

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE)	
COMPANY OF OKLAHOMA, AN)	
OKLAHOMA CORPORATION, FOR)	
AN ADJUSTMENT IN ITS RATES AND)	
CHARGES AND THE ELECTRIC)	CASE NO. PUD 2022-000093
SERVICE RULES, REGULATIONS AND)	
CONDITIONS OF SERVICE FOR)	
ELECTRIC SERVICE IN THE STATE)	
OF OKLAHOMA AND TO APPROVE A)	
FORMULA BASE RATE)	
PROPOSAL)	

**OKLAHOMA ATTORNEY GENERAL’S MOTION TO MODIFY
ORDER NO. 738226 AND ADOPT THE JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Gentner F. Drummond, Attorney General of Oklahoma, on behalf of the utility customers of this state, hereby submits his Motion to Modify Order No. 738226 in the above-styled Cause.

INTRODUCTION

This Case comes before the Oklahoma Corporation Commission (the “Commission”) on the above styled and numbered Application of Public Service Company of Oklahoma (“PSO” or “Company”) filed on November 22, 2022. PSO’s Application after six-month post-test year updates requested a base rate increase in the amount of \$294.5 million or over \$14 per month for the average residential customer. On May 5, 2023, a Joint Stipulation and Settlement Agreement (“Settlement Agreement”) was executed between the Office of the Attorney General (“Attorney General”), AARP, the Public Utility Division Staff of the Oklahoma Corporation Commission (“PUD”), and PSO (collectively the “Stipulating Parties”).

The Settlement Agreement reduced the average residential impact from over \$14 increase per month to \$3.57. The Settlement Agreement also contained a number of valuable concessions for customers including a cap on the average residential bill impact, a reduction to the residential base charge by \$3 per month, changes to antiquated transmission allocations which currently harm residential customers and subsidize other classes, and changes to the cost allocations of wind generation assets which currently harm residential customers and subsidize other classes.

A hearing was held on the Settlement Agreement on May 22, 23, and 24, 2023, before the Administrative Law Judge (“ALJ”), after which the ALJ issued her Report and

Recommendation of the ALJ (“Report and Recommendation”) on July 14, 2023, and an Amended Report and Recommendation on July 17, 2023. The Attorney General, AARP, PUD, and PSO filed Exceptions to the Report and Recommendations of the ALJ both separately and some jointly. A number of arguments were raised in Exceptions by various parties, including that the ALJ’s recommendations were contrary to Commission precedent, promotes bad regulatory policy, are contrary to law and prior Commission decisions, and would deny the Stipulating Parties due process of law. On August 15, 2023, oral arguments were presented to the Commission.

The Commission issued Order No. 738226 on November 3, 2023. The Attorney General, pursuant to OAC 165:5-17-1, has filed this Motion to Modify Order No. 738226.

THE STIPULATING PARTIES

The Attorney General is charged by statute to represent and protect the collective interests of utility customers of this state in “rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding.” 74 O.S. 18b (20).

The PUD, a division of the Commission, has a long history of reviewing the rates of regulated utilities in rate-making proceedings and making recommendations as to rates that will be fair, just, and reasonable for utility consumers.

AARP is an organization that provides various services, including intervening in utility rate-making proceedings, to represent AARP members who are residential customers. AARP has approximately 400,000 members residing in Oklahoma, representing all segments of the socio-economic scale.

PSO is an electric utility serving over 570,000 Oklahoma customers in over 230 communities across the state.

PROVISIONS OF ORDER NO. 738226 SOUGHT TO BE MODIFIED

The Attorney General requests that all provisions of Order No. 738226 (“Order”) modifying the Settlement Agreement between the Attorney General, AARP, PUD, and PSO be set aside and the Order be modified to adopt the Settlement Agreement *in toto*.

I. THE COMMISSION SHOULD MODIFY ITS FINAL ORDER IN THIS CASE TO ACCEPT THE SETTLEMENT AGREEMENT NEGOTIATED BY THE ATTORNEY GENERAL, AARP, THE COMMISSION’S PUBLIC UTILITY DIVISION, AND PSO.

A. By not accepting the Settlement Agreement, the Commission’s Order defies decades of precedent resulting in a denial of a full hearing.

The Commission’s Final Order in this proceeding is not based on a fully developed record. At the Hearing on the Settlement Agreement, the ALJ stated that the hearing was to

be a hearing on the Agreement. (“We’re here to talk about the [Settlement Agreement] and any issues arising from that [Agreement].” (5/22/23 Tr. 8, LL. 13-15.)) The Stipulating Parties proceeded to provide testimony in support of the Settlement Agreement.

By altering the Settlement Agreement, “notwithstanding the non-severability clause”, the Commission’s Order denies parties the right to have a full hearing on all issues. The Commission’s Order denies Stipulating Parties the right to present their underlying testimony in full, cross examine witnesses that have provided pre-filed testimony relied upon by the Commission to support the Order, and to present witnesses to support or oppose the parties’ underlying positions.

The Commission’s Rules of Practice address the hearing process at OAC 165:5-13-3. Section J of the rule is entitled “Prepared testimony”, which PSO and other parties submitted for Commission consideration. When a witness files pre-filed testimony under the rule, the “witness shall be subject to cross-examination.” The Commission’s Order ignored its procedural rule when it decided it could turn a hearing on the Settlement Agreement into a hearing on adjudicating the merits of each individual element of the Agreement without regard to the non-severability clause.

The Commission acknowledges that the provisions of the Settlement Agreement were based on the totality of the Agreement. On page nine of the Order, the Commission states:

The Commission recognizes that in settlement negotiations parties ultimately agree to certain provisions in the spirit of compromise in which they might not otherwise accept. In this instance, the Commission is modifying the proposed [Settlement Agreement], which may contradict the parties’ internal decisions which led to supporting the agreement.

The Oklahoma Supreme Court has given clear instructions to administrative agencies that have promulgated procedural rules. In *Henry v. Corporation Com’n of State of Okl.*, 1990 OK 103, 825 P.2d 1262 (1990) the court held:

When an administrative agency such as the Commission promulgates rules to govern proceedings these rules must be scrupulously observed. Once the agency creates procedural rules it denies itself the right to violate these rules, and an action taken in violation of these procedural rules will be stricken down by the courts.

...

If the Commission wishes to make an exception to the application of a rule which speaks in mandatory and unambiguous language it must reasonably explain the reasons for making the exception. (At page 1268.)

As stated previously, the Order acknowledges the fact that the issues contained within the Settlement Agreement are interrelated. The Order makes reference to the Commission's general rate-making authority and that setting rates is a legislative process as a basis for considering the elements of the Settlement Agreement separately. The fact that the setting of rates is a legislative process does not negate the need to follow the Commission's rules of practice which afford participants in rate cases the right to present and cross-examine witnesses.

Rather than disrupting decades of precedent and promoting bad public policy or relitigating this case, the Commission should approve the Settlement Agreement, which the Stipulating Parties believe is fair, just, and reasonable.

The Commission's Order rewards parties that have refused to compromise their filed positions to reap the benefits of the Settlement Agreement reached by the Stipulating Parties. The Commission's Order rewards those very parties by allowing them to advocate for additional or modified positions not agreed to as part of a comprehensive package as reflected in the Settlement Agreement.

B. The Commission's Final Order will destroy the Commission's settlement process and promote bad public policy.

If the Commission does not amend its Order, which picks apart the Settlement Agreement and substitutes different terms, it will remove any incentive for parties to compromise and settle their differences unless all parties, even intransigent parties, are agreeable. In today's regulatory environment where there is no real standard for intervening in a utility rate proceeding, it will foreclose most settlements. Parties will have no ability to know if the bargain they strike in a settlement will be accepted or if provisions they negotiated for will be stripped and provisions they oppose be substituted in. Others may stand on the sidelines, refusing to negotiate or settle, and hope to use a settlement reached by other parties' efforts as the starting point for litigating the matter before this body.

To discourage settlements in this manner is harmful regulatory policy and is contrary to Oklahoma court decisions which hold that settlements are favored. "The law and public policy favor settlements and compromises, entered into fairly and in good faith between competent persons, as a discouragement to litigation." *Whitehead v. Whitehead*, 995 P.2d 1098, 1101 (Okla. 1999). The Commission's Order is contrary to good public policy as articulated by the Oklahoma Supreme Court.

Repeatedly, when presented with a settlement agreement, it has been the practice of the Commission to either reject or accept it. The Commission did neither in this instance. The Attorney General moves the Commission to modify its Final Order to adopt the Settlement Agreement *in toto*.

C. Adopting the Settlement Agreement in full would reduce the residential impact and give residential customers the benefit of a transmission allocation change.

As part of the Settlement Agreement, the Stipulating Parties negotiated a number of provisions that would critically benefit customers, including (1) a cap on the residential bill impact, limiting the residential customer increase to no more than 2.5% (down from the request of 11.90%); (2) a \$3 reduction of the monthly residential base charge; (3) a change to transmission cost allocation from 4 CP to 12 CP, which would properly eliminate a subsidy residential customers pay to other customer classes; and (4) a change to the cost allocation of wind generation assets that would eliminate a subsidy residential customers pay to other classes and properly align the costs and benefits of those assets.

Regrettably, when the Commission issued its Order in this case, it did not approve the entire Settlement Agreement and thus, customers will not receive the benefit of all the above negotiated provisions. Specifically, the Commission stripped the provisions giving residential customers the benefit of a transmission cost allocation change and the negotiated cap on the residential bill impact.

The Commission should adopt the Settlement Agreement in full. Doing so will reduce the average residential impact from \$5.35 to \$3.57 per month and give residential customers the benefit of all the above negotiated provisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 13th day of November 2023, a true and correct copy of the above and foregoing *Attorney General's Motion to Modify to Modify Order No. 738226 and Adopt the Joint Stipulation and Settlement Agreement* was sent via electronic mail to the following interested parties:

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