

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY)
FOR AN ORDER OF THE COMMISSION)
AUTHORIZING APPLICANT TO MODIFY ITS) CASE NO. PUD 2023-000087
RATES, CHARGES, AND TARIFFS FOR RETAIL)
ELECTRIC SERVICE IN OKLAHOMA)

Rebuttal Testimony

of

James G. Fenno

on behalf of

Oklahoma Gas and Electric Company

May 17, 2024

James G. Fenno
Direct Testimony

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

2 A. My name is James G. Fenno. My business address is 321 North Harvey Avenue, Oklahoma
3 City, Oklahoma 73102.
4

5 Q. **Are you the same James G. Fenno who filed Direct Testimony in this Case on
6 December 29, 2023?**

7 A. Yes.
8

9 Q. **What is the purpose of your Rebuttal Testimony?**

10 A. The purpose of my Rebuttal Testimony is to discuss an adjustment made by Oklahoma
11 Corporation Commission (“Commission”) Public Utility Division (“PUD”) witness John
12 Givens to OG&E’s (“the Company”) rate base, specifically related to the *pro forma*
13 adjustment on WP B 3-11 Plant Held for Future Use (“PHFU”).¹
14

15 Q. **Please explain the Company’s *pro forma* adjustment to PHFU on WP B 3-11.**

16 A. The Company made an adjustment to remove \$2,054,326 from the test year rate base for
17 all PHFU with an acquisition date older than 10 years from the test year end.
18

19 Q. **Does PUD agree with the Company’s methodology?**

20 A. No. PUD witness Givens recommends removal of all PHFU citing the Company’s lack of
21 addressing the prudence for purchases or why it would be fair and reasonable to charge
22 current customers for assets which are held for future use. Witness Givens proposes that
23 since PHFU is not used and useful, it provides no benefit to the Company’s current
24 customers and further, that requiring current customers to pay for assets acquired up to ten
25 years ago, which may not provide any benefit for years to come, introduces
26 intergenerational inequity and is unfair and unreasonable.²

¹ Revenue Requirement Exhibit of Farzad Khalili, Page 18, Adj. No. B-3.

² Responsive Testimony of John Givens, Page 6, Lines 8-15.

1 Q. **Did any other party raise an objection to the Company's standard adjustment to**
2 **PHFU in this Case?**

3 A. No. None of the other parties have raised an objection to this standard adjustment to PHFU.
4

5 Q. **What is the Company's reasoning for purchasing PHFU?**

6 A. These assets were purchased based on long-range planning considerations for the benefit
7 of the Company's customers, so the best-situated land will be available when needed in the
8 future. This is based on geographic limitations of feasible future plant locations as well as
9 the principle that purchasing real estate in advance mitigates the risk of higher real estate
10 costs in the future.
11

12 Q. **What are some additional risks associated with not purchasing PHFU?**

13 A. Failure to purchase the most feasible locations for utility facilities in advance, particularly
14 in growth areas, creates risk of higher future costs associated with rerouting distribution
15 lines, transmission lines, and access easements to connect substations that would have to
16 be built at less suitable locations on whatever land would be available at the time. By then,
17 other infrastructure (natural gas, water, etc.) would already be expanded and taking up
18 room in public right of way, forcing the Company to route sub-optimally or even in a
19 disruptive manner.
20

21 Q. **Is there any industry guidance related to PHFU?**

22 A. Yes. *The Regulation of Public Utilities: Theory and Practice* by Charles F. Phillips, Jr.,
23 1988 Public Utility Reports, Inc., considered by some as an authoritative text on public
24 utilities, states the following:
25

26 Property held for future use is the amount of investment in property and
27 plant which is not being used currently by a utility to provide service.
28 Generally, such property is land, purchased when available, for potential
29 future use (such as an office building or a generating site). The rule that
30 most commissions follow in deciding whether to include or exclude such
31 property is one based upon on a time limitation; that is, if the property has

1 an expected in-service date within a reasonable time period (commonly 2-
2 10 years), it is included in the rate base. Id. at 334-35 (emphasis added).

3
4 **Q. Is there any legal precedent related to PHFU?**

5 A. Yes. The standard in Oklahoma regarding inclusion of PHFU was stated in *Southwestern*
6 *Public Service Company v. State*, 1981 OK 136, ¶ 17, 637 P.2d 92, as follows:

7
8 In determining whether property held by a utility for anticipated future use
9 should be included in the rate base, there is yet another factor to be weighed,
10 i.e., whether the purchase of the property in question was made in pursuance
11 of honest and reasonable business judgment in carrying out some definite
12 plan, for example, whether the expenditure was dishonest, wasteful, or
13 imprudent. This is a question of fact to be determined from the evidence.

14
15 **Q. Why should a return on PHFU with acquisition dates of 10 years old or less be**
16 **included in rates?**

17 A. The Company believes that all PHFU should be included in the rate base because these
18 parcels of land/easements were acquired with the plan to place them in service within a
19 reasonable time period. In WP C-13, the Company identified for all PHFU land/easement
20 assets the expected date to be utilized and intended use. But the use of the 10-year
21 limitation is a compromise that has been agreed to in several rate cases over the past 15
22 years- it removes any property acquired earlier than 10 years prior to the test year end. This
23 already results in the removal of essentially half of the PHFU that OG&E maintains, even
24 though these land/easements are expected to be used in the next few years.

25
26 It is also worth noting that PUD witness Givens produced no facts or evidence that the
27 land/easements included in PHFU constituted dishonest, wasteful, or imprudent
28 expenditures as required by Oklahoma law.

1 Q. **Has PHFU with acquisition dates of 10 years old or less been allowed by the**
2 **Commission in previous cases?**

3 A. Yes. This approach has been allowed since Case No. PUD 2008-00398 when the
4 Commission adopted the Company's position for partial inclusion based on acquisition
5 date. Prior to 2008, there were no adjustments and all PHFU was included regardless of
6 age.

7
8 Q. **Does the Company believe the current and requested methodology is a fair**
9 **compromise?**

10 A. Yes. While the Company believes *all* PHFU is purchased for the benefit of customers, the
11 use of the 10-year limitation methodology as adopted by the Company (and previously
12 approved by the Commission) represents a fair compromise between the positions of all
13 parties by not requiring customers to pay for PHFU acquired more than 10 years ago (even
14 though such land or easements are planned for use by the Company for the benefit of
15 customers in the future).

16
17 Q. **What is your request regarding PUD's proposed removal of all PHFU?**

18 A. The Company requests the Commission continue the practice it has used since 2008 and
19 adopt the removal of any PHFU that has an acquisition date older than 10 years from the
20 test year end and reject PUD's recommendation to remove all PHFU since PUD's
21 recommendation is contrary to Commission treatment, industry standards, and Oklahoma
22 law.

23
24 Q. **Does this conclude your Rebuttal Testimony?**

25 A. Yes.