

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

APPLICATION OF PUBLIC SERVICE )  
COMPANY OF OKLAHOMA FOR A ) CAUSE NO. PUD 200500516  
DETERMINATION THAT ADDITIONAL )  
ELECTRIC GENERATING CAPACITY )  
WILL BE USED AND USEFUL )

APPLICATION OF PUBLIC SERVICE )  
COMPANY OF OKLAHOMA FOR A ) CAUSE NO. PUD 200600030  
DETERMINATION THAT ADDITIONAL )  
BASELOAD GENERATING CAPACITY )  
WILL BE USED AND USEFUL )

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 ) (CONSOLIDATED)  
AUTHORIZING A RECOVERY RIDER )

**STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Joyce E. Davidson, as Director of the Public Utility Division of the Oklahoma Corporation Commission ("Staff") submits the attachment hereto as Staff's proposed Findings of Fact and Conclusions of Law to the Honorable Administrative Law Judge, Maribeth D. Snapp.

Respectfully submitted,



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HEARING DATES: July 9th through July 11th; July 16th through July 20th; July 23rd through July 27th, and; July 30th through July 31st, 2007, before the Honorable Administrative Law Judge, Maribeth D. Snapp.

APPEARANCES: William J. Bullard, Patrick D. Shore, Robert D. Stewart, Jr. and Dustin R. Fredrick, Attorneys *representing* Oklahoma Gas & Electric Company  
Jack P. Fite, Attorney *representing* Public Service Company of Oklahoma  
Cheryl A. Vought and Deborah R. Thompson, Attorneys *representing* Redbud Energy, L.P.  
William L. Humes and Elizabeth Ryan, Assistant Attorney Generals *representing* Oklahoma's Office of Attorney General  
Thomas P. Schroedter, James R. Satrom, and J. Fred Gist, Attorneys *representing* Oklahoma Industrial Energy Consumers  
Lee W. Paden, Attorney *representing* Quality of Service Coalition  
Kendall W. Parrish, Attorney *representing* AES Pacific and AES Shady Pointe  
Ronald E. Stakem and Jack C. Clark, Jr., Attorneys *representing* OG&E Shareholders Association  
Rick D. Chamberlain, Attorney *representing* Wal-Mart Stores East, L.P.

David Dykeman and Lenora F. Burdine, Deputy General  
Counsel, and Don A. Schooler, Assistant General Counsel,  
*representing* the Public Utility Division, Oklahoma Corporation  
Commission

**TESTIMONY SUMMARY OF JATINDER KUMAR  
ON BEHALF OF THE OKLAHOMA CORPORATION COMMISSION**

Mr. Jatinder (“Jay”) Kumar—president of Economic and Technical Consultants, Inc. (“ETC”), a public utility and energy-consulting firm—was retained as an expert witness<sup>1</sup> by the Public Utility Division of the Oklahoma Corporation Commission (“Staff”) to review the applications filed by Public Service Company of Oklahoma (“PSO”) [Cause Nos. PUD 200500516 and 200600030]<sup>2</sup> and Oklahoma Gas and Electric Company (“OG&E”) [Cause No. PUD 200700012]<sup>3</sup> (jointly “Applicants”) in which Applicants are seeking approval of the “need”

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<sup>1</sup>Mr. Kumar has testified as an expert witness in well over 200 regulatory and judicial proceedings before the Federal Energy Regulatory Commission (“FERC”), numerous state regulatory commissions, and Federal and State courts. He has appeared as an expert witness before 25 retail jurisdictions in the United States, two retail jurisdictions in Canada, two pollution control boards, and 13 judicial proceedings in matters relating to public utilities and energy. He has been involved with most of the important FERC rulemakings for the gas and electric utilities since the 1970’s. He has advised the White House and a member of the Senate Sub-Committee on Energy on energy-related matters. He has also authored more than 30 technical papers and is listed in the 1996 Edition of Marquis’ “Who’s Who in Finance and Industry”. [Direct Testimony of Jatinder Kumar, Pg. 4, Ln. 17-28, and Pg. 5, Ln. 2-22.]

<sup>2</sup>Cause No. PUD 200500516 – Relief Requested: “Public Service Company of Oklahoma requests this Commission to issue an order determining that there is need for PSO to acquire electric generating capacity and that the capacity will be considered used and useful.” (Emphasis added.)

Cause No. PUD 200600030 – Relief Requested: “Public Service of Oklahoma requests this Commission to issue an order determining that there is a need for PSO to acquire electric baseload generating capacity and that the capacity will be considered used and useful.” (Emphasis added.)

<sup>3</sup>Cause No. PUD 200700012 – Relief Requested: “OG&E requests that the Commission issue an Order: (1) determining OG&E has a need to add additional base load generation capacity to its system in order to provide safe, reliable and dependable service to its customers; (2) determining OG&E’s ownership of a portion of the Red Rock unit is appropriate to address the Company’s need for additional generation; (3) determining that a ‘not to exceed’ cost to OG&E for the construction of the Red Rock and related transmission facilities of \$789 million is prudent, and recognizing OG&E’s right to seek recovery in a future proceeding of any additional costs incurred to complete the Red Rock Unit; (4) authorizing OG&E to implement its proposed tariff effective with the Company’s August 2007 billing cycle; and (5) granting such other and further relief as the Commission may determine to be fair, just and equitable in the premises.” (Emphasis added.)

for, and “used and useful” status of, additional base load electric generating capacity, as defined by Title 17, Oklahoma Statutes, Section 286(C)(1).<sup>4</sup> To meet a portion of this additional base load generating capacity need, PSO is planning to add 446 MW and OG&E 400 MW of base load capacity through a jointly owned 950 MW ultra-supercritical coal fired plant to be built in Red Rock, Oklahoma, next to OG&E’s existing Sooner Power Plant.

On May 21, 2007, following review of the applications, Mr. Kumar filed both redacted and un-redacted Direct Testimony and on June 27, 2007, he filed a Testimony Summary. A brief restatement of his conclusions and recommendations, which are to be properly considered as the position of Staff, follows hereinafter:

### **I. Capacity Planning**

Capacity Planning should be based on providing reliable and economic power supplies to meet the utilities customers’ power requirements. Capacity Planning should also consider both supply and demand-side resources, fuel diversity and, stability fuel prices. The Capacity should not be based solely on one-hour load during the year and its utilization to displace more expensive fuel for longer periods should be considered. [Testimony Summary of Jatinder Kumar (“Testimony Summary”), Pg 2, ¶ 2]

### **II. Load Forecasts**

Mr. Kumar found that the PSO load forecasts are reasonable. OG&E has selected its highest load forecasts with only 10% occurrence probability. In Mr. Kumar’s analysis of OG&E’s capacity needs, he used the load forecast with 90% occurrence probability which is

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<sup>4</sup>17 O.S. §286(C)(1) An electric utility subject to rate regulation by the Corporation Commission may elect to file an application seeking approval by the Commission to construct a new electric generating facility or to purchase an existing electric generation facility subject to the provisions of this subsection. 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 costs shall be subject to cost recovery rules promulgated by the Commission. The Commission shall enter an order on an application filed pursuant to this subsection within two hundred forty (240) days of the filing of the application, following notice and hearing and after consideration of reasonable alternatives.

more reasonable especially for the determination of the base load capacity needs. [Testimony Summary, Pg 2, ¶ 3]

### **III. Consideration of Demand Side Management**

Both PSO and OG&E did not adequately take into consideration the DSM, and other sources available in their evaluation of additional capacity. The other sources for PSO, which PSO did not fully consider, are the PSO/SWEPCO Capacity Transfer and AEP East/West Capacity Transfer. In the past, in its Capacity Planning, PSO has been relying upon these capacity transfers, however, in its determination of the future capacity needs, PSO did not take into consideration these capacity resources to the full extent. [Testimony Summary, Pg 2, ¶ 4]

### **IV. Existing Plant Utilization**

Both PSO and OG&E have low load and generator plant capacity factors. The Capacity Planning and DSM should be implemented to improve both these factors. [Testimony Summary, Pg 2, ¶ 5]

### **V. Additional Capacity Needs**

Based upon Mr. Kumar's analysis, PSO will need additional capacity starting from 2011; however, the capacity deficiency is only 71 MW, which continues to increase. Mr. Kumar's analysis shows that OG&E would not need additional capacity until 2014.

However, as Mr. Kumar described, there are other considerations, which should be employed for planning the future capacity additions. Both PSO and OG&E have too much gas-based generation, therefore, it is essential to diversify fuel use for power generation. During the last decade, more gas based peaking capacity was added and now there is a need for new non-gas powered base load capacity, especially in view of the age of existing bas load capacity, which, is

getting old. There is a need to replace some of the old base load plants. [Testimony Summary, Pg 2, ¶ 6-7, Pg 3, ¶ 1]

Construction of the Red Rock Plant would benefit Oklahoma ratepayers through greater fuel diversification, assurance of stable fuel and power prices, and will allow for the displacement of less efficient and less economical generators.

#### **VI. Red Rock Plant**

The Applicants proposed 950 MW coal powered Red Rock Plant will use ultra-supercritical technology which is the most efficient technology available for coal powered plants. However, there are some concerns about the performance of this technology as this information is not available. Further, neither PSO nor OG&E is willing to provide any guarantee related to the cost, completion date or performance of the Red Rock Plant.

Mr. Kumar agrees with OG&E that the Commission should not micro manage the utilities' decisions and operations and let them manage their business, and thus, PSO and OG&E, and not the ratepayers, should bear the risks associated with their decision. Therefore, the Commission should not decide the prudence and cost related issues in this proceeding. [Testimony Summary, Pg 3, ¶ 2-3]

#### **VII. Red Rock Construction Rider**

OG&E has proposed to recover the cost associated with the financing of its share of the Red Rock Plant through a rider, *i.e.*, the Red Rock Construction Rider ("RRCR"). While Mr. Kumar does not necessarily agree with such a rider, as this proceeding should focus mainly on the need and type of additional base load capacity rather than cost, in the event that the Commission grants OG&E's rider proposal it should incorporate the same safeguards ordered by the Commission in previously approved riders in other causes. [Testimony Summary, Pg 3, ¶ 4]

## **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Commission finds that to properly determine the appropriate amount of Applicants' capacity needs it shall consider the electric generation that may be obtained through maximum implementation of contracted interruptible loads and similar load control programs, aggressive use of DSM resources, and increased PSO/SWEPCO and AEP East/West capacity transfers.

The Commission further finds pursuant to 17 §286(C)(1), that there is a "need" for Applicants to acquire base load generating capacity and that said capacity would be adequately met through the construction of a proposed 950 MW, ultra-supercritical, coal-fired generation plant, and that said plant is found to be "used and useful."

The Commission further finds that the Applicants shall thoroughly evaluate the potential generation capacity that could be gained from retrofitting and/or upgrading existing generation plants, reporting the results to the Commission.

The Commission further finds that PSO is encouraged to work with the Southwest Power Pool ("SPP") to implement the necessary transmission upgrades to increase PSO/SWEPCO transfer capabilities.

The Commission further finds that prudence and cost related issues are not properly before it in this consolidated Cause but should be considered in a subsequent cause(s).

The Commission further finds that reasonable and prudent Construction Work in Progress ("CWIP"), such as, but not limited to, OG&E's RRRCR, should be approved for the Applicants in like manner as ordered by this Commission in previous causes.

The Commission further finds that although PSO issued a Request for Proposal ("RFP") in the fall of 2005 it was not required to do so as the Commission's Competitive Procurement

rules, *i.e.*, Oklahoma Administrative Code ("OAC") 165:35-34-1 through 165:35-34-3, were not enacted until July 1, 2006, and were not retroactive.<sup>5</sup>

The Commission further finds that OG&E, as a self-build utility, was not required, but may have elected, to issue a RFP in accordance with 17 O.S. §286(C) and OAC 165:35-34-1 through 165:35-34-3. OAC 165:35-38-5(E) reads:

A Cause shall be opened by the utility for cost recovery if the competitive bidding RFP process established in 165-35-34 is not utilized and the utility wishes to gain approval of cost before construction starts.

Respectfully submitted,



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<sup>5</sup>17 O.S. §286 was enacted as an emergency provision on May 11, 2005, becoming permanent on July 1, 2006. 17 O.S. §286(C)(4) reads:

**The Commission shall promulgate rules to implement the provisions of this subsection. Such rules shall be transmitted to the Legislature on or before April 1, 2006.** In promulgating rules to implement the provisions of this subsection, the Commission shall consider, among other things, rules which would:

- a. permit contemporaneous utility recovery from its customers, the amount necessary to cover the Corporation Commission staff and Attorney General assessments as authorized by this subsection;
- b. establish how the cost of facilities approved pursuant to this subsection shall be timely reviewed, approved, and recovered or disapproved, and
- c. establish the information which an electric utility must provide when filing an application pursuant to this subsection.

[Emphasis added.]