

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

JOINT APPLICATION OF CENTERPOINT)
ENERGY RESOURCES CORP., SOUTHERN COL)
MIDCO, LLC, AND SUMMIT UTILITIES)
OKLAHOMA, INC. FOR TRANSFER OF)
JURISDICTIONAL UTILITY ASSETS AND)
CUSTOMER ACCOUNTS PURSUANT TO OAC)
165:45-3-5)

CAUSE NO. PUD 202100114

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CORPORATION COMMISSION
OF OKLAHOMA

**PUBLIC UTILITY DIVISION'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Pursuant to order of the Court at the conclusion of the Hearing on the Merits in this matter, PUD proposes the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this matter by virtue of OKLA. CONST. art. IX, §18 and 17 O.S. §§ 151 *et seq.*
2. Notice of the Hearing on the Merits was given as required by law and the Rules of the Commission.
3. On June 24, 2021, Joint Applicants, CenterPoint Energy Resources Corp. ("CERC"), Southern Col Midco, LLC (SC MidCo"), and Summit Utilities Oklahoma, Inc. ("SUO") filed a joint application for transfer of jurisdictional utility assets and customer accounts pursuant to OAC 165:45-3-5. *See Application.*
4. CERC is a natural gas public utility that operates as a local distribution company subject to the regulatory jurisdiction of the Oklahoma Corporation Commission ("Commission"). CERC is currently providing regulated utility services to approximately 100,025 residential, commercial and industrial customers in 36 counties in Oklahoma. CERC's rates and charges, and its terms and conditions of service are subject to regulation by the Commission. *Id.*
5. SUO is a corporation duly organized and validly existing under the laws of Colorado, and it exists as a direct subsidiary of SC MidCo, a Delaware limited liability company. In connection with the proposed transaction described in the Application, SUO was formed for the purpose of acquiring the natural gas distribution assets of CERC located in the State of Oklahoma and will function as an Oklahoma public utility providing local distribution services to all the former Oklahoma customers of CERC within the same Oklahoma service territory. *Id.*
6. Pursuant to OAC 165:45-3-5 SUO has the burden of establishing that the proposed transfer of jurisdictional utility assets and customer accounts as requested in the Application is fair, just and reasonable, as well as in the public interest. OAC 165:45-3-5(d).

7. SUO possesses the operational and managerial expertise to offer gas utility service in Oklahoma. SUO’s ultimate parent company, Summit Utilities, Inc. (“Summit”) owns regulated gas distribution utilities in five states, including Oklahoma. Summit and SUO intend to utilize CERC’s existing expertise by making job offers to current CERC employees in Oklahoma; inviting CERC entire state utilities operation management team located in Little Rock, Arkansas, to continue at Summit in substantially the same roles as they currently fill at CERC; and executing a Transition Services Agreement to receive operational support from CERC for 12 months following the transfer. *See Responsive Testimony of John Givens, pg. 6, lns. 2-11.*

8. The net book value of the assets to be acquired by SUO is approximately \$113 million. In its most recent PBRC filing, Cause No. PUD 202100054, CERC’s Oklahoma net plant was approximately \$99.5 million. *Id., pg. 6, lns. 13-17.*

9. The difference between these two figures, approximately \$13.5 million, will not be included in SUO’s rate base. *Id. pg. 7, lns. 1-3.*

10. These two figures cannot be directly compared, for three reasons. First, CERC’s net plant figure is from the 2020 test year and any capital additions or retirements during 2021 are not included. Second, CERC’s net plant figure includes amounts allocated to Oklahoma for corporate-owned assets which are not being acquired by SUO. Finally, SUO’s \$113 million figure includes asset retirement obligation assets which will be transferred from CERC to SUO, but which are excluded for ratemaking purposes in Oklahoma. The value of SUO’s initial rate base is not known at this time, but the assets purchased by SUO will be included in rate base at their net book value, just as they currently are for CERC. *Id. pg. 7, lns. 3-11.*

11. The proposed transaction includes a purchase premium. SUO’s parent company, SC MidCo, is acquiring the previously mentioned \$113 million in assets in Oklahoma (which it will then assign to SUO), as well as approximately \$865 million of assets in Arkansas and Texas, for a total of approximately \$978 million in net book value. As consideration, SC MidCo is paying a purchase price of \$2.15 billion, subject to certain adjustments, resulting in a total purchase premium of approximately \$1.17 billion. *Id. pg. 7, lns. 12-18.*

12. This purchase premium will not affect Oklahoma ratepayers. SUO has testified that it “will not seek recovery of any acquisition premium for regulatory or rate-making purposes.” Any amounts above the net book value of the purchased assets will be excluded from rate base and borne by shareholders, not ratepayers. *Id. pg.8, lns. 1-5.*

13. SUO will adopt CERC’S existing tariff, which includes a Performance Based Rate Change Plan (“PBRC”). *Id. pg. 8, lns. 7-9.*

14. In 2004, the Commission set up PUD’s pilot program for the PBRC, which shifted regulation from the traditional cost of service/rate of return method to price cap regulation with financial incentives to control cost. Due to the success of the program, CERC’s PBRC became permanent in 2010.

15. The PBRC does not provide for periodic general rate cases.

16. Historically the Commission has found that “[CERC] and its customers have benefited from the streamlined regulation of the PBRC and the resulting cost efficiencies. Specifically, the PBRC encourages greater efficiency and performance by the Company due to revenue sharing for amounts earned above the upper-limit of the dead-band. The PBRC also reduces the cost of serving customers through significantly lower rate case and regulatory expenses, thereby reducing rates below what customers would otherwise pay. The PBRC also accomplishes the regulatory goal of gradualism by providing the opportunity for more frequent but generally smaller changes in rates. The PBRC also results in greater supervision of the Company by PUD and the Commission because the Company’s financial performance is reviewed annually.” *See Cause No. 201700078, Order No. 669205, at pg. 10.*

17. Historically, the Commission has also found that “a very significant benefit of the PBRC arises from the return of credits to customers when the Company’s earnings exceed the allowed ROE dead-band. The annual nature of the PBRC review provides assurance that all such surplus earnings will be shared by the Company, with customers receiving 75% of the earnings above the upper limit of the dead-band. The PBRC provides a mechanism to ensure that customers will receive the full amount of the credits. Under the traditional rate case regimen, a utility may economize and cut expenses immediately after the test year and to the extent the company is able to earn more than its allowed ROE, it will keep all those surplus earnings and share none of them with its customers. The PBRC prevents this from occurring because of the annual review of the Company’s performance prescribed by the PBRC. As a result, all surplus earnings will be identified and shared with its customer through direct credits.” *Id. at pgs. 10-11.*

18. Attorney General’s witness Bohrmann admitted that all the elements of a rate case, *i.e.*, cost of capital, capital structure, a jurisdictional cost of service study, a class cost of service study, and rate design can be reviewed via annual PBRCs. *See Trial Testimony of Todd F. Bohrmann, pgs. 115-116, lns. 12-25 & 1-9.*

19. Mr. Bohrmann, concedes that the Commission has considered items such as cost of capital, depreciation, and rate design in prior PBRC proceedings, but noted that “the Commission would typically approve one or fewer instances of such changes in a given year.” Although, a large number of potentially complex issues would be difficult in the timeline of a single PBRC filing, by spreading complex issues over several PBRC filings, parties are able to give appropriate and robust focus to the issue(s) being presented in a given filing. As a result, the review in PBRC filings can be just as thorough, if not more so, than in a single general rate case proceeding. *See Rebuttal Testimony of John Givens, pg. 5, lns. 10-19.*

19. While many aspects can be expected to change when a new company begins operating a utility, the annual PBRC filing is designed to take most of these changes into account. Any changes to rate base, or operating income will be reviewed by the Commission annually, and will flow through the revenue requirement calculation, just as it would if CERC

had experienced those same changes. Furthermore, because Summit will continue operating the same system, for the same customers, in the same state, there would likely be no difference in the Allowed Return on Equity calculation between CERC and SUO. *Givens Responsive*, pg. 8, *lns. 10-19*.

20. PUD has argued that there are two areas that require additional consideration: class cost of service allocations and depreciation rates. CERC’s PBRC tariff does not contain a mechanism for updating class cost of service allocations, and the same allocation factors have been in effect since the 2011 Test Year. As CERC has added and removed both plant assets and customers over the last decade, and especially as SUO begins to do the same under different management and operating characteristics, it is likely that these allocation factors have become increasingly inaccurate estimates of each class’s contribution to cost of service, which may cause certain customer classes to pay more or less than their fair share of utility costs. *Id. at pg. 9, lns. 1-9*.

21. PUD further argues that depreciation rates are affected by any change in capital addition and retirement characteristics. These changes occur over time as a normal part of utility operations, which is why utilities file periodic Depreciation Studies to update rates and amortize any reserve imbalance (i.e., any over- or under-depreciated amount relative to actual retirements); however, it is reasonable to assume that the changes will be much more pronounced when transitioning from one operating company to another. For this reason, it is important that a new Depreciation Study be performed in the relatively near future to update depreciation rates and avoid the reserve imbalance growing too large and having an outsized impact on future base rates. *Id. at pg. 9, lns. 10-19*.

22. PUD recommends that the Commission approve SUO’s request to adopt CERC’s existing tariff, including the PBRC tariff. PUD also recommends that the Commission find that a need exists for SUO to perform a Class Cost of Service Study and a Depreciation Study after the transfer from CERC is complete. Regarding the timing of these studies, PUD does not take a position, but recommends that the Commission require SUO file Direct Testimony in its first PBRC filing describing its proposed timeline for performing and submitting each study, as well as how the proposed timeline strikes a balance between (a) avoiding negative impacts from unnecessary delays, and (b) ensuring sufficient post-transition historical data exists for the studies to be effective. *Id. at pg. 10, lns. 1-11*.

23. PUD is concerned that the rate of capital investment under SUO will be higher than under CERC, leading to increase ratepayer costs as occurred after Summit acquired Arkansas Oklahoma Gas Corporation (“AOG”). *Id. at 10, lns. 12-18*.

24. SUO “expects capital spending to increase from the current \$15-\$20 million per year level to approximately \$30 million dollars per year, during the next 5 years.” *See Id. at pg.11, lines 1-6 citing SUO’s Response to PUD Data Request JTG-SUO-1-3*.

25.. However, increased capital spending can lead to improved system resiliency, reliability, safety, and other benefits for a utility’s customers. *Id. at pg. 11, lns. 17-21*.

26. The Commission finds that CERC’s existing PBRC Tariff, as adopted by SUO, will continue to function effectively as a mechanism to review SUO’s costs. As stated in Mr. Given’s Responsive Testimony, “[w]hile many things can be expected to change when a new company begins operating a utility, the annual PBRC filing is designed to take most of these changes into account.” *Id. at pg. 8, lns. 11-12.*

27. The Attorney General’s recommendation to suspend PBRC filings for the 2021, 2022, and 2023 test years is rejected. Because this acquisition is expected to close by the end of 2021, a PBRC review with a 2022 or 2023 test year would be entirely based on SUO’s financial data, not CERC’s. There is no reason why SUO’s own financial data would not be “representative of SUO’s future revenues and expenses” for the purposes of a PBRC.

28. While it is true that a PBRC filing with a 2021 test year will primarily rely on CERC’s financial data rather than SUO’s, this concern must be weighed against the benefits that ratepayers may miss if the PBRC is suspended. CERC customers received a credit of \$2.46 million as a result of the 2019 PBRC, and will receive a credit of \$883,697 as a result of the 2020 PBRC as the Commission approved the proposed Joint Stipulation and Settlement Agreement in Cause No. PUD 202100054. If the 2021 PBRC is suspended, ratepayers will lose the ability to potentially receive a credit under the PBRC Tariff if CERC’s Earned Return on Equity once again exceeds the Allowed Return dead-band of 9.5% to 10.5% in 2021.

29. The Commission did suspend annual PBRC filings following the acquisition in Cause No. PUD 201700495, Final Order No. 684561, when the Commission granted a waiver of AOG’s requirement to file for review of its PBRC following its acquisition by SUO’s parent company, Summit. However, the facts in that case differ substantially from the present case, for three reasons: (1) AOG was granted a *waiver* of its *requirement* to file, as requested by the utility. SUO has made no such request in this Case; (2) Summit’s acquisition of AOG closed on March 31, 2017, in the middle of AOG’s PBR test year, which ended August 31 of each year. In this Case, the acquisition is expected to close at or near the end of 2021; and (3) AOG wanted to change its test year end from August 31 to December 31, to align with Summit’s fiscal year. That is not an issue in this Cause, as CERC’s test year already ends December 31.

30. The Commission denies the Attorney General’s recommendation to require SUO to file a general rate case and suspend annual filings under the PBRC Tariff for the 2021, 2022, and 2023 test years. A general rate case is unnecessary, because PBRC filings are sufficient to perform a thorough review of SUO’s costs after the acquisition of CERC’s system. Furthermore, suspension of the PBRC filing risks denying the benefits of the PBRC to ratepayers.

31. The Commission orders, with regard to post-transition capital investments by SUO that it provide Direct Testimony in its first PBRC filing before the Commission addressing the following:

- A high-level description of SUO’s plant investment strategy and why it requires accelerated spending relative to CERC’s spending on the same system;

- SUO’s procurement process for labor and materials, and how it ensures projects are completed at the lowest reasonable cost;
- Any substantive changes made, or expected to be made, to CERC’s DIMP or TIMP plans;
- Any efforts SUO has made, or could reasonably make, to minimize the capital cost of plant projects or otherwise mitigate the impact on rates; and,
- Whether SUO could slow or delay the implementation of plant projects without material adverse effects to the safe and reliable delivery of service.

32. The Commission further orders, concerning the transfer of jurisdictional utility assets and customer accounts from CERC to SUO, that the proposed transfer is fair, just, reasonable, and in the public interest. SUO has demonstrated a clear ability to continue to provide continued service to CERC’s customers in Oklahoma, due both to the experience and expertise of its ultimate parent company, Summit Utilities, Inc., and its commitment to hire current CERC employees and management.

33. The Commission also approves SUO’s proposal to adopt CERC’s existing tariff, including the Performance Based Rate Change (“PBRC”) tariff. The PBRC mechanism will continue to allow for effective review of SUO’s rates, including any changes to rate base and operating income, just as it has for CERC.

34. However, the PBRC mechanism does not provide for changes to class cost of service allocations or depreciation rates, which the Commission believes should be updated based on new operating characteristics of SUO. For this reason, the Commission finds that a need exists for SUO to perform a Class Cost of Service Study and a Depreciation Study after the transfer from CERC is complete. Regarding the timing of these studies, the Commission directs SUO to file Direct Testimony in its first PBRC filing describing its proposed timeline for performing and submitting each study, as well as how the proposed timeline strikes a balance between (a) avoiding negative impacts from unnecessary delays, and (b) ensuring sufficient post-transition historical data exists for the studies to be effective.

35. During trial, PUD requested to present additional surrebuttal type testimony during witness John Given’s testimony. The Attorney General objected to the presentation of the additional testimony and the Joint Applicants demurred. The ALJ considered the matter under the broad discretion granted the ALJ pursuant to the guidelines set forth in the Procedural Schedule and, in that broad discretion, permitted the additional questioning.

Respectfully submitted,

/s/Mike S. Ryan

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CERTIFICATE OF ELECTRONIC SERVICE

I, the undersigned, do hereby certify that on the 9th day of September 2021, a true and correct copy of the above and foregoing was sent electronically to:

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