

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF
OKLAHOMA GAS AND ELECTRIC COMPANY
FOR AN ORDER OF THE COMMISSION
AUTHORIZING APPLICANT TO MODIFY ITS
RATES, CHARGES, AND TARIFFS FOR
RETAIL ELECTRIC SERVICE IN OKLAHOMA

CASE NO. PUD2023-000087

**JOINT EXCEPTIONS OF OKLAHOMA INDUSTRIAL ENERGY CONSUMERS,
OKLAHOMA ATTORNEY GENERAL, AARP, AND FEDERAL
EXECUTIVE AGENCIES TO REPORT OF ADMINISTRATIVE LAW JUDGE**

Oklahoma Industrial Energy Consumers (“OIEC”), the Oklahoma Attorney General (“AG”), AARP, and the Federal Executive Agencies (“FEA”) jointly submit these Exceptions to the Report and Recommendations of the Administrative Law Judge (“ALJ”) filed on July 31, 2024 (“ALJ Report”).

INTRODUCTION

These exceptions address what is referred to as the 1 MW Competitive Load Issues, which are issues relating to Oklahoma Gas & Electric Company’s (“OG&E”) services provided under 17 Okla. Stat. § 158.25(E) to electric-consuming facilities in unincorporated areas with a connected load for initial full operation of 1,000 kw or greater (“1 MW customers” or “1 MW class”). The parties have settled all other issues.

Okla. Stat. tit. 17, § 158.25 is part of the Retail Electric Supplier Certified Territory Act, adopted effective September 10, 1971. 17 Okla. Stat. § 158.21, *et seq.*, Laws 1971, SB 198, c. 113. Since its adoption in 1971, a retail electric supplier is permitted to extend service to an electric consuming facility in an unincorporated area if the initial connected load for initial full operation of such electric consuming facility is to be 1,000 kw or greater. 17 Okla. Stat. § 158.25(E), Laws 1971, SB 198, c. 113, § 5. OG&E has initiated electric service to customers located outside of its certified territory in reliance upon § 158.25. OG&E witness Maxey testimony, Transcript, p. 96:10-15.

OG&E’s services to 1 MW customers has been addressed in OG&E’s last two general rate cases. In PUD 2018000140, the Commission ordered OG&E to prepare a cost of service study for the 1 MW class initially served after January 1, 2014, to be used in OG&E’s next general rate case. *See* Order No. 702531.¹ In OG&E’s next rate case, PUD 2021000164, OG&E agreed to file a cost of service study in the present rate case that would treat the 1 MW customers as a separate class of customers for cost allocation purposes. *See* Hearing Exhibit 1, Order No. 728277, Hearing Exhibit 1, pp. 7-8, ¶ 22.

OG&E prepared such a cost of service study for the 1 MW class and included it in its application package filed in this case. Maxey Direct Testimony, p. 20:17-18. However, OG&E

¹ The ALJ took judicial notice of Order No. 702531. Transcript, pp. 68:1 – 71:13.

chose not to use its 1 MW cost of service study to establish rates for the 1 MW class. Likewise, the ALJ recommends that OG&E's 1 MW cost of service study not be used, taking the position that it was not prepared for ratemaking purposes, but was only informational. The ALJ recommends that the Commission direct OG&E, for the third time, to prepare yet another cost of service study for the 1 MW class to be used in OG&E's next general rate case.

OG&E filed its Application in this case prior to the effective date of the amendment of § 158.25, which added a new subsection (F). Laws 2023, HB 2845, Ch. 95, § 1. The amendment went into effect on November 1, 2023. Subsection (F) requires electric service providers to establish and utilize rate tariffs applicable to the 1 MW class. The ALJ construes Subsection (F) as applying only to 1 MW customers who are first served by OG&E after November 1, 2023, and recommends that for its next rate case, OG&E prepare two rate tariffs for the 1 MW class—one for loads initially connected after November 1, 2023 and the other for loads connected prior to November 1, 2023.

Subsections (E) and (F) of Section 158.25 provide, in full:

E. The provisions of this act shall not preclude any retail electric supplier from extending its service after September 10, 1971, (1) to its own property and facilities, in an unincorporated area, and (2) subject to subsection D of this section, to an electric-consuming facility requiring electric service, in an unincorporated area, if the connected load for initial full operation of such electric-consuming facility is to be 1,000 kw or larger.

F. To achieve the purposes of efficient, cost-effective retail electric service without duplication of electric facilities and to avoid unfairly shifting costs to residential consumers, retail electric service providers are required to establish and utilize rate tariffs which are specifically applicable to a rate class of customers composed of electric consuming facilities being served in accord with the 1,000 kw size exception found in subsection E of this section and located outside the retail electric service provider's certified territory. These tariffs may be for a specific electric consuming facility or for a class of electric consuming facilities taking service under this provision. For retail electric service providers that are rate-regulated by the Commission, the rates supporting this rate class shall be determined in the rate-regulated service provider's most recent rate proceeding. Rates for this rate class shall be designed to recover (i) the costs of extending service to the competitive load of electric consuming facilities of 1,000 kw or larger located outside the retail electric service provider's certified territory; and (ii) the allocated share of other costs associated with providing service to the electric consuming facility. Such tariffs shall be cost-of-service based and shall not subsidize other rate classes or be subsidized by other rate classes. Unless costs of extending service to such a new load are collected from the customer, those costs shall be included in the cost of service study in the next rate proceeding. If the electric service provider, in whose certified territory the competitive load is seeking electric service, chooses in writing not to compete for said

competitive load or does not respond within thirty (30) days of receiving written notice by the customer, the terms of this subsection shall not apply.

EXCEPTIONS

1. OIEC, AG, AARP, and FEA request the Commission to issue a final order incorporating the proposed Findings of Fact and Conclusions of Law in Exhibit “A” attached hereto.² The Report and Recommendations of the ALJ are advisory only and not binding on the Commission and the Commission must reach its own conclusions. *State ex rel. Cartwright v. Oklahoma Natural Gas Company*, 1982 OK 11, ¶ 8, 640 P.2d 1341, 1345-1346; *Smith Cogeneration Mgmt., Inc. v. Corporation Commission*, 1993 OK 147, ¶ 14, 863 P.2d 1227, 1235. The Commission may modify, reverse, or affirm the ALJ’s findings of fact or conclusions of law. *Id.*; OAC 165:5-13-5(e).

2. The ALJ Report does not fairly present the evidence presented by the parties on the 1 MW Competitive Load Issues. The ALJ Report includes, verbatim, the entirety of OG&E’s Proposed Findings of Fact and Conclusions of Law pertaining to the 1 MW Competitive Load Issues, including OG&E’s subheadings and footnotes. *See* ALJ Report, pp. 26-31. OG&E included 30 paragraphs of proposed findings and conclusions pertaining to the 1 MW Competitive Load Issue at pages 10-14, ¶¶ 17-46 of its proposed findings and conclusions filed on July 1, 2024. The ALJ includes all 30 paragraphs of OG&E’s proposed findings verbatim, and added six words to the end of paragraph 34.³ The ALJ also added the findings appearing in paragraphs 35, 36, 44, 50, and 54.

3. As discussed below, the Commission should find that 17 Okla. Stat. § 158.25(F) applies to OG&E’s existing 1 MW customers in this case. Establishing a tariff in this case for OG&E’s 1 MW class does not constitute retroactive ratemaking, but is a prospective application of § 158.25(F).

4. Regardless of 17 Okla. Stat. § 158.25, the Commission should establish cost-based rates for OG&E’s 1 MW customers, consistent with the Commission’s traditional rate-making authority and to comport with the Commission’s duty to safeguard the public’s interest with regard to public utility rates. *Satellite Systems, Inc. v. Birch Telecom of Oklahoma, Inc.*, 2002 OK 61, ¶ 10, 51 P.3d 585, 589; *State v. Oklahoma Gas & Electric Co.*, 1975 OK 40, ¶ 20, 536 P.2d 887, 891. The Commission’s authority over public utility rates under Okla. Const. art. 9, § 18 and 17

² AARP was not a signatory to the Uncontested Joint Stipulation and Settlement Agreement and does not take a position with respect to paragraphs 5-8 of the proposed Findings of Fact and Conclusions of Law attached as Exhibit “A”.

³ OG&E’s findings adopted by ALJ:

OG&E’s proposed findings & conclusions, by paragraph no.	ALJ’s corresponding findings, by paragraph no.
17-31	20-34
32-38	37-43
39-43	45-49
44-46	51-53

Okla. Stat. §§ 152 and 153 includes the power to ensure that utility rates are just, reasonable, non-discriminatory and in the public interest. Okla. Const. art. 9, § 18; *Public Service Co. of Oklahoma v. State ex rel. Corporation Commission*, 1997 OK 145, ¶ 11, 948 P.2d 713, 717-718.

OG&E's 1 MW Cost of Service Study ("1 MW COSS") and Allocation of Costs to the 1 MW Class

5. OIEC, AG, AARP, and FEA except to the ALJ's findings that (1) OG&E's 1 MW COSS should not be used in this case; (2) OG&E's 1 MW COSS does not demonstrate that substantial subsidies are being provided to OG&E's 1 MW customers by OG&E's other customer classes; (3) direct assignment of transmission radials to 1 MW customers would be discriminatory and inappropriate; (4) there is no relevant cost data to utilize for establishing separate rates for the 1 MW class, and (5) OG&E should prepare a new 1 MW COSS and create a proposed tariff for use in OG&E's next rate case that divides the 1 MW customer class into two separate classes – OCT-1 for 1 MW customers connecting after November 1, 2023, and OCT-2 for customers connecting before November 1, 2023. *See* ALJ Report, pp. 15-17, 19-21, and 28-31, paragraphs 34-44 and 51-53.

6. The ALJ finds that OG&E's 1 MW COSS was not prepared for ratemaking purposes but solely for informational purposes and to demonstrate the impact on rates that direct assignment of costs to the 1 MW customers would have. The ALJ thus disregards the substantial evidence that OG&E's 1 MW COSS shows that significant subsidies are being provided to OG&E's 1 MW customers by OG&E's other classes of customers. *See* Hearing Exhibit 2; Hedrick Responsive Testimony, pp. 10:7-11:12; Garrett Responsive Testimony, p. 19:15-20; Tr., 22. 255:14-19, 261:19-262:5, 278:15-21. For example, OG&E's Large Power and Light Service Level 2 ("LPL-SL2") class is providing approximately \$3.5 million, or about 11.1% of OG&E's existing 1MW customers' base rates. Garrett Responsive Testimony, p. 20:1-11.

7. A cost of service study is used to determine the revenue requirement to be recovered from a utility company's jurisdictional and individual customer classes. OG&E witness Lauren Maxey Direct Testimony, p. 4:10-14. Maxey testified that costs in a cost of service study are allocated to customers based on the principle of cost-causation—determining what or who is causing costs to be incurred by the utility in providing service to its customers. Transcript, p. 93:5-21.

8. OG&E claims, and the ALJ found, that there is insufficient data of costs pertaining to OG&E's 1 MW class. This is contrary to Maxey's testimony that the costs that OG&E incurred to service customers outside of its service territory are known and identifiable; and that OG&E determined costs for this customer class from 2014 forward. Transcript, pp. 99:19-100:7. Further, OG&E's response to Data Request OAEC 1-02 shows the transmission and distribution investment costs that were required to extend service to the 1 MW customers. *See* Hearing Exhibit 8. It also shows the amount of these investments collected from the 1 MW customers as a Contribution in Aid of Construction ("CIAC"). *Id.* The response shows that OG&E spent \$59.127 million to extend service to these customers but collected only \$0.996 million in CIAC. *Id.* In other words, the 1 MW customers paid about 1.64% of their costs to connect service. Hearing Exhibit 8; M. Garrett Responsive Testimony, p. 23:4-11.

9. OG&E witness Maxey testified that costs should be assigned based on cost-causation. Maxey Direct Testimony, pp. 5:15-6:2, 9:13-18, 11:16-27. Maxey also testified that she agreed that customers who benefit from the use of the system should also bear their appropriate cost responsibility for the system. Transcript, p. 98:4-9. Nevertheless, OG&E did not directly assign costs of providing service to its 1 MW customers.

10. OG&E does not directly assign the actual costs of the transmission radials which connect those SL2 substations to the grid although those costs are known to OG&E. *See* Hedrick Responsive Testimony, pp. 15:4-9, 18:10-14, 19:9-17; Transcript, pp. 194:6-24, 208:24-209:12, 266:9-10; Gorman Responsive Testimony, p. 13:16-18; Hearing Exhibits 5, 8, and 10; Maxey Rebuttal Testimony, p. 15:17-20. The ALJ finds that directly assigning radial transmission costs to the 1 MW customers would be discriminatory and inappropriate because OG&E does not directly assign costs to its other customers. However, the evidence in this case is that OG&E already directly assigns certain costs to other customers. OG&E directly assigns the actual costs of Service Level 2 substations to SL2 customers because SL2 customers are served directly from a substation. Transcript, p. 16:11-17. *See also* Transcript, pp. 91:19-24, 98:10-19. Moreover, no undue discrimination would exist by directly assigning radial transmission costs to OG&E's 1 MW customers because, unlike for its other customer classes, OG&E does not have a duty or obligation to serve the 1 MW customers. Transcript, p. 95:1-6. Finally, because these costs are incurred to provide service only to one customer, they should be borne by that customer or class of customers. Maxey Direct Testimony, pp. 5:15-6:2, 9:13-18, 11:16-27; Transcript, p. 98:4-9.

11. OG&E has sufficient data from its records to assign actual investment costs for radial transmission to the 1 MW customers. Hedrick Rebuttal Testimony, p. 18:10-14; Hearing Transcript, pp. 99:19-101:10, 194:6-2, 242:2-3; Hearing Exhibits 8 and 10. OG&E is able to track the actual radial transmission plant balance for the 1 MW customers and OG&E knows the exact number of radial transmission miles for each customer. Hedrick Responsive Testimony, p. 17:1-4; Transcript, p. 194:6-24; Hearing Exhibit 10. In fact, OG&E reports the actual radial transmission plant balance annually to FERC. *Id.*

12. In its 1 MW COSS, OG&E did not assign actual, direct radial investment costs to the 1 MW class, but used a formula based on the number of miles times an average cost per mile. Maxey Testimony, Tr., pp. 83:6-84:4, 85:5-10. Because these costs are incurred to benefit only a specific class of OG&E's customers, OG&E should correct its 1 MW COSS to include actual radial-line transmission costs to the 1 MW customers, rather than the average costs. OG&E's use of average rates to assign radial transmission costs is flawed. Hedrick Responsive Testimony, p. 14:19-15:3; Garrett Responsive Testimony, p. 26:8-23. OG&E's use of average ratemaking results in an allocation of radial transmission plants of only 8.6% of the actual transmission plant investment by OG&E to serve the 1 MW customers. Hearing Exhibit 7; Hedrick Responsive Testimony, p. 16:11-13.

13. OAC 165:35-25-2 provides that a utility may make an extension of its distribution system when its gross anticipated revenue from the extension will provide the utility with an adequate return upon its investment. OG&E witness Schwartz testified that OG&E utilizes an allowable formula to ensure that OG&E earns a fair return on its investment. Transcript, pp. 175:25-176:2. As demonstrated by the 1MW COSS, OG&E has not earned an adequate return upon its extension line investments made for 1 MW customers.

14. The spread of the revenue deficiency associated with the 1 MW class should be allocated to guard against excessive increases for such class, while moving customers' rates toward accurate cost of service. Gorman Responsive Testimony, p. 8:6-15. To prevent an excessive increase to the 1 MW class, while moving such class toward cost of service, the revenue allocation for the 1 MW class and all other classes shall be allocated in accordance with paragraph 14 at page 4 of the Uncontested Joint Stipulation and Settlement Agreement so that there will be no more than a 12.8% base rate increase for the 1 MW class.

15. OG&E should be required to update its cost of service study referenced in OG&E witness Maxey's Direct Testimony filed on December 29, 2023, using the revenue requirement set forth in the Uncontested Joint Stipulation and Settlement Agreement. The Company's updated cost of service study should include a separate cost of service study class for the 1 MW customer class, which shall include all customers included in the 1 MW cost of service study referenced in Maxey's Testimony. Maxey testified that the 1 MW cost of service study referenced in her Direct Testimony is accurate and correct. Transcript, p. 67:14-25.

16. OG&E should revise its OCT Tariff developed for 1 MW customers, introduced as Hearing Exhibit 6, p. 1, under "Availability", to provide that it applies to all existing 1 MW customers that OG&E has added since 2014, as well as new customers.

17. In its next rate case, OG&E should provide an amended allowable tariff consistent with Commission Rule OAC 165:35-25-2 that will ensure that OG&E adequately recovers the costs of extending service to new customers in addition to an adequate return of OG&E's investment.

Application of 17 Okla. Stat. § 158.25(F) to rates established in this case for OG&E's 1 MW customers served both before and after November 1, 2023.

18. OIEC, AG, AARP, and FEA except to the ALJ's findings in paragraphs 25 and 28 through 32 of the ALJ Report that 17 Okla. Stat, § 158.25(F) applies only prospectively to new loads and new customers who signed contracts after November 1, 2023.

19. The application of 17 Okla. Stat. § 158.25(F) to OG&E's current customers is not a retroactive application of the statute. Its application would not modify or affect any past rates but would affect only the rates established in this case, on a go forward basis. Ratemaking is a legislative proceeding that establishes future rates. *Matter of Application of Oklahoma Gas & Elec. Co.*, 2018 OK 31, ¶¶ 13-15, 417 P.3d 1196, 1201-1202. Therefore, Subsection F applies prospectively to rate cases filed on or after its effective date of November 1, 2023. OG&E filed its Application in this case on December 29, 2023.

20. In *Houck v. Hold Oil Corp.*, 1993 OK 167, ¶ 16, 867 P.2d 451, 457, which is relied upon by the ALJ, the Court held "whether to give a statute prospective or retroactive effect should be controlled by the fundamental or transcendent canon of statutory construction, to wit: to give effect to the legislative design." Applying § 158.25(F) to current customers in establishing rates furthers the legislative intent of § 158.25(F), which includes preventing other classes of customers from subsidizing the costs of service provided to the 1 MW class. The purpose of the subsection F is reflected in the language of the statute, which is to achieve "efficient, cost-effective retail electric

service . . . and to avoid unfairly shifting costs to residential customers.” Subsection F requires retail electric suppliers to establish and utilize tariffs that are designed to recover the costs of extending service and the allocated share of other costs associated with providing service to the 1 MW customers. Subsection (F) mandates that such tariffs be cost-of-service based “and shall not subsidize other rate classes or be subsidized by other rate classes” (emphasis added). As discussed previously, the evidence shows that significant subsidies are being provided to OG&E’s 1 MW customers by other classes of customers.

21. The ALJ relies heavily on § 158.25(E), which provides that the retail electric supplier may extend its service into unincorporated areas after September 10, 1971 if the connected load for initial full operation is to be 1,000 kw or greater. *See* ALR Report, pp. 9-10. The ALJ states that this indicates the legislative intent that § 158.25(F) apply prospectively only by the use of the words “initial full operation.” However, § 158.25(E) has been in existence since the September 10, 1971 effective date of the Retail Electric Supplier Certified Territory Act and OG&E has been providing service to customers under § 158.25(E) since prior to November 1, 2023.⁴ OG&E witness Maxey testimony, Transcript, p. 96:10-15.

22. The ALJ also relies heavily on *Houck*, stating that the holding in *Houck* “directly correlates to the issue at hand.” ALJ Report, p. 11. *Houck*, however, does not support the ALJ’s findings. In *Houck*, the Court held that the Surface Damages Act did not apply to an oil and gas well that was completed before the Act went into effect. However, the Court re-affirmed its prior holding in *Davis Oil Co. v. Cloud*, 1986 OK 73, 766 P.2d 1347, that the Surface Damages Act applies to wells drilled under oil and gas leases that were entered into prior to the adoption of the Act. *Houck*, ¶¶ 12-13, 20, 867 P.2d at 456, 458. The Court stated that the Act changed the common law, under which an oil and gas operator was liable for surface damages only if the damage resulted from negligence or if the operations affected more than a reasonable area of the surface, unless the lease provided otherwise. The Court held:

In that no person has a vested interest in any rule of the common law we held the common law defense to liability of reasonable use was susceptible to being changed or modified by the Legislature in the exercise of the state’s

⁴ Subsection E was amended by HB 2845 only to clearly state the original effective date of § 158.25, and to update the statutory reference. HB 2845 reflects these clarifications as shown by the following screenshot:

E. The provisions of this act shall not preclude any retail electric supplier from extending its service after ~~the effective date of this act~~ September 10, 1971, (1) to its own property and facilities, in an unincorporated area, and (2) ~~subject to Section 5 subsection D of this section~~, to an electric-consuming facility requiring electric service, in an unincorporated area, if the connected load for initial full operation of such electric-consuming facility is to be 1,000 kw or larger.

An amendment that clarifies the original enactment applies retroactively. *Matter of Protest of Hare*, 2017 OK 60, ¶¶ 12, 17, 398 P.3d 317, 322-323.

police power and, thus, the Act's abolition of the defense was not an impermissible impairment of contract.

Id., ¶ 13, 867 P.2d at 456.

23. *Houck*, by analogy, supports the application of § 158.25(F) to existing customers, with respect to applications to modify rates filed after November 1, 2023, such as the Application filed by OG&E in this case. A rate proceeding is legislative in nature. *Southwestern Bell Telephone Co. v. Oklahoma Corporation Commission*, 1994 OK 38, ¶¶ 8, 14, 873 P.2d 1001, 1005-1006. The Commission has the authority to adopt rates, for future application, that modifies prior rates or that are contrary to rates agreed upon in a contract or previously set by a municipality. *Southeastern Oklahoma Development & Gas Authority v. Oklahoma Corporation Commission*, 1980 OK 16, ¶¶ 6, 8, 11, 606 P.2d 574, 576-577. *See also Turpen v. Oklahoma Corp. Comm'n*, 1988 OK 126, ¶ 76, 769 P.2d 1309, 1332 (“In general, rate regulation is prospective. Future rates are set on the basis of forecasts of income, expenses and profits.”).⁵

24. The ALJ acknowledges that the statute must be read as a whole to determine the legislative intent and the ALJ states at page 7 of the Report that legislative intent cannot be determined by an isolated phrase. However, the ALJ relies on isolated phrases in § 158.25(F) and in Rule 165:35-11-4(b) to determine that § 158.25(F) does not apply to existing 1 MW customers. *See* ALJ Report, p. 27, ¶¶ 25, 26, 29. The notice provision in § 158.25(F) is a procedural requirement for new loads that are added after November 1, 2023; that provision, as well as the § 158.25(F) as a whole can be given effect by applying § 158.25(F) prospectively to all 1 MW customers from and after November 1, 2023, and applying the notice provision to new customers. The Legislature expressed its intent that § 158.25(F) apply to current customers by providing that “retail electric service providers are required to establish and utilize rate tariffs which are specifically applicable to a rate class of customers composed of electric consuming facilities being served in accord with the 1,000 kw size exception found in subsection E . . .” (emphasis added). This language demonstrates that the amendment is intended to apply to current customers being served under the exception provided in subsection E.

25. Rule 165:35-11-4(b), adopted to implement 17 Okla. Stat. § 158.25(F), requires retail electric service providers to establish rate tariffs that are specifically applicable to the class of 1 MW customers. It does not define such class as consisting of only new contracts signed from and after November 1, 2023, but applies to the class of 1 MW customers. The rule further specifies the procedure regarding new contracts with 1 MW customers. The rule does not restrict the application of the statutory amendment. The Rule does not provide that § 158.25(F) applies only to new contracts. To the extent the Rule is interpreted to prohibit application of § 158.25(F) to current customers, it is contrary to § 158.25(F), and the statute controls over the rule. *See Terral Telephone Co. v. Oklahoma State Board of Equalization*, 2023 OK 51, ¶ 23, 529 P.3d 190, 197.

⁵ *Cf. Thompson Bldg. Co. v. Oklahoma Tax Comm'n*, 1942 OK 428, ¶ 13, 192 Okla. 1, 132 P.2d 962, 964 (“No authority is cited in support of this contention, and we take it to be an undisputed rule that no property owner or taxpayer has a vested interest in the scheme or method of taxation in effect at any given time. The power of legislatures to change schemes and rates of taxation from time to time is undoubted. If this was not true we would have as many different tax schemes and rates as property owners, and no uniformity or equality could exist, or as an alternative the legislatures would be without power to change.”).

Joint Exceptions to ALJ Report of OIEC, AG, AARP and FEA
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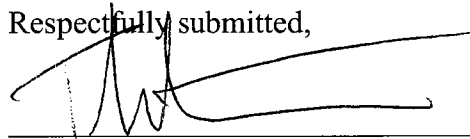
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Further, neither the rule nor the statute prevents the Commission from acting to eliminate the subsidies being provided to the 1 MW class and for the Commission to comply with its constitutional and statutory obligation to establish rates that are fair and reasonable. *See Horvat v. State, ex rel. Dep't of Corr.*, 2004 OK CIV APP 59, ¶ 10, 95 P.3d 190, 192 (“If an administrative rule or a statute conflicts with the Constitution, it must give way.”).

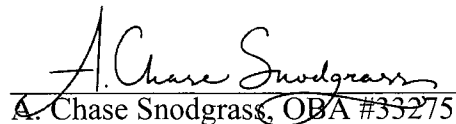
CONCLUSION

For the above reasons, OIEC, the AG, AARP and the FEA respectfully request that the Commission reject the Report and Recommendations of the ALJ regarding the 1 MW Competitive Load Issues and instead issue a final order incorporating the Proposed Findings of Fact and Conclusions of Law in Exhibit “A” attached hereto.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on the 12th day of August 2024, a true and correct copy of the above and foregoing was emailed, addressed to:

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. *THE COMMISSION FINDS that it has jurisdiction of this case pursuant to Okla. Const. art. 9, § 18 and 17 Okla. Stat. §§ 151 and 152.*
2. *THE COMMISSION FURTHER FINDS that notice of the hearing on the merits in this case has been given as required by law, the Commission rules and the provisions of Order No. 740764 issued in this case on March 7, 2024.*
3. *THE COMMISSION FURTHER FINDS that individual notice to customers has been accomplished in substantial compliance with Order No. 74-764, an Affidavit of Service has been filed of record in this case, and that opportunity for public comment has been provided at the hearing and by mail and electronic mail.*
4. *THE COMMISSION FURTHER FINDS that the parties executed and submitted to the Commission an Uncontested Joint Stipulation and Settlement Agreement ("Joint Stipulation"), filed with the Commission on June 12, 2024.⁶*
5. *THE COMMISSION FURTHER FINDS that the Joint Stipulation, attached hereto as Attachment A, is recommended to be approved in all respects except as modified below regarding the 1 MW Competitive Load Issue.*
6. *THE COMMISSION FURTHER FINDS that in approving the Joint Stipulation, the Commission accepts the settlement as a whole and the facts and circumstances as presented in this Case. Accordingly, the Commission makes no policy decisions or endorsement of recovery methodologies to be relied upon or to be viewed as binding in future proceedings. The Joint Stipulation does not constitute precedent nor is it an admission by any party thereto.*
7. *THE COMMISSION FURTHER FINDS that no party has opposed the Joint Stipulation.*
8. *THE COMMISSION FURTHER FINDS that the Stipulation is in the public interest and the provisions of the Stipulation are fair, just, and reasonable.*
9. *THE COMMISSION FURTHER FINDS that the Joint Stipulation does not address the 1 MW Competitive Load Issue.*
10. *THE COMMISSION FURTHER FINDS that costs should generally be assigned based on cost causation, as acknowledged by OG&E. See Maxey Direct Testimony, pp. 5:15-6:2, 9:13-18, 11:16-27; Transcript at 98, 4-9.*
11. *THE COMMISSION FURTHER FINDS that OG&E's 1 MW COSS included in its Application Package shows that significant subsidies are being provided to OG&E's 1 MW customers by OG&E's other customer classes.*
12. *THE COMMISSION FURTHER FINDS that these subsidies should be eliminated in order to provide fair and reasonable rates, as mandated by Okla. Const. art. 9, § 18, as well as*

⁶ AARP was not a signatory to the Uncontested Joint Stipulation and Settlement Agreement but has not opposed it.

by 17 Okla. Stat. § 158.25(F).

13. THE COMMISSION FURTHER FINDS that application of 17 Okla. Stat. § 158.25(F) for the future rates established in this case to OG&E's 1 MW customers that have been served by OG&E since January 1, 2014, does not constitute impermissible retroactive application of § 158.25(F).

14. THE COMMISSION FURTHER FINDS that OG&E's 1 MW COSS shows OG&E is greatly under-collecting revenue from the 1 MW Class.

15. THE COMMISSION FURTHER FINDS that the costs of extending service to the 1 MW customers has been subsidized by OG&E's other customers for years. Transcript, p. 215:12-20; Hearing Exhibit 2. In the future, the OG&E must earn an adequate return on its investments made for new 1 MW customers, as required by OAC 165:35-25-2. In its next base rate case filing, OG&E should amend its allowable formula to ensure the recovery of the costs of its investments to serve new 1 MW customers, along with an adequate return on such investments.

16. THE COMMISSION FURTHER FINDS that OG&E has sufficient data from its records to assign actual investment costs for radial transmission to the 1 MW customer class, and OG&E should directly assign the actual costs for radial transmission to the 1 MW customer class.

17. THE COMMISSION FURTHER FINDS the spread of the revenue deficiency associated with the 1 MW class should be allocated to guard against excessive increases for such class, while moving customers' rates toward accurate cost of service. Gorman Responsive Testimony, p. 8:6-15. To prevent an excessive increase to the 1 MW class, while moving such class toward cost of service, the revenue allocation for the 1 MW class and all other classes shall be allocated in accordance with paragraph 14 at page 4 of the Joint Stipulation so that there will be no more than a 12.8% base rate increase for the 1 MW class.

18. THE COMMISSION FURTHER FINDS that OG&E should be required to update its cost of service study referenced in OG&E witness Maxey's Direct Testimony filed on December 29, 2023, using the revenue requirement set forth in the Joint Stipulation. The Company's updated cost of service study should include a separate cost of service study class for the 1 MW customer class, which shall include all customers included in the 1 MW cost of service study referenced in Maxey's Testimony. Maxey testified that the 1 MW cost of service study referenced in her Direct Testimony is accurate and correct. Transcript, p. 67:14-25.

19. THE COMMISSION FURTHER FINDS that OG&E should revise its OCT Tariff developed for 1 MW customers, introduced as Hearing Exhibit 6, p. 1, under "Availability", to provide that it applies to all existing 1 MW customers that OG&E has added since 2014, as well as new customers.

20. THE COMMISSION FURTHER FINDS that in its next rate case, OG&E should provide an amended allowable tariff consistent with Commission Rule OAC 165:35-25-2 that will ensure that OG&E adequately recovers the costs of extending service to new customers in addition to an adequate return of OG&E's investment.