

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

ORDER NO. 749854

CORPORATION COMMISSION OF OKLAHOMA

Kim David

Kim David, Chairman

DISSENT - Dissenting Statement Attached

J. Todd Hiatt, Commissioner

Brian Bingman

Brian Bingman, Commissioner

DONE AND PERFORMED THIS 4th DAY OF JUNE 2025.



BY ORDER OF THE COMMISSION:

Eleise J. Rouse

Eleise J. Rouse, Acting Commission Secretary

ORDER NO. 749854

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE
COMPANY OF OKLAHOMA FOR AN ORDER
OF THE COMMISSION GRANTING
PREAPPROVAL OF THE PURCHASE AND
COST RECOVERY OF THE GREEN COUNTRY
GENERATING FACILITY AND AUTHORIZING
A RECOVERY RIDER.

CASE NO. PUD2024-000057

HEARINGS: March 10–14, 2025, in Concourse Theater, Suite C50 (live and video
teleconference)
Will Rogers Memorial Office Building
2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Carly M. Ortel, Administrative Law Judge

May 19, 2025, in the Concourse Theater, Suite C50
Will Rogers Memorial Office Building
2401 North Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before the Commission en banc

APPEARANCES: Jack P. Fite, Lauren D. Willingham, and Kenneth A. Tillotson, Attorneys
representing Public Service Company of Oklahoma
Natasha M. Scott, Michael L. Velez, Mike Ryan, and E.J. Thomas,
Deputy General Counsels *representing* Public Utility Division,
Oklahoma Corporation Commission

A. Chase Snodgrass, Deputy Attorney General, Thomas L. Grossnicklaus,
Senior Assistant Attorney General, and Ashley N. Youngblood,
Assistant Attorney General, *representing* Office of the Attorney
General, State of Oklahoma

Thomas P. Schroedter, Attorney, *representing* Oklahoma Industrial Energy
Consumers

Adam J. Singer, Attorney *representing* AARP

J. David Jacobson, Attorney *representing* The Petroleum Alliance of
Oklahoma

FINAL ORDER

This Case comes before the Corporation Commission ("Commission") of the State of Oklahoma on the above-styled and numbered Application of Public Service Company of Oklahoma ("PSO" or "Company"), seeking an Order of the Commission granting preapproval of the purchase and cost recovery of the Green Country Generation Facility ("Green Country") and authorizing a rider.

I. PROCEDURAL HISTORY

The Administrative Law Judge (“ALJ”) prepared a Report and Recommendation (“ALJ Report”) and filed it on April 28, 2025. The procedural history of this Case though the date of the ALJ Report is appended as Attachment “A” to the ALJ Report and incorporated as if fully set forth in this Order.

The Company filed written exceptions to the ALJ Report on May 5, 2025. On the same date, the Company filed a Motion for Oral Argument (“Motion”) and a Notice of Hearing indicating the Motion would be heard on May 19, 2025.

Oklahoma Industrial Energy Consumers (“OIEC”), AARP, and The Petroleum Alliance of Oklahoma (“Petroleum Alliance”) filed a written response to PSO’s exceptions on May 9, 2025.

On May 19, 2025, the Commission *en banc* considered PSO’s Motion and granted it. The Commission proceeded to hear oral arguments regarding PSO’s exceptions and subsequently took the Case under advisement.

II. SUMMARY OF EVIDENCE

Any documents filed in this Case are contained in the records maintained by the Court Clerk of the Commission. Testimony was offered through written pre-filed testimony (direct, responsive, and rebuttal), along with certain oral testimony at the Hearing. The entirety of the live testimony and arguments offered are contained in the transcripts of these proceedings. All pre-filed testimony summaries are attached to the ALJ Report as Attachment “B” and are incorporated as if fully set forth in this Order.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the Commission’s review and evaluation of the pleadings, testimony of witnesses, and evidence contained in the record of this Case, and upon a full and final consideration thereof, the Commission makes the following findings of fact and conclusions of law:

A. Jurisdiction and Preliminary Issues

1. PSO is an Oklahoma corporation authorized to do business in the State of Oklahoma. The Commission finds that PSO is a public utility with plant, property, and other assets dedicated to generation, transmission, distribution, and the sale of electric power and energy within the State of Oklahoma. This Commission is vested with jurisdiction over this Case by virtue of Article IX, § 18 of the Oklahoma Constitution and 17 O.S. §§ 151, 152, and 286.

2. Due and proper notice of these proceedings was given as required by Commission Order No. 745072.

3. The Oral Recommendation of the ALJ with respect to the Company’s Motion to Associate Counsel is adopted, and the motion is granted.

4. This Case involves PSO's Application for approval of its purchase of Green Country, which is a natural gas combined cycle power plant with generation capacity of 795 MW. The power plant is located in Jenks, Oklahoma, near PSO's largest load center in the Tulsa metropolitan area within Oklahoma. Green Country is currently owned by J-Power USA and operates as an independent power producer in Oklahoma. The plant began commercial operation in February 2002.

B. Legal Standard

5. As a regulated electric utility in the State of Oklahoma, PSO must comply with the Commission's standards for electric utility generation capacity requirements. Under these standards, the "generation capacity of a utility's plant, supplemented by" contracts with third party providers, "must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies."¹

6. PSO entered a contract to purchase the Green Country for \$730 million, not including owner's costs, contingency, or closing adjustments. In its Application, PSO alleges that the purchase is necessary to ensure it has sufficient generation capabilities to comply with Commission standards.

7. PSO filed its Application in this case under the provisions of 17 O.S. § 286(C), which allows regulated utilities to seek preapproval from the Commission before taking certain actions with respect to generation capacity. Preapproval under Section 286(C) reduces financial strain and risk for regulated electric utilities in Oklahoma because it allows such utilities to avoid the risk of making substantial financial outlays that are later deemed imprudent and unrecoverable by the Commission. The statute also provides a legal basis for the Commission to consider cost recovery related to such electric generation facilities outside the parameters of its general jurisdiction at 17 O.S. §§ 151 and 152.

8. Under Section 286(C), a regulated electric utility may request Commission approval "to construct a new electric generating facility, to purchase an existing electric generation facility" or even to "enter into a long-term contract" with respect to electric generation. To secure approval, the Company must provide evidence for the Commission to "determine[] there is a need for construction or purchase" of the facility or contract "after consideration of reasonable alternatives."² If the Commission grants approval, the facility or contract "shall be considered used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission."³

9. Hence, the Commission must address whether PSO has established that a need exists for additional generation capacity; whether PSO has compared its proposed purchase of Green Country to reasonable alternatives; and, if so, what sort of cost recovery will apply to Green Country.

¹ OAC 165:35-25-3(e).

² 17 O.S. § 286(C).

³ *Id.*

C. Need

10. Although the Commission has a general standard requiring PSO to maintain sufficient generation capacity to meet the needs of its customers, the Company must also meet the standards for participation as a member of the Southwest Power Pool (“SPP”). The SPP provides an organized market for wholesale electricity⁴ and, in order to participate, PSO must have sufficient generation capacity to meet the SPP’s Planning Reserve Margin (“PRM”).⁵ Over the last decade, the Commission has typically addressed the need for additional generation capacity under Section 286(C) by analyzing load and generation capacity consistently with the SPP PRM applicable to the electric utility.

Risk Adder

11. In this Case, above and beyond the SPP’s PRM, PSO has added a contingency factor or “risk adder” above the current SPP minimum requirements.⁶ In its analysis, PSO added a risk adder of six percent to the SPP PRM to compensate for future uncertainties in regard to load, accreditation of its resources, and contract risk.⁷ However, the PRM already addresses the availability of resources and uncertainty in load levels.⁸ The Attorney General’s witness Frank J. Beling and OIEC’s witness Scott Norwood testified that PSO’s risk adder increases the projected capacity need but is in excess of the SPP’s actual planning requirements.⁹ The Commission rejects PSO’s use of the risk adder.

12. PSO’s testimony shows that even with the risk adder excluded, PSO’s capacity shortfall is still more than the full amount of Green Country’s accredited capacity starting in 2027, not considering the other issues with Northeastern Unit 3 and additional load growth.¹⁰

Northeastern Unit 3

13. Northeastern Unit 3 is a coal-fired generation facility which the Company has a legal obligation to retire by the end of 2026 pursuant to a settlement regarding how it would comply with Regional Hazard emission standards.¹¹ PSO is taking steps to keep Northeastern Unit 3 available and operating by amending the Regional Haze settlement agreement to allow the plant’s conversion to natural gas.¹² PSO alleges that converting Northeastern Unit 3 to run on natural gas and thus extending its life would preserve generation capacity in a very cost-effective manner.¹³ Nevertheless, PSO’s witness Matthew A. Horeled testified that the Regional Haze settlement had not been formally amended and that the conversion is not yet completely certain.¹⁴

⁴ 3/12/25 Tr. 14:3–4.

⁵ 3/10/25 Tr. 216:20–24.

⁶ Demmy Rebuttal 6:19–21.

⁷ 3/10/25 Tr. 216:25–217:5.

⁸ 3/12/25 Tr. 11:11–12:24.

⁹ Beling Responsive 7:6–14; Norwood Responsive 13:13–15:14.

¹⁰ Demmy Rebuttal 8:18–20; 9:1–3.

¹¹ 3/10/25 Tr. 59:6–7.

¹² 3/10/25 Tr. 59:10–14.

¹³ *Id.* at Tr. 51:18–23.

¹⁴ Horeled Rebuttal 6:15–18.

14. At the time of filing direct testimony, PSO did not include Northeastern Unit 3 in its analysis of the need for Green Country.¹⁵ The Company did include the conversion in all scenarios as part of its 2024 Integrated Resource Plan, which was submitted shortly after the Application in this Case was filed.¹⁶ In rebuttal testimony, the Company stated that its updated capacity forecast includes the assumption that NE Unit 3 will be approved.¹⁷

15. PSO's testimony shows that if the Northeastern Unit 3 conversion is assumed to take place, PSO's capacity shortfall is still more than the full amount of Green Country's accredited capacity starting in 2027, not considering the other issues with the risk adder and additional load growth.¹⁸

Additional Load Growth

16. In his prefiled rebuttal testimony, Mr. Horeled testified that PSO has several prospective customers who have executed contracts, initiated site development, or taken other steps to indicate interest in future electric service from the Company.¹⁹ The total capacity expected to be required for these customers would be about 837 MW after considering projected load and the associated planning reserve required.²⁰ Witnesses criticized PSO for raising this issue for the first time in rebuttal testimony, for not updating its integrated resource plan for such a large change to its load forecast, and for providing inadequate supporting documentation for its customer growth expectation.²¹

Conclusion

17. The Commission determines that PSO has a need for additional generation capacity of at least 227 MW by the summer of 2027. In the circumstances of this Case, PSO's efforts to procure generation capacity approximately two years in advance of the projected shortfall in 2027 are reasonable. Credible testimony establishes that a newly built generation facility would take several years to complete.²² Further, although the Commission concludes that PSO has only firmly established a shortfall of 227 MW in 2027, the Commission finds that evidence regarding additional customer growth and the possibility that Northeastern Unit 3's conversion will not be authorized are relevant. The Commission finds that there is a much higher risk that PSO's need will be materially greater than 227 MW in 2027 relative to the risk that it will be smaller. Hence, based on the circumstances in this Case, the Commission finds that meeting an established need of 227 MW by procuring long-term capacity in excess of 227 MW is reasonable.

¹⁵ Beling Responsive 7:15–8:4; Norwood Responsive 13:6–12.

¹⁶ Beling Responsive 7:18–19 (citing PSO 2024 Integrated Resource Plan, at 77, Table 24).

¹⁷ Demmy Rebuttal 8:14–15.

¹⁸ *Id.* at 8:18–20; 9:1–3.

¹⁹ Horeled Rebuttal 7:12–8:9.

²⁰ 3/10/25 Tr. 236:1–4.

²¹ *E.g.*, 3/13/25 Tr. 20:10–22:19.

²² 3/10/25 Tr. 126:17–19; *see also* 3/10/25 Tr. 292:20–22 (noting “a power plant is not just going to magically appear on January 1 of 2027”).

18. As previously noted, OIEC witness Scott Norwood criticized PSO for not updating its integrated resource plan to reflect new, higher load expectations.²³ Indeed, the Commission's rules do indicate that a regulated utility "shall submit updates to the Commission" as material changes occur, but such updates are only indicated to be provided to reflect "changes from year to year" or as the "Commission may require."²⁴ Since PSO filed its integrated resource plan for 2024 in October, the Commission's rules do not squarely require PSO to have already filed an update. Nevertheless, the Commission expects PSO to continue monitoring its planning assumptions to determine if an updated integrated resource plan should be filed during 2025.

19. The Commission recognizes that as Oklahoma seeks to attract economic development, the natural result will be additional load growth for Oklahoma's electric utilities. Additional load growth, in turn, will lead electric utilities to seek increased capacity. Hence, the Commission may need to explore requiring more frequent reporting of load forecast updates and/or updates to utilities' integrated resource plans for in the foreseeable future, although it makes no order regarding such reporting in this Case.

D. Comparison to Reasonable Alternatives

20. PSO was made aware of the opportunity to bid on Green Country shortly before issuing its 2023 request for proposals for generation ("2023 RFP").²⁵ PSO was unable to bid Green Country into its own competitive bidding process because Green Country was being separately marketed to potential bidders.

21. The Company proposes to satisfy the statutory requirement of a comparison to reasonable alternatives by comparing its Green Country contract to the bids it received as part of the 2023 RFP. PSO concluded that, if Green Country had been bid into the 2023 RFP at the same price PSO agreed upon in its contract, it would have been the highest-ranking score of all bids received.²⁶

Objections to the Company's Analysis

22. OIEC witness Mr. Norwood testified that the purchase of Green Country outside of the 2023 RFP process is reasonable if the negotiated purchase price of Green Country was lower and more consistent with the costs of other gas-fired plants.²⁷ However, Mr. Norwood could not point to a cost for Green Country that would be supported by OIEC.²⁸ Mr. Norwood also testified that the purchase price of Green Country is higher than its net book value.²⁹ He compared the price of Green Country to two Oklahoma Gas and Electric Company combustion turbine units and to the original costs of PSO's Northeastern Unit 1 combined cycle unit, finding that Green Country's purchase price was higher.³⁰

²³ 3/13/25 Tr. 22:11–19.

²⁴ OAC 165:35-37-4(b).

²⁵ Chandler Direct 5:3–22.

²⁶ Bolan Direct 4:3–6, 6:2–4, 5:13.

²⁷ Norwood Responsive 17:15–18.

²⁸ 3/13/25 Tr. 36:24–25.

²⁹ Norwood Responsive 20:1–2.

³⁰ *Id.* at 20:1–8.

23. PSO's witness Richard Chandler testified that Mr. Norwood's comparison of Green Country to combustion turbines did not involve a comparable plant since Green Country is a more efficient combined cycle unit that will provide a much higher capacity factor.³¹ Further, Mr. Norwood admitted under cross-examination that Northeastern Unit 1 was a conversion project and was completed in 2000, not a time close to 2025.³² Finally, the Commission finds that the net book value of a generation facility on the books of an unregulated independent power producer bears only tangential relevance to the appropriate purchase price of the plant.

24. PUD witness Frank Mossburg, the independent evaluator for the 2023 RFP, testified that PSO made a "reasonable start" by comparing Green Country to the 2023 RFP.³³ However, Mr. Mossburg stated that the bid pool was limited and favored combined-cycle resources.³⁴ Mr. Mossburg testified that PSO did not examine what he characterized as the "unique risks of a gas-fired project."³⁵ Mr. Mossburg further testified that there is a "well-known bias in utility procurement" against PPAs.³⁶ According to Mr. Mossburg, these risks include natural gas prices, future potential increased costs, future environmental regulations, and the impact of future carbon emissions price.³⁷ Such risks would generally be analyzed through a scenario analysis conducted by the utility, and varying weights would be given to each scenario.

25. Attorney General witness Mr. Beling acknowledged that PSO had performed a comparative evaluation of the purchase of Green Country.³⁸ However, Mr. Beling disagreed with the development of the scoring used in the 2023 RFP.³⁹ He noted that PSO assigned only 60% weight to its price score and 40% weight to its non-price score.⁴⁰ He also noted that several non-price items were exaggerated or duplicative of economic performance characteristics.⁴¹ Further, Mr. Beling described the unusual pricing model used by the Company, Value to Cost ratio, which contrasts with net costs per capacity.⁴² Mr. Beling testified that he performed an alternative evaluation of Green Country against the short-list of 2023 RFP bids. Using his alternative analysis, Mr. Beling nevertheless concluded that Green Country is the "best resource compared to the other options" in the 2023 RFP shortlist.⁴³

Determination

26. The Commission agrees that the total cost of Green Country, \$730 million, raises concerns in light of the plant's 2002 commercial operation vintage. Further, the Commission agrees with the concerns raised by several parties that PSO did not *actually* evaluate Green Country as

³¹ Chandler Rebuttal 3:6–14.

³² 3/13/25 Tr. 40:16–41:5.

³³ Mossburg Responsive 6:22–24.

³⁴ *Id.* at 6:23–7:2.

³⁵ *Id.* at 7:3–4.

³⁶ *Id.* at 16:14, 17:1.

³⁷ *Id.* at 21:1–23:15.

³⁸ Beling Responsive 9:5–10.

³⁹ *Id.* at 10:1–7.

⁴⁰ *Id.* at 9:12–13.

⁴¹ *Id.* at 10:1–22.

⁴² *Id.* at 11:1–13:6.

⁴³ *Id.* at 17:23–18:2.

part of the 2023 RFP, meaning the independent evaluator had limited input in the selection process. Further, PSO's scoring methods raise concerns. It has assigned a very high weight to nonprice factors in its evaluation, it does not appear to have conducted a variety of risk scenario analyses, and it has implemented an unusual "Value to Cost" ratio method of pricing scoring rather than net present value of customer costs or net cost per capacity unit.

27. While the Commission appreciates and recognizes these and other concerns raised by multiple parties regarding the process undertaken by PSO to acquire Green Country, it is nevertheless compelled by the evidence in the record to conclude that PSO has compared the acquisition to reasonable alternatives and that the selection is approved. The only attempt made by parties to produce a reasonable alternative analysis was advanced by Attorney General witness Mr. Beling, whose alternative price analysis reflected *very favorably* upon Green Country and who ranked Green Country as the best option among 2023 RFP shortlist bids,⁴⁴ the same conclusion reached by PSO despite its problematic process.

Competitive Bidding Rules

28. In granting preapproval in this unique and unusual Case, the Commission does not intend to encourage electric utilities to evade the rules on competitive procurement. These rules "establish[] a fair, just, and reasonable process that best serves the public interest of all electricity consumers" and "complement and improve the state's economic growth by, among other things, making the most efficient use of Oklahoma's coal, natural gas, and power generation and transmission assets."⁴⁵ They do so by granting a presumption of prudence for generation costs where such costs result from compliant competitive procurements.⁴⁶ Nevertheless, the competitive bidding rules are not mandatory, nor do they automatically create a presumption of prudence in cases filed under Section 286(C). "A utility may exercise managerial discretion and enter into contracts, fixed-priced or index-based, without seeking a presumption of prudence."⁴⁷

29. The Commission's competitive procurement rules are intended to "create an open, transparent, fair and nondiscriminatory competitive bidding process for the utility to meet its needs" and to "establish[] reasonable standards of conduct for transactions between utilities and their affiliates."⁴⁸ They therefore provide specific requirements such as an independent evaluator, bid opening procedures, and requirements for affiliate bids.⁴⁹ For these reasons, the Commission strongly encourages regulated utilities to use the competitive bidding process *and to actually bid desired contracts and self-build options into such competitive solicitations*.

30. The specific competitive procurement procedures applicable to generation resources do include a provision requiring utilities to seek a waiver of the competitive bidding rules before taking action inconsistent with those rules.⁵⁰ However, these specific procedures also

⁴⁴ *Id.* at Exs. FJB-5, FJB-6.

⁴⁵ OAC 165:35-34-1(a).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ OAC 165:35-34-3.

⁵⁰ OAC 165:35-34-3(e).

apply to long-term fuel transportation and long-term fuel storage. Read together with the clear statement that *all* of the competitive procurement rules are not mandatory in OAC 165:35-34-1(a), the waiver process envisions minor exceptions to competitive bidding processes that would be applicable to the wide range of contracts contemplated in the OAC 165:35-34-1(a) procedures. It does not mean that a utility cannot file an application under Section 286(C) seeking preapproval of a project just because the project does not comply with the competitive bidding rules.

31. The Commission considers this to be an unusual situation where PSO was compelled to participate in the competitive sale of Green Country as a bidder, and where bidding the plant into PSO's 2023 RFP was not practicable.

Accountability

32. The Commission recognizes that much of the analysis in this Case, even when supplemented by intervenors, relies on the estimates, forecasts, analysis, and other materials produced by PSO,⁵¹ which is the same entity seeking preapproval in this Case. As a result of the Commission's approval, and assuming closing of the contemplated transaction, Green Country will be considered a "used and useful" plant and hence PSO will, eventually, include the plant in rate base. In short, the justification for the plant's acquisition relies on estimates, and if those estimates do not come to fruition, PSO's customers will continue to pay for base rate recovery while enjoying limited benefits.⁵² In this sense, the acquisition carries an elevated level of risk for customers.⁵³

33. Parties suggested that, specifically, the actual purchase price may fluctuate due to closing adjustments; the Company's forecasted operations and maintenance expense as well as maintenance capital expenditures may prove inaccurate; the forecasted net margin from the wholesale electricity market may decline; the net capacity factor of the plant may decline, possibly due to environmental regulations; and the capacity rating assigned to the plant by SPP may fluctuate due to methodology changes.

34. The Commission believes that PSO should be held accountable for its projections in future proceedings. The Commission intends to closely scrutinize the future performance and associated costs of Green Country and directs its staff to monitor Green Country in appropriate cases, including fuel adjustment clause reviews and general rate cases, regarding the following areas of concern:

- Closing adjustments and owner's costs related to the acquisition
- Variance from forecasted operations and maintenance expense
- Variance from forecasted capital expenditures
- Reductions in capacity rating assigned by SPP
- Net margin revenues from SPP wholesale electricity market sales

⁵¹ 3/10/25 Tr. 84:7–11.

⁵² Beling Responsive 19:1–4; 3/10/25 Tr. 83:9–88:10.

⁵³ *Id.* at 8:8–11.

E. Cost Recovery

35. As a consequence of the Commission's determination that PSO has a need for additional generation capacity and that Green Country should be approved based on a comparison with reasonable alternatives, the plant will be considered "used and useful."⁵⁴ As an additional consequence, recovery related to the plant "shall be subject to cost recovery rules promulgated by the Commission."⁵⁵ The relevant rules provide broad discretion to the Commission to "review the requested cost recovery" in a preapproval application and then determine cost recovery that is just, reasonable, and in the public interest.⁵⁶

36. In its Application and accompanying testimony, PSO proposed a rider mechanism to recover the revenue requirement associated with Green Country once it is purchased until the non-fuel revenue requirement may be included in base rates as a result of a general rate case. The rider would provide recovery associated with the operation of the facility including estimated operations and maintenance expenses, depreciation expense, property and income taxes, and a return on the purchase cost.⁵⁷ The DRR has an annual redetermination provision, which includes a true-up of the rider's revenues to actual costs. According to PSO witness Rebecca Schwarz, PSO intends to follow traditional over/under deferral accounting methods in which the actual costs incurred for the facility will be compared to the revenues received through the rider. After such comparison, any net under-recovery would be recorded as a regulatory asset, or any net over-recovery would be recorded as a regulatory liability, which would be included for future recovery or refunded through the proposed true-up to actual costs in subsequent factor filings.⁵⁸ In response to questions from OIEC, Ms. Schwarz testified that PSO is seeking approval to include up to \$753,042,291 through the rider.⁵⁹

37. Several parties opposed PSO's proposed rider. At a general level, the record contains three primary reasons to reject the proposed rider. First, parties argue that the rider is unnecessary because PSO will have an opportunity to file a general rate proceeding before the need of 227 MW exists in summer of 2027.⁶⁰ Second, parties argue that the proposed rider does not meet the standards of customary ratemaking principles, which require riders to involve large expenses that are volatile and outside the utility's direct control.⁶¹ Finally, at least one witness seemed to argue that approval of the rider would violate Oklahoma law.

Riders under Section 286(C)

38. The Commission rejects the parties' arguments regarding PSO's proposed rider because Section 286(C) specifically requires the Commission to create cost recovery rules and

⁵⁴ See 17 O.S. § 286(C).

⁵⁵ *Id.*

⁵⁶ OAC 165:35-38-5(b).

⁵⁷ Schwarz Direct 7:3-7.

⁵⁸ *Id.* at 7:8-14.

⁵⁹ 3/11/25 Tr. 48:6-7.

⁶⁰ *E.g.*, Bohrmann Responsive 11:4-5.

⁶¹ Bohrmann Responsive 11:5-7; Garrett 12:15-16:16.

generally contemplates mechanisms such as riders and trackers for affected costs. First, it is simply untrue that approving a rider under Section 286(C) violates Oklahoma law.

39. The Commission is mindful of the Oklahoma Supreme Court's instructions for interpreting statutes:

The primary goal of statutory construction is to ascertain and follow the intention of the Legislature. If a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction a statute will be accorded the meaning expressed by the language used. However, where a statute is ambiguous or its meaning uncertain it is to be given a reasonable construction, one that will avoid absurd consequences if this can be done without violating legislative intent. Further, the Legislature will not be presumed to have done a vain and useless act in the promulgation of a statute, nor will an inept or incorrect choice of words be applied or construed in a manner to defeat the real or obvious purpose of a legislative enactment.⁶²

40. As a whole, Section 286 represents legislative policy that transmission expenses meeting federal transmission rules, environmental compliance costs, and needed generation costs should be reviewed, approved, and recovered under standards and procedures that are distinguished from traditional ratemaking principles. The specific modifications to traditional ratemaking are distinct for each category of expense, but each involves some requirement that the utility *must* be able to use a rider or similar mechanism or that the Commission must *consider* riders or other cost recovery. While Section 286(C) specifically does not mandate a rider to be approved in every circumstance, it does contemplate that the Commission's cost recovery rules must consider how to ensure "timely . . . recover[y]" of approved costs, and the Commission's rules allow it to consider the cost recovery proposed by a utility.⁶³

41. The Legislature has modified traditional ratemaking principles with respect to needed generation facilities under Section 286(c). Undoubtedly, the purpose of this modification is to reduce the risk of a regulated utility making financially significant investments that would otherwise impose financial strain on the utility and expose it to the risk of sizeable disallowances after material funds have been expended. It is consistent with such a policy to recognize that rider recovery may be warranted in specific cases brought under Section 286(C).

Standards for Riders in General Rate Cases

42. Second, parties argued that the rider should be denied under the traditional ratemaking principle that a rider should only be implemented for costs that are significant, volatile, and outside the utility's direct control. The record includes Ken Costello's 2009 whitepaper "How Should Regulators View Cost Trackers?" as well as the Commission's final order in Cause No. PUD 201500208, which both effectively set out the traditional ratemaking policy. While the

⁶² *Brown v. Claims Management Resources Inc.*, 2017 OK 13, ¶ 20, 391 P.3d 111 (quoting *Wylie v. Chesser*, 2007 OK 81, ¶ 19, 173 P.3d 64); see also *Okla. Gas & Elec. Co. v. State*, 2025 OK 15, ¶ 29, 565 P.3d 418.

⁶³ OAC 165:35-38-5(b).

Commission commends these principles, they simply do not apply if the Legislature has directed an alternative policy aimed at reducing risk and financial strain on utilities making large generation investments. While the Commission may be very open to applying such principles in a general rate case, they are not conclusive in cases filed under Section 286(C).

Financial Impact Without Rider

43. Third, the Commission recognizes that the purchase price of Green Country at \$730 million is significant and could impose a financial strain on PSO if concurrent recovery is not authorized in this case.⁶⁴ Although AARP witness Paul Sullivan showed that a credit rating downgrade may be averted due to a rate increase approved for PSO in January 2025,⁶⁵ the Commission finds that the evidence is nevertheless sufficient to show that approving the purchase of Green Country without allowing recovery of the revenue requirement would impose a financial strain on PSO. PSO's requested revenue requirement for the plant is \$114.4 million per year,⁶⁶ which is substantially similar to the rate increase it received in Case No. PUD 2023-000086.⁶⁷ Further, the Commission notes the incongruity of crediting customers with profitable wholesale electricity market margins through the fuel adjustment clause from the date of purchase while completely denying PSO recovery of the plant for up to a year.

44. Hence, allowing PSO *no* recovery related to Green Country until a rate case would not alleviate financial strain, and may be unfair with respect to wholesale electricity market revenue. Allowing no recovery while recording the revenue requirement in a regulatory asset would do little better, burdening PSO's cashflow position while materially increasing the future balance to be recovered from customers.

Rider Approved with Modifications

45. Recognizing the Legislature's policy embodied in Section 286(C) and with an understanding of the evidence in this particular Case regarding the risk and financial strain from purchasing Green Country, the Commission approves the requested rider with the modifications explained below.

46. The Attorney General's witness Mr. Beling noted that PSO has requested amounts to be included in the proposed rider for contingency costs as well as other costs related to the acquisition.⁶⁸ The Commission does not approve recovery of such costs through the rider at this time. The recovery of return and depreciation expense in the rider shall be limited to the contractual purchase price of Green Country of \$730 million. This limitation shall apply both to the authorized categories of return and depreciation expense, excluding contingency and owner's costs, as well as to the total amount included in the rider. Additional amounts and categories of cost may be

⁶⁴ Luedtke Direct 4:12–21; Luedtke Rebuttal 2:1–4:19.

⁶⁵ 3/11/25 Tr. (in camera) 78:21–80:11, 91:17–93:17, 95:24–98:9.

⁶⁶ Schwarz Direct, Ex. RAS-1.

⁶⁷ Final Order, Order No. 746,624, *Appl. of Pub. Serv. Co. of Okla., an Okla. Corp., for an Adjustment in its Rates and Charges and the Elec. Serv. Rules, Regulations, and Conditions of Serv. For Elec. Serv. In the State Elec. Serv. In the State of Okla. and to Approve Various Cost Recovery Mechanisms*, Case No. PUD 2023-000086 (2025).

⁶⁸ Beling Responsive 20:5–11.

requested in the future and if, upon close review, they are found prudent, then recovery shall be allowed at that time.

47. The Public Utility Division's witness John Givens testified that the proposed rider should have a specified terminal net salvage rate and interim net salvage rate based on decommissioning costs provided by the Company's outside vendor Black & Veatch, less contingency.⁶⁹ The Commission does not intend to adjust its policy⁷⁰ in this Case to exclude contingency estimates from decommissioning costs for purposes of developing depreciation rates. Any tariff and rider factors approved as a result of this Case must be prepared consistently with the recommendations of Mr. Givens.

48. The Commission declines to adjust the cost allocation method of Green Country as a temporary measure until a rate case, as proposed by AARP witness Mr. Sullivan.

IV. ORDER

THE COMMISSION THEREFORE ORDERS that, based on the substantial evidence in the record and summarized herein, the above findings of fact and conclusions of law are adopted as the Order of the Commission.

THE COMMISSION FURTHER ORDERS that the Company's Application is hereby approved with the modifications and limitations described above.

THE COMMISSION FURTHER ORDERS that the Company shall submit proposed tariffs to the Director of the Public Utility Division consistent with the Commission's Order for further review and approval.

⁶⁹ Givens Responsive 9:8–16.

⁷⁰ *Id.* at 7:17–8:11.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PUBLIC SERVICE
COMPANY OF OKLAHOMA FOR AN ORDER
OF THE COMMISSION GRANTING
PREAPPROVAL OF THE PURCHASE AND
COST RECOVERY OF THE GREEN COUNTRY
GENERATING FACILITY AND AUTHORIZING
A RECOVERY RIDER.

CASE NO. PUD2024-000057

DISSENTING STATEMENT OF COMMISSIONER J. TODD HIETT

I respectfully dissent from Final Order No. 749854 (Final Order) entered today. As expressed during deliberations on May 21, 2025, I stated this case was “messy”. Messy it is. The Commission has been put into a difficult situation—being presented with a *potentially* good acquisition that the evidentiary record did not fully demonstrate. However, I was pleased with the comments by at least two Commissioners for the need to include “guardrails” if the Commission ultimately granted preapproval to PSO for the purchase of Green Country.

In order to address such guardrails, I put forth a proposed order that incorporated recommended customer protections. *Every* intervenor in this Case (the Attorney General, AARP, the Petroleum Alliance of Oklahoma, Oklahoma Industrial Energy Consumers, and the Public Utility Division) each took the position that the Commission should either deny PSO’s request for preapproval of Green Country in full or should only grant the preapproval subject to conditions. No party outside of PSO took the position that the Commission should grant preapproval without conditions.

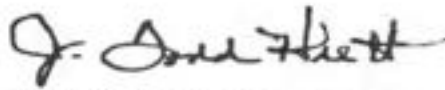
The Attorney General took the position that the Commission should not approve PSO’s request for preapproval of Green Country without customer protections due to the increased risks associated with this purchase. The protections proposed include a Purchase Price Recovery Cost Cap; a Capital Spending Cost Cap; an Operations and Maintenance (“O&M”) Cost Cap; a Value Guarantee; and an Energy Cost Savings Guarantee. My proposed order incorporated these protections.

As stated today, I believe it is a major disservice to the Oklahoma ratepayers to allow this level of extraordinary investment risk without protections. The consumer protections merely hold PSO to its own projections and its assurances that Green Country is a good deal for its ratepayers.

The role of this Commission cannot be to make decisions on wants or desires or even what may instinctively feel right. At the end of the day my job is to evaluate the law, including the rules of this Commission, and apply it to the particular facts and circumstances based upon the evidentiary record in each proceeding.

It cannot be ignored that PSO, *inter alia*, chose to file this optional case for preapproval; has the legal burden of proof to prove this case; drove the timing to process this case and was at the negotiating table for the terms of the acquisition; represented to the owner/seller of Green Country that they should get comfortable regulatory approval; and then testified that if not fully approved as requested it would likely cancel the acquisition. And today, the President of PSO advised the Commission it would not proceed with the transaction if it was not granted a full return on and of its investment (thus receive a profit).

I stand by my statements today that in order to preapprove Green Country, fences/guardrails are needed. For this reason, I respectfully dissent from the Final Order.

A handwritten signature in black ink, appearing to read "J. Todd Hiatt", written in a cursive style.

J. TODD HIETT, Commissioner