

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY)
FOR AN ORDER OF THE COMMISSION)
AUTHORIZING APPLICANT TO MODIFY ITS)
RATES, CHARGES, AND TARIFFS FOR RETAIL)
ELECTRIC SERVICE IN OKLAHOMA)

CAUSE NO. PUD 202100164

FILED
JAN 06 2022

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CORPORATION COMMISSION
OF OKLAHOMA

MOTION FOR PROTECTIVE ORDER

COMES NOW Oklahoma Gas and Electric Company (“OG&E”) and requests this Commission to issue a Protective Order in this Cause. The Protective Order being requested by OG&E is attached hereto as Exhibit “A”.

WHEREFORE, premises considered, OG&E respectfully requests that this Commission set a hearing in this matter and issue a Protective Order preventing public or unauthorized disclosure of confidential, proprietary, or privileged information until otherwise ordered by this Commission.

Respectfully submitted,

OKLAHOMA GAS AND ELECTRIC COMPANY



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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2022, a true and correct copy of the foregoing Motion was electronically transmitted to:

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William L. Humes

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HEARING: January 13, 2022, in Courtroom B (virtual teleconference)
2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: William L. Humes and Kimber L. Shoop, Attorneys
representing Oklahoma Gas and Electric Company
Michael L. Velez, Deputyneral Counsel *representing* Public
Utility Division, Oklahoma Corporation Commission
Jared B. Haines and A. Chase Snodgrass, Assistant Attorneys General,
representing Office of the Oklahoma Attorney General
Ronald E. Stakem and Jack G. Clark, Jr., Attorneys *representing* OG&E
Shareholders Association
Thomas P. Schroedter, Attorney *representing* Oklahoma Industrial Energy
Consumers
Deborah R. Thompson, Attorney *representing* AARP
Paul D. Trimble, Attorney *representing* CMC Steel Oklahoma

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

This Cause comes before the Oklahoma Corporation Commission (“Commission”) on the Motion for Protective Order filed in this Cause by Oklahoma Gas and Electric Company (“OG&E”, “Company”, or “Applicant”) on January 6, 2022, and set for hearing on January 13, 2022.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction in this cause pursuant to Article IX, Section 18 of the Oklahoma Constitution, and 51 O.S. §24A.22 of the Oklahoma statutes.

THE COMMISSION FURTHER FINDS that the Oklahoma Open Records Act, 51 O.S. §§24A.1, *et seq.*, states the purpose of this act is to ensure and facilitate the public’s right of access

to and review of government records so the public may efficiently and intelligently exercise their inherent political power.

THE COMMISSION FURTHER FINDS that the Oklahoma Legislature has allowed the Commission a specific exemption to the Oklahoma Open Records Act, allowing limited information to be kept confidential:

The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets. 51 O.S. §24A.22(A).

THE COMMISSION FURTHER FINDS that the Commission has given consideration to the specific request set forth in the Motion for a Protective Order brought forth in this Cause which is addressed in this Order.

THE COMMISSION FURTHER FINDS that a Protective Order should be issued in this Cause because this Cause may contain confidential information which the Commission hereby determines to be confidential books, records or trade secrets of the public utility, its affiliates, suppliers and/or customers. Information required or allowed by law to be confidential shall also be considered confidential by the Commission. Information already in the public domain shall not be considered confidential by the Commission.

THE COMMISSION FURTHER FINDS that the Commission desires access to information and records claimed as confidential in nature in order for the Commission and the Commission's Public Utility Division to sufficiency review this Application.

THE COMMISSION FURTHER FINDS that the claimed confidential information shall be used by the Commission solely in connection with its review of this Application and that the confidential material will not be introduced or used as testimony or exhibits in this Cause, except on an in camera basis unless said information is presented in a summary format such that confidential material cannot be determined therefrom; provided, however, the Commission may in a subsequent cause request the same information, permitting the submitting party to request that said information be received under protective order in that cause.

THE COMMISSION FURTHER FINDS that the parties, except PUD, may use the Confidentiality Agreement ("Agreement") attached as Attachment "A" to protect confidential information.

THE COMMISSION FURTHER FINDS that a requesting party shall request relief from this Protective Order from the Commission before any of the confidential material is revealed to any third party including, but not limited to, intervenors in this Cause. All confidential information shall be clearly designated/identified on the face of the document(s) and shall be limited to the following:

(1) Any non-public data, facts, or other information sought in any form of discovery including, but not limited to, data requests, interrogatories, requests for information,

- requests for admission, or depositions, or non-public facts or information which could be used by a competitor, potential competitor, or any other person or entity to the detriment of OG&E or OG&E vendors, suppliers, or customers, including compilations, programs, methods, formulae, techniques, or processes directly related to the following:*
- (a) Fuel supply, fuel transportation, and fuel storage agreements and other related information,*
 - (b) Internal, non-public information regarding or related to the current, past, or future configuration, operation, performance, maintenance, or capital expenditures of any OG&E facility, and*
 - (c) Internal, non-public information regarding or related to the current, past, or future business operations of OG&E or any related entities.*
- (2) Any trade secrets of OG&E and all information obtained by OG&E or any of its employees which, when it was obtained by OG&E, was designated as privileged or confidential by non-affiliated counterparties, including those with whom OG&E then had a contractual or other business relationship. Any request for such disclosure shall be provided by OG&E immediately to the non-affiliated counterparty in question, and such non-affiliated counterparty shall have an opportunity to protest the disclosure prior to the release of any portion of such information to the requesting party.*

THE COMMISSION FURTHER FINDS that the issuance of this Protective Order is not a waiver of any right of the parties to challenge any claim that the requested material is privileged or confidential, and that any challenge made to the protected status provided the confidential and/or privileged material, under 51 O.S. § 24A.22 and this Order, may be made in open court in accordance with the Commission's Rules of Practice, provided that any discussion, disclosure or use of the substantive content of the protected material shall be done *in camera* before an Administrative Law Judge ("ALJ") or the Commission *en banc*, with each party having three (3) business days to respond to any challenge to the claimed confidential material and the opportunity to be heard by the ALJ or the Commission *en banc*, as appropriate. The public utility shall bear the burden of proving its entitlement to confidential treatment of any claimed confidential material.

THE COMMISSION FURTHER FINDS that all claimed confidential information, as set forth above, shall remain protected from public disclosure until otherwise ordered by the Commission.

ORDER

THE COMMISSION THEREFORE ORDERS that the requested Protective Order is hereby granted pursuant to the findings and directives set forth herein.

THE COMMISSION FURTHER ORDERS that the Proprietary Agreement attached hereto as Attachment "A" is approved and shall be used by the parties, except the Public Utility Division Staff, as needed to protect confidential and highly-sensitive confidential information and documents produced in this cause. Nothing in this protective order shall be deemed to prevent the disclosure of any information, which must be maintained as a "public record" or for "public use" pursuant to State statute or the Oklahoma Constitution.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION

DANA L. MURPHY, Chairman

BOB ANTHONY, Vice Chairman

J. TODD HIETT, Commissioner

DONE AND PERFORMED by the Commissioners participating in the making of this order, as shown by their signatures above this _____ day of January, 2022.

[seal]

PEGGY MITCHELL, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned administrative law judge.

Linda S. Foreman
Administrative Law Judge

Date

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CONFIDENTIALITY AGREEMENT

WHEREAS, the parties herein have agreed that the procedures shall be established and followed for the protection of information and documents produced, given, exchanged or otherwise used by and among the parties in the course of discovery and other proceedings in this cause.

NOW, THEREFORE, the parties agree as follows:

1. Any document or any information produced or required to be produced by the parties or exchanged by the parties in the course of discovery in this cause, which satisfies the conditions set forth below, may be designated by the producing party as "confidential" or "highly sensitive confidential." Documents and information shall only be designated as "confidential" or "highly sensitive confidential" upon the good faith determination by the producing party, concurred in by counsel representing that party, that such documents or information are confidential as delineated in the Protective Order issued in this Cause. The standard regarding the definition of "confidential" in any classification dispute shall be the common or other applicable law of the State of Oklahoma. "Highly sensitive confidential" documents and information are a subset composed of information which a responding party claims is of such a highly sensitive nature that the making of copies of such information by or for the requesting party having access to such information as contemplated in Paragraph 7 of this Confidentiality Agreement ("Agreement") would expose the producing party to an unreasonable risk of harm.

2. "Confidential" information and "highly sensitive confidential" information shall not include information found by the Administrative Law Judge ("ALJ"), the Oklahoma Corporation Commission ("Commission"), or a court of competent jurisdiction not to merit the protection afforded "confidential" information or "highly sensitive confidential" information under the terms of this Agreement.

3. As to documents and information produced to another party, only such documents or information as have been determined to be "confidential" or "highly sensitive confidential" under the terms of this Agreement and which are clearly marked and identified as such under the terms of this Agreement shall be deemed "confidential" or "highly sensitive confidential" information and entitled to receive the protection afforded by this Agreement. The designation of "confidential" or "highly sensitive confidential" documents and information shall be made initially

by the producing party prior to, or contemporaneously with, the production of such documents or information to the other party in accordance with this Agreement.

4. "Confidential" or "highly sensitive confidential" documents and information shall not be disclosed by counsel for the party receiving or having access to such documents and information to any person or entity except:

- A. Counsel of record for the parties;
- B. Employees of counsel assigned to assist counsel in the conduct of this Cause and any appeal herein;
- C. Consultants or experts, and their subordinates, employed by a party or counsel to assist counsel in this cause;
- D. The Commission, PUD and the ALJ designated by the Commission to conduct proceedings herein.

All persons who may be entitled to receive, and who are afforded access to, any "confidential" information or "highly sensitive confidential" information by reason of this Agreement shall not: (a) use or disclose the information for any purpose other than the preparation for and conduct of this proceeding before the Commission or any related proceedings before the Supreme Court of the State of Oklahoma or any court it designates; or (b) reveal or discuss such documents or information, or any information contained therein, to or with any person who is not eligible to receive such documents or information pursuant to this paragraph and authorized to receive such documents or information pursuant to Paragraph 5.

All such persons shall use their best efforts to keep the information secure in accordance with the purpose and the intent of this Agreement. To this end, persons having custody of any such information shall keep the documents under lock and key or otherwise properly secured during all times when the documents are not being reviewed by a person authorized to do so.

5. Prior to producing the "confidential" information, as contemplated in Paragraphs 4 and 6, or producing for review the "highly sensitive confidential" information, as contemplated in Paragraph 7 to any person authorized to be given and provided access to such information pursuant to this Agreement, counsel for the requesting party shall notify counsel for the producing party of the intent to make such disclosure, stating with particularity the name, title and job responsibilities of the person to whom disclosure will be made and the purpose of such disclosure. In addition, requesting counsel shall require the person to whom disclosure is to be made to read a copy of this Agreement, sign the same and deliver it to counsel for the producing party before disclosure is made and, if no objection thereto is registered to counsel requesting the same by 5:00 p.m. on the second business day after actual notice, then disclosure shall follow. If objection is made, the disclosure shall not occur until the objection is withdrawn or until an appropriate order of the Commission is issued. Objection shall be made only after good faith review by counsel for the producing party. The procedure for objecting shall not apply to disclosure to Commission

employees. Any objection shall be set for hearing, if necessary, on the next available motion docket.

6. "Confidential" documents and information shall be produced by the producing party by delivering a copy thereof to counsel for the requesting party.

7. The following procedures apply with respect to production for review of "highly sensitive confidential" information unless: (a) the producing and receiving parties agree otherwise; or (b) otherwise required by the provisions of this Agreement.

On or before the date the response is due, the party producing information claimed to be "highly sensitive confidential" information shall file with the Commission, and deliver to the party that requested the information, a written statement that includes the following information: (a) the identity of the party requesting the "highly sensitive confidential" information; and (b) a verbatim recitation of those data requests for which responsive information, in whole or in part, is deemed to be highly sensitive information; and (c) a written statement that explains why the information is "highly sensitive confidential" information.

Information claimed to be "highly sensitive confidential" information must be made available at the responding party's Oklahoma City, Oklahoma location, or another location agreed by the parties or ordered by the ALJ or the Commission, on or before the date the response is due.

The party producing information claimed to be "highly sensitive confidential" information shall be responsible for monitoring the inspection of such information. The attorney for the party requesting the information shall be responsible for monitoring any note taking allowed under this Agreement. Extensive note taking shall not be permitted.

8. A party may include "confidential" or "highly sensitive confidential" documents or information of another party in, or as attachments to, prefiled testimony, but only if the portion of the testimony, including at least the affected question and the attachments which state the "confidential" or "highly sensitive confidential" information, and such other portions of the testimony, if any, as in fairness should be redacted to protect the confidentiality of the information, are segregated from the remainder of the testimony. Where such protected documentation and/or information are redacted, the party claiming confidentiality shall file a cover sheet to the redacted version(s) of such confidential testimony with the Commission. The cover sheet shall be marked: "CONFIDENTIAL INFORMATION REDACTED--SUBJECT TO PROTECTIVE ORDER IN OKLAHOMA CORPORATION COMMISSION CAUSE NO. PUD 202100164." A party which submits a confidential cover sheet shall initially serve a copy of the complete prefiled testimony, including the unredacted portions, on the party whose "confidential" or "highly sensitive confidential" information is affected. All other parties shall initially be served only a copy of the redacted prefiled testimony without the confidential portions, but annotated to clearly reveal that the testimony is not complete. If a party who is not served the unredacted portions of prefiled testimony wants to obtain access to the protected information and/or documents relating to that testimony, that party must request the unredacted information and demonstrate it has signed this Agreement. The request shall be served on both the party which filed the testimony and upon the party whose information is affected. A requesting party shall be provided the unredacted portions

of the prefiled testimony, pursuant to the mandates defined in this Agreement, by the party which filed the testimony, if the party whose information is affected does not object to such disclosure, by 5:00 p.m. of the second business day after actual notice of such a request. A failure to object has no effect other than to authorize an unredacted copy of the confidential portion of the testimony to be served on the requesting party. In the event of an objection, it shall be heard by the ALJ and no later than the next available motion docket.

9. If a party intends to use "confidential" or "highly sensitive confidential" information on the record at the hearing of this cause, the party shall give reasonable advance notice to the ALJ or the Commission and to counsel for all other parties, and shall request an *in camera* proceeding before the ALJ or the Commission, as appropriate. If "confidential" or "highly sensitive confidential" information is admitted into evidence or taken as an offer of proof or otherwise in such an *in camera* proceeding, the record of such *in camera* hearing, if thereafter prepared, shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN OKLAHOMA CORPORATION COMMISSION CAUSE NO. PUD 202100164." The portion of the transcript shall be separately bound, segregated, sealed and withheld from inspection by any person not bound by this Agreement, unless and until released from the restrictions of this Agreement either through the written agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission or a court of competent jurisdiction.

10. The receipt by any party to this cause of any documents or information which have been designated as "confidential" or the receipt of access to any documents or to any information designated as "highly sensitive confidential" pursuant to the terms of this Agreement shall not be deemed to constitute an agreement that the documents or information produced are "confidential" or "highly sensitive confidential." Subsequent to the receipt of documents or information marked "confidential" or of access to documents or information marked "highly sensitive confidential" by any party to this cause, the party receiving such documents or information or access thereto may contest the claim of confidentiality.

11. If a party, after review of the information designated as "confidential" or "highly sensitive confidential," wishes to contest such classification, a motion to that effect shall be filed with the Commission identifying with particularity (but not disclosing) the information in question. The parties seeking to have the information designated as "confidential" or "highly sensitive confidential" shall file a response within five working days after receipt of the motion, and shall have the burden of establishing the need for such designation. The parties are expected to attempt to resolve such a dispute by negotiated agreement.

At the request of the ALJ, the responding party shall provide the documents claimed to be "confidential" or "highly sensitive confidential" to the ALJ for an *in camera* review. Those documents shall not be filed with the Commission. Such documents will not be accessible to the other parties except pursuant to the terms of this Agreement, unless subsequently so ordered by the Commission or a court of competent jurisdiction. Disclosure shall be made as ordered or otherwise agreed to by the responding and requesting parties.

12. In the event a party determines that in order to protect the interests and expectations of privacy and confidentiality of its customers, employees, agents or representatives, it is necessary

for such party to withhold the identification of such customers, employees, agents or representatives, from any documents or information produced, the producing party may, in addition to taking any other action provided for in this Agreement, redact the names and other types of information which specifically identifies such customers, employees, agents or representatives from the documents and information it produces or discloses to the other party. The fact of redaction must be clearly disclosed on the face of the document produced or as part of the response made. If the party receiving documents or information with such redaction disagrees with the necessity or appropriateness of such redactions, it may seek resolution of such issue by the ALJ. Provided, however, that one unredacted version of such documents or information shall be provided to counsel of record for the party requesting such documents or information, but such counsel shall not duplicate such unredacted documents or information or disclose the unredacted documents or information to any other person, party or entity, including the persons or parties described in Paragraph 4 above, without first seeking and receiving permission in advance from counsel for the producing party or an order from the Commission allowing such disclosure or duplication.

13. To the extent that such efforts will not damage a party's presentation of its position in this docket, each party shall use its best efforts to phrase deposition and other discovery questions, prefiled testimony, questions asked on live examination of a witness, briefs, other pleadings and oral arguments in a way which will eliminate or minimize the need for documents in the record to be under seal, or for Commission proceedings in this docket to be closed to the public. Any party intending to refer to "confidential" information or "highly sensitive confidential" information during a Commission proceeding in this docket in a manner which might require that such proceeding be closed shall as soon as possible provide advance notice of this to the parties and the ALJ or the Commission, whichever is presiding over the proceeding, identifying with particularity the confidential information involved.

14. Upon completion of this proceeding, including administrative or judicial review thereof, copies of all "confidential" documents furnished under the terms of this Agreement shall be returned promptly to the producing party and any notes from "confidential" or "highly sensitive confidential" information shall be destroyed. Counsel for the party, which made such notes, shall certify to the producing party that such notes have been destroyed. Unless otherwise ordered, such information including portions of transcripts from any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Agreement, and shall be returned to the producing party at the conclusion of this litigation. While in the custody of the Commission, these documents shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN OKLAHOMA CORPORATION COMMISSION CAUSE NO. PUD 202100164". They shall not be considered as records in the possession of or retained by the Commission subject to public disclosure within the meaning of the Oklahoma Open Records Act. If the Office of the General Counsel of the Oklahoma Corporation Commission receives a request for public disclosure, pursuant to the Oklahoma Open Records Act, 51 O.S. Sections 24A.1, *et seq.*, of information claimed to be either "confidential" or "highly sensitive confidential" (or any notes reflecting such information) then the recipient of that request for disclosure shall, within one working day following receipt of that request, notify the party whose information is affected that a request for public disclosure has been made. The Office of the General Counsel of the Oklahoma Corporation Commission shall not release such

information publicly for ten calendar days, in order to allow the responding party time to pursue any legal remedies that it may have, unless otherwise ordered by a court of competent jurisdiction.

15. Nothing in this Agreement shall prevent any party from: (a) requesting additional relief from the Commission concerning the production, protection, disclosure or use of any "confidential" or "highly sensitive confidential" documents or information in the event of disagreements among the parties or their counsel which cannot be resolved by the parties or their counsel; or (b) objecting to the production or disclosure of documents or information on grounds that such documents or information are not subject to production or disclosure or are entitled to protection from such production or disclosure under provisions of the Commission's rules of practice or other applicable law.

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THE UNDERSIGNED PARTY OR INDIVIDUAL CERTIFIES THAT HE/SHE HAS READ THIS PROPRIETARY AGREEMENT AND WILL COMPLY WITH AND BE BOUND BY THE TERMS HEREOF.

PRINT NAME: _____
Signature: _____
Title: _____
Address: _____
Representing: _____
Date: _____

STATE OF OKLAHOMA)
) ss:
COUNTY OF)

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public

My Commission Expires: _____
My Commission No.: _____