Net Metering/Solar-Energy Generating Facility: Arkansas Court of Appeals Addresses Agricultural Operations Challenge to Tarriff

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The Court of Appeals of Arkansas ("Court") addressed in a November 19th Opinion an issue involving net metering. *See Don L. Kittler, Jr. v. Entergy Arkansas*, LLC, 2025 Ark. App. 567.

The question addressed was whether Entergy was treating net-metering customers differently than non-net-metering customers under Rate Schedule No. 14 - Agricultural Water Pumping Service ("AWP RS").

Don Kittler, Jr. ("Kittler") is described as owning a farm in Lonoke and Prairie Counties that operates a solar-energy-generating facility. The facility provides energy for his rice, soybean, and corn growing operations. The solar facility provides 90% of the farm's electricity. The electricity is used to pump water from various wells.

The Court by way of introduction summarizes the concept of net metering from the decision *Petit Jean Electric Cooperative Corp. v. Arkansas Public Service Commission*, which states:

… Net metering is a method of billing electric-utility customers who consume electrical power generated by their own renewable-energy equipment (such as wind turbines or solar panels) as well as power supplied by an electric utility. Net-metering customers may generate more electrical power by their own renewable-energy equipment than the customer consumes. In this event, the net-metering customer transmits the excess renewable energy to the electric utility's grid, where it is consumed by other customers (whether or not they also have net-metering equipment). At the end of the electric utility's billing period, the net-metering customer is billed for the kilowatt hours (kWh) of grid power that the customer consumed and credited for the kWh of any excess renewable energy that the customer supplied to the grid.

Kittler's solar array is stated to generate more electrical power during many months of the year than is needed from Entergy. Therefore, Kittler receiveS credits surpassing what he was billed for his energy usage.

The method of determining a public utility rate (i.e., "tariff") is by using a rate schedule. The applicable rate schedule in this instance is the previously referenced AWP RS.

The Court frames the question as whether Entergy violated the Arkansas Public Service Commission's ("Commission") Net Metering Rules in its application of AWP RS when it billed a minimum charge to Kittler in months that he produced excess net-generation credits.

Kittler filed a Complaint before the Commission which was denied in Order No. 7. The Commission held that Entergy applied the different components of the AWP RS to its bills in the same manner to all customers under that rate schedule. As a result, the Commission found that Entergy had not engaged in improper billing procedures.

The Court in considering Kittler's appeal quotes from his Petition which states in part:

… Customers' contention is that EAL is special-billing Customers by wrongfully adding charges that are not billed to other customers… However, EAL insists on taking a special billing step for Customers' accounts after the Energy Charge is settled. EAL chooses to calculate and bill a "Minimum."

The Court identifies Kittler's primary point as an argument that the AWP RS conflicts with Net-Metering Rule 2.03 when applied to net-metering customers.

The Court holds that:

… there is substantial evidence that the Minimum Charge under AWP Rate Schedule § 14.5.2 is not a "new or additional charge" that is assessed only to net-metering customers.

Further, the Court adds that:

… Perhaps even more importantly, this iteration of Rule 2.03 was in effect at least as early as 2007. Even if the rate set forth in AWP Rate Schedule § 14.5 does establish a new or additional charge for a net-metering customer, the version applied to Kittler was enacted in 2019.

Kittler was determined to have not argued or presented evidence that the AWP RS was not filed properly or that the Commission had not properly approved it.

The Court disagreed with Kittler's argument that the treatment by Entergy was discriminatory, citing witnesses from the Commission hearing that the treatment was:

... exactly the same as all other customers who are billed under AWP Rate Schedule § 14.5.

The Court further rejects the argument that Kittler is being charged both the Minimum Charge and an Energy Charge in months that he has excess net-generation credits and that this practice is discriminatory against net-metering customers. It holds that Kittler's not being charged both as the AWP RS is interpreted as explaining how the bill is calculated each month.

A copy of the Opinion can be found here.