

FILED

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA DEC 14 2015

IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY)
REQUESTING COMMISSION APPROVAL OF NEW)
DISTRIBUTIVE GENERATION TARIFFS PURSUANT)
TO TITLE 17, SECTION 156 OF THE OKLAHOMA)
STATUTES)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

CAUSE NO. PUD 201500274

Hearing: December 1-2, 2015 in Courtroom B
2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before Administrative Law Judge Jacqueline T. Miller

Appearances: William J. Bullard, Kimber L. Shoop, Patrick D. Shore, and Stephanie G. Houle, Attorneys *representing* Oklahoma Gas and Electric Company
Natasha M. Scott, Deputy General Counsel *representing* Public Utility Division, Oklahoma Corporation Commission
Ronald E. Stakem and Jack G. Clark, Jr., Attorneys *representing* OG&E Shareholders Association
Thomas P. Schroedter and Jennifer H. Castillo, Attorneys *representing* Oklahoma Industrial Energy Consumers
Jim Roth, Dominic D. Williams, Deborah R. Thompson and Thad Culley, Attorneys *representing* The Alliance for Solar Choice
Laurie Williams and Jacquelyn Dill, Attorneys *representing* Sierra Club
Dara M. Derryberry, Assistant Attorney General *representing* Office of Attorney General, State of Oklahoma

REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the present Application of Oklahoma Gas and Electric Company ("OG&E" or "Company") for an Order of the Commission approving certain tariffs to be applied to customers with distributed generation ("DG") facilities as of November 1, 2014 pursuant to 17 O.S. §156, came on for hearing before the undersigned Administrative Law Judge ("ALJ") of the Oklahoma Corporation Commission ("Commission") in the captioned Cause on December 1, 2015. The hearing was continued on the record and concluded on December 2, 2015. Proposed Findings of Fact and Conclusions of Law were filed December 10, 2015 and the Report and Recommendation of the Administrative Law Judge was filed December 14, 2015. Having heard the evidence and testimony presented, and being fully advised thereof, the ALJ submits the following as her report and recommendation to the Commission.

I. Procedural History

On July 31, 2015, Oklahoma Gas and Electric Company ("OG&E") filed an Application initiating this cause along with the direct testimony of Roger D. Walkingstick, a Motion for

Protective Order, Motion to Determine Notice Requirements and Approve Form of Notice and a Motion for Procedural Schedule.

On August 5, 2015, the Attorney General filed an Entry of Appearance for Jerry J. Sanger. On August 6, 2015, OIEC filed an Entry of Appearance. On August 12, 2015, the Alliance for Solar Choice ("TASC") filed a Motion to Associate Counsel and Entries of Appearance for Thad Culley, William L. Humes, Jim Roth and Dominic D. Williams. On August 20, 2015, TASC filed Attachment: Certificate of Compliance. On August 24, 2015, OG&E filed supplemental testimony of Roger D. Walkingstick, supplementing its direct testimony. Also on August 24, 2015, the ALJ filed an Oral Recommendation allowing Attorneys to consult with Clients regarding an earlier procedural schedule per instructions of the ALJ. On August 27, 2015, all parties advised that the parties' agreed schedule was the desired schedule in terms of caseload considerations and to allow for discovery in the Cause, thus an earlier schedule could not be accomplished. On August 27, 2015, the Attorney General filed an Entry of Appearance for Eric Davis. On August 31, 2015, the Attorney General filed an Entry of Appearance for Abby Dillsaver.

On September 11, 2015, Public Comment was filed. On September 22, 2015, the Commission issued Order No. 645383, Order Granting Motion to Associate Counsel, Order No. 645384, Order Determining Notice Requirements and Approving Form of Notice, Order No. 645385, Order Establishing Procedural Schedule and Order No. 645386, Order Granting Motion for Protective Order. On September 23, 2015, Public Comment was filed. On September 24, 2015, Public Comment was filed.

On October 1, 2015, Sierra Club filed an Entry of Appearance for Jacquelyn Dill to replace the fax filed Entry of Appearance received September 30, 2015. On October 8, 2015, the Attorney General filed an Entry of Appearance for Dara Derryberry. On October 27, 2015, OG&E filed the Publication Affidavits.

On November 3, 2015, PUD filed responsive testimony of Kathy J. Champion and TASC filed responsive testimony of Justin R. Barnes and Mark E. Garrett. On November 6, 2015, Sierra Club, OIEC, OG&E Shareholders Association and the Attorney General filed a Statements of Position. On November 12, 2015, OG&E filed rebuttal testimonies of Ashley C. Brown and Roger D. Walkingstick. On November 16, 2015, William L. Humes filed a Notice of Withdrawal as Counsel representing TASC. Also on November 16, 2015, Deborah R. Thompson filed an Entry of Appearance for TASC. On November 18, 2015, Sierra Club filed a Motion to Associate Counsel for S. Laureign Williams which was noticed for hearing and heard on November 30, 2015. Also on November 18, 2015, Sierra Club filed its Exhibit List. On November 20, 2015, PUD filed its Exhibit List and Testimony Summary; OG&E filed its Exhibit List and Testimony Summaries; and TASC filed its Exhibit List and Testimony Summaries. Also on November 20, 2015, TASC filed a Motion to Dismiss which was noticed and heard on November 30, 2015.

Public Comment was heard each day of the hearing. Following the conclusion of the hearing on the merits, the ALJ took the matter under advisement stating that given the timing in which the Cause was filed by the Company and the brief time to process the Cause, the ALJ

asked whether an expedited findings of fact and conclusions of law schedule could be entered. The ALJ further inquired whether proposed findings of fact and conclusions of law could be filed December 10, 2015. The ALJ further announced that the Report and Recommendation of the ALJ would be expedited and filed December 14, 2015. Further, by agreement of the parties, exceptions to the ALJ Report were to be filed December 18, 2015. Each of these filing dates were utilized in this proceeding.

II. Summary of Evidence

OKLAHOMA GAS AND ELECTRIC COMPANY

Roger D. Walkingstick

Roger Walkingstick is an independent consultant with RDSTICK Consulting, LLC, in Oklahoma City, OK. Mr. Walkingstick has a Bachelor's degree in electrical engineering from the University of Oklahoma. He also has a Master's of Business Administration from Oklahoma City University. He is a licensed professional engineer in the State of Oklahoma. He was an employee of OG&E for over 28 years, of which approximately 23 years was involved with rates, costing, rate administration, regulatory issues, and pricing functions for the Company. He retired from OG&E December 31, 2009, and has since worked with OG&E on a contract basis on various OG&E regulatory projects.

Mr. Walkingstick sponsored the Company's application for appropriate tariffs in compliance with Senate Bill 1456. OG&E proposes that the Commission adopt three new tariffs and modifications to a current rider schedule. The Company's new tariffs will be the Commercial Time-of-Use kW Demand tariff ("COM-TOU-kW"), Residential Time-of-Use kW Demand tariff ("R-TOU-KW"), the Renewable Power Purchase Option ("RPPO") and the Net Energy Billing Option rider (NEBO-kW"). Mr. Walkingstick testified that the Company will close the existing Net Energy Billing Option ("NEBO") rider to new participants effective November 1, 2014 as required by S.B. 1456.

Mr. Walkingstick provided four salient points of S.B. 1456 which is required of both the utility and the Commission for consideration. The first is that "No public utility electric supplier shall increase rates charged or enforce a surcharge on the basis of the use or installation of a solar energy device by a consumer above that required to recover the full costs necessary to serve." The second is "no retail electric supplier shall allow customers with distributed generation installed after the effective date of this act to be subsidized." The third is "A higher fixed charge for customers within the same class of service...is a means to avoid subsidization between customers within that class and shall be deemed in the public interest." Finally, retail electric suppliers shall implement tariffs in compliance with this act no later than December 31, 2015. Mr. Walkingstick presented tariffs and rates consistent with the scope of the legislation.

Mr. Walkingstick described the current status of distributed generation ("DG") on the OG&E system. OG&E's Oklahoma jurisdiction had 245 DG customers. Only fifteen of these customers will be subject to new tariffs proposed in this Cause. He noted that the

“grandfathered” customers will still receive the current subsidized rates as contemplated in the statute, but the new DG customers will be required to subscribe to the new tariffs.

Mr. Walkingstick offered the Company’s response to SB 1456. OG&E is proposing four new tariffs including: the COM-TOU-KW, R-TOU-KW, NEBO-kW and RPPO. OG&E’s proposed tariffs eliminate subsidies by collecting the functional costs through the proper billing determinants: customer related costs are collected through the fixed monthly connection charge; transmission and distribution costs are collected through the demand based kW charge; production supply costs are collected through the time-differentiated energy charges.

Mr. Walkingstick structured the new tariffs using unit cost information from the GS (commercial) and Residential customer classes from the cost of service study in the last general rate case (Cause No. PUD 201100087). It is appropriate to use this cost study as it is the basis for all of OG&E’s existing tariffs, used by approximately 750,000 retail customers. In his direct testimony, Mr. Walkingstick determined that the R-TOU-kW tariff would consist of a customer charge of \$18.00 per month, a demand charge of \$2.68 per kW per month, and a supply charge of 17.3¢ per kWh on-peak and 1.37¢ per kWh off-peak. In supplemental testimony Mr. Walkingstick offered OG&E’s proposed COM-TOU-kW would be a customer charge of \$35.00 per month, a demand charge of \$3.33 per kW per month, and a supply charge of 18.753¢ per kWh on-peak and 1.43¢ per kWh off-peak. Further, the existing NEBO rider will be closed to new DG customers entering the system after November 1, 2014. Those customers will receive service under Rider NEBO-kW. Finally, OG&E introduced the RPPO tariff for qualifying facilities as a new optional purchase schedule that allows a customer to sell all of the DG facility output to the utility.

Mr. Walkingstick then analyzed the proposed tariffs and concluded that all customers benefit from the rate design by eliminating the long-standing subsidy from non-DG ratepayers to the affected DG customers. Since the overall revenue collected from all customers should be the same between rate cases, no future customer should receive unfair positive or negative treatment (subsidy) under the new rate structures. Mr. Walkingstick asserted that any rate structure that truly reflects underlying costs, benefits all customers as a whole.

Mr. Walkingstick summarized the results of OG&E’s solution with four conclusions. First, a current pre-act customer having DG facilities would choose between the current NEBO or QF rider and then pair it with a time differentiated tariff, either TOU or VPP. Second, existing demand rates of PL-TOU, LPL-TOU, and PS-D-TOU remain unchanged, but those customers now have the flexibility of pairing the applicable tariff with either of the existing riders; QF or NEBO. These customers also have the added option of pairing their tariff with RPPO. Third, a current residential DG subscriber, with a 4 kW rooftop solar system producing about 475 kWh per month, receives a bill reduction of approximately \$43 a month. That same customer with the same DG facility under the proposed R-TOU-kW tariff would receive about a \$28 per month reduction to their overall bill. Fourth, if the residential customer reduces their maximum demand, they will receive full credit for their reduction.

In Commission technical conferences following the adoption of SB 1456, stakeholders developed a checklist of issues. Mr. Walkingstick addressed each issue in his Direct Testimony

noting that they are suggestions and not mandates. He observed that the first issue relates to cost of service and the Company has met this obligation through its incorporation of the results of the last general rate case. Second, OG&E's proposed tariffs follow Executive Order 2014-07 by considering all potential rate designs. Third, OG&E has advanced metering infrastructure for virtually all customers which allows for an introduction to demand rates since demand information can now be collected for all customers. The fourth issue centers on the additional cost of DG interconnection. The proposed tariffs place the burden of additional costs on the DG customer rather than the general body of ratepayers. Fifth, OG&E proposed tariffs either minimize or eliminate the subsidy from non-DG customers to DG customers. Sixth, OG&E chose to defer its calculation of lost revenue to its next rate case. Seventh, Mr. Walkingstick listed the benefits of DG throughout his testimony. Eighth, Mr. Walkingstick observed that the effect of net exported kWh is minimal owing to the small number of customers on the system. Last, as a former distribution engineer, Mr. Walkingstick voiced his concerns about the benefits to safety and reliability associated with behind-the-meter DG.

Mr. Walkingstick filed Rebuttal Testimony to address issues raised by TASC witnesses, Justin Barnes and Mark Garrett, and PUD Witness Kathy Champion. Mr. Walkingstick refuted Mr. Barnes, Mr. Garrett, and Ms. Champion's assertions that a subsidy to DG customers may not exist. Their long-term evaluation methodology proffered benefits that are not supported by Mr. Walkingstick's embedded based evaluation approach of determination of DG subsidy. Mr. Walkingstick also stated that demand charges are an acceptable, fair, and viable option of eliminating subsidies to new DG customers that have been added since November 1, 2014. The tariffs outlined in OG&E's proposal provide DG customers with various rate choice options that accurately reflect underlying costs without negatively impacting customers that do not choose to purchase a DG facility. Mr. Walkingstick's rebuttal testimony reflected a balanced approach to eliminating the subsidies by using On-Peak and Off-Peak kWh energy charges, demand charges to recover the wires portion of a customer's bill, and a cost based customer charges to collect the desired revenue requirement.

Mr. Walkingstick further disagreed with Mr. Barnes, Mr. Garrett, and Ms. Champion's beliefs that a new cost of service is required to design DG tariffs. The Commission will have ample opportunity not only in the next general rate case but in subsequent rate cases as well to review the DG tariffs and rate design approaches. Only a few DG customers will be affected in this Cause and the proposed tariffs they are billed under will be subject to updates in each subsequent general rate case. Since the total affected number is low, OG&E will be able to provide one-on-one education to new DG customers as they join the OG&E system.

Finally, by filing these proposed tariffs, OG&E will be able to meet the mandates of S.B. 1456 and address a problem that is currently small, but is unfair. Mr. Walkingstick emphasized that the time to address the DG subsidy issue is now before the growth of DG becomes such that it is no longer a small issue but a very big one.

Ashley C. Brown

On November 12, 2015, Ashley C. Brown filed Rebuttal Testimony in Cause No. PUD 201500274 on behalf of Oklahoma Gas and Electric Company ("OG&E"). Mr. Brown is

Executive Director of the Harvard Electricity Policy Group, a program of the Harvard Kennedy School at Harvard University. Prior to that, Mr. Brown served two full terms as Commissioner of the Public Utilities Commission of Ohio. While Commissioner, Mr. Brown served as Chair of the NARUC Electricity Committee, a member of the Executive Committee of NARUC, on the Board of the National Regulatory Research Institute, and on the Advisory Committee to the Electric Power Research Institute. He has trained regulators in the NARUC approved programs at Michigan State University, University of Florida, and at New Mexico State University. He has authored many articles on electricity markets and on regulation, and co-authored The World Bank's *Handbook for Evaluating Infrastructure Regulation*. He has also advised many governments around the world on electricity markets, law, and regulation.

In his Rebuttal Testimony, Mr. Brown addresses the Direct Testimony of Oklahoma Corporation Commission witness Kathy J. Champion and of TASC witnesses Mark E. Garrett and Julian [*sic*] R. Barnes, arguing that their calls for delay and additional studies, rather than approval of OG&E's proposed tariff revision, are not justified and would have negative consequences for Oklahoma, its ratepayers, and the long-term future of solar energy itself.

Mr. Brown testifies that the distortions associated with the current net metering tariff, if not corrected before there is more pervasive market penetration by solar DG, will inevitably distort price signals, increase inefficiency, and cause potentially severe inequities to emerge between solar and non-solar customers. It will also, ironically, as noted in the MIT study on *The Future Of Solar Energy*, do long term harm to the evolution of solar energy by providing disincentives for productivity, technological, and reliability gains. Indeed, as Mr. Brown points out, when the MIT study, as well as independent research from the Lawrence Berkley National Laboratory, are juxtaposed with the TASC testimony on this matter, what becomes clear is that the central conflict in this matter is not between OG&E and TASC, but rather, between the short term profits of TASC members and the future of solar energy. That is because what TASC seeks is to perpetuate [*sic*] an antiquated, inefficient, and highly cross-subsidized tariff, which substantially inflates their bottom line, as opposed to developing prices that are efficient, reflective of costs and markets, and which incentivize the evolution of solar DG into a viably competitive and efficient energy resource into the future. As Mr. Brown points out, a more sophisticated and fair solar tariff, such as the one proposed by OG&E, creates incentives for solar DG providers to maximize the value they can offer to the entire system by partnering with new technologies like battery storage or finding ways to leverage the potential grid benefits of smart inverters. The real beneficiary of delay, Mr. Brown argues, is not solar energy or even individual solar customers—it is large solar developers like those represented by TASC.

Mr. Brown goes on to show that, while currently affecting a small number of customers, the cross subsidy from non-DG to DG customers is undeniable and requires action in order to be fully compliant with the directives of the state's government as expressed in Senate Bill 1456 and Executive Order 2014-07 to eliminate cross subsidies from non-solar to solar customers by the end of 2015.

Mr. Brown points out that the current regime of net metering was primarily the result of technology limits and poor pricing in energy markets, coupled with low market penetration by distributed generation. None of those three considerations is relevant today. To the extent that

policy played a role in net metering implementation, it was to provide a boost to get solar DG over the commercial hump, which, with declining panel prices, is no longer needed. Mr. Brown notes that a significant effect of net metering today is enabling TASC members, and other solar vendors, to retain the declining costs of panels for themselves rather than pass them on to consumers, and to leave OG&E's customers having to pay a retail price for a wholesale energy product. They are required to pay a retail per kWh rate for rooftop solar that greatly exceeds the wholesale market per kWh rate for electricity. The retail rate paid for rooftop solar includes costs associated with capacity costs, transmission and distribution costs, and other fixed costs not included in the customer charge, even though all of those services are provided, not by them, but, rather, by OG&E. An even greater part of the cross subsidy is derived from the fact that when solar DG customers are producing energy, even when they are consuming their output themselves, they are not paying their share of the fixed system costs, so those costs as well get passed on to non-solar customers. The result has been that non-distributed generation customers must pay extra to cover the share of these costs not being paid by DG customers—a clear cross-subsidy.

Mr. Brown testifies that the provision in the proposed tariff revision related to solar DG customers' ability to carry credits from month to month reflects an entirely reasonable economic measure explicitly designed to provide the correct price signal to reflect the variability of the value of energy produced in different months (summer months vs. winter months, for example). It also works to reduce undesirable and/or unanticipated shifts in cost allocation, since different types of customers impose different costs on the system.

Recognizing that many solar industry advocates, such as those testifying on behalf of TASC, do not go so far as to defend the net metering *status quo*, but instead turned to unsubstantiated claims about the "value of solar," Mr. Brown notes, first, that the suggestion by TASC witnesses Barnes and Garrett that OG&E carry out elaborate studies of the various values attributed to solar would initiate a costly and inevitably subjective and divisive process, also noting that the request by the TASC witnesses that OG&E carry out studies on TASC's behalf is quite unusual--typically, in matters pending before regulatory agencies, parties who seek to have studies put in the record do so themselves.

Mr. Brown goes on to examine the specific claims associated with "value of solar" arguments, and shows how the intermittency of solar and its resulting unpredictable demands on generation as well as the transmission and distribution grids makes it impossible for utilities to realize actual savings based on anything but the most immediate, energy, value provided by solar in terms of potentially lessening the amount of electricity the utility must purchase on the spot market—and this value is fully captured and reimbursed in OG&E's proposed revised distributed solar tariff.

With respect to the environmental benefits claimed for distributed solar by TASC and others, as a non-carbon-emitting source of electricity generation, Mr. Brown notes that distributed solar is widely recognized as less cost-effective than energy efficiency, hydro power, utility-scale solar, and wind power—with the result that a subsidy that benefits only distributed solar generation is likely to lead Oklahoma onto a needlessly expensive path to carbon emissions reductions. It may, Mr. Brown points out, be an especially costly proposition if the EPA's

proposed Clean Power Plan, or even some variation of it, goes into effect, because the State of Oklahoma, like all other states, will have to develop a State Implementation Plan (SIP) for least-cost compliance with the rules. Starting from a base of the highest priced renewable energy, one which the EPA removed from the list of building blocks for compliance, would put Oklahoma at an economic disadvantage from the start.

Furthermore, Mr. Brown notes that there is a very significant, and highly unfortunate, negative social effect that must be considered as part of any “value of solar” discussion—the fact that solar distributed generation customers tend to be richer than typical utility customers—so any cross-subsidy for such customers constitutes a wealth transfer from less affluent to more affluent customers.

Mr. Brown then addresses a number of specific procedural and factual issues raised by Barnes, Champion, and Garrett. First, he addresses claims that the adjustment in rates for solar DG customers should be undertaken in a rate case. While Mr. Brown agrees that single issue ratemaking is undesirable, he shows that that regulatory principle is simply not applicable to this proceeding. He gives three reasons for his position. The first is that the legislature has mandated that cross-subsidies in the pricing of solar DG must be eliminated by the end of 2015. Thus, they have effectually mandated that this issue be specifically addressed outside of a rate case (unless, which is not the case herein, there is a rate case timed for disposition by that date). Secondly, the proposed tariff is prospective only, so it does not add to or subtract from the cost allocations made to existing solar and non-solar customers. It only applies to customers who choose to install solar, a voluntary decision made entirely at the customer’s discretion. Thus, the basic reason for avoiding single issue ratemaking, the prevention of inadvertent cost shifting resulting from focusing on the particulars out of overall context, does not apply in this case. Finally, the matter herein is really not a simple rate issue; rather, it is a broad pricing policy question more akin to rulemaking than ratemaking.

With respect to calls for a new cost of service study, Brown clarifies that the current proposal has to do with establishing pricing principles, not the cost basis itself, and so it is appropriately tied to whatever is the most recent cost of service study that applies to all customers, and there need not be any deviation from whatever schedule may exist for updating the cost of service. He also concurs with TASC witness Barnes that such a study would be costly--too costly for whatever value it would deliver in this matter.

Brown rebuts some specific claims from the testimony of TASC witness Garrett. First, with respect to Garrett’s proposed interpretation of the senate bill, namely that it forbids the use of demand charges, Brown notes that there is absolutely no reasonable basis for interpreting the text that way. It is clear that the legislature was simply trying to make certain that no customer currently obligated to pay demand charges would be assessed again for the same thing. As a lawyer, Mr. Brown notes that there is nothing in the statutory language that even remotely justifies Mr. Garrett’s breathtakingly exaggerated interpretation. With respect to Garrett’s claim that OG&E should have proposed a widespread public outreach and education effort to explain the proposed distributed generation tariff change to customers, Mr. Brown notes that this is not a cost-effective proposal, given that the number of customers interested in distributed generation are relatively few and that they are presumably highly motivated to inform themselves. Indeed,

Mr. Garrett seriously underestimates the intelligence of OG&E's customers when he implies that many of them would be willing to invest many thousands of dollars in solar installations without making any investigation of what value they would be getting for their money, or that they can only do so with OG&E providing advice.

Finally, with respect to Garrett's assertion that TOU rate customers form a separate customer "class" by themselves, and that it is only appropriate to look for cross-subsidies within this "class," Brown explains that a customer class is not defined by choice of tariff, but by the costs imposed on the system—thus, the relevant classes to examine for cross-subsidies are the residential and commercial classes that OG&E used as the basis for their analysis. The fact is that there may well be more than one tariff applicable to a class of customers, so it is not the tariff that defines the class; rather, it is the cost characteristics.

Brown goes on to review a number of criticisms of the demand charge that is an element of OG&E's proposed new DG tariff. Such a charge, Brown shows, is an important element in capturing the actual costs a customer's usage imposes on the system, since many of the utility's costs are tied to meeting customer peak demand—securing capacity and sizing the transmission system, for example. These demand charge rates are not "unprecedented;" they have recently been increasingly seriously considered and utilized, precisely as a means of responding to the pressures on the system of accommodating distributed generation, with arguments for the usefulness of demand charges coming from a range of perspectives, including the pro-energy-efficiency perspective of Amory Lovins' Rocky Mountain Institute. Mr. Brown goes on to address the idea that demand charges are too hard for customers to understand, noting that DG customers, of all customer groups, are likely to be the most sophisticated and best able to understand and respond to these charges. Finally, Mr. Brown examines the criticism that the combination of an increased fixed customer charge and a demand charge discourages energy efficiency, finding that the concern may have some validity with respect to the fixed, but not the demand, charges, but noting that the need to increase such charges emerges as a consequence of increasing distributed generation—and that, by breaking out distributed generation customers and giving them a separate tariff, the utility may be best enabled to preserve the energy efficiency benefits of a more traditional billing approach for other customers. Indeed, the need to reallocate a higher proportion of rates to the fixed charges is driven, to a very large degree, by the problems associated with net metering, the pricing policy TASC seeks to perpetuate. In effect, it is TASC and some of its counterparts in the solar DG space who, by clinging to the inefficient and cost shifting policy of net metering, are motivating the shift to a different fixed-variable billing ratio. In effect, TASC is the son who kills his parents and throws himself on the mercy of the court because he is an orphan.

Finally, Mr. Brown addresses Oklahoma Corporation Commission witness Champion's concern that DG customers who successfully manage their demand will be over-compensated under the proposed tariff, explaining that because savings on demand charges are tied to usage changes that actually save the utility money, there is no cross-subsidy in allowing customers to save money by making such changes.

In summary, Mr. Brown concludes that the OG&E proposed tariff is reasonable and that neither the TASC witnesses nor Witness Champion have rebutted that reasonableness.

Accordingly, he recommends that the Commission approve the OG&E tariff as filed.

PUBLIC UTILITY DIVISION

Kathy J. Champion

Kathy Champion is employed by the Public Utility Division (“PUD”) of the Oklahoma Corporation Commission (“OCC” or “Commission”). Ms. Champion filed Responsive Testimony on November 3, 2015. The purpose of her testimony was to present PUD’s recommendations concerning the reasonableness of the Oklahoma Gas and Electric (“OG&E” or “Company”) proposed Distributed Generation (“DG”) tariffs and compliance with 2014 Senate Bill No. 1456, now codified as 17 O.S. § 156, (“Section 156”) and the Governor’s Executive Order 2014-07 (“Executive Order”).

With the enactment of Section 156 and the issuance of the Executive Order, the Corporation Commission was required to:

- Conduct a transparent evaluation of distributed generation consistent with the Oklahoma First Energy Plan, to protect all Oklahoma customers and encourage all forms of Oklahoma energy use;
- Evaluate mandates with the inclusion of all stakeholders, including representatives of the solar and distributed wind industries and utilities;
- Consider use of all available alternatives, including other rate reforms such as increased use of time-of-use rates, minimum bills, and other demand charges prior to implementation of any fixed charge; and
- Ensure that Oklahoma implements the Oklahoma First Energy Plan while protecting future distributed generation customers.

To accomplish these requirements, the OCC held two public meetings and requested from stakeholders a list of suggestions for required data and/or information that should be included in all tariff applications filed at the OCC. From the information provided by all parties participating in the public meetings, PUD developed a “checklist”¹ that was used as a discussion point in the subsequent technical conferences. The Commission held two technical conferences, March 31, 2015 and June 16, 2015. OG&E was an active participant in the public meetings and technical conferences.

Ms. Champion reviewed the Application, testimony, proposed tariffs provided in this Cause and the applicable law and the Executive Order. Ms. Champion also met with Company personnel, issued data requests and reviewed data requests issued by other parties, reviewed Commission rules² and reviewed programs offered by other utilities.

While not a requirement, the checklist developed as a result of the DG technical conferences included all items that were preferred to be included in all DG tariff applications filed by parties to evaluate compliance with the law. As a participant in the technical

¹ http://www.occeweb.com/pu/DistributedGeneration/PUD_DGApplicationList_061615.xls

² OAC 165:40 (Standard Terms of Purchases from Purchasers of 100 KW or Less, Effective 9-12-2014)

conferences, OG&E was involved in the discussion of each item on the checklist. Ms. Champion found that OG&E did not supply the vast majority of the information on the checklist. In addition, Ms. Champion found the information that was supplied was insufficient or outdated, for example the cost of service from a 2010 test year, which was provided in Cause No. PUD 201100087. Without providing current information on the costs and benefits of the DG installations, Ms. Champion believes PUD cannot recommend that OG&E has met the burden of proof to require separate DG tariffs or charges.

Ms. Champion also found that the unit costs proposed for use by OG&E in development of its new demand charges were established as a part of the settled rates in the PUD 201100087 cause and not intended to be used for any other purpose.³ The unit costs that resulted from the Settlement Agreement in Cause No. PUD 201100087 were not given a rigorous review in that cause as would have occurred if OG&E had proposed to use them to set future DG rates or to modify their base rates in that cause. Also, the COS from OG&E's last rate case did not have DG customers included as a separate class. Ms. Champion states that reviewing DG customers as a separate class would provide a review of the costs to serve those customers based on their use of the system.

PUD also found that OG&E did not provide sufficient data because they did not provide any data related to the benefits of the DG installations. OG&E did not provide a cost effectiveness study, information related to the cost effectiveness of the Demand Programs, information related to lost revenues, or an updated loss study.

Finally, Ms. Champion found that without current data and a review of both the costs and benefits to DG customers, OG&E has not identified the full cost to serve DG customers and has not proven that a subsidy has occurred.

Regarding the proposed demand based charges for residential and commercial customers, Ms. Champion believes that OG&E is proposing adjustments to tariff designs that have little to do with 17 O.S. § 156 or DG customer recovery issues. Ms. Champion further stated that the adjustments proposed by OG&E via the TOU-kW tariffs to eliminate alleged subsidies for DG customers have a broader and more far-reaching effect on recovery than is appropriate to consider within the confines of this Application and that. OG&E appears to be taking the opportunity with this Application to introduce a broad policy change with the proposed TOU-kW recovery, but targeting it to only the participating DG customers.

PUD is also concerned that implementing demand charges on customers with no previous experience with demand billings could be punitive and OG&E has not proposed any education programs or provided information about how residential and commercial customers will incur demand charges. This lack of information and understanding about how consumer demand occurs could result in customers creating higher demand than is estimated by OG&E. Not knowing the demand per appliance or how the effects of using multiple appliances simultaneously can affect demand is exactly how customers could be penalized by the proposed TOU-kW tariffs. In addition, she expressed concern that if customers reduce their maximum

³ Cause No. PUD 201100087, Order No. 599558, Attachment A, pages seven through nine and Attachment E pages six and seven.

demand, and receive full credit for their reduction, an under-recovery could occur which could result in cost shifting and perpetuate the subsidy that OG&E is attempting to eliminate.

Ms. Champion believes that the recommendations made are fair, reasonable and in the public interest. She recommends that the Commission reject OG&E's proposed DG tariffs at this time. Ms. Champion also recommends that the Commission accept the recommendations as discussed in this testimony and summarized below:

- Ms. Champion recommends that a review of the subsidy issue related to DG customers be included with OG&E's upcoming base rate case, Cause No. PUD 201500273. This would provide updated information and/or data, with an updated COS and with separate classes for the DG customers.
- Ms. Champion also recommends that OG&E provide a cost effectiveness study to review the benefits provided by DG customers. The study should be similar to those provided to review the benefit of the demand programs.
- Ms. Champion recommends that the proposed demand-based TOU-kW tariffs also be reviewed within the upcoming base rate case review. The proposed demand-based tariffs for both residential and small commercial customers and the proposed functional basis for recovering costs would mean a policy change, which would benefit from a broader audience to review [sic] more updated data that will be available in base rate review.

THE ALLIANCE FOR SOLAR CHOICE

Justin R. Barnes

On behalf of The Alliance for Solar Choice ("TASC"), Mr. Justin R. Barnes submitted Responsive Testimony on the proposal for new tariffs for customers of Oklahoma Gas & Electric Company ("OG&E") who choose to install and use onsite distributed generation facilities. Mr. Barnes is the Director of Research with EQ Research LLC, based in Cary, North Carolina.

TASC advocates for maintaining successful distributed solar policies nationwide. Founded by the leading rooftop solar companies in the nation, TASC represents some of the largest companies in the industry, including: SolarCity, Sunrun, Silevo, Demeter Power, Solar Universe, Verengo, and ZEP Solar.

The purpose of Mr. Barnes's testimony is to describe the deficiencies in OG&E's application to implement distributed generation ("DG") tariff changes in response 2014 Senate Bill No. 1456 ("S.B. 1456") and its accompanying Executive Order 2014-07 ("E.O. 2014-07"). OG&E's DG tariff proposal fails to meet the requirements of S.B. 1456 and E.O. 2014-07 on the basis of fundamental flaws in its design and the utility's failure to fully consider the benefits of DG to non-DG customers in its evaluation of the supposed "subsidy" being provided from non-DG customers to DG customers. Mr. Barnes discusses how mandatory demand charges are inappropriate for residential customers with distributed generation, as such customers are not accustomed to and ill-equipped to deal with demand-based charges.

Mr. Barnes offers four primary recommendations for how the Commission should proceed in its consideration of the application. First, Mr. Barnes recommends that the Commission reject OG&E's proposal for new DG tariffs because the utility fails to adequately demonstrate the prerequisites of S.B. 1456 and E.O. 2014-07 that: (a) customers with distributed generation are currently being subsidized by customers without distributed generation and (b) that its proposed tariffs would not constitute a rate increase on DG customers that causes them to pay rates above their cost of service.

Second, Mr. Barnes recommends that the Commission require the development of a more complete analysis of the cost to serve DG customers and the benefits of DG that accrue to non-DG customers prior to implementing any tariff changes. This step will establish a roadmap for reliably identifying the magnitude of any subsidy that exists between DG customers and non-DG customers by requiring completion of an updated cost of service study and the development of a comprehensive quantitative methodology for determining the value of DG benefits.

Third, and related to his second recommendation, Mr. Barnes recommends a stakeholder process to arrive at the comprehensive valuation methodology for distributed generation resources.

Fourth, upon reaching any conclusion that DG customers are being subsidized by non-DG customers, Mr. Barnes recommends that the Commission pursue rate reforms such as minimum bills or modifications to time-of-use tariffs to mitigate the issue. These alternative reforms are superior to approaches that rely on increased fixed charges and or the imposition of demand charges (as proposed by OG&E) because these alternatives allow customers to retain substantial control over their energy bills. These recommendations encourage DG deployment and are in aligned with the directive in EO-2014-07 and the policy goals of the Oklahoma First Energy Plan.

Mark E. Garrett

On behalf of the Alliance for Solar Choice ("TASC"), Mr. Mark E. Garrett submitted Responsive Testimony addressing, from a ratemaking perspective, the Application of Oklahoma Gas and Electric ("OG&E" or the "Company") to implement distributed generation ("DG") tariff changes in response to 2014 Senate Bill No. 1456 ("S.B. 1456"), and to make recommendations to the Oklahoma Corporation Commission ("Commission") regarding the Company's proposed tariff changes. Mr. Garrett recommended that the Commission reject OG&E's Application. OG&E's Application proposes a set of tariffs that would dramatically, and negatively, impact DG customers and markets. He recommends that the Commission defer consideration of new DG tariffs until OG&E presents, within the context of a general rate case, the information outlined in the stakeholders' Master Checklist, as this is necessary to enable the Commission to perform a full and fair evaluation of DG tariffs.

In support of his recommendation, Mr. Garret [*sic*] noted that the Application is inconsistent with S.B. 1456 because it, as a general matter, fails to demonstrate the existence of a subsidy for DG customers and the proposed tariffs are not cost-based. Specifically, the Company's proposed tariffs do not comply with the statute because OG&E has failed to

demonstrate that the proposed tariffs are cost-based. The Company also failed to demonstrate whether, or the extent to which, *any* subsidization of DG customers may exist. Moreover, the tariffs proposed by OG&E are not designed to eliminate subsidization among customer classes. Instead, the new tariffs merely impose rate increases on a single class, with no offsetting adjustments to any other classes. Lastly, S.B. 1456 states that it is not applicable to customers on demand charges, thus moving DG customers to a demand charge rate would have the impact of making them exempt from the provisions of S.B. 1456.

Mr. Garrett also stated that from both a technical and policy perspective, OG&E's Application represents single-issue ratemaking, which has been disfavored by this Commission and others nationwide. He noted that single-issue ratemaking is disfavored because it considers changes in isolation, thereby ignoring potentially offsetting considerations and risking understatement or overstatement of the overall revenue requirement. Mr. Garrett noted that OG&E's Application would only raise costs on DG customers without correspondingly lowering costs for other customers. In other words, OG&E is proposing new rates and tariffs for a specific set of customers without providing the other customers with the offsetting rates and charges that would result as a consequence of the rates. Mr. Garrett pointed out that if OG&E truly believed the DG customers were being subsidized, that subsidy could not be eliminated by merely raising rates for the DG customers. It could only be eliminated by both raising the rates for the subsidized DG customers and lowering the rate for those remaining customers who currently provide the subsidy. OG&E's proposal only addresses one side of the equation. Additionally, under OG&E's plan, the extra money that comes from the higher DG rates does not go back to the customers who allegedly provide the subsidy. It goes instead to the shareholders of the Company. This is the type of abuse that the prohibition against single-issue ratemaking is meant to avoid. Moreover, the alleged "embedded costs" and subsidies on which OG&E relies cannot be tested, or verified, when such costs are considered in a vacuum, without giving due consideration to offsetting benefits.

OG&E's Application contains several rate design flaws, including implementation of demand charges for residential customers. Mr. Garrett stated that the residential customers are not equipped to respond to demand charges, and implementing demand charges for distributed generation customers is inconsistent with the express language of S.B. 1456 which seems to prohibit the use of a demand-based charge to address the alleged subsidization of distributed generation customers.

Mr. Garrett noted that the Company's Application fails to comply with the Commission-led stakeholders' collaborative process that was specifically designed to provide the necessary information for a transparent evaluation of DG rates, despite being involved in the development of the Master Checklist process and being fully aware that the Commission Staff and other stakeholders expected that the information in Master Checklist would be incorporated as part of the Company's application for new DG tariffs. Because OG&E's Application did not adhere to the Master Checklist, the Company's Application is seriously flawed. It violates the applicable statute and E.O. 2014-07. By going through the motions during the collaborative stakeholders' process, but failing to comply with the resulting Master Checklist, the Company has wasted the time and efforts of the Commission and the other stakeholders, and has unnecessarily delayed the process. The Master Checklist was designed specifically for the purpose of establishing the

fundamental information the Commission would need to perform a “transparent evaluation,” as required by the Governor’s Order, and to comply with the clear requirements of 17 O.S. §156. Because OG&E chose to ignore the Master Checklist prepared in the stakeholders’ collaborative process, the Commission lacks necessary information to even consider the Company’s Application at this time. The Commission should therefore reject OG&E’s proposed new tariffs.

Mr. Garrett pointed out that OG&E’s Application makes rate design recommendations for DG customers that are inconsistent with recommendations the Company has put forward in prior rate cases. Specifically, Mr. Garrett stated that in OG&E’s last rate case, the Company recommended a reduced customer charge for TOU customers relative to the residential class standard tariff customer charge. The rationale for the proposed rate reduction for TOU customers was that the reduced customer charge would encourage customer subscription to the optional TOU rates.

For the reasons stated in Mr. Garrett’s full testimony and arguments noted above, he recommends that the Commission defer consideration of new DG tariffs until OG&E presents, within the context of a general rate case, the information outlined in the stakeholders’ Master Checklist as this is necessary to enable the Commission to perform a full and fair evaluation of DG tariffs.

III. Statements of Position

OKLAHOMA ATTORNEY GENERAL

The Attorney General of the State of Oklahoma, E. Scott Pruitt, appearing by and through Assistant Attorney General Dara M. Derryberry, submitted his Statement of Position in this cause on November 6, 2015. The Attorney General stated that Title 17, Section 156 of the Oklahoma Statutes (“the DG Act”) defines “distributed generation” as:

- I. a device that provides electric energy that is owned, operated, leased or otherwise utilized by the customer,
- II. is interconnected to and operates in parallel with the retail electric supplier’s grid and is in compliance with the standards established by the retail electric supplier,
- III. is intended to offset only the energy that would have otherwise been provided by the retail electric supplier to the customer during the monthly billing period.

17 O.S. §156 (A)(1)(a)-(c). The Act specifically excludes from the definition of distributed generation “generators used exclusively for emergency purposes,” “generators operated and controlled by a retail electric supplier,” and “customers who receive electric service which includes a demand-based charge.” 17 O.S. §156 (A)(1)(d)-(f).

The DG Act limits the rates that a “retail electric supplier,” including OG&E, may charge customers who install distributed generation on the customer side of the meter after November 1, 2014 (“DG Customers”); the Act caps DG customer rates at the level needed to recover the full costs necessary to serve such customers. 17 O.S. §156(B). In other words, the rates OG&E charges to DG Customers must be cost-based, and limited to the Company’s actual cost of

providing those customers with service.

The Attorney General also stated that OG&E's proposed DG Tariffs are based on cost estimates, using 2010 figures from its last Commission-approved rate case, Cause No. PUD 201100087. The Company has provided no current Cost of Service Study in support of the DG Tariffs filed in this Cause, and admittedly did not rely on one in crafting such tariffs. See *Direct Testimony of Roger D. Walkingstick on behalf of OG&E* ("*Direct Testimony of Walkingstick*"), Page 13, Cause No. PUD 201500274. Therefore, the Company has not provided evidence establishing that its DG Tariffs are cost-based, as required by the DG Act. For that reason, the Attorney General asked the Commission to reject OG&E's proposed DG Tariffs at this time.

The Attorney General's Statement of Position went on to identify a second fatal flaw in OG&E's Application. The second fatal flaw of OG&E's Application arises from its failure to provide evidence to support its contention that non-DG customers are currently subsidizing DG customers. The Act prohibits a retail electric supplier, like OG&E, from allowing non-DG customers to subsidize service to DG customers in the same class of service (i.e. the class of residential customers). 17 O.S. §156(C). The DG Tariffs for which OG&E seeks approval in this Cause purport to address a subsidy of DG Customers by raising the rates of DG Customers. See *Direct Testimony of Walkingstick*, Pages 5-6. Had OG&E performed a current Cost of Service Study in support of this Application, the Commission would be capable of properly evaluating the DG Tariffs before it now. However, in the absence of such evidence, the Attorney General urged the Commission to now reject the Company's proposed DG Tariffs.

The Attorney General's Statement of Position informed this Commission that if it rejects OG&E's proposed DG Tariffs at issue in this Cause, there is no harm to the Company or its customers at this time. The Attorney General's Statement went on to say that on or before November 30, 2015, OG&E will file an Application requesting a general rate change ("*Rate Case*"). See *Notice of Intent, 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*, Cause No. PUD 201500273. In its Rate Case filing, OG&E will presumably provide the actual, comprehensive cost information necessary to evaluate the cost of service to DG Customers. This fast-approaching, comprehensive Rate Case is the proper Cause in which to evaluate OG&E's DG Tariffs. It will avoid the non-cost-based, single-issue-rate-making result, otherwise achieved by approving the Company's DG Tariffs, as filed in this Cause. The interests of all affected parties, including the Company, can be timely protected in the existing vehicle of the Rate Case. Unlike this Cause, with its limited and unhelpful information, the Rate Case provides an appropriate procedural and substantive opportunity to remedy any needed adjustments to rates, including those charged to DG customers.

The Attorney General then explained that there is no harm to either DG or non-DG customers if the Commission rejects the DG Tariffs in this Cause. Rates currently paid by OG&E customers do not allocate costs based on whether a customer uses DG; current rates are based on five-year-old data, with no distinct customer class identified based on DG use. It is possible that no subsidy exists between DG and non-DG customers, in which case, no DG Tariff filings under the DG Act are required. However, this determination cannot be made with the

limited and stale information provided by the Company in this Cause.

The Attorney General further supported his argument that rejection of OG&E's proposed DG Tariffs would not cause harm to ratepayers by stating that even under the Company's assumption that there is a subsidy, the number of DG Customers who fall within the scope of the DG Act is de minimus when compared to the overall customer base of the Company: as of July 31, 2015, only 15 of OG&E's approximately 740,000 customers fall within the scope of the Act. *See Direct Testimony of Walkingstick*, Page 10, Table 1. Even if the true figure for any such subsidy were known today, removing it from the Company's revenue would have a negligible effect.

The Attorney General then discussed the potential harm in approving OG&E's DG Tariffs now, as opposed to reviewing them in the context of the Rate Case. Not only would a rate-making decision in this Cause be based on assumptions and hypothetical costs, it would also be adopting a potentially sweeping rate-making policy change in isolation. OG&E has proposed a rate-making policy change in its DG Tariffs by proposing a Demand Charge for residential and commercial DG Customers. It explains this as a move toward "functional" cost recovery, i.e. tying customers' rates to the different aspects of providing service to them. The new DG Demand Charge, the Company claims, is designed to charge customers for transmission and distribution costs recovered under the DG Tariffs. *See Direct Testimony of Walkingstick*, Page 5. However, OG&E currently does not charge residential or small commercial customers a Demand Charge. The effect of restructuring rates in this way is unknown, and will be amplified if applied more broadly to all residential and small commercial customers in the future.

The Attorney General noted the benefit of making this policy change must be evaluated by assessing its impact and associated costs; the Company has filed no such evaluation. The cost-effectiveness, and overall impact, of functional cost recovery, could, however, be determined in the context of the Company's Rate Case.

The Attorney General concluded by stating that to evaluate the Company's DG Tariffs, the Commission must have comprehensive, relevant, current, cost information, such as that to be provided in the Company's approaching Rate Case. In the context of the Rate Case, DG customers can be established as a separate customer class or sub-class, with the cost of providing service to them specifically measured, and rates for them set accordingly. If the Commission chooses to approve rates that are established in a way that changes rate-making policy, it should do so in the Rate Case, where the policy change can be evaluated thoughtfully, with an understanding of its overall impact. Therefore, the Commission should reject the DG Tariffs proposed in this cause, and as a condition precedent to approval of any future Application filed by OG&E for DG Tariffs, OG&E should submit cost of service information related to its DG customers, as well as evidence that any proposed changes to its tariffs relating to DG customers is cost-effective.

Sierra Club

The Sierra Club submitted its Statement of Position in this cause on November 6, 2015. The Sierra Club stated that Senate Bill No. 1456 ("the Act") prohibits a utility from imposing a

tariff or charge on DG customers unless it can first demonstrate the existence of subsidization between customers. A utility thus must first show what the cost of serving a DG customer is and that a cross-subsidy exists before it may lawfully impose additional fees on those customers. Moreover, the statute makes clear that a utility may not impose a charge that exceeds the actual costs necessary to serve DG customers. Because the utility may not overcharge a DG customer, in order to meet its burden of proof, the utility thus must fully account for both the costs *and* benefits of DG.

Sierra Club argues that OG&E failed to demonstrate that a cross-subsidy exists and so has not met its burden of proof. First, Sierra Club contends that OG&E neglected to assess the specific benefits of solar energy, despite the Commission issuing a checklist that instructs utilities to conduct a solar benefits study. Sierra Club's Statement of Position outlines the benefits it believes OG&E ignored, including: avoided energy costs; avoided line losses; avoided generating capacity costs; avoided transmission and distribution cost; avoided environmental compliance costs; and economic benefits, as well as societal benefits to air and water. Sierra Club points out that many other states have conducted studies to calculate the value of solar and found that the costs associated with DG and solar are minimal and are outweighed by the many benefits.

Sierra Club also contends that OG&E's cost calculations are based on outdated information and are not specific to DG customers. OG&E relies on a study conducted in 2010, which not only fails to reflect current costs, but is especially lacking with respect to DG customers. OG&E has not conducted any analysis of the costs of serving DG customers, nor has it provided evidence that those costs are different from serving non-DG customers. Without an up-to-date study that examines the cost to serve DG customers, Sierra Club argues that OG&E cannot show that a subsidy exists, and so has not met its burden of proving that its proposed tariffs are justified.

Sierra Club next states that demand charges are not rationally related to correcting a subsidy or to the cost of providing service to DG customers. First, OG&E does not explain how its demand charge accurately reflects the cost of DG to OG&E's system. The fundamental problem with demand charges is that a utility's cost for meeting demand—capacity cost of generation, transmission and distribution—is tied to aggregate demand, or load, not to an individual's non-coincident maximum demand. Demand charges impose fees on customers regardless of whether their individual peak demand coincides with system peak. OG&E also fails to explain how the costs on which the tariffs are based are specific to DG customers. Furthermore, the tariff could require DG customers to pay more than other residential customers despite using less energy, an irrational result that this Commission has a policy interest in preventing. Moreover, demand charges are an especially ill-suited mechanism for residential customers who are poorly equipped to respond to demand charge pricing signals. Finally, Sierra Club expressed the concern that the proposed tariff could snuff out the residential solar market before it has gotten off the ground, contrary to Oklahoma's all-of-the-above energy mandate.

Sierra Club also contends that OG&E has not justified its proposed fixed charge increase. Collecting costs through fixed charges signals to customers that their demand has no effect on these costs and disincentivizes customer reduction in energy usage.

Given these concerns, Sierra Club notes that a minimum bill may offer a better way of ensuring that customers pay the costs of connecting to the grid.

OG&E Shareholders Association

The OG&E Shareholders Association submitted its Statement of Position in this cause on November 6, 2015. The OG&E Shareholder Association supports the Application of Oklahoma Gas and Electric Company requesting Commission approval of the four proposed tariffs filed in this matter to comply with 17 O.S. § 156 by the statutory deadline of December 31, 2015. The OG&E Shareholders Association opposes the efforts of various parties to delay compliance of this statutory mandate past this date.

Oklahoma Industrial Energy Consumers (OIEC) Statement of Position

The OIEC filed a general statement of position announcing their participation in the Cause.

IV. NOTICE AND JURISDICTION

The Commission finds that notice in this Cause was published in compliance with the form of notice required by Order No. 645384. The ALJ finds that due and proper notice of these proceedings was given as required by law and the orders of the Commission, and OG&E is in compliance therewith.

The Commission further finds that it has jurisdiction in this Cause by virtue of Article IX, Section 18 of the Constitution of the State of Oklahoma and 17 O.S. §§ 151-156.

IV. Standard of Review

The Corporation Commission of Oklahoma, as created by the Constitution of the State, has executive, judicial and legislative powers with respect to the regulation of public service corporations. *Muskogee Gas and Electric Company v. State*, 81 Okla. 176, 186 P. 730 (1920); However, these powers are limited to those expressly, or by necessary implication, conferred upon the Corporation Commission by the Constitution or statutes. *Southwestern Light and Power Company v. City of Elk City*, 188 Okla. 540, 111 P.2d 820 (1940)

In establishing public utility rates, it is acting in its legislative capacity. *Application of Bell Telephone Company*, 1978 OK 19, 575 P.2d 624 (1978). In such cases, the Commission is not bound by any particular theory or method of fixing rates as ratemaking is not a matter of exact science or capable of precise mathematical calculation. *Application of Valliant Telephone Company*, 1982 OK 159, 656 P.2d 273 (Okla. 1982)

In proceedings before the Commission, the Applicant has the initial burden of producing evidence to show a *prima facie* case has been made. Once a showing of reasonableness has been made, the burden shifts to opponents to produce evidence showing why the particular issue is not

reasonable. *Turpen v. Oklahoma Corporation Commission*, 1988 OK 126, 769 P.2d 1309 (Okla. 1988) Pursuant to *Turpen*, the Oklahoma Supreme Court has held that “substantial evidence is more than a scintilla of evidence; it possesses something of substance and of relevant consequence that is fit to induce conviction and may lead reasonable men fairly to differ on whether it establishes a case.”

V. Findings of Fact and Conclusions of Law

The ALJ finds that the Commission has jurisdiction in this Cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. §§ 151 *et seq.* and 17 O.S. § 156. Notice was given as required by law and Commission order.

The ALJ finds that the Legislature on April 14, 2014, enacted Senate Bill 1456, codified at Title 17, Oklahoma Statutes, Section 156, which provided no regulated electric supplier, such as the Applicant herein, shall: (i) increase rates required to recover or enforce a surcharge above that required to recover the full costs necessary to serve customers who install distributed generation on the customer side of the meter;⁴ and (ii) allow customers with Distributed Generation to be subsidized by customers in the same class of service who do not have Distributed Generation.⁵

The ALJ further finds that the statute provides that a higher fixed charge for customers within the same class of service that have Distributed Generation is one means to avoid subsidization between customers within that class of service and shall be deemed in the public interest.⁶

The ALJ finds, based upon the evidence in this record, that Applicant collects its revenue requirement based upon the embedded costs that are caused by the customers receiving electric service. Such recovery of the revenue requirement should occur at a level commensurate with the embedded cost.⁷ The current non-demand rate structures collect demand related costs through the energy charges, and when energy usage is curtailed due to self-generation, subsidies occur.⁸

The ALJ further finds, based upon the evidence in this record, that the Company’s rates are made up of several components: production (generation) costs, customer costs, energy costs, demand related costs, and fuel costs.⁹ Current non demand rate structures tend to combine these components together which incorrectly provides DG customers with more credit than the actual embedded benefit that is supplied by their DG facilities.¹⁰

The ALJ further finds that OG&E’s existing tariffs create the opportunity for subsidies between DG participants and non-participants which is contrary to the Act.¹¹ The current rate

⁴ 17 O.S. § 156 (B), applies only to distributed generation installed after November 1, 2014

⁵ 17 O.S. § 156 (C), applies only to distributed generation installed after November 1, 2014

⁶ 17 O.S. § 156 (D)

⁷ Walkingstick Direct, p. 7, lines 14-19

⁸ Walkingstick Direct, p. 8, lines 19-26

⁹ Walkingstick Direct, p. 7, lines 23-26

¹⁰ Walkingstick Direct, p. 7, lines 26-28

¹¹ Walkingstick Direct, p. 7, lines 23-24

structures as they apply to Net Energy Billing Option (NEBO) customers do not meet the statutory requirement for fully recovering the cost of serving Distributed Generation customers. These current NEBO related tariffs compensate Distributed Generation customers at a level that is too high for the embedded benefit they provide.¹² While currently affecting a small number of customers, the cross subsidy from non-DG to DG customers is present and requires action in order to be fully compliant with the directives of Senate Bill 1456 and Executive Order 2014-07.¹³

The ALJ further finds that the proposed tariffs eliminate subsidies by collecting the functional costs through the proper billing determinants, those being; customer related costs being collected through the fixed monthly connection charge; transmission and distribution costs being collected through the demand based charge; and supply costs being collected through the time differentiated energy charges.¹⁴

The ALJ finds, based upon the evidence in this record, that it was appropriate for OG&E to design the new tariffs using the existing Cost of Service Study (COSS) from Cause No. PUD 201100087, as it is the most recent study reviewed by the Commission. The Company used the COSS to develop its proposed tariffs by utilizing the unit costs components of the COSS.¹⁵ [*In Camera Testimony was held*]

The ALJ further finds that while conducting a new COSS for this proceeding would not be possible given the time the Company filed the Cause and may lead to the inability of the Company to comply with the December 31, 2015, deadline, the ALJ further finds that a comprehensive rate review of this proposal in Cause No. PUD 201500273, OG&E's current rate case is warranted and adopts the arguments set forth by the Public Utility Division, the Office of Attorney General, The Alliance for Solar Choice and Sierra Club in regard to such review. The ALJ therefore finds that the proposed tariffs are deemed reasonable and designed to reflect the actual cost to serve DG customers and should be implemented by December 31, 2015 and be in effect for the first billing cycle following a Commission order in this Cause for one month only, *subject to refund*. This finding allows compliance with the statute and a comprehensive rate review in OGE's current rate review cause, Cause No. PUD 201500273.

The ALJ finds, based upon the evidence in this record, that it is appropriate to use the cost study from the last approved rate case to design the new tariffs as this cost study is the most recent study reviewed by the Commission in an OG&E rate Cause.

The ALJ finds that there is no basis to deem OG&E's application and proposed tariffs as constituting inappropriate or prohibited single issue ratemaking. This Commission has, at various times, and for good cause shown, granted various requests for stand-alone riders or trackers and done so outside the context of a general rate case. The ALJ takes judicial notice of all such Commission Orders approving a rider or tracker. The commonality of such approvals is that such riders have had prospective application only, that they addressed a specific situation

¹² Walkingstick Direct p. 6, lines 23-28

¹³ Brown Rebuttal, p. 4, lines 12-15

¹⁴ Walkingstick Direct, p. 13, lines 16-20

¹⁵ Walkingstick Direct, p. 13, lines 10-13

and were subject to review in subsequent proceedings.

The ALJ finds, based upon the evidence in this record, that the proposed new rates are OG&E's response to the enactment of SB 1456 by the Legislature and the subsequent approval by the Governor. Secondly, the proposed rates and their application to OG&E Customers are prospective in nature from the November 1, 2014, date specified by SB 1456.

The ALJ finds that OG&E has not completely considered and addressed the items on the Commission Staff's Checklist for Distributive Generation Tariff Filings and is hereby directed to do so in Cause No. PUD 201500273. While no party alleged that the checklist was a requirement of the Statute or rule, the checklist as set forth by the Public Utility Division is critical to this process.¹⁶ The ALJ finds that OG&E should consider further the items on the checklist and address them in Cause No. PUD 201500273.¹⁷

The ALJ finds, based upon the evidence in this record that OG&E must be ready, willing and able to properly keep their customers informed about the proposed tariffs, how they operate and the potential effect of the tariffs, whether through effective one-on-one contact or otherwise. The ALJ finds that an educational plan should be submitted by OG&E for this purpose in Cause No. PUD 201500273.

Based upon the evidence in this record and the foregoing findings of fact, the ALJ concludes:

1. The Commission has jurisdiction in this matter pursuant to 17 O.S. §§ 151 *et seq.* and 156.
2. The Applicant herein has shown by substantial evidence that a subsidy currently exists in favor of Distributed Generation customers by non-DG customers within their applicable class of service.
3. The proposed rates are reasonable and designed to reflect the actual cost to serve affected Distributed Generation customers, should be implemented by December 31, 2015, and will be in effect for the first billing cycle following a Commission order in this Cause for one month only, *subject to refund*.
4. The Motion to Dismiss filed by TASC is moot due to the Cause proceeding to merit hearing.
5. In this Cause there was no other tariff proposal proposed to comply with the statute.
6. Due to the expedited nature of this Cause, the ALJ reserves the right to supplement this Report and Recommendation.

¹⁶ Champion Direct, p. 6, lines 9-10 and p. 7, line 12;

¹⁷ Walkinstick Direct, p. 23, line 23 – p. 28, line 29; Tr. December 2, 2015, p. 57, line 6 – p. 58, line 21

VI. Recommendations

Based upon the above and foregoing the ALJ recommends that the Commission issue and order:

1. Approve each of the tariffs proposed by the Applicant in this cause; and
2. Close the existing NEBO tariff to new Distributed Generation making application for service with OG&E after November 1, 2014.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned Administrative Law Judge.

Jacqueline T. Miller
JACQUELINE T. MILLER
Administrative Law Judge

December 14, 2015
Date