

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL OF NEW ) Case No. PUD 2023-000038  
GENERATION CAPACITY PURSUANT )  
TO 17 O.S. SECTION 286(C) )

Rebuttal Testimony

of

Kimber L. Shoop

on behalf of

Oklahoma Gas and Electric Company

September 21, 2023

Kimber L. Shoop  
*Rebuttal Testimony*

1 Q. **Please state your name and business address.**

2 A. My name is Kimber L Shoop. My business address is 321 North Harvey, Oklahoma City,  
3 Oklahoma 73102.

4

5 Q. **Are you the same Kimber L. Shoop that filed Direct Testimony in this Cause?**

6 A. Yes.

7

8 Q. **Please state the purpose of your testimony in this proceeding.**

9 A. The purpose of my testimony is to respond to the Responsive Testimonies of the Public  
10 Utility Division Staff (“PUD” or “Staff”) witnesses Trent Campbell and Andrew Scribner,  
11 the Office of the Attorney General (“AG”) witness Todd Bohrmann, the Oklahoma  
12 Industrial Energy Consumers (“OIEC”) witness Mark Garrett, and Walmart witness Lisa  
13 Perry. OG&E witnesses Matthew Schuermann and Kelly Riley are filing rebuttal  
14 testimony as well.

15

16

**Introduction**

17 Q. **Can you summarize the intervenor positions in this proceeding?**

18 A. OG&E filed its direct case for approval of its new Horseshoe Lake Combustion Turbines  
19 (“HL CTs”) pursuant to Oklahoma statute 17 O.S. §286(C), which allows rate-regulated  
20 electric utilities like OG&E to file an application seeking Commission approval “to  
21 construct a new electric generating facility, to purchase an existing electric generating  
22 facility or enter into a long-term contract for purchased power and capacity and/or energy.”  
23 The statute further provides that a utility must show a need for the generation or contract  
24 and requires that the Commission consider reasonable alternatives before issuing an order  
25 on the utility’s application. In their Responsive testimony, all of the intervenors agreed  
26 that OG&E had established the need for the HL CTs and had considered all reasonable

1 alternatives.<sup>1</sup> In essence, all intervenors support OG&E's construction of the HL CTs and  
2 believe that the investment in those new generating units is prudent.

3

4 **Q. What seems to be the remaining disagreement among the parties?**

5 A. The remaining disagreement is around whether costs can be included in the Generation  
6 Capacity Rider ("GCR") when the HL CTs are placed in service and generating electricity  
7 to the benefit of customers.

8 PUD Witnesses Trent Campbell and Andrew Scribner believe that OG&E's cost  
9 recovery should be limited through the GCR to the \$249 million contained in the RFP bid.  
10 It appears the PUD witnesses support the recovery of a capped level of "Owner's Costs"  
11 identified in OG&E testimony, but it is not clear from testimony whether PUD advocates  
12 recovery of those "Owner's Costs" through the GCR. PUD however did not present any  
13 evidence that the HL CT costs identified by OG&E are unreasonable and believes that all  
14 final HL CT costs should be reviewed in the first rate case filed by the Company following  
15 the in-service date of the HL CTs. PUD also testified that the term of the GCR should be  
16 the earlier of three years or whenever the costs of the HL CTs are included in base rates  
17 after a general rate case.

18 AG Witness Bohrmann also advocates for a limit to recovery of HL CT cost  
19 through the GCR and believes that OG&E "may seek recovery of prudently incurred capital  
20 expenditures above \$249 million in base rates in the Chapter 70 rate case proceeding  
21 following the commercial in-service dates of these units." AG Witness Bohrmann also  
22 recommends that the Commission require a general rate case within one (1) year of the HL  
23 CT project being placed in service.

24 The OIEC argues that the GCR is not authorized under Oklahoma law and is  
25 inconsistent with sound ratemaking principles. However, OIEC argues that if the GCR is  
26 authorized, the amount of recovery should be capped at \$249 million. OIEC testified that  
27 any amount in excess of the \$249 million should be subject to review in a future general  
28 rate case after the HL CTs are placed in service.

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<sup>1</sup> See Responsive Testimony of Jason Chaplin, p. 3-4, 10-12, 14; Responsive Testimony of Todd Bohrmann, p. 14, 20-21; Responsive Testimony of Scott Norwood, p. 12, 17, and 22. Walmart witness Lisa Perry seems to take no position on the need for the HL CTs or the reasonableness of the decision to construct those units in light of alternatives.

1 Q. **Does OG&E agree that GCR recovery should be limited to \$249 million for a project**  
2 **that is estimated to cost \$330.5 million (plus associated items like AFUDC and taxes)?**

3 A. No. I do not agree that any costs should be excluded from the rider. Excluding rider  
4 recovery for any costs in excess of the bid amount constitutes a refusal to acknowledge the  
5 reasonableness of the total costs of the project. While I recognize that the costs will exceed  
6 the bid amount, there are valid reasons for these costs in excess of the bid amount. No  
7 parties have presented evidence that the final contract costs, Owner's costs, and  
8 contingency costs are unreasonable. Because all these costs are necessary to construct a  
9 project that everyone agrees is necessary, they should be eligible for recovery in the GCR.  
10 Moreover, limiting recovery to \$249 million also excludes the Allowance for Funds Used  
11 During Construction ("AFUDC") and property taxes associated with the HL CTs, costs  
12 that are clearly related to the construction of the HL CTs. AFUDC and property taxes  
13 associated with the project cost clearly should be included in the GCR. Also, limiting  
14 recovery to \$249 million in the GCR excludes Long-Term Service Agreement ("LTSA")  
15 costs associated with the project. The need for the LTSA was discussed in the testimony  
16 of OG&E Witness Doupe and not addressed by any intervenor witness.

17

18 Q. **What is the rationale for limiting recovery of the costs of this necessary project**  
19 **through the GCR?**

20 A. The intervenors believe that OAC 165:35-38-5(d) intends to limit recovery of a 17 O.S.  
21 §286(c) request to the amount bid into the Company's RFP. This limitation of recovery  
22 through the GCR is based simply on an inaccurate interpretation of OAC 165:35-38-5(d)  
23 and has nothing to do with the evidence that the cost estimates themselves are  
24 unreasonable.

25

26 Q. **What is the difference between a self-build proposal under Subchapter 38 and an**  
27 **affiliate bid under the competitive bidding rules?**

28 A. OGE Energy Corp. and its joint venture partners submitted an "affiliate" bid into the  
29 Flexible Resource RFP under the competitive bidding rules (OAC 165:35-34). The "self-  
30 build proposal" referred to in OAC 165:35-38-5(c) and (d) is not the same thing as an  
31 affiliate bid. OAC 165:35-38-5(c) discusses how a self-build proposal must be submitted

1 at the same time the bids are requested through an RFP. OG&E did not create a “self-  
2 build proposal” in advance of the competitive procurement process. When OG&E issued  
3 the Flexible Resource RFP, it had not identified a specific self-build proposal and was  
4 seeking a myriad of different flexible resource options through the RFP, including  
5 combustion turbines, reciprocating internal combustion engines and stand-alone energy  
6 storage.

7  
8 **Q. Do you believe it would have been possible to comply with both the Subchapter 38**  
9 **rules and the competitive bidding rules?**

10 A. No. OG&E was focused on complying with the competitive bidding rules. This means  
11 that it would submit an affiliate bid into the RFP and would need to ensure that the  
12 appropriate walls were created between the Bid and Evaluation Teams. It could not have  
13 developed a self-build proposal in advance of the RFP because for the Bid Team to prepare  
14 any proposal before the OG&E Evaluation Team completed the CT technical specifications  
15 associated with the RFP would be in violation of the Code of Conduct. OG&E wanted all  
16 bids to be submitted at the same time, under the same conditions and under the review of  
17 the Independent Evaluator so that no bidder – including the affiliate bidder – had any unfair  
18 competitive advantage during the RFP process. Ultimately, OG&E chose the lowest cost  
19 project bid into the RFP.

20  
21 **Q. Why was OG&E so focused on complying with the competitive bidding rules?**

22 A. In Cause No. PUD 201400229, Order No. 647346, this Commission specifically ordered  
23 that “In any future request for approval pursuant to 17 O.S. §286(C), OG&E must prove  
24 that the requisite need exists, include an evaluation of reasonable alternatives as required  
25 by statute, and show compliance with the Commission’s competitive bidding rules.”<sup>2</sup>  
26 Given this express direction by the Commission, the Company did not feel that any other  
27 path could be utilized in conjunction with its pre-approval ask.

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<sup>2</sup> *In the Matter of the Application of Oklahoma Gas and Electric Company for Commission Authorization of a Plan to Comply with the Federal Clean Air Act and Cost Recovery; and for Approval of the Mustang Modernization and Cost Recovery*, Cause No. PUD 201400229, Order No. 647346, p. 23.

1 Q. Even if the HL CT project is considered a “self-build proposal” under OAC 165-35-  
2 38-5(c) and (d), is the Commission prevented from granting rider recovery for any  
3 amount in excess of the self-build proposal?

4 A. No. The rules clearly allow for recovery of costs in excess of the costs identified in the  
5 self-build proposal based on evidence presented by the Company. The pre-approval rules  
6 (OAC 165-35-38-5(c)) clearly state “other cost-recovery methods *without additional*  
7 *Commission* approval is limited to the total project cost identified in the Self-build  
8 Proposal.” This case is for the purpose of requesting that “additional Commission  
9 approval” for the entire \$330.5 million in capital investment (plus associated items like  
10 AFUDC and taxes) it will take to construct the HL CTs and place them into service for the  
11 benefit of customers.  
12

13 **Response to PUD Witness Campbell**

14 Q. **Do you agree with Mr. Campbell’s interpretation of OAC 165:35-38-5(d)?**

15 A. No. OAC 165:35-38-5(d) states in pertinent part:

16 (d) Once submitted, the Self-build Proposal may not be modified by  
17 the soliciting utility. If a Self-build Proposal is selected and  
18 approved by the Commission, the amount the soliciting utility shall  
19 recover through the rate base or other cost-recovery methods  
20 without additional Commission approval is limited to the total  
21 project cost identified in the Self-build Proposal.

22 As stated above, OG&E does not believe this provision should apply to the affiliate bids  
23 submitted in the RFP process. However, even if the affiliate bid is considered a “self-build  
24 proposal,” the rules clearly allow for the Commission to approve cost recovery for an  
25 amount in excess of what is in the self-build proposal. That is what the words “without  
26 Commission approval” means. Through the filing of this pre-approval case, the Company  
27 is specifically asking for “additional Commission approval” for recovery of costs above  
28 the original bid amount, in the amount of \$330.5 million (plus associated items like  
29 AFUDC and taxes).

1 Q. **Do you believe that OG&E provided evidence supporting its requested relief above**  
2 **the original bid price?**

3 A. Yes. OG&E provided extensive testimony in its direct filing to support not only the \$286  
4 million associated with final negotiated contract price, the \$26 million owner's costs, and  
5 the \$18 million contingency costs: in both my direct testimony and the direct testimony of  
6 OG&E witness Schuermann. Witness Schuermann is also filing rebuttal testimony that  
7 further explains the reasonableness of these costs. PUD did not present evidence that any  
8 cost estimates are unreasonable.

9  
10 Q. **Are there additional costs that made up the Company's ask in this case?**

11 A. Yes. The AFUDC and taxes were also included in OG&E's ask to calculate the revenue  
12 requirement. PUD does not comment on these associated costs. OG&E would ask that  
13 they be included in the GCR for recovery once the Horseshoe Lake combustion turbines  
14 ("HL CTs") go into service. AFUDC is the typical method for accruing financing costs on  
15 projects that are constructed over time. When the project is placed in service, the rate base  
16 reflects not only the direct construction costs but also the accrued AFUDC incurred related  
17 to the construction. To my knowledge, no party has objected to the normal practice of  
18 including AFUDC in rate base in past rate case or rider filings. Similar to AFUDC,  
19 including capitalized property taxes related to the in-service project is also typical. No  
20 party has objected to the inclusion of taxes associated with the project in the GCR. Also,  
21 as noted above, OG&E supported the need for LTSA costs associated with the project in  
22 the Direct Testimony of OG&E Witness Doupe. No party, including PUD, addressed these  
23 LTSA costs in testimony. These costs should be included in the GCR for recovery as well,  
24 as noted in the revenue requirement calculated by OG&E Witness Thenmadathil.

25  
26 Q. **Do you agree with PUD that contingency costs should be excluded because they are**  
27 **an estimate and shift costs to the customer?**

28 A. No. As explained by OG&E Witness Schuermann, contingency costs are necessary for the  
29 successful completion of the project. All projects, especially projects of this size and  
30 complexity, carry risk and therefore planning a budget for the potential cost increases is  
31 standard industry practice. Witness Schuermann also explains that classifying these costs

1 as contingency will also create opportunities to lower the total project cost, as they are  
2 critical to ensure that total project costs are mitigated and kept as low as possible. Without  
3 these types of contingency costs, the contracts with the engineering and construction  
4 contractors would simply result in higher fixed costs to compensate the contractors for the  
5 risk of those contingencies. OG&E disagrees with intervenor witnesses that argue that  
6 contingency costs shift risks to customers. These contingency costs are a tool for protecting  
7 customers by allowing costs to remain lower if those contingencies do not materialize.  
8

9 **Q. Do you have any response to PUD's recommendation that the GCR term should be**  
10 **the earlier of three years or whenever the HL CTs are included in base rates?**

11 A. OG&E has concerns about setting a term that would require a rate case by a date certain.  
12 OG&E believes that is important to retain flexibility so that rate case is not required to be  
13 brought at an inappropriate time. With that being said, OG&E has every incentive to time  
14 a rate case so there is a full review of the final costs as soon after the HL CTs are placed in  
15 service as possible. This is especially true if there are any costs not included in the GCR  
16 that OG&E will need to recover in a general rate case.  
17

18 **Response to AG Witness Bohrmann**

19 **Q. Did Mr. Bohrmann reach the same conclusion as PUD witness Campbell on OAC**  
20 **165:35-38-5(d)?**

21 A. Yes. Mr. Bohrmann concluded that the Company may only seek the original bid amount  
22 of \$249 million in the GCR, should the Commission approve the requested rider. In  
23 addition, he recommends that any costs above the bid amount of \$249 million may be  
24 addressed in a subsequent rate case, which the AG recommends take place within one year  
25 of the HL CTs in service date. Mr. Bohrmann also recommends that the Commission's  
26 rules could use further clarification as to how OAC 165:35-38 fits into the competitive  
27 bidding rules, clarity to benefit both the regulatory community and the customer.

1 Q. **Do you agree with Mr. Bohrmann's conclusions?**

2 A. Partly. OG&E does not agree that the GCR should be limited to only \$249 million for the  
3 reasons stated above. However, OG&E supports Mr. Bohrmann suggestion that the rules  
4 could benefit from further clarification.

5  
6 Q. **Do you have any response to the AG's recommendation that OG&E be required to  
7 file a general rate case within one (1) year after the HL CTs are placed in service?**

8 A. For the same reasons stated above, OG&E has concerns about requiring a rate case filed  
9 by a date certain.<sup>3</sup>

10

11 **Rebuttal of OIEC Witness Mark Garrett**

12 Q. **Mr. Garrett states on page 8 of his Responsive Testimony that OG&E's requested  
13 rider is not authorized under 17 Okla. Stat. §286(C). Do you agree?**

14 A. No. Mr. Garrett's testimony states that: (1) 17 Okla. Stat. §286(C) does not provide "for  
15 rider recovery of the pre-approval generation costs" and (2) OCC rules promulgated under  
16 17 Okla. Stat. §286(C) "determined not to authorize a rider recovery provision for  
17 generation additions." Mr. Garrett's legal theories are misguided and are contrary to prior  
18 commission orders.

19 17 Okla. Stat. §286(C) states in part that "the generating facility shall be considered  
20 used and useful, and its costs shall be subject to cost recovery rules promulgated by the  
21 Commission." OAC 165:35-38-5(b) states in part "upon application by an electric utility  
22 pursuant to this Subchapter, the Commission shall review the requested cost recovery."  
23 OG&E has requested cost recovery through a rider and the Commission's rules state  
24 specifically that the Commission will review the request. The statute and the  
25 Commission's rules create no boundaries on what manner of cost recovery the Commission  
26 might approve or that a utility may request.

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<sup>3</sup> Walmart witness Perry makes a similar proposal, *i.e.*, that the Commission should require a rate case at the earliest possible date. While she does not propose a specific timeline for when a rate case should be required, OG&E still does not believe it is appropriate to dictate any timing of a rate case. Nevertheless, OG&E believes it is already incentivized to time its rate case so that the total costs of the HL CTs will be fully reviewed and placed in base rates as soon as possible.

1 Q. **Has the Commission approved a cost recovery rider mechanism for generation**  
2 **projects approved under 17 Okla. Stat. 286(C)?**

3 A. Yes, many times. The most recent case that I know of is Order No. 734110 issued in Case  
4 No. PUD 2022-000121, dated May 4, 2023. On page 18 of the Order the Commission  
5 found that “the Renewable Resource Rider complies with the Commission’s rules  
6 promulgated on cost recovery”. The case was filed under 17 Okla. Stat. 286 (C). Other  
7 previous cases filed under 17 Okla. Stat. 286(C) that resulted in cost recovery riders  
8 include:

- 9 • OG&E Centennial Wind – Cause No. PUD 2005-59 & PUD 2005-177
- 10 • OG&E Redbud – Cause No. PUD 2008-86
- 11 • OG&E OU Spirit - Cause No. PUD 2009-167
- 12 • OG&E Crossroads Wind – Cause No. PUD 2010-37
- 13 • OG&E Frontier – Cause No. PUD 2018-159
- 14 • OG&E River Valley – Cause No. PUD 2018-159
- 15 • PSO Wind Preapproval – Cause No. PUD 2019-48

16  
17 Q. **On page 12 of Mr. Garrett’s Responsive Testimony, he alleges that “OG&E’s**  
18 **Requested Rider Is Inconsistent With Sound Ratemaking Practices.” Do you agree?**

19 A. No. The requested rider that OG&E is proposing will have customers paying for the  
20 combustion turbines after the commission has determined there is a need for the turbines  
21 and after the turbines are used and useful and providing service to customers. I believe  
22 that is sound ratemaking practice.

23  
24 Q. **What does Mr. Garrett cite as the reason for his position that the GCR is not sound**  
25 **ratemaking practice?**

26 A. Mr. Garrett states on line six of page 18 of his Responsive Testimony that “OG&E’s  
27 combustion turbines do not meet the criteria typically required for rider recovery.” Mr.  
28 Garrett’s testimony is seemingly based upon a paper published for the National Regulatory  
29 Research Institute (NRRI) in 2009 by Mr. Ken Costello.

1 Q. **In your opinion, was the 2009 NRRI paper written by Mr. Costello in response to**  
2 **state commissions not adhering to the rigid requirements being advocated by Mr.**  
3 **Costello?**

4 A. Yes. The Executive Summary states that “[s]everal state commissions have approved new  
5 cost trackers for a wide array of utility functions in both the electric and natural gas  
6 sectors.” It goes on to state that “[t]he recent approvals depart from past regulatory  
7 practices that sanction trackers only under highly restricted conditions.” I believe that Mr.  
8 Costello was trying to convince regulators to apply his recommendations rather than  
9 making a determination of the appropriateness of approving a rider for utility cost recovery  
10 on a case-by-case basis.  
11

12 Q. **To your knowledge has the 2009 Costello paper been adopted as an authoritative**  
13 **guide by state or federal regulators?**

14 A. No. I am not aware of either NARUC or a state or federal regulatory agency adopting what  
15 Mr. Costello states are the “highly restricted conditions” advocated in Mr. Costello’s 2009  
16 paper. Those “highly restricted conditions” that Mr. Garrett characterizes as “typical” are  
17 not typical. In fact, as noted above, this Commission has granted cost recovery riders for  
18 generation projects under 17 Okla. Stat. 286(C) many times over the years.  
19

20 Q. **Does Mr. Garrett’s testimony mention Mr. Costello’s recommendation for regulators**  
21 **to consider an earnings-sharing mechanism similar to the Performance Based Rate**  
22 **Mechanism that gas utilities have in Oklahoma?**

23 A. No. Mr. Garrett fails to mention that Mr. Costello “recommends that regulators consider  
24 the advantages of replacing cost trackers (excluding fuel and purchased gas trackers) with  
25 a single rate-of-return tracker in the form of an earnings-sharing mechanism.”<sup>4</sup> Mr. Garrett  
26 has opposed the use of earnings-sharing mechanisms (for example PSO’s Formula Based  
27 Rate in PUD 202200093) so I assume that is why he has failed to make the recommendation  
28 suggested by Mr. Costello that the Commission consider an earnings-sharing mechanism

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<sup>4</sup> *How Should Regulators View Cost Trackers?*, Ken Costello, National Regulatory Research Institute, September 2009, p. 3.

1           rather than a tracker in this case. It appears that Mr. Garrett does not agree that regulators  
2           should consider all of the positions suggested by Mr. Costello in the 2009 NRRRI paper.

3  
4   **Q.    The Costello paper states that trackers have the problem of producing “weak**  
5           **incentives for cost control” and “inadequate regulatory oversight of costs” (At page**  
6           **22.) Does approval of OG&E’s rider create those problems in this case?**

7    A.    No. There is a strong incentive to manage costs to not exceed the level of costs found to  
8           be prudent in an order issued pursuant to 286(C). Further, the base rate case following the  
9           commercial operation date of the turbines will allow for full regulatory oversight of the  
10          entire project cost. Only those costs that the Commission deems reasonable will be allowed  
11          to be passed on to customers after the plants are in service and providing electricity.

12  
13 **Q.    Does Mr. Garrett recommend a limit to GCR recovery in the event the Commission**  
14          **grants rider recovery for the HL CTs?**

15    A.    Yes. Mr. Garrett also adheres to the same rigid argument for limiting recovery to the \$249  
16          million amount of the bid. Neither he nor Mr. Norwood present any evidence as to why  
17          any costs in excess of the \$249 million are unreasonable. In fact, it is strange that Mr.  
18          Garrett makes no mention of being able to allow AFUDC and property taxes associated  
19          with the HL CTs in the GCR. This is reasonable request that is typically included for rider  
20          recovery.

21                As explained above, OG&E does not believe OAC 165:35-38-5(d) should be  
22                narrowly read to preclude recovery of the full cost of the project.

23  
24 **Q.    What is your recommendation to the Commission?**

25    A.    OG&E has provided robust support for the \$330.5 million (plus associated items like  
26          AFUDC and taxes) requested in its direct case. No intervenor has shown that any of these  
27          costs are unreasonable or without support or merit. This Commission should approve the  
28          recovery of the entire \$330.5 million (plus associated items like AFUDC and taxes)  
29          through the GCR. The GCR is authorized pursuant to 17 Okla.Stat.§286(C), the  
30          Commission’s rules promulgated pursuant to the statute, and is consistent with sound  
31          ratemaking practices.

- 1 Q. **Does this conclude your testimony?**
- 2 A. Yes.