

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE)
COMPANY OF OKLAHOMA (“PSO”) FOR)
APPROVAL OF THE COST RECOVERY OF)
FACILITIES TO BE LOCATED AT FT. SILL; A)
DETERMINATION THERE IS A NEED FOR THE)
FACILITIES; APPROVAL FOR FUTURE)
INCLUSION IN BASE RATES FOR COST)
RECOVERY OF PRUDENT COSTS INCURRED)
BY PSO FOR THE FACILITIES; APPROVAL OF)
A TEMPORARY COST RECOVERY RIDER;)
APPROVAL OF CERTAIN ACCOUNTING)
PROCEDURES REGARDING FEDERAL TAX)
CREDITS; AND SUCH OTHER RELIEF THE)
COMMISSION DEEMS PSO IS ENTITLED)

CAUSE NO. PUD 202000097



PUBLIC SERVICE COMPANY OF OKLAHOMA’S
EXCEPTIONS TO THE REPORT AND RECOMMENDATION
OF THE ADMINISTRATIVE LAW JUDGE

/s/ Joann Stevenson Worthington
Joann Stevenson Worthington, OBA #19947
American Electric Power
1601 North West Expressway, Suite 1400
Oklahoma City, OK 73118-1116
(405) 841-1302 (Telephone)
(405) 249-1258 (Mobile)
jtstevenson@aep.com

Jack P. Fite, OBA #2949
WHITE, COFFEY & FITE, P.C.
2200 N.W. 50th Street, Suite 210
Oklahoma City, Oklahoma 73112
(405) 627-6790 (Telephone)
jfite@wgcflaw.com

ATTORNEYS FOR PUBLIC SERVICE
COMPANY OF OKLAHOMA
EXCEPTIONS TO THE REPORT AND RECOMMENDATION

OF THE ADMINISTRATIVE LAW JUDGE

Comes Now Public Service Company of Oklahoma (“PSO” or “Company), pursuant to OAC 165:5-13-5(a)(2) and Order No. 715195 in the above captioned cause, and files these Exceptions to the Report and Recommendations (“Report”) of the Administrative Law Judge (“ALJ”) filed on May 10, 2021.

Introduction

PSO filed above-captioned application on October 2, 2020, requesting approval of cost recovery of generation facilities to be located at Fort Sill, the Fort Sill Energy Center (“The Project” or “FSEC”), approval of a temporary cost recovery rider, and such other relief that the commission deems PSO is entitled. On May 10, 2021, the ALJ issued a Report and Recommendations to this Commission recommending that it deny PSO’s application and concluding, among other things, that PSO established a long-term need for capacity, but failed to meet its burden of considering reasonable alternatives as required by statute and failed to properly bid these facilities as envisioned by Commission rule. The ALJ also opined that the approval of the application did not appear to be fair to PSO’s ratepayers as it provides everything Ft. Sill needs and very little capacity to ratepayers in return. PSO takes exception to the ALJ Report for the foregoing reasons.

PSO disagrees with the ALJ Report’s ultimate conclusion and most of its supporting findings, but PSO will focus on the following to which it takes especial exception:

- 1) The Report’s failure to address whether consideration of Ft. Sill’s needs was in the public interest in determining the reasonableness of the costs of the Project and what constituted reasonable alternatives to the Project under 17 O.S. § 286(C);
- 2) The Report’s conclusion that PSO failed to meet its burden of considering reasonable alternatives to the Project;
- 3) The Report’s conclusion that PSO did not properly comply with the Commission’s competitive bidding rules; and
- 4) The Report’s conclusion PSO’s application was not fair to PSO’s ratepayers because

of the distribution of benefits between Ft. Sill and ratepayers and the amount of capacity the Project would provide to ratepayers.

I. The Important Public Interest Question

While the Report purports to consider the public interest in its review of PSO's application (Para. V. 57), it gives short shrift to a threshold issue critical to resolution of PSO's Application and upon which it is important for the Commission to communicate its policy preferences to the utilities it regulates: Whether it is appropriate and in the public interest for PSO to consider the Ft. Sill Army Bases' mission readiness and resiliency needs while meeting PSO's capacity needs. The record reflects that PSO worked with Ft. Sill to design a capacity solution for all customers, while meeting Ft. Sill's specific requirements, including, most importantly, the goals set forth in Army Directive 2020-03 that installations have "'islandable back-up power capability to sustain Fort Sill's critical missions for at least 14 days if necessary.'" [Horeled Dir. Exh. MAH-2, Letter by Alex A. Beehler, Assistant Secretary of the Army Installations, Energy and Environment]. Meeting those goals was the purpose of the conception and design of the Project. See also Direct Testimony of Mr. Michael F. McGhee, Deputy Assistant Secretary of the Army for Installations, Energy and Environment ("Successful completion of this project is an important priority for Fort Sill and the U.S. Army". Page 2, line 8, and "Federal law mandates that the Department of Defense must take active steps to achieve energy security and energy resilience at military installations.") PSO considered several alternatives to meet those goals and conducted a competitive process to identify the most reasonably priced options to meet those goals. (PSO Proposed Findings of Fact and Conclusions of Law ("Proposed Finding"), filed April 9, 2021, at p. 12-14.)

The ALJ adopted the positions of parties who suggested that it was inappropriate for PSO to have engaged in that collaborative process with a large, critical, and unique customer like the Fort Sill Army Base, with its important role in national defense, to devise a unique and innovative solution to meet the resiliency and renewable resource goals of the military installation. (Report at Para. V. 54.) PUD testified that "the Army's self-imposed need for energy resiliency should not be PSO's responsibility." (Bertus Resp. p. 13, ll. 9-10), while OIEC argued that PSO customers would be "subsidizing" Fort Sill. (Norwood Resp. p. 5, ll. 4-5). By contrast, the AG witnesses "commended" PSO for working with Fort Sill, suggested that goals of resiliency were "very

important”, and testified that Tinker Air Force Base had a similar arrangement with OG&E that enables Tinker Air Force Base to isolate from the Bulk Electric System. (See Bohrmann Resp. p. 12, ll.7-14 and Alexander Resp. p. 7, ll. 14-17.)

The Report’s criticisms of the Project are contingent upon resolution of the threshold issue. If consideration of Ft. Sill’s needs is appropriate and in the public interest, then alternatives that do not meet Ft. Sill’s needs are not among the range of reasonable alternatives to the FSEC. The ALJ endorses the comparisons that parties make that are not on the Ft. Sill installation, and therefore do not meet the goals outlined in Army Directive 2020-3. (Report at Para. V. 51-54.) There was no point in PSO pursuing its collaboration with Ft. Sill, and there will be no point in pursuing such unique, projects in the future if the Commission deems such efforts unwelcome, unimportant and not in the public interest. PSO urges direct and explicit resolution of this threshold issue and requests the Commission find that consideration of Ft. Sill’s needs was reasonable and in the public interest.

II. PSO’s Consideration of Reasonable Alternatives

The Report states that its view of “alternatives available to PSO” is “without regard to location, generation technology, or the service requirements of Ft. Sill.” (Report at Para. V.54.) Again, this is why the Commission’s resolution of the threshold question is so important. Consideration of Fort Sill’s service requirements, while providing capacity to all customers, was the entire point. There would be no reason to collaborate with Fort Sill, the Army and the Department of Defense to pursue a project “without regard” to Ft. Sill’s needs.

PUD asserts that “limiting the scope of PSO’s capacity requisition to the needs of Fort Sill excludes many reasonable alternatives from consideration.” (Bertus Resp. p. 19 ll. 12-13). Again, that conclusion is entirely dependent upon the determination that limiting the scope of the capacity solutions to the needs of Fort Sill is not in the public interest and not reasonable. OIEC admits that the **un-sited**, larger generic resources it pulls from PSO’s IRP “may not have supplied the same supply resilience benefits desired by the Army for Fort Sill” arguing “they could be acquired at a cost that would be much lower than the proposed FSEC.” Norwood Resp. p. 17, ll. 7-11]. Similarly, AG testified that “based on the technology chosen to match Ft. Sill’s service requirements, the proposed action incurs costs that are higher than alternative capacity options.” Again, providing

resiliency benefits to Fort Sill while serving all customers was the whole point of the discussions with Fort Sill and the resulting solution, the FSEC.

PSO's testimony outlined Fort Sill's needs including Ft. Sill's critical mission loads; facility location relative to the Mow Way and Ft. Sill substations; start-up and ramp rates considering Ft. Sill's infrastructure and restoration plan; sustained operation over a 14 day event period; and high frequency short interval operating capability to serve potential SPP ancillary market needs. PSO's submissions explain its technology review to identify possible options to meet those needs. (PSO Proposed Findings at p. 13.) PSO's testimony explained how it used PLEXOS® long-term resource optimization software to compare the economics of various Ft. Sill gas-fired generation alternatives identified by the technology review by simulating the dispatch of those resources in the Southwest Power Pool (SPP) day-ahead and real time energy and ancillary services markets over a 20-year period on an hourly basis in the day-ahead market and on a 5-minute basis in the real-time market. This analysis identified RICE as the most economic option. PSO's testimony and Proposed Findings then explain that PSO conducted competitive bidding processes by issuing RFPs, monitored by a Commission-appointed Independent Evaluator to select the vendor to construct the RICE and Solar facilities. The RFPs drew a good response, and the Company was able to conduct a comprehensive evaluation of reasonable alternatives. (PSO Proposed Findings at p. 13-14). PUD concluded that "PSO followed Commission rules by conducting an RFP process to obtain responses from qualified bidders and to identify the best offer for the Project." (Casey Resp. P.7, ll. 14-15.)

The ALJ Report adopted positions that relied on comparisons to generation alternatives that do not meet Ft. Sill's needs. The asserted alternatives are not on the Ft. Sill installation, some are much larger than FSEC, and others are non-peaking alternatives despite Ft. Sill's stated needs for fast-ramping technology. (Report at Para. V. 37-49.) However, whether any of these alternatives constituted real alternatives to the FSEC is contingent upon the resolution of the threshold issue above, i.e., whether it was appropriate for PSO to take into account Ft. Sill's requirements in reviewing alternatives to the FSEC. If it was in the public interest for PSO to consider Ft. Sill's needs in securing capacity to meet all of its customers' needs, then PSO properly considered an appropriate range of reasonable alternatives. PSO employed a process to examine reasonable alternatives to determine the technology that best fit Ft. Sill's needs while providing

capacity and other benefits to all of its customers. PSO conducted an economic evaluation of the various gas-fired technologies it had identified to meet those needs. PSO then conducted a competitive process to procure the gas-fired technology it identified through its review of technologies and its economic evaluation. PSO additionally conducted a competitive process to procure the solar resources identified in its IRP suitable for meeting Ft. Sill’s renewable needs. PSO urges the Commission to reject the Report’s recommendation and find that PSO properly considered alternatives in accordance with 17 O.S. § 286(C).

III. PSO’s Compliance with the Commission’s Competitive Bidding Rules

The Report recommends that the Commission find that the Commission’s rules implementing 17 O.S. 286 (c) “require PSO to comply with the Commission’s competitive bidding RFP process set forth in OAC 165:35-34” citing Order No. 647346 in support of the recommendation (Para. V. 58) and recommends the Commission find that PSO did not comply with the Commission’s competitive bidding rules set forth in OAC 165:35-34 (Para. V. 59).

A. Order No. 647346.

Contrary to the Report’s finding, Order No. 647346 (“Order”) issued in cause PUD 201400229, sets forth three options for a utility to receive pre-approval under Section 286 (C) to self-build new generation capacity:

As set forth in OAC 165:35-34-1 and 165:35-34-3, and in conjunction with OAC 165:35- 38-5(c) implementing Section 286(C), if a utility wants pre-approval under Section 286(C) to self-build new generation capacity, the utility has three options: 1) comply with the Commission's competitive bidding rules under OAC 165:34, 2) seek a waiver of some or all of the competitive bidding requirements of Subchapter 34, or 3) await a “subsequent Commission review” in which the utility must show the Commission that its decision to self-build new generation capacity was reached in “an open, transparent, fair and nondiscriminatory” process comparable to competitive bidding. (At Page 15.)

As set forth below, PSO has complied with the Commission’s competitive bidding rules. However, even if that was not the case, there is no evidence in the record that would suggest that PSO’s RFP was not “an open, transparent, fair and non-discriminatory” process and therefore eligible for pre-approval pursuant to Order No. 647346.

B. Compliance with the Commission’s Competitive Bidding Rules

The ALJ recommends that the Commission find that conducting an RFP for an engineering, procurement and construction contract (“EPC contract”) does not comply with the Commission’s bidding rules. The ALJ’s recommendation is contrary to the language of the rules. OAC 165:35-34-3 governs the competitive bidding process for long-term generation. Subsection (d)(1)(A), Evaluation of Responses to the RFP, states in part:

The soliciting utility will evaluate all timely submitted bids to determine the lowest reasonable cost for long-term reliable power . . . consistent with the principles and procedures contained in this Subchapter and in the utilities resource plan and associated procurement plans.” (Emphasis supplied.)

PSO conducted the RFP to procure an EPC contract for long-term generation consistent with “the utility’s resource plan and associated procurement plan”. This plan included a specific resource solution to serve all customers while meeting Fort Sill’s identified needs. Once resource solutions of the appropriate technology were identified to meet the need for those resources, PSO conducted competitive bidding processes for those resources in accordance with the Commission’s competitive bidding rules at OAC 165:35-34-1 et seq. by issuing RFPs, monitored by a Commission-appointed Independent Evaluator. The RFPs drew a good response, and the Company was able to conduct a comprehensive evaluation of reasonable alternatives. [Horeled Dir. p. 11, ll. 21-24]. PUD testified that “PSO followed Commission rules by conducting an RFP process to obtain responses from qualified bidders and to identify the best offer for the Project. [Casey Resp. P.7, ll. 14-15]. She also noted that “an Independent Evaluator also determined the Company to be in compliance with competitive bidding guidelines outlined in OAC: 165:35-34-3.” [Casey Resp. p.7, ll. 16-17].

If the Commission resolves the threshold issue by concluding it is in the public interest for

PSO to have considered Ft. Sill's needs in securing capacity to meet all of its customers' needs, then it was appropriate for PSO to issue RFPs designed to evaluate and secure those resources. PSO properly conducted an RFP pursuant to the Commission's competitive bidding rules to meet the standards for a finding of prudence and preapproval pursuant to Section 286(C), and PSO urges the Commission to so find.

IV. Fairness

Among the Report's most concerning conclusions is its finding that the project "provides everything Ft. Sill needs and very little capacity to ratepayers in return." (Report at Para. I.) For support for this finding, the report relies on *Sierra Club v. Corporation Commission* 2018 OK 31, 417 P. 3d 1196, in stating that the Commission must, "consistent with Sierra Club, consider the FSEC's fairness to ratepayers and the interests of the public." While PSO designed FSEC to meet Ft. Sill's goals, it serves all customers the vast majority of the time which no party disputes. (See, e.g., Horeled Reb. p. 7, ll. 6-8) ("Other customer's energy needs will be served except when Fort Sill needs to island itself which is limited to circumstances defined by the Lease between PSO and Fort Sill, and generally should be a rare occurrence.") In fact, the Report itself acknowledges that "Over the last 10 years, there has not been a single service interruption to Ft. Sill due to transmission forced outages, generation supply shortages, or regional electric grid emergency events." (Report at Para. V. 28.) This demonstrates that the islanding capability should very rarely be invoked.

PSO is also puzzled by the conclusion that the proportion of a projected capacity shortfall that a resource fills can diminish its fairness. Neither Section 286 nor *Sierra Club* suggest that a resource must be of a particular size to be "fair." PSO, like all utilities, has often used different sizes, configurations and timing of resources to fill its needs (including conservation voltage reduction (CVR), renewables and non-generation alternatives such as demand side management), and the Report's conclusion that if a resource does not fill an unidentified arbitrary percentage of a capacity need it is "unfair" calls into question all but the most conventional of large baseload generation projects.

The Report's conclusion regarding the size and benefits of projects is also troubling given PSO's and the industry's preparations for the future of generation. PSO witness Mark Becker

testified regarding “the Company's belief that the operating flexibility of the RICE resources would be valuable in the SPP energy and ancillary services markets as the expected addition of non-dispatchable resources increased in the SPP system.” (Becker Tr. p. 26, ll. 19-23.) Mr. Becker stated that “[b]y doing those on a smaller scale, PSO will understand more about how they'll be operated by SPP while it provides capacity and energy to their customers and provides resiliency for the base.” (Becker Tr. p. 42, ll. 3-6.) The Report’s conclusions jeopardize efforts to examine technologies on a more limited basis to anticipate a future of increased penetration by aggregated demand, renewables and distributed generation.

PSO urges the Commission to find that PSO’s collaborative efforts were prudent and make a finding that PSO’s proposal to serve all customers, while at the same time meeting the resiliency and renewable goals of Fort Sill, satisfies the statutory requirements found in Section 286(C) and will provide a meaningful capacity benefit for both customers and PSO. Customers will receive the capacity while PSO will receive the ability to provide electric service to customers through the use of two different technologies (solar and RICE engines) on a smaller scale. The Commission should reject the recommendation based upon the subjective finding that the capacity that all customers will receive will not be “meaningful” (see Report at Para. V. 57) and find the FSEC is fair to ratepayers and is in the public interest.

Conclusion

PSO considered Ft. Sill (and by extension the U.S. Army and Department of Defense) an important and unique customer. For that reason, PSO collaborated with Ft. Sill to devise a unique solution to meet its specific resiliency needs while serving all customers. FSEC if approved would do that. PSO admittedly considered only those alternatives that met Ft. Sill’s needs because that was the whole point of the collaboration and the Project. PSO followed an Independent Evaluator monitored-competitive process to achieve the best price for constructing the Project. The record reflects that for the resource selected, the price was fair, just and reasonable since “PSO followed Commission rules by conducting an RFP process to obtain responses from qualified bidders and to identify the best offer for the Project.” The Independent Evaluator, who reviewed Energy Information Agency data in reaching his conclusions, agreed. (PUD Witness Casey Resp. at p.7,

ll. 14-17 and PSO Findings at pp. 15-16.) PSO explained the value of the Project to not just Ft. Sill, but all customers. It is for the Commission to decide whether it considers PSO's efforts appropriate and worthwhile, and PSO urges the Commission to agree that PSO's efforts were reasonable, and resulted in a Project and a price that is fair and in the public interest.

Certificate of Service

This is to certify that a true and correct copy of the above and foregoing was e-mailed to the following:

Kyle Vazquez
Michael Velez
Mike Ryan
Kyle.Vazquez@occ.ok.gov
Michael.Velez@occ.ok.gov
Mike.Ryan@occ.ok.gov
pudenergy@occ.ok.gov

Thomas P. Schroedter
TSchroedter@HallEstill.com

Jared B. Haines
A. Chase Snodgrass
Office Of The Attorney General
Jared.Haines@oag.ok.gov
Chase.Snodgrass@oag.ok.gov
utilityregulation@oag.ok.gov

Rick Chamberlain
Rick@ChamberlainLawOffice.com

John J. McNutt
Scott M. Frazee
John.J.McNutt.civ@mail.mil
Scott.M.Frazee2.mil@mail.mil

/s/ Joann S. Worthington