



# Arkansas

## State Guide to Utility Energy Efficiency Planning

# State Guide to Utility Energy Efficiency Planning: Arkansas

## I. Arkansas Utility Landscape

### A. Utilities in Arkansas

In Arkansas, three types of electricity providers sell electric power to retail customers: investor-owned utilities (IOUs), electric membership corporations (cooperatives), and municipal-owned utilities. The following chart shows the number of each of these types of providers, along with the percentage of Arkansas' electricity customers served by each:

**Electric Utilities in Arkansas**

Type of Provider	Quantity	Percentage of AR Electricity Customers Served
Investor-Owned Utilities	4	56.30%
Electric Membership Corporations	15	31.43%
Municipal Utilities	11	12.27%

Source: U.S. Energy Information Administration, Form EIA-861, [2018 Annual Electric Power Industry Report](#)

Approximately two-thirds of electricity customers in Arkansas are served by three vertically integrated IOUs, two of which are the largest utilities in the state in terms of customers served, amount of electricity sold, and revenue. Information on the five largest utilities (by sales) in Arkansas is provided in the chart below:

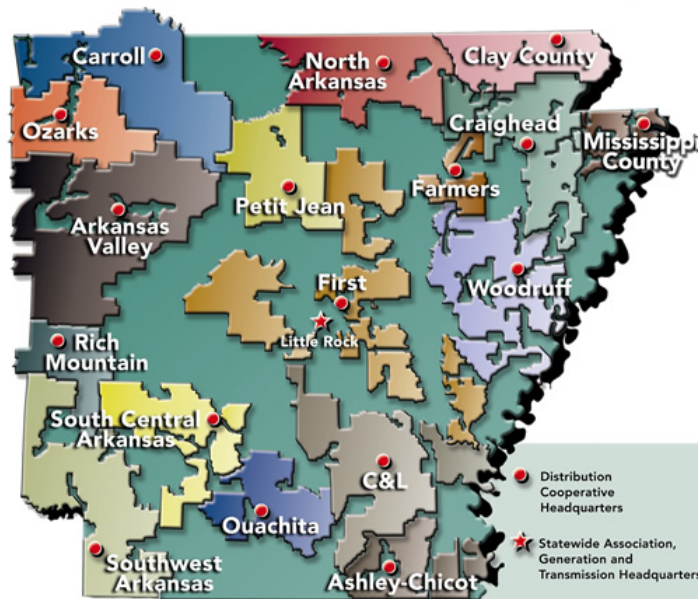
**Five Largest Utilities in Arkansas by Sales**

Utility Name	Type of Provider	Revenue (Thousand USD)	Sales (MWh)	Number of Customers	Average Price (cents/kWh)
Entergy Arkansas	IOU	1,667,418.2	22,524,756	711,931	7.40
SWEPCO	IOU	298,455.6	3,890,585	119,644	7.67
Mississippi County Electric Co.	Cooperative	159,231.0	3,382,065	4,854	4.71
Oklahoma Gas & Electric	IOU	176,781.0	2,670,587	67,175	6.62
First Electric Co-op Corporation	Cooperative	193,889.6	2,034,359	94,423	9.53

Source: U.S. Energy Information Administration, Form EIA-861, [2018 Annual Electric Power Industry Report](#)

## Service Territories for Cooperative Utilities in Arkansas

Electric Cooperatives of Arkansas Service Area Map



*Image Source.* The service territory of Entergy Arkansas extends over most of the green space on the East side of the state; SWEPCO service territory covers the remaining green space on the South and West of the state.

## II. General Information

The Arkansas Public Service Commission (PSC or the commission) is the state administrative agency charged with regulating Arkansas's public utilities. The state legislature vested the commission with the power to regulate the rates and services of the public utilities in Arkansas.<sup>1</sup> The commission's mission is to "enhance the economic environment of the state by: ensuring safe, reliable and reasonably priced utility service; educating customers to make independent and informed choices; and ensuring the fair and equitable ad valorem assessment and equalization of utility and carrier property."<sup>2</sup> Functionally, the commission is comprised of three commissioners and a support staff.<sup>3</sup> For the purposes of this guide, we will focus on electricity regulation, but the Arkansas Commission also regulates telecommunications, natural gas, water, and pipeline safety.

### A. Relationship with State Legislature

The commission derives its authority from the Arkansas General Assembly, which delegated to the commission the power to regulate the service and rates of those utilities subject to its jurisdiction. The Department of Public Utilities was established in 1935 within the commission and regulates that

<sup>1</sup> <http://www.apscservices.info>

<sup>2</sup> <http://www.apscservices.info/pdf/files/PSCStrategicPlan2017FinalforPostingSeptember28-2017.pdf> (1)

<sup>3</sup> <http://www.apscservices.info/comm.asp>

utilities pay an annual fee based on gross earnings to finance the commission's operations. The commission gained its current name in 1945. In 1967, the legislature made electric cooperatives subject to commission regulation in the same manner as investor-owned utilities, but in 1987 the legislature reduced that jurisdiction by exempting cooperatives from rate case procedures. In 1977, the general assembly restored exclusive ratemaking jurisdiction to the commission.

Act 1556, or the Electric Consumer Choice Act, was enacted by the state legislature in 1999. Act 1556 would have provided for a competitive retail electric market by allowing consumers to choose a power provider and encouraging fair competition between providers. In 2000, the commission published, "Progress Report to the General Assembly on the Development of Competition in Electric Markets and the Impact on Retail Customers." The report concluded that implementation of a competitive market did not appear possible in the proposed timeline and recommended that the legislature delay the implementation. Act 324, passed in 2001, amended Act 1556 to delay implementation; however, the commission then recommended a repeal of the statute due to observations that there did not appear to be any opportunity to implement electric retail competition for the foreseeable future while providing benefits to customers. The legislature repealed the provision through Act 204, the Electric Utility Regulatory Reform Act of 2003.<sup>4</sup>

## B. Commission Structure

The commission is comprised of three commissioners that are appointed by the governor with approval from the state Senate. Commissioners serve for six-year terms, with no limit on the number of consecutive terms a commissioner may serve. The commission does not require bipartisan representation and the governor designates a chairman that serves in that position until their term as commissioner expires; the chairperson acts as the chief executive and administrative officer of the commission. Commissioners must have resided in Arkansas for at least five years, be at least eighteen years old, and may not have any pecuniary interest in the utilities that they regulate; at least one commissioner must be an attorney. The commission maintains a support staff that functions independently of the commissioners and whose responsibility is to independently analyze each utility application and present its recommendations to the commission.<sup>5</sup> There are also administrative law judges and attorneys on commission staff.<sup>6</sup>

### Arkansas Utility Commissioners

Name	Term Start	Term End	Contact
Ted Thomas (R) <i>Chairman</i>	01/06/2015	01/04/2021	501-682-5806 <a href="mailto:TThomas@psc.state.ar.us">TThomas@psc.state.ar.us</a>

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<sup>4</sup> <http://www.apscservices.info/commission-history.asp>

<sup>5</sup> <http://www.apscservices.info/publichearings.asp>

<sup>6</sup> <http://www.apscservices.info/comm.asp>



Kimberly O’Guinn (NP) <i>Commissioner</i>	11/28/2016	01/06/2023	501-682-5806 <a href="mailto:KOGuinn@psc.state.ar.us">KOGuinn@psc.state.ar.us</a>
Justin Tate (R) <i>Commissioner</i>	01/14/2019	01/10/2025	501-682-5806 <a href="mailto:JTate@psc.state.ar.us">JTate@psc.state.ar.us</a>

### C. Overview of Commission Proceedings

As noted above, the commission regulates nearly all aspects of service for the IOUs in Arkansas. The commission regulates utilities individually, such as fixing rates or approving specific utility investments, and collectively, by setting policies that apply across all regulated utilities. The commission typically relies on formal administrative processes in conjunction with an energy efficiency collaborative to make its regulatory decisions. The commission is prohibited by law from engaging in ex parte communications with parties to contested cases.<sup>7</sup>

### D. Commission Staff

The Electric Utilities Section of the general staff is responsible for investigating, analyzing, evaluating, and presenting testimony regarding issues and policies in the electric industry. In doing so, the group analyzes the activities, operations, costs, and earnings of investor-owned and cooperative utilities. The group also evaluates the impact of policies and decisions made by the Federal Energy Regulatory Commission on Arkansas utilities’ policies, rates, service reliability, and quality of service. The table below shows the contact information for key members of the Commission General Staff:

**Arkansas Public Service Commission Key Staff**

Donna Gray <i>Executive Director</i>	501-682-2051 <a href="mailto:DGray@psc.state.ar.us">DGray@psc.state.ar.us</a>
Regina Butler <i>Director, Electric Utilities</i>	501-682-2051 <a href="mailto:Regina_Butler@psc.state.ar.us">Regina_Butler@psc.state.ar.us</a>
Jennifer Hoss <i>Director, Rates &amp; Demand Resources</i>	501-682-2051 <a href="mailto:JHoss@psc.state.ar.us">JHoss@psc.state.ar.us</a>
Cindy Ireland <i>Research &amp; Policy Director</i>	501-682-2051 <a href="mailto:CIreland@psc.state.ar.us">CIreland@psc.state.ar.us</a>
Karen Wesson <i>Executive Assistant to Commissioners</i>	501-682-5806 <a href="mailto:KWesson@psc.state.ar.us">KWesson@psc.state.ar.us</a>
Wally W. Nixon III <i>Commissioners’ Legal Advisor</i>	501-682-5797 <a href="mailto:WNixon@psc.state.ar.us">WNixon@psc.state.ar.us</a>

Source: [National Association of Regulatory Utility Commissioners](#)

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<sup>7</sup> Ex parte communications are prohibited when the communications pertain to the merits of the proceedings.

### III. State Energy Office

The Arkansas Energy Office is housed within Arkansas' Department of Environmental Quality. Its mission is to "promote energy efficiency, clean technology and sustainable strategies that encourage economic development, energy security and the environmental well-being for all citizens of Arkansas." The energy office administers the Low-Income Home Energy Assistance Program as well as the Weatherization Assistance Program, the Residential Energy Efficiency Loan Loss Reserve Program, and more. The energy office does not participate directly in energy efficiency proceedings before the commission.<sup>8</sup>

### IV. Parties Working Collaboratively

The commission issued an order establishing the state's energy efficiency collaborative, the Parties Working Collaboratively (PWC), on June 30, 2006. In the order, the commission directed the group to design energy efficiency programs, develop incentives, evaluation, measurement, and verification (EM&V) standards, and identify appropriate cost-effectiveness tests through a collaborative process.<sup>9</sup> The role of the collaborative has shifted in recent years to develop a Technical Reference Manual (see Cost Effectiveness Testing on page 7).<sup>10</sup> The PWC works in the interest of energy efficiency and is a party to each proceeding in front of the commission. Meetings are open to the public and the commission established a set of procedural guidelines for the collaborative in 2014. The PWC aims to make consensus decisions on each issue, but dissenting opinions are allowed and recognized.<sup>11</sup>

### V. Existing State Policies for Energy Efficiency

#### A. Incentives for Energy Efficiency

##### *i. Energy Efficiency Resource Standard*

The Arkansas legislature passed the "Energy Conservation Endorsement Act of 1977" that authorizes the commission to "propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels."<sup>12</sup> This law enables the commission to develop an energy efficiency resource standard (EERS).

Arkansas is currently the only state in the Southeast with a dedicated EERS. In 2007, the commission approved Rules for Conservation and Energy Efficiency Programs (Rules) that require utilities to

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<sup>8</sup> [Arkansas Energy Office](#)

<sup>9</sup> [Docket No. 06-004-R, Order No. 3](#)

<sup>10</sup> [SEEACTION, September 2015, Department of Energy](#)

<sup>11</sup> [Docket No. 13-002-U](#)

<sup>12</sup> [AR Code §23-3-405\(a\)\(1\)](#). (Whole Act is AR Code §23-3-401 et seq)

administer energy efficiency programs.<sup>13</sup> Initially, utilities were required to offer “Quick-Start” programs, and in 2010 the commission established the first set of targets for its jurisdictional natural gas and electric utilities. The commission revisits targets every three years in a dedicated energy efficiency proceeding.

## ii. *Cost Recovery and Performance Incentives*

Utilities may recover program costs through a rider on customer bills in annual energy efficiency cost rate (EECR) approval dockets.<sup>14</sup> Arkansas allows utilities to recover lost revenue due to efficiency programs through lost contribution to fixed costs; utilities may request to recover lost contribution to fixed costs through a surcharge or rider. Recovery of costs associated with demand response programs must be addressed in utility-specific rate or tariff proceedings.<sup>15</sup>

Energy efficiency performance incentives are awarded annually for achievement ranging between 80% and 120% of the commission-established savings target.

**Performance Incentives**

Achieved Savings (as % of target)	Incentive (based on TRC)	Cap (% of program budget)
80.0%	10.0% of shared savings	0.04%
90.0%	10.0% of shared savings	0.05%
100.0%	10.0% of shared savings	0.06%
110.0%	10.0% of shared savings	0.07%
120.0%	10.0% of shared savings	0.08%

## B. Cost-Effectiveness Testing

Arkansas uses four of the five traditional benefit-cost tests: Total Resource Cost (TRC), Utility/Program Administrator (UCT or PACT), Participant (PCT), and Ratepayer Impact Measure (RIM), with TRC being the primary test. Arkansas applies the TRC primarily at the program level and secondarily at the portfolio and measure level. Arkansas’s TRC accounts for non-energy costs and

<sup>13</sup> Docket No. 06-004-R.

<sup>14</sup> [Rules for C&EE §5G and 7A—E](#)

<sup>15</sup> Rules for C&EE §7B—E.

benefits associated with water savings, other fuels, participants' equipment replacement costs, participant measure costs, and additional non-energy benefits for low-income customers.

Each utility is required to hire an independent contractor for evaluation, measurement, and verification (EM&V) and the utilities jointly fund an independent EM&V monitor that reviews filings to assist regulatory staff.<sup>16</sup> Arkansas uses a Technical Reference Manual (TRM) that is developed through the PWC.

The Technical Reference Manual (TRM), first completed in 2011, organizes and maintains EM&V protocols in order to effectively assess and improve energy efficiency programs. The first TRM was adopted in 2011. In August 2019, the PWC and the general staff filed version 8.1 of the TRM and set a new process for updating the manual. Beginning in 2020, the Independent Evaluation Monitor (IEM) will conduct a comprehensive update of the TRM every three years with an annual review process when necessitated by changes in certain conditions.<sup>17</sup>

Electric utilities must use an evaluation period of either ten years or the actual lifetime for each measure in a program to evaluate a program or program portfolio.<sup>18</sup> Utilities are required to present the results of the tests using a standardized reporting table.

In October 2018, Arkansas released a review of cost-effectiveness practices in the state to assess its alignment with principles of the National Standard Practice Manual (NSPM). The case study found that, while Arkansas's practices are consistent with the NSPM, there are some areas for improvement. There were several inconsistencies in utilities' application of commission guidance on the TRC test, notably the quantification and treatment of certain costs and benefits. In addition, there is an asymmetrical application of participant impacts; all participant costs are included, but some non-energy benefits are excluded. Lastly, impacts associated with some state policy objectives are not included.<sup>19</sup> At the time of this publication, the Parties Working Collaboratively were continuing to respond to a commission order to address these inconsistencies.

## C. Program Participation

Commercial or industrial customers with more than one megawatt (MW) in monthly demand may opt-out of energy efficiency programs and associated fees.<sup>20</sup> Commercial or industrial customers that are not eligible to opt-out may request an exemption from the commission allowing the customer to self-direct its energy efficiency. Such customers are required to show documentation that they have implemented or invested in energy savings measures and that they shall continue to do so throughout the period of utility energy efficiency program offerings. In addition, the applicant

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<sup>16</sup> Docket No. 10-100-R, Order #12, October 14, 2011.

<sup>17</sup> Docket No. 10-100-R and 13-002-U, August 29, 2019.

<sup>18</sup> Rules §6B.

<sup>19</sup> Arkansas NSPM Case Study, page iii. October 2018.

<sup>20</sup> Rules for C&EE §11A (1).



must demonstrate that it cannot realize further meaningful and cost effective benefits through the utility's energy efficiency programs.<sup>21</sup>

## VI. Utility Energy Efficiency Planning Process

### A. Target-Setting and Performance Incentives

Every three years, the commission sets new targets for its regulated utilities in Docket No. 13-002-U. The commission set its first mandatory savings targets in 2011 and has steadily ramped up targets for electric and gas utilities over the years. Savings are expressed as a percentage of baseline sales from the previous program year. Targets for program years 2020-2022 are 1.20% and 0.50% of 2018 baseline sales for electric and gas utilities, respectively.<sup>22</sup>

**Historical Savings Targets in Arkansas**

Year	Electric Utilities	Gas Utilities
2011	0.25%	0.20%
2012	0.50%	0.30%
2013	0.75%	0.40%
2014	0.75%	0.40%
2014-2018	0.90%	0.50%
2019	1.00%	0.50%
2020-2022	1.20%	0.50%

The PWC convenes to make recommendation to the commission about new targets. If consensus cannot be reached, individual parties may make separate recommendations. This triennial proceeding also addresses the correlating performance incentive.

### B. Energy Efficiency Program Approval

Utilities propose programs in annual program plan filings which must be approved by the commission before program implementation. The commission is expected to issue a final order

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<sup>21</sup> Rules for C&EE §11A (2).

<sup>22</sup> Docket No. 13-002-U, Order No. 43.

within 180 days of the initial filing after investigation, analysis, and adjudication of the program. The commission establishes a procedural schedule for the review of each program filing.<sup>23</sup>

Utilities are required to submit annual reports on the results of their programs. If they are requesting changes to their rider, they must submit an energy efficiency cost rate (EECR) for approval at the same time as the annual report.

### **C. Energy Efficiency Program Plan Filings**

Program administrators must propose general program designs, specific programs and/or measures, and/or combinations of programs/measures. All programs submitted for approval should: (1) show high probability of providing aggregate ratepayer benefits to the majority of ratepayers; (2) identify specific objectives; and (3) identify specific EM&V procedures that will be used to determine whether the program has achieved its stated objectives.<sup>24</sup>

Each portfolio filing must: (1) demonstrate that the scope of programs serves all customer classes; (2) address cost-effectiveness analysis by listing total costs and benefits and including expected savings goals for the portfolio of programs; (3) include a cost recovery proposal; and (4) any additional supporting information from the program administrator.<sup>25</sup> Program filings should also include a description of the services to be provided, the target population, and a plan to address potential barriers.<sup>26</sup>

The rules state that programs should be coordinated to the extent reasonable, meaning that utilities to make some effort to keep program structures as standard as possible among companies; the commission is authorized to direct utilities to offer uniform statewide efficiency and conservation programs if it deems that to be the most cost-effective method and in the public interest. Fuel switching and load building are prohibited and will not be treated as energy efficiency.<sup>27</sup>

### **D. Annual Energy Efficiency Program Reports**

Each regulated electric and gas utility must file a report by May 1 of each year that addresses the performance of all approved conservation and energy efficiency programs. The report should present the results of the prescribed EM&V measures for each measure and/or program and portfolio, a measure of each program's savings, and the program costs.<sup>28</sup>

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<sup>23</sup> Rules for C&EE §5H.

<sup>24</sup> Rules for C&EE §5A.

<sup>25</sup> Rules for C&EE §5B.

<sup>26</sup> Rules for C&EE §5C and §8B.

<sup>27</sup> Rules for C&EE §5D and 5F and §9.

<sup>28</sup> Rules for C&EE §9.

## **E. Energy Efficiency Cost Rate (EECR) Approvals**

Utilities must file for EECR approval annually in conjunction with the annual report on energy efficiency. Each filing must show a schedule of program costs throughout the reporting period, amounts collected through the rider, and approved program budgets for the next calendar year. If a utility seeks approval to recover lost contribution to fixed costs and/or utility energy efficiency incentives through a surcharge or rider, the utility must incorporate these costs in the schedule; any incentive calculations will be based upon the reporting year. The EECR will be adjusted annually to reconcile any under or over recovery for the prior year and the approved budget for the next year.<sup>29</sup>

## **F. Integrated Resource Planning**

Despite the Arkansas IRP process being informal in nature, third parties can petition to intervene and submit public comment. The commission approved "Resource Planning Guidelines for Electric Utilities" in January 2007.<sup>30</sup> These guidelines direct utilities to comparably consider all reasonably useful, economic, and available supply and demand-side resources for incremental capacity needs. In the IRP process, utilities should identify multiple resource portfolios that meet reliability criteria, determine the costs and effectiveness of monetizable resources, and recognize non-monetizable benefits. Further, according to Section 4.3 of the guidelines, utility efforts to encourage energy efficiency, conservation, demand-side management, interruptible load and price responsive demand should be identified in the IRP.

# **VII. Opportunities for Third-Party Engagement**

## **A. Parties Working Collaboratively**

The most direct means of engagement on energy efficiency dockets in Arkansas is through participation in the energy efficiency collaborative, which provides recommendations to the commission in all energy efficiency related proceedings.<sup>31</sup> Meetings are open to the public; interested parties should contact general staff for information on joining the collaborative.

## **B. Formal Proceedings**

Interested parties may intervene in the various energy efficiency and IRP dockets; most activity is typically in the EE target-setting docket.<sup>32</sup> According to Section 4.8 of the Resource Planning Guidelines, each utility must organize and facilitate meetings of a stakeholder committee that includes representatives of multiple customer classes and other interested entities within the service area. The utility should make efforts to properly inform and respond to the committee. Early

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<sup>29</sup> Rules for C&EE §7E.

<sup>30</sup> [Docket No. 06-028-R](#)

<sup>31</sup> <http://www.johnsonconsults.com/presentations/IEPPEC%202014%20All%20Together%20Now%20AR.pdf>

<sup>32</sup> Docket No. 13-002-U

in the planning cycle, stakeholders in the committee should review utility objectives, assumptions, and needs; a report by the committee should be included with the submittal of the IRP.

Stakeholders and general staff may submit comments on the plan after it has been submitted by the utility. Parties must submit testimony, rebuttal, and surrebuttal in compliance with Arkansas Rules of Practice and Procedure.<sup>33</sup>

### **C. Other Means of Engagement**

Members of the public may engage in ex parte communications with commissioners provided that the communication does not attempt to influence a decision on any issue of law or fact in a proceeding pending before the commission. Independent advice and counsel rendered by the general staff to the commission or presiding officer is not ex parte communication, nor is attendance by the commissioners or a presiding officer at public conferences and other educational events.<sup>34</sup> There do not appear to be prohibitions on communications with general staff.

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<sup>33</sup> [http://www.apscservices.info/Rules/rules\\_of\\_practice\\_procedure2015.pdf](http://www.apscservices.info/Rules/rules_of_practice_procedure2015.pdf)

<sup>34</sup> [APSC Rules of Practice and Procedure Rule 1.06](#)