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 RATES, CHARGES, AND TARIFFS FOR RETAIL ELECTRIC SERVICE IN OKLAHOMA	))))))	CASE NO. PUD2023-000087

OKLAHOMA GAS AND ELECTRIC COMPANY'S RESPONSE TO OKLAHOMA ASSOCIATION OF ELECTRIC COOPERATIVES' EXCEPTIONS TO THE REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE AND THE JOINT EXCEPTIONS OF OKLAHOMA INDUSTRIAL ENERGY CONSUMERS et al.[1]

COMES NOW Oklahoma Gas and Electric Company ("OG&E") pursuant to OAC 165:5-13-5(c) and submits its Response to: (1) *Oklahoma Association of Electric Cooperatives' Exceptions to the Report and Recommendation of the Administrative Law Judge* ("OAEC Exceptions") and (2) *Joint Exceptions of Oklahoma Industrial Energy Consumers, Oklahoma Attorney General, AARP, and Federal Executive Agencies to Report of Administrative Law Judge* ("Joint Exceptions") (jointly referred to herein as "Exceptions"), both filed herein on August 12, 2024.

The Report and Recommendation of the Administrative Law Judge ("ALJ Report"), filed on July 31, 2024, provides a comprehensive and thoughtful analysis of the issues at stake, particularly the contested 1 MW competitive load issue that could not be resolved prior to trial. It is crucial to note that the primary issues in OG&E's general rate change request were resolved through the Uncontested Joint Stipulation and Settlement Agreement ("Stipulation"), filed on June 12, 2024. The ALJ Report appropriately recommends the Commission adopt this Stipulation as fair, just, reasonable, and in the public interest. (Findings, paras. 6-19.) Significantly, none of the Exceptions filed contest these findings.

The objections raised in the Exceptions revolve around the unresolved 1 MW competitive load issue, where the ALJ's decision did not align with the outcome sought by the parties seeking exceptions. However, as demonstrated by the document itself, the ALJ Report is grounded by a thorough evidentiary record, resulting in a recommendation and findings that are fair, just, and reasonable. **Accordingly, OG&E asserts that the Exceptions should be rejected, and the ALJ Report should be fully adopted by the Commission.**

I. Introduction

The ALJ Report presents a meticulous and well-reasoned analysis, grounded in sound ratemaking principles and a thorough review of the 1MW issue and proper application of 17 OS §158.25. The ALJ Report is the product of a careful consideration of the record, including reliance

[1] In addition to Oklahoma Industrial Energy Consumers, the Joint Exceptions were filed jointly with the Oklahoma Attorney General, AARP, and Federal Executive Agencies.

upon the evidence presented and the statutory requirements set out in 17 O.S. § 158.25(F) ("Subsection F"). The ALJ's decision to limit the application of Subsection F to new customers taking service after November 1, 2023, is legally sound, comports with the plain language of the statute, and is wise public policy. The Exceptions insistence on applying this provision to existing customers is an attempt to circumvent the clear intent of Subsection F and would result in unwarranted and discriminatory rate increases that are inconsistent with the principles of cost causation and equitable rate design.

To accept the arguments presented in the OAEC Exceptions or the Joint Exceptions would not only undermine the integrity of the ratemaking process but would also set a dangerous precedent of prejudicial treatment of 1 MW customers served by OG&E. These Exceptions seek to distort the application of established ratemaking principles to serve narrow interests, at the expense of fairness. The outcome advocated by opposing parties requires a ratemaking treatment that ignores traditional average ratemaking policies and argues for discriminatory rates applicable only to a small group of customers.

Moreover, the ALJ correctly identified the 1 MW Cost of Service Study ("COSS") submitted by OG&E as an informational tool, not as a basis for ratemaking decisions. The opposing parties' reliance on this 1 MW COSS to argue for drastic and prejudicial rate adjustments is fundamentally flawed and solely based on their desire for the Commission to adopt discriminatory rates designed to protect their special interests. Their approach disregards the purpose of the 1 MW COSS and ignores the broader implications of deviating from traditional ratemaking methodologies, which have long been designed to balance the interests of all customer classes fairly.

In short, the Exceptions are built on a misinterpretation and selective readings of both the law and the evidence, and the opposing parties' goals for doing so are clear. OAEC is trying to artificially increase rates for OG&E's 1 MW customers, so they have a better opportunity to compete against OG&E for potential customers. OIEC members are attempting to artificially lower their own rates and shift those costs onto 1 MW customers (mainly oil and gas producers and transporters[2]). Opposing parties also ignore that Subsection F does not require the Commission to adopt a prejudicial treatment of 1 MW customers nor to move away from traditional average ratemaking. Their proposals, if accepted, would lead to inequitable outcomes that contradict the public interest and are contrary to law. The Commission should affirm the ALJ's well-reasoned Report and reject the opposing parties' misleading arguments in their entirety.

To provide context to OG&E's Response below, it is helpful to set out the fundamental Recommendations regarding the 1 MW customer issue as set forth in the ALJ Report at pages 20 and 21.

1. The ALJ Report determined that provisions of Subsection F apply prospectively to new 1 MW customers taking service with OG&E after November 1, 2023. (ALJ Report at 20.) Because no new 1 MW customers have been added to OG&E's system since November 1, 2023, there are no customers to which Subsection F applies at this time. (ALJ Report at 21.)

[2] Tr. 6-20-2024, at p. 155, lines 10-11.

2. Because there are no current 1 MW customers to which Subsection F applies, the ALJ Report determined that the existing Outside Certified Territory (OCT) Tariff should continue as currently structured, with pricing for new (after November 1, 2023) 1 MW customers to be based on OG&E's LPL-TOU rates until data on the 1 MW customers can be available in OG&E's next general rate case. (ALJ Report at 21.)

3. Regarding treatment of radial transmission line costs, the ALJ Report determined that the direct assignment of costs was improper, mass property accounting does not track costs for individual customer connections, and using cost assignment that differs between 1 MW customers and other customer classes would be discriminatory. (ALJ Report at 21.)

4. The ALJ Report also determined that OG&E's Allowable Expenditure Formula as last updated in Cause No. PUD 201800140 should remain unchanged and that it should continue to be applied to all customers equally. (ALJ Report at 21.)

II. ALJ Interpretation of 17 O.S. §158.25(F)

The opposing parties argue the ALJ's determination that the requirements of 17 O.S. §158.25(F) ("Subsection F" or "the Statute") are prospective in nature and can only be applied to 1 MW customers taking service after November 1, 2023, not only constitutes error but misses the nature of their argument in this Case. OAEC states in that regard:

> 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.

OAEC Exceptions, p.4.

A review of the legal briefs filed by certain parties on June 17, 2024, and argued during the Prehearing in this Case, reveal that the parties were indeed arguing the interpretation of the Statute and whether those provisions could be applied to existing 1 MW customers (retroactive application) or only to new 1 MW customers taking service after November of 2023 (prospective application). OG&E submits that the ALJ not only correctly interpreted the intent of the newly promulgated Statute, but fully understood the underlying arguments as to prospective versus retroactive applicability of the Statute's requirements, and rendered a proper recommendation based on well-established Oklahoma law. OG&E incorporates by reference its Brief Regarding Interpretation of 17 O.S. §158.25 in support of the assertion the ALJ considered and applied the applicable law in interpreting the Statute.

Beginning on page 5 of her Report, the ALJ undertakes a thorough analysis that includes, among other things, the history of the 1 MW issue *vis-a-vis* cost of service, a history of the statutory provisions at issue, the standard for interpretation of a statute, case law from the Oklahoma Supreme Court regarding statutory interpretation, and consideration of the parties' arguments as to the statutory interpretation issue. Notably, the ALJ cites to portions of the parties' legal briefs and the contested language from the Statute that each party relies upon to support their arguments. *See* ALJ Report, p.7. After a lengthy analysis, the ALJ states in her Report:

> Although the ALJ does not dispute the correctness of this provision as it applies to new OG&E 1 MW customers after the effective date of November 1, 2023, the plain language of the Statute is clear that it does not apply to 1 MW customers of OG&E prior to November 1, 2023.

ALJ Report, p.10.

It is important to note that, currently, no party takes exception to the ALJ's adopted standard of review for statutory interpretation or the well-established case law relied upon by the ALJ regarding the interpretation of the statutory provisions. Instead, the opposing parties argue generally that: 1) the ALJ erred in relying upon isolated phrases in the statutory language to support her finding; 2) a case found by the ALJ to be analogous to the present Case and relied upon to support her ruling was misinterpreted and, instead, supports the opposing parties' position (see *Houck v. Hold Oil Corp.*, 1993 OK 167, ¶16); 3) the ALJ misinterprets the opposing parties' actual argument that they do not seek retroactive application of the Statute; 4) the relevant Commission Rule is merely a notice provision and does not provide support for the ALJ's determination; and 5) the Commission's general supervisory powers provide adequate authority to apply the provisions of the Statute to OG&E's existing customers going forward. These arguments are addressed individually below.

1. The ALJ's interpretation of the Statute is correct.

The ALJ correctly concluded that the Statute cannot be applied retroactively to 1 MW customers prior to the effective date of the Statute (November 1, 2023). She goes through an exhaustive analysis of the Retail Electric Supplier Certified Territories Act ("RESCTA") and specifically Subsection (F). The ALJ holds that the statute "applies to new loads only" and the "Legislature is clear in its intent to apply the Statute prospectively by including the qualifying language of "such a new load." Had the Legislature intended for the Statute to apply to existing loads prior to the Statute's effective date, it would have said so." ALJ Report at 10.

Subsection (F) cannot be applicable to existing customers because it references "new load customers" and existing load customers by definition are not new load.[3] "New load" is a reference to customers after the effective date of the legislation (or November 1, 2023)[4] and the cooperatives' recommendation on applicability of 17 O.S. § 158.25(F) is in opposition to the intention of the statute.[5]

Moreover, the record supports the ALJ Report in other ways. For example, Mr. Cash testified in Rebuttal Testimony that, as a participating subject matter expert during the drafting of HB 2845, he can attest that all parties involved, including the OAEC, agreed that the new bill would apply to new customers on a strictly prospective basis only.[6] In addition, Mr. Cash testified that the legislation requires that a 1 MW customer notify the cooperatives of their intention to locate in their territory[7] Based on the cooperative response, the OCT tariff may not even apply.[8]

[3] Tr. 6-20-2024, at p. 131, lines 4-5.
[4] Tr. 6-20-2024, at p. 131, lines 5-7.
[5] Tr. 6-20-2024, at p. 131, lines 7-10.
[6] Cash Rebuttal Testimony, p. 11, lines 11-13.
[7] Cash Rebuttal Testimony, p. 10, lines 28-29.
[8] Cash Rebuttal Testimony, p. 10, lines 29-30.

Prior to this new legislation, no notice requirement was in effect.[9] This new criteria for the applicability of 17 O.S. § 158.25(F) shows that it cannot be applied to existing customers because such requirements did not exist when those customers chose OG&E service over the cooperatives.[10]

2. The ALJ did not improperly rely upon isolated phrases to support her finding of legislative intent.

In her Report, the ALJ quoted the phrases from the Statute upon which the parties relied to support their positions. *See* ALJ Report, p.7. Because the parties set forth conflicting positions regarding the intent of the Statute based on these specific phrases, the ALJ concluded "there is more than one reasonable interpretation as to the applicability of the Statute" and further concluded "canons of statutory interpretation must be employed." *Id*. However, the ALJ did not focus entirely on those quoted phrases in her analysis. In fact, after the paragraph setting forth the phrases the parties' relied upon, the following section heading is found: "**The plain language of the Statute must be analyzed in its entirety and read within the context of the Act to determine the Legislature's intent.**" *Id.* (emphasis original).

Next, the ALJ states "[w]hen the parties ask the Court to focus on a particular word or phrase in a statute, as the parties herein are seeking to do, we are not allowed to ignore the statutory context wherein the particular word or phrase appears." Over the next two and one-half pages, the ALJ engages in an in-depth analysis regarding the history of the RESCTA, the goals of that Act, and the application of the canons of statutory interpretation to the statutory language in dispute. *Id*. at 7-10.

Even a cursory reading of the Report reveals that the ALJ did not focus on a specific phrase of the Statute to reach her determination and the opposing parties' assertion in this regard is baseless.

3. The ALJ reliance upon the *Houck* case is proper.

In her Report, the ALJ found *Houck v. Hold Oil Corp.*, 1993 OK 167 to "directly correlate[]" to the present case and the issue of retrospective versus prospective application of a new statute. In their Exceptions, the opposing parties suggest that the ALJ misread or misinterpreted the *Houck* case, and that case actually supports their position regarding statutory interpretation.

Briefly, the *Houck* case concerned, in part, the application of the Surface Damage Act to two oil and gas wells, one completed prior to the passage of that Act, and one completed after enactment. The Oklahoma Supreme Court reversed and remanded for a new trial on the basis that the first well at issue, "having been completed prior to the effective date of the Act, was not covered by the Act[.]" *Id*. at ¶8. The *Houck* Court further stated:

> [A]s we view the Act, the Legislature gives neither by express declaration nor do we discern by necessary implication any indication of an intent to apply the provisions of the Act to drilling operations which have culminated in the

[9] Cash Rebuttal Testimony, p. 10, line 30; p. 11, line 1.
[10] Cash Rebuttal Testimony, p. 10, line 16 – p. 11, line 7.

> completion of a well prior to the effective date of the Act. Common sense would seem to dictate that because the notice provisions of the act, the settlement negotiation provisions and those calling for appointment of appraisers [§ 318.3 and § 318.5] are supposed to take place prior to the commencement of drilling or related activity there was no legislative intent to apply the Act to wells already completed. In that the Act by express language is geared toward future activity we fail to find any legislative intent that would require application to the first well which was completed prior to the effective date of the Act.

Id. at ¶18.

The ALJ in her Report provides citations and quotes from the pertinent portions of the *Houck* Case to support her assertions regarding statutory interpretation.

Contrary to the argument by the opposing parties, the *Houck* case is indeed analogous to the present Case. Similar to the situation in *Houck*, the issue in the present Case involves the issue of applicability of requirements to customers taking service prior to the enactment of the 17 O.S. §159.25(F), the lack of legislative language indicating retroactive application, and inclusion of notice requirements in those provisions that further militate against retroactive application. The ALJ properly relied upon *Houck* in considering the issue of applicability of new statutory provisions in a retroactive manner.

4. The ALJ understood the position of the parties regarding statutory interpretation and applicability of the Statute to existing customers.

In their Exceptions, the opposing parties now seem to pivot from their original position that the Statute is retroactive in nature and can be lawfully applied to existing 1 MW customers. The position the Statute can be applied retroactively is clearly stated in the opposing parties original legal brief and was expressed repeatedly during the oral arguments held at the Prehearing Conference in the present Case. The opposing parties now seem to argue that they agree the Statute is prospective in nature and that they seek to apply the provisions to existing 1 MW customers on a going-forward basis. OG&E submits that application of the requirements of the Statute to existing 1 MW customers on a going-forward basis still constitutes a retroactive application. Merely because the opposing parties do not seek recovery of alleged past subsidy amounts does not change the retroactive nature of their arguments.

As in *Houck*, there is no indication of legislative intent to apply the provisions of the Statute retroactively. Further, just as the Surface Damages Act did not apply to wells completed prior to the promulgation of that Act, the requirements of the Statute don't apply to existing 1 MW customers taking service prior to November 1. 2023. It is clear from the record and the ALJ Report that she clearly understood the legal issue of whether the Statute's provisions applied to existing 1 MW customers. Whether the opposing parties characterize that as retroactive or prospective application does not change the true nature of the issue. The opposing parties' argument in that regard is without merit.

5. Commission Rule OAC 165:35-11-4 is not strictly a notice provision.

The opposing parties next argue that Commission Rule OAC 165:35-11-4 is strictly a notice provision and the ALJ erred in relying upon that rule to aid in interpretation of legislative intent. As noted by the ALJ, simply because the Rule's heading and subsection a of that rule refer to notice, does not equate to a conclusion that all the provisions of the Rule are exclusively classified as a notice rule. *See* ALJ Report, p.14-15. A review of subsection b of the Rule shows five distinct requirements that are clearly derived from the Statute and are not related to notice.

There is no valid argument that the Commission rule at issue is strictly related to notice and the ALJ did not err in relying upon that rule when considering legislative intent and whether the Statute is retroactive or prospective.

6. The Commission lacks authority to impose the Statute's requirements on existing 1 MW customers.

As a "Hail Mary" argument, the opposing parties contend that this Commission's general supervisory authority over utilities "trumps" the Statute if it is determined that it is prospective in nature and cannot be applied to existing 1 MW customers. To that end, the opposing parties argue that regardless of the Statute's applicability, this Commission has the authority to impose the requirements within the Statute to existing 1 MW customers by virtue of its general supervisory power over utilities and its duty to ensure fair rates. OG&E submits that such an argument is not consonant with the law.

It is well established that this Commission is tribunal of limited jurisdiction that derives its authority from the Oklahoma Constitution and the Oklahoma Legislature through existing statutes. *See e.g., Public Serv. Co. v. State of Oklahoma, ex rel., Corporation Comm'n*, 1996 OK 43, ¶21. While the Commission has the power to fix and establish rates and generally supervise public utilities, its power to regulate "is not unfettered, but is instead limited by the Constitution and must be exercised within the confines of other statutes." *See Sierra Club v. Corporation Comm'n*, 2018 OK 31, ¶22.

The implicit argument is that the Commission has the authority to set rates and could have imposed requirements such as found in the Statute without objection prior to enactment of the Statute and should be able to do so now. OG&E agrees that prior to the enactment of Subsection F of the Statute, this Commission could have required tariffs for existing 1 MW customers that include the requirements of Subsection F and of OAC 165:35-11-4. However, with the enactment of the Statute, the legislature has effectively narrowed the discretion of this Commission as regards application of the requirements set forth in the Statute. Because there is no language within the Statute indicating an intent to have the provisions apply retroactively, this Commission may not impose the requirements of the Statute upon existing 1 MW customers. There is no disagreement that this Commission has the duty to ensure fair and just rates, but it cannot impose the specific requirements of the Statute upon existing 1 MW customers when establishing those rates.

In conclusion, the ALJ Report includes exhaustive analysis of the applicable law, consideration of the parties' arguments and positions, and a resolution of the issues that is supported by long-standing Oklahoma law. The findings of the ALJ should be adopted by this Commission.

III. The ALJ Recommendations and Findings Regarding the Treatment of the 1 MW COSS, Direct Assignment of Costs, the Allowable Expenditure Formula, and OCT Tariff.

OG&E does not intend to provide a Findings-by-Findings evaluation of the ALJ Report or of the Exceptions filed herein as OG&E supports the adoption of the ALJ Report *in toto*. Moreover, the subjects presented outside the issues raised by the legal interpretation of Subsection F fall into the categories described and addressed below.

1. The ALJ correctly determined the applicability of the informational 1 MW COSS.

The ALJ Report thoroughly evaluated the parties' position regarding the 1MW COSS that was submitted by OG&E pursuant to Final Order No. 728277 in Case No. PUD 202100164. The ALJ Report correctly determined, pursuant to her lengthy analysis set forth on pages 14-17, that the 1 MW COSS should not be relied upon for ratemaking decisions in this Case. The ALJ's determination that the 1 MW COSS does not reliably demonstrate the existence of any subsidies is well-supported by the evidence and testimony, including that of OG&E's witnesses to which she cites.

The ALJ correctly identified that the 1MW COSS: (1) was prepared to satisfy the requirement of Final Order No. 728277, (2) used to demonstrate what future rates may look like for new competitive load customers on the OCT, and (3) demonstrates the drastic impact of the opposing parties arguments to change the cost allocation methodology used across all of OG&E's customer classes.[11] Addressing the opposing parties' argument that the 1MW COSS demonstrates there are subsidies to the 1MW customers,[12] the ALJ found that, in fact, the 1MW COSS does not "reliably prove whether or not subsidies exist."[13]

Opposing parties continue to beat the drum that OG&E's customers, who are lawfully served pursuant to 17 O.S. § 158.25, are being subsidized by other customer classes. This claim is based almost entirely on the improper use of the 1MW COSS, along with the inappropriate direct assignment of transmission radials. The opposing parties misrepresent the facts in two primary ways. First and most importantly, as reflected in the ALJ Report's recitation of Mr. Cash's testimony, the higher results in the informational 1 MW COSS are driven by the direct assignment of costs and not by any subsidy. Secondly, the opposing parties purposefully ignore that the current case is a request for a rate increase where OG&E's COSS and its 1 MW COSS included a revenue increase request of more than $332 million, while the Stipulation cuts this by more than 60% to $126 million, resulting in significantly inflated and unreliable purported subsidies by opposing parties.

The evidence to support the ALJ recommendation regarding the informational nature of the 1 MW COSS is substantial and includes the following:

- During the hearing on the merits, Ms. Lauren Maxey testified that the 1 MW COSS was done for two reasons: (1) to comply with the settlement agreement reached in Case No.

[11] ALJ Report, p.15.
[12] ALJ Report, p.16.
[13] ALJ Report, p.17.

PUD 2021-000164; and (2) to show a hypothetical COSS situation to demonstrate what happens when 1 MW competitive load customers from different rate categories are moved and placed in a separate class.[14] She also testified that the 1 MW COSS was not required to be used to set rates for customers.[15]

- In her Rebuttal Testimony, Ms. Maxey testified that the Final Order in Case No. PUD 2021-000164 required the Company to perform a 1 MW COSS to "verify the accuracy of the decision of the Company in this Case to treat the 1 MW customer class's coincident peak as their own customer class."[16] In addition, she testified that the order required that "the cost allocation method with respect to this new class will be the same as the cost allocation methods used for other customers."[17] She testified that the 1 MW COSS complied with this directive. Ms. Maxey testified that PUD witness Scalf confirmed that the filed 1 MW COSS complied with the settlement requirements in that Case.[18]

- In his Direct Testimony, Mr. Gwin Cash testified that no customers have joined the OG&E system pursuant to the OCT tariff through the end of the six-month pro forma period that ended on March 31, 2024. Because there are no active customers on the rate, OG&E is not able to design cost-based rates on actual active OCT customers.

- Mr. Cash also testified that there is no relevant cost data to be used for rate making purposes for the OCT tariff.[19] He further testified that the treatment currently in place which provides for rates in the OCT tariff are tied to the LPL-TOU rates and until there are new customers to evaluate the OCT tariff remains in the initial phase with rates tied to LPL-TOU tariff.[20]

The 1 MW COSS results the opposing parties rely on are derived from the original rate increase request, including the transmission and production wind allocation changes that were originally proposed and the six-month updates. Since the original filing, there have been several updates to the revenue requirements, deficiency calculation, and plant allocations that have changed the deficiency for each class of customers. The 1 MW COSS does not take into account these changes and cannot be relied upon to inform ratemaking. Opposing parties are aware of the significantly lower rates agreed to by the parties in this case and that this substantially impacts all classes, including the 1MW class.

The Joint Exceptions rely on the 1 MW COSS to assert a $3.5 million "subsidy" from the LPL-SL2 class,[21] claiming this was ignored by the ALJ. However, this assertion is fundamentally flawed because the 1 MW COSS cannot support such a calculation for the following reasons: (1) it excludes the 6-month post-test year adjustments which include revenue updates; (2) it fails to account for the Joint Settlement's significantly lower revenue requirement for all customers; and (3) it incorporates outdated transmission and production wind allocators that have since been

[14] Tr. 6-20-2024, at p. 66, lines 12-20, p. 67, lines 21-25.
[15] Tr. 6-20-2024, at p. 110, lines 7-19.
[16] Order No. 728277, p. 7.
[17] *Id.* at 8.
[18] David Scalf Responsive Testimony, p. 18.
[19] Cash Rebuttal Testimony, p. 9, lines 13-23; p. 11, lines 3-7.
[20] Cash Rebuttal Testimony, p. 9, lines 27-29; p. 10, lines 1-3.
[21] Joint Exceptions, p. 4.

modified by the Joint Stipulation.[22] These omissions substantially alter the revenue deficiencies for each customer class, particularly the LPL-SL2 class.

Furthermore, the Joint Exceptions compound this error by applying the proposed discriminatory cost allocation method, which artificially increases the perceived revenue deficiency for the 1 MW class. Thus, the claimed $3.5 million "subsidy" is unsubstantiated, and the ALJ's rejection of these arguments is both sound and justified.

Both the OAEC Exceptions and the Joint Exceptions erroneously rely on Hearing Exhibit 8 to support their positions that 1 MW customers are subsidized by other customer classes.[23] The $59.12 million cited by the Joint Exceptions represents capital expenditures for projects serving 1 MW customers since 2014, including $15.7 million in transmission system costs and $43.4 million in distribution system costs. Crucially, $25.3 million of these distribution costs are associated with substations that directly serve SL2 customers and are already assigned to these customers in both the filed COSS and the 1 MW COSS. All of these project costs were factored into the Allowable calculations, which determine whether the revenues generated from providing service cover the revenue requirement for connecting these customers or if any CIAC is required.

The misleading use of the $59.12 million and $15.7 million figures, while ignoring that approximately half of these costs were already directly assigned to SL2 customers through standard allocation processes, is inappropriate. Moreover, OAEC's claim that Hearing Exhibit 10 demonstrates OG&E's ability to directly assign transmission costs[24] without disclosing that these plant amounts are not broken down or tracked by specific customers is misleading. The suggestion that using mass property accounting equates to inadequate record keeping[25] contradicts well-established utility ratemaking standards. For these reasons, the ALJ correctly determined that the 1 MW COSS cannot be used to substantiate any alleged "subsidies" for 1 MW customers.

The Exceptions' reliance on the 1 MW COSS to argue for rate changes is fundamentally flawed. The 1 MW COSS was never designed to dictate rates but rather to illustrate potential impacts under hypothetical scenarios. Moreover, the significant reductions in the rate increase request, as reflected in the Stipulation, further undermine the credibility of the subsidy claims made in the Exceptions. The Commission should uphold the ALJ's rejection of the 1 MW COSS as a basis for ratemaking in this proceeding.

2. The ALJ recommendation regarding the direct assignment of radial transmission lines costs as argued by opposing parties is discriminatory is supported by substantial evidence.

The ALJ Report rightly concluded that the direct assignment of radial transmission line costs exclusively to 1 MW customers is discriminatory, legally unnecessary, and violates established ratemaking principles. The ALJ's analysis highlights the fundamental unfairness of singling out 1 MW customers for cost assignment methodologies that differ from those applied to other customer classes. Such a practice would not only be discriminatory but would also set a dangerous precedent for future ratemaking cases.

[22] See Tr. 6-20-2024, at p. 217, line 13 through p.221, line 21.
[23] See OAEC Exceptions, p. 9 and Joint Exceptions, p. 4.
[24] OAEC Exceptions, p. 9.
[25] OAEC Exceptions, p. 9.

The evidence to support the ALJ's recommendation to reject the direct assignment of radial transmission to one customer class is substantial:

- During the hearing, Ms. Maxey testified that it was highly unusual to directly assign costs and it was common to charge customers based on system average costs.[26] Ms. Maxey also testified that the purpose of directly assigning costs just to the 1MW competitive load customers would be to increase their rates and would lead to discriminatory practices by singling out these customers.[27] Ms. Maxey further stated that the final order in Case No. PUD 2021-000164 did not require direct assignment of costs, as it specifically stated that the cost allocation methodology with respect to the Outside Certified Territory ("OCT") class should be the same as the cost allocation methods used for other customers.[28]

- Ms. Maxey testified that OG&E does not track transmission radials by customer.[29] OG&E used property accounting records and engineering records to identify the length of each transmission radial that is dedicated to a single customer, and the average cost per mile of the gross plant balance of transmission radials to calculate an average cost per mile which was then assigned to these customers.[30] Ms. Maxey testified that it would be inappropriate for the Company to deviate from the use of average ratemaking principles that are applied throughout the regulated industry.[31] Further, Ms. Maxey also testified that the final order in Case No. PUD 2021-000164 dictated that cost allocations for the 1MW class be the same as the cost allocations used for other customers.[32]

- While OG&E does directly assign costs of substations to Service Level 2 ("SL2") customers, these assets are the exception to OG&E's property accounting records and the Company's use of mass property accounting.[33] Transmission radials are not tracked individually.[34] SL2 substations can be tracked because they are either dedicated to a single customer or have one dedicated circuit from the substation to serve a customer.[35] Ms. Maxey stated during the hearing that because distribution substation costs are separately tracked in OG&E's accounting system, they can be directly assigned, but that those separately tracked costs are the exception within OG&E's property accounting system.[36] Ms. Maxey testified in her Rebuttal Testimony that OG&E uses mass accounting for transmission radials and they are not tracked by customer.[37] At the hearing on the merits, Ms. Maxey testified that, while she is not an expert on how OG&E tracks costs in its property accounting system, starting to separately track individual assets currently included

[26] Tr. 6-20-2024, at p. 85, lines 8-14.
[27] Tr. 6-20-2024, at p. 85, lines 1-7.
[28] Tr. 6-20-2024, at p. 110, lines 11-16.
[29] Maxey Rebuttal Testimony, p. 15, lines 15-17; Tr.6-20-2024, at p. 121, lines 5-14.
[30] Maxey Rebuttal Testimony, p. 15, lines 17-20.
[31] Maxey Rebuttal Testimony, p. 16, lines 6-7.
[32] Tr. 6-20-2024, at p. 136, lines 1-14.
[33] Maxey Rebuttal Testimony, p. 16, lines 18-21.
[34] Maxey Rebuttal Testimony, p. 16, lines 21-22.
[35] Maxey Rebuttal Testimony, p. 16, lines 11-17.
[36] Tr. 6-20-2024, at p. 98, lines 15-19.
[37] Maxey Rebuttal Testimony, p. 15, lines 15-17.

in mass property accounts would lead to increased costs for all rate payers because it would be expensive to separately track those costs so they can be directly assigned.[38]

- Mr. Cash also testified that the cooperatives cost allocation proposal is "drastically different than how [OG&E has] been doing cost assignment for decades" and it could lead to increases for OCT customers of over 40 percent.[39] Mr. Cash stated that the cooperatives are proposing a cost allocation methodology that yields a very high increase for these OG&E competitive load customers.[40]

The Exceptions fail to provide any compelling legal or factual basis for overturning the ALJ's findings on this issue. The ALJ's decision is rooted in sound principles of non-discriminatory rate design and should be affirmed by the Commission.

3. The ALJ's determination that the Allowable Expenditure Formula (AEF) is correctly applied and should not be modified is supported by substantial evidence.

The ALJ Report correctly determined that OG&E's Allowable Expenditure Formula, as last updated in Cause No. PUD 201800140, should remain unchanged and continue to be applied equally to all customers. The Exceptions' arguments to modify the AEF for 1 MW customers are unsupported and would result in unjust and unreasonable discrimination against 1 MW customers, along with providing preferential treatment for all other customers.

The evidence to support the ALJ's recommendation that the AEF should not be modified is substantial and is summarized below:

- Mr. Schwartz filed Rebuttal Testimony to explain that the Company complies with the Commission rules on extension of service through its Commission approved Terms and Conditions of Service, specifically Part IV, Section 408, which provides the definition and calculation of the Allowable for the Company.[41] The formula has not substantively changed in 15 or more years.[42]

- Mr. Schwartz also testified that the purpose of the Allowable is to ensure the incremental impact of a new project is covered either by the gross annual revenue, or gross annual revenue plus a contribution in aid of construction ("CIAC").[43] The Allowable is designed to protect all other customers and the Company as new projects are added to the system.[44]

[38] Tr. 6-20-2024, at p. 98, lines 20-25, p. 99, lines 1-5.
[39] Tr. 6-20-2024, at p. 153, lines 3-13.
[40] Tr. 6-20-2024, at p. 153, lines 10-25; p. 154, lines 11-15.
[41] Schwartz Rebuttal Testimony, p. 4, lines 1-5.
[42] Tr. 6/20/2024, at p. 181, lines 13-16.
[43] Schwartz Rebuttal Testimony, p. 4, lines 18-20.
[44] Schwartz Rebuttal Testimony, p. 4, lines 20-21.

- Mr. Schwartz stated that the Allowable is used for all customers regardless of whether a project is for a 1 MW competitive load or a customer within OG&E's territorial boundaries.[45]

- Mr. Schwartz further testified that OIEC witness Garrett presents an incorrect argument that CIAC payments are the only method in which incremental investment costs can be offset.[46] This line of reasoning ignores the reason for and the application of OAC 165:35-25-2(d).[47] First, CIAC is required only when the Allowable indicates that projected revenues from a customer are insufficient to provide the utility with adequate return upon its investment as clearly established in Commission rules.[48] In addition, he testified that CIAC is not the only mechanism within the Allowable policy to offset these costs to connect customers.[49] Mr. Schwartz testified that OIEC is ignoring the actual components of the Allowable formula that determine how much expenditure is "allowed" versus what needs to be paid through CIAC.[50] He testified that it is inappropriate to assert that if a project does not have a CIAC the "customers have paid virtually none of the costs to extend service."[51]

- Mr. Schwartz testified that Mr. Garrett provides no evidence to support the accusation, and it is not accurate, that the Company "waived the CIAC charges for competitive load outside the certified service territory in an attempt to entice those customers onto OG&E's system."[52] He explained that the Allowable is a strictly followed formula for all customers and that there has been no situation where CIAC has been "waived" in an instance where the Allowable shows one is required.[53] Mr. Schwartz testified that Mr. Garrett attempts to argue that other customers are paying for the CIAC charges that OG&E failed to collect when this is incorrect and reflects continued misunderstanding of the purpose and application of the Allowable.[54] OG&E has collected CIAC where the Allowable showed one was required.[55] Again, Mr. Schwartz explained that Mr. Garrett is leaving out the actual components of the Allowable formula that determine how much expenditure is "allowed" versus what needs to be paid through CIAC.[56]

- Mr. Schwartz also provided a response to OAEC witness Hedrick in his Rebuttal Testimony.[57] Contrary to Mr. Hedrick's description of the purpose of the Allowable, Mr. Schwartz testified that the purpose of the Allowable is to calculate the amount of extension costs that may be made above the free limit provided by rule when it is economically

[45] Schwartz Rebuttal Testimony, p. 5, lines 6-9.
[46] Schwartz Rebuttal Testimony, p. 6, lines 12-14.
[47] Schwartz Rebuttal Testimony, p. 6, lines 14-19.
[48] Schwartz Rebuttal Testimony, p. 7, lines 6-8.
[49] Schwartz Rebuttal Testimony, p. 7, lines 8-9.
[50] Schwartz Rebuttal Testimony, p. 7, lines 9-11.
[51] Schwartz Rebuttal Testimony, p. 7, lines 11-13.
[52] Schwartz Rebuttal Testimony, p. 7, lines 29-30; p. 8, line 1.
[53] Schwartz Rebuttal Testimony, p. 8, lines 2-3.
[54] Schwartz Rebuttal Testimony, p. 8, lines 9-11.
[55] Schwartz Rebuttal Testimony, p. 8, lines 11-12.
[56] Schwartz Rebuttal Testimony, p. 8, lines 12-14.
[57] Schwartz Rebuttal Testimony, p. 8, line 16.

justified.[58] He testified this is clearly explained in the formula which complies with OAC 165:35-25-2.[59]

- Mr. Schwartz further testified that Mr. Hedrick argues about whether embedded or marginal costs should be used within the Allowable.[60] However, Mr. Schwartz explained that the Commission rules do not reference the inclusion of any embedded costs in the Allowable and the rules specifically reference the costs of the extension of the system itself as necessary to furnish service to a customer.[61] The intent of the rules is to address the incremental cost, the extension, to serve a new customer, and this is what should be considered in the Allowable.[62]

- During the hearing, Mr. Schwartz testified that the Company's Allowable includes a return component two-fold.[63] First, the line extension itself has a calculation that includes a return component.[64] In addition to that, the formula includes an estimated annual revenue component.[65] By default, and its basic ratemaking principles, rates charged to customers include a return component.[66] Therefore, when the Company calculates the estimated annual revenue that this customer is going to bring on to help offset their costs, that has a return component as well.[67] In summary, there are two return components in OG&E's allowable.[68]

The Commission should reject any proposal to alter the long-standing AEF and should uphold the ALJ's recommendation to maintain its current application across all customer classes.

4. The ALJ appropriately addressed issues related to the Outside Certified Territory (OCT) Tariff.

The ALJ Report's recommendation to maintain the current structure of the Outside Certified Territory ("OCT") Tariff, with pricing for new 1 MW customers based on OG&E's LPL-TOU rates, is both reasonable and consistent with sound ratemaking principles. Given that there are no current 1 MW customers to whom Subsection F of the Statute applies, the existing OCT Tariff structure remains appropriate until the next general rate case, when more data on 1 MW customers can be evaluated.

The evidence to support the ALJ's recommendation for maintaining the current OCT tariff structure is considerable:

[58] Schwartz Rebuttal Testimony, p. 8, lines 24-26.
[59] Schwartz Rebuttal Testimony, p. 8, lines 26-27.
[60] Schwartz Rebuttal Testimony, p. 9, lines 10-12.
[61] Schwartz Rebuttal Testimony, p. 9, lines 10-13.
[62] Schwartz Rebuttal Testimony, p. 9, lines 13-15.
[63] Tr. 06/20/2024, p. 295, lines 7-8.
[64] Tr. 06/20/2024, p. 295, lines 8-11.
[65] Tr. 06/20/2024, p. 295, lines 11-13.
[66] Tr. 06/20/2024, p. 295, lines 13-15.
[67] Tr. 06/20/2024, p. 295, lines 15-17.
[68] Tr. 06/20/2024, p. 295, lines 17-18.

- In his Direct Testimony, Mr. Cash testified that no customers have joined the OG&E system pursuant to the OCT tariff through the end of the test year used in this case and the six-month pro forma period beyond the test year which ended March 31, 2024. Because there are no active customers on the rate, OG&E is not able to design cost-based rates on actual active OCT customers.

- In his Rebuttal Testimony, Mr. Cash testified that 1 MW COSS should not be used for proposed rates for all 1 MW customers because the "Availability" clause of the OCT tariff clearly states that the tariff is available for customers who have "executed an agreement for service with OG&E after September 30, 2022."[69] He further testified that OG&E has not executed any agreements with new customers outside its service territory since this date and through the six-month pro forma period beyond the test year.[70] It is for this reason that there is no relevant cost data to be used for rate making purposes for the OCT tariff.[71] He further testified that the treatment currently in place which provides for rates in the OCT tariff are tied to the LPL-TOU rates and until there are new customers to evaluate the OCT tariff remains in the initial phase with rates tied to LPL-TOU tariff.[72]

The Exceptions offer no substantive arguments that justify altering the OCT Tariff structure at this time. The Commission should adopt the ALJ's recommendation in full.

IV. General arguments found throughout both OAEC Exceptions and the Joint Exceptions fail to provide any additional basis for overturning any ALJ Report Findings.

The OAEC Exceptions request alternative relief from this Commission that was not raised in the case below,[73] and which could not have been addressed by the parties or the ALJ within her report. OAEC attempts to disregard its arguments regarding the requirements of Subsection F and puts forward, for the first time, that the new rates OAEC wants applied to 1MW customers could be applied solely to new customers after the issuance of an order in this case. OAEC is apparently attempting to "negotiate" with the Commission, and it is requesting that the Commission adopt a final order that would be unsupported by the evidence.

There is simply no evidentiary basis upon which the Commission could accept OAEC's new proposal to apply rates only to new 1MW customers that come onto OG&E's system after the issuance of a final order in this case, which is based on a 1MW COSS that utilizes their preferred cost assignment and allocation determination. Consequently, this argument and new recommendation by OAEC must be summarily rejected. However, it does demonstrate OAEC's "flexible" approach to what it claims are strict statutory mandates.

The opposing parties also seek to imply that something improper has occurred because the ALJ Report utilized the proposed findings of OG&E. The Exceptions' critique of the ALJ on this

[69] Cash Rebuttal Testimony, p. 9, lines 13-23.
[70] Cash Rebuttal Testimony, p. 9, lines 19-21.
[71] Cash Rebuttal Testimony, p. 9, lines 13-23; p. 11, lines 3-7.
[72] Cash Rebuttal Testimony, p. 9, lines 27-29; p. 10, lines 1-3.
[73] OAEC Exceptions, p.2, 2nd full para. through p.3, 1st para.

point is both hypocritical and inappropriate. The opposing parties are attempting to insinuate some nefarious result when the ALJ incorporated findings submitted by OG&E.[74] However, they are in fact arguing the Commission should replace OG&E's proposed findings with their own.[75] The ALJ's reliance on findings submitted by a party is a common and appropriate practice, especially when those findings are supported by the law, evidence, and the record. The ALJ conducted a thorough review of the evidence, as documented in the Report. There is no error that can be attributed to the ALJ Report's adoption or use of a party's findings.

Likewise, both the OAEC Exceptions and the Joint Exceptions make statements inferring or explicitly stating that the ALJ did not fairly or adequately consider their positions. This criticism may be viewed as insulting to both the ALJ and the Commission process because the opposing parties are implying that the ALJ is biased in favor of OG&E simply because she disagreed with their arguments. Both the Joint Exceptions and OAEC Exceptions argue that the ALJ Report "does not fairly present the evidence presented by the parties," "fails to address the contentions and evidence of the Intervenors," and did not consider or weigh the testimony of competing side on the 1 MW Issue.[76] This is belied by not only the specific language contained in the ALJ Report which states that she conducted "a thorough review of the Application, live and pre-filed testimony, and the filed Briefs and arguments made therein" and that she considered all of the evidence in the Case,[77] but also by the detailed analysis provided to supporting her recommendations and findings. For example, see ALJ Report pages 5, 7, 8, 9, 11, 13, 16, and 20 which contain descriptions or citations to opposing parties' positions.

Moreover, the ALJ is not required to set forth descriptions of evidence upon which she did *not* rely when making her findings. Again, there is no error that can be ascribed to the ALJ Report because her findings are properly supported by the evidence.

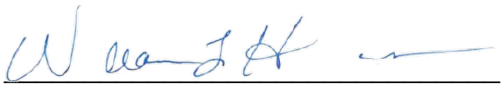
V. CONCLUSION

In light of the foregoing, OG&E respectfully requests that the Commission reject the OAEC and Joint Exceptions in their entirety and adopt the ALJ Report as its final order in this case. To depart from the ALJ's recommendations would be both legally unsound and contrary to the principles of fair and reasonable ratemaking. The ALJ's Report is a product of careful deliberation and is firmly bolstered by the evidence and applicable law and should be adopted by the Commission.

[74] OAEC Exceptions at p.7, 3rd para.; Joint Exceptions, p.3, ¶2 and fn.3.
[75] See Joint Exceptions at p. 9 requesting a "final order incorporating the Proposed Findings of Fact and Conclusions of Law in Exhibit "A" attached hereto; OAEC Exceptions at p. 2 stating that "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."
[76] Joint Exceptions p.3, ¶2; OAEC Exceptions, p.6, 4th full para. And p.7, 2nd para.
[77] ALJ Report, p.3, 2nd para. and p.21, 5th full para.

Respectfully submitted,

OKLAHOMA GAS AND ELECTRIC COMPANY



William L. Humes, OBA No. 15264
Oklahoma Gas and Electric Company
P.O. Box 321, MC 1208
Oklahoma City, OK 730101-0321
Telephone: (405) 553-3062
Facsimile: (405) 553-3198
humeswl@oge.com
reginfor@oge.com

and

Deborah R. Thompson, OBA No. 16700
Kenneth A. Tillotson, OBA No. 19237
Thompson Tillotson PLLC
P.O. Box 54632
Oklahoma City, Oklahoma 73154
Telephone: (405) 213-1000
deborah@ttfirm.com
kenneth@ttfirm.com

Attorneys for Oklahoma Gas and Electric Company

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August 2024, a true and correct copy of the above and foregoing was electronically served via the Electronic Case Filing System to those Official Electronic Case Filing Service List, or via electronic mail to the following persons:

Natasha Scott
Michael Velez
Michael Ryan
Justin Cullen
E.J. Thomas
Oklahoma Corporation Commission
natasha.scott@occ.ok.gov
michael.velez@occ.ok.gov
michael.ryan@occ.ok.gov
justin.cullen@occ.ok.gov
ej.thomas@occ.ok.gov

A. Chase Snodgrass
K. Christine Chevis
Ashley Youngblood
Thomas Grossnicklaus
Oklahoma Attorney General
Chase.snodgrass@oag.ok.gov
christine.chevis@oag.ok.gov
Utility.regulation@oag.ok.gov
ashley.youngblood@oag.ok.gov
thomas.grossnicklaus@oag.ok.gov

David Jacobson
JACOBSON & LAASCH
jdj8788@aol.com

Thomas P. Schroedter
Hall, Estill, Hardwick, Gable Golden & Nelson, P.C.
tschroedter@hallestill.com

Jack G. Clark
CLARK, WOOD & PATTEN, P.C.
cclark@cswp-law.com

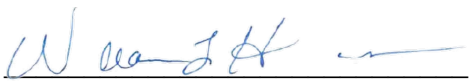
Ronald Stakem
CHEEK & FALCONE, PLLC
rstakem@cheekfalcone.com

Adam Singer
Eric Turner
DERRYBERRY & NAIFEH
asinger@derryberrylaw.com
eturner@derryberrylaw.com

Rick D. Chamberlain
Chamberlain Law Offices
rick@chamberlainlawoffices.com

Paul Trimble
Jeremy Melton
TRIMBLE LAW GROUP
ptrimble@trimblelawgroup.com
jmelton@trimblelawgroup.com

Thomas Jernigan
Ashley George
Scott Hodges
Leslie Newton
Federal Executives Agencies
thomas.jernigan.3@us.af.mil
ashley.george.4@us.af.mil
scott.hodges@us.af.mil
leslie.newton.1@us.af.mil



William L. Humes