

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

TOM GANN,

Appellant,

and

OKLAHOMA INDUSTRIAL ENERGY
CONSUMERS and AARP,

Cross-Appellants,

vs.

STATE OF OKLAHOMA ex rel.
OKLAHOMA CORPORATION
COMMISSION, and PUBLIC SERVICE
COMPANY OF OKLAHOMA,

Appellees.

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 29 2026

SELDEN JONES
CLERK

Case No. 124090

PETITION IN ERROR

- ☐ PETITION IN ERROR
☐ AMENDED OR SUPPLEMENTAL PETITION
☒ CROSS PETITION
☐ COUNTER-PETITION

DATE FIRST PETITION IN ERROR FILED: _____

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: Oklahoma Corporation Commission
COUNTY: Oklahoma
CASE NO.: PUD2025-000064
JUDGE: Commissioners Kim David, Brian Bingman, and J. Todd Hiett
NATURE OF CASE: Public Utility Preapproval and Cost Recovery Case

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:
Oklahoma Industrial Energy Consumers and AARP

THE APPEAL IS BROUGHT FROM:

- ☐ Judge, Decree or Final order of District Court
☐ Appeal from order granting summary judgment or motion to dismiss (Rule 1.36)
☐ Appeal from Revocation of Driver's License (Rule 1.21(b))
☒ Final Order of Other Tribunal Oklahoma Corporation Commission

- ☐ Interlocutory Order Appealable by Right
☐ Other _____

II. TIMELINESS OF APPEAL

1. Date judgment, decree or order appealed was filed: May 11, 2026
2. Did the party appealing prepare the judgment, decree or order appealed?
☐ Yes ☒ No
3. Date the certificate of service was filed in the trial court: N/A
4. Does the judgment or order on appeal dispose of all claims by and against all parties?
☒ Yes ☐ No
 If not, did district court direct entry of judgment in accordance with 12 O.S. § 994?
☐ Yes ☐ No
 When was this done? _____
5. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? ☐ Yes ☐ No
 Specific *statutory* basis for interlocutory order appealable by right:

6. If none of the above applies, what is the specific statutory basis for determining the judgment or order is appealable? _____
7. Were any post-trial motions filed? ☒ Yes ☐ No

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
<u>Motion for Reconsideration and Modification</u>	<u>May 21, 2026</u>	<u>pending</u>
8. This Petition is filed by: ☒ Delivery to Clerk, or
☐ Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested, on _____

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding:

List all related appeals involving same issues: On May 22, 2026, State Representative Tom Gann previously filed in this case an appeal of the same final order that is the subject of this appeal.

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? ☐ Yes ☒ No

V. RECORD ON APPEAL

- ☒ A Transcript will be ordered.
- ☐ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal.
- ☐ A Narrative Statement will be filed.
- ☐ Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

See Exhibit “A” attached – certified copy of Order.

VII. SUMMARY OF CASE – EXHIBIT “B”

See Exhibit “B” attached – a brief summary of the case.

VIII. ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

See Exhibit “C” attached – issues proposed to be raised.

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

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DATE: May 29, 2026

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CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed or sent this 29th day of May, 2026, by depositing in the U.S. Mail, postage prepaid, to:

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I further certify that a copy of this Petition in Error was mailed or email to, or filed in, the Office of the Oklahoma Corporation Commission on the 29th day of May 2026:

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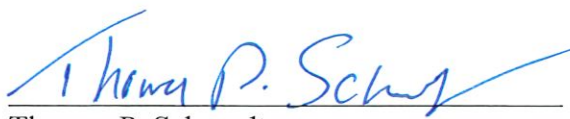

Thomas P. Schroedter

EXHIBIT "A" TO PETITION IN ERROR

Certified Copy of Order No. 757495

Exhibit A – see attached

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

ORDER NO. 757495

CORPORATION COMMISSION OF OKLAHOMA

Kim David

Kim David, Chairman

J. Todd Hiatt

J. Todd Hiatt, Commissioner

Dissenting Statement Attached

DISSENT

Brian Bingman, Commissioner

DONE AND PERFORMED THIS 11th DAY OF MAY 2026.



BY ORDER OF THE COMMISSION:

Eleise J. Rouse

Eleise J. Rouse, Acting Commission Secretary

ORDER NO. 757495

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE COMPANY OF
OKLAHOMA (PSO) FOR AN ORDER OF THE
COMMISSION PREAPPROVING THE ACQUISITION
AND COST RECOVERY OF GENERATION
FACILITIES TO ALLOW PSO TO MEET ITS
OBLIGATIONS PURSUANT TO OAC 165:35-25-3(e).

CASE NO. PUD2025-000064

HEARINGS: February 17-19, 2026, in Concourse Theater, Suite C50 (live and video
teleconference)

Will Rogers Memorial Office Building
2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Carly M. Ortel, Administrative Law Judge

April 28, 2026, in the Concourse Theater, Suite C50
Will Rogers Memorial Office Building
2401 North Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before the Commission en banc

APPEARANCES: Jack P. Fite, Lauren D. Willingham, Kenneth A. Tillotson, and Noelle J.
Coates, Attorneys *representing* Public Service Company of Oklahoma
Natasha Scott, Chief Legal Counsel, Michael L. Velez, Mike S. Ryan,
E.J. Thomas, and Kyle Vazquez, Deputy General Counsels
representing Public Utility Division, Oklahoma Corporation
Commission
Thomas L. Grossnicklaus, Deputy Attorney General, and Ashley N.
Youngblood, Justin Cullen, and Meghan Wan, Assistant Attorneys
General *representing* Office of Attorney General, State of Oklahoma
Thomas P. Schroedter, Attorney *representing* Oklahoma Industrial
Energy Consumers
Adam J. Singer, Attorney *representing* AARP
J. David Jacobson, Attorney *representing* The Petroleum Alliance of
Oklahoma
A. Chase Snodgrass, Attorney *representing* Oklahoma Gas and Electric
Company
Dustin R. Fredrick and Deborah R. Thompson, Attorneys *representing*
Oklahoma Natural Gas Company, a Division of ONE Gas, Inc.
C. Eric Davis and Peter K. Wright, Attorneys *representing* Oklahoma
Sustainability Network
Douglas D. Vernier, Attorney *representing* International Brotherhood of
Electrical Workers, Local 1002, AFL-CIO
Jim A. Roth, C. Eric Davis and Peter K. Wright, Attorneys *representing*
U.S. Energy Storage Coalition

FINAL ORDER

This Case comes before the Corporation Commission (“Commission”) of the State of Oklahoma on the above-styled and numbered Application of Public Service Company of Oklahoma (“PSO” or “Company”), seeking an Order of the Commission Preapproving the Acquisition and Cost Recovery of Generation Facilities to Allow PSO to Meet its Obligations Pursuant to OAC 165:35-25-3(e) (“Application”).

I. SUMMARY OF DECISION

The Commission provides the below summary of its decision:

1. PSO demonstrated a need for additional generation capacity and generally considered reasonable alternatives in the selection of each project, except that it excluded third-party contracts for Battery Energy Storage System (“BESS”) facilities.
2. The Wind Energy Purchase Power Agreements (“PPAs”) are hereby preapproved, with costs to be recovered through the Fuel Adjustment Clause (“FAC”) utilizing a production demand allocator.
3. The Five-Year 150 MW Kiamichi Capacity Purchase Agreement (“CPA”) is hereby preapproved, with costs to be recovered through the FAC utilizing a demand allocator. However, the Commission encourages PSO to choose longer-term, lower-cost contract options in future competitive bidding processes.
4. The three (3) Purchase and Sale Agreement (“PSAs”) Battery Energy Storage System (“BESS”) Projects (50 MW BESS Rock Falls Project, 74 MW Dover Project, and 100 MW Northeastern 1&2 (“NE 1&2”) Project) are preapproved, subject to PSO gaining zoning approval and other conditions, with costs to be recovered through the Energy Security Rider (“ESR”), provided PSO guarantees the value of Investment Tax Credits (“ITCs”) as set forth herein.
5. The Northeastern Units 5 & 6 (“NE 5&6”) Projects are hereby conditionally preapproved, subject to PSO gaining zoning approval and other conditions, with Construction Work in Progress (“CWIP”) costs to be recovered through the ESR.
6. As mandated by the Oklahoma Legislature’s enactment of Senate Bill (“SB”) 998 (2025), codified at 17 O.S. § 286(C)(6), PSO is entitled to recover CWIP in relation to the NE 5&6 project, although the Commission does not endorse CWIP cost recovery as a policy matter.

II. PROCEDURAL HISTORY

The Administrative Law Judge (“ALJ”) prepared a Report and Recommendation (“ALJ Report”) and filed it on April 6, 2026. The procedural history of this Case though the date of the ALJ Report is appended as Attachment “A” to the ALJ Report and incorporated as if fully set forth in this Final Order (“Order”).

On April 13, 2026, the following were filed:

- Oklahoma Industrial Energy Consumers’ (“OIEC”) Exceptions to ALJ Report;
- OIEC’s Motion for Oral Arguments, with a Notice of Hearing;

- Exceptions of PSO to the ALJ Report;
- PSO's Motion for Oral Argument, with a Notice of Hearing;
- Exceptions of the Public Utility Division ("PUD") to the ALJ Report;
- PUD's Motion for Oral Argument, with a Notice of Hearing;
- Oklahoma Attorney General ("AG"), AARP, and the Petroleum Alliance of Oklahoma's ("PAO") Limited Exceptions to the ALJ Report; and
- AG, AARP, and PAO's Motion for Oral Argument, with a Notice of Hearing.

On April 14, 2026, Amended Certificates of Service were filed by the AG, AARP, and PAO.

On April 17, 2026, the following were filed:

- Response of Oklahoma Gas and Electric Company ("OG&E") to the Exceptions of the AG, AARP, and PAO;
- U.S. Energy Storage Coalition's Response to the AG, AARP, and PAO's Limited Exceptions to the ALJ Report;
- AARP Response to OIEC's Exceptions to ALJ Report;
- PSO's Responses to Written Exceptions Filed to the ALJ Report; and
- Notice of Withdrawal of Counsel.

On April 27, 2026, an Entry of Appearance was filed by Meghan Wan, on behalf of the AG.

On April 28, 2026, the Commission en banc considered and granted the motions for oral argument. The Commission proceeded to hear oral arguments on the exceptions to the ALJ Report and subsequently took the Case under advisement.

III. SUMMARY OF EVIDENCE

Any documents filed in this Case are contained in the records maintained by the Court Clerk of the Commission. Testimony was offered through written pre-filed testimony (direct, responsive, and rebuttal), along with certain oral testimony at the Hearing. The entirety of the live testimony and arguments offered are contained in the transcripts of these proceedings. All pre-filed testimony summaries are attached to the ALJ Report as Attachment "B" and are incorporated as if fully set forth in this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the Commission's review and evaluation of the pleadings, testimony of witnesses, and evidence contained in the record of this Case, and upon a full and final consideration thereof, the Commission makes the following findings of fact and conclusions of law:

A. Jurisdiction and Notice

1. PSO is an Oklahoma corporation authorized to do business in the State of Oklahoma. The Commission finds that PSO is a public utility with plant, property, and other assets dedicated to generation, transmission, distribution, and the sale of electric power and energy within the State of Oklahoma. This Commission is vested with jurisdiction over this Case by virtue of Article IX, § 18 of the Oklahoma Constitution and 17 O.S. §§ 151, 152, and 286.

2. Due and proper notice of these proceedings was given as required by Commission Order No. 753135.

B. Summary of Requested Relief

3. On September 12, 2025, PSO filed its Application under the provision of 17 O.S. § 286, which allows regulated utilities to seek preapproval from the Commission before taking certain actions with respect to generation capacity. The statute also provides a legal basis for the Commission to consider cost recovery related to such electric generation facilities outside the parameters of its general jurisdiction at 17 O.S. §§ 151 and 152.

4. As a regulated electric utility in the State of Oklahoma, PSO must comply with the Commission's rules for electric utility generation capacity requirements. Specifically, the "generation capacity of a utility's plant, supplemented by" contracts with third party providers, "must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies."¹

5. In its Application, PSO requested preapproval of a portfolio of eight proposed resources that would add a total of 1,299 MW of nameplate capacity to the Company's system. The total cost is \$1.255 billion. The resources proposed by PSO consist of:

- Three wind PPAs – Caddo, Weatherford and King Plains;
- A five-year 150 MW CPA – Kiamichi;
- Three BESS PSAs – NE 1&2, Rock Falls, and Dover (collectively, "BESS Projects"); and
- A self-build natural gas combustion generation facility – NE 5&6.

6. PSO asserted in its Application and accompanying testimony that the Company has a need for additional capacity and energy. In addition, PSO stated that the Company has taken steps to maintain sufficient generation to provide for the normal demands for service while also providing reasonable reserve margins, as required by this Commission and the Southwest Power Pool ("SPP").² Mr. Horeled testified that with the inclusion of NE 5&6, PSO will be adding a total of 871.2 MW of 2029 Accredited Summer Capacity to the system.³

¹ OAC 165:35-25-3(e).

² Application, p. 1, ¶ 11(c).

³ Horeled Direct, 13:20-22.

7. In total, PSO entered into contracts to acquire eight different generation resources. All eight generation resources are located within the State of Oklahoma.⁴ Mr. Horeled provided the following table in his Direct Testimony to further detail the proposed generation resources:⁵

Figure 2: Proposed Generation Resources

Bidder	Location	Project Name	Technology Type	Offered Capacity – Nameplate (MW)	2029 Accredited Summer Capacity (MW)	PSA/ PPA	PSA Capital – “All In” (\$M)
Tenaska	Oklahoma	Kiamichi	Combined Cycle	150	180	CPA	
Allete	Oklahoma	Caddo	Wind	80	10	PPA	
NextEra	Oklahoma	Weatherford	Wind	147	19	PPA	
Engie	Oklahoma	King Plains	Wind	248	31	PPA	
Jupiter	Oklahoma	NE 1&2	Storage Standalone	100	97	PSA	\$312
Jupiter	Oklahoma	Rock Falls	Storage Standalone	50	48	PSA	\$165
Jupiter	Oklahoma	Dover	Storage Standalone	74	72	PSA	\$238
Self-Build	Oklahoma	NE 5&6	NG CT	450	437	PSA	\$540
			Total:	1,299	864		\$1,255

8. PSO requested to recover costs of the three wind PPAs through the Company’s FAC using an energy allocator, of the five-year 150 MW CPA through the Company’s FAC using a demand allocator, and of the BESS and NE 5&6 through the ESR, while being allowed to recover CWIP for NE 5&6.

C. ALJ Report

9. Based on a review of the entire record in this Case, including a thorough review of all of the evidence, exhibits, the ALJ Report, the exceptions and responses thereto, and all arguments of counsel, and upon a full and final consideration thereof, the Commission does not adopt the recommendations of the ALJ Report in full. However, the Commission has relied extensively on the ALJ Report in developing this Order and adopts portions of the ALJ Report where explicitly stated.

10. The Commission adopts the recommendations of the ALJ Report regarding the motions to intervene and to associate counsel filed by the International Brotherhood of Electrical Workers, Local 1002, AFL-CIO; regarding the change in designation for the Summary of the Rebuttal Testimony of Michael J. Dilley; regarding the motion to intervene of Oklahoma Gas and Electric Company; regarding the motion for limited intervention filed by U.S. Energy Storage

⁴ Bolan Direct, 6:1.

⁵ Horeled Direct, p. 14, Table 2.

Coalition; and regarding the oral motion to associate counsel by PSO. This Order shall incorporate the ALJ Report's discussion of these matters on pages 7 to 8 as if fully set forth in this Order.

D. Legal Standard

11. PSO seeks relief pursuant to 17 O.S. § 286(C), which authorizes regulated utilities to obtain preapproval from the Commission before undertaking certain actions related to generation capacity. In addition to providing this preapproval mechanism, the statute establishes a legal basis for the Commission to consider cost recovery associated with electric generation facilities, supplementing the scope of its general jurisdiction under 17 O.S. §§ 151 and 152.

12. Under Section 286(C), a regulated electric utility may request Commission approval “to construct a new electric generating facility, purchase an existing facility,” or “enter into a long-term contract for electric generation.” To obtain such approval, the utility must present sufficient evidence for the Commission to determine that a need exists for the proposed construction, purchase, or contract, after considering reasonable alternatives.⁶ If the Commission grants approval, the facility or contract is deemed “used and useful,” and its costs become eligible for recovery under rules promulgated by the Commission,⁷ which afford the Commission broad discretion in determining the appropriate cost recovery framework.⁸

13. Hence, the Commission must address whether PSO has established that a need exists for additional generation capacity and whether PSO has compared its proposed incremental generation sources to reasonable alternatives. If both such questions are affirmed, the Commission must then address what sort of cost recovery will apply to the generation.

E. Demonstration of Need

14. Commission rules require that an electric utility prepare an integrated resource plan (“IRP”) every three years⁹ and also “when material changes in planning assumptions occur.”¹⁰ An IRP assists a utility with identifying future generation needs as well as cost-effective options for meeting those needs.¹¹ As the Commission’s rules recognize, investments in generation involve “substantial investment and expenses” with “substantial effects on the costs and reliability of the electric supply to be provided to all retail consumers in Oklahoma.”¹² Given these stakes, resource planning is inherently complex and must be regularly reviewed to ensure that decisions are fair, just, and reasonable.¹³ The IRP rules are intended to promote this outcome.

15. In 2024, less than a year before filing this Application, PSO prepared and submitted its most recent IRP in compliance with OAC 165:35-37-4. The evidence presented in this

⁶ 17 O.S. § 286(C).

⁷ *Id.*

⁸ OAC 165:35-38-5(b).

⁹ OAC 165:35-37-4(a).

¹⁰ OAC 165:35-37-4(b).

¹¹ OAC 165:35-37-1(b); Riley Direct, 3:17–4:3.

¹² OAC 165:35-37-1(a).

¹³ *Id.*

proceeding demonstrates that intervening events have altered PSO's capacity and energy forecasts since that filing.¹⁴

16. In this proceeding, PSO provided an updated load forecast.¹⁵ PSO witness Horeled testified that even with the addition of Green Country¹⁶ and the continued operation of the Northeastern Unit 3 ("NE 3") on natural gas, PSO projects a summer capacity deficit, absent additional SPP accredited capacity resources, of 10 MW in 2027, 470 MW in 2028, and 1,766 MW in 2029.¹⁷ PSO witness Demmy further testified that this deficit is expected to grow to 3,124 MW by 2031.¹⁸ Moreover, even with the addition of the eight proposed generation resources, PSO projected in its direct testimony that it would continue to experience a capacity shortfall of approximately 260 MW beginning in 2028, increasing to as much as 2,267 MW by 2031.¹⁹

17. Based upon the testimony of PSO's witnesses, the evidence provided in Direct and Rebuttal Testimony, the record developed at the Hearing on the Merits, and the absence of any dispute among the parties regarding the existence of a need for additional accredited capacity, the Administrative Law Judge recommended that the Commission find that PSO has demonstrated a need pursuant to 17 O.S. § 286(C).

18. The Commission finds that PSO has demonstrated a need for additional generation capacity under 17 O.S. § 286(C), sufficient to support the capacity approvals requested in this proceeding.

F. IRP Refresh and Models

19. The ALJ recommended that PSO update its IRP in light of material changes to the Company's planning assumptions since its 2024 IRP.²⁰ PSO filed an exception to this recommendation.²¹

20. Since the filing of the 2024 IRP, energy market conditions have evolved, and the emergence of large-load customers has resulted in revised load projections. These developments have implications for future investment decisions and the overall cost of power supply. An updated or refreshed IRP would assist the Commission in evaluating whether PSO's projected costs remain fair, just, and reasonable.²²

21. PUD witness Purvis presented evidence, including a comparative table, demonstrating that PSO's capacity needs have changed significantly since the 2024 IRP and constitute a material change in planning assumptions:²³

¹⁴ Purvis Responsive, 8:11-9:8.

¹⁵ *Id.* at 9:9-10.

¹⁶ *See* PUD2024-000057.

¹⁷ Horeled Direct, 9:14-17.

¹⁸ Demmy Direct, 8:7-8.

¹⁹ *Id.* at p. 10, Figure 3.

²⁰ ALJ Report, p.57, ¶ 54.

²¹ PSO Exceptions, p. 5-6.

²² Purvis Responsive, 11:7-13.

²³ *Id.* at 11:13-14.

Figure 6: PSO 2024 IRP vs. Updated Summer Capacity Position

Year	2024 IRP Summer Capacity Peak (MW) ¹¹	Updated Summer Capacity Position (MW) ¹²	Difference	Percent Difference
2026	4,471	4,516	45	1.0%
2027	4,476	4,800	324	7.2%
2028	4,481	5,168	687	15.3%
2029	4,469	6,451	1982	44.4%
2030	4,468	7,223	2755	61.7%
2031	4,464	7,281	2817	63.1%

22. PSO contends that its obligation to conduct an all-source RFP already requires it to evaluate available resource options, including generation resources capable of meeting needs in the 2027–2028 timeframe. On that basis, PSO asserts that performing a full IRP update would not provide meaningful additional benefits to customers in this instance.²⁴

23. The Commission disagrees that an all-source RFP serves as a substitute for an updated IRP. The IRP process is designed to allow for meaningful stakeholder participation and comprehensive review, which a contested proceeding such as this does not fully replicate. Accordingly, the requirement to conduct an RFP does not obviate the need to revisit IRP assumptions when material changes occur.

24. The Commission finds that material changes in PSO's planning assumptions have occurred since the 2024 IRP. However, the Commission declines to require PSO to submit a full updated IRP at this time. Instead, PSO shall refresh its IRP to update its load forecast.

25. The Commission reiterates its finding in Final Order No. 749854 in PUD2024-000057, in which it expressed its expectation that "PSO [will] continue monitoring its planning assumptions to determine if an updated [IRP] should be filed..." The Commission further stated the following:

The Commission recognizes that as Oklahoma seeks to attract economic development, the natural result will be additional load growth for Oklahoma's electric utilities. Additional load growth, in turn, will lead electric utilities to seek increased capacity. Hence, the Commission may need to explore requiring more frequent reporting of load forecast updates and/or updates to utilities' integrated resource plans . . . in the foreseeable future . . .²⁵

26. The ALJ also recommended that the Commission find reasonable PSO's resource planning methodology of assigning 50% capacity for loads supported by a signed Letter of Agreement ("LOA") and 80% capacity to loads supported by a signed a Contract for Electric

²⁴ 2/17/2026 Tr. 135:11-21.

²⁵ Case No. PUD2024-000057, Final Order No. 749857, p. 7.

Service (“CES”).²⁶ The PUD filed an exception, asserting that only loads supported by a signed CES, at 80% capacity, should be included in the model.²⁷

27. The Commission finds this issue to be moot in light of its determination that PSO has demonstrated a need for additional generation capacity under 17 O.S. § 286(C). Accordingly, the Commission declines to adopt either the ALJ’s recommendation or the PUD’s proposed modification. The Commission finds that the treatment of LOAs and CESs in resource planning warrants further consideration and is more appropriately addressed on a case-by-case basis.

G. Consideration of Reasonable Alternatives

28. The Commission’s rules establish a competitive procurement framework for the selection of generation resources.²⁸ These rules set forth governing principles for Requests for Proposals (“RFP”), including requirements related to affiliate participation, bid evaluation, and other aspects of the procurement process.²⁹

29. When a competitive procurement is expected to have a “material impact on the utility’s cost of providing electricity to its customers” or when “an affiliate of the utility is anticipated to participate in the” procurement, the Commission is required to retain an independent evaluator (“IE”).³⁰ The rules contemplate that the IE will “monitor the competitive bidding process,” including communications between any affiliate bid team and the utility’s evaluation team, and will provide an independent assessment of the winning bidder(s), which may differ from the utility’s selection, among other responsibilities.³¹

30. The Commission’s competitive procurement rules are designed to “establish[] a fair, just, and reasonable process that best serves the public interest of all electricity consumers” and “complement and improve the state’s economic growth by, among other things, making the most efficient use of Oklahoma’s coal, natural gas, and power generation and transmission assets.”³² Although compliance with these rules does not create a presumption of prudence in proceedings under Section 286(C), the Commission encourages electric utilities to utilize the competitive bidding process,³³ which is intended to “create an open, transparent, fair and nondiscriminatory competitive bidding process for the utility to meet its needs.”³⁴

31. To address a need for approximately 1,500 MW of additional capacity and energy, PSO employed the competitive procurement process set forth in Subchapter 34 of the Commission’s Electric Utility Rules. PSO’s 2023 All-Source RFP was designed as a market-based test of reasonable alternatives to meet its identified resource needs.³⁵ Consistent with OAC 165:35-

²⁶ ALJ Report, p. 54, ¶ 24.

²⁷ PUD Exceptions, p. 6.

²⁸ OAC 165:35-34-1, -3.

²⁹ *Id.*

³⁰ OAC 165:35-34-3(b)(1).

³¹ *See* OAC 165:35-34-3.

³² OAC 165:35-34-1(a).

³³ *Id.*

³⁴ *Id.*

³⁵ Horeled Direct, 11:6-10.

34-3(b), the Commission approved the retention and compensation of an IE to oversee the RFP and procurement process. Of the eight generation resources for which PSO seeks preapproval, seven were selected through the 2023 All-Source RFP. These include three PSAs for BESS, three PPAs for wind generation, and one CPA for combined-cycle natural gas generation.³⁶

32. PSO testified that the NE 5&6 project was not eligible for inclusion in the 2023 All-Source RFP because the project could not utilize the interconnection rights currently associated with NE 3.³⁷ Accordingly, PSO proposed to demonstrate that NE 5&6 represents a reasonable alternative by comparing it to the bids received in the 2023 All-Source RFP and relying on OAC 165:35-38-5(e) as a basis for approval.

33. PSO issued the RFP in November 2023³⁸ and subsequently conducted a bid refresh in December 2024 to account for additional economic development-driven load growth in Oklahoma.³⁹ The RFP process yielded 314 project proposals from 35 bidders, submitted on January 29, 2024.⁴⁰ Following the application of eligibility and threshold screening criteria, as well as the withdrawal of certain proposals, 150 bids advanced to preliminary evaluation.⁴¹ Between September 2024 and September 2025, PSO conducted negotiations with selected bidders, resulting in the execution of seven agreements.⁴²

34. A more detailed evaluation of each selected agreement is provided below.

H. Wind Energy PPA and Cost Recovery

35. PSO requested approval of its selection of three PPAs with owners of existing wind generation resources. Each PPA provides for the delivery of energy, SPP-accredited capacity, and associated environmental attributes at a fixed contract price.⁴³ The selection of each PPA resulted from, and was evaluated against, competing resources submitted in the 2023 All-Source RFP.⁴⁴ The three wind PPAs consist of the 80 MW Caddo Wind PPA, the 248 MW King Plains PPA, and the 147 MW Weatherford Wind PPA.⁴⁵

36. Each of the three wind PPAs ranked highly in the bid evaluation process, placing first, fifth, and ninth, respectively.⁴⁶ No party contested the reasonableness of these selections or opposed their approval. The Commission finds that PSO fairly considered reasonable alternatives in selecting the three wind PPAs.

³⁶ Bolan Direct, 5:16-19.

³⁷ Horeled Direct, 11:18-23.

³⁸ *Id.* at 11:11-17.

³⁹ Bolan Direct, 8:4-6.

⁴⁰ *Id.* at 12:16-20.

⁴¹ *Id.* at 13:11-15.

⁴² Horeled Direct, 11:11-17.

⁴³ Bolan Direct, 20:17-20; Exhibits STB-3 through STB-5; Exhibit STB 10.

⁴⁴ Mossburg Responsive, 26:8-9.

⁴⁵ Horeled Direct, 13:19 and p. 12, Table 2.

⁴⁶ Bolan Rebuttal, 9:6.

37. The ALJ recommended approval of the PPAs and further recommended that the associated costs be recovered through the Company's FAC using an energy allocator.⁴⁷

38. OIEC filed an exception to the recommended cost recovery methodology, arguing that a production demand allocator should be applied instead. OIEC witness Garrett testified that wind PPA costs should be allocated among customer classes using PSO's most recently established production demand allocator. He further asserted that allocating these costs on an energy basis would render the projects uneconomic for large, high load-factor customers. Mr. Garrett also contended that prior Commission orders have consistently supported the use of a demand-based allocation for wind resources.⁴⁸

39. The Commission notes, however, that in Case No. PUD2022-000093, Order No. 738571, it previously authorized the use of an energy-based allocation for the Sundance wind facility, utilizing an 84% energy and 16% demand allocator.⁴⁹ In doing so, the Commission expressly treated the Sundance project as a pilot to further evaluate appropriate allocation methodologies for wind resources.

40. The Commission acknowledges AARP's arguments supporting the use of an energy allocator for the PPAs approved in this case. The evidence in this proceeding demonstrates that the residential class is not the primary driver of the need for additional capacity underlying PSO's request.⁵⁰ However, the existing industrial and commercial classes were not identified as primary drivers of additional capacity needs. The evidence demonstrated that *new* large load is in fact the primary driver of PSO's need for additional capacity.⁵¹

41. The Commission adopts the ALJ's recommendation to preapprove the three wind energy PPAs; however, the Commission authorizes the recovery of the associated costs through the Company's FAC using the Company's most recently approved production demand allocator. This relief applies only to the three wind PPAs approved in this Case and should not be taken as Commission policy that applies to any other wind projects owned or contracted by PSO at this time.

I. Five-Year Kiamichi CPA and Cost Recovery

42. PSO requested approval of its selection of a five-year, 150 MW thermal CPA for the Kiamichi resource.⁵² The Kiamichi CPA was evaluated against other resources submitted through the 2023 All-Source RFP process. Based on that evaluation, the five-year, 150-MW Kiamichi CPA ranked tenth among the bids considered.⁵³

⁴⁷ ALJ Report, p. 54, ¶ 30.

⁴⁸ Garrett Responsive, 41:5-10.

⁴⁹ Case No. PUD2022-000093, Order No. 738571.

⁵⁰ Horeled Direct, 6:2-11.

⁵¹ Mossburg Responsive, 13:5.

⁵² Horeled Direct, 13:19-20.

⁵³ 2/18/2026 Tr. 19:10-14.

43. Several parties expressed concern that PSO selected the 5-year, 150 MW Kiamichi gas-fired CPA rather than a longer-term 15-year, 300 MW alternative.⁵⁴ PSO witness Bolan testified that the Company's selection reflects a prudent decision to preserve flexibility and allow PSO to adapt to changing system conditions and future resource opportunities.⁵⁵ While the IE did not raise concerns with PSO's selection of the 5-year contract,⁵⁶ he did state that the 15-year, 300 MW CPA ranked number one in the evaluation.⁵⁷

44. The ALJ recommended approval of the five-year, 150 MW Kiamichi CPA and further recommended that costs be allocated on a demand basis and recovered through the Company's FAC.⁵⁸ OIEC filed an exception, arguing that PSO should be required to reengage in negotiations to secure the longer-term, lower-cost 300 MW contract. In the alternative, OIEC contended that if the 15-year CPA is no longer available, recovery of the five-year Kiamichi CPA should be limited to the pricing of the 15-year, 300 MW option.⁵⁹

45. In *Lone Star Gas Co. v. Corporation Commission*, the Oklahoma Supreme Court held that,

The powers of the Commission are to regulate, supervise, and control the public service companies in their services and rates, but these powers do not extend to an invasion of the discretion vested in the corporate management. It does not include the power to approve or disapprove contracts about to be entered into, nor to the approval or veto of expenditures proposed. The powers of the Commission, as respects the acts of public service companies, are limited to an investigation of these acts to determine whether or not they have a reasonable and fair effect upon the rights of the public, and to take steps to avoid an unreasonable or unfair or prejudicial effect upon the public rights, if such be found.⁶⁰

46. Similarly, in *Oklahoma Gas & Electric Co. v. Corporation Commission*, the Oklahoma Supreme Court explained,

Although the Corporation Commission has general supervision over all public utilities, the Constitution does not clothe it with the general power of internal management and control incident to ownership. The Commission has the power to supervise and regulate the public duties and obligations of such utilities but is not empowered to substitute its judgment for that of the utilities concerning their internal management and control.⁶¹

⁵⁴ 2/18/2026 Tr. 209:13-21; Beling Responsive, 32:4-12.

⁵⁵ Bolan Rebuttal, 13:13-14.

⁵⁶ 2/18/2026 Tr. 20:6-12.

⁵⁷ 2/18/2026 Tr. 19:10-21.

⁵⁸ ALJ Report, p. 55, ¶ 33-35.

⁵⁹ OIEC Exceptions, p. 3-5.

⁶⁰ *Lone Star Gas Co. v. Corp. Comm'n*, 1934 OK 396, ¶ 23; 39 P.2d 547.

⁶¹ *Oklahoma Gas & Electric Co. v. Corp. Comm'n*, 1975 OK 15, ¶ 30; 543 P.2d 546.

47. Consistent with these principles, the Commission will not order PSO to negotiate or enter any specific contract with a third party. The Commission adopts the ALJ's recommendation to approve PSO's selection of the five-year, 150 MW Kiamichi CPA as reasonable. While the Commission shares concerns about PSO's selection among the options for the Kiamichi CPA, the Commission approves the five-year, 150 MW Kiamichi CPA as one reasonable option to meet PSO's growing capacity need. The Commission further finds that costs shall be allocated on a demand basis and recovered through the Company's FAC, as recommended by the ALJ.

48. As discussed above, PSO is experiencing a period of significant and sustained growth, with no indication that this trend will abate in the near term. In light of these conditions, the Commission discourages the future selection of shorter-term contracts where longer-term alternatives are available at a lower overall cost. Similarly, the Commission discourages selecting lower-capacity (MW) options when higher-capacity alternatives are available on reasonable terms. Longer-term, higher-capacity contracts can provide a valuable hedge against future increases in generation capacity costs and, in doing so, better serve the long-term interests of PSO's customers.⁶² The Commission may limit cost recovery or adjust PSO's return on equity in future cases where shorter-term, smaller contracts are selected over more affordable, larger, longer-term options.

J. BESS Projects

Eligibility of BESS Resources under Section 286

49. The Commission notes that the only prior preapproval case that included a BESS facility dealt with a CPA in Case No. PUD2025-000038, Order No. 753440. In that proceeding, the Commission granted preapproval and recognized that the utility would be credited with the capacity but would not be directly exposed to costs or revenues from its daily operations.⁶³ This is a case of first impression for a utility to seek preapproval to own a BESS facility through a PSA.

50. As a threshold matter, the AG, AARP, PAO, and OIEC⁶⁴ (collectively, "Movants") argue that the BESS Projects are ineligible for preapproval under 17 O.S. § 286(C) because they do not constitute a "new electric generating facility." Section 286(C)(1) provides, in pertinent part:

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 existing electric generation facility or enter into a long-term contract for purchased power, capacity and energy, subject to the provisions of this subsection. (emphasis added).

⁶² Norwood Responsive, 18:17-21.

⁶³ Case No. PUD2025-000038, Order No. 753440, p. 10, ¶ 4.

⁶⁴ See, Joint Motion of the Attorney General, AARP, Petroleum Alliance and OIEC for Partial Summary Judgment for Lack of Subject Matter Jurisdiction ("Joint Motion").

51. The ALJ recommended that the Commission find BESS resources eligible for preapproval and deny the Joint Motion challenging eligibility. The Commission agrees with the ALJ's recommendation and finds that the BESS Projects are eligible for preapproval under Section 286(C). The Commission is further persuaded by the arguments advanced by the U.S. Energy Storage Coalition.

52. The record reflects that five PSO witnesses testified that the BESS Projects constitute generation facilities, and this testimony was not rebutted by the excepting parties.⁶⁵ PSO witness Dr. Shelly Hagerman testified that the BESS Projects will provide capacity and will meet SPP requirements by being capable of delivering their accredited capacity for a minimum of four continuous hours.⁶⁶

53. The term "electric generating facility" should be interpreted consistent with its usage and understanding within the retail electric industry. Because the statute does not define the term, and because "electric generating facility" is reasonably susceptible to more than one interpretation, it is appropriate to consider relevant industry usage and the understanding of the expert regulatory body charged with administering this statute.⁶⁷ In doing so, the Commission looks to how the term is reasonably understood within the technical and regulatory context of the electric industry it oversees.

54. In organized electricity markets across the United States, BESS resources routinely participate as generation assets and are treated as supply-side resources. Within the SPP, of which Oklahoma is a member, tariff provisions and related filings reflect that energy storage resources participate in market functions as supply resources. While not determinative of state statutory interpretation, this industry treatment informs the broader understanding that "generation" in modern electric markets encompasses a wider set of resources than traditional thermal generation alone.

55. The Commission further recognizes its long-standing regulatory definition of "generation facility" in OAC 165:35-1-2, which defines the term as a "machine or machines capable of producing capacity, energy, or other electricity products." This rule provides the applicable industry-specific context absent a statutory definition in Section 286. Under this definition, BESS resources qualify as generation facilities because they are capable of producing capacity, energy, and other electric products.

56. Section 286 was enacted through HB 1910, which directed the Commission "to promulgate rules to implement the provisions of this subsection." In response, the Commission transmitted rules to the Legislature, including the definition of "generation facility" in OAC 165:35-1-2. That definition has remained unchanged for approximately twenty years, during which the Legislature has not amended Section 286 to alter or reject the Commission's definition.

⁶⁵ ALJ Report, pg. 14-15.

⁶⁶ Hagerman Direct, 8:7-9.

⁶⁷ U.S. Energy Storage Coalition's Response to the AG, AARP, and PAO's Limited Exceptions to the ALJ Report, p. 2, citing *J.L.M.*, 2005 OK 15, ¶ 5, 109 P.3d 336, 338.

57. The Commission is persuaded by *McCain v. State Election Board*, which recognizes that a long-standing, contemporaneous agency interpretation of a statute is entitled to significant weight, particularly where the Legislature has not acted to contradict it.⁶⁸ Here, the Legislature has had ample opportunity to amend Section 286 to provide a different definition but has not done so, nor has it challenged the Commission's regulatory definition.

58. The Oklahoma Supreme Court in *McCain* further explained that courts are "especially reluctant to overturn a longstanding executive or departmental construction where great interests have grown up under it and will be disturbed or destroyed by the announcement of a new rule."⁶⁹ While the Commission has not previously addressed BESS explicitly under Section 286, a plain reading of the existing regulatory definition supports their inclusion, as BESS resources produce capacity, energy, and other electric products. Market participants have relied on this framework in developing and investing in such resources.

59. The Commission is also guided by *Oklahoma Gas & Electric Co. v. Oklahoma Corporation Commission*, wherein the Court held that when a statute regulates a technical industry, terms must be interpreted as they are generally used and understood within that industry.⁷⁰ Applying that principle, the Court emphasized that industry-specific meaning controls where statutory language is clear when viewed through that lens.

60. Consistent with the *OG&E* decision, the Commission must interpret the term "generation facility" as used and understood within the retail electric industry. The Commission's own rules supply that industry-specific meaning, which supports the inclusion of BESS resources within the statutory framework of Section 286.

61. Accordingly, the Commission finds that the fact that BESS resources are not "traditional generators" does not exclude them from the definition of "generation facility." Based on the statutory framework, Commission rules, industry practice, and applicable case law, the Commission affirms the ALJ's recommendation that BESS Projects fall within the Commission's jurisdiction for preapproval under 17 O.S. § 286(C). The Joint Motion is hereby denied.

Comparison of Reasonable Alternatives

62. PSO requested preapproval of its selection of three BESS Projects located in Oklahoma: the 100 MW NE 1&2 Project, the 50 MW Rock Falls Project, and the 74 MW Dover Project.⁷¹ The combined base purchase price for these Projects is approximately \$560 million, with a total capital cost of approximately \$715 million, or roughly \$3,192/kW.⁷² This total includes owner's costs, Allowance for Funds Used During Construction ("AFUDC"), and contingencies for risk mitigation associated with each Project.⁷³ Each BESS Project was evaluated through the 2023

⁶⁸ *McCain v. State Election Bd*, 1930 OK 323; 289 P. 759.

⁶⁹ *Id.* at ¶ 17.

⁷⁰ *OG&E Co. v. Oklahoma Corp. Comm'n*, 2025 OK 43, ¶5.

⁷¹ Lozier Direct, 7: Table 1.

⁷² Bolan Direct, 17:13-14.

⁷³ *Id.* at 17:18-21.

All-Source RFP process and compared against other resources submitted in that solicitation. The selected Projects ranked 7th, 10th, and 14th, respectively, in the bid evaluation.⁷⁴

63. Following issuance of the RFP, PSO identified potential cybersecurity risks associated with certain BESS resources, including concerns regarding vulnerabilities tied to communication components supplied by certain manufacturers. PSO became aware of these risks after issuance of the RFP but prior to completion of the scoring phase. Based on these concerns, PSO excluded BESS PPA proposals from further consideration.⁷⁵ PSO testified that a PPA structure would not provide sufficient operational oversight to mitigate these risks, whereas a PSA structure would allow greater control over equipment selection and operations, thereby enabling more effective risk management.⁷⁶

64. The IE generally concluded that PSO's 2023 RFP process and bid evaluation were generally reasonable and conducted in compliance with Commission rules.⁷⁷ However, the IE expressed concern regarding PSO's decision to exclude BESS PPA proposals on cybersecurity grounds, particularly because bidders were not given an opportunity to address or mitigate those concerns.⁷⁸ The IE also noted PSO's lack of experience in operating and maintaining BESS facilities.⁷⁹ Notwithstanding these concerns, the IE ultimately recommended approval of the BESS Projects.⁸⁰

65. PSO testified that, in selecting winning bids, it evaluated the BESS Projects against all resource types submitted in the 2023 All-Source RFP, consistent with Commission rules requiring consideration of reasonable alternatives. The Company did not limit its comparison to other BESS proposals but instead evaluated the Projects against all 151 bids across multiple resource types. PSO further asserted that exclusion of BESS PPAs does not undermine compliance with 17 O.S. § 286, which requires consideration of reasonable alternatives. The BESS Projects ranked among the highest-performing resources within the evaluated portfolio.

66. The ALJ recommended denial of the BESS Projects, concluding that PSO failed to adequately consider reasonable alternatives and acted imprudently by excluding BESS PPA proposals without allowing bidders an opportunity to mitigate cybersecurity concerns.⁸¹

67. The Commission adopts the ALJ's recommendation in part. While cybersecurity risks are significant and warrant careful consideration, the record demonstrates that PSO conducted a robust competitive procurement process. Although the Commission agrees that including explicit cybersecurity requirements in the RFP would have been preferable, their absence does not render the overall evaluation unreasonable. The Commission discourages the future wholesale elimination of all third-party contracts with BESS owners. However, in this Case, Commission finds that PSO fairly evaluated reasonable alternatives in its selection of the BESS Project.

⁷⁴ Bolan Rebuttal, 9:6.

⁷⁵ *Id.* at 6:5-10.

⁷⁶ *Id.* at 6:16-19.

⁷⁷ IE Report, p. 1.

⁷⁸ Norwood Responsive, 13:19-14:2.

⁷⁹ IE Report, p. 36.

⁸⁰ ALJ Report, p. 27.

⁸¹ ALJ Report, p. 29.

ITCs

68. In light of the ALJ's recommendation to deny the BESS Projects in their entirety, the ALJ concluded that issues related to ITC were moot.⁸²

69. PSO witness Trapp testified that the BESS Projects are expected to qualify for federal ITCs, which would reduce the Company's cost of providing electric service. The projected value of these ITCs is approximately \$222 million, or up to \$286 million if the Domestic Content bonus credit is achieved, in the years the Projects are placed in service.⁸³ PSO proposes to flow these benefits to customers ratably over the depreciable life of the assets, rather than recognizing them entirely in the first year. According to PSO, this approach supports long-term rate stability and aligns with established ratemaking practices.⁸⁴

70. PUD witness Scalf testified that, if PSO is unsuccessful in its appeal of the Rogers County zoning variance denial, the value of the ITCs could be significantly reduced: to approximately \$109 million, or \$145 million with the Domestic Content bonus credit.⁸⁵ PUD witness Purvis further expressed concern regarding customer impacts tied to uncertain economic development, Renewable Energy Certificates ("RECs"), ITCs, and potential off-system sales, all of which may be affected by zoning outcomes.⁸⁶

71. Mr. Scalf also testified that PSO intends to monetize the ITCs through sale to third parties and, therefore, the benefits should not be amortized over a 20-year period. He explained that such an approach could allow PSO to retain proceeds from ITC sales for an extended period before passing benefits to customers. Instead, PUD recommends that proceeds from ITC sales be credited to customers through the ESR contemporaneously with the sale. Until such sales occur, PUD recommends amortizing ITCs over a five-year period. While acknowledging that this approach could result in potential over-crediting, PUD maintains that it better ensures customers receive the full benefit of ITCs, particularly where such credits may be sold at a discount.⁸⁷

72. The Commission support's PSO's recommendation to flow the ITC benefits to customers ratably over the 20-year depreciable life of the assets, rather than over a 5-year period..

Conclusion

73. While the Commission is concerned with exclusion of BESS PPAs and CPAs and the overall cost of the BESS Projects (approximately \$715,000,000), the Commission finds that these Projects are reasonable, will benefit ratepayers, and should ultimately be preapproved. PSO witness Demmy testified to the higher capacity and accreditation factors of the BESS.⁸⁸ Such

⁸² ALJ Report, p. 30.

⁸³ Trapp Direct, 4:7-13.

⁸⁴ Schwarz Direct, 5:12-23.

⁸⁵ Scalf Responsive, 15:13-17.

⁸⁶ Purvis Responsive, 26:9-11.

⁸⁷ Scalf Responsive, 21:1-16.

⁸⁸ Demmy Rebuttal, 7: 3-7.

attributes will result in better achieving customer needs. Additionally, PSO witness Hayat testified that the “BESS resources are dispatchable which can avoid injecting energy during low-value periods and target high-value windows. BESS congestion and loss impacts can be strategically optimized, rather than passively incurred”⁸⁹ Mr. Hayat further testified that BESS helps in “reducing congestion cost and lowering overall market costs that customers would otherwise bear.”⁹⁰

74. Because the 100 MW NE1&2 Project cannot proceed to construction absent a favorable zoning determination, PSO shall not recover any costs associated with the Project until a final, *non-appealable* order is issued by the District Court granting the necessary zoning approval. Upon issuance of such order, PSO shall provide a copy to all parties in this proceeding. PSO shall submit updated tariff sheets to the PUD Director prior to beginning collection from customers. Further, if the required zoning approval is ultimately denied, customers shall be held harmless for any and all sunk costs associated with the NE 1&2 and NE 5&6 projects arising from the zoning denial.

75. The Commission intends to hold PSO accountable for the estimated ITCs. If the BESS Projects preapproved herein do not qualify for the minimum of 30% ITCs, the Commission reserves the right to hold PSO accountable for any deficiency in a future proceeding.

76. PSO is therefore *conditionally* authorized to recover the costs associated with the 100 MW NE 1&2 Project and authorized to recover the costs associated with the 50 MW Rock Falls Project and the 74 MW Dover Project through the Company’s ESR, as described below.

K. NE 5&6

77. PSO requested approval of a self-build natural gas combustion generation facility to be located at NE 5&6, with an estimated total project cost of approximately \$539,800,000, inclusive of direct, indirect, and owner’s costs.⁹¹ PSO asserts that the capacity from NE 5&6 is needed no later than December 2028. Although this project was not included in the 2023 All-Source RFP, PSO proposes to demonstrate that NE 5&6 represents a reasonable alternative by comparing it to bids received in that RFP and relying on OAC 165:35-38-5(e) as a basis for approval.

78. The record reflects that PSO initially submitted a proposal in the 2023 All-Source RFP to construct gas combustion turbines at the Northeastern site, utilizing the existing interconnection associated with NE 3. Had that proposal remained viable, it would have satisfied the requirement to submit a self-build option under OAC 165:35-28-5(c), which provides:

If the soliciting utility wishes to consider an option for full or partial ownership of a self-build option, the utility must submit its construction proposal (“Self-build Proposal”) to provide all or part of the capacity

⁸⁹ Hayat Direct, 12:14-20.

⁹⁰ *Id.* at 14:16-18.

⁹¹ Dilley Direct, 20:2-4.

requested in the RFP stated in 165:35-34 at the same time the bids are requested.

79. PSO subsequently withdrew that proposal after determining that NE 3 could continue operating on natural gas, thereby precluding the use of its existing interconnection rights for the new project. PSO then developed the NE 5&6 project, which differs from the original proposal and includes, among other elements, a new position in the SPP transmission interconnection queue.⁹²

80. PSO witness Dilley testified that the original affiliate bid was withdrawn in 2024 after NE 3 was selected to continue operations in PSO's 2024 IRP. He further testified that the NE 5&6 project developed thereafter is distinct from the earlier proposal and is the project presented in this proceeding.⁹³

81. The scope of the NE 5&6 project was not finalized until February 7, 2025, well after the January 29, 2024, deadline for submissions to the 2023 All-Source RFP.⁹⁴ As such, the project could not have been evaluated alongside the bids received in that solicitation. PSO does not contend that NE 5&6 constituted a conforming or official bid.⁹⁵ However, PSO witness Bolan confirmed that the proposal was received while the Company was engaged in negotiations with shortlisted bidders following the December 2024 bid refresh.⁹⁶

82. To evaluate reasonable alternatives, PSO compared the NE 5&6 proposal against all 314 bids received through the 2023 All-Source RFP.⁹⁷ Based on that comparison, PSO determined that NE 5&6 would have ranked second overall among all bids, including those considered during the December 2024 refresh.⁹⁸

83. The record contains no evidence that the cost of NE 5&6 is inflated or above market levels. To the contrary, PSO testified that it secured gas turbines at a price approximately 40% below current market levels.⁹⁹ AG witness Beling testified that if a generation facility can be purchased at a very good price, he would recommend purchasing it outside of the RFP process.¹⁰⁰

84. PSO further stated that, if this request is denied, the turbines would likely be deployed elsewhere within the AEP footprint due to strong demand.¹⁰¹ While this consideration is not determinative, the Commission finds that development of a natural gas facility in Oklahoma provides economic and reliability benefits to the state.

⁹² Horeled Direct, 11:19-12:4.

⁹³ Dilley Direct, 22:11-18.

⁹⁴ Beling Responsive, 16:6-9.

⁹⁵ 2/17/2026 Tr. 100:2-13.

⁹⁶ 2/17/2026 Tr. 254:12-17.

⁹⁷ 2/17/2026 Tr. 119:7-20.

⁹⁸ Horeled Direct, 12:6-12.

⁹⁹ 2/18/26 Tr. 169:1-3.

¹⁰⁰ 2/19/26 Tr. 143:22-25; 144:1-16.

¹⁰¹ 2/18/26 Tr. 174:17-18; 175:1-8.

85. Several parties argued that PSO could have included NE 5&6 in its anticipated 2026 All-Source RFP. However, the record demonstrates that doing so would delay the project beyond the timeframe necessary to meet projected capacity needs, with the facility unlikely to be in service by the summer of 2029.¹⁰² The Commission finds this to be a reasonable basis for PSO's decision not to defer the project to a future RFP.

86. The Commission agrees with PSO that its rules do not mandate the use of a competitive bidding process to satisfy the requirement under 17 O.S. § 286(C) to consider reasonable alternatives. The rules explicitly provide that "[t]he presumption of prudence shall not apply to a case filed pursuant to 17 O.S. § 286(C)."¹⁰³ By removing the presumption of prudence in such cases, the Commission recognized that utilities must retain flexibility to pursue generation resources in response to evolving market conditions without being strictly bound to the competitive procurement framework.

87. Consistent with this approach, PSO relies on OAC 165:35-38-5(e) to support its request for approval outside the competitive bidding process. That rule provides:

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

88. The Commission finds that PSO satisfied the requirements of OAC 165:35-38-5(e) by initiating this proceeding.

89. The Commission acknowledges the concerns raised by several parties that NE 5&6 was not evaluated through the formal RFP process and that the IE had limited involvement in its selection. The Commission takes these concerns seriously. While the record supports the finding that PSO considered reasonable alternatives, the Commission also finds it appropriate to impose customer protections in light of the process employed.

90. In granting preapproval in this Case, the Commission does not intend to encourage electric utilities to evade the rules on competitive procurement. These rules "establish[] a fair, just, and reasonable process that best serves the public interest of all electricity consumers" and "complement and improve the state's economic growth by, among other things, making the most efficient use of Oklahoma's coal, natural gas, and power generation and transmission assets."¹⁰⁴ They do so by granting a presumption of prudence for generation costs where such costs result from compliant competitive procurements.¹⁰⁵ Nevertheless, the competitive bidding rules are not mandatory, nor do they automatically create a presumption of prudence in cases filed under Section 286(C). "A utility may exercise managerial discretion and enter into contracts, fixed-priced or index-based, without seeking a presumption of prudence."¹⁰⁶ It is important to reiterate that

¹⁰² Horeled Rebuttal, 22:2-4.

¹⁰³ OAC 165:35-34-1(a).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

when/if a utility does not follow the competitive procurement process, it bears the burden of proof to demonstrate such decision was prudent.

91. The Commission's competitive procurement rules are intended to "create an open, transparent, fair and nondiscriminatory" process and to "establish[] reasonable standards of conduct for transactions between utilities and their affiliates." To achieve these goals, the Commission strongly encourages regulated utilities to use the competitive bidding process *and to actually bid desired contracts and self-build options into such competitive solicitations.*

92. Notwithstanding these concerns, the Commission declines to adopt the ALJ's recommendation. The Commission therefore finds that PSO's decision to pursue NE 5&6 is reasonable, in the best interests of ratepayers, reasonable alternatives were fairly considered, it contributes to meeting the Company's demonstrated capacity need, and it is therefore eligible for cost recovery, as described below.

L. Rogers County Board of Adjustment

93. Certain witnesses raised concerns that a recent decision of the Rogers County Board of Adjustment could prevent the construction of NE 5&6 and the NE 1&2 BESS project,¹⁰⁷ and argue that the resulting zoning uncertainty warrants removal of these projects from this proceeding. The Commission finds this argument to be without merit.

94. PSO has operated the Northeastern Plant site for more than 60 years and has maintained generation facilities at that location for decades.¹⁰⁸ Following the Rogers County Board of Adjustment's denial of the requested zoning, PSO testified that it is pursuing all available legal remedies to obtain the necessary zoning authority to construct the two projects and expects resolution of the matter this summer.¹⁰⁹

95. Zoning disputes are not uncommon in the development of electric generation facilities and are distinguishable from the issues presented in this proceeding. PSO witness Horeled testified that developers frequently must pursue zoning designations or variances as part of the development process.¹¹⁰ PSO acknowledges that it cannot commence construction absent a favorable ruling from the District Court of Rogers County ("District Court").¹¹¹

96. Mr. Horeled further testified that no costs associated with the NE 1&2 facility will be recovered from customers unless and until the facility is placed in service. PUD witness Scalf testified that any CWIP collected prior to NE 5&6 being placed into service would be refunded to customers if the project is ultimately not constructed.¹¹²

¹⁰⁷ See, e.g. Scalf Supplemental Testimony, 3:16.

¹⁰⁸ 2/17/26 Tr.16:25; 17 :1-2.

¹⁰⁹ 2/17/26 Tr.13:25; 14:1-3.

¹¹⁰ 2/17/2026 Tr. 15:15-18.

¹¹¹ 2/17/2026 Tr. 13:21-14:3.

¹¹² 2/19/26 Tr. 167:8-13.

97. While the Commission finds that the zoning uncertainty does not warrant removal of the projects from this case, it does present an important customer protection issue. Although PSO asserts that any CWIP collected prior to NE 5&6 being placed in service would be refunded if the project is not completed, the Commission finds that this assurance is insufficient to fully protect customers from unnecessary risk. Because the projects cannot proceed to construction absent a favorable zoning determination, PSO shall not recover any CWIP associated with NE 5&6 until a final, *non-appealable* order is issued by the District Court granting the necessary zoning approval. Upon issuance of such order, PSO shall provide a copy to all parties in this proceeding. PSO shall submit updated tariff sheets to the PUD Director prior to beginning collection from customers. Further, if the required zoning approval is ultimately denied, customers shall be held harmless for any and all sunk costs associated with the NE 1&2 and NE 5&6 projects arising from the zoning denial.

98. Hence, consistent with the above findings, the Commission *conditionally* preapproves the NE 5&6 project and authorizes recovery of CWIP costs through the Company's ESR, as described below, upon completion of all conditions for final preapproval. Such preapproval shall be final upon PSO's completion of the conditions set forth above in paragraph 97.

M. Cost Recovery of BESS and NE 5&6

99. As a result of the Commission's determination, pursuant to 17 O.S. § 286, that PSO has demonstrated a need for additional generation capacity and that the BESS Projects and NE 5&6 represent reasonable selections when compared to available alternatives, these resources shall be deemed "used and useful."¹¹³ Accordingly, cost recovery for these facilities "shall be subject to cost recovery rules promulgated by the Commission."¹¹⁴ Those rules provide the Commission with broad discretion to review proposed cost recovery mechanisms in preapproval proceedings and to determine recovery that is fair, just, reasonable, and in the public interest.¹¹⁵

100. The Commission finds that it has authority under 17 O.S. § 286(C) to approve rider-based cost recovery in this proceeding. The statute directs the Commission to establish cost recovery rules and contemplates mechanisms such as riders or trackers to facilitate recovery of approved costs.¹¹⁶ Although Section 286(C) does not require approval of a rider in every instance, it emphasizes the importance of timely recovery. The Commission's rules likewise permit consideration of utility-proposed recovery mechanisms.¹¹⁷ In appropriate circumstances, rider recovery is consistent with these principles.

101. In this proceeding, PSO proposed the ESR to recover the revenue requirement associated with the projects. PSO asserted that the ESR would allow recovery of costs associated with the facilities, including operations and maintenance expenses, capital costs, depreciation,

¹¹³ See 17 O.S. § 286(C).

¹¹⁴ *Id.*

¹¹⁵ OAC 165:35-38-5(b).

¹¹⁶ See generally 17 O.S. § 286.

¹¹⁷ OAC 165:35-38-5(b).

property and income taxes, and a return on investment.¹¹⁸ The proposed ESR includes an annual reconciliation mechanism under which actual costs are compared to amounts recovered. As explained by PSO witness Schwarz, over- or under-recoveries would be recorded as regulatory liabilities or assets, respectively, and addressed through future rider adjustments to ensure recovery of actual, prudently incurred costs.¹¹⁹

102. Specifically, PSO proposed that the ESR provide for the following:

- Recovery of CWIP for NE 5&6 until the project is placed in service and, after placed in service, recovery of the annual revenue requirement until the units are included in base rates;
- Recovery of the annual revenue requirement of the three BESS facilities until the units are included in base rates; and,
- The ITC credits from the BESS facilities.¹²⁰

103. Intervenors presented differing positions regarding the appropriate recovery mechanism for NE 5&6 and the BESS Projects. OIEC witness Garrett recommended that no rider recovery be approved.¹²¹ The Commission acknowledges this position but declines to adopt it at this time.

104. AG witness Beling recommended that, if NE 5&6 is approved, PSO should be limited to seeking recovery of no more than \$540 million in capital costs.¹²²

105. PUD recommended a hard cost cap for NE 5&6 of \$539.8 million, excluding certain categories such as community outreach, start-up fuel net of generation, and internal labor costs and benefits.¹²³ PUD further recommended limiting recovery of capital and non-fuel O&M expenses through 2058 to budgeted amounts reflected in Exhibit MJD-2 and restricting ESR recovery to property taxes.¹²⁴ For the BESS Projects, PUD recommended a hard cap of \$715 million, excluding community outreach and internal labor costs, and limiting capital and non-fuel O&M recovery to the amounts reflected in PSO witness Lozier's Exhibit BEL-5.¹²⁵

106. AARP witness Bacalao similarly recommended the imposition of hard caps on capital and O&M costs based on PSO's projected amounts.¹²⁶

107. In response, PSO witness Dilley testified that large-scale generation projects inherently involve uncertainties that may affect costs, including supply chain disruptions, labor availability, inflationary pressures, and changes in law.¹²⁷

¹¹⁸ Horeled Direct, 17:23-27.

¹¹⁹ Schwarz Direct, 16:4-9.

¹²⁰ Schwarz Direct, 13:14-18 and RAS-3.

¹²¹ Garrett Responsive, 24:1-3.

¹²² Beling Responsive, 49:10-18.

¹²³ Purvis Responsive, 18:3-7; Givens Responsive, 4:3-8.

¹²⁴ Purvis Responsive, 26:17-18.

¹²⁵ *Id.* at 18:3-13.

¹²⁶ Bacalao Responsive, 30:5-7.

¹²⁷ Dilley Rebuttal, 9:19-20; 10:1-2.

108. PSO witness Horeled further testified that future operating costs cannot be guaranteed due to variables outside the Company's control, including natural disasters, regulatory changes, and evolving SPP requirements.¹²⁸

109. The Commission finds that PSO should be held accountable for its estimated capital cost of \$539,800,000 for construction of NE 5&6. While PSO presented this estimate, it also acknowledged that major project components will be procured through phased competitive processes, creating the potential for cost increases. Accordingly, recovery through the ESR shall be capped at \$539,800,000. Any request to recover costs in excess of this amount must be supported by a showing of prudence in PSO's next Chapter 70 general rate case following the facility's entry into service.

110. The Commission declines to impose a cap on operations and maintenance expenses over the life of NE 5&6, as such costs will be subject to future prudence review prior to recovery. The Commission also declines to adopt PUD's recommendations to exclude recovery of community outreach, start-up fuel net of generation, and internal labor costs and benefits.

111. With respect to the BESS Projects, the Commission finds that recovery through the ESR shall be capped at the bid prices of \$312,000,000, \$165,000,000, and \$238,000,000, respectively. Any request to recover costs in excess of this amount must be supported by a showing of prudence in PSO's next general rate case following the projects' entry into service.

112. The recovery of the BESS Projects through the ESR as authorized in this Order shall expire concurrently with the authorization under paragraph 122, below, to avoid the need for multiple base rate proceedings.

NE5&6 CWIP Recovery

113. As part of its proposed cost recovery for NE 5&6, PSO requested authorization to recover financing costs incurred during construction—commonly referred to as CWIP treatment.¹²⁹ PSO asserts that such recovery is now mandatory under recent amendments to 17 O.S. § 286(C)(6).

114. The Oklahoma Legislature enacted SB 998 on May 6, 2025, which became effective on August 28, 2025.¹³⁰ SB 998 provides that “[t]he Commission shall permit an electric utility to begin to recover return on and return of Construction-Work-In-Progress expenses prior to commercial operation of a newly constructed electric generation facility” authorized under Section 286, provided that: (1) the Commission has approved construction of the facility pursuant to Section 286; and (2) the facility utilizes natural gas as its primary fuel source.¹³¹

¹²⁸ Horeled Rebuttal, 16:6-9.

¹²⁹ Horeled Direct, 17:8-12.

¹³⁰ Okla. Const. art. V, § 58.

¹³¹ Okla. Sess. Laws 2025, ch. 216, codified at 17 O.S. § 286(C)(6) (emphasis added).

115. Prior to this amendment, the statute afforded the Commission discretion in determining cost recovery mechanisms. Historically, the Commission has declined to grant CWIP treatment for large, multi-year construction projects, instead favoring AFUDC. Both CWIP and AFUDC are recognized regulatory approaches to recovering financing costs.¹³²

116. CWIP treatment contrasts with AFUDC treatment. Under AFUDC treatment, financing costs incurred during construction are accrued and compounded until a project's in-service date, at which time the accrued cost is included in the project's principal costs.¹³³ Hence, CWIP and AFUDC are two different ways of recovering the financing costs of a project: under CWIP, customers pay during construction to mitigate compounding interest and a larger in-service charge later, while under AFUDC they forego paying during construction but pay more, including compound interest, once a project enters service.

117. Although members of the Commission may have preferred to retain discretion to apply AFUDC treatment, the Legislature has removed that discretion and mandated CWIP recovery under specified conditions. Nothing in the Oklahoma Constitution or the Commission's enabling statutes authorizes the Commission to deny relief expressly required by statute unless deemed unconstitutional by the Oklahoma or United States Supreme Court.

118. The Commission is not vested with authority to determine the constitutionality of legislative enactments,¹³⁴ nor may it disregard or alter policy determinations made by the Legislature. Here, the Legislature has directed that electric utilities are entitled to recover CWIP costs for newly constructed generation facilities utilizing natural gas as their primary fuel source. Accordingly, the Commission is obligated to apply the statute as written.

119. The Commission recognizes that several intervenors have raised serious concerns regarding the constitutionality of SB 998. The Commission likewise emphasizes that it has a constitutional duty to ensure that rates remain fair, just, and reasonable; however, through SB 998, the Legislature has significantly constrained the Commission's ability to fulfill that duty in this context. By mandating CWIP recovery, the Legislature has effectively inserted itself into the Commission's constitutionally established ratemaking authority and limited the Commission's ability to reject cost recovery mechanisms, even where the evidentiary record may demonstrate that such mechanisms are not in the best interest of ratepayers. This encroachment raises substantial concerns regarding the proper balance of authority and the preservation of the Commission's independent regulatory function.

120. The statutory conditions set forth in § 286(C)(6) are satisfied in this case: NE 5&6 are newly constructed generation units that will utilize natural gas as their primary fuel source. Accordingly, the Commission finds that CWIP recovery is required for these facilities during the construction period.

¹³² Direct Test. of Donald R. Rowlett on behalf of Oklahoma Gas and Electric Company 17:14–17, *In the Matter of the Appl. of Okla. Gas & Electric Co. for Comm'n Authorization of a Plan to Comply with the Federal Clean Air Act and Cost Recovery; and for Approval of the Mustang Modernization and Cost Recovery*, Cause No. PUD 201400229 (Okla. Corp. Comm'n Aug. 6, 2014).

¹³³ Case No. PUD2025-000038, Givens Responsive, 6:7–12.

¹³⁴ *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 10, 681 P.2d 763; *State v. Bd. of County Commissioners of Creek County*, 1940 OK 468, 188 Okla. 184, ¶ 7, 107 P.2d 542.

121. PSO is therefore authorized to recover the construction costs of NE 5&6 as CWIP through the ESR while the facility is under construction. This authorization shall terminate once the units enter commercial service. After NE 5&6 are placed in service, the ESR shall be used to recover the revenue requirement for the unit(s) and that recovery shall continue until NE 5&6 are included in rate base after a general rate case. The revenue requirement shall include a return on and of the costs of NE 5&6, property taxes associated with the project, and non-fuel O&M.

122. The ESR recovery of costs related to NE 5&6, and the BESS Projects shall expire upon the earlier of: (a) implementation of new rates following the next general rate case in which the in-service NE 5&6 are included in rate base; or (b) six (6) months after the in-service date of NE 5&6.

123. PUD recommends that, if the Commission approves NE 5&6, CWIP recovery be allowed.¹³⁵ However, PUD recommends that CWIP recovery be tracked through a true-up mechanism so that costs may be allocated to new large load customers once they begin taking service.¹³⁶ The AG agrees with the use of a CWIP tracker mechanism to reallocate costs as new large loads come online.¹³⁷

124. PSO objects that riders and tracking are used to recover system-level costs from all customers, not to reallocate money between customers across time.¹³⁸ PSO has also proposed in its separate new rate case to have new large load customers who sign contracts start paying CWIP amounts upon contract signing.¹³⁹

125. To ensure that new large loads pay their fair share of these projects, PSO shall recalculate demand and energy allocation factors annually to reflect evolving load characteristics for the purpose of true-up and reallocation of the ESR costs according to the latest load data. PSO will submit to the PUD and the AG its workpapers related to the changes to the demand and energy allocation factors prior to implementation of the annual true-up and reallocation.

126. From the inception of the ESR, all CWIP collections shall be tracked separately by rate class and subject to annual true-up between rate classes. PSO shall annually redetermine the production demand allocator to reallocate the CWIP costs in the ESR according to the latest load data. Further, at the time NE 5&6 reaches commercial operation and is placed into service, the approved revenue requirement shall be reallocated between the customer classes utilizing the latest annual redetermination of the production demand allocator.

127. While the Commission authorizes CWIP recovery in this proceeding, it does so solely because such recovery is mandated by SB 998, now codified as 17 O.S. § 286(C)(6).

¹³⁵ Givens Responsive, 3:18-4:2, 6:17-10:9; Purvis Responsive, 4:14-18.

¹³⁶ Givens Responsive, 3:21-4:2, 10:4-9; Purvis Responsive, 24:1-9.

¹³⁷ Beling Responsive, 52:10-53:12.

¹³⁸ Schwarz Rebuttal, 5:13-6:2.

¹³⁹ *Id.* at 6:2-10.

128. This Commission continues to oppose the new amendments in SB 998 as a matter of public policy and restates its positions from a “Vote No” memo encouraging members of the Legislature to vote against the amendment.¹⁴⁰ The memo stated that SB 998 will:

- Increase costs to customers, who will start paying for construction costs on top of their existing utility bill before the plant is operational.
- Limit the timeframe for the Commission and consumer advocates to conduct a complete audit and review (180 vs. 240 days), significantly hampering critical oversight.
- Move the constitutionally created ratemaking process away from the Commission.
- Produce in Oklahoma the same result Kansas consumers are experiencing—which is the lack of savings promised in similar legislation passed there last year. Customers are currently facing an immediate significant bill increase.
- Result in less utility monopoly regulatory oversight, scrutiny and transparency.
- Mandate that the Commission allows utilities to charge customers CWIP costs, regardless of opposing evidence. No utility has sought a CWIP rider in any rate case in over a decade, even though it is permissible to request such treatment.

129. The Commission continues to be persuaded by evidence provided in Case No. PUD2025-000038, a recently decided case wherein an electric utility requested CWIP recovery for a facility that would utilize natural gas as its primary fuel source.

130. In that proceeding, PUD witness Givens testified that AFUDC more closely aligns cost recovery with the timing of customer benefits, a foundational ratemaking principle.¹⁴¹ Under AFUDC, customers pay for financing costs over the life of the asset as they receive service benefits. Under CWIP, customers begin paying before the asset is operational and providing service.¹⁴²

131. Similarly, OIEC witness Garrett testified that, on a net present value basis, customers take 25 years for CWIP treatment to break even with AFUDC treatment, and even at 30 years, the difference amounts to a few million dollars.¹⁴³ He testified that he had been a part of cases involving requests for CWIP treatment since 1991, and he has never had a client or customer group, including large, sophisticated businesses, that supported CWIP.¹⁴⁴ He also testified that the appropriate discount rate for a net present value analysis should be at least at the Company’s cost of money, but it could also be higher because many residential customers could use money to pay down credit card balances that are costing much higher rates such as 12 percent or 21 percent.¹⁴⁵

132. Ultimately, in Case No. PUD2025-000038, the Commission exercised its discretion to reject CWIP in favor of AFUDC by finding:

¹⁴⁰ “Vote No on SB 998,” May 5, 2025.

¹⁴¹ PUD2025-000038, Givens Responsive, 12:2-4.

¹⁴² *Id.* at 12:4-6.

¹⁴³ PUD2025-000038, 10/14/25 P.M. Tr. 40:11–18.

¹⁴⁴ *Id.* at Tr. 44:1–23.

¹⁴⁵ *Id.* at Tr. 45:17–3.

The Commission rejects CWIP treatment for HSL 13 and 14. First, the Commission finds that time value of money must be considered in the context of evaluating whether customers should pay more up front or defer payments for later. The Commission further finds that net present value analysis is an appropriate method for recognizing the time value of money in this context. While the Commission recognizes that there is not a single objectively certain discount rate to apply in this context, it notes the ranges reported by Mr. Givens and Mr. Garrett, which showed that even a small discount rate of 2 percent drastically reduced the claimed savings, and discount rates in the range of OG&E's weighted average cost of capital or return on equity virtually eliminate any savings. Second, the Commission finds that AFUDC treatment better aligns the receipt of benefits from a project to the costs recovered from customers, a core ratemaking principle. An unknown number of customers who would pay financing costs during 2026 to 2030 under CWIP treatment would receive no benefits from the operation of HSL 13 and 14 due to moving out of OG&E's service territory or otherwise. Third, the Commission finds that while CWIP results in a smaller increase at the time a project is placed in service, the significant sums recovered from customers before plants enter service can result in negative impacts to customers.¹⁴⁶

133. The overwhelming evidence in Case No. PUD2025-000038 demonstrated that CWIP did not produce rates that were fair, just, and reasonable under the circumstances presented.

134. Consistent with the above, the Commission authorizes PSO to recover CWIP for NE 5&6 for no other reason than because the Oklahoma Legislature mandates it.

N. Other Issues

Customer Protections

135. The Commission believes that its current regulatory scrutiny, which includes both annual prudence reviews and base rate cases, discussed during the hearing, provides sufficient customer protections that includes both the ability to prohibit cost recovery and to refund amounts the utility has collected from customers. The Commission believes that the same accountability finding¹⁴⁷ regarding how PSO shall be held accountable for the Green Country facility is applicable to NE 5&6 and the BESS Projects.

136. Therefore, the Commission finds that PSO should be held accountable for its projections in future proceedings. The Commission intends to closely scrutinize the future performance and associated costs of NE 5&6 and the BESS Projects and directs its staff to monitor in appropriate cases, including fuel adjustment clause reviews and general rate cases, regarding the following areas of concern:

¹⁴⁶ Case No. PUD2025-000038, Order No. 753440, p. 23, ¶ 65.

¹⁴⁷ Order No. 749854, p. 9, ¶ 34.

- Closing adjustments and owner's costs related to the acquisition;
- Variance from forecasted operations and maintenance expense;
- Variance from forecasted capital expenditures; and
- Net margin revenues from SPP wholesale electricity market sales.

Depreciation Rates

137. PUD witness Givens recommended that PSO be required to provide proposed depreciation rates for the BESS Projects and NE 5&6 in its next general rate case.¹⁴⁸ He explained that the proposed depreciation rates should include reasonable estimates of future interim and terminal net salvage along with an explanation for the development of these estimates in either direct testimony or a depreciation study filed in that rate case.¹⁴⁹ PSO did not rebut this recommendation.

138. PSO shall provide proposed depreciation rates for the BESS Projects and NE 5&6 in its next Chapter 70 general rate case.

Line Item on Bill

139. To ensure that PSO's customers are aware of the Legislature's mandate in SB 998, and pursuant to its authority under OAC 165:35-19-30(16), the Commission orders PSO to include as a separate line item on each customer's bill the amount of CWIP paid for NE 5&6 during the previous billing cycle. The line item shall state, "State Legislature Mandated CWIP Recovery - \$X.XX."

Large Load Tariff

140. The evidence in this proceeding demonstrates that the residential class is not the primary driver of the need for additional capacity underlying PSO's request.¹⁵⁰ Consistent with cost-causation principles, no customer class should bear costs attributable to large-load customers where doing so would result in rates that are not fair, just, and reasonable.

141. PSO currently has a pending base rate case in PUD2025-000075, in which it proposes implementation of a large load tariff. The Commission will evaluate that proposal to ensure that any resulting rates and cost allocations are fair, just, and reasonable.

142. The Commission recognizes that this Order does not account for the potential future effects of a large load tariff. The new tariff will establish how future costs associated with any large load service are allocated among customer classes and, along with other potential changes in rates, may reduce the ultimate cost to customers. Additionally, as more customers come online and demand increases on the PSO system, certain costs are spread across all customer classes, resulting in decreases to a customers' ultimate customer impact.

¹⁴⁸ Givens Responsive, 4:13-19.

¹⁴⁹ *Id.* at 20:19-21:3.

¹⁵⁰ Horeled Direct, 6:2-11.

V. ORDER

THE COMMISSION ORDERS that the Findings of Fact and Conclusions of Law set forth herein are hereby adopted as the Order of this Commission.

THE COMMISSION FURTHER ORDERS that the Company shall submit the amended ESR tariffs to the Director of the Public Utility Division consistent with the Commission's Order for further review and approval.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE)
 COMPANY OF OKLAHOMA (PSO) FOR)
 AN ORDER OF THE COMMISSION) CASE NO. PUD 2025-000064
 PREAPPROVING THE ACQUISITION)
 AND COST RECOVERY OF GENERATION)
 FACILITIES TO ALLOW PSO TO MEET)
 ITS OBLIGATIONS PURSUANT TO)
 OAC 165:35-25-3(e).)

DISSENTING STATEMENT OF COMMISSIONER BRIAN BINGMAN

Today, the Commission has voted to grant preapproval for PSO to expend approximately \$1.255 billion toward additional generation resources. While I agree with my fellow Commissioners that PSO has a need for additional generation and that many of the generation choices included in PSO's proposed portfolio are reasonable, I am voting no to register my objection to the significant expenditure PSO will make toward three Battery Energy Storage System ("BESS") Projects.

Of the \$1.255 billion PSO will invest and recover from customers, approximately \$715 million—well over half the total investment—relates to just three BESS projects. Nevertheless, these three projects would provide only 217 MW of accredited summer capacity, around a quarter of the summer capacity provided by all projects proposed by PSO. PSO's other proposed resource that it would own and operate, a natural gas combustion turbine, provides more than double the summer accredited capacity of the BESS Projects for less total investment.

While the BESS Projects require more upfront investment, which customers must pay, I recognize that they could provide additional benefits such as federal tax credits and higher electricity market savings. Nevertheless, each of these benefits is more uncertain than the large rate increase customers will shortly be paying for the battery facilities. PSO has not operated BESS facilities before, and I am concerned about customers bearing the risk of this new technology at such a high price during this time of rising costs. Thankfully, several parties including the Attorney General, Oklahoma Industrial Energy Consumers, and the Petroleum Alliance of Oklahoma raised serious concerns about the economics of the BESS Projects in this case.

Finally, PSO excluded potentially cheaper avenues for PSO to gain the benefits of capacity from new BESS developments without exposing its customers to the large upfront costs and risk associated with the proposals here. Citing a single incident involving a military facility, PSO excluded *all* consideration of third-party contracts with BESS developers. This extreme position prevented the Commission from being able to compare potentially cheaper options.

For these reasons, I respectfully dissent.



Brian Bingman, Commissioner

I, Garey L. Wortham, Secretary and Court Clerk of the Corporation Commission of the State of Oklahoma, do hereby certify that this is a true and correct copy of the original on file in this Commission. In witness whereof, I hereunto set my hand and affix the seal of the Corporation Commission of the State of Oklahoma, done in this office of the Commission this 27th day of May 2026.

OKLAHOMA CORPORATION COMMISSION
 GAREY L. WORTHAM, COMMISSION SECRETARY AND COURT CLERK



By: _____

EXHIBIT “B” – SUMMARY OF CASE

Oklahoma Industrial Energy Consumers (“OIEC”) and AARP challenge in this appeal the constitutionality of SB 998, which amended 17 Okla. Stat. § 286(C) by adding paragraph 6 to § 286(C). Section 286(C)(6) provides that if the Commission preapproves a utility’s construction of an electric generating facility that utilizes natural gas as its primary fuel source, the Commission must authorize the utility to recover Construction Work in Progress (“CWIP”) financing costs while the facility is being constructed and before it is providing service. Public Service Company of Oklahoma (“PSO”) filed its application below, seeking preapproval of PSO’s acquisition and recovery of costs of eight proposed generation resources. The Commission, by a vote of 2-1, granted preapproval of the facilities, subject to certain conditions, and determined the methods of cost recovery of the various resources. One of the generation resources preapproved is the Northeastern 5 and 6 natural gas combustion units to be constructed by PSO. The Commission found that § 286(C)(6), as amended by SB 998, required the Commission to permit PSO to recover a return on and return of CWIP expenses incurred for the Northeastern 5 and 6 units. The Commission found that prior to the amendment, the statute afforded the Commission discretion to determine the appropriate cost recovery mechanism for a utility to recover financing costs incurred during construction, but the Legislature removed that discretion in adopting SB 998. The Commission found that it did not have the authority to determine that the statute is unconstitutional. The Commission emphasized its “constitutional duty to ensure that rates remain fair, just, and reasonable” and stated that the Legislature has constrained the Commission’s constitutional duty by its enactment of SB 998. Commissioner Bingman dissented to the order, objecting only to the preapproval of three of the other proposed generation resources – the Battery Energy Storage System Projects.

EXHIBIT “C” -ISSUES TO BE RAISED ON APPEAL

1. Whether the amendment of 17 Okla. Stat. § 286(C)(6) by SB 998 is, insofar as it amends 17 Okla. Stat. § 286(C)(6), unconstitutional because it usurps the Corporation Commission’s authority granted by Okla. Const. art. 9, § 18, to ensure that rates charged by a public utility are just, reasonable, and in the public interest.

2. Whether the amendment of 17 Okla. Stat. § 286(C)(6) by SB 998 violates the Due Process clauses of the 14th Amendment of the United States Constitution and Article 2, Section 7 of the Oklahoma Constitution, by usurping the Commission’s authority and duty to ensure that a public utility’s rates are just, reasonable, and in the public interest?