

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

FILED
SEP 17 2021

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

HEARING: August 17, 2021, Courtroom B (virtual teleconference)
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: Curtis M. Long and J. Dillon Curran, Attorneys *representing* CenterPoint
Energy Resources Corp., Southern Col Midco, LLC, and Summit
Utilities Oklahoma, Inc.
Mike S. Ryan, Assistant General Counsel *representing* Public Utility
Division, Oklahoma Corporation Commission
Jared B. Haines and A. Chase Snodgrass, Assistant Attorneys General
representing Office of Attorney General, State of Oklahoma

REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE

This Cause comes before the Oklahoma Corporation Commission (“Commission”) on the Joint Application of CenterPoint Energy Resources Corp. (“CERC”), Southern Col Midco, LLC (“SC MidCo”) and Summit Utilities Oklahoma, Inc. (“SUO”).

I. RECOMMENDATION

The Administrative Law Judge (“ALJ”) recommends approval of the Joint Applicants’ request for a transfer of the utility assets of CenterPoint Energy Resources Corp. including customer accounts, to Summit Utilities Oklahoma, Inc., a subsidiary of South Col Midco, LLC, because the Applicants met the requirements of OAC 165:45-5-3.

The ALJ recommends that the Commission establish a process to closely monitor, on an annual basis, the cost of service underlying SUO’s operation of the transferred jurisdictional assets to assure that customers receive all benefits to which they are entitled under the CERC Performance Based Rate Change (“PBRC”) Tariff which shall be adopted by SUO upon closing and including any credits that may be forthcoming from year to year during the transition period.

The ALJ recommends that SUO reconcile SUO’s Accumulated Deferred Income Tax (ADIT) and Excess Deferred Income Tax (EDIT) legacy balance to CenterPoint’s last PBRC filing in a subsequent PBRC filing by SUO with SUO separately tracking any newly created SUO ADIT balance due to the uncertainty of whether tax normalization rules apply to SUO’s legacy ADIT and EDIT balances.

The ALJ does not recommend suspension of a PBRC filing for the years 2021, 2022 and 2023. It is not recommended that SUO file a rate case.

II. PROCEDURAL HISTORY

On June 24, 2021, CERC, CD MidCo and SUO (collectively, “Applicants”) filed their Joint Application for transfer of jurisdictional assets and customer accounts pursuant to OAC 165: 45-3-5.

Also on June 24, 2021, the Attorney General of the State of Oklahoma filed an Entry of Appearance on behalf of Jared B. Haines and A. Chase Snodgrass.

Also on June 24, 2021, the Direct Testimonies of Steven E. Birchfield and Fred Kirkwood on behalf of Summit Utilities Oklahoma, Inc. and Cynthia L. Westcott on behalf of CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Oklahoma Gas were filed.

Also on June 24, 2021, Applicants filed a Joint Motion for Protective Order, a Joint Motion to Establish Notice Requirements and a Joint Motion to Establish Procedural Schedule along with Notices of Hearing setting the Joint Motion for Protective Order, Joint Motion to Establish Notice Requirements and Joint Motion to Establish Procedural Schedule for hearing on July 1, 2021.

On July 1, 2021, the Joint Motion to Establish Notice Requirements, Joint Motion for Protective Order and the Joint Motion to Establish Procedural Schedule came on for hearing before the ALJ, and were heard and recommended on that date.

On July 13, 2021, Order No. 719419, Order Granting Joint Motion to Establish Notice Requirements, Order No. 719420, Order Granting Joint Motion to Establish Procedural Schedule and Order No. 719421, Order Granting Joint Motion for Protective Order were issued.

On July 23, 2021, the Responsive Testimony of Todd F. Bohrmann, the Responsive Testimony of Brice D. Betchan and the Responsive Testimony of John Givens were filed.

On August 5, 2021, the Rebuttal Testimony of John Givens and the Rebuttal Testimony of Steven E. Birchfield were filed.

On August 13, 2021, the Public Utility Division’s Exhibit List, the Attorney General’s Exhibit List and the Exhibit List of Joint Applicants CenterPoint Energy Resources Corp., Southern Col MidCo, LLC. and Summit Utilities Oklahoma, Inc. were filed.

Also on August 13, 2021, the Summary of Responsive Testimony of John Givens, Summary of Rebuttal Testimony of John Givens, the Summary of Testimony of Cynthia L. Westcott, the Summary of Testimony of Fred Kirkwood, the Summary of Testimony of Steven E. Birchfield, the Summary of Responsive Testimony of Brice D. Betchan and the Summary of Responsive Testimony of Todd F. Bohrmann were filed.

On August 16, 2021, the Testimony of Angus S. King III was filed.

On August 17, 2021, the Hearing on the Merits was held and Exhibits 1 through 12 were filed.

Also on August 17, 2021, the Hearing on the Merits was continued by agreement of the parties to August 26, 2021.

On August 26, 2021, following testimony presented at the Hearing, the ALJ took the matter under advisement and requested the parties to file Proposed Findings of Fact and Conclusion of Law on or before September 9, 2021.

Also on August 26, 2021, the Notice of Withdrawal of Appearance on behalf of Johanna Roberts was filed.

Also on August 26, 2021, the Notice of Transcript Completion from August 17, 2021, was filed.

On September 2, 2021, the Notice of Transcript Completion from August 26, 2021, was filed.

III. SUMMARY OF EVIDENCE

Documents filed in this Cause are contained in records kept by the Court Clerk of the Commission. Testimony was offered at the Hearing on the Merits. Witnesses testifying were John Givens on behalf of PUD, Cynthia L. Westcott on behalf of CERC, Steven E. Birchfield and Angus S. King III on behalf of SUO, Brice D. Betchan and Todd F. Bohrmann on behalf of the Attorney General. The entirety of the testimony offered is contained in the transcript of these proceedings. The testimony summaries are included as Attachment “B” attached hereto and incorporated herein.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction in this Cause pursuant to Article IX, § 18 of the Oklahoma Constitution and 17 OKLA. STAT. § 151 *et seq.*
2. This proceeding is governed by OAC 165:45-3-5.

Notice

3. Notice of the Hearing on the Merits is proper as prescribed by Order No. 719419 with individual notice provided by United States Mail, at least twenty (20) days prior to the hearing, as required by OAC 165:45-3-5(f). On August 9, 2021, CERC filed an Affidavit of Service demonstrating that notice in this Cause was provided to the Company’s Oklahoma customers as required by Order No. 719419.

Purchase Agreement

4. CERC is a natural gas utility company serving approximately 100,025 residential,

commercial and industrial customers throughout 36 Oklahoma Counties and operates subject to Commission oversight.

5. SUO, organized under Colorado law, and a subsidiary of SCMidco, a Delaware limited liability company, was organized to acquire the assets of CERC in Oklahoma. SUO corporate affiliates include several regulated public utility companies operating in Oklahoma, Arkansas, Missouri, Colorado and Maine. Its primary parent company, Summit Utilities, operates natural gas utilities in multiple jurisdictions.

6. Pursuant to an Asset Purchase Agreement entered into by CERC and SC Midco on April 29, 2021 and subject to Commission approval, SUO will acquire substantially all of the utility operating assets of CERC located in the State of Oklahoma (the “Utility Assets”). Following completion of the Transaction, SUO will use these assets to continue to provide the natural gas services currently provided by CERC as an Oklahoma public utility, at the same rates, and under the same terms and conditions of service, as set out in CERC’s current Oklahoma rate schedules and tariff on file with, and as may be revised and approved from time to time by, this Commission.

Joint Application

7. The Commission should approve the transfer of jurisdictional assets and customer accounts from CERC to SUO. The Joint Application of CERC, SC Midco and SUO seeking approval of this asset transfer, and complying with the requirements of OAC 165:45-3-5, was filed June 24, 2021. Joint Applicants provided all of the information set out in OAC 165:45-3-5(b) (1 through 14) and demonstrated the ability to continue operations in furtherance of the welfare of utility customers sufficient to support approval of the Joint Application. Givens Responsive Testimony 6:2-11 and 12:15-23.

8. The Commission should find that there was no evidence presented by any party to this cause indicating there was insufficient information to support approval of the Joint Application for asset transfer. 1TR 78:25 – 79:10.

Post-Closing Transition

9. The Commission should find that the Joint Applicants have taken steps to ensure a safe transition during this asset transfer.

10. SC Midco or an affiliate will enter into Transition Services Agreement (TSA) under whose terms CESC, a CERC subsidiary, will provide to SUO, and SUO will pay for, transition services for a 12 month post-closing period. 1TR 60:24 – 61:3.

11. Services provided to SC Midco by CESC under the TSA shall include operational support in the areas of gas supply, safety, training, engineering, customer operations, supply chain, finance, accounting, and regulatory, among other services. Birchfield Direct 6:23–7:14; Kirkwood/King 5:21–6:11; Givens Responsive 6:2-11.

12. TSA expenses are expected to be equivalent to pre-closing CERC operating and maintenance expenses since they will be charged to SUO consistent with the historical

methodology for direct charges and allocated costs to CERC. Birchfield Direct 7:12-14.

13. SUO committed to hiring CERC employees and to assuring safe and reliable service. Birchfield 1T 55:7 – 56:10. Givens Responsive 6:2-11.

14. As a protection of reliable and safe service to customers, as recommended by PUD, SUO's direct testimony in support of its first post-transfer PBRC, shall include:

- 1) An in-depth description SUO's plant investment strategy and any variance from the prior utility's spending pattern with a discussion of procurement processes that mitigate capital cost and negative effect on rate payers.
- 2) A discussion of SUO's procurement process and safeguards in place to assure projects are completed at the lowest reasonable cost while ensuring system integrity and maintaining customer service standards.
- 3) An outline of any changes made or to be made in the future to SUO's Distribution Integrity Management Plan (DIMP), Transmission Integrity Management Plan (TIMP).
- 4) An analysis considering whether SUO is able to slow the timetable for certain improvement projects without affecting the safety and reliability of service to customers. Givens responsive 12:1-13.

Accumulated Deferred Income Tax and Excess Deferred Income Tax

14. The Commission should find that SUO's recommendation that CERC's ADIT and EDIT remain a reduction to rate base for rate-making purposes is reasonable and in the customers' interest. Birchfield Direct 19:19 – 20:2; Betchan Responsive 7: 12-20.

15. SUO shall reconcile its legacy ADIT and EDIT with CERC's last PBRC filing in a subsequent filing by SUO with SUO separately tracking newly created ADIT balances due to uncertainty of whether tax normalization rules apply to SUO legacy ADIT, EDIT balances. Betchan 9:10-17.

Cost of Service Study and Depreciation Study

16. The Commission should find that SUO shall enumerate in its first post-closing PBRC filing a proposed timeline in which to perform both a Cost of Service Study and Depreciation Study, specifically stating how the scheduling strikes a balance between avoidance of potential harm to customers due to unnecessary delay while providing sufficient post-acquisition data to allow for meaningful review. Givens responsive 10: 1-11, 13:5-12.

Suspension of PBRC review

17. The Commission should deny the Attorney General's recommendation to suspend PBRC review for 2021, 2022 and 2023. There has been no convincing evidence presented in support of

PBRC suspension in the context of the current proceeding. The information required to effectuate a sale or transfer of the assets of a utility company in Oklahoma is delineated in OAC 165: 43-3-5. This chapter does not require the acquiring party to commit to a specific method of performance review in a future proceeding to receive approval of the transfer. Therefore the joint applicants' failure to agree to the recommendation regarding suspension of PBRC review for test years 2021, 2022 and 2023 in favor of a rate case filing in 2024 is irrelevant to the current proceeding.

18. As a matter of policy, PBRC suspension runs counter to the public interest as it would eliminate the process which allows PUD to closely monitor utility costs during the transition period and thereafter on a yearly basis. Givens Responsive 13:5 – 14:4; 2TR 14:19 – 15:2. Any adjustments to rates that can be made in a general rate case are and can be made in a PBRC review proceeding. 1TR. 53:21 – 54:19, 1TR 115:12 – 117:4.

19. Suspension of the PBRC for a three year period in favor a full rate case review additionally removes the possibility of a credit to customers during the suspension period. Givens Rebuttal 7: 1-10. Suspension also eliminates rate change gradualism that is a hallmark of the PBRC. 1Tr. 98:7 -99: 18.

20. Prior consideration of this issue found that “the yearly performance-based comparison and regular review by PUD, OAG and ultimately the Commission is inherently efficient leading to improvements toward greater efficiency in the public interest.” PUD 201900019, Order No. 701439.

Rate Case Review

21. The Commission should deny the Attorney General's recommendation that, in addition to PBRC suspension, a general rate case be initiated in 2024. A general rate case is not required at this time since CERC and SUO have taken steps to ensure that quality of service will be maintained. SUO will provide the same services to CERC customers using the same assets, under the same rate structure and tariffs previously approved by the Commission. Birchfield Direct 20:3-18; 1TR 79:22-25 and 81:11-13. SUO also intends to retain CERC employees who currently operate the system. Birchfield Direct 8:13 - 9:5. Operating and maintenance costs will continue as under CERC for a 12 month period under the TSA and are not expected to vary substantially from costs under CERC. Birchfield Direct, 7: 12-14. SUO will not seek to recover costs arising from the transfer including acquisition premium, transition or general integration costs. Birchfield Direct 18: 21- 22,19: 18.

22. The items that are reviewed in a rate case including cost of capital, capital structure, cost of service and rate design can be reviewed in an annual PBRC proceeding. Bohrmann TR. 115: 12-25, 116: 1-9.

The Attorney General's Objection to PUD Testimony

23. At trial, PUD counsel requested permission to present additional testimony in the nature of surrebutal by witness John Givens. Counsel for the Attorney General objected to this testimony based upon the language set out in the Procedural Schedule Order. However the Procedural Schedule Order in this case allows the ALJ discretion in permitting additional testimony. The

Commission should give due weight to Mr. Given's testimony in light of the subject matter of this proceeding.

Conclusion

24. Joint Applicants' requested transfer of jurisdictional assets and customer accounts is in the public interest and the terms of the transaction are fair, just, and reasonable insofar as they pertain to utility service in Oklahoma.

25. The Joint Application should be approved in all respects, subject to the findings and conclusions set out herein.

Respectfully submitted,

/s/ Linda S. Foreman
LINDA S. FOREMAN
Administrative Law Judge

September 17, 2021
Date

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Vice Chairman Bob Anthony
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