ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF AN INTERIM RATE SCHEDULE OF OKLAHOMA GAS AND ELECTRIC COMPANY IMPOSING A SURCHARGE TO RECOVER ALL INVESTMENTS AND EXPENSES INCURRED THROUGH COMPLIANCE WITH LEGISLATIVE OR ADMINISTRATIVE RULES, REGULATIONS OR REQUIREMENTS RELATING TO THE PUBLIC HEALTH, SAFETY, OR THE ENVIRONMENT UNDER THE FEDERAL CLEAN AIR ACT FOR CERTAIN OF ITS EXISTING GENERATION FACILITIES	)	DOCKET NO. 15-034-U ORDER NO. 7

ORDER

Procedural History

On May 8, 2015, Oklahoma Gas and Electric Company (OG&E or the Company) filed with the Arkansas Public Service Commission (Commission) in the above-styled Docket its *Notice of Filing of an Interim Rate Schedule Pursuant to Act 310 of 1981, as Amended* (Notice). As a consequence of filing the Notice, the Company recovers in rates, through an interim surcharge (subject to refund after an investigation by the Commission concerning the reasonableness of the surcharge), costs and expenses incurred as a result of legislative or regulatory requirements relating to the protection of the public health, safety, and the environment. In support of its Notice and its Environmental Compliance Plan Rider (Rider ECP), OG&E contemporaneously filed the Direct Testimony of Donald R. Rowlett.

The stated purpose of the surcharge filed under Act 310 (Ark. Code Ann. § 23-4-501, *et seq.*) is to recover expenditures OG&E has incurred at four of its coal generation units and three of its gas generation units to comply with the Federal Clean Air Act (CAA) to take steps to limit emissions of nitrogen oxides (NOx) by January 27, 2017.

On June 2, 2015, by Order No. 1, the Commission initiated an investigation into the reasonableness of OG&E's Act 310 surcharge and adopted a procedural schedule. On June 17, 2015, the Attorney General of Arkansas (AG) served written notice that the AG's Office would be an active party in the docket. On July 15, 2015, Arkansas River Valley Energy Consumers (ARVEC) and Wal-Mart Stores Arkansas, LLC and Sam's West, Inc. (collectively, Wal-Mart) were granted intervention. The Commission amended the procedural schedule on July 16, 2015, by Order No. 4 and on August 18, 2015, by Order No. 5.

On August 10, 2015, ARVEC filed the Direct Testimony of Mark E. Garrett; Wal-Mart filed the Direct Testimony of Steve Chriss; the AG filed the Direct Testimony of William B. Marcus; and the General Staff (Staff) of the Commission filed the Direct Testimony of William Matthews. On August 26, 2015, OG&E filed the Rebuttal Testimony of Mr. Rowlett. On September 11, 2015, ARVEC filed the Surrebuttal Testimony of Mr. Garrett; the AG filed the Surrebuttal Testimony of Michael J. McGarry, August H. Ankum, and Mr. Marcus; and Staff filed the Surrebuttal Testimony of Mr. Matthews. On September 17, 2015, OG&E filed the Sur-Surrebuttal Testimony of Mr. Rowlett.

On September 14, 2015, the AG filed a Motion for Partial Summary Judgment. On September 16, 2015, Staff filed a Motion for Partial Summary Judgment.[1]

On September 25, 2015, the parties filed a *Joint Motion to Approve Settlement Agreement* (Joint Motion), along with the supporting testimony of Mr. Rowlett for OG&E, Mr. Garrett for ARVEC, Mr. Chriss for Wal-Mart, Kevin Lemley for the AG, and

[1] The Motions for Summary Judgment were mooted by the Settlement Agreement filed September 25, 2015. T. 19-20, 352.

Mr. Matthews for Staff. The Commission conducted the public hearing on the Joint Motion on October 8, 2015.

Act 310 Statutory and Regulatory Authorities

Pursuant to Act 310, as amended, a public utility is permitted to recover, through an interim surcharge, all costs and expenses incurred to comply with legislative or administrate rules, regulations or requirements relating to the protection of the public health, safety, or the environment. A utility may file an interim surcharge cost recovery mechanism no more frequently than once every six (6) months and may implement it immediately, subject to subsequent Commission investigation, adjustment, and refund. The utility may continue to apply the interim surcharge to rates until the implementation of new rate schedules in connection with the next general rate filing of the utility in which such investments and expenses can be included in the public utility's base rate schedules. *See* Ark. Code Ann. §§ 23-4-501, 502, 504, and 507.

Arkansas Code Annotated § 23-4-501, as amended by Act 1000, sets forth the authority of a public utility to recover costs through an interim rate surcharge as follows:

> (a)(1) Upon a proper filing with the Arkansas Public Service Commission, a public utility shall be permitted to recover in a prompt and timely manner all investments or expenses through an interim surcharge, if the investments or expenses:
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> (A) Are not currently being recovered in existing rates;
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> (B) Are reasonably incurred;
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> (C) Were not reasonably known and measurable at a time that allowed for a reasonable opportunity for the inclusion and consideration of the investments or expenses for recovery in the public utility's last general rate case;
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> (D) Are incurred by the public utility to comply with legislative or administrative rules, regulations, or requirements;
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> (E) Relate to the protection of the public health, safety, or the environment;
>
> (F) Cannot otherwise be recovered in a prompt and timely manner; and

(G) Are any of the following:
(i) Mandatory;
(ii) A condition of continued operation of a utility facility; or
(iii) Previously approved by the commission.

(2) The interim surcharge shall be effective until the implementation of new rate schedules in connection with the next general rate filing of the public utility in which such investments or expenses can be included in the public utility's base rate schedule.

(3) However, the costs to be recovered through such an interim surcharge described [in] subdivisions (a)(1) and (2) of this section shall not include increases in the cost for employment compensation or benefits as a result of legislative or regulatory action.

(b)(1) A public utility shall be permitted to recover, through an interim surcharge, the allowance for funds used during construction that would otherwise be accrued and capitalized that is incurred during the construction of facilities and equipment required for compliance with such legislative or administrative rules, regulations, or requirements provided that any such allowance for funds used during construction have not been capitalized or otherwise included in the utility's currently effective rates.

(2) The public utility shall not capitalize or otherwise recover through rates any allowance for funds used during construction incurred in connection with investments described in (b)(1) of this section when the associated financing costs are included in an interim surcharge.

Arkansas Code Annotated § 23-4-503, as amended by Act 1000, provides for the calculation of the interim surcharge:

The amount of the interim surcharge to be added to the public utility's rates shall be calculated so as to produce annual revenues equal to the additional annualized revenue requirement to which the public utility would be entitled had the investments and expenses described in § 23-4-501 been included in the public utility's most recent rate determination by the Arkansas Public Service Commission.

Arkansas Code Annotated, § 23-4-504 and 506 provide that an Act 310 surcharge "shall become effective immediately upon filing" and "shall be collected subject to refund...." Arkansas Code Annotated § 23-4-505 provides that the Commission "shall

enter upon an investigation concerning the reasonableness of the surcharge within thirty (30) days after filing and upon reasonable notice to the utility.

Arkansas Code Annotated § 23-4-507, as amended by Act 1000, concerning modification and disapproval of surcharges by the Commission, provides:

> (a) After its investigation and hearing thereon, the Arkansas Public Service Commission may modify or disapprove all or any portion of the surcharge upon a finding that:
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> (1) Investments or expenses were not reasonably incurred to comply with legislative or administrative rules, regulations, or requirements;
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> (2) The investments or expenses do not relate to the protection of the public health, safety, or the environment;
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> (3) The investments or expenses were not substantiated;
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> (4) The amount of the surcharge has been erroneously calculated;
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> (5) The investments or expenses are already being recovered in existing rates;
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> (6) The investments or expenses were reasonably known and measurable at a time that allowed for a reasonable opportunity for their inclusion and consideration for recovery in the public utility's last general rate case;
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> (7) The investments or expenses were not reasonably incurred;
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> (8) The investments or expenses can otherwise be recovered in a prompt and timely manner;
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> (9) The allocation of the surcharge among the customers of the public utility is unreasonable; or
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> (10) The investments or expenses were not:
>
> (A) Mandatory;
>
> (B) A condition of continued operation of a utility facility; or
>
> (C) Previously approved by the commission.
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> (b) (1) If the commission determines that the allocation of the surcharge among the customers of the utility should be modified, it shall fix and determine the appropriate allocation among the utility's customers which shall be applied prospectively.
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> (2) The commission shall further direct the utility to credit or charge, as the case may be, the affected classes of customers whose surcharges were determined to be improperly allocated for the period between the effective date of the surcharge and the effective date of the modification. As to those classes of customers entitled to credits, the utility also shall pay interest on those credits, as applicable.

(c) If the commission determines that all or any portion of the proposed surcharge should be disapproved under subsection (a) of this section, the commission shall determine the just and reasonable amount of the surcharge to be charged or applied by the public utility after the time the proposed surcharge took effect. In the same order, the commission shall fix the amounts, plus interest, if any, to be refunded to the utility's customers.

By Order No. 4 issued in Docket No. 09-059-U on December 8, 2009, the Commission established certain general requirements applicable to Act 310 applications, which have been applied consistently in all subsequent Act 310 proceedings before the Commission. Those general requirements are summarized below:

1. No finding of the Commission regarding the proposed surcharge shall be deemed a finding that the costs included for recovery via the surcharge are necessary, appropriate, or in the public interest. Likewise, all costs recovered under the surcharge shall remain subject to refund until the prudence of said costs is addressed in the Company's next general rate case proceeding. Further, all costs recovered under the surcharge shall be subject to refund with interest;

2. Subsequent Act 310 Notices and/or subsequent related amendments to the surcharge tariff shall be filed in the underlying general rate case docket;

3. The Company shall cooperate fully with Staff (and intervenors) in its investigation of the surcharge and any subsequent related amendments filed by the Company;

4. The Company shall reflect the surcharge as a separate line item on customer bills labeled "Act 310 Surcharge" as well as for any subsequent related amendments filed by the Company;

5. The Company shall provide to Staff concurrent with its Act 310 filing, the following supporting documentation and workpapers for a sample of projects to be determined by Staff:

- Work order tickets;
- Engineering/GIS Department diagrams;
- "As built" construction drawings (if not included in the Engineering diagrams);
- General information records for replaced service lines associated with qualifying replaced mains;
- Arkansas State Highway and Transportation Department or other government agency Work Order/Project Certification or other official documentation that directs the relocation of Company facilities; and
- Credit workpapers (1) for all projects with a betterment or reimbursement credit (even those not identified in Staff's sample) and (2) for all sample projects, even those for which there is no betterment or reimbursement credit.

6. To the extent any additional cost items are included in subsequent surcharge filings, the Company shall similarly provide, at the time of filing, justification in support of its inclusion of those costs and documentation of each of those transactions; and

7. The Company shall provide workpapers to Staff in electronic format with formulas intact.

Docket No. 09-059-U, Order No. 4 at 17-20.

Positions of the Parties

OG&E – DIRECT TESTIMONY

OG&E witness Donald R. Rowlett explains 1) why OG&E is seeking the relief it is requesting; and 2) the Company's environmental compliance plan for NOx emission requirements. Mr. Rowlett further elaborates on the Regional Haze Rule (RHR) Oklahoma State Implementation Plan (SIP). Mr. Rowlett testifies that OG&E must use Best Available Retrofit Technology (BART) to control NOx emissions. Mr. Rowlett states that the installation of Low NOx burners with over-fire air (LNB/OFA) systems on the seven affected generation units was determined as BART by the Oklahoma Department of Environmental Quality. The cost of complying with NOx emissions is

expected to be approximately $99.4 million as compared to the 2008 BART estimate of $100 million. OG&E is requesting that the Commission 1) approve the recovery of its investments and expenses to comply with NOx emission requirements; and 2) approve its proposed recovery mechanism, the ECP Rider (Direct Exhibit DRR-1). Rowlett Direct at 3-4, T. 25-26.

Mr. Rowlett testifies that 1) the investments and expenses requested for recovery are not currently being recovered in existing rates; and 2) were not reasonably known and measurable at the time of the Company's last rate case. Mr. Rowlett describes how the Company will show that the investments and expenses requested for recovery were reasonably incurred. Mr. Rowlett also describes the process that OG&E used to ensure the cost for equipment and installation were reasonable and complied with the legislative or administrative rules, regulations, or requirements of the statute. Mr. Rowlett further explains how the investments and expenses 1) relate to the protection of the public, health, safety or environment of the state; 2) cannot otherwise be recovered in a prompt and timely manner; and 3) are mandatory, a condition of continued operation, or previously approved by the Commission. Rowlett Direct at 5-7, T. 27-29.

Mr. Rowlett states that all costs associated with the Company's environmental compliance plan for the RHR SIP will be collected via the ECP Rider. In this filing, OG&E is requesting $42.2 million for net capital investment and $1 million for expenses (Direct Exhibit DRR-2). According to Mr. Rowlett, the Company will implement the surcharge on the first billing cycle of June, 2015. The Company is not proposing a security deposit to ensure prompt payment for any over collections. Chart 1 of Mr. Rowlett's direct testimony shows how the Company determined an annual revenue

requirement for the costs that would be recovered through the proposed ECP Rider. Chart 2 of Mr. Rowlett's direct testimony shows the estimated customer impacts of the ECP Rider. Rowlett Direct at 7-11, T. 29-33.

ARVEC DIRECT TESTIMONY

Mr. Garrett testifies for ARVEC that, under Act 1000, the Commission may reject or modify a requested surcharge recovery mechanism if the investments or expenses can otherwise be recovered in a prompt and timely manner. Mr. Garrett contends that OG&E's NOx compliance costs mostly will occur in 2015 and 2016, and OG&E could file a rate case in 2016 to recover these costs going forward. Mr. Garrett testifies that in Oklahoma, the Commission's ALJ recommended that rate recovery of OG&E's environmental compliance costs be recovered in its next rate case. However, the Oklahoma Commission has not yet issued a final order in that case. Garrett Direct at 6-10, T. 77-81.

Mr. Garrett testifies that OG&E's current customer allocation is unreasonable. He contends that the cost allocation section of Act 725 is not limited to general rate case applications. Mr. Garrett further contends that Act 1000 does not require that the surcharge costs be allocated to customer classes as they would in the Company's last rate case. Mr. Garrett also contends that the allocations used in the Company's last rate case do not provide a reasonable allocation of these costs now. Mr. Garrett states that the language in Act 725 indicates that the allocation methodology in the Act should be applied in this case. Mr. Garrett testifies that the use of a 4 coincident peak (CP) average and excess production cost allocation will be beneficial to economic

development, promote employment opportunities and result in just and reasonable rates as contemplated by Act 725. Garrett Direct at 10-17, T. 81-88.

Mr. Garrett states that the Company's proposed rider combines the Power & Light (P&L) and P&L-Time of Use (TOU) classes into one P&L class. He contends that, in the Company's last rate case, the P&L-TOU was identified as a separate class and should be treated the same for the ECP rider as well. Garrett Direct at 17, T. 88.

Mr. Garrett recommends that the ECP Rider be corrected to collect the surcharge on a kW rather than a kWh basis, as it would have been collected if included in OG&E's last rate case. Mr. Garrett also contends that Act 725 requires that these costs be allocated and recovered on a demand rather than on a volumetric basis. Garrett Direct at 17-18, T. 88-89.

Mr. Garrett is concerned that OG&E may seek to extend the rider mechanism to other costs. Mr. Garrett recommends that approval should be explicitly limited to recover only the investments and expenses identified by OG&E in this application to comply with the NOx emissions requirement of the CAA RHR and not later extended to recover the additional costs that ultimately will be incurred. According to Mr. Garrett, these additional future investments and expenses will include substantial cost at OG&E's Sooner plant and Muskogee plant. Mr. Garrett contends that OG&E's remaining ECP costs should not be passed on through piecemeal ratemaking, as the Commission cannot know whether the overall rates it authorizes are just and reasonable if it sets those rates in a piecemeal fashion as OG&E recommends. Garrett Direct at 18-21, T. 89-92.

WAL-MART DIRECT TESTIMONY

Wal-Mart witness Steve W. Chriss testifies that, based on responses to Company data requests, it appears that: 1) OG&E will defer filing a rate case until 2020; 2) the ECP Rider will be in place at least until 2020; and 3) OG&E will recover at least $40,240,997 from Arkansas customers over the period 2015-2020. Mr. Chriss recommends that the Commission impose time and dollar limits on the duration of any Act 310 surcharge and require the Company to file a general rate case prior to any filing for a future increase in any approved surcharge in this docket. Chriss Direct at 4-10, T. 140-46.

Mr. Chriss testifies that he understands that the Company proposes to use the Average & Peak (A&P) allocator based on the Company's 1 CP. The Company also proposes to use the major class groupings to allocate ECP revenues and set rates as opposed to allocating to the subclass level. Mr. Chriss states that OG&E does not plan to update the data used to calculate the production capacity allocator and set rates. He expresses concerns with OG&E's proposed allocation methodology. Mr. Chriss further testifies that he understands that Act 725 contains provisions regarding the use of an Average and Excess (A&E) production plant allocator (A&E 4CP). Chriss Direct at 10-13, T. 146-49.

Mr. Chriss explains his understanding of the purpose of production capacity cost allocation. He states that a utility's production capacity costs do not change with changes in the amount of electricity generated and should be sized to meet the maximum demand imposed on the system. Mr. Chriss states OG&E's need for generation units is primarily driven by its customers' demand in the months June

through September and not during the rest of the year. Mr. Chriss maintains that the use of a CP-based production cost allocator correctly reflects both the fixed nature of production costs, and the use of all generation plant to meet system peak demand. Chriss Direct at 13-17, T. 149-53.

Mr. Chriss testifies that an A&E is an allocator that recognizes the contribution of each class to average demand, as well as the relative peak demand of each class. Mr. Chriss states that his Direct Exhibit SWC-7 shows the calculation of an A&E allocator using 4CP and Exhibit SEC-9 shows a comparison of his proposed A&E 4CP vs. OG&E's A&P CP results. Chriss Direct at 17-19, T. 153-55.

Mr. Chriss states that he is concerned with the Company's proposal to recover the ECP revenue requirement solely through $/kWh energy charges. He states that ECP costs should be recovered in a manner that reflects how they are allocated. Mr. Chriss contends that the recovery of demand-related costs through an energy charge is a disadvantage to higher load factor customers. He recommends that the Commission should 1) separately calculate and charge ECP rates on a subclass level; and 2) reject OG&E's proposal to charge the ECP rider to demand-metered classes on a $/kWh basis and instead use a $/kW demand charge. Chriss Direct at 20-23, T. 156-59.

AG DIRECT TESTIMONY

AG witness William B. Marcus recommends that 1) Act 310 recovery be allowed but ratemaking adjustments be made to reduce recoverable costs from $2,263,926 to no more than $1,831,662; and 2) the rider to recover these costs be made an exact recovery rider to reflect actual costs and actual revenues. Mr. Marcus concludes that: 1) a portion of the costs requested by OG&E should not be recovered under Act 310; 2) since OG&E

has not filed a rate case in five years, an alternative relief should be used; and 3) OG&E's request should be reduced by 18.8% from $489,934 to $397,752. Marcus Direct at 2-3, T. 204-05.

Mr. Marcus states that OG&E witness Rowling's testimony on the justification for recovery of its Act 310 costs is not entirely true, and that the return and property taxes on Construction Work in Progress (CWIP) should not be recovered in rates. Mr. Marcus raises other concerns related to OG&E not filing a rate case since 2010. Because of this related concern, Mr. Marcus proposes that OG&E be granted alternative recovery to Act 310, and be granted recovery of the costs but through an exact recovery rider. Under an exact recovery rider, a revenue requirement would be set for OG&E, which would be trued up for actual costs and revenues. Furthermore, an annual true-up filing would forecast costs and sales for the following year.

Mr. Marcus explains that this request is the first in a series of requests that OG&E is likely to file. He states that an exact recovery rider will be beneficial in that it would allow plant to be brought into service on an actual cost basis which would be an alternative to filing more Act 310 filings every few months, which would create an administrative burden for both the Company and the Commission. Mr. Marcus explains how the Commission could adopt an exact recovery rider and shows what the revenue requirement would be for either an exact recovery rider or an Act 310 rider. Mr. Marcus states that in his Exhibit WBM-2 he has calculated the revenue requirement, and rates for individual customer classes. Marcus Direct at 3-5, T. 205-07.

Mr. Marcus agrees with OG&E's cost allocation method, and states that while he recognizes that the statute allows the Commission to consider economic development

issues in a general rate case, this is not a general rate case. Therefore, he says that Act 725 does not apply, and the Commission should follow past practice in allocating costs based on the last available general rate case. Marcus Direct at 6, T. 208.

STAFF – DIRECT TESTIMONY

Staff witness William L. Matthews testifies that OG&E complied with the Commission's procedures for an Act 310 filing as set forth in Docket No. 09-059-U. Mr. Matthews agrees with OG&E's request that security not be required due to the small size of the amount to be collected through the ECP Rider. Mr. Matthews recommends a revenue requirement for Rider ECP of $478,097, which is 0.54% of the Arkansas Rate Schedule Revenue Requirement allowed in OG&E's last rate case in Docket No. 10-067-U. Matthews Direct at 3-7, T. 319-23.

Mr. Matthews agrees with the inclusion of LNB/OFA technology costs in the Act 310 surcharge. He recommends modifications to OG&E's revenue requirement to adjust: 1) Allowance for Funds Used During Construction (AFUDC); 2) Retirements; 3) Accumulated Depreciation (A/D); 4) depreciation expense; 5) property taxes; and 6) OG&E allocation factors. Mr. Matthews' recommended $478,097 revenue requirement is $11,837 less than OG&E's $489,934. Matthews Direct at 7-10, T. 323-26.

Mr. Matthews does not entirely agree with the production demand allocators (PDA) used by OG&E to allocate the ECP Rider's revenue requirement between rate classes because they do not match the approved PDAs from the Company's last rate case, as shown on his Direct Exhibit WM-2. He explains that his recommended allocation factors will have minimal impact on customer bill impacts. Matthews Direct at 10-12, T. 328-30.

Mr. Matthews recommends a modification of the ECP Rider for: 1) Staff's proposed change in the allocation percentage to reflect the correct PDAs; and 2) Staff's tariff language revision reflecting that the prudence of project expenditures will be decided in the Company's next rate case and not in this proceeding. Matthews Direct at 12-13, T. 328-29.

OG&E – REBUTTAL TESTIMONY

Mr. Rowlett does not agree with the recommendations of Staff witness Matthews and AG witness Marcus to disallow property tax expense on CWIP costs. Mr. Rowlett states that: 1) OG&E is required to include CWIP costs in its filings with the Commission Tax Division for valuation purposes each year; and 2) OG&E does not capitalize any property taxes on CWIP projects. For these reasons OG&E believes it is appropriate to include property taxes related to CWIP in expense. Rowlett Rebuttal at 2-3, T. 40-41.

Mr. Rowlett agrees with Staff witness Matthews that OG&E should have used the "as settled" class factors rather than its "filed" class factors. Mr. Rowlett disagrees with ARVEC witness Garrett and Wal-Mart witness Chriss proposal to use an Average and Excess production plant allocator using four-month coincident peaks June through September. Mr. Rowlett contends that Act 310 directs the Company to use the settled allocation methodology which is 1 CP and Average, as established in its most recent base rate case, Docket No. 10-067-U. Rowlett Rebuttal at 3-4, T. 41-42.

Mr. Rowlett states that there are certain aspects of the Staff and Intervenors rate design recommendations with which OG&E agrees including: 1) the P&L and the P&L-TOU subclasses could be separated; 2) for those classes with demand charges, the revenue requirements could be recovered through a demand rate on a $/kW, and not a

$/kWh basis; and 3) the tariff formula to calculate the billing factors for P&L and P&L-TOU customers should be changed as recommended by Staff witness Matthews in his direct Exhibit WMT-2. Rowlett Rebuttal at 4, T. 42.

Mr. Rowlett states that he: 1) agrees with Staff witness Matthews on the purpose of a utility filing under Act 310; 2) disagrees with AG witness Marcus that an exact recovery rider is a replacement for the relief supported by Act 310; 3) disagrees with ARVEC witness Garrett that no rider recovery is an option; 4) disagrees with ARVEC witness Garrett's suggestion that if rider recovery is allowed under Act 310 recovery, it should commence only upon the Company's filing of a base rate case; and 5) disagrees with Wal-Mart witness Chriss' assertion that, because OG&E will not file a rate case in the near future, a time limit on recovery of costs and dollar amount cap should be implemented until the Company files a general rate case. Mr. Rowlett also testifies that OG&E did not state that it will not file a rate case until 2020, only that it does not have a planned date for a general rate case in Arkansas. Rowlett Rebuttal at 4-6, T. 42-44.

ARVEC – SURREBUTTAL TESTIMONY

Mr. Garrett testifies that if the Commission decides to use the cost allocation methodology proposed by OG&E rather than the 4CP A&E method he proposed, he agrees with Mr. Rowlett that the "settled" class allocation factors should be used. Garrett Surrebuttal at 3, T. 116.

Mr. Garrett testifies that neither Act 310 nor Act 1000 prescribe the allocation methodology for the surcharge. Ark. Code Ann. §23-4-503 requires that the utility receive as much revenue as it would have received if the investments and expenses had been included in the last rate case but does not prescribe how the revenue requirement

should be allocated to the customer classes. Mr. Garrett testifies that in the past the allocation methodology from the last rate case was used but that approach is no longer reasonable in light of Act 725, where the General Assembly prescribed the allocation method for production plant costs going forward. Mr. Garrett states that the methodology from Act 725 is not limited to base rate cases and the Emergency Clause makes it clear the new method should be applied as soon as possible. Garrett Surrebuttal at 3-5, T. 116-18.

Mr. Garrett states that if the Commission does allow rider recovery in this docket, it should be limited to OG&E's NOx costs and not later extended to include additional costs OG&E incurs to comply with the CAA RHR, which may increase OG&E's total revenue requirement by $281.1 million. In light of the significant cost increase, Mr. Garrett states the Commission should look for ways to mitigate the increase. Mr. Garrett contends that the Commission's duty to balance the interests of the utility and ratepayers cannot occur in a vacuum, where isolated decisions are made on rate increases without considering other potential rate decreases that may be available to mitigate the impact on ratepayers. Mr. Garrett argues that the Commission could authorize rider recovery of these costs, but insist the recovery mechanism start in a rate case proceeding. In the alternative, the Commission could approve the rider and condition its approval on the timely filing of a rate case. Either approach would provide the utility with timely recovery while providing ratepayers the protection of a comprehensive rate case review. Mr. Garrett testifies Act 310 was not intended to help utilities evade necessary rate case filings but intended to provide timely recovery until

such time as the utility is able to file and process its general rate case application. Garrett Surrebuttal at 5-6, T. 118-19.

Mr. Garrett responds to AG witness Marcus' contention that Act 725 only allows the Commission to consider economic development and potentially adopt other cost allocation methods in a general rate case. Mr. Garrett testifies that Mr. Marcus was unable to reference the language or provision in such Act that supports his interpretation. Mr. Garrett testifies he did not see any language that limits the cost allocation section to rate case applications. Garrett Surrebuttal at 6-7, T. 119-20.

Mr. Garrett agrees with Staff witness Matthews that the prudence of the costs in the ECP Rider will be decided in OG&E's next rate case. Garrett Surrebuttal at 7, T. 120. Mr. Garrett states that Staff witness Matthews' recommendation for the P&L class is that the specific charge should include both kWh and kW billing determinants as developed and approved in the last rate case as shown in Direct Exhibit WLM-2. He testifies that all ECP costs should be classified as production demand costs, recovered through a demand rate component not a volumetric rate component, and collected on a kW basis. If this is the intent of Mr. Matthews' testimony, he agrees. He notes that OG&E witness Rowlett agreed that the P&L classes' costs should be recovered on a kW basis. Garrett Surrebuttal at 7-9, T. 120-22.

Mr. Garrett testifies OG&E agreed with him that the P&L-TOU class is a separate rate class and should be treated as such. Garrett Surrebuttal at 9. He notes that OG&E did not respond or rebut his testimony concerning the link between lower electric rates and economic development. Garrett Surrebuttal at 9, T. 199.

AG – SURREBUTTAL TESTIMONY

AG witness August H. Ankum recommends that the Commission decline to rule on the merit of the A&E 4CP method in the context of this limited surcharge proceeding. He states that if the Commission does decide to consider the issue, he recommends that the Commission reject recommendations for the use of the A&E 4CP method. Ankum Surrebuttal at 6, T. 222.

Mr. Ankum states that in his testimony, he will show that the A&E 4CP allocation method is not in the public interest and will harm economic development and job growth –- two things he states that Act 725 requires to approve A&E 4CP. Ankum Surrebuttal at 6, T. 222. Mr. Ankum argues that using this allocation method will lower electricity bills for industrial customers by increasing electricity bills on residential customers, which will suppress residential demand. His testimony details the effects of this residential demand suppression. Ankum Surrebuttal at 7, T. 223.

Mr. Ankum points out that ARVEC witness Garrett and Wal-Mart witness Chriss are advocating that OG&E change its demand cost allocation method to the A&E 4CP. He then describes the A&E 4CP as a way to allocate the capacity-related production costs of generating facilities across the Company's rate classes. Mr. Ankum asserts that if Act 725 applies, it requires a demonstration that A&E 4CP promotes economic development and job growth. He says that ARVEC witness Garrett acknowledges this, while Wal-Mart witness Chriss does not. He also states that neither witness demonstrates how the use of A&E 4CP will promote economic development and job growth in Arkansas. Ankum Surrebuttal at 8-13, T. 224-229.

Mr. Ankum states that higher electricity rates for residential and small commercial ratepayers will adversely impact economic development and job growth. He reasons that higher rates paid by this class of customer means less money for them to spend on other goods and services, which leads to the adverse impact. For additional support, Mr. Ankum introduces the idea of economic multipliers, which measure the effect of injecting dollars into, or extracting dollars from, an economy. He contends that the effect of higher rates for the residential and small commercial ratepayer class, brought on by using the A&E 4CP allocation method, will remove dollars from the Arkansas economy and have a negative effect on economic growth. He then presents a detailed discussion of different multipliers (including the Congressional Budget Office, or CBO Industrial multiplier) and attempts to show how these multipliers would apply to this Docket. Ankum Surrebuttal at 13-23, T. 229-239.

Mr. Ankum refers to ARVEC witness Garrett's testimony, where Mr. Garrett points out that in Entergy Arkansas, Inc.'s (EAI) most recently filed rate case, 15-015-U, EAI witness Maulden proposes the use of the A&E 4CP cost allocation methodology. Mr. Ankum simply points out that the rate case is still pending and no other party has responded to Mr. Maulden at this point, so Mr. Garrett's reference should be ignored. Ankum Surrebuttal at 23-25, T. 239-41.

Mr. Ankum testifies that service providers and not manufacturing are projected to provide the most job growth in Arkansas in the near future. Ankum Surrebuttal at 25-27, T. 241-43. He states that the issues raised by ARVEC witness Garrett and Wal-Mart witness Chriss are too complicated and too important to be decided in this limited proceeding. He argues that Mr. Garrett and Mr. Chriss also failed to show that the A&E

4CP cost allocation methodology will promote economic development and job growth as required under Act 725. Ankum Surrebuttal at 27, T. 243.

AG witness William B. Marcus testifies that ARVEC and Wal-Mart raise important considerations regarding cost recovery under Act 310 and that Act 310 should not be a blank check even though the reasonableness of costs will be determined later. Mr. Marcus notes that it is more difficult to require a company to disgorge costs that it has already collected than to cap them in the first place. Marcus Surrebuttal at 2, T. 214.

Mr. Marcus testifies that the Oklahoma Corporation Commission, which regulates 90% of OG&E's generation costs, established a cap for the same costs OG&E requests in Arkansas without a cost cap. Mr. Marcus recommends that the Commission seriously consider and adopt Mr. Garrett's recommendation for a corresponding cost cap in Arkansas, even in the context of approving some type of expedited recovery. While the cost cap may not apply in this filing because OG&E's request is only for a portion of the costs subject to the Oklahoma cost cap, Mr. Marcus testifies it is reasonable to use the Oklahoma cost cap as a guideline to limit costs in future filings under either the AG's proposed exact recovery rider or future Act 310 filings by OG&E. Marcus Surrebuttal at 2-3, T. 214-15.

Mr. Marcus testifies that OG&E interprets Act 310 entirely to its benefit. While OG&E claims Act 310 does not allow for changes from any previous rate case recovery, Mr. Marcus recommends the Commission read the act more flexibly. Marcus Surrebuttal at 3, T. 215.

AG witness Michael J. McGarry, Sr. notes that ARVEC and Wal-Mart propose alternate cost allocation modifications should the Commission approve OG&E's ECP

Rider. Mr. McGarry testifies that because this is a significant policy issue, it should be handled within the context of a base rate case and not in the limited scope of this proceeding. McGarry Surrebuttal at 6-7, T. 280-81. Mr. McGarry testifies he did not perform a thorough analysis of Mr. Garrett's and Mr. Chriss' cost allocation proposals. Changing the cost allocation is an important issue and should be fully vetted by all parties before the Commission approves a change, according to Mr. McGarry. He states that proposing such a change halfway through a surcharge proceeding, without notice from the beginning of the case, does not allow time for proper and necessary consideration and examination. McGarry Surrebuttal at 8-9, T. 282-83.

Mr. McGarry disagrees with ARVEC witness Garrett's position that OG&E's proposed method of cost allocation is unreasonable. The Commission previously determined the methodology is reasonable and therefore it should be applied in the ECP Rider. Mr. McGarry refers to testimony of AG witness Marcus and Staff witness Matthews to support OG&E's cost allocation methodology as reasonable. But he notes that there is not sufficient time to review and evaluate Staff's testimony regarding the alternative proposed cost allocation methodology or to determine an appropriate or fully reasoned opinion on the cost allocation methodology. McGarry Surrebuttal at 9-10, T. 283-84.

Mr. McGarry testifies that the motivation for Mr. Garrett's and Mr. Chriss' proposed changes appears to be concerned with the impacts on industrial and large commercial customers. Under their proposals, costs would be shifted from industrial and large commercial customers to residential and small commercial ratepayers. Mr. McGarry testifies that extensive and proper due diligence must be allowed before the

Commission should consider such drastic and far-reaching consequences. McGarry Surrebuttal at 10-11. Mr. McGarry testifies that based on the huge swing of burden between classes shown by Wal-Mart witness Chriss, it appears that the criterion of Act 725 of just and reasonable rates for all classes of service is not being considered in the cost allocation change proposal. McGarry Surrebuttal at 11-12, T. 285-86. Mr. McGarry testifies that the use of the uncontested testimony of EAI witness Michael Maulden in EAI's current rate case (Docket No. 15-015-U) is not compelling. McGarry Surrebuttal at 12, T. 286.

Mr. McGarry also disagrees with ARVEC witness Garrett's recommendation that the ECP Rider surcharge be collected on a kW basis rather than a kWh basis from customer classes with demand meters. He testifies that fulfilling the ECP requirements for NOx compliance may include energy-related charges. He again states the need for a full and complete opportunity for analysis before deciding on the cost allocation methodology. McGarry Surrebuttal at 13, T. 287.

Mr. McGarry testifies that Wal-Mart witness Chriss' discussion of the A&E 4CP allocator is confusing because it goes from expressing the need to allocate costs on peak demand to then arguing the A&E 4CP method is superior because it reflects demand, load factor, and energy considerations. Mr. McGarry explains that under Mr. Chriss' calculations and workpapers, the A&E 4CP allocator is a simple peak demand allocator and reflects none of the other considerations. McGarry Surrebuttal at 13-15, T. 287-89. Mr. McGarry testifies that this belies Mr. Chriss' assertion that the A&E 4CP method weighs peak demand and energy requirements. McGarry Surrebuttal at 15-16, T. 289-90.

STAFF – SURREBUTTAL TESTIMONY

Staff witness Matthews states that OG&E witness Rowlett agreed with most of his recommendations but disagreed with his adjustment to disallow property taxes on CWIP. Mr. Matthews points out that Mr. Rowlett contends that since the Commission's Tax Division uses CWIP information in calculating the Company's tax liability for Arkansas, property taxes should be included. Mt. Matthews also notes Mr. Rowlett's position that historically OG&E has not capitalized property taxes on CWIP, but it may capitalize property tax per the FERC Uniform System of Accounts. Mr. Matthews confirmed with OG&E that it will begin to capitalize property tax on the Low NOx Burner CWIP on January 1, 2016 and, as such, he continues to recommend exclusion of property tax from CWIP. Mr. Matthews states that he made changes to his calculation of property tax in his Direct Testimony which resulted in a reduction of total Company property taxes from $333,210 to $289,570. This results in a difference of $138,953 between his calculation and the Company's requested property tax expense of $428,523. This change decreases in total Arkansas Revenue Requirement shown in Mr. Matthews' Direct Testimony by $4,798 to $473,299. Matthews Surrebuttal at 2-4, T. 336-38.

Regarding production demand allocators, Mr. Matthews agrees with the updated Company analysis reflected in Mr. Rowlett's Rebuttal Exhibits DRR-1 and DRR-2 because the Company is now using production allocators and rate design that was approved in its most recent rate case. Matthews Surrebuttal at 4, T. 338.

Mr. Matthews disagrees with AG Witness Marcus regarding AFUDC. He states that Mr. Marcus views the return on CWIP as not normally recoverable on a cash basis in Arkansas, but states that under the provisions of Act 310 as amended by Act 1000,

utilities are authorized to include AFUDC in the Act 310 surcharge with the condition that the utility not capitalize or otherwise recover any AFUDC recovered through the surcharge in future base rate proceedings. Mr. Matthews recommends that the rate of return from the Company's most recent rate case be applied to CWIP and the resulting amount be included in the surcharge. Mr. Matthews does not agree with Mr. Marcus' position regarding recovery of an additional six months of accumulated depreciation or the use of an exact recovery rider, finding these recommendations to be inconsistent with Act 310. Matthews Surrebuttal at 4-7, T. 338-41.

Mr. Matthews disagrees with ARVEC Witness Garrett's proposals to 1) reject the surcharge on the basis that the amounts do not exceed a certain percentage of OG&E's revenues and 2) alter the allocation among the classes, because neither proposal, in his opinion, is consistent with Act 310. Mr. Matthews does agree with Mr. Garrett's proposal to separate the PL and the PL-TOU subclasses and to charge the classes that have a demand charge on a kW basis because the suggested treatment is consistent with the treatment in the last rate case. Mr. Matthews does not agree with Mr. Garrett that making the Company file a rate case to recover the remaining environmental compliance costs is necessary. Matthews Surrebuttal at 7-9, T. 341-43.

Mr. Matthews states that, similar to his disagreements with ARVEC witness Garrett, he disagrees with Wal-Mart witness Chriss' proposals to alter the allocation of OG&E's Act 310 surcharge among its customers and the proposal that the Company not be allowed to recover remaining environmental compliance costs through an Act 310 surcharge. He does agree with Mr. Chriss that rates be designed consistent with the design from the most recent rate case. Matthews Surrebuttal at 9-10, T. 343-44.

OG&E – SUR-SURREBUTTAL TESTIMONY

Mr. Rowlett agrees with Staff witness Matthews' revision to the property tax calculation to apply OG&E's approximately 1% rate to gross rather than net plant. In addition, Mr. Rowlett agrees with Staff's other Surrebuttal positions regarding AFUDC on CWIP and cost allocators and believes they are in the best interest of customers. Rowlett Sur-Surrebuttal at 2, T. 59.

Mr. Rowlett agrees with AG witness McGarry that to use a cost allocator as suggested by ARVEC witness Garrett and Wal-Mart witness Chriss is a huge shift in methodology that should be vetted in a rate case and not halfway through a surcharge case. Mr. Rowlett continues to recommend use of the allocators approved in OG&E's last rate case. Rowlett Sur-Surrebuttal at 2-3, T. 59-60.

Mr. Rowlett disagrees with the assertion of the AG, ARVEC, and Wal-Mart that recovering costs through a surcharge is in some way a "blank check." Mr. Rowlett states that the tariff specifically states only the "costs associated with Arkansas' retail jurisdictional portion of the annual revenue requirement for expenditures related to environmental compliance projects are to be recovered through the rider." OG&E is currently only asking for recovery of Low NOx Burners, which are necessary for environmental compliance. In addition, OG&E is subject to a prudence review of the costs in its next rate case. Rowlett Sur-Surrebuttal at 3, T. 60.

Settlement Agreement

The Settlement Agreement (Agreement) proposed by the Parties in the Joint Motion is intended to settle all outstanding issues in this Docket under the following terms:

A. The revenue requirement and surcharge calculation as set forth in the Surrebuttal Testimony of Staff witness William Matthews will be used to calculate the surcharge (Please see Agreement Attachment No. 1).
B. The cost allocation factors from OG&E's most recent rate case, Docket No. 10-067-U, will be used to allocate the costs of the surcharge among the rate classes.
C. The rates should be designed consistent with Staff witness Matthews' recommendations. As recommended by Mr. Matthews, the surcharge for the Power and Light class will be divided between the volumetric or kWh charge and the demand or KW charge.
D. OG&E will refund the amounts excluded from the revenue requirement calculation by Staff witness Matthews that have been collected through its Surcharge, including carrying charges at the overall rate of return from Docket No. 10-067-U, as a bill credit in the month following the Commission's order in this docket.
E. The parties will not oppose up to two updated Act 310 surcharge filings by OG&E associated with this project and filed in this docket with the first filing being made no sooner than six months from its May 8, 2015 filing consistent with the provisions of Act 310, subject to examination for accuracy; calculation of the revenue requirement and surcharge consistent with Mr. Matthews' recommendations; and including the use of the approved cost allocation factors from the previous rate case, Docket No. 10-067-U.
F. OG&E will file a general rate case application and supporting testimony no later than December 31, 2016.
G. Separate and apart from its general rate case application, OG&E commits to provide to the parties as a workpaper, on the filing date of its general rate case application in 2016, a cost of service study reflecting the Average and Excess 4CP cost allocation as well as a rate design for its largest customer class consistent with the provisions of Ark. Code Ann. §23-4-422. OG&E commits to develop those cost of service results and rate design for its largest class using the same revenue requirement and billing determinants underlying cost of service and rate design recommendations in its rate case application. OG&E is not obligated to support that cost allocation methodology and may advocate a different cost allocation methodology.

Mr. Rowlett on behalf of OG&E discusses the terms of the Agreement and provides a breakdown of the impact by customer class. Rowlett Settlement at 3-4, T. 64-65. He states that OG&E has committed to filing a rate case in 2016 and providing the settling parties a workpaper which provides a cost of service study reflecting the A & E 4CP cost allocation as well as a rate design for its largest customer class consistent with

the provisions of Ark Code. Ann. §23-4-422. Rowlett Settlement at 4, T. 65. He supports the Agreement as a reasonable compromise of the various positions of the parties that produces a balance of customer and shareholder interests and results in a fair, just, and reasonable outcome. Rowlett Settlement at 5, T. 66.

ARVEC witness Garrett supports the Agreement because it sets the revenue requirement at the amount calculated by Staff and addresses all of the major issues raised by ARVEC in the Docket. Garrett Settlement at 2, T. 127. The Agreement adopts ARVEC's recommendation to disaggregate the P&L class into the existing P&L-TOU and P&L non-TOU subclasses; adopts ARVEC's recommendation to collect the surcharge on a kW basis from those customers in classes with demand meters; satisfies ARVEC's recommendation that OG&E's costs be subject to a full rate case review; and addresses ARVEC's concern on cost of service allocation and rate design methodologies. Garrett Settlement at 3, T. 128. He recommends that the Commission accept the Agreement as reasonable. Garrett Settlement at 4, T. 129.

Wal-Mart witness Chriss recommends that the Commission approve the Agreement as a reasonable resolution of the issues in this Docket. He testifies that the Agreement is a result of arms-length negotiations between the parties and addresses Wal-Mart's issues. Chriss Settlement at 1, T. 192.

AG witness Kevin Lemley recommends that the Agreement be approved by the Commission as being in the public interest. Lemley Settlement at 3, T. 199. He notes that the AG initially opposed OG&E's revenue requirement calculation but points out that the majority of the AG's adjustment was for CWIP, which the AG now accepts as authorized by statute. Lemley Settlement at 4, T. 200. He testifies that the Agreement

addresses the AG's concern by: using Staff's revenue requirement; using the cost allocation methodology from OG&E's last rate case; and OG&E committing to filing a rate case in 2016. Lemley Settlement at 4-5, T. 200-01.

Staff witness Matthews testifies that the Agreement makes no changes to Staff's surrebuttal case and that additional provisions agreed to by the parties were necessary to settle the case and are reasonable. He supports the Agreement as reasonable and recommends its approval. Matthews Settlement at 3-5, T. 348-50.

Findings and Rulings of the Commission

Having considered OG&E's Application, the filed testimonies of all witnesses for OG&E, ARVEC, Wal-Mart, the AG, and Staff, and the proposed Settlement Agreement including testimony in support thereof, the Commission finds and orders as follows:

1. The Settlement Agreement proposed by the Joint Motion is reasonable and in the public interest. Therefore the Joint Motion is granted and the Settlement Agreement is approved.

2. OG&E is directed to make all necessary compliance filings and customer refunds with interest consistent with the Settlement Agreement.

3. No security deposit will be required of OG&E. However, OG&E shall implement an immediate one-time refund of any over-collections, with interest, as may be ordered by the Commission.

4. OG&E shall file subsequent Act 310 Notices and amendments to Rider ECP in the current Docket to enable Staff to review each subsequent Act 310 filing in the context of this filing.

5. This Order does not represent any final determination for general rate case purposes, and the Commission specifically reserves all such issues for final determination in OG&E's next general rate case proceeding.

BY ORDER OF THE COMMISSION.

This 2nd day of December, 2015.

Ted J. Thomas, Chairman

Elana C. Wills, Commissioner

Lamar B. Davis, Commissioner

I hereby certify that this order, issued by the Arkansas Public Service Commission, has been served on all parties of record on this date by the following method:

___U.S. mail with postage prepaid using the mailing address of each party as indicated in the official docket file, or
_V_Electronic mail using the email address of each party as indicated in the official docket file.

Cynthia Maxwell (acting)
Michael Sappington, Secretary of the Commission