

**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 ) CASE NO. PUD 2023-000087  
AUTHORIZING APPLICANT TO MODIFY ITS )  
RATES, CHARGES, AND TARIFFS FOR )  
RETAIL ELECTRIC SERVICE IN OKLAHOMA )

**OKLAHOMA ASSOCIATION OF ELECTRIC COOPERATIVES' EXCEPTIONS TO  
THE REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE**

COMES NOW Oklahoma Association of Electric Cooperatives (“OAEC”) and hereby files its Exceptions to the Report of the Administrative Law Judge pursuant to OAC 165:5-13-5(a)(2). The Report of the Administrative Law Judge (“ALJ Report” or “Report”) in this matter was filed on July 31, 2024. Concurrent with the filing of these exceptions, a Motion for Oral Argument and Notice of Hearing are filed.

**INTRODUCTION**

These exceptions relate to the 1 MW Issue as carved out of the Joint Stipulation of the Parties. The 1 MW Issue relates to subsidies currently benefitting certain OG&E customers while harming the rest of the Company’s other customers. Adoption of the recommendations of the ALJ Report would result in failure to enforce the mandate of 17 O.S. §158.25(F) to prevent subsidization of the 1 MW Customer Class by other customer classes, including residential customers.

The ALJ Report disregards the information contained in the 1MW COSS. That study was filed in this case with the Company’s initial rate application in November of 2023, as a result of OG&E’s past two general rate cases, each of which considered the 1 MW Issue. The Report disregards the clear subsidies identified in the 1 MW COSS by adopting OG&E’s arguments that its own study cannot be used in this rate case to determine whether subsidies exist or to determine

rates going forward. The Report reaches a determination that the 1 MW COSS does not “reliably prove” the existence of subsidies, despite OG&E’s cost of service author, Lauren Maxey, testifying that the study which she prepared contains accurate and correct information.<sup>1</sup> Without further explanation, the ALJ Report recommends that a similar cost of service study report – using 1 MW Customers data since 2014, which will include all of the customers in the current 1 MW COSS – be prepared and considered by the Commission in the *next* OG&E rate case, thus ‘kicking’ this issue, along with its existing rate data, down the road instead of determining and resolving the 1 MW Issue.<sup>2</sup>

OAEC requests the Commission to enter its Final Order and include the Findings of Fact and Conclusions of Law, as set forth in OAEC’s filing, Record Entry #472. Those finding should include a requirement that the Company shall update its separate One-Megawatt Cost of Service Study (1MW COSS), included in the Company’s Application Package submitted in this case, to include direct assignment of actual gross plant investment for radial transmission as identified in Hedrick Responsive Testimony’s Table 3, page 21, lines 6-7.<sup>3</sup> Using this updated 1 MW COSS, the Company shall amend its OCT-1 Tariff and submit the amended tariff consistent with the Amended 1MW COSS with its Compliance Package submittal. Pursuant to 17 O.S. § 158.25(F), the Amended 1MW COSS will be used to determine rates for customers with in-service dates after January 1, 2014, who are served in accord with the 1,000 kw size exception found in subsection E of 17 O.S. § 158.25.

Should the Commission determine that adoption of tariffs as requested by OAEC would result in too great a rate impact for current 1 MW Customers, the Commission should order the

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<sup>1</sup> Tr. 67:18-21

<sup>2</sup> The Report suggests development of the 1 MW COSS in future OG&E rate cases to inform the Commission in these cases.

<sup>3</sup> Hedrick Responsive at 21:6-7, including table 3 in same.

new 1 MW Customer class tariffs to apply only for 1 MW Customers taking initial service after the effective date of the Final Order in this case. Under this alternative approach, no current 1 MW Customer would be subject to a rate increase as a result of the Commission's determination regarding the 1 MW Issue.

Additionally, OAEC requests the Commission to require OG&E to amend its Line Extension Policy to remove the allowable expense formula and require an amendment of that policy to conform with Commission rules. The Company should be ordered to correct its future cost of service studies to assign, as direct costs to the 1MW Customer Class, those radial transmission lines serving only 1 MW Customers.

**Implementation of New 1 MW Customer Rates – Options to Assist Customers**

It is necessary to use the 1 MW COSS, with inclusion of all 1 MW Customers since 2014, to determine new appropriate rates for the 1 MW Customer class. As indicated above, OAEC believes that to follow traditional rate making practices, these new rates should be applied to all 1 MW Customers and take effect with the conclusion of this rate case. However, if necessary to avoid too great an impact on the current 1 MW Customers, the new rates should be applied to only new 1 MW Customers taking service after the conclusion of this rate case. Under this alternative approach, no current 1 MW Customer would be subject to a rate increase as a result of the Commission's determination regarding the 1 MW Issue.

An additional alternative suggested by other Intervenors would implement a gradual rate increase over this and future rate cases. It should be noted however, that delaying a rate increase for the 1 MW Customer class will also delay relief to the other OG&E customers currently subsidizing the relatively small 1 MW Customer class.

### **Unfair Competition Issue**

OAEC's concern, apart from preventing the continuation of the subsidy to 1 MW Customers, is unfair competition. OG&E has competed against the rural electric cooperatives for 1 MW competitive loads by offering pricing which is below the cost to provide service to new customers in remote rural areas. Appropriate increases for the 1 MW Customer class tariffs would prevent this unfair competition related to pricing. Such an increase would only affect competition relating to future loads, because existing customer loads cannot switch service provider without an order from the Commission.

### **Topics of Exceptions to the ALJ Report**

- I. OAEC Seeks only Prospective Application of 17 O.S. § 158.25(F)
- II. Failure to Recognize and Address Testimony and Evidence from OAEC, OIEC and FEA
- III. Determination that the 1MW COSS Does Not Reliably Prove the Existence of Subsidies
- IV. Failure to Require Amendments to the Line Extension Policy
- V. Failure to Require Direct Assignment of Radial Transmission Assets

#### **I. OAEC Seeks Prospective Application of 17 O.S. § 158.25(F) The Report Suggests a Retroactive Application is Sought**

The question of whether 17 O.S. §158.25(F), (the "Statute" as used in the Report) applies on a prospective or retroactive basis is not a question raised in this rate matter. The actual question is whether setting future rates in this rate case by considering and utilizing the data from a cost of service study is prospective in nature or a retroactive action. It is clearly prospective in nature.

The ALJ Report initially focuses its Analysis, beginning at pg. 6, on the topic of prospective versus retroactive application of a statutory provision. There it states, "the predominate discourse in this Case stems from the various interpretations of the Statute as to whether it applies in a prospective or retroactive nature."<sup>4</sup> No Intervenor, including OAEC, seeks a retroactive application of the new statutory provision. The report does not cite to any such characterization of the issues by the Intervenors.

Rather, this argument is a red herring introduced by OG&E to avoid the clear prospective application of the new §158.25(F) in this current rate case. As briefed in this matter by all Intervenors participating in the 1MW Issue, application of the mandate to avoid subsidization does not call for any retroactive action, enforcement, or application. Rather, customer cost of service

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<sup>4</sup> Report pg. 7, opening paragraph under "Background".

data from the prior year and updated with the test year is used to determine the new 'going forward' rates for electric service. OG&E's argument that inclusion of cost of service data of 1 MW Customers since 2014 would be a retroactive application of the Statute is simply wrong. Attempts to recover the subsidies which benefitted those customers from 2014 until the conclusion of this rate case would be a retroactive application of the Statute. Such a recovery is not being sought.

The Statute describes the rate class as

“a rate class of customers composed of electric consuming facilities being served in accord with the 1,000 kw size exception found in subsection E of this section and located outside the retail electric service provider's certified territory.”

This identifies the same 1 MW Customer class used by OG&E in the last rate case, PUD 2021-00164, and describes the same customers used in the 1 MW COSS in this case.<sup>5</sup>

As is recognized in the testimonies of Mr. Mark Garrett for OIEC, Mr. Michael Gorman for FEA and Mr. David Hedrick, as well as the recommendations filed in this case, immediate and drastic rate increases for existing customers can create difficulties and are disfavored. As recommended by FEA in their Statement of Position, OAEC requests the Commission, based on the 1 MW COSS, order a moderated movement to the cost of service for 1 MW Customers.

Without going into great detail of the lengthy discussion of prospective application of §158.25(F) in the Report, one concept emerges from that discussion. The Report fails to implement the separate actions required by subsection (F) of the Statute. This new provision mandates three separate requirements; *all for prospective action*. The first action is to set rates in the next rate case using the cost of service of the 1 MW Customer Class so as to avoid subsidization by other customers. A major dispute in this case is whether this class of 1 MW Customers includes those loads beginning service in November 2023 or beginning in January 2014. However, the makeup of that class is proscribed by the language of the Statute. The class of customers described by the Statute is identical to those included in the 1 MW COSS filed in this case. It is the same class of customers contained in the 1 MW COSS filed in PUD 2021-00164

Importantly, OAEC's request only looks for test year data to use in going forward. There is no attempt or suggestion on the part of any Intervenor to recover under-collections of past years. OAEC seeks only consideration of the costs during the relevant test year of those 1 MW Customers being served, just as is being done for all other OG&E customers in this rate case. The language of “being served” as stated by the Statute can only refer to those 1 MW loads being served at the time of this next rate case for all rate cases after the Statute became law. This rate case is occurring after the effective date of the Statute.

The next two prospective actions of subsection (F) are conditional and determine whether the costs to serve a specific new 1 MW Customer are to be included in the 1 MW Class's cost of

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<sup>5</sup> There had been no new 1 MW customers since November 2023 until after the pro-forma test year. Cash Rebuttal 9:19-21.

service study for the next rate case. The second of three is the action to assign the costs of each new 1 MW Customer to the 1 MW Class *unless* the utility collects those costs directly from that customer. The third and final action item is conditioned on the choice by the incumbent utility not to compete for the new load. If that utility chooses not to compete, or fails to respond to a notice, then the costs of serving that customer are not included in the 1 MW Customer Class.

Interestingly, the Statute *does not require any notice* by the customer or either utility. Rather, the final sentence provides the condition for non-application of subsection (F). Should the incumbent affirmatively choose not to compete, or an intent not to compete is inferred by a failure to respond to a notice from the proposed customer, then the costs to serve that customer will not be included in the 1 MW Customer class. There is no obligation for the customer to provide such a notice. Furthermore, Okla. Admin. Code § 165:35-11-4 at (a)(4) does not *require* the new customer to provide a notice. The information sought under that rule is “*whether* a written notice was sent by the new electric-consuming facility to the incumbent electric service provider”.<sup>6</sup> This language is consistent with the Statute and recognizes that a notice is not required to be sent by the new customer. The only mandatory notice required by the Rule is that of the non-incumbent utility, and this requirement predates the amendment after the effective date of the Statute. That notice by the non-incumbent utility has no counterpart in the Statute.

The Report at pg. 12, the second full paragraph, illustrates a partial lack of understanding of subsection (F). Incorrectly stating there is a requirement for new customers to give a notice to the incumbent provider, the Report points out the absurdity of applying this to existing customers. In support of this, the Report points to testimony of Mr. Hedrick who agrees only that it would be absurd for an existing customer to provide a notice to the incumbent utility long after taking service from another utility. The Report's analysis misunderstands that first, no notice is *required* by any customer<sup>7</sup>, and second, preventing subsidization in this, what will be the most recent, rate case is prospective application of the new provision.

Without repeating the authorities and discussion here on this issue of prospective application of the Statute, OAEC would adopt by reference its 1 MW Issue Brief Record Entry #445.

## **II. Failure to Recognize and Address Testimony and Evidence from OAEC, OIEC and FEA**

The ALJ Report consistently, if not completely, fails to address the contentions and evidence of the Intervenor regarding the 1 MW Issue. In fact, the Report ignores the Intervenor's actual issues and instead addresses the Company's mischaracterizations of Intervenor's positions. For example, as relates to prospective versus retroactive application of §158.25(F), the Intervenor's briefs and evidence demonstrate that there is no attempt to apply the Statute retroactively, rather this is only a false characterization by OG&E.

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<sup>6</sup> Okla. Admin. Code § 165:35-11-4

<sup>7</sup> On Tr. p. 201 the incorrect line of questions by OG&E's attorney mischaracterizing the statute as “requiring” notice from customers.

To be clear, the ALJ Report provides an excellent discussion of the general rule favoring only prospective application of statutory amendments, which begins at pg. 6 through pg. 12. However, the Report does not recognize that the Intervenors do not seek retroactive application of the Statute.

Moreover, there is no indication in the Report that the ALJ considered or weighed the testimony of the competing sides. Rather, the Report includes only the testimony of OG&E's witnesses. The testimony of Intervenors' witnesses is only found in the Report where OG&E's proposed findings cite to the testimony of Intervenor witnesses to support OG&E's positions on limited points. Absent from the ALJ Report is any indication that the Intervenors' evidence was considered and weighed. Nowhere in the Report is there discussion of why the testimony and documentary evidence of Intervenor witnesses was discounted or found to be inaccurate.

The ALJ Report proposes fifty-four (54) separate findings of fact and conclusions of law of which thirty-five (35) relate solely to the 1 MW Issues. Thirty (30) of the thirty-five (35) proposals regarding the 1 MW Issue are taken verbatim from OG&E's requested findings and conclusions. The Report makes five (5) new proposals, not recommended by any party. No proposals from any Intervenor are included or discussed.

### **III. Determination that the 1MW COSS Does Not Reliably Prove the Existence of Subsidies is Contrary to the Evidence**

OG&E's witnesses Lauren Maxey testified that the 1 MW COSS contains accurate and correct information.<sup>8</sup> In non-responsive testimony, she added that she viewed the 1 MW COSS as "hypothetical" which coincides with OG&E's contention that this information should not be used as it is an improper grouping of customers. It was hypothetical only in the sense that the Company had no plans to use it for implementation of their rates. The figures and calculations are 'real'. They are the actual numbers reported from the actual revenues and costs related to supplying these customers electric service. OG&E attempts to disregard the Statute's requirement to use this separate cost of service information for 1 MW Customer class. Despite this attempt, it is clear from Ms. Maxey's testimony that the information is accurate and correct and cannot be dismissed as 'unreliable'.

Moreover, the Intervenors' witnesses have reviewed the data and conclude without exception that tremendous subsidies are shown in the 1 MW COSS provided by OG&E' accurate and correct data.<sup>9</sup>

In contradiction to all evidence, the ALJ Report states that the 1MW COSS does not reliably prove the existence of subsidies. Additionally, the Report places undue emphasis that this cost of service study was mandated in the 2021 rate case for a different purpose. The Final Order

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<sup>8</sup> Tr. 67:18-21

<sup>9</sup> M. Garrett Resp. 19:15-20, 26:21-23, Tr. 255:14-19 and 256:16-22 (Garrett Direct Test.), Tr. 261:19-262:5 and 263:1-4 (Garrett Cross Test.); M. Gorman Resp. 13:12-15. Tr. 278:15-21 (Gorman Cross Test.); Hedrick Resp. 4:12-16, 7:10-16, Table 1 at 10:10-11, Tr. 220:17-223:4 (Hedrick Cross Test.) .

in that case does not specifically limit the study's use to a specific purpose. A different purpose being indicated for the study does not invalidate, or even call into question, the correctness of the information provided by the study.

#### **IV. Failure to Require Amendments to the Line Extension Policy, including deletion of the current Allowable Expenditure Formula and use of only marginal costs which have led to significant subsidization of the 1 MW Customer Class**

The Company's line extension policy, found in its tariff at Part IV Extension Policy 408 - Allowable Expenditure Formula should be removed and replaced with language consistent with OAC 165:35-25-2(d). On cross examination, Mr. Hedrick testified it is clear that the Company's calculations/formulas for determining allowable expenditures to produce a return on investment do not work, because the Company is "losing its shirt" making investments without aid in construction while the rates do not support the investment to serve the customers. Tr. 223:8-224:14. Under cross-examination by OG&E, Mr. Hedrick denied that utilizing embedded costs in a line extension calculation would lead to double collection, testifying that rates are designed to recover a certain level of investment to provide service and that level of investment is embedded in the cost of service. Tr. 228:9-19, and Tr. 229:23-231:17. He further testified to the extent that a company calculates its allowable investment based on cost of service, it will accurately define how much plant it can actually invest to provide service, so that when it adds a customer to its system and then subsequently adds that customer to its cost of service study, it will show that customer is providing a return commensurate with all the other customers in its class. Tr. 228:20-229:2.

Mr. Hedrick testified that Public Service Company of Oklahoma's allowable expenditure clause doesn't include a formula and it specifically states that they will make an investment above the free limit when they can justify it by return on investment. Tr. 236:8-13.

Additionally, the calculation of the allowable investment must recognize embedded costs to correctly produce an allowable plant investment amount that is economically justified. Hedrick Resp. 23:11-12. OG&E's use of only marginal costs is improper and has led to the under recovery of costs for the 1 MW Customer class. Transcript 223:8-224:14, and Hedrick Resp. 22:10 - 26:2.

OAEC therefore requests, as is supported by Mr. Hedrick, that OG&E should be required to revise its line extension allowable investment calculation to recognize the embedded costs of providing service as reflected in the cost of service study. Hedrick Resp. 32:16-18. To do this, OG&E must amend its Terms and Conditions Part IV Extension Policy to remove the current section 408 Allowable Expenditure Formula ("AEF") and replace it with language consistent with OAC 165:35-25-2(d).



### V. Failure to Require True Direct Assignment of Radial Transmission Assets which benefit only 1 MW Customers

OG&E hides behind its unilateral choice to use "mass property accounting" to justify something other than direct assignment of actual radial line costs serving only specific 1 MW Customers. The Company recognizes the appropriateness of directly assigning specific costs caused by specific customers as it directly assigns the costs of substation used only by these 1 MW Customers to that customer class. Recognizing the need to also directly assign radial line costs in the 1 MW COSS, OG&E included skewed information for such an assignment. Instead of using actual known costs, it *substituted* an average cost of radial transmission through use of a system-wide average of these costs multiplied by the actual miles of line serving 1 MW Customers.

The actual known costs for the radial lines serving eleven (11) separate 1 MW Customers was \$15,752,421. Hearing Ex. 8 and Hedrick Resp. 15:4-9. However, OG&E reduced the amount reflected in the 1 MW COSS to \$1,362,123 (only 8.6% of the actual costs) by using an average cost methodology. Hedrick Resp. 16:4-13. These values were obtained by Mr. Hedrick using OG&E responses to data requests. These responses show that the Company possesses sufficient accounting records to make the direct assignment regarding the eleven (11) accounts utilizing radial transmission. Hearing Ex. 8, Tr. 209:21-210:5 and Hedrick Resp. 18:7-21.

The ALJ Report recommends OG&E's proposals regarding transmission radials, affirming the Company's average cost methodology. The Report indicates that OG&E used its records to identify the length of each transmission radial to each 1 MW Customer, and then assigned the total system (gross plant) average cost based on mileage.<sup>10</sup> The Report ignores Hearing Exhibit 8, where the exact costs of transmission radials serving these eleven (11) customers is plainly stated. The Report makes this omission on the basis of avoiding discriminatory ratemaking practices. However, assigning the actual costs of a customer class to that separate class creating those costs is proper ratemaking.

Neither a lack of sufficient record keeping by the Company, nor suggestions of discriminatory ratemaking provide support for the ALJ Report's justification to approve direct assignment for the costs of substations to the 1 MW Class but not assign the true costs of the radial transmission lines which connect those substations to the system network. The several findings and conclusions which the Report adopts relating to radial transmission costs are flawed and should not be included in the Commission's final order.

OAEC requests the Commission to order the Company to revise its 1 MW COSS and include the actual known costs of \$15,752,421 for radial transmission. In the alternative, if it is necessary to reduce the immediate impact on customers, the Commission should order that the actual costs of radial transmission for the 1 MW Class be utilized in all future rate cases.

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<sup>10</sup> ALJ Report pg. 19, second paragraph.

**SPECIFIC FINDINGS OF FACT CONCLUSIONS OF LAW OF THE ALJ REPORT**

21. THE COMMISSION FURTHER FINDS that effective November 1, 2023, the Oklahoma Legislature promulgated new language, Subsection (F), that seeks, inter alia, to prevent subsidization of 1 MW customers, requires tariffs for these customers, includes requirements for inclusion of specific costs within the tariffs, and sets forth notice requirements to incumbent service providers from prospective 1 MW customers prior to initiating service.

**Exception: OAEC takes exception to the last part of finding 21 where it states that subsection (F) "sets forth notice requirements to incumbent service providers from prospective 1 MW customers prior to initiating service." The Statute does not set forth any requirements for notice. As discussed above, the Statute sets up a conditional exception for application of the subsection (F) should an incumbent not respond to a voluntary notice of the new load or the incumbent decline to offer service to the new load. This would otherwise be a very minor point, however, the ALJ Report relied on the provision incorrectly as is noted above.**

26. THE COMMISSION FURTHER FINDS that the intent of Okla. Stat. tit. 17 § 158.25(F) is to avoid subsidization of 1 MW customers by other rate class members, to require tariffs for the 1 MW customers, to specify the cost of service to the 1 MW customers that must be included in the tariffs, and provide requirements for notice to incumbent service providers. The express language within the statute that refers to costs and the tariffs provides: "Unless the costs of extending service to such a new load are collected from the customer, those costs shall be included in the cost of service study in the next rate proceeding." (emphasis added).

**Exception: The Report correctly states the intent of the Statute is to avoid subsidization of 1MW Customers by other rate classes. OAEC otherwise takes exception to this finding for multiple reasons. To accomplish the intent for avoidance of subsidy, rates for the 1MW Class "shall be designed to recover (i) the costs of extending service to the competitive load of electric consuming facilities of 1,000 kw or larger located outside the retail electric service provider's certified territory; and (ii) the allocated share of other costs associated with providing service to the electric consuming facility. Such tariffs shall be cost-of-service based and shall not subsidize other rate classes or be subsidized by other rate classes."<sup>11</sup> This is the express language of the Statute describing the rate tariffs necessary to accomplish the goal.**

The Report is incorrect in stating, "The express language within the statute that refers to costs and the tariffs provides: "Unless the costs of extending service to such a new load are collected from the customer, those costs shall be included in the cost of service study in the next rate proceeding." This phrase from the Statute relates only to one of two exceptions

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<sup>11</sup> 17 O.S. §158.25(F)

which allow the costs of serving a specific new 1 MW load not to be included in the next rate case's 1 MW COSS.<sup>12</sup>

The Report states an intent of the amendment is to "... provide requirements for notice to incumbent service providers." As discussed above, there is no requirement to provide notice to the incumbent service provider found in the Statute. There is an option to do so which, depending on other actions, may relate to the inapplicability of the subsection (F) to a specific new load.<sup>13</sup>

29. THE COMMISSION FURTHER FINDS that the new Commission Rule, Okla. Admin. Code § 165:35-11-4, seeks to give effect to the requirements of Okla. Stat. tit. 17 § 158.25(F) and sets forth five criteria that must be included in the tariffs for 1 MW customers served after November 1, 2023. The sentence immediately preceding the enumerated criteria states that: "Such tariffs for any new customers that have signed contracts for service on or after November 1, 2023 shall conform to the following criteria[.]" (emphasis added).

**OAEC does not take exception to this finding, but notes that the revised Commission rule deals only with notice provisions and applies only to the need to provide such notice after its effective date of November 1, 2024. This rule's provisions are consistent with the Statute, and do not alter the meaning and effect of the Statute as it relates to avoiding subsidization.**

30. THE COMMISSION FURTHER FINDS that all existing load customers, i.e., those customers with signed contracts prior to November 1, 2023, for service with OG&E outside its certified territory, are, by definition, not new load.

**Exception: OAEC takes exception to this finding as it is irrelevant. The Statute, which became effective on date stated in this finding, does not refer to 'existing load customers' or 'customers with a signed contract' regardless of contract date. It refers to a class of customers "being served". The Statute refers to "new load" as an undefined term, but only in relation to the exception where costs are collected from that customer, so as not to be included in the cost of service study in the next rate case.**

31. THE COMMISSION FURTHER FINDS that there is no express language, as required, in either the newly enacted statutory provision or the recently adopted Commission Rule that clearly indicates an intent for retroactive application.

**OAEC does not take exception to this finding, and as explained above, OAEC does not seek retroactive application of the Statute.**

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<sup>12</sup> These exceptions are discussed in more detail herein at the bottom of pg. 4 and top of pg. 5.

<sup>13</sup> *Id.*

32. THE COMMISSION FURTHER FINDS that the clear language of the statute and rule require the application of the respective provisions to new 1 MW customers after November 1, 2023, and such an interpretation is entirely consistent with the intent of the Retail Electric Supplier Certified Territory Act.

**Exception: OAEC takes exception to any finding that the Statute applies only to 1 MW Customers first taking service after November 1, 2023. The Statute makes no indication of this. The Statute's effective date determines a point in time and specifically applies cost of service rates as determined in the utility's most recent rate proceeding. Currently, all OG&E customers, including the 1 MW Customers, are receiving service at the most recent rate proceeding which was concluded in 2022. After this current rate case is completed, it will be OG&E's most recent rate proceeding. The Statute does not state or suggest that its effective date will determine what customers are to be included in the 1 MW Class. Nothing in the Retail Electric Supplier Certified Territory Act suggests that a subsidy, once recognized in rate proceedings, shall be ignored and continued, or that remedy be delayed. Clearly, the Statute intends to correct existing subsidies relating to the 1 MW Class during the next rate proceeding following the Statute becoming effective.**

33. THE COMMISSION FURTHER FINDS that no current 1 MW customer has signed a contract for service with OG&E on or after November 1, 2023, and through the end of the six-month proforma test year period, March 31, 2024.

**Exception: OAEC takes exception to the findings as irrelevant to the 1 MW Issue for the reasons stated above.**

34. THE COMMISSION FURTHER FINDS that because there are no 1 MW customers to which Okla. Stat. tit. 17 § 158.25(F) applies, there is no relevant cost data upon which to utilize for ratemaking purposes and, therefore, OG&E's existing OCT tariff should continue as currently structured and should continue to be based on the LPL-TOU rates as prescribed in the Company's Final Order No. 728277 from Case No. PUD2021-00164 until OG&E's next base rate case.

**Exception: OAEC takes exception to the finding that no relevant cost data exists for ratemaking purposes. The 1 MW COSS, as well as the analysis of Intervenors' rate analysts provide clear data for ratemaking purposes. As noted above, the "Analysis" portion of the Report incorrectly suggests that the information is unreliable, despite OG&E's witnesses Lauren Maxey testifying that the 1 MW COSS contains accurate and correct information. The Report also places undue emphasis on the originally stated purpose of the 1MW COSS. The 1 MW COSS provides more than adequate evidence of cost data to amend the OCT tariff in a fashion to avoid rate subsidy by other customers.**

**Exception is also taken regarding the finding of a lack of 1 MW Customers to which the Statute applies. The 1 MW COSS and its supporting papers clearly identify customers by**

load which fall into the customer class described in subsection (F). For the reasons stated above, the load data from these customers cannot be ignored.

Exceptions are also taken with continuing the LPL-TOU rates prescribed in Order 728277. As noted by the Report at pg. 16 (citing Tr. 158:20-159:4), at least two new customers have been identified beginning service after March 1, 2024. Other new 1 MW Customers may exist prior to the next rate case. Even if the balance of the Report's recommendations were to be adopted, the rate for these customers under a LPL-TOU or other rate should be amended and made consistent with the rates otherwise prescribed in this rate case.

OAEC notes that, while otherwise adopting OG&E's proposed finding, the ALJ Report added the final clause "until OG&E's next base rate case" to OG&E's proposed finding.

35.\* THE COMMISSION FURTHER FINDS that the Company should develop an updated OCT tariff for 1 MW customers taking service after the pro forma test year in this Case and file it in its next base rate case. This tariff should be reflective of the historical data associated with this class of customers and should no longer be based upon the pricing of the LPL-TOU (or PL-TOU). The tariff should be reflective of the formulas and cost allocations herein and should comply with the requirements of Okla. Stat. tit. 17 § 158.25.

**Exception: OAEC takes exception to these findings which defer any action for compliance with the Statute until OG&E's next rate case. The Company should develop an updated OCT tariff for 1 MW Customers in the present rate case. The tariff should reflect amended formulas and cost allocations as determined in this present rate case and comply with the Statute as well as historical rate making practices of this Commission.**

36.\* THE COMMISSION FURTHER FINDS that the Company should develop a rate tariff for existing 1 MW customers that began taking service with OG&E after January 1, 2014, and prior to November 1, 2023, and file it in its next base rate case. This tariff should be used for informational purposes to aid the Commission in making a determination as to how to treat the existing 1 MW customer class. The pricing should be based upon historical data and be reflective of the formulas and cost allocation methods herein. OG&E should treat this tariff as a separate service level for the 1 MW customer class. OG&E may, at its discretion, create additional service levels within the 1 MW customer class.

**Exception: OAEC takes exception to these findings which defer development of a rate class for 1 MW Customers to the next rate case.**

**Exception is also taken to treating a tariff developed for existing 1 MW Customers that began taking service with OG&E after January 1, 2014, for only informational purposes. Such a tariff should be implemented in this current rate case.**

**OAEC agrees that OG&E should be required to continue developing rate tariffs for 1 MW Customers that began taking service with OG&E after January 1, 2014, in its next rate**

case using a 1 MW COSS. OAEC takes exception with using the data solely for informational purposes.

OAEC agrees that should the Commission determine it appropriate to apply increased rates to only new 1 MW Customers taking service after the conclusion of this rate case, so as to avoid the impact of a large rate increase on current 1 MW Customers, then OG&E may treat a tariff developed for 1 MW Customers taking service prior to November 23, 2023, as a separate service level for the 1 MW Customer class. *Regardless*, all data from all accounts of 1 MW Customers taking service since January 1, 2014, shall be included in the 1 MW COSS study used both in this rate case and in future base rate cases unless the costs of extending service to a new load were collected from the customer.<sup>14</sup>

37. THE COMMISSION FURTHER FINDS that the 1 MW customers currently served by OG&E pursuant to Okla. Stat. tit. 17 § 158.25 are being lawfully served as customers of OG&E.

**Exception:** This is not an issue in the current rate case, as it was not raised and is not based upon evidence in the record. It should also be omitted for the reason that Commission Orders Nos. 711782 and 714136 issued respectively in PUD 2019-00026 and PUD 2019-00057 found that certain 1 MW customers included in the 1 MW COSS were not being lawfully served by OG&E. Both of those cases remain actively on appeal awaiting decision by the Oklahoma Supreme Court in Appellate Case nos. 118857 and 119088 respectively. No determination of the lawful status of other 1 MW Customers was sought or addressed in the current case and the record is entirely devoid of same.

38. THE COMMISSION FURTHER FINDS that the 1 MW COSS provided complies with the requirements of Final Order No. 728277 in Case No. PUD2021-00164 and was not required to be used in setting rates in this Case but rather to be able to "continue to evaluate 1 MW customers."

**Exception:** This finding correctly states that the 1 MW COSS complied with the prior Order and was created for a stated purpose relating to that class's coincident peak. However, Order No. 728277 does not limit use of the valid and accurate information found in the 1 MW COSS. The Report's Analysis in the first paragraph at pg. 17 suggests, without support, that the data found in the 1 MW COSS is unreliable to determine whether subsidies exist. This data, confirmed to be accurate by its author Lauren Maxey, should, without question, be used to assist in correcting the problem of the subsidization issue identified in Case No. PUD2021-00164. In the same finding No. 22 of that Order, OG&E was also directed to "develop a rate tariff for prospective 1MW customers" and the parties were directed to meet and attempt to resolve the 1 MW Issue.

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<sup>14</sup> 17 O.S. §158.25(F)

**The purpose for which the 1 MW COSS was created does not impact the amount of relevant data it offers, nor does it impact the reliability of the data to determine whether subsidies exist. Both of these contentions are found at pg. 17 in the first paragraph of the Report and apparently form the basis of the ALJ Report's finding regarding non-use of the 1 MW COSS to establish rates for the 1 MW Customer tariff established during the prior rate case.**

39. THE COMMISSION FURTHER FINDS that the 1 MW COSS demonstrates the cost assignment differences between a direct assignment approach for 1 MW customers and the cost allocation approach that is used for all other customers.

**Exception: The 1 MW COSS certainly demonstrates the cost assignment differences between a direct assignment of radial transmission lines used only to serve 1 MW Customers as compared to an "averaged" method of determining those costs. However, the direct assignment of costs approach for certain other transmission assets, substations for all Service Level 2 ("SL2" substation delivered electric service) customers, was used for all SL2 customers, not just SL2 1 MW Customers.<sup>15</sup> This proposed finding is only partially correct, and is misleading as it suggests that no direct assignment of costs is used for any category of costs related to non-1 MW Customers.**

40. THE COMMISSION FURTHER FINDS that OG&E's use of mass property accounting does not record costs for individual customer's connections and, therefore, does not support direct assignment of costs for all customers.

**Exception: The Company *voluntarily* uses of mass property accounting of certain specific assets for the purpose of developing cost of service studies *for the convenience* of the Company. Individual radial transmission lines are individually tracked by OG&E, and reported to FERC, for SPP reporting purposes. OG&E's choice not to track these by customer is not a valid reason to reduce \$15,752,421 of actual costs in radial transmission costs serving only 1 MW load to an amount of \$1,362,123 (only 8.6%).<sup>16</sup>**

41. THE COMMISSION FURTHER FINDS that a cost assignment approach that differs between 1 MW customers and all other customer classes is discriminatory in nature.

**Exception: This finding follows the prior incorrect finding which fails to indicate an unjustified difference in cost allocation approaches. The customer class specifically causing these additional costs for new radial transmission lines should be allocated these costs. These customers are voluntarily served by OG&E and are geographically outside of the Company's service area. In eleven (11) instances, this has require enormous costs for**

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<sup>15</sup> Tr. pg. 83, 13-17 Maxey Testimony

<sup>16</sup> Hedrick Resp. 16:4-13.

**radial transmission lines to reach these customers. Hearing Exhibit # 8. Maxey Testimony Tr. 103:8-19 admitting they are voluntarily served and different due to be outside OG&E's service territory, Hedrick Resp. Table 2 at pg. 16 and 15:19-17:6. To the extent these loads would be treated differently, that treatment merely reflects the difference in costs to serve these customers.**

42. THE COMMISSION FURTHER FINDS that direct assignment of costs will yield rates that are driven by the age and timing of the asset deployment, and that age-driven rates recognize inflationary, undepreciated costs in a manner that negatively impacts customers newer to the system thereby creating barriers to entry and inhibiting competition.

**Exception: Here, the Commissioners should reject the Report's adoption of OG&E's unsupported argument by Mr. Cash against proper cost allocation rate making procedure. Mr. Cash cites no authorities, but alludes generally to the NARUC Manual. Moreover, the ALJ sustained an objection to this testimony of Mr. Cash at pgs. 150-151 at 151:11-16. The Report then relies on this objectionable testimony in footnote 141 of the Report. It should also be noted that this was part of Mr. Cash's re-redirect testimony which was offered without an opportunity for cross-examination.**

43. THE COMMISSION FURTHER FINDS the use of cost allocation methods (e.g., 12CP, 4CP, 4CP A&E) that yield average rates, a practice known as average ratemaking, have been employed by OG&E for ratemaking purposes for decades and there is no evidence that this practice has ever been recognized as a subsidy.

**Exception: The Report misunderstands the analogy to be drawn between OG&E's request to move to 12CP in this rate case. The Company's filed testimony reflects that this change is to better align costs with cost causers. The changes to the OCT-1 tariff, as suggest by Mr. Hedrick, Mr. Garrett and Mr. Gorman would similarly more appropriately recover costs from cost causers.**

44.\* THE COMMISSION FURTHER FINDS that the Company should continue to evaluate the 1 MW customers class, at least those initially being served by OG&E after January 1, 2014, through a separate Cost of Service Study during their next rate case. This 1 MW COSS should be created to aid the Commission in its ratemaking decisions for the existing and prospective 1 MW customer class. This Cost of Service Study should separate the 1 MW customer class into at least two distinct service levels-a service level for existing customers taking service with OG&E from January 1, 2014, to November 1, 2023, and a service level for new customers taking service with OG&E after November 1, 2023. OG&E may, at its discretion, create additional service levels within the 1 MW customer class.



**Exception:** This recommendation merely delays any action on the 1 MW Issue. It would move to the next rate case any possible resolution of this issue which has been in question since 2018.

The recommendation to include the 1 MW Customer class *including those taking service since January 1, 2014*, is inconsistent with prior recommended findings that the data for these customers cannot be used in the current rate case. Any finding that this cost of service data for the same customers is unreliable simply because it was prepared for different purposes, as noted above, is without basis or merit.

OAEC agrees that should the Commission determine it appropriate to apply increased rates to only new 1 MW Customers taking service after the conclusion of this rate case, so as to avoid the impact of a large rate increase on current 1 MW Customers, then OG&E may apply the results of the 1 MW COSS differently for two different groups distinguished by their date of service. *While using the data for service to all 1 MW Customers since 2014 for the 1 MW COSS*, it may be appropriate to apply the resulting determination of appropriate rates differently to the two groups of 1 MW Customers, one prior to November 2023 and the other group taking service after that date.

45. THE COMMISSION FURTHER FINDS that OG&E's Terms and Conditions of Service, specifically Part IV, Section 408, complies with Okla. Admin. Code§ 165:35-25-2, and provides a correct definition and calculation of an Allowable Expenditure Formula.

**Exception:** This finding adopts OG&E's position without consideration of the testimony of the Intervenor or the results of the 1 MW COSS. The formula as applied by OG&E is clearly not providing an adequate return on the investment to serve the 1 MW Customers.<sup>17</sup>

46. THE COMMISSION FURTHER FINDS that OG&E's Terms and Conditions of Service, specifically Part IV, Section 408, are and should continue to be applied to all customers equally.

**Exception:** This finding relies upon the prior finding No. 45. Both are flawed for the reason that the formula used by OG&E is shown by their own data to fail to provide an adequate return on investment. *See fn. 16.*

47. THE COMMISSION FURTHER FINDS that the Company provided evidence and opportunity for review of its Allowable Expenditure calculations and how it is applied pursuant to approved Terms and Conditions of Service.

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<sup>17</sup> Hedrick Resp. 22:12-17; 26:18-27:2; 29:19-30:10.

**Exception:** This finding should be omitted as irrelevant to the 1 MW Issue. It relates only to the discovery conducted during the rate case. Mr. Schwartz' testimony<sup>18</sup> was that only one intervening party (OAEC), traveled to OG&E's offices to review the data provided concerning whether the Company's cost of connecting 1 MW Customers met with the allowable rules. His answer sidestepped the inquiry. Moreover, it offered no evidentiary support for approval of the formula used by OG&E.

48. THE COMMISSION FURTHER FINDS that OG&E has correctly applied CIAC charges in accordance with its Terms and Conditions of Service, specifically Part IV, Section 408.

**Exception:** Schwartz' Rebuttal testimony cited in support of this finding provides no analysis of data to support a finding that OG&E has correctly applied CIAC charges. Rather, Mr. Schwartz' testimony only attempts to refute concerns raised by Mark Garrett in OIEC's responsive testimony. Mark Garrett's testimony, together with Hearing Exhibit 8, show that insufficient CIAC was collected which contributed to under collection of costs to serve the 1 MW Customers and created a subsidy by other customers.<sup>19</sup>

49. THE COMMISSION FURTHER FINDS that OG&E has not waived any CIAC amounts when the Allowable Expenditure calculation showed one should be charged.

**Exception:** The problem with OG&E's allowable formula is that it is designed in such a way so as to inherently under collect costs of building out facilities to serve 1 MW Customers.<sup>20</sup> It is improper here to adopt OG&E's statement that it has not waived CIAC required by the formula, when the formula is flawed and not designed to indicate the proper CIAC needed.

50.\* THE COMMISSION FURTHER FINDS that OG&E's level of CIAC during the test year was accurately represented and reasonable.

**Exception:** There is no evidence supporting a determination that the CIAC collected by OG&E related to 1 MW Customers was correct. Cody Alsup's testimony that the reporting of CIAC for the test year is accurately represented and reasonable has no impact on the 1 MW Issue. There were no new 1 MW Customers during the test year, so that no CIAC payments were reported.

This proposed finding should be omitted as immaterial. A finding related to CIAC as it affects the 1 MW Issue should indicate the relatively small level of CIAC recovered from the 1 MW Customers, as is requested by the Joint Proposed Findings of Fact and

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<sup>18</sup> Tr. 178:1-3.

<sup>19</sup> Garrett Resp. 23:4-17.

<sup>20</sup> Hedrick Resp. 22:10-30:10.

**Conclusions of Law on the 1 MW Competitive Load Issue by OIEC, AG AARP, and FEA at page 5, Item 12. The relevant testimony to the 1 MW Issue was 1 MW Customers paid about 1.64% of the costs incurred to connect service to them. Hearing Exhibit 8. M. Garrett Responsive 23:4-11. Further, Mr. Hedrick testified that not requiring sufficient CIAC for 1 MW Customers contributes to OG&E losing significant funds on those customer's accounts. Tr. 223:17-225:10.**

51. THE COMMISSION FURTHER FINDS that the embedded costs, or total system costs - rate base, are addressed for recovery through cost allocation steps in a rate case proceeding such as this Case and should not be considered in the calculation of an Allowable Expenditure Formula in the manner proposed by OAEC in this Case.

**Exception: This finding is contrary to the facts and proper rate making methodology. Mr. Hedrick's testimony details how ignoring embedded costs and including only limited marginal costs has significantly contributed to the under recovery of costs in the 1 MW Customer class. Transcript 223:8-224:14, and Hedrick Resp. 22:10 - 29:19. Quantifying this under recovery through a model, Mr. Hedrick showed that the OG&E methodology overstated the allowable investment for a hypothetical 1 MW Outside customer with 5,000 kW of load on the existing LPL-TOU SL-2 rate by \$5,980,327. *Id.* OG&E's argument in response that recovery through the allowable formula and the rates would lead to a double recovery is incorrect. Tr. 228:9-229:4.**

52. THE COMMISSION FURTHER FINDS that the Company's Allowable Expenditure Formula appropriately calculates a return on investment with a return component on the cost of the line extension itself and through the rates applied in the estimated annual revenue contribution in the formula.

**Exception: OAEC takes exception to the is finding for the reason the formula does not work to collect adequate return for the Company. Tr. 234:19-235:9. Hedrick Resp. 22:12-17; 26:18-27:2; 29:19-30:10. Accordingly, the Commission should omit this finding.**

**1. That the Company's Part IV Extension Policy 408 Allowable Expenditure Formula for allowable expenses relating to OG&E's line extension policy should be removed and replaced with language consistent with OAC 165:35-25-2(d), as follows:**

**(d) Extension may be made above the free limit when economically justified. In lieu of making an extension pursuant to (a) and (b) of this Section, the utility may make an extension above the free limit upon receipt of a lesser payment or no payment, when the gross anticipated annual revenue from the extension will provide the utility with adequate return upon its investment, pursuant to a formula approved by the Commission or contained in its approved terms and conditions of service.**

**Accordingly, the Company shall amend its Terms and Conditions Part IV Extension Policy to remove the current section 408 Allowable Expenditure Formula ("AEF"), replace it with language consistent with OAC 165:35-25-2(d), and submit this with its Compliance Package as required by this Order.<sup>21</sup>**

53. THE COMMISSION FURTHER FINDS that a revenue deficiency or surplus is highly influenced by cost allocation, and these are cost of service topics, not a direct reflection on the Company's application of its Allowable Expenditure formula.

**Exception: See exceptions to finding No. 51.**

54.\* THE COMMISSION FURTHER FINDS that the terms found in Section II.12 in Final Order No. 702531 in Cause No. PUD 201800140 remain in place and unchanged.

**Exception: There is no identifiable Section II.12 in Order No. 702531 relating to the 1 MW Issue. However, Section II – General Recommendations of the Stipulating Parties at section 12 recommended that Section 408 of OGE's Terms and Conditions of Service, Allowable Expenditure Formula be amended to explicitly state the then current allowable expenditure formula, and add requirements for contracts with newly acquired 1 MW customers.**

**This provision was an agreement between all parties in that case to amend OG&E's Line Extension Policy to make more specific the policy and require additional protections for recovery of allowable expenditure costs. There is no agreement in this present case that these requirements have shown to be adequate to recover initial costs and ensure an appropriate return on investment.**

**OAEC requests removal of the Allowable Expenditure Formula ("AEF") from Section 408, replace it with language consistent with OAC 165:35-25-2(d), and submit this with its Compliance Package as required by this Order**

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<sup>21</sup> See OAC 165:35-25-2(d).

OAEC's Exceptions to ALJ Report 21

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been mailed electronically to all parties of record on this 12th day of August, 2024.

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/s/ Hope S. Davis  
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