

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

JLM  
MC

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 )  
EARNINGS 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

ORDER NO.

**606279**

HEARINGS: Agreed Order

APPEARANCES: Jack P. Fite and Joann T. Stevenson, Attorneys *representing* Public Service Company of Oklahoma  
Mary Candler, Assistant General Counsel *representing* the Public Utility Division, Oklahoma Corporation Commission  
William L. Humes and Nicole King, Assistant Attorneys General, Office of the Attorney General, State of Oklahoma  
Donald K. Shandy, James A. Roth and Jeff M. Riles, Attorneys *representing* Chesapeake Energy Corporation  
Jon Laasch and Cheryl Vaught, Attorneys *representing* Dogwood Energy, L.L.C. and Chermac Energy Corporation  
Thomas P. Schroedter, James D. Satrom, J. Fred Gist and Jennifer Kirkpatrick, Attorneys *representing* Oklahoma Industrial Energy Consumers  
Lee Paden, Attorney *representing* Quality of Service Coalition  
Jacquelyn L. Dill and Elena Saxonhouse, Attorneys *representing* Sierra Club  
Rick D. Chamberlain, Attorney *representing* Calpine Corporation  
Deborah R. Thompson, Attorney *representing* Oklahoma Sustainability Network

**ORDER ESTABLISHING PROCEDURAL SCHEDULE**

The Corporation Commission of Oklahoma (“Commission”) being regularly in session and the undersigned Commissioners being present and participating, the above-styled cause comes on for consideration and for an order of the Commission in this proceeding.

## I. PROCEDURAL HISTORY

On April 16, 2012, PSO filed its Application in this cause. The Application included general statements as to the relief to be requested by PSO in the future, but no specifics were set forth. The Application also included a statement that the purpose of its being filed at that time was to give the Commission staff and the Office of Attorney General notice of the cause and to allow them time to acquire “an expert witness, consultants and analytical services” as provided by 17 O.S. §286(C)(2) and (3).

On September 26, 2012, PSO filed the direct testimonies of its witnesses (Fate, Ground, Weaver, Munson, Hamlett, Jones and Decker). These testimonies included, in detail, the relief requested by PSO in this cause.

Also on September 26, 2012, PSO filed a Motion to Establish Procedural Schedule (“Motion”).

The Motion came on for hearing November 1 and 8, 2012, before the Administrative Law Judge (“ALJ”).

After hearing the arguments of Counsel, the ALJ made his oral recommendation, to which PSO announced its oral exception.

On November 16, 2012, the ALJ filed the Report of the Administrative Law Judge Regarding Public Service Company of Oklahoma’s Motion to Establish Procedural Schedule (“Report”).

On December 6, 2012, the oral exceptions of PSO to the Report were heard by the Commission sitting *en banc* and then taken under advisement.

On December 20, 2012, the Commission issued Order No. 605734 remanding the Motion to the ALJ, with instructions.

Subsequent to Order No. 605734’s issuance, the parties conferred to consider the instructions contained within the order and determined an agreed procedural schedule consistent with the order.

## II. PROCEDURAL SCHEDULE

Following discussion by the parties, the following procedural schedule was agreed to:

<u>ACTION</u>	<u>DATE</u>
Responsive Testimony	January 8, 2013
Statements of Position	January 18, 2013
Cutoff of Discovery of Responsive Testimony	February 1, 2013
Rebuttal Testimony	February 11, 2013
Cutoff of Discovery of Rebuttal Testimony	March 8, 2013
Surrebuttal Testimony	March 22, 2013

Prehearing Motions due	March 25, 2013
Cutoff of Discovery on Surrebuttal Testimony	April 2, 2013
Responses to Prehearing Motions due	April 4, 2013
Prehearing Conference (all prehearing motions to be heard)	April 11, 2013, 10:00 a.m., Courtroom 301
Summaries of Testimony and Exhibit Lists	April 11, 2013
Hearing on the Merits	April 23, 2013, 10:00 a.m., Courtroom 301, continuing until the record is closed
Findings of Fact and Conclusions of Law to be filed and submitted electronically to the ALJ	To be determined

The hearing on the merits shall commence on **April 23, 2013**, at 10:00 a.m., and continue until the record is closed. The hearing shall be held each subsequent business day beginning at 10:00 a.m. unless otherwise directed by the ALJ. The hearing will be held in Courtroom 301 located on the third floor of the Jim Thorpe Office Building unless the ALJ directs otherwise.

### **III. GENERAL PROVISIONS**

#### **A. ORDER AND PRESENTATION OF TESTIMONY:**

The following order of witnesses shall be followed unless the ALJ directs otherwise:

1. Public Service Company of Oklahoma;
2. Intervenors
  - a. Calpine Corporation
  - b. Dogwood Energy, LLC
  - c. Chermac Energy Corporation
  - d. Chesapeake Energy Corporation
  - e. Sierra Club
  - f. Oklahoma Sustainability Network
  - g. Quality of Service Coalition
  - h. Oklahoma Industrial Energy Consumers
3. Office of the Attorney General
4. Commission Staff

#### Direct Examination:

After admittance of the pre-filed testimony (direct, responsive, rebuttal and surrebuttal) into the record, the witness shall be tendered for oral cross-examination and redirect examination. Any redirect examination will be limited to issues which were raised during cross-examination.

#### Surrebuttal Issues:

The surrebuttal testimony filed in this cause shall be limited to any new matters raised in the rebuttal testimony of the other parties.

Due to Applicant having the burden of proof, after other parties have presented their testimony, summaries and statements of position, Applicant may be allowed to present oral sur-surrebuttal testimony provided Applicant can show that other parties have raised new issues which Applicant was unable to adequately address through cross-examination. The oral sur-surrebuttal shall be strictly limited to the new issues.

Once Applicant has presented its oral sur-surrebuttal testimony, the witness shall be tendered for cross and redirect examination. Any cross-examination shall be limited to the issues addressed in the sur-surrebuttal testimony; likewise, the redirect examination will be limited to issues which were raised during cross-examination.

After Applicant's sur-surrebuttal testimony and cross-examination, if any other party(ies) deems it necessary to request of the ALJ to be allowed to present further surrebuttal type testimony, the ALJ shall evaluate the request and make a determination based on the following criteria:

- a. Whether or not any new issue(s) has been raised.
- b. Whether or not the party was able to adequately respond to the new issue during cross-examination.
- c. Whether or not additional testimony/evidence is needed as a matter of due process to the requesting party.
- d. Whether or not the additional testimony/evidence is necessary to perfect the record.
- e. Whether or not additional testimony/evidence is cumulative in nature and has been previously and sufficiently addressed.
- f. Whether or not any statutorily imposed time will permit further testimony/evidence.

**B. TESTIMONY SUMMARIES, STATEMENTS OF POSITION AND EXHIBITS:**

Any party not filing testimony but desiring to cross-examine witnesses at the hearing must file a statement of position on or before **January 18, 2013**.

The parties shall file of record and exchange summaries of their respective pre-filed testimony (direct, responsive, rebuttal, surrebuttal) on or before **April 11, 2013**. Summaries of testimony shall be used in the preparation of the ALJ Report and Recommendation and shall be transmitted to all parties and the ALJ in electronic format.

Each party presenting or cross-examining any witness shall, on or before **April 11, 2013**, file of record and exchange an exhibit list of all potential exhibits that may be utilized at the hearing and shall exchange any exhibits that have not already been provided or received throughout the course of the proceeding. All documents filed in the Court Clerk's office shall be presumed to be exhibits and need not be identified separately on the exchanged exhibit lists.

However, if for good cause shown, a party finds it necessary during the hearing to present an additional exhibit(s) which was not listed on the exhibit list, such exhibit(s) shall not be allowed unless submitted to all parties as least twenty-four (24) hours prior to usage and permitted by the ALJ.

Exhibits not exchanged on **April 11, 2013**, which could have been prepared based upon pre-filed testimony, will be offered only by agreement of all parties, subject to the ruling of the ALJ.

### **C. DISCOVERY AND OBJECTIONS:**

The parties have agreed that responses to discovery requests for direct testimony shall be due within ten (10) business days of receipt, unless agreed otherwise. Objections to discovery requests for direct and responsive testimony will be due within five (5) calendar days. Discovery is limited to twenty-five (25) questions per party per day.

The parties have also agreed that responses to discovery requests for responsive, rebuttal and surrebuttal testimony shall be due within five (5) business days from receipt, unless agreed otherwise. Objections to discovery requests for rebuttal or surrebuttal testimony will be due within three (3) calendar days. However, any due date falling on a Saturday, Sunday, or Holiday shall be due the next business day.

Any discovery request received after 3:00 p.m. shall be deemed received the next regular business day as provided for in OAC 165:5-11-1(e)(4).

Unless the parties agree otherwise, the response times for filing objections to discovery requests shall be as stated above, and a hearing on such an objection shall be set on the next motion docket unless specifically set on dates agreed to by the parties and as directed by the ALJ. All times specified herein for filing documents shall be determined to be 4:30 p.m. unless specified otherwise.

Any objections to the testimony or qualification of any witness shall be made prior to the commencement of the hearing. Any such motion shall be heard on any regularly scheduled motion docket that precedes the commencement of the Pre-Hearing Conference, or at the Pre-Hearing Conference, whichever is sooner, unless otherwise directed by the ALJ.

If the parties are able to dispose of the issues of this cause by way of a negotiated settlement, the dates contained herein may be modified.

## **IV. FINDINGS OF FACT**

The Commission finds that the proposed procedural schedule and general provisions, set forth herein, shall be adopted by the Commission and adhered to by the parties.

The Commission further finds that for purposes of 17 O.S. § 286(C)(1) the date of the "Application" shall be deemed to be the date PSO detailed the relief requested in this cause, being the filing date of its witnesses' direct testimony, September 26, 2012.

The Commission further finds that for purposes of 17 O.S. § 286(C)(1), PSO has waived the provision of that statute requiring that a final order be issued within 240 days of the filing of the Application as was stated by PSO Counsel at the hearing *en banc* regarding their oral exceptions to the Report.

**V. CONCLUSIONS OF LAW**

The Commission is vested with jurisdiction in this cause pursuant to Article IX, § 18 of the Oklahoma Constitution, 17 O.S. §§ 151, 152, and 286 and other applicable authority.

**VI. ORDER**

THE COMMISSION THEREFORE ORDERS that the procedural schedule and the general provisions as set forth herein shall be adhered to by and between the parties to this cause and the same shall become the order of the Commission.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION

*Patrice Douglas*

PATRICE DOUGLAS, Chairman

*Bob Anthony*

BOB ANTHONY, Vice Chairman

*Dana L. Murphy*

DANA L. MURPHY, Commissioner

**CERTIFICATION**

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 3<sup>rd</sup> day of January, 2013.

[Seal]

*Peggy Mitchell*

PEGGY MITCHELL, Secretary

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

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

*James L. Myles*

JAMES L. MYLES

Administrative Law Judge

*January 3, 2013*

Date