

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

JOINT APPLICATION OF CENTERPOINT)
ENERGY RESOURCES CORP., SOUTHERN)
COL MIDCO, LLC, AND SUMMIT UTILITIES)
OKLAHOMA, INC. FOR TRANSFER OF)
JURISDICTIONAL UTILITY ASSETS AND)
CUSTOMER ACCOUNTS PURSUANT TO)
OAC 165:45-3-5)

CAUSE NO. PUD 202100114

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW SUBMITTED BY JOINT APPLICANTS**

Curtis M. Long, OBA No. 5504
J. Dillon Curran, OBA No. 19442
CONNER & WINTERS, LLP
1700 Leadership Square
Oklahoma City, Oklahoma 73102-7261
Phone: 405-272-5711
Fax: 405-232-2695
clong@cwlaw.com
dcurran@cwlaw.com

**ATTORNEYS FOR JOINT APPLICANTS
CENTERPOINT ENERGY RESOURCES
CORP., SOUTHERN COL MIDCO, LLC, AND
SUMMIT UTILITIES OKLAHOMA, INC.**

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JURISDICTIONAL UTILITY ASSETS AND)
CUSTOMER ACCOUNTS PURSUANT TO)
OAC 165:45-3-5)

HEARING: August 17 and 26, 2021, in Courtroom B (virtual teleconference)
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: Curtis M. Long and J. Dillon Curran, Attorneys *representing* CenterPoint
Energy Resources Corp, Southern COL Midco, LLC and Summit
Utilities Oklahoma, Inc.
Jared B. Haines and A. Chase Snodgrass, Assistant Attorneys General
representing Office of the Attorney General, State of Oklahoma
Michael Ryan, Assistant General Counsel *representing* the Public
Utility Division, Oklahoma Corporation Commission

REPORT AND RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE

This Cause comes before the Corporation Commission (“Commission”) of the State of Oklahoma on the Joint Application filed in this Cause by Joint Applicants CenterPoint Energy Resources Corp. (“CERC”), Southern Col Midco, LLC (“SC MidCo”), and Summit Utilities Oklahoma, Inc. (“SUO”), (collectively, “Joint Applicants”), requesting that the Commission (1) approve a transaction by which CERC would assign all its Oklahoma jurisdictional utility assets and all its Oklahoma natural gas customer accounts to SUO (the “Transaction”); and (2) authorize SUO to provide utility service utilizing the utility assets under CERC’s applicable tariffs on file with and approved by this Commission (and as may be revised and approved from time to time in the future).

I. RECOMMENDATION

The Administrative Law Judge (“ALJ”) recommends that the Commission approve the Joint Application in all respects, subject to the recommended findings of fact and conclusions of law set out below. The Joint Applicants have met all requirements of the applicable Commission rule, OAC 165:45-3-5, presenting evidence that SUO has the financial, managerial and operational capability to operate CERC’s jurisdictional assets to provide safe and reliable natural gas utility service to all CERC’s Oklahoma customers.

The ALJ further recommends that the Commission adopt the conditions presented by the Public Utility Division (“PUD”) of the Commission, as set forth in the Responsive Testimony of PUD’s witness John Givens, so as to assure the public (1) that the Commission has a process in place to closely monitor on an annual basis the cost of service underlying SUO’s operation of the transferred jurisdictional assets, and (2) that customers will receive all benefits to which they are entitled under the Performance Based Rate Change (“PBRC”) Tariff of CERC (to be adopted by SUO upon closing), including any credits that may be forthcoming from year to year during the transition period.

The ALJ further recommends that the Commission deny as prejudicial to the public interest the proposal by the Attorney General to suspend the PBRC Tariff. A suspension would disrupt the Commission’s established process for close review and supervision of annual changes in cost during the transition period and would deny customers the opportunity to receive credits to which they might be entitled under the PBRC Tariff.

The ALJ further recommends that the Commission deny as premature and unnecessary the proposal by the Attorney General to schedule a future rate case. The annual PBRC process may be utilized to make annual and gradual adjustments to rates, if and when they are shown to be in the public interest according to the process already in place, together with the conditions proposed by the PUD and recommended by the ALJ above.

Finally, the ALJ recommends that the Commission adopt the unopposed recommendations of the Attorney General’s witness Brice D. Betchan that SUO should reconcile SUO’s legacy ADIT and EDIT balances to CenterPoint’s last PBRC filing in a subsequent filing by SUO, and that SUO should separately track any newly created ADIT balances of SUO due to SUO’s uncertainty of whether the tax normalization rules apply to SUO’s legacy ADIT and EDIT balances.

II. PROCEDURAL HISTORY

Joint Applicants initiated this Cause on June 24, 2021, by filing their Joint Application pursuant to OAC 165:45-3-5, requesting that the Commission (1) approve the Transaction and authorize SUO to provide utility service utilizing the utility assets under CERC’s applicable tariffs approved by this Commission.

Also on June 24, 2021, Joint Applicants filed the supporting direct testimony of CERC’s Vice President of Regional Operations for the states of Arkansas and Oklahoma, Cynthia L. Westcott, and Summit Utility, Inc.’s Executive Vice President and Chief Financial Officer Steven E. Birchfield and its Chief Customer Officer, Fred Kirkwood.

Also on June 24, 2021, Joint Applicants filed the following motions: (1) Joint Motion to Establish Procedural Schedule; (2) Joint Motion for Protective Order; and (3) Joint Motion to Establish Notice Requirements. Each motion was noticed for hearing on July 1, 2021 and each motion was heard and recommended by the ALJ on that date.

On June 24, 2021, Jared B. Haines and A. Chase Snodgrass filed an Entry of Appearance on behalf of the Oklahoma Attorney General.

On July 13, 2021, the Commission issued Order No. 719419, Order Granting Joint Motion to Establish Notice Requirements.

Also on July 13, 2021, the Commission issued Order No. 719420, Order Granting Joint Motion to Establish Procedural Schedule.

Also on July 13, 2021, the Commission issued Order No. 719421, Order Granting Joint Motion for Protective Order.

On July 23, 2021, the PUD filed Responsive Testimony of John Givens recommending approval of the transfer of assets from CERC to SUO, concluding that SUO has demonstrated a clear ability to provide continued service to CERC's Oklahoma customers, and recommending approval of SUO's proposal to adopt CERC's existing tariff, including its PBRC tariff, and recommending that SUO be required to address certain matters in its next PBRC filing.

Also on July 23, 2021, the Attorney General filed testimony of Todd F. Bohrmann and Brice D. Betchan. The Attorney General's witnesses recommended approval of the joint application, but subject to three conditions: (1) that SUO should file a general rate case covering a test year ending no later than December 31, 2023; (2) that SUO should not make an annual PBRC filing for test years 2021, 2022 or 2023; and (3) that SUO should reconcile its legacy deferred tax balances to CERC's last PBRC filing and separately track any newly created deferred tax balances.

On August 5, 2021, SUO filed rebuttal testimony of Steven E. Birchfield opposing the responsive testimony of Todd F. Bohrmann as it pertained to his proposed requirements for a general rate case and a suspension of PBRC filings.

Also on August 5, 2021, PUD filed rebuttal testimony of John Givens opposing the responsive testimony of Todd F. Bohrmann as it pertained to his proposed requirements for a general rate case and a suspension of PBRC filings.

On August 9, 2021, CERC filed the Affidavit of Service of Kimberly Middleton, affirming that twenty (20) days prior to the hearing in this cause, CERC served by United States Mail the notice prescribed by Order No. 719419 on all its Oklahoma customers.

On August 13, 2021, Joint Applicants, the Attorney General and the PUD each filed their respective Exhibit Lists.

Also on August 13, 2021, Joint Applicants filed a summary of the direct testimony of Cynthia L. Westcott, of the direct and rebuttal testimony of Steven E. Birchfield and of the direct testimony of Fred Kirkwood.

Also on August 13, 2021, the PUD filed summaries of both the responsive and rebuttal testimony of John Givens.

Also on August 13, 2021, the Attorney General filed a summary of the responsive testimony of Todd F. Bohrmann and of the responsive testimony of Brice E. Betchan.

On August 16, 2021, SUO filed the testimony of Angus S. King III adopting the direct testimony of Fred Kirkwood filed on June 24, 2021.

On August 17, 2021, written Public Comment was filed.

Also on August 17, 2021, as provided in Order No. 719420, a hearing on the merits was conducted by the ALJ in Courtroom B and by video conference. The ALJ provided opportunity for oral public comment on the record and one member of the public present in Courtroom B offered oral public comment. Joint Applicants presented their witnesses, Cynthia L. Westcott, Steven E. Birchfield and Angus S. King III (adopting the written direct testimony of Fred Kirkwood) and the Attorney General presented his witnesses, Todd F. Bohrmann and Brice D. Betchan. Thereupon, the hearing was continued by the ALJ to August 26, 2021. At that time, PUD presented its witness, John Givens, for oral testimony.

After all evidence in the case had been presented, the ALJ requested that all parties submit proposed findings of fact and conclusions of law to her by September 9, 2021.

On September 9, 2021, Joint Applicants, PUD and the Attorney General each filed their respective proposed findings of fact and conclusions of law at the request of the ALJ.

III. SUMMARY OF THE EVIDENCE

The Summary of the Evidence is set forth in Attachment “A” hereto.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction in this Cause pursuant to Article IX, § 18 of the Oklahoma Constitution and 17 OKLA. STAT. § 151 *et seq.*
2. The Commission rule governing this proceeding is found at OAC 165:45-3-5.

Notice

3. Notice of the Hearing on the Merits was prescribed by Order No. 719419 as individual notice by United States Mail, at least twenty (20) days prior to the hearing, as required by OAC 165:45-3-5(f). On August 9, 2021, CERC filed in this Cause an Affidavit of Service demonstrating that notice in this Cause was provided to the Company’s Oklahoma customers as required by Order No. 719419.

4. Notice is proper in this Cause and in compliance with Order No. 719419 issued on July 13, 2021.

Capability and Compliance with the Commission’s Governing Rule

5. The Joint Application was filed under and governed by OAC 165:45-3-5. Joint Applicants in their filing have provided all the information required by OAC 165:45-3-5(b)(1 through 14) and that information is sufficient to support approval of the Joint Application. Givens Responsive Testimony 6:2-11 and 12:15-23. No party has asserted that Joint Applicants failed to provide sufficient evidence necessary to support a finding that Summit possesses the financial, managerial and operational capacity to purchase and operate the jurisdictional assets of CERC and to provide safe and reliable natural gas utility service to the customer accounts transferred to the Oklahoma public. See, 1Tr. 78:25 – 79:10.

6. SUO has demonstrated a clear ability to provide safe and reliable service to CERC’s customers in Oklahoma, due both to the experience and expertise of its ultimate parent, Summit Utilities, Inc. in operating natural gas utilities in multiple jurisdictions across the country, and its commitment to hire current CERC employees and management to manage and operate the facilities to be acquired. Kirkwood/King Direct 4:19 – 7:14; 1TR 55:7 – 56:10; Givens Responsive 6:2-11.

7. Consistent with OAC 165:45:3-5(g), SUO has committed to adopt upon closing of the Transaction all tariffs of CERC, including CERC’s PBRC tariff. The CERC rates for regulated service to the transferred customers in effect prior to the effective date of the transfer shall continue to be charged by SUO with respect to those customers, unless and until different rates are reviewed and approved by the Commission in a subsequent proceeding, after notice and hearing. Birchfield Direct 20:3-18; Kirkwood/King Direct 7:21-22; Givens Responsive 8:7-19.

8. SUO has provided assurances that it will not adjust the net book value of the acquired assets for ratemaking purposes as a consequence of the Transaction (Birchfield Direct 18:14-20), and that it will not seek ratemaking recovery of any acquisition premium (Birchfield Direct 18:21 – 19:4; Givens Responsive 8:1-5), transaction costs (Birchfield Direct 18:21 – 19:4) or general integration costs (Birchfield Direct 19:5-10). SUO has also stated the expectation that allocation of O&M cost to Oklahoma will be “consistent with the historical amounts allocated by CERC.” Birchfield Direct 19:11-18. SUO’s approach is reasonable and in the public interest.

Transition after Closing

9. Summit has developed skill and experience in transitioning new operations into its system and processes and, where appropriate, developing new systems and processes that are best suited to the scale and scope of the platform resulting from a significant acquisition. Birchfield Direct 7:15 – 8:5.

10. The parties to the Transaction have planned for a smooth transition after closing. To prepare for the transition of this significant transaction, at closing, SC MidCo (or an affiliate)

will enter into a Transition Services Agreement (“TSA”), pursuant to which CenterPoint Energy Service Company (“CESC”), a CERC affiliate, will provide to SUO and SUO will pay for transition services for a period of 12 months post-closing. 1TR 60:24 – 61:2. The purpose of the TSA is to allow SUO to operate as normal during the transition period while its parent company stands up the organization to support the newly acquired assets. The scope of the services to be provided under the TSA will include operational support in the areas of gas supply, safety, training, engineering, customer operations, supply chain, finance, accounting, and regulatory, among other services. Birchfield Direct 6:23 – 7:14; Kirkwood/King 5:21 – 6:11; Givens Responsive 6:9-11.

11. The TSA expenses paid by SUO are expected to be similar to the O&M expenses borne by CERC pre-closing because the cost of services provided under the TSA will be based on the actual cost of performing those same services, and will be charged to SUO consistent with the historical methodology for direct charges and allocated costs to CERC. Birchfield Direct 7:12-14.

Monitoring and Tracking after Closing

12. As proposed by PUD’s witness John Givens, the existing PBRC process to be adopted by SUO offers an efficient and proven process for continued close monitoring and tracking of costs and charges after closing. Givens Responsive 10:13 – 12:13 and 13:7 – 14:4. The PBRC process has been routinely used by PUD to monitor, adjust and true up these and other matters such as capital expenditures, energy efficiency charges, EDIT and ADIT accounts, and earnings exceeding the allowed returns and resulting customer credits.

13. SUO’s proposal that for ratemaking purposes in Oklahoma, the existing Oklahoma-related ADIT and EDIT continue to be treated as a reduction to rate base (Birchfield Direct 19:19 – 20:2) is reasonable and in the public interest and should be approved. See, Betchan Responsive 7:12-20.

14. The Commission should adopt the unopposed recommendations of the Attorney General’s witness Brice D. Betchan that SUO should reconcile SUO’s legacy ADIT and EDIT balances to CenterPoint’s last PBRC filing in a subsequent filing by SUO, and that SUO should separately track any newly created ADIT balances of SUO due to SUO’s uncertainty of whether the tax normalization rules apply to SUO’s legacy ADIT and EDIT balances. Betchan Responsive 9:10-17.

15. The Commission should approve PUD’s proposal that SUO file direct testimony in its first PBRC filing after closing describing its proposed timeline for performing and submitting a Class Cost of Service Study and a Depreciation Study, as well as how the proposed timeline strikes a balance between (a) avoiding negative impacts from unnecessary delays, and (b) ensuring sufficient post-transition historical data exists for the studies to be effective. Givens Responsive 13:5-12.

16. The Commission should approve PUD’s proposal that SUO’s direct testimony in its first PBRC filing after closing shall include the following:

A high-level description of SUO’s plant investment strategy and any material changes expected from the rate of past spending by CenterPoint on the same system;

SUO’s procurement process for labor and materials, and how it ensures projects are completed at the lowest reasonable cost;

Any substantive changes made, or expected to be made, to CenterPoint's Distribution Integrity Management Program or Transmission Integrity Management Program plans;

Any efforts SUO has made, or could reasonably make, to minimize the capital cost of plant projects or otherwise mitigate the impact on rates; and

Whether SUO could slow or delay the implementation of plant projects without material adverse effects to the safe and reliable delivery of service.

Givens Responsive 13:13 – 14:4.

17. The recommendations by PUD are in the public interest and should be adopted here because they will assure the public that the Commission has a process in place to closely monitor on an annual basis the cost of service underlying SUO’s operation of the transferred jurisdictional assets, that rate adjustments may be made as needed from year to year, and that customers will receive all benefits to which they are entitled under the PBRC Tariff of CERC (to be adopted by SUO upon closing), including any credits that may be forthcoming from year to year during the transition period.

Attorney General’s Proposal to Require a General Rate Case in 2024

18. Scheduling a general rate case for 2024¹ is premature and unnecessary given the steps SUO is taking to maintain stable rates and a smooth transition process over the next years. The record reflects no evidence that a comprehensive rate review in a general rate proceeding will be beneficial over this period. On the contrary, no one disputes that SUO will provide the same services to CERC customers using the same assets, under the same rate structure and tariffs previously approved by the Commission (Birchfield Direct 20:3-18; 1TR 79:22-25 and 81:11-13). SUO expects to employ the same Oklahoma employees that now operate the system for CERC. Birchfield Direct 8:13 – 14:5. Further providing for rate and cost stability, the TSA that SUO is implementing will cover O&M costs for up to twelve months after closing and are not expected to be materially different from past costs of CERC. Birchfield Direct 7:12-14. Providing further stability, SUO will not be seeking to adjust rates for one-time costs arising from the Transaction,

¹ 1TR 73:14-23. Mr. Bohrmann’s speculation that SUO might be able to present a general rate case sooner than 2024 is contrary to his position that the rate case should not be filed until one full test year is completed based on shared services solely from Summit Utilities, Inc. (not relying on TSA services) and undisputed evidence that the “first full year where SUO would be relying on shared services from Summit Utilities Incorporated, and not use transition services would be 2023.” 1TR 60:24 – 61:3 and 61:20-23.

such as recovery of acquisition premium, or transition or general integration costs. Birchfield Direct 18:14 – 19:18.

19. Adjustments to rates can be made year by year according to cost information presented in each annual PBRC review. The PBRC review is the “same depth as the review in a general rate case.” Order No. 701439, Attachment 1 at 10 (¶45), Cause No. PUD 201900019. Everything can be subject to review in a PBRC Cause. Past expenses are reviewed for prudence and may be adjusted, and everything else can be changed prospectively. PUD may scope its full review as it would in a general rate case, including intensive reviews such as plant additions, and a sample of projects in order to determine the reasonableness of projects and expenses. This is the same process followed in any rate case. Instead, in a PBRC review, PUD is able to perform the full review more quickly due to the transparency and familiarity achieved through reviewing the Company's books every year. Any adjustments to rates that can be made in a general rate case are and can be made in a PBRC review proceeding. See also, 1TR 53:21 – 54:19 and 115:12 – 117:4 (cost of capital, capital structure, jurisdictional and class cost of service study, depreciation and rate design); Bohrmann Responsive 14:3-11 (cost of capital, depreciation, rate design).

20. Under the facts presented here, no reasonable basis exists to expect that annual test year costs will not be reasonably predictive of future rates where, as here, SUO will adopt CERC's rates, as the preferred approach under OAG 165:45-3-5(g). As costs change from year to year, the PBRC process will accommodate rate adjustments or credits to customers, as required.

21. Under a PBRC review, annual O&M costs will not be CERC costs, as asserted by AG. The TSA will provide SUO with contract-based services while Summit sets up its own shared services systems. Birchfield Direct 6:23 – 7:14; Kirkwood/King 5:21 – 6:11; Givens Responsive 6:9-11. Under the TSA, SUO will pay for those services provided in Oklahoma and the costs of those services will be borne by SUO. See, Joint Application, Attachment 1 at 192 of 227, §3.2. The TSA will therefor provide a stable cost structure during the transition. AG is incorrect in suggesting these costs will be irrelevant to SUO's operation. On the contrary, the cost of the services provided to SUO during TY 2022 will be borne by SUO, not CERC. 2TR 35:18-24

Suspension of the PBRC Process

22. The annual PBRC review should not be suspended as proposed by the Attorney General's witness Todd Bohrmann. A suspension is not in the public interest because it would disrupt the PUD's close, annual oversight over the company, eliminate transparency, eliminate even the possibility for customer credit refunds that are available only under the PBRC process, and destroy the gradualism for rate changes that customers have come to expect from annual PBRC review. 1TR 52:13 – 53:4.

23. A suspension of the PBRC for three years would also eliminate the reasonable process by which the PUD proposes to closely monitor costs during and after the transition, as recommended by PUD Witness John Givens. See, Givens Responsive 13:5 – 14:4; 2TR 14:19 – 15:2.

24. The Commission has found that the close review required by the PBRC process is a valuable benefit for the public: “The yearly performance-based comparison and regular review by PUD, OAG and ultimately the Commission is inherently efficient leading to improvements toward greater efficiency in the public interest.” Order No. 701439, Attachment 1 at 4 (¶9), Cause No. PUD 201900019; see also, Order No. 669205, Attachment 1 at 10 (¶6) (“The PBRC also results in closer supervision of CenterPoint by PUD and the Commission because the Company’s financial performance is reviewed annually”), Cause No. PUD 201700078.

25. Mr. Bohrmann’s contention that the PUD could still maintain close oversight during the PBRC suspension period is untenable. No reasonable basis exists to suspend or to replace the annual rate review process already in place, tested and refined by 15 years of experience.

26. A suspension of the PBRC process is further contrary to the public interest because it would eliminate even the possibility for customer credit refunds that are available only under the PBRC process. *Givens Rebuttal 7:1-10*. The Commission has found that customer credits are a “very significant benefit” arising from the PBRC process. Order No. 669205, Attachment 1 at 10 (¶7), Cause No. PUD 201700078; *1TR 96:14-21 and 113:25 – 115:8*. Since inception of the PBRC process for CERC, a total of approximately \$8 Million in credits has been returned to customers, including \$2.46 Million in credits authorized by the Commission in 2020 and \$883,697 just ordered in 2022. *1TR 99:19 – 102:15; Givens Rebuttal 7:1-10; Order No. 713127, Attachment A at 1 (¶1), Cause No. PUD 202000028; Order No. 720135, Attachment A at 1 (¶1), Cause No. PUD 202100054*. These are benefits that would not have arisen but for the PBRC process. See, Order No. 669205, Attachment 1 at 11 (¶8), Cause No. PUD 201700078. Any such benefits arising during a suspension of the PBRC would be lost forever. *1TR 52:25 – 53:4*. Mr. Bohrmann’s disregard for the loss of this potential benefit (*1TR 90:20 – 91:6*) in the name of what he regards as accurate post-closing cost information is neither reasonable nor supported by any public interest. *Givens Rebuttal 7:1-10; Birchfield Rebuttal 5:12 – 7:14; 2TR 15:11 – 16:2, 19:1-5 and 34:6-15*.

27. A suspension of PBRC process would disrupt the gradualism for rate changes that the Commission values as a benefit of the PBRC process. *1TR 98:7 – 99:18; Order No. 669205, Attachment 1 at 10 (¶6), Cause No. PUD 201700078* (“PBRC also accomplishes the regulatory goal of gradualism by providing the opportunity for more frequent but generally smaller changes in rates”). Mr. Bohrmann’s proposed suspension of the PBRC is inconsistent even with his own concern about SUO’s planned capital spending. *Bohrmann Responsive 20:1 – 21:2*. If Mr. Bohrmann believes the Commission should be monitoring such matters and their effect on rates, the best way to do so would be the annual PBRC review already in place, rather than waiting for several years to review the prudence of past additions to plant in service.²

² Of course, an increase in capital spend does not necessarily result in an increase in rates or the elimination of credits to customers. CenterPoint has had increases in capital spending in the last few years at the same time that it has had refunds to customers through the PBRC process. *1TR 54:20 – 55:1*.

The AOG Acquisition Order

28. The Commission’s order approving the acquisition of Arkansas Oklahoma Gas Corporation (“AOG”) by Summit Utilities, Inc. in 2017 (Order No. 659979, Cause No. PUD 201600439) relied upon by the Attorney General does not support his proposal for a general rate case or for a suspension of the PBRC process. On the contrary, the AOG acquisition order *rejected* the Attorney General’s proposal to impose “public interest” conditions relating to rate elements. Order No. 659979 at 9; 1TR 91:13 – 93:4.

29. In the AOG acquisition proceeding, one of the conditions proposed by the Attorney General’s witness was that the Commission require approval of any new debt issuance based on the witness’ concern that the acquisition would adversely alter AOG’s capital structure and exposed it to costs from “excessive leverage.” Order No. 659979 at 8-9. Actual results arising from the acquisition proved contrary to the Attorney General’s predictions: in the next following PBRC review proceeding, AOG presented a stipulated customer *credit refund* of \$487,305 (Order No. 703084, Attachment A at 1 (¶1), Cause No. PUD 201900028), and in the PBRC review a year after that, AOG presented a study *reducing* the cost of the company’s long-term debt and its cost of capital (Order No. 714513, Attachment A at 2 (¶4), Cause No. PUD 202000051). Significantly, if Mr. Bohrmann’s proposal for a three-year post-closing moratorium on PBRC proceedings had been in place for AOG, the benefits of the customer credits in 2019 would have been lost forever.

30. The single year waiver requested by AOG after the Summit acquisition provides no useful guidance here: (1) the waiver was presented more than a year after the acquisition of AOG was approved and closed, presumably after more facts became known; (2) the waiver was supported by settlement agreed upon by all parties, including the Attorney General; and (3) the waiver was driven by a significant change to the test year necessary to synchronize AOG’s test year to Summit’s fiscal year records. No evidence was presented that any customer benefits would have been lost by the waiver and the Commission neither imposed nor was asked to impose any moratorium on PBRC proceedings. Even the Attorney General’s witness agreed that the facts and circumstances surrounding the AOG waiver were different. 1TR 93:23 – 95:12. Givens Rebuttal 7:11 – 8:6; Order No. 684561 at 6 (¶1) and 13 (¶8), Cause No. PUD 201700495.

The Empire Electric General Rate Case Order

31. The Empire Electric decision (Order No. 667123, Cause No. PUD 201600468) relied upon by the Attorney General does not support a decision to require a rate case or a suspension of the PBRC process after closing. Unlike CERC and SUO, Empire did not have an annual PBRC review process in place. 1TR 87:10-18, 118:22 – 119:1; 2TR 32:25 – 33:3. The Empire Electric proceeding was instead a general rate case where known cost savings hit the books *after* the test year (and after six-month post-test-year adjustment period). Thus, under general rate case rules (17 OKLA. STAT. §284), *customers would not have received that benefit if rates had been set based on that data* known to be stale. 1TR 87:1-9; Order No. 667123 at 6. Worse, without any annual PBRC review, Empire rates would have remained in place for several years, thus precluding any benefit for customer cost savings during that period. See, 1TR 88:24 – 89:7; 2TR 33:4-17. Recognizing these adverse consequences, the Commission wisely dismissed Empire’s

rate case and required Empire to come back with new test year covering the known cost savings, which Empire then did a year later in Cause No. PUD 201800113. 1TR 86:20-25 and 89:8-16; Order No. 667123 at 8.

32. The lesson from Empire for this Cause, to the extent pertinent here at all, is that benefits should not be denied customers simply because of a change in utility ownership. Here, the opportunity for customer credits would be denied by the Attorney General's proposal to suspend the PBRC, so if Empire is relevant here at all, it argues for a *denial* of that proposal as contrary to the public interest.

33. Thus considered, the principles applied by the Commission in the Empire Electric case support an efficient annual PBRC review for SUO during the transition period, not a required general rate case sometime in the future based on speculation about conditions that cannot now be predicted, and not a suspension of an existing and effective mechanism for annual review.

Conclusion

34. The proposed Transaction presented for approval is in the public interest and the terms of the Transaction are fair, just, and reasonable insofar as they pertain to utility service in Oklahoma.

35. The Joint Application should be approved in all respects, subject to the findings and conclusions set out herein.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2021 a full, true, and correct copy of the above and foregoing instrument was served on the following persons via **ELECTRONIC MAIL** to:

Michael Ryan
OKLAHOMA CORPORATION COMMISSION
2101 North Lincoln Boulevard
P. O. Box 52000
Oklahoma City, OK 73152-2000
Michael.Ryan@occ.ok.gov

Jared B. Haines
Office of Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Jared.Haines@oag.ok.gov

Brandy L. Wreath
Director of the Public Utility Division
OKLAHOMA CORPORATION COMMISSION
Jim Thorpe Building
2101 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
PUDEnergy@occ.ok.gov

/s/ Curtis M. Long