

Collaborating for Success – How Arkansas Got it Right

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ABSTRACT

In 2006, the Arkansas Public Service Commission (PSC) initiated a statewide energy efficiency collaborative process for the utilities in Arkansas. From the time the Commission issued the order establishing the energy efficiency collaborative on June 30, 2006 until the draft report was issued on October 31, 2006, stakeholders in the process addressed the major issues affecting designing, developing, launching and recovering the costs for initiating energy efficiency programs in Arkansas. Over 24 utilities participated in the collaborative, as well as citizen groups, large corporate rate-payers and major large commercial and industrial customers.

The process that Arkansas used was unusual in that energy efficiency didn't ride the coattails of a sweeping legislative movement, as either an integral part of a contemplated restructuring of the electric industry or as a result of protests by consumers and businesses to lower the burden of energy costs. Rather, this process emerged independently, from the vision and leadership of senior regulatory officials and utility companies committed to serving their constituents and customers in the best way possible.

This collaborative process serves as an excellent model for states initiating energy efficiency programs for the first time or significantly modifying their existing energy efficiency programs. The process provides a forum for all stakeholders to voice their concerns, and more importantly, provide input into the process. Since the process is collaborative instead of adversarial, it works well whether the parties' goals are aligned or in opposition to each other.

Introduction

The Commission envisioned a collaborative process whereby the questions about an energy efficiency initiative for Arkansas could define the ultimate goals of the initiative. The Commission recognized that the goals could take the form of standards, codes, or programs, and the Commission was interested in determining what the appropriate balance should be among a multitude of goals.

The collaborative process resulted in a substantial number of recommendations to the Arkansas Commission, many of which were incorporated into the final Commission orders mandating "Quick Start" energy efficiency programs in the fall of 2007. Some of the reasons the collaborative succeeded were simple, yet are often overlooked by many states initiating energy efficiency programs. This paper illustrates how to incorporate these simple lessons to help quell the raging debate on major energy efficiency issues and prevent the positions of the parties from overwhelming and ultimately hindering the process. Lessons learned include:

- **Provide clear direction from the top.** Commission Chairwoman Sandra (Sandy) Hochstetter explained her underlying reasons for initiating energy efficiency efforts to all parties in the initial Commission energy efficiency workshop, and she maintained her position throughout the collaborative. Competing agendas were not an issue and all parties heard a consistent message.

- **Apply lessons learned from other states.** The Arkansas Commission invited the U.S. EPA, through the ENERGY STAR programs, to assist in the process and to share best practices and lessons learned from a number of states. This was done through the EPA's Regulatory Assistance Project (RAP), with Rich Sedano as the facilitator. He was a valuable contributor in Arkansas, bringing his personal experiences facilitating these kinds of regulatory processes in a number of states.
- **Keep a tight agenda.** While all parties had a voice in the proceedings of the collaborative, Rich Sedano kept a tight rein on subjects that strayed from the agenda. When parties were silent about sensitive issues, he did not view silence as consent and effectively drew out opposing comments so that issues could be thoroughly vetted.
- **Understand the local issues.** Rich Sedano took the time during meeting breaks and in the weeks between collaborative meetings to make sure that he understood as many differing views as possible, in order to ensure that all parties had their key issues discussed fully during the collaborative. This required excellent judgment, timely intervention, and impeccable record-keeping. There are particular issues and sensitivities in every utility jurisdiction, and Arkansas is no different. Mr. Sedano made sure that the issues were raised and addressed when possible, and tabled for future reference when necessary.
- **Keep the wheels turning.** A number of issues, such as lost-revenue recovery, incentives for utilities, and administration of energy efficiency programs, had the potential to derail the collaborative. To minimize this possibility, Commission staff and the facilitators worked to maintain a culture of openness. For example, when the topic of lost revenue was raised, the staff indicated its willingness to address the issue in a rate case proceeding.
- **Get out of the gate quickly.** The time elapsed from the completion of the collaborative (in a short 90 days) to the final Commission order authorizing each utility's energy efficiency programs was approximately 10 months. This included the initial Commission comments, rebuttal comments, Commission orders, each utility filing a suite of programs, comments by interveners, utility reply comments, Commission hearings for each utility and the final Commission orders mandating "Quick Start" programs.

What Made the Arkansas Process Unique?

While many factors contributed to completing these complicated tasks in a relatively aggressive timeframe, there were many factors that threatened to slow the process considerably. The collaborative also had some significant challenges to overcome in order to achieve its mission. A number of factors made this collaborative process unique:

- The collaborative was initiated by Chairwoman Hochstetter. Her concerns over rising energy costs, new electric generation, and resource adequacy played an important role in the development of the collaborative.
- Unlike other states, both electric and gas utilities were directed to participate in the collaborative. The resulting orders from the Commission mandated the creation of energy efficiency programs for both the electric and gas investor-owned utilities (IOU's). Having both electric and gas IOU's participating in the collaborative allowed it to address

key issues, such as fuel-switching and the importance of being fuel-neutral, early on in the discussions instead of later, when divisiveness could have derailed the process.

- The legislation that provided the Arkansas Public Service Commission the authority to order energy efficiency programs by the state's utilities was passed into law in 1977, 29 years before the Commission finally acted on it. The lack of a Commission Order for 29 years emboldened certain parties that did not want to see energy efficiency programs created, particularly the coalition of large industrial and large commercial customers.
- In stark contrast to the decades that passed before the PSC ordered energy efficiency programs, the collaborative achieved its mission in a relatively short 90 days. While the collaborative completed its work quickly, it would not have been possible without the foundation established prior to the collaborative and the filings by interveners subsequent to the collaborative.

Chairwoman Hochstetter recognized that sustained increases in the price of energy would threaten the social and economic well-being of Arkansans. This formed the foundation for the energy efficiency initiative. The Commission also noted that the Energy Policy Act of 2005 provided federal tax credits which, when combined with the creation of utility-based energy efficiency programs, would allow Arkansas consumers and businesses to improve their energy efficiency and reduce their energy expenditures.

The Commission recognized that the ultimate goals of the initiative could take the form of standards, codes, or programs, and that the right balance must be struck among the following options¹:

- Energy savings directly attributable to program activities (e.g., more emphasis on pushing energy efficiency technologies into the market that are shown to provide rapid payback on the initial investment);
- Long-term and permanent changes in behavior, attitudes, awareness, and knowledge about energy savings and use of energy efficient technologies (e.g., more emphasis on *market transformation*);
- Permanent peak demand reduction;
- Energy cost savings and cost-effectiveness;
- Reliability enhancements;
- Environmental benefits;
- Economic development/competitiveness benefits;
- Increases in system-wide capacity;
- Accelerating the commercialization of advanced or emerging technologies;
- Improving affordability of energy for low-income customers; and
- Any other criteria not listed above.

The parties were encouraged to: describe, in quantitative terms, the benefits and costs of these different aspects of the program; comment on the barriers inhibiting adoption of energy efficiency measures; and suggest how to overcome these barriers. Parties were also encouraged to provide estimates of the energy efficiency potential in Arkansas associated with these options.

¹ Arkansas Public Service Commission, Docket # 06-004-R Order #1

In addition to other key questions raised by the Commission, the Commission sought information regarding experiences in other states, how energy efficiency could be incorporated into integrated resource plans, how cost recovery should be designed, the role of education and increasing consumer awareness of energy efficiency, the role of financial incentives, appropriate funding levels, the energy efficiency infrastructure that currently exists in Arkansas, the appropriate metrics for program evaluation, and the overall development process.

U.S. EPA, through the ENERGY STAR programs, also played an important role. In order to make efficient progress in the timelines envisioned by the Commission, Rich Sedano of the Regulatory Assistance Project (RAP) was retained to facilitate the collaborative with the assistance of then-retired utility executive, Walter “Wally” Nixon. Through an initiative to promote the development of energy efficiency program funding by utility companies, U.S. EPA provided financial assistance to the State of Arkansas to reduce administrative costs of RAP and for RAP to serve as an outside facilitator.

Key Success Factors and Lessons Learned

Initial Workshop

An initial workshop to discuss some of the issues facing and goals of the collaborative was conducted on February 21, 2006. Approximately 100 interested parties from various backgrounds attended. The IOU’s were well represented, as were most of the Arkansas Electric Cooperatives, state government agencies, energy service companies, consultants, community action agencies, Commission staff, and renewable energy advocates.

Chairwoman Hochstetter led the introduction to the workshop and outlined her concerns on the current state of the energy industry and how it threatened the financial well-being of Arkansans as well as the financial health and competitiveness of Arkansas businesses. Other speakers included Stacey Angel of US EPA, Bill Prindle of ACEEE, Michael Dworkin of the Vermont Law Center, Bob Balzar of Nevada Power, Jess Totten of the Texas Public Utility Commission, Angie Kline of Minnegasco, and Sue Nathan of Kansas City Power and Light.

The workshop presentations highlighted the energy efficiency potential within states and how energy efficiency programs improve the economic conditions of residents as well as the reliability of the electric grids. The workshop also included many comments from the National Action Plan for Energy Efficiency. Chairwoman Hochstetter made it a point to draw out comments from all of the utilities attending the workshop. Formal comments from all interested parties were also sought by the Commission.

Once formal comments had been received and reviewed by the Commission, Commission Order # 3&4 ordered the start of the collaborative process on August 26th, 2006, with a requirement for a final report to the Commission by October 13th, 2006.² The major issues to be addressed during the collaborative were as follows:

1. The nature and design of energy efficiency and conservation programs that can be started quickly and produce near-term benefits for Arkansans.
2. The appropriate incentives and standards for customers and utilities.
3. The development of energy efficiency market structure principles and guidelines.

² Arkansas Public Service Commission, Docket # 06-004-R, Order Nos. 3&4

4. The advantages of fostering cooperative gas and electric energy efficiency program templates.
5. Possible development of a “deemed savings approach” for Arkansas.
6. The development of uniform standards and mechanisms for evaluating, measuring and validating energy efficiency programs.
7. The proper economic tests to use in determining whether a program is in the public interest.

The Commission anticipated that other relevant and important topics would emerge during the collaborative, and wanted to discuss those issues, make recommendations for a framework of how programs would emerge, and define parameters for introducing energy efficiency programs to the market. The Commission also wanted to see draft rules reflecting the discussion and its conclusions. The Commission indicated that it encouraged consensus among the parties, but was resolved to make choices among alternatives if the parties did not achieve consensus.

Clear Direction from the Top

The collaborative convened on August 28, 2006, with Rich Sedano of RAP facilitating and being assisted by Wally Nixon. Chairwoman Hochstetter attended several of the collaborative meetings to ensure that the commitment from the top was seen and felt by collaborative attendees. Since energy efficiency programs were new to most Commission staff members, they listened carefully in the early meetings and learned the concepts quickly so that their presence and guidance could be felt and heard as the collaborative continued. Rich Sedano led the participants through some early questions to help guide the discussions and to promote inclusion by all participants. The key questions included:

- What qualities should Arkansas energy efficiency programs have?
- What are “quick start” and “good return candidate” programs?
- Can Arkansas apply programs and practices in use in other states?
- How similar should programs be across utilities?
- Beyond cost, are there any drawbacks to the use of customer incentives?
- Is there a preferred method to determine the customer incentive?
- Are there any special issues for natural gas programs compared with electric?
- What will we want to know later that we don't need now?

The underlying reasons for the initiation of energy efficiency programs and the resulting benefits for Arkansans never changed throughout the process. The message was consistent, concise, factual and relatively simple. At each collaborative meeting, Rich Sedano provided a summary briefing from the events of the previous collaborative meeting, the consensus reached, a summary of differences remaining and a reminder of the underlying reasons for the collaborative. Opening comments were requested on the meeting format and the agenda to be covered and comments were continually requested at all points along the way.

Lessons Learned from Other States

Early in the collaborative process, all parties agreed that the lessons learned in other states should be considered for their applicability to Arkansas. Additionally, in the midst of the collaborative, the North American Electric Reliability Council released its 2006 Long Term Reliability Assessment. The report warned of a decline in reliability as forecasted growth in energy use exceeds the forecasted ability to maintain sufficient resources to serve demand. The report pointed to the potential for increased demand side resources to help slow growth and improve reliability. This report underscored the importance and timeliness of this collaborative process and the actions to follow.³

The only state neighboring Arkansas that has substantial energy efficiency programs is Texas. Many of the lessons learned from Texas's implementation of energy efficiency programs were brought out in the collaborative. Additionally, Rich Sedano's experiences in Vermont and other collaborative participants' experiences in California and Minnesota were brought to bear in discussing and trying to reach consensus on the seven major topics.

In order to keep the cost of the energy efficiency programs affordable, most of the parties agreed with the need to establish deemed savings. However, the Arkansas Attorney General's office was skeptical about the accuracy this approach. To address this, experts from the Texas Public Utility Commission and firms that have established deemed savings in other states came to address the collaborative and present their experiences. These presentations demonstrated the depth of the research involved in each measure as well as the veracity of the process to determine the outcome. These were most beneficial to all parties in highlighting the need for deemed savings and the relative accuracy of the final product.

Initial concerns regarding the current attitudes, skills and knowledge of energy efficiency strategies among contractors in Arkansas, along with the challenge the State of Arkansas Energy Conservation Office took on in training contractors on energy efficiency convinced many parties that additional work was needed in this area. A majority of the collaborative participants supported the notion that a separate training and education initiative was needed so that Arkansas contractors and consumers could better understand energy efficiency options, proper installation methods, and best practices that would be required to make the energy efficiency programs successful. The State Energy Conservation Office proposed that, as the State's current coordinating entity regarding energy efficiency, they would be well-suited to implement such an initiative.

While consumer attitudes, awareness regarding energy efficiency, and contractor education and training were not initially priorities on the Commission's agenda, this initiative underscored the focus on the collaborative in taking on substantive issues that would ultimately affect the successful outcome of the energy efficiency programs.

Another topic that dominated discussion by various groups was how the programs would be administered. The Attorney General's Office was in favor of hiring an outside administrator to implement the programs. Most of the other parties, including the utilities, supported utility-administered programs, with the option to outsource the implementation of the programs.

The large industrial and commercial customers, represented by the Arkansas Electric Energy Consumers, Inc. and Arkansas Gas Consumers, Inc., consistently opposed the creation of energy efficiency programs, any possible subsidization of energy efficiency programs and benefits from their rate class to others, the formulation of deemed savings, and inclusion of large

³ http://www.nerc.com/pub/sys/all_updl/docs/pubs/LTRA2006.pdf

industrial and commercial customers in paying for or participating in the programs. While this has been a consistent position of almost all advocacy groups representing large energy consumers in the U.S., the Commission wisely considered the impacts of large energy users on natural gas prices and transmission and distribution costs on the electric grid as whole to determine that large energy users have an important role to play in energy efficiency.

The Value of a Tight Agenda

In order to keep the aggressive timelines set by the Commission, it was necessary for the facilitator to set an agenda for each meeting that would promote the substantive discussion required to fully address each major question posed by the Commission. The agendas were designed to bring out opposing views and to promote discussion. Parties were encouraged to bring industry reports and substantive documentation to support their positions. A number of participants provided extensive research into cost-effectiveness calculations, technologies, and programs that are well suited to a quick start approach.

Keeping the Wheels Turning

In order to keep the process moving, the facilitators sought a delicate balance between issues in which general consensus could be obtained and controversial issues in which consensus could not be reached. Two issues illustrating the latter included cost recovery and how to address “severely inefficient housing.” Arkansas law prohibits income-based energy efficiency programs. Therefore, in order to address the critical needs of lower-income residents in Arkansas, it was necessary to focus on the older, more inefficient housing stock that likely corresponds with lower income levels. Other key issues included the participation or exclusion of large industrial customers, how energy efficiency messages should be communicated to customers, the scale of the energy efficiency programs, fuel-switching, and the costs for administration of programs (including the costs of administration for the Severely Inefficient Housing Program implemented by the Community Action Agencies).

On each point, the facilitators sought to bring about the maximum consensus possible. As the various parties filed comments on the process, the issues were thoroughly vetted, noted, and then forwarded to Commission staff for review.

Getting Out of the Gate Quickly

The aggressive deadlines and milestones served as a constant reminder that the parties were working against the clock in order to achieve the objectives of the Commission. The deadlines for utility filings, filings by interveners, Commission comments and reply comments were all aggressive, and for the most part, the parties met them.

Commission Order # 12 set similarly aggressive deadlines for the utilities to file their program plans after the initial program creation orders.⁴ A mere six months passed between the program filings and the Commission hearings on the programs. This required all parties to work on tight deadlines and to make sure that all parties were properly notified.

During the entire collaborative, the Commission decided that it was imperative to resolve some matters, at least provisionally, so that comprehensive program administration could begin.

⁴ Arkansas Public Service Commission, Docket # 06-004-R, Order No. 12

Other matters were important to the long term quality and success of energy efficiency programs in Arkansas, but it was not necessary to resolve them in order for programs to begin. A consistent theme utilized by the Commission was focusing on the important issues, as opposed to what some parties viewed as urgent issues.

Conclusion

The Arkansas collaborative process was a huge success because it drew on experiences outside of Arkansas, it focused on a balanced approach, and it kept the process simple. A key driver of this success was the fact that the regulatory leadership provided clear direction and relied on expert facilitation to keep the process balanced and on track.

It would have been easy for the collaborative participants to complain that “our state is different” and rely upon their own resources and judgment for program development and design. Instead, the collaborative participants chose to take relevant lessons from various initiatives elsewhere and put them to best use in Arkansas. Experienced and credible facilitation was also a significant contributing factor to the success. At many junctures in the collaborative, the process could have been sidetracked. The process of striving for consensus and giving opposing views a chance to be heard helped to defuse potential confrontation and allowed the participants to focus more of their time and attention on the end result.