

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY)
SEEKING A DECLARATORY ORDER FINDING) DOCKET NO. 17-030-U
ITS MUSTANG GENERATION PLANT)
MODERNIZATION PLAN IS CONSISTENT)
WITH THE PUBLIC INTEREST)**

DIRECT TESTIMONY OF SARAH PAGE TACKER

on behalf of

THE OFFICE OF ARKANSAS ATTORNEY GENERAL LESLIE RUTLEDGE

November 15, 2017

DOCKET NO. 17-030-U

DIRECT TESTIMONY OF SARAH PAGE TACKER

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

A. I am Sarah Tacker. I am Senior Assistant Attorney General in the Public Protection Department of the Office of Arkansas Attorney General Leslie Rutledge. My business address is 323 Center Street, Suite 200, Little Rock, Arkansas 72201.

Q. Please describe your background and qualifications.

A. I received a B.A. degree from the University of Central Arkansas in 1999. I attended the William H. Bowen School of Law at the University of Arkansas at Little Rock, and graduated with a J.D. in 2002.

After graduation from law school, I was engaged in the private practice of law from 2002 through 2006. I began work at the Attorney General's Office in 2006 as an Assistant Attorney General in the Consumer Utilities Rate Advocacy Division ("CURAD") and retained that position until April 2010 when I was promoted to Senior Assistant Attorney General for the Consumer Protection Division. During my time in CURAD, I represented the interests of Arkansas utility customers in proceedings before the Arkansas Public Service Commission and handled several utility proceedings. In addition, I attended numerous trainings, programs, seminars, and forums regarding regulated utilities.

From 2010 until February 2015, I oversaw the Attorney General's Consumer Protection Division. My responsibilities included oversight of the division's staff and coordination of its consumer protection efforts. The division educates the consumer public, mediates informal disputes between consumers and businesses in the form of consumer

1 complaint resolution, investigates violations of Arkansas's consumer
2 protection laws, and engages in enforcement actions when necessary.
3 From February 2015 through May 2017, I served as Deputy Attorney
4 General for the Public Protection Department. Beginning in May 2017,
5 I was named Senior Assistant Attorney General for PPD supervising
6 the CURAD and Environmental Divisions.

7 **Q. On whose behalf are you appearing?**

8 A. I am appearing on behalf of the Office of Arkansas Attorney General
9 Leslie Rutledge's Consumer Utilities Rate Advocacy Division ("the
10 AG").

11 **Q. What topic do you address in this testimony?**

12 A. I propose a remedy to the Commission for Oklahoma Gas and Electric
13 Company's ("OG&E") violation of the Arkansas statute requiring
14 Commission pre-approval prior to construction of a new generation
15 facility. As stated below, the AG's other witness, Mr. Kevin Woodruff,
16 states his view as to the reasonableness of OG&E's Mustang
17 Generation Plant Modernization Plan ("Plan"). Because of procedural
18 irregularities that are unique to Arkansas, however, I would only
19 recommend that the Plan be approved as consistent with the public
20 interest as long as the remedy proposed herein is adopted by the
21 Commission.

22 **Q. What is OG&E's Mustang Generation Plant Modernization**
23 **Plan?**

1 A. The Plan retires Mustang Units 1-4 and replaces the capacity with
2 seven natural gas-fired, quick start, combustion turbines (“CTs) at the
3 existing site.¹

4 **Q. What Arkansas statute governs the construction of new**
5 **electric generating facilities outside of the state?**

6 A. The applicable statute is found at Ark. Code Ann. §§ 23-18-104. It
7 requires that no “utility subject to the jurisdiction of the Arkansas
8 Public Service Commission shall commence construction of any power-
9 generating facility to be located outside of the boundaries of this state
10 without the express written approval of the commission,”² and thus
11 applies to OG&E’s planned replacement of Mustang Units 1-4 with
12 seven natural gas-fired, quick start, CTs in this proceeding. The
13 statute further provides that failure to abide by this requirement
14 “shall constitute grounds for disallowance by the commission for all
15 costs and expenses associated with the construction and subsequent
16 operation of the facility.”³

17 **Q. Why is this provision important to this proceeding?**

18 A. As admitted by Company witness Donald Rowlett, OG&E began
19 construction of the CTs in August of 2016 without first obtaining
20 advanced approval from the Commission pursuant to this statute.⁴ Not
21 only did OG&E commence construction prior to obtaining written
22 Commission approval, all seven of the CTs will be in service before the
23 APSC has had an opportunity to rule on this application.⁵

24 **Q. What is the AG’s position regarding this statutory violation?**

¹ OG&E’s Application, p. 2, ¶ 4.

² Ark. Code Ann. § 23-18-104 (a).

³ Ark. Code Ann. § 23-18-104 (b).

⁴ Direct Testimony of Donald Rowlett, page 11, line 27.

⁵ *Id.*, page 15, line 3.

1 A. As you can see from the testimony of AG witness Kevin Woodruff, the
2 AG believes that the construction of the CTs is reasonable under the
3 circumstances. Mr. Woodruff's testimony, however, does not address
4 the statutory violation. It is the AG's opinion that the Commission
5 must assess some sort of ratemaking adjustment upon OG&E, to be
6 borne by its shareholders, as an acknowledgement that it failed to
7 follow the unique requirements of Arkansas law regarding plant
8 construction. Further, a ratemaking adjustment, which would run to
9 the benefit of Arkansas ratepayers, will at least partially compensate
10 ratepayers for the opportunity they were denied in not allowing for
11 Commission review of the application prior to commencement of
12 construction. Importantly, the AG wants to demonstrate to other
13 jurisdictional utilities in Arkansas that strictly conforming with
14 Arkansas statutes is in the best interest of Arkansas ratepayers and
15 that the Commission will impose appropriate ratemaking remedies
16 upon any company which fails to follow such requirements.

17 **Q. What remedy does the AG recommend?**

18 A. In consultation and agreement with the Commission's General Staff,
19 the AG recommends a credit to ratepayers of \$300,000 a year for four
20 years, with a total monetary assessment of \$1.2 million. The exact
21 mechanism through which this credit should flow will be a topic of
22 discussion among the parties if the Company is amenable to the AG
23 and Staff's recommendation.

24 **Q. Does this conclude your testimony?**

25 A. Yes. Thank you.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: /s/ M. Shawn McMurray
M. Shawn McMurray , Ark. Bar No. 92250
Assistant Attorney General
Shawn.McMurray@ArkansasAG.gov
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-1053

CERTIFICATE OF SERVICE

I, M. Shawn McMurray, do hereby certify that on the 15th day of November, 2017, I provided a copy of the above and foregoing to the parties to be served in this docket.

/s/ M. Shawn McMurray
M. Shawn McMurray