

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF)
AUTHORITY PERMITTING IT TO ISSUE)
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED)
PROMISSORY NOTES IN A PRINCIPAL)
AMOUNT OF \$200,000,000.)

CAUSE NO. PUD 201200087

FILED
OCT 12 2012

HEARINGS: July 26, 2012, and August 30, 2012, in Courtroom 8
2101 N. Lincoln Blvd., Oklahoma City, OK 73105
Before Jacqueline T. Miller, Administrative Law Judge

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPEARANCES: Jack P. Fite and Joann T. Stevenson, Attorneys *representing* AEP
Oklahoma Transmission Company, Inc.;
Mary F. Candler, Assistant General Counsel *representing* the
Public Utility Division, Oklahoma Corporation Commission;
Thomas P. Schroedter, James D. Satrom, J. Fred Gist and Jennifer H.
Kirkpatrick , Attorneys *representing* the Oklahoma Industrial Energy
Consumers ("OIEC");
Lee W. Paden, Attorney *representing* Quality of Service Coalition
("Coalition")

REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE

SUMMARY

This cause comes before the Oklahoma Corporation Commission ("Commission") on the Application of AEP Oklahoma Transmission Company, Inc. ("OK Transco", "AEPOTC", "Applicant", "Company") for a Certificate of Authority permitting it to issue secured notes, senior unsecured notes and/or unsecured promissory notes in the principal amount of \$200 million dollars. The Administrative Law Judge recommends that the relief requested by AEP Oklahoma Transmission Company, Inc. be granted as set forth herein.

PSO's Application requests the Commission to find it has met the requirements of 17 O.S. § 185 which requires:

- (1) An application verified by the President or Vice President;
- (2) The amount and character of the proposed securities or liens;
- (3) The general purposes ... ; and,
- (4) A balance sheet as of the most recent available date.

I. PROCEDURAL HISTORY

On May 23, 2012, OK Transco filed an Application for Certificate of Authority to issue secured or senior unsecured notes in the principal amount of \$200 million dollars.

On that same date, OK Transco filed the Direct Testimony of Mr. Jerald R. Boteler, Jr., a Motion to Determine Notice and Motion to Establish Procedural Schedule. That same date there was an Amended Motion to Determine Notice and an Amended Motion to Establish Procedural Schedule filed.

On May 30, 2012, Oklahoma Industrial Energy Consumers (“OIEC”) filed an Entry of Appearance. On June 28, 2012, the Quality of Service Coalition (“Coalition”, “QSC”, “QOSC”) filed an Entry of Appearance. On July 16, 2012, Public Utility Division (“PUD” or “Staff”) filed the Responsive Testimony of Mr. Fairo Mitchell. On July 16, 2012, the OIEC filed a general Statement of Position and on July 17, 2012, the Coalition filed its general Statement of Position. On June 27, 2012, this Commission issued Order No. 599164 which determined the notice to be provided in this cause. The Commission found that because approval was not being sought for any schedule, rate, charge, classification, rule or regulation that would directly or indirectly alter charges made for services performed as delineated in OAC 165:5-7-51 that notice given to the Attorney General would be sufficient for the cause. On that same date, the Commission issued an Order Establishing Procedural Schedule (Order No. 599165) which, among other things, set the hearing on the merits for July 26, 2012, at 1:30 p.m.

On July 23, 2012, the Applicant and Public Utility Division of the Commission filed Exhibit and Witness Lists. On July 23, 2012, testimony summaries were filed by the Applicant and Staff. On July 23, 2012 (fax filed) and on July 24, 2012 (hard copy), the Coalition filed a Motion to Dismiss Without Prejudice or in the Alternative to Hold in Abeyance the Consideration of This Cause Until PSO’s Next Rate Proceeding or Filing of an Application by AEP Oklahoma Transmission Company for Designation as a Public Utility (“Coalition’s Motion” or “Motion of Quality of Service Coalition” or “QSC”). The Notice of Hearing filed with the Coalition’s Motion set the motion for hearing on the date of the merits, July 26, 2012. The OIEC supported the Motion of the Coalition.

On July 25, 2012, OK Transco filed by fax and July 26, 2012 by hard copy, a Response to Quality of Service Coalition’s Motion.

A hearing on the motion was held on July 26, 2012, the date of the merit hearing. No party objected to the hearing of the motion, however, the merits of motion were contested. In light of the Motion filing, the July 26, 2012 hearing was continued to August 30, 2012. Parties filed proposed findings of fact and conclusions of law July 31, 2012.¹

¹ Proposed Findings of Fact and Conclusions of Law were filed by QSC and OIEC on July 31, 2012 and the proposed report of QSC and the OIEC was filed September 10, 2012; these filings are attached hereto and incorporated by reference. The Staff’s proposed report filed September 10, 2012 is attached and incorporated by reference as well.

The Administrative Law Judge issued her Report and Recommendations on August 6, 2012.

On August 16, 2012, this Commission issued Order No. 601032 which found the Motion of Quality of Service Coalition should be deferred for consideration until the final Report and Recommendation of the ALJ in this cause.

A hearing on the merits was held on August 30, 2012, at 1:30 p.m. Judicial notice was taken of all matters proper for judicial notice. The ALJ has also reviewed Commission Order No. 591185 in Cause No. PUD 201100106. On September 6, 2012, AEP Oklahoma Transmission Company, Inc. filed a Revised Response to OIEC's second set of data requests. All parties filed proposed reports on September 10, 2012 (the reports of QSC, OIEC and Staff are incorporated by reference); an errata was filed by the Applicant September 13, 2012.

II. SUMMARY OF EVIDENCE²

Jerald R. Boteler, Jr.

Mr. Jerald R. Boteler, Jr. Managing Director, Corporate Finance for American Electric Power Service Corporation ("Service Corporation"), which provides corporate financing support services for several of the public utility operating companies of the American Electric Power System ("AEP System"), testified on behalf of AEP Oklahoma Transmission Company, Inc. ("OK Transco" or "Company").

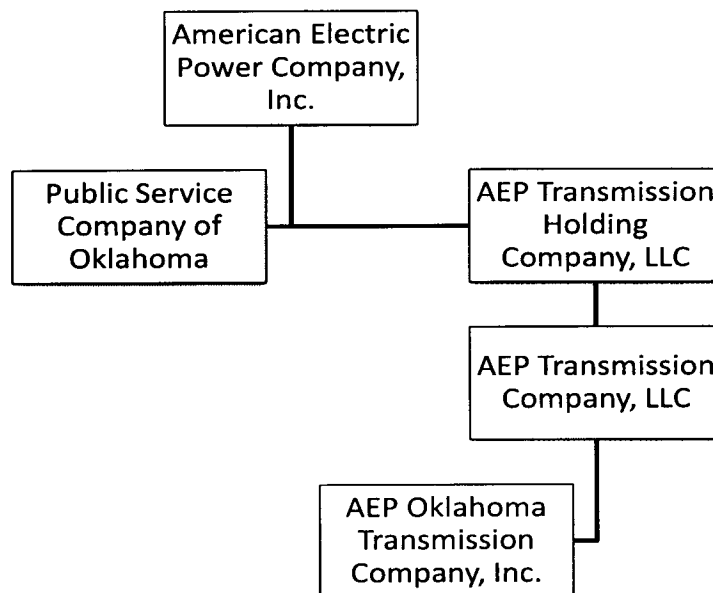
Mr. Boteler, Jr. graduated from Millsaps College in Jackson, Mississippi in 1979, where he received a Bachelor's of Business Administration Degree in Finance, and from the Cox School at Southern Methodist University in Dallas, Texas in 1982, where he received a Master's Degree in Business Administration with a concentration in Finance. From 1983 to 1985, he was employed by InterFirst Bank, N.A. in Fort Worth, Texas in various commercial bank credit analysis and review positions. In 1985 he was employed by Oryx Energy, Inc. as a Financial Analyst and worked in various positions on the treasury staff of that company from 1985 until 1996, rising to Assistant Manager, Corporate Finance and Credit. In February 1996, he was hired by Central and South West Corporation (subsequently acquired by AEP in 2000), first as a Senior Financial Consultant, then as Manager of Project Finance and Director of Project Finance. His responsibilities included raising capital through negotiation of financing agreements for various gas-fired electric generating projects. In July 2001, he joined AEPSC as Director, Wholesale Finance, supporting financing activity for the unregulated companies of the AEP System. In July 2003, he was named Director, Corporate Finance of AEPSC. In that capacity, he was responsible for capital markets activity for several of the regulated utilities, establishing dividend recommendations and capitalization targets, and assisting in the management of liquidity for the overall AEP System. In May 2007, he was named to the same position for AEP and became responsible for parent company financing and banking activities, as well as financing activities for AEP's transmission ventures and all leasing activity for the AEP System companies, including utility subsidiaries. In April 2011, he was named to his current position,

² The Applicant and Staff submitted witness testimony.

Managing Director, Corporate Finance of AEPSC.

He previously testified in Case No. 10-0577-E-PC with the Public Service Commission of West Virginia, in Case No. 2011-00042 at the Public Service Commission of Kentucky, and in Docket No. 11-050-U at the Arkansas Public Service Commission.

According to Mr. Boteler, OK Transco is a wholly-owned subsidiary of AEP Transmission Company, LLC ("AEP Transmission"). AEP Transmission is a wholly-owned subsidiary of AEP Transmission Holding Company, LLC ("AEP HoldCo"). American Electric Power Company, Inc. ("AEP") is the parent company of AEP HoldCo. An organization chart is displayed below.



Mr. Boteler testified that OK Transco was formed to engage in providing electric transmission service within the state of Oklahoma. OK Transco will develop, own and operate certain new transmission facilities interconnected to existing transmission facilities owned by Public Service Company of Oklahoma ("PSO") and entities within the SPP footprint.

According to Mr. Boteler, the purpose of his testimony was to describe OK Transco's request for the authority to issue up to \$200,000,000 of secured or senior unsecured notes, (the "Notes") or unsecured promissory notes, including senior unsecured notes or unsecured promissory notes issued to AEP or its intermediate parent companies, AEP Transmission and AEP Holdco, (the "AEP Notes"); the Notes and the AEP Notes are collectively referred to as the ("Debt Securities"), provided that the aggregate amount of long-term debt securities issued will not exceed \$200,000,000.

Mr. Boteler testified that the Debt Securities to be issued under this financing program will be used, together with other available funds, to finance transmission capital expenditures, to repay short-term borrowings (through OK Transco's participation in the AEP System Utility

Money Pool), to meet working capital needs (including construction expenditures), and for other general corporate purposes of the Company.

The Company currently has no existing long-term indebtedness. However, as a participant in the Money Pool, OK Transco has incurred short-term indebtedness. As of May 10, 2012, OK Transco's outstanding short-term Money Pool borrowings totaled \$38,092,989. Mr. Boteler anticipated that proceeds from a long-term debt issuance would be used, in part, to pay down OK Transco's outstanding balance in the Money Pool. The Company may choose to refinance or refund any long-term debt issued pursuant to the authority being requested.

Mr. Boteler testified that the facts stated in that Application were true and correct, to the best of his knowledge, information and belief.

According to Mr. Boteler, OK Transco proposes to issue the Debt Securities *at any time* and is not asking this Commission to make a determination as to the appropriateness of any action taken by OK Transco's Board of Directors.

Mr. Boteler testified that the Debt Securities may be issued in the form of senior or subordinated notes or other promissory notes, including AEP Notes to Company's parents, AEP Transmission, AEP Holdco or AEP. In the case of a long-term borrowing from AEP Transmission, AEP Holdco or AEP, the interest rates and maturity dates of the borrowings will be designed to parallel the cost of debt of such parent. Each series of long-term debt issued directly by the Company would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as that may be determined at the time of issuance. The Debt Securities (a) will have maturities up to 60 years, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (c) may be entitled to mandatory or optional sinking fund provisions, (d) may provide for reset of the coupon pursuant to a remarketing arrangement, (e) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (f) may be called from existing investors by a third party and (g) may be entitled to the benefit of affirmative or negative financial or other covenants. The interest rates on or underlying the Debt Securities may be fixed or variable and will be sold (i) by competitive bidding, (ii) in negotiated transactions with underwriters or agents or (iii) by direct placement with a commercial bank or other institutional investor. Based on recent transactions, the yield to maturity of such Debt Securities should not exceed by more than 5.0 percent the yield to maturity on United States Treasury bonds of comparable maturity at the time of pricing. OK Transco does not expect to exceed that difference. If the Company agrees to a fluctuating rate of interest on the Debt Securities, it will not exceed 8 percent at the time of issuance. The Company may agree to specific redemption provisions, including redemption premiums, at the time of the pricing.

Any Debt Securities may mature as soon as one year, but more likely will be of a longer term. They will likely be issued under an Indenture, to be supplemented and amended by one or more Supplemental Indentures or other similar documentation.

According to Mr. Boteler, the OK Transco will decide to issue senior or subordinated notes or other promissory notes to the public or to its parent AEP Transmission, LLC, on the basis of market conditions, principally the lowest cost and best terms available, in the Company's judgment, at the time, and consistent with maintaining a sound capital structure. However, it was Mr. Boteler's opinion that it is in the public interest to afford OK Transco the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur in order to obtain the best reasonably available price, interest rate and terms for its Debt Securities. Therefore, OK Transco would use its flexibility to decide at future dates whether there will be one or more series and on the maturity of each series of the Notes. Any specific redemption provisions will be determined at the time of the pricing of each series of the Debt Securities.

Mr. Boteler considered the terms and composition of this financing program in the Company's and the public's best interest.

The proposed financings are reasonably necessary in the operation and management of OK Transco's business in order that OK Transco may provide adequate service and facilities.

Fairo Mitchell.

My name is Fairo Mitchell. I am employed by the Public Utility Division ("PUD") of the Oklahoma Corporation Commission ("OCC" or "Commission") as the Chief of the Energy and Water Group. The cause being reviewed is the application of AEP Oklahoma Transmission Company ("AEPOTC") for a certificate of authority permitting it to issue debt in the amount of \$200 million.

PUD reviewed the Company's application and attached balance sheet, the prefiled testimony of the applicant's witness, the Oklahoma Statute that sets forth the requirements a public utility must meet to obtain the certificate authorizing the issuance of debt and the reporting rules for transmission only utilities under OAC 165:35-43-4. AEPOTC has not filed an application or submitted any information to this Commission prior to this application. AEPOTC has not requested public utility status because AEPOTC believes it is a public utility based upon the definition of "public utility" contained in 17 O.S. § 181. Title 17 of the Oklahoma Statutes § 181 states the following:

"Public utility" means and embraces every corporation organized or doing business in this state, (except a municipal corporation or other political subdivision of this state), that now owns or hereafter may own, operate or manage any plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state."

As stated on page 4 of the testimony of Mr. Jerald R. Boteler, Jr., Managing Director of Corporate Finance and witness for AEPOTC, AEPOTC was formed to provide electric transmission service within the State of Oklahoma. AEPOTC plans to develop, own and operate transmission facilities interconnected to Public Service Company of Oklahoma's ("PSO's") existing transmission facilities and entities within the SPP footprint. AEPOTC is a

wholly-owned subsidiary of AEP Transmission Company, LLC ("AEP Transmission"). AEP Transmission is a wholly-owned subsidiary of AEP Transmission Holding Company, LLC ("AEP HoldCo"). American Electric Power Company, Inc. ("AEP") is the parent company of AEP HoldCo and Public Service Company of Oklahoma ("PSO").

Title 17 of the Oklahoma Statutes § 185 requires any utility desiring to issue securities to file an application such as AEPOTC filed in this Cause. It further states as long as AEPOTC complies with certain statutory requirements, the Commission "shall" issue a certificate of authority permitting the debt issuance by the public utility.

AEPOTC has fulfilled the requirements of 17 O.S. § 185 in the following manner:

1. File an application verified by its president or vice president: Scott N. Smith, senior vice president, filed a sworn statement verifying the contents of AEPOTC's application.

2. Indicate the amount and character of the proposed securities:

AEPOTC plans to obtain:

- a. Unsecured or senior unsecured notes, (the "Notes") or
- b. Unsecured promissory notes, including senior unsecured notes or unsecured promissory notes issued to AEP or its intermediate parent companies, AEP Transmission and AEP Holdco, (the "AEP Notes").

The Notes and the AEP Notes are collectively referred to as the "Debt Securities". The aggregate amount of long-term Debt Securities issued will not exceed \$200 million.

3. State the general purpose of the proposed issuance: The Debt Securities will be used for the following: (1) to finance transmission capital expenditures; (2) to repay short-term borrowings (through AEPOTC's participation in the AEP System Utility Money Pool); (3) to meet working capital needs (including construction expenditures); and (4) to use for other general corporate purposes.

4. Provide a copy of its most recent balance sheet: AEPOTC provided a copy of the balance sheet for the first quarter of 2012.

PUD has confirmed that AEPOTC has complied with all of the statutory requirements in 17 O.S. § 185.

PUD believes that AEPOTC falls under the requirements of the Transmission Only Utility Rules because AEPOTC has stated in this Cause that it is a public utility whose purpose is to build, construct, own, operate, control, manage or maintain Transmission Lines.

Based upon the limited review allowed PUD by the referenced statute, PUD does not object to AEPOTC's requested relief. The Commission is approving only issuing a certificate of authority to

issue debt for AEPOTC. Also, the Commission will order AEPOTC to comply with OAC 165:35-43 that details the requirements for Transmission Only Utilities, if the Commission accepts PUD's recommendation that AEPOTC should follow these rules.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ finds that the Commission has jurisdiction over the above entitled cause pursuant to Article IX, Section 18 of the Oklahoma Constitution; 17 O.S. Section 181, *et seq.*

The ALJ finds that AEP Oklahoma Transmission Company, Inc. complied with all notice requirements required by Order No. 599164.

Upon consideration of the record in this Cause, the ALJ finds that AEP Oklahoma Transmission Company, Inc. filed an application in this cause pursuant to 17 O.S. §§ 181 *et seq.* for a certificate of authorization to issue securities. Section 185 of Title 17 specifically prescribes the required contents of such an application, stating that:

(1) Any public utility desiring to issue securities, or to create liens to secure evidences of indebtedness, shall file with the Commission an application verified by its president or vice-president, (or by the signers of its articles of organization if it has not yet elected officers), setting forth: (1) The amount and character of the proposed securities or liens; (2) the general purposes for which they are to be issued or created, including a description and statement of the value of any property or services that are to be received in full or partial payment for the securities or in a proper case the evidences of indebtedness to be secured by the lien or liens, and of any property or services already received by the public utility, the cost of which is to be reimbursed to the public utility by the proceeds of such securities or evidences of indebtedness; and (4) [(3)][sic] a balance sheet of the public utility as of the most recent available date.

Section 185 goes on to provide that:

(2) The Commission shall examine all applications filed with it pursuant to this act, and if the proposed issue of securities or creation of lien or liens complies with the provisions of this act, it shall issue to the public utility a certificate of authority permitting such issue or creation.

Accordingly, the ALJ concludes that if AEP Oklahoma Transmission Company, Inc. proposes to issue securities; if it is subject to 17 O.S. § 181 *et seq.*; and if its application "complies with the provisions of [the] act," i.e., contains the three items delineated in Subsection 1) of Section 185, the Commission shall issue the certificate of authority to AEP Oklahoma Transmission Company, Inc. See *Forest Oil Corp. v. Corp. Comm'n*, 1990 OK 58, 807 P.2d 774, 787 ("Use of the term 'shall' by a lawmaking body is normally considered as a legislative mandate equivalent to the term 'must'").

The ALJ finds that AEP Oklahoma Transmission Company, Inc. itself proposes to issue securities. QOSC and OIEC did inquire on cross-examination whether OK Transco itself would issue securities because of testimony indicating OK Transco's parent company would be issuing securities.

In response Mr. Boteler clarified:

What we're asking for is the ability of AEP Oklahoma Transmission Company to issue securities both either to the public or to its parent company. And we stipulated or specified in there that any securities that would be issued to its parent would mirror securities that the parent company itself has issued to the market. So that AEP Oklahoma Transmission Company would be benefited by the broader asset base of the parent company and certainly no less advantaged in the terms that it received than the parent got from its more efficient mode of accessing the market. (Tr. at 53).

Mr. Boteler additionally explained:

[W]hat we require authorization for is for Oklahoma Transco to be able to issue notes either to the public or to its parent. And the mechanism by which if they issue notes to the parent, that the parent would get the money and the pricing that would be seen would be based on market price and current demand in the market would be through the parent issuing notes to the public and then mirroring those notes back down into, you know, essentially at the same terms to Oklahoma Transco . . . It's just a funding mechanism is what we're talking about here. (Tr. at 72-73).

Mr. Boteler confirmed OK Transco would be issuing notes either to the public or its parent, and consistent with his pre-filed testimony, if the notes are issued to the parent "the interest rates and maturity dates of the borrowings will be designed to parallel the cost of debt of such parent," (Boteler at 6) *i.e.*, the parent's debt issuance is being used to set the price and terms of the OK Transco's issuance to the parent to ensure that OK Transco's debt issuance reflects the market where the parent's larger asset base helps it secure more favorable terms. (*See* Tr. at 53). Mr. Boteler indicated that the AEP Transco parent company will market the issuance to potential investors in mid-September, and targets a closing date for issuance of the long-term securities by the second week of October.

The ALJ finds that the plain language of 17 O.S. § 181(1) dictates that AEP Oklahoma Transmission Company, Inc. is a public utility subject to 17 O.S. §181 *et seq.* Section 181(1) defines a public utility for the purposes of 17 O.S. §§181-190 as "embrac[ing] every corporation organized or doing business in this state . . . that now owns or hereafter may own, operate or manage any plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state." AEP Oklahoma Transmission Company, Inc. has a Certificate of Incorporation on file at the Oklahoma Secretary of State's office. *See* Hearing Exhibit A. The verified application states that applicant was

organized under the laws of the State of Oklahoma and is a public utility as defined by 17 O.S. §181(1). See Application at ¶ 1. The verified application further states that applicant “owns and operates properties and facilities that are used for transmitting electric power in the State of Oklahoma.” *Id.*

OK Transco Witness Boteler’s pre-filed testimony states that “OK Transco will develop, own and operate new transmission facilities interconnected to existing transmission facilities owned by Public Service Company of Oklahoma (‘PSO’) and entities within the SPP footprint.” (Boteler at 4). Upon cross-examination, Boteler reiterated that “AEP Oklahoma Transmission Company owns and operates transmission facilities at this time” and confirmed that they were for public use (Tr. at 29). He also stated that OK Transco is a member of the Southwest Power Pool (SPP) and bills its customers through the SPP Open Access Transmission Tariff (Tr. at 79), and that OK Transco’s FERC Form 1 indicates that it has on its books utility plant consisting of “various types of transmission facility assets” that are “by and large . . . productive assets used in the transmission of electricity” located in Oklahoma. (Tr. at 60-62). The evidence indicates that AEP Oklahoma Transmission Company, Inc. is a “corporation organized or doing business in this state. . . that now owns or hereafter may own, operate or manage any plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state.” 17 O.S. § 181(1).

Although different Transcos formed by AEP in other jurisdictions have filed applications seeking utility status (see Tr. at 27, 52), Mr. Boteler indicated those states “require[d] an application for certificate to be a public utility” (Tr. at 27); and that “all [OK Transco was] asking for here is financing authority.” The statute prescribing the Commission’s issuance of such certificate of authority does not necessarily include some of the additional inquiries urged by QOSC and OIEC.

The ALJ also notes that while the Commission has adopted rules governing a proceeding regarding an entity wishing to seek recognition by the Commission that such entity is a public utility, OAC 165:35-43-3, the rule is voluntary and no transmission only utility is required to make such filing seeking public utility status, and in any event, the rule was promulgated on July 12, 2012, after AEP Oklahoma Transmission Company, Inc.’s application was filed on May 23, 2012.

Mr. Boteler’s testimony stated that “[t]he proposed financings are reasonably necessary in the operation and management of OK Transco’s business in order that OK Transco may provide adequate service and facilities” (Boteler at 8) and would be used “to finance transmission capital expenditures, to repay short-term borrowings (through OK Transco’s participation in the AEP System Utility Money Pool), to meet working capital needs (including construction expenditures), and for other general corporate purposes of the Company.” (Boteler at 5). Those purposes are among those provided for in 17 O.S. § 184 (“Securities - Issued for what Purposes”).

Commission rules further support this conclusion. The Commission’s rule governing this proceeding is OAC 165:5-7-52 (“Public utility certificate of authority for issuance of securities”).

The rule states:

165:5-7-52. Public utility certificate of authority for issuance of securities

(a) Any public utility, as defined in 17 O.S. §181, desiring to issue securities or to create liens to secure evidences of indebtedness pursuant to the above statute, shall file an application setting forth:

(1) The amount and character of the proposed securities or liens.

(2) The general purposes for which they are to be issued or created, including a description and statement of the value of any property or services that are to be received in full or partial payment for the securities or in a proper case the evidence of indebtedness to be secured by the lien or liens.

(3) Any property or services already received by the public utility, the cost of which is to be reimbursed to the public utility by the proceeds of such securities or evidences of indebtedness.

(4) The most recent balance sheet of the public utility certified by their independent auditor.

(b) The application shall be verified by the public utility's president or vice president or by the signers of its articles of organization if it has not yet elected officers.

The Commission is required to follow its procedural rules. See *Henry v. Corp. Comm'n*, 1990 OK 103, 825 P.2d 1262, 1267.

Staff Witness Mitchell's pre-filed testimony indicated that AEP Oklahoma Transmission Company, Inc. met the requirements of the statute (Mitchell at 4-5), no party filed any testimony (OIEC and QOSC filed no testimony and presented no witnesses) disputing that AEP Oklahoma Transmission Company, Inc.'s application meets the requirements of the statute and rule. The application set forth the amount and character of the securities (*See Application* at the caption and ¶¶ 2(b)-(c) and Boteler at 6-7), the purposes for which they were to be issued, attached a balance sheet to the application, the balance sheet showing the value of the utility's total assets (Line 85, p. 111 of the balance sheet) and its total liabilities and stockholder equity (Lines 66, p. 11 of the balance sheet) i.e., the value of all the assets and liabilities the issuance of securities would go to support, and attached an affidavit from AEP Oklahoma Transmission Company, Inc.'s Vice President verifying the contents of the application (*See Affidavit of Scott N. Smith attached to the Application*).

AEP Oklahoma Transmission Company, Inc. has complied with the 17 O.S. §181 *et seq.* and Commission Rule OAC 165:5-7-52. The ALJ finds and recommends the Commission issue the Certificate of Authority.

The Administrative Law Judge further recommends that the Commission Order state that by granting the Certificate of Authority, the Commission is not making a determination as to the appropriateness of any action taken, or to be taken, by AEP Oklahoma Transmission Company, Inc.

Regarding the Coalition's Motion, the Administrative Law Judge further recommends that the Motion filed by the Coalition be denied. The ALJ is not persuaded by the Coalition's arguments for the proposition that the legislature, by passage of the Retail Electric Supplier Certified Territory Act and the Electric Restructuring Act of 1997 (17 O.S. § 190.1, *et seq.*), changed the definition of the term "public utility" for purposes of the Securities and Public Utilities Act found at 17 O.S. § 181(1). AEP Oklahoma Transmission Company, Inc. cited authority that when there are multiple acts they should be construed so as to give effect to each act. *Grand River Dam Authority v. State*, 645 P.2d 1011 at page 1019.

The ALJ further recommends that the Commission find that Subchapter 43, Transmission Only Utility Rules, were not effective until July 12, 2012, after the filing of the current case. Further, the ALJ recommends that the Commission find the provisions of OAC 165:35-43-3, regarding an entity wishing to seek recognition by the Commission that such entity is a public utility, is voluntary and no transmission only utility is required to make such filing seeking a public utility status.

The ALJ further recommends that the Commission's order state this proceeding is governed by procedural rule OAC 165:5-7-52 (public utility certificate of authority for issuance of securities), and that the Commission is required to follow its procedural rules. *See Henry v. Corporation Commission*, 825 P.2d 1262 at page 1267.

The ALJ further recommends that the Commission, based upon the verified application and the testimony in the record make a finding that AEP Oklahoma Transmission Company, Inc. is a public utility as defined by 17 O.S. § 181(1).

Mr. Mitchell testified that PUD believed "... that AEPOTC falls under the requirements of the Transmission Only Utility Rules." (Pre-filed testimony page 6.) The Applicant did not contest this position. The ALJ recommends the Commission make a finding that AEP Oklahoma Transmission Company, Inc. is subject to the Transmission Only Utility Rules found at OAC 165:35-43.

The ALJ further recommends that the issuance of evidence of indebtedness in a principal amount up to \$200,000,000 is consistent with the public interest and is a lawful purpose for which securities may be issued under the authority of this Commission as provided by 17 O.S. §184.

The ALJ further recommends that the relief requested in this Cause complies with 17 O.S. §185; therefore, the Application shall be approved and a Certificate of Authority shall be granted to Applicant to issue secured notes, senior unsecured notes and/or unsecured promissory notes pursuant to 17 O.S. Section 181 *et seq.* in a principal amount up to \$200,000,000.

IV. REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings and conclusions are the report and recommendation of the undersigned Administrative Law Judge.

Jacqueline T. Miller
JACQUELINE T. MILLER
Administrative Law Judge

October 12, 2012
Date

FILED
JUL 31 2012

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATER OF THE APPLICATION)
OF AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFCATE OF)
AUTHORITY PERMITTING IT TO ISSUE)
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED PROMISSORY)
NOTES IN A PRINCIPAL AMOUNT OF)
\$200,000,000)

CAUSE PUD NO. 201200087

HEARING: July 26, 2012, Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jacqueline T. Miller, Administrative Law Judge

APPEARANCES: Jack P. Fite and Joann T. Stevenson, Attorneys *representing* AEP
Oklahoma Transmission Company, Inc.
Mary F. Candler, Assistant General Counsel, *representing* Public
Utility, Oklahoma Corporation Commission
Thomas P. Schroedter and Jennifer H. Kirkpatrick, Attorneys
representing Oklahoma Industrial Energy Consumers
Lee W. Paden, Attorney *representing* Quality of Service Coalition

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
QUALITY OF SERVICE COALITION
AND OKLAHOMA INDUSTRIAL ENERGY CONSUMERS**

This matter comes before the Oklahoma Corporation Commission ("Commission") on the Motion to Dismiss without Prejudice the Application of AEP Oklahoma Transmission Company, Inc.¹ ("OKTCO") or in the alternative to Hold in Abeyance the consideration in this cause until Public Service Company of Oklahoma's ("PSO") next rate proceeding or filing of an Application by AEP Oklahoma Transmission

¹ According to the Direct Testimony of Jerald R. Boteler, Jr., filed on behalf of OKTCO, OKTCO is a wholly-owned subsidiary of AEP Transco. Both AEP Transco and the PSO are owned by American Electric Power Company, Inc. ("AEP"). OKTCO was formed to provide electric transmission service within the State of Oklahoma. It will develop, own and operate certain new transmission facilities interconnected to existing transmission facilities owned by PSO.

Company, LLC ("AEP Transco") for Designation as a Public Utility filed by Quality of Service Coalition.

I. PROCEDURAL HISTORY

OKTCO filed an application ("Application") and supporting testimony on May 23, 2012, requesting that the Commission issue a Certificate of Authority permitting it to issue secured notes, senior unsecured notes and/or unsecured promissory notes in a principal amount of \$200,000,000. In the Application, OKTCO alleged that it is a corporation organized under the laws of the State of Oklahoma and is a "public utility" as defined by 17 O.S. § 181 (1).

On May 23, 2012, OKTC filed an Amended Motion to Determine Notice and an Amended Motion to Establish Procedural Schedule which were heard by the Administrative Law Judge ("ALJ") on June 4, 2012. Order No. 599164, setting notice to be given of the Application, and Order No. 599165, establishing the procedural schedule, were issued on June 27, 2012.

On July 16, 2012, the Responsive Testimony of Fairo Mitchell was filed on behalf of the Public Utility Division of the Commission ("PUD").

On July 16, 2012, Quality of Service Coalition ("Coalition") and Oklahoma Industrial Energy Consumers ("OIEC") filed Statements of Position reserving the right of each to cross-examine witnesses at the Hearing on the Merits.

On July 23, 2012, Coalition fax-filed its Motion to Dismiss without Prejudice or in the Alternative Hold in Abeyance the consideration of this cause until PSO's next rate proceeding or filing of an application by AEP Oklahoma Transmission Company for

designation as a public utility. A copy of Coalition's Motion is appended to this report as Attachment A. OKTCO fax-filed a Response to Coalition's Motion on July 26, 2012.

Pursuant to Order No. 599165 establishing the procedural schedule, the Hearing on the Merits was set for July 26, 2012 at 1:30 p.m. in Courtroom B. The ALJ called for the oral argument of Coalition's Motion prior to undertaking any hearing on the merits. At the conclusion of the arguments on Coalition's Motion, the ALJ requested that proposed ALJ Reports be filed and submitted by July 31, 2012 and continued the Hearing on the Merits to August 30, 2012 at 1:30 p.m.

II. SUMMARY OF ARGUMENTS OF COUNSEL

Arguments of Counsel for Quality of Service Coalition in Support of Motion

Coalition presented its Motion to dismiss without prejudice or in the alternative to hold this proceeding in abeyance until PSO presents all issues related to OKTCO in the next rate case to be filed no later than June 30, 2014 or seek designation as a transmission-only public utility pursuant to Commission rules in a filing similar to the ITC and Clean Line filings. Coalition supports the orderly development of transmission infrastructure because it encourages Oklahoma business activity and leads to the construction of a robust transmission system within the State and to markets beyond Oklahoma's boundaries.

Coalition's concern is not with OKTCO's activities, but with whether or not it falls under the Commission's authority and review. Before automatically granting the relief requested by OKTCO, the Commission should have ample time and opportunity to review what OKTCO is, how it is organized, how it is regulated, and how it will interact with other AEP affiliates (particularly PSO which is already subject to the Commission's

power and authority). Transmission-only utilities, in particular Oklahoma's two independent transmission companies, have already undergone a rigorous review process by the Commission and have both been granted public utility status as a result of those reviews.

Coalition explained that the Motion is couched in the alternative, *i.e.*, dismissal of the cause without prejudice or hold the matter in abeyance. Coalition, in its Motion, provided general background information that should have been provided in this case. In Cause PUD 201100106, Order No. 591185, PSO entered into a settlement agreement which included the consideration of all OKTCO issues when PSO filed its next general rate proceeding. That settlement provided that PSO would file its next rate proceeding no longer than 26 months from the date of the order, November 11, 2011.

In addition, this Commission has promulgated rules for transmission-only companies which provides a voluntary filing process to receive designation as a transmission-only public utility. *See*, OAC 165:35-43 *et seq.*

Coalition pointed out that transmission-only entities are a relatively new entrant in the spectrum of the electric business in Oklahoma and other states. They are primarily created to provide wholesale services that are almost always subject to the rate and regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC"). This Commission has the authority to designate OKTCO as a transmission only utility. Such designation is a valuable tool because it would describe how OKTCO will conduct business in the State, how it will comply with the rules of the Commission and how continued oversight will occur.

Coalition discussed the Commission's jurisdiction over retail activities of electric entities and indicated that there is no question that the Commission has the power and authority to regulate retail activities. The question presented by Coalition centers around the Oklahoma Constitution and statutes and how the Commission's retail jurisdiction has been refined and enhanced by statutory changes. There is no question that the Constitution has from its adoption in 1907 provided the Commission power and authority relating to the supervision, regulation and control of electric utilities in this state. As the electric utility industry has changed over the years, the Oklahoma Legislature ("Legislature") has provided more definition and enhanced the Commission's authority. The provisions of the Oklahoma Constitution contained in Article 9, Sections 18 and 19 and Section 35 provide the authority for such legislative actions.

Title 17 of the Oklahoma Statutes ("OS") contains examples of a number of these enhancements. For example, Sections 151 through 155 of Title 17 were originally enacted in 1913 but have been amended on several occasions to provide the Commission additional clarification of its powers and authority. Sections 181 through 190 of Title 17, the sections upon which Applicant based its contention that it is a public utility, were adopted in 1947. Sections 158.21 through 158.32 of Title 17 were enacted in 1971 and first amended by the Legislature in 1988. At that time, language was added to make those provisions a part of the Oklahoma Constitution pursuant to Article 9, Section 35 with additional amendments in later years. Finally, Sections 190.1 through 190.21 of Title 17, were first adopted by the Legislature to provide the Commission guidance for recommending language related to "restructuring", a term to identify

change occurring in the United States in the formation and operation of the electric utility industry.

Coalition contends that the Legislature's recognition of restructuring is an important element in this case because Commission's regulation of retail electric service to Oklahoma consumers has evolved as the industry has evolved. The legislative amendments provide the Commission not only with enhanced definition, but also require the Commission to address other issues like transmission-only companies in a different manner. When rates and regulation are subject to FERC authority, this Commission must and has developed a process to exercise its power and authority under the Oklahoma Constitution which provides oversight to ensure the operation and safety of a transmission only entity is properly reviewed. The Commission's rules are contained in the Oklahoma Administrative Code ("OAC") 165: 35-43.1 through 43.7.

Unlike the other transmissions companies created by AEP who have filed extensive testimony in proceedings before state regulatory commissions in Arkansas, Louisiana, Ohio, Indiana, Kentucky, Virginia and West Virginia seeking recognition as a public utility, based on each states laws, no similar filing has been made in Oklahoma for OKTCO. In February 2012, some of the AEP state transmission companies, including OKTCO, sought FERC authority to issue securities, both short-term and long-term. That authority has been granted by the FERC on May 10, 2012. At that time, OKTCO was authorized to issue both short-term debt not to exceed \$100 million and long-term debt not to exceed \$100 million.

Coalition finally opined that OKTCO will not be prejudiced if the Commission grants its Motion. OKTCO's construction plan can continue and securities already

authorized by FERC can be issued. In granting Coalition's Motion to Dismiss without Prejudice, the Commission will be presented the opportunity to review this transmission-only entity in the same manner it undertook in granting ITC and Clean Line transmission-only utility status. This review will provide the Commission with the information needed to both oversee OKTCO's activities as a transmission-only utility and ensure that all retail customers are also protected.

Arguments of Counsel for Oklahoma Industrial Energy Consumers

Counsel for OIEC made arguments in support of Coalition's Motion. As recognized by all parties to the cause, OKTCO is new to this Commission. It has never before filed anything with the Commission or subjected itself to the Commission's authority. Because of this, very little is known about OKTCO, its business dealings, or the manner in which it interacts with PSO.

OIEC asserted that a question exists as to whether or not OKTCO is a "public utility" as that term is defined at 17 OS § 181(1). Although OKTCO asserts that it is, in fact, a "public utility" under Section 181(1), there are discrepancies between statements of OKTCO in this cause and statements made concerning OKTCO in FERC proceedings. For example, OKTCO's annual FERC filing, dated April 12, 2012, approximately forty-five (45) days before the Application was filed, affirmatively states that

OKTCO's rates are regulated by the FERC. ... The FERC also has jurisdiction over the issuance and acquisitions of securities by OKTCO, the acquisition or sale of certain utility assets and mergers with another electric utility or holding company ...

See, FERC Form 1, Summary of Significant Policies, Rates and Service Regulation, page 123.3.

Additionally, AEP Transco, in a February 28, 2012 filing under Section 204 of the Federal Power Act for authorization of state transmission only companies, including OKTCO, to issue securities for short and long-term debt, affirmatively stated that

No application is required to be filed with any state regulatory body with respect to the issuance of any securities for which authorization is required herein. (Emphasis added).

See, Application Submitted in FERC Docket ES 12-24 at page 8. Despite these affirmative statements, OKTCO now seeks authority from this Commission to issue additional securities.

Finally, OIEC argued that the rules created to recognize and govern transmission-only companies, found at OAC 165:35-43 *et seq.*, are applicable to OKTCO - a fact also recognized by PUD in its testimony filed herein. Those rules provide a specific procedure for transmission -only companies to be recognized as a public utility. See, OAC 165:35-43-3. Although other transmission-only companies doing business in the State of Oklahoma have sought and received such recognition, OKTCO has not.

OIEC argued that the very existence of such a procedure supports the position that due to the evolving nature of the electric utility business, it is not always clear whether a particular company is, in fact, a public utility as defined in various state statutes. Because it is not clear at this time, given the lack of information, whether or not OKTCO is a public utility, OIEC agrees that this cause should be dismissed without prejudice or held in abeyance until OKTCO seeks public utility designation under OAC 165:35-43-3 or the next PSO regular rate case.

Arguments of Counsel for Staff of the Public Utility Division

(Summary of Arguments to be provided by Staff Counsel)

Arguments of Counsel for AEP Oklahoma Transmission Company

(Summary of Arguments to be provided by OKTCO Counsel)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over the above-captioned cause pursuant to Article IX, Sections 15 through 35 of the Oklahoma Constitution and various provisions contained in Title 17 of the Oklahoma Statutes, including but not limited to Sections 151 through 155, Sections 158.21 through 158.32, Sections 181 through 190 and Sections 190.1 through 190.21, and the Commission's Electric Utility Rules codified in the Oklahoma Administrative Code, 165, Chapter 35.

2. The Commission further finds that Applicant satisfied the notice requirements in this cause, as set forth in Order No. 599164, by providing the Office of the Attorney General with notice in the approved form.

3. The Commission further finds that Coalition's Motion and OKTCO's Response present not only factual and legal issues, but also policy issues which the Commission should be provided an opportunity to review prior to any hearing on the merits of the Application. Therefore, it is in the public interest to grant Coalition's Motion and to dismiss without prejudice OKTCO's Application to allow either: (1) PSO and OKTCO to comply with the provisions of Order No. 591185 by including in PSO's next general rate proceeding all issues related to OKTCO; or (2) OKTCO to file a cause pursuant to Commission Rules OAC 165:35-43 *et seq.* which would allow the Commission to

examine the information filed and make a determination of OKTCO's status as a transmission-only utility.

IV. ORDER

THE COMMISSION THEREFORE ORDERS that the above findings of fact and conclusions of law are hereby adopted.

THE COMMISSION FURTHER ORDERS that the Motion to Dismiss without Prejudice or in the Alternative Hold in Abeyance the above captioned cause be granted

THIS ORDER SHALL BE EFFECTIVE IMMEDIATELY.

CORPORATION COMMISSION OF OKLAHOMA

PATRICE DOUGLAS, Chair

BOB ANTHONY, Vice Chair

DANA MURPHY, Commissioner

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by tier signatures this ____ day of August, 2012.

PEGGY MITCHELL, Commission Secretary

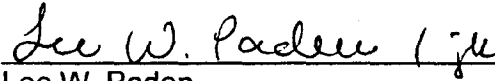
REPORT OF ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned Administrative Law Judge.

JACQUELINE T. MILLER
Administrative Law Judge

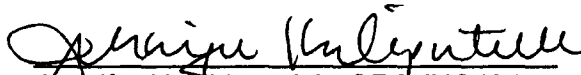
Date

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Proposed Findings of Fact and Conclusions of Law of Quality of Service Coalition and Oklahoma Industrial Energy Consumers was served on this the 31st day of July, 2012 via hand delivery or electronic mail to the following:

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BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATER OF THE APPLICATION)
OF AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF)
AUTHORITY PERMITTING IT TO ISSUE)
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED PROMISSORY)
NOTES IN A PRINCIPAL AMOUNT OF)
\$200,000,000)

CAUSE PUD NO. 201200087

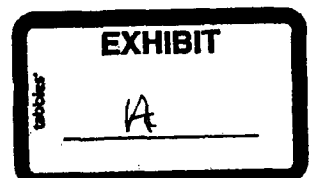
MOTION TO DISMISS WITHOUT PREJUDICE OR IN THE ALTERNATIVE

TO HOLD IN ABEYANCE THE CONSIDERATION OF THIS CAUSE UNTIL

PSO'S NEXT RATE PROCEEDING OR FILING OF AN APPLICATION BY

AEP OKLAHOMA TRANSMISSION COMPANY FOR DESIGNATION AS A PUBLIC
UTILITY

COMES NOW, Quality of Service Coalition (Coalition), an intervenor in this cause, moving that this matter be dismissed without prejudice or in the alternative to hold said cause in abeyance until Public Service Company of Oklahoma's (PSO) next rate proceeding or by AEP Oklahoma Transmission Company (OKTCO) seeking designation as a public utility. Coalition presents the following information and arguments in support of this filing.



a. What is OKTCO?

American Electric Holding Company has a number of subsidiary companies which provide a variety of services. One of those entities is American Electric Power Transmission Company (AEPTCO) which is the parent company for a number of subsidiary companies. AEPTCO and its subsidiaries will be solely in the business of planning, constructing, owning, operating and maintaining new transmission assets interconnected to existing AEP operating companies' facilities in the SPP and PJM regions. Seven subsidiary companies were formed in the states of Arkansas, Indiana, Kentucky, Louisiana, Ohio, Oklahoma, Virginia and West Virginia. AEP Oklahoma Transmission Company, Inc. (AEP OKTCO) was incorporated in Oklahoma on October 29, 2009. The purpose or purposes for which the corporation was formed were to transmit, sell, and distribute electricity to the public, either directly or through the sale of electric energy to other utilities, within and without the state of Oklahoma.

AEP OKTCO's does not intend to own, operate, manage its facilities under the jurisdiction of the Oklahoma Corporation Commission but rather sought approval of the Federal Energy Regulatory Commission (FERC) to regulate its business. On December 1, 2009, American Electric Power Service Corporation (AEPSC), on behalf of subsidiaries of AEP Transmission Company, LLC, (AEPTCO) submitted a request for acceptance of a formula rate to recover the cost of investments in transmission facilities owned by seven (7) subsidiaries of AEPTCO. AEP OKTCO was one of the subsidiaries for which FERC formula rates was requested. The filing (FERC Docket No. 10-355)

addressed a number of issues including the establishment of an annual revenue requirement for each subsidiary, proposed formula rates for each subsidiary, depreciation expense, recovery of Formation Costs for each subsidiary, Rate of Return on Common Equity for each subsidiary, and other issues.

In testimony filed with the request, then Vice President Transmission Strategy and Business Development for AEPSC, Lisa Barton, who now is identified in the latest FERC Form 1 for each of the subsidiary transmission-only companies as the President and Chief Operating Officer of each, including AEP OKTCO, stated:

...This transmission -only business will be a straightforward, transparent business, meaning that investors should be able to easily understand and assess it for investment purposes. The transparency comes from managing a business under FERC with one type of electrical asset as opposed to operating three types of major electrical assets under multiple state regulators. (FERC Docket No. 10-355 at Exhibit AEP 100, Page 14 o 21, lines 12-17.)

Ms. Barton's testimony explained that AEP's existing transmission facilities are owned by AEP's eleven operating companies of which PSO is one operating company entity. She further explained that the new subsidiary companies will be subject to FERC jurisdiction and will have the same responsibilities with respect to adherence to MERC reliability requirements and RTO member obligations as the AEP operating companies do today.

On April 21, 2011, following the negotiation of a Settlement on the issues in the formula rate case, the FERC approved the formula rates for the AEPTCO subsidiaries.

In AEP OKTCO's annual FERC filing, FERC Form 1, filed 4/12/2012, as well as the filings of the other 6 AEPTCO subsidiaries, on page 123.3 in the Summary of Significant Policies, Rates and Service Regulation, Rates and Service Regulation section the following language appears:

"OKTCO's rates are regulated by the FERC. ...The FERC also has jurisdiction over the issuance and acquisitions of securities of OKTCO, the acquisition or sale of certain utility assets and mergers with another electric utility or holding company. ..."

These examples demonstrate that AEP OKTCO does not intend to submit itself to the rate and regulatory jurisdiction of the Commission but rather prefers to be regulated by the FERC. Even more demonstrative is a February 28, 2012 filing by AEPTCO on behalf of its transmission-only companies, including AEP OKTCO, an application under Section 204 of the Federal Power Act for authorization to issue securities for short-term and long-term debt. Short-term debt for OKTCO was up to \$100 million and long-term debt for OKTCO was described as not to exceed \$100 Million.

In paragraph 1. G. the following appears:

" No application is required to be filed with any state regulatory body with respect to the issuance of any securities for which authorization is required herein." (page 8 of Application submitted in FERC Docket ES 12-24)

On May 10, 2012 FERC issued its Letter Order authorizing both short term debt and long-term debt for the AEPTCO's subsidiaries.

These examples clearly indicate the intent that FERC regulates AEP OKTCO's rates and issuance of securities.

b. What if any jurisdiction does the Oklahoma Corporation Commission have over OKTCO?

An examination of Oklahoma law related to the electric industry requires a review of constitutional language, case law and statutes to come to a proper conclusion. Section 18 of the Oklahoma Constitution (cited below) empowers and authorizes the Commission with the duty of supervising, regulating and controlling all transportation and transmission companies, including public utilities in all matters related to performance of their public duties and to prescribe such rates, charges, classifications of traffic, and rules and regulations.

The Oklahoma Constitution at Article 9, Section 18 describes the exact limit of the Corporation Commission's power and authority relating to supervising, regulating and controlling all transportation and transmission companies doing business in this state.

§ 18. Powers and duties - Notice before taking action - Process for witnesses - Authority of Legislature - Municipal powers.

The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to

the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation, transmission, or otherwise, in connection with the public duties of such company. Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given, by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published one time in substance in one or more of the newspapers of general circulation published in the county in which the Capitol of this State may be located, together with the notice of the time and place, when and where the Commission will hear any objections which may be urged by any person interested, against the proposed general order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the Commission, shall be published at length, in the next annual report of the Commission. The authority of the Commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the Legislature to legislate thereon by general laws: Provided, However, That nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county, so far as such services may be wholly within the limits of the city, town, or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons or employees. (*Emphasis added*)

Oklahoma Statutes provide further definition by providing in Title 17, Sections 151-155 of the term "public utility" in sections 151 and 152:

Section 151

The term "public utility" as used in Sections 151 through 155 of this title, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipeline.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

(d) For the transportation, delivery or furnishing of water for domestic purposes or for power. Provided, further that a corporation organized and existing not for profit pursuant to Title 18 of the Oklahoma

Statutes, Sections 851-863, but for the purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents shall not be declared a public utility under this act, and shall be exempt in any and all respects from the jurisdiction and control of the Corporation Commission of this state.

The term "Commission" shall be taken to mean Corporation Commission of Oklahoma.

Provided, that, in Washington County, where any corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, is engaged in the private business of manufacturing any products other than those hereinbefore defined, and in the manufacture of such products operate and maintain private electric or water plants for its own power and electrical energy or water used in its manufacturing plant, without the right of eminent domain and without the use of streets, highways or public property, it may contract upon terms and prices approved by Corporation Commission the sale of a bona fide surplus of electrical energy or water developed in such private plants to any public utility engaged in manufacturing and distributing electrical energy in Washington County, Oklahoma, without becoming a public utility. Provided further any city or town within a county having a population of over five hundred thousand (500,000) or any county having a population of over five hundred thousand (500,000), according to the 1970 Federal Census, which is a beneficiary of a public trust that has multiple beneficiaries and that includes within any or all of its boundaries a water supply and/or distribution system, or any portion thereof, shall have the authority to condemn all or any portion of any water supply and/or distribution system owned and/or operated and/or leased by a public trust within the limits of the condemning city or town or within the unincorporated areas of the condemning county; provided the power granted hereunder shall not be exercised until the condemning city, town or county shall have made provision to pay off all outstanding bonded indebtedness incurred by the public trust, including interest on the bonds to maturity of the bonds, or first call date, and premium, if any, to which the property to be condemned or the revenues therefrom has been pledged for security. *(Emphasis Added)*

and

Section 152

A. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe and promulgate rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted.

B. 1. When any public utility subject to general supervision pursuant to this section or to Section 158.27 [17-158.27] of this title shall file with the Commission a request for review of its rates and charges, such request shall be given immediate attention.

2. In the exercise of this responsibility, the Commission shall complete any examination of such request for a review of its rates and charges within one hundred twenty (120) days from the date such application for review of its rates and charges is filed.

3. Public hearings on such matter must commence within forty-five (45) days of the end of such examination to be conducted by the Commission and in no event shall the conclusion of such examination of the rates and charges and the hearing conducted by the Commission exceed one hundred eighty (180) days from the date the request was filed.

4. If such request for review of the applicant's rates and charges has not been completed and an order issued within one hundred eighty (180) days from the date of filing of such application, some or all of the

request for changes in the rates, charges, and regulations made in such application shall be immediately placed into effect and collected through new tariffs on an interim basis at the discretion of the applicant.

5. Should the Commission determine upon the completion of its examination and public hearings that a refund regarding the amount of interim relief is appropriate and necessary, the Commission shall order such refund including reasonable interest at the one-year U.S. Treasury bill rate accruing on that portion of the rate increase to be refunded for a period not to exceed ninety (90) days from the effective date of the rate increase which is being refunded.

C. The Commission shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission. (*Emphasis Added*)

Further, Oklahoma Statutes, in 1971, provided additional definition when new legislation, now codified as Section 158.21, *et seq.* which further defines electric public utility by defining "retail electric supplier" and "retail electric service" to add more clarity of what constitutes an electric public utility. Section 158.22 provides:

For the purposes of this act, the following terms shall have the meanings given them:

1. The term "retail electric supplier" means any person, firm, corporation, association or cooperative corporation, exclusive of municipal corporations or beneficial trusts thereof, engaged in the furnishing of retail electric service.

2. The term "certified territory" shall mean the unincorporated areas as certified by and pursuant to Section 158.24 of this title.

3. The term "existing distribution line" shall mean an electric line which on the effective date of this act

a. is located in an unincorporated area and

b. is being or has been substantially used for retail electric service.

4. The term "retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale.

5. The term "unincorporated area" shall mean geographical area outside the corporate limits of cities and towns.

6. The term "electric consuming facilities" means everything that utilizes electric energy from a central station source.

7. The term "Commission" shall mean "Corporation Commission of Oklahoma" or its successor.

8. The term "association or cooperative corporation" shall mean any association or cooperative corporation doing business under the Rural Electric Cooperative Act.

9. The term "hearing" shall mean a hearing by the Commission pursuant to reasonable notice to all affected retail electric suppliers.

10. The term "member consumer" shall mean the customer in whose name service of any association or cooperative corporation doing business under the Rural Electric Cooperative Act is being provided. (Emphasis Added)

Important in this discussion is the language contained in Section 158.21a:

If this act, or any provision hereof is, or may be deemed to be, in conflict or inconsistent with any of the provisions of Section 18 through Section 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, then, to the extent of any such conflicts or inconsistencies, it is hereby expressly declared this entire act and this section are amendments to and alterations of said sections of the Constitution, as authorized by Section 35 of Article IX of said Constitution. (Emphasis Added)

Finally, the Legislature addressed the restructuring of the electric utility industry when it enacted language which is now codified in the Oklahoma Statutes in Sections 190.1 through 190.21. The pertinent section related to unbundling of an vertically integrated electric utility appears in Section 190.4 B, (4) which provides:

4. Regulation and unbundling of services. Entities which own both transmission and distribution, as well as generation facilities, shall not be allowed to use any monopoly position in these services as a barrier to competition. Generation services may be subject to minimal regulation and shall be functionally separated from transmission and distribution services, which services shall remain regulated. All retail electric energy suppliers shall be required to meet certain minimum standards designed to ensure reliability and financial integrity, and be registered with the Corporation Commission; *(Emphasis Added)*

It is interesting to note that the term "retail energy suppliers" is used by the drafters in this section and adopted by the Legislature, which in Coalition's opinion, is an additional recognition by the Legislature that the Commission's responsibility for electric utilities is to supervise, regulate and control their retail activities.

1 The progression of defining what authority the Commission has related to the performance of its public duties and their business in the State of Oklahoma has

evolved since the adoption in 1907 of the Constitutional language contained in Section 18. That section clearly authorizes that evolution when it provides:

"The authority of the Commission (subject to review on appeal as herein provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount, but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the Legislature to legislate thereon by general laws.";

and in Section 19 when it further provides:

The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith,..."

Both Title 17, Sections 151 through 155 (cited above) originally enacted in 1913 and amended by the Legislature on several occasions, and Title 17 Sections 158.21 through 158.32 first enacted in 1971 and also amended on several occasions, are examples of further definition of the language contained in the Section 18 and 19 of the Oklahoma Constitution. Section 158.21a, in fact, invokes the provisions of Section 35 of Title 9 of the Oklahoma Constitution by making the entire act an amendment to the Constitution.

Another example of language added by the Legislature is codified in Title 17, Sections 181 through 189, an act passed by the Legislature in 1947. That legislation contains language defining "public utility" as any corporation organized or doing business in this state..that now owns or hereafter may own, operate or manage any

plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state. This definition is quite similar to that contained in Section 151 of Title 17.

In 1947 a public utility was what is commonly referred to as a "vertically integrated business" consisting of a company that operated generation, transmission, and distribution segments to provide electricity "for public use". But the Legislature made a further modification when it enacted the provisions of Title 17, Sections 158.21 through 158.32 in 1971. This new statute recognizes the changing character of electric service and further defines public use by now including a definition of a "retail electric supplier" and "retail electric service". This further definition is an important feature of this case because its enactment and its amendment of the Oklahoma Constitution now clarifies what "manufacture, production, transmission, delivery or of furnishing electric current for light heat or power for public use in this state" means by adding the definition of "retail electric service

In addition, in 1998, the Legislature enacted Sections 190.1 through 190.21 to outline the procedure to provide an orderly restructuring of vertically integrated utilities. While the final version of legislation implementing electric restructuring for our state was never adopted, the language of Section 190.4 has not been repealed or amended. That language is clear that transmission and distribution services should not be unbundled and still remains the law in this state. "

c. Can the Commission recognize OKTCO as a public utility?

Applicant seeks Commission approval of the issuance securities pursuant to the provisions of Oklahoma Statutes, Title 17, Sections 181 *et seq.*, statutory language requiring public utilities to seek approval of the Commission when issuing securities with maturity dates later than twelve (12) months from the date of issue.

AEP Oklahoma Transmission Company's (OKTCO) application does not suggest or aver that it is a public utility subject to the Commission's approval of securities issuance contained in Title 17, Section 181 *et seq.* but simply states that it operates properties and facilities that are used for transmitting electric power in the State of Oklahoma. Coalition would suggest that transmitting electric power in the State of Oklahoma does not qualify any entity to be a "public utility" but that such entity must be examined in detail to determine if the Oklahoma Constitution and the Oklahoma Statutes support that definition.

The Commission has conducted a review of two transmission-only utilities who sought recognition as a public utility and OKTCO can also file an action to allow the Commission to make that determination. PSO, in Cause PUD 201100106 agreed to present the issues related to OKTCO as a part of its next rate filing. PSO has 26 months from the date of that order, Order No. 59185, November 19, 2011, to file a rate proceeding.

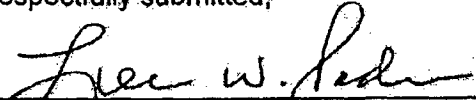
OKTCO is not harmed by a delay in this proceeding. The FERC has already approved the issuance of \$100 million in short term debt and an additional \$100 million

in long-term debt which can be used to finance OKTCO's activities. The financial statement attached to the application in this cause indicates that there is approximately \$73 million of Construction and \$21 Million of other assets. The \$200 million approval already authorized by the FERC should provide adequate resources to continue its operation.

Even if this matter is dismissed, OKTCO is not precluded from seeking public utility designation by the Commission. PSO has already agreed to submitting all OKTCO issues in its next rate case. The ability to secure financing has been approved by FERC. Should PSO and OKTCO determine that requesting transmission-only status for OKTCO's business is necessary, that process is only available should they voluntarily seek such designation.

Coalition respectfully request the Commission consider the arguments put forth in this matter and either dismiss the current cause without prejudice or to consider all OKTCO issues in a separate cause, in either a PSO rate case or a voluntary request OKTCO might file seeking designation of OKTCO as a transmission-only public utility.

Respectfully submitted,



Lee W. Paden
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2012, a true and correct copy of the Quality of Service Coalition's Motion was fax filed with the Court Clerk of the Oklahoma Corporation Commission and a copy electronically transmitted to those listed below:

Jack Fite
White, Coffey & Fite, P.C.
1001 E. 63rd Street, Suite 100
Oklahoma City, OK 73116
jfite@wcfglaw.com

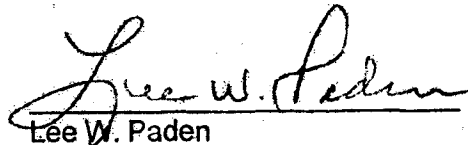
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Lee W. Paden
Attorney for Quality of Service Coalition

FILED
SEP 10 2012

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CORPORATION COMMISSION
OF OKLAHOMA

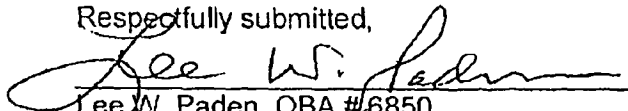
BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATER OF THE APPLICATION)
OF AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF)
AUTHORITY PERMITTING IT TO ISSUE) CAUSE PUD NO. 201200087
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED PROMISSORY))
NOTES IN A PRINCIPAL AMOUNT OF)
\$200,000,000)

QUALITY OF SERVICE COALITION AND
OKLAHOMA INDUSTRIAL ENERGY CONSUMERS'
PROPOSED REPORT OF ADMINISTRATIVE LAW JUDGE

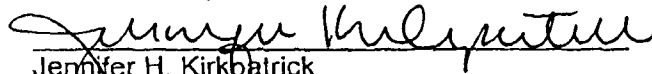
Quality of Service Coalition and Oklahoma Industrial Energy consumers respectfully submits its Proposed Report of the Administrative Law Judge, attached hereto.

Respectfully submitted,



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and



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Oklahoma City, OK 73102
(405-533-2828)

**ATTORNEYS FOR QUALITY OF SERVICE
COALITION AND OKLAHOMA INDUSTRIAL
ENERGY CONSUMERS**

Attachment "B"

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)
OF AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF)
AUTHORITY PERMITTING IT TO ISSUE) CAUSE PUD NO. 201200087
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED PROMISSORY)
NOTES IN A PRINCIPAL AMOUNT OF)
\$200,000,000)

HEARINGS: Hearings in this cause were conducted:

June 4, 2012- Motion to Determine Notice and Motion to Establish Procedural Schedule in Courtroom B, 2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105

July 26, 2012- Motion to Dismiss without Prejudice or in the Alternative to Hold in Abeyance in Courtroom B, 2101 North Lincoln Blvd., Oklahoma City, Oklahoma 73105

August 30, 2012- Hearing on the Merits in Courtroom B, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105

Before Jacqueline T. Miller, Administrative Law Judge

APPEARANCES: Jack P. Fite and Joann T. Stevenson, Attorneys *representing* AEP Oklahoma Transmission Company, Inc.
Mary F. Candler, Assistant General Counsel, *representing* Public Utility, Oklahoma Corporation Commission
Thomas P. Schroedter and Jennifer H. Kirkpatrick, Attorneys *representing* Oklahoma Industrial Energy Consumers
Lee W. Paden, Attorney *representing* Quality of Service Coalition

FINAL ORDER

There comes on for consideration and action before the Oklahoma Corporation Commission ("Commission") the application of AEP Oklahoma Transmission Company, Inc. ("Oklahoma Transco" or "Applicant") for a Certificate of Authority permitting it to issue secured notes, senior unsecured notes and/or unsecured promissory notes in the principal amount of \$2,000,000.00.

I. PROCEDURAL HISTORY

Oklahoma Transco filed an application ("Application") and supporting testimony on May 23, 2012, requesting that the Commission issue a Certificate of Authority permitting it to issue secured notes, senior unsecured notes and/or unsecured promissory notes in a principal amount of \$200,000,000. In the Application, Oklahoma Transco alleged that it is a corporation organized under the laws of the State of Oklahoma and is a "public utility" as defined by 17 O.S. § 181 (1).

On May 23, 2012, Oklahoma Transco filed an Amended Motion to Determine Notice and an Amended Motion to Establish Procedural Schedule which were heard by the Administrative Law Judge ("ALJ") on June 4, 2012. **Order No. 599164**, setting notice to be given of the Application, and **Order No. 599165**, establishing the procedural schedule, were issued on June 27, 2012.

On July 16, 2012, the Responsive Testimony of Fairo Mitchell was filed on behalf of the Public Utility Division of the Commission ("PUD Staff" or "PUD").

On July 16, 2012, Quality of Service Coalition ("Coalition") and Oklahoma Industrial Energy Consumers ("OIEC") filed Statements of Position reserving the right of each to cross-examine witnesses at the Hearing on the Merits.

On July 23, 2012, Coalition fax-filed its Motion to Dismiss without Prejudice or in the Alternative Hold in Abeyance the consideration of this cause until Public Service Company of Oklahoma's ("PSO") next rate proceeding or filing of an application by Oklahoma Transco for designation as a public utility. Oklahoma Transco fax-filed a Response to Coalition's Motion on July 26, 2012.

Pursuant to **Order No. 599165** establishing the procedural schedule, the Hearing on the Merits was set for July 26, 2012 at 1:30 p.m. in Courtroom B. The ALJ called for the oral argument of Coalition's Motion prior to undertaking any hearing on the merits. At the conclusion of the arguments on Coalition's Motion, the ALJ requested that proposed ALJ Reports be filed and submitted by July 31, 2012. The ALJ also continued the Hearing on the Merits to August 30, 2012 at 1:30 p.m.

On August 6, 2012, the ALJ filed her Initial Hearing Report and on August 16, 2012, the Commission Issued **Order No. 601032**, deferring for consideration the Motion of Coalition until the final Report and Recommendations of the ALJ in this Cause are presented.

On August 30, 2012, the Hearing on the Merits in this Cause was conducted by the ALJ in Courtroom B, 2101 North Lincoln Blvd, Oklahoma City, Oklahoma 73105.

TESTIMONY SUMMARIES

AEP Oklahoma Transmission Company, Inc

1. Summary of Testimony of Jerald R. Boteler, Jr.

(Insert pre-filed Testimony Summary)

2. Jerald R. Boteler, Jr., Direct Examination at the Hearing on the Merits

Although the Application seeks approval for Oklahoma Transco to issue long-term debt securities, Mr. Boteler's testimony on direct examination indicated otherwise. Specifically, Mr. Boteler clarified on direct examination that Oklahoma Transco's parent company is the company that will actually be issuing the long-term debt securities. "Oklahoma Transco will proceed to describe and market long-term debt securities to its investors for the purpose of selling that same, those same long-term debt securities to investors and then take those funds and supply them to Oklahoma Transco, I'm sorry, AEP Transco will sell the securities and provide the funds to Oklahoma Transco for the purpose of the previously described, that is, paying down short-term debt, making capital expenditures, and general purposes." (Emphasis added) (Transcript of proceedings, August 30, 2012, page 20, lines 9-13 and page 21, lines 14-17)

Mr. Boteler also testified that AEP Transco, the parent company of Oklahoma Transco, is currently in the process of issuing long-term securities for the purpose of "marketing to investors starting in mid September". (Transcript of proceedings, August 30, 2012, page 23, lines 18-24)

2. Jerald R. Boteler, Jr. Cross-Examination at the Hearing on the Merits

Mr. Boteler is the only person who presented testimony for Applicant, Oklahoma Transco. He testified as an expert in corporate finance and in financing issues in this cause. (Transcript of proceedings, August 30, 2012, page 19, lines 11-22)

Regarding the issue of whether or not the Applicant, Oklahoma Transco, falls within the definition of "public utility" under Title 17, Mr. Boteler indicated in response to a question from the ALJ that he had not reviewed the definition of "public utility" under Title 17. (Transcript of proceedings, August 30, 2012, page 23, lines 18-21) However, he later testified on cross-examination by OIEC that based on "advice of counsel" Oklahoma Transco is qualified to be a "utility in the State of Oklahoma by the fact that they own utility assets in the State of Oklahoma." (Transcript of proceedings, August 30, 2012, page 74, lines 19-21)

Regarding the utility assets owned by Oklahoma Transco, Mr. Boteler initially testified that all of Oklahoma Transco's assets within the State of Oklahoma are all "new build assets" rather than existing line of PSO which PSO then transferred to Oklahoma Transco. (Transcript of proceedings, August 30, 2012, lines 9-10, page 63, lines 1-12) (Exhibit HE-2) However, Oklahoma Transco's FEERC Form-1 dated April of 2012 clearly states that "Oklahoma Transco purchased \$1,000 and 1.5 million of transmission property in 2011 and 2010 respectively at book value from PSO." (Transcript of

proceedings, August 30, 2012, page 68, lines 6-8) (Exhibit HE-2) Further, Mr. Boteler testified that he is not familiar with the Commission's rules governing affiliate transactions, nor does he possess any personal knowledge of the actual transfers indicated on the April 2012 FERC Form-1. (Transcript of proceedings, August 30, 2012, page 69, lines 18-25, page 70, line 1)

Mr. Boteler offered additional testimony regarding the authority being sought by the Application on cross-examination by Coalition and OIEC. He specifically offered the following testimony:

- "... [O]ur financing plan is not to issue actually at Oklahoma Transco. Our financing plan is to issue at the AEP Transco parent level and then push inter-company notes down to the individual companies according to their need." (Transcript of proceedings, page 49, lines 12-16)
- "In our application here we ask to be able to issue securities both at AEP Oklahoma Transmission Company and at the AEP parent or Holdco level above ... as the need and market may indicate" to establish an inter-company loan between AEP Transco parent and AEP Oklahoma Transco." (Transcript of proceedings, page 51, lines 7-23)

See also, Transcript of proceedings at page 57, lines 5-22, in which Mr. Boteler confirms (1) that AEP Transco, the parent company of Oklahoma Transco, will be the entity issuing securities in 2012, (2) that the named applicant is Oklahoma Transco and (3) that the Application states that Oklahoma Transco is the entity seeking authority to issue securities; Transcript of proceedings at page 74, lines 10-14.

Mr. Boteler offered additional testimony which further muddied the water with respect to which entity would be issuing securities. Towards the end of his cross-examination, Mr. Boteler provided the following testimony:

Boteler: And it's probably a good time, Your Honor, to point out that the authority we're asking for the authority to Oklahoma Transco to issue securities whether to the public or to the AEP parent. We're not asking for authority for AEP Transco parent to issue securities, but merely for AEP Oklahoma Transco to issue securities whether to the public or to AEP parent. And so that is the authority we're asking for here. ... We merely are trying to explain how the process of obtaining the funds from the public market would be done to assure the Commission that they would be done at the most advantageous price and would reflect a market mechanism and so forth by the reflection of the parent's notes being sold to the market and those notes being mirrored down to Oklahoma Transco so that Oklahoma Transco would issue notes to the parent on the same terms and not be disadvantaged in any way.

Court: And the reason why you're stating that is to show that you're not requesting that AEP parent be authorized to issue?

Boteler: Correct.

Court: That's your point?

Boteler: Correct.

Kirkpatrick: Okay, and forgive me, I may have misheard you previously, but I believe that when I first stood up and began questioning you I clarified that you had previously testified that AEP Transco, the parent company, would be issuing securities this year?

Boteler: They will be issuing securities this year. They don't -- they don't require authorization from anyone to issue those securities. ... It's just a funding mechanism is what we're talking about here. (Transcript of proceedings, August 30, 2012, page 71, lines 18-25, page 72, lines 1-24, page 73, lines 10-11)

Although it remained unclear exactly which entity will issue securities, Mr. Boteler did clearly confirm that AEP Transco was not a party to this Cause, (Transcript of proceedings, August 30, 2012, page 53, lines 3-10), was not registered to do business in the State of Oklahoma, does not own assets, and is not a transmission utility itself. (Transcript of proceedings, August 30, 2012, page 54, lines 1-11 and page 71, lines 11-18)

Mr. Boteler also provided testimony which explains why AEP Transco, the parent company, and not Oklahoma Transco, the Applicant herein, will be issuing securities. Mr. Boteler testified that Oklahoma Transco was hampered by the fact that it was a new company with a balance sheet that is fairly small. (Transcript of proceedings, August 30, 2012, page 49, lines 1-6). He also agreed that Oklahoma Transco did not have sufficient assets to support reasonable financing terms and conditions at this time, (Transcript of proceedings, August 30, 2012, page 49 lines 7-11), nor would Oklahoma Transco be in a financial position to do a financing of the size indicated in the Application for many years. (Transcript of proceedings, August 30, 2012, page 50, lines 8-11)

Regarding the issuance of securities by AEP Transco, the parent company, Mr. Boteler also testified that the issuance would not have a prospectus since the issuance would not be a public issuance but rather serve as a means to generate funds for an inter-company loan to Oklahoma Transco. (Transcript of proceedings, August 30, 2012, page 54, lines 17-21)

Mr. Boteler also offered testimony on cross-examination by Coalition and OIEC regarding AEP Transco's operation of its affiliate, Oklahoma Transco. In response to a question concerning Oklahoma Transco which suggested that the Company had no employees, Mr. Boteler indicated that no employees could be a reasonable assumption. (Transcript of proceedings, August 30, 2012, page 36, lines 9-15) Instead, Oklahoma Transco will utilize the employees of AEP Transco, AEP Service Corp., PSO and contractors. (Transcript of proceedings, August 30, 2012, page 58, line 25 and page

59, lines 1-11) (Exhibit HE-1) Mr. Boteler testified that budgetary and financial decisions are made by a corporate finance group contained within AEP Transco for Oklahoma Transco. (Transcript of proceedings, August 30, 2012, page 70, lines 24-25 and page 71, lines 1-5)

Public Utility Division Staff

1. Summary of Testimony of Fairo Mitchell

(Insert pre-filed Testimony Summary)

2. Cross-Examination of Fairo Mitchell at Hearing on the Merits

Upon cross-examination by the ALJ at the Hearing on the Merits, Mr. Mitchell testified that PUD Staff believes Oklahoma Transco is a "public utility" as that term is defined in 17 O.S. §181 because the Applicant "owns, or hereafter may own, operate or manage any plant or equipment for the manufacture, production, transmission, delivering or furnishing electric current for LIHEAP or power for public use". (Transcript of proceedings, August 30, 2012, page 84, lines 1-24) This opinion is based on Mr. Mitchell's review of the Application and the prefiled testimony of Mr. Boteler. (Transcript of proceedings, August 30, 2012, page 84, line 25, page 85, lines 1-6) He did not issue any data requests as part of his review and analysis of the Application. (Transcript of proceedings, August 30, 2012, lines 7-9)

The ALJ also questioned Mr. Mitchell about his understanding of the manner in which securities would be issued. Mr. Mitchell testified that he had been in the courtroom for the testimony regarding whether Oklahoma Transco or the parent AEP Transco would issue the securities and how those securities would be issued. (Transcript of proceedings, August 30, 2012, page 88, lines 7-14) Despite the conflicting testimony presented by Mr. Boteler, Mr. Mitchell testified that it is his "understanding" that the authority being sought is for the "Transco". (Transcript of proceedings, August 30, 2012, page 88, lines 20-25, page 89, line 1)

Upon cross-examination by Coalition, Mr. Mitchell testified that in similar cases in which a company has sought authority to issue securities, the company seeking the authority was a public utility regulated by the Commission. (Transcript of proceedings, August 30, 2012, page 80, lines 16-25 and page 81, lines 1-5) However, Oklahoma Transco has not submitted itself for approval as a transmission only company. (Transcript of proceedings, August 30, 2012, page 81, lines 22-25)

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over the above-captioned cause pursuant to Article IX, Sections 15 through 35 of the Oklahoma Constitution and various provisions contained in Title 17 of the Oklahoma Statutes, including but not limited to, Sections 151 through 155, Sections 158.21 through 158.32, Sections 181

through 190, and Sections 190.1 through 190.21, and the Commission's Electric Utility Rules codified in the Oklahoma Administrative Code, 165, Chapter 35.

2. The Commission further finds that Applicant satisfied the notice requirements in this Cause, as set forth in Order No. 599164, by providing the Office of the Attorney General with notice in the approved form.

3. The Commission finds that Oklahoma Transco is an affiliate of PSO.

4. The Commission finds that Oklahoma Transco is making its initial request for a Certificate of Authority to issues Securities pursuant to 17 O.S. § 181 *et seq*; and OAC 165:5-7-52.

5. The Commission finds that the definitions of "public utility" and "securities" contained in Section 181 of Title 17 of the Oklahoma Statutes are critical to this Cause.

6. The Commission finds that AEP Transmission Company, LLC, the parent company of Oklahoma Transco, will be issuing securities for which Oklahoma Transco seeks authority in order to meet Oklahoma Transco's capital expenditures. However, AEP Transmission Company, LLC is not a party in this Cause.

7. AEP Transmission Company, LLC is not organized or doing business in this state. Nor does it own, operate or manage any plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state. Therefore, AEP Transmission Company, LLC does not meet the definition of a "public utility" set forth in Section 181 of Title 17 of the Oklahoma Statutes.

8. The comparative balance sheet appended to the Application and verified by a corporate officer, indicates that Oklahoma Transco does not have sufficient assets in service or operation history to support reasonable financing terms and conditions at this time in the public market. Nor does Oklahoma Transco have the assets to support a financing of debt in the amount of \$200,000,000 for many years.

9. Oklahoma Transco will have to rely on an inter-company loan between it and AEP Transmission Company, LLC in order to finance transmission capital expenditures, repay short-term debt and meet working capital needs. Such inter-company loan does not appear to have the standing of a negotiable instrument of a public utility since there may not have a way to sell that loan in the market. Therefore, the long-term debt which is being proposed does not meet the statutory definition of "securities" set forth in Section 181 of Title 17 of the Oklahoma Statutes.

10. PSO and Oklahoma Transco are in violation of the Commission's rules governing standards for transactions between electric utilities and affiliates as set forth in OAC 165:35-31.

11. It is in the public interest to grant Coalition's Motion and to dismiss without prejudice Oklahoma Transco's Application to allow either: (1) PSO and Oklahoma Transco to comply with the provisions of Order No. 591185 by including in PSO's next

general rate proceeding all issues related to Oklahoma Transco; or (2) Oklahoma Transco to file a cause pursuant to Commission Rules OAC 165:35-43 *et seq.* which would allow the Commission to examine the information filed and make a determination of Oklahoma Transco's status as a transmission-only utility.

III. ORDER

THE COMMISSION THEREFORE ORDERS that the above findings of fact and conclusions of law are hereby adopted.

THE COMMISSION FURTHER ORDERS that the Motion to Dismiss without Prejudice is hereby GRANTED to allow either: (1) PSO and Oklahoma Transco to comply with the provisions of Order No. 591185 by including in PSO's next general rate proceeding all issues related to Oklahoma Transco; or (2) Oklahoma Transco to file a cause pursuant to Commission Rules OAC 165:35-43 *et seq.* which would allow the Commission to examine the information filed and make a determination of Oklahoma Transco's status as a transmission-only utility.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION:

PATRICE DOUGLASS, Chairman

DANA L. MURPHY, Vice-Chair

BOB ANTHONY, Commissioner

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by their signatures above this ____ day of _____, 2012.

PEGGY MITCHELL, Commission Secretary

REPORT AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned Administrative Law Judge.

Jacqueline T. Miller
Administrative Law Judge

Date

FILED
SEP 10 2012

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
AEP OKLAHOMA TRANSMISSION)
COMPANY, INC. FOR A CERTIFICATE OF)
AUTHORITY PERMITTING IT TO ISSUE)
SECURED NOTES, SENIOR UNSECURED)
NOTES AND/OR UNSECURED)
PROMISSORY NOTES IN A PRINCIPAL)
AMOUNT OF \$200,000,000.)

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OF OKLAHOMA

CAUSE NO. PUD 201200087

HEARING: August 30, 2012, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jacqueline T. Miller, Administrative Law Judge

APPEARANCES: Jack P. Fite and Joann T. Stevenson, Attorneys *Representing* AEP
Oklahoma Transmission Company
Mary Candler, Assistant General Counsel, *Representing* Public Utility
Division, Oklahoma Corporation Commission
Jennifer H. Kirkpatrick, *Representing* Oklahoma Industrial Energy
Consumers
Lee Paden, *Representing* Quality of Service Coalition

PUBLIC UTILITY DIVISION'S PROPOSED REPORT AND RECOMMENDATION
OF THE ADMINISTRATIVE LAW JUDGE

The Public Utility Division ("PUD") of the Oklahoma Corporation Commission ("OCC" or "Commission"), by and through the undersigned counsel, submits its proposed Report and Recommendation of the Administrative Law Judge ("ALJ") as set forth below.

I. PROCEDURAL HISTORY

On May 23, 2012, AEP Oklahoma Transmission Company ("AEPOTC") filed an Application in the above-captioned Cause requesting a certificate of authority permitting AEPOTC to issue secured notes, senior unsecured notes and/or unsecured promissory notes in a principal amount of \$200,000,000. Along with the Application, the Company also filed the

following: AEPOTC's most recent balance sheet, sworn statement of AEPOTC'S Senior Vice President Scott N. Smith, Direct Testimony of Jerald R. Boteler, Jr., motion to determine notice and motion to establish procedural schedule. On July 16, 2012, PUD filed the Responsive Testimony of Fairo Mitchell. Oklahoma Industrial Energy Consumers and Quality of Service Coalition ("QOSC") each filed a Statement of Position on July 16 and 17, 2012, respectively. On July 23, 2012, QOSC filed a motion to dismiss without prejudice or in the alternative to hold in abeyance the consideration of this Cause until Public Service Company of Oklahoma's next rate proceeding or filing of an application by AEPOTC for designation as a public utility.

On June 27, 2012, the Commission entered an Order Establishing Notice Requirements (Order No. 599164) and an Order Establishing Procedural Schedule (Order No. 599165).

On July 26, 2012, AEPOTC stated on the record and the ALJ noted that AEPOTC was responsible for notification of the Attorney General's Office. It was also noted that two representatives from the Attorney General's Office were in attendance.

On July 26, 2012, all parties appeared at the hearing on QOSC's motion to dismiss. At the hearing, all parties were given opportunity to speak to the filed motion to dismiss. At the conclusion of the hearing on this motion, the ALJ determined that an ALJ Report and Recommendation as to QOSC's motion to dismiss would issue on or before August 6, 2012. All parties were directed to each file a proposed ALJ Report and Recommendation by July 31, 2012. The Hearing on the Merits was continued to August 30, 2012.

The ALJ Report and Recommendation as to QOSC's motion to dismiss was filed on August 6, 2012. No party filed exceptions to the ALJ Report and Recommendation. On August

16, 2012, the Commission issued Order 601032 adopting the ALJ Report and Recommendation filed on August 6, 2012, as the Order of the Commission.

On August 30, 2012, the hearing on the merits occurred.

II. NOTICE

Affidavits of mailing and electronic mailing were filed by Commission staff on June 28, 2012, indicating Commission Orders 599164 and 599165 were mailed and sent electronically to the Attorney General's Office. Additionally, on July 26, 2012, AEPOTC stated on the record and the ALJ noted that AEPOTC was responsible for notification of the Attorney General's Office. It was also noted that two representatives from the Attorney General's Office were in attendance. Also, on August 30, 2012, parties affirmed notice had been provided to the Attorney General's Office and a representative from the Attorney General's Office was in attendance.

III. SUMMARY OF EVIDENCE

PUD proposes each party's position and summary of testimony or evidence be represented in this section of the ALJ Report and Recommendation document. However, PUD submits only PUD's proposed statement of position as to QOSC's motion to dismiss that has not been resolved and testimony summary as presented at the hearing on the merits.

Public Utility Division's Statement of Position as to Quality of Service Coalition's Motion to Dismiss

QOSC's motion questions whether AEPOTC is a public utility. PUD relies upon the definition of "public utility" contained in Title 17 Okla. Stat. §181(1), which states:

Public utility means and embraces every corporation organized or doing business in this state, (except a municipal corporation or other political subdivision of this state), that now owns or hereafter may own, operate or manage any plant or equipment for the manufacture, production, transmission, delivery or of furnishing electric current for light, heat or power for public use in this state.

The definition contained within this statute provides the definition of public utility to be used for Chapter 10- Securities of Public Utilities. This is the relevant chapter to be applied in causes such as this one filed by AEPOTC. Using the plain language of the definition contained in §181(1), AEPOTC is a public utility.

Public Utility Division's Summary of Testimony

Mr. Fairo Mitchell, the PUD chief of energy and water, filed written testimony and testified at the hearing on the merits. Mr. Mitchell testified as follows.

PUD reviewed the Company's application and attached balance sheet, the pre-filed testimony of the applicant's witness, the Oklahoma Statute that sets forth the requirements a public utility must meet to obtain the Commission's certificate authorizing the issuance of debt and the reporting rules for transmission only utilities under OAC 165:35-43-4.

Title 17 of the Oklahoma Statutes §185 requires any utility desiring to issue securities to file an application such as AEPOTC filed in this Cause. It further states as long as AEPOTC complies with certain statutory requirements the Commission "shall" issue a certificate of authority permitting the debt issuance by the public utility.

AEPOTC has fulfilled the requirements of 17 O.S. § 185 in the following manner:

1. **File an application verified by its president or vice president:** Scott N. Smith, senior vice president, filed a sworn statement verifying the contents of AEPOTC's application.

2. **Indicate the amount and character of the proposed securities:** AEPOTC plans to obtain:
 - a. Unsecured or senior unsecured notes, (the "Notes") or

- b. Unsecured promissory notes, including senior unsecured notes or unsecured promissory notes issued to AEP or its intermediate parent companies, AEP Transmission and AEP Holdco, (the "AEP Notes").

The Notes and the AEP Notes are collectively referred to as the "Debt Securities". The aggregate amount of long-term Debt Securities issued will not exceed \$200 million.

3. State the general purpose of the proposed issuance: The Debt Securities will be used for the following: (1) to finance transmission capital expenditures; (2) to repay short-term borrowings (through AEPOTC's participation in the AEP System Utility Money Pool); (3) to meet working capital needs (including construction expenditures); and (4) to use for other general corporate purposes.

4. Provide a copy of its most recent balance sheet: AEPOTC provided a copy of the balance sheet for the first quarter of 2012.

PUD has confirmed that AEPOTC has complied with all of the statutory requirements in 17 O.S. § 185.

PUD believes that AEPOTC falls under the requirements of the Transmission Only Utility Rules because AEPOTC has stated in this Cause that it is a public utility whose purpose is to build, construct, own, operate, control, manage or maintain Transmission Lines.

Based upon the limited review allowed PUD by the referenced statute, PUD does not object to AEPOTC's requested relief. Also, it is recommended that the Commission include in the order the directive that AEPOTC comply with OAC 165:35-43.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Administrative Law Judge finds that Applicant AEPOTC complied with all notice requirements required by Order No. 599164.

2. The Administrative Law Judge finds that Applicant AEPOTC is a public utility as is defined in Title 17 Okla. Stat. §181(1). Applicant is a corporation organized and existing under the laws of the State of Oklahoma and is an electric public utility engaged in the business of transmitting electric energy for light, heat or power for public use in the State of Oklahoma.
3. The Administrative Law Judge finds that the Oklahoma Corporation Commission has jurisdiction of this Cause pursuant to Title 17 Okla. Stat. §§181-190 and OAC 165:5-7-52.
4. The Administrative Law Judge finds the issuance of evidence of indebtedness in an aggregate principal amount up to \$200,000,000 is consistent with the public interest and is a lawful purpose for which securities may be issued under the authority of this Commission as provided by 17 O.S. §184.
5. The Administrative Law Judge finds the Application filed in this Cause complies with 17 O.S. § 185; therefore, the Application shall be approved and a Certificate of Authority shall be granted to Applicant authorizing Applicant to issue evidence of indebtedness in a principal amount up to \$200,000,000.

Respectfully Submitted,



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CERTIFICATE OF ELECTRONIC SERVICE

I, the undersigned, do hereby certify that on the 10th day of September, 2012, a true and correct copy of the above and foregoing was sent electronically, addressed to the following:

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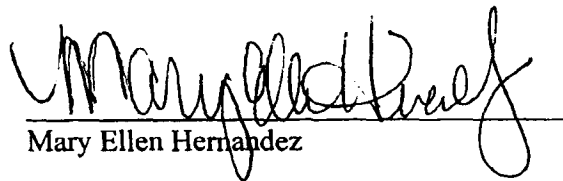
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