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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,)
DIRECTOR OF THE PUBLIC UTILITY DIVISION,)
OKLAHOMA CORPORATION COMMISSION, TO) CAUSE NO. PUD 202200003
PUBLICLY DISCLOSE CERTAIN DOCUMENTS AND)
INFORMATION RELATED TO THE EXTREME) ORDER NO. 723431
WEATHER EMERGENCY OF FEBRUARY 2021)

HEARING: January 31, 2022, in Courtroom B (virtual teleconference)
2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: Michael L. Velez, Attorney, *representing* the Public Utility Division,
Oklahoma Corporation Commission;
William L. Humes and Kimber L. Shoop, Attorneys *representing*
Oklahoma Gas and Electric Company;
Dustin R. Fredrick, Curtis M. Long, J. Dillon Curran, and Anna McNeil,
Attorneys *representing* Oklahoma Natural Gas Company, a division of
ONE Gas Inc.;
Curtis M. Long, J. Dillon Curran, and Anna McNeil, Attorneys
representing CenterPoint Energy Resources Corp., d/b/a CenterPoint
Energy Oklahoma Gas;
Curtis M. Long, J. Dillon Curran, and Anna McNeil, Attorneys
representing Summit Utilities Oklahoma Inc.;
Curtis M. Long, J. Dillon Curran, and Anna McNeil, Attorneys
representing Arkansas Oklahoma Gas Corporation;
Jack P. Fite and Joann S. Worthington, Attorneys *representing* Public
Service Company of Oklahoma;
Kenneth A. Tillotson, Attorney *representing* Empire District Electric
Company;
Ron Comingdeer, Attorney *representing* Panhandle Natural Gas Inc.
Ron Comingdeer, Attorney *representing* Ft. Cobb Fuel Authority LLC
James A. Roth, Marc Edwards, C. Eric Davis, and Travis E. Harrison,
Attorneys *representing* NextEra Energy Marketing, LLC

ORDER GRANTING LIMITED INTERVENTION AND DENYING PROTECTIVE ORDER

The Corporation Commission (“Commission”) of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration NextEra Energy Marketing, LLC’s (“NEM”) combined Motion for Limited Intervention and Motion for Protective Order (“Motion”) filed on January 25, 2022, in the Application of Brandy L. Wreath, Director of the Public Utility Division (“PUD”), Oklahoma Corporation Commission, to publicly disclose certain documents and information related to the extreme weather emergency of February 2021 (“Application”).

I. PROCEDURAL HISTORY

On January 12, 2022, PUD submitted Discovery Request to the Respondents listed in the Application requesting the Respondents file in this Cause, the total amount each Respondent paid to each provider for the natural gas commodity, transportation services, transmission services, storage related expenses, purchased power, and other related expenses by type and provider. The request made clear that no confidential information was to be provided and that a comment of why any withheld data was confidential should be provided. The Discovery Request were due to be filed by February 1, 2022.

On January 25, 2022, NEM filed its combined Motion along with a Notice of Hearing setting its combined Motion to be heard before an Administrative Law Judge (“ALJ”) on January 27, 2022. On the same date NEM sent an email to all parties requesting a waiver of the five business day notice in OAC 165:5-9-2 (b)(1)(A).

All Respondents agreed to waive the five business day notice requirement. PUD did not agree to waiver of the five business notice requirement. However, PUD did agree, subject to the ALJ’s availability, to have a hearing on January 31, 2022, prior to the due date for responses to be submitted to PUD’s discovery request.

On January 27, 2022, the Motion came on for hearing and was continued by agreement of the parties to January 31, 2022.

On January 31, 2022, Oklahoma Gas and Electric Company, (“OG&E”), Oklahoma Natural Gas Company, a division of ONE Gas (“ONG”), CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Oklahoma Gas (“CenterPoint”), Summit Utilities Oklahoma, Inc., (“Summit”), Arkansas Oklahoma Gas Corporation (“AOG”), Public Service Company of Oklahoma (“PSO”), and Empire District Electric Company (“Empire”) filed their respective Entries of Appearance.

On January 31, 2022, a hearing on NEM’s Motions was held before an ALJ.

At the hearing, NEM requested intervention and stated, pursuant to their Motion that NEM had been provided notice by PSO and ONG that in response to the Application and associated data requests they intended to provide the names of suppliers from whom they purchased natural gas, the total volume purchased from each supplier, and the total amount paid to each supplier, including any penalty, including information regarding their transactions with NEM.

NEM stated that the disclosure of the total volume purchased from NEM, and the total amount paid to NEM, including any penalty, is highly competitive confidential and proprietary information to NEM. NEM stated that public disclosure of the NEM Information would provide competitors of NEM access to information valuable to them in making their own competitive decisions, without the competitors expending the time and money necessary to gather and develop the information, which, in turn, will directly harm NEM’s competitive interests. Further, the NEM Information sought is confidential to third parties with whom NEM contracts, and to provide said information requires their consent.

No party objected to the intervention of NEM and the ALJ recommended NEM's Intervention.

PUD stated that they strongly opposed NEM's Motion for Protective Order and presented Brandy L. Wreath for his testimony.

Mr. Wreath testified that during the February 2021 weather emergency, an extraordinary spike in demand occurred, coupled with supply disruptions, that seriously threatened Respondents' ability to obtain the natural gas required to serve their customers. Mr. Wreath testified that as a result, Respondents incurred extraordinary costs in providing critical utility services across Oklahoma.

Mr. Wreath testified that this filing is necessary due to some of the extreme costs related to the weather emergency incurred by the utilities to serve customers and which will be billed to ratepayers in future charges. These costs were not the result of normal market conditions, normal contracting, or normal usage. Therefore, it should be allowable, at some point, for all of the related extreme weather emergency costs to be made available to the public.

Mr. Wreath testified to clarify the information PUD is requesting be made public. PUD would suggest using those costs considered eligible for recovery as storm related regulatory assets or securitization be disclosed. This would include, but not be limited to, the following:

A. The total amount each Respondents paid to each provider for:

- i. The natural gas commodity
- ii. Transportation services
- iii. Transmission services
- iv. Storage related expenses
- v. Purchased Power
- vi. Other related expenses by type and provider

B. Any penalties related to each category above should be listed out separately by provider and penalty type. If each Respondent is of the belief that there are barriers, including any legal prohibitions, that would prevent them from immediately filing the information, each Respondent should be required to provide the specific reasons.

Mr. Wreath testified that concerns regarding the costs associated with this weather emergency supports a conclusion that this information should be made available to the public. Mr. Wreath testified that traditionally, purchase information is maintained as confidential for an extended period of time because premature disclosure of contracting terms would ultimately harm ratepayers in future bid processes. Providing the information can reveal to competitors how close they were to winning a bid and could serve to reduce competition in future requests for bid. Winning bidders would also have a clearer picture of how much higher they could have bid for certain contracts and still have been chosen as having the winning bid. This only serves to harm ratepayers going forward. However, this weather emergency has been identified as an anomaly, even by the utilities. Some have even called it a 'hundred year storm.' Therefore, PUD recommends the information should be made publicly available as soon as legally permissible.

Mr. Wreath testified that the public has an interest in this information being made public. Mr. Wreath testified that ratepayers have contacted PUD wanting to know who will receive the funds for the purchases the utilities made during the weather emergency, and PUD agrees this is a reasonable request to fulfill once legally permissible to do so. Therefore, Mr. Wreath testified that a protective order defeats the purpose of the cause as it was made clear nothing confidential should be provided. Mr. Wreath also testified that a protective order in this cause should not be allowed to protect data that is not otherwise protected by a pre-existing legal limitation.

Mr. Wreath testified that PUD believes each utility should be required to reveal the information, but if the utility's position is that disclosing the information is not legally permissible, the utility should be required to explain with specificity the legal prohibition and when the information will be able to be released. Mr. Wreath testified this is critical to make it clear to the public that the OCC is not "hiding" information to protect parties, but rather maintaining compliance with the law. Each utility should cite any legal limitation prohibiting immediate disclosure of any singular piece of information. Any assertion that disclosure is legally prohibited or limited should be required to be supported by documentation viewable by PUD for verification onsite at the utility. That will allow the public to know when each data point can, or will, be made public at some time in the future.

Mr. Wreath testified that PUD is not requesting utilities provide contract or settlement level information based on individual purchases or services. Mr. Wreath testified that PUD is merely requesting disclosure of the amount of extreme weather emergency costs paid to each provider for the commodity, transport, service, purchase power, or other expenses related to the emergency. PUD is not requesting expense amounts be tied to volumes purchased if that is the limiting factor for disclosure.

Mr. Wreath testified that PUD believes each respondent should be required to file information in this Cause as requested above for posting to the Commission website. PUD also recommends Respondents be required to file information in this Cause stating why any piece of the requested information is not available, along with a reference to the document, rule, or legal provision upon which the Respondent is relying in asserting that limitation, and when it may be available in the future.

No other party either objected to or had a response to NEM's Motion for Protective Order or PUD's objection. Based on the arguments of the parties the ALJ denied NEM's Motion for Protective Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it has jurisdiction over this matter by virtue of Art. IX, § 18 of the Constitution of the State of Oklahoma, Title 51 O.S. §24 A.22, and 17 O.S. § 151 et seq.

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and the rules of the Commission.

THE COMMISSION FURTHER FINDS that on January 7, 2022 PUD filed the Application of Brandy L. Wreath, Director of the Public Utility Division, Oklahoma Corporation

Commission, to publicly disclose certain documents and information related to the extreme weather emergency of February 2021.

THE COMMISSION FURTHER FINDS that Application of PUD requested the following specific relief that each Respondent should make public the following information from and including February 7, 2021, through February 21, 2021, related to the weather emergency:

A. The total amount each Respondents paid to each provider for:

- i. The natural gas commodity
- ii. Transportation services
- iii. Transmission services
- iv. Storage related expenses
- v. Purchased Power
- vi. Other related expenses by type and provider

B. Any penalties related to each category above should be listed out separately by provider and penalty type. If each Respondent is of the belief that there are barriers, including any legal prohibitions, that would prevent them from immediately filing the information, each Respondent should be required to provide the specific reasons.

THE COMMISSION FURTHER FINDS that on January 25, 2022, NextEra Energy Marketing, LLC (“NEM”) filed a combined Motion for Limited Intervention and Motion for Protective Order.

THE COMMISSION FURTHER FINDS that a hearing on NEM’s Motions was held on January 31, 2022.

THE COMMISSION FURTHER FINDS that no party objected to NEM’s intervention.

THE COMMISSION FURTHER FINDS that NEM stated that the disclosure of the total volume purchased from NEM, and the total amount paid to NEM, including any penalty, is highly competitive confidential and proprietary information to NEM. NEM stated that public disclosure of the NEM Information would provide competitors of NEM access to information valuable to them in making their own competitive decisions, without the competitors expending the time and money necessary to gather and develop the information, which, in turn, will directly harm NEM’s competitive interests. Further, the NEM Information sought is confidential to third parties with whom NEM contracts, and to provide said information requires their consent.

THE COMMISSION FURTHER FINDS that the Oklahoma Open Records Act, 51 O.S. §24A.1, et seq., states the purpose of the act is to ensure and facilitate the public’s right of access to and review of government records so the public may efficiently and intelligently exercise their inherent political power.

THE COMMISSION FURTHER FINDS that the Oklahoma Legislature has allowed the Commission a specific exception to the Oklahoma Open Records Act, allowing limited information to be kept confidential:

The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets. 51 O.S. §24A.22(A).

THE COMMISSION FURTHER FINDS that the Commission has given consideration to the specific request set forth in the Motion for protective order brought forth in this Cause.

THE COMMISSION FURTHER FINDS that the protective order requested by NEM, should not be issued in this Cause based on the testimony provided by the Public Utility Division.

THE COMMISSION FURTHER FINDS that traditionally, purchase information has been requested to be kept confidential for an extended period of time because premature disclosure of contracting terms would ultimately harm ratepayers in future bid processes. Providing the information can reveal to competitors how close they were to winning a bid and could serve to reduce competition in future requests for bid. Winning bidders would also have a clearer picture of how much higher they could have bid for certain contracts and still have been chosen as having the winning bid. This only serves to harm ratepayers going forward. However, this weather emergency has been identified as an anomaly, even by the utilities. Some have even called it a ‘hundred year storm.’

THE COMMISSION FURTHER FINDS that each utility should be required to reveal the information sought by PUD, but if the utility’s position is that disclosing the information is not legally permissible, the utility should be required to explain with specificity the legal prohibition and when the information will be able to be released. Each utility should cite any legal limitation prohibiting immediate disclosure of any singular piece of information. Any assertion that disclosure is legally prohibited or limited should be required to be supported by documentation viewable by PUD for verification onsite at the utility. That will allow the public to know when each data point can, or will, be made public at some time in the future.

THE COMMISSION FURTHER FINDS that PUD is not requesting utilities provide contract or settlement level information based on individual purchases or services. PUD is merely requesting disclosure of the amount of extreme weather emergency costs paid to each provider for the commodity, transport, service, purchase power, or other expenses related to the emergency. PUD is not requesting expense amounts be tied to volumes purchased if that is the limiting factor for disclosure.

THE COMMISSION FURTHER FINDS that the public has an interest in this information being made public.

ORDER

THE COMMISSION THEREFORE ORDERS that NextEra Energy Market, LLC’s Motion for Limited Intervention is hereby granted.

THE COMMISSION FURTHER ORDERS that NextEra Energy Market, LLC’s Motion for Protective Order is hereby denied.

THIS ORDER SHALL BE EFFECTIVE immediately.

CORPORATION COMMISSION OF OKLAHOMA


DANA L. MURPHY, CHAIRMAN

BOB ANTHONY, VICE CHAIRMAN


J. TODD HIATT, COMMISSIONER

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 10th day of February, 2022.

BY ORDER OF THE COMMISSION:




PEGGY MITCHELL, Commission Secretary