BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE COMPANY OF OKLAHOMA FOR COMMISSION AUTHORIZATION OF A PLAN AND COST RECOVERY OF ACTIONS OF PSO TO BE IN COMPLIANCE WITH CERTAIN ENVIRONMENTAL RULES PROMULGATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; SUCH ACTIVITIES TO INCLUDE, BUT NOT BE LIMITED TO, CAPITAL EXPENDITURES FOR EQUIPMENT AND FACILITIES; CONSTRUCTION OR PURCHASE OF AN ELECTRIC GENERATING FACILITY OR ENTER INTO A LONG-TERM PURCHASE POWER CONTRACT (AND POSSIBLE EARNING ON THE CONTRACT); CHANGE IN DEPRECIATION RATES AND/OR ESTABLISHMENT AND RECOVERY OF A REGULATORY ASSET; AND FOR SUCH OTHER RELIEF AS THE COMMISSION DEEMS PSO IS ENTITLED.	)	Cause No. PUD 201200054

RESPONSIVE TESTIMONY
OF
MARK E. GARRETT

ON BEHALF
OF
OKLAHOMA INDUSTRIAL ENERGY CONSUMERS
("OIEC")

JANUARY 8, 2013

Prepared Responsive Testimony of Mark E. Garrett
January 8, 2013

TABLE OF CONTENTS

I. WITNESS IDENTIFICATION AND PURPOSE OF TESTIMONY

Q: PLEASE STATE YOUR NAME AND OCCUPATION.

A: My name is Mark Garrett. I am the President of Garrett Group, LLC, a firm specializing in public utility regulation, litigation and consulting services.

Q: WOULD YOU PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND YOUR PROFESSIONAL EXPERIENCE RELATED TO UTILITY REGULATION?

A: I received my bachelor's degree from the University of Oklahoma and completed post graduate hours at Stephen F. Austin State University and the University of Texas at Arlington and Pan American. I received my juris doctorate degree from Oklahoma City University Law School and was admitted to the Oklahoma Bar in 1997. I am a Certified Public Accountant licensed in the States of Texas and Oklahoma, with a background in public accounting, private industry, and utility regulation. In public accounting, as a staff auditor for a firm in Dallas, I primarily audited financial institutions in the State of Texas. In private industry, as controller for a mid-sized ($300 million) corporation in Dallas, I managed the Company's accounting function, including general ledger, accounts payable, financial reporting, audits, tax returns, budgets, projections, and supervision of accounting personnel. In utility regulation, I served as an auditor in the Public Utility Division of the Oklahoma Corporation Commission from 1991 to 1995. In that position, I managed the audits of major gas and electric utility companies in Oklahoma. Since leaving the Commission, I have provided consulting services and expert testimony in numerous jurisdictions on various regulatory matters.

Q: HAVE YOUR QUALIFICATIONS BEEN ACCEPTED BY THIS COMMISSION IN PROCEEDINGS DEALING WITH RATEMAKING ISSUES?

A: Yes, they have. A more complete description of my qualifications and a list of the proceedings in which I have been involved are included at the end of my testimony.

Q: ON WHOSE BEHALF ARE YOU APPEARING IN THESE PROCEEDINGS?

A: I am appearing on behalf of Oklahoma Industrial Energy Consumers (OIEC).

Q: WHO IS OIEC?

A: OIEC is an association consisting principally of a diverse group of Oklahoma processing and manufacturing industries which is involved in regulatory and legislative matters primarily involving natural gas and electric power.

Q: WHAT IS OIEC'S INTEREST IN THIS PROCEEDING?

A: OIEC is an association which represents the interests of industrials or other large energy consumers. Many industries in Oklahoma purchase substantial quantities of electric power which is essential and required for their operations. Electric power costs can constitute a significant percentage of industrial operating costs. These electric power supplies are generally purchased from utilities pursuant to standard tariffs filed at the Commission. Industries served by PSO often operate in highly competitive business environments and, thus, are interested in the Commission determining rates for PSO that achieve reliable power supply at the lowest and most reasonable cost possible under the circumstances.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A: The purpose of my testimony is to address: (1) the rate impacts of PSO's EPA settlement plan; (2) cost recovery issues related to PSO's early closure of the Northwestern coal plant, (3) allocation issues related to the EPA settlement plan and (4) PSO's request for additional earnings on the Calpine purchase power contract.

II. SUMMARY OF RECOMMENDATIONS

Q: COULD YOU PLEASE SUMMARIZE YOUR TESTIMONY AND RECOMMENDATIONS?

A: Yes. A summary of my testimony and recommendations is set forth below:

1. PSO's claimed 11% rate increase for the EPA plan is significantly understated. PSO's calculations start with projected 2016 revenues and add the EPA plan costs on top of that. PSO's calculations also replace only 260MW of the entire 460MW retired. The EPA settlement plan actually results in a 14.6% increase in PSO's 2011 rates. By 2016, all of PSO's planned rate increases will result in a 44.8% increase in rates.

2. PSO's plan to shut down 460MW at the Northeastern Unit 4 coal plant in the middle of its useful life but continue to include both a "return on" and a "return of" the plant costs in rates is contrary to Oklahoma law that allows only "used and useful" plant to be included in rates. Faced with the same issue, the Ohio Commission *denied* AEP-Ohio Power's request for recovery of costs associated with the retirement of its Sporn 5 unit, a 450MW coal plant in Ohio. In its order dated January 11, 2012, the Ohio commission found that the retired plant did not meet the "used and useful" requirements in Ohio. The retired Northeastern plant costs are not stranded costs because there is no mandate to close the plant. Neither the FIP nor the SIP require such action. Neither is the plant uneconomic. According to Mr. Norwood, the Company's own analysis shows that the nominal cost of the Retrofit Both Units option (keeping the assets in service) is approximately $2 billion lower than the cost of the EPA Settlement plan (taking the assets out of service). I know of no ratemaking theory that would require ratepayers to share the costs of retired assets, when such retirement is voluntary and results in higher, not lower, rates.

3. In light of the following facts, (1) that the EPA settlement plan is not the least cost option for ratepayers, (2) that the majority of the higher costs of the EPA settlement plan are energy-related costs (gas prices compared with coal prices), meaning that the higher (uneconomic) costs of the plan fall disproportionately on the high load factor industrial customers, under an energy allocation approach, and (3) that there is a substantial amount of energy already embedded in the Company's production cost allocator, I believe, if the plan is approved, the Commission should allocate the costs of the BLPP rider using a production cost allocator. In doing so, the Commission would adopt a cost allocation more consistent with the allocation that would result to the industrial customers under the Retrofit Both Units approach.

4. PSO's request for additional earnings on the Calpine contract should be denied for the following reasons:

(1) PSO's requested return is contrary to Oklahoma law. Title 17 § 252 requires that fuel and purchased power costs be recovered from ratepayers at actual cost with no mark-up. PSO's request for a mark-up on the Calpine Contract clearly violates this statute.

(2) PSO's claim that federal and state policies caused PSO to buy rather than build is unsupported. PSO not only provides no support for this claim but also provides no explanation as to why other utilities operating under identical rules in this state and similar rules in other states are able to add assets to rate base at market-competitive prices. PSO also fails to explain why it chose <u>not</u> to submit a *self-build* bid option in the RFP process for this capacity, but instead chose to merely complain about the results of the bid process later.

(3) PSO provided no example of a state that follows it recommendation. PSO identified Georgia as a state that allows additional compensation on PPAs. However, the return allowed in Georgia is authorized <u>by statute</u> and is <u>10 times smaller</u> by comparison than the return requested by PSO.

(4) PSO's requested return is contrary to constitutional requirements. Oklahoma and virtually every other state follow the *prudent-investment rule* (or *original-cost rule)* where a regulated utility's Fifth and Fourteenth Amendment rights are satisfied when the utility is allowed to earn a return on the original cost of assets prudently invested for the provision of utility service. Here, PSO has invested no capital in the Calpine Contract and is therefore, not entitled to earn a return on the contract.

(5) PSO's requested return is inconsistent with the treatment in other states. A survey of the 24 western states found <u>no state</u> that actually provides additional compensation on purchased power contracts.

(6) PSO's requested return is contrary to sound public policy. From a policy perspective, it would be inappropriate for the Commission to compensate a utility "as if" it had invested capital in the state when in reality it had made no such investment. This approach would actually provide the utility with a <u>disincentive</u> to invest in Oklahoma.

III. RATE IMPACTS

Q: HAS PSO PROVIDED TESTIMONY REGARDING THE OVERALL RATE IMPACT OF ITS EPA SETTLEMENT PLAN?

A: Yes. PSO quantifies the overall first-year rate impact of the EPA settlement plan in the testimony of Shawna G. Jones. In her direct testimony, Ms. Jones testifies that the EPA settlement plan will result in only an 11% first-year increase in rates.[1] PSO failed to provide other forecasted revenue requirements or rate impacts of the EPA settlement plan beyond the first year of the settlement plan implementation.

Q: DO YOU AGREE WITH PSO'S ASSERTION THAT THE COMPLIANCE PLAN WILL RESULT IN ONLY AN 11% RATE INCREASE?

A: No. The actual rate impact of PSO's EPA settlement plan is significantly higher than PSO claims. PSO uses an inappropriate base line starting point for its cost comparison. It compares the estimated $164 million costs of the plan with its *projected* revenues in 2016, after *escalating* its projected revenue levels with other anticipated increases including: energy cost increases, BLPP Rider increases, SPP transmission cost increases, DSM, load growth, the Reliability Rider and other rider increases. By comparing the $164 million compliance plan increase with a much higher overall revenue level in 2016, PSO distorts the true impact of the EPA settlement plan. The more accurate comparison would be to compare the $164 million increase with the overall revenues that existed <u>at the time</u> PSO made the decision to implement the compliance plan. When this correction is made, the percentage increase in rates that results from the EPA Settlement plan is 14.6%. The calculations supporting the 14.6% increase are set forth at Exhibit MG-2 attached to this testimony.

Q: WHAT IS THE RELEVANT TIME-FRAME FOR MEASURING THE IMPACTS OF THE COMPANY'S DECISION?

A: The rate impact of the Company's Environmental Settlement Plan should be measured against base line rates in effect when the Company made its decision to pursue the plan – *i.e.*, the rates actually in effect during 2011 and the first half of 2012.

Q: DESCRIBE THE TIMING OF EVENTS LEADING UP TO PSO'S CURRENT ENVIRONMENTAL SETTLEMENT PLAN.

A: According to the Company, the EPA published its proposed partial approval and disapproval of the Oklahoma Regional Haze SIP and the Federal Implementation Plan on March 22, 2011. The EPA response was final on December 28, 2011, and became effective January 27, 2012. PSO then filed a Petition for Review of the final Regional Haze FIP in the Tenth Circuit Court of Appeals on February 24, 2012. After that, the State of Oklahoma, EPA, the Sierra Club and PSO engaged in settlement discussions that eventually resulted in the agreement presented in this case. During this same time period, Oklahoma Gas & Electric Company (OG&E), the State of Oklahoma and OIEC, filed a separate suit in the Tenth Circuit challenging the EPA determinations. On June 22, 2012, the Tenth Circuit issued a stay of the SO2 requirements for OG&E's units until the court reaches a final decision on the merits of OG&E *et. al.'s* appeal. At that point in

1 See Direct Testimony of Shauna G. Jones at page 6, lines 2-13, and Exhibit SGJ-1.

time, PSO should have also sought a stay from the Tenth Circuit, but instead chose to pursue the current Environmental Settlement Plan. As such, the rate impact of PSO's plan should be measured against rates in effect during 2011 and early 2012, and at the very latest, against rates in effect in June 2012, when the Company chose to move ahead with its settlement plan rather than to avail itself of a Tenth Circuit stay.

Q: ARE THERE OTHER PROBLEMS WITH PSO'S CALCULATIONS?

A: Yes. PSO's calculation distorts the actual cost impact of the EPA settlement plan by including replacement costs for only 260MW of the 460MW actually retired at Northeastern Unit 4. Clearly, for an accurate comparison, the entire lost output of the 460MW plant must be accounted for in the calculations. This means that 200MW of capacity should be attributed to the Northeastern Unit 4 Plant closure. Realistically, this capacity should come from the most recent new capacity available on the system which would be capacity from the Exelon contract. Assuming sufficient MWHs from the Exelon contract were used to make up the 200MW shortfall and this differential were attributed to the EPA settlement, the settlement cost would increase by an additional $133.71 million.

Q: HOW WAS THE AMOUNT OF THE BLPP RIDER COSTS NEEDED TO MAKE UP THE DEFICIT BETWEEN THE RETIRED 460 MW UNIT AND 260 MW CALPINE CONTRACT CALCULATED?

A: The shortfall between the 460MW Northeastern Plant output and the Calpine Contract was determined by comparing the estimated MWHs produced from the Northeastern Unit in 2010 of 3,022,000 (using the plant's actual 2010 capacity factory of 75%) with the purchased output under the Calpine Contract of 1,400,000, to arrive at a shortfall of 1,622,200 MWHs that must be obtained from another source. This shortfall was transferred from the BLPP Rider costs identified by PSO. These calculations are set forth in detail at Column E of Exhibit MG-2 attached to this testimony.

Q: ARE THERE OTHER WAYS IN WHICH THE PERCENTAGE INCREASE RESULTING FROM THE EPA SETTLEMENT DECISION COULD BE MEASURED?

A: Yes. My calculations attempt to quantify the overall impact of the EPA settlement decision. Certainly a different base-line could be used and different assumptions could be made about how to calculate the cost of the shortfall between the retired coal capacity and the newly-purchased Calpine capacity. There is no question, however, the shortfall should be accounted for in order to arrive at a realistic quantification of the actual costs associated with the settlement. My calculations demonstrate that the costs from the EPA settlement, identified by PSO, are approximately 14.6% higher than the rates ordered by this Commission in PSO's last rate case, Cause No. PUD 2010000050. If the 200MW shortfall were accounted for, the increase would be even higher.

Q: PLEASE EXPLAIN THE OVERALL RATE INCREASE ON EXHIBIT MG-2.

A: Exhibit MG-2 shows that the anticipated rate increases, <u>as identified by PSO</u> in Exhibit

SGJ-1 for the 5-year period from 2011 through 2015, amount to an overall rate increase of **44.8%** above the last rates ordered by this Commission in PSO's last rate case. Much of this significant increase is associated with the EPA Settlement decision.

Q: PLEASE DESCRIBE HOW THE 44.8% INCREASE IS CALCULATED.

A: The 44.8% increase is calculated by comparing PSO's total projected revenues in 2016 from Exhibit SGJ-1 (less load growth revenues) with the total revenues ordered in 2011 from PSO's last general rate case. PSO's projected revenues for 2016 include energy cost increases, BLPP rider cost increases, SPP increases, DSM and other rider increases and load growth. I excluded load growth increases from the calculations because load growth costs should be paid for from the added load. (If load growth were included the percentage increase would be higher). The calculations supporting the 44.8% increase are shown in the table below and set forth in more detail at Exhibit MG-2.

TABLE: RATE INCREASES IDENTIFIED BY PSO FOR 2016

Ln	Description	Source	Amount
1	Base Rate Revenue PUD 10-050	SGJ-1/MG-2	$ 516,784,226
2	Fuel Revenue PUD 10-050	Sch M-1 PUD10-050	534,353,437
3	Rider Revenues PUD 10-050	OIEC 5-1 PUD 10-050	75,431,009
4	2011 Base-Line Revenues		$1,126,568,672
5			
6	PSO Identified EPA Settlement Increase	RWH-1/MG-2	$ 147,427,754
7	PSO Identified Calpine Contract Return	RWH-1/MG-2	5,000,000
8	PSO Identified Gas Unit Increases	RWH-1/MG-2	11,574,545
9	PSO Identified BLPP Rider Increases	SGJ-1/MG-2	225,347,884
10	PSO Identified SPP Rider Increases	SGJ-1/MG-2	74,269,232
11	PSO Identified Other Rider Decreases	SGJ-1/MG-2	-19,418,341
12	PSO Identified Energy Cost Increases	SGJ-1/MG-2	61,056,425
13	PSO Identified Revenue Increases		$ 505,257,499
14			
15	2016 Percentage Revenue Increase		**44.8%**

IV. RECOVERY OF THE NORTHEASTERN UNIT 4 PLANT COSTS

Q: PLEASE DESCRIBE THE ISSUES SURROUNDING PSO'S REQUESTED RECOVERY OF THE NORTHEASTERN UNIT PLANT COSTS IN THIS CASE?

A: PSO is proposing to shut down the 460MW Northeastern Unit 4 coal plant in the middle of its useful life, but plans to continue to include both a "return on" and a "return of" the plant costs in rates. In fact, the Company even plans to accelerate the "recovery of" the plant costs over a 10-year period rather than the 25-year period now in place. Thus, there are actually three cost recovery issues associated with this plant closure:

1. PSO's plan to continue to include the un-depreciated balance of this plant in rate base, enabling the Company to continue to earn a full profit "return on" the abandoned plant for its shareholders;[2]

2. PSO's plan to continue to depreciate the balance of this plant into rates so that shareholders will receive a full "return of" the abandoned plant costs; and

3. PSO's plan to shorten the depreciation recovery term to a 10-year period.[3]

Q: WHAT ARE THE COSTS TO RATEPAYERS AS A RESULT OF THE COMPANY'S PROPOSALS?

A: The net un-depreciated plant balance for Northeastern Units 3 and 4 at June 30, 2012

[2] See PSO's response to OIEC 1-17. This response that PSO plans to use routine accounting entries in 2016 to credit the plant accounts and debit accumulated depreciation for the remaining costs of the retired NE units. This treatment effectively leaves the cost of the retired units in rate base. This routine treatment is acceptable when plant has reached the end of its useful life, and the accounting entries over the life of the plant have either over- or under-depreciated the plant balance by an inexact amount. This routine treatment for plant retired at the end of its useful life, however, is not used when plant is retired during the middle of its useful life with a substantial plant balance remaining on the books.

[3] See Hamlett Direct Testimony at page 9, lines 5-6.

was $227.4 million.[4] The annual rate base "return on" this amount would be approximately $25.2 million. A 10-year amortization of this balance would result in an annual amortization expense level of $22.7 million, for a total annual cost recovery associated with the Northeastern plant closure of $47.9 million, starting in 2016.

Q: DO YOU AGREE WITH THE COMPANY'S PROPOSED TREATMENT?

A: No. I do not agree with PSO's proposal to include the costs of the retired Northeastern Unit 4 in rates. Oklahoma law is very clear on this point: only assets "used and useful" for providing utility service may be included in rate base. Further, a plant's "used and useful" status is determined "based upon the value of the property used and useful in [the utility's] public service business at the time the inquiry was made."[5] In other words, the determination is made in each rate case as to whether assets are used and useful <u>at that time</u> and, thus, should be included in rates. Under the "used and useful" test, only assets in service <u>during the test year</u> may be used to establish rates.[6] As explained by the Oklahoma Supreme Court in *Southwestern Public Service Co.*, 1981 OK 136, ¶ 14, 637 P.2d at 98:

[4] See Hamlett Direct Testimony at page 8, lines 18-23.

[5] Turpen v. Oklahoma Corporation Commission, 1988 OK 126, n. 7, 769 P.2d 1309, 1316 (In Oklahoma, a public utility's rate base is "the amount upon which the utility is permitted to make a profit," which is "'based upon the value of the property used and useful in [the utility's] public service business at the time the inquiry was made.'") (quoting Southwestern Public Service Co. v. State, 1981 OK 136, 637 P.2d 92, 97).

[6] See Southwestern Public Service Co. v. State, 1981 OK 136, 637 P.2d 92, 97; Arkansas Louisiana Gas Co. v. Sun Oil Co., 1976 OK 89, 554 P.2d 14, 15. See also Public Service Co. v. Oklahoma Corp. Com., 1983 OK 124, 688 P.2d 1274, 1276; Oklahoma Natural Gas Co. v. Corporation Com. of Oklahoma, 1923 OK 400, 216 P. 917.

In 1994, the test year was effectively extended by six months when the Legislature adopted Okla. Stat. tit. 17, § 284, which authorized recovery of costs reasonably certain to occur within six months of the test year end.

> 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. Only the cost of those capital assets which are in actual use during the test year, or whose use is so imminent and certain that they may be said, at least by analogy, to have the quality of working capital may be added to the rate base established by the test year in any event; and then only if appropriate counter-balancing safe guards are applied. (Emphasis added).

Q: DO YOU BELIEVE THAT THE "USED AND USEFUL" STANDARD AS APPLIED IN OKLAHOMA PRECLUDES THE TREATMENT PROPOSED BY THE COMPANY?

A: Yes. In the Company's first rate case (after the Northeastern unit is closed) the plant will no longer be providing service to customers, and thus will no longer be used and useful, and therefore cannot be included in rates under a used and useful determination. In Oklahoma, a utility is allowed to earn a reasonable return on utility assets at the time the assets are being used for the public.[7]

Q: ARE THERE RELEVANT EXAMPLES IN OTHER STATES WHERE COMMISSIONS HAVE DENIED RECOVERY OF RETIRED COAL PLANT COSTS?

A: Yes, there is one particularly recent and relevant example, specifically on point, that occurred in AEP's home state of Ohio earlier this year. There, the Ohio Commission *denied* AEP-Ohio Power's request for recovery of costs associated with the retirement of

---

7 See, *Southwestern Public Service Co.,* 637 P.2d 92, 97 (Okla. 1981) where the Court stated: "'In determining whether the rate is reasonable, it is necessary to ascertain the fair value of the property of the [utility] used and useful in its public service business at the time the inquiry was made, . . . for [the utility] is entitled to a rate which will yield a fair return upon the reasonable value of the property at the time it is being used for the public.'"

its Sporn 5 unit.[8] Sporn 5 was a 450MW coal plant that was built and place in service around 1960. AEP sought to close the coal unit as part of an agreement between AEP and the Department of Justice, and asked that the Ohio commission approve recovery of the remaining costs of the plant, with return, over an accelerated recovery period, similar to the treatment PSO seeks here. In its order dated January 11, 2012, the Ohio commission denied any recovery of the remaining costs of the closed unit, finding that the plant did not meet the "used and useful" requirements in Ohio.[9]

Q: WOULD YOU CONSIDER THE RETIRED COAL PLANT COSTS TO BE "STRANDED COSTS" UNDER THE TRADITIONAL UTILITY DEFINITION OF THAT WORD?

A: No. Costs are not "stranded" when a utility <u>voluntarily chooses</u> to retire an asset in the middle of its useful life, as the Company has done here. I know of no order, case law or statute where costs have been defined as stranded costs when they result from a utility's voluntary action. To the contrary, costs have been defined as stranded when they were caused by laws or orders that mandate a major change. Here, there is no mandate that the utility close the Northeastern plant. Neither the SIP nor the FIP require such action. In fact, the FIP provides that the Northeastern units be retrofitted and continue operating.

Q: EVEN WITHOUT SPECIFIC LAWS THAT MANDATE A MAJOR CHANGE, COULD THERE BE OTHER SITUATIONS THAT STRAND UTILITY ASSETS?

---

[8] See Order of the PUC of Ohio in Case No. 10-1454-EL-RDR.

A: Utility assets can become uneconomic, where it costs ratepayers more to keep the assets in service than to replace them. In that case, the costs of the stranded assets might be shared with ratepayers. Here, that is certainly not the case. According to Mr. Norwood, the Company's own analysis shows that the nominal cost of the Retrofit Both Units option (keeping the assets in service) is approximately $2 billion <u>lower</u> than the cost of the EPA Settlement plan (taking the assets out of service). I know of no ratemaking theory that would require ratepayers to share the costs of retired assets, when such retirement results in higher, not lower, rates.

Q: ARE THERE OTHER REASONS WHY RATEPAYERS SHOULD NOT BE RESPONSIBLE FOR THE REMAINING COAL PLANT COSTS?

A: Yes. According to the Company's own analysis and to Mr. Norwood's testimony, the EPA settlement plan is not the least-cost option for ratepayers. Instead, it appears to be a business decision of the Company that inures to the overall benefit of AEP. As such, AEP, not the Oklahoma ratepayers, should bear the additional costs of closing coal units in the prime of their useful life.

---

[9] Id.

V. COST ALLOCATION ISSUES

Q: HAS PSO RAISED COST ALLOCATION ISSUES IN ITS TESTIMONY?

A: Yes. Ms. Jones testifies in her direct testimony at page 11 that the true-up in the current BLPP Rider is allocated using a production cost allocation factor even though there is an energy component to the true-up that should be allocated using an energy allocation factor.

Q: DO YOU AGREE WITH PSO'S ALLOCATION METHODOLOGY?

A: I agree that, ordinarily, the capacity costs of the BLPP rider would be allocated using a production allocator and the energy costs would be allocated using an energy allocator. However, in light of the following facts, a different approach should be considered, in the event the Commission approves PSO's EPA settlement plan.

1. The EPA settlement plan is not the least cost option for ratepayers.
2. The majority of the higher costs of the EPA settlement plan are energy-related costs (gas prices compared with coal prices), meaning that the higher (uneconomic) costs of the plan fall disproportionately on the high-load-factor industrial customers, with an energy allocation factor.
3. There is a substantial amount of energy already embedded in the Company's production cost allocator.

These facts taken together support a recommendation to allocate the costs of the BLPP rider using a production cost allocator. In doing so, the Commission would adopt an allocation to the industrial class that would more closely reflect the cost allocation that would result under the Retrofit Both Units approach.

VI. ADDITIONAL EARNINGS ON THE CALPINE CONTRACT

Q: PLEASE PROVIDE AN OVERVIEW OF PSO's REQUEST TO EARN ADDITIONAL COMPENSATION ON THE CALPINE CONTRACT.

A: PSO is requesting that the Commission depart from the traditional ratemaking treatment for purchased power agreements (PPAs) to allow the Company to collect earnings associated with the Calpine Oneta, LLC contract ("Calpine Contract" or "Contract") which will supply approximately 1.4 billion kilowatt-hours kWh a year for 15 years. PSO seeks to earn additional compensation, above cost, on the Contract in the amount of $3 million annually.[10] PSO asserts that without these additional earnings, PSO will not be allowed to earn a return on a significant portion of its energy supply business.[11]

Q: DO YOU AGREE WITH THE COMPANY'S PROPOSAL TO ALLOW A RETURN ON THE CALPINE CONTRACT?

A: No. The very basis for PSO's request – the idea that PSO will not be allowed to earn a return on a significant portion of its energy supply business – is seriously flawed. The Company's request is a radical departure from traditional ratemaking principles followed in Oklahoma and virtually every other jurisdiction. Under current ratemaking jurisprudence and widely recognized regulatory policy, a utility is allowed to earn a reasonable return on its <u>invested capital</u>. In this proceeding, PSO has asked the Commission to allow a return on capital the Company <u>did not invest</u>. In this testimony, I will show that the Company's request is contrary to fundamentally-accepted ratemaking

[10] See Direct Testimony of Alan Decker at page 8.
[11] See Direct Testimony of Alan Decker at page 3, lines 1-6.

principles (because it would provide a return where no capital has been invested), contrary to Oklahoma law (because it would cause an impermissible mark-up on purchased power), and contrary to sound public policy (because it would provide the utility with a financial incentive to not invest capital in Oklahoma).

Q: WHAT SPECIFIC ARGUMENTS DOES PSO MAKE TO SUPPORT ITS REQUEST FOR ADDITIONAL EARNINGS ON THE CALPINE CONTRACT?

A: PSO'S request for additional earnings on the Calpine Contract is based on its own arbitrary recommendation that it should be awarded $3 million per year to offset its purported "significant long term earnings loss" associated with the contract. The request is not based on any actual capital investment by the Company. Instead, PSO asserts it has "foregone earnings" associated with the Calpine contract. Specifically, "PSO's annual earnings will be on average some $11 million less than they otherwise would have been had PSO built a plant as opposed to entering into the Calpine Contract."[12]

Next, PSO argues (again without support), that the Calpine contract is on average about $5 million less expensive than a "new build combined-cycle of comparable size over the terms of the contract."[13] PSO asserts that its request is reasonable because it is substantially lower than its estimated "foregone earnings" and that if it is not allowed earnings on the Calpine Contract, rating agencies may view PSO as a riskier investment than if PSO were earning on this contract. PSO improperly cites the Commission's approval of Demand Side Management (DSM) programs, an obscure Georgia statute,

[12] See Direct Testimony of Alan Decker at page 3, lines 11-14, and at page 9, lines 6-8.
13 See Direct Testimony of Alan Decker at page 3, lines 11-14, and at page 9, lines 6-8.

and inapposite case law in its effort to justify its request. In my opinion PSO's arguments fail to justify its request for additional earnings on the Calpine contract. I have addressed each of these arguments, in turn, in Sections V (A) through (E) below.

VI. A. <u>PSO'S request is contrary to applicable statutory provisions.</u>

Q: PLEASE DESCRIBE THE STATUTORY PROVISIONS PSO REFERENCES WITH RESPECT TO THE CALPINE CONTRACT.

A: In his testimony, Mr. Decker acknowledges that this request is similar to PSO's pending request in Cause No. PUD201200079, PSO's Application for the Commission to allow earnings on the Exelon Contract, and incorporates and makes reference to the arguments PSO advanced that cause.[14] Mr. Decker cites 17 Okl.St.Ann. § 286 C, in support of its claim that the Calpine Contract is property which will be used and useful for the benefit of PSO's customers.[15]

Q: DO YOU AGREE WITH PSO'S INTERPRETATION OF 17 O.S. § 286 C.1?

A: No. The statute does not support PSO's claim that purchased power agreements are a form of "property," nor does it justify a utility earning a return (above cost) on purchased power. Section 286 C.1 is set forth below (with the pertinent language underlined).

Title 17 § 286 C.1. Applications for capital expenditures, facilities.

> 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, to purchase an

[14] See Direct Testimony of Alan Decker at page 5.
[15] See Direct Testimony of Alan Decker at page 6, lines 13-14; Mr. Decker also discusses 17 Okl.St.Ann. § 286 C at length in Exhibit AWD-1, which is a copy of Mr. Decker's Direct Testimony in Cause No. PUD 201200079, incorporated by reference at page 5, line 21.

> existing electric generation facility or enter into a long-term contract for purchased power and capacity and/or energy, 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 the electric generating facility or long-term purchase power contract, the generating facility or contract shall be considered used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission.**

With respect to long term purchase power contracts, this section provides that a utility may seek pre-approval of such contracts, and to the extent the Commission determines there is a need for the contract, the contract shall be considered "used and useful" and its costs shall be "*subject to cost recovery rules promulgated by the Commission*."

Q: IF A CONTRACT IS CONSIDERED 'USED AND USEFUL' DOES THAT INDICATE THAT IT IS 'PROPERTY' OR THAT A UTILITY IS ENTITLED TO AN EARNINGS RETURN ON THE CONTRACT?

A: Clearly, it does not. The statute merely states that if a contract is considered 'used and useful' the Company is entitled to ***cost recovery*** in accordance with the cost recovery rules of the Commission. There is no indication that additional earnings are required pursuant to the language of this statute.

Q: ARE THERE STATUTES AND RULES PROMULGATED BY THE COMMISSION THAT ADDRESS APPROPRIATE COST RECOVERY FOR PURCHASED POWER?

A: Yes. In Oklahoma, Commission rules and statutes explicitly prescribe that purchase power contracts must be recovered ***at actual cost***, without the mark-up PSO seeks. The

Commission's rules for cost recovery for purchased power reflect the statutory requirements set forth in 17 Okl.St.Ann. § 252:

Title 17 § 252. Monitoring of fuel adjustment clauses.

> Whenever the Commission approves a fuel adjustment clause pursuant to this act, the clause shall apply to all similar public utilities affected by such increased costs. In addition, the Commission shall continually monitor and oversee the application of the fuel adjustment clauses. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every twelve (12) months. <u>If the Commission finds that the charges or credits are not based upon the **actual prices paid for** fuel, purchased gas or **purchased power**, or are not properly computed in accordance with the applicable adjustment clause, it shall recompute the charges or credits and shall direct the public utility to take such action as may be required to insure that the charges or credits properly reflect the **actual prices paid** for fuel, purchased gas or purchased power and are properly computed in accordance with the applicable adjustment clause for the applicable period.</u>

The statutory requirements are clear: fuel and purchased power contracts must be recovered at cost, or more specifically, at the actual price paid for the fuel and purchased power contract. In short, the Company's request for a mark-up or additional earnings on the Calpine Contract is prohibited under Oklahoma law.

VI. B. <u>Federal and state policies do not warrant the additional earnings PSO seeks.</u>

Q: WHAT IS PSO'S ARGUMENT WITH RESPECT TO FEDERAL AND STATE POLICIES?

A: PSO claims that recent changes in federal and state policies have <u>*caused*</u> PSO to rely more on purchases. Specifically, PSO claims that the Commission rules on integrated resource planning, affiliate transactions, and competitive procurement all work to make it easier to purchase rather than build. PSO provides no explanation or examples as to why these statements are true, nor does it explain why other utilities in this state, operating under identical rules or other utilities operating in other states under similar rules, have not asked for similar treatment for their purchased power contracts. In fact, PSO failed to provide any example, other than Georgia, where such treatment has been authorized by any commission.

Moreover, PSO's claim that *it is easier* to buy than to build generation does not, in my view, justify PSO's request for additional earnings on its purchased power agreement. The fact that it is *easier* to buy than to build explains (in part) why utilities are awarded additional compensation, in the form of an earnings return, when they actually invest their own capital to build utility assets and dedicate those assets to public use. Further, utilities such as PSO and utilities in other regulated states still have the option to build utility assets and earn a return on those assets, provided they build the assets at market based prices, which, of course, is only fair.

Also, as a final note, it seems disingenuous for PSO to blame the Commission, and more specifically the competitive procurement requirements of the Commission, for having to purchase power rather than build or buy generation, when **PSO did not even attempt an asset purchase or self-build option for the needed capacity.**

Q: WHY DID PSO CHOOSE NOT TO PARTICIPATE IN THE RFP?

A: According to the Company, PSO chose not to participate in the RFP because it was not "an attractive business option" for the Company. At page 26 of his testimony, Mr. Fate states that "PSO did not pursue an asset purchase because it was not an attractive business option to be a significant minority owner, it had significant financial requirements, and reduced the Company's flexibility." In my opinion, it is inappropriate for the Company to complain of lost potential earnings when in reality the Company purposefully chose not to pursue an opportunity to invest in the needed capacity because of "significant financial requirements," and "reduced flexibility."

VI. C. <u>PSO's reliance on Georgia's PPA provision is inappropriate.</u>

Q: DOES PSO REFERENCE ANY OTHER STATE THAT ALLOWS AN ADDITIONAL RETURN ON PURCHASED POWER CONTRACTS?

A: PSO points to Georgia as a state that allows (but does not require) the Georgia Commission to provide an additional amount on the PPA price sufficient to encourage utilities in that state to make such purchases.[16] Georgia is the only state that PSO references, and the only I am aware of that provides any mark-up on PPAs.[17] My understanding is that the Georgia statute was passed in 1990 (during the deregulation trend of that period). The additional amount allowed by the commission is $2.30/kW-year, which the Georgia Commission Staff argues is excessive and should be reduced to $1.15/kW-year. Georgia's Staff argues that the current IRP and RFP processes in Georgia have made the practice of providing an incentive on PPAs obsolete and unnecessary.

Q: IS THE LEVEL OF RETURN PSO SEEKS FOR THE CALPINE CONTRACT COMPARABLE TO THE RECOVERY ALLOWED IN GEORGIA?

---

[16] See O.C.G.A. § 46-3A-8.

A: No. It is inaccurate to suggest that Georgia allows a return anywhere near the magnitude of the return requested by PSO.

Q: WHAT WOULD THE RETURN ON THE CALPINE CONTRACT BE IF PSO RECEIVED $2.30/KW-YEAR AS PROVIDED BY GEORGIA COMMISSION?

A: A return of $2.30/kW-year on a 260MW contract would be $598,000 per year with no gross up for tax. This is far less than the $3 million requested by PSO. Moreover, because the Georgia staff considers the current level of return excessive, it has recommended a return of $1.15/kW-year. Based on this lower level of return as recommended by staff in Georgia, the return on the Calpine Contract would be $299,000 per year, approximately one-tenth (1/10) of the $3 million additional earning level PSO has requested here.

Q: ARE THERE OTHER REASONS WHY PSO's REQUESTED RETURN ON THE CALPINE CONTRACT IS NOT COMPAREABLE TO THE RETURN ALLOWED IN GEORGIA?

A: Yes. There is a very important difference. In Georgia, the return on purchased power contracts is authorized by statute. In Oklahoma, any mark-up above actual cost on purchased power contracts is statutorily prohibited.

---

[17] See PSO response to OIEC Data Request 1-14(a).

VI. D. <u>**PSO is not being deprived its due process rights to reasonable earnings.**</u>

Q: WHAT HAS PSO ARGUED WITH RESPECT TO DUE PROCESS RIGHTS?

A: In Exhibit AWD-1, Mr. Decker testifies that he has been "advised by PSO counsel" that, without reasonable earnings on the Calpine Contract, PSO is being denied its due process rights.[18] In essence, Mr. Decker's argument is this: long-term purchased contracts are the "property" of PSO; PSO is entitled to earn a return on the fair value of all property used to provide service; therefore, PSO should be allowed to earn a return on the long term contracts (such as the Calpine Contract and the Exelon Contract). The problem with this argument is that the "prudent investment" or "historical cost" rule for setting returns for regulated utilities has been adopted and approved by the United States Supreme Court, Oklahoma courts and courts in virtually every other state. Under the *prudent investment rule*, a utility is compensated for all prudent investment at its actual cost when made (its "historical" or "original" cost). Thus, a utility's return is based on the level of <u>capital prudently invested</u> by the utility on assets that provide utility service: in effect, on rate base.[19] Here, PSO has made no investment in the Calpine plant; but instead, merely has contracted for a portion of the power produced at the plant. Consequently, there is no account recorded on the balance sheet of the Company that

---

[18] See Exhibit AWD-1, Direct Testimony of Alan Decker in Cause No. PUD201200079, at page 11, lines 6-11.

[19] The *prudent investment rule* was first articulated by Justice Brandeis in his dissent in the 1923 *SWBT v. Missouri PSC* case. It was then adopted by the Court in the 1944 *F.P.C. v. Hope* case and re-affirmed by the Court in the 1989 *Duquesne v. Barasch* case. Although the Court decline to mandate the *prudent investment rule* as the only constitutionally valid approach in the *Duquesne* case, in his concurring opinion, Justice Scalia makes it clear that, from a practical perspective, other ratemaking approaches would ultimately have to be evaluated using the *prudent investment rule,* since "We cannot determine whether the payments a utility has been allowed to collect constitute a fair return on investment, and thus whether the government's action is confiscatory, unless we agree upon what the relevant 'investment' is."

reflects costs associated with the Calpine plant, and thus, no investment level upon which a return can be calculated.

For PSO to be deprived of its Fifth and/or Fourteenth Amendment due process rights, the rate set by the Commission would have to be a confiscatory rate. However, in the words of Justice Scalia (see footnote above), "We cannot determine whether the payments a utility has been allowed to collect constitute a fair return on investment, and thus whether the government's action is confiscatory, unless we agree upon what the relevant 'investment' is." Here, since PSO's relevant investment in the Calpine contract is zero, a rate that does not provide an additional return on the contract price cannot be called a constitutionally invalid rate.

Q: PSO ALSO CLAIMS THAT THE COMMISSION HAS APPROVED NON-TRADITIONAL RETURNS BEFORE. IS THIS ACCURATE?

A: No. Mr. Decker sites the Demand Side Management ("DSM") incentives and the ONG Performance Based Rate ("PBR") process as examples of non-traditional returns. The DSM incentives are based on a small (15%) sharing of benefits and a return on DSM invested capital. The ONG PBR return is based entirely on the utility's prudent invested capital, in effect, on the *prudent-investment-rule.*

VI. E. <u>PSO is not entitled to a return on the "VALUE" of the Calpine Contract.</u>

Q: WHAT ARGUMENT DOES PSO RAISE CONCERNING EARNING A RETURN ON THE VALUE OF THE CALPINE CONTRACT?

A: PSO claims that Oklahoma law provides that PSO is entitled to earn a return on the *value* of the property it employs for the convenience of the public.[20] To reach this conclusion, PSO argues: (1) that the Calpine Contract is PSO's property; it is just a different form of property; and (2) that "as property that the Commission has approved," for service, PSO is entitled to earnings on that property.[21] In support of this proposition, Mr. Decker relies on *Lone Star Gas Co., v. Corporation Com'n of State of Okla.*, 1982 OK 79, 648 P.2d 36 at 39, to conclude that PSO is entitled to earn a "<u>return on the value of property which it employs for the convenience of the public</u>." [22] However, the portion of the opinion that Mr. Decker quotes is taken out of context and omits the preceding sentence that is critical to a fair understanding of its meaning. The full passage reads as follows:

> A regulated utility is entitled to a fair opportunity to earn a reasonable rate of return ***<u>on its investment</u>***. A public utility is entitled to earn a return on the value of the property it employs for the convenience of the public and a return to the equity owner sufficient to enable the public to operate successfully, maintain its financial integrity, attract capital, and ***<u>compensate its investors for the risk assumed</u>***.[23] (Emphasis added).

When read in the proper context, it is clear that Oklahoma law provides a utility with an opportunity to earn a return on the value of capital invested for public use. Here, the

---

[20] See Direct Testimony of Alan Decker at page 6, lines 9-10.

[21] See Exhibit AWD-1, Direct Testimony of Alan Decker in Cause No. 201200079, at page 11, lines 17-19.
[22] See Exhibit AWD-1 Direct Testimony of Alan Decker in Cause No. 201200079 at page 12, lines 3-6.
[23] See 575 P.2d 624 (Okla. 1978).

Calpine contract does not represent actual capital invested for the provision of utility service, and as such, PSO is not entitled to additional earnings under Oklahoma law.

Q: DO YOU AGREE WITH MR. DECKER THAT THE CALPINE CONTRACT IS PROPERTY FOR RATEMAKING PURPOSES?

A: No. The Calpine Contract is not "property" from either an accounting or a ratemaking definition of the word. For accounting purposes, there is no account on the balance sheet of the Company that records the cost of the Calpine Contract. For ratemaking purposes, there is no investment in the Calpine Contract upon which the utility is entitled to earn a return. PSO's reference to a 1965 condemnation case which refers to a contract as *property* in that context is holly irrelevant for ratemaking purposes. Under prevailing ratemaking principles, PSO is certainly not entitled to earn a return on the purported value of property for which no capital has been invested.

VI. F. Treatment of Purchase Power Contracts in Other States

Q: DO YOU KNOW HOW OTHER STATES TREAT THE RETURN ISSUE ON PURCHASED POWER CONTRACTS?

A: Yes. In 2012, Garrett Group conducted a survey of the twenty-four (24) western states to understand how purchased power contracts are treated for ratemaking purposes in each of these states, and to ascertain which states, if any, allow additional compensation above cost on purchased power contracts. Of the twenty-two states that responded to our survey, no state provides additional compensation above cost for PPAs. One state, Texas, gives the commission statutory authority to provide additional compensation on power contracts above cost if such additional compensation is required to protect the financial integrity of the utility. However, according to the Texas PUC staff member contacted in our survey, only one utility has requested additional compensation, and that request was denied. The utility requesting the additional compensation was the PSO affiliate SWEPCO. In Docket No. 37162, SWEPCO requested an $8.2 million mark-up for risk premiums on contracts transferred to an affiliated company. The Texas commission disallowed these payments finding them not to be fair and reasonable to SWEPCO's customers. Another state, Nevada, give the commission statutory authority to permit utilities to request mitigation for the impacts of imputed debt from renewable energy contracts, but, to date, the Nevada commission has never granted such relief. Washington did not respond to the survey.

The results of the Garrett Group, LLC survey are summarized in the following table and more fully discussed in the section below:

2012 Survey of Western States: Whether Investor-Owned Utilities are Allowed to Recover Additional Earnings on Purchased Power Agreements			
Jurisdiction	Additional Earnings NOT ALLOWED	Additional Earnings MAY BE ALLOWED	Have Additional Earnings Actually Been Approved in this Jurisdiction?
Alaska	X		**No**
Arizona	X		**No**
Arkansas	X		**No**
California	X		**No**
Colorado	X		**No**
Hawaii	X		**No**
Idaho	X		**No**
Iowa	X		**No**
Kansas	X		**No**
Louisiana	X		**No**
Minnesota	X		**No**
Missouri	X		**No**
Montana	X		**No**
Nevada		X (1)	**No**
North Dakota	X		**No**
Oklahoma	X		**No**
Oregon	X		**No**
South Dakota	X		**No**
Texas		X (2)	**No**
Utah	X		**No**
Wyoming	X		**No**
Nebraska(3)			
Washington(4)			
(1) Nevada ***statutes*** provide for mitigation of imputed debt impacts on *renewable energy contracts*.			
(2) Texas ***statutes*** allow "*exceptional*" rate relief if necessary to protect financial integrity of utility.			
(3) The Nebraska commission does not regulated investor owned electric companies.			
(4) Washington did not respond to the survey.			
The above summary is based on the results of a 2012 survey conducted by Garrett Group, LLC.			

Alaska: Utilities are not allowed to earn additional compensation on purchased power agreements (PPAs) above actual cost. PPAs are generally recovered by way of a direct pass-through in a cost of power adjustment clause (COPA). The regulations addressing PPAs are found at 3 ACC 52.470(d). An example of the Commission's policy governing the treatment of PPAs can be found in Docket No. U-11-100, Order No. 5. In Alaska, all additional power sources, green or not, are encouraged, but there have been increased efforts to diversify electric power supply options, especially in South-central Alaska to mitigate reliance on Cook Inlet natural gas, which is in short supply. The result has been more "green" power coming from hydro and wind. Utilities have not asked for additional compensation on PPAs.

Arizona: PPA costs are treated like fuel, as an expense, and recovered at cost. This treatment is established by practice and set forth in Decision 70628. In that decision's Plan of Administration, Section 9.A, Allowable Costs includes four FERC accounts, one of which is 555, Purchased Power. Section 9.B specifically states that no other costs are allowable "without preapproval from the Commission in an Order." Utilities have not asked for additional compensation on PPAs.

Arkansas: Arkansas does not allow utilities to be compensated above costs PPAs. PPAs are treated as a pass-through item only. This treatment is spelled out in the each tariff but not prescribed by statute. Utilities have not asked for additional compensation on PPAs.

California: No direct response received from staff. In its report dated May, 2010 submitted to the Governor and Legislature in compliance with California Public Utilities Code, Section 748 the Public Utilities Commission stated that fuel and purchased power contract costs "are passed through to customers without any mark-up or profit for the utility."

Colorado: Colorado does not allow additional compensation on PPAs. This treatment is considered a general policy. It is set forth in Docket 06S-234EG. The commission has not yet been asked for additional compensation on PPAs.

Hawaii: PPAs are a strict pass-through in Hawaii. This treatment is prescribed by Hawaii Administrative Rule 6-60-6. The commission has not yet been asked for additional compensation for PPAs, but is aware of discussion that this issue may become a concern.

Idaho: PPAs are included in rates only at cost. No additional compensation of any kind is allowed. This treatment is based on prior orders, but not prescribed by statute. The commission has not been presented with this question, but is aware that it has been raised in other states (e.g. Oregon). It is not something they would encourage.

Iowa: Iowa does not allow additional compensation on PPAs. They are a direct pass-through. This treatment is not prescribed by statute. The commission has received no specific requests to change this treatment. Before a utility could ask the commission for additional compensation it would have to reach an agreement with the Consumer Advocate Office on the issue.

Kansas: Kansas treats PPAs within the Energy Cost Adjustment mechanism which provides for recovery of actual costs. This is a long-established treatment and no utilities have recently asked for additional compensation on PPAs.

Louisiana: Utilities are not allowed to earn additional compensation on PPAs in Louisiana. This treatment *is specified in LPSC General* Orders, specifically, the Order dated 9/20/1983: In the Matter of the Expansion of Utility Power Plant, Proposed Certification of New Plant by the Louisiana Public Service Commission, and the General Order dated October 29, 2008, (R-30517): Possible modifications to the September 20, 1983 General Order to allow: (1) for more expeditious certifications of limited-term resource procurements; and (2) an exception for annual and seasonal liquidated damages block energy purchase. These General Orders were intended to streamline the certification procedures for purchase power agreements. Utilities have not asked for additional compensation on PPAs. Recent orders demonstrating this treatment include: U-31196, 11/13/2009; U-31284, 2/26/2010; U-31841, 3/29/2011 and U-32224, 2/2/2012.

Minnesota: Utilities are not allowed to earn additional compensation on PPAs, with approved rate schedules they flow through at cost (see Minn. Stat. section 216B.16 Subd.7). Several utilities (including Minnesota Power, Xcel and Ottertail) have attempted to persuade the commission to allow additional compensation claiming PPAs amounted to additional debt. These claims were rejected by the commission.

Missouri: On PPAs there is no return component, capacity costs are built into rates. PPAs have nothing in rate base. To earn a return, utilities must have ownership. The commission, aware that some rating agencies' views differ, does not allow for any "implied [debt] liability" for PPAs. No utilities have asked the commission for additional compensation on PPAs.

Montana: Utilities in Montana are not allowed additional compensation on PPAs. The cost of these contracts are included in commodity trackers and recovered dollar for dollar. This is a general policy and the commission has not been asked for additional compensation for PPAs.

Nebraska: The Nebraska Public Service Commission does not currently regulate any investor-owned electric utility companies at this time.

Nevada: PPAs, like fuel, are treated as a pass-through of costs without mark-up. (*See* NRS 704.062.2, NRS.704.110.10-704.110.11 and NRS 704.187; NAC 704.023 – 704.195, esp. 704.050). The rules for Nevada's Portfolio Standard provide that on long-term contracts for renewable energy the utility may request mitigation for the impact of imputed debt on its capital structure. (*See* NRS 704.7821.7(b) and NAC 704.88875). One request has been made for this type of additional compensation but was later withdrawn by the electric utility. The case was Docket No. 06-05040 filed on May 31, 2006, filed by Sierra Pacific Power Company now doing business as NV Energy.

New Mexico: No additional compensation above costs is allowed for PPAs. By statute (Public Utility Act) utilities are provided a dollar for dollar cost recovery through an adjustment clause for fuel and PPAs. None of the three New Mexico investor-owned utilities have asked for additional compensation on PPAs. General practice has recently allowed capacity charges (fixed fees for access to energy, administrative fees, etc.) to flow through the adjustment clauses which were meant for energy costs. To remedy this situation, the commission is considering a new rule for PPAs over 5 years in length which would flow their capacity charges (subject to prior approval) through base rates. These charges are for the standard fixed costs of the contract and do not represent a premium or any other sort of additional compensation for PPAs. PPAs are viewed as the capacity of last resort and the commission has demonstrated a definite preference for utility-owned generation assets as being in the best interest of the ratepayer.

North Dakota: Utilities are not allowed to earn additional compensation on PPAs in North Dakota. This treatment follows FAC Rules for FERC accounts 501 and 555. Utilities have not asked for additional compensation on PPAs. Ottertail recently approached the commission with the proposition that by purchasing a wind farm being built by FPL/Nexterra instead of contracting for the generation in a PPA Ottertail could save ratepayers 10% on the levelized cost per kWh. Ottertail requested that the commission remove risk from the purchase by agreeing not to oppose its prudency. Staff gave

Ottertail a letter of agreement and the utility purchased the wind farm. This process has led to a new procedure in North Dakota by which a utility can petition the commission to grant an Advanced Determination of Prudence. The intent of the commission is to reduce the risk of the self-build option to make it comparable to that of a PPA.

Oklahoma: Oklahoma does not allow additional compensation on PPAs. In Oklahoma, fuel and purchased power prices are recovered through the fuel adjustment clause (FAC) at cost.

Oregon: The Oregon commission does not allow additional compensation on PPAs. This treatment is a general policy and is not codified in statute or rule. Utilities generally do not ask for additional compensation on PPAs. The commission has considered this issue (Docket UM 1276) in the context of investigating mechanisms to address potential build-vs.-buy bias, in the larger context of resource planning and acquisition. In that case (Order No. 11-001, 1/3/2011) the commission declined to adopt any of the proposals for addressing the preference of a utility to build rather than buy (including proposals for additional compensation and incentives) stating, "Given our duty to serve the public interest by ensuring that rates are just and reasonable, we are unwilling to adopt any mechanism that would increase customer rates with no assurance of offsetting risks and costs to the ratepayer." The commission did allow utilities to raise the issue of the impact of debt imputation on credit ratings and earnings in future rate cases. It also reopened Docket UM 1182 to further examine issues related to competitive bidding. The Administrative Law Judge for Docket UM 1182 has now issued a ruling which directs parties to focus on three areas of potential build-vs.-buy bias – 1) cost over- and under-runs, 2) counterparty risk, and 3) heat rate degradation (of thermal plants). Additional compensation on PPAs did not emerge as an important issue in that proceeding.

South Dakota: Investor-owned utilities in South Dakota are not allowed additional compensation on PPAs. Statute SDCL 49-34A-25 provides for a dollar for dollar pass-through for fuel and PPAs - they cannot be marked up in any way. The Commission has not been asked for additional compensation on PPAs. One South Dakota regulated electric utility does have an incentive mechanism which involves PPAs. This mechanism passes through only 90% of the fuel and purchased power cost deviation from the level set in the last rate case. If the current fuel and PPA cost is below that set in the last rate case, the company passes back 90% of the savings. If the costs are above that set in the last case, the company recovers only 90% of the over-run.

Texas: The commission does not allow utilities additional compensation on PPAs. PPAs are treated within the fuel regulations and are passed through at cost without markup. To encourage economic PPAs, the Texas statutes at Section 36.204 through 36.207 authorize the commission to add a mark-up to the cost of PPAs to compensate for additional financial risk. Section 36.307 states that "Any mark-ups approved under Section 36.206 are an exceptional form of rate relief that the electric utility may recover from ratepayers only on a finding by the commission that the relief is necessary to maintain the utility's financial integrity." Only one utility has asked for additional compensation on PPAs above cost and that request was denied. SWEPCO sought to include an additional $8.2 million in risk premium compensation in Docket 37162. The Commission disallowed the $8.2 million premium as not fair and reasonable to SWEPCO customers.

Utah Utilities in Utah are not allowed additional compensation on PPAs. This treatment is general policy and considers that PPAs are not part of investor-contributed capital. In recent memory, no utilities have sought additional compensation on PPAs.

Wyoming: Utilities in Wyoming are not allowed any additional compensation on PPAs. This is a general policy and utilities have not asked the commission to consider any form of additional compensation on PPAs in recent memory.

VI. G. <u>Public Policy Concerns Regarding Return on the Calpine Contract</u>

Q: ARE THERE PUBLIC POLICY REASONS WHY THE COMMISSION WOULD <u>NOT</u> WANT TO PROVIDE A REGULATED UTILITY IN THIS STATE WITH ADDITIONAL COMPENSATION ON PURCHASED POWER CONTRACTS?

A: Yes. From a policy perspective, it would be inappropriate for the Commission to compensate a utility "as if" it had invested capital in the state when in reality it had made no such investment. In that situation, the Commission would actually be providing the utility with a <u>disincentive</u> to invest in Oklahoma. In my opinion, the traditional *regulatory compact* – where a utility is provided a protected franchise and the opportunity to earn a reasonable return on its invested capital in return for its commitment to serve customers within the franchise area – provides the proper balance of risks and rewards. Under this paradigm, the utility is rewarded with a protected franchise and the opportunity to earn a fair return on invested capital in return for placing capital at risk in order to meet its obligation to serve. Under PSO's new "enlightened" approach, the utility would retain all of the rewards that now exist under the regulatory compact but would shed the risks associated with actually placing investor capital at risk to provide service. If PSO's approach were followed, there would be no incentive for AEP to actually invest capital in Oklahoma. Instead, AEP would invest the capital *it would have invested in Oklahoma* in other jurisdictions and earn a return on that money there, and still be compensated in Oklahoma "as if" it had invested the money here. Under this approach, AEP would actually make more by <u>not investing</u> in Oklahoma.

Q: PLEASE SUMMARIZE YOUR RECOMMENDATIONS REGARDING PSO'S REQUESTED EARNINGS ASSOCIATED WITH THE CALPINE CONTRACT.

A: PSO's request for additional earnings should be denied for the following reasons:

1. PSO's requested return is contrary to Oklahoma law. Title 17 § 252 requires that fuel and purchased power costs be recovered from ratepayers at actual cost with no mark-up. PSO's request for a mark-up on the Calpine Contract clearly violates this statute.

2. PSO's claim that federal and state policies caused PSO to buy rather than build is unsupported. PSO not only provides no support for this claim but also provides no explanation as to why other utilities operating under identical rules in this state and similar rules in other states are able to add assets to rate base at market-competitive prices. PSO also fails to explain why it chose <u>not</u> to submit a *self-build* bid option in the RFP process for this capacity, but instead chose to merely complain about the results of the bid process later.

3. PSO provided no example of a state that follows it recommendation. PSO identified Georgia as a state that allows additional compensation on PPAs. However, the return allowed in Georgia is authorized <u>by statute</u> and is <u>10 times smaller</u> by comparison than the return requested by PSO.

4. PSO's requested return is contrary to constitutional requirements. Oklahoma and virtually every other state follow the *prudent-investment rule* (or *original-cost rule)* where a regulated utility's Fifth and Fourteenth Amendment rights are satisfied when the utility is allowed to earn a return on the original cost of assets prudently invested for the provision of utility service. Here, PSO has invested no capital in the Calpine Contract and is therefore, not entitled to earn a return on the contract.

5. PSO's requested return is inconsistent with the treatment in other states. A survey of the 24 western states found <u>no state</u> that actually provides additional compensation on purchased power contracts.

6. PSO's requested return is contrary to sound public policy. From a policy perspective, it would be inappropriate for the Commission to compensate a utility "as if" it had invested capital in the state when in reality it had made no such investment. This approach would actually provide the utility with a <u>disincentive</u> to invest in Oklahoma.

Q: DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A: Yes, it does.

EXHIBIT MG-1

MARK E. GARRETT

CONTACT INFORMATION:

11713 N.W. 120th Street
Yukon, OK 73099
(405) 239-2226

EDUCATION:

Juris Doctor Degree, With Honors, Oklahoma City University Law School, 1997
Post Graduate Hours in Accounting, Finance and Economics, 1984-85:
- University of Texas at Arlington
- University of Texas at Pan American
- Stephen F. Austin State University

Bachelor of Arts Degree, University of Oklahoma, 1978

CREDENTIALS:

Member Oklahoma Bar Association, 1997, License No. 017629
Certified Public Accountant in Oklahoma, 1992, Certificate No. 11707-R
Certified Public Accountant in Texas, 1986, Certificate No. 48514

WORK HISTORY:

CONSULTING PRACTICE (1996 - Present) Participate as a consultant and expert witness in electric utility, natural gas distribution company, and natural gas pipeline matters before regulatory agencies making recommendations related to cost-based rates. Review management decisions of regulated utility companies for reasonableness from a ratemaking perspective, especially in proceedings to review the reasonableness of prices paid for natural gas supplies, natural gas transportation, coal supplies, coal transportation and purchased power. Participate in gas gathering, gas transportation, gas contract and royalty valuation disputes to determine pricing and damage calculations and to make recommendations concerning the reasonableness of charges to royalty and working interest owners and other interested parties. Participate in regulatory proceedings to restructure the electric and natural gas utility industries.

OKLAHOMA CORPORATION COMMISSION - Coordinator of Accounting and Financial Analysis (1991 - 1994) Planned and supervised the audits of major public utility companies doing business Oklahoma for the purpose of determining revenue requirements. Presented both oral and written testimony as an expert witness for Staff in defense of numerous accounting and financial recommendations related to cost-of-service based rates. Audit work and testimony covered all areas of rate base and operating expense. Supervised, trained and reviewed the audit work of numerous Staff CPAs and auditors. Promoted from Supervisor of Audits to Coordinator in 1992.

FREEDOM FINANCIAL CORPORATION - Controller for Real Estate Development Company with $300 million in assets (1987 - 1990) Responsible for all financial reporting including monthly and annual financial statements, cash flow statements, budget reports, long-term financial planning, tax planning and personnel development. Managed the General Ledger and Accounts Payable departments and supervised a staff of seven CPAs and accountants. Reviewed all subsidiary state and federal tax returns and facilitated the annual independent financial audit and all state or federal tax audits. Received promotion from Assistant Controller in September 1988.

SHELBY, RUCKSDASHEL & JONES, CPA's - Auditor (1986 - 1987) Audited the financial statements of businesses in the state of Texas, with an emphasis in financial institutions.

EDINBURG HIGH SCHOOL, EDINBURG TEXAS – Teacher/Music Director (1978 - 1985)

Previous Experience Related to Cost-of-Service, Rate Design, Pricing and Energy-Related Issues

1. **Doyon Utilities, 2012 Alaska Rate Case** (Docket No. TA7-717) – Participating as an expert witness on behalf of the Department of Defense to provide testimony in twelve rate case reviews for the utility systems of Fort Wainwright, Fort Greely and Joint Base Elmendorf-Richardson before the Regulatory Commission of Alaska.

2. **Public Service Company of Oklahoma, 2012 (Cause No. PUD 201200079)** – Participating as an expert witness on behalf of the Oklahoma Industrial Energy Consumers ("OIEC")[1] before the Oklahoma Corporation Commission to provide expert testimony addressing the utility's request to earn additional compensation on a 510MW purchased power agreement with Exelon

3. **Centerpoint Energy Texas Gas, 2012 (Docket No.** GUD 10182) – Participated as an expert witness on behalf of the Steering Committee of Cities before the Texas Railroad Commission to provide expert testimony on various revenue requirement issues.

4. **Entergy Texas Inc., 2012 (PUC Docket No. 39896) –** Participated as an expert witness on behalf of the Cities[2] in ETI's general rate case to provide testimony on various cost of service issues and on the utility's overall revenue requirement.

5. **Oklahoma Natural Gas Company, 2012 (Cause No. PUD 2012-029)** – Participated as an expert witness on behalf of the Oklahoma Industrial Energy Consumer ("OIEC") before the OCC in ONG's Performance Based Rate ("PBR") application seeking Commission approval of a requested rate increase based upon formula results for 2011.

6. **University of Oklahoma, 2012** – Assisting the University of Oklahoma with an audit of the costs associated with its six utility operations and its contract with the Corix Group to provide utility services to the university.

7. **Oklahoma Gas and Electric Company, 2012 (Cause No. PUD 2011-186)** – Participating as an expert witness on behalf of the OIEC before the OCC in OG&E's application seeking Commission approval of a special contract with Oklahoma State University and a wind energy purchase agreement in connection therewith.

8. **Empire Electric Company, 2011, (Cause No. PUD 11-082)** – Participated as an expert witness on behalf of Enbridge before the OCC in Empire's rate case to provided testimony in both the revenue requirement and rate design phases of the proceedings to establish prospective cost-of-service based rates for the power company.

9. **Nevada Power Company, 2011, (Docket No. 11-04010)** - Participated as an expert witness on behalf of the Southern Nevada Hotel Group[3] before the Nevada PUC to sponsored written and oral testimony to address proposed changes to the Company's customer deposit rules.

10. **Nevada Power Company, 2011, (Docket No. 11-06006)** - Participated as an expert witness on behalf of the Southern Nevada Hotel Group before the Nevada PUC to sponsored written and oral testimony in both the revenue requirement phase and the rate design phase of the proceedings to establish prospective cost-of-service based rates for the power company.

11. **Public Service Company of Oklahoma, 2011 (Cause No. PUD 2011-106)** – Participated as an

---

1 OIEC is an association of approximately 25 large industrial manufacturing facilities in Oklahoma.
2 Beaumont, Conroe, Groves, Houston, Huntsville, Orange, Navasota, Nederland, Pine Forest, Pinehurst, Port Arthur, Port Neches, Rose City, Shenandoah, Silsbee, Sour Lake, Vidor, and West Orange
3 The Southern Nevada Hotel Group is comprised of Boyd Gaming, Caesars Entertainment, MGM Resorts, Station Casinos, Venetian Casino Resort, and Wynn Las Vegas.

expert witness on behalf of the Oklahoma Industrial Energy Consumer ("OIEC") before the OCC in PSO's application seeking rider recovery of third party SPP transmission costs and fees.

12. **Oklahoma Gas and Electric Company, 2011 (Cause No. PUD 2011-087)** – Participating as an expert witness on behalf of OIEC before the OCC in OG&E's rate case to provided testimony in both the revenue requirement and rate design phases of the proceedings to establish prospective cost-of-service based rates for the power company.

13. **Oklahoma Gas & Electric Company, 2011 (Docket No. 10-109-U)** – Participated as an expert witness on behalf of Gerdau Macsteel before the Arkansas Public Service Commission in OG&E's application to recover Smart Grid costs to make recommendations regarding the allocation of the Smart Grid costs.

14. **Oklahoma Gas & Electric Company, 2011 (Cause No. PUD 2011-027)** – Participated as an expert witness on behalf of the Oklahoma Industrial Energy Consumers ("OIEC") before the OCC in OG&E's application seeking to include retire medical expense in the Company's pension tracker mechanism.

15. **Public Service Company of Oklahoma, 2011 (Cause No. PUD 2010-50)** – Participated as an expert witness on behalf of OIEC before the Oklahoma Corporation Commission in AEP/PSO's application to recover ice storm O&M expenses through a regulatory asset/rider mechanism to address tax impact and return issues in the proposed rider.

16. **Public Service Company of Colorado, 2011 (Docket No. 10AL-908E)** – Participated as an expert witness on behalf of the Colorado Retail Council ("CRC") before the Colorado Public Utilities Commission to address PSCo's proposed Environmental Tariff.

17. **Oklahoma Gas & Electric Company, 2011 (Docket No. 10-067-U)** – Participated as an expert witness on behalf of the Northwest Arkansas Industrial Energy Consumers ("NWIEC")[4] before the Arkansas Public Service Commission in OG&E's general rate case application to provide testimony on various revenue requirement, cost of service and rate design issues.

18. **Oklahoma Gas & Electric Company, 2010 (Cause No. PUD 2010-146)** – Participated as an expert witness on behalf of the OIEC before the OCC in OG&E's application seeking rider recovery of third party SPP transmission costs and SPP administration fees.

19. **Massachusetts Electric Co. & Nantucket Electric Co. d/b/a National Grid, 2010 (Docket No. DPU 10-54)** – Participated as an expert witness providing both written and live testimony before the Massachusetts Department of Public Utilities on behalf of the Associated Industries of Massachusetts ("AIM") to address the Company's proposed participation in the 438MW Cape Wind project in Nantucket Sound

20. **Public Service Company of Oklahoma, 2010 (Cause No. PUD 2010-50)** – Participated as an expert witness on behalf of the OIEC before the OCC in AEP/PSO's general rate case application to provide testimony on various cost-of-service issues and on the utility's overall revenue requirement and rate design proposals.

21. **Texas-New Mexico Power Co., 2010 (Docket 38480)** – Participating as an expert witness on behalf of the Alliance of Texas Municipalities ("ATM") before the Texas PUC in TMNP's general rate case application to address various revenue requirement and rate design issues to establish prospective cost-of-service based rates.

22. **Southwestern Public Service Co., 2010 (PUCT Docket No. 38147)** – Participating as an expert

4 NWIEC is an association of industrial manufacturing facilities in northwest Arkansas.

witness on behalf of the Alliance of Xcel Municipalities ("AXM") in the SPS general rate case application to provide testimony before the Texas Public Utility Commission regarding rate base and operating expense issues and sponsor the AXM Accounting Exhibits.

23. **Oklahoma Gas & Electric Company, 2010 (Cause No. PUD 2010-37)** – Participating as an expert witness on behalf of OIEC before the OCC to address the preapproval and ratemaking treatment of OG&E's 220MW self-build wind project.

24. **Oklahoma Gas & Electric Company, 2010 (Cause No. PUD 2010-29)** – Participated as an expert witness on behalf of the OIEC before the OCC in OG&E's application seeking pre-approval of deployment of smart-grid technology and rider-recovery of the associated costs. Sponsored written testimony to address smart-grid deployment and time-differentiated fuel rates.

25. **Public Service Company of Oklahoma, 2010 (Cause No. PUD 2010-01)** – Participated as an expert witness on behalf of the OIEC before the OCC in the Company's proposed Green Energy Choice Tariff. Sponsored testimony to address the pricing and ratemaking treatment of the Company's proposed wind subscription tariff.

26. **Nevada Power Company, 2010 (Docket No. 10-02009)** – Participated as an expert witness on behalf of the Southern Nevada Hotel Group ("SNHG") before the Nevada PUC to provide testimony in NPC's Internal Resource Plan to address the ratemaking treatment of the proposed ON Line transmission line.

27. **Entergy Texas Inc., 2010 (PUC Docket No. 37744)** – Participating as an expert witness on behalf of the Cities in ETI's general rate case to provide testimony on various cost of service issues and on the utility's overall revenue requirement.

28. **El Paso Electric Company, 2010 (PUC Docket No. 37690)** – Participated as an expert witness on behalf of the City of El Paso in the EPI general rate case to provide testimony on various cost of service issues and on the utility's overall revenue requirement.

29. **Public Service Company of Oklahoma, 2009 (Cause No. 09-196)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's application for approval of DSM programs and cost recovery. Sponsored testimony to address program costs, lost revenue recovery, cost allocations and incentives.

30. **Oklahoma Gas and Electric Company, 2009 (Cause No. PUD 09-230 and 09-231)** – Participated as an expert witness on behalf of OIEC before the OCC in OG&E's application to add wind resources from two purchased power contracts. Sponsored written testimony to address the proper ratemaking treatment of the contract costs and the renewable energy certificates.

31. **Oklahoma Gas and Electric Company, 2009 (Cause No. PUD 08-398)** – Participated as an expert witness on behalf of OIEC before the OCC in OG&E's rate case. Provided testimony in both the revenue requirement and rate design phases of the proceedings to establish prospective cost-of-service based rates for the power company.

32. **Nevada Power Company, 2009, (Docket No. 08-12002)** - Participated as an expert witness on behalf of the Southern Nevada Hotel Group before the Nevada PUC. Sponsored written and oral testimony in both the revenue requirement phase and the rate design phase of the proceedings to establish prospective cost-of-service based rates for the power company.

33. **Public Service Company of Oklahoma, 2009 (Cause No. 09-031)** – Participated as an expert witness on behalf of OIEC before the OCC in PSO's application to add wind resources from two purchased power contracts. Sponsored written testimony to address the proper ratemaking treatment of the contract costs and the renewable energy certificates.

34. **Oklahoma Natural Gas Co., 2009 (Cause No. PUD 08-348)** – Participated as an expert witness on witness on behalf of the OIEC before the OCC in ONG's application to establish a Performance Based Rate tariff. Sponsored both written and oral testimony to address the merits of the utility's proposed PBR.

35. **Rocky Mountain Power, 2009 (Docket No. 08-035-38)** – Participated as an expert witness on behalf of the Division of Public Utilities in PacifiCorp's general rate case to provide testimony on various revenue requirement issues.

36. **Texas-New Mexico Power Co., 2008 (Docket 36025)** – Participating as an expert witness on behalf of the Alliance of Texas Municipalities ("ATM") before the Texas PUC in TMNP's general rate case application to address various revenue requirement and rate design issues to establish prospective cost-of-service based rates.

37. **Public Service Company of Oklahoma, 2008 (Cause No. 08-144)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's general rate case application to address revenue requirement and rate design issues to establish prospective cost-of-service based rates.

38. **Public Service Company of Oklahoma, 2008 (Cause No. 08-150)** – Participated as an expert witness on behalf of the OIEC before the OCC to address PSO's calculation of its Fuel Clause Adjustment for 2008.

39. **Oklahoma Gas and Electric Company, 2008 (Cause No. PUD 08-059)** – Participated as an expert witness on behalf of the OIEC before the OCC in OG&E's application seeking authorization of its Demand Side Management ("DSM") programs and the establishment of a DSM Rider to recover program costs, lost revenues and utility incentives.

40. **Entergy Gulf States, 2008 (PUC Docket No. 34800, SOAH Docket No. 473-08-0334)** – Participated as an expert witness on behalf of the Cities[5] in EGSI's general rate case to provide testimony on various cost of service issues and on the utility's overall revenue requirement.

41. **Public Service Company of Oklahoma, 2008 (Cause No. 07-465)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's application to recover the pre-construction costs of the cancelled Red Rock coal generation facility.

42. **Oklahoma Gas and Electric Company, 2008 (Cause No. 07-447)** – Participating as an expert witness on behalf of the OIEC before the OCC in OG&E's application seeking authorization to recover the pre-construction costs of the cancelled Red Rock coal generation facility using proceeds from sales of excess SO_2 allowances.

43. **Rocky Mountain Power, 2008 (Docket No. 07-035-93)** – Participating as an expert witness on behalf of Staff in PacifiCorp's general rate case to provide testimony on various revenue requirement issues.

44. **Public Service Company of Oklahoma, 2008 (Cause No. PUD 07-449)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's application seeking authorization of its Demand Side Management ("DSM") programs and the establishment of a DSM Rider to recover program costs, lost revenues and utility incentives.

45. **Public Service Company of Oklahoma, 2008 (Cause No. PUD 07-397)** – Participated as an expert witness on behalf of OIEC before the OCC in PSO's application seeking authorization to defer storm

---

5 Beaumont, Conroe, Groves, Houston, Huntsville, Orange, Navasota, Nederland, Pine Forest, Pinehurst, Port Arthur, Port Neches, Rose City, Shenandoah, Silsbee, Sour Lake, Vidor, and West Orange

damage costs in a regulatory asset account and to recover the costs using the proceeds from sales of excess SO_2 allowances.

46. **Oklahoma Gas & Electric Co., 2007 (Cause No. PUD 07-012)** – Participated as an expert witness on behalf of OIEC before the OCC in OG&E's application seeking pre-approval to construct the Red Rock coal plant to address the Company's proposed rider recovery mechanism.

47. **Oklahoma Natural Gas Co., 2007 (Cause No. PUD 07-335)** – Participated as an expert witness on behalf of the OIEC before the OCC in ONG's application proposing alternative cost recovery for the Company's ongoing capital expenditures through the proposed Capital Investment Mechanism Rider ("CIM Rider"). Sponsored testimony to address ONG's proposal.

48. **Public Service Company of Oklahoma, 2007 (Cause No. PUD 06-030)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's application seeking a used and useful determination for its planned addition of the Red Rock coal plant to address the Company's use of debt equivalency in the competitive bidding process for new resources.

49. **Public Service Company of Oklahoma, 2006 (Cause No. PUD 06-285)** – Participated as an expert witness on behalf of the OIEC before the OCC in PSO's general rate case application to address various revenue requirement and rate design issues to establish prospective cost-of-service based rates.

50. **Nevada Power Company, 2007, (Docket No. 07-01022)** - Participated as an expert witness on behalf of the MGM MIRAGE before the Nevada PUC in Nevada Power Company's deferred energy docket to determine the level of prudent company expenditures for fuel and purchased power.

51. **Nevada Power Company, 2006, (Docket No. 06-11022)** - Participated as an expert witness on behalf of the MGM MIRAGE properties before the Nevada PUC. Sponsored written and oral testimony in both the revenue requirement phase and the rate design phase of the proceedings to establish prospective cost-of-service based rates for the power company.

52. **Southwestern Public Service Co., 2006 (PUCT Docket No. 37766)** – Participated as an expert witness on behalf of the Alliance of Xcel Municipalities ("AXM") in the SPS general rate case application. Provided testimony before the Texas Public Utility Commission regarding rate base and operating expense issues and sponsored the Accounting Exhibits on behalf of AXM.

53. **Atmos Energy Corp., Mid-Tex Division, 2006 (Texas GUD 9676)** – Participated as an expert witness in the Atmos Mid-Tex general rate case application on behalf of the Atmos Texas Municipalities "ATM"). Provided written and oral testimony before the Railroad Commission of Texas regarding the revenue requirements of Mid-Tex including various rate base, operating expense, depreciation and tax issues. Sponsored the Accounting Exhibits for ATM.

54. **Nevada Power Company, 2006 (Docket No. 06-06007)** – Participated as an expert witness on behalf of the MGM MIRAGE in the Sinatra Substation Electric Line Extension and Service Contract case. Provided both written and oral testimony before the Nevada Public Utility Commission to provide the Commission with information as to why the application is consistent with the line extension requirements of Rule 9 and why the cost recovery proposals set forth in the application provide a least cost approach to adding necessary new capacity in the Las Vegas strip area.

55. **Public Service Co. of Oklahoma, 2006 (Cause No. PUD 05-00516)** - Participated as an expert witness on behalf of the OIEC to review PSO's application for a "used and useful" determination of its proposed peaking facility.

56. **Oklahoma Gas and Electric Co., 2006 (Cause No. PUD 06-00041)** – Participated as an expert witness on behalf of the OIEC in OG&E's application to propose an incentive sharing mechanism for

SO_2 allowance proceeds.

57. **Chermac Energy Corporation, 2006 (Cause No. PUD 05-00059 and 05-00177)** – Participated as an expert witness on behalf of the OIEC in Chermac's PURPA application. Sponsored written responsive and rebuttal testimony to address various rate design issues arising under the application.

58. **Oklahoma Gas and Electric Co., 2006 (Cause No. PUD 05-00140)** – Participated as an expert witness on behalf of the OIEC in OG&E's 2003 an 2004 Fuel Clause reviews. Sponsored written testimony to address the purchasing practices of the Company, it transactions with affiliates, and the prices paid for natural gas, coal and purchased power.

59. **Nevada Power Company, 2006, (Docket No. 06-01016)** - Participated as an expert witness on behalf of the MGM MIRAGE properties before the Nevada PUC. Sponsored written testimony in NPC's deferred energy docket to determine the level of prudent company expenditures for fuel and purchased power.

60. **Oklahoma Gas and Electric Co., 2005 (Cause No. PUD 05-151)** – Participated as an expert witness on behalf of the OIEC in OG&E's general rate case application. Sponsored both written and oral testimony before the OCC to address various revenue requirement and rate design issues for the purpose of setting prospective cost-of-service based rates.

61. **Oklahoma Natural Gas Co., 2005 (Cause No. PUD 04-610)** – Participated as an expert witness on behalf of the Attorney General of Oklahoma. Sponsored written and oral testimony to address numerous rate base, operating expense and depreciation issues for the purpose of setting prospective cost-of-service based rates.

62. **CenterPoint Energy Arkla, 2004 (Cause No. PUD 04-0187)** – Participating as an expert witness on behalf of the Attorney General of Oklahoma: Sponsored written testimony to provide the OCC with analysis from an accounting and ratemaking perspective of the Co.'s proposed change in depreciation rates from an Average Life Group to an Equal Life Group methodology. Addressed the Co.'s proposed increase in depreciation rates associated with increased negative salvage value calculations.

63. **Public Service Co. of Oklahoma, 2004 (Cause No. PUD 02-0754)** – Participated as an expert witness on behalf of the OIEC. Sponsored written testimony (1) making adjustments to PSO's requested recovery of an ICR programming error, (2) correcting errors in the allocation of trading margins on off-system sales of electricity from AEP East to West and among the AEP West utilities and (3) recommending an annual rather than a quarterly change in the FAC rates.

64. **PowerSmith Cogeneration Project, 2004 (Cause No. PUD 03-0564)** - Participated as an expert witness on behalf of the OIEC to provide the OCC with direction in setting an avoided cost for the PowerSmith Cogeneration project under PURPA requirements. Provided both written and oral testimony on the provisions of the proposed contract under PURPA:

65. **Electric Utility Rules for Affiliate Transactions, 2004 (Cause No. RM 03-0003)** – Participated as a consultant on behalf of the OIEC to draft comments to assist the OCC in developing rules for affiliate transactions. Assisted in drafting the proposed rules. Successful in having the Lower of Cost or Market rule adopted for affiliate transactions in Oklahoma.

66. **Nevada Power Company, 2003, (Docket No. 03-10001)** - Participated as an expert witness on behalf of the MGM MIRAGE properties before the Nevada PUC. Sponsored written and oral testimony in both the revenue requirement phase and the rate design phase of the proceedings to establish prospective cost-of-service based rates for the power company.

67. **Nevada Power Company, 2003, (Docket No. 03-11019)** - Participated as an expert witness on behalf of the MGM MIRAGE before the Nevada PUC in Nevada Power Company's deferred energy

docket to determine the level of prudent company expenditures for fuel and purchased power.

68. **Oklahoma Gas & Electric Co., 2003** – Participated as an expert witness on behalf of the OIEC in OG&E's general rate case application before the OCC to address numerous rate base, operating expense and rate design issues for the purpose of setting prospective cost-of-service based rates.

69. **Public Service Company of Oklahoma, 2003 (Cause No. PUD 03-0076)** – Participating as an expert witness on behalf of the OIEC before the OCC in PSO's general rate case application to address various revenue requirement and rate design issues to establish prospective cost-of-service based rates.

70. **Oklahoma Gas & Electric Co., 2003 (Cause No. PUD 03-0226)** – Participated as an expert witness on behalf of the OIEC. Provided both written and oral testimony before the OCC to determine the appropriate level to include in rates for natural gas transportation and storage services acquired from an affiliated company.

71. **Nevada Power Company, 2003 (Docket No. 02-5003-5007)** - Participated as an expert witness on behalf of the MGM Mirage before the Nevada PUC. Sponsored written and oral testimony to calculate the appropriate exit fee in MGM Mirage's 661 Application to leave the system.

72. **McCarthy Family Farms, 2003** – Participated as a consultant to assist in converting a biomass and biosolids composting process into a renewable energy power producing business in California.

73. **Bice v. Petro Hunt, 2003 (ND, Supreme Court No. 20030306)** - Participated as an expert witness in a class certification proceeding to provide cost-of-service calculations for royalty valuation deductions for natural gas gathering, dehydration, compression, treatment and processing fees in North Dakota.

74. **Nevada Power Company, 2003 (Docket No. 03-11019)** - Participated as a consulting expert on behalf of the MGM Mirage before the Nevada PUC in Nevada Power Company's deferred energy docket to determine the level of prudent company expenditures for fuel and purchased power. Provided written and oral testimony on the reasonableness of the cost allocations to the utility's various customer classes.

75. **Wind River Reservation, 2003 (Fed. Claims Ct. No. 458-79L, 459-79L)** – Participated as a consulting expert on behalf of the Shoshone and Arapaho Tribes to provide cost-of-service calculations for royalty valuation deductions for gathering, dehydration, treatment and compression of natural gas and the reasonableness of deductions for gas transportation.

76. **Oklahoma Gas & Electric Co., 2002 (Cause No. PUD 01-0455)** – Participated as an expert witness on behalf of the OIEC before the OCC. Sponsored written and oral testimony on numerous revenue requirement issues including rate base, operating expense and rate design issues to establish prospective cost-of-service based rates.

77. **Nevada Power Company, 2002 (Docket No. 02-11021)** - Participated as an expert witness on behalf of the MGM Mirage before the Nevada PUC in Nevada Power Company's deferred energy docket to determine the level of prudent company expenditures for fuel and purchased power and to make recommendations with respect to rate design.

78. **Nevada Power Company, 2002 (Docket No. 01-11029)** - Participated as a consulting expert on behalf of the MGM Mirage before the Nevada PUC in Nevada Power Company's deferred energy docket to determine the level of prudent company expenditures for fuel and purchased power included in the Company's $928 million deferred energy balances.

79. **Nevada Power Company, 2002 (Docket No. 01-10001)** - Participated as an expert witness on behalf

of the MGM Mirage before the Nevada PUC. Sponsored written and oral testimony in both the revenue requirement phase and the rate design phase of the proceedings to establish prospective cost-of-service based rates for the power company.

80. **Chesapeake v. Kinder Morgan, 2001 (CIV-00-397L)** - Participated as an expert witness on behalf of Chesapeake Energy in a gas gathering dispute. Sponsored testimony to calculate and support a reasonable rate on the gas gathering system. Performed necessary calculations to determine appropriate levels of operating expense, depreciation and cost of capital to include in a reasonable gathering charge and developed an appropriate rate design to recover these costs.

81. **Southern Union Gas Company, 2001** - Participated as a consultant to the City of El Paso in its review of SUG's gas purchasing practices, gas storage position, and potential use of financial hedging instruments and ratemaking incentives to devise strategies to help shelter customers from the risk of high commodity price spikes during the winter months.

82. **Nevada Power Company, 2001** - Participated as an expert witness on behalf of the MGM-Mirage, Park Place and Mandalay Bay Group before the Nevada Public Utility Commission to review NPC's Comprehensive Energy Plan (CEP) for the State of Nevada and make recommendations regarding the appropriate level of additional costs to include in rates for the Company's prospective power costs associated with natural gas and gas transportation, coal and coal transportation and purchased power.

83. **Bridenstine v. Kaiser-Francis Oil Co. et al., 2001 (CJ-95-54)** - Participated as an expert witness on behalf of royalty owner plaintiffs in a valuation dispute regarding gathering, dehydration, metering, compression, and marketing costs. Provided cost-of-service calculations to determine the reasonableness of the gathering rate charged to the royalty interest. Also provided calculations as to the average price available in the field based upon a study of royalty payments received on other wells in the area.

84. **Klatt v. Hunt et al., 2000 (ND)** - Participated as an expert witness and filed report in United States District Court for the District of North Dakota in a natural gas gathering contract dispute to calculate charges and allocations for processing, sour gas compression, treatment, overhead, depreciation expense, use of residue gas, purchase price allocations, and risk capital.

85. **Oklahoma Gas and Electric Co., 2000 (Cause No. PUD 00-0020)** - Participated as an expert witness on behalf of the OIEC before the OCC. Sponsored testimony on OG&E's proposed Generation Efficiency Performance Rider (GEPR). Provided a list of criteria with which to measure a utility's proposal for alternative ratemaking. Recommended modifications to the Company's proposed GEPR to bring it within the boundaries of an acceptable alternative ratemaking formula.

86. **Oklahoma Gas and Electric Co., 1999** - Participated as an expert witness on behalf of the OIEC before the OCC. Sponsored testimony on OG&E's proposed Performance Based Ratemaking (PBR) proposal including analysis of the Company's regulated return on equity, fluctuations in the capital investment and operating expense accounts of the Company and the impact that various rate base, operating expense and cost of capital adjustments would have on the Company's proposal.

87. **Nevada Power Company, 1999 (Docket No. 99-7035)** - Participated as an expert witness on behalf of the Mirage, Park Place and Mandalay Bay Group before the Nevada PUC. Sponsored written and oral testimony addressing the appropriate ratemaking treatment of the Company's deferred energy balances, prospective power costs for natural gas, coal and purchased power and deferred capacity payments for purchased power.

88. **Nevada Power Company, 1999 (Docket No. 99-4005)** - Participated as an expert witness on behalf of the Mirage, Park Place and Mandalay Bay Group before the Nevada PUC. Sponsored written and oral testimony to unbundle the utility services of the NPC and to establish the appropriate cost-of-service allocations and rate design for the utility in Nevada's new competitive electric utility industry.

89. **Nevada Power Company, 1999 (Docket No. 99-4005)** - Participated as an expert witness on behalf of the Mirage, Park Place and Mandalay Bay Group before the Nevada PUC. Sponsored written and oral testimony to establish the cost-of-service revenue requirement of the Company.

90. **Nevada Power/Sierra Pacific Merger, 1998 (Docket No. 98-7023)** - Participated as an expert witness on behalf of the Mirage and MGM Grand before the Nevada PUC. Sponsored written and oral testimony to establish (1) appropriate conditions on the merger (2) the proper sequence of regulatory events to unbundle utility services and deregulate the electric utility industry in Nevada (3) the proper accounting treatment of the acquisition premium and the gain on divestiture of generation assets. The recommendations regarding conditions on the merger, the sequence of regulatory events to unbundle and deregulate, and the accounting treatment of the acquisition premium were specifically adopted in the Commission's final order.

91. **Oklahoma Natural Gas Company, 1998 (Cause No. PUD 98-0177)** - Participated as an expert witness in ONG's unbundling proceedings before the OCC. Sponsored written and oral testimony on behalf of Transok, LLC to establish the cost of ONG's unbundled upstream gas services. Substantially all of the cost-of-service recommendations to unbundle ONG's gas services were adopted in the Commission's interim order.

92. **Public Service Company of Oklahoma, 1997 (Cause No. PUD 96-0214)** - Audited both rate base investment and operating revenue and expense to determine the Company's revenue requirement and cost-of-service. Sponsored written testimony before the OCC on behalf of the OIEC.

93. **Oklahoma Natural Gas /Western Resources Merger, 1997 (Cause No. PUD 97-0106)** - Sponsored testimony on behalf of the OIEC regarding the appropriate accounting treatment of acquisition premiums resulting from the purchase of regulated assets.

94. **Oklahoma Gas and Electric Co., 1996 (Cause No. PUD 96-0116)** - Audited both rate base investment and operating income. Sponsored testimony on behalf of the OIEC for the purpose of determining the Company's revenue requirement and cost-of-service allocations.

95. **Oklahoma Corporation Commission, 1996** - Provided technical assistance to Commissioner Anthony's office in analyzing gas contracts and related legal proceedings involving ONG and certain of its gas supply contracts. Assignment included comparison of pricing terms of subject gas contracts to portfolio of gas contracts and other data obtained through annual fuel audits analyzing ONG's gas purchasing practices.

96. **Tenkiller Water Company, 1996** - Provided technical assistance to the Attorney General of Oklahoma in his review of the Company's regulated cost-of-service for the purpose of setting prospective utility rates.

97. **Arkansas Oklahoma Gas Company, 1995 (Cause No. PUD 95-0134)** - Sponsored written and oral testimony before the OCC on behalf of the Attorney General of Oklahoma regarding the price of natural gas on AOG's system and the impact of AOG's proposed cost of gas allocations and gas transportation rates and tariffs on AOG's various customer classes.

98. **Enogex, Inc., 1995 (FERC 95-10-000)** - Analyzed Enogex's application before the FERC to increase gas transportation rates for third party shippers and made recommendations regarding revenue requirement, cost-of-service and rate design on behalf of independent producers and shippers.

99. **Oklahoma Natural Gas Company, 1995 (Cause No. PUD 94-0477)** - Analyzed a portfolio of ONG's gas purchase contracts in the Company's Payment-In-Kind (PIC) gas purchase program and made recommendations to the OCC Staff on behalf of Terra Nitrogen, Inc. regarding the inappropriate profits made by ONG on the sale of the gas commodity through the PIC program

pricing formula. Also analyzed the price of gas on ONG's system, ONG's cost-of-service based rates, and certain class cross-subsidizations in ONG's existing rate design.

100. **Arkansas Louisiana Gas Company, 1994 (Cause No. PUD 94-0354)** - Planned and supervised the rate case audit for the OCC Staff and reviewed the workpapers and testimony of the other auditors on the case. Sponsored cost-of-service testimony on cash working capital and developed policy recommendations on post test year adjustments.

101. **Empire District Electric Company, 1994 (Cause No. PUD 94-0343)** - Planned and supervised the rate case audit for the OCC Staff and reviewed the workpapers and testimony of other auditors. Sponsored cost-of-service testimony on rate base investment areas including cash working capital.

102. **Oklahoma Natural Gas Company, 1992 through 1993 (Cause No. PUD 92-1190)** - Planned and supervised the rate case audit of ONG for the OCC Staff. Reviewed all workpapers and testimony of the other auditors on the case. Sponsored written and oral testimony on numerous cost-of-service adjustments. Analyzed ONG's gas supply contracts under the Company's PIC program.

103. **Oklahoma Gas and Electric Company, 1991 through 1992 (Cause No. PUD 91-1055)** - Audited the rate base, operating revenue and operating expense accounts of OG&E on behalf of the OCC Staff. Sponsored written and oral testimony on numerous revenue requirement adjustments to establish the appropriate level of costs to include for the purpose of setting prospective rates.

EXHIBIT MG-2

EXHIBIT MG-2

PSO 2012 EPA Settlement Case
Cause No. PUD 201200054

OIEC Analysis of PSO'S Actual Projected Rate Increase by 2016

(A) Line	(B) Description	(C) Source	(D) Environmental Compliance Plan	(E) BLPP Rider [Used to Retire NE4]	(F) BLPP Rider	(G) SPPTC Rider	(H) Reliability, DSM and Assessment Riders	(I) Increased Energy Costs	(J) Totals
1	Base Rate Revenues PUD 2010-050	Exhibit SGJ-1	$516,784,226 (1)	$516,784,226	$516,784,226	$516,784,226	$516,784,226	$516,784,226	$516,784,226
2	Fuel Revenues PUD 2010-050	Sch M-1 10-050	$534,353,437 (1)	$534,353,437	$534,353,437	$534,353,437	$534,353,437	$534,353,437	$534,353,437
3	Rider Revenues PUD 2010-050	OIEC 5-1 10-050	$75,431,009 (2)	$75,431,009	$75,431,009	$75,431,009	$75,431,009	$75,431,009	$75,431,009
4	**2011 Base-Line Revenues**		$1,126,568,672	$1,126,568,672	$1,126,568,672	$1,126,568,672	$1,126,568,672	$1,126,568,672	$1,126,568,672
5									
6	PSO Identified EPA Settlement Increase	Exhibit RWH-1	$147,427,754						$147,427,754
7									
8	PSO Identified Contract Earnings	Exhibit RWH-1	$5,000,000						$5,000,000
9									
10	PSO Identified BLPP Rider Increases	Exhibit SGJ-1		$133,751,660 (3)	$91,596,224 (4)				$225,347,884
11									
12	PSO Identified Other Rider Increases	Exhibit SGJ-1				$74,269,232 (5)	-$19,418,341 (6)		$54,850,891
13									
14	PSO Identified Gas Unit Increases	Exhibit RWH-1	$11,574,545						$11,574,545
15									
16	PSO Identified Energy Cost Increases	Exhibit SGJ-1						$61,056,425 (7)	$61,056,425
17									
18	**2016 PSO Identified Rate Increases**		$164,002,299	$133,751,660	$91,596,224	$74,269,232	-$19,418,341	$61,056,425	$505,257,499 (8)
19									
20	Percentage Increase over 2011 Base-Line (Ln 3)		**14.6%**	**11.9%**	**8.1%**	**6.6%**	**-1.7%**	**5.4%**	**44.8%**

Footnotes:

(1) Base rate revenues comes from PSO's Exhibit SGJ-1 in this case and fuel revenues comes from PSO's Exhibit M-1 filed in Cause No. PUD 201000050

(2) Rider revenues comes from PSO response to OIEC 5-1 in Cause No. PUD 201000050.

(2) Recap: Rider Revenues PUD 2010-050	
Regulatory Assessment Fe	$1,157,642
Reliability	$26,391,499
Purchase Capacity Fee	$12,037,899
DSM	$4,999,015
RARR	$16,338,366
PPCR	$14,151,114
BLPP	$214,225
Economic Development R	$141,250
	$75,431,009

(3) Recap: Portion of Exelon Contract needed to make up the difference between the 460MW retired at NE and the 260MW Calpine contract used to replace it:

Annual kWh from Retired 460 MW NE Unit (at Actual 2010 75% Capacity Factor)	2010 Actual NE CF	3,022,200,000
Less kWh Received from 260 MW Calpine Contract	Decker 2012-54 p.2	1,400,000,000
Annual kWh to come from Other Source (Exelon Contract)		1,622,200,000
Annual Output from Exelon Contract (520MW at 60% Capacity Factor)	Decker 2009-99 p.3	2,733,120,000
Portion of Exelon Contract Used to Cover NE Retirement		59.35%

(4) This is the $225,347,884 BLPP amount from SGJ-1 reduced by the 59.35% used to replace the kWh lost through the retirement of the 460 MW NE unit.

(5) The SPPTC is a new rider so these cost additions are shown separately.

(6) This is the difference between the rider revenues identified on Exhibit SGJ-1 and the rider revenues from 2010-050.

(6) Reconcile Rider Revenues	
Rider Revenues SGJ-1	$56,012,668
Rider Revenues 10-050	-$75,431,009
	-$19,418,341

(7) This amount is the $595,409,662 identified on Exhibit SGJ-1 for 2016 energy cost levels less the amount included in the 2010 rate case (Line 2).

(8) Agrees with PSO identified increases on Exhibits RWH-1 and SGJ-1 except for the load growth increase which should be covered by the additional load.

(7) Reconcile PSO Identified Increases	
Exhibit SGJ-1	$1,494,657,380
Exhibit RWH-1	$164,002,299
PUD 2010-050	-$1,126,568,672
SGJ-1 Load Growth	-$26,833,507
2016 Increase	$505,257,500