

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
OKLAHOMA GAS AND ELECTRIC COMPANY) CAUSE NO. PUD 200700012
FOR AN ORDER OF THE COMMISSION)
GRANTING PRE-APPROVAL TO CONSTRUCT)
RED ROCK GENERATING FACILITY AND) ORDER NO. 545240
AUTHORIZING A RECOVERY RIDER)

HEARING: September 5, 2007, before the Commission *en banc*

APPEARANCES: William J. Bullard, Patrick D. Shore, Robert D. Stewart, Jr., Dustin R. Fredrick, Clark Evans Downs and Mark A Whitt Attorneys for Oklahoma Gas & Electric Company
Jack P. Fite, Attorney for Public Service Company of Oklahoma
Lenora F. Burdine and David B. Dykeman, Deputy General Counsels for Public Utility Division, Oklahoma Corporation Commission
William L. Humes and Elizabeth Ryan, Assistant Attorneys General for Office of the Attorney General
Thomas P. Schroedter, Graydon Dean Luthey, Jr. and J. Fred Gist, Attorneys for Oklahoma Industrial Energy Consumers
Cheryl A. Vaught, Scot A Conner and Deborah R. Thompson, Attorneys for Redbud Energy, L.P.
Kendall W. Parrish, Attorney for AES Pacific, Inc. and AES Shady Point, LLC
Ronald E. Stakem and Jack G. Clark, Jr., Attorneys for OG&E Shareholders Association
Rick D. Chamberlain, Attorney for Wal-Mart Stores East, LP
Lee W. Paden, Attorney for Quality of Service Coalition

**FINAL ORDER REGARDING THE NEED OF
OKLAHOMA GAS AND ELECTRIC COMPANY
FOR ADDITIONAL BASELOAD GENERATION CAPACITY**

BY THE COMMISSION:

The Oklahoma Corporation Commission ("Commission") being regularly in session and the undersigned Commissioners being present and participating, the above-styled Application of Oklahoma Gas and Electric Company ("OG&E") for an order granting pre-approval to construct the Red Rock Generating Facility and authorizing a recovery rider comes on for decision of the Commission.

I. Procedural History

The preliminary Procedural History of this Cause is set forth in the ALJ report attached to this Order as Attachment A and is incorporated herein by reference.

On February 27, 2007, the Commission issued Order No. 535993 entitled “Partial Preliminary Procedural Order” inviting parties to voluntarily submit a bench memorandum addressing three (3) specific matters: (A) Why the Commission should, or should not, grant pre-approvals for major utility projects under 17 O.S. §286; (B) The arguments for and against Commission pre-approval and consideration of reasonable alternatives; and, (C) The extent to which a pre-approval order by one Commission can or does bind a subsequent Commission.

On March 1, 2007, the Commission issued Order No. 536112 entitled “Procedural Order,” which, with agreement of the parties, consolidated Cause Nos. PUD 200500516, PUD 200600030 and PUD 200700012 for purposes of judicial economy.

On March 6, 2007, Staff filed a copy of the Executed Proprietary Agreement of its consultant, Jatinder Kumar.

On March 13, 2007, AES, the AG, OG&E, OG&E Shareholders, OIEC, PSO, Quality of Service Coalition (“QSC”), Redbud Energy L.P. (“Redbud”), and Wal-Mart filed legal briefs/bench memorandums pursuant to Order No. 535993.

Staff has filed all written Public Comments provided to the Commission, to date. Additionally, at the Hearing on the Merits, the ALJ allotted time daily for citizens to make public comment and certain citizens did make public comment on the record.

The Hearing on the Merits for these Causes commenced on July 2, 2007, pursuant to earlier issued Notices of Hearing, at which time the ALJ continued the hearing, on the record, until July 9, 2007. The Hearing on the Merits for these Causes was held July 9-11, 16-20, 23-26, 30, and concluded on July 31, 2007.

II. Post-hearing Procedural History

On August 13, 2007, the AG, AES, OG&E, OIEC, PSO, QSC, Redbud, Staff, and Wal-Mart filed Proposed Findings of Fact and Conclusions of Law. Along with same, several parties also filed legal briefs requested by the ALJ. OG&E, OIEC, PSO, QSC, Redbud, and Staff filed legal briefs regarding hedging. OG&E, OIEC, PSO, QSC, Redbud, and Staff filed legal briefs regarding the applicability of the Commission’s Competitive Procurement Rules to the bidding process for the Red Rock Generating Facility. AES and the AG filed combined briefs addressing both matters simultaneously.

On August 15, 2007, OG&E filed its late-filed Hearing Exhibit No. 20.

On August 16, 2007, PSO filed its Witness Identification Form in regard to Mr. Wayne J. Oliver.

On August 22, 2007, the Administrative Law Judge Report was filed.

On August 28, 2007, AES, the AG, OG&E, OG&E Shareholders, OIEC, QSC, PSO, Redbud, and Wal-Mart filed Appeals to the ALJ's Report.

On August 31, 2007, OG&E, OG&E Shareholders, OIEC and PSO filed Responses to parties' Appeals to the ALJ's Report. On this same date, AES filed an Amended Appeal to the ALJ's Report.

On September 5, 2007, the Commission *en banc* heard oral arguments from all parties that had filed an Appeal to the ALJ's Report.

On September 10, 2007, the Commission *en banc* held public deliberations.

III. Findings of Fact and Conclusions of Law

The Commission finds that it has jurisdiction over the above-styled Cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and Title 51 O.S. §§151, 152 and 286.

The Commission further finds that the proper burden of proof in considering OG&E's Application and in weighing the evidence presented in support of said Application is "substantial evidence" as set forth in *Pannell et al. v. Farmers Union Co-op Gin Association*, 138 P.2d 817 (Okla. 1943) and *State, ex rel. Cartwright v. Oklahoma Natural Gas Co. and Oklahoma Corporation Commission*, 640 P.2d 1341, 1982 Ok 11.

The Commission further finds that in the exercise of its legislative, judicial and executive powers it is required to reach its own conclusions based upon the evidence and record before it and that it may adopt, reject, restrict, or expand any or all findings and recommendations of the Administrative Law Judge as set forth in *State, ex rel Cartwright v. Oklahoma Natural Gas Co. and Oklahoma Corporation Commission*, 640 P.2d 1341, 1982 Ok 11.

The Commission further finds that a review of 17 O.S. §286, demonstrates that a regulated utility "may elect to file an Application seeking approval by the Commission to construct a new electric generating facility or to purchase an existing electric generating facility subject to the provisions of this subsection" [17 O.S. § 286(c)(1)].

The Commission further finds that OG&E exercised this option of seeking "pre-approval" of its proposed generation facility, pursuant to 17 O.S. §286.

The Commission further finds that 17 O.S. §286 also states "if, and to the extent that, the Commission determines there is a need for construction or purchase of such electric generating facility, the generating facility *shall* be considered used and useful and its cost *shall* be subject to cost recovery rules promulgated by the Commission."

The Commission further finds 17 O.S. §286(c)(1) requires that "reasonable alternatives" be considered when reviewing Applications filed with the Commission for pre-approval.

The Commission further finds that the summary of evidence set forth in the Report of the ALJ should be adopted as the Summary of Evidence of the Commission.

The Commission further finds that there is substantial evidence to support a finding that OG&E has a need for 300 MW of additional baseload generating capacity by the year 2012.

The Commission further finds that there is not sufficient evidence in the record to find specifically that the Red Rock Generating Facility is the most reasonable option to meet that determined need for baseload generating capacity.

The Commission further finds that it has broad authority in fashioning a decision it believes is in the best interests of Oklahoma's ratepayers, *Turpen v Oklahoma Corporation Commission*, 769 P.2d 1309, 1317, 1988 OK 126.

The Commission further finds that the proposed customer protections and/or Demand Side Management programs proffered by OG&E in its filings with the Commission would be beneficial to its ratepayers and shareholders alike. The Commission therefore finds that the Customer Protections, which are attached hereto as Attachment "B" and the Demand Side Management Programs proposed by OG&E, which are attached hereto as Attachment C, should be approved by the Commission. Those programs identified in Attachment C should be the starting point for OG&E's Demand Side Management programs and should be implemented as quickly as practical. OG&E is further encouraged to explore other Demand Side Management options that will additionally defer the need for additional generation capacity. No later than 60 days after the signing of this Order, the company should conduct meetings with customers to explore additional types of demand side management programs. Analysis should include the length of time necessary to realize results from the new programs, the cost to implement the programs and the cost benefit of achieving the goal of slowing and/or reducing the need for additional capacity. The Commission notes that all demand side management programs will be carefully reviewed prior to any recovery by OG&E of the cost of the programs implemented by the company.

ORDER

IT IS THEREFORE ORDERED BY THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the foregoing Findings of Fact and Conclusions of Law be adopted.

IT IS FURTHER ORDERED that Oklahoma Gas and Electric Company's request for an order granting pre-approval of the Red Rock Generating Facility and authorizing a recovery rider is DENIED.

IT IS FURTHER ORDERED that Oklahoma Gas and Electric Company has a need for 300 MW of baseload generating capacity by the year 2012.

IT IS FURTHER ORDERED that the Commission approves the customer protections and Demand Side Management programs, as set forth in Attachments B and C to this Order. However, any cost recovery for said programs must be justified by OG&E as being cost effective, prior to recovery of said costs. The Commission directs that such programs be fully implemented by OG&E in a timely fashion.

OKLAHOMA CORPORATION COMMISSION



JEFF CLOUD, Chairman

(Separate Opinion attached)

BOB ANTHONY, Vice Chairman



JIM ROTH, Commissioner

DONE AND PERFORMED THIS 11 DAY OF OCTOBER, 2007 BY ORDER OF THE COMMISSION:



PEGGY MITCHELL, Secretary

JOYCE CONNER, Acting Secretary

Separate Opinion of Commissioner Bob Anthony

Those who think the Oklahoma Corporation Commission gets to tell OG&E and PSO what type of generating facility to build, such as coal or gas, need to read the State Supreme Court's 1982 ruling when our agency tried to stop the Black Fox nuclear plant. The Commission's authority was found to be limited to determining the fair and reasonable rates charged consumers based on whether the facility is used and useful to current customers.

In today's order, I concur with the majority's decision concerning:

1. The determination of need for construction or purchase of 450 MW by PSO and 300 MW by OG&E of additional baseload generating capacity by 2012;
2. Consumer protections – known as ring-fencing; and
3. Demand and energy efficiency programs.

I am appreciative of both companies' willingness to work with the Commission on these customer protection and demand program initiatives, realizing they are timely steps forward in both areas.

I believe the lowest cost to consumers is the primary concern where 17 O.S. 286(C) requires the Corporation Commission to decide the OG&E and PSO applications "after consideration of reasonable alternatives." Only in the years to come will we know for sure whether a coal plant or gas-fired facility would have provided Oklahoma the cheapest baseload electric power for the next few decades.

In my voting against denial of the OG&E and PSO applications, I am mindful that our Administrative Law Judge (ALJ) found that the price of gas is very volatile, being in the range of \$7.00 per million British Thermal Units (mmBTU). By comparison, coal costs \$1.20 per mmBTU and is tied to long-term contracts generally with known price escalators. The ALJ's report found that with natural gas at \$7 per mmBTU, the annual fuel cost for 600 MW of coal generation from the Red Rock plant is likely to be approximately \$157 million lower than 600 megawatts of natural gas-fired generation.

The ALJ found that while a coal-fired plant is considerably more expensive to construct, the Red Rock plant is expected to make up for the higher capital cost in 4.18 years. A natural gas price above \$7 per mmBTU would shorten that break-even period. Compared to a gas-fired unit, the ALJ found that the nominal savings to ratepayers over a 40-year project life for Red Rock would be \$5.5 billion.


Bob Anthony, Commissioner