no evidence as to whether those criteria had been met. (T. at 269) EAI witness O'Rourke testified that similar criteria should be met. (T. at 171) AG witness McMurray, AEEC witness Clark, EAI witness O'Rourke, and SWEPCO/AEP witness Decker all testified that competition for the specified billing services is in the public interest and recommended that the Commission so declare. (T. at 347, 315-316, 288-289, 196, 240)

Arguing against a Commission declaration, Ouachita witness Tidwell raised questions as to whether competitive billing meets the criteria as outlined. (T. at 147-150) Tidwell also testified that it is appropriate that cooperatives and, at a minimum, small customers, be exempt from competitive billing. (T. at 150-151) The Coops argued that competitive billing would not be in its customers' best interests and is not necessary for competition. (T. at 88) Further, the Coops argued that (1) no evidence has been presented to find it in the public interest, (2) cooperatives' unique characteristics needed to be considered, and (3) Staff's criteria would not be met for cooperative distribution customers if billing is declared competitive. (T. at 35) Finally, the Coops question the

validity of Staff's assertion that it has met its own criteria, arguing that Staff presents no evidence to support its contentions. (T. at 54-55)

The Commission finds that the record supports Staff's proposed use of these six criteria to determine whether the specified billing functions should be declared competitive at the time of ROA. The Commission will, therefore, adopt these criteria and make its finding based on the testimony and evidence that those criteria are met or not.

Staff's first criteria concerns long run benefits. The Staff found that long run benefits of competitive billing included lower costs, new services, and enhanced market entry. (T. at 372) Nucor and EAI agreed with Staff's findings. (T. at 288-289, 171-174) AEEC found that competition would provide significant enhancements to the services provided. (T. at 316) The AG noted enhanced market entry and SWEPCO/AEP noted that ESP consolidated and third party billing lowered cost and enhanced competition. (T. at 347, 233) EAI and SWEPCO/AEP also noted the importance of the precedents set in other states which supported competition for the specified billing functions. (T. at 173-174, 236, Ex. at 15-95)

Ouachita and the Coops both argued that no cost or market benefits would necessarily be forthcoming, especially for customers of cooperatives. (T. at 138, 147-148, 148-149, 88-89, 42) The Coops also reference several other states which have dealt with this issue, citing several which either have deferred addressing other competitive services or have exempted distribution cooperatives from providing competitive services. (T. at 44-45, 59-60)

Staff's second criteria concerns competitive supplier readiness. Staff witness Peaco testified that there is sufficient evidence of competitor supplier readiness. He also stated that ESPs entering

the market acknowledge the importance of providing their own billing service and stand ready to do so. (T. at 372-373) EAI witness O'Rourke testified that a significant market for billing providers for this type of service currently exists and he provided a list of some of those suppliers. Evidence of supplier readiness can be gleaned from the list of those suppliers currently operating in the market. (T. at 189, 192-194, Ex. at 8-11) SWEPCO/AEP witness Decker testified that there are no barriers to entry which would prevent a competitive billing market to develop. (T. at 234-236) In addition, SWEPCO/AEP's testimony supports findings that the fact that other states have allowed some form of billing competition as part of ROA is a significant indication that the market is developed. (T. at 236)

Staff's third criteria deals with customer readiness. Staff witness Peaco testified that the billing options Staff proposes are no more technically advanced than those with which most customers are faced when they pay for other competitive services. Customer experience with the telecommunications industry, as well as the acceptance of competitive billing by other jurisdictions, indicates the readiness of customers to accommodate this change in their electric bills. (T. at 373-374) Further, Peaco testified that a comprehensive consumer education program should prepare customers for these changes. (T. at 390-391) Alternatively, Ouachita witness Tidwell testified that billing by anyone other than the EU will foster customer confusion. (T. at 138) Ouachita also notes that "(i)n two focus groups conducted by Market Insights of Little Rock . . . consumers . . . expressed concern about billing confusion." The comments of these focus groups indicated that "consumers are adamant that they do not want confusing bills and all the other complications accompanying telephone deregulation." (T. at 149) The Coops echoed these arguments stating that

“rural customers of phone companies do not applaud complicated phone bills and related out of state billing, information and collection systems.” (T. at 42) The Coops argue that there is no evidence of customer readiness for competitive billing and that, coupled with the confusion expected from ROA, “simultaneously initiat(ing) competitive billing . . . would only compound this anticipated confusion and frustration.” (T. at 107-108) Finally, Mr. Minton, a member of First Electric Cooperative, argues that “most people want no change in the way that they buy and are billed for electricity after retail open access from the way they receive those services now.” (T. at 125)

Staff's fourth criteria concerns market infrastructure readiness. Staff witness Peaco also addresses the current and expected infrastructure which will be required for successful competitive billing. He testified that currently operating ESPs already have or will have the electronic systems necessary for the billing data exchange. He also testified that Staff intends, in Docket No. 00-067-R, to “build upon the experience of other states with regard to the electronic data exchange systems required to accommodate competitive billing options.” (T. at 374) EAI and SWEPCO/AEP address the infrastructure question in the context of the expected costs and complexities under a “mandated EU consolidated billing” scenario. (T. at 180-181, 201-202, 239-240)

Staff's fifth criteria involves cost/benefits analysis. Staff testimony indicates that Staff has no exact estimates of the costs to implement competitive billing but that “the fact that competitive billing options have been implemented in other states is evidence that the cost of making billing options available is not prohibitively expensive.” (T. at 374, 379) AEEC testified that its “members have increasing expectations that consumers will realize reductions in their energy bills as a result of all the restructuring efforts.” (T. at 315) EAI witness O'Rourke testified that competitive billing

will foster innovative billing solutions with the result being that “costs of providing a . . . bill can be expected to decline as more robust competition arises.” (T. at 173) SWEPCO/AEP witness Decker notes the general benefits of competition in markets and testified that “competition forces market participants to be more efficient, which causes prices to be as low as possible . . . each billing provider will have incentives to reduce their billing costs.” Those incentives to reduce costs include “the opportunity to improve their profits” and offer electric service at the lowest possible prices, which in turn “will provide an opportunity to make more sales.” (T. at 233) The Coops argue that no evidence of cost benefits exists. (T. at 35-36, 44, 54-55) Further, the Coops argue that competitive billing will not reduce costs. (T. at 42) For distribution cooperatives, the Coops argue that competitive billing will result in duplication of facilities with resulting stranded costs (T. at 42) Rebutting the Coop’s contentions, Staff witness Peaco points out that “eight distribution cooperatives currently find it efficient to use a third party to process their monthly bills . . .” (T. at 391) Further, Peaco testified that the parties to this docket, both in comments and testimony, have presented significant evidence of the long-run benefits and enhanced competition that will result. (T. at 392)

Staff’s sixth criteria concerns whether a reasonable transition to full competition in customer billing services is likely to occur. “Other states which are implementing retail open access have begun the transition from the regulated provision of billing for electric services to competitive billing. Billing is not a natural monopoly and is provided by numerous suppliers in other states where there is a competitive retail electric market. There should be relative ease of entry in the

billing market, because there is already an extensive infrastructure to support retail billing." (T. at 375)

### **Conclusion**

The Commission finds that the evidence supports declaring billing functions to be competitive upon ROA. These functions have met the six criteria and declaring them to be competitive is in the public interest. There is virtually no testimony contradicting that there is a ready market of suppliers and an evolving infrastructure to support these services which will result in a reasonable transition to competition for the EU functions now regulated. ( T. at 374-375, 189-190, Ex. at 8-11)

The Commission also finds that long-run benefits, including cost savings, expanding markets, and enhanced entry into the market, are indicated. (T. at 372, 288-289, 172-174, 316, 347, 233)

The Commission finds the Coops' argument that the other parties fail to provide sufficient evidence to sustain these conclusions unpersuasive. The Commission is persuaded by the undisputed evidence that the currently competitive market for billing services appears to be burgeoning and that non-regulated market participants are willing to expend the capital and take the risk of providing these services. (T. at 189-190, 192-194, Ex. at 8-11) It is reasonable to assume that suppliers have already determined that there will be long run benefits available in this market. In addition, it appears disingenuous that the Coops testified that no cost benefits can be garnered for cooperatives in this market when the record reflects that many of these same cooperatives now use a third party billing service. (T. at 391) The Commission therefore declares that the specified billing services will be competitive at the time of ROA.

**Exemptions to Competitive Billing**

The Coops testified that, because of their unique characteristics, electric distribution cooperatives should be exempt from any Commission declaration of competitive billing. Specifically, the Coops identify those characteristics as being that cooperatives are (1) customer owned and not operated on a for-profit basis, (2) usually serving a small customer base, (3) rural, and geographically large, with greater investment per customer, and (4) operated locally, including billing and collections. (T. at 36-37) Ouachita asks that residential and small commercial customers be initially exempt from billing competition, citing a quicker transition for larger customers and allowing more time for further evaluation. (T. at 150-151)

The Coops testified that it is appropriate that distribution cooperatives be exempt from billing competition because their unique structure would result in the following negative consequences; stranded costs for unused billing systems, additional costs to accommodate non-EU billing, lost local contact for distribution customers, lost local accountability for billing and collections, customer confusion, safety problems, and less efficient operation of cooperative systems. (T. at 37-38)

Staff, Nucor, and EAI oppose exemptions. Staff and Nucor's witnesses testified regarding to the need for consistency in billing across all systems and for all customers. EAI witness O'Rourke testified that carving out one large group from billing competition, which results in EU-only billing, would result in significant market barriers to new ESPs. (T. at 375, 301-304, 206-207) AEEC opposes exemptions for cooperatives, absent a Commission determination made on a case by case basis. (T. at 316)

Responding to the Coops' contentions, Staff witness Peaco testified first that significant increases in cost are highly unlikely given that new costs to accommodate billing will be transition costs subject to transition cost recovery, and that current billing system costs will be recovered as part of a market-based standard service package and rate based distribution expenses. As to the Coops' concerns dealing strictly with the loss of local contact and local control issues, Staff witness Peaco believes there will be no loss of local contact as the EU will continue to deal with distribution related matters. Staff's testimony rebuts the contention that competitive billing will detrimentally affect electric distribution cooperatives' efficiency, especially given that eight of the cooperatives have already resorted to an outside billing service. (T. at 389-391) Additionally, Staff witness Peaco stated that "[m]ost, if not all, of the issues raised by the Distribution Cooperatives are issues of concern to all incumbent EUs, not just Distribution Cooperatives." (T. at 392) Nucor referred to its previously filed Reply Comments to question the significance of the Coops' argument that electric distribution cooperatives should garner exemption simply because they do not operate on a for-profit basis. Nucor concluded that the "cooperatives' argument ultimately comes down to an effort to decide for the customer/members what is in their self-interest." (T. at 304)

The Commission finds Staff, EAI, and Nucor's points well taken. The Commission agrees with Staff that consistently applied billing requirements are appropriate and would actually avoid some of the customer confusion and frustration for which the Coops are concerned. The Commission also finds that, as Staff witness Peaco testified, the substance of most of the Coops arguments hang precariously on the "uniqueness" of their structure, yet the negative impact of competition for which they have concern would be the same for all EUs irrespective of that structure.

As concluded by Nucor, it appears that the electric cooperatives would simply have this Commission single out the cooperative structure and allow them “to decide for the customer/members what is in their best interest.” The Commission is confident that, even absent the expected consumer protections and the customer education programs, the owner/members will be able to weigh the options available to them, either as members of the cooperative or consumers of generation supply. Further, as previously noted, adopting an exemption for the Coops would result in market barriers for new ESPs. (T. at 207-208)

The Commission therefore finds that exemptions to competitive billing for distribution cooperatives is not appropriate. Additionally, the Commission is not persuaded that, as it discussed with regard to Customer Readiness, exemptions are necessary for small customers as requested by Ouachita. Consequently, the Commission finds that exemptions for small customers are also not appropriate.

### **BILLING CONFIGURATION**

Staff witness Peaco, EAI witness O'Rourke, and SWEPCO/AEP witness Decker all testified that the Commission should order three essential billing configurations for which all parties providing services must make accommodations. (T. at 376-377, 209, 237) These parties propose that it should be at the option of the ESP to choose which configuration will be used. The three proposed options include: ESP Consolidated Billing<sup>7</sup>, Dual/ Multiple Billing<sup>8</sup>, or 3rd Party Billing.

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<sup>7</sup>The ESP would send a consolidated bill to the customer which includes the charges from the EU and the charges from the ESP. The ESP could contract with a Third Party Billing entity to act only as an agent for it in this matter.

<sup>8</sup>The EU would send its own bill directly to the customer. Any one or more ESPs, which have served the customer, would send their own bills directly to the customer.

Additionally, these parties support the right for the EU to offer, at its option, EU Consolidated Billing but opposed any mandate to require such billing.<sup>9</sup> The witnesses for AEEC, Nucor, and the AG generally agree with the proposed configurations and with providing ESP choice of configuration rather than EU choice. These parties, however, support a mandate that EUs provide consolidated billing for ESPs. The witnesses for Ouachita and the Coops testified that EU consolidated billing should be the preferred method, but under all circumstances, an EU should be able to bill for its own service.<sup>10</sup> (T. at 77, 113-114)

### **Mandated EU Consolidated Billing**

The Commission has found herein that certain previously regulated billing services will be subject to competition as of ROA. The Commission also found that, under the Act, it is normally assumed that once a service is declared “competitive” Commission regulation is no longer needed to ensure appropriate service or pricing for that service. Thus, the Commission would not be expected to “dictate” or “mandate” that a regulated utility provide a service for which an open and competitive market exists. Absent a compelling rationale, tied to the Commission’s other obligations under the Act or other statutes, the Commission need not interfere in choices made by an EU concerning a non-regulated service.

The record does not support a finding that EU consolidated billing is essential to foster the competitive market, nor does it indicate that the billing options available are not sufficient to meet

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<sup>9</sup>The EU would send a consolidated bill to the customer which includes the charges from the EU and the charges from the ESP.

<sup>10</sup>Of necessity, this would shift the option of choice of configuration to the EU. Absent agreement by the EU, the ESP could not provide consolidated billing of EU and ESP charges.

the needs of ROA. Rather, the record reflects that most ESPs have either their own billing capabilities or have an array of billing providers from which to choose. (T. at 372-373, 189, 192, Ex. at 8-11) However, AEEC highlights a concern that is shared by the Commission. AEEC notes that, although no party objects to EU consolidated billing on a voluntary basis, without a mandate “[t]he EU would still be in a position to decide discriminatorily whether to offer this service” (T. at 325) The Commission finds that the potential for undue discrimination is significant under these circumstances for this particular service. Such discrimination may well have a negative impact on the newly developing competitive generation market. The Commission is charged by Act 1556 to foster a competitive generation market and mitigate any similar unintended discriminatory results. The Commission will not mandate that EUs provide consolidated billing services; however, the Commission will require that, to the extent an EU does offer this service, it shall offer that service in a non-discriminatory manner consistent with the Affiliate Rules.

#### **Required Billing Configurations**

Absent the exemptions requested by the Coops and Ouachita, there is no serious disagreement among the parties that the Commission should require both EUs and ESPs to be in a position to accommodate at least Dual/Multiple Billing, ESP Consolidated Billing or 3rd Party Billing. On one aspect of the proposed requirements, however, AEEC disagrees. AEEC witness Clark testified that ESPs should not be required to accommodate all of the same options as those of the EU, contending it is not appropriate and may prove to be a market barrier. (T. at 318) Given the current billing capabilities of ESPs and the plethora of billing service competitors, all operating in multiple jurisdictions, the Commission is not persuaded that equally applying the billing standards

adopted in this Order to EUs and ESPs will result in a threat to market entry. (T. at 189-90, 192-194, Ex. at 8-11)

In addition, while the parties appear to be in general agreement, the Commission notes continued confusion surrounding the issue of 3rd Party Billing entities and whether they fall within the scope of this docket. (T. at 204-206) The Commission is concerned that 3rd Party Billing service has not been well defined or discussed. The Commission will therefore delay a final determination on the issue of whether the billing requirements adopted herein and in Docket No. 00-067-R should be applicable to 3rd Party Billing entities. The Commission finds that ESP Consolidated Billing and Dual/Multiple Billing are appropriate and orders that the market participants be required to accommodate these billing options.

#### **Choice of Billing Configuration**

There are significant differences in the parties' positions regarding which market participant is to be allowed to make the choice of the billing configuration that will be used. EAI witness O'Rourke, SWEPCO/AEP witness Decker, and AEEC witness Clark testified that the ESP should make the choice of billing configuration. (T. at 168, 237, 318) EAI witness O'Rourke acknowledges that ultimately the customer will choose a billing option when he chooses either an ESP or, in the alternative, the default service option which the Act requires an EU to offer. (T. at 213, 214) The Staff, the AG, and Nucor generally agree that the ESP should have the option of billing choice, but they also argue that the consumer should also have a direct choice of a 3rd Party Billing agent if he so desires. (T. at 377, 347-348, 295)

EAI expresses some confusion as to what the Staff and AG contemplate for 3rd Party Billing. If Staff and the AG simply contemplate the use of a billing agent who is responsible for receiving final bills from vendors, consolidating those bills, and paying them, then utility customers already have that right through the default service option. If, however, the intent is to require EUs and ESPs to provide the Bill-Ready information directly to a 3rd Party Biller, EAI asks that no additional billing or financial burden be placed on the EU beyond those necessary to provide that same information to an ESP. (T. at 204-205)

The Coops argue that the customer should be able to directly make their choice of billing options, be it EU Consolidated, ESP Consolidated, or Dual billing. (T. at 38-39) Ouachita supports the position that the EU should be “entitled to bill for its own service.” (T. at 137)

All of the parties, except for the Coops and Ouachita, support the ESP’s right to make the choice as to providing ESP consolidated billing or Dual billing.<sup>11</sup> All of these parties also support an EU’s right to offer consolidated billing, with the choice of taking that service left to the ESP. Staff witness Peaco testified that it is necessary to allow ESP choice in this matter to “encourage ESPs entry into the market and promote competition.” Such choice, Peaco contends, “should make it easier for ESPs to enter the Arkansas markets by allowing those entities to bill for their own services and to provide ‘one stop shopping’ to customers.” (T. at 377) Additionally, entry is encouraged because, as Peaco and EAI witness O'Rourke both state, ESP consolidated or dual billing “may facilitate the provision of new and ‘value added’ products and services to customers.” (T. at 377, 175)

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<sup>11</sup>Staff, he AG and Nucor also support consumer-chosen 3<sup>rd</sup> Party billing.

Absent the exemptions it requests, Ouachita argues that, based on the information they have garnered through two focus groups of electric cooperative customers, the majority of those wish to receive an EU consolidated bill. Ouachita found, however, that “(b)oth groups agreed that if there was to be a single bill, they wanted it to come from the EU, who is ‘always going to be for them’ because they have their wires connected to the house.” (T. 149) Irrespective of the consumer choice, however, it is the position of Ouachita that the EU should always have the right to, at a minimum, bill for its own service. (T. at 151)

The Coops, as an alternative to exempting themselves from competitive billing, have argued that it is the consumer who has the right, under Act 1556, to make the choice in competitive billing options. (T. at 97) The Coops argue that it is not the provider of generation service which is mandated by the Act to make a choice of billing service but the consumer and to allow only an ESP to make that choice would be to violate the ‘letter and spirit’ of the Act.” (T. at 97) The Coops recommend that customers “retain the choice to receive consolidated billing from the electric utility. Alternatively, customers should be able to choose to receive separate bills from the electric utility and ESP. In any case, the electric utility should continue to bill for the services it provides.” (T. at 60)

In support of the recommendation, the Coops argue that ESP choice is not necessary to avoid market power by incumbents, nor do benefits accrue more effectively through competitive billing opportunities. (T. at 98) Further, the Coops argue that it is not necessary to mandate ESP choice in order to allow unrestricted customer access to ESPs. The Coops contend that “ESPs will always be free to communicate directly with their customers in any way they deem appropriate.” (T. at 98)

Further, the Coops assert that no evidence has been submitted to justify the contention of the parties that ESP consolidated billing supports the competitive retail market. (T. at 57)

The Coops' arguments seem to indicate that these decisions should be made without regard to the Commission's other mandates under the Act. The Commission must consider, when determining whether ESP choice in billing matters is appropriate, not only the costs and benefits of that service in isolation, but also the overall impact of that choice, or lack thereof, on the competitive generation market.

In order to foster open access to our generation market it is imperative that the potential providers of that service be offered favorable opportunities to enter that market. The Coops argue that there is no evidence to indicate that market entry concerns would be warranted if the EU were allowed to deny ESPs the billing configuration of their choice. The evidence in this docket, however, supports the intuitive conclusion that the greater the flexibility afforded potential ESPs in our market, the greater their participation in our market.

The Coops main concern appears not to be allowing billing option choice to the ESP, but that the "choice" of the ESP will be ESP Consolidated Billing. (T. at 56-58) The Coops argue, in their support of EU billing, that EAI's contentions which support ESP Consolidated Billing, are "the same principles (that) apply to consolidated billing by the electric utility." (T. at 57) The supposed advantages of ESP Consolidated Billing, including expanded billing for a variety of services and economic provision of billing services, are equally available under EU Consolidated Billing. (T. at 57-58) The Commission has found that billing services should be subject to competition upon ROA. All EUs, including the Coops, are now free to offer those billing services to any ESP entering the

market. Subject to non-discriminatory terms and conditions, the Coops will now be in the same position as any other competitive supplier of those services, including an ESP's own in-house billing. The Coops argue the merits of the efficiencies and economics of EU-provided billing. In an open market, these merits should prove strong incentives for an ESP to choose EU billing service. More importantly, Ouachita's and the Coop's contention of EU-preference by cooperative customers (T. at 149, 90), which they argue is a result of the highly individualized local service and ability to pay bills in person at the local office, should become persuasive selling points in an open market. If, in fact, Coop or other EU customers value these services and benefits, the market and the ESPs in that market will respond.

Allowing ESPs the choice of billing options accomplishes two of the Act's mandates to the Commission. First, by allowing maximum flexibility in an ESPs choice of billing, active participation in the Arkansas market is fostered. Thus, the Commission's determination in this regard is based on its mandate to foster effective competitive access to generation service - with more providers, there will be more effective competition. Second, the Commission's determination also meets the "letter and spirit of the Act," which is entitled the "Electric Consumer Choice Act". (T. at 97, Emphasis added) The Commission's finding provides customers with a greater choice of suppliers, thereby forcing those suppliers to provide better, more expanded, and customer-desired services. The Commission therefore finds that the choice of billing options will be left with the ESP. The ESP may respond to customer desire for consolidated billing by consolidating its bill with the serving EU's bill if the EU has elected to provide billing services. The ESP also has the option

of rendering a consolidated bill by requiring the EU to provide its billing information to the ESP for consolidated billing by the ESP.

### **DATA TRANSFER**

Staff proposed that, for all approved billing options, information would be transferred by all parties in a Bill-Ready format rather than in a Rate-Ready format.<sup>12</sup> (T. at 380) Some of the parties supported exchange of Rate-Ready information on a voluntary and negotiated basis. In direct testimony none of the parties objected to Staff's proposal in this regard except for AEEC. However, in Rebuttal, AEEC removed their objection, with the proviso that the Commission "would be open to revisiting the issue if the absence of a rate ready billing option proves to be a substantial barrier to entry...." (T. at 324-325)

The Commission, therefore, finds the Bill-Ready method of information transfer appropriate and applicable to all parties to transactions.

### **OTHER ISSUES**

The Commission notes that various issues, including but not limited to payment processing questions, call center functions, accounting issues, and costing, have been raised in this docket. Upon consideration, the Commission finds that these issues are more appropriately addressed in

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<sup>12</sup>Bill Ready format dictates that each party providing service would be required to calculate the bill prior to transferring the information. Rate Ready format dictates that only the usage or rate information would be provided, with no calculated bill-due provided.

those other dockets which deal with data exchange, customer protections, energy provider rules, or customer education.

It is, therefore, ordered that:

1. It is in the public interest to declare bill production and issuance, payment processing and collections, and the call center functions related to bill production and issuance and payment processing and collections competitive effective the day of retail open access and the Commission so declares;
2. EUs are to implement electronic data systems in accordance with the guidelines developed in Docket No.00-067-R;
3. Uniform billing practices should be established for all utilities across the state; and
4. ESPs shall have the option of providing consolidated billing for an EU which is serving the billing ESPs customer.

BY ORDER OF THE COMMISSION.

This 30th day of June, 2000.

/s/ Jim von Grep  
Jim von Grep, Chairman

/s/ Sam I. Bratton, Jr.  
Sam I. Bratton, Jr., Commissioner

/s/ Betty C. Dickey  
Betty C. Dickey, Commissioner

/s/ Jan Sanders  
Jan Sanders  
Secretary of the Commission