

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

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IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY)
FOR AN ORDER OF THE COMMISSION) CAUSE NO. PUD 201500273
AUTHORIZING APPLICANT TO MODIFY ITS)
RATES, CHARGES, AND TARIFFS FOR RETAIL)
ELECTRIC SERVICE IN OKLAHOMA)

RESPONSIVE TESTIMONY
OF
JOHN A. BARRETT
ON BEHALF OF
CITIZEN POTAWATOMI NATION

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CORPORATION COMMISSION
OF OKLAHOMA



CAUSE NO. PUD 201500273

RESPONSIVE TESTIMONY

OF

JOHN A. BARRETT

I. Introduction

Q. Please state your name, position and business address.

A. My name is John A. Barrett. I am Tribal Chairman of the Citizen Potawatomi Nation, a Federally Recognized Native American Tribe headquartered in Shawnee, Oklahoma. Our tribal office complex is located at 1601 Gordon Cooper Drive, Shawnee, Oklahoma 74801.

Q. Please summarize the history and composition of Citizen Potawatomi Nation.

A. The Potawatomi are among the Algonquian-speaking people who occupied the Great Lakes region from prehistoric times through the early 1800s. During the Removal Period of the 1830s, the Mission Band, today known as the Citizen Potawatomi Nation were forced to leave their homelands in the Great Lakes and then eventually moved to Oklahoma Territory to purchase reservation lands in the late 1800s. The Nation was a party to more than forty treaties, including the 1867 Treaty with the Potawatomi, in which it was recognized as a sovereign nation under the protection of the laws, jurisdiction, and government of the United States of America.

The Nation's original reservation in Indian Territory encompassed 900 square miles with boundaries described as an area spanning from north of the Canadian River, South of the North Canadian River, East of the Indian Meridian, and west of the Seminole County Line, Oklahoma.

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Since the original reservation purchase, land runs and other pressures have dispersed tribal members throughout the United States. This unfortunate diaspora crippled the cultural and linguistic ties that the Citizen Potawatomi had with their Great Lakes area ancestors, causing severe ceremonial, linguistic and economic losses. However, in the past three decades, CPN tribal leadership has worked diligently to recover from these damages while still moving the tribe into the 21st century by establishing a modern governmental system that unites tribal members no matter where they live.

Today, the CPN is considered one of the most progressive Native governments in a state of 39 federally recognized tribes; it possesses the managerial, technical, and administrative capability to provide general government services to Native American community residents in economic/business development, social and health service delivery, and educational assistance. Under sound, consistent and innovative leadership, the Tribe continues to strive to meet its long-range goals of economic development and self-sufficiency.

About 12,000 tribal members live in Oklahoma, while the remainder of the 32,500 members are located throughout the United States, plus in at least five foreign countries.

II. Citizen Potawatomi Nation’s Government, Services, and Business Enterprises

Q. Could you describe the structure of the Citizen Potawatomi Nation’s government?

A. The Nation is governed under the Constitution of the Citizen Potawatomi Nation, as originally adopted in 1938 and amended in 1985, and subsequently amended in 2007. The 2007 constitutional reform effort has been featured

1 among the exhibits of the Smithsonian Institution's National Museum of the
2 American Indian as an example of excellence in self-governance. The
3 Constitution provides the framework for our three-branched government.
4

5 The first of these, the Executive branch, includes the Chairman, Vice-Chairman,
6 and Secretary-Treasurer. These three elected officials oversee day-to-day
7 operations and administration of tribal government. These individuals also serve
8 in the tribal legislature. I have served as Chairman since 1985. Linda Capps has
9 served as an elected official since 1987 and has served as Vice-Chairman since
10 1990. D. Wayne Trousdale has served as Secretary-Treasurer since 2002.
11

12 In addition to the three members of the Executive branch, the Citizen Potawatomi
13 Legislative branch includes 13 additional elected members. The 16 total
14 members of the legislature are elected from all citizens of the Citizen Potawatomi
15 Nation, both in Pottawatomie County and nationally. All tribal legislative powers
16 reside with these 16 elected members of the legislature. In 2007, a Constitutional
17 resolution replaced a five-member "Business Committee" with the current 16-
18 member Legislature, which includes the five members of the previously important
19 "Business Committee" of CPN. Eight of the legislative seats are based in
20 Oklahoma, while the remaining eight districts of approximately 2000 tribal
21 citizens are spread over the rest of the 49 U.S. states. In addition to other duties,
22 the Legislature has exclusive authority to appropriate tribal funds, create tribal
23 management positions or departments, and certain contracts on behalf of CPN,
24 including retaining legal counsel on behalf of the Nation. Similar to the Executive
25 branch of the Citizen Potawatomi Nation, members of the Legislature are elected
26 to office in elections open to all eligible and qualified members of the Nation.
27 Many of the functions of the Legislative branch are carried out by eight different
28 committees. Policy making responsibilities are given to the Legislative
29 committees, ranging from matters such as environmental management, to
30 taxation, to arts and education, while all managerial authority resides in the
31 executive branch.

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The Citizen Potawatomi Judicial branch is the third component of the CPN Government. The Judicial branch of the Citizen Potawatomi Nation operates the Nation's Tribal Court to provide enforcement of tribal laws, justice among tribal members, and protection of tribal sovereignty. Judicial officers are appointed by the Tribal Chairman, confirmed by the Tribal Legislature and voted upon by the tribal electorate. The Tribal Court deals largely with tribal members and employees, as well as other Native Americans and non-Indian litigants who consent to its jurisdiction. The Tribal Court is made up of three District Court judges and an appellate court of seven Supreme Court Justices headed by a Chief Justice. The Citizen Potawatomi Nation Tribal Court typically adjudicates a range of legal matters and issues ranging from civil disputes, to criminal charges, to Indian Child Welfare and juvenile matters, as well as many civil actions, such as divorce proceedings, guardianship hearings, and marriage certification.

Q. What sorts of services does the Citizen Potawatomi Nation provide to its members?

A. The economic prosperity of the Nation has been used to provide services to its members and to the surrounding community.

CPN Health Services are partially funded through self-governance agreements with Indian Health Services. The bulk of health services are tribally funded from tribal revenue. These programs are open to all Native Americans and CPN employees, through two full-service clinics with ten physicians and four dentists.

Our CPN elderly service program provides meals and social activities to Native Americans within the CPN jurisdiction, plus other services, including transportation, housing, and in-home medical assistance.

1 CPN social and human services activities include job placement programs,
2 emergency services for families and children, child care, youth mentoring,
3 nutritional services for pregnant women, nutritional services for children,
4 emergency assistance for utility bills, food and college preparation services.

5
6 The House of Hope seeks to eliminate family violence by providing victims and
7 the community with appropriate, effective services and programs.

8
9 The Indian Child Welfare Program monitors tribal court cases, state court cases,
10 adoptions and subsidized adoptions. The ICW office also provides home-based
11 services, foster care, prevention services, counseling, parenting skills, respite
12 care and crisis interventions.

13
14 Youth ages 12 to 17 years are eligible to receive prevention services with a focus
15 on alcohol, drugs, life skills, and school success. All programs are voluntary and
16 services provided include a tribal youth council, in-school prevention programs,
17 an afterschool program, and summer camps. Parenting education classes for
18 parents of adolescents are also offered, as well as referrals to additional
19 community resources.

20
21 The Child Development Center is a three-star facility licensed by Indian Health
22 Services for up to 400 children. The facility offers two infant rooms, two toddler
23 rooms, a two-year-old program, three-year-old program, a four and five-year-old
24 program and a before and after school program.

25
26 All programs offered by Employment and Training target the economically
27 disadvantaged, unemployed and under-employed. Services are rendered on an
28 un-met need basis with available funding. Counselors are available to assist with
29 resume writing, job referrals, interview tips, job placement and other employment
30 related services.

31

1 The Citizen Potawatomi Nation Women Infant, Children nutrition program
2 provides supplemental nutritious foods, health and nutrition education, referrals,
3 and nutrition and breastfeeding counseling for eligible pregnant, breastfeeding,
4 and postpartum women as well as infants and children under the age of five
5 years. The program is designed to positively impact prenatal nutrition, infant birth
6 weight, iron deficiency anemia and early childhood nutrition and cognitive
7 development. WIC complies with all applicable Federal and state agency
8 mandates. CPN WIC serves approximately 14,890 participants at its three
9 permanent agency / clinic sites and three mobile satellite sites in central
10 Oklahoma.

11
12 CPN awards thousands of scholarships for educational assistance. Most
13 recently, the Nation prepaid \$5 million in scholarships to St. Gregory's University
14 in Shawnee, Oklahoma. Higher education scholarships exceed \$6,000,000
15 annually.

16
17 The Citizen Potawatomi Nation Housing Authority offers a variety of programs to
18 assist in providing decent, safe and sanitary housing to its tribal members.
19 These programs include low income housing, down payment and closing cost
20 assistance, the Home III construction program, which enables Citizen
21 Potawatomi Nation tribal members to build a new home, an acquisition program
22 for the purchase of existing homes from the CPNHA inventory and emergency
23 home repair loans to low income Native Americans, who reside within the CPN
24 jurisdiction, with a priority given to CPN tribal members.

25
26 The Citizen Potawatomi Nation provides a transportation service to Shawnee &
27 Tecumseh area residents free of charge. This service helps those 18 years of
28 age and older to get to their medical appointments, to go shopping, to gain their
29 GED, to apply for jobs, to be able to participate in programs such as the meals
30 program at the Senior Center and more. This program is available to Native
31 Americans and non-natives.

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The Office of Environmental Health increases the health status of Native Americans to the highest level by providing safe drinking water systems and sanitary sewage and solid waste disposal services.

Rural Water District 3 is the largest rural water district in Pottawatomie County. RWD 3 serves almost 1,000 customers and its service area includes 60 percent of the Pottawatomie County with more than 285 miles of line. RWD 3 serves the towns and schools of Asher, Wanette and Dale. RWD 3 is also a partial water supplier to Tecumseh. CPN rescued the failing water district in 2007 and has expanded the infrastructure of the system to provide both improved water quality and quantity in rural Oklahoma. While doubling the number of customers and water treatment capacity, a second water plant is now part of the district and three new towers have been built to improve service. This service is available to Native Americans and non-natives. The CPN has invested more than \$8 million in the Rural Water District.

The Citizen Potawatomi Nation Tribal Police Department is responsible for protecting and patrolling the 900 square mile area that is within the Citizen Potawatomi Nation jurisdictional boundary. The Cross-deputation program with the Pottawatomie County Sheriff's Office also allows Citizen Potawatomi Nation police officers to have jurisdiction in Pottawatomie County. The tribal police are CLEET certified, BIA Academy trained officers than meet all standards for Oklahoma law enforcement.

The department also provides a full-service dispatch center in conjunction with the Pottawatomie County Sheriff's Department and the Tribal Police departments of the Kickapoo, Sac and Fox, and Absentee Shawnee Indian Nations. In 2015, CPN began providing dispatch services for all emergency services in Pottawatomie County with the exception of McLoud and Shawnee. This service is available to Native Americans and non-natives.

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Q. Please summarize the Citizen Potawatomi Nation’s business enterprises.

A. In the interest of brevity, this is a summary all of the Nation’s businesses. The Nation owns and operates the Grand Casino Hotel & Resort at the intersection of Interstate 40 and State Highway 102. The Grand Casino Hotel & Resort consists of not only a 125,000 square foot casino, but also a 262-room hotel, a 2,500 seat event center, four on-site restaurants and related retail shopping and service operations, a spa, a fitness center, over 15,000 square feet of meeting space, a business center, and catering services. It employs over 900 workers. The majority are non-tribal members.

The Nation has invested in and developed additional enterprises on its tribal lands. Thus, located on tribal lands outside the grounds of the Grand Casino Hotel & Resort, the Nation has created, owns and operates: FireLake Golf Course, Firelake Bowling Center, FireLake Mini-Putt Golf, FireLake Designs (specializing in screen printed garments), a tribal AM and FM radio stations, FireLake Entertainment Center (a separate casino), FireLake Arena (a 5100 seat event venue), FireLake Discount Foods (which is vertically integrated with CPN-owned agricultural enterprises), FireLake Express Grocery, FireLake Corner (Convenience) Store, FireLake Pizza, FireLake Fry Bread Taco, and FireLake Grand Travel Plaza. The Nation will soon open a third grocery store, FireLake Express Grocery Store No. 2, near McLoud, Oklahoma.

In addition, the Nation owns the First National Bank and Trust Company, with seven branches statewide, including a local branch on tribal land.

The Nation also permits businesses to operate on tribal lands under leases authorized by the HEARTH Act of 2012. Such lessees include the BDC Gun Room, a retail firearms store and indoor shooting range, and Quail Ridge

1 Sporting Clays, an outdoor shooting range. The Nation has invested in the
2 development of the Iron Horse Industrial Park, an international trade zone
3 located on tribal lands. The Nation looks forward to further industrial
4 development.

5
6 **Q. What sorts of contributions has the Citizen Potawatomi Nation made to**
7 **the development of neighboring communities?**

8
9 A. Beyond the positive economic impact of the Nation's growing businesses on
10 neighboring communities, the Nation regularly and substantially contributes to
11 these communities in many forms, summarized below.

12
13 As I have previously testified, the Nation provides a myriad of programs and
14 services to both its members and to non-Natives in the form of health care, job
15 placement programs, emergency services for families and children, child care,
16 youth mentoring, nutritional services for pregnant women, nutritional services for
17 children, emergency assistance for utility bills and food, college preparation
18 services, educational contributions, arts and culture programs, wildlife
19 preservation, recreational facilities and programs, roads and other infrastructure,
20 law enforcement services, emergency management and disaster relief services,
21 and utility services.

22
23 The Nation also makes regular and substantial monetary contributions to local
24 charities and local governments and cooperates with such charities and
25 governments to improve the quality of life in the communities surrounding the
26 Nation. These contributions exceed \$2,000,000 annually.

27
28 Dr. Joseph Kalt, a professor emeritus of International Political Economy at the
29 John F. Kennedy School of Government at Harvard University, recently
30 calculated that the Nation's public investments in the neighboring communities
31 from 2010-2015 totaled \$44 million.

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Q. What is the economic impact of Citizen Potawatomi Nation?

Professor Kalt also calculated that in 2014 alone, the Nation employed 2,086 individuals and made a total economic impact of \$540.6 million. In 2014, the Nation also made direct and charitable expenditures in the amount of \$35.6 million, which likewise contributed to the local economy.

Q. Earlier in your testimony you mentioned economic development opportunities CPN is considering. What are some examples you can share with us?

A. We have future projects ranging from improvements to the FireLake Golf Course complex, expansion of the Softball Complex, and adding a Childcare Center at the Grand Casino Complex, but the most promising economic development opportunity is the creation of the Iron Horse Industrial Park near the Tribal Complex. Since the federal government granted Indian tribes new legislative authority commonly referred to as the HEARTH Act, the tribe now has the authority to process land leases without going through a lengthy Bureau of Indian Affairs approval process long term, greatly expediting the approval of leases for homes and small businesses on CPN properties held in trust by the United States. These leases can be used for leasehold mortgages. This will enhance the financing and marketing of the Iron Horse Industrial Park for businesses and industry that will provide jobs for both tribal members and non-Indian citizens who live in this area.

III. OG&E's Request for Review of Rates

Q. What is Citizen Potawatomi Nation's interest in this case?

1 A. The Nation is a large user of electricity. Its members are also users of
2 electricity. From our tribal housing complex to our largest facility, the Grand
3 Casino and Hotel Complex, our billings averaged more than 24.6 million kilowatt
4 hours of electric usage resulting in 2015 annual billings in excess of \$2,250,000.
5 We are mindful of electric energy usage but are always seeking ways to better
6 manage that major expense. This proposed rate increase, an additional \$92
7 million, will impact our business operations and will also impact our members
8 living in the OG&E service area and our patrons at the various businesses on the
9 Nation's lands.

10
11 The Nation has already examined a number of energy efficiency measures to
12 address energy usage. For example, we have instituted the use of spray foam
13 insulation in a number of our buildings. This insulation method provides a better
14 thermal package, reducing the loss of heating and cooling resources which has
15 reduced energy usage.

16
17 We also have adopted the use of geothermal systems in the Grand Casino
18 complex and in the tribal housing project. In addition, a number of units in our
19 housing project have been equipped with solar roof-top panels as and added
20 energy efficiency measure. We are the largest tribal user of ground-source
21 geothermal in the State.

22
23 We continue to look at other energy efficiency measures related to usage.
24 Recently we completed a system wide audit of lighting for all our facilities. It is
25 our intent to examine the retrofit of all lighting for our building with advanced LED
26 systems in the future.

27
28 Beyond the Nation's interest in obtaining a reasonable rate for electricity, the
29 Nation has several other concerns.

30

1 First, upon information and belief, Chickasaw Nation Industries, Choctaw Nation,
2 and Cherokee Nation Businesses are paying rates approximately 70% lower than
3 that paid by the Citizen Potawatomi Nation. The Citizen Potawatomi Nation
4 believes that this is fundamentally unfair.

5
6 Next, our current rate of \$0.061 per kWh is excessive for a consumer of our size

7
8 Next, OG&E has been steadfast over the last ten years in its refusal to treat the
9 Nation in the same way as a municipal franchise. With the explanation that the
10 Oklahoma Corporation Commission refuses to allow them to do so, this
11 treatment would include payment for the use of tribal rights of way, a special rate
12 for public safety lighting of streets and public areas, and collection of tribal
13 franchise taxes. The Oklahoma Corporation Commission should recognize the
14 ability of a Tribal Utility Authority to function in a manner similar to a municipal
15 franchise.

16
17 Next, OG&E continues to apply the franchise tax from the City of Shawnee to
18 both the Nation's electric bills and the Nation's HEARTH Act lessees' electric
19 bills, and neither the Nation nor these lessees are located in Shawnee's
20 franchise area, and if they were, there are not properly executed rights-of-way
21 and easement agreements between OG&E and the Citizen Potawatomi Nation.

22
23 Finally, our current efforts to secure renewable energy purchases through wind
24 facilities are inhibited by excessive demand charges from OG&E for leveling,
25 which will force us to seek the assistance of a market participant in the
26 Southwest Power Pool at great expense.

27
28 **Q. Does OG&E supply all of the electricity consumed by Citizen**
29 **Potawatomi Nation facilities?**

1 A. No. While OG&E supplies the bulk of the electricity consumed on tribal lands,
2 we also are provided electric service by Canadian Valley Electric Cooperative
3 and a municipal system owned by the City of Tecumseh. Many of our members
4 live in OG&E's service area but others live in areas served by electric
5 cooperatives or by municipal electric systems.

6

7 **Q. What are options an Indian Tribe might consider to help manage its**
8 **utility costs?**

9

10 A. Sovereignty provides an Indian Tribe with alternatives that may not be
11 available to other entities. Since we are not bound by conventional territorial
12 rules and regulations, we can examine a number of different ways to select our
13 provider of electricity or to supplement our electric supply using new and
14 innovative techniques.

15

16 The simplest approach would be to continue work with the utility, in this case
17 OG&E, to provide our electric needs. Other Indian tribes in Oklahoma have
18 continued to work with their existing electric provider but have also created a
19 tribally approved mechanism, the tribal utility authority, to diversify their electric
20 energy supply. This has resulted in substantially lower prices.

21

22 Using a business entity created by a legislative act, these tribes have created a
23 Tribal Utility Authority which works with electric suppliers to deliver the power
24 needed for their facilities. Primarily directed to electric usage at tribally owned
25 buildings, offices and other enterprises, a utility authority is charged with the
26 management and operation of this activity. To that end, the Nation has created
27 the Citizen Potawatomi Nation Tribal Utility Authority. It will manage the Nation's
28 utility operations and coordinate those supplemental activities.

29

30 **Q. What is a Tribal Utility Authority (TUA)?**

31

1 A. A tribal utility authority is a governmental entity created by an Indian tribe's
2 governing body. In Oklahoma, Tribal Utility Authorities have been created by
3 several tribes. The statutory language of each tribe's authorizing legislation
4 provides the structure under which they operate. For example, the Osage
5 Nation's legislation provides the Authority's regulatory jurisdiction and identifies
6 electricity, gas, water, sanitation, telecommunications wastewater treatment and
7 renewable energy for regulation and oversight while others are more limited.

8
9 In 1998, the Federal Energy Regulatory Commission (FERC) disclaimed
10 jurisdiction over a tribal utility authority, wholly owned by a federally recognized
11 Indian tribe, because the tribe's TUA performs inherent government functions
12 and thus falls within the exemptions provided by Part II, Section 201 of the
13 Federal Power Act. Thus, FERC recognized, the Tribe is an instrumentality of
14 the "United States, a State or any political subdivision of a state" and performs an
15 inherent government function, where the funds will be utilized by the tribe on
16 behalf of the government and in performance of governmental functions and
17 activities. Following that decision, FERC issued a disclaimer over a filing by
18 Chickasaw Nation Industries, Inc. of Oklahoma seeking permission to make
19 wholesale sales, using the same rationale.

20
21 **Q. What other activities related to the provision of utility services can be**
22 **managed by a Tribal Utility Authority?**

23
24 A. As you can tell from my earlier testimony, we want to examine ways to better
25 conduct our business and utilize the savings that will come from more efficient
26 operations to provide our members with better services, including health care
27 and education.

28
29 We want to examine better use of our generation facilities. Pursuant to the
30 National Indian Gaming Commission's regulations, back up generation is a
31 requirement for operation of our gaming facilities. We currently have sufficient

1 generation in place to satisfy those requirements. But, there may be better ways
2 to utilize this generation by examining the right fuel mix for their operation and
3 even looking at a more centralized generation facility to serve the gaming
4 operations and also other tribal complex facilities. In addition, we are looking at
5 how this generation could be used to provide stand-by, back-up or supplemental
6 power as a part of the new Iron Horse Industrial Park.

7
8 We are also examining energy delivery options. Adding a micro-grid system to
9 serve our facilities will be examined to determine if that enhances our delivery of
10 electricity to our facilities. While this is a concept that has not yet been used in
11 our state, other states are beginning to recognize that having the ability to
12 purchase, for example, wind energy from a developer and transmitting the
13 energy on the grid to a wholesale substation near or at your business location
14 might provide lower electric costs by use of a micro-grid. We may also lower
15 costs by using battery stored electricity at peak times.

16 Duplicating a utility's existing system is not an efficient use of resources but if a
17 customer like CPN could be provided access to the incumbent utility's distribution
18 facilities to supplement electric energy it has purchased or generated, while
19 paying the same distribution charges the utility charges itself, we think this
20 concept can reduce customer expense while providing revenue to the utility for
21 the use of its facilities that are now in place.

22
23 **Q. Do you think Oklahoma will see the need to change the way we**
24 **distribute electricity in the future?**

25 A. Yes. The natural gas industry and the communications sector have already
26 undergone major changes in recent years. I think similar changes will occur for
27 the electric industry because alternative sources of electric energy are now
28 becoming competitive. A distributed energy resource, for example, in the form of
29 a small natural gas generating system that can be located adjacent to a large
30 consumer's office, manufacturing facility, or Casino and Resort will provide
31 savings for those customers. Wind resources continue to be built in our state

1 that provide opportunities to purchase long term supplies of electricity at prices
2 that are competitive. Solar roof-top and commercial solar systems are going to
3 be a part of Oklahoma's future because the price is already competitive in
4 Oklahoma and across the country. We want to be a leader in these technology
5 advancements for our Tribe but also for our state.

6

7 **Q. Has OG&E been a reliable supplier of electricity?**

8

9 A. Reliability is only one element a business needs to consider. We have
10 numerous outages, by weather or other reasons. Any business has to manage
11 its costs to continue to be successful, and the Nation also has to consider its
12 operating expenses so that it can continue to provide essential services to its
13 members and the surrounding community. We want to work with OG&E and
14 other utility providers to obtain reliable utility services at a reasonable cost in
15 order to avoid the very substantial investment necessary to retain a market
16 participant separate from OG&E to purchase electricity from the Southwest
17 Power Pool, or be forced to build a substation connected to a FERC regulated
18 power line and become an LSE (Load Serving Entity). All of this can be avoided
19 by a reasonable accommodation of rates and access.

20

21 **Q. Does that conclude your testimony?**

22 A. Yes it does. Thank you for the opportunity to appear before you on this very
23 important matter.

24

25