Southern Renewable Energy Association
11610 Pleasant Ridge Rd., Suite 103 #176, Little Rock, AR 72223

January 28, 2025

Karen Shook
Secretary of the Commission
Arkansas Public Service Commission
1000 Center Street, P.O. Box 400
Little Rock, Arkansas 72201-4314

**Re: Docket No. 07-016-U, Southern Renewable Energy Association's Comments on Entergy Arkansas, LLC's 2024 Integrated Resource Plan**

Dear Ms. Shook:

Pursuant to Section 4.8 of the Arkansas Public Service Commission's Resource Planning Guidelines for Electric Utilities, the Southern Renewable Energy Association respectfully submits the attached Comments regarding the process and results of Entergy Arkansas, LLC's 2024 Integrated Resource Plan.

Please contact me if you have any questions. Thank you for your assistance with this matter.

Respectfully submitted,

Whit Cox
Regulatory Director
Southern Renewable Energy Association
11610 Pleasant Ridge Road, Suite 103 # 176
Little Rock, AR 72223
whit@southernrenewable.org
(501) 701-0874

Enclosures

cc: All parties of record in this docket (*via electronic service*)

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**ARKANSAS PUBLIC SERVICE COMMISSION**

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| **IN THE MATTER OF THE FILING OF ENTERGY ARKANSAS LLC'S CURRENTLY EFFECTIVE RESOURCE PLAN PURSUANT TO THE COMMISSION'S RESOURCE PLANNING GUIDELINES** | **)** | **DOCKET NO. 07-016-U** |

**SOUTHERN RENEWABLE ENERGY ASSOCIATION'S COMMENTS ON ENTERGY ARKANSAS, LLC'S 2024 INTEGRATED RESOURCE PLAN**

The Southern Renewable Energy Association ("SREA") respectfully submits these Comments to the Arkansas Public Service Commission ("Commission" or "APSC") regarding the 2024 Integrated Resource Plan ("IRP") of Entergy Arkansas, LLC ("EAL") pursuant to Section 4.8 of the Commission's Resource Planning Guidelines for Electric Utilities ("RPGs").[1]

## I. Introduction

SREA is a non-profit regional trade association that works to promote the responsible development and use of utility-scale wind energy, solar energy, energy storage, and transmission solutions throughout the South. Our vision is for renewable energy to become a leading source of energy in the South and our mission is to promote responsible use and development of renewable energy in the South. SREA's geographic region covers seven Southeastern states: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee.[2]

To achieve our vision, SREA frequently engages in IRP processes throughout the southeast, including in Arkansas. SREA previously participated in EAL's IRP stakeholder

[1] EAL 2024 IRP (Doc. # 103), available at 07-016-U_103_1.pdf; RPGs, available at resource_plan_guid_for_elec_06-028-R_1-7-07.pdf.
[2] Southern Renewable Energy Association - Home.

processes in 2015, 2018, and 2021. In these efforts, SREA filed comments noting significant deficiencies that would hamper renewable energy development to the detriment to of EAL's customers.[3] The following comments focus on the RPGs and SREA's expectations for EAL to fulfil the requirements set forth by the Commission, as well as SREA's recommendations to improve the IRP process in Arkansas more broadly moving forward.

## II. SREA's Comments and Recommendations

SREA appreciates the opportunity to submit these Comments pursuant to Section 4.8 of the RPGs.[4] SREA's Comments highlight numerous concerns that merit timely review and action by the Commission, including poor resource planning assumptions in EAL's 2024 IRP modeling, as well as an Action Plan that fails to comply with Section 4.6 of the RPGs and industry best-practices for post-IRP procurement of resources. Without review and action by the Commission, the shortcomings in EAL's resource planning process and corresponding results will lead to higher costs and less economically efficient energy services for EAL's Arkansas customers. Therefore, in order to protect Arkansas ratepayers and the public interest by thoroughly evaluating whether EAL's IRP adheres to resource planning objectives,"[5] as well as to ensure that EAL and other Arkansas public utilities follow industry best-practices in future resource planning processes moving forward, SREA recommends that the Commission take the following actions:

A. **Hold a hearing** to determine whether EAL must re-evaluate and resubmit its 2024 IRP to address the concerns raised in SREA's Comments herein and in the Stakeholder Committee Report;

[3] *See e.g.*, SREA's Comments on EAL's 2021 IRP, Doc. # 71, available at 07-016-U_71_2.pdf
[4] Devi Glick and Lucy Metz from Synapse Energy Economics contributed to these comments, along with Dinos Gonatas from CPG Advisors.
[5] RPGs Section 4.1, Objectives. ("The objectives of the Resource Plan include, but are not limited to, low cost, adequate and reliable energy services; economic efficiency; financial integrity of the utility; comparable consideration of demand and supply resources; mitigation of risks, consideration of impacts; and consistency with governmental regulations and policies.")

B. **Require EAL to re-evaluate and resubmit its 2024 IRP** to address the concerns raised in SREA's Comments herein and in the Stakeholder Committee Report pursuant to Section 4.8 of the RPGs;[6]

C. **Require EAL to issue an all-source Request for Proposals** ("RFP") following the conclusion of the 2024 IRP process;

D. **Direct EAL to propose more customer-centered resource options for renewable energy and storage,** [7] including bring-your-own new clean energy and storage programs, green tariffs that are tied to the procurement of new clean energy, and clean transmission tariffs.

E. **Grant the relief requested in *Application for a Declaratory Order and to Compel Discovery* ("Application") filed by the Arkansas Electric Energy Consumers ("AEEC")** on August 21, 2024;[8] and

F. **Engage in a comprehensive rulemaking to reform the IRP process**, as suggested by other utilities,[9] and re-open intervention so that all current Stakeholders in the various IRP dockets can participate fully and can propose reforms to the Resource Planning Guidelines or the adoption of new IRP Rules.

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[6] RPGs Section 4.8, Stakeholder Process ("If comments concerning the process and results warrant, the Commission may require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments.")

[7] *See e.g.*, Louisiana Public Service Commission Docket No. R35462, *In re: Rulemaking to Research and Evaluate Customer-Centered Options for all Electric Customer Classes as well as Other Regulatory Environments* (approving new rules for renewable energy in response to a 2019 directive for LPSC Staff to "research customer-centered options for all customer classes…and recommend a plan for how to ensure customers are the focus."), available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=XjHX15Kr5NI%3D.

[8] AEEC Application (Doc. # 89); *see also* AEEC Amended Application (Doc. # 90).

[9] *See* Petition for Limited Appearance and Verified Statement of Position filed by Arkansas Electric Cooperative Corporation (Doc. # 99) ("the Cooperative … asks the Commission to … transfer the issues raised in the Motion to Docket No. 06-028-R, and issue a procedural schedule, so that all interested parties receive notice and opportunity to be heard on the matter."); *see also*, Limited Appearance Statement of Southwestern Electric Power Company at 9 (Doc. # 101)(" The Stakeholder Process should continue to be governed exclusively by Rule 4.8 absent a comprehensive rulemaking.").

### A. Request for a Hearing

The Commission should hold a hearing to specify the steps EAL must take to address concerns raised by stakeholders, including but not limited to re-filing its 2024 IRP, and the applicable timeframe for compliance. There is substantial room for the Commission to take more proactive action to review EAL's 2024 IRP in this current proceeding under the current Resource Planning Guidelines. For instance, although the Resource Planning Guidelines do not require a hearing for IRPs, they also do not preclude a hearing. Therefore, the Commission should hold a hearing to aid its consideration of whether the Stakeholder Committee Report and comments concerning the IRP process and results warrant requiring EAL to re-evaluate and resubmit its IRP for the 2024 planning cycle to address concerns raised in the comments and Stakeholder Committee Report, or grant any other relief it finds to be just and reasonable. For example, although the Kentucky IRP statute does not expressly require a hearing for IRPs, [10] and the Kentucky Public Service Commission has likewise not adopted rules requiring a hearing for IRPs, the Kentucky Public Service Commission nonetheless held a hearing to review Kentucky Power Company's IRP on June 12th, 2024.[11] The Kentucky PSC likewise recently issued an order finding

[10] 807 KAR 5:058. Integrated resource planning by electric utilities, Section 11. Procedures for Review of the Integrated Resource Plan.

> (1) Upon receipt of a utility's integrated resource plan, the commission shall develop a procedural schedule which allows for submission of written interrogatories to the utility by staff and intervenors, written comments by staff and intervenors, and responses to interrogatories and comments by the utility.
> (2) The commission may convene conferences to discuss the filed plan and all other matters relative to review of the plan.
> (3) Based upon its review of a utility's plan and all related information, the commission staff shall issue a report summarizing its review and offering suggestions and recommendations to the utility for subsequent filings.
> (4) A utility shall respond to the staff's comments and recommendations in its next integrated resource plan filing.

available at Title 807 Chapter 5 Regulation 058 • Kentucky Administrative Regulations • Legislative Research Commission.

[11] 2023-00092, Kentucky Power Company-Part1 - YouTube.

that "a hearing should be scheduled for the purpose of taking evidence on the issues within the scope of the review of [Louisville Gas & Electric Company and Kentucky Utilities Company's] 2024 IRP, including the cross-examination of witnesses who respond to requests for information."[12] Holding a hearing on the IRP will produce tangible benefits, creating an opportunity for the Commission to dig deeper and thoroughly evaluate whether EAL's IRP aligns with resource planning objectives, including "low cost, adequate and reliable energy services; economic efficiency; financial integrity of the utility; comparable consideration of demand and supply resources; mitigation of risks, consideration of impacts; and consistency with governmental regulations and policies."[13] SREA therefore respectfully requests that the Commission hold a hearing and take evidence on the issues within the scope of its review of EAL's 2024 IRP to aid its consideration of whether the Stakeholder Committee Report and comments concerning the IRP process and results warrant requiring EAL to re-evaluate and resubmit its IRP for the 2024 planning cycle to address concerns raised in the comments and Stakeholder Committee Report. The current Resource Planning Guidelines support this request, which is a simple and straightforward step the Commission can take to proactively ensure it fulfills its duty to supervise and regulate EAL's resource planning process.[14]

[12] KPSC Case No. 2024-00326, Order of October 30, 2024, available at https://psc.ky.gov/pscscf/2024%20Cases/2024-00326//20241030_PSC_ORDER.pdf.
[13] RPGs Section 4.1, Objectives.
[14] *See* Ark. Code Ann. § 23-2-301. Powers and jurisdiction of commission generally ("The commission is vested with the power and jurisdiction, and it is made its duty, to supervise and regulate every public utility defined in § 23-1-101 and to do all things, whether specifically designated in this act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty.")

**B. Comments concerning the IRP process and results warranting requiring EAL to re-evaluate and resubmit its IRP for the 2024 planning cycle[15]**

Pursuant to Section 4.8 of the RPGs, SREA requests that the Commission direct EAL to re-evaluate and resubmit its 2024 IRP to address the concerns raised by SREA and other Stakeholders in the Stakeholder Committee Report filed with EAL's 2024 IRP, which SREA incorporates by reference herein pursuant to Rule 3.05 of the RPPs, as well as the additional concerns outlined in these Comments.[16] The 2024 IRP states that "EAL will closely review the stakeholder report…and continue taking steps to address concerns in the continuing IRP process."[17] This indicates that EAL has not already reviewed the stakeholder report and taken steps to address stakeholder concerns.[18] It is also indicates that EAL has not determined what steps it will take and when it will take them. Therefore, SREA recommends that the Commission should review the Stakeholder Committee Report and these Comments and then determine specifically what steps EAL should take to address concerns raised by stakeholders and the applicable timeframe for compliance.

**i. Discussion of Concerns raised in the Stakeholder Committee Report**

In particular, the Stakeholder Committee Report raised the following specific concerns regarding the IRP process and results:

1. EAL should not use unreasonably high costs and low-capacity accreditations for modeling new renewable resources:

[15] Additional concerns regarding the IRP process are discussed in Section VIII.
[16] EAL 2024 IRP at 109-140, Appendix G - Stakeholder Report (Doc. # 103), available at 07-016-U_103_1.pdf.
[17] EAL 2024 IRP at 93.
[18] This is not intended as a criticism of EAL's resources planning team, particularly given that the Stakeholder Committee Report was submitted only a week in advance of the IRP filing (as requested by EAL), but merely an observation of the factual situation.

a. EAL's clean energy input costs are substantially higher than costs used by other utilities and leading industry sources. On average, EAL's cost estimates are 65 percent higher for wind, 36 percent higher for solar PV, and 69 percent higher for battery energy storage (BESS) compared to estimates from the National Renewable Energy Lab, the United States Energy Information Administration, and Lazard's Levelized Cost of Energy Report.[19]

b. EAL's capacity accreditation of batteries is unrealistically low.[20] EAL used effective load carrying capability ("ELCC") values from an external study conducted by Astrapé in 2023. However, the numbers that Entergy provided were not directly cited in the Astrapé report, so it is unclear what modeling results they represent. The ELCCs, especially for winter, are substantially lower than values Astrapé has calculated in other regions, and EAL did not explain why it utilized these values. EAL also chose to use battery ELCCs that assume there is no wind or solar on the system (meaning that battery storage is only used to arbitrage market energy or fossil generation), and it used such large tranche sizes that it undervalues the capacity from the first several GW of battery storage added.

c. As a result of renewable cost and accreditation assumptions, EAL's modeling assumptions do not match reality in the Midcontinent Independent System Operator, Inc. ("MISO").[21] In the MISO-wide modeling results for portfolio 2A, Entergy projects that over 100 GW of new gas will be added across MISO during the study period, 40 GW of solar, 11.6 GW of wind, and zero MW of BESS, hybrid

[19] *See* Stakeholder Committee Report at 1–5.
[20] *See* Stakeholder Committee Report at 5–7.
[21] *See* Stakeholder Committee Report at 8–9.

or otherwise.[22] Looking at the MISO interconnection queue, there is over 160 GW of solar and over 110 GW of BESS (hybrid or stand-alone) that is active in the queue.[23] While it is likely that some of the resources in the queue will not materialize, it is unrealistic to assume that *no* storage will be built and significantly less solar than is already past the study phase of the interconnection queue will be built over the entire study period.

d. EAL arbitrarily failed to model the 10% "energy community" adder that is available to it under the Inflation Reduction Act. Entergy's modeling therefore may overstate the costs of new clean energy projects.[24] The IRS already considers nearly all of Entergy Arkansas's service area to be an energy community,[25] and when Entergy retires the first coal-burning unit at White Bluff and Independence, the census tract in which each plant is located and all adjoining census tracts will also become energy communities. Because these coal plant sites would likely be a suitable location for a new battery storage project, Entergy's ability to take advantage of the adder for batteries is likely within its own control, and Entergy is wrong to exclude the energy community adder from its modeling.

e. EAL should consider applying for a US DOE Energy Infrastructure Reinvestment program loan to reduce the cost to customers of retiring coal units and/or building new clean energy projects.

[22] EAL 2024 IRP at 103.
[23] MISO. "Interactive Queue." Accessed September 12, 2024. Available at: https://www.misoenergy.org/planning/resource-utilization/GI_Queue/gi-interactive-queue/.
[24] *See* Stakeholder Committee Report at 9–11.
[25] U.S. Internal Revenue Service Energy Community Bonus Tax Credit map, available at: https://arcgis.netl.doe.gov/portal/apps/experiencebuilder/experience/?id=a2ce47d4721a477a8701bd0e08495e1d.

2. EAL's only near-term resources additions is hard-coded, and transparency into this decision is limited.[26] EAL "manually" replaced two combustion turbine (CT) units that the model selected in 2030 with a 733 MW combined cycle combustion turbine unit (CCCT), citing the higher energy coverage provided by the CCCT.[27] This decision is concerning for several reasons: First, it is not clear that Energy needs the CCCT as an energy resource, since the model selected CTs. Second, if Entergy does need an energy resource, solar and wind would likely be lower cost than a CCCT gas plant. Third, the CCCT will expose ratepayers to future costs from environmental regulation and gas fuel price volatility.
3. Large cost discrepancies between portfolios prevent meaningful comparison, and EAL analysis conflates scenarios and portfolios.[28] As a result of the nearly 1:1 mapping between scenarios and portfolios, when Entergy compares the cost and risk of various portfolios, it is actually comparing the cost and risk associated with very different versions of the future—not the risk associated with different actions the Company could take. Different load growth assumptions in each portfolio drive drastically different levels of resource builds, and as a result, drastically different portfolio costs. For example, Portfolio 3 has a total resource supply cost that is 194% (nearly 3x) higher than the preferred portfolio.[29] It is difficult to draw any conclusions about the relative advantages of each resource mix, because it is impossible to distinguish the cost impacts of different resource options from the cost impact of all the other variables that differ between the scenarios. EAL can instead model different portfolios—representative of different actions the Company can take—for

[26] *See* Stakeholder Committee Report at 12–13.
[27] EAL 2024 IRP at 77.
[28] *See* Stakeholder Committee Report at 13–16.
[29] EAL 2024 IRP at 107–108.

each future scenario and determine which portfolios are most robust and economic across a range of potential futures.

4. EAL's risk analysis is overly simplistic and should be replaced with iterative resource adequacy modeling.[30] The Company performed a "qualitative risk assessment" that includes reliability as well as executability and optionality metrics that are biased towards conventional resources. This type of qualitative assessment is not sufficiently robust to capture the resource adequacy of a system that includes renewables and battery storage in addition to fossil resources. Best practices in resource planning are to conduct reliability assessments iteratively with resource planning.[31] Portfolios can be evaluated against a range of weather and load events – based on a historical data set – to determine outage risk. Entergy should be evaluating the reliability of its portfolios in a resource adequacy model, rather than just qualitatively assessing each portfolio after the fact using a subjective ranking system.
5. EAL arbitrarily failed to include the full costs of new gas plants in its modeling for the 2024 IRP.[32] It omitted the costs for new gas pipeline construction and the contract cost of assuring firm gas service for new generation. Excluding these costs means that EAL is representing only a portion of the cost of investing in new gas generation.
6. Multiple other modeling limitations bias EAL's modeling towards coal and gas resources, including its omission of long-duration energy storage (LDES) from its modeling and its limited examination of the impacts of the U.S. Environmental Protection Agency's

[30] *See* Stakeholder Committee Report at 17–20.
[31] Hart, E. 2024. *Iterative Portfolio Optimization: An essential tool for reliable and clean electricity planning.* Sylvan Energy Analytics and GridLab. Available at: https://gridlab.org/wp-content/uploads/2024/12/GridLab-Sylvan_Iterative-Portfolio-Optimization.pdf.
[32] *See* Stakeholder Committee Report at 20–21.

Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants promulgated under Section 111 of the Clean Air Act on future gas builds.[33]

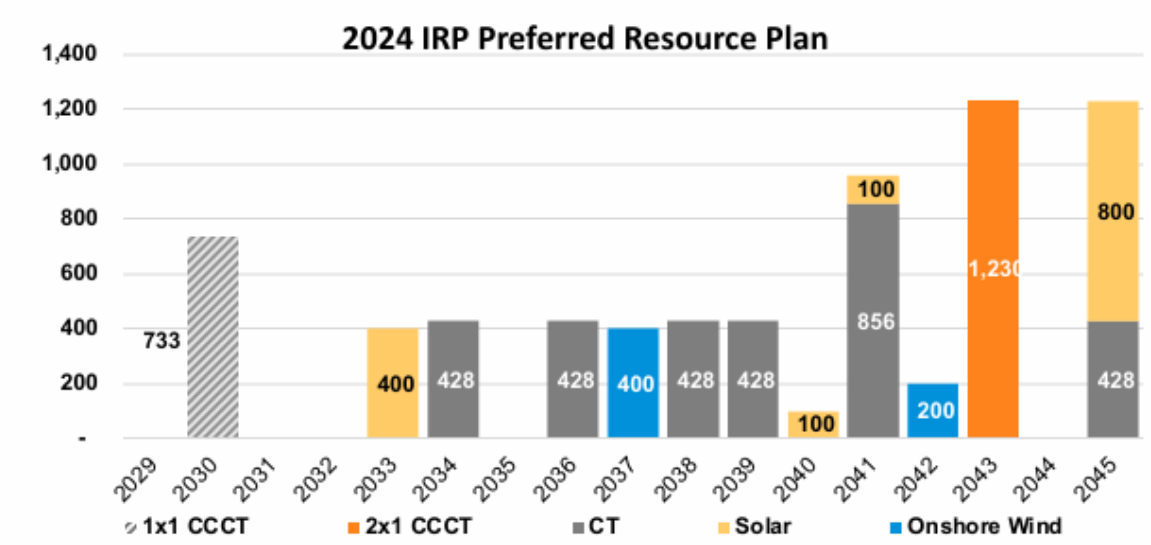
7. EAL is not sufficiently integrating transmission planning into its resource planning process so that resource options can be synthesized and optimized, as required by Section 4.7 of the RPGs.[34] EAL states that projected transmission projects are outside the scope of this proceeding, and that the Aurora model does not include transmission constraints of future projects. Model selection should not excuse Entergy from conducting robust resource planning that includes transmission requirements. While it is true that transmission planning analysis is inherently a separate exercise, EAL can and should still consider transmission alternatives and integrate the results from the separate transmission studies into its IRP processes, so that resource options can be synthesized and optimized.

These numerous concerns raised by SREA and other Stakeholders have not yet been addressed and resolved in the IRP filed on October 30, 2024, and the IRP has raised additional concerns. For instance, EAL's "2024 IRP Preferred Resource Plan" still includes a proposed 733 MW CCCT gas-fired thermal power plant as the only new near-term resource addition.[35]

[33] *See* Stakeholder Committee Report at 21–22.
[34] *See* Stakeholder Committee Report at 22-28; *See* RPGs Section 4.7 ("The transmission…should be integrated into the overall resource planning process, such that the analysis of generation options and demand response options can be synthesized and optimized.")
[35] EAL 2024 IRP at 91 (I.e., in addition to the "Planned Resources" selected by EAL's 2021 IRP.)

## 2024 IRP Preferred Resource Plan

Based on the modeling, analysis and findings discussed above, the EAL concludes Portfolio 2A CC as the Preferred Portfolio for the 2024 IRP.




Entergy "manually" added this proposed 733 MW CCCT into the preferred portfolio, in place of two CT units that the model selected under economic optimization.[36] The Stakeholder Committee Report outlined numerous concerns regarding the lack of transparency into this decision and corresponding risks related to the uncertain costs of compliance with environmental regulations. First, it is not clear that Entergy needs the CCCT as an energy resource – in fact, the model selected CTs rather than the CCCT, and it is likely that solar and wind would be lower cost energy resources than a CCCT gas plant. Additionally, the new gas plant "would be subject to a 40 percent capacity factor cap, or else would need to install [carbon capture and storage]" to comply with the U.S. Environmental Protection Agency's Clean Air Act regulations.[37]

[36] EAL 2024 IRP at 77 (The IRP states that "[t]he 1x1 CCCT in 2030 was added manually to improve EAL's energy coverage metric.")
[37] EAL 2024 IRP at 123124, Stakeholder Committee Report at 12-13.

### ii. Discussion of additional concerns regarding EAL's IRP process and results

#### a. Concerns regarding the proposed 446 MW gas plant that was "forced in"

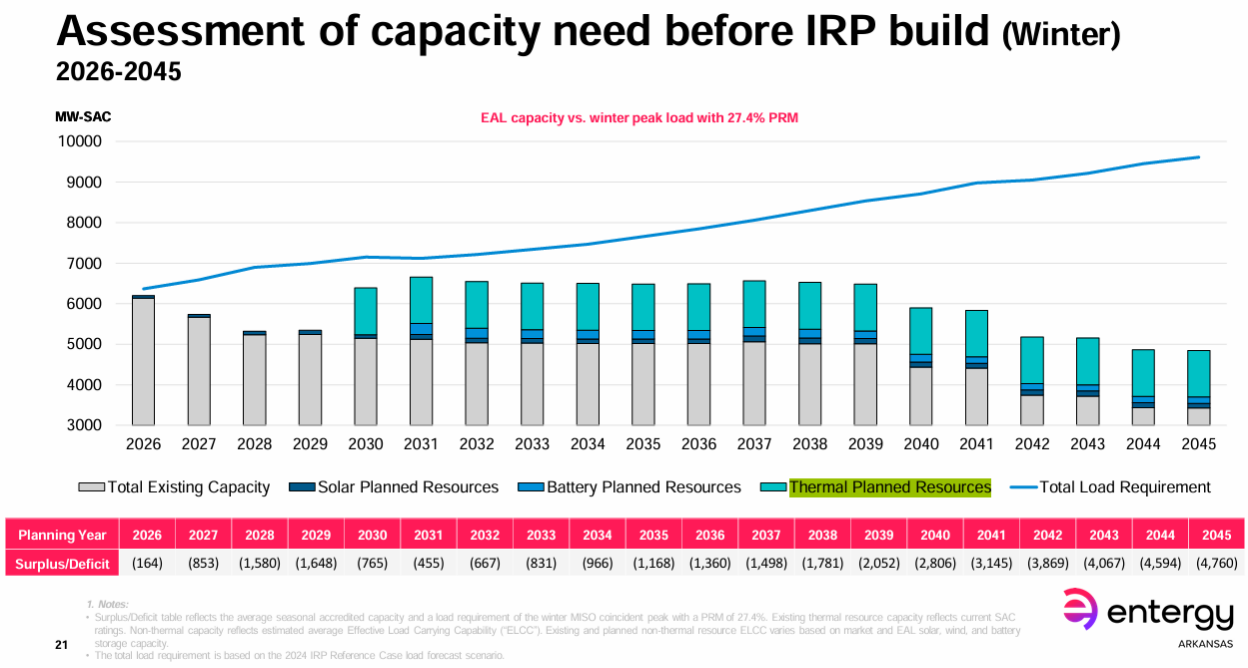
In addition to the 733 MW CCCT that EAL's was manually added to EAL's "Preferred Resource Plan" in 2029/2030, EAL's 2024 IRP also forces in a 446 MW hydrogen-capable simple-cycle natural gas combustion turbine (CT) in 2028 as part of its "Planned Resources."[38]

## Planned Resources

| Resource | Nameplate Capacity (MW) | Resource Type | COD[2] |
|---|---|---|---|
| Walnut Bend | 100 | Solar | 2024 |
| West Memphis | 180 | Solar | 2024 |
| Driver | 250 | Solar | 2024 |
| Flat Fork | 200 | Solar | 2025 |
| Forgeview | 200 | Solar | 2025 |
| 2022 RFP | up to 1000 MW | Solar | Target 2027 |
| 2028 CT | 446 | Gas | Target 2028 |
| 2029 CCCT | 733 Generic | Gas | Target 2029 |
| 2030 Solar | 600 Generic | Solar | Target 2030 |
| 2030 Battery | 350 Generic | Battery | Target 2030 |

From a process standpoint, this manual addition is particularly concerning given that it was not presented to stakeholders in the stakeholder meetings leading up to the IRP filings. For instance, EAL's August stakeholder meeting included power point presentation slides that outlined "Thermal Planned Resources," but included no "Thermal Planned resources" until 2030 (i.e., the 733 MW CCCT).[39]

[38] EAL IRP at 23; *See also* Docket No. 24-072-U.
[39] *See* 2024 IRP Stakeholder Meeting # 2 at Slides 20-21, August 15, 2024, available at Presentation title goes here.




By failing to disclose this "Planned Resource" in the stakeholder process of the IRP, EAL violated the requirement to "properly inform…the stakeholder Committee" pursuant to RPG 4.8, and likewise prevented stakeholder input in the Stakeholder Committee report filed with the IRP in October. Regarding this proposed 446 MW CT, SREA incorporates by reference the Direct Testimony of General Staff witness Jeffrey D. Bower filed in Docket No. 24-072, which stated the following concerns regarding the proposed 446 MW CT (i.e., the "LC5 Project"):

> **The decision to add the LC5 unit in 2028 was not the result of optimized capacity expansion modeling in the context of an IRP**. Neither the 2021 IRP nor the 2022 Mid-Cycle Update refer to the LC5 Project…In the 2024 IRP, the LC5 Project was "forced in" and assumed to be built, and was not considered in the buildout analysis. The capacity buildout modeling analysis started in 2030, and the Company manually added resources to the model prior to 2030, including LC5… While it is true that the 2022 Mid-Cycle Update did conclude that a CT was an eventual part of the long-term preferred portfolio, it also added significant solar, wind, and battery storage resources before adding the CT… **By not basing a resource decision on the optimized portfolio, EAL diminishes the value of the insight provided by the quantitative analysis conducted as part of the IRP, and may be introducing portfolio inefficiency or unnecessary cost on customers**… Since the Company did not issue such an RFP, there is no evidence to support the conclusion that there are no viable alternatives to LC5… **The Company should provide a comparison of the LC5 Project to other market opportunities for**

**resources that could meet EAL's resource needs, consistent with the RPGs, Section 4.6.** [40]

Moreover, the Arkansas Clean Energy Development Act of 2012 states that "[a]ll electric and natural gas public utilities subject to the jurisdiction of the Arkansas Public Service Commission ***shall consider clean energy and the use of renewable resources as part of any resource plan or natural gas procurement plan***."[41] EAL's Director of Resource Planning has likewise testified that "EAL is obligated "to consider" clean energy resources when reviewing its generation investment options."[42] EAL concedes that hydrogen cannot currently be reliably sourced and incorporated into its operations, and that a reliable level of hydrogen development may never by recorded in Arkansas, in which case the proposed LC5 unit will continue rely on natural gas indefinitely.[43] Nonetheless, EAL's Director of Resource Planning testified that "the Company believes it is meeting its obligations to consider clean energy generation" pursuant to the Arkansas Clean Energy Development Act, simply because the proposed 466 MW gas plant "could [hypothetically] facilitate clean energy generation to some degree in the future."[44] Just as customers are not permitted to "game" the Commission's Net-Metering Rules and the Cost-Shifting Prevention Act,[45] EAL should likewise not be permitted to game the Arkansas Clean Energy Development Act by adding more gas to its already relatively gas-heavy resource portfolio based on the hypothetical future possibility of utilizing a percentage of hydrogen,[46] without first issuing an RFP that properly considers the clean and renewable resources that are proven

[40] Docket No. 22-072-U, Redacted Direct Testimony of Jeffrey D. Bower at 17-20, 36, available at https://apps.apsc.arkansas.gov/pdf/24/24-072-U_67_1.pdf (emphasis added).
[41] Ark. Code Ann. § 23-18-702. (Emphasis added).
[42] Docket No. 24-072-U, Rebuttal Testimony of William J. Cunningham at 24 (Doc. # 80), available at https://apps.apsc.arkansas.gov/pdf/24/24-072-U_80_1.pdf.
[43] Docket No. 24-072-U, REDACTED Direct Testimony of William J. Cunningham at 14, 24-25.
[44] Docket No. 24-072-U, Rebuttal Testimony of William J. Cunningham at 24.
[45] *See* Net-Metering Rules Section 5. Rules to Guard Against Gaming.
[46] *See* EAL 2024 IRP at 21, Chart 2: 2023 EAL Fuel Mix ("EAL relies on 2,070 MW of natural gas-fired generation." more than 10 times its current Solar portfolio of 1.2%.)

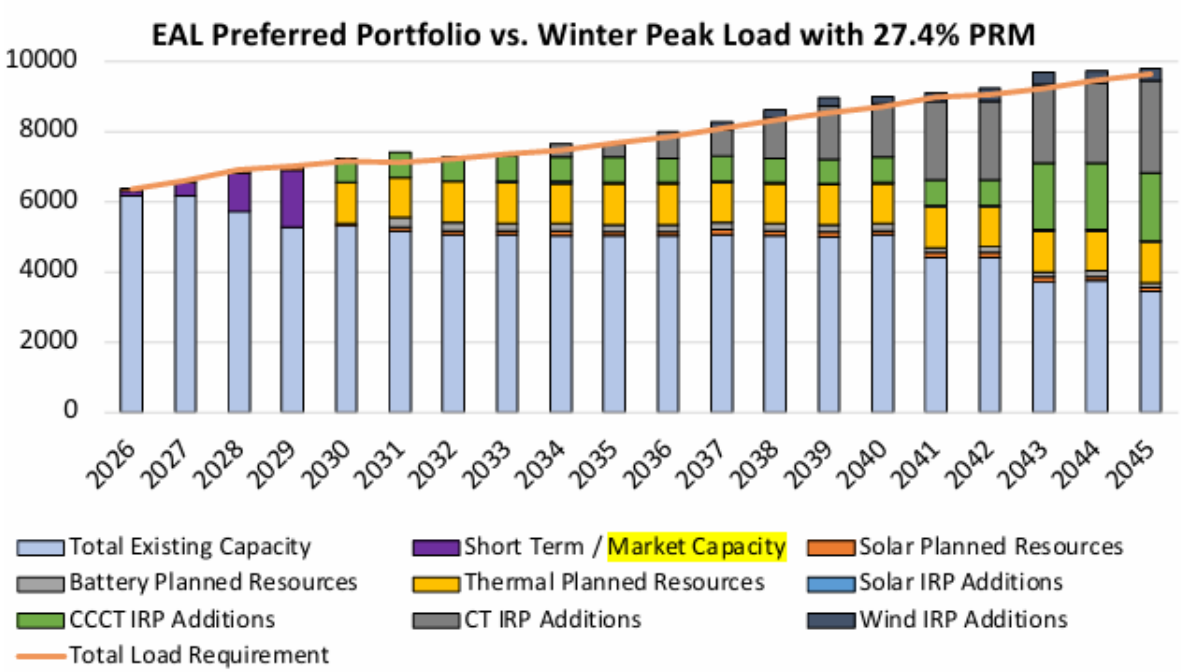
technologies and commercially ready, including wind, solar, and storage, along with strategic transmission investment.[47] The Arkansas Clean Energy Development Act specifically authorizes the Commission to "encourage or require electric and natural gas public utilities subject to its jurisdiction to consider clean energy or renewable energy resources, or both, as part of any resource plan or natural gas procurement plan."[48] Therefore, the Commission's statutory authority supports requiring EAL to issue an RFP that is open to proven, commercially-ready clean and renewable energy resources,[49] rather than arbitrarily limiting its procurement to gas-fired resources such as the proposed 446 MW CT and the 733 MW CCCT, that only have the potential for generating a percentage of clean energy (i.e., up to 30%) in the future with additional investment if and "when hydrogen is commercially available in Arkansas."[50]

**b. Overreliance on market capacity in the short term**

Additionally, EAL's "Preferred Portfolio" indicates that it is planning to rely on "Short Term/Market Capacity" to meet its capacity shortfall until 2030 when the proposed 733 MW CCCT is expected to come online.[51] However, EAL's Action Plan does not justify the decision

[47] *See* Tennessee Valley Authority Draft 2025 IRP at 8 ("Carbon-free Commercial Ready Focus Strategy. Emphasizes proven carbon-free technologies like wind, solar, and storage, at both utility-scale and through customer partnerships, along with strategic transmission investment."), available at 2025 Draft Integrated Resource Plan Volume 1.
[48] Ark. Code Ann. § 23-18-703(a)(2)(A).
[49] *See* Tennessee Valley Authority Draft 2025 IRP at 8 ("Carbon-free Commercial Ready Focus Strategy. Emphasizes proven carbon-free technologies like wind, solar, and storage, at both utility-scale and through customer partnerships, along with strategic transmission investment."), available at 2025 Draft Integrated Resource Plan Volume 1.
[50] Docket No. 24-072-U, REDACTED Direct Testimony of William J. Cunningham at 14, 24-25 (Doc. # 22) (" I am aware that hydrogen generation is considered a clean energy technology and believe that hydrogen generation would accomplish the goals of the Arkansas Clean Energy Development Act…[w]hen hydrogen can be reliably sourced and incorporated into LC5's operations…if that level of a hydrogen development is never reached in Arkansas, LC5 will continue to operate on natural gas"); *See also* Docket No. 24-072-U, Direct Testimony of Staff witness Bower at 24-26 ("The Application notes that the proposed LC5 turbine will be "capable of co-firing hydrogen with additional investment… The Company states that the ability to co-fire the resource with hydrogen helps meet the goals of the Arkansas Clean Energy Development Act… "when hydrogen is commercially available in Arkansas," and will "reduce emissions from LC5"… In total, the evidence provided by the Company at this point does not yet support a conclusion that co-firing with hydrogen will be a cleaner option and, as such, that the additional costs associated with co-firing with hydrogen should be considered or determined to be in the public interest, according to the Arkansas Clean Energy Development Act of 2012.")
[51] *See* EAL 2024 IRP at 91-93.

to rely on market purchases during this timeframe.[52] Notably, EAL has previously testified that acquiring a generation resource is "less risky for customers than relying on the spot market for energy and capacity for its long-term planning."[53] Likewise, the Commission has previously found that "it is more reasonable and less risky for [EAL] to acquire [a capacity resource] than to rely on the MISO capacity market."[54] Entergy should analyze whether procuring battery capacity by 2027 or 2028 would be a lower cost way to fill its capacity needs than relying on short-term market capacity and the proposed 446 MW CT in Docket No. 24-072-U.




EAL's Action Plan asserts that the "CCCT instead of two CTs in 2030 provides better energy coverage, mitigating market exposure."[55] Adding battery storage during this timeframe (i.e., before 2030) can also mitigate market exposure and this is something EAL could have modeled and

[52] *Id.*
[53] Docket No. 14-118-U, Order No. 7 at 42 summarizing the testimony of EAL witness Matt Wolf, available at https://apps.apsc.arkansas.gov/pdf/14/14-118-U_146_1.pdf.
[54] *Id.* at 68.
[55] *Id.* at 92.

considered as an alternative strategy. Other utilities in the region are deploying battery storage as part of their portfolios. For instance, Georgia Power Company agreed to issue an RFP on an expedited schedule for 500 MW Battery Energy Storage Resources with commercial operation dates no later than December 1, 2027.[56] The Commission should follow this model to reduce market exposure prior to 2030, and likewise allow EAL to reliably satisfy growing demand while simultaneously reducing the amount of new gas that EAL is planning to add to its rate base.

**c. Lacking reasonable consideration of wind resources**

Further, SREA notes that EAL's consideration of wind resources in the IRP is particularly lacking. The capacity expansion modeling results recently presented by Entergy New Orleans indicated that wind energy is a good option for helping Entergy meet its winter capacity needs.[57] However, EAL's Action Plan indicates that it is not planning to add any new wind resources until 2037, despite having energy and capacity needs much sooner, particularly in the winter.[58] Further, EAL states that it "elected not to include existing or new-build AC interconnected SPP wind as an alternative due to the lack of available hedging mechanisms available to EAL for such resources."[59] However, as noted above, EAL does not outline any plan of "hedging mechanisms" for its plan to rely on market capacity purchases until 2030, or its plan to invest heavily in natural gas, a resource with fluctuating fuel prices. Entergy New Orleans did not express any such reservations about wind energy in its IRP when presenting its capacity expansion modeling to stakeholders in October. However, since Entergy New Orleans was not trying to force new gas

[56] Georgia Public Service Commission Docket No. 55378, Order Adopting Stipulated Settlement Agreement at p. 19 ¶ 9, April 26, 2024, available at https://psc.ga.gov/search/facts-document/?documentId=218484.
[57] *See* Docket UD-23-01, ENO 2024 IRP Technical Meeting # 4, October 2, 2024, available at tech-meeting-4-materials.pdf
[58] *See* EAL IRP at 28-29.
[59] EAL IRP At 52 ("In response to prior stakeholder feedback regarding modeling SPP wind resources, EAL included assumptions for SPP wind delivered via HVDC line in the 2024 IRP. However, EAL elected not to include existing or new-build AC interconnected SPP wind as an alternative due to the lack of available hedging mechanisms available to EAL for such resources.")

plants in the near term, this could explain why it was more open to considering wind energy as a viable option to meet its winter energy and capacity needs. [60]

**d. Overreliance on gas plants**

Robust and fair accreditation of all resources is essential not just to make informed investment decisions, but to ensure reliability and enhance resiliency against future weather-related stress.[61] EAL's overreliance on gas power plants renders it vulnerable to blackouts, gas supply disruptions, and high fuel costs during winter weather events. EAL's IRP indicates that "the model favored gas resources as they provide consistent capacity accreditation levels in both the summer and winter seasons."[62] While MISO capacity accreditation is certainly a factor that should be considered in EAL's resource planning, it should not be the dispositive factor. MISO currently uses ELCC for capacity accreditation of wind and solar resources.[63] ELCC is a statistical measure from simulations of many scenarios, but not a guarantee of resource availability in any particular scenario. SREA is particularly concerned that the capacity accreditation framework does not accurately reflect the reliability contributions and risks of different resource types, And overall, there are elements of MISO's framework which are still being addressed and require greater stakeholder scrutiny. As outlined in the Stakeholder Committee Report, EAL's capacity accreditation of batteries is unrealistically low, and we encourage a better examination of optimal dispatch of batteries during extreme peak demand scenarios.[64] Further, a recent Winter Storm

[60] *See* EAL IRP at 123, Stakeholder Committee Report at 12 (Noting that "Entergy's only near-term resource addition is hard-coded, and transparency into this decision is limited.").
[61] *See Winter Storm Elliott, An independent review of Southern Company's performance during the historic events of December 22-25, 2022*, at 1, 22 available at https://www.southernrenewable.org/uploads/1/9/8/9/19892499/winter_storm_elliott_report_southern_renewable_energy_association.pdf ("Winter Storm Elliott Report").
[62] EAL IRP at 62.
[63] *See* MISO Planning Year 2023-2024 Winder and Solar Capacity Credit Report, March 2023, available at https://cdn.misoenergy.org/2023%20Wind%20and%20Solar%20Capacity%20Credit%20Report628118.pdf.
[64] *See* Stakeholder Committee Report at 5-9.

Elliot Report notes that "during this time, the thermal generating fleet across the eastern interconnection experienced widespread outages, fuel supply disruptions, and unavailability."[65] Key findings include that thermal resources underperformed and there were significant correlated outages due to extreme cold.[66] Meanwhile, "solar performed well above its expected contribution [i.e., winter accreditation] during Winter Storm Elliott."[67] As recommended in the Winter Storm Elliott Report, EAL should improve methods for evaluating the capacity contribution of thermal resources to ensure that these resources are not being over accredited compared to renewable resources, and likewise ensure that it is not placing too much faith in resources that have historically underperformed their capacity accreditation during crucial times.[68]

**e. Action Plan not complaint with RPGs**

Finally, EAL's "Action Plan" also does not "include a description of and timeline associated with the utilities competitive bidding process," as required by Section 4.6 of the RPGs.[69] EAL's "2024 IRP Action Plan" includes no plans to issue any future Requests for Proposals ("RFPs") prior to moving forward with the resources identified in the "Preferred Resource Plan," nor does it even include any timeline and description of the competitive bidding process that EAL intends to use.[70] Instead, the Action Plan simply states the following:

[65] Winter Storm Elliott Report at 2; *see also FERC, NERC Release Final Report on Lessons from Winter Storm Elliott*, Nov. 7, 2023, available at https://www.ferc.gov/news-events/news/ferc-nerc-release-final-report-lessons-winter-storm-elliott.
[66] *See* Winter Storm Elliott Report at 8, Figure 4.
[67] *Id*. at 18.
[68] *Id.* at 24. ("Rather than discounting by average forced outage rates, planning should reflect the real correlated outage risk of these resources during extreme events. Consistent with the evaluation approach for wind and solar resources, this revised methodology would provide a more accurate picture of available capacity during winter peak demands and extreme weather events.")
[69] RPGs Section 4.6, The Action Plan ("The utility shall submit an action plan consisting of the tasks that are necessary to implement the preferred Resource Plan. The action plan shall include a description of and timeline associated with the utility's competitive bidding process. A self-build option must be compared to market opportunities.")
[70] EAL 2024 IRP at 92-93.

> In the near-term, renewable resource additions will be made based on specific project proposals…In the near term, resource additions will be made based on specific projects.[71]
>
> EAL will seek approval from the APSC to construct a CT with a plan to commence commercial operations in Q4 2028, but no later than three years after the deactivation of Lake Catherine Unit 4. EAL will also continue to evaluate utilization of the remaining interconnection rights from Lake Catherine Unit 4…
>
> EAL will seek to develop a diverse mix of resources to meet its customers capacity and energy needs post-2028. The mix is expected to include a combination of solar, battery and gas resources to ensure capacity, energy, and reliability in supporting integration of renewable resources, and will be evaluated in the future IRPs. [72]

The Action Plan does not specify how and when developers of renewable resources or gas CTs and CCCTs should propose "specific projects" to EAL for its review and consideration (e.g., through formal RFPs or unsolicited proposals). EAL's IRP indicates that it has not issued an RFP since June of 2022.[73] To remedy EAL's non-compliance with the RPGs, the Commission should direct it to issue an all-source RFP based on the timeframe of capacity and energy needs identified in the IRP, as further discussed herein.[74]

### C. Recommendation for All-Source RFPs

SREA recommends that the Commission direct EAL to issue an all-source RFP that is appropriately tailored to meet its projected capacity needs following the conclusion of the 2024 IRP and prior to moving forward with the development of any particular generation resource (or contract execution), including the proposed 446 MW CT at issue in Docket No. 24-072-U.

> **All-source procurement** means that whenever a utility (and its regulators) believe it is time to acquire new generation resources, it conducts a unified resource acquisition process. In that process, the requirements for capacity or generation

[71] *Id.* at 92.
[72] *Id.*at 93.
[73] *Id.* at 18 ("EAL completed the RFP issued In June 2022 for Renewable Resources."); *see also*, EAL IRP at 23 "
[74] *Id.* at 29 ("EAL could see a winter deficit as early as 2027 and a summer deficit by 2028."); *Id.* at 30. (Showing an energy deficit as early as Summer 2028, increasing substantially by Summer 2031.).

> resources are neutral with respect to the full range of potential resources or combinations of resources available in the market.[75]

Having a procurement plan is required by the RPGs,[76] and issuing an all-source RFP before acquiring new generation resources is consistent with best resource planning practices.[77] EAL's IRP indicates that it may have a capacity shortfall as early as 2027, thus bolstering the need for a timely competitive procurement plan.[78] As noted by General Staff witness Bower in Docket No. 24-072-U, "[s]ince [EAL] did not issue such an RFP, there is no evidence to support the conclusion that there are no viable alternatives to LC5."[79] Staff witness Bower likewise recommends that EAL "should provide a comparison of the LC5 Project to other market opportunities for resources that could meet EAL's resource needs, consistent with the RPGs, Section 4.6."[80] AG witness Norwood also recommended the following:

> The Commission…order EAL to defer its plan to move forward with construction of LC5 until the Company solicits competitive proposals for generating resources and long-term PPAs as potential alternatives to LC5 and conducts cost/benefit analysis to determine which alternative is the optimal choice for supplying EAL's forecasted capacity needs.[81]

The easiest way to require EAL to provide such a comparison and cost/benefit analysis as recommended by its General Staff and the AG is to direct EAL to issue an all-source RFP that is

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[75] John Wilson, Mike O'Boyle, Ron Lehr, Mark Detsky, *Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement* (April 2020) at 1, available at https://energyinnovation.org/wp-content/uploads/2020/04/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices.pdf.

[76] Section 4.6 of the RPGs states that "The action plan shall include a description of and timeline associated with the utilities competitive bidding process."

[77] *See* Synapse Energy Economics, *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future,* November 2024 (Revised December 6, 2024) at 31, available at https://www.synapse-energy.com/sites/default/files/IRP_Best_Practices_2024_Synapse_LBNL_24-061_1.pdf ("The most accurate way to develop present-day cost expectations for most resources is through real market data obtained directly from project developers or through competitive, all-source requests for proposals."); *see also* Wilson et. al., *supra* note 64. All-Source-Utility-Electricity-Generation-Procurement-Best-Practices.pdf

[78] EAL IRP at 29 ("Considering deactivation assumptions and load growth, EAL could see a winter deficit as early as 2027 and a summer deficit by 2028.")

[79] Docket No. 24-072-U, Redacted Direct Testimony of Jeffrey D. Bower at 20-21 (Doc. # 67), available at https://apps.apsc.arkansas.gov/pdf/24/24-072-U_67_1.pdf.

[80] *Id.* at 36.

[81] Docket No. 24-072-U, Errata Redacted Direct Testimony of Scott Norwood at 24 (Doc. # 77), available at Microsoft Word - V3 Norwood Direct to Redact.

appropriately tailored to meet its projected capacity needs. As explained by Staff witness Bower, such an RFP should not be arbitrarily limited to "existing resources, within an emphasis on natural gas resources,"[82] particularly considering that EAL's IRP does not project a capacity need until winter 2027, when it plans to retire the 522 MW LC4 unit.[83] Instead unreasonably and arbitrarily limited, the RFP should be open to any resources that will be in service at the time the capacity need is forecasted to materialize.

At the conclusion of an IRP process, it has become industry standard to issue an RFP for renewable energy resources. Obtaining real market data directly from project developers (including SREA members) via RFPs is the most accurate way to develop present day cost expectations for most resources, particularly since the costs to procure new resources change constantly.[84] RFPs allow utilities to test the market against IRP assumptions and use competition to act in ratepayers' best interests. RFPs should be flexible, enabling renewable energy developers to bid in many different project sizes, locations, technologies, and contractual types.[85] Issuing RFPs is a zero-risk action item that should be included with every IRP, including this one.

Further, the shortcomings of EAL's resource modeling and corresponding "Action Plan" could be mitigated by requiring EAL to issue an all-source RFP.[86] The "Action Plan" section of EAL's 2024 IRP states that "Peaking capacity, such as a CT, is favored across all scenarios in the near term to meet winter capacity needs and integration of renewables."[87] It also states that "***Battery storage may also be cost-effective peaking capacity if built alongside renewables to***

[82] Docket No. 24-072-U, Redacted Direct Testimony of Jeffrey D. Bower at 19.
[83] *Id.* at 21.
[84] *See* Synapse Energy Economics, *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future* at 31.
[85] *See* Wilson et. al., *supra* note 64 at 31 (Model Process and For Bid Evaluation).
[86] EAL 2024 IRP at 88.
[87] *Id.*

***realize capital, O&M, land, and interconnection cost savings***."[88] However, despite finding that "battery storage may also be cost-effective peaking capacity," and including 350 MW of Battery resources in the "Planned Resources" section,[89] EAL's 2024 IRP Action Plan includes no plans to actually procure battery energy storage resources.[90] EAL's "Preferred Resource Plan" indicates that it plans to add a 733 MW CCCT in 2030, 1,400 of additional CCCTs between 2033- 2045, 2,996 MW of CTs between 2034-2045, but no battery storage between now and 2045.[91] It would not be prudent for EAL to move forward with one resource without evaluating the market for alternative resources through competitive procurement processes such as an all-source RFP, particularly since EAL's IRP indicates that "battery storage may also be cost-effective peaking capacity."[92] Likewise, it would not be prudent for the Commission to wait until EAL files an Application seeking approval of the 733 MW CCCT that EAL plans to construction in 2030 to direct EAL to issue an RFP that is open to battery storage.[93] By then it could be too late to properly evaluate market options before EAL's capacity needs materialize. Instead, the Commission should be proactive in ensuring that EAL truly considers all resource options before moving forward with a particular decision, consistent with the RPGs, which state that "Resource planning…requires consideration of all reasonable resources for meeting the demand for a utility's product."[94]

To the extent that time constraints do not allow for a lengthy procurement process to meet EAL's projected short-term capacity needs, which EAL's IRP indicates may materialize as early as winter 2027, SREA recommends utilizing an expedited RFP process. For example, as part of the settlement agreement for Georgia Power Company's 2023 IRP Update, Georgia Power

[88] *Id.* (Emphasis added).
[89] *Id.* at 23 (350 MW Battery Target 2030).
[90] *Id.* at 93.
[91] *Id.* at 91.
[92] *Id.* at 88.
[93] *Id.* at 11. 2024 IRP Preferred Resource Plan.
[94] RPGs Section 2.

Company agreed to issue an RFP on an expedited schedule for 500 MW Battery Energy Storage Resources with commercial operation dates no later than December 1, 2027.[95]

> For the remaining 500 MW of BESS resources requested by the Company in this case that are needed to serve customers during the winter of 2027/2028, the Company agrees to issue a narrowly tailored RFP on an expedited schedule. The RFP will seek BESS resources with commercial operation dates no later than December 1, 2027. The RFP will follow the solicitation, product requirements, regulatory accommodations, and schedule found in Attachment C to this Stipulation. The amount of capacity ultimately procured through this expedited RFP will be determined during the certification proceeding and be an amount equal to the Company's projected capacity needs for the winter of 2027/2028 at that time.[96]

For capacity needed in an expedited timeframe, SREA recommends that the Commission direct EAL to follow this example but require commercial operation dates based on the capacity needs identified in EAL's IRP.

Further, the Commission should consider opening a new proceeding to seek comments from parties on the design of a post-IRP procurement process. At a minimum, the Commission should direct EAL to provide its RFP schedule for the next five years in a compliance filing in this docket and provide notice of future RFPs either in this docket or a dedicated RFP docket.[97] SREA would appreciate the opportunity to provide its insights into best procurement practices to the Commission in a pre-RFP comment period.

[95] Georgia Public Service Commission Docket No. 55378, Order Adopting Stipulated Settlement Agreement at p. 19 ¶ 9, April 26, 2024, available at https://psc.ga.gov/search/facts-document/?documentId=218484.
[96] *Id.*
[97] *See e.g.,* GPSC Docket No. 55268, Georgia Power Company's 2029-2031 All Source Capacity RFP, available at https://psc.ga.gov/search/facts-docket/?docketId=55268.

**D. Recommendation for more customer-centered resource options to strategically meet load growth from surging industries.**

For the past two decades, the utility industry has been in a low growth period, averaging below 1% growth annually.[98] However, a recent report from Grid Strategies, "*Strategic Industries Surging: Driving US Power Demand,*" shows that nationwide electricity demand is forecasted to increase by 15.8% by 2029, with the main drivers of this load growth being data centers and manufacturing.[99] The Grid Strategies Report notes the following challenge for responding to this emerging load growth:

> There is often a mismatch between development of these strategic industries and the procurement of new generation and transmission to meet load growth. It may take only one or two years to connect new load to the grid, while it may take over four years to bring new generation online and even longer to build new transmission, including connections between regions to enable power sharing during peak periods.

To proactively prepare for this load growth, the Commission should direct utilities to develop customer-centered options that will successfully attract new economic development to the state, while at the same time protecting ratepayers by ensuring that new load puts downward pressure on rates.

In both organized markets and vertically-integrated utilities, opportunities are available for customers to more directly obtain the benefits of renewable energy projects. There is high interest in such opportunities and programs. Last year, EAL's former Director of Resource Planning filed testimony stating that "clean energy options are also a critical economic development tool for the Company to be able to offer prospective customers seeking to locate in Arkansas, as well for

[98] John D. Wilson, Zach Zimmerman, and Rob Gramlich, *Strategic Industries Surging: Driving US Power Demand,* GRID STRATEGIES, December 2024, at 5, available at https://gridstrategiesllc.com/wp-content/uploads/National-Load-Growth-Report-2024.pdf.
[99] *Id*. at 3.

existing customers seeking to expand or cement their operations in the state."[100] Likewise, Entergy Louisiana's CEO Phillip May stated that "customers want 'additionality,' or new solar on the system to meet their demand…There's a huge appetite for this with companies that are looking to reduce their carbon footprint. "[101]

As noted in its 2024 IRP, EAL already has two subscription tariffs that provide opportunities for customers to access the benefits of renewable energy, including its Green Promise tariff in Docket No. 21-054-TF and Go ZERO tariff in Docket No. 23-037-TF.[102] However, Green Promise only offers 280 MW of capacity,[103] and Go Zero is likewise substantially limited by the current capacity of solar generation that EAL owns (i.e., "five solar resources totaling 930 MW planned to achieve commercial operations between 2024 and 2025.").[104] Therefore, in order to help Arkansas keep pace with economic development in neighboring states, the Commission should expand opportunities for customers to invest in renewable energy resources in ways that will facilitate the development of additional renewable resources in Arkansas. Developing additional opportunities for customers to access clean and renewable energy resources would be consistent with the Commission's authority under the Arkansas Clean Energy Development Act, which states the following:

> The Arkansas Public Service Commission may consider, propose, develop, solicit, approve, implement, and monitor measures by electric and natural gas public

[100] APSC Docket No. 23-037-TF, Direct Testimony of Kurtis W. Castleberry at 4, available at https://apps.apsc.arkansas.gov/pdf/23/23-037-TF_3_1.pdf.

[101] John Engel, *Why this gas-heavy utility is going (really) big on solar*, RENEWABLE ENERGY WORLD (April 17, 2023), available at https://www.renewableenergyworld.com/podcasts/why-this-gas-heavy-utility-is-going-really-big-on-solar/.

[102] EAL IRP at 25 ("In response to customer demand and a business environment that is increasingly focused on sustainability and renewable energy goals, EAL sought and received APSC approval of its Green Promise tariff in Docket No. 21-054-TF and Go ZERO tariff in Docket No. 23-037-TF. These voluntary products provide participating customers with direct access to renewable and clean energy attributes and support economic development in Arkansas.")

[103] *See* Docket No. 21-054-TF (Doc. # 135), Attachment B (Chicot Solar 50MW, Searcy Solar 50 MW, and West Memphis Solar 180 MW), available at https://apps.apsc.arkansas.gov/olsv2/Docket_Search_Documents.asp?Docket=21-054-TF&DocNumVal=135.

[104] *See* EAL 2024 IRP at 18.

> utilities subject to its jurisdiction that cause the electric and natural gas public utilities to incur costs of service and investments that utilize, generate, or involve clean energy resources or renewable energy resources.[105]

As further discussed below, some customer-centered options to meet emerging load growth include bring-your-own new clean energy programs, green tariffs that are tied to the procurement of new clean energy, and clean transmission tariffs.

**1. Bring-your-own new clean energy and storage**

Examples of bring-your-own clean energy programs include Duke's Energy's Resource Acceleration Option,[106] Wisconsin Power & Light's Renewable Energy Partner Program and Indiana Michigan Power's Bring Your Own Contract program.[107] Additionally, the Louisiana Public Service Commission ("LPSC") recently approved final rules to research and evaluate customer-centered options for all electric customer classes.[108] The rules create a framework for electric utilities to receive and consider renewable Power Purchase Agreements ("PPAs") brought to the utility by end use customers (i.e., "Sleeved PPAs").[109] Sleeved PPAs are negotiated between an end-use customer of a utility and a renewable generation developer or owner.[110] The rules provide for the utility to be directly involved in a Sleeved PPA transaction, but the economic costs

[105] Ark. Code Ann. § 23-18-703(a)(1).
[106] Duke Energy Gives North, South Carolina Customers More Access to Renewable Energy ("Duke added a Resource Acceleration Option program (RAO Option), under which eligible customers may also contract with developers of solar projects not otherwise selected during the utility's procurement process to accelerate the construction of renewable energy facilities. Capacity contracted under the RAO program would be in addition to Duke's annual procurements.").
[107] *See* CEBA, U.S. Utility Green Tariff Report: January 2023 Update, January 2023; *see also* Public Service Commission of Wisconsin.
[108] *See e.g.*, LPSC Docket No. R-35462, *In re: Rulemaking to Research and Evaluate Customer-Centered Options For all Electric Customer Classes as well as Other Regulatory Environment*., General Order No. 8-1-2024, available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=XjHX15Kr5NI%3D. (Approving rules to create a framework for electric utilities to receive and consider renewable PPAs brought to the utility by end use customers. The rules provide for the utility to be directly involved in a "Sleeved PPA" transaction, but the economic costs and benefits of the Sleeved PPA are borne by the participating end-use customer, not all customers").
[109] Louisiana Public Service Commission Docket No. R-35462, Staff's Final Phase I Report, https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=oXpuInwkJfg%3d.
[110] *Id*. at 31.

and benefits of the Sleeved PPA are borne by the participating end-use customer, not all customers.[111] The LPSC stated the following regarding the Rule's purpose:

> Electric utilities and its customers are striving to find appropriate solutions that allow customers to have access to the attributes of renewable generation that they need in order to remain competitive in the national and global economy. The Commission promulgates this Rule to provide one such potential solution that allows large commercial and industrial customers to gain access to attributes of renewable generation needed to sustain and grow economic development in Louisiana.[112]

The APSC should also consider sleeved PPAs as one potential solution to allow large commercial and industrial customers to gain access to attributes of renewable generation needed to sustain and grow economic development in Arkansas.

Additionally, Entergy New Orleans included a "Bring Your Own Battery ("BYOB") Demand Response Pilot Expansion" as part of its Action Plan for its 2024 IRP, which was recently filed in December.[113] ENO's BYOB program targets residential customers with solar-connected battery systems.[114] According to ENO's 2024 IRP, "Batteries are dispatched to address ENO's grid needs and participants are incentivized for allowing ENO to control their batteries and export energy."[115] ENO's 2024 IRP states that this BYOB program is cost-effective, and assumes that batteries are paired with solar.[116] SREA recommends that the Commission direct EAL to develop and file a similar BYOB pilot program in Arkansas, but also consider opportunities for participation by non-residential customers.

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[111] *Id*.
[112] LPSC General Order No. 8-1-2024, Attachment 4 – Proposed Sleeved PPA Rule at 3.
[113] ENO 2024 IRP at 70-71, 77, 2024 IRP Action Plan ("ENO will pursue continuation of the BYOB DR pilot that was conducted in 2023 and 2024 and seek further expansion of the program through the DER Programs docket (UD-24-02)."), available at 2024-Integrated-Resource-Plan-Report.pdf
[114] *Id*. at 70
[115] *Id*.
[116] *Id*. at 26.

**2. Green tariffs tied to the procurement of new clean energy**

Similarly, Georgia Power's Customer and Renewable Energy Subscription ("CARES") program pairs generation and load using a subscription tariff.[117] The Georgia PSC added this program to Georgia Power's 2022 IRP proceeding, authorizing it to deliver up to 2,100 MW renewable energy. Additionally, the LPSC has approved a Geaux Green Option Rider for Entergy Louisiana that is tied to the expedited procurement of 3 GW of new solar energy.[118] A key difference between these green subscription tariffs and EAL's current tariff offerings is that EAL's current green tariff offerings match load with existing generation, whereas these programs in Georgia and Louisiana match load with new generation, thus helping customers demonstrate additionality of renewable resources while helping the utility meet load growth.[119]

**3. Clean Transmission Tariffs**

Finally, the Commission should direct EAL to develop a Clean Transmission Tariff.[120] Clean Transmission Tariffs are innovative ways utilities across the country are providing individualized portfolios of new carbon-free energy to commercial and industrial customers.[121] For instance, the Clean Transmission Tariff proposed for Google by NV energy created a framework

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[117] Georgia Power Company, 2022 Integrated Resource Plan. [https://psc.ga.gov/search/facts-document/?documentId=188519]

[118] LPSC Docket No. U-36697, *In re: Application for approval of an alternative market-based mechanism Process seeking to secure up to3,000MWof solar resources, including certification of those resources, expansion of the Geaux Green Option Rider, and approval of a new renewable tariff*. https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=MO4weQw%2F0j0%3D.

[119] *See* Why this gas-heavy utility is going (really) big on solar; *see also* Green Tariffs and Additionality: Do Voluntary Renewable Programs Accelerate the Energy Transition? — DSIRE Insight ("For states where renewable or clean energy requirements are not satisfied with RECs, other adjustments are necessary to make sure that green tariff renewable energy is additional.")

[120] *See* Clean Transition Tariffs: An innovative way to accelerate power sector emission reductions - Center for Climate and Energy Solutions Center for Climate and Energy Solutions.(" In a relatively short period of time, CTTs and [Accelerating Clean Energy] tariffs have creatively established a new regulatory pathway to progress promising early-mover clean firm power generation. It is not hard to envision how these tariffs could help companies and their utility partners to deploy, scale, and incorporate other new clean firm technologies like advanced nuclear or even more established clean technologies like offshore and onshore wind or large solar projects coupled with energy storage.").

[121] *Id.*

that EAL should replicate with customers in Arkansas.[122] Objectives and benefits of the Clean Transition Tariff include adding new clean firm capacity resources to the grid, increasing customer choice and flexibility, and holding non-participants harmless from the difference in costs.[123] Additionally, Duke Energy and some of its major customers have announced that they plan to file Accelerating Clean Energy ("ACE") tariffs, which would include a CTT, for approval by North Carolina and South Carolina's utility commissions.[124] These tariffs could help EAL and SREA's members to deploy and scale clean technologies coupled with longer duration energy storage.[125] Therefore, the Commission should direct EAL to develop a tariff following this new model, and make it easier for customers to invest in clean energy projects that provide firm capacity to the grid.[126]

**4. Conclusion**

The Commission should direct EAL to develop and provide these opportunities for customers to gain benefits of renewable energy resources directly as a means to promote economic growth and rate stability in the state. These opportunities will leverage growing interest by large customers to invest directly into renewable energy projects, and support customers' need to

[122] NV Energy seeks new tariff to supply Google with 24/7 power from Fervo geothermal plant | Utility Dive. ("While this energy supply agreement in Nevada will only provide enough energy to supply Google's data center, [Google's global head of energy market development, Caroline Golin] said the goal for the tariff was to create a framework that other customers and other states could replicate.")

[123] *Id.* ("The tariff is intended to spur the deployment of more carbon-free dispatchable energy resources, like geothermal or nuclear generation, by allowing energy users to make up the difference between the cost of these capital intensive resources and low-cost options like solar or natural gas, said Caroline Golin, Google's global head of energy market development.")

[124] Duke Energy Corporation - Responding to growing demand, Duke Energy, Amazon, Google, Microsoft and Nucor execute agreements to accelerate clean energy options.

[125] *See* Clean Transition Tariffs: An innovative way to accelerate power sector emission reductions - Center for Climate and Energy Solutions Center for Climate and Energy Solutions. (" In a relatively short period of time, CTTs and ACE tariffs have creatively established a new regulatory pathway to progress promising early-mover clean firm power generation. It is not hard to envision how these tariffs could help companies and their utility partners to deploy, scale, and incorporate other new clean firm technologies like advanced nuclear or even more established clean technologies like offshore and onshore wind or large solar projects coupled with energy storage.")

[126] How Google is helping create a new model for clean energy. ("To access the benefits of 24/7 carbon free energy technologies and meet the growing needs of local grids, we need a new approach that makes it easier to invest in clean energy projects that provide firm capacity to the grid.")

demonstrate additionality of renewable energy resources. Therefore, the Commission should direct EAL to file program proposals for these customer-centered options within one year of issuing its final order in this proceeding.

### E. Support for AEEC's Application

SREA supports AEEC's Application and the relief requested therein. SREA believes that AEEC and the AG have sufficiently addressed and rebutted the arguments made in EAL's pleadings. Therefore, SREA will only briefly address the additional arguments made in the Statements of Position filed by the other utilities (i.e., the Cooperative and SWEPCO).

#### i. Procedural Background on AEEC's Application

On January 30th, EAL held a virtual kickoff meeting to discuss its IRP process, input assumptions and preliminary plans, as well as to provide information and engage stakeholders.[127]

On March 13, 2024, the Stakeholder Committee submitted informal discovery requests to EAL, after collaborating to form a list of questions and requests. As outlined in AEEC's Application, many Stakeholders, including SREA, disagreed with EAL's assertion that certain unanswered questions were properly "deemed to be outside the scope of the IRP."[128] The timeline and details regarding this discovery dispute is further outlined in AEEC's Application.[129]

On August 21, 2024, AEEC filed an Application requesting the following relief on behalf of the Stakeholder Committee to resolve the aforementioned discovery dispute:

1. Clarification that the Stakeholder Committee, not the utility, has the discretion to determine the proper process for submitting questions and requests to the utility for resource planning purposes since Section 4.8 of the RPGs grants Stakeholders the right to "develop their own rules and procedures."

2. Clarification that, since the RPGs allow for less formal discovery process, stakeholders may file a motion to compel discovery without first engaging in

[127] *See* 2024 Integrated Resource Plan Stakeholder Kickoff Meeting, available at Presentation title goes here.
[128] AEEC Application at 2-3.
[129] *Id.*

the formal discovery process outlined in Section 5 of the RPGs, in the event that a utility refuses to make a good faith effort to properly informal and respond to the Stakeholder committee, as required by RPG Section 4.8.

3. Clarification that parties in IRP proceedings may elect to utilize the formal discovery process outlined in Section 5 of the Rules of Practice and Procedure ("RPPs"), notwithstanding the fact that the RPGs allow Stakeholders to engage in a less formal discovery process, particularly in instances where the utility refuses to make a good faith effort to properly inform and respond to the Stakeholder Committee, as required by Section 4.8 of the RPGs.

4. An order finding that the 97 interrogatories and requests submitted by the AG and AEEC on July 12, 2024, are relevant to the proper scope of the IRP process set forth in the RPGs, and likewise compelling EAL to properly inform and respond to the Stakeholder Committee with substantive responses to these questions and requests within 15 days of the order.

5. All other relief the Commission deems just, reasonable, and in the public interest.[130]

On August 30, the Office of the Attorney General Time Griffen ("AG") filed a Response supporting AECC's Application and observing that "Too much is at stake to allow EAL to be the sole arbiter of what questions fall within the scope of the IRP process." [131] The AG also asserted that "the Commission's discovery rules apply in this docket as they do in any other Commission docket, absent explicit Commission order modifying the RPPs."[132]

On August 30, EAL filed a Response to AEEC's Application, requesting that the Commission deny and dismiss AEEC's Application.[133] On September 6, AEEC filed a Reply to EAL's Response.[134] On September 13, EAL filed a Reply to AEEC's Reply,[135] notwithstanding that AEEC's Application is a Motion pursuant to Rule 3.10, and the Commission's Rules of

[130] AEEC Application at 8-9.
[131] AG's Response at 2 (Doc. # 94), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_94_1.pdf.
[132] *Id*. at 3
[133] EAL Answer to AECC Amended Application (Doc. # 95), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_95_1.pdf ("EAL Response").
[134] AEEC Reply (Doc. # 97), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_97_1.pdf.
[135] EAL Reply (Doc. # 98), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_98_1.pdf.

Practice and Procedure expressly state that "No additional responses or replies shall be permitted unless specifically authorized by the Commission."[136]

On September 13, 2024, the Arkansas Electric Cooperative Corporation ("the Cooperative" or "AECC") filed a Petition for Limited Appearance and Verified Statement of Position, requesting that the Commission "deny AEEC's motion, or in the alternative suspend the matter at hand, and issue notice for an amended rulemaking in Docket No. 06-028R."[137]

On September 17, Southwestern Electric Power Company ("SWEPCO") made a Limited Appearance and filed a Verified Statement of Position, concluding that "The Stakeholder Process should continue to be governed exclusively by Rule 4.8 absent a comprehensive rulemaking."[138]

On September 23, AEEC filed a Response to the Limited Appearance Statements of AECC and SWEPCO.[139]

**ii. Reasons for Granting AEEC's Application**

First, AEEC's Application and requested relief does not propose new rules, regulations, or amendments to existing rules, and thus the requested declaratory order would not be a rule pursuant to Ark. Code Ann. § 23-3-309.[140] AEEC's requested relief is consistent with Ark. Code Ann. § 10-3-309(b)(1)(b)(ii), which states that "Rule does not mean: (ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling."[141] Therefore, the Commission should provide prompt disposition of AEEC's

[136] Rule 3.10 Motions.
[137] Cooperative Statement of Position at 6 (Doc. # 99), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_99_1.pdf
[138] SWEPCO Statement of Position at 7 (Doc. # 101), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_101_1.pdf.
[139] AEEC Response to Limited Appearance Statements of AECC and SWEPCO (Doc. # 102), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_102_1.pdf.
[140] *See* Docket No. 19055-U, Order No. 4 at 60-61, available at https://apps.apsc.arkansas.gov/pdf/19/19-055-U_35_1.pdf.
[141] *Id*. at 61.

petitions for a declaratory order, as required by statute, [142] and deny the Cooperative's request to "suspend the matter."[143]

Second, SREA notes that the Cooperative and SWEPCO focused primarily on rebutting AEEC's third request for relief (i.e., "Clarification that parties in IRP proceedings may elect to utilize the formal discovery process outlined in Section 5 of the RPPs"). The Cooperative asserted that "Order No. 6 clearly contemplates that the [IRP] process is only open to formal discovery when a utility requests by application for the Commission to approve its IRP."[144] However, SREA notes that Commission Order No. 6 does not use the word "only" when discussing one instance in which the Commission clarified that the IRP process would be open to discovery (i.e., "a utility request for formal approval"), after that one particular situation was raised by the utilities.[145] In Order No. 6, the Commission did not clarify what other instances would open the process to discovery, including if the utility fails to comply with the Resource Planning Guidelines, including the requirement in Section 4.8 to "make a good faith effort to properly inform and respond to the Stakeholder Committee." Therefore, AEEC's third request for relief is an issue of first impression for the Commission to decide that was not even raised by Order No. 6, much less settled therein. SREA believes it would be reasonable for the Commission to clarify that a utility's refusal to answer stakeholder questions based upon a unilateral determination they are beyond the scope is an additional situation that should open the IRP process to formal discovery, and thus clarify the applicability of the Rules of Practice and Procedure to IRPs.

[142] Ark. Code Ann. 25-15-206. ("Each agency shall provide by rule for the filing and ***prompt disposition of petitions for declaratory orders*** as to the applicability of any rule, statute, or order enforced by it.")
[143] Cooperative Statement of Position at 6.
[144] Cooperative Statement of Position at 4, ¶ 4.
[145] Order No. 6 at 7. https://apps.apsc.arkansas.gov/pdf/06/06-028-r_57_1.pdf.

Third, even if the Commission clarifies that a utility application for approval of an IRP is the "only" situation that would open the IRP process to discovery, as asserted by the utilities, there is still the question of whether the rest of the Rules of Practice and Procedure apply to IRPs, including the right to seek relief by Motion[146] or Application,[147] as AEEC has done with its fourth request for relief, which does not rely on the Commission's discovery rules. SWEPCO and AEEC assert that the only opportunity available for a Party or Stakeholder to seek relief from the Commission during the IRP process is to submit comments to the Commission on each Resource Plan *after* it has been submitted by the utility, as outlined in Section 4.8 of the RPGs.[148] However, in Order No. 6, the Commission stated the following regarding the purpose of the stakeholder process:

> ***The reason for stakeholder involvement is*** to open up the planning process and provide an opportunity for others with an interest in the planning process ***to provide input as a check on the reasoning of a utility during the development of the resource plan***. Utilities should be able to design a forum for stakeholder input at appropriate places along the process timeline in accordance with Section 4.8 of the Guidelines.[149]

If a Stakeholder's only recourse during the IRP process is to file comments *after* an IRP has been filed, this does not provide sufficient opportunity for Stakeholders to provide "a check on the

[146] Rule 3.10 ("A Party may seek relief by motion, including motions available under the Ark. R. Civ. P.").
[147] Rule 3.09
[148] SWEPCO Statement of Position at 7 ("If a Stakeholder disagrees with the questions that the utility determines to be outside the scope of the IRP process, it should dialogue with the utility. If it is still not satisfied, it can incorporate those unanswered questions into the Stakeholder Report or into comments to the Commission. This is the procedure that the Commission has laid out for the Stakeholder process. If the Commission intended for the IRP process to be open to formal discovery (which it explicitly did not), there would be no reason for the Stakeholder dialogue process which the Commission lays out in RPG 4.08. The Stakeholder Process should continue to be governed exclusively by Rule 4.8 absent a comprehensive rulemaking."); AECC Statement of Position at 5, ¶ 12 ("Thus, oversight of the RP process occurs after the compliance filing of each utility's IRP. This is the remedy the Commission has wisely provided by the RPGs to stakeholders dissatisfied with a utility's RP process. The stakeholders are permitted to issue a Report of the Stakeholder Committee, which is to be simultaneously filed with the IRP, and then may also file comments. These explicit processes are how stakeholders engage in the utilities' RP processes, including how stakeholders may raise concerns to the Commission. Thus, granting the Motion and compelling discovery responses would be beyond the procedural remedy provided to stakeholders in the Commission's RPGs.")
[149] Order No. 6 at 3 (emphasis added).

reasoning of a utility *during the development of the resource plan*," as contemplated in Order No. 6, and as AEEC and the AG have attempted to do via their recent pleadings. Therefore, AEEC's Application is consistent with the Resource Planning Guidelines, as read in harmony with the Rules of Practice and Procedure.

Further, the Resource Planning Guidelines notably do not provide any procedure for utilities, including the Cooperative and SWEPCO, to file a Statement of Position in another utility's IRP docket. By making their respective Limited Appearances and filing Verified Statements of Position in this docket, the Cooperative and SWEPCO have both gone beyond the scope of the procedures expressly set forth in the Resource Planning Guidelines, and utilized procedures set forth in the Commission's Rules of Practice and Procedure, namely Rule 4.02(b). By relying on the Rules of Practice and Procedure to make their filings in this docket, the Cooperative and SWEPCO have essentially conceded that the Rules of Practice and Procedure *do* in fact apply to IRP dockets, and thus that the Resource Planning Guidelines do not provide the "exclusive" recourse for stakeholders in IRP proceedings. Alternatively, the implication in the utilities' arguments is that one set of rules applies to stakeholders (to limit their recourse), and another set of rules apply to utilities to expand their opportunities for recourse. If this is the utilities' intent, this interpretation is simply unjust, unreasonable, and contrary to the public interest.[150]

Additionally, the utilities' position that stakeholders (who are also parties) can make no filings in an IRP docket requesting Commission action until after the utility's filing of the IRP is inconsistent with the legislative intent set forth in Consumer Utilities Rate Advocacy Division Act,

[150] *See* § Ark. Code Ann. 23-4-103 Rates and rules to be reasonable ("All rates made, demanded, or received by any public utility, for any product or commodity furnished, or to be furnished, or any service rendered or to be rendered, and all rules made by any public utility pertaining thereto shall be just and reasonable, and to the extent that the rates or rules may be unjust or unreasonable, are prohibited and declared unlawful.").

Ark. Code Ann. § 23-4-302, which states that "The people of Arkansas need aggressive and effective representation in utility rate hearings and other utility-related proceedings." The interpretation of the Resource Planning Guidelines put forth by the utilities would seek to make the representation of the AG unaggressive and ineffective in IRP proceedings, contrary to Ark. Code Ann. § 23-4-302. Statutes supersede Commission rules and orders,[151] and therefore the Commission must construe its Resource Planning Guidelines in a manner that allows for aggressive and effective representation by the AG in IRP proceedings (*i.e.*, in harmony with the Rules of Practice and Procedure). If the Commission were to interpret the Resource Planning Guidelines as the utilities propose, and limit stakeholder recourse to only that which is expressly and exclusively discussed in the RPGs, stakeholders and parties, including the AG and the Commission's General Staff, would have no right to seek guidance and supervision from the Commission in the event that utilities violate the Resource Planning Guidelines prior to the filing of an IRP.[152] Utilities could even take away stakeholders' right to file comments on an IRP by not even filing an IRP in the first place. Therefore, the Commission should grant AEEC's Application and clarify that Stakeholders in IRP proceedings have all the rights set forth in Commission Rules of Practice and Procedure, except as expressly stated otherwise in Commission rule or order.

Finally, EAL's filing of its 2024 IRP does not make AEEC's Application moot. Since Section 4.8 of the RPGs grant stakeholders a right to file comments on IRPs, without providing any deadline for those comments, AEEC's Application is still ripe for a Commission determination in this proceeding. Further, since the Commission's decision on AEEC's Application could have

[151] *McLane Co., Inc. v. Weiss*, 965 S.W.2d 109,115, 332 Ark. 284 (1998) ("the law is elementary that an agency has no right to promulgate a rule or regulation contrary to a statute."). *see also* Docket No. 19-055-U, Order No. 4 at 59 ("When a rule or tariff does not conform to a statute, the statute must control.").

[152] *See* Ark. Code § 23-2-301 ("The commission is vested with the power and jurisdiction, and ***it is made its duty, to supervise and regulate every public utility*** defined in § 23-1-101 and to do all things, whether specifically designated in this act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty.")(emphasis added)

precedential value for other IRPs, as noted by SWEPCO and AECC, it is important that the Commission issue an order to clarify the issues presented.

### F. SREA Position on Utilities' Proposal for a Comprehensive Rulemaking to Evaluate Reforms to the Resource Planning Guidelines

Regardless of whether the Commission decides to grant the relief requested in AECC's Application, SREA believes that the filings in this docket made by utilities, parties, and other stakeholders conclusively suggest that the current Resource Planning Guidelines lack clarity, are subject to dispute, and are in need of comprehensive reform. As further discussed herein, the RPGs were adopted in 2007 and factual circumstances have substantially changed in the past 18 years, including the regulatory framework and corresponding stakeholder concerns that persuaded the previous Commission to not require approval of IRPs.[153] Therefore, SREA supports SWEPCO's proposal for "a comprehensive rulemaking" to revise and reform the Resource Planning Guidelines or promulgate new IRP Rules that are in the public interest considering the current factual situation and regulatory framework.[154] In support of its position, SREA submits the following background information regarding the EAL's 2024 IRP process, review of IRP best practices in other states, discussion of the current IRP review process in Arkansas more broadly, and the case for reforming the IRP review process under the applicable IRP statute.

#### i. Background on stakeholder process pursuant to the RPGs

The RPGs were adopted by the Commission in Docket No. 06-028-R on January 4, 2007.[155] The RPGs state the following regarding the Stakeholder Process:

> Each utility will organize and facilitate meetings of a Stakeholder Committee for resource planning purposes. The Stakeholder Committee should be broadly

[153] *See* Docket No. 06-028-R, Order No. 6 at 7 ("Staff explains that little purpose is served by docket and approving the plan, as subsequent actions—e.g., resource acquisition, generation and transmission plant construction, demand-side tariffs—will require separate approval.").
[154] *See* SWEPCO Statement of Position at 7.
[155] Docket No. 06-028-R, Order No. 6, available at https://apps.apsc.arkansas.gov/pdf/06/06-028-r_57_1.pdf.

> representative of retail and wholesale customers, independent power suppliers, marketers, and other interested entities in the service area. The Stakeholders shall develop their own rules and procedures. Stakeholders should review utility objectives, assumptions, and estimated needs early in the planning cycle. The utility shall make a good faith effort to properly inform and respond to the Stakeholder Committee. A Report of the Stakeholder Committee should be included with the Resource Plan submittal. Stakeholders and General Staff may also submit comments to the Commission on each Resource Plan after it has been submitted by &e utility. Such comments should be taken into consideration by the utility in its preparation efforts and decisions Concerning subsequent approval applications, as well as in its next planning cycle. If comments concerning the process and results warrant, the Commission may require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments. [156]

### ii. Background and review of the stakeholder process in EAL's 2024 IRP

Before criticizing how EAL conducted the stakeholder process for its 2024 IRP, SREA notes that some aspects of EAL's 2024 IRP process are worth praising and should serve as a model for other utilities, with the goal of fostering more robust participation and contributions from stakeholders. For instance, EAL facilitated remote participation by stakeholders in each of the two stakeholder meetings that it conducted via WebEx, allowing more opportunities for stakeholders who do not reside in Little Rock to participate. EAL's resource team also prepared and presented detailed PowerPoint presentations for both stakeholder meetings, which each spanned multiple hours and provided opportunities for stakeholder questions and input.[157] EAL's resources team also posted information related to its 2024 IRP on a dedicated IRP webpage, including the aforementioned presentations, along with EAL's responses to stakeholder questions, and the IRP filed on October 30, 2024.[158] This helped to facilitate information sharing and coordination among

[156] RPG Section 4.8, Stakeholder Process, resource_plan_guid_for_elec_06-028-R_1-7-07.pdf (arkansas.gov).
[157] *See* 2024 IRP Stakeholder Kickoff Meeting, January 309, 2024, available at Presentation title goes here; *see also* 2024 IRP Stakeholder Meeting #2, August 15, 2024, available at Presentation title goes here.
[158] https://www.entergy-arkansas.com/integrated_resource_planning/.

stakeholders who were not able to attend the official stakeholder meetings that EAL hosted. For comparison, SWECPO has also followed these laudable stakeholder procedures in its 2024, including to post responses to questions on its IRP website when requested by stakeholders, and even scheduling a third stakeholder meeting to present additional modeling results in response to stakeholder feedback.[159] By contrast, the Cooperative declined stakeholder requests to allow remote participation in the single stakeholder meeting that it held on November 6, 2024, started the meeting approximately 45 minutes late,[160] did not present any PowerPoint presentations during the stakeholder meeting, and declined to post information about its IRP on a dedicated IRP webpage.

Despite these notable bright spots from the stakeholder process for EAL's 2024 IRP, EAL's stakeholder process nonetheless highlights the need to reform the IRP process in Arkansas to provide more transparency, clarity, opportunities for robust participation by Stakeholders, and oversight from the Commission and its General Staff, particularly considering the discrepancy of stakeholder processes among Arkansas public utilities. The 2024 IRP process for EAL and other utilities has left many Stakeholders, including customers, consumer groups, trade associations, and the Arkansas Attorney General's Office with many frustrations and unanswered questions, in large part due to the lack of clarity and guidance provided by the Resource Planning Guidelines. With such loose guidelines, Stakeholders really rely on the goodwill of the utilities to fully participate; and that's a bad model. Specific examples of frustrations experienced by Stakeholders are outlined below. Reform of the IRP process would be particularly timely now, given the impending substantial capacity deficit faced by the state's largest public utility, as well as ongoing and

[159] *See* Ark. Integrated Resource Plan; *see also*, Docket No. 07-011-U, SWEPCO Motion for Extension of Time to File 2024 IRP (Doc. # 65), available at https://apps.apsc.arkansas.gov/pdf/07/07-011-U_65_1.pdf.
[160] Another meeting ran late that was scheduled in the same meeting room.

anticipated disruption to supply fostered by the energy transition and the substantial load growth resulting from data centers and the renewal of American manufacturing.

**a. Lack of reasonable notice for the Stakeholder Kickoff Meeting**

The Stakeholder Process for EAL's 2024 IRP got off to a rocky start in January, in large part due to the lack of clarity provided by the Resource Planning Guidelines. On January 19th, EAL sent a Friday afternoon email providing notice that it would be "kicking off the first virtual meeting for 2024 Integrated Resource Plan (IRP) on Tuesday, Jan 30th at 10am CST." First, the Stakeholder Committee asserts that 11 days is not adequate notice for a significant event that only occurs every three years. For comparison, the Commission's Rules of Practice and Procedure require notice to be provided "at least fort-five (45) days before a hearing." Some Stakeholders were not able to attend the kickoff meeting due to prior commitments, which could have potentially been avoided if EAL had provided more advanced notice.[161] However, the Resource Planning Guidelines provide no specific requirements for advance notice of Stakeholder Committee meetings.

Additionally, EAL set the date for its Stakeholder Kickoff meeting on January 30th without input from Stakeholders. If the intent of EAL's Stakeholder Kickoff meetings was truly to "organize and facilitate meetings of a Stakeholder Committee for resource planning purposes,"[162] it would be reasonable to seek input from Stakeholders regarding the date in an effort to try to schedule the meeting when Stakeholders are actually able to attend, just as the Commission's General Staff and other Parties to a docket customarily seek input from the Commission and other Parties to a docket prior to proposing hearing dates. However, the Resource Planning Guidelines

[161] For example, SREA's Executive Director had already made a commitment to speak on a panel at an energy conference in North Carolina on January 30th.
[162] Resource Planning Guidelines Section 4.8.

provide no specific requirement to seek input from Stakeholders prior to scheduling Stakeholder Committee meetings.

Further, no notice of the Stakeholder Kickoff meeting was provided in Docket No. 07-016-U. It would be reasonable to publish notice of a Stakeholder meeting regarding EAL's IRP in the applicable docket where EAL's IRPs are filed. This is the most logical place that a stakeholder would check to look for updates regarding EAL's IRP. However, the Resource Planning Guidelines provide no specific requirement to file notice of a utility-hosted Stakeholder Meeting in the IRP Docket.

By contrast, other state commissions have established a standard schedule of events for IRPs that is set forth in their appliable IRP Rule(s) and published in the applicable IRP dockets. For example, as further discussed herein, the LPSC's IRP Rule requires utilities to hold the first Stakeholder Meeting two (2) months from the date that the utility files its request to initiate the IRP process, which must include a proposed schedule of events filed in the applicable IRP docket.[163] Following the process utilized by the LPSC would address the Stakeholder Committee's concerns regarding the lack of reasonable notice for EAL's Stakeholder Kickoff Meeting.

**b. Lack of transparency to facilitate coordination among Stakeholders**

Following the initial Stakeholder Meeting on January 30th, which was essentially a presentation from EAL rather than a Stakeholder Meeting, the Stakeholders had some initial difficulty coordinating amongst ourselves. For comparison, in most Commission dockets, the official service list allows parties to easily communicate with one another, since it displays all interested

[163] LPSC Docket No. R-30021 – LPC, ex parte. In re: Development and Implementation of Rule for Integrated Resource Planning for Electric Utilities at 17-19, March 21, 2012, available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=FOl1UTXQnwY%3d; *See e.g.*, LPSC Docket No. I-36242, Southwest Electric Power Company Request to Initiate IRP Process, Document # F22-63080, available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=RByee8ifhgo%3d.

parties and their most updated contact information. However, since IRPs do not follow the normal process of party participation and use of an official service list, the appropriate method for Stakeholders to coordinate and contact one another is unclear. Further, since EAL held only a virtual presentation via WebEx, there was no opportunity for Stakeholders to exchange contact information during the presentation. Additionally, EAL did not share Stakeholders' email addresses with other Stakeholders, to facilitate organization among the Stakeholders. We had multiple back-and-forth rounds of asking for the stakeholder contact list. EAL initially provided a list of names of Stakeholders who registered for the Stakeholder Kickoff Meetings, without any corresponding contact information. When SREA specifically requested that EAL provide email addresses, EAL agreed to send an email to other Stakeholders on SREA's behalf in lieu of providing the email addresses, creating unnecessary extra work and levels of bureaucracy. For comparison, SWEPCO voluntarily disclosed the list of stakeholder emails when it scheduled its initial 2024 IPR Stakeholder Meeting on June 6, 2024, without being requested by Stakeholders, making it easier for Stakeholders to coordinate amongst themselves. However, the Resource Planning Guidelines provide no specific requirement that EAL share the email addresses of Stakeholders with other Stakeholders, nor any details regarding how the utility "will organize and facilitate meetings of a Stakeholder Committee."[164]

**c. Lack of good faith effort to properly inform and respond to the Stakeholder Committee**

The RPGs state that "the utility shall make a good faith effort to properly reform and respond to the Stakeholder Committee."[165] However, without details regarding specific deadlines for responding to questions, the applicability of discovery, and the proper scope of discovery (or

[164] *Id.*
[165] *Id.*

informal stakeholder questions), this vague guideline leaves too much room for abuse by utilities. The RPGs do not specify how, when, and to what extent a utility must respond to Stakeholders. As a result, the 2024 IRP process for EAL has left many Stakeholders, including customers, consumer groups, trade associations, and the Arkansas Attorney General's Office ("AG"), with many unanswered questions.

Since January, there have been numerous questions from Stakeholders challenging the assumptions and direction of Entergy's IRP. Many of these questions remain inadequately answered or not answered at all, as outlined in the *Amended Application for a Declaratory Order and to Compel Discovery* that was filed by Arkansas Electric Energy Consumers, Inc. ("AEEC") in August,[166] and supported AG.[167] Further, at the August stakeholder meeting, SREA's consultants asked if data centers were driving demand growth. EAL refused to answer, saying the customer type was confidential. This lack of transparency is not conducive to planning the right resource mix because, for example, load factors differ by customer type. To ensure that EAL is optimizing its resource planning, the Commission needs to know what the drivers of demand increases are, as do stakeholders.

Additionally, the lack of clarity regarding the applicability of the Commission's Rules of Practice and Procedure to IRPs creates further uncertainty. For instance, EAL's responses to data requests were served in PDF form instead of native electronic format (e.g., excel), and thus lacked functionality to stakeholders. The Commission's Rules of Practice and Procedure state that "Discovery documents shall, to the greatest extent possible, be served electronically, pursuant to Rule 3.07 Attachments to documents shall be provided in native electronic format, with formulae

[166] AEEC Amended Application or a Declaratory Order and to Compel Discovery (Doc. # 90), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_90_1.pdf.
[167] AG's Response to AEEC's Request for Clarification and to Compel Discovery (Doc. # 94), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_94_1.pdf.

and viable links intact."[168] However, EAL asserted that "the Commission's discovery rules do not apply" to IRPs.[169] Likewise, other utilities have also made filings in this Docket asserting that the Rules of Practice and Procedure do not apply to IRPs (except apparently to allow them to make a limited appearance in EAL's IRP docket).[170] Since the Resource Planning Guidelines do not clarify whether the Rules of Practice and Procedure apply to IRPs, this ambiguity leaves too much room for the utility to circumvent the Rules of Practice and Procedure. For comparison, the Mississippi Public Service Commission ("MPSC") Integrated Resource Planning and Reporting Rule is contained within the MPSC's Public Utility Rules of Practice and Procedure,[171] thereby providing clarity that the rest of the MPSC's Rules of Practice and Procedure apply to IRPs. Providing such clarity regarding the applicability of the APSC's Rules of Practice and Procedure would be beneficial to the IRP process in Arkansas.

**d. Failure to include Transmission Planning and Modeling in the IRP Process**

Section 4.7 of the Resource Planning Guidelines states the following regarding Transmission Planning:

> The transmission plan necessarily results from a separate planning process and is a separate plan; however, ***it should be integrated into the overall resource planning process, such that the analysis of generation options and demand response options can be synthesized and optimized***. Transmission planning will be done by an independent entity and is regional in scope.[172]

[168] Rule of Practice and Procedure 4.08 (6)(D), rules_of_practice_procedure2015.pdf (arkansas.gov)
[169] Docket No. 07-016-U, EAL Answer to Amended Application for a Declaratory Order at 6 (Doc. # 95), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_95_1.pdf.
[170] *See* Petition for Limited Appearance and Verified Statement of Position filed by Arkansas Electric Cooperative Corporation at 4-5 (Doc. # 99) (asserting that "AEEC's reliance upon Section 5 of the RPPs as a basis to obtain discovery during the RP process is misplaced and unsubstantiated."); *see also*, Limited Appearance Statement of Southwestern Electric Power Company at 4 (Doc. # 101) (asserting that "the RPGs are the exclusive authority on what is within the scope of the IRP process.")
[171] MPSC Public Utility Rules of Practice and Procedure, Rule 29, available at https://www.psc.ms.gov/sites/default/files/2021-04/Procedural%20Rules%20Updated%2005092022.pdf.
[172] (emphasis added).

Transmission connectivity for new generation resources is a critical piece of an IRP, as economics depend on resource location.[173] However, EAL refuses to integrate transmission planning into the overall resource planning process, such that the analysis of generation options and demand response options can be synthesized and optimized.

EAL refuses to consider transmission new generation may require, apart from interconnection costs, asserting that "projected transmission projects are outside the scope of this proceeding."[174] One notable exception was to introduce an un-needed and costly 600 mile HVDC transmission line to SPP as a strawman hindering the consideration of other, more economic options.[175] In response to the Stakeholders' most recent questions regarding transmission planning, EAL asserted the following:

> Transmission analysis as it relates to power flow modeling that may identify projects or upgrades needed for NERC TPL compliance or due to MISO's Attachment X or Attachment Y processes is outside the scope of the IRP. EAL has included interconnection costs in its IRP modeling because such interconnection cost assumptions are available in a generic manner through its technology assessment process. Regarding HVDC wind, it is infeasible to model external wind resources without assuming transmission cost required to transport the energy to EAL to serve their load. Therefore, EAL has estimated the cost for an HVDC line; however, consistent with the description above, EAL has not estimated the MISO Attachment X network upgrade cost that such an HVDC interconnection might produce in the MISO DPP process as such power flow analysis is beyond the scope of the IRP capacity expansion analysis.[176]

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[173] *See* LPSC IRP Rule at 5, footnote 6 ("Typically all generation resources will require transmission costs and those costs should be considered in the analysis."); *see* also Duke Energy Carolinas Resource Plan, Appendix L, Transmission System Planning and Grid Transformation, available at https://www.duke-energy.com/-/media/pdfs/our-company/carolinas-resource-plan/appendix-l-transmission-system-planning.pdf?rev=c6cf1bc1ac9c4c878ec4a5d2307c4532. (For an example of an IRP of a comparable Southern State that considers transmission options adequately to enable solar energy at lower cost than combined cycle generation.)

[174] 3rd Stakeholder Committee Question Set at 2, Response 27, available at EAL-2024-IRP-Stakeholder-Committee-Questions-With-Responses-Set3.pdf (entergy-arkansas.com)

[175] Entergy IRP IRP Stakeholder meeting #2, p. 10; Stakeholder questions Response 105.

[176] 5th Stakeholder Committee Question Set at 28, Response to Question #12(a), available at Set 5 Questions and Answers (entergy-arkansas.com). ("If it is EAL's position that "Projected transmission projects are outside the scope of this proceeding," please explain why the Company included projected transmission costs in its presentation slides for the 2024 IRP Stakeholder Meeting #2. For example, footnote 3 on slide 10 indicates that it "Includes transmission HVDC costs for a 600 mile line." Additionally, footnote 2 on slide 10 indicates that the Levelized Cost of Electricity ("LCOE") for renewable energy and storage resources includes transmission interconnection costs.")

> Long term transmission planning is evaluated as a part of EAL's MISO MTEP process, and there is no additional Transmission analysis performed as part of the IRP.[177]

As noted in AEEC's Reply to EAL's Answer in this Docket ("AEEC's Reply"), EAL has cited to limitations in its chosen Aurora software (which are not present in other resource modeling software alternatives).[178] EAL should not be permitted to use its own modeling software selection as an excuse for circumventing Commission directives.[179] However, the Resource Planning Guidelines do not set requirements for modeling software or specific requirements to model projected transmission projects, once again providing a lack of clarity regarding a disputed issue.

By contrast, the LPSC's IRP Rule expressly includes transmission planning in the IRP Process, stating the following:

> The following Integrated Resource Planning Rules shall be used by jurisdictional investor owned utilities regulated by the Louisiana Public Service Commission ("Commission" or "LPSC") to develop long-term resource plans, which include both supply and demand-side resources, and consider transmission needs, in order to satisfy the load requirements.[180]
>
> ***The overall objective of the IRP Process is to evaluate a comprehensive set of potential resource options, including*** supply-side, demand-side and ***economic transmission resource options,*** to determine a base or "reference resource" plan that offers the most economic and reliable combination of resources satisfying the forecasted load requirements…[181] ***Typically all generation resources will require transmission costs and those costs should be considered in the analysis. At times, there may be large transmission projects that could provide access to economic generation resources, and it may be desirable to treat those projects as separate resource options in the optimization process***."[182]
>
> Existing Transmission System. The ***IRP shall include the most recent long-term transmission plan and planning study prepared by the entity charged with***

[177] *Id*., Response to Question #12(b) ("How is EAL integrating regional transmission planning that is done by MISO into its IRP process such that the analysis of generation options can be synthesized and optimized, as required by the Commission's Resource Planning Guidelines (RPGs)? Please explain.")
[178] Docket No. 07-016-U, AEEC's Reply to EAL's Answer at 5, ¶ 12 (Doc. # 97), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_97_1.pdf.
[179] *Id.*
[180] LPSC IRP Rule at 1.
[181] *Id.* at 5.
[182] *Id.* at footnote 6.

> ***performing transmission planning pursuant to the effective FERC jurisdictional open access transmission tariff.*** Unless this information is included in the transmission planning study provided, the utility shall identify and describe transmission constraints and limitations within its system, and identify and describe any Reliability Must Run units that it operates. Furthermore, the utility shall discuss any actions that could be taken to eliminate the constraints, limitations, and RMR units.[183]

Likewise, the New Orleans' City Council's IRP Rule states the following regarding transmission planning:

> The Utility shall explain how the Utility's current transmission system, and any planned transmission system expansions (including regional transmission system expansion planned by the RTO in which the Utility participates) and the Utility's distribution system are integrated into the overall resource planning process to optimize the Utility's resource portfolio and provide New Orleans ratepayers with reliable electricity at the lowest practicable cost.
>
> Models developed for the integrated resource planning process should incorporate the planned configuration of the Utility's transmission system and the interconnected RTO during the Planning Period.
>
> To the extent major changes in the operation or planning of the transmission system and/or distribution system (including changes to accommodate the expansion of DERs) are contemplated in the Planning Period, the Utility should describe the anticipated changes and provide an assessment of the cost and benefits to the Utility and its customers…

The Georgia Public Service Commission GPSC also expressly includes specific requirements for transmission planning in its IRP Rules.[184] Following these examples and revising the Resource Planning Guidelines to expressly include transmission planning would help to address the Stakeholder Committee's concerns regarding the lack of transmission planning and modeling in the IRP process.

Finally, updating IRP requirements to incorporate transmission into planning is one near-term strategy that was recommended in in a recent regulatory report evaluating the "Regulatory

[183] *Id.* at 9.
[184] GA R&R - GAC (state.ga.us)

Gap" and "how to enhance local transmission oversight."[185] The report includes contributions from former APSC Chairman Ted Thomas and a number of other current and former PSC commissioners and staff.[186] The report made the following recommendations regarding incorporating transmission into IRPs:

> Updating IRP requirements to incorporate transmission into planning is one near-term strategy states can use to gain more insight into utility transmission planning and influence the process early on. For example, states could require that within the IRP process, utilities include specific details about their transmission expansion plans, evaluate technologies that increase transmission capacity, such as GETs, and model transmission as a resource, along with new generation options. More broadly, states could require utilities to discuss how they are utilizing a regional-first planning approach in partnership with the regional planning entity.[187]

**e. Lack of clear deadlines**

Finally, there was no clarity on when EAL would provide answers to questions from the Stakeholder Committee. For comparison, the Cooperative has included contradictory deadlines in its first email to Stakeholders for its 2025 IRP, stating that Stakeholder Questions are due by October 7, 2024 and ten (10) days prior to November 6th. The Rules of Practice and Procedure provide clear deadlines for responding to discovery.[188] Per Rule 5.05(c): "The Party upon whom discovery is sought shall serve a written response or objection within fifteen (15) days after service of the discovery." However, the RPGs provide no deadlines for utilities to respond to questions from the Stakeholder Committee, and EAL has asserted that "the Commission's discovery rules do not apply" to IRPs.[189] For comparison, the MPSC's IRP Rule expressly references "Data

[185] RMI, *Mind the Regulatory Gap: How to Enhance Local Transmission Oversight*, November 2024, available at https://rmi.org/wp-content/uploads/dlm_uploads/2024/11/mind_the_regulatory_gap_report.pdf.
[186] *Id.* at 2.
[187] *Id.* at 46.
[188] Rule of Practice and Procedure 5.05 Sequence, Timing and Format of Discovery.
[189] Docket No. 07-016-U, EAL Answer to Amended Application for a Declaratory Order at 6 (Doc. # 95), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_95_1.pdf.

Requests,"[190] thereby providing clarity that the MPSC's rule regarding Data Request and Responses applies to IRPs.[191] Although the Stakeholders appreciate being able to ask questions at any time during EAL's IRP process (contrasted with the Cooperative's very limited timeframe for stakeholder questions), having clear, standard deadlines for utility responses would be beneficial to the IRP Process and help to avoid confusion and frustration.

### iii. Review of IRP best practices in other states

In many states, the IRP process requires formal and thorough review of an IRP by the applicable state commission (e.g., Public Service Commission, Public Utility Commission, etc.) through a process that includes a required hearing that provides more transparency and opportunity for robust participation by Stakeholders.[192] Likewise, in many states the applicable commission issues an order approving or denying an IRP based on applicable rules, following the formal review process.[193] For example, the IRP rules adopted by the Georgia Public Service Commission ("GPSC") require the GPSC to hold a hearing to review IRPs and then issue an order either approving or rejecting the IRP based on the evidence of record presented at the hearings, which often include multiple days of hearings and cross-examination for each round of testimony.[194] For instance, Georgia Power Company's 2023 IRP update proceeding alone included five days of

[190] MPSC Public Utility Rules of Practice and Procedure at Section 105, IRP Schedule and Stakeholder Participation, ¶ 6 ("Initial Data Requests may be served upon the utility within thirty (30) days of the utility filling its Integrated Resource Plan.")
[191] *Id.* at Chapter 6 General Rules, Section 122 Data Requests and Responses.
[192] Laren Shwisberg, Katerina Stephan, Mark Dyson, *Reimagining Resource Planning* (2023) at 24, available at Reimagining Resource Planning - RMI. ("Reimagining Resource Planning").
[193] *Id.*
[194] GPSC Rule 515-3-4-.06 Integrated Resource Plan Filing Requirements and Procedures ("(4) Hearing and Review of Integrated Resource Plans. (a) Proceedings. The Commission shall commence a hearing within sixty days of receipt of a utility's complete integrated resource plan…(d) Standard for Approval. Based upon the evidence of record presented at the hearing on the plan, the Commission shall render a decision either approving the plan, approving it subject to stated conditions, approving it with modifications, approving it in part and rejecting it in part, rejecting it as filed, or provide an alternate plan, within one-hundred-twenty days of receipt of fees related to the utility's completed application. A utility's integrated resource plan shall be approved if found to be in the public interest and to substantially comply with these regulations."), available at https://rules.sos.state.ga.us/gac/515-3-4.

hearings,[195] participation from 17 intervenors with 13 panels of expert witnesses (including the U.S. Department of Defense and Walmart), testimony from 12 expert witnesses on behalf of the GPSC's Public Interest Advocacy Staff, and an order from the GPSC containing detailed findings of fact and conclusions of law.[196] South Carolina and Virginia also have a full litigated process – testimony, discovery, hearing.[197] Likewise, Minnesota's Administrative Rules require the Public Utility Commission to "issue a decision consisting of findings of fact and conclusions on the utility's proposed resource plan and the alternative resource plans."[198] Additionally, although the LPSC does not officially approve IRPs, its IRP Rule still provides specific requirements for review and a report filed by the LPSC's Staff,[199] as well as requirements for an order by the LPSC that either finds that the IRP complies with the IRP rule or sets the matter for a hearing to resolve any disputed issues.[200] Further, public utilities in other states routinely help to facilitate independent

[195] GPSC Hearing, January 16, 2024 (Cross Examination of Georgia Power Company Witnesses' Direct Testimony – Day 1) PSC Georgia Power Company's 2023 Integrated Resource Plan Update - YouTube ; GPSC Hearing, January 17, 2024 (Cross Examination of Georgia Power Company Witnesses' Direct Testimony – Day 2) PSC Georgia Power Company's 2023 Integrated Resource Plan Update (youtube.com); GPSC Hearing, February 29, 2024, (Cross-Examination of Staff Witnesses) Docket #55378 Georgia Power 2023 Integrated Resource Plan Update - YouTube; GPSC Hearing, March 1, 2024 (Cross-Examination of Intervenor Witnesses) PSC Docket #55378 Georgia Power Company's 2023 Integrated Resource Plan Update (youtube.com); GPSC Hearing, March 27, 2024 (Cross-Examination of Georgia Power Company Rebuttal Testimony) Docket # 55378 Georgia Power Company's 2023 Integrated Resource Plan Update (youtube.com).

[196] *See GPSC* Docket No. 55378, Order Adopting Stipulated Agreement, Doc. Filings #218484, April 26, 2024, available at https://psc.ga.gov/search/facts-document/?documentId=218484.

[197] *See* Code of Virginia § 56-599. Integrated resource plan required ("The Commission shall analyze and review an integrated resource plan and, after giving notice and opportunity to be heard, the Commission shall make a determination within nine months after the date of filing as to whether such an integrated resource plan is reasonable and is in the public interest."), available at https://law.lis.virginia.gov/vacode/title56/chapter24/section56-599/; See Code of Laws - Title 58 - Chapter 37 - Energy Supply And Efficiency (scstatehouse.gov) ("(2) The commission shall approve an electrical utility's or the Public Service Authority's integrated resource plan if the commission determines that the proposed integrated resource plan represents the most reasonable and prudent means of meeting the electrical utility's or the Public Service Authority's energy and capacity needs as of the time the plan is reviewed.")

[198] Minnesota Administrative Rules, 7843.0500 COMMISSION REVIEW OF RESOURCE PLANS, Subpart 1, available at https://www.revisor.mn.gov/rules/7843.0500/.

[199] LPSC Docket No. R-30021 – LPC, ex parte. In re: Development and Implementation of Rule for Integrated Resource Planning for Electric Utilities at 24, March 21, 2012. ("Staff will either recommend that the Commission acknowledge the IRP by the utility, or recommend a resolution of disputed issues."); *See e.g.*, LPSC Docket No. I-36242, Staff Report and Recommendations, August 27, 2024, available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=n1XAPW3yNMw%3d.

[200] *Id.* ("If the Commission determines there are any disputed issues it will need to resolve, it will establish a procedural schedule to address the issues. Once all issues are resolved, the Commission will issue an acknowledgement that the

modeling by intervenors as part of the IRP process, including as a result of commission orders, rules, or approved stipulations, thereby allowing intervenors to provide more helpful contributions to the IRP process through resource modeling.[201]

### iv. Shortcomings of the current IRP review process in Arkansas

The current IRP Review process in Arkansas includes several key shortcomings. As outlined in more detail below, these shortcomings include the lack of any requirement for a Commission order, as well as the lack of a requirement to issue RFPs for post-IRP competitive procurement. SREA's comments explain how these shortcomings support the need to revise and reform the Resource Planning Guidelines to prioritize Commission review and engagement in IRP proceedings and ensure that utilities are planning to procure the most cost-effective resources.

#### a. No requirement for a Commission order

Arkansas is one of several states, along with Alabama[202] and Mississippi,[203] where the applicable regulatory commission is not required to evaluate a utility's IRP, along with any and all comments and concerns filed by Stakeholders, thereby deterring Stakeholders from spending valuable time and resources participating in the resource planning process. In Arkansas, the only language in the Commission's Resource Planning Guidelines that contemplates Commission action states the following: "If the comments concerning the process and results warrant, the

IRP process and its IRP Report have fully complied with the requirements of these IRP rules, though the acknowledgement will not constitute Commission approval of the IRP. The Commission may also, at its discretion, provide recommendations to the utility for improvements to the IRP inputs and process, including the IRP Report. Any such recommendations may be considered in any future Commission proceedings concerning the resource plans of the utility.")

[201] *See* page 14 of this Arizona Commission Order and page 27 of this Michigan PSC Order.

[202] *Reimagining Resource Planning* at 23 (noting that Alabama has no IRP requirements, but Alabama Power voluntarily submits a plan ever three years for review.

[203] *See* Public Utility Rules of Practice and Procedure of Mississippi Public Service Commission and Public Utilities Staff, Rule 29.105(8-10), available at https://www.psc.ms.gov/sites/default/files/2021-04/Procedural%20Rules%20Updated%2005092022.pdf. ("The Commission *may* require the utility to re-evaluate and resubmit its Integrated Resource Plan for the current planning cycle to address any concerns raised in the comments or expressed by the Staff or Commission.") (emphasis added).

Commission *may* require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments."[204] The use of the word "may" rather than "shall" in the Resource Planning Guidelines makes Commission action in an IRP proceeding (or lack thereof) completely optional and discretionary. On the one hand, the Commission *may* "require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments." On the other hand, the Commission *may* choose to not review stakeholder feedback or participate in the IRP process, much less make a determination regarding whether the Stakeholders' comments support requiring the utility to re-evaluate and resubmit its IRP. Since the RPGs do not require the Commission to even issue an order if the Commission declines to require the utility to re-evaluate and resubmit its IRP, the Stakeholder Committee has no way of knowing whether the Commission valued the work by the Stakeholder Committee, but found that it was not in the public interest to require EAL to refile its IRP for specific reasons, or whether the Commission simply declined to read the Stakeholder Committee Report and any comments subsequently filed by Stakeholders because it was focused on other dockets, including dockets where the applicable rules required a Commission order by a particular deadline.

**b. History of inaction by the Commission under the Resource Planning Guidelines**

The RPGs expressly authorize the Commission to "require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments."[205] However, SREA is not aware of any instance that the Commission has ever directed a utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address

[204] RPG 4.8 Stakeholder Process (emphasis added).
[205] RPGs Section 4.8.

concerns raised in the comments. This history of inaction calls into question whether the RPGs are effective in facilitating proper review and oversight by the Commission.

For instance, on November 23, 2021, SREA filed comments regarding EAL's 2021 IRP, recommending that the Commission "require the utility to re-evaluate and resubmit its Resource Plan for the current planning cycle to address concerns raised in the comments."[206] SREA's Comments made the following specific recommendations:

- Re-evaluating adding more renewable energy resources, sooner, at reasonable price assumptions (such as prices already reviewed and approved by the APSC for Entergy or other utilities in Arkansas)
- Modifying the Action Plan to issue a new 1,200 MW RFP for renewable energy resources, to come online in the 2025/2026 timeframe, in addition to the existing 500 MWRFP (based on Sensitivity Portfolio 1 and Sensitivity Portfolio 2)
- Opening a docket to re-evaluate retirement dates for Entergy's existing generation units, to bring together joint owners of facilities
- Opening a docket to institute new IRP Rules for Entergy

Since the Commission issued no orders in this Docket until Order No. 4 in 2023, when the General Assembly passed the Arkansas Affordable Energy Act and directed the Commission to act,[207] it is not clear whether the Commission considered requiring EAL to refile its 2021 IRP based on SREA's recommendations, or simply ignored the 2021 Stakeholder Committee Report and SREA's Comments. What is clear is that the Commission has been more likely to act when required to do so pursuant to a statute or rule, and less likely to act when such action is entirely discretionary under the Resource Planning Guidelines. This is not intended as a criticism of the Commission,

[206] Docket No. 07-016-U, SREA Limited Appearance Statement Regarding EAL's 2021 IRP at 7 (Doc. # 71), available at https://apps.apsc.arkansas.gov/pdf/07/07-016-U_71_1.pdf

[207] Order No. 4 (Doc. # 75) ("Starting in 2024 and continuing one (1) time every three (3) years, the Arkansas Public Service Commission shall produce a report discussing the remaining useful lives of existing electric generating units based on data and information previously provided in the integrated resource plans of electric utilities prepared under § 23-18-106.")

but rather as an observation of how the applicable rules or guidelines logically have the effect of prioritizing (or deprioritizing) certain Commission actions.

**c. The importance of Commission review and action in the IRP process**

The Resource Planning Guidelines state the following regarding the importance of the IRP process:

> Resource planning will be relevant to future resource investment decisions and approval proceedings, as well as revenue requirements and rate design. Consistency of a utility's Resource Plan with the Guidelines will be an additional factor for the Commission to consider in evaluating the prudence of investments, construction and rate applications, as will changed circumstances and other evidence.[208]

In several docketed proceedings, Arkansas utilities have partly relied on IRP filings to support applications to recover contracts or new generation in rates.[209] In this instance, the state's largest electric utility is facing a massive capacity shortfall in less than 5 years, but the Commission and its Staff are only directing resources to focus on one piece of the puzzle in Docket No. 22-072-U regarding EAL's application for the 446 MW CT. Without full Commission participation in an IRP, utilities are capable of ignoring stakeholder requests and the Resource Planning Guidelines, then using a faulty evaluation to support future decision-making, putting Arkansas ratepayers at risk. Likewise, without binding IRP rules, the utilities can ignore the Resource Planning Guidelines and the results of the IRP process, resulting in applications that are an inefficient waste of resources for all Stakeholders, including the Commission, and are not in the public interest. If the

[208] Resource Planning Guidelines, Section 3: Relationship of the Commission and Utilities with Resource Planning.
[209] *See e.g.*, Docket No. 20-049-U, Direct Testimony of Kurtis W. Castleberry at 26 (Doc. # 17) (stating that "the [EAL Resource Planning and Operation's Committee] determined that EAL's ownership and control of a fleet of Distributed Generation] will address several of the resource planning objectives set out in the 2018 IRP…"), EAL Direct Exhibit KWC-1, EAL's Resource Planning Objectives, available at https://apps.apsc.arkansas.gov/pdf/20/20-049-U_17_1.pdf; *see also*, Docket No. 22-065-U, Direct Testimony of Thomas P. Brice at 5-6 (Doc. # 17) (noting that "Despite not being included in SWEPCO's Arkansas Rates, to date the MWs are included in the Arkansas Integrated Resource Plan (IRP)…"); *see also* Docket No. 22-065-U, Direct Testimony of Thomas P. Brice at 5-6 (Doc. # 17) (noting that "Despite not being included in SWEPCO's Arkansas Rates, to date the MWs [of SWEPCO's Turk coal-fired power plant] are included in the Arkansas Integrated Resource Plan (IRP)…")

Commission reformed the IRP process as recommended herein, Stakeholders (including Staff and the AG) could direct their limited resources to proactively focus on the broader integrated resource planning process, rather than expending their limited resources reacting to individual applications that may be contrary to prudent integrated resource planning.

**d. The importance of requiring RFPs for post-IRP procurement of supply-side resources**

As discussed herein, industry best-practices for resource planning include requiring RFPs for post-IRP procurement of supply side resources, since obtaining real market data directly from project developers is "the most accurate way to develop present-day cost expectations for most resources."[210] Other commissions in the Southeast expressly require RFPs by rule, including Georgia and Louisiana.[211] However, as noted by SWEPCO, "at present no Arkansas statute or Commission Rule requires that [an RFP] be conducted in advance of any utility request for approval to acquire any utility plant or property constituting an operating unit or system."[212] The

[210] *See* Synapse Energy Economics, *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future*, November 2024 (Revised December 6, 2024) at 31, available at https://www.synapse-energy.com/sites/default/files/IRP_Best_Practices_2024_Synapse_LBNL_24-061_1.pdf. *See e.g.*, GA Reg. 515-3-4-.04. Identification of Capacity Resources (3)(b) Requirement to use an RFP Process.1. ("For each block of required new supply-side resources identified in the IRP, the utility shall propose a schedule for conducting a RFP Process, including specifically the expected date upon which the RFP shall be issued that solicits each such new supply-side resource along with the amount of capacity required."), available at https://rules.sos.state.ga.us/gac/515-3-4.

[211] *See e.g.*, GA Reg. 515-3-4-.04. Identification of Capacity Resources (3)(b) Requirement to use an RFP Process.1. ("For each block of required new supply-side resources identified in the IRP, the utility shall propose a schedule for conducting a RFP Process, including specifically the expected date upon which the RFP shall be issued that solicits each such new supply-side resource along with the amount of capacity required."), available at https://rules.sos.state.ga.us/gac/515-3-4; *see e.g.*, LPSC Docket No. R-34247, General Order 10-14-2024 at 20 ("Electric utilities subject to the Commission's jurisdiction shall employ a market-based mechanism to support the addition of generating capacity intended to serve LPSC- jurisdictional retail customers, whether through the construction of that capacity, the acquisition of that capacity, or the contracting for that capacity through a Purchase Power Agreement ("PPA")… The market-based mechanism shall be a Request for Proposal ("RFP") competitive solicitation process that shall be constructed as broadly as possible to allow for review of all available options to add generating capacity. The RFP competitive solicitation process developed by the utility shall include the solicitation and evaluation of PP As and shall solicit and evaluate all available market options, including, but not limited to conventional resources, intermittent resources, hybrid resources, and storage."), available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=ZsHaodDYfhA%3d.

[212] Docket No. 22-019-U, SWEPCO Motion for Clarification of Order No. 5 at 2-3, ¶5 (Doc. # 118) available at https://apps.apsc.arkansas.gov/pdf/22/22-019-U_118_1.pdf.

Commission should consider closing this apparent gap in its rules and requiring RFPs for post-IRP procurement of supply side resources, so that Arkansas customers may have the benefit of the most economical resource options, and so that utilities are not incentivized to exploit this loophole by self-dealing or otherwise arbitrarily limiting the consideration of resource alternatives.

Recent utility applications support the need to reform the resource planning process to guide more prudent planning decisions from utilities that are informed by industry best-practices for competitive procurement, including the use of all-source RFPs.[213] For example, in the 2022 Application of SWEPCO for a Certificate of Public Convenience and Necessity to put 93 MWs of its Turk coal-fired power plant in rates pursuant to Ark. Code Ann. 23-3-201,[214] SWEPCO cited to its 2021 IRP as a basis for including Turk in Arkansas rates, noting that the MWs were included in its IRP.[215] The Commission General Staff and the AG each expended valuable tax payer funds hiring consultants as expert witness, from Daymark Energy Advisors and Norwood Energy Consulting, LLC respectively, to evaluate SWEPCO's application.[216] The AG's expert witness pointed out that putting 93 MWs SWEPCO's Turk plant into Arkansas rates was not part of SWEPCO's "Preferred Plan" for its 2021 IRP, and also that the application was contrary to the Commission's Resource Planning Guidelines, which state that "a self-build option must be compared to market opportunities."[217] Staff's expert witness likewise testified that "The record on

[213] *See e.g.*, Docket Nos. 24-072-U and 22-065-U.
[214] Docket No. 22-065-U Application of SWEPCO (Doc. # 16), Nov. 30, 2022.
[215] See e.g., Docket No. 22-065-U, Direct Testimony of Thomas P. Brice at 5-6 (Doc. # 17) (noting that "Despite not being included in SWEPCO's Arkansas Rates, to date the MWs are included in the Arkansas Integrated Resource Plan (IRP)…")
[216] *See e.g.*, Docket No. 22-065-U, Redacted Direct Testimony of John G. Athas (Doc. # 39), available at https://apps.apsc.arkansas.gov/pdf/22/22-065-U_39_1.pdf; Docket No. 22-065-U, Redacted Direct Testimony of Scott Norwood (Doc. # 38), available at https://apps.apsc.arkansas.gov/pdf/22/22-065-U_38_1.pdf.
[217] Docket No. 22-065-U, Order No. 11 at 12 (Doc. # 102) (citing Testimony of AG witness Norwood at 7, noting that "the Preferred Plan from SWEPCO's 2021 IRP indicated that short-term capacity purchases were the best option for serving SWEPCO's capacity requirements in the 2023-2024 period, followed by the addition of renewable energy resources in the 2025-2027 period and conversion of SWEPCO's Welsh 1 coal unit to natural gas in 2028.") (also noting that "in accordance with Section 4.6 of the Commission's Resource Planning Guidelines (RPG), "[a] self-build option must be compared to market opportunities.")

this docket lacks any comparison to alternative sources of capacity."[218] However, as noted in the Commission's Order, SWEPCO "essentially proposed a self-operate or self-deal option rather than a self-build option," and Commission rules (including the RPGs) do not expressly require a utility to engage in competitive procurement prior to filing an application for approval of a supply side resources, including a self-operate or self-deal option.[219] Thus, apparent loopholes in the RPGs guided SWEPCO to propose an uneconomic and high-cost resource. If the Commission had IRP Rules that expressly require RFPs prior to applying for approval to include generation resources in rate base and clearly precluded any self-dealing without first engaging in competitive procurement, SWEPCO would likely not have wasted time and resources filing its application in Docket No. 22-065-U in the first place, without first evaluating other options. Thus, recent utility resource-acquisition applications also support the need to reform the IRP process to provide more specificity regarding required procurement practices (i.e., requiring RFPs for new supply-side resources), which is a common requirement in other states.[220]

**e. The need to revise the Resource Planning Guidelines to prioritize Commission review and action**

The Resource Planning Guidelines need to be revised to prioritize Commission review and engagement in IRP proceedings. To illustrate this point, it is worth highlighting that of the four orders issued by the Commission in this IRP Docket since the Docket was established in 2007, the Commission has not issued a single order related to the substance of an IRP (e.g., an order containing findings of fact on whether stakeholder comments merit requiring EAL to reevaluate and resubmit its IRP). Notably, the Commission issued Order No. 2 to grant the intervention of

[218] Docket No. 22-065-U, Redacted Direct Testimony of Scott Norwood at 37 (Doc. # 38).
[219] Docket No. 22-065-U, Order No. 11 at 23-24 ("As further noted by AG witness Norwood, RPG Section 4.6 states that "[a] self-build option must be compared to market opportunities." Although SWEPCO has essentially proposed a self-operate or self-deal option rather than a self-build option, the Commission finds that the public policy and logic behind Section 4.6 of its RPGs with regard to self-dealing still applies.")
[220] *See e.g.*, GA Reg. 515-3-4-.04. Identification of Capacity Resources (3)(b) Requirement to use an RFP Process.

AEEC, which was not contested by any party.[221] Why did the Commission spend its valuable time and resources drafting an order to grant a routine, uncontested intervention of a stakeholder that has participated in countless proceedings before the Commission, but did not spend their time issuing any orders regarding the substance of EAL's IRPs? The obvious answer is because the Commission's rules are drafted in a way that diverts the Commission's time to prioritize relatively insignificant filings and corresponding orders. Commission *Rule of Practice and Procedure* 4.02(a)(4) states that "The Commission shall rule on the petition to intervene within twenty (20) days from the date the petition is filed. Commission does not rule within that time, the petition to intervene shall be deemed denied." The applicable rule therefore requires timely Commission action for even uncontested interventions. The presumption is that if the Commission does not act and issue an order, the intervention is denied. By contrast, for IRPs, the presumption is that if the Commission does not act and declines to issue an order, the IRP is not denied (i.e., the IRP is approved). Given the importance of resource planning,[222] these presumptions seem entirely backward. The result is that the Commission and its Staff spend more time reviewing routine petitions to intervene and drafting pleadings and orders for routine interventions than the time spent reviewing much more impactful resource plans for the next 20 years. Therefore, the Commission's Resource Planning Guidelines should be revised to prioritize review and action by the Commission in IRP proceedings, including review and action by the Commission's General Staff.

[221] *See* Order No. 2.

[222] Resource Planning Guidelines Section 3, Relationship of the Commission and Utilities with Resource Planning ("Resource planning will be relevant to future resource investment decisions and approval proceedings, as well as revenue requirements and rate design. Consistency of a utility's Resource Plan with the Guidelines will be an additional factor for the Commission to consider in evaluating the prudence of investments, construction and rate applications, as will changed circumstances and other evidence.")

### v. The case for reforming the IRP review process under the applicable IRP statute

SREA recognizes and understands that, when the Resource Planning Guidelines were originally adopted by the Commission in 2007, Stakeholders expressed concerns about the impact of the Commission reviewing and approving an IRP pursuant to rules, since the applicable IRP statute, Ark. Code Ann. § 23-18-106, creates a rebuttable presumption that a utility's costs are reasonable, prudent, and incurred in the public interest, and therefore are eligible for recoverable in rates (subject to Commission approval), if the Commission officially reviews and approves an IRP pursuant to rules.[223] When the Resource Planning Guidelines were originally adopted by the Commission in 2007, the Commission's Order noted the following regarding this issue:

> The Electrics would add language that the utility may seek Commission approval of its Resource Plan in order to establish a rebuttable presumption of reasonableness and prudence of costs necessary to implement the Plan, pursuant to A.C.A. § 23-18-606. AEEC (Tr. At 289) and the AG (Tr. At 346) object to this suggestion on the grounds that following the Guidelines should not preclude future prudence reviews. Staff believes that seeking approval of its Resource Plan should be an option for the utility (Tr. At 397). The Commission does not intend for the Guidelines to interfere with any statutory restrictions, rights, or privileges of a utility, and agrees with Staff. However, a utility request for formal approval would result in docketing the Resource Plan and opening the process to discovery.[224]

SREA also recognizes and understands that circumstances have changed substantially since 2007, and likewise the concerns of Stakeholders have also changed. In 2007, the general rate case was a

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[223] Ark. Code Ann. § 23-18-106(a)("The Arkansas Public Service Commission shall have the authority to adopt rules under which electric utilities shall seek commission review and approval of the processes, actions, and plans by which the utilities:

**(1)** Engage in comprehensive resource planning;

**(2)** Acquire electric energy, capacity, and generation assets; or

**(3)** Utilize alternative methods to meet their obligations to serve Arkansas retail electric customers…

(d)(1)(A) Reasonable and prudent costs incurred in compliance with subsection (a) of this section and in compliance with the provisions of § 23-3-201 et seq. and the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., shall be eligible for recovery in the rates of any electric utility making such an acquisition, subject to final approval by the commission.

**(B)** When the utility establishes that the costs were incurred in compliance with subsection (a) of this section, a rebuttable presumption is established that the costs were reasonable and prudent and incurred in the public interest.

[224] Order No. 6 at 7 (Doc. # 51), available at https://apps.apsc.arkansas.gov/pdf/06/06-028-r_57_1.pdf.

paramount function of the Commission's authority. Therefore, at the time the Resource Planning Guidelines were promulgated by the Commission, it would have been reasonable for Stakeholders and the Commission to have concerns about creating any presumption applicable to rate cases, and potentially ceding some of the Commission's ratemaking authority, even if the presumption was rebuttable and the costs still subject to final approval by the Commission. At that time, Stakeholders and the Commission would have been rightly cautious about the creation of any rules that might relegate the Commission's paramount ratemaking authority to a mere cursory review, or secondary to the IRP process. However, the circumstances changed substantially in 2015, when EAL persuaded the General Assembly to pass the Formula Rate Review Act ("FRRA"),[225] drastically limiting the Commission's ratemaking authority for utilities that elect formula rate plans, such as EAL. The FRRA has had the effect of actually doing what the 2007 Commission and Stakeholders likely feared robust IRP rules might do: it took away much of the Commission's regulatory authority. The FRRA now determines rates for most utilities that elect to utilize a formula rate plan ("FRP"), using a prescriptive formula established by statute that leaves little (if any) discretion to the Commission,[226] and likewise leaves little opportunity for input from Stakeholders.[227] For example, in its most recent order approving a settlement for EAL's FRP, the Commission made no findings that EAL's costs were reasonable, prudent, and incurred in the public interest, and therefore are eligible for recoverable in rates, as the IRP statute contemplated. Instead, the Commission merely made the following findings regarding compliance with the

[225] Ark. Code Ann. § 23-4-1201 et. seq.
[226] *See* Ark. Code Ann. 23-4-1207 ("(b)Adjustments of customer rates *shall* be calculated using the following formula…**(c)** If a formula rate review test period utilizes projected data under § 23-4-406 or a projected year, rates shall be adjusted by the netting of historical year differences under § 23-4-1206.")
[227] *See e.g.,* Docket No. 23-012-R, General Staff's Response to Arkansas Advanced Energy Association's Petition to Intervene at 4, ¶¶ 10-11. (Doc. # 55) (citing the limited scope of a the formula rate review process as a basis for opposing intervention from AAEA), available at https://apps.apsc.arkansas.gov/pdf/23/23-012-FR_55_1.pdf.

FRRA, while lamenting its lack of ratemaking authority and expressing concerns regarding the rate increase:

> While the Commission finds that the increase is consistent with the operation of the Arkansas FRP statutes and EAL's Rider FRP, the Commission continues to be concerned that the operation of the FRP statute could result in continuing year-to-year rate increases approaching or meeting the four-percent cap. The Commission expects all utilities to control their costs in a prudent and reasonable manner and not utilize the FRP as an automatic yearly four-percent rate increase.[228]

The APSC has said this in almost every final order entered during an FRP cycle.[229] Likewise, the Commission has agreed with other stakeholders, including AEEC and General Staff, that the methodology EAL uses in FRPs does not incentivize the utility to control its costs.[230] In response, SREA observes that the Commission may mitigate its concerns regarding its lack of ratemaking authority under the FRRA by taking a more proactive role in the resource planning process on the front end under the applicable IRP statute, which authorizes the Commission "to adopt rules under which electric utilities shall seek commission review and approval of the processes, actions, and plans by which the utilities: (1) Engage in comprehensive resource planning."[231] In short, the 2007 Commission's reservations about adopting IRP rules are no longer valid, having been made moot by the FRRA. Under the FRRA, utilities are incentivized to maximize their statutorily allowed costs each year, and the Commission is not authorized to deny recovery of "imprudent" costs after they are incurred, so the key question is whether the Commission proactively reviews utility IRPs on the front end to help guide prudent investment decisions before the cost are incurred. Therefore, the Commission should take a more proactive approach in the IRP process to ensure that it is

[228] Docket No. 16-036-FR, Order No. 62 at 3 (Doc. # 979), available at 16-036-FR_979_1.pdf (arkansas.gov).
[229] *See e.g.*, Docket No. 16-036-FR, Order No. 14 at 31, Order No. 40 at 49, Order No. 52 at 2-3.
[230] *See* Docket No. 16-036-FR, Order No. 40 at 42 (Doc. # 687) ("[AEEC witness] LaConte testifies that…EAL has no incentive to control its cost because it can exceed the cap and recover those in later FRP filings when it does its netting adjustment."), at 48 ("AEEC's and Staff's positions that the effect of EAL's methodology has the same effect as creating a regulatory asset is well taken… Prioritizing the "bottom of the stack" advances recovery ahead of other costs and also creates a disincentive for EAL to control its costs.")
[231] Ark. Code Ann. § 23-18-106(a).

fulfilling its duty to supervise and regulate every public utility and ensure that rates are just and reasonable, and in the public interest.[232]

### vi. Recommendations for improving the IRP process in Arkansas

SREA proposes the following high-level recommendations for improving Arkansas's IRP process:

- **Approval:** Use a litigated process, or otherwise have a requirement for the Commission to formally approve or disapprove the IRP. [233]
- **Discovery:** Include a formal discovery process in the IRP review or other formal process for requesting information.
- **Intervention:** Automatically approve uncontested applications for intervention, and expeditiously review contested applications.
- **Procedural Schedule:** Establish a clear set of milestones and due dates associated with data requests, testimony, hearings, comment periods, and final decision-making.[234]
- **Hearing:** Require a live-hearing at the conclusion of the procedural schedule, prior to the Commission's decision.[235]
- **Information accessibility:** Create minimum filing requirements for the IRP, including but not limited to:
    - New Resource cost assumptions
    - Cost assumptions for maintaining existing resources
    - Capacity accreditation for all resources
    - Commodity price forecasts
    - Modeling parameters, including constraints on new resource build and resource retirements
    - Load and resource tables
    - Model results for capacity build and retirements by unit and resource type, generation by unit and resource type, revenue requirements
    - Transmission plans and modeling: Utilities should be required to include specific details about their transmission expansion plans, evaluate technologies that increase transmission capacity, such as grid enhancing technologies (GETs), and model transmission as a resource, along with new generation options.[236]

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[232] *See* Ark. Code Ann. § 23-2-301. Powers and jurisdiction of commission generally ("The commission is vested with the power and jurisdiction, and it is made its duty, to supervise and regulate every public utility defined in § 23-1-101 and to do all things, whether specifically designated in this act, that may be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty."); Ark. Code Ann. § 23-2-304 Certain powers of commission enumerated.

[233] Georgia, South Carolina, and Virginia have a full litigated process – testimony, discovery, hearing.

[234] *See e.g.*, LPSC Docket No. R-30021 – LPC, ex parte. In re: Development and Implementation of Rule for Integrated Resource Planning for Electric Utilities at 22-23, March 21, 2012, available at https://lpscpubvalence.lpsc.louisiana.gov/portal/PSC/ViewFile?fileId=FOl1UTXQnwY%3d.

[235] As with other APSC dockets, the hearing could be subject to being canceled in the event the stakeholders agree to a settlement and request to cancel the hearing.

[236] *See* RMI, *Mind the Regulatory Gap: How to Enhance Local Transmission Oversight* at 46, November 2024, available at https://rmi.org/wp-content/uploads/dlm_uploads/2024/11/mind_the_regulatory_gap_report.pdf.

  - All studies developed to conduct the IRP, including reserve margin, solar integration cost, DSM potential, ELCC, and any other studies.
- **Transparency**:
  - Require the utility to justify all confidential designations for modeling inputs and data.
  - Require the utility to file applications for new resource approvals (e.g., CCNs and CECPNs) in the designated IRP dockets, so that Stakeholders that have intervened in IRP dockets (or are otherwise tracking IRP dockets) may have notice of such proceedings and the opportunity to participate.[237]
- **Modeling:**
  - Provide intervenors licenses to IRP modeling software.[238]
    - Provide technical intervenors with intervenor licenses for the utility planning software that the company is using (Aurora, EnCompass, Plexos, etc.)
    - Provide all modeling files so intervenors can evaluate the Company's methodology and design and run their own scenarios.
  - Integrate resource adequacy modeling with resource planning modeling.
  - Minimize unnecessary and unsupported constraints in the model, i.e., build limits, hard-coded retirement dates.
- **Stakeholder engagement:**
  - Hold regular stakeholder meetings to solicit input from Stakeholders.
  - Allow feedback from Stakeholders throughout development of the IRP and modeling process, not just one the IRP has been filed.
  - Always allow virtual participation options.
  - Solicit input from intervenors on the timing of meetings.
  - Provide presentation materials in advance of stakeholder meetings so that Stakeholders have adequate time to review the materials and prepare questions prior to the meetings.
- **Stakeholder comments / testimony:**
  - If the process is litigated, allow a reasonable timeline for intervenor testimony to be filed. Consider developing and providing transcripts of any formal hearing.
  - If the process is not litigated, allow intervenors to file comments after stakeholder meetings and once modeling results are produced. Require the utility to respond to questions and concerns raised in the comments.
- **Scenarios:**
  - Require the Company to model additional scenarios as requested by Staff.
  - Require modeling of at least one fully optimized scenario with economic. retirements allowed and all avoidable forward-going costs modeled for existing resources.

[237] *See e.g.*, GPSC Docket No. 44578, Order Adopting Stipulated Agreement at 3 (finding that an IRPs and certificates should be filed and considered in the same docket. "O.C.G.A. § 46-3A-4 states, "The utility's application for a certificate shall be accompanied by its current integrated resource plan, whether or not previously filed."...Because the utility's application for certification, decertification, or an amended certification must be accompanied by its current IRP, it is appropriate to consider these dockets and their schedules concurrently.")

[238] Public utilities in other states routinely help to facilitate independent modeling runs by intervenors as part of the IRP process, including as a result of commission orders, rules, or approved stipulations. For instance, see page 14 of this Arizona Commission Order and page 27 of this Michigan PSC Order.

  - Model all required environmental laws as part of base / reference scenario.
- **Integration with plans:**
  - Clearly link near-term generation and transmission plans with the results of the IRP.
- **Competitive Procurement**
  - Utilities must engage in RFP process for competitive procurement prior to filing an application for approval of a resource (e.g., CCN or CECPN) or contract (e.g., power purchase agreement or capacity purchase agreement).[239]
  - The RFP process should include participation by an independent evaluator and APSC General Staff.[240]
  - RFPs must not be unreasonably or arbitrarily limited (e.g., not limited to existing resources or specific technologies).
  - A self-deal option (e.g., self-build, self-own, or self-operate) must be the lowest cost option resulting from an RFP that results in at least three (3) other qualifying proposals (i.e., proposals from market participants other than the self-dealing utility) prior to the utility filing an application for Commission approval of the self-deal option.

In addition to these specific suggestions, SREA encourages the Commission to review the available literature regarding best practices in integrated resource planning cited in the footnotes to these Comments, including the most recent report from Synapse Energy Economics, who contributed to the development of the Stakeholder Committee Report and SREA's comments.[241]

[239] *See* Synapse Energy Economics, *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future*, November 2024 (Revised December 6, 2024) at 31, available at https://www.synapse-energy.com/sites/default/files/IRP_Best_Practices_2024_Synapse_LBNL_24-061_1.pdf ("The most accurate way to develop present-day cost expectations for most resources is through real market data obtained directly from project developers or through competitive, all-source requests for proposals."); *See e.g.*, GA Reg. 515-3-4-.04. Identification of Capacity Resources (3)(b) Requirement to use an RFP Process.1. ("For each block of required new supply-side resources identified in the IRP, the utility shall propose a schedule for conducting a RFP Process, including specifically the expected date upon which the RFP shall be issued that solicits each such new supply-side resource along with the amount of capacity required."), available at https://rules.sos.state.ga.us/gac/515-3-4.

[240] John Wilson, Mike O'Boyle, Ron Lehr, Mark Detsky, *Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement* (April 2020) at 19 ( noting that the "[n]umbers of bids received in each case study suggests that a regulatory requirement for use of an independent evaluator and significant staff scrutiny provide for a meaningful engagement of the market."), available at https://energyinnovation.org/wp-content/uploads/2020/04/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices.pdf

[241] *See e.g.*, Synapse Energy Economics, *Best Practices in Integrated Resource Planning: A guide for planners developing the electricity resource mix of the future*, November 2024 (Revised December 6, 2024), available at https://www.synapse-energy.com/sites/default/files/IRP_Best_Practices_2024_Synapse_LBNL_24-061_1.pdf; *see also* Laren Shwisberg, Katerina Stephan, Mark Dyson, *Reimagining Resource Planning* (2023), available at Reimagining Resource Planning - RMI.

## III. Conclusion and request for relief

The inadequacies of the IRP process have never been on such full display until now, as the impacts of increasing demand and insufficient transmission become more and more evident. The state's largest electric utility faces an impending capacity deficit in winter of 2027 and summer of 2028 (approximately 1,000 MW),[242] and EAL's capacity deficit is expected to exceed 8,300 MW by 2045 if the high-load growth sicario materializes.[243] A lack of sufficient energy resources and poor planning hurts Arkansas as a whole. It raises energy prices and deters new businesses from locating in Arkansas. The challenges with the IRP processes in Arkansas underscore the urgent need for the Arkansas PSC to take a more active role in the IRP process to ensure accurate information and appropriate considerations are included in developing a plan for Arkansas's energy future. Therefore, the Commission should reopen Docket No. 06-028-R or establish a new rulemaking docket and engage in a comprehensive rulemaking to reform the IRP process, as suggested by other utilities.[244] Additionally, the Commission should re-open intervention and establish a new intervention deadline so that all current Stakeholders in the IRP dockets can participate and have the opportunity to propose additional reforms to the RPGs or the adoption of new IRP Rules.

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[242] *See* EAL 2024 IRP at 21 ("EAL's customer base has grown to over 730,000 residential, commercial, industrial, and governmental customers in 63 of Arkansas' 75 counties, covering over 40,880 square miles."), 29 (Charts 4-5: "Considering deactivation assumptions and load growth, EAL could see a winter deficit as early as 2027 and a summer deficit by 2028.")

[243] EAL 2024 IRP at 29 ("This need may grow to over 8,300 MW by the end of the 20-year planning horizon in the high-load growth future.")

[244] *See* Petition for Limited Appearance and Verified Statement of Position filed by Arkansas Electric Cooperative Corporation (Doc. # 99) ("the Cooperative … asks the Commission to … transfer the issues raised in the Motion to Docket No. 06-028-R, and issue a procedural schedule, so that all interested parties receive notice and opportunity to be heard on the matter."); *see also*, Limited Appearance Statement of Southwestern Electric Power Company at 9 (Doc. # 101)("The Stakeholder Process should continue to be governed exclusively by Rule 4.8 absent a comprehensive rulemaking.").

SREA respectfully requests that the Commission take the following actions recommended in these Comments:

1. Hold on hearing on the issue of whether to require EAL to re-evaluate and resubmit its 2024 IRP to address the concerns raised in SREA's Comments and the Stakeholder Committee Report;

2. Require EAL to re-evaluate and resubmit its 2024 IRP to address the concerns raised in SREA's Comments and the Stakeholder Committee Report;

3. Require EAL to issue an all-source RFP following the conclusion of the 2024 IRP process, and prior to approving any new gas plants;

4. Direct EAL to propose more customer-centered resource options for renewable energy and storage;

5. Grant the relief requested in AEEC's Application;

6. Issue notice for an amended rulemaking to engage in a comprehensive rulemaking to reform the IRP process, either in Docket No. 06-028-R or in a new docket, and re-open intervention so that all current Stakeholders in the various IRP dockets can participate fully and have the opportunity to propose additional reforms to the Resource Planning Guidelines or the adoption of new IRP Rules; and

7. Grant any other relief it deems just and reasonable and in the public interest.

Respectfully submitted,

**Southern Renewable Energy Association**

Whit Cox, AR Bar No. 2013209
Regulatory Director
Southern Renewable Energy Association
11610 Pleasant Ridge Road, Suite 103 # 176
Little Rock, AR 72223
whit@southernrenewable.org
(501) 701-0874

Simon Mahan
Executive Director
Southern Renewable Energy Association
11610 Pleasant Ridge Road, Suite 103 #176
Little Rock, AR 72223
simon@southernwind.org
(337) 303-3723

**CERTIFICATE OF SERVICE**

I hereby certify that I have served all parties with the foregoing document by electronic mail on this 28th day of January, 2025. [245]

Whit Cox
Regulatory Director
Southern Renewable Energy Association
11610 Pleasant Ridge Road, Suite 103 # 176
Little Rock, AR 72223
whit@southernrenewable.org
(501) 701-0874

[245] SREA notes that representation by its Regulatory Director in this matter is in compliance with Ark. Code Ann. § 21-8-102 regarding restrictions on employment of former state employees because the former state employee was not assigned Docket No. 07-016-U or Docket No. 06-028-R during his time of employment with the Commission.