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

RESPONSE OF JOINT APPLICANTS TO ATTORNEY GENERAL'S EXCEPTIONS TO THE REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE

Joint Applicants CenterPoint Energy Resources Corp. ("CERC"), Southern Col Midco, LLC ("SC MidCo"), and Summit Utilities Oklahoma, Inc. ("SUO"), present this Response to the Attorney General's Exceptions to the Report and Recommendation of the Administrative Law Judge (the "Exceptions").

I. INTRODUCTION

This Cause was filed by Joint Applicants to request that the Commission (1) approve a transaction by which CERC would assign all its Oklahoma jurisdictional utility assets and all its Oklahoma natural gas customer accounts to SUO (the "Transaction"); and (2) authorize SUO to provide utility service on those assets under CERC's rates and tariffs on file with and approved by this Commission, including CERC's Performance Based Rate Change ("PBRC") Plan.

Joint Applicants presented to the Administrative Law Judge below a case carefully tailored to comply with all the requirements of the controlling Commission rule governing utility acquisitions such as this, with detailed accompanying testimony in support. Offering no opposition to Joint Applicants' compelling case on the merits, the Office of the Attorney General ("AG") instead appropriates the critical public importance of this Cause as leverage to gain extraneous relief that AG has been seeking for almost a decade and that the Commission has consistently and

repeatedly denied: the relegation of the PBRC Plan to a minor regulatory role and a reversion to traditional, litigated rate proceedings as the primary tool for rate regulation of this utility. Doubling down on the familiar arguments in past cases, AG's proposal here is to *suspend the PBRC completely, for three years*, eliminating a proven mechanism for close supervision of natural gas utilities by the Public Utility Division and ending any hope for customers to receive any credit refunds under the PBRC until 2025, if then.

The Administrative Law Judge ("ALJ") filed her Report and Recommendation on September 17, 2021 (the "ALJ Report"). She recommended that the acquisition should be approved and that the Commission should reject the AG's proposals (1) to suspend the PBRC Plan; and (2) to require SUO to present a general rate case by 2024. Joint Applicants support the ALJ's Report in all respects, as does the record in this Cause.

I. THE APPLICABLE STANDARD OF REVIEW

A. JOINT APPLICANTS' EVIDENCE WAS UNDISPUTED AND SATISFIES THE APPLICABLE STANDARD IN ALL RESPECTS

This Cause was filed under and governed by OAC 165:45-3-5. The Rule requires that the initial filing must contain specific information to justify the acquisition and to qualify the acquiring party as possessing sufficient financial, managerial and operational capacity to operate and maintain the jurisdictional assets to provide safe and reliable service. OAC 165:45-3-5(b)(1-14). Joint Applicants provided all the information required by the Rule, together with extensive supporting testimony. The result is a record containing overwhelming and uncontested evidence of compliance with the criteria set out in the Rule, particularly as it provides assurances for a stable transition to SUO ownership. *See,* Givens Responsive Testimony 6:2-11 and 12:15-23; 1Tr. 78:25 – 79:10; ALJ Report at ¶¶7-8.

The uncontested evidence of SUO's plans for the first several years post-closing is particularly compelling, as noted by the ALJ in her Report. ALJ Report ¶¶9-13. Service quality and continuity will be preserved because SUO has committed to hire current CERC employees and management to manage and operate the facilities to be acquired. Kirkwood/King Direct 4:19 – 7:14; 1TR 55:7 – 56:10; Givens Responsive 6:2-11. Consistent with OAC 165:45:3-5(g), SUO has committed to adopt CERC's rate structure and tariffs, including the PBRC tariff. Birchfield Direct 20:3-18; Kirkwood/King Direct 7:21-22; Givens Responsive 8:7-19.

SUO also provided assurances that it will not seek ratemaking recovery of any acquisition premium (Birchfield Direct 18:21 – 19:4; Givens Responsive 8:1-5), of transaction costs (Birchfield Direct 18:21 – 19:4) or of general integration costs (Birchfield Direct 19:5-10). SUO has also expressed its expectation that the allocation of operating cost to Oklahoma operations will be "consistent with the historical amounts allocated by CERC." Birchfield Direct 19:11-18.

To further prepare for SUO's ownership and operation of the CERC system, a Transition Services Agreement ("TSA") will be implemented at closing, whereby a CERC affiliate will provide to SUO and SUO will pay for transition services for a period of 12 months post-closing. 1TR 60:24 – 61:2. The TSA will allow SUO to operate as normal during the transition period while its parent company stands up the organization to support the newly acquired assets. The scope of the services to be provided under the TSA will 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 6:9-11.

The TSA expenses paid by SUO are expected to be similar to the O&M expenses borne by CERC pre-closing because the cost of services provided under the TSA will be based on the actual

cost of performing those same services, and will be charged to SUO consistent with the historical methodology for direct charges and allocated costs to CERC. Birchfield Direct 7:12-14.

No party has asserted that Joint Applicants failed to provide sufficient evidence necessary to support a finding that Summit possesses the financial, managerial and operational capacity to purchase and operate the jurisdictional assets of CERC and to provide to the Oklahoma public safe and reliable natural gas utility service. That alone should be sufficient for an unconditional approval of the Transaction.

AG did not contest any of the evidence summarized above, but insists that the Commission should tack on as a "public interest" criteria a three-year suspension of the PBRC Plan and the requirement of a general rate case in 2024. The ALJ carefully and thoughtfully considered AG's proposals and rejected them both for their lack of merit. The Commission should do likewise.

B. THE ALJ DID NOT MISUNDERSTAND THE APPLICABLE STANDARD OF REVIEW.

The AG unfairly and incorrectly accuses the ALJ of applying the standard for a stock purchase transaction instead of the standard for an asset acquisition such as this. Exceptions at 2-3. The ALJ did no such thing. The ALJ Report clearly and unambiguously applies the applicable standard for asset acquisitions set out in OAC 165:45-3-5. *See, e.g.,* ALJ Report ¶2 ("This proceeding is governed by OAC 165:45-3-5"). Nowhere in her report did the ALJ even mention, much less apply, the statute that AG claims that she erroneously relied upon.

The AG suggests that the ALJ failed to consider the "public interest" conditions for which AG advocates. Exceptions at 2-3. That contention is also unfair and incorrect. The ALJ carefully and thoughtfully considered AG's proposals at length and rejected them both *on their merits*, not because of a misapplication of the standard under OAC 165:45-3-5. *See* ALJ Report ¶¶ 17-22.

This is not a misapplication of the standard of review, it is a fair and just evaluation of AG's proposals and a rejection of them both as lacking merit.

In rejecting AG's proposals, the ALJ obviously found significant the evidence of safeguards in place and the noteworthy preparations of the Joint Applicants *designed to ensure stable rates and stable operations during the transition period. See,* ALJ Report ¶¶9-16, 18, 21-22. In light of that overwhelming evidence and the explicit preference in the applicable rule for the adoption of existing rate structures (OAC 165:45:3-5(g)), the ALJ was *following* the standards of the applicable rule, not "ignoring" them as AG contends. Her report should be adopted.

II. THE ALJ CAREFULLY CONSIDERED AND CORRECTLY REJECTED AS CONTRARY TO THE PUBLIC INTEREST THE AG'S PROPOSAL TO SUSPEND THE PBRC PLAN

Recognizing the wisdom of close supervision during the transition under the Commission's existing regulatory structure, the ALJ included several recommendations designed to accomplish that result. ALJ Report ¶¶14-16. These recommendations expressly incorporate the Commission's existing regulatory structure, including CERC's established and proven PBRC Plan that SUO will be adopting. These recommendations, together with the meticulous preparation for post-closing to which SUO has committed (as recounted in Part I, above), provide the highest level of confidence in a continued pattern of safety, reliability and rate stability for customers whose accounts will be transferred to SUO.

Despite all this, the AG persists in its insistence that this Commission should apply a regulatory chainsaw to the Commission's established process proven to assure close annual review by the Public Utility Division: *a three-year suspension of the PBRC Plan for the years 2022, 2023 and 2024, during which time there would exist no formal mechanism for review*. AG presented no evidence of substance supporting such draconian measures and the ALJ correctly rejected the

proposal as without evidentiary support, as contrary to the public interest, and as such, irrelevant to the criteria for approval of an asset acquisition.[1]

The ALJ got this exactly right in her Report. First, the Commission must have evidence to support the abrupt cancellation of an establish regulatory tool, and the AG provided "no convincing evidence" on the point. ALJ Report ¶17. Second, a three-year suspension of a process providing close review during a critical transition period would deprive the PUD of its primary regulatory tool for annual oversight,[2] contribute to the elimination of transparency, and destroy the gradualism for rate changes customers have come to expect from annual PBRC review. 1TR 52:13 – 53:4. A suspension of the PBRC for three years would also eliminate the reasonable process by which the PUD plans to closely monitor costs during and after the transition. *See*, Givens Responsive 13:5 – 14:4; 2TR 14:19 – 15:2; ALJ Report ¶18.

Third, AG's proposed suspension of the PBRC process is further contrary to the public interest because it would destroy even the possibility for customer credit refunds that are available only under the PBRC process. Givens Rebuttal 7:1-10; ALJ Report ¶19. The Commission has found that customer credits are a "very significant benefit" arising from the PBRC process. *E.g.*,

[1] The Commission's order approving the acquisition of Arkansas Oklahoma Gas Corporation ("AOG") by Summit Utilities, Inc. in 2017 (Order No. 659979, Cause No. PUD 201600439) relied upon by the Attorney General (Exceptions at 4) does not support his proposal for a suspension of the PBRC process. On the contrary, the AOG acquisition order *rejected* the Attorney General's proposal to impose "public interest" conditions relating to rate elements. Order No. 659979 at 9; 1TR 91:13 – 93:4. Furthermore, the single year waiver requested by AOG *after* it was acquired by Summit provides no useful guidance here: (1) the waiver was presented more than a year after the acquisition of AOG was approved by the Commission and closed, presumably after more facts became known; (2) the waiver was supported by a settlement agreed upon by all parties, including the Attorney General; and (3) the waiver was driven by a significant change to the test year necessary to synchronize AOG's test year to Summit's fiscal year records. No evidence was presented that *any* customer benefits would have been lost by the waiver and the Commission neither imposed nor was asked to impose any moratorium on PBRC proceedings. *See,* Givens Rebuttal 7:11 – 8:6; Order No. 684561 at 6 (¶1) and 13 (¶8), Cause No. PUD 201700495. In the present case, even the Attorney General's witness agreed that the facts and circumstances surrounding the AOG waiver were different (1TR 93:23 – 95:12).

[2] Mr. Bohrmann's peculiar assertion that the PUD could develop a *new* review mechanism during the transition to replace an *existing* PBRC review process (as refined by 15 years of experience and success and with proven public benefits) is an illogical conclusion apparently borne of an irrational dislike for the PBRC. 1TR 109:7 – 110:8.

Order No. 669205, Attachment 1 at 10 (¶7), Cause No. PUD 201700078; 1TR 96:14-21 and 113:25 – 115:8. Since inception of the PBRC process for CERC, a total of approximately $8 Million in credits has been returned to customers, including $2.46 Million in credits authorized by the Commission in 2020 and $883,697 just ordered in 2022. 1TR 99:19 – 102:15; Givens Rebuttal 7:1-10; Order No. 713127, Attachment A at 1 (¶1), Cause No. PUD 202000028; Order No. 720135, Attachment A at 1 (¶1), Cause No. PUD 202100054. These are benefits that would not have arisen but for the PBRC process. *See*, Order No. 669205, Attachment 1 at 11 (¶8), Cause No. PUD 201700078. Any such benefits arising during AG's proposed suspension of the PBRC would be *lost forever*. 1TR 52:25 – 53:4. Mr. Bohrmann's disregard for the loss of this potential benefit (1TR 90:20 – 91:6; 1TR 110:9 – 112:14) in the name of what he regards as accurate post-closing cost information is neither reasonable nor supported by any public interest. Givens Rebuttal 7:1-10; Birchfield Rebuttal 5:12 – 7:14; 2TR 15:11 – 16:2, 19:1-5 and 34:6-15.

AG argues for a three-year suspension of the PBRC review because such a review would apply CERC financial information to SUO rates going forward. That argument is illogical and contrary to the applicable standard of review for several reasons. First, the applicable rule sets out a clear preference for adoption of *existing rate structures* in connection with an asset acquisition:

> If the application is approved, *the rates for natural gas service in effect* for the transferred customers prior to the effective date of the transfer *shall continue to be charged by the acquiring party* with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause.

OAC 165:45:3-5(g)(emphasis added). The ALJ's recommendation is consistent with this rule.

Second, under AG's proposed suspension, the existing CERC rates AG considers "stale" will remain in effect until at least 2024, and without any process for review or supervisions by PUD. No "public interest" is evident from that illogical position. Third, rates (or refunds) that

will be ordered in SUO's 2022 PBRC case would be based on 2021 data that would be no more "stale" than if CERC had not sold its Oklahoma assets. Under this Commission's established procedures for CERC's PBRC Plan now in effect, a review of the current 2021 test year is now scheduled for next year's filing. There is no basis to abandon that scheduled review because the data is "stale": the data is the same vintage with or without the asset sale. An historic test year is standard procedure for rate review at this Commission and to our knowledge, an instantaneous rate adjustment has not yet been invented.[3] Moreover, if customer credits are due based on performance in the 2021 test year almost completed, PBRC review for the current test year will not occur under AG's proposal and customers will be deprived of the opportunity to receive credits for no good reason. Fourth, and finally, if the PBRC Plan continues as an annual review as proposed by the Joint Applicants and as recommended by the ALJ, any "stale" data will be updated and corrected from year to year and the rates adjusted accordingly.

III. THE ALJ CAREFULLY CONSIDERED AND CORRECTLY REJECTED THE AG'S PROPOSAL TO REQUIRE A GENERAL RATE CASE IN 2024.

Contrary to the AG's arguments, a general rate case would provide no public benefit. On the contrary, it would impose an unnecessary regulatory burden on a company that has gone well beyond what is required to ensure the continuation of safe and reliable service and rate stability during the transition under SUO's ownership. The ALJ summarized this in her Report (*see,* ALJ Report ¶21) and concluded that because of these significant efforts to "ensure that quality of service will be maintained" by providing the same services on the "same assets under the same rate structure and tariffs previously approved by the Commission," a general rate case "is not

[3] As PUD's witness John Givens stated at the hearing, "The fact is that following acquisition, rates are always going to be based on stale data. The difference is simply, how stale. The Attorney General's position would have Summit's rates continue to be based on 2018 CenterPoint data because that's the last time that the rates were updated through a PBRC filing rather than a credit being issued." 2TR. 14:19-25.

required at this time." The ALJ also correctly observed that if corrections in the rates are necessary during the transition period, the PBRC may accommodate any such issue. ALJ Report ¶22. Any adjustment to rates that can be made in a general rate case are and can be made in a PBRC review proceeding. *See,* 1TR 53:21 – 54:19 and 115:12 – 117:4 (cost of capital, capital structure, jurisdictional and class cost of service study, depreciation and rate design); Bohrmann Responsive 14:3-11 (cost of capital, depreciation, rate design).

IV. THE EMPIRE ELECTRIC RATE CASE ORDER IS NEITHER PRECEDENTIAL NOR PERSUASIVE AUTHORITY FOR AG'S PROPOSALS

The Empire Electric rate case order (Order No. 667123, Cause No. PUD 201600468) (the "Empire Order") on which the AG places heavy reliance (Exceptions 2-5) provides no support for either a general rate case or a suspension of the PBRC process in this Cause. First of all, the Empire Order arose from a general rate case, which in Oklahoma is a legislative proceeding. *See, Muskogee Gas & Electric Co. v. State,* 1920 OK 6 (¶¶4-5), 186 P. 730. Decisions in legislative proceedings carry none of the same preclusive effect as judicial decisions. If it were not so, the Commission could never revise the rates it sets in a rate case.

Furthermore, the Empire Order is not persuasive in this Cause for a number of reasons. Unlike CERC and SUO, Empire did not have an annual PBRC review process in place. 1TR 87:10-18, 118:22 – 119:1; 2TR 32:25 – 33:3. The Empire proceeding was instead a general rate case in which known cost savings hit the books *after* the test year (and after six-month post-test-year adjustment period). Thus, under general rate case rules (17 OKLA. STAT. §284), *customers would not have received that benefit if rates had been set based on that data* known to be stale. 1TR 87:1-9; Order No. 667123 at 6. Worse, without any annual PBRC review, Empire rates would have remained in place for several years, thus precluding any benefit for customer cost savings

during that period. *See,* 1TR 88:24 – 89:7; 2TR 33:4-17. Recognizing these circumstances, the Commission wisely dismissed Empire's rate case and required Empire to come back with a new test year covering the known cost savings, which Empire then did a year later in Cause No. PUD 201800113. 1TR 86:20-25 and 89:8-16; Order No. 667123 at 8.

The lesson for this Cause from the Empire Order is that cost savings should not be denied customers simply because of a change in utility ownership. Here, the opportunity for customer credits would be denied by the Attorney General's proposal to suspend the PBRC, so if relevant here at all, the Empire Order argues for a *denial* of AG's proposal as contrary to the public interest, as the ALJ recognized in her Report. Thus considered, the principles applied by the Commission in the Empire Order support an efficient annual PBRC review for SUO during the transition period, not a suspension of an existing and proven mechanism facilitating annual review by the PUD, and not a required general rate case years in the future based on AG's speculation (*see* Exceptions at 6-8) about conditions that cannot now be predicted with any accuracy.

V. CONCLUSION

The Commission should adopt the ALJ Report in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2021 a full, true, and correct copy of the above and foregoing instrument was served on the following persons via **electronic mail** to:

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