

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL OF NEW ) CASE NO. PUD2023-000038  
GENERATION CAPACITY PURSUANT )  
TO 17 O.S. SECTION 286(C) ) ORDER NO. 738566

HEARING: October 19, 2023, in Concourse Theater, Suite C50 (live and video teleconference)  
Will Rogers Memorial Office Building  
2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105  
*Before* Carly M. Ortel, Administrative Law Judge

APPEARANCES: William L. Humes, Jack P. Fite, Deborah R. Thompson, and Kenneth A. Tillotson, Attorneys *representing* Oklahoma Gas and Electric Company  
Michael L. Velez, Michael S. Ryan, Justin Cullen, and Jonathon Herndon, Deputy General Counsels *representing* Public Utility Division, Oklahoma Corporation Commission  
A. Chase Snodgrass, Deputy Attorney General, K. Christine Chevis and Ashley N. Youngblood, Assistant Attorneys General *representing* Office of Attorney General, State of Oklahoma  
Jack G. Clark, Jr. and Ronald E. Stakem, Attorneys *representing* OG&E Shareholders Association  
Thomas P. Schroedter, Attorney *representing* Oklahoma Industrial Energy Consumers  
Madison B. Miller, Attorney *representing* Oklahoma Sustainability Network  
Rick D. Chamberlain, Attorney *representing* Walmart Inc.  
J. David Jacobson, Attorney *representing* The Petroleum Alliance of Oklahoma

**FINAL ORDER ADOPTING JOINT STIPULATION  
AND SETTLEMENT AGREEMENT**

The Corporation Commission (“Commission”) of the State of Oklahoma, being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Application of Oklahoma Gas and Electric Company (“OG&E” or “Company”) in which OG&E is seeking preapproval of new generation capacity pursuant to Section 286(C), Title 17, of the Oklahoma Statutes.

**I. PROCEDURAL HISTORY**

On May 31, 2023, OG&E filed its Application seeking preapproval of new generation capacity. The procedural history is incorporated herein and attached hereto as Attachment “A”.

## II. NOTICE

On July 11, 2023, the Commission issued Order No. 735663 in the present Case granting OG&E's Motion to Determine Notice Requirements and Approve Form of Notice. The Commission found that because OG&E's Application in this Case seeking preapproval to construct two combustion turbines at OG&E's Horseshoe Lake site and additional approval of a recovery rider to recover the costs of construction would possibly result in a change to customer rates, Okla. Admin. Code § 165:5-7-51(b) applies, and required notice of hearing of the Application to be published once each week for two consecutive weeks at least fifteen (15) days prior to the Hearing on the Merits in a newspaper of general circulation published in each county in which are located utility customers affected thereby. The Commission ordered OG&E to publish notice of the Application in specified newspapers once each week for two consecutive weeks at least fifteen (15) days prior to the Hearing. In addition, the Commission ordered that direct notice should be given to OG&E customers.

At the Prehearing Conference held October 17, 2023, Counsel for OG&E referenced "Publication Affidavits" filed in this Case that contain proof of publication for all newspapers for which notice was to be published pursuant to Order No. 735663. Counsel also represented that direct notice to customers had been accomplished in the time period set forth in Order No. 735663.

## III. SUMMARY OF THE EVIDENCE

### OG&E

Kimber L. Shoop, Director of Regulatory Affairs, testified on behalf of OG&E regarding the Joint Stipulation that was reached between OG&E, OG&E Shareholders Association, PUD, the AG, and The Petroleum Alliance of Oklahoma and filed on October 10, 2023. Parties that did not sign the Agreement, but do not oppose that Joint Stipulation, include OIEC, Walmart, and OSN.

Mr. Shoop testified that on May 31, 2023, OG&E filed its Application and Direct Testimony in this Case and requested approval of OG&E's construction of the Horseshoe Lake Combustion Turbines ("HL CTs") under Okla. Stat. tit. 17 § 286(C). The Company requested that the Commission find: (i) there is a need for the HL CTs and those generating units will be used and useful when placed in service by OG&E; (ii) OG&E properly considered reasonable alternatives through a series of RFPs; and (iii) the proposed Generation Capacity Rider ("GCR") should be implemented for recovery of the costs associated with the HL CTs after those generating units are placed in service. Shoop Settlement Test. 2:19-26.

Mr. Shoop stated that after the filing of Rebuttal Testimony, the parties to the Case met virtually on three separate days to discuss settlement. Discussions began on September 28, 2023, and were continued on October 5, 2023. The final discussion occurred on October 10, 2023, and the Joint Stipulation was executed and filed on that same day. Shoop Settlement Test. 3:3-6.

In his oral testimony, Mr. Shoop provided details about the Integrated Resource Plan ("IRP") that demonstrated the need for the HL CTs and the series of Requests for Proposals that followed the IRP to identify the lowest reasonable cost option for meeting that need. Mr. Shoop

also testified about the details of the HL CTs and the benefits of constructing the new CTs at the Horseshoe Lake Generating Facility, including being able to retire the old legacy steam units at that site and replace them with new, quick start CTs.

Mr. Shoop then provided explanation as to the substantive provisions of the Joint Stipulation as follows:

With regard to Section II.A of the Joint Stipulation, Mr. Shoop explained that the Stipulating Parties agree that sufficient evidence exists in the record for the Commission to find that OG&E has demonstrated a need for generating capacity. Also, he testified that the Stipulating Parties agree that the record reflects OG&E engaged in a series of competitive bidding processes to assess the most reasonable alternatives for meeting that capacity need. He stated that these competitive bidding processes showed that the best option for meeting OG&E's capacity need is the construction of two GE 7F Class combustion turbines at the Horseshoe Lake Power Plant with a summer rated capacity of 448 MWs and an estimated in-service date of late 2026. He explained that the Stipulating Parties agree that the Commission should approve OG&E's HL CTs under Okla. Stat. tit. 17 § 286. Shoop Settlement Test. 3:8-18.

With regard to Section II.B of the Joint Stipulation, Mr. Shoop explained that the Stipulating Parties agree the Generation Capacity Rider, or GCR (attached to the Joint Stipulation as Exhibit 1), should be approved by the Commission to allow OG&E to recover certain costs associated with the HL CTs as those units are placed in service. He stated that the Stipulating Parties agree that OG&E shall only be able to recover a return, at the Company's most recently approved weighted average cost of capital, on the following costs through the GCR:

- (a) OG&E's original bid amount of approximately \$249 million for the costs associated with the purchase of the HL CTs through a contract with General Electric as the Original Equipment Manufacturer, and the costs associated with the balance of plant, engineering, procurement and construction contracts between OG&E and a joint venture between Sargent & Lundy and TIC – The Industrial Company.
- (b) Costs incurred by the Company in addition to the costs of purchasing the equipment and third-party costs of construction ("Owner's Costs"). These Owner's Costs shall include internal labor, construction oversight, engineering oversight to ensure design adequacy and technical compliance with specifications, project management, legal costs and performance testing. The Stipulating Parties agree that OG&E's recovery of Owner's Costs through the GCR shall be limited to a cap of \$26 million.
- (c) Allowance for Funds Used During Construction ("AFUDC") and capitalized Property Taxes associated with the costs specified in Section II.B(a) and (b) above.<sup>1</sup>

Mr. Shoop also explained that the Stipulating Parties agree that OG&E shall also include in the GCR depreciation expense, property tax expense, and investment tax credits associated with

<sup>1</sup> Shoop Settlement Test. 3:20-4:14.

the capital investments specified in Section II.B(a), (b), and (c) above. Shoop Settlement Test. 4:12-14.

With regard to Section II.A of the Joint Stipulation, Mr. Shoop explained that OG&E estimates that the total capital investment for the HL CT project will be approximately \$330.5 million (excluding AFUDC, associated taxes and Long Term Service Agreement (“LTSA”) costs). However, for purposes of the Joint Stipulation, the Stipulating Parties agreed to limit cost recovery through the GCR to approximately \$275 million plus AFUDC and associated property taxes. Instead, the Stipulating Parties agree that any costs incurred by OG&E in excess of that \$275 million (or any non-fuel O&M expenses) shall be reviewed for prudence in a general rate case in order to be recovered from customers. OG&E must demonstrate the reasonableness of any capital investment above \$275 million in a general rate case after the HL CTs are placed in service. Mr. Shoop testified that the Stipulating Parties also agree that OG&E shall not recover any non-fuel O&M expenses associated with the HL CTs through the GCR. Shoop Settlement Test. 4:23-5:6.

At the time of Hearing, on cross-examination, Mr. Shoop testified that AFUDC was estimated to be approximately \$45.4 million, depending on how long it takes to put the HL CTs in service, and capitalized property taxes to be approximately \$3.5 million. Tr. Video 18:25-18:52.

Mr. Shoop further testified that in its Application, OG&E requested contingency costs which are not apart of the Joint Stipulation. If it comes to pass that contingency costs are incurred, OG&E would have to justify those costs in a general rate case. Tr. Video 20:17-20:35.

With regard to Section II.A of the Joint Stipulation, Mr. Shoop explained that the Stipulating Parties agreed to a term of the GCR that shall expire upon the earlier of: (i) 18 months after the in-service date of the HL CTs; or (ii) implementation of new rates following the next general rate case in which the in-service HL CTs are included in rate base. Mr. Shoop also explained that OG&E also agreed to file a general rate case to include the Horseshoe Lake CTs in base rates no later than one year after the in-service date of the HL CTs. Shoop Settlement Test. 4:16-21.

Mr. Shoop then explained that in Section II.E, the Stipulating Parties agreed that the GCR should recover costs from Power and Light and Large Power and Light customers pursuant to a demand or \$/kW charge rather than through an energy or \$/kWh charge. Shoop Settlement Test. 5:8-11.

Mr. Shoop testified that, based on the terms of the Joint Stipulation, the estimated impact on an average residential customer will be \$1.82 per month in 2026 after the HL CTs go into service and are providing benefit to customers. This is a reduction from the customer impact from the recovery requested in the Application, which was \$2.21 per month. Shoop Settlement Test. 5:13-17.

Based on the above considerations, Mr. Shoop recommended the Commission approve the Joint Stipulation, as OG&E has demonstrated the need for additional generating capacity and, through a series of competitive bidding processes, that the HL CTs are the lowest reasonable cost

option for customers. Mr. Shoop stated his opinion that this settlement is fair, just, and reasonable and in the public interest. Shoop Settlement Test. 5:19-24.

## **PUD**

Trent A. Campbell, Programs Manager, testified on behalf of PUD regarding the Joint Stipulation that was reached between the Stipulating Parties.

In his prefiled testimony, Mr. Campbell testified that, on May 31, 2023, OG&E filed its Application for preapproval of new generation capacity pursuant to Okla. Stat. tit. 17 § 286(C). In its Application, OG&E made the following requests to the Commission:

1. That the Commission find that need for the HL CTs exists; and therefore, they are considered used and useful and subject to this Commission's cost-recovery rules;
2. OG&E properly considered reasonable alternatives to the resources evaluated through the IRP and series of RFPs;
3. A cost recovery rider should be approved to allow OG&E to recover the costs of the HL CTs after each of those units is placed in service and providing benefits to customers; and
4. Granting such other and further relief as the Commission may determine to be fair, just, and reasonable. Campbell Settlement Test. 4:11-5:5.

Mr. Campbell testified that, following robust discussions concerning the relief sought by OG&E, the Company, PUD, Attorney General, OG&E S/H and PAO signed a Joint Stipulation which, although non-unanimous, was unopposed by the non-signatory parties, and was filed on October 10, 2023. The non-signatories to this Joint Stipulation are OIEC, WalMart, and OSN. Campbell Settlement Test. 5:6-11.

Mr. Campbell testified that the resultant Joint Stipulation is non-unanimous, un-opposed, and contains input from all parties after robust settlement negotiations. Furthermore, the settlement is supported by testimony filed by some of the parties to the Case. This is a comprehensive settlement, and represents a fair, just, and reasonable agreement to address the issues raised in this Case and is in the public interest. Campbell Settlement Test. 5:13-17.

Mr. Campbell testified that Section II of the Joint Stipulation contains the general recommendations of the Stipulating Parties. Campbell Settlement Test. 6:5-6.

Mr. Campbell testified that Part A of the Joint Stipulation states:

The Commission should find that OG&E has a demonstrated need for generating capacity and that OG&E engaged in a series of competitive bidding processes to assess the most reasonable alternatives for meeting that capacity need. These competitive bidding processes showed that the best option for meeting OG&E's capacity need is the construction of two GE 7F Class combustion turbines at the Horseshoe Lake Power Plant with a summer rated capacity of 448 MW s and an estimated in-service date of late

2026 (“HL CTs”). The Stipulating Parties agree that the Commission should approve OG&E’s HL CTs under 17 Okla. Stat. § 286.<sup>2</sup>

Mr. Campbell testified that PUD agrees with Part A of the Joint Stipulation. Per the Responsive Testimony and accompanying recommendation of PUD Witness Jason Chaplin, OG&E’s load forecast was reasonable. Comparing the Company’s load forecast to its existing generation resources and including Southwest Power Pool’s (“SPP”) 12% planning reserve margin, OG&E will have a capacity need starting in 2023. Also, due to SPP changing the Planning Reserve Margin in July from 12% to 15%, this increases OG&E’s capacity need 180 MW-190 MW’s each year. Campbell Settlement Test. 6:19-7:12.<sup>3</sup>

Mr. Campbell testified that Part B of the Joint Stipulation states:

That the Commission should approve the Generation Capacity Rider (“GCR”) that allows OG&E to recover certain cost [*sic*] associated with the HL CTs as those units are placed in service. The Stipulating Parties agree that OG&E shall only be able to recover a return, at the Company’s most recently approved weighted average cost of capital, on the costs discussed later through the GCR:

a) OG&E’s [*sic*] shall be permitted to recover the original bid amount of approximately \$249 million for the costs associated with the purchase of the HL CTs through a contract with General Electric, [*sic*] as the Original Equipment Manufacturer and the costs associated with the balance of plant, engineering, procurement and construction contract between OG&E and a joint venture between Sargent & Lundy and TIC - The Industrial Company.

b) OG&E shall be permitted to recover costs incurred by the Company in addition to the costs of purchasing the equipment and third-party costs of construction (“Owner’s Costs”). These Owner’s Costs shall include internal labor, construction oversight, engineering oversight to ensure design adequacy and technical compliance with specifications, project management, legal cost [*sic*], and performance testing. The Stipulating Parties agree that OG&E’s recovery of Owner’s Costs through the GCR shall be limited to a cap of \$26 million.

c) OG&E shall be allowed to recover a return, [*sic*] at the Company’s most recently approved weighted average cost of capital for Allowance for Funds Used During Construction (“AFUDC”) and capitalized Property Taxes associated with the costs specified in Section II.B(a) and (b) above. Additionally, the Stipulating Parties agree that OG&E shall also include in the GCR depreciation expense, property tax expense, and investment tax credits associated with the capital investments specified in Section 11.B(a), (b), and AFUDC and capitalized Property Taxes.<sup>4</sup>

<sup>2</sup> Campbell Settlement Test. 6:8-17.

<sup>3</sup> Citing Chaplin Resp. Test. 10:16-11:5.

<sup>4</sup> Campbell Settlement Test. 7:4-35.

Mr. Campbell testified that PUD agrees with all the provisions of Part B of the Joint Stipulation. PUD believes Part B to be fair, just, reasonable, and in the public interest. The GCR Rider is designed so that the recovery of costs can begin the month following the HL CTs being placed into service for the benefit of customers in late 2026. This ensures cost recovery begins when the HL CTs are used and useful for customers. The GCR Rider also promotes gradualism by phasing in the HL CTs into rates between rate cases. Campbell Settlement Test. 8:2-6.

Mr. Campbell testified that, additionally, as cited in his Responsive Testimony, Okla. Admin. Code § 165:35-38-5(d) states:

Once submitted, the Self-build Proposal may not be modified by the soliciting utility. If a Self-build Proposal is selected and approved by the Commission, the amount the soliciting utility shall recover through the rate base or other cost-recovery methods without additional Commission approval is limited to the total project cost identified in the Self-build Proposal.<sup>5</sup>

Mr. Campbell testified that PUD believes that OG&E's recovery should be limited to the original bid price of the HL CT project. Campbell Settlement Test. 8:12-13.<sup>6</sup>

Mr. Campbell testified that Owner's Costs are costs that will be incurred by OG&E in addition to the costs of purchasing the equipment and third-party costs of construction. These Owner's Costs include items such as internal labor, construction oversight, engineering oversight to ensure design adequacy and technical compliance with specifications, project management to ensure timely, on-budget compliance with the contracts and technical specifications, legal fees related to negotiating the contracts and to handle disputes arising during construction, and performance testing after the HL CTs are constructed in order to validate performance to the design and technical specifications. Mr. Campbell testified that, as he recommended in his Responsive Testimony, the Owner's Costs should be capped at \$26 million. As these costs are estimates, capping the costs will mitigate any additional risk to ratepayers. Campbell Settlement Test. 8:14-9:3.<sup>7</sup>

Mr. Campbell testified that Part C of the Joint Stipulation states:

OG&E shall not recover any non-fuel O&M expenses associated with the HL CTs through the GCR. Also, in the event OG&E's HL CT project costs exceed the amounts specified in Section II.B of this Joint Stipulation, the Stipulating Parties agree that such excess costs or contingency costs shall not be eligible for recovery through the GCR. Any costs incurred by OG&E in excess of the amount contained in Section II.B of this Joint Stipulation (or any non-fuel O&M expenses) shall be reviewed for prudence in a general rate case in order to be recovered from customers.<sup>8</sup>

<sup>5</sup> Campbell Settlement Test. 8:7-12.

<sup>6</sup> Citing Campbell Resp. Test. 8:8-17.

<sup>7</sup> Citing *Id.* at 9:18-25.

<sup>8</sup> Campbell Settlement Test. 9:5-13.

Mr. Campbell testified that PUD agrees with Part C of the Joint Stipulation. Mr. Campbell testified that, as he recommended in his Responsive Testimony, PUD believes that non-fuel O&M costs associated with the project should not be recoverable through the proposed GCR tariff. Campbell Settlement Test. 9:15-17.<sup>9</sup>

Mr. Campbell testified that Part D of the Joint Stipulation states:

The GCR shall expire upon the earlier of: (i) 18 months after the in-service date of the HL CTs or (ii) implementation of new rates following the next general rate case in which the in-service HL CTs are included in rate base. The Company must file a general rate case to include the Horseshoe Lake CTs in base rates no later than one year after the in-service date of the HL CTs.<sup>10</sup>

Mr. Campbell testified that PUD agrees with Part D of the Joint Stipulation and believe this provision is fair, just, reasonable, and in the public interest. PUD believes a limited effective term ensures that OG&E files a rate case in a timely manner to include the projects in rate base once they have reached in-service status, and that recovery through the rider does not continue longer than strictly necessary. Campbell Settlement Test. 10:2-5.

Mr. Campbell testified that Part E of the Joint Stipulation states:

The GCR shall recover costs from Power and Light and Large Power and Light customers pursuant to a demand or \$/kW charge rather than through an energy or \$/kWh charge.<sup>11</sup>

Mr. Campbell testified that PUD agrees with Part E of the Joint Stipulation and believe this provision is fair, just, reasonable, in the public interest, and the result of robust settlement negotiations. Campbell Settlement Test. 10:12-13.

Mr. Campbell testified that PUD recommends the Commission approve the Joint Stipulation filed in this Case on October 10, 2023, and believes the Joint Stipulation is fair, just, reasonable, in the public interest, and the result of robust settlement negotiations. Campbell Settlement Test. 10:16-19.

### **Attorney General**

Todd F. Bohrmann filed testimony in support of the Joint Stipulation on behalf of the Attorney General and testified at the Hearing on the Merits.

At the Hearing, Mr. Bohrmann began by testifying that he participated in the discussions that led to the Joint Stipulation, and that all parties to the Case were present for these settlement discussions. He testified that it was his understanding that, although not all parties to the Case

<sup>9</sup> Citing Campbell Resp. Test. 10:23-24.

<sup>10</sup> Campbell Settlement Test. 9:19-25.

<sup>11</sup> Campbell Settlement Test. 10:7-10.

signed the Joint Stipulation, that these non-signatories did not oppose the Joint Stipulation. Bohrmann Settlement Test. 6:16–7:2, 7:9-13.

Mr. Bohrmann summarized the costs associated with the HL CTs that he identified in his pre-filed Responsive Testimony at Exhibit TFB-3. He explained that the original bid cost was \$249 million, and that a bid refresh due to a change in circumstance increased the cost by \$37 million to \$286 million. He also explained that other associated costs included Owner’s Costs of \$26 million and contingency expenses of \$19 million. Mr. Bohrmann stated that it was his understanding that Owner’s Costs would be included regardless of which winning bid was chosen.

Mr. Bohrmann next addressed what was ultimately agreed upon in the Joint Stipulation. The Joint Stipulation approves the Horseshoe Lake Combustion Turbines and recommends the Commission approve the HL CTs under Okla. Stat. tit. 17 § 286. Mr. Bohrmann testified that sufficient evidence exists in the record to find that OG&E demonstrated a need for generating capacity in this Case. Mr. Bohrmann also testified that OG&E engaged in a series of competitive bidding processes to assess the most reasonable alternatives for meeting this capacity need. Bohrmann Settlement Test. 7:14–8:3.

Mr. Bohrmann then testified that the Joint Stipulation recommends the Commission approve the GCR to allow OG&E to recover certain costs associated with the HL CTs. Mr. Bohrmann testified as to the term of the rider, explaining that it was to expire at the earlier of 18 months after the in-service date of the HL CTs, or implementation of new rates following the next rate case wherein the HL CTs are included in rate base. He testified that the Joint Stipulation requires OG&E to file a rate case within one year of placing the HL CTs in service.

Mr. Bohrmann then described the HL CTs’ costs recovered through the GCR as set forth in the Joint Stipulation. He explained that the costs approved for recovery through the GCR included the original bid amount of \$249 million plus Owner’s Costs capped at \$26 million, in addition to AFUDC and capitalized Property Taxes costs. Mr. Bohrmann testified that other costs he identified in his pre-filed Responsive Testimony associated with the HL CTs not included for recovery under the GCR were not non-recoverable. He testified that those costs are not pre-approved in this Case and that OG&E can request recovery of those costs in a rate case proceeding after the HL CTs are built and in service, where the prudence of those costs will be determined at that point in time.

Mr. Bohrmann concluded by testifying that the Joint Stipulation is in the public interest, balances the interests of all Stipulating Parties, and represents a fair, just, and reasonable resolution to all outstanding issues in the Case. Mr. Bohrmann recommended the Commission approve the Joint Stipulation as he believes it to be fair, just, reasonable, and in the public interest. Bohrmann Settlement Test. 8:13-19.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THE COMMISSION FINDS that it is vested with jurisdiction in this Case pursuant to Okla. Const. art. 9, § 18; Okla. Stat. tit. 17 §§ 151, 152, and 286(C); and Commission Rules.

THE COMMISSION FURTHER FINDS that notice is proper and given as required by law and Rules of this Commission.

THE COMMISSION FURTHER FINDS that, as demonstrated through the proffered testimony, its Integrated Resource Plan, and a series of Requests for Proposal, OG&E has demonstrated both a need for the requested generation resource additions and consideration of reasonable alternatives regarding generation needs, thereby satisfying the requirements of Section 286(C), Title 17, of the Oklahoma Statutes.

THE COMMISSION FURTHER FINDS that certain parties entered into the Joint Stipulation and Settlement Agreement, and that, although OIEC, Walmart, and OSN were not signatories, these parties did not oppose the Joint Stipulation and Settlement Agreement.

THE COMMISSION FURTHER FINDS that the GCR should be authorized pursuant to the terms specified in the Joint Stipulation and Settlement Agreement and that any costs in excess of the amounts specified for GCR recovery shall only be recovered after a demonstration of prudence of those costs in a general rate proceeding.

THE COMMISSION FURTHER FINDS that the provisions of the Joint Stipulation and Settlement Agreement are fair, just, and reasonable and in the public interest and that all the provisions of the Joint Stipulation and Settlement Agreement should be approved and adopted by this Commission.

## **V. ORDER**

THE COMMISSION THEREFORE ORDERS that the Application of Oklahoma Gas and Electric Company seeking preapproval of new generation capacity pursuant to Section 286(C), Title 17, of the Oklahoma Statutes is hereby granted as modified by the terms and conditions of the Joint Stipulation and Settlement Agreement.

THE COMMISSION FURTHER ORDERS that the GCR should be authorized pursuant to the terms specified in the Joint Stipulation and Settlement Agreement and that any costs in excess of the amounts specified for GCR recovery shall only be recovered after a demonstration of prudence of those costs in a general rate proceeding.

THE COMMISSION FURTHER ORDERS that the Joint Stipulation and Settlement Agreement, attached hereto as Attachment "B" is hereby approved.

THIS ORDER SHALL BE EFFECTIVE immediately.

CORPORATION COMMISSION OF OKLAHOMA

J. Todd Hiett  
J. TODD HIETT, Chairman

Kim David  
KIM DAVID, Vice Chairman

Bob Anthony  
BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 21st DAY OF NOVEMBER, 2023.

BY ORDER OF THE COMMISSION:

Eleise J. Rouse  
ELEISE ROUSE, Acting Commission Secretary



**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

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

Carly M. Ortel  
CARLY M. ORTEL  
Administrative Law Judge

11-14-2023  
Date

**ATTACHMENT “A”**

**PROCEDURAL HISTORY**

On May 31, 2023, OG&E filed its Application for preapproval of new generation capacity pursuant to Okla. Stat. tit. 17 § 286(C), as well as Direct Testimony of Kimber L. Shoop; Direct Testimony of Kelly M. Riley and Confidential Cover Pages for Direct Exhibits KMR-6, KMR-7, KMr-8, KMR-9 and KMR-10; Direct Testimony of Matthew J. Schuermann; Direct Testimony of Maria F. Scheller; Redacted and Unredacted Direct Testimonies of Robert Doupe; Direct Testimony of Gwin Cash; and Direct Testimony of Jason Thenmadathil.

On June 1, 2023, OG&E filed a Motion for Protective Order along with a Notice of Hearing, followed by an Amended Notice of Hearing setting the hearing on the Motion for Protective Order before an Administrative Law Judge (“ALJ”) on June 8, 2023.

Also on June 1, 2023, Michael L. Velez, Kenneth B. Behrens, Natasha M. Scott, Mike S. Ryan and Justin Cullen filed an Entry of Appearance on behalf of Public Utility Division (“PUD”).

Also on June 1, 2023, A. Chase Snodgrass and K. Christine Chevis, filed an Entry of Appearance on behalf of Office of Attorney General, State of Oklahoma (“Attorney General”).

On June 2, 2023, Jack G. Clark, Jr. and Ronald E. Stakem filed an Entry of Appearance on behalf of OG&E Shareholders Association (“OG&E S/H”).

On June 8, 2023, the Motion for Protective Order was heard and recommended by the ALJ.

Also on June 8, 2023, OG&E filed a Motion for Procedural Order and a Motion to Determine Notice Requirements and Approve Form of Notice (“Motions”), along with Notices of Hearing setting the Motions before an ALJ on June 22, 2023.

Also, on June 8, 2023, Thomas P. Schroedter filed an Entry of Appearance on behalf of Oklahoma Industrial Energy Consumers (“OIEC”).

On June 19, 2023, Madison B. Miller filed an Entry of Appearance on behalf of Oklahoma Sustainability Network (“OSN”).

On June 20, 2023, Kenneth A. Tillotson and Deborah R. Thompson filed an Entry of Appearance on behalf of OG&E.

Also on June 20, 2023, the Commission issued Order No. 735164, Order Granting Protective Order.

On June 22, 2023, the Motion for Procedural Order and the Motion to Determine Notice Requirements and Approve Form of Notice were heard and recommended by the ALJ.

On June 23, 2023, J. David Jacobson filed an Entry of Appearance on behalf of The Petroleum Alliance of Oklahoma (“PAO”).

On June 26, 2023, Rick D. Chamberlain filed an Entry of Appearance on behalf of Walmart, Inc. (“Walmart”).

On July 11, 2023, Jack P. Fite filed an Entry of Appearance on behalf of OG&E.

Also on July 11, 2023, the Commission issued Order No. 735663, Order Granting Motion to Determine Notice Requirements and Approve Form of Notice and Order No. 735664, Order Granting Motion for Procedural Order.

On August 16, 2023, OG&E filed Publication Affidavits indicating that Publication and Direct Notice to customers was accomplished pursuant to Order No. 735663.

Also on August 16, 2023, Kenneth B. Behrens filed a Notice of Withdrawal of Counsel.

Also on August 16, 2023, Jonathon Herndon filed an Entry of Appearance on behalf of PUD.

On August 31, 2023, the following documents were filed:

- a. Responsive Testimony of Andrew Scribner, Responsive Testimony of Cody Alsup, Responsive Testimony of Hannah R. Hubler, Responsive Testimony of Trent A. Campbell, Responsive Testimony of Farzid Khalili, and Responsive Testimony of Jason C. Chaplin on behalf of PUD;
- b. Responsive Testimony and Exhibits of Lisa V. Perry on behalf of Walmart;
- c. Redacted and Confidential Cover Sheet for the Responsive Testimony of Todd F. Bohrmann on behalf of Attorney General; and
- d. Responsive Testimony and Exhibits of Mark E. Garrett and Responsive Testimony of Scott Norwood on behalf of OIEC.

On September 1, 2023, Confidential Responsive Testimony of Scott Norwood was filed on behalf of OIEC.

On September 7, 2023, two Public Comments were filed.

On September 8, 2023, Public Comment was filed.

Also on September 8, 2023, PAO, OG&E S/H, and OSN filed their respective Statements of Position.

On September 11, 2023, three Public Comments were filed.

On September 13, 2023, Public Comment was filed.

On September 21, 2023, OG&E filed Rebuttal Testimony of Kimber L. Shoop, Rebuttal Testimony of Matthew J. Schuermann, and Rebuttal Testimony of Kelly M. Riley.

On September 25, 2023, two Public Comments were filed.

On September 26, 2023, Ashley N. Youngblood filed an Entry of Appearance on behalf of the Attorney General.

From September 27, 2023, to October 10, 2023, multiple parties filed Public Comments.

On October 10, 2023, OG&E filed a Joint Stipulation and Settlement Agreement (“Joint Stipulation”) attached hereto as Attachment “B”, on behalf of OG&E, PUD, Attorney General, OG&E S/H and PAO (“the Stipulating Parties”).

On October 11, 2023, the following documents were filed:

- a. Direct and Rebuttal Testimony Summaries of Kimber L. Shoop, Direct and Rebuttal Testimony Summaries of Kelly M. Riley, Direct and Rebuttal Testimony Summaries of Matthew J. Schuermann, Direct Testimony Summary of Gwin Cash, Direct Testimony Summary of Jason Thenmadathil, Direct Testimony Summary of Robert Doupe and Direct Testimony Summary of Maria F. Scheller on behalf of OG&E;
- b. Summary of Responsive Testimony of Todd F. Bohrmann on behalf of Attorney General;
- c. Summary of Responsive Testimony of Farzad Khalili, Summary of Responsive Testimony of Andrew Scribner, Summary of Responsive Testimony of Cody Alsup, Summary of Responsive Testimony of Hannah Hubler, Summary of Responsive Testimony of Trent A. Campbell, and Summary of Responsive Testimony of Jason C. Chaplin on behalf of PUD;
- d. Summary of Responsive Testimony of Scott Norwood and Summary of Responsive Testimony of Mark E. Garrett on behalf of OIEC; and
- e. Multiple parties filed Public Comment.

On October 12, 2023, Settlement Testimony of Kimber L. Shoop on behalf of OG&E was filed.

Also on October 12, 2023, multiple parties filed Public Comment.

On October 13, 2023, Settlement Testimony of Todd F. Bohrmann on behalf of Attorney General and Testimony in Support of Joint Stipulation and Settlement Agreement of Trent A. Campbell on behalf of PUD were filed.

Also on October 13, 2023, two Public Comments were filed.

On October 16, 2023, multiple parties filed Public Comment.

Also on October 16, 2023, Public Comment and Prehearing Conference was held. There were no public comment rendered and the Prehearing Conference was recommended.

Also on October 16, 2023, Sign-in Sheet for Public Comment was filed.

On October 17, 2023, the Hearing on the Joint Stipulation and Settlement Agreement was heard and continued to October 19, 2023.

Also on October 17, 2023, multiple parties filed Public Comment.

On October 18, 2023, Public Comment was filed.

On October 19, 2023, the Hearing on the Joint Stipulation and Settlement Agreement was heard and recommended by the ALJ.

From October 19, 2023, to November 1, 2023, multiple parties filed Public Comment.

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL OF NEW ) Case No. PUD 2023-000038  
GENERATION CAPACITY PURSUANT )  
TO 17 O.S. SECTION 286(C) )

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

COME NOW the undersigned parties to the above entitled Case (“Stipulating Parties”) and present the following Joint Stipulation and Settlement Agreement (“Joint Stipulation”) for the Oklahoma Corporation Commission’s (“Commission”) review and approval as their compromise and settlement of issues in this proceeding. The Stipulating Parties represent to the Commission that this Joint Stipulation represents a fair, just and reasonable settlement of these issues, that they believe the terms and conditions of the Joint Stipulation are in the public interest, and the Stipulating Parties request the Commission issue an order in this case adopting and approving this Joint Stipulation.

**I. Jurisdiction of the Commission**

The Stipulating Parties agree that the Commission has jurisdiction with respect to the issues presented in this proceeding by virtue of Article IX, §18 *et seq.* of the Oklahoma Constitution, 17 O.S. §152 *et seq.*, 17 O.S. §286 *et seq.*, the Commission’s Rules of Practice (OAC 165:5), and the Commission’s Electric Utility Rules (OAC 165:35).

**II. General Recommendations of the Stipulating Parties**

This Joint Stipulation represents a comprehensive settlement to become effective with the issuance of a Commission order approving this Joint Stipulation (“Effective Date”).

**A. Approval of the Horseshoe Lake Combustion Turbines:** The Stipulating Parties agree that sufficient evidence exists in the record for the Commission to find that OG&E has a demonstrated need for generating capacity. Also, the Stipulating Parties agree that the record reflects OG&E engaged in a series of competitive bidding processes to assess the

most reasonable alternatives for meeting that capacity need. These competitive bidding processes showed that the best option for meeting OG&E's capacity need is the construction of two GE 7F Class combustion turbines at the Horseshoe Lake Power Plant with a summer rated capacity of 448 MWs and an estimated in-service date of late 2026 ("HL CTs"). The Stipulating Parties agree that the Commission should approve OG&E's HL CTs under 17 Okla. Stat. §286.

**B. Generation Capacity Rider Costs:** The Stipulating Parties agree that the revised Generation Capacity Rider ("GCR") (attached hereto as Exhibit 1) should be approved by the Commission to allow OG&E to recover certain costs associated with the HL CTs as those units are placed in service. The Stipulating Parties agree that OG&E shall only be able to recover a return, at the Company's most recently approved weighted averaged cost of capital, on the following costs through the GCR:

- (a) OG&E's original bid amount of approximately \$249 million for the costs associated with the purchase of the HL CTs through a contract with General Electric, as the Original Equipment Manufacturer and the costs associated with the balance of plant, engineering, procurement and construction contract between OG&E and a joint venture between Sargent & Lundy and TIC – The Industrial Company.
- (b) costs incurred by the Company in addition to the costs of purchasing the equipment and third-party costs of construction ("Owner's Costs"). These Owner's Costs shall include internal labor, construction oversight, engineering oversight to ensure design adequacy and technical compliance with specifications, project management, legal cost and performance testing. The Stipulating Parties agree that OG&E's recovery of Owner's Costs through the GCR shall be limited to a cap of \$26 million.
- (c) Allowance for Funds Used During Construction and capitalized Property Taxes associated with the costs specified in Section II.B(a) and (b) above.

The Stipulating Parties agree that OG&E shall also include in the GCR depreciation expense, property tax expense, and investment tax credits associated with the capital investments specified in Section II.B(a), (b), and (c) above.

- C. **Other Costs:** The Stipulating Parties agree that OG&E shall not recover any non-fuel O&M expenses associated with the HL CTs through the GCR. Also, in the event OG&E's HL CT project costs exceed the amounts specified in Section II.B of this Joint Stipulation, the Stipulating Parties agree that such excess costs or contingency costs shall not be eligible for recovery through the GCR. Any costs incurred by OG&E in excess of the amount contained in Section II.B of this Joint Stipulation (or any non-fuel O&M expenses) shall be reviewed for prudence in a general rate case in order to be recovered from customers.
- D. **Term of the GCR:** The Stipulating Parties agree the GCR shall expire upon the earlier of: (i) 18 months after the in-service date of the HL CTs or (ii) implementation of new rates following the next general rate case in which the in-service HL CTs are included in rate base. The Company must file a general rate case to include the Horseshoe Lake CTs in base rates no later than one year after the in-service date of the HL CTs.
- E. **Cost Recovery from PL and LPL Customers:** The Stipulating Parties also agree that the GCR shall recover costs from Power and Light and Large Power and Light customers pursuant to a demand or \$/kW charge rather than through an energy or \$/kWh charge.

### III. General Reservations

The Stipulating Parties represent and agree that, except as specifically provided:

A. Negotiated Settlement

This Joint Stipulation represents a negotiated settlement for the purpose of compromising and resolving the issues presented in this Cause.

B. Authority to Execute

Each of the undersigned affirmatively represents to the Commission that he or she has fully advised his or her respective client(s) that the execution of this Joint Stipulation constitutes

a resolution of issues which were raised in this proceeding; that no promise, inducement or agreement not herein expressed has been made to any Stipulating Party; that this Joint Stipulation constitutes the entire agreement between and among the Stipulating Parties; and each of the undersigned affirmatively represents that he or she has full authority to execute this Joint Stipulation on behalf of his or her client(s).

C. Joint Stipulation Represents a Balance and Compromise of Positions

The Stipulating Parties stipulate and agree that the agreements contained in this Joint Stipulation have resulted from negotiations among the Stipulating Parties. The Stipulating Parties hereto specifically state and recognize that this Joint Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt all of the terms of this Joint Stipulation, this Joint Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Joint Stipulation nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed to by the parties to this Joint Stipulation.

D. No Admissions Nor Waivers

The Stipulating Parties agree and represent that the provisions of this Joint Stipulation are intended to relate only to the specific matters referred to herein, and by agreeing to this settlement, no Stipulating Party waives any claim or right which it may otherwise have with respect to any matters not expressly provided for herein. In addition, except as specifically set forth in this Joint Stipulation, none of the signatories hereto shall be deemed to have approved or acquiesced in any ratemaking principle, valuation method, cost of service determination, depreciation principle or cost allocation method underlying or allegedly underlying any of the information submitted by the parties to this cause and except as specifically provided in this Joint Stipulation, nothing contained herein shall constitute an admission by any Stipulating Party that any allegation or contention in this proceeding is true or valid or shall constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.

E. No Precedential Value

The Stipulating Parties agree that the provisions of this Joint Stipulation are the result of

negotiations based upon the unique circumstances currently represented by the Company's Application and that the processing of this cause sets no precedent for any future causes that the Applicant or others may file with this Commission. The Stipulating Parties further agree and represent that neither this Joint Stipulation nor any Commission order approving the same shall constitute or be cited as precedent or deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. The Commission's decision, if it enters an order approving this Joint Stipulation, will be binding as to the matters decided regarding the issues described in this Joint Stipulation, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Joint Stipulation may differ from its position or testimony in other causes. To the extent there is a difference, the Stipulating Parties are not waiving their respective positions in other causes. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Joint Stipulation in other dockets.

F. Outstanding Discovery and Motions

As between and among the Stipulating Parties, any pending requests for information or discovery and any motions that may be pending before the Commission are hereby withdrawn.

WHEREFORE, the Stipulating Parties hereby submit this Joint Stipulation and Settlement Agreement to the Commission as their negotiated settlement of this proceeding with respect to all issues raised within the Application filed herein by Oklahoma Gas and Electric Company or by Stipulating Parties to this Cause, and respectfully request the Commission to issue an Order approving the recommendations of this Joint Stipulation and Settlement Agreement.

OKLAHOMA GAS AND ELECTRIC COMPANY

Dated: 10/10/23

By: 

PUBLIC UTILITY DIVISION  
OKLAHOMA CORPORATION COMMISSION

Dated: October 10, 2023

By: 

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

Dated: October 10, 2023

By: 

OKLAHOMA INDUSTRIAL ENERGY CONSUMERS

Dated: \_\_\_\_\_

By: \_\_\_\_\_

OG&E SHAREHOLDERS ASSOCIATION

Dated: Oct. 10, 2023

By: 

WAL-MART INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

OKLAHOMA SUSTAINABILITY NETWORK

Dated: \_\_\_\_\_

By: \_\_\_\_\_

PETROLEUM ALLIANCE OF OKLAHOMA

Dated: 10/10/2023

By:  \_\_\_\_\_

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL OF NEW ) Case No. PUD 2023-000038  
GENERATION CAPACITY PURSUANT )  
TO 17 O.S. SECTION 286(C) )

Joint Stipulation and Settlement Agreement

Exhibit 1

Generation Capacity Rider

**EFFECTIVE IN:** All territory served.

**PURPOSE:** The purpose of this rider is to recover the Oklahoma retail jurisdictional portion of the annual revenue requirement for the generation capacity projects authorized in Case No. PUD 202300XXX.

**APPLICABILITY:** This rider is applicable to all Oklahoma retail rate classes and customers except those specifically exempted by special contract.

**TERM:** The GCR will begin recovery of costs following the first billing cycle of the month following the first generation capacity project (combustion turbines at Horseshoe Lake) that reaches in-service status. The GCR will continue for the lesser of 18 months after the in-service date of the combustion turbines or until such time that the generation capacity projects authorized for recovery through this rider are included in base rates or terminated by order of the Commission. If terminated by order of the Commission, the Generating Facilities shall be included in rate base after receiving a final order approving new rates in the next OG&E general rate case proceeding. The Company will file a general rate case proceeding within 12 months of the first-generation capacity project that reaches in-service status.

**RATE CLASSES:**

Major Rate Classes = *Residential, General Service, Power and Light (inclusive of Supplemental, Backup, and Maintenance Service rates), and Large Power and Light (inclusive of Outside Certified Territory customers)*

Combined Minor Rate Classes (Other) = *Oil and Gas Producers + Public Schools (Small and Large) + Municipal Pumping + Municipal Lighting + Outdoor Security Lighting + LED Lighting*

**GCR FACTOR CALCULATION:** GCR factors shall be calculated using the following formula, on a per kilowatt-hour (kWh) basis, for each of the major rate classes and the combined minor rate classes:

$$GCR\ Factor_{Class} = \frac{A * B_{Class} + C_{Class}}{D_{Class}}$$

Where:

A = Oklahoma jurisdictional Revenue Requirement for each generation asset that has reached in-service status

B = Oklahoma jurisdictional rate class Production Demand Allocator

C = Annual True-Up for each rate class

D = Projected annual kWh or kW for each rate class

And:

**A) Oklahoma Jurisdiction GCR Annual Revenue Requirement:**

- a. Return on the capital investment calculated using the Company’s most recently approved weighted average cost of capital (“WACC”). The capital investment shall be inclusive of:
  - i. \$249 million for costs associated with the purchase of HL CTs;
  - ii. Internal labor, construction oversight, engineering oversight to ensure design adequacy and technical compliance with specifications, project management, legal cost and performance testing, all capped at \$26 million; and
  - iii. Allowance for Funds Used During Construction and capitalized Property Taxes.
- b. Depreciation and property tax expenses associated with the items included in a. above.
- c. Investment tax credits associated with the items in a. above. These tax credits will be included for recovery in the Rider for Tax Credits tariff at such time that the projects associated with this rider are authorized for recovery in base rates.

**B) Annual True-Up:** The over or under amount will be calculated for each class and will be the difference between actual revenue requirement and the Prior Period GCR factor revenues net of the previous Prior Period True-Up.

**C) Allocation Factor:** The most recently approved production demand allocation factor, adjusted to exclude jurisdictions not at issue.

<b>Rate Class</b>	<b>Allocator Percentage*</b>
Residential	46.9201%
General Service	9.6944%
Power and Light	24.4640%
Large Power and Light	15.4960%
Other	3.4255%

\*Adjusted to exclude jurisdictions not at issue

**D) Projected kWh or kW:** The applicable annual Oklahoma jurisdictional kWh as calculated by the Company for the Residential, General Service, and Other classes. The

applicable annual Oklahoma jurisdictional kW as calculated by the Company for the Power & Light and Large Power and Light classes.

**ANNUAL RE-DETERMINATION:** On or before August 15 of each year, re-calculated GCR factors shall be submitted by the Company to the Public Utility Division and to the parties of record in Case No. PUD 2023-000038 for review and shall be implemented the first billing cycle of October.

**FINAL REVIEW:** The final over/under balance for the GCR will be refunded or collected through the Rider for Fuel Cost Adjustment.

**Attachment A**

**XXXX 1, 202X – XXXX XX, 202X GCR FACTORS**

<b>Class</b>	<b>\$ per kWh</b>	<b>\$ per kW</b>
Residential	-	\$0.00
General Service	-	\$0.00
Power and Light	\$0.000000	-
Large Power and Light	\$0.000000	-
Other	-	\$0.00