

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE)
COMPANY OF OKLAHOMA ("PSO") FOR)
APPROVAL OF THE COST RECOVERY OF)
THE WIND CATCHER ENERGY)
CONNECTION PROJECT; A DETERMINATION)
THERE IS A NEED FOR THE PROJECT;)
APPROVAL FOR FUTURE INCLUSION IN)
BASE RATES COST RECOVERY OF)
PRUDENT COSTS INCURRED BY PSO FOR)
THE PROJECT; APPROVAL OF A)
TEMPORARY COST RECOVERY RIDER;)
APPROVAL OF CERTAIN ACCOUNTING)
PROCEDURES REGARDING FEDERAL)
PRODUCTION TAX CREDITS; WAIVER OF)
OAC 165:35-38-5(e); AND SUCH OTHER)
RELIEF THE COMMISSION DEEMS PSO IS)
ENTITLED)

FILED
JUN 07 2018

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

CAUSE NO. PUD 201700267

**JOINT MOTION FOR COMMISSION REVIEW AND CONSIDERATION
OF JOINT STIPULATION AND SETTLEMENT AGREEMENT**

I. MOVANTS: Public Service Company of Oklahoma ("PSO")
Oneta Power, LLC ("Oneta")

II. ALLEGATIONS OF FACT:

(a) On July 31, 2017, PSO filed an Application and Direct Testimony in support of what is termed the Wind Catcher Energy Connection Project. Discovery was conducted, Responsive and Rebuttal testimony was filed, and a hearing on the merits commenced on January 8, 2018, before the Administrative Law Judge. The Administrative Law Judge filed her Report on February 12, 2018, after which Exceptions and Responses to Exceptions were filed. Arguments on those Exceptions were heard before this Commission en banc on March 14, 2018.

(b) On March 7, 2018, PSO filed a Motion to Delay Oral Argument stating that PSO and Wal-Mart Stores East LP and Sam's East, Inc. had entered into a Joint Stipulation and Settlement Agreement ("Stipulation") which, in the opinion of PSO, affected the issues to be presented in oral argument on Exceptions. In the alternative, PSO requested that the Commission allow the record to remain open to provide PSO the opportunity to present a settlement to the Commission for review and approval. As this Commission is aware, "the law and public policy favor settlements and compromises...". *Whitehorse v. Johnson*, 156 P.3rd 41, 2007 OK 11. (At page 46).

(c) At the hearing on Exceptions the Commission denied the Motion to Delay Oral Argument but from the record it appears the Commission kept the record open to allow the parties additional time to discuss settlement and present that settlement to the Commission at a later date.

(d) The Movants take the position that although that portion of the record that the Administrative Law Judge considered is closed, pursuant to OAC 165: 5-13-3(n) the record is not closed as to what the three Commissioners can consider. However, if Movants have misinterpreted the Commission's action taken on March 14, 2018, as set forth in the transcript attached hereto as Attachment "A", the Movants would request that the Commission re-open the record as authorized by OAC 165:5-13-3(p). As stated in the Rule, the Commission, at any time prior to a final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be re-opened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits. The Stipulations filed May 30, 2018, had not been entered into at the time of the hearing on the merits.

(e) Subsequent to the filing of the Joint Stipulation and Settlement Agreement described in paragraph (e) above, a Stipulation and Settlement Agreement was reached between PSO and Oneta ("Stipulation"). A copy of the Stipulation is attached hereto as Attachment "B".

(f) The Movants request that this Commission issue a notice to all parties in this proceeding that a hearing will be held for the Commission to take evidence and examine the Stipulation which will be considered as a basis for a final order. Movants further request that the Commission advise all parties that it will make an independent finding on the merits and make a determination as to whether or not there is substantial evidence in the record for the Commission to approve the Stipulation.

(g) A copy of the proposed Notice is attached as Attachment "C".

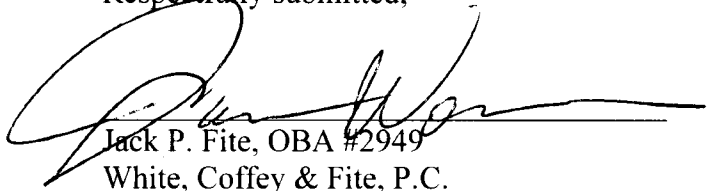
III. LEGAL AUTHORITY:

17 O.S. §§152, 153; OAC 165: 5-13-3

IV: RELIEF REQUESTED:

WHEREFORE, the Movants request this Commission to issue a notice to all parties that a hearing will be held to consider approval of the Joint Stipulation and Settlement Agreement attached hereto.

Respectfully submitted,



Jack P. Fite, OBA #2949

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CERTIFICATE OF ELECTRONIC SERVICE

This is to certify that a true and correct copy of the above and foregoing was e-mailed to the following:

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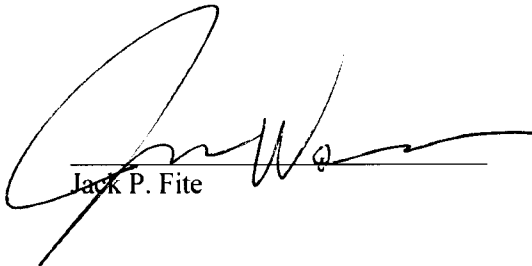
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Jack P. Fite

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 CREDITS: WAIVER OF OAC)
 11 165:35-38-(e); AND SUCH OTHER)
 RELIEF THE COMMISSION DEEMS PSO)
 12 IS ENTITLED)

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SIGNING AGENDA ITEM IV

19

ON MARCH 14, 2018

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REPORTED BY: KARISA J. AEBI, CSR, RPR
 25 OFFICIAL COURT REPORTER
 OKLAHOMA CORPORATION COMMISSION

1 And I -- I still say, my terminology is
2 keeping the record open, not reopening it, because I
3 feel like it's still open right here in front of us.
4 So --

5 COMMISSIONER HIETT: I agree with that.

6 COMMISSIONER MURPHY: So if other
7 Commissioners use that term, I feel like this case is
8 still open. So what -- what is your response to that,
9 Mr. Fite? Because I know that Mr. Haines had actually
10 mentioned something else. But it seems like to me, if
11 we were inclined to that -- and I'll come back to you
12 Ms. Thompson, that it seems like we can narrow what
13 the scope of that would be.

14 MR. FITE: Again, we would like an
15 opportunity to present a settlement agreement. And
16 when that happens, then I suppose who would be opposed
17 to that settlement, I doubt if we're going to have a
18 unanimous settlement if we grant one, would be able to
19 produce evidence at that time in opposition to the
20 settlement.

21 COMMISSIONER MURPHY: So along the lines that
22 Mr. Haines had mentioned about the gas prices?

23 MR. FITE: If -- if that was the type of
24 evidence he wanted to present against the -- any
25 settlement that might be reached.

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38-5(e); AND SUCH OTHER RELIEF THE)
COMMISSION DEEMS PSO IS ENTITLED)

FILED

MAY 30 2018

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CORPORATION COMMISSION
OF OKLAHOMA

CAUSE NO. PUD 201700267

**JOINT STIPULATION AND SETTLEMENT AGREEMENT
BETWEEN PUBLIC SERVICE COMPANY OF OKLAHOMA
AND ONETA POWER, LLC**

COME NOW Public Service Company of Oklahoma ("PSO") and Oneta Power, LLC ("Oneta") ("PSO and Oneta" or "Stipulating Parties"), and Oklahoma Industrial Energy Consumers ("OIEC") as a supporting party, and all as parties to the above entitled Cause, and present the following Joint Stipulation and Settlement Agreement ("Joint Stipulation" or "Oneta Stipulation") for Oklahoma Corporation Commission ("Commission") review and approval as their compromise and settlement of all issues in this proceeding between the parties to this Joint Stipulation. The Stipulating and Supporting Parties represent to the Commission that this Joint Stipulation represents a fair, just and reasonable settlement of these issues and that the terms and conditions of the Joint Stipulation are in the public interest and urge the Commission to expeditiously and fully adopt the terms of this Joint Stipulation.

It is hereby stipulated and agreed by and between the Stipulating Parties as follows:

TERMS OF THE JOINT STIPULATION AND SETTLEMENT AGREEMENT

The Stipulating Parties request the Commission issue an Order approving all elements of the instant Joint Stipulation to which PSO is a party in Cause No. 201700267. More specifically regarding the instant Joint Stipulation:

1. **Recitation of Facts:**

- (a) In December 2016, PSO issued a Request For Proposals for energy and capacity for a minimum of 500 MW and stepping up to a maximum of 800 MW for a minimum term of ten years to begin delivery no later than the 1st day of June, 2022 (2016 RFP).
- (b) Oneta submitted a proposal in accordance with the 2016 RFP (Proposal), and was selected among a shortlist of bidders.
- (c) The Integrated Resource Plan (2015 IRP) supporting the 2016 RFP, issued by PSO on September 30, 2015, shows a need for 892 MW of capacity by 2022, while the succeeding and most recent IRP update, issued by PSO on November 1, 2017, reflected 458 MW of capacity by 2022.

2. **The Stipulating Parties stipulate and request that the Commission approve the following:**

- (a) The Power Purchase Agreement (“PPA” or “Power Purchase Agreement”) contemplated by this Joint Stipulation will meet a need for 300 MW of cost effective capacity and energy starting in the year 2022.
- (b) Oneta and PSO shall use commercially reasonable efforts to execute a Power Purchase Agreement based on the requirements of the 2016 RFP and Oneta’s Proposal no later than June 30, 2018.
- (c) Oneta and PSO agree that the PPA entered into in accordance with paragraph 2(a) above will contain pricing terms lower than or consistent with those contained in Option 1 of Oneta’s proposal at a capacity of 300 MW, a delivery period from June 1, 2022 through May 31, 2042, and as further specified in Confidential Attachment A.
- (d) Oneta and PSO each agree to utilize their best efforts in support of expeditious approval by the Commission of this Joint Stipulation.
- (e) PSO agrees to issue another RFP for the remainder of its identified capacity needs starting in 2022 within nine (9) months of the issuance of a final non-appealable order of the Commission approving this Joint Stipulation.
- (f) Oneta agrees not to oppose the Joint Stipulation dated April 20, 2018, between PSO, Wal-Mart Stores East, LP and Sam’s East, Inc. and OIEC. Oneta also agrees not to oppose any separate Joint Stipulation and Settlements signed by PSO that are filed with the Commission in this Cause, subsequent to or simultaneous with the filing of this Joint Stipulation that do not materially adversely affect Oneta.

- (g) PSO agrees to file this Joint Stipulation with the Oklahoma Corporation Commission within two (2) business days of execution of same by PSO and Oneta.
- (h) In the event any of the conditions or requirements contained in this Joint Stipulation fail to be satisfied by the applicable date(s) specified or as otherwise required herein, the Stipulating Parties each reserve all respective rights as a party in Cause No. 201700267, including, but not limited to, rights of appeal. If a Stipulating Party fails to satisfy any of the conditions or requirements contained in this Joint Stipulation by the applicable date(s) specified or otherwise required herein, then the other Stipulating Party may terminate this Joint Stipulation by written notice, without need for regulatory approval prior to doing so. The Stipulating Parties reserve such rights (and either Stipulating Party may terminate this Joint Stipulation by written notice, without need for regulatory approval prior to doing so) in the event a Commission Order approving this Joint Stipulation has not been issued within ninety (90) days of the filing of this Joint Stipulation. In addition, the Stipulating Parties reserve such rights (and either Stipulating Party may terminate this Joint Stipulation by written notice, without need for regulatory approval prior to doing so) in the event the Commission Order is not final and non-appealable with respect to this Joint Stipulation within ninety (90) days following the date of issuance of a Commission Order approving this Joint Stipulation. The Stipulating Parties reserve the right to extend the deadlines in this paragraph by mutual agreement not to be unreasonably withheld.
- (i) The terms of this Joint Stipulation are binding upon the Parties only if this Joint Stipulation has been approved by a Commission order which is final and non-appealable with respect to this Joint Stipulation.

3. **Discovery.**

As between the Stipulating Parties, all requests for discovery are deemed satisfied upon final and non-appealable Commission approval of this Joint Stipulation.

4. **General Reservations.**

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

- (a) This Joint Stipulation represents a negotiated settlement for the purpose of compromising and settling all issues between Oneta and PSO which were raised relating to this proceeding.
- (b) Each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Joint Stipulation on behalf of his or her client(s).

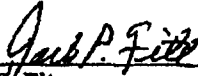
- (c) Nothing contained herein shall constitute an admission by any party that any allegation or contention in these proceedings as to any of the foregoing matters is true or valid and shall not in any respect constitute a determination by the Commission as to the merits of any allegations made in this proceeding.
- (d) The Stipulating Parties agree that the provisions of this Joint Stipulation are the result of extensive negotiations, and the terms and conditions of this Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues in this Joint Stipulation is in the public interest and, for that reason, they have entered into this Joint Stipulation to settle among themselves the issues set forth in this Joint Stipulation. This Joint Stipulation shall neither constitute nor be cited as a precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce the terms of this Joint Stipulation before the Commission or any state court of competent jurisdiction. 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 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.

5. Non-Severability.

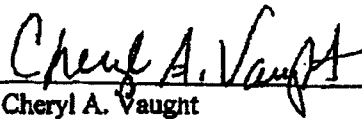
The Stipulating Parties stipulate and agree that the terms contained in this Joint Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Joint Stipulation represents 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 the terms of this Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), 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 the PPA discussed herein nor any of the provisions of either shall become effective unless and until the Commission has entered an Order, which has become final and non-appealable with respect to this Joint Stipulation, approving all of the terms and provisions of this Joint Stipulation.

The Stipulating Parties hereby submit this Joint Stipulation and Settlement Agreement to the Commission as their negotiated settlement of this proceeding and respectfully request the Commission to issue an Order approving this Joint Stipulation and Settlement Agreement.

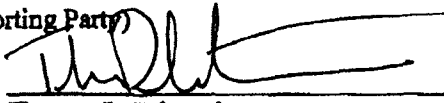
PUBLIC SERVICE COMPANY OF OKLAHOMA

By: 
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Joann S. Worthington
Attorney for Public Service Company of Oklahoma

ONETA POWER, LLC

By: 
Cheryl A. Vaught
Attorney for Oneta Power LLC

**OKLAHOMA INDUSTRIAL ENERGY CONSUMERS
(Supporting Party)**

By: 
Thomas P. Schroedter
Hall, Estill, Hardwick, Gable, Golden & Nelson

Attachment A Redacted/Public Version

ATTACHMENT "C"

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38-5(e); AND SUCH OTHER RELIEF THE)
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NOTICE OF HEARING

Notice is hereby given that Public Service Company of Oklahoma ("PSO") and Oneta Power, LLC ("Oneta") have filed a Joint Motion for Commission Review and Consideration of Joint Stipulation and Settlement Agreement.

NOTICE IS FURTHER GIVEN that the Commission shall, after hearing and taking of evidence, issue such orders and grant such relief as it deems reasonable, fair, necessary, proper and equitable.

NOTICE IS FURTHER GIVEN that the hearing on the merits to consider the Movants joint motion will be heard before the Commission en banc commencing on the 2nd day of July 2018, at 1:30 p.m., and continuing each business day thereafter until the hearing concludes, in Courtroom 301, Third Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105.

OKLAHOMA CORPORATION COMMISSION

DANA L. MURPHY, Chairman

J. TODD HIETT, Vice Chairman

BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS ____ DAY OF _____, 2018, BY ORDER OF
THE COMMISSION:

PEGGY MITCHELL, Secretary