

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

IN RE: INQUIRY OF THE OKLAHOMA CORPORATION COMMISSION TO EXAMINE ALTERNATIVE RATEMAKING METHODOLOGIES FOR AND ISSUES OF ELECTRIC PUBLIC UTILITIES, INCLUDING BUT NOT LIMITED TO, PERFORMANCE BASED RATES, AND RIGHT OF FIRST REFUSAL<sup>1</sup>

CASE NO. GD 2023-000005

APPLICATION OF PUBLIC SERVICE COMPANY OF OKLAHOMA, AN OKLAHOMA CORPORATION, FOR AN ADJUSTMENT IN ITS RATES AND CHARGES AND THE ELECTRIC SERVICE RULES, REGULATIONS AND CONDITIONS OF SERVICE FOR ELECTRIC SERVICE IN THE STATE OF OKLAHOMA AND TO APPROVE VARIOUS COST RECOVERY MECHANISMS

CASE NO. PUD 2023-000086

IN THE MATTER OF THE APPLICATION OF OKLAHOMA GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE COMMISSION AUTHORIZING APPLICANT TO MODIFY ITS RATES, CHARGES, AND TARIFFS FOR RETAIL ELECTRIC SERVICE IN OKLAHOMA

CASE NO. PUD 2023-000087

**Clarifications On Securitization Audits and Process**

This filing is intended to assist the public with navigating the statutes that governed the securitization process handled by multiple state agencies as a result of the 2021 Winter Storm. There are a few areas that seem to have caused confusion and concern that need to be addressed. The statute cited in a filing in these matters dated March 24, 2024, (“March 24<sup>th</sup> Filing”) has been only partially referenced and improperly stated. The full language of the sections on audits included below makes it clear that the post-issuance audit is meant to ensure monies collected from ratepayers through the securitization charge on their monthly bills are fully applied to the bonds used to fund the extraordinary costs associated with winter storm Uri.

That statute – 74 O.S. § 9074 – is one section of the February 2021, Regulated Utility Consumer Protection Act. It does not directly list any requirements for an audit. However, the determination required of the Corporation Commission under paragraph A – that each regulated utility had extreme purchase costs, extraordinary costs, or both – was accomplished through numerous publicly litigated cases with numerous parties participating in prudency reviews for the expenses collected. These parties included the Commission’s Public Utility Division (PUD), the Office of the Attorney General, and numerous ratepayer groups that hired their own experts to review the expenses and participate in the hearings.

74 O.S. § 9074 (A) requires the following:

Upon the determination that a regulated utility has extreme purchase costs, extraordinary costs or both that are subject to this act and may be mitigated by issuing ratepayer-backed bonds, the Oklahoma Corporation Commission shall make necessary findings and conclusions to result in a financing order under this act, either in the same order or through a continued or separate proceeding. The financing order shall include, but not be limited to, the following:

1. The quantified amount of extreme purchase costs and extraordinary costs to be recovered using a financial instrument;
2. The maturity or range of maturities of bonds authorized to be issued, and a corresponding amortization period of customer charges, subject to reasonable provisions for true-up and reconciliation, with any authorized maturity not to exceed thirty (30) years;
3. The creation of an irrevocable and nonbypassable mechanism under which the regulated utility will recover from customers an amount necessary to service, repay and administer the ratepayer-backed bonds. A customer's monthly billing charges collected pursuant to the nonbypassable mechanism established under a financing order shall be based upon the then-current monthly billing of the customer and shall be a separate line-item on the monthly bill of the customer. The nonbypassable mechanism shall include procedures for receiving accounting information from the Oklahoma Development Finance Authority and calculating factors to be applied to customer bills. The mechanism shall remain in effect until the complete repayment and retirement of any ratepayer-backed bonds, or refunding bonds, authorized under the financing order;
4. The frequency of true-up and reconciliation of the customer repayment revenues collected through the nonbypassable mechanism, whether on a monthly, quarterly or semiannual basis;
5. The method by which the customer repayment charges will be allocated among the various customer classes; and
6. The requirement that all funds received under the irrevocable and nonbypassable mechanism be provided immediately to the holder of securitization property pursuant to Section 6 of this act for the purpose of repaying, servicing and administering the ratepayer-backed bonds authorized by the financing order.

74 O.S. § 9074(A) (See attached for complete section of law.)

It was only after the intensive cases at the Commission, which were needed to meet these requirements, and which included extensive audits of storm-related utility costs, that the Commission majority granted the securitized recovery.

It is important to note that this approval still required the ability, pursuant to statute, to reduce the bonds if any claw backs of storm-related costs occurred. This was specifically important to the PUD as it was, and still is, wholeheartedly supportive of the Attorney General's announced investigation into any potential market manipulation by those who profited from the storm.

Regarding the true-ups required under subparagraph 9074(A)(4), this is a calculation where amounts collected from customers and paid to the bond servicing agent are reviewed to ensure full application of the monies and to verify the factor to be used for future billings. This is necessary as each collection period will collect an amount that is not exactly what is estimated as customer usage and the number of customers is ever fluctuating. The true-up calculation merely adjusts the future billing based on the next period's estimated customer activity and the amount of bond debt to be serviced.

A different provision of the February 2021 Regulated Utility Consumer Protection Act, 74 O.S. § 9078, calls for regular audits of the collections from customers and paid to the utility for servicing the bond debt:

In any proceeding where the issue is properly before it, the Oklahoma Corporation Commission may require an audit of all amounts received from customers under an irrevocable and nonbypassable mechanism and paid to a utility, the amounts paid by the utility to the Oklahoma Development Finance Authority or other holder of securitization property. An audit, as provided in this section, shall be part of any general rate case filed by a regulated utility currently affected by a financing order with outstanding ratepayer-backed bonds. Any audit conducted pursuant to this section shall be provided to the Governor, the Pro Tempore of the Senate, the Speaker of the House of Representatives and the Authority; provided, however, any part or parts of the audit deemed confidential pursuant to federal or state law or as determined by the Commission, shall be redacted.

These audits are important as they accomplish two main goals:

1. Ensuring all monies collected from customers are actually applied to the servicing, or repayment, of the bond debt.
2. Ensuring these revenues and payments are removed from the calculations used to determine a utility's future rates.

Goal one is important as it ensures ratepayers are receiving all of the benefit of the collections meant to reduce, or repay, the bond debt. *Otherwise, there would be a risk that revenues would be retained by a regulated entity for benefit of the company, rather than being used to reduce the debt.*

Goal two is important because failure to remove these revenues from the calculation could have an inappropriate effect on future rates to be charged to customers. *This is the intention of the statute, i.e., to specifically require the audit to be performed during a rate case.* This audit is performed by reviewing the application of the bond factor to customer billings, auditing the collections received from customers, and ensuring the monies collected were properly transferred to the bond servicing agency.

The allegations in the March 24<sup>th</sup> Filing concerning these audits being represented by "one page" filings are a misleading reference to the reporting requirement in 74 O.S. § 9082 -- another provision of the February 2021 Regulated Utility Consumer Protection Act:

For regulated utility entities doing business in this state and subject to the February 2021 Regulated Utility Consumer Protection Act, the Oklahoma Corporation Commission shall make available through posting to its public website, a report on any audits or true-ups performed under Section 9074 or 9078 of Title 74 of the Oklahoma Statutes. The report shall include, but shall not be limited to, the following:

1. Total amount of the original securitization bond;
2. Annual interest rate on the securitization bond;

3. Total annual interest expense paid;
4. Total interest expense paid to date;
5. Total annual revenue collected per the utility tariff;
6. Total revenue collected to date per the utility tariff;
7. Remaining repayment term and outstanding principal balance; and
8. Any other information deemed appropriate by the Oklahoma Corporation Commission.

The report required under this section is clearly a summary that is neither intended, nor designed, to include all the financial audit work performed. That underlying information is presented in testimony, under oath, in a public hearing, by the PUD personnel engaged in the audit work.

To continue to question the work of these public servants is inappropriate and appears to be an intentional distortion to the public to gain continued media coverage and garner public support at the expense of the Commission and its employees.

The responsibilities of the agencies involved in different phases of the securitization process are clear. The following is a basic list of who looked at, or is looking at, what:

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| Market manipulation concerns and pricing during the event:  | Oklahoma Office of the Attorney General and the Federal regulatory bodies, including FERC   |
| Hiring companies to market and service any bonds issued:  | ODFA and the State Treasurer's Office   |
| Determining if bonds are to be utilized for recovery and determining prudence of the utility expenses during the storm: | Oklahoma Corporation Commission through public hearings with multiple parties participating |
| Post Issuance Factor Determination:   | ODFA  |
| Post issuance customer collections and bond re-payment audits:  | Oklahoma Corporation Commission with reports to be filed pursuant to statute                |

Furthermore, in regard to the request for copies of audits performed by the Oklahoma Corporation Commission, all audits performed to date have been part of publicly litigated cases or subject to filing or reporting requirements. The requestor had access through the public records held by the Commission's court of record and the agency website where PUD has focused on publishing information for the public.

The March 24<sup>th</sup> Filing included the following misleading accusation:

*"The Oklahoma Corporation Commission's inability thus far to supply anything in response to my repeated requests to see its so-called "audits" is just as telling as the written denials above."*

This statement generates unnecessary fear and doubt in the minds of consumers. The PUD Director notified the requestor in writing that the information responsive to the request was forthcoming, but these statements were still made to infer no audits had been done. The truth is that the Division is extremely busy engaged in the actual work before the Commission and was given an arbitrary 10-day

deadline to provide the information. PUD personnel are deep into audits relevant to hearings before the Commission and their time is not limitless. Additionally, the information to be pulled is quite voluminous and is still not fully representative of the totality of the work. A significant portion of these audits are performed onsite at the utility's offices where PUD auditors review financial records and source documents.

Statements have also been made to the public about not knowing who received payments for the securitization related expenses. This is unfortunate as all payments made using securitized dollars have been documented and publicly available on the Commission's website for some time. There are reports that show who received the large sums related to the actual natural gas and energy expenses during the storm. There are also reports that show the amounts paid, or estimated to be paid, for the process to securitize the debt. As these numbers are finalized by ODFA, so are the reports. PUD is still awaiting final numbers on three utilities that utilized securitization. The reports are publicly available at the following links:

Actual commodity expenses paid during the storm and fully audited by parties during the publicly litigated cases:

<https://oklahoma.gov/occ/news/news-feed/2022/utility-costs-from-february-2021-winter-storm.html>

Expenses paid, or estimated, related to the issuance of the bonds reported to the Corporation Commission by ODFA, True-up Letters, supporting workpapers, and Issuance Expense Comparison: (Reports are updated as ODFA reports the numbers as finalized)

<https://oklahoma.gov/occ/divisions/public-utility/pudreports/securitization-reports.html>

The March 24<sup>th</sup> Filing continues to impugn both the name and work product of OCC PUD employees. Statements are used out of context, which has become the norm. No explanation is given of the actual audit work performed, which has been significantly similar for decades. Statements meant to sow distrust and distress are used overwhelmingly to increase fear in our statewide community. Faced with inflation on all fronts, this narrative appears to create the need for a "champion" to protect consumers from a host of allegedly nefarious profiteers. Unfortunately, all of these efforts are misplaced, inappropriate and hurtful to the numerous, fellow Oklahomans who worked on the securitization cases and were subjected to cross examination in public hearings as required by law.

Luckily, the Attorney General, our state's chief law enforcement officer, is already championing the cause through extensive investigations into any actions which may have artificially inflated the price of gas sold to utilities during the storm and which, if found, may result in claw-backs of fuel costs for ratepayers. We are fully supportive of this effort, and have provided assistance and information as requested, and have faith the Attorney General will leave no stone unturned to protect Oklahomans.


To allege company internal audit documents were the sole source for determining prudence by a public utility is a deliberate falsification of the parties providing expert witnesses in these cases and the testimony they gave. Private companies regularly hire accounting firms to conduct independent audits. Most utilities are publicly traded companies and are actually required to conduct internal audits. It has long been a practice of regulators to review those independent audits and reference them in utility cases. However, they are not the sole basis for the findings, and are merely an example of other work performed.

Again, audits are conducted in all prudency review cases before the Commission. These audits include reviewing account records, contracts, settlements and other documents which often number into the thousands. Testimony is meant to be a summary of work performed. The whole reason regulatory bodies have used expert witnesses for over a century is because the work is so voluminous. This is the reason for litigated cases with multiple parties and cross examination. The filing of sworn testimony and standing for cross examination in public is what every party to a Commission case does. To ask someone after the fact to prove what they did in person is as disingenuous as it is impossible. The only "evidence" to fully show the work performed would have been body camera footage from all of the parties' experts that conducted audits. In my non-legal opinion, repeatedly claiming these employees are misrepresenting their conclusions is bullying and needs to stop.

The ongoing baseless allegations of widespread criminal obstruction, whitewash and coverup are getting old and continue to be hurtful to the committed team of employees still trying to serve the public and all three elected Commissioners. The employees of the OCC are expending state resources to aid the accusing Commissioner by responding to all requests made of them. These efforts have cost Oklahomans thousands of dollars. However, we will continue to fulfill our duty to focus on service excellence and kindness, even in the face of unwarranted name-calling, nonstop insults and attacks on a weekly basis.

#GOBEKIND

Signature:

A handwritten signature in red ink, appearing to read "Daryl W. ...", is written over a horizontal line.

Oklahoma Corporation Commission Director of Administration

2022 Oklahoma Statutes Title 74. State Government §74-9074. Financing order.  
74 OK Stat § 9074 (2022)

- A. Upon the determination that a regulated utility has extreme purchase costs, extraordinary costs or both that are subject to this act and may be mitigated by issuing ratepayer-backed bonds, the Oklahoma Corporation Commission shall make necessary findings and conclusions to result in a financing order under this act, either in the same order or through a continued or separate proceeding. The financing order shall include, but not be limited to, the following:
1. The quantified amount of extreme purchase costs and extraordinary costs to be recovered using a financial instrument;
  2. The maturity or range of maturities of bonds authorized to be issued, and a corresponding amortization period of customer charges, subject to reasonable provisions for true-up and reconciliation, with any authorized maturity not to exceed thirty (30) years;
  3. The creation of an irrevocable and nonbypassable mechanism under which the regulated utility will recover from customers an amount necessary to service, repay and administer the ratepayer-backed bonds. A customer's monthly billing charges collected pursuant to the nonbypassable mechanism established under a financing order shall be based upon the then-current monthly billing of the customer and shall be a separate line-item on the monthly bill of the customer. The nonbypassable mechanism shall include procedures for receiving accounting information from the Oklahoma Development Finance Authority and calculating factors to be applied to customer bills. The mechanism shall remain in effect until the complete repayment and retirement of any ratepayer-backed bonds, or refunding bonds, authorized under the financing order;
  4. The frequency of true-up and reconciliation of the customer repayment revenues collected through the nonbypassable mechanism, whether on a monthly, quarterly or semiannual basis;
  5. The method by which the customer repayment charges will be allocated among the various customer classes; and
  6. The requirement that all funds received under the irrevocable and nonbypassable mechanism be provided immediately to the holder of securitization property pursuant to Section 6 of this act for the purpose of repaying, servicing and administering the ratepayer-backed bonds authorized by the financing order.
- B. Prior to issuing a financing order, the Commission shall consult with the Deputy Treasurer for Policy and Debt Management regarding the marketability and efficiency of any proposed financing authorized by a financing order.
- C. The Commission shall issue an order no later than one hundred eighty (180) days from the date the Commission receives all necessary information and documentation pursuant to Section 4 of this act.
- D. On the same date a financing order is issued, a copy of the order shall be delivered to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Oklahoma Development Finance Authority.
- E. A financing order shall be effective immediately upon issuance.
- F. A financing order shall not be subject to any form of rehearing after thirty (30) days from the issuance of the order, subject to appeals pursuant to Section 20 of Article IX of the Oklahoma Constitution.
- G. Upon entering a financing order under this act, a regulated utility shall not recover the extreme purchase costs and extraordinary costs identified and quantified in the financing order from customers except through the transfer of securitization property as provided in Section 6 of this act in exchange for the proceeds of a bond issuance, which shall offset and complete the recovery of extreme purchase costs and extraordinary costs for the regulated utility.
- H. Upon the issuance of any financing order pursuant to this section, the periodic determination of factors for customer collection with true-up and reconciliation authorized by the financing order shall not be removed, adjusted or interrupted by any other regulatory determination of the Commission except where adjustments are warranted as a result of an audit of amounts actually collected from customers and provided to the Authority or where insurance proceeds, government grants or other funding sources offset or reduce the amount of extreme purchase costs and extraordinary costs to be recovered from customers. No adjustments shall in any manner impair or prevent the collection of sufficient revenues to service and repay ratepayer-backed bonds.
- I. No ratepayer-backed bonds authorized in a financing order, except for refunding obligations authorized under subsection D of Section 8 of this act, may be issued more than twenty-four (24) months after issuance of the financing order pursuant to this section.
- Added by Laws 2021, c. 204, § 5, emerg. eff. April 23, 2021.