

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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CORPORATION COMMISSION
OF OKLAHOMA

**ATTORNEY GENERAL'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

John O'Connor, the Attorney General of Oklahoma, on behalf of the utility customers of this State, hereby submits his Proposed Findings of Fact and Conclusions of Law for the proceeding referenced above. The Attorney General requests that, as a condition for approval of the proposed transaction, the Performance Based Rate Change plan ("PBRC plan") tariff not be adopted until after a rate case has been filed at the earliest opportunity with quality data supporting the test year. The Attorney General's recommended findings are set out in more detail below.

I. SUO should not be allowed to make rate filings under the PBRC plan or otherwise until it has data for a historical test year under new management.

Oklahoma law recognizes that a test year only provides value to the extent it is a reasonable basis for forecasting future costs and setting forward-looking rates. Relying on known inaccurate or mixed data for setting rates is therefore inappropriate, and the Commission has recognized this principle before. There is undisputed evidence that stale and mixed data would be used for several years if Summit Utilities Oklahoma, Inc. ("SUO") continues to file PBRC applications each year. SUO should not be allowed to make such rate filings until it can rely upon a quality historical test year. There is no material difference between PBRC plan filings and general rate cases, or between gas and electric utilities, with respect to this principle; all of these situations use a historical test year. Further, the possibility of a credit does not warrant adopting inappropriate regulatory practices, nor is it even likely that customers would receive many credits in future years due to the

high capital spending plans noted in the record of this case. The Attorney General requests the following findings:

1. THE COMMISSION FINDS that, as part of the relief requested in this case, SUO and CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Oklahoma Gas (“CenterPoint”) have requested the adoption of *all* tariffs currently relied upon by CenterPoint in Oklahoma. *See* Joint Appl. 8 (requesting right to serve customers under CenterPoint tariffs); Hrg. Tr. 8/17/21 26:16–23 (requesting adoption of CenterPoint’s tariffs); Tr. 8/17/21 120:8–17 (noting PBRC plan tariff is a tariff). This adoption necessarily includes the adoption of the PBRC plan tariff, which has been challenged by the Attorney General.

2. THE COMMISSION FURTHER FINDS that the purpose of using a historical test year, including in the PBRC plan tariff, is to create a reasonably accurate forecast of future costs in order to set rates. The Oklahoma Supreme Court has explained the use of a historical test year:

A test year is a mirror view of the past suspended within a limited but definite time frame through which we prophesy its duplication in the future. To alter the image is to risk the distortion for the future.

Sw. Pub. Serv. Co. v. State, 1981 OK 136, ¶ 14, 637 P.2d 92.

3. THE COMMISSION FURTHER FINDS that major corporate events such as the acquisition of the relevant utility can impact the quality of historical data for rate-setting purposes. The Commission recognizes it has previously made similar findings in Cause No. PUD 201600468, where the evidence indicated the following:

[A]s a result of the Acquisition, some costs may be spread over a larger number of customers, and the structure of these costs may also be different. It is anticipated that services provided by affiliates may replace services that Empire has traditionally provided itself.

Order No. 667,123, at 7. The Commission therefore concluded the following based on the evidence:

A general rate case after at least a full year of Liberty Utilities' ownership would ensure that Empire's rates are set with cost information reflecting these changes. . . . Here, the Acquisition impacts the accuracy of the historical data presented by Empire, thereby affecting the predictive power of the historical data for Empire.

Id. at 7–8.

4. THE COMMISSION FURTHER FINDS that similar issues are present in this case as were present in Cause No. PUD 201600468. As explained in the responsive testimony of Attorney General witness Bohrmann, costs now incurred by CenterPoint will be spread over a very different number of customers. Currently, CenterPoint's Oklahoma customer base represents a small portion of its overall customer base. For Summit Utilities, Inc., on the other hand, CenterPoint's Oklahoma and Arkansas customer bases together would be around five times the number of existing customers. Bohrmann Responsive Test. 9:16–10:8. Further, shared services upon which CenterPoint Oklahoma has relied will be shifted to Summit Utilities, Inc. over a year-long transition period. Birchfield Direct Test. 6:22–7:4; Bohrmann Responsive Test. 11:16–12:2; Hrg. Ex. 9; Hrg. Tr. 8/17/21 61:12–23.

5. THE COMMISSION FURTHER FINDS that certain items will need to be updated in addition to jurisdictional cost allocation and shared services models. SUO will likely experience a different cost of capital that needs to be updated, particularly with respect to its cost of debt. Hrg. Tr. 8/17/21 39:11–40:23. Additionally, the testimony of both Todd F. Bohrmann and John Givens indicated that a range of additional issues should be studied, including depreciation rates and class cost of service allocations. Bohrmann Responsive 13:6–13; Givens Responsive 10:3–5.

6. THE COMMISSION FURTHER FINDS that while the parties disagree vigorously about whether rate filings should be suspended for SUO after the acquisition, it is undisputed that any rate filings made in 2022 would reflect old data from CenterPoint. For example, SUO witness Birchfield acknowledged that a PBRC filing made for SUO in 2022 would reflect CenterPoint's 2021 costs. Hrg. Tr. 8/17/21 44:24–45:6. PUD witness Givens also acknowledged this point. Givens Rebuttal 7:2–3; Hrg. Tr. 8/26/21 28:2–6.

7. THE COMMISSION FURTHER FINDS that it has previously recognized the need for suspending PBRC plan filings in relation to acquisitions in the past with respect to a different acquisition by Summit Utilities, Inc. In Cause No. PUD 201700469, Arkansas Oklahoma Gas Corp. requested that its annual rate filing be waived, in part, due to the lack of quality data supporting test year calculations. Bohrmann Responsive 17:1–11. The Commission agreed to waive annual rate filings. Final Order, Order No. 684,561, Cause No. PUD 201700469. As PUD witness John Givens recognized during cross-examination, it would have been inappropriate to review “mixed data” in an annual PBRC review for Arkansas Oklahoma Gas Corp. Hrg. Tr. 8/26/21 27:4–14.

8. THE COMMISSION FURTHER FINDS that in comparing the present case to Cause No. PUD 201600468, there is no material difference just because of The Empire District Electric Co.'s status as an electric utility or its lack of a PBRC plan tariff. First, the need for a waiver after the acquisition of Arkansas Oklahoma Gas Corp. shows that similar issues can arise for natural gas utilities with PBRC plan tariffs. Second, both natural gas utilities and electric utilities rely on a historical test year that is used to develop fair, just, and reasonable forward-looking rates. Third, rate reviews under both general rate cases and under PBRC plan tariffs use

historical test years. Multiple witnesses recognized the use of the historical test year under the PBRC plan tariff. Hrg. Tr. 8/17/21 44:24–45:6; Givens Rebuttal 6:11–16.

9. THE COMMISSION FURTHER FINDS that the possibility of a credit in PBRC plan filings also does not warrant conducting an annual review with stale or mixed data. As Mr. Bohrmann explained, the “overriding purpose of the PBRC, or any ratemaking[] action taken by the Commission is not for the customers to receive a credit, instead, the overriding purpose for the Commission is to make sure that rates are fair, just and reasonable.” Tr. 8/17/21 72:9–13. Additionally, the record indicates that both SUO and CenterPoint intend significant increases to annual capital investment that would tend to increase rates. Givens Responsive 10:12–11:16; Hrg. Tr. 8/17/21 48:7–51:9. The low likelihood of sustained credits under the PBRC plan tariff does not warrant reliance on that possibility for determining the most appropriate review of SUO’s rates after the acquisition.

10. THE COMMISSION FURTHER FINDS that, in this case, due to the length of the transition period and the items that need to be updated, rate filings should not be conducted until all major items can be updated with a quality historical test year. Since the acquisition will not close until the end of 2021 and SUO intends to rely on transition services during 2022, Hrg. Tr. 8/17/21 61:12–23, SUO may not be able to make any rate filings until it can rely upon a 2023 test year. Nevertheless, SUO would have some alternatives, including ending its use of transition services earlier than December 2022 and/or using a six-month update period to correct for data quality problems, allowing the use of an earlier test year. Hrg. Tr. 8/17/21 122:23–123:10.

II. A general rate case is a more practical and efficient way to update SUO's rates for the first time after the acquisition than seriatim PBRC filings.

SUO's rates will need to be reviewed after it has a quality historical test year. Further, many issues would need to be reviewed at that time, including cost of capital, the new treatment of shared services from Summit Utilities, Inc., depreciation rates, and a class cost of service study. Further, SUO's handling of tax savings, including ADIT and EDIT, after the acquisition will need to be reviewed. The most efficient and effective manner to review all of these issues at the earliest opportunity without relying on mixed or stale data would be to require SUO to file a general rate case. The Attorney General requests the following findings:

11. THE COMMISSION FURTHER FINDS that several items must be reviewed and updated for SUO after the acquisition. First, SUO's new jurisdictional cost allocation and shared service models must be reviewed. Hrg. Tr. 8/26/21 20:2–10; Hrg. Ex. 7; Hrg. Ex. 8; Hrg. Ex. 11; Bohrmann Responsive Test. 11:16–12:2; *see also* Kirkwood Direct 5:21–6:20 (describing SUO's reliance on shared services from Summit Utilities, Inc., which will need to be grown).

12. THE COMMISSION FURTHER FINDS that SUO's cost of capital, including return on equity, capital structure, and debt will need to be reviewed. Hrg. Ex. 5; Hrg. Ex. 6; Hrg. Tr. 8/17/21 39:11–40:23; Hrg. Tr. 8/26/21 19:22–20:1; Bohrmann Responsive 13:8–9. If cost of capital is not reviewed in the next proceeding, SUO would rely on CenterPoint's debt, even though SUO's cost of debt is likely to be lower. Hrg. Tr. 8/17/21 39:11–40:23.

13. THE COMMISSION FURTHER FINDS that SUO will need to conduct a new depreciation study and a new class cost of service study in the near future due to the length of time since CenterPoint's most recent studies on these issues. Givens Responsive 10:3–5; Bohrmann Responsive 13:10; Hrg. Tr. 42:3–12.

14. THE COMMISSION FURTHER FINDS that SUO's retirement plans will be different from those of CenterPoint and will need to be reviewed for recovery in rates. Hrg. Tr. 8/17/21 44:18–23 (noting that in some cases CenterPoint and Summit retirement plans are different).

15. THE COMMISSION FURTHER FINDS that careful review of the impact on tax savings will need to be considered in SUO's next rate review. The acquisition will result in the elimination of Accumulated Deferred Income Tax balances. Birchfield Direct 19:19–20:2; Betchan Responsive 6:19–22; Hrg. Tr. 8/17/21 42:17–43:7. Accumulated Deferred Income Tax balances generally offset rate base and provide a significant benefit to customers. Betchan Responsive 7:1–11; Hrg. Tr. 8/17/21 43:8–17. While SUO proposes to provide the same benefits to customers, it will have to carefully track related balances and study normalization impacts from the balances. Betchan Responsive 8:1–17; Hrg. Tr. 8/17/21 44:5–11.

16. THE COMMISSION FURTHER FINDS that reviewing all of these issues in a single PBRC plan proceeding would be difficult due to the number of issues, their complexity, and the time allotment in a single PBRC proceeding. PUD witness Givens acknowledged that “addressing a large number of potentially complex issues would be difficult in the timeline of a single PBRC filing.” Givens Rebuttal 5:14–15; *see also* Bohrmann Responsive 14:12–15:2.

17. THE COMMISSION FURTHER FINDS that a general rate case would allow greater time to address the numerous, complex issues that need to be reviewed for SUO after the acquisition. Hrg. Tr. 8/26/21 22:17–22; Bohrmann Responsive 14:12–15:2.

18. THE COMMISSION FURTHER FINDS that a general rate case offers sufficient procedural protections for all parties and is consistent with due process and a utility's opportunity to earn a fair rate of return on its investments. *See* 17 O.S. § 152(B); OAC 165:70. A rate case

would allow for the review of all legal, policy, and factual issues at a given point in time, allow examination by the parties, and allow the Commission to set fair, just, and reasonable rates going forward. Hrg. Tr. 8/17/21 68:5–11.

19. THE COMMISSION FURTHER FINDS that it has required the study of numerous ratemaking issues in PBRC plan filings and could use the same plan for addressing the numerous, complex issues that need to be reviewed for SUO after the acquisition. Bohrmann Responsive 14:3–11. However, the Commission has generally only addressed one or no such issues in a single case. Bohrmann Responsive 14:9–11. Addressing these issues one by one over many years would result in setting rates for SUO based on old and mixed data that would not be appropriate for regulatory purposes. Hrg. Tr. 8/26/21 27:10–14; Hrg. Tr. 8/17/21 70:14–17.

20. THE COMMISSION FURTHER FINDS that while the costs of a general rate case and a PBRC filing may be different, the most important driver of rate case costs in this instance are special studies including cost of capital and depreciation. Since these studies must be performed in either a general rate case or seriatim PBRC filings, there is no evidence in the record showing that several years of complex PBRC proceedings would actually be cheaper or more efficient than a single general rate case to review and update the numerous, complex issues to be studied. Hrg. Tr. 8/17/21 118:3–12.

21. THE COMMISSION FURTHER FINDS that SUO shall not adopt the PBRC plan tariff upon acquisition until it has filed a general rate case under chapter 70 of the Commission's rules and regulations. SUO shall be required to file the general rate case no later than June 30, 2024, and it shall file the case only after it can present representative post-test-year data to support its filing. Such rate case filing must address post-acquisition cost of capital, jurisdictional allocation and costs of shared services, and the treatment of regulatory liabilities for Accumulated

Deferred Income Taxes lost in connection with the transaction. Further, the rate case filing must include a depreciation study and a class cost of service study.

III. The Public Utility Division's additional live testimony at the hearing should be stricken because it violated the procedural schedule and due process.

Lastly, at the hearing on the merits on August 26, 2021, PUD's witness John Givens offered additional sur-sur-rebuttal testimony that was not authorized under the procedural schedule. Counsel for PUD argued that this testimony was in the nature of "sur-rebuttal testimony" in response to Todd F. Bohrmann's unauthorized live testimony on August 17, 2021, even though no objection was raised at the time to Mr. Bohrmann's sur-rebuttal testimony. The Attorney General requests that PUD's additional testimony be stricken for not complying with the procedural schedule issued to govern this case. The Attorney General submits the following findings:

22. THE COMMISSION FURTHER FINDS that on August 26, 2021, PUD witness John Givens began to offer additional testimony that counsel for PUD characterized as "sur-rebuttal testimony." Hrg. Tr. 8/26/21 9:4–6. Nevertheless, this testimony was in response to the sur-rebuttal testimony of Todd F. Bohrmann provided on August 17, 2021. *Compare* Hrg. Tr. 8/26/21 9:4–6 (noting proposed testimony would respond to Bohrmann's testimony "last Tuesday" on August 17) *with* Hrg. Tr. 8/17/21 69:13–17 (providing sur-rebuttal testimony). Counsel for PUD argued that the previous live testimony of Todd F. Bohrmann had been improper, even though such an objection was not raised at the time. *Compare* Hrg. 8/26/21 Tr. 9:16–20 (arguing previous sur-rebuttal testimony was "not called for") *with* Hrg. Tr. 8/17/21 67:3–72:16.

23. THE COMMISSION FURTHER FINDS that in its Order Granting Procedural Schedule, Order No. 719,420, it recognized the following standard for live oral sur-rebuttal testimony to be provided at the hearing on the merits:

After admittance of the pre-filed testimony (direct, responsive, rebuttal) into the record, each witness shall then be permitted to offer oral surrebuttal testimony in response to any new matters raised in the rebuttal testimony of the other parties.

Order No. 719,420, at 2. The order allowed for the adoption of prefiled testimony, sur-rebuttal testimony in response to *new matters raised in the rebuttal testimony of other parties*, and submission to cross-examination and redirect examination.

24. THE COMMISSION FURTHER FINDS that no objection was raised as to the propriety of Todd F. Bohrmann's sur-rebuttal on August 17, 2021, and such testimony clearly indicated the rebuttal testimony to which Mr. Bohrmann responded.

25. THE COMMISSION FURTHER FINDS that since Mr. Bohrmann did not file rebuttal testimony and his additional testimony clearly referenced the live testimony of Mr. Bohrmann, PUD witness John Givens provided sur-sur-rebuttal testimony on August 26, 2021.

26. THE COMMISSION FURTHER FINDS that its Order Granting Procedural Schedule, Order No. 719,420, recognized the following standard for sur-sur-rebuttal testimony:

Due to Joint Applicants having the burden of proof, after other parties have presented their testimony, summaries and statements of position, Joint Applicants, or either of them, may be allowed to present oral sur-surrebuttal testimony provided the requesting Joint Applicant can show that other parties have raised new issues which Joint Applicant was unable to adequately address through cross-examination. The oral sur-surrebuttal shall be strictly limited to the new issues, whether raised in testimony or a statement of position.

Order No. 719,420 at 2–3. The standard effectively requires that some showing be made by counsel of two elements: that new issues were raised and that they were unable to be addressed by cross-examination.

27. THE COMMISSION FURTHER FINDS that counsel for PUD made no attempt to show any new issues had been raised by Todd F. Bohrmann on August 17, 2021, while the record

shows Mr. Bohrmann was subject to an extensive cross-examination by counsel for both the Joint Applicants and PUD. The standard for oral sur-sur-rebuttal testimony was not met. The additional live testimony of Mr. Givens which was subject to objection should be stricken.

28. THE COMMISSION FURTHER FINDS that the standard for sur-sur-rebuttal testimony in the procedural schedule of this case only allows the *Joint Applicants* to offer sur-sur-rebuttal testimony. Even though PUD's position in the case is substantially aligned with the utility, it is nevertheless not a Joint Applicant, further warranting striking the testimony at issue.

29. THE COMMISSION FURTHER FINDS that counsel for the Attorney General timely objected and presented the basis for striking the live testimony of John Givens that contravenes the procedural schedule. Hrg. Tr. 8/26/21 9:7–15, 10:4–24, 11:17–12:4, 12:12–13:3.

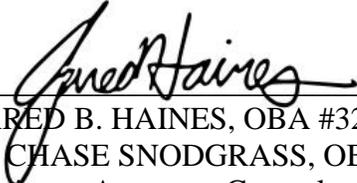
30. THE COMMISSION FURTHER FINDS that the testimony of John Givens from page 9, line 4 to page 16, line 2 be stricken from the evidentiary record in this case.

IV. Conclusion

Based on the evidence in the record and cited above, the Attorney General recommends, as a condition upon approval of the proposed transaction, that the PBRC plan tariff not be adopted for SUO until after the company files a general rate case that updates rates with post-acquisition costs under new management. The Attorney General appreciates the opportunity to provide his requested findings to the Commission in this proceeding and welcomes a thorough review of the evidentiary record on the part of the Administrative Law Judge and Commissioners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 9th day of September, 2021, a true and correct copy of the above and foregoing
Attorney General's Proposed Findings of Fact and Conclusions of Law was sent via electronic
mail to the following interested parties:

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