

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT ) CAUSE NO. PUD 201800159  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

HEARING: March 27, 2019, in Courtroom B  
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105  
*Before* Linda S. Foreman, Administrative Law Judge

APPEARANCES: William L. Humes, John D. Rhea, Patrick D. Shore, Dominic Williams,  
and Kimber L. Shoop, Attorneys *representing* Oklahoma Gas and  
Electric Company  
Jack G. Clark, Jr., and Ronald E. Stakem Attorneys *representing* OG&E  
Shareholders Association  
Jared B. Haines and A. Chase Snodgrass, Assistant Attorneys General  
*representing* Office of Attorney General, State of Oklahoma  
Thomas P. Schroedter, Attorney *representing* Oklahoma Industrial Energy  
Consumers  
Rick D. Chamberlain, Attorney *representing* Wal-Mart Stores East, LP,  
and Sam's East, Inc.  
Deborah R. Thompson, Attorney *representing* Oklahoma Cogeneration,  
LLC  
Kyle Vazquez, Assistant General Counsel *representing* Public Utility  
Division, Oklahoma Corporation Commission  
Kendall Parrish, Attorney *representing* AES Shady Point, LLC  
Cheryl Vaught, Scott A. Conner and Jon W. Laasch, Attorneys,  
*representing* Oklahoma Energy Results, LLC

**FILED**  
APR 22 2019  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

**REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE**

This Cause comes before the Corporation Commission ("Commission") of the State of Oklahoma March 27, 2019 on the Application of Oklahoma Gas and Electric Company ("OG&E" or "Applicant") for Commission preapproval for acquisition of capacity through asset purchase pursuant to 17 O.S. Section 286(C).

**I. RECOMMENDATION**

The Administrative Law Judge ("ALJ") recommends the Commission approve the Joint Stipulation and Settlement Agreement ("Joint Stipulation") for asset purchase of AES Shady Point, LLC ("AES Shady Point") and Oklahoma Cogeneration ("Oklahoma Cogeneration") entered into by Applicant, the Commission's Public Utility Division ("PUD"), Office of the Attorney General ("Attorney General"), OG&E Shareholders ("OG&E SH") and AES Shady Point (attached hereto as Attachment "A") with paragraph III C-4 of the Joint Stipulation amended as noted below.

Oklahoma Energy Results (“OER”), Oklahoma Industrial Energy Consumers (“OIEC”), Wal-Mart Stores East, LP, and Sam’s East, Inc. did not agree to the Joint Stipulation, however all parties agreed that Paragraph III C-4 of the Joint Stipulation regarding the Generation Capacity Recovery Rider (“GCRR”) is amended as follows:

*“The Generation Capacity Recovery Rider Shall terminate three (3) years from the date of the final Order entered in Cause PUD 201800140, the general rate case filed by OG&E December 31, 2018.”*

The ALJ also recommends the Findings of Fact and Conclusions of Law contained herein be adopted.

## II. PROCEDURAL HISTORY

On December 28, 2018, OG&E filed an Application for preapproval for acquisition of capacity through Asset purchase agreement pursuant to 17 O.S. § 286(C). On March 25, 2019, OG&E filed Supplemental Testimony of Donald R. Rowlett with a Joint Stipulation and Settlement Agreement attached as Exhibit DRR-1 (“Attachment “A”). The procedural history is attached hereto as Attachment “B”.

## III. SUMMARY OF EVIDENCE

### A. Documents:

Documents filed in this Cause are contained in records kept by the Court Clerk of the Commission. Testimony was offered at the Hearing on the Merits. Witnesses testifying were Donald R. Rowlett on behalf of OG&E, Steven Gabel on behalf of OER, and Mark Garrett on behalf of OIEC. The entirety of the testimony offered is contained in the transcript of these proceedings. The testimony summaries are included as “Attachment “C” attached hereto and incorporated herein.

### B. Exhibits:

1. Exhibit 71, OG&E 2018 Request for Proposals for Capacity was presented at the Hearing on the Merits.
2. Exhibit 1, Oklahoma Energy Results, LLC’s Technical Conference Statement, was presented at the Technical Conference.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission is vested with jurisdiction by virtue of OKLA. CONST. art. IX, § 18 and 17 O.S. § 151 *et seq.* and 17 O.S. § 286(C). Notice was proper and given as required by law and the rules of the Commission.
2. Approval of the Joint Stipulation and adoption of the findings contained herein are in the public interest and are fair, just and reasonable.

3. OG&E demonstrated the immediate need for new generating capacity in its September 18, 2018, Integrated Resource Plan (“IRP”), due to termination of the contract with AES Shady Point (360 MW nameplate) in January 2019, and the impending termination of OG&E’s contract with Oklahoma Cogeneration (146 MW nameplate) in August 2019. (Leon Howell Direct p. 3, ln. 15-19). Expiration of the AES Shady Point contract resulted in the need for 168 MW of rated capacity in 2019 and 305 MW of rated capacity by 2020 with a total capacity need of 438 MW by 2023. (Leon Howell Direct at p. 4, ln. 2-11).

4. The Request for Proposals (“RFP”) OG&E issued on October 8, 2018, sought bids from third parties to meet OG&E’s generating capacity needs as outlined in the IRP was consistent with Commission rules on competitive bidding (OAC 165:35-34-1 et seq.). (Rose Direct at p. 11-13). (Andrew Scribner, Responsive Testimony, p. 10, lns. 16-20).

5. The RFP process resulted in two asset purchase agreements with Oklahoma Cogeneration and AES Shady Point. (Donald Rowlett, Tr. p. 30, ln. 25; p 31, lns. 1-4).

6. AES Shady Point generation capacity is needed in 2019 and will be used and useful in 2019. (Donald Rowlett, Supplemental Testimony, p.5, lns. 3- 9).

7. Oklahoma Cogeneration capacity is needed in 2021 and will be used and useful at that time. (Donald Rowlett, Supplemental Testimony, p.5, lns. 3-9)

8. OG&E is entitled to a presumption of prudence related to the acquisition of the generating facilities since it complied with Commission rules on competitive bidding. (OAC 165:35-34-1).

9. There was no timely objection to the RFP process raised within the 15 days required by Commission rules. (OAC 165:35-34-3 (f)(1)).

10. OG&E’s quantitative and qualitative analyses of capacity-only PPA bids was in keeping with Commission rules and parameters established in the RFP and was reasonable and in consideration of customer cost and benefit. (Howell Direct at p. 7-9; Howell Rebuttal at p. 5-12; Rose Direct at p. 6-12, 16-35; Rose Rebuttal at p. 8-21, 24-26).

11. An Independent Evaluator was not required to monitor OG&E’s RFP and competitive bidding process. OAC 165-34-3(b)(1) mandates appointment of an Independent Evaluator in limited circumstances:

- i) When an affiliate of the utility is anticipated to participate in the competitive bidding process.
- ii) When the RFP and bid resulting there from is expected to have a material impact on the utilities' cost of providing electricity to its customers.
- iii) When it is anticipated that the utility may participate as a bidder in the competitive bidding process.

None of these circumstances apply in the current matter.

12. OG&E is not required to secure a waiver since it followed the competitive bidding process outlined at OAC 165:35-34-3(e) which was reviewed and approved by PUD.

13. OG&E adequately explained its need for capacity only, rather than a combination of capacity and energy. OG&E purchases energy from the SPP Integrated Marketplace thereby taking advantage of competitive pricing rather than being locked into an energy contract which could work to customers' financial detriment. (Donald Rowlett Supplemental Testimony).

14. OG&E properly considered all reasonable alternatives when evaluating bids received pursuant to the RFP. OG&E received 94 bids from 19 bidders presenting a variety of generation options in response to the RFP. (Jason Lawter Responsive Testimony, p.8-9).

15. A replacement RFP is not required since OG&E issued a non-restrictive RFP which was consistent with Commission rules.

Purchase of AES Shady Point and Oklahoma Cogeneration will provide low cost energy to customers at approximately \$106/kW and is in customers' best interest. (Leon Howell, Direct Testimony, p.9, ln.25).

16. Paragraph III-D of the Joint Stipulation is reasonable in requiring OG&E to disclose in the next RFP the weights applied to natural gas price sensitivity and the method used to assign Net Present Value of Customer Cost ("NPVCC") for each bid considered in the evaluation process.

17. OG&E's request for recovery outlined in the GCRR is proper, reasonable and fair. 17 O.S. §286C does not preclude recovery, rather it allows cost to be "subject to cost recovery rules promulgated by the Commission." OAC 165:35-38-5(b) allows Commission review of OG&E's cost recovery request.

18. OG&E counsel sent an April 4, 2019, e-mail to the ALJ copying all parties to the case and alerting the ALJ to the limitation placed on the GCRR in amendment to paragraph III C-4 of the Joint Stipulation noting all parties agreed to the concession. The amendment language mirrored that of OG&E's proposed Findings of Fact and Conclusions of Law filed with the Commission April 4, 2019, with a copy sent to all parties.

19. To assure no further issues arose based upon this amendment, the ALJ scheduled a Technical Conference set for April 12, 2019. At that Conference, all parties were able to express their support and/or voice their concerns regarding OG&E's concession. All parties agreed to the change in the Paragraph III C-4 language which terminated the GCRR three (3) years from the date the Final Order issues in Cause No. PUD 201800140, the OG&E rate case filed December 31, 2018.

Respectfully submitted, this 22<sup>nd</sup> day of APRIL, 2019.

  
LINDA S. FOREMAN  
Administrative Law Judge

C:

Chairman J. Todd Hiatt  
Vice Chairman Bob Anthony  
Commissioner Dana L. Murphy  
Nicole King  
Matt Mullins  
Elizabeth Cates  
Ben Jackson  
Jim Myles  
William L. Humes  
John D. Rhea  
Patrick D. Shore  
Dominic Williams  
Kimber L. Shoop  
Ronald E. Stakem  
Jack G. Clark, Jr.  
Jared B. Haines  
A. Chase Snodgrass  
Thomas P. Schroedter  
Rick D. Chamberlain  
Deborah R. Thompson  
Kyle Vazquez  
Maribeth D. Snapp  
Mary Candler  
Natasha Scott

ATTACHMENT "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF	)	
OKLAHOMA GAS AND ELECTRIC COMPANY	)	
FOR COMMISSION PREAPPROVAL PURSUANT	)	Cause No. PUD 201800159
TO 17 O.S. SECTION 286(C) FOR ACQUISITION	)	
OF CAPACITY THROUGH ASSET PURCHASE	)	

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

**I. Introduction**

The undersigned parties believe it is in the public interest to effectuate a settlement of the issues in Cause No. PUD 201800159.

Therefore, now the undersigned parties to the above entitled Cause present the following Joint Stipulation and Settlement Agreement ("Joint Stipulation") for the Oklahoma Corporation Commission's ("Commission") review and approval as a compromise and settlement of all issues in the proceeding between the parties to this Joint Stipulation ("Stipulating Parties"). The Stipulating Parties represent to the Commission that the Joint Stipulation represents a fair, just, and reasonable settlement of these issues, that the terms and conditions of the joint Stipulation are in the public interest, and the Stipulating parties urge the Commission to issue an Order in this Cause adopting the Joint Stipulation.

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. § 151 *et seq.*, 17 O.S. § 286(C).

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

**II. Stipulated Facts**

A. On September 18, 2018, Oklahoma Gas and Electric Company ("OG&E" or "Company") submitted to this Commission its final Integrated Resource Plan ("IRP"). That IRP demonstrates a capacity shortfall for OG&E starting in 2019 and growing through 2028.

B. On October 10, 2018, OG&E issued a Request for Proposals for Capacity ("RFP") seeking bids for projects that will be used to satisfy OG&E's load and planning reserve obligations as a Load Responsibility Entity within the Southwest Power Pool, which projects must be in service beginning in 2019, 2020, or 2021.

C. Bid responses to the RFP were received on October 22, 2018, and OG&E undertook evaluations of those proposals and engaged in negotiations with bidder(s) which culminated in two asset purchase agreements with Oklahoma Cogeneration and AES Shady Point ("Generating Facilities"). Oklahoma Cogeneration is a 146 MW nameplate capacity, natural-gas, combined-cycle existing generating facility located in Oklahoma City, Oklahoma. AES Shady Point is a 360

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*Joint Stipulation and Settlement Agreement*

MW, nameplate capacity, circulating fluidized bed coal-fired existing generating facility located in Panama, Oklahoma.

D. On December 28, 2019, OG&E filed an application requesting that the Commission preapprove OG&E's acquisition of the Generating Facilities pursuant to 17 O.S. § 286(C).

E. In its Application, OG&E also sought approval of a recovery rider mechanism (the Generation Capacity Recovery Rider or "GCRR") to recover the revenue requirement associated with the Generating Facilities (including a return of and on the capital investment associated with the Generating Facilities, non-fuel operations and maintenance ("O&M") expenses, depreciation, and ad valorem taxes). The GCRR, as proposed, would begin recovery of the costs for each Generating Facility as the Company closes on each Generating Facility's purchase.

**III. Settlement Agreement**

A. The Stipulating Parties request that the Commission find that OG&E's RFP and bid evaluation process was consistent with the Commission's competitive bidding rules (OAC 165:35-34).

B. The Stipulating Parties further request that the Commission find that OG&E has demonstrated a need for the acquisition of the Generating Facilities. The Stipulating Parties request that the Commission should, pursuant to 17 O.S. § 286(C), approve the acquisition of the Generating Facilities and determine that the Generating Facilities are (i) needed on their respective need dates (*i.e.*, AES Shady Point in 2019 and Oklahoma Cogeneration in 2021); (ii) reasonable in light of alternatives on their respective need dates; (iii) used and useful on their respective need dates; and (iv) subject to the cost recovery specified herein.

C. The Stipulating Parties further request that the Commission approve the GCRR rider attached hereto as Exhibit A to recover the costs of the Generating Facilities set forth by OG&E in its Application with the following conditions:

1. ~~The GCRR rider shall become effective the first billing cycle of July 2019, but only if the Commission issues an order approving this Joint Stipulation and only if OG&E closes on the acquisition of the AES Shady Point facility.~~
2. The GCRR rider shall initially only recover the revenue requirement associated with the AES Shady Point facility, calculated using the Company's most recently approved cost of capital. If OG&E closes on the acquisition of the AES Shady Point facility before July 2019, OG&E shall be able to recover any costs related to the AES Shady Point facility during the time between closing and the effectiveness of the GCRR.
3. Beginning on the date OG&E closes on the acquisition of the Oklahoma Cogeneration facility, the Company shall create a regulatory asset for costs of that facility, including a return of and on the capital investment associated with the Generating Facilities, non-fuel operations and maintenance ("O&M") expenses, depreciation, and ad valorem taxes. The Stipulating Parties further agree that the return on that regulatory asset shall

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Joint Stipulation and Settlement Agreement

be at the Company's most recently approved cost of debt, which shall be updated based on the final order in Cause No. PUD 201800140. On May 1, 2021, the Oklahoma Cogeneration regulatory asset shall terminate and the regulatory asset balance shall be included in the GCRR for amortization over a five year period and a revenue requirement associated with the Oklahoma Cogeneration facility shall be calculated for recovery in the GCRR using the Company's most recently approved cost of capital. If the GCRR terminates before the regulatory asset balance is fully amortized, the regulatory asset balance shall be recovered through base rates in OG&E's next general rate case.

4. If a general rate case is not filed within three (3) years after a final order is issued in Cause No. PUD 201800140, OG&E will initiate a docket to allow the Commission and interested parties an opportunity to perform a comprehensive review of the GCRR rider and to consider whether the GCRR should continue.
5. No fuel costs associated with the Generation Facilities shall be included in the GCRR and all fuel costs associated with each Generating Facility shall be included in the fuel adjustment clause beginning after OG&E closes on each facility.
6. The capital investment amount to be included in the GCRR shall be limited to the purchase price of the Generating Facilities. No capital costs other than the costs associated with purchase of the Generation Facilities shall be included in the GCRR. In addition, the annual O&M costs associated with the Generating Facilities shall be capped at \$20 million.
7. On or before February 15 of each year, re-calculated GCRR factors shall be submitted by the Company to the Public Utility Division and all stipulating parties for review and shall be implemented the first billing cycle of April. When the GCRR terminates, the Generating Facilities shall be included in rate base after an OG&E general rate case proceeding.

~~D. The Stipulating Parties further agree that, in OG&E's next request for proposals for the acquisition of generation facilities, the Company will disclose in the initial request for proposals document the following: (i) all weights applied to natural gas price sensitivities in the bid evaluation process; and (ii) the method or calculation used to assign value to the Net Present Value of Customer Cost ("NPVCC") for each bid considered in the bid evaluation process. In addition, OG&E shall examine various alternative quantitative and qualitative weightings, including assigning more weight to the NPVCC value, for its next request for proposals for the acquisition of generation facilities and discuss those alternatives in the initial draft request for proposals document.~~

#### IV. General Reservations

The Stipulating Parties represent and agree to the following, except as specifically provided:

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*Joint Stipulation and Settlement Agreement*

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 counsel of record 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 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. Balance/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. Admissions and 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, 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 Applicant 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

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Joint Stipulation and Settlement Agreement

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.

F. Discovery. 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.

Dated: 3/25/19

OKLAHOMA GAS AND ELECTRIC COMPANY

By: William L. Humes

William L. Humes

THE PUBLIC UTILITY DIVISION

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

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

Kyle Vazquez

OKLAHOMA ATTORNEY GENERAL

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

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

Jared B. Haines, Assistant Attorney General

**Cause No. PUD 201800159  
Joint Stipulation and Settlement Agreement**

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OKLAHOMA GAS AND ELECTRIC COMPANY

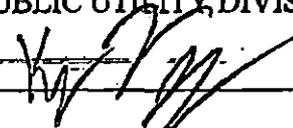
Dated: \_\_\_\_\_

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

William L. Humes

THE PUBLIC UTILITY DIVISION

Dated: 3/25/19

By: 

Kyle Vazquez, Assistant General Counsel

OKLAHOMA ATTORNEY GENERAL

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

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

Jared B. Haines, Assistant Attorney General

**Cause No. PUD 201800159**

**Joint Stipulation and Settlement Agreement**

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OKLAHOMA GAS AND ELECTRIC COMPANY

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

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

William L. Humes

THE PUBLIC UTILITY DIVISION

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

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

Kyle Vazquez

OKLAHOMA ATTORNEY GENERAL

Dated: 3/22/19

By: Jared Haines

Jared B. Haines, Assistant Attorney General

**Cause No. PUD 201800159  
Joint Stipulation and Settlement Agreement**

Jared B. Haines, Assistant Attorney General

**THE OKLAHOMA INDUSTRIAL ENERGY  
CONSUMERS**

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

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

Thomas P. Schroedter

**OG&E SHAREHOLDERS ASSOCIATION**

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

By: Jack G. Clark, Jr.

Jack G. Clark, Jr.

**AES SHADY POINT, LLC**

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

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

Kendall Parrish

**OKLAHOMA ENERGY RESULTS**

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

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

Cheryl Vaught

**WAL-MART STORES EAST, LP and SAM'S  
EAST, INC.**

Cause No. PUD 201800159  
Joint Stipulation and Settlement Agreement

THE OKLAHOMA INDUSTRIAL ENERGY  
CONSUMERS

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

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

Thomas P. Schroedter

OGE SHAREHOLDERS ASSOCIATION

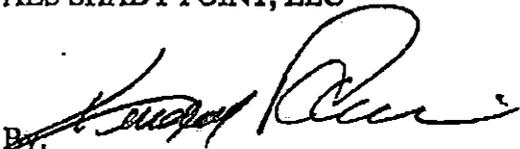
Dated: \_\_\_\_\_

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

Ron Stakem

AES SHADY POINT, LLC

Dated: 3/25/19

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

Kendall Parrish

~~OKLAHOMA ENERGY RESULTS~~

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

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

Cheryl Vaught

WAL-MART STORES EAST, LP and SAM'S  
EAST, INC.

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

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

Richard Chamberlain

OKLAHOMA GAS AND ELECTRIC COMPANY

Original Sheet No. 52.30

P. O. Box 321

Oklahoma City, Oklahoma 73101

Date Issued XXXXXX XX, XXXXSTANDARD PRICING SCHEDULE: GCRR  
Generation Capacity Replacement RiderSTATE OF OKLAHOMAEFFECTIVE 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 replacement approved in Cause No. PUD 201800159.

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

**TERM:** The GCRR will be implemented the later of either the first billing cycle of July 2019 or the first billing cycle of the month following the closing of the acquisition of the AES Shady Point facility. The GCRR will continue until such time that the generation capacity replacement approved for recovery through this rider is 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 an OG&E general rate case proceeding.

**GCRR FACTOR CALCULATION:** The Company will calculate the GCRR factors using the following formula, on a per kilowatt-hour (kWh) basis, for each of the major rate classes and the combined minor rate classes and will be computed as follows:

$$GCRR\ Factor_{class} = \frac{(A + B) * C}{D}$$

Where:

A = Oklahoma Jurisdiction Generation Capacity Replacement Revenue Requirement

B = Annual True-Up

C = Production Demand Allocator for each class

D = Projected annual kWh for each class

And:

**A) Oklahoma Jurisdiction GCRR Annual Revenue Requirement:** The GCRR shall initially only recover the revenue requirement associated with the AES Shady Point facility, inclusive of a return of and on the capital investment calculated using the Company's most recently approved cost of capital, non-fuel operations and maintenance ("O&M") expenses, depreciation, and ad valorem taxes, and reduced for applicable state investment tax credits. If OG&E closes on the acquisition of the AES Shady Point facility before July 2019, OG&E shall be able to recover any costs related to the AES Shady Point facility during the time between closing and the effective date of the GCRR.

Beginning on the date OG&E closes on the acquisition of the Oklahoma Cogeneration facility, the Company shall create a regulatory asset for costs of that facility, including a return of and on the capital investment associated with the

Rates Authorized by the Oklahoma Corporation Commission:

Public Utilities Division Stamp

(Effective) (Order No.) (Cause/Docket No.)

Xxxx X, 20XX

XXXXX

PUD 201400229

Exhibit A

OKLAHOMA GAS AND ELECTRIC COMPANY

Original Sheet No. 52.31

P. O. Box 321

Oklahoma City, Oklahoma 73101

Date Issued XXXXXX XX, XXXX**STANDARD PRICING SCHEDULE: GCRR****STATE OF OKLAHOMA****Generation Capacity Replacement Rider**

Generating Facilities, non-fuel operations and maintenance ("O&M") expenses, depreciation, and ad valorem taxes. The return on that regulatory asset shall be at the Company's most recently approved cost of debt (as specified in Cause No. PUD 201700496) and shall be updated based on the final order in Cause No. PUD 201800140. On May 1, 2021, the Oklahoma Cogeneration regulatory asset shall terminate and the regulatory asset balance shall be included in the GCRR for amortization over a five year period and a revenue requirement associated with the Oklahoma Cogeneration facility inclusive of a return of and on the capital investment calculated using the Company's most recently approved cost of capital, non-fuel operations and maintenance ("O&M") expenses, depreciation, and ad valorem taxes and reduced for applicable state investment tax credits and shall be calculated for recovery in the GCRR using the Company's most recently approved cost of capital.

If the GCRR terminates before the regulatory asset balance is fully amortized, the regulatory asset balance shall be recovered through base rates in OG&E's next general rate case.

The capital investment amount to be included in the GCRR shall be limited to the purchase price of the Generating Facilities. No capital costs other than the costs associated with purchase of the generation facilities shall be included in the GCRR. In addition, the annual O&M costs associated with the Generating Facilities shall be capped at \$20 million.

- B) **Annual True-Up:** The over or under amount will be the difference between actual revenue requirement and the Prior Period GCRR 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.

Rate Class	Allocator Percentage*
Residential	46.7649%
General Service	8.9330%
Power and Light	25.0039%
Large Power and Light	16.0169%
Other	3.2813%

\*Adjusted to exclude jurisdictions not at issue

- D) **Projected kWh:** The applicable annual Oklahoma jurisdictional kWh for each GCRR class as determined by the Company.

Rates Authorized by the Oklahoma Corporation Commission:

Public Utilities Division Stamp

(Effective) (Order No.) (Cause/Docket No.)

Xxxx X, 20XX

XXXXXX

PUD 201400229

Exhibit A

**OKLAHOMA GAS AND ELECTRIC COMPANY**

**Original Sheet No. 52.32**

**P. O. Box 321**

**Oklahoma City, Oklahoma 73101**

**Date Issued XXXXXX XX, XXXX**

**STANDARD PRICING SCHEDULE: GCRR**  
**Generation Capacity Replacement Rider**

**STATE OF OKLAHOMA**

**RATE CLASSES:**

Major Rate Classes = *Residential, General Service, Power and Light, and Large Power and Light*

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

**ANNUAL RE-DETERMINATION:** On or before February 15 of each year, re-calculated GCRR factors shall be submitted by the Company to the Public Utility Division and all stipulating parties for review and shall be implemented the first billing cycle of April.

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

**Rates Authorized by the Oklahoma Corporation Commission:**

Public Utilities Division Stamp

(Effective)	(Order No.)	(Cause/Docket No.)
Xxxx X, 20XX	XXXXX	PUD 201400229

Exhibit A

**OKLAHOMA GAS AND ELECTRIC COMPANY**

**Original Sheet No. 52.32**

**P. O. Box 321**

**Oklahoma City, Oklahoma 73101**

**Date Issued XXXXXX XX, XXXX**

**STANDARD PRICING SCHEDULE: GCRR  
Generation Capacity Replacement Rider**

**STATE OF OKLAHOMA**

**Attachment A**

**JULY 1, 2019 – MARCH 31, 2020 GCRR FACTORS**

<b>Class</b>	<b>\$ per kWh</b>
Residential	\$0.XXXXXXX
General Service	\$0.XXXXXXX
Power and Light	\$0.XXXXXXX
Large Power and Light	\$0.XXXXXXX
Other	\$0.XXXXXXX

**Rates Authorized by the Oklahoma Corporation Commission:**

Public Utilities Division Stamp

**(Effective)**

**(Order No.)**

**(Cause/Docket No.)**

Xxxx X, 20XX

XXXXX

PUD 201400229

Exhibit A

## ATTACHMENT "B"

### PROCEDURAL HISTORY

1. On December 28, 2018, Oklahoma Gas and Electric Company ("OG&E") filed its Application requesting Commission preapproval for acquisition of capacity through asset purchase pursuant to O.S. 17 § 286(C). Also on December 28, 2018, OG&E filed the Direct Testimonies of Judah L. Rose (Confidential and Redacted), Jason Bailey, Keith Mitchell, and Leon Howell.
2. Also on December 28, 2018, the Attorney General of the State of Oklahoma ("Attorney General") filed an Entry of Appearance.
3. On January 2, 2019, OG&E filed a Motion for Protective Order along with a Notice of Hearing setting the Motion for Protective Order for hearing on January 10, 2019.
4. On January 7, 2019, AES Shady Point, LLC ("AES") filed an Entry of Appearance.
5. On January 8, 2019, OG&E filed an Amended Direct Testimony of Judah L. Rose (Confidential and Redacted).
6. On January 10, 2019, OG&E Shareholders Association ("OG&E Shareholders") filed an Entry of Appearance.
7. Also on January 10, 2019, the Motion for Protective Order was heard and recommended.
8. Also on January 10, 2019 OG&E filed a Motion to Establish Procedural Schedule along with a Notice of Hearing setting the Motion to Establish Procedural Schedule for hearing on January 17, 2019.
9. On January 17, 2019, the Motion to Establish Procedural schedule was heard and recommended.
10. Also on January 17, 2019, the following documents were filed:
  - a. Motion to Establish Notice Requirements and to Approve Form of Notice along with a Notice of Hearing setting the Motion to Establish Notice Requirements and to Approve Form of Notice for hearing on January 24, 2019; and
  - b. Oklahoma Industrial Energy Consumers ("OIEC") filed an Entry of Appearance.
11. On January 24, 2019, the Motion to Establish Notice Requirements and to Approve Form of Notice was heard and recommended.

12. On January 25, 2019, Wal-Mart Stores East, LP, and Sam's East, Inc. (collectively, "Wal-Mart") filed an Entry of Appearance.

13. On January 30, 2019, the Commission issued Order No. 690564, Order Granting Motion for Protective Order.

14. Also on January 30, 2019, Oklahoma Energy Results, LLC ("OER") filed an Entry of Appearance.

15. On February 6, 2019, the Commission issued Order No. 690986, Order Granting Motion to Establish Notice Requirements and to Approve Form of Notice. Also, the Commission issued Order No. 690987, Order Granting Motion to Establish Procedural Schedule.

16. On February 13, 2019, Public Comment was filed.

17. On February 19, 2019, Responsive Testimony of Jason Lawter and Andrew Scribner on behalf of the Public Utility Division, Oklahoma Corporation Commission ("PUD") were filed.

18. On February 20, 2019, the Attorney General filed the Responsive Testimony of Todd F. Bohrmann (Confidential and Redacted) and OER filed the Responsive Testimony of Steven Gabel (Confidential and Redacted)

19. On February 21, 2019, the following documents were filed:

- a. Statements of Position by Wal-Mart, OIEC, OG&E Shareholders and AES;
- b. Summary of Responsive Testimony of Todd F. Bohrmann on behalf of the Attorney General; and
- c. Testimony Summaries of Jason Lawter and Andrew Scribner on behalf of PUD.

20. On February 22, 2019, the Responsive Testimony Summary of Steven Gabel (Confidential and Redacted) on behalf of OER were filed.

21. On March 1, 2019, the following Rebuttal Testimonies were filed:

- a. Steven Gabel (Confidential and Redacted) on behalf of OER; and
- b. Judah L. Rose (Confidential and Redacted) and Leon C. Howell on behalf of OG&E.

22. On March 5, 2019, the Summary of Rebuttal Testimony of Steven Gabel (Confidential and Redacted) were filed on behalf of OER.

23. On March 6, 2019, the Testimony Summaries of Jason Bailey and Keith Mitchell on behalf of OG&E were filed.

24. Also on March 6, 2019, the Testimony Summaries of Leon Howell and Judah L. Rose (Confidential and Redacted) on behalf of OG&E were filed.

25. On March 7, 2019, the Affidavit of Publication for LeFlore County was filed.

26. On March 14, 2019, Public Comment was filed. Also on this date, Publication Affidavits were filed.

27. On March 19, 2019, the Witness and Exhibit List of Wal-Mart and PUD were filed.

28. Also on March 19, 2019, Exhibit Lists of OIEC, OG&E, OG&E Shareholders, OER, Attorney General and AES were filed, and also OG&E's Witness List was filed.

29. On March 25, 2019, the Supplemental Testimony of Donald R. Rowlett with the Joint Stipulation and Settlement Agreement attached as Exhibit DRR-1 on behalf of OG&E was filed.

30. On March 26, 2019, the following documents were filed:

- a. Testimony Summary of the Supplemental Testimony of Donald R. Rowlett on behalf of OG&E;
- b. Testimony Summary of Mark E. Garrett on behalf of OIEC; and
- c. Supplemental Testimony of Steven Gabel on behalf of OER.

31. On March 27, 2019, the Hearing on the Merits was heard and the ALJ took the matter under advisement, requesting the parties file Proposed Findings of Fact and Conclusions of Law by April 4, 2019.

32. Also on March 27, 2019, Exhibit 71 was filed.

33. On March 28, 2019, Public Comments were filed.

34. On April 2, 2019, a Notice of Transcript Completion was filed.

35. On April 4, 2019, Proposed Findings of Fact and Conclusions of Law of OG&E, OIEC, OER, Wal-Mart, Attorney General, OG&E Shareholders and PUD were filed.

36. On April 5, 2019, a Notice of Hearing was filed setting a Technical Conference in this Cause for April 12, 2019.

37. On April 12, 2019, the Technical Conference was heard and taken under advisement.

38. Also on April 12, 2019, OER's Technical Conference Statement and Exhibit I were filed.

**FILED**

FEB 21 2019

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL )  
PURSUANT TO 17 O.S. SECTION 286(C) FOR ) CAUSE NO. PUD 201800159  
ACQUISITION OF CAPACITY THROUGH )  
ASSET PURCHASE )

**STATEMENT OF POSITION OF  
WAL-MART STORES EAST, LP, AND SAM'S EAST, INC.**

Oklahoma Gas and Electric Company ("OG&E" or the "Company") seeks Commission pre-approval in this docket under 17 O.S. §286(C) for the acquisition of certain generation assets. Wal-Mart Stores East, LP, and Sam's East, Inc., (collectively "Walmart") are large commercial customers of OG&E with approximately 57 stores and related facilities, and a distribution center taking service from the Company.

The relief requested in this docket will directly impact Walmart and its business in Oklahoma. While Walmart did not file responsive testimony, it reserves the right to file rebuttal testimony, cross-examine witnesses and take other steps as required to protect its interests.

Respectfully submitted,

By 

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ATTORNEY FOR INTERVENORS,  
WAL-MART STORES EAST, LP,  
AND SAM'S EAST, INC.

**STATEMENT OF POSITION OF  
WAL-MART STORES EAST, LP,  
AND SAM'S EAST, INC.,  
CAUSE NO. PUD 201800159**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of February, 2019, a true and correct copy of the foregoing instrument was served upon the following by means of the U.S. mail, postage prepaid, electronic mail and/or hand-delivery:

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**Public Utility Division**

Kyle A Vazquez  
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**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

**IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )**

**CAUSE NO. PUD 201800159**

**FILED**  
FEB 21 2019

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**



**SUMMARY TESTIMONY**

**OF**

**JASON LAWTER**

**FEBRUARY 21, 2019**

1 Jason Lawter is employed by the Public Utility Division (“PUD”) of the Oklahoma  
2 Corporation Commission (“Commission”) as a Public Utility Regulatory Analyst. Mr.  
3 Lawter filed Responsive Testimony in Oklahoma Gas and Electric Company’s (“OG&E”  
4 or “Company”) Cause No. PUD201800159 on February 19, 2019.

5 Mr. Lawter testified that PUD reviewed the Application, testimony of Company witnesses,  
6 and the relevant Oklahoma statutes and Commission rules that govern approval of OG&E’s  
7 acquisition of capacity. PUD also issued data requests and reviewed the associated  
8 responses, interviewed Company personnel, and conducted onsite audits at the Company’s  
9 headquarters in Oklahoma City, Oklahoma.

10 Mr. Lawter testified that OG&E requested approval from the Commission for its purchase  
11 of the AES Shady Point and Oklahoma Cogeneration facilities via 17 O.S. § 286(C). This  
12 statute allows an electric utility subject to rate regulation by the Commission to file an  
13 application for Commission approval to construct a new electric generating facility, to  
14 purchase an existing electric generating facility, or enter into a long-term contract for  
15 purchased power and capacity and/or energy. Should the Commission determine that the  
16 utility has a need for any of the above options, the facility or contract shall be considered  
17 used and useful and its costs shall be subject to cost recovery rules promulgated by the  
18 Commission.

19 Mr. Lawter testified that two Commission rules also apply to the relief OG&E seeks in this  
20 Cause. OAC 165:35-38-5 governs the recovery of costs via self-build or purchase options

1 for generating facilities, power, or energy. OAC 165:35-34-3 governs the competitive  
2 bidding procurement process for long-term fuel transportation, long-term fuel storage,  
3 long-term electric generation, and long-term purchase power agreements.

4 Mr. Lawter testified that after reviewing the scoring process and the model to look at cost  
5 and non-cost factors to find the most efficient and most cost-effective alternatives, PUD  
6 determined that OG&E's model was accurate and complete, and portrays the options  
7 correctly. PUD recommends the Commission grant preapproval to OG&E and believes  
8 that this recommendation is fair, just, reasonable, and in the public interest.

Cause No. PUD 201800159  
Certificate of Service

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 21<sup>st</sup> day of February, 2018, a true and correct copy of the above and foregoing was sent **electronically**, addressed to the following:

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OKLAHOMA CORPORATION COMMISSION

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

**IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )**

**CAUSE NO. PUD 201800159**

**FILED**  
FEB 21 2019

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**



**SUMMARY TESTIMONY**

**OF**

**ANDREW SCRIBNER**

**FEBRUARY 21, 2019**

1 Andrew Scribner is employed by the Public Utility Division (“PUD”) of the Oklahoma  
2 Corporation Commission (“Commission”) as a Public Utility Regulatory Analyst. Mr.  
3 Scribner filed Responsive Testimony in Oklahoma Gas and Electric Company’s (“OG&E”  
4 or “Company”) Cause No. PUD201800159 on February 19, 2019.

5 Mr. Scribner testified that PUD reviewed the Application, testimony of Company  
6 witnesses, and the relevant Oklahoma statutes and Commission rules that govern approval  
7 of OG&E’s acquisition of capacity. PUD also issued data requests and reviewed the  
8 associated responses, interviewed Company personnel, and conducted onsite audits at the  
9 Company’s headquarters in Oklahoma City, Oklahoma.

10 Mr. Scribner testified that OG&E requested approval from the Commission for its purchase  
11 of the AES Shady Point and Oklahoma Cogeneration facilities via 17 O.S. § 286(C). This  
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20 this Cause. OAC 165:35-38-5 governs the recovery of costs via self-build or purchase

1 options for generating facilities, power, or energy. OAC 165:35-34-3 governs the  
2 competitive bidding procurement process for long-term fuel transportation, long-term fuel  
3 storage, long-term electric generation, and long-term purchase power agreements.

4 Mr. Scribner testified that after review of OG&E's Request for Proposal competitive  
5 bidding process for capacity procurement, PUD is satisfied that OG&E is in compliance  
6 with the above Oklahoma statute and Commission rules, and recommends the Commission  
7 grant preapproval to the Company's request for cost recovery.

Cause No. PUD 201800159  
Certificate of Service

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 21<sup>st</sup> day of February, 2018, a true and correct copy of the above and foregoing was sent **electronically**, addressed to the following:

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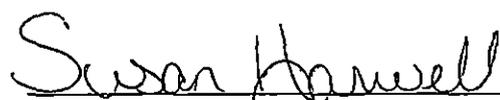
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BARBARA COLBERT, Administrative Assistant  
SUSAN HARWELL, PUD Regulatory Analyst  
OKLAHOMA CORPORATION COMMISSION

**FILED**

FEB 21 2019

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

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY FOR )  
COMMISSION PREAPPROVAL PURSUANT TO 17 )  
O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

CAUSE NO. PUD 201800159

**OKLAHOMA INDUSTRIAL ENERGY CONSUMERS STATEMENT OF POSITION**

Oklahoma Industrial Energy Consumers (OIEC) through the undersigned attorneys hereby submits its statement of position in the above styled Cause. OIEC is an unincorporated association comprised of large consumers of electricity, some of which are ratepayers of Oklahoma Gas and Electric Company (OG&E).

In this Cause, OG&E seeks preapproval of the Company's acquisition of generating facilities and Commission approval of a rider to collect the costs associated with the purchase of such facilities. The Company proposes a new rider, the Generation Capacity Recovery Rider, ("GCRR"), to allow for the concurrent recovery of the annual revenue requirement associated with the generating facilities to be acquired. The Rider will begin recovering costs when the Company closes on the acquisition of the generating facilities and continue until all approved Rider costs are included in base rates. The estimated annual revenue requirement in the first year of the Rider's existence is approximately \$20.2 million according to the testimony of OG&E witness Jason Bailey.

This Statement of Position does not address the merits of OG&E's acquisition of the generating facilities. However, in the event the Commission approves such acquisition, OIEC recommends that the Commission adopt the consumer protection recommendations offered by the Oklahoma Attorney General's office in its February 20, 2019 testimony of Todd F. Bohrmann. The Attorney General's recommendations will provide essential safe guards for ratepayers and are in the public interest.

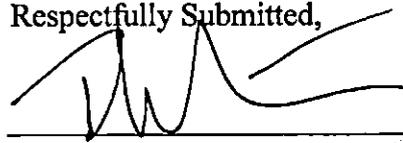
More specifically, Attorney General witness Bohrmann recommends that GCRR include a sunset clause, most favored nation clause and hold harmless clause as a condition for Commission approval of the GCRR. OIEC concurs that the addition of such clauses would be beneficial to ratepayers and afford protections that the GCRR does not currently provide.

Regarding adoption of a sunset clause for the GCRR, as noted by Mr. Bohrmann the proposed GCRR fails to address the expiration of the GCRR. Mr. Bohrmann has recommended that the GCRR Tariff be modified to address the term and expiration of the Tariff. OIEC agrees with this recommendation. The Commission should set a reasonable maximum limit for which the Company is authorized cost recovery through the GCRR.

Regarding the adoption of a favored nation's clause, as noted by Mr. Bohrmann, it will be necessary for OG&E to obtain approval from the Arkansas Public Service Commission (APSC) for the recovery of costs associated with the acquisition of the generating facilities. Mr. Bohrmann recommends that any concession or condition associated with the APSC's approval of the acquisition that is materially more advantageous to the Company's Arkansas customers should be extended to OG&E's Oklahoma customers as well. OIEC agrees and recommends that the Commission condition any approval of the GCRR Tariff on a most favored nation type treatment for OG&E's Oklahoma ratepayers.

In conclusion, OIEC recommends that the Commission adopt the Attorney General's consumer protection recommendations of a sunset clause and a most favored nation clause for OG&E's GCRR for the benefit of OG&E's Oklahoma ratepayers. OIEC also reserves the right to cross examine witnesses regarding any issue in this Cause and to amend this Statement of Position as necessary if new evidence becomes available. Further, this Statement of Position is limited to the issues discussed herein and OIEC's failure to address any issue does not indicate that OIEC agrees or disagrees with other Party's assertions.

Respectfully Submitted,



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**FILED**  
FEB 21 2019

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

CAUSE NO. PUD 201800159

**Summary of the Responsive Testimony of Todd F. Bohrmann  
On Behalf of Mike Hunter, Oklahoma Attorney General**

Mr. Todd F. Bohrmann submitted pre-filed responsive testimony in the present case on February 20, 2019. In his testimony, Mr. Bohrmann summarized his educational and professional experience. Mr. Bohrmann then recommended that the Commission make the following findings with respect to Oklahoma Gas and Electric Company's ("OGE" or the "Company") request for approval of the purchases of existing generating facilities, AES Shady Point and Oklahoma Cogeneration, under 17 O.S. § 286(C), and associated cost recovery: 1) Oklahoma Gas & Electric Company ("OGE") needs approximately 320 MW capacity to fulfill its reserve margin requirements from the Southwest Power Pool ("SPP") until 2021; 2) OGE can fulfill its reserve margin requirement with the acquisition of the AES Shady Point facility alone; 3) evaluation of the Oklahoma Cogeneration proposal under different sensitivities shows a lack of robustness relative to other reasonable proposals; and 4) tariff language in the proposed Generation Capacity Recovery Rider should be clarified to include only needed capacity and terminate with the effective date of base rates implemented in the next rate case proceeding following the current rate case proceeding, but no more than three years after the effective date of new base rates established in Cause No. PUD 201800140.

To receive approval under 17 O.S. § 286(C), Mr. Bohrmann explained that the Company must demonstrate a need for the purchase of the electric generating facility, and then OGE must show its proposed action is the best among reasonable alternatives under the Commission's

consideration. If these conditions are met, then the existing generating facility would be considered used and useful. The revenue requirement of this generating facility shall then be subject to cost recovery rules promulgated by the Commission. OGE would retain the right to purchase a facility regardless of the outcome of this proceeding. OGE could then seek recovery for the facility as part of a future general rate case proceeding, once the purchased facility/facilities were in service and providing a benefit to ratepayers.

Mr. Bohrmann described the operating characteristics for both the AES Shady Point and Oklahoma Cogeneration generating facilities as well as their prior or existing commercial relationships that existed with the Company. He next described the contents of OGE's 2018 Integrated Resource Plan ("IRP") in which OGE demonstrated a capacity need for 168 MW in 2019 followed by an additional 137 MW in 2020 for a total of 305 MW during the next two years. OGE determined that a combination of solar resources and plant improvements as well as a market opportunity in 2019 is the most cost-effective resource plan for the next ten year planning horizon. The Company made this determination by utilizing its load and fuel price forecasts to determine the timing and type of resource additions among available technological alternatives. OGE also evaluated how robust its potential resource portfolio options are by analyzing the change in incremental customer costs due to a series of scenarios and sensitivities. The Company's data, assumptions, and methods to determine its need as well as the type and timing of resources to meet this need in its 2018 IRP appear reasonable.

Mr. Bohrmann indicated that OGE had initiated a request for proposals ("RFP") under the Commission's competitive bidding rules to assess reasonable alternatives for satisfying the capacity need among market opportunities. Mr. Bohrmann provided a summary of the role that a RFP plays in a utility's competitive bidding process under the Commission rules. He explained

that OGE would evaluate qualified responses to its RFP with quantitative (*i.e.*, price) and qualitative (*i.e.*, non-price) factors.

Mr. Bohrmann explained that OGE evaluated each qualified RFP response of its price and operational performance factors through simulating the impact of each proposal on the costs borne by OGE's customers under four natural gas price sensitivities: 1) Low price case; 2) Base case; 3) High price case; and 4) CO<sub>2</sub> case. The base case is based on the forecast of spot natural gas prices at Henry Hub based on projections in the EIA's 2018 Annual Energy Outlook. The low price gas sensitivity assumed that prices would be 50 percent of the base case forecast, while the high price case sensitivity would be 150 percent of the base case forecast. The CO<sub>2</sub> sensitivity assumed that OGE would be assessed a \$20 per ton tax on carbon dioxide emitted from its generation plants, commencing in 2025 and increasing at a 2.5 percent rate thereafter. The Company then calculated a weighted NPVCC by assigning the following previously undisclosed weights to these sensitivities: base case, 45 percent; low price gas, 35 percent; high price gas, 10 percent; and CO<sub>2</sub>, 10 percent.

Mr. Bohrmann testified that OGE's analysis indicated that the acquisition of the Oklahoma Cogeneration and AES Shady Point facilities were the top two proposals with the highest combined quantitative and qualitative scores. Although these two proposals had lower quantitative scores than other proposals, these proposals had significantly higher qualitative scores than the lower cost alternatives. The Company cannot meet its 2019 capacity need with the Oklahoma Cogeneration facility alone. However, OGE can meet its projected capacity shortfall with AES Shady Point until 2021.

Although AES Shady Point shows robustness in maintaining cost effectiveness among proposals that can meet the Company's 2019 capacity need, Mr. Bohrmann testified that small

changes in *either* the weightings for qualitative and quantitative factors *or* the natural gas price forecast weights created material differences in the relative cost effectiveness of the Oklahoma Cogeneration proposal among its reasonable alternatives. Mr. Bohrmann testified that it is not prudent for OGE to acquire the Oklahoma Cogeneration facility at this time. The Company's 2018 IRP indicated its most cost-effective resource portfolio included a 320 MW market opportunity in 2019. With the addition of AES Shady Point *only*, the Company's reserve margin in 2019 at 14.6 percent, well above the SPP's minimum 12 percent reserve margin, and 12.3 percent in 2020. In proceeding initiated under 17 O.S. § 286(C), OGE's customers should not pay for additional capacity beyond the Company's proven need, especially given the lack of robustness that the Oklahoma Cogeneration proposal has shown relative to the other RFP proposals.

Mr. Bohrmann described that the Company has requested to recover the revenue requirement associated with the asset purchases of AES Shady Point and Oklahoma Cogeneration through the creation of a new rider, identified as the Generation Capacity Recovery Rider ("GCRR"). Subject to annual true-up, the GCRR would allow OGE to recover the return on prudently incurred capital expenditures, net of accumulated depreciation and accumulated deferred income taxes, associated with these asset purchases through a rider mechanism. OGE would also recover investment-related expenses such as income taxes, other associated taxes, depreciation, and operation & maintenance ("O&M") expenses. During the first year of cost recovery through the GCRR, the Company calculated its Oklahoma customers would incur a revenue requirement of approximately \$20.2 million—\$14.2 million for AES Shady Point and \$6.0 million for Oklahoma Cogeneration.

Notwithstanding the cost recovery requirements in 17 O.S. § 286(C), the Company's request to recover these costs through the GCRR would not be appropriate. Those costs do not

meet the three-prong test for extraordinary rate relief through a rider mechanism. Costs that would be recovered through the proposed GCRR tariff are: 1) not substantial to the utility/OGE; 2) not volatile; and 3) within OGE's control. However, the Commission could authorize the Company to use the proposed GCRR tariff as a method to recover costs only until implementation of base rates is approved in the next proceeding pursuant to Chapter 70 of the Commission's rules, immediately following OGE's current rate case proceeding in Cause No. PUD 201800140.

Mr. Bohrmann indicated that the proposed GCRR, as filed, lacks several customer protections that the Commission should address as a condition for approval of the GCRR. Whether the Commission pre-approves OGE to acquire one or both facilities, these customer protections include: 1) a "sunset" clause; 2) a "most favored nation" clause; and 3) a "hold harmless" clause.

Mr. Bohrmann explained that the proposed GCRR tariff language lacks an expiration date. In a discovery response, the Company clarified that OGE will request that the new capacity generation additions be placed in base rates in its next general rate case filing. Mr. Bohrmann recommends that the Commission not approve the proposed GCRR tariff until the Company has modified the tariff language to memorialize this clarification. A "sunset clause" would resolve concerns related to the lack of an expiration date. A "sunset clause" would set a reasonable maximum limit for which the Company could recover costs through the GCRR. Mr. Bohrmann would recommend that the Commission authorize OGE to recover costs through the GCRR for three years after the effective date of base rates that will be established in Cause No. PUD 201800140.

Mr. Bohrmann explained that the Company may also need to receive approval from the Arkansas Public Service Commission ("Arkansas Commission") for recovery of costs associated with the acquisitions of the AES Shady Point and Oklahoma Cogeneration facilities. He would

recommend that any concession or condition associated with the Arkansas Commission's approval that is materially more advantageous to the Company's Arkansas customers should be extended to OGE's Oklahoma customers as well. Such regulatory treatment is commonly known as a "most favored nation" clause.

Finally, Mr. Bohrmann described these two generating facilities as approaching 30 years old. Although the Company assumed that these two generating facilities would retire after the end of the 30-year analysis period, it is extremely likely that OGE may retire either facility early due to physical, technical, or economic obsolescence. The Commission should condition any pre-approval on OGE holding its customers harmless if the Company should retire either generating facility before a date certain. For example, Mr. Bohrmann would recommend that the Commission condition approval for either facility in this Application on OGE holding its customers harmless if the Company should retire either facility within 20 years of the effective date of a final Commission order. This means that no amortization, depreciation, or return would be recovered at that time. It would not affect cost recovery before the date of retirement.

*Oklahoma Gas and Electric Company  
Summary of Responsive Testimony of Todd F. Bohrmann*

**CERTIFICATE OF SERVICE**

On this 21st day of February, 2019, a true and correct copy of the above and foregoing *Summary of the Responsive Testimony of Todd F. Bohrmann on Behalf of Mike Hunter, Oklahoma Attorney General*, was sent via electronic mail to the following interested parties:

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BEFORE THE  
CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS & ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT ) CAUSE NO. PUD 201800159  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

**OG&E SHAREHOLDERS ASSOCIATION'S  
STATEMENT OF POSITION**

**FILED**  
FEB 21 2019

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CORPORATION COMMISSION  
OF OKLAHOMA

OG&E Shareholders Association ("OG&E SH") submits this Statement of Position in lieu of responsive testimony pursuant to the Procedural Order entered in this cause.

OG&E Shareholders Association supports the Application of Oklahoma Gas & Electric Co. ("OG&E") for a Commission order preapproving the acquisition of existing generating facilities of Oklahoma Cogeneration and AES Shady Point pursuant to 17 O.S. §286(C) and a rider mechanism to collect costs associated with the purchase of these necessary generating facilities.

17 O.S. §286(C) provides that an electric utility subject to rate regulation (in this case, OG&E) may elect to file an application for approval to purchase an existing electric generation facility (in this case, AES Shady Point and Oklahoma Cogeneration). It also provides that if the Commission determines there is a need for the purchase of the electric generating facility the generating facility shall be considered used and useful and its costs shall be subject to cost recovery. This is exactly the situation in this case.

OG&E's need for additional generation beginning in 2019 was established in its 2018 IRP which was submitted in September 2018. The IRP describes how the expiration of the AES

Shady Point contract in January 2019 and the Oklahoma Cogeneration contract in August 2019 will cause OG&E to fail to comply with Southwest Power Pool's planning reserve margin requirement of 12%. In order to satisfy this reserve requirement OG&E determined that conducting an RFP would allow it to identify the lowest reasonable cost market opportunity best meeting the immediate capacity needs of the company and to best serve the interests of its customers. No party disputed the need for OG&E to acquire additional capacity to meet SPP's reserve margin requirement.

The testimony of Judah Rose affirms OG&E's immediate need for additional capacity to meet SPP's reserve requirement. He explains that, although OG&E has a capacity shortfall, SPP has excess generation capacity. This, therefore, creates the potential opportunity to purchase long-term capacity at a cost below replacement costs. Mr. Rose explains the design, development and implementation of OG&E's RFP process to secure sufficient capacity to satisfy SPP's reserve margin requirement. Mr. Rose asserts that the RFP will responsibly test the market in an effort to lock-in prices below replacement costs and thereby result in savings for customers. He concluded that the selection of the AES Shady Point and Oklahoma Cogeneration facilities satisfied the RFP criteria and the weighting of those criteria and therefore reflect the most reasonable alternatives for OG&E and its customers.

In order to satisfy the critical need for additional capacity OG&E enlisted the assistance of ICF in the creation, implementation and evaluation of the RFP. ICF assisted "in the design, development and implementation of the RFP (which assistance) includ(ed) assisting in drafting the RFP requirements and evaluative criteria and their weights, assistance in managing technical aspects of the RFP, and providing an independent review of the RFP responses. (emphasis supplied) (Direct Testimony of Judah L. Rose, December 28, 2018, p. 5, ll. 14-17) OG&E SH

supports the conclusion of the PUD Staff witness Jason Lawter that “After reviewing the scoring process and the model to look at the cost and non-cost factors to find the most efficient and most cost-effective alternatives, PUD determined that OG&E’s model was accurate and complete, and portrays the options correctly.” (Responsive Testimony of Jason Lawter, February 19, 2019, p. 4, ll. 3-5) Therefore, OG&E SH agrees with the recommendation of PUD: “PUD recommends the Commission grant preapproval to OG&E and believes that this recommendation is fair, just, reasonable, and in the public interest.” (Id., p. 4, ll. 5-7) In support of the bidding and evaluation process, Mr. Lawter states, “Each option was compared in such a way that differences were not penalized, rather, they were adapted so that each could be compared equally. Each capacity type was compared to all other options so that a best option was chosen without a bias towards a particular type.” (Id., p. 9, ll. 17-20)

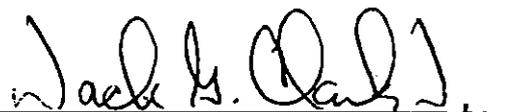
In addition, OG&E Shareholders Association supports the testimony of PUD Staff witness Andrew Scribner and PUD’s recommendation in this Cause. “After review of OG&E’s Request for Proposal (“RFP”) competitive bidding process for capacity procurement PUD is satisfied that OG&E is in compliance with the above Oklahoma statute (17 O.S. §286(C)) and Commission rules (OAC 165:35-38-5 and OAC 165:35-34-3), and recommends the Commission grant preapproval to the Company’s request for cost recovery.” (Responsive Testimony of Andrew Scribner, February 19, 2019, p. 4, ll. 3-6) In coming to this conclusion “PUD reviewed the Application, testimony of Company witnesses and the Oklahoma statutes and Commission rules that apply to OG&E’s request for Commission preapproval. PUD conducted onsite audits at OG&E’s headquarters in Oklahoma City, Oklahoma, issued data requests, and reviewed responses to data requests issued by intervenors.” (Id., p. 6, ll. 3-6)

The OG&E Shareholders Association disagrees with the recommendation of Steven Gabel that the “Commission should not approve the purchase of the Selected Projects”. (Responsive Testimony of Steven Gabel, February 19, 2019, p. 23, ll. 26-27). Rather, Mr. Gabel would have OG&E “issue a new RFP.” (Id., p. 23, l. 28). These recommendations were made even though Mr. Gabel indicated “My assessments in this testimony are based upon review of the application, redacted testimony, and certain discovery responses. However, my review does not include analysis of all elements of the petitioner’s presentation as I was not able to obtain access to “Highly Sensitive Confidential Information”, including the Net Present Value of Customer Cost (“NPVCC”) analysis, which is a central element of the Company’s justification for its selection of the Selected Projects; and the scoring of individual proposals.” (Id., p. 3, ll. 2-8) Even without reviewing this vital information, which was available for review at OG&E’s offices pursuant to the Protective Order, Order No. 690564, Mr. Gabel acknowledges that “The RFP was not restrictive as to the number of bids accepted, technology type, or fuel source. The RFP also allowed bidders to submit either Asset Purchase Agreements (“APA”) or Power Purchase Agreements (“PPA”). Following the receipt of bids on October 22, 2018, OG&E evaluated the proposals and identified the Selected Projects as the candidates for purchase.” (Id., p. 2, ll. 27-31)

Based upon the above, the OG&E Shareholder Association urges the Commission to find that there is a need for OG&E to purchase generating capacity, grant preapproval to OG&E for the purchase of the AES Shady Point and Oklahoma Cogeneration generating facilities and approve the requested rider mechanism to collect the costs associated with the purchase of these generating facilities.

The OG&E Shareholders Association notes that the procedural schedule allows for the filing of rebuttal testimony, and, therefore, reserves the right to fully participate in the remainder of this proceeding as scheduled, including to cross-examine witnesses on all issues at the hearing on this matter. OG&E Shareholders Association reserves the right to amend this Statement of Position should circumstances change or if information not previously known becomes available in the course of this proceeding.

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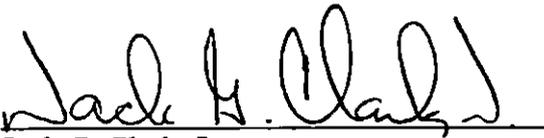
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**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN THE MATTER OF THE )  
APPLICATION OF OKLAHOMA GAS )  
AND ELECTRIC COMPANY FOR )  
COMMISSION PREAPPROVAL )  
PURSUANT TO 17 O.S. SECTION 286(C) )  
FOR ACQUISITION OF CAPACITY )  
THROUGH ASSET PURCHASE )  
)

CAUSE NO. PUD 201800159

**FILED**  
FEB 21 2019

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CORPORATION COMMISSION  
OF OKLAHOMA

**STATEMENT OF POSITION OF  
AES SHADY POINT, LLC**

COMES NOW, AES Shady Point, LLC ("AES") by its attorneys, and submits its Statement of Position in this Cause. For the reasons stated below, AES believes the relief requested by Oklahoma Gas & Electric Company ("OG&E") in this matter is in the public interest, complies with state law and Commission rules and should be approved by the Commission.

The Shady Point generation facility is located near Poteau, Oklahoma, in Le Flore County, just southwest of Fort Smith, Arkansas. The plant employs nearly 100 workers and has supported an estimated 800 to 1,200 additional jobs in the area directly and indirectly through its operations. It is estimated that the plant's operations provide an annual economic impact of as much as \$48 million to southeast Oklahoma. The Shady Point facility is currently in operation and holds necessary emissions and water permits and firm transmission capacity for the continued operation of the facility.

AES Shady Point has a total nameplate capacity of 360 MW, consisting of two identical 180 MW units. The facility has been a reliable source of electric generation to OG&E customers under a long-term Power Purchase Agreement ("PPA") with OG&E since January 1991. The facility began operation as a cogeneration qualifying facility ("QF") under the federal Public Utility Regulatory Policies Act (PURPA"). AES Shady Point has met the cogeneration requirement by capturing some of its emissions of CO2 to use as a liquid and solid food-grade refrigerant for the poultry industry, which plays an important role in the state's economy. State

data show poultry, which includes broilers and eggs, contributed more than \$960 million to the state economy in 2017.

The Shady Point facility utilizes circulating fluid bed ("CFB") technology that allows for lower nitrogen oxides (NOx) emissions due to staged combustion and lower combustion temperatures. Sulfur dioxide (SO<sub>2</sub>) emissions are also lower with this technology due to the introduction of limestone into the boilers during the combustion process. The facility, as currently constructed, is compliant with all current state and federal requirements. CFB technology also allows for a variety of fuels or fuel blends to be used in the electric generation process. While the facility has relied heavily on local Oklahoma-mined coal, the facility also has the ability to burn natural gas, waste tires and has successfully tested burning shredded railroad ties. AES Shady Point also has the ability to blend different fuels. This flexibility is not available from any other currently operating facility in the SPP region.

AES participated in the OG&E's 2018 RFP for Capacity released in October, 2018 ("RFP"). AES believes the RFP, as conducted by OG&E, was a fair, just and reasonable process and satisfies the Commission's Competitive Procurement rules codified at Subchapter 34 of the Commission's Electric Rules. As described by OG&E witnesses in this Cause, there was robust participation in the RFP by wide variety of alternative providers and energy sources. Each alternative was evaluated under the same evaluation criteria set forth in the RFP. Importantly, qualitative non-price evaluation criteria such as contract risk, operational characteristics and locational benefits were evaluated by a third party, ICF Consulting, who also supports the robustness and fairness of the RFP and the resulting selection by OG&E. Additionally, the quantitative, price evaluation performed by OG&E was applied consistently across all qualifying bidders, thereby ensuring a fair process to all qualifying bidders.

The RFP and OG&E's selections made pursuant to the RFP process satisfy the requirements for preapproval under 17 O.S. § 286(C). Section 286(C) provides: "[i]f, and to the extent that, the Commission determines there is a need for construction or purchase of the electric generating facility or long-term purchase power contract, the generating facility or contract *shall* be considered used and useful and its costs *shall* be subject to cost recovery rules promulgated by the Commission." (emphasis added). The statute further states that once the Commission determines such need, "it *shall* issue an order . . . within 240 days . . . after consideration of reasonable alternatives." (emphasis added). AES believes OG&E has demonstrated the need for AES capacity in order to meet its reserve requirements imposed by the

Southwest Power Pool ("SPP"). As noted above, the Shady Point facility has been a reliable source of capacity used by OG&E to meet its SPP reserve requirements for years. As such, OG&E's termination of the PPA most certainly created a need for equivalent capacity in order for OG&E to continue to meet its SPP capacity reserve obligation. The Shady Point facility will continue to provide a reliable source of capacity to OG&E customers and the flexibility OG&E will achieve through outright purchase of the Shady Point facility is superior to the balance of interests under the PPA approved by the Commission in 1986.

In sum, AES Shady Point fully supports OG&E's application for approval of its purchase of the Shady Point facility under 17 O.S. § 286(C). The RFP adheres to the Commission's rules, was a fair and nondiscriminatory process and resulted in a wide variety of reasonable alternatives for consideration by OG&E and the Commission. Moreover, Commission approval of OG&E's purchase of the AES Shady Point facility satisfies the public interest in that OG&E's operation of the facility will continue to produce direct and indirect economic benefits to the southeast portion of the State and the State of Oklahoma as a whole.

Respectfully submitted,

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Attorney for AES Shady Point, LLC

### CERTIFICATE OF SERVICE

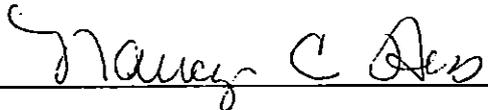
On this 21<sup>st</sup> day of February, 2019, the undersigned caused a true and correct copy of the above and foregoing document to be transmitted to the following:

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**FILED**  
FEB 22 2019

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

CAUSE NO. PUD 201800159

Summary of the Responsive Testimony of

**Steven Gabel**

On Behalf of

**Oklahoma Energy Results, LLC**

February 22, 2019

**PUBLIC REDACTED VERSION**

**RESPONSIVE TESTIMONY SUMMARY OF STEVEN GABEL (PUBLIC REDACTED  
VERSION) ON BEHALF OF OKLAHOMA ENERGY RESULTS, LLC  
FEBRUARY 22, 2018**

Steven Gabel testified on behalf of Oklahoma Energy Results, LLC (“OER”), an intervenor in this case. Mr. Gabel is an economist who specializes in public utility economics and regulation. Mr. Gabel has over 35 years of experience in the energy industry, working at the New Jersey Board of Public Utilities (“NJBPU”) and as an energy consultant at Gabel Associates. Over the years, Mr. Gabel’s responsibilities have included working as an economist for the NJBPU; Bureau Chief of Electric Rates and Tariffs for the NJBPU; Director of the Electric Division at the NJBPU; and Director of the Division of Solid Waste at the New Jersey Department of Environmental Protection.

During his employment at the NJBPU, Mr. Gabel worked extensively on various utility rate cases and developed, implemented, and testified with respect to rate setting, alternative energy, capacity and resource planning, long term power contracting, demand side management, incentive regulation, cost of service, and tariff design initiatives. Starting in the 1990s, he was also a participant in the development of the PJM Interconnection, L.L.C. (“PJM”) regional transmission organization (“RTO”) and remains active evaluating issues with respect to PJM, as well as other RTOs around the country, including the Southwest Power Pool (“SPP”).

From 1993 to the present, he served as the President of Gabel Associates utilizing his longstanding and diverse expertise in the field of energy. Gabel Associates is a consulting firm that assists clients in strategic energy issues, regulatory matters, project development of renewable and fossil fueled generation resources, and energy procurement in wholesale and retail energy markets. The firm currently provides energy planning, procurement and financial advice, strategic analysis, and expert testimony to a wide range of public and private sector clients.

Mr. Gabel has also testified extensively before state regulatory and legislative bodies with respect to ratemaking, cost of service, industry restructuring, energy policy, renewable energy policy, and tariff design issues, including direct involvement in electricity planning, policy, and resource evaluation. In addition, he is involved in tariff and policy development with respect to energy, capacity, transmission, and related issues.

Finally, with respect to his understanding of commercial issues, Mr. Gabel has been involved in the development of over 250 fossil and renewable energy projects and hundreds of energy transactions and power purchase agreements for energy commodities, combined heat and power entities, bulk power generation, and renewable projects.

Mr. Gabel’s educational background includes a BA in Economics from the University of Pennsylvania and a MA in Economics from Rutgers University, where he studied price theory, industrial organization, and the history of economic thought.

The purpose of Mr. Gabel’s testimony is to evaluate Oklahoma Gas and Electric Company’s (“OG&E” or “the Company”) application for preapproval pursuant to 17 O.S. § 286(C) for acquisition of capacity through asset purchase in front of the Corporation

Commission of The State of Oklahoma (“Commission”); specifically, Cause No. PUD 201800159 (“Cause”) for approval of OG&E’s purchase of the AES Shady Point generating facility and the Oklahoma Cogeneration facility (“Selected Projects”).

Mr. Gabel testified that on October 10, 2018, OG&E released a Request for Proposals (“RFP”) for up to approximately 500 MW of capacity deliverable to the OG&E service territory for the years between 2019 and 2023. The RFP was not restrictive as to the number of bids accepted, technology type, or fuel source. The RFP also allowed bidders to submit either Asset Purchase Agreements (“APA”) or Power Purchase Agreements (“PPA”). Following the receipt of bids on October 22, 2018, OG&E evaluated the proposals and identified the Selected Projects as the candidates for purchase.

Mr. Gabel’s assessments in his testimony are based upon his review of the application, redacted testimony, and certain discovery responses. However, his review does not include analysis of all elements of the petitioner’s presentation as he was not able to obtain access to “Highly Sensitive Confidential Information”, including the Net Present Value of Customer Cost (“NPVCC”) analysis, which is a central element of the Company’s justification for its selection of the Selected Projects; and the scoring of individual proposals.

Mr. Gabel has identified a number of areas of concern regarding the assumptions, process, and analysis undertaken by the Company. His testimony reviewed these issues and recommended next steps for the Commission regarding this matter.

Mr. Gabel testified that for a number of reasons, the proposal of OG&E is not in the interest of ratepayers, is unfair and discriminatory, and should not be approved by the Commission. OG&E should re-issue a modified RFP which is aligned with ratepayer interests.

According to Mr. Gabel these reasons are:

a) Approval of these asset purchases would be a significant “lost opportunity” for OG&E to modernize its Oklahoma power generation fleet as the Selected Projects are dated and inefficient relative to generation technologies available in the market today. The Selected Projects have already been in service for 28 and 30 years respectively and have heat rates (the primary measure of plant efficiency) that are between 20% and 40% higher or worse than alternatives in the market today. OG&E’s proposal to purchase the Selected Projects today denies ratepayers the benefits of substantial improvements in power generation, including lower costs and a hedge against future increases in fuel costs.

b) The results of OG&E’s own economic analysis, the NPVCC, demonstrate that purchase and ownership by the Company of the Selected Projects is not the best economic or lowest reasonable cost choice for ratepayers. OG&E’s own analysis makes it clear that there are lower cost choices available to ratepayers. Mr. Gabel testified that this is not surprising given the inefficiency and age of the Selected Projects. Inconsistent with its own economic analysis, OG&E unreasonably emphasizes the lower “first cost” of the older Selected Projects and undervalues the long-term capacity and energy value that more efficient resources can provide to ratepayers.

c) Contrary to the statements of OG&E witnesses that the ownership of the Selected Projects will shield ratepayers from risk, in fact, owning the Selected Projects will instead impose risk on ratepayers since it exposes them to: i) increased electric rates from increases in market fuel costs (i.e. increases in natural gas pricing as applied to generation facilities with a high heat rate, a leading risk in power price increases); and, ii) capacity risk that would harm ratepayers if more capital additions are needed at the Selected Projects (or to replace them entirely) due to their age or condition. This risk is also heightened if SPP changes its capacity rules to reduce the capacity value of these units or if the performances of the Selected Projects (which are currently among the oldest in SPP) degrade over time.

d) The selection process used by OG&E is unfair and discriminatory as it included energy in the asset purchase selection process but excluded energy from its PPA process. Therefore, since it was not a true market test, its results did not yield the lowest reasonable costs for ratepayers. This unfair selection process resulted in a lost opportunity that precluded the Commission from considering PPA options that included energy purchases which would have delivered benefits to ratepayers. Ownership of the Selected Projects is not a capacity only purchase, as stated by OG&E witnesses; ownership of the assets is a capacity and energy purchase by OG&E. If these purchases are approved, the Company's ratepayers will be responsible for not only the cost of the capacity, but also for the cost of all fuel, fixed and variable operation and maintenance, future capital additions, and closure related costs. Asset bidders were allowed to propose asset sales that included these energy purchases, yet OG&E precluded PPA offers which included sales of energy in their proposals. In fact, PPA offers that included energy were eliminated from evaluation as they were considered non-conforming to the RFP process. PPA arrangements which include energy (dispatch or tolling agreements) are common in the power industry and their exclusion by OG&E prevented fair competition and the opportunity to assess proposals that might provide benefits to ratepayers.

e) The design of the RFP evaluation process "double counted" the qualitative factors, accounting for them in both the screening analysis and qualitative analysis. The evaluation should have prioritized quantitative factors, such as the NPVCC (the key metric of ratepayer impact), and placed less emphasis on qualitative factors including RFP factors which were previously used to screen and eliminate bids.

f) The structure of the RFP, including the length of time provided to interested parties to submit bids, may also have contributed to the poor acceptance rate of bids of only 22%.

g) The conditions in the current and future capacity marketplace were presented by OG&E in a manner to imply that it may be difficult to procure capacity in the future. In fact, based upon SPP and OG&E data, there appears to be ample uncommitted excess capacity available through 2023 to provide for the needs of OG&E. This means that there is no reason to rush to a decision on the Selected Projects, as a properly designed and implemented RFP would enable OG&E and the Commission to review a wider range of alternatives and assess them in a manner that provides greater ratepayer benefit, more efficient operations, and a hedge against increases in energy, fuel, and capacity costs.

Moreover, Mr. Gabel testified that ratepayers are not harmed by the Commission denying OG&E's Application and requiring OG&E to re-solicit proposals. OG&E has provided its estimate of the cost of a short-term purchase of capacity. Based on this OG&E data, the short-term cost of capacity is \$7.1 million, which has a lower rate impact than OG&E's proposed annual revenue requirement of the Selected Projects of \$20.2 million (a savings of \$13.1 million to ratepayers). This rate benefit does not even include the benefits to be secured by issuance of a new RFP nor does it include the rate reduction related to the expiration of its current PPAs with the Selected Projects. Accordingly, there is adequate time for issuance of a new RFP and the opportunity to avoid a substantial ratepayer impact which supports a decision to deny the request for pre-approval of the Selected Projects.

h) The purchase of the Selected Projects will likely increase net emissions causing harm to the environment and people of the State of Oklahoma.

i) The Company overestimated the impact of imputed debt from the PPAs submitted in the RFP and unfairly penalized PPA bids versus those which included APAs.

j) The Commission should be cognizant of the fact that the revenue requirements provided by the Company to recover the costs of the purchase of the Selected Projects do not include all costs related to the operation of the Selected Projects, resulting in potential hidden additional costs to customers as a result of purchasing the Selected Projects.

k) In light of the age, low efficiency, operating capabilities, and higher emissions rates of the Selected Projects, the Commission should review the points awarded to the Selected Projects for the qualitative categories "Operational Characteristics and Viability", "Locational Benefits, Reliability, Resiliency and Security", and "Environmental Impact" to assure their reasonableness, especially with respect to the other bids received.

Based on the above, Mr. Gabel recommended that the Application be denied and that OG&E issue a modified RFP which is aligned with ratepayer interests.

Mr. Gabel testified that OG&E conducted a NPVCC analysis which calculated the costs to ratepayers of each of the pre-screened bids.

Mr. Gabel only reviewed the conclusions. However, the results provided by OG&E indicate that, even by its own analysis, the Selected Projects do not offer the best economics of the twenty-one (21) projects which cleared the OG&E pre-screen. This is significant since, despite lower cost offers being available, OG&E is proposing to purchase the Selected Projects due to other factors, including imputed debt from PPA offers and its qualitative scoring of non-cost factors.

Mr. Gabel testified that it should also be recognized that the OG&E NPVCC analysis does not include consideration of resource options that may be offered if a non-discriminatory and reasonable RFP is issued (as discussed further elsewhere in his Testimony).

According to Mr. Gabel, OG&E's reasoning for excluding capacity and energy PPAs is detailed in two data responses (AG-1-12, and AG-1-13).

Mr. Gabel testified that these responses make it clear why such offers should have been included in the RFP process. Specifically, OG&E's response to AG-1-12 includes the following:

*"In a purchase power agreement that includes a fixed energy price, OG&E would be required to purchase the energy from the counterparty even if the fixed energy price is above the SPP Locational Marginal Price ("LMP"). In an asset purchase agreement, OG&E would not have the requirement to dispatch the facilities if the cost to produce energy is above SPP LMPs. Therefore, in an asset purchase agreement, there is no energy price risk of paying energy prices higher than the SPP LMPs."*

Mr. Gabel testified that the important flaws in this explanation by OG&E are that:

a) It only focuses on PPAs with a fixed energy price. A type of PPA that is common in the industry is a "dispatch agreement" (or "tolling agreement") which gives the buyer (OG&E in this instance) the sole right to determine whether and when the seller's plant should be dispatched. When a dispatch agreement is in place, the problem indicated above, that "OG&E would be required to purchase the energy from the counterparty even if the fixed energy price is above the Locational Marginal Price ("LMP")", cannot occur. Under a dispatch agreement PPA, OG&E would only dispatch the generator when it was "in the money" and able to create ratepayer benefits.

b) The OG&E explanation for not allowing PPAs that included energy supply into the RFP also fails to recognize ratepayer benefits that would flow from a dispatch agreement PPA when a unit is dispatched. Such dispatch creates energy benefits (the difference between the market energy price/LMP and the variable cost of the generator) which are credited to ratepayers. In addition, renewable PPA resources would also be able to provide energy benefits.

Mr. Gabel testified that OG&E's response to Data Request AG-1-13 highlights one of the critical flaws in the Company's selection and evaluation process. Specifically, AG-1-13 includes the following:

*"Excluding energy from purchase power agreements does not hinder the ability of the counterparties to offer the energy into the SPP IM and to receive the associated revenue, therefore, counterparties retain the ability to realize benefits from generated energy."*

Mr. Gabel testified that a PPA which includes energy sales to OG&E allows ratepayers to realize energy benefits instead of allowing such benefits to flow to the generation owner. The fact that counterparties were able to retain the ability to offer energy into the SPP and receive the associated revenue does not demonstrate that the RFP procured the best possible offers. By disallowing the ability of bidders to include energy benefits, the RFP restricted the potential benefits available to ratepayers.

Mr. Gabel testified that the OG&E economic analysis does not properly take into account energy benefits. Mr. Gabel testified that OG&E only considers energy benefits as to asset purchases – plants it would own and rate base. By virtue of the restriction in the RFP, OG&E takes the position that PPA offers could not include the provision of energy. Simply put,

OG&E's position that it eliminated PPAs with energy sales prevented OG&E from assessing offers which could have provided significant benefit to ratepayers.

Mr. Gabel testified that two general examples can provide the Commission with a sense of scope of the energy benefits that could be realized *in one year alone*, if 506 megawatts of more efficient generation had been selected instead of the older, less efficient asset purchases of the Selected Projects:

a) The Selected Projects will provide estimated annual net energy benefits of between \$2.5 million and \$4 million per year.

b) More efficient gas-fired generation with a heat rate of 7,000 BTU/MWh would provide estimated annual net energy benefits of between \$15 million and \$25 million per year, which equates to between \$11 million and \$22.5 million per year more than the Selected Projects.

c) Wind generation with no fuel cost would provide annual net energy benefits of between \$35 million and \$45 million, which equates to between \$31 million and \$42.5 million more than the Selected Projects.

Mr. Gabel testified that as fuel costs and energy market prices increase so to do the benefits of the more efficient alternatives.

Mr. Gabel testified that as market prices increase, the energy benefits of more efficient generation increase relative to the less efficient Selected Projects. Newer, more efficient generators not only provide immediate and recurring energy benefits, they act as a significant hedge against future increases in market prices. Mr. Gabel testified that while OG&E recommends a different result than he does, it is worth noting that the general energy market view of OG&E's witnesses and their approach to energy benefits in OG&E's cost analysis is consistent with Mr. Gabel's: they state that market energy prices are depressed, and their economic analysis includes energy benefits, albeit and problematically for asset purchase selections only.

Mr. Gabel testified that because it included asset purchases that could provide energy while excluding PPAs from providing the same service, OG&E's process was both unfair and discriminatory. Moreover, OG&E prevented any consideration of PPA resources that could provide capacity, realize energy benefits, and provide a hedge against increases in market capacity or energy costs to ratepayers. This restriction was not in the best interest of ratepayers.

Mr. Gabel testified that participation in any market includes risks. However, he also testified that purchasing aging assets also places risks on ratepayers. Mr. Gabel testified that as stated by OG&E witness Judah L. Rose, "Energy market conditions appear likely to be depressed." Because energy market prices are low, the potential for the energy market prices to increase significantly outweighs the risk of the energy market becoming further depressed. By not permitting bidders to offer energy services in a PPA, OG&E lost the opportunity to realize energy price protection and to provide ratepayer benefits.

Contrary to the position of OG&E that its choice of the Selected Projects shields ratepayers from energy risk, in fact, its choice increases energy risk since the less efficient generation selected by OG&E exposes ratepayers to the rate impact from upward movement in fuel costs relative to more efficient generation.

Mr. Gabel testified that purchasing and operating a generator places performance-based risk on ratepayers. If the asset or assets were to fail, require unscheduled maintenance, or incur increases in capital or fixed operating expenses, those costs would be subject to cost recovery and be borne by ratepayers. This risk can be mitigated through use of a PPA. PPAs are instruments used to insulate ratepayers from risk. Typically, PPAs include provisions which contain performance-based risk as the supplier is required to provide the product at an agreed upon price regardless of cost increases or operational issues.

In addition, Mr. Gabel testified that PPAs can hedge against volatile energy markets, providing ratepayers protections against increases in electric prices. Since energy prices are depressed (as confirmed by the Company), a PPA or asset purchase that yields lower cost energy could represent an opportunity to lock in energy costs while they are low at a specified and more efficient heat rate as compared to long-term energy market exposure, for the benefit of ratepayers.

Mr. Gabel testified that there are several other factors to consider that give the OG&E request fuller context. While it is true that the "first cost" of the Selected Projects is low, there are several factors that would cause the proposed purchase to not be the strong capacity hedge advanced by OG&E. Moreover, as discussed elsewhere in his Testimony, OG&E's presentation unreasonably minimizes energy value.

Mr. Gabel testified that there are a number of factors that could limit the capacity value of the Selected Projects, including:

a) Capital additions: as older generators, the Selected Projects are susceptible to increased capital requirements to maintain their reliability. The Commission should assure that adequate due diligence is performed with respect to this issue. Moreover, as has been experienced increasingly across the United States, older generation units have been retired as their going forward capital additions are simply too costly relative to market forces and other generation available in the market. As a regulated utility, OG&E would have a cost recovery mechanism for such expenditures (unlike unregulated generators that have to be competitive as their costs must be recovered through market revenues or PPAs). If OG&E were to receive pre-approval of these purchases, it may decide to pursue continuing cost recovery (resulting in higher rates) instead of retiring the units as uneconomic. Either scenario is unattractive for ratepayers.

b) OG&E presents the Selected Projects as available assets for thirty more years. The assets have already been in service for 28 and 30 years, making them older than 60% of the generation in SPP. If these units cannot continue operations or cannot economically operate, the purported thirty-year hedge is lost. It's worth noting that both assets will be more than 55 years old during the back end of OG&E's assumed thirty-year life for these assets.

- c) Reduced availability over time reduces capacity value.
- d) Changes in capacity rules diminish the value of these older assets.

Mr. Rose stated, “SPP can change capacity rules, subject to FERC approval, and moreover, SPP can change rules without “grandfathering” — i.e. without locking in previous arrangements, accreditation levels, etc.” In an attempt to support the long term-value of the capacity of the Selected Projects, Mr. Rose suggests that the Selected Projects would be less susceptible to changes in rules regarding: 1) treatment of intermittent capacity; 2) location and deliverability; and, 3) penalties imposed for lack of performance.

However, Mr. Gabel testified that contrary to Mr. Rose’s testimony, these changes could also hurt the value of the Selected Projects due to their ages, and changes to SPP flexibility requirements could derate the capacity eligibility of the Selected Projects. Moreover, newer, more efficient units and/or those subject to performance provisions in PPAs are less likely to suffer performance problems that could impact capacity value.

Mr. Gabel testified that in PJM and ISO-NE, the RTOs in the Mid-Atlantic and in New England, new Capacity Performance regulations have been put in place to assure reliability and resilience of capacity resources. These Capacity Performance regulations have implemented severe penalties for under- or non-performance during certain scarcity hours and events. In order to comply, owners of older plants have been forced to invest large amounts of capital to improve operations and have incurred increased annual costs to secure fuel availability and maintenance improvements.

Mr. Gabel testified that to the extent similar rules are implemented in the SPP, ratepayers could be responsible for paying the cost of these upgrades or be required to pay the price of non-performance should a scarcity event occur.

According to Mr. Gabel, the Company claimed that deteriorating available capacity in the generating fleet and increases in load within the region could result in diminished capacity reserve margins which might increase the price to purchase capacity in the future. Specifically, the Direct Testimony of Mr. Rose states:

*OG&E can lock in very low capacity prices on long term agreements which provide valuable protections to customers in the event that SPP market conditions continue to transition through falling reserve levels, which would produce increasing capacity prices.*

Mr. Gabel testified that Mr. Rose provides an example to “illustrate the potential for rapid tightening of the capacity situation over time, and hence, the potential for higher capacity prices.” However, Mr. Gabel testified that Mr. Rose’s example “is shown not as a forecast but to highlight the rapidity with which markets with excess capacity can come into balance when both the numerator (capacity) and the denominator (peak demand) change at the same time to lower reserve levels.”

Mr. Gabel stated that in this example, Mr. Rose provides a hypothetical scenario where “Non-wind capacity decreased 1.5 GW per year... until 2023” and where “peak demand unexpectedly also grew at 2.0% per year, which would be higher than the SPP forecast, the reserve margin would be zero in 2023.”

While Mr. Gabel does not dispute the fact that a short capacity market could increase the price of capacity, there is no evidence that the market will reach the levels illustrated in Mr. Rose’s example, which Mr. Gabel finds to be misleading as to the expected future of the market and in direct conflict with SPP data.

Mr. Gabel testified that on June 29, 2018, SPP published the SPP 2018 Resource Adequacy Report (“SPP Report”), which is provided to assess resource adequacy for the 2018 Summer Season in SPP. This report provides a five-year outlook of demand and firm capacity, as well as reserve margin and excess capacity. The SPP Report estimates that peak demand will escalate by a compound annual growth rate of only 0.6% between 2018 and 2023.

Mr. Gabel testified further that the SPP Report reviews firm available capacity (i.e. capacity eligible to meet load requirements) and determines that it will decrease by only 0.26% per year (or only 843 MW in total) between 2018 and 2023. The firm available capacity determination takes into consideration factors such as existing capacity additions, existing capacity reductions, confirmed retirements, unconfirmed retirements, scheduled outages, transmission limitations, external firm capacity purchases, external firm capacity sales, and firm capacity resources (new and existing). This forecast incorporates nearly 7,000 MW of capacity retirements, but still concludes that an available reserve margin of no less than 22.8% in 2023, nearly double the 12% reserve margin requirement, will exist.

Mr. Gabel testified that the SPP Report forecasts that by 2023, the SPP will have roughly 5,566 MW of excess capacity, which corresponds with the 22.8% reserve margin. In addition, the report also provides an estimate of “SPP Excess Capacity – Generator Owner Only entities, excluding wind and solar resources (Capacity not committed to an LRE)” which directly correlates to available uncommitted capacity in the market. Contrary to Mr. Rose’s example, the forecast shows 120 MW of excess non-committed capacity in 2018. The SPP’s forecast for non-committed capacity grows substantially, to nearly 2,000 MW in 2023. This equates to a compound annual growth rate of 74% per year.

Mr. Gabel testified that OG&E has a forecast that supports the SPP forecast. OG&E’s 2018 Integrated Resource Plan (“IRP”) published a load forecast which had a compound annual growth rate between 2019 and 2023 of 0.6%, in line with SPP’s load forecast.

Mr. Gabel testified that between 2008 and 2017, OG&E’s reported system peak has grown at a compound annual growth rate of 0.0% per year. Over the past five years between 2013 and 2017, OG&E’s reported system peak grew by a compound annual growth rate of 0.5% per year.

According to Mr. Gabel, Mr. Rose’s example presents an unrealistic, unsupported scenario that suggests the possibility of severe tightening of capacity, where the actual SPP data

projects the opposite. Excess non-committed capacity will increase significantly over time and neither OG&E in its current IRP nor SPP believe load will increase at a rate anywhere close to that presented in Mr. Rose's testimony.

Mr. Gabel testified that there are flaws in OG&Es' RFP structure that resulted in the selection of the two Selected Projects that are not in ratepayers' best interest.

Mr. Gabel testified that OG&E conducted a two-phased evaluation; the first phase screened resources and eliminated them from the analysis if they were deemed non-conforming with the RFP. The second phase contained a quantitative and qualitative analysis that in sum, awarded points which were used to determine which proposals should be selected by the Company.

Mr. Gabel testified that a total of 94 bids were received in response to the RFP. According to Mr. Rose "21 bids were considered fully conforming - i.e. met the requirements for evaluation (see Table 1). Those that were not considered conforming were either determined to be infeasible or not-conforming to the requirements of the RFP." This represents a bid acceptance rate of only 22%. A majority of the rejected bids were deemed "non-conforming" for reasons such as including energy in addition to capacity, material changes to the PPA or APA, and the imposition of construction risk to OG&E. The remainder of the bids was rejected for reasons such as size, timing, term, or completeness.

Mr. Gabel testified that the fact that over three-quarters of all bids received were rejected would suggest that the Commission should review the process to determine whether adequate time was provided for participants to respond, and whether there was adequate clarity in the RFP. One area of concern the Commission should evaluate is the period of time respondents were provided to prepare and submit a bid. The RFP was issued on October 10, 2018 with bid responses due on October 22, 2018, twelve days (eight business days) later.

Mr. Gabel testified that the evaluation matrix placed a 50% weight on quantified economics and a 50% weight on other qualitative factors. These qualitative factors included Contract Risk, Costs and Benefits (15%), Operational Characteristics and Viability (10%), Locational Benefits, Reliability, Resiliency, and Security (10%), Overall Project Development Risks (5%), Resource Diversity and Scalability (5%), and Environmental Impacts (5%).

Mr. Gabel's concern is that the 50% weighting on qualitative factors is excessive because these matters (related to projected likelihood and stability) were also the subject of the up-front screening evaluation which rejected projects as infeasible or non-conforming. The use of this initial screen means that the 50% weighting on non-economic factors is too high. Instead a greater weight should be placed on the quantitative economic evaluation. This economic evaluation goes to the heart of assuring that OG&E and the Commission prioritize ratepayer benefits since the economic evaluation (specifically the NPVCC analysis) is the key metric that incorporates how each offer impacts ratepayers.

Mr. Gabel testified that the Commission should carefully review the evaluations and points awarded for the quantitative category titled "Operational Characteristics and Viability".

Mr. Gabel testified that this section is meant to capture, among other things, “an assessment of the project lifetime expectations (i.e., remaining useful asset life), and an estimate of the reasonable capital investment (cost and timing) expected to maintain the facility in sound operational order over time.” Mr. Gabel testified that he has significant concerns as to whether the Selected Projects will be able to provide service for the required thirty-year terms and whether they will be able to provide service at a reasonable cost. [REDACTED]

Mr. Gabel testified that the issue of the expected useful life of the Selected Projects should also be viewed in the context of market expectations, specifically what SPP’s expectations are for the lifetime of coal and natural gas plants. Mr. Gabel testified that in SPP’s 2020 Integrated Transmission Planning Assessment Scope, SPP makes the assumption that “Coal generators over the age of 56 will be retired, while gas-fired and oil generators over the age of 50 will be retired.” Based on this assessment, because the Selected Projects are 28 and 30 years old already, they would not be in-service for the thirty-year period required by OG&E in the RFP.

Mr. Gabel testified that the Commission should also review the “Locational Benefits, Reliability, Resiliency, and Security” category and the “Environmental Impact” category, [REDACTED]. Specifically, the “Locational Benefits, Reliability, Resiliency, and Security” category is meant to capture the expected asset life performance. [REDACTED]

Regarding the “Environmental Impact” category, [REDACTED]

Mr. Gabel testified that the Commission should also consider the fact that the Selected Projects, with expected low capacity factors, will be limited in their ability to provide ancillary services, including voltage support, because of the low dispatch of the Selected Projects.

Mr. Gabel testified that based on the information available to him, he was unable to ascertain and review the future capital, O&M, and decommissioning costs assumed for each bid evaluation. While he does not know what OG&E assumed, Mr. Gabel testified that the Commission should consider the trends and data relative to increasing capital and O&M costs for aging coal and natural gas plants.

Mr. Gabel testified that a June 2015 Study from the Institute of Energy Research explores the trend of upward cost growth in aging coal and natural gas plants. The graphs, set forth in Mr. Gabel’s Responsive Testimony provided in the June 2015 Study illustrate this trend by plant age for both coal and natural gas combined cycle resources.

Mr. Gabel testified that the Company accepted both APA offers and PPA offers, including offers for capacity only, while excluding PPA offers inclusive of an energy product, in the RFP process. However, OG&E placed a financial penalty on PPA capacity only offers related

to “the debt equivalency of a PPA on a manner consistent with ownership treatment.” Mr. Gabel testified that under the valuation method used by OG&E, all asset sale offers received 10 points in this category while point scoring for PPAs were penalized downward based on Mr. Rose’s imputed debt calculation. According to Mr. Rose, “The debt equivalency issue arises when rating agencies impute debt to PPAs, thereby assigning a higher debt-to-equity ratio for comparative rating purposes (the consequence could be a derating and/or higher interest expenses) against the rate-based option.”

Mr. Gabel testified that this factor should not have received weight in the OG&E evaluation. Mr. Gabel testified that the weighting method used by Mr. Rose is inconsistent with the studies he provided in this proceeding and does not recognize the high certainty of recovery of PPA costs in this particular matter. The two studies Mr. Rose provided in discovery were a report from Standard and Poor (“S&P Report”) and a report from the California Public Utilities Commission (“PUC Report”).

Mr. Gabel testified that Mr. Rose used a debt equivalence of 25% which he states is “the risk factor employed by Standard + Poor in its debt equivalency determination and is consistent with typical ranges employed” As explained in the S&P Report, the level of debt equivalence is based primarily on the regulatory risks around PPA cost recovery. A higher risk that a public utility commission will not allow a utility to recover PPA costs increases this premium.

Mr. Gabel testified that the 25% premium used by Mr. Rose is unreasonable because:

a) It only uses the method used by S&P and uses only the 25% risk factor of S&P when S&P states that a factor of 0 to 50% can be used based on the regulatory environment for rate recovery; rate mechanisms to recover costs; and counterparty risk. Mr. Gabel testified that Mr. Rose provides no analysis of these issues specific to OG&E and the Commission and simply uses 25% because it “is consistent with typical ranges employed”.

b) It does not recognize the fact that the other two rating agencies (Moody’s and Fitch) do not apply this risk premium in the same manner as S&P.

Moody’s approach has been summarized as follows:

*“Moody’s does not apply a formula. Instead Moody’s conducts qualitative assessment of inherent risk to determine the degree to which company’s financial flexibility is affected by PPAs. Therefore, Moody’s approach is more subjective. “In certain cases, Moody’s would not impute any debt and in other cases consider PPAs as a positive risk mitigation factor. Moody’s recognizes that PPAs have been used by utilities as a risk management tool. Thus, it will not automatically penalize utilities for entering into contracts for the purpose of reducing risk associated with power price and availability. Moody’s looks at the aggregate commercial position, evaluating the risk to a utility’s purchase and supply obligations.”*

Fitch's approach has been summarized as follows:

*"Fitch assigns risk factor, which can range between 0 and 100%, based on (1) PPA cost relative to market (market to market value is calculated based on forecast), (2) likelihood of cost recovery taking into account lags in regulatory recovery and probability of disallowances, (3) counterparty credit quality i.e. risk of seller's default. Fitch focuses on out-of-money positions with low cost recovery prospects."*

c) Importantly, the specific circumstances in this matter lead Mr. Gabel to conclude that placing a risk premium on PPA offers is unreasonable and unfairly discriminates against PPAs in the evaluation process. In this Cause, the risk of OG&E having to absorb PPA payments, i.e. not recovering its payments from ratepayers, is mitigated by: i) the history of this Commission of passing-through PPA payments after it approves an agreement; and ii) the specific provisions of the PPA used by OG&E that provide strong protection to OG&E that it will recover its PPA payments. These PPA provisions (attached to Mr. Gabel's Testimony as Exhibit SG-4) include section 6 of the PPA which requires OG&E to be obligated under the PPA only if the Commission approves the PPA with express and strong rate recovery provisions for its term; and the Force Majeure provision of the PPA which would enable OG&E to suspend the PPA if (despite the up-front Commission approval) rate recovery does not occur. Therefore, there is minimal risk, per OG&E's own RFP terms, that OG&E would be saddled with the costs of PPA payments.

Mr. Gabel testified that there are several additional factors supporting his position that this imputed debt weighting, which penalizes PPAs in the OG&E evaluation, should be removed. First, asset ownership has its own risk of disallowance, that is, that future costs incurred at the Selected Projects would not be recovered in rates. Therefore, it is unreasonable to penalize PPAs when asset ownership has its own set of risks. Second, penalizing PPAs from a risk perspective does not recognize that PPAs are themselves risk management tools. PPAs move construction, performance, and market risk to the seller, and reduce risk to utilities. That is, PPAs protect utilities from risk they might otherwise have to absorb if they owned the generating asset.

Mr. Gabel testified that the use of the 25% premium and an automatic ten points for Asset Purchase bids by OG&E placed an unreasonable penalty on PPAs in the OG&E evaluation. The risk premium of 25% and the ten points available for the category should have been omitted from the evaluation.

Mr. Gabel testified that ratemaking treatment of fuel costs and energy revenues are not set forth in the revenue requirement testimony presented by OG&E witness Jason Bailey. Mr. Gabel testified that OG&E has a separate rider to recover fuel costs which represent an additional cost to ratepayers over and above OG&E's rate request.

Mr. Gabel testified that OG&E is also not clear in its testimony that Variable Operation and Maintenance costs ("VOM") should only be recovered from market revenues and should not have a recovery mechanism from the Commission. A mechanism for recovery for out-of-market VOM costs would improperly distort the SPP energy market. Additionally, OG&E would need to demonstrate the reasonableness of recovery of going forward costs.

Mr. Gabel testified that he is concerned with how OG&E's emphasis on first or initial cost of capacity instead of emphasizing energy value and ratepayer cost over the term would impact specific rate classes and customers if the Selected Projects were approved.

Mr. Gabel expressed concerns that all of OG&E's customers will be negatively impacted if the Commission approves the Selected Projects. Mr. Gabel testified that he is concerned that some of OG&E's largest customers, such as industrial users, might be disproportionately and negatively affected by this approach and by OG&E's selection of higher energy cost generators. These customers typically have higher load factors and therefore are more exposed to energy cost risk than capacity cost risk. The OG&E choice, if approved, will harm these customers (and jobs at these sites) even more than it will affect average customers.

According to Mr. Gabel, the Company states that "since these facilities are already existing generating assets, OG&E is not adding to the emissions profile of the State of Oklahoma." Further, the last of the six qualitative criteria reviewed environmental impact, "including the potential to reduce air emissions."

Mr. Gabel testified that older coal and natural gas facilities convert fuel into electric energy less efficiently than newer resources, and therefore produce more emissions per MWh. Mr. Gabel testified that at the very least, selection of new, more efficient resources would push the Selected Projects down the dispatch stack and thereby decrease their production and reduce their production of harmful emissions.

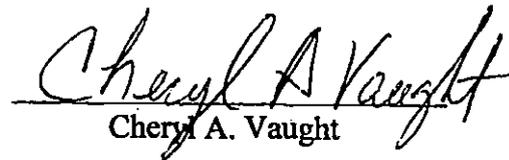
Based on his testimony, Mr. Gabel recommended that the Commission should not approve the purchase of the Selected Projects as their purchase is not in the best interest of ratepayers and based on a restrictive and discriminatory RFP. Mr. Gabel testified that OG&E should issue a new RFP that is consistent with his recommendations so that a wider range of proposals can be reviewed and assessed in a manner that is consistent with ratepayer interests.

Mr. Gabel testified that purchasing the Selected Projects would deny ratepayers the benefits of substantial improvements in power generation, including lower costs, secure capacity, and a hedge against future increases in fuel costs. Mr. Gabel testified that approval of these asset purchases would be a significant "lost opportunity" to continue to modernize Oklahoma's power generation fleet as the Selected Projects are old and highly inefficient relative to generation technologies available in the market today.

**CERTIFICATE OF MAILING**

This is to certify that on this 22nd day of February, 2019, a true and correct copy of the above and foregoing Testimony Summary was e-mailed, addressed to:

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Cheryl A. Vaught

**FILED**

FEB 22 2019

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF	)	
OKLAHOMA GAS AND ELECTRIC COMPANY	)	
FOR COMMISSION PREAPPROVAL PURSUANT	)	
TO 17 O.S. SECTION 286(C) FOR ACQUISITION	)	CAUSE NO. PUD 201800159
OF CAPACITY THROUGH ASSET PURCHASE	)	

Summary of the Responsive Testimony of

**Steven Gabel**

On Behalf of

**Oklahoma Energy Results, LLC**

February 22, 2019

**CONFIDENTIAL UNREDACTED VERSION**

**Subject to Protective Order**

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

CAUSE NO. PUD 201800159

**FILED**  
MAR 05 2019

Summary of the Rebuttal Testimony of

**Steven Gabel**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

On Behalf of

**Oklahoma Energy Results, LLC**

March 5, 2019

**CONFIDENTIAL UNREDACTED VERSION**

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

CAUSE NO. PUD 201800159

**FILED**  
MAR 05 2019

Summary of the Rebuttal Testimony of

**Steven Gabel**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

On Behalf of

**Oklahoma Energy Results, LLC**

March 5, 2019

**PUBLIC REDACTED VERSION**

**REBUTTAL TESTIMONY SUMMARY OF STEVEN GABEL (PUBLIC REDACTED  
VERSION) ON BEHALF OF OKLAHOMA ENERGY RESULTS, LLC  
MARCH 5, 2019**

Steven Gabel's business address is 417 Denison Street, Highland Park, New Jersey 08904. Mr. Gabel is currently the President of Gabel Associates, Inc., an energy, environmental, and public utility consulting firm. Mr. Gabel is testifying on behalf of Oklahoma Energy Results, LLC ("OER"), an intervenor in this case. Mr. Gabel filed Responsive testimony in this Cause on February 20, 2019 and Rebuttal Testimony on March 1, 2019.

The purpose of Mr. Gabel's Rebuttal Testimony is to reply to the Responsive Testimonies of Jason Lawlor and Andrew Scribner ("PUD witnesses") on behalf of the Public Utility Division ("PUD") of the Commission, and Todd F. Bohrmann on behalf of the Oklahoma Attorney General ("OAG"). Mr. Gabel reviewed these testimonies relative to their review of OG&E's proposed purchase of Oklahoma Cogeneration and Shady Point (the "Selected Projects").

**REBUTTAL OF PUD WITNESSES**

Mr. Gabel testified that his review of the recommendations of the PUD witnesses' Responsive Testimonies indicates that there are a series of key issues that the PUD witnesses did not consider or address. Mr. Gabel testified that these issues go to the core of the reasonableness of OG&E's RFP process and request for preapproval to purchase the Selected Projects. Consideration of these issues leads to Mr. Gabel's recommendation that the OG&E proposal is not in the best interest of ratepayers.

Mr. Gabel testified that the following issues were not considered or addressed by the PUD witnesses. According to Mr. Gabel consideration of each of these issues is instructive and indicative as to the critical deficiencies in OG&E's approach and recommendation:

1. The PUD witnesses state that the OG&E RFP includes consideration of a wide array of resources. However, the testimony and discovery responses (OER 1-7) make it clear that the witnesses did not address or consider the fact that commonly and prudently used resources (PPA offers that include energy) were prohibited from participating in the RFP process, nor did the PUD witnesses consider the benefits that energy revenues from these PPAs could provide to ratepayers. In fact, OG&E specifically prohibited PPA offers with capacity and energy from offering proposals. This RFP restriction artificially and improperly prevented consideration of offers that could provide greater benefits and cost protection to ratepayers. This restriction is also discriminatory because the OG&E RFP allowed asset purchases, which would be included in OG&E's rate base, to include the provision of energy, while at the same time preventing PPA proposals which would provide energy benefits from being considered in the RFP. Contrary to the statements of the PUD witnesses that the process was fair and open, in reality it was unnecessarily and unreasonably restrictive; meaning that it was not an adequate competitive

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Public Redacted Version

On behalf of Oklahoma Energy Results, LLC

Cause No. PUD 201800159

market test to obtain the best results for ratepayers. Mr. Gabel testified that the Commission should reject the RFP results because the process was improper in that it disallowed an assessment of legitimate and potentially lower cost PPAs.

2. The PUD witnesses did not address the “imputed debt” analysis and scoring used by OG&E. Consideration of this issue leads to the conclusion that PPA offers were unfairly penalized as compared to asset purchases in OG&E’s scoring. The “imputed debt” scoring penalized PPAs based on a series of unreasonable and unrealistic assumptions that PPA payments may not be recovered by OG&E from ratepayers and therefore represents an imputed debt risk to OG&E that should be penalized in the RFP evaluation process. However, PUD witnesses did not evaluate this issue and did not consider: a) the terms of the PPA prepared and presented by OG&E which fully shield OG&E from any risk of not recovering PPA payments from ratepayers; b) the fact that an asset purchase creates a risk to OG&E that it might not recover future expenditures from ratepayers; c) that the choice of a 25% factor in the imputed debt calculation of OG&E was both arbitrary and incorrect; and d) the fact that the Report from the California Public Utility Commission provided by OG&E’s witness finds that the California Commission does not include any weight on imputed debt in its resource acquisition process. As a result, the penalty for imputed debt placed on PPA scores should have not been utilized.

3. The PUD witnesses state that they reviewed the “Environmental Impact”, yet their responses to discovery (Response to OER 1-11) do not provide their evaluation, which was requested in the discovery request. It is therefore concerning as to how PUD witnesses concluded that the Selected Projects, both of which are inefficient, high heat rate, older generators which burn more fuel than new, more efficient facilities - including independent generation facilities which offer PPAs into utility RFPs - could receive [REDACTED] for environmental performance as set forth by OG&E in its evaluation. Due to their poor heat rates, the Selected Projects have greater emissions per MWh than newer, more efficient alternatives. Moreover, it should also be recognized that higher efficiency generation also reduces generation and emissions from less efficient, higher emitting generation throughout the grid, another environmental benefit not provided by the Selected Projects.

4. The PUD witnesses did not evaluate whether there would be degradation of performance at the Selected Projects over time, as seen in response to Discovery OER 1-8:

**OER 1-8**

***Did PUD evaluate whether there would be degradation of performance that might occur with respect to the AES Shady Point and Oklahoma Cogeneration Facility over the thirty-year term? If yes, please provide your evaluation.***

**PUD RESPONSE:**

***No.***

Mr. Gabel testified that without such a review it is unclear as to how these witnesses assessed the key evaluation categories related to cost (the NPVCC analysis) and the qualitative category "Operational Characteristics and Viability". If the performance of the Selected Projects degrades over time (or if capital expenditures are needed to prevent degradation), these costs would factor into the cost analysis and would materially impact the grading of the proposals with respect to their cost. If, as older generators, the performance of the Selected Projects were to degrade over time this would materially reduce the scoring in the evaluation category related to "Operational Characteristics and Viability". Mr. Gabel testified that the "Contract Risk, Costs, and Benefits", "Locational Benefits, Reliability, Resiliency, and Security", and "Resource Diversity, and Scalability" categories may also be impacted by degradation of the Selected Projects and should be evaluated.

5. The PUD witnesses did not adequately consider the energy risk that the low efficiency (high heat rates) of the Selected Projects imposes on ratepayers (see Response to Discovery OER 1-7). The low efficiency of the Selected Projects means that energy revenues and benefits of these resources is low as compared to newer more efficient generation (as evidenced by the low 10-11% capacity factors forecasted by OG&E). More efficient assets provide energy benefits and a stronger hedge against increases in energy prices. The energy hedge value of the resources chosen was not adequately considered. This factor, in conjunction with the fact that PPAs that could provide energy were not permitted to make proposals, means that energy value to ratepayers was not adequately or properly considered in the OG&E process. Importantly, it also should be noted that Shady Point was ranked [REDACTED] and Oklahoma Cogeneration was ranked [REDACTED] in OG&E's NPVCC (customer cost) calculation. That is, the Selected Projects were far from the lowest cost projects which were reviewed by OG&E after the pre-qualification process. This means there were other proposals of lower cost, not even including the proposal types (including PPAs with energy offers) that were prohibited from proposing under the discriminatory and restrictive RFP requirements.

### **REBUTTAL OF OAG WITNESS**

Mr. Gabel referred to Mr. Bohrmann statement at Page 25 of his Responsive Testimony that:

*"Although the Company assumed that these two generating facilities would retire after the end of the 30-year analysis period, it is extremely likely that OG&E may retire either facility early due to physical, technical, or economic obsolescence."*

Mr. Gabel testified that this serious concern expressed by Mr. Bohrmann directly puts into question the reasonableness and prudence of OG&E's evaluation of the Selected Projects, including the "Operational Characteristics and Viability" evaluation category which awarded [REDACTED] out of a maximum of 10 points for this classification; and the cost evaluation of OG&E. Mr. Gabel testified that Mr. Bohrmann's view that the Selected Projects could likely be retired in less than thirty-years means that either: a) these assets should

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not have moved passed the pre-qualification phase of the RFP (which requires resources for thirty-years of service); or, at a minimum that, b) the Selected Projects should have been assigned a very low point score for the “Operational Characteristics and Viability” category. Mr. Gabel testified that this opinion also means that the Selected Projects should have been lower than OG&E scored them in the “Located Benefits, Reliability, Resiliency and Security” Category, which awarded the Selected Projects [REDACTED] out of a maximum of 10 points. Mr. Gabel testified that contrary to Mr. Bohrmann’s opinion that the Selected Projects may likely be retired before the thirty-year period which OG&E testifies to, OG&E gave the Selected Assets [REDACTED] in the “Operational Characteristics and Viability”, and [REDACTED] in the “Located Benefits, Reliability, Resiliency and Security” Category. The “Contract Risk, Costs, and Benefits”, “Locational Benefits, Reliability, Resiliency, and Security”, and “Resource Diversity, and Scalability” categories may also be impacted by the physical, technical, or economic obsolescence of the Selected Projects and should be evaluated. Mr. Gabel testified that the Commission should carefully consider the scoring in these categories, as both Mr. Bohrmann and industry wide data suggest that these assets will likely not fulfill the requirements of the RFP. This could materially change the ranking of proposals.

Mr. Gabel testified that Mr. Bohrmann addresses this issue by recommending that ratemaking adjustments that disallow costs be made if OG&E retires either of the Selected Projects prior to the thirty-year life. According to Mr. Gabel, this “after-the-fact” ratemaking, while partially protective of ratepayers, does not assure that the appropriate resource choice is made. Mr. Gabel testified that ratepayers are better served if OG&E and the Commission make the correct resource choice at the front end, based on a proper, accurate, and non-discriminatory RFP process than by an after-the-fact adjustment to a selection that is not in ratepayers’ best interest. Mr. Gabel testified that an after-the-fact adjustment cannot “undo” the impact, including capital and other costs to ratepayers as well as environmental impact, which would be incurred by choosing resources which should not have been selected in the first place. While the “after-the-fact” ratemaking – disallowance of costs post retirement - may mitigate some negative customer impacts, this cannot make up for pre-retirement costs which were paid by customers because a thirty-year life was expected but not realized and cannot make up for potential benefits which could be realized from a better performing and lower cost generation asset being selected in the first place. Mr. Gabel testified that while Mr. Bohrmann’s ratemaking approach can play a partial role, it does not fully address the important issue at hand: that the right resources for OG&E ratepayers are chosen and secured at the onset.

Mr. Gabel also testified that Mr. Bohrmann’s ratemaking recommendation is that the Commission condition any pre-approval on holding OG&E customers harmless if OG&E should retire either unit within thirty years of the Commission Order. In addition to his concern discussed above that after-the-fact ratemaking cannot undo the damage and costs of choosing the wrong resources, Mr. Gabel testified that Mr. Bohrmann’s approach to ratemaking should be clarified to assure that ratepayers do not get burdened with one category of over-market costs of

the Selected Projects. Mr. Gabel testified that the generation resources which serve OG&E should be required to offer energy into SPP's competitive energy market and be dispatched in accord with these competitive protocols. Any variable operating costs of generation resources serving OG&E should be required to be recovered through market energy prices, without ratepayer subsidy (through fuel adjustment or other rate recovery mechanisms). Mr. Gabel testified that future increases in fixed operation and maintenance expenses and any capital expenditures should be subject to careful review by the Commission to assure that unreasonable or above market costs are not borne by ratepayers.

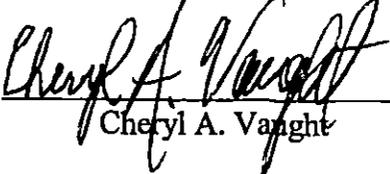
Mr. Gabel testified that he continues to recommend that the Commission should not pre-approve the purchase of the Selected Projects and that OG&E should issue an appropriate RFP replacement that is consistent with ratepayer interests. Mr. Gabel testified that due to the restrictive and discriminatory design of the RFP (which prevented consideration of all resources) and the flaws in the evaluation process, approval of these asset purchases would cause a significant "lost opportunity" for OG&E to reduce its costs and modernize its Oklahoma power generation fleet as the Selected Projects, which are intended to be rate based, are dated and inefficient relative to generation technologies available in the market today. Mr. Gabel testified that the Selected Projects have already been in service for 28 and 30 years respectively and have heat rates (the primary measure of plant efficiency) that are between 20% and 40% higher (worse) than alternatives in the market today. Mr. Gabel testified that OG&E's proposal to purchase the Selected Projects was not competitively tested and denies ratepayers the benefits of substantial improvements in power generation, including lower costs, avoidance of potential degradation of performance and increased expenditures at the Selected Projects, and a hedge against future increases in fuel costs.

**CERTIFICATE OF MAILING**

This is to certify that on this 5th day of March, 2019, a true and correct copy of the above and foregoing Testimony Summary was e-mailed, addressed to:

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Steven Gabel Rebuttal Testimony Summary 7  
Public Redacted Version  
On behalf of Oklahoma Energy Results, LLC  
Cause No. PUD 201800159

  
Cheryl A. Vaughn

**FILED**

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CORPORATION COMMISSION  
OF OKLAHOMA

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT ) Cause No. PUD 201800159  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

**Testimony Summary of Jason Bailey**

My name is Jason Bailey. I am employed by Oklahoma Gas and Electric Company ("OG&E" or "Company") as the Director of Revenue Requirements. I received a Bachelor of Science in Chemical Engineering and a Master of Business Administration (Finance), both from the University of Oklahoma. I have been employed by either OGE Energy Corp. or OG&E since 2002. I have held various positions with increasing responsibility, most recently including Director of Risk Coordination, Director of Corporate Finance, and currently as the Director of Revenue Requirements.

***Direct Testimony***

In my direct testimony, I support the Company's request for a cost recovery mechanism so the Company can recover the costs of purchasing the AES Shady Point and Oklahoma Cogeneration facilities ("Generating Facilities"). I also explain the customer bill impacts from implementing the proposed rider.

I testify that the Company proposes to recover its revenue requirement through a new rider called the Generation Capacity Recovery Rider ("GCRR"). The GCRR is designed to concurrently recover the annual revenue requirement associated with the Generating Facilities.

I testify that the revenue requirement calculation is the same calculation used in base rate case applications to determine the revenues required by a utility to recover its costs. The return on capital investment is calculated by multiplying net rate base by the most recently Commission-approved rate of return ("ROR") at the time, which is comprised of return on equity and debt interest weighted against each other, plus a factor to collect for income taxes. That return is then added to operation and maintenance ("O&M") expenses, depreciation, property taxes, and reduced for applicable state investment tax credits to arrive at the revenue requirement.

I testify that the rider is designed to begin the recovery of costs when the Company closes on the Generating Facilities and they begin providing benefit to customers. The rider will continue until all approved rider costs are included in base rates. If the rider is approved by the Commission, the bills for Oklahoma retail customers will reflect the class appropriate billing factors. Regardless of the exact billing timeframe associated with the rider, a proposed true-up mechanism is an integral part of the rider.

I testify that the rider will have a true-up mechanism to track the recovered costs of the rider. For the rider, the Company proposes to submit factor redeterminations annually to the Commission staff. The Company will include in this submission the updated factors based on a projected revenue requirement, adjusted or true-up for prior period over-or-under collection of revenue compared to actual revenue requirement. The new rider factors will become effective the first billing cycle of the month following the annual report.

I testify that based on the combined purchase price for both facilities of \$53.5 million, the estimated annual non-fuel revenue requirement in the first year is approximately \$20.2 million. This would result in an average residential customer impact, assuming 1,100 kWh of use per month, is an increase of \$1.16 per month. This does not include the customer savings associated with the expiration of the AES Shady Point and Oklahoma Cogeneration agreements.

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
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TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

**Testimony Summary of Keith Mitchell**

My name is Keith Mitchell. I am employed by Oklahoma Gas and Electric Company ("OG&E" or the "Company") as the Chief Operating Officer. I graduated from the University of Oklahoma, with a Bachelor of Science in Chemical Engineering in 1984. Prior to joining Enogex in 1994, I was Vice President at Kansas Pipeline Operating Company, responsible for all marketing, supply, and transportation activities. I have over 30 years of diversified experience in the natural gas industry. From 2002 to 2004, I was Vice President, Sales Support of Enogex, leading the contract management and technical sales support groups. I also served in other transportation and system planning positions. From 2004 to 2007, I served as Vice President, Transportation Services of Enogex. In 2007, I was named Senior Vice President and Chief Operating Officer of Enogex. In 2011, I was named President of Enogex and when Enogex became Enable Midstream, I was named Chief Operating Officer of Enable Midstream. In 2015, I began my current role as Chief Operating Officer of OG&E.

***Direct Testimony***

In my direct testimony, I support the Company's request for relief in this application, including Commission approval of OG&E's purchase of the AES Shady Point generating facility in Panama, Oklahoma and the Oklahoma Cogeneration facility in Oklahoma City, OK (together, the "Generating Facilities"). My testimony first discusses the requested relief sought by the Company in this proceeding and how this pre-approval is being requested pursuant to 17 O.S. § 286(C). Second, I will provide an overview of the Generating Facilities to be purchased by the Company and will describe how and why such facilities were selected as the winning bidders in OG&E's recent 2018 Request for Proposals for Capacity ("2018 RFP"). Finally, I describe the Company's decision to acquire the Generating Facilities and why it makes sense for customers.

*Discussion of Key Issues*

**1. Requested Relief**

I testify that the Company is requesting that the Commission pre-approve: (i) the purchase of the AES Shady Point and Oklahoma Cogeneration generating facilities; and (ii) the proposed rider for recovery of the costs associated with those acquired facilities.

I testify that it is my understanding that 17 O.S. § 286(C) allows rate-regulated electric utilities like OG&E to file an application seeking Commission approval "to construct a new

electric generating facility, to purchase an existing electric generating facility or enter into a long-term contract for purchased power and capacity and/or energy.” The statute further provides that a utility must show a need for the generation or contract and requires that the Commission consider reasonable alternatives before issuing an order on the utility’s application.

I testify that OG&E has complied with the requirements of 17 O.S. § 286(C) by establishing a need for this new generating capacity in its 2018 Integrated Resource Plan (“IRP”). After the IRP, the Company then initiated a competitive bidding process under the Commission’s competitive bidding rules (OAC 165:35-34) to assess reasonable alternatives for meeting that need and the various market opportunities.

## 2. Overview of the Generation Facilities

I testify that AES Shady Point is a generating facility located in Panama, Oklahoma with a total nameplate capacity of 360 MW, consisting of two identical 180 MW units. The facility has been in operation since January 1991 and, since that time, has been serving OG&E customers under a long-term Power Purchase Agreement (“PPA”) as a cogeneration qualifying facility (“QF”) under the federal Public Utility Regulatory Policies Act (“PURPA”). The facility utilizes circulating fluid bed (“CFB”) technology that allows for lower nitrogen oxides (NO<sub>x</sub>) emissions due to staged combustion and lower combustion temperatures. Sulfur dioxide (SO<sub>2</sub>) emissions are also lower with this technology due to the introduction of limestone into the boilers during the combustion process. The facility, as currently constructed, is compliant with all current state and federal requirements. CFB technology also allows for a variety of fuels or fuel blends to be used in the electric generation process. While the facility is currently coal-fired using both Powder River Basin coal and local Oklahoma-mined coal, the facility also has the ability to burn natural gas, tire-derived fuel and has even successfully tested burning shredded railroad ties. AES Shady Point also has the ability to blend different fuels. This optionality around diverse fuel supply is very attractive to OG&E and represents a flexibility that OG&E currently does not have in its generation fleet.

I testify that AES Shady Point is already well integrated into the OG&E transmission system. Since it is already considered a network resource for OG&E at the SPP, there will be no additional transmission upgrades needed before adding the facility to OG&E’s generation fleet. Also, the plant already has the necessary infrastructure (and therefore has no construction risk), security protocols, permits, and water rights. The facility also has a trained workforce and a current inventory of replacement parts with a value of approximately \$4 million to facilitate continued operation and maintenance. In addition, AES Shady Point is near OG&E’s Ft. Smith load center and will aid in voltage support.

I testify that the AES Shady Point units have both had excellent Equivalent Availability Factors (“EAF”). EAF is a reliability metric defined by the National Electric Reliability Corporation (“NERC”) that represents the equivalent hours of planned and unplanned outages, and derates to unit capability compared to the available hours in the period. In both 2016 and 2017, the EAF for the two AES Shady Point units were around 90% and higher than the benchmark values of comparable sized coal units using NERC’s generating availability data system (“GADS”). Another metric used to measure operating performance is the Equivalent Forced

Outage Rate (“EFOR”). EFOR measures the hours of unit failure (*i.e.*, unplanned outage hours and equivalent unplanned derate hours). In 2016, the AES Shady Point units were at or below the EFOR benchmark of comparable coal units and in 2017, the EFOR value for each unit was a fraction of one percent and dramatically lower than the comparable units benchmark.

I testify that the AES Shady Point facility is located in southeast Oklahoma and has a significant economic impact for that part of the state. The facility is located in a rural community about 20 miles from the western border of Arkansas and about 10 miles north of Poteau, Oklahoma. The facility currently employs 69 people directly and provides significant economic benefits to the local economy in that part of the State. Not only is the facility responsible for a significant financial impact in the local job market and the economy, annual *ad valorem* taxes fund several county and education improvements.

I testify that the Oklahoma Cogeneration facility is a natural gas-fired combined cycle facility located in Oklahoma City, Oklahoma with a nameplate capacity of 146 MW. It consists of one General Electric (“GE”) 7EA gas turbine generation unit, one heat recovery steam generator with supplemental duct firing capability, one single- extraction condensing steam turbine generator and associated balance of plant equipment. It began operations in 1989 and for the entire operating history of the facility, all major equipment has been maintained and inspected under a long-term high value service agreement with GE and O&M services have been provided through separate service agreements, first with GE and then with NAES Corporation.

I testify that the Oklahoma Cogeneration facility is well positioned to serve OG&E, being centrally located in OG&E’s system in an industrial area of Oklahoma City. This location facilitates OG&E’s ability to use the facility to provide localized reliability support and to provide SPP-accredited capacity. OG&E is very familiar with this facility because it has been purchasing capacity and energy from Oklahoma Cogeneration under a Power Sales Agreement since 1989.

I testify that the Oklahoma Cogeneration facility is in Oklahoma City, the Company’s largest load center and is already well-integrated into the OG&E transmission system. As with the AES Shady Point facility, since it is already considered a network resource for OG&E at the SPP, there will be no additional transmission upgrades needed before adding the facility to OG&E’s generation fleet. Also, the facility already has the necessary infrastructure (and therefore has no construction risk), security protocols, and permits. As with AES Shady Point, the facility also has a current inventory of replacement parts with a value of approximately \$3.2 million to facilitate continued operation and maintenance. OG&E is also very familiar with the combined cycle technology at the Oklahoma Cogeneration facility, as it has operated similar natural gas, combined cycle units for many years. This facility also has faster start-up times and better heat rates than other units operating in the SPP and will therefore provide the Company more flexible and efficient units for SPP IM dispatch.

I testify that the Oklahoma Cogeneration facility has experienced a quite favorable Equivalent Availability Factor (“EAF”) in recent years. In both 2016 and 2017, the EAF for the Oklahoma Cogeneration was between 80% and 90% and comparable to the regional benchmark. Also, in 2016 and 2017, the Oklahoma Cogeneration facility had a very low EFOR value of under 1%, which is well below the regional benchmark of over 7%.

### 3. OG&E's Decision to Acquire the Generating Facilities

I testify that the Company took steps to ensure that the lowest reasonable cost option was selected for meeting the capacity need identified in the IRP. As explained by Witness Howell, OG&E first undertook an IRP process, which demonstrated a need for additional long-term capacity. The Company believed that it could elect not to continue the existing PPA with AES Shady Point and find cheaper alternatives for that capacity through a market opportunity. This is especially true right now, as there is excess capacity in the SPP footprint.

I testify that OG&E utilized the Commission's competitive bidding rules and issued the 2018 RFP to consider all options for meeting OG&E's capacity needs between 2019 and 2023. OG&E also retained the optionality to contract with one or multiple bidders to procure capacity resources and sought bids from a wide variety of utility scale electric generation sources. Moreover, OG&E did not limit the RFP to any specific technology, fuel source or type of generation.

I testify that there were several important requirements that were imposed on bidders. The bidders were required to meet threshold requirements that, among other things, required that proposals be for long-term (30 year) capacity only. Witness Rose discusses the focus on such long-term capacity and why proposals for the sale of capacity and energy were rejected as non-conforming. Also, the bidders were required to design proposals that met the Company's specific SPP-accredited capacity needs.

I testify that there were nineteen (19) bidders submitting ninety-four (94) distinct proposals. Of these 94 proposals, forty-one (41) were for the acquisition of generating assets and fifty-three (53) were for PPAs. These proposals constituted more than 6,400 MW from existing and new generating facilities utilizing many types of fuels, including coal, natural gas, wind, solar, and batteries. The proposals also came from twenty-six (26) different locations within a 350-mile radius of Oklahoma City, Oklahoma.

I testify that the Company performed a thorough bid evaluation process that employed a number of quantitative and qualitative criteria. OG&E requested an independent consultant (ICF Consulting) to perform the qualitative analysis and scoring, while OG&E took the lead in performing the quantitative scoring. When the two separately calculated scores were combined, a final ranking of bidders was generated.

I testify that the Company did eliminate some bids because they were non-conforming. Bids were deemed non-conforming for a number of reasons. Some bids were rejected because they were deemed incomplete for failing to submit the proper forms, documents, information and data requested in the 2018 RFP. Also, some bids did not meet the size, timing and term requirements specified by the Company. That is, the Company specified that proposals were required to have between 50 MW and 500 MW accredited capacity, be available to begin supply to OG&E between 2019 and 2021, provide capacity to support OG&E's SPP planning reserve obligations, and, if a PPA, have a term of a minimum of 30 years. Other reasons for finding bids non-conforming included: (i) non-demonstration of a high level of site control through executed

land leases, options to lease, easements and other instruments of conveyance; (ii) unacceptable project conditions or contingencies; (iii) inadequate developer experience and financial ability to develop their respective projects. Several proposals were also deemed non-conforming if they made material and unacceptable changes to the form PPA Agreement attached to the 2018 RFP or they placed too much construction risk on OG&E and its customers. Finally, some PPA bids were deemed non-conforming if they offered both capacity and energy. OG&E would only consider capacity-only PPAs, as stipulated in the RFP, because OG&E only needed capacity and did not want to take on added energy price risk. Witness Rose elaborates on the reasons why proposals were rejected as non-conforming.

I testify that after the threshold evaluation, there were twenty-one (21) bids that were evaluated through the rigorous quantitative and qualitative scoring process. These projects included a number of existing asset acquisition proposals, utility-scale solar build/own/transfer projects, and power purchase agreements.

I testify that there were two parts to the quantitative analysis. First, OG&E internally calculated a Net Present Value of Customer Costs ("NPVCC") for each of the conforming bids. This part of the analysis constituted 80% of the quantitative scoring. Second, for any PPA proposal in the 2018 RFP, OG&E also considered the projected costs of direct or inferred debt associated with the proposal. ICF Consulting performed this second part of the economic analysis, which constituted 20% of the quantitative scoring.

I testify that Judah Rose and his team at ICF Consulting conducted the qualitative analysis. His team reviewed each proposal and assigned a qualitative score to each one. The qualitative evaluation consisted of six non-economic criteria: (i) contract risk, cost and benefits; (ii) operational characteristics and viability; (iii) locational benefits, reliability, resiliency and security; (iv) overall project development risks; (v) resource diversity and scalability; and (vi) environmental impact. The AES Shady Point and Oklahoma Cogeneration generating facilities had two of the best qualitative scores among the projects evaluated. Witness Rose is submitting testimony explaining the details of that qualitative review.

I testify that after the final quantitative and qualitative scores for each bid were combined to develop final overall rankings of the bids, the Generating Facilities (AES Shady Point and Oklahoma Cogeneration) were shown to be the clear winners. Out of 100 possible points, the Generating Facilities each scored over 80 points and beat the next highest bidder by 10 points.

I testify that even when you looked beyond the RFP scores, did the acquisition of the Generating Facilities make sense. First, both of these generating facilities are already part of OG&E's operations. They are both interconnected with OG&E's transmission system and OG&E has designated both facilities as network resources with the SPP. There are no transmission upgrades needed to acquire or operate the Generation Facilities. Also, since these facilities have been providing power to OG&E for many years, OG&E is familiar with how these units operate and are dispatched. Second, as evidenced by recent EAF and EFOR data, OG&E is getting two well maintained generating units for a very attractive price. The acquisition costs for both Generating Facilities is approximately \$53.5 million. Since these facilities total approximately 500 MW, the cost of this new capacity equals approximately \$106/kW. Also, since the value of

the capacity comes mostly from that low capital investment and does not rely on market revenues to demonstrate value for customers, there is less market risk associated with these projects. Also, these facilities both currently provide valuable jobs to Oklahomans and *ad valorem* taxes to their local communities. The acquisition of these facilities will ensure that these facilities will continue to contribute to their local economies. Further, since these facilities are already existing generating assets, OG&E is not adding to the emissions profile of the State of Oklahoma and OG&E will continue to strive to reduce emissions of both of these plants through efficient operations.

I testify that did OG&E conduct due diligence on the Generating Facilities before entering into the contracts for their acquisition. OG&E assembled a team to examine all types of corporate documents, real property documents (deeds, easements, encumbrances, surveys, zoning, etc.), insurance policies, contracts, financial documents/matters, governmental compliance matters, legal proceedings, environmental and safety matters, and auditor reports. OG&E's team also assessed operating data and engineering reports over the last 10 years, as well as the facility design data and documents. OG&E also conducted inspections of the facilities.

I testify that OG&E entered into the contracts to purchase both the AES Shady Point and Oklahoma Cogeneration facilities on December 19, 2018.

I testify that in order to have sufficient capacity by May 15, 2019, a timely Commission Order is necessary. If an order is not received by May 15, 2019, customers would have to bear the cost of a short-term capacity purchase for the summer of 2019. In addition, both contracts contain regulatory termination clauses that respectively allow the Company or the Sellers to terminate. Termination may occur if regulatory approval is not obtained for the AES Shady Point contract by August 31, 2019 and in the case of the Oklahoma Cogeneration by September 3, 2019.

I testify that OG&E has demonstrated the need for the Generating Facilities' capacity in its IRP and shown that the Generating Facilities were the lowest reasonable cost bids in the 2018 RFP. Moreover, the Company has shown that the acquisition of the Generating Facilities reduce costs to customers over the next five years compared to continuing to operate under the existing AES Shady Point PPA. OG&E respectfully requests that the Commission issue an order approving the acquisition as soon as practicable. I believe that the approval is in the public interest. These two facilities were the best options identified through the 2018 RFP and represent the lowest reasonable cost options for the Company. Moreover, these facilities have existing infrastructure, employees, proven operational success, and are important to the local and state economy.

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OKLAHOMA GAS AND ELECTRIC COMPANY )  
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TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

**Testimony Summary of Leon Howell**

My name is Leon Howell. I am employed by Oklahoma Gas and Electric Company ("OG&E" or the "Company") as the Director, Resource Planning & Investment. I am responsible for OG&E's resource planning group and for all of its activities including the preparation of integrated resource plan submittals and frequent resource planning analyses that are performed on an ongoing basis as needs arise. I have been employed by OG&E since 1996. I earned a Bachelor of Science Degree in Electrical Engineering from the University of Oklahoma (1985) and a Masters Degree in Business Administration (2000) from Oklahoma City University. Prior to joining OG&E in 1996, I was employed by Western Farmers Electric Cooperative as a Senior Transmission Planning Engineer. Since joining OG&E, I have held various operations and engineering positions. I have been responsible for leading OG&E's resource planning efforts since 2003.

***Direct Testimony***

In my direct testimony, I testify that the Company is seeking pre-approval for the acquisition of two existing generating facilities in Oklahoma: the AES Shady Point facility in Panama, Oklahoma and the Oklahoma Cogeneration facility in Oklahoma City, OK. The purpose of my testimony is to support both the need for this additional generating capacity and the Company's decision to purchase these two generating facilities after evaluating the various bids in a competitive bidding process. First, I will discuss OG&E's integrated resource planning ("IRP") process that established the need for generating capacity facing the Company. I will discuss the capacity needs outlined in the IRP and why the Company decided to investigate potential generating capacity options through a competitive bidding process.

Second, I will discuss the competitive bidding process (the "2018 Request for Proposals for Capacity" or "2018 RFP") initiated by the Company in October 2018 to determine market opportunities for existing or new generating capacity. I will describe the 2018 RFP and how the Company evaluated bids received in the 2018 RFP, including how the Company considered various quantitative and qualitative factors.

***Integrated Resource Plan***

The 2018 IRP identifies the resource plan that will allow OG&E to meet its capacity obligations at the lowest reasonable cost. OG&E submitted the 2018 IRP in compliance with requirements established pursuant to the Commission's Electric Utility Rules (OAC 165:35-37).

This 2018 IRP was submitted according to a triennial schedule after the last IRP was submitted in 2015.

I testify that the objective of this IRP is to explore options to maintain OG&E's generation capability in accordance with the Southwest Power Pool ("SPP") planning reserve margin requirement of 12% in a manner that achieves the lowest reasonable costs to customers, and improves reliability. OG&E believes the best way to accomplish this is by considering a range of capacity options with varying degrees of scalability and timelines. As stated in previous IRPs, the Company continues to pursue fuel diversity by maintaining a reasonable balance among gas, coal and renewable generation resources, while adding advancing technologies as they become cost effective.

I testify that a key driver for the capacity needs facing the Company in the next few years is the expiration of the Company's existing power purchase agreements with AES Shady Point (360 MW, nameplate) and Oklahoma Cogeneration (146 MW, nameplate). The AES Shady Point contract will end in January 2019 and the Oklahoma Cogeneration contract will end in August 2019.

I further testify that after considering existing generating capacity, demand forecasts with OG&E demand side management programs and the SPP planning reserve margin requirements, OG&E determined that the expiration of the AES Shady Point contract created needs for 168 MW of rated capacity in 2019 and 305 MW of rated capacity in 2020. The total capacity need by 2023 totals 438 MW. Below is a table from the IRP that shows the capacity needs by year:

Table 1: Capacity Needs

	2019	2020	2021	2022	2023
<b>Total Capacity</b>	6,479	6,359	6,359	6,359	6,359
<b>Net Demand</b>	5,934	5,949	6,001	6,031	6,069
<b>Reserve Margin</b>	9%	7%	6%	5%	5%
<b>Needed Capacity*</b>	168	305	362	396	438
<i>*Indicates the potential capacity needed to restore the reserve margin to 12%.</i>					

I testify that OG&E considered more than 300,000 portfolios that meet the capacity needs utilizing a combination of potential future resources of various technology types, sizes and availability. However, the common denominator of all portfolios shows that meeting the immediate capacity need would be done through available resources identified in the market through a competitive bidding process. To assess available generation that is available in the next few years, OG&E decided to issue a Request for Proposals ("RFP") to solicit bids for available resources to satisfy the capacity needs beginning in 2019.

### ***Request for Proposals***

I testify that on October 8, 2018, the Company issued the 2018 RFP, seeking bids from third parties to meet OG&E's generating capacity needs identified in the IRP and discussed above. Proposals were required to be a minimum of 50 MW and a maximum of 500 MW. OG&E required

that any bid would have to be for capacity available to satisfy OG&E's resource adequacy obligations beginning as early as June 1, 2019 but no later than June 1, 2021. The RFP also specified that proposals must be for single generation facilities, or co-located generation facilities, that are located in and interconnected to SPP's transmission network. OG&E also was focused on long-term (30 year) capacity that met SPP-accredited capacity requirements.

I further testified that, OG&E stated in the 2018 RFP that it would consider procuring up to approximately 500 MW of qualified capacity if the procurement alternatives available are shown to benefit the Company's system. OG&E also retained the optionality to contract with one or multiple bidders to procure capacity resources. The 2018 RFP was drafted broadly so that OG&E could receive bids from a wide variety of utility scale electric generation sources. OG&E invited proposals from all potential suppliers capable of meeting the requirements of this RFP, including other utilities, independent power producers, wholesale generators, and qualifying facilities under the Public Utility Regulatory Policies Act ("PURPA"). OG&E also sought both proposals for the transfer of ownership of existing or to-be-constructed generation facilities and also proposals for power purchase agreements ("PPAs") for sale of only capacity (and not energy) with a thirty (30) year term following commercial operation. Finally, OG&E did not limit the RFP to any specific technology, fuel source or type of generation.

I also testify that the RFP was administered in a fair, just, and reasonable manner consistent with Commission rules for competitive procurements Oklahoma Administrative Code ("OAC") 165:35-34 ("Commission Rules"). All communications were required to be directed to a special email address and unsolicited direct contact between bidders and employees or personnel at OG&E was prohibited. Pursuant to the Rules, OG&E provided a draft RFP to interested stakeholders and thereafter held a technical conference to allow interested parties to provide comments and feedback regarding the draft RFP. After receiving comments and feedback on the draft RFP, OG&E issued the final 2018 RFP, but bidders were allowed to submit questions to OG&E on the final RFP via email. Bidders submitted sealed bids to OG&E on October 22, 2018, and bids were opened at OG&E headquarters at 9:00am on October 23, 2018 in front of members of the Public Utility Division of the Oklahoma Corporation Commission, the Office of the Attorney General, and other interested stakeholders. OG&E then performed a detailed evaluation of bids and identified Bidder(s) selected for negotiation. Throughout November 2018, the Company engaged in both bid evaluation and due diligence.

I further testify that participation in the 2018 RFP was quite robust. There were nineteen (19) bidders submitting ninety-four (94) distinct proposals. Of these 94 proposals, forty-one (41) were for the acquisition of generating assets and fifty-three (53) were for PPAs. These proposals constituted more than 6,400 MW from existing and new generating facilities utilizing many types of fuels, including coal, natural gas, wind, solar, and batteries. The proposals also came from twenty-six (26) different locations within a 350-mile radius of Oklahoma City, Oklahoma.

I testify that once all bids were received, OG&E, in conjunction with its consultant Judah Rose and his team from ICF Consulting, reviewed the bids to determine which ones provided the most economical, reliable and viable alternatives for OG&E and its customers. There were three parts to OG&E's evaluation process. Initially, each proposal was subjected to a threshold review process to determine whether the proposal was complete and technically viable and whether the

bidder had the financial viability and capability to deliver the project. OG&E Witnesses Keith Mitchell and Judah Rose explain how the threshold evaluation was conducted and why some bids were deemed non-conforming. After the threshold evaluation, there were twenty-one (21) projects that remained in the process. These projects included a number of existing asset acquisition proposals, utility-scale solar build/own/transfer projects, and power purchase agreements.

I testify that the quantitative analysis consisted of two separate criteria. First, proposals were evaluated on price and operational performance factors through a simulation of the impact of the proposal on the costs paid by OG&E's customers. That is, OG&E calculated the expected 30-year Net Present Value Customer Cost ("NPVCC") for each proposal through detailed resource planning simulation modeling and sensitivity analysis. This analysis accounted for initial capital costs, on-going fixed O&M costs, future capital expenditures and production cost with market impact. For PPAs, the analysis was the same with the customer costs reflecting the contract costs over the PPA term. For modeling purposes, the Company projected dispatch and/or curtailment of resources in the SPP Integrated Marketplace over a 30-year time horizon beginning in 2019. The modeling application was consistent with the analysis and tools described in OG&E's 2018 IRP, including analyzing proposals under base case assumptions as well as three sensitivities. This expected customer cost analysis constituted 80% of the overall quantitative analysis and was worth 40 out of 100 points for each bid's overall score in the 2018 RFP.

I testify that OG&E analyzed each proposal under a "Base Case" and three sensitivities (Low Gas, High Gas and CO2). The Low Gas sensitivity assumed natural gas price forecasts were half of the gas price forecasts used in the Base Case and the High Gas sensitivity assumed natural gas price forecasts were 1.5 times higher than the gas price forecasts used in the Base Case. The CO2 sensitivity studied the NPVCC if a cost of \$20 per ton of CO2 was applied to electric generation plants starting in 2025 and escalated by 2.5% each year thereafter. The Company then calculated a weighted NPVCC by assigning weights to the Base Case (45% weight) and the Low Gas (35% weight), High Gas (10% weight) and CO2 (10% weight) sensitivities. This created a weighted NPVCC for each proposal that was designed to capture the quantitative risks for each proposal over long-term. The proposal with the lowest weighted NPVCC received 40 points. Points were then awarded to the other proposals based on the ratio between the weighted NPVCC for each proposal and the lowest weighted NPVCC.

I further testify that for any PPA proposal in the 2018 RFP, OG&E also considered the projected costs of direct or inferred debt associated with the proposal. Inferred debt results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing OG&E's credit standing. Factors which may additionally be considered include balance sheet impact, cash flow impact, and bond rating impact. ICF Consulting performed this second part of the economic analysis and is addressing both the results of this analysis and how it was weighed in the overall quantitative evaluation.

I then testified that the score from the weighted NPVCC analysis was added to the inferred debt score to calculate a total quantitative score.

I testify that although the AES Shady Point and Oklahoma Cogeneration proposals did not have the lowest NPVCC scores, those facilities represent extraordinarily cheap capacity. The

purchase of the AES Shady Point and Oklahoma Cogeneration facilities will cost approximately \$53.5 million and OG&E will receive over 500 MW of nameplate capacity. This equates to adding capacity for approximately \$106/kW. Not only that, the acquisition of these facilities at these low capital investment costs introduces less market risk compared to some of the high capital cost proposals that rely on SPP IM revenues to offset revenue requirements over a 30-year period.

I testify that the acquisition of the AES Shady Point and Oklahoma Cogeneration facilities represents the lowest amount of capital investment and relies less on future market revenues to create benefits for customers. OG&E believes that for meeting the immediate capacity needs facing the Company, selecting the cheapest options that are not necessarily reliant on future market prices to reduce customer costs, was the correct decision. The AES Shady Point and Oklahoma Cogeneration facilities represent extraordinarily cheap capacity. Moreover, the purchase of the AES Shady Point and Oklahoma Cogeneration facilities is cheaper for customers compared to continuing to purchase capacity and energy from AES Shady Point for the next five years. This confirms that OG&E's decision to not extend the contract for the 360 MW AES Shady Point facility for another 5 years was the correct decision because the Company was able to find a cheaper alternative and to add over 500 MW of nameplate capacity at an extremely favorable cost.

I testify that the overall analysis showed that the acquisition of the AES Shady Point and Oklahoma Cogeneration generating facilities were the top two proposals with the highest total scores after considering all economic and non-economic criteria.

#### ***Rebuttal Testimony***

In my rebuttal testimony, I testify to my response to portions of the responsive testimony of Oklahoma Energy Results ("OER") Witness Steven Gabel and Attorney General ("AG") Witness Todd Bohrmann. I focus on Witness Gabel's critique of the Company's RFP process, bid evaluation and winning bid selection. He disagrees with the Company's analysis of the bids in its recent Request for Proposals ("RFP") and the Company's ultimate decision select bids to acquire the AES Shady Point and Oklahoma Cogeneration facilities ("Generating Facilities"). Witness Gabel essentially wants OG&E to redo its RFP process and design the RFP according to his views around resource planning and what is best for OG&E's customers. I also address Witness Bohrmann's omission of OG&E's capacity needs beyond 2020, his objections to the bid evaluation and his manipulation of OG&E's RFP scoring data and analysis in an attempt to justify a different decision for the Company.

#### ***PUD Staff***

I testify that PUD concluded that OG&E's model for analyzing the RFP bids was accurate and complete and portrayed the options correctly. After its review of all facts and processes, PUD recommended that the Commission grant pre-approval of the Generating Facilities.

#### ***Oklahoma Energy Results***

I testify that Mr. Gabel believes that his opinions should supersede those of OG&E in regard to the RFP design and bid evaluation. While Mr. Gabel may disagree with the RFP process that the Company undertook, OG&E engaged in a transparent and fair process pursuant to the Commission's competitive procurement rules and ultimately chose the best option after weighing

all bids and factors in making its decision. I will respond to Mr. Gabel's arguments and demonstrate that OG&E's decisions on the RFP development and evaluation process were reasonable. I will then address the responsive testimony of AG Witness Bohrmann, his critique of OG&E's analysis and his belief that OG&E should acquire AES Shady Point but not Oklahoma Cogeneration.

I testify that Mr. Gabel stated that acquiring the Generating Facilities represents a "lost opportunity for OG&E to modernize its Oklahoma power generation fleet as the Selected Projects are dated and inefficient relative to generation technologies available in the market today." Mr. Gabel cites to the possibility of natural gas generation with better heat rates and wind generation as possible better options for OG&E.

I testify that OG&E's RFP analysis included bids from newer natural gas generation facilities with more efficient heat rates, however they scored lower than the Generating Facilities' bids and would create higher costs to customers. It would be a lost opportunity to walk away from a chance to acquire the Generating Facilities at the price offered in the RFP. OG&E has the opportunity to add additional fuel diversity to its portfolio by acquiring a coal-fired generating facility with optionality for other types of fuel (e.g., natural gas) and a combined cycle natural gas facility close to OG&E's largest load center and well-integrated into the OG&E transmission system. Moreover, Mr. Gabel discounts the incredibly low cost of acquiring the Generating Facilities. Instead, Mr. Gabel tries to focus on more efficient energy generation options and the fuel and market benefits from those resources in a vacuum.

I testify that OG&E has a need for capacity, and it must focus on meeting that need at the lowest reasonable cost and the lowest risk to customers. Mr. Gabel argues that a natural gas generating facility with a more efficient heat rate may provide additional fuel savings and SPP market revenues, but he fails to mention that acquiring such a facility or buying such capacity through a PPA will come with higher capital costs or PPA capacity charges. The Generating Facilities selected for acquisition by the Company are older and perhaps less efficient than other resources available, but they come with a much lower cost. In fact, OG&E received two asset purchase offers for newer more efficient fossil fuel generation facilities that were included in the bid evaluation. The newer generation ranked lower in the RFP analysis than the generating facilities selected and the analysis shows it would increase costs to customers. Since OG&E's proposed Generating Facilities have such low capital costs, they rely less on market benefits to create savings for customers, unlike more expensive projects that require significant amount of market revenues to offset those higher costs.

I testify that Mr. Gabel also raises the prospect of wind generation providing higher market revenues than the Generating Facilities, but fails to point out, to meet its capacity need, OG&E would need to add over 2,000 MW of nameplate wind at a cost of over \$2.5 billion not including the potential for significant transmission cost.

I further testify that PPA bidders had a lot of latitude to craft bids that both complied with the RFP and provided customers with the same benefits of a capacity and energy PPA. As discussed in Direct Testimony, OG&E's request for capacity-only PPAs placed all the risk on PPA sellers associated with market dispatch, but it also allowed those PPA sellers to retain all energy

market revenues generated from the SPP IM. OG&E believed that this should have allowed those PPA sellers to make more competitive bids for their capacity. That is, those PPA bidders could be more competitive in their capacity bids because they would be able to retain the energy market revenues generated by the dispatch of their respective units.

I testify that Mr. Gabel argues that “there are lower cost choices available to ratepayers.” He states that the Generating Facilities “do not offer the best economics of the twenty-one (21) projects” evaluated. I testify that OG&E should not just look at quantitative factors, as there are many qualitative factors that need to be assessed and considered. As discussed in the Direct Testimony of Witness Rose, one cannot look solely at a Net Present Value of Customer Costs (“NPVCC”) calculation and pick a winner based solely on the quantitative analysis due to the need to assess and evaluate non-quantitative factors. PUD agreed with the balance between quantitative and qualitative factors in the RFP evaluation process. Mr. Gabel even affirms the need for a quantitative and qualitative balance and offers an opinion of what qualitative factors deserve greater emphasis in the analysis. OG&E Witness Rose also discusses Mr. Gabel’s inconsistency on this issue in his Rebuttal Testimony.

I testify that Mr. Gabel argues that the Generating Facilities exposes OG&E customers to increased electric rates from increases of “market fuel costs.” However, OG&E utilized forecasts for both fuel and SPP market prices in its analysis, as well as scenario and sensitivity analyses to test those forecasts. Mr. Gabel also argues that the acquisition of the Generating Facilities exposes customers to risks associated with future capital additions needed at the Generating Facilities. But, future capital additions (and future O&M costs) were included in the RFP quantitative analysis, so those risks were properly taken into account by the Company in its evaluation of all bids.

Further, I testify that Mr. Gabel also discusses the possible risk of SPP changing its capacity rules to reduce the capacity value of the Generating Facilities. There has been no discussion at the SPP about changing the way it accredits capacity of thermal generation. Mr. Gabel also argues that degrading performance could pose a risk for capacity values at the Generating Facilities. But, capacity accreditation is based on the Accredited Capability Test in the SPP Planning Criteria and there are not any SPP penalties for under or non-performance after those capacity accreditations are determined. While some organized capacity markets have adopted such penalties, SPP does not have an organized capacity market and has not discussed the development of such a market or similar type penalties.

I testify that there is no evidence to suggest that the capacity of the Generating Facilities will degrade over time. With O&M and capital additions (which OG&E has forecasted and modeled in its analysis), the facilities should be able to operate for the period included in RFP with the exception of unforeseen or unusual events. Our operations team in conjunction with Burns and McDonnell conducted inspections of the Generating Facilities and fully evaluated operating data and engineering reports for the Generating Facilities over the last ten years, as well as facility design data and documents. Both Burns and McDonnell and OG&E’s operations team believe that the projects are in good shape. Mr. Gabel did not explain how he assessed the operational status and condition of the Generating Facilities. He, therefore, is not in the position to make any type of statements about any concerns about the projects lasting for the next 30 years.

In addition, I testify that Mr. Gabel's suggestion that newer facilities may be better able to satisfy OG&E's capacity requirements in SPP simply because they are newer does not have any basis in the SPP Planning Criteria document used as the foundation of capacity accreditation in SPP.

I testify that, contrary to Mr. Gabel's suggestion, OG&E did not rush its decision in this case. However, if the Commission does not act, OG&E will lose opportunities to acquire the facilities, will have to buy short term capacity and will still have a need to acquire capacity, perhaps at higher costs and risks to customers. The Generating Facilities' low-cost capacity is built, operational and with a proven operational track record. It has all permits, licenses, employees, contracts, interconnections needed to continue to provide capacity for customers. Walking away from these projects means we run the risk of losing this opportunity or increasing the cost of the capacity needed for customers. While there may be capacity available in the future, it is questionable whether the capacity could be secured in the future at such a competitive price.

I also testify that there is no evidence to support Mr. Gabel's statement that OG&E's net emissions will increase. The Generating Facilities are currently operated for and on behalf of OG&E, so there should be no net emission increase from their continued use. The emissions from the Generating Facilities are already part of the emissions profile for the State.

Lastly, Mr. Gabel argues that there will be hidden costs associated with the Generating Facilities and those costs were not considered by OG&E. OG&E does not believe there are any hidden cost because fuel cost forecasts, market price forecasts and future capital projects (and future O&M) were all included in the RFP analysis. The NPVCC results of the quantitative analysis included all those future cost estimates. In addition, the qualitative analysis considered many of the future risks associated with each bid.

#### ***Attorney General***

I testify that Mr. Bohrmann argues that pre-approval should be limited to the acquisition of the AES Shady Point facility and that the Commission should not pre-approve the acquisition of the Oklahoma Cogeneration facility. He concludes this based on his understanding of capacity needs as shown in OG&E's IRP and by changing the RFP analysis weightings. I further testify that the Generating Facilities provide 440 MW of summer rated capacity (which constitutes approximately 500 MW of nameplate capacity) and satisfies the Company's 438 MW capacity need through 2023, as identified in the 2018 IRP. In the 2018 IRP Action Plan, OG&E stated that it intended to issue an RFP to meet its needs through 2023. The RFP specified that OG&E was seeking a maximum of 500 MW, which was consistent with the 2018 IRP Action Plan.

I testify that Mr. Bohrmann focuses on the established need in the IRP of 305 MW through 2020. He then recognizes that a market opportunity of 320 MW would satisfy the initial needs through 2020, but he does not agree that the Company should address any needs beyond 2020 at this time. Mr. Bohrmann's recommendation to only address part of OG&E's need is contrary to the 2018 IRP Action Plan.

I testify further that OG&E's customers have an opportunity to realize the benefits of very low-cost generating capacity. The Oklahoma Cogeneration facility is a combined cycle natural

gas-fired generating facility that is well positioned to serve OG&E customers, being centrally located in OG&E's system and the Company's largest load center of Oklahoma City. Also, the facility already has the necessary infrastructure (and therefore has no construction risk), security protocols, permits, and water rights. OG&E is also very familiar with the combined cycle technology at the Oklahoma Cogeneration facility, as it has operated similar natural gas, combined cycle units for many years. This facility also has faster start-up times and better heat rates than other units operating in the SPP and will therefore provide the Company more flexible and efficient units for SPP IM dispatch.

I testify that Mr. Bohrmann manipulated the natural gas weights by increasing the weight given to the high gas cost forecast and reducing the weight given to the low gas forecast. He also manipulated the data to increase the overall weight given to the quantitative analysis and reduce the weight given to the qualitative analysis. I testify that this is incorrect and in order to assess each bid under different gas price scenarios, the Company calculated a weighted NPVCC by assigning weights to the Base Case (45% weight) and the Low Gas (35% weight), High Gas (10% weight) and CO2 (10% weight) sensitivities. This created a weighted NPVCC for each proposal that was designed to capture the quantitative risks for each proposal over the long-term. The proposal with the lowest weighted NPVCC received the most points. Points were then awarded to the other proposals based on the ratio between the weighted NPVCC for each proposal and the lowest weighted NPVCC.

I further testify that Mr. Bohrmann's manipulation of the weights makes no sense. The Attorney General has stated a concern that the Energy Information Administration's ("EIA") natural gas forecasts were too high. In fact, on page 19 of his testimony, Mr. Bohrmann cites to statements made by the Attorney General's representative at the August 29, 2018 IRP technical conference that "EIA's natural gas forecasts have consistently overestimated future gas prices in recent years, leading to frequent downward adjustments over time." That is precisely why OG&E developed the weighting analysis – to ensure that the low gas price forecast was weighted more heavily than the high gas price forecast.

Mr. Bohrmann does the exact opposite for someone concerned about the gas price forecast being too high. He manipulates the weights to give more weight to the high gas price until his final adjustment of 22.5% for the Low Gas Sensitivity and 22.5% for the High Gas Sensitivity. This adjustment places equal weightings for both the Low Gas and High Gas Sensitivity. While he does this to make the Oklahoma Cogeneration facility look worse and drop in the final rankings, it seems antithetical to the Attorney General's concern about high gas price forecasts to give the higher prices more weight in the analysis. It should be noted that even when Mr. Bohrmann gave equal weight to low and high natural gas price forecasts, Oklahoma Cogeneration moved from the number one ranked bid to the number two ranked bid.

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

Cause No. PUD 201800159

**FILED**  
MAR 06 2019

REDACTED

Testimony Summary of Judah L. Rose

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OF OKLAHOMA

*Direct Testimony Summary*

Judah L. Rose, Executive Director of ICF, stated that he was providing testimony on behalf of Oklahoma Gas and Electric Company ("OG&E" or the "Company"). After he described his educational, professional and employment experience and described ICF, Mr. Rose discussed the purpose of his testimony. He stated that the purpose of his testimony is to describe the OG&E 2018 Request for Proposals (RFP) for Capacity, and also to discuss ICF's assistance to OG&E on the RFP. Mr. Rose then stated OG&E issued the RFP for capacity to meet Southwest Power Pool (SPP) resource adequacy requirements on October 8, 2018. The 2018 RFP sought up to 500 MW of qualified reserve capacity in support of OG&E's reserve obligations to SPP. Mr. Rose testified that ICF assisted in the design, development and implementation of the RFP including assisting in drafting the RFP requirements and evaluative criteria and their weights, assistance in managing technical aspects of the RFP, and providing an independent review of the RFP responses.

Mr. Rose testified that, based on his involvement and taking into consideration the objectives of the RFP, he concluded that OG&E's RFP was a strong test of the market for long-term capacity in SPP that it produced competitive results. He further concluded that the process which OG&E implemented for this RFP was designed with explicit recognition and acknowledgement of the OCC rules on competitive procurement and that the execution of the RFP and evaluation of the responses was successfully completed considering the OCC rules. He also concluded that the resulting selection of the AES Shady Point and Oklahoma Cogeneration facilities were consistent with the RFP criteria and weighting thereof and reflect the most reasonable alternatives for the Company.

Mr. Rose testified that OG&E immediately needs more capacity in order to comply with minimal resource adequacy requirements of SPP (OGE's capacity shortfall is 3% to 7% of OGE's peak demand). He further testified that OG&E designed a competitive procurement process to test the market for long term capacity purchases that lock-in prices below full replacement costs and shift as much risk to the sellers.

Mr. Rose then testified about the conditions of the SPP market for generation capacity. He stated that those market conditions in SPP cause OG&E to prefer long term arrangements. This is because, given the long capacity position in SPP, OG&E can lock in very low capacity prices on long term agreements which provide valuable protections to customers in the event that SPP market conditions continue to transition through falling reserve levels, which would produce

increasing capacity prices. He stated that such a long-term capacity acquisition can result in savings for customers. Mr. Rose then explained how this led to the RFP requiring all bidders to provide long-term bids (including PPAs of 30 years).

Mr. Rose then testified about how long-term arrangements increase the potential for certain types of risks, and hence, long term arrangement require special attention to risk management such as measures to transfer risks to power providers. He stated how OG&E tried to transfer the long-term risks to the seller in order to protect the customers and, as a result, there was added emphasis on the qualitative assessment of the facilities' ability to meet accredited capacity requirements over the long term and the ability to pass these risks from customers to the sellers.

Mr. Rose testified how conducting a solicitation to invite capacity owners to submit their best offers would provide an indication of reasonable capacity prices given market conditions at the time. He stated that he believed the OG&E 2018 RFP for capacity was well designed and suitable test for current market conditions. He stated that OG&E's RFP was consistent with the action plan contained in OG&E's Integrated Resource Plan (IRP) which considered a solicitation to test market conditions. Mr. Rose also explained that the RFP was designed with a focus on SPP-accredited capacity and long-term procurement and risk management.

Mr. Rose then testified that the design of the OG&E RFP was consistent with the OCC's competitive procurement rule requirements. He explained that OG&E sought to comply with the goals and specifications of OCC competitive procurement rules. He stated that OG&E (1) provided a clear statement of product sought, term, terms and conditions, quantity, measurement of quantity, etc. before the RFP and the nexus with the IRP which showed careful consideration of OG&E's needs; (2) provided a clear statement of Evaluative Criteria before RFP including scoring, threshold and evaluative criteria; (3) established a set of conditions and features that matched the objectives; (4) included form agreements for asset purchase and power purchase alternatives; (5) submitted a draft RFP for comments in a timely manner and established a forum for Bidders through a technical conference and question and answer process in a timely manner where all Bidders were invited to request additional information, either during the Technical Conference or through the RFP Website; (6) utilized a consultative process to engage and inform the Commission and staff throughout the process; (7) established a clear schedule including dates and locations for all key events of the process; (8) prevented unilateral rebidding and used the best offers; (9) prevented affiliate bidding to facilitate the process in terms of fairness; and (10) utilized financial impact as a criteria.

Mr. Rose then testified that there were additional elements that demonstrated that RFP was fair for participants. He stated that the process relied on multiple aspects to ensure transparency for Bidders, and to maintain the confidentiality of individual bidders. He testified that, to ensure a fair and consistent evaluation of responses, clear protocols prior to evaluating criteria. OG&E acted in good faith with all Bidders, and utilized evaluation protocols that permitted the RFP response review to be conducted in a fair and transparent manner. The protocols were applied to all Bidders, regardless of their capacity type or whether they were proposing a capacity purchase or acquisition. Also, to facilitate the review process, standardized forms were provided to all Bidders to aid in the collection and review of information on a consistent basis. He stated that

further evidence of the transparency and fairness is reflected in the draft RFP review process where the sufficiency of documentation provided by OG&E was unchallenged by Bidders.

Mr. Rose then testified how the RFP was designed to foster participation and facilitate a competitive response. He explained, for example, that the RFP was designed as all-source procurement which facilitates competition. This allowed for a range of power plant types, including renewable and non-renewable to participate. Further, Mr. Rose testified that the RFP included options for sale of the Bidder facility through an APA or for contracting through a PPA. He stated that this also facilitated the ability for Bidders to provide a full range of alternatives or to emphasize their preferred alternative. He further explained how the RFP was open to both existing and new facilities, again, allowing for a diverse set of participants to respond.

Mr. Rose then described the RFP for electric generation capacity and how he and ICF assisted OG&E in designing a competitive procurement process to test the market for capacity and position OG&E to review SPP accredited capacity offers meeting its objectives for cost, schedule, and other matters. He stated that ICF also focused its assistance on achieving a successful and fair bidding process, including designing the RFP, developing the evaluation protocol and supporting the bid evaluation process.

With regard to his role in the RFP design, Mr. Rose generated a draft RFP and relevant attachments and forms to the RFP, including proposed threshold and evaluation requirements, including a draft for scoring system. Mr. Rose further testified that before developing its draft RFP, ICF worked with OG&E to identify their requirements for capacity and understand critical price and non-price factors to be utilized to assess the bidders. Mr. Rose then testified that ICF's RFP focused on certain areas, including:

- **Establishing Criteria:** ICF worked with OG&E to identify the key criteria and requirements for its capacity RFP. These included the types of capacity allowed, the size, the timing for capacity bids, and the PPA or asset purchase agreement (APA) contract structures to be reviewed. The result of that process was to accept up to 500 MW of capacity available to OG&E to meet SPP requirements beginning in summer as of 2019, 2020, or 2021. The minimum acceptable bid was 50 MW. Also, Mr. Rose also stated how ICF confirmed that no OG&E affiliate was bidding.
- **Identifying Bidder Threshold Requirements:** ICF assisted OG&E in designing threshold requirements for bidders including items that establish the bidders as eligible for participation. Threshold requirements included bid completeness, size timing and term requirements, proper property site control, the absence of contingencies or conditions, experience and bidder financial ability.
- **Designing Price and Non-Price Factors Criteria and Relative Weighting:** ICF assisted OG&E in determining appropriate price and non-price (qualitative) factors and their weightings. Mr. Rose explained how price factors accounted for 50% of the overall evaluation score and how the qualitative portion of the evaluation covered six categories and accounted for the other 50% of the evaluation score. The six qualitative categories included:
  - Contract Risk, Costs and Benefits – 15%
  - Operational Characteristics and Viability – 10%
  - Locational Benefits, Reliability, Resiliency, and Security – 10%

- Overall Project Development Risks – 5%
- Resource Diversity and Scalability – 5%
- Environmental Impacts – 5%

Mr. Rose then described how he and ICF supported OG&E after the RFP was finalized. He testified that ICF worked with OG&E to collect comments including those from other parties and finalize a draft RFP suitable for filing with the OCC. He explained that, on October 5, 2018, a technical conference was held at which ICF and OG&E presented to interested parties regarding the RFP process and evaluative criteria. After due consideration of all comments received from parties, certain modifications were made to the draft RFP, and a Final RFP was issued and posted to the OG&E RFP website. Mr. Rose further testified that ICF also worked with OG&E to review and answer questions received from interested parties and assisted in the evaluation of responses received.

Mr. Rose then discussed in greater detail the threshold criteria and qualitative evaluation criteria. Mr. Rose also explained why he believes that the overall emphasis on qualitative factors was appropriate in this case. He cited to a number of reasons why the 50% weighting on qualitative criteria was appropriate for OG&E. Mr. Rose stated that the RFP scoring was reasonable based on ICF participation and observations.

Mr. Rose then testified how he and ICF reviewed the draft APA and PPA terms from commercial business practice, power market, and energy technology perspectives. He explained how ICF was focused on PPA issues that would test the ability of the marketplace to provide long term risk management related to SPP capacity requirements including timeliness, accredited capacity, deliverability, and changes in rules. He also explained how ICF assisted in developing appropriate guidelines/protocols in advance of opening and evaluating bids in order to enable the fair treatment of all Bidder responses.

Mr. Rose then testified that the response to the RFP was very strong with 94 proposals received from a total of 19 companies and involving 26 project sites. He stated that he considered the response to the RFP to be very strong because: (1) the total number of bids is high, (2) the number of companies bidding is high, (3) the diversity of technologies is high including a diverse range of thermal and renewable technologies, as well as storage, (4) the diversity of delivery locations into the SPP market is high, (5) the diversity of size of offered capacity, (6) large numbers of both APA and PPA offers were made, and (7) the total amount of capacity very high compared to the need. He testified that a strong response, all else equal, is beneficial for customers because it is indicative of competition and options and tends to lead to the best-scoring offers being low-cost with well-managed risks.

Mr. Rose then discussed ICF's role in the bid evaluation process. He explained how ICF supported OG&E in its evaluation of bids received, including addressing evaluating bids in the threshold review and both the quantitative and qualitative review. Mr. Rose explained that ICF's role in the quantitative review was limited to the financial impact to OG&E (imputed debt), but that ICF's role in the qualitative (non-price) review was extensive and covered all six qualitative categories.

Mr. Rose then explained how ICF conducted a quantitative review of bids to determine the financial impact to OG&E in the form of debt equivalency. He then described that debt equivalency analysis and how much weight it was given in the overall quantitative analysis. Mr. Rose explained how it is important to assess the debt equivalency of a PPA on a manner consistent with ownership treatment. He stated that the debt equivalency issue arises when rating agencies impute debt to PPAs, thereby assigning a higher debt-to-equity ratio for comparative rating purposes (the consequence could be a derating and/or higher interest expenses) against the rate-based option. He stated that PPAs are considered as imputed debt if they are long-term and/or are a large size.

Mr. Rose then explained the results of RFP, including the bids that were deemed non-conforming in the threshold review as well as final scoring for the conforming bids. He testified that the threshold factors were reasonable and consistent with such factors utilized in industry RFPs. He explained how the largest number of offers which were eliminated for threshold factors were identified in the size, timing, and term categories. This category reflects the foundational requirements of the RFP and reflect reasonable rationale for elimination. Outside of the threshold categories, the majority of elimination from evaluation were proposals offering energy and how energy offers were entirely outside the scope of the RFP and should not be considered in the context of this RFP.

Mr. Rose testified that the two winning bids were AES Shady Point and Oklahoma Cogeneration. He explained that

Mr. Rose then testified that the acquisition costs for both Generating Facilities is approximately \$53.5 million. Since these facilities total approximately 500 MW, the cost of this new capacity equals approximately \$107/kW. This is a very low cost for capacity especially when compared to full replacement costs. Also, he explained that, since the value of the capacity comes mostly from that low capital investment and does not rely on market revenues to demonstrate value for customers, there is less market risk associated with these projects.

Mr. Rose the testified in greater detail about the RFP scoring for AES Shady Point and Oklahoma Cogeneration.

Mr. Rose concluded that based on his involvement and taking into considerations the objectives of the RFP in terms of addressing a pressing need for capacity, OG&E complied with OCC Competitive Procurement Rules. He also stated that the RFP had a reasonable and detailed analytic basis.

### **Rebuttal Testimony Summary**

Mr. Rose provided rebuttal testimony to respond to the testimonies of Steven Gabel of behalf of Oklahoma Energy Results and Todd Bohrmann on behalf the Attorney General.<sup>1</sup> He also highlighted the fact that the testimonies of Mr. Jason Lawter and Mr. Andrew Scribner on behalf of Oklahoma Corporation Commission Public Utility Division staff supported the Company's RFP process, evaluation and winning bid selection.

Mr. Rose rebutted Mr. Gabel's belief that OG&E's proposal to purchase AES Shady Point ("Shady Point") (320 MW) and Oklahoma Cogeneration ("Oklahoma Cogen") (120 MW), the two clear winners of the recent OG&E Request for Proposals ("RFP"), is not in the public interest and that OG&E should redo its recent RFP. Mr. Rose also rebutted Mr. Gabel's belief that the RFP structure is flawed because there was not sufficient time, there was too much emphasis on qualitative factors in part because qualitative factors were double counted in the threshold analysis and the qualitative evaluation, PPA options were treated unfairly in the RFP because the Company rejected PPA bids that offered sales of both energy and capacity, and imputed debt was incorrectly calculated. Mr. Rose also rebutted Mr. Gabel's belief that OG&E failed to account for hidden costs, and was incorrect with regard to risks related to capacity market rules and market considerations. Mr. Rose also rebutted Mr. Gabel's criticism of the treatment of emissions, ancillary services, and the benefits of modernization.

Mr. Rose stated that he disagreed with Mr. Gabel's criticisms, which are frequently incorrect, conclusory, internally inconsistent, and not supported by industry practice. Mr. Rose argued that:

1. The structure of the RFP has the advantages of carefully constructed quantitative and qualitative analysis, openness to all sources, fairness, and compliance with OCC competitive procurement rules. Moreover, there was no self-build option complicating the RFP. Mr. Rose testified that the results of the RFP show a significant turnout and a highly competitive pool of fully qualified offers to consider.
2. The time allowed to respond to the RFP was sufficient, and comparable to others, and appears to have placed competitive pressure on suppliers to the benefit of OG&E customers.
3. The evaluative structure was properly balanced between qualitative and quantitative factors given the wide range of complex issues involved in evaluation of generation options, especially in an all source RFP for capacity.
4. The double counting issue is a red herring and refuted by logic, the structure of the OG&E RFP, the weakness of Mr. Gabel's specific criticisms, and comparable industry practice. Mr. Rose testified that it is common and appropriate to have threshold and non-threshold criteria including some of the same criteria. The threshold criteria was used to determine whether

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<sup>1</sup> Filed February 20, 2019

bidders followed the rules of the RFP. The threshold analysis determined whether a bid “cleared the bar” to continue forward to the evaluation stage. The qualitative analysis involved a scoring of the qualitative factors to compare conforming bids.

5. While PPA bids offering both the sale of capacity and energy were rejected, bidders still included energy in the PPAs bids via lower capacity pricing that results from sellers retaining the ability to sell their energy, and done in a manner which transfers the risk of energy costs being lower than expected to sellers from customers.
6. Mr. Rose’s treatment of imputed debt is correct, there were no hidden costs that were not included in the RFP analysis, Mr. Rose’s testimony on the risks of capacity market rules is correct, and the views of OG&E witness Leon Howell that Mr. Gabel provides no evidence that more modern equipment provide benefits to offset much higher capital costs is also correct.

Mr. Rose explained that the OG&E RFP was well conducted, and provides customers the very low price of \$107/kW. He stated that he is not aware of another Oklahoma purchase of capacity at such a low price. The equipment is operating, diversely fueled, and favorably located including Oklahoma Cogen which is located in the heart of OG&E’s load center. Most importantly, it provides capacity to solve OG&E’s need to comply with SPP reliability rules and meet reliability deadlines as early as May 2019.

Mr. Rose then rebutted Mr. Bohrmann, who supports the purchase of AES Shady Point as prudent, but not Oklahoma Cogeneration. Mr. Rose disagreed with Mr. Bohrmann’s positions and agreed with Mr. Howell that both plants are needed and the purchase is prudent. Mr. Rose testified that the two plants have scores that put them both well above all the other proposals, and he disagreed with Mr. Bohrmann’s view that OG&E should focus only on a short-term need and abandon its plan to acquire Oklahoma Cogen. Mr. Rose also explains how Mr. Bohrmann is manipulating the weightings in the RFP evaluation to achieve a desired outcome. Mr. Rose explains that Mr. Bohrmann gives more weight to higher gas prices in order to make Oklahoma Cogeneration look worse in the RFP scoring. He also explains how Mr. Bohrmann similarly manipulates the quantitative and qualitative weightings to make the Oklahoma Cogeneration bid looks worse.

Furthermore, Mr. Rose addressed Mr. Bohrmann’s proposal for a hold harmless provision that would deny recovery if the plants retire before lasting 30 years. Mr. Rose testified that Mr. Bohrmann’s hold harmless proposal is unbalanced, violates regulatory principles of cost recovery, is insufficiently detailed, and Mr. Rose stated that he is not aware of a similar practice being in place anywhere. Lastly, Mr. Rose addressed Mr. Bohrmann’s proposed most favored nation clause so that any condition agreed to in Arkansas should be available to the Oklahoma jurisdiction. Mr. Rose stated that the most favored nation clause violates the principle that regulation should make sense for Oklahoma by opening the process to unfounded extra-Oklahoma regulation and explained that an unfair decision in Arkansas, should it occur, gets worse when it is automatically applied to other jurisdictions.

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

IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
FOR COMMISSION PREAPPROVAL PURSUANT )  
TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )

Cause No. PUD 201800159

**FILED**

MAR 06 2019

**UNREDACTED**

**Testimony Summary of Judah L. Rose**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

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

**IN THE MATTER OF THE APPLICATION OF )  
OKLAHOMA GAS AND ELECTRIC COMPANY )  
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TO 17 O.S. SECTION 286(C) FOR ACQUISITION )  
OF CAPACITY THROUGH ASSET PURCHASE )**

*FWD*  
**Cause No. 201800159**

**TESTIMONY SUMMARY OF THE SUPPLEMENTAL TESTIMONY OF  
DONALD R. ROWLETT**

**March 26, 2019**

**FILED**  
MAR 26 2019

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

Mr. Don Rowlett provided Supplemental Testimony on March 25, 2019, in support of the Joint Stipulation and Settlement Agreement also filed that date. Mr. Rowlett states he is Managing Director of Regulatory Affairs for Oklahoma Gas and Electric Company (“OG&E”) and provides his educational qualifications and employment history. He states he has previously testified before this Commission, the Arkansas Public Service Commission, the Environmental and Public Works Committee in the United States Senate, and the Federal Energy Regulatory Commission.

Mr. Rowlett describes the present Cause and the relief requested stating that in September of 2018, OG&E submitted its final Integrated Resource Plan to this Commission which demonstrated a capacity shortfall for OG&E starting in 2019 and growing through 2028. In response to this need, OG&E issued a Request for Proposals for Capacity (“RFP”) on October 10, 2018, seeking projects that must be in service in 2019, 2020, or 2021. Bid responses to the RFP were received on October 22, 2018, and OG&E undertook evaluation of the proposals and engaged in negotiations that culminated in two asset purchases: Oklahoma Cogeneration and AES Shady Point. Mr. Rowlett provides a brief description of both facilities including nameplate capacity and location.

Mr. Rowlett provides a description of the structure of the Settlement and notes four components: 1) an introduction that states the Stipulating Parties believe the Settlement is fair, just, and reasonable and in the public interest; 2) a set of facts agreed to by the Stipulating Parties; 3) specific agreements reached by the Stipulating parties; and 4) a “general reservations” section that is commonly found in agreements of this type filed at the Commission.

Mr. Rowlett provides a brief description of the “general reservations” section and then discusses the specific agreements reached by the Stipulating Parties. The initial requested finding of facts and approvals include: that OG&E’s RFP and bid evaluation process was consistent with Commission rules; that OG&E has demonstrated a need for acquisition of the Generating Facilities, and that this Commission approve the acquisitions pursuant to Title 17, Section 286(C).

Mr. Rowlett next states the Stipulating parties request approval of the Generation Capacity Recovery Rider (“GCRR”) and describes the seven conditions for approval of the GCRR. Those conditions include: 1) the GCRR will become effective the first billing cycle of July 2019 in the event the Commission issues an order and OG&E closes on the AES facility; 2) the GCRR will initially only recover the revenue requirement associated with the AES facility using OG&E’s most recently approved cost of capital; 3) beginning on the date OG&E closes on the Oklahoma Cogeneration facility, OG&E will create a regulatory asset for the costs of that facility using OG&E’s most recently approved cost of debt that will be updated based on the final order in PUD 2018-140 and on May 1, 2021, the Oklahoma Cogeneration facility regulatory asset will terminate and be included in the GCRR; 4) in the event a rate case is not filed within three years after a final order is issued in PUD 2018-140, OG&E will initiate a docket to allow the Commission and interested parties the opportunity to perform a comprehensive review of the GCRR; 5) no fuel

costs associated with the Generating Facilities shall be included in the GCRR and all fuel costs will be included in the FAC after OG&E closes on the facilities; 6) the capital investment amount included in the GCRR shall be limited to the purchase price of the Generating Facilities and annual O&M costs are to be capped at \$20 million; and 7) on or before February 15 of each year, recalculated GCRR factors shall be submitted by OG&E to the Public Utility Division and all Stipulating Parties for review and shall be implemented the first billing cycle of April.

Mr. Rowlett states the parties agree that in OG&E's next RFP for acquisition of generation facilities, OG&E will disclose in its initial RFP document the following: 1) all weights applied to natural gas price sensitivities in the bid evaluation process; and 2) the method of calculation used to assign value to the Net Present Value of Customer Cost for each bid considered in the evaluation process. Further, OG&E will examine various alternative quantitative and qualitative weightings, including assigning more weight to the NPVCC value and discuss those alternatives in the initial draft of the RFP document.

Regarding the customer impact resulting from the initial implementation of the GCRR, Mr. Rowlett states when the GCRR first becomes effective, it will only include the revenue requirement associated with the AES facility and that an average residential customer using 1,100 kilowatt hours per month of electricity will see an increase of \$0.87 per month.

Mr. Rowlett states his opinion that the Stipulation and Settlement Agreement is a well-balanced agreement, is in public interest, and should be approved by this Commission.

**CERTIFICATE OF SERVICE**

This is to certify that on the 26<sup>th</sup> day of March, 2019, a true and correct copy of the above was transmitted to the following:

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**FILED**  
MAR 26 2019

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

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

IN THE MATTER OF THE APPLICATION OF )	
OKLAHOMA GAS AND ELECTRIC )	
COMPANY FOR COMMISSION )	
PREAPPROVAL PURSUANT TO 17 O.S. )	CAUSE NO. PUD 201800159
SECTION 286(C) FOR ACQUISITION )	
OF CAPACITY THROUGH ASSET )	
PURCHASE )	

**TESTIMONY SUMMARY OF MARK E. GARRETT  
ON BEHALF OF OKLAHOMA INDUSTRIAL ENERGY CONSUMERS (OIEC)**

**Introduction**

My name is Mark Garrett. I am the President of Garrett Group, LLC a firm specializing in public utility regulation litigation and consulting services. I am an attorney and certified public accountant. My qualifications have been previously accepted by this Commission. I have testified in numerous proceedings in Oklahoma and other jurisdictions regarding cost of service, rate design and ratemaking matters. I have also previously provided testimony in proceedings involving utility requests for recovery of costs through a rider.

I am appearing on behalf of Oklahoma Industrial Energy Consumers (OIEC). OIEC is an association consisting of a diverse group of large consumers of energy in Oklahoma which is involved in regulatory and legislative matters primarily involving natural gas and electric power. OIEC advocates for reliable power supply at the lowest and most reasonable cost possible.

OG&E, the Oklahoma Corporation Commission Public Utility Division (PUD) and the Oklahoma Attorney General have entered into a Settlement Agreement (the "Stipulation") which requests Commission approval of OG&E's acquisition of certain generating plants and OG&E's cost recovery of the revenue requirement associated with the acquisition of such plants through the GCRR. The purpose of my testimony is to respond to the Stipulating Party's request for recovery of the annual revenue requirement associated with the AES Shady Point and OK Cogen generating plant acquisitions (in the amount of approximately \$20.2 million) through OG&E's proposed Generation Capacity Recovery Rider ("GCRR").

In my live testimony, I will explain OIEC's recommendation for the Commission's conditional approval of the Stipulation and the GCRR. OIEC requests Commission rejection of subparagraph 4 of Paragraph C of the Stipulation and the imposition of a "Sunset" provision which limits recovery of costs pursuant to the GCRR to a term of 3 years following the issuance of a

Commission order approving new rates in OG&E's pending base rate case proceeding (PUD 201800140).

### **Sound Ratemaking Principles**

Riders and other tracker mechanisms (such as the GCRR) are *preferential ratemaking treatment* that should be used only in *extraordinary circumstances* and for a *limited period of time*. Riders reduce risk; therefore, if there is no corresponding reduction in the utility's return on equity ("ROE"), the duration of the rider should be limited to the shortest time period practicable. The reason for this is that regulators realize that it is unfair to ratepayers to allow special recovery of one cost area that may be going up while ignoring all of the other costs that may be going down. To capture the savings from cost areas that may be going down, a rate case must be scheduled. I have testified to these principles on many occasions.

### **Statutory Law in Oklahoma Follows this Rule**

Title 17 OK Stat § 17-286 (B) allows a utility to periodically adjust its rates to recover environmental compliance mandates for generation facilities. However, if a utility elects to periodically adjust its rates (as through a rider), Oklahoma law requires that the utility file for a full rate case review no more than 24 months after initiating the rider.

OG&E is requesting to purchase these two plants under 17-286(C), which does not specifically address or provide for cost recovery through a rider. OG&E's request for rider approval is not consistent with the terms of Title 17 O.S. Section 286 (B).

### **The Attorney General Recommended a 3-Year Limit to the GCRR**

In this case, the Attorney General's witness, Mr. Todd Bohrmann, recommended that the GCRR terminate in three years. OIEC filed a Position Statement in this Cause supporting the Attorney General's recommendation for rider termination.

### **OIEC Recommendation**

A "sunset clause" would resolve concerns related to the lack of an expiration date. A "sunset clause" would set a reasonable maximum limit of 3 years for which the Company could recover costs through the GCRR. The Commission should authorize OG&E to recover costs through the GCRR for three years after the effective date of base rates that will be established in Cause No. PUD 201800140.<sup>1</sup> (Emphasis added).

### **Other Authority**

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<sup>1</sup> See Responsive Testimony of Todd Bohrmann at page 24, lines 11-17.

Ken Costello is a Principal with the National Regulatory Research Institute ("NRRI"). His white paper, *How Should Regulators View Cost Tracker Mechanism*, published in 2009, has been cited by Staff on several occasions and followed by this Commission.

Mr. Costello explains that commissions see cost trackers as a special regulatory treatment and approve them only under "extraordinary circumstances." To meet the "extraordinary circumstances" test, a utility would be required to show the following:

1. The costs are outside the control of management;
2. The costs are volatile and unpredictable;
3. The utility would suffer severe financial harm without the tracker.

Mr. Costello also points out, at page 14, that regulatory commissions implementing trackers should require utilities to file predetermined rate cases:

V.A. On net, the utility benefits and its customers immediately pay for the infrastructure costs without benefiting from the lower operating costs (at least until new rates reflect the lower costs). Such an outcome would violate any common meaning of "fairness" and seriously calls into question the merits of using a single-function tracker without readjusting rates for the effect on a utility's other functional areas.<sup>38</sup> This dynamic suggests that commissions implementing trackers should require their utilities to file rate cases on predetermined intervals. (Emphasis added).

### Recent Examples

In PSO's 2018 rate case, PUD 18-097, the parties to a stipulation agreed to allow PSO to recover some of its transmission costs and a very limited portion of its distribution costs through a rider mechanism. The agreement also requires PSO to file a rate case no later than October of 2021, which is 2½ years after new rates in this case go onto effect.

### The Stipulation does not Provide Adequate Protections

The Stipulation provides for a review of the GCRR in paragraph C.4.

4. If a general rate case is not filed within three (3) years after a final order is issued in Cause No. PUD 201800140, OG&E will initiate a docket to allow the Commission and interested parties an opportunity to perform a comprehensive review of the GCRR rider and to consider whether the GCRR should continue.

This provision is inadequate because it provides for a comprehensive review of the GCRR, but not a review of OG&E's other costs that may be going down. What is needed is a comprehensive review of all of OG&E's costs. Only by looking at OG&E's total cost of service can ratepayers be sure that they are being treated fairly.

This Commission should not authorize preferential rider treatment for OG&E for its new generation capacity and deprive ratepayers of their most important protection, which is a comprehensive rate case review.

**Conclusion**

The Commission should reject the Stipulating Parties proposed GCRR and instead, authorize a GCRR containing a "Sunset" provision which limits the recovery of costs pursuant to the GCRR to a term of 3 years after the effective date of base rates established in Cause No. PUD 201800140.

**CERTIFICATE OF MAILING**

This is to certify that on this 26<sup>th</sup> day of March, 2019, a true and correct copy of the above and foregoing was emailed, addressed to:

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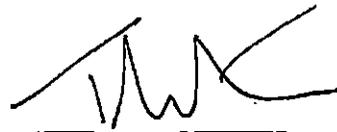
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