

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL

STATE OF OKLAHOMA

STATE CAPITOL, OKLAHOMA CITY, OKLAHOMA 73105

April 20, 1979

NRC PUBLIC DOCUMENT ROOM



Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Chief, Docketing and
Service Section

Re: Application of Public Service Co., et al., Docket
Nos. STN 50-556 and STN 50-557

Dear Mr. Secretary:

Please accept for filing the attachment to MOTION OF THE STATE OF OKLAHOMA FOR AN INDEFINATE STAY IN THE ISSUANCE OF AN INITIAL DECISION that through inadvertance was not attached to the aforesaid document when it was mailed. We sincerely regret any inconvenience this has caused to your staff.

Sincerely,

CHARLES S. ROGERS
Assistant Attorney General
One of the Attorneys for the
State of Oklahoma

CSR:dd

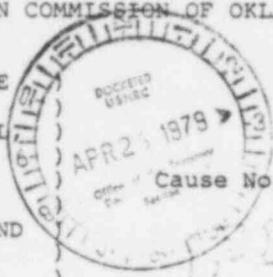
cc: Hon. Sheldon Wolfe, Esq., Chairman, ASLB
Hon. Frederick J. Shon, Member, ASLB
Hon. Paul W. Purdon, Member ASLB
All persons on Service List attached on
the enclosed document.

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BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION AND COMPLAINT OF THE STATE OF OKLAHOMA, EX REL. JAN ERIC CARTWRIGHT ATTORNEY GENERAL AN INVESTIGATION, REVIEW AND EXAMINATION OF THE PRACTICES, RULES, REGULATIONS, PRESENT AND FUTURE CONSTRUCTION PROPOSALS AND PROJECTS AND THE EFFECT THEREOF ON THE RATEPAYERS OF THE PUBLIC SERVICE COMPANY OF OKLAHOMA



Cause No. 26582

APPLICATION AND COMPLAINT

COMES NOW the State of Oklahoma, by and through its Attorney General Jan Eric Cartwright, and states:

1. Parties: Applicant is the State of Oklahoma, represented by Attorney General Jan Eric Cartwright, 112 State Capitol Building, Oklahoma City, Oklahoma 73105, (405) 521-3921 and also represented by his assistants Charles S. Rogers and Richard F. Berger. The State of Oklahoma is interested on its own behalf, and on the behalf of its citizens who are also ratepayers of Public Service Company of Oklahoma (PSO) concerning the practices, rates, rules, regulations, present and future construction proposals and projects of PSO and the probable effect thereof on ratepayers of PSO.

Respondent as to Section C. is Public Service Company of Oklahoma, an Oklahoma Corporation, located at 212 East 6th Street, Tulsa, Oklahoma 74119.

2. Allegations of Fact:

A.

PSO proposes to construct a nuclear-powered electric generation facility located 23 miles east of Tulsa, Oklahoma, near Inola, Oklahoma in Rogers County. This facility, known as Black Fox Station, Units 1 and 2, will embody two boiling water reactors rated at 1150 MWe and is scheduled, subject to Atomic Safety Licensing Board (ASLB) approval of Construction and Operating permits, for operation as to the first unit in 1984 and the second in 1986. The facility is to be a joint project of PSO, Western Farmers Electrical Cooperative and Associated Electric Cooperative, Inc. It is contemplated that PSO will operate the plant and will receive 60.870% of the output. Associated and Western Farmers will

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receive 21.739% and 17.391% respectively of the plant output. Right to receive output from the plant is apportioned according to each company's agreed contribution to the cost of building Black Fox Station and is further affected by each company's participation in the cost of fueling each reactor.

As of June, 1977, the most recent estimate by PSO, et al, of the total cost of Black Fox Station was \$2.042 billion. More recently, the Rural Electrification Administration (REA) estimated the facility would require \$2.9 billion to complete. PSO's 1978 Annual Report states at page 14:

Due to longer delays than anticipated in the licensing process, a major re-analysis of the scheduled completion dates and cost estimates must be performed. The conclusion of the hearings on March 1, 1979, set the basis for the review. The results of this re-analysis, which will result in a significantly increased cost estimate will be available during the second quarter of 1979. [Emphasis added]

See also page 31 of Annual Report 1978.

As of December 31, 1978 approximately \$53 million attributable to Black Fox Station had accumulated in PSO's Construction Work in Progress (CWIP) account, said figure including approximately \$4 million of Allowance for Funds Used During Construction (AFUDC). In PSO's attempt to prove to the ASLB and the Nuclear Regulatory Commission (NRC) that they had reasonable assurance of obtaining funds necessary to design and construct Black Fox Station they presented financing projections premised upon a Capital Structure of 50% Debt, 40% Common Equity and 10% Preferred Stock and a Rate of Return on Common Equity of 15%. All of PSO's Common Stock is owned by Central and South West Corporation.

The Company states that it intends to spend \$242 million, including AFUDC for construction during 1979. \$100 million is to be raised through sale of first mortgage bonds. See, Annual Report 1978, p. 12. The Report is unclear as to the extent the monies referenced above are required for work on Black Fox Station.

The State of Oklahoma is interested in determining to the maximum extent possible, the expected cost of Black Fox Station. The State is interested in determining whether the Company continues to consider the optimum financing structure 50% debt, 40% common

equity and 10% preferred stock. The State is interested in exploring what effect the recent "Three Mile Island" accident has had, and is expected to have, on the willingness of lenders to loan large sums of money for constructing nuclear power plants and precisely what assurances such lenders will require concerning repayment. The State is also interested whether a 15% rate of return on common equity is required to induce PSO's parent, Central and South West Corporation, to contribute the 40% of the cost of PSO's share of Black Fox.

The recent nuclear accident at Three Mile Island Generating Plant located near Harrisburg, Pennsylvania raises many serious issues of interest to the ratepayers of PSO which go beyond the primary and critical issues relative to the operational safety of nuclear powered generating plants. Recent reports state that the Three Mile Island Plant will be out of service for at least two years in order to repair and decontaminate the \$1.5 billion facility. These costs are expected to be flowed through to the ratepayers of Metropolitan Edison. Legal experts reportedly predict numerous lawsuits for damages by reason of the accident.

The State of Oklahoma is interested in learning what plans PSO, et al, have made for financing repair and decontamination of Black Fox Station and environs should an accident occur at the Station which results in major damage to the reactor and/or release of radioactive contamination. Specifically, the State is interested if PSO intends to directly rely upon the ratepayers of the Company to finance such repair and decontamination through surcharge of rates.

The Three Mile Island Generating Plant was reportedly insured by American Nuclear Insurers, (ANI) a pool of about 140 companies. ANI has reportedly to-date issued \$140 million in liability insurance for the Three Mile Island plant. The policy reportedly provides that if damages exceed \$140 million, up to \$340 million would be available by assessing other nuclear plants throughout the country \$5 million per reactor. The State of Oklahoma is interested in learning what, if any, insurance coverage PSO, et al, has acquired to cover damages caused by a nuclear accident at Black Fox Station.

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The State seeks to learn if PSO is indirectly liable for damage-claims arising from accidents in plants located in some other part of the nation. The State specifically is interested if the accident at Three Mile Island Plant presently makes PSO indirectly liable for damages caused by the recent accident.

Nuclear powered generating facilities are operated under stringent safeguards imposed by the Nuclear Regulatory Commission. A recent example of federal attention to the safety of operating commercial reactors is the recent shut-down of five eastern plants because of a flaw in the computer program used to calculate the plant's capacity to withstand trauma caused by earthquake, despite the fact that each of the plants shut down were in areas of minimal activity. The State is interested in PSO's evaluational process which led to the Company decision to build Black Fox Station. Were alternative energy sources considered? If so, why were they eliminated? Did the Company prepare a formal, critical report which weighed these considerations or did the company entirely rely upon representations made by vendors of the nuclear plant? In light of the large economic loss in investment due to the accident at Three Mile Island, has the company re-evaluated its position concerning the risks assumed through operating a nuclear powered generating facility. The State is interested in learning factors which comprise the foundation for the company's decision in this regard.

B.

The State is interested in exploring present, future and foreseeable construction projects of PSO relating to generation as well as ascertain the current and projected generation requirements of the Company in order to determine if the proposed construction of facilities is necessary to meet the needs of Oklahoma ratepayers. The scope of the State's inquiry will include but not be limited to the following factors:

1. After June 1, 1981, PSO will no longer be expected to provide unlimited capacity requirements to Grand River Dam Authority (GRDA) and forecasts its capacity sales to GRDA will cease after 1982;
2. The continuous yearly "off system" sales to other utilities;

3. Current growth rates and existing excess capacity when projected to 1984 and 1986 (dates Black Fox Station goes "on line") apparently will create further excess capacity as said project contemplates addition of two (2) boiling water reactors with a generation capability of 1,150 Mwe each;

4. PSO has reportedly formulated plans to construct and place "on line" a total of four (4) additional nuclear generating plants, in addition to Black Fox Station, such capacity apparently greatly in excess of Oklahoma requirements, and;

5. Explore the extent of present and future construction intended to supply interstate markets through interconnection with other utility companies.

Excess capacity will result in serious economic impact on Oklahoma ratepayers and benefits will inure to the stockholders of PSO, a wholly owned subsidiary of Central and South West Corporation, not the ratepayers that make such construction possible.

C.

Net income for PSO increased by fifty-one percent (51%) in 1978, as result of "off system" sales to electrical utilities, and record electric use by residential customers due to an extremely hot, dry summer and an unusually bitter, cold winter. The State of Oklahoma and thousands of other ratepayers and consumers have received no apparent benefit of "off system" sales, and PSO has reaped excessive profits at ratepayer expense due to want of proper weather normalization for rate-making purposes.

PSO engages in transfer of electrical power, "wheeling," for other public utility companies for compensation, and such profits are not passed on to the ratepayers of said Company.

3. Legal Authority: The Attorney General is authorized to bring this action by virtue of and pursuant to 74 O.S. Supp. 1978 § 18b(c) upon written request by the Honorable George Nigh, Governor of Oklahoma and also House Resolution 1024. See also, Derryberry v. Kerr-McGee, 516 P. 2d 813 (Okla. 1973) and State v. District Court of Mayes County, 440 P. 2d 700 (Okla. 1967). The commission has jurisdiction in the instant matter by virtue of Okla. Const. art. 9, § 18-34 and 17 O.S. 1971 § 151.

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4. Relief Requested: The State respectfully requests the Commission to order hearings be held on a date certain and after proper hearings make findings of fact on the following matters:

- A. What the projected cost will be for Black Fox Station.
- B. Whether PSO can adequately finance its interest in Black Fox Station, taking into consideration inter alia, the effect of the recent accident at Three Mile Island on sale of bonds by the utility to fund said project.
- C. What insurance coverage PSO has acquired to cover liability for damages flowing from an accident at Black Fox Station.
- D. What contingency plans PSO has for financing repair and decontamination of Black Fox Station and environs resulting from the occurrence of an accident at the station.
- E. Whether PSO currently is indirectly liable for damages flowing from the recent accident in Pennsylvania or if the Company is in any way liable by way of contract for monies necessary to cover liability for damage caused by a plant other than the one it proposes to operate.
- F. Whether PSO reasonably concluded that its election to build a nuclear powered generating station rather than conventionally-fired plants, would ultimately benefit its ratepayers through lower costs over the lifetime of the plant, taking into consideration the risk of severe financial loss in the event of a nuclear accident at the plant, future regulatory action, and reliability of service of nuclear power plants.
- G. Whether PSO's construction program will result in burdensome excess capacity within its system.
- H. That PSO's increased income due to off-system sales and improper weather normalization adjustment resulted in a ratepayer overcharge.
- I. That profits from wheeling of electrical power resulted in windfall profits that have not been properly included in the company's rate structure, thereby resulting in overcharge to the ratepayer.
- J. Such other findings of fact dictated by the record.

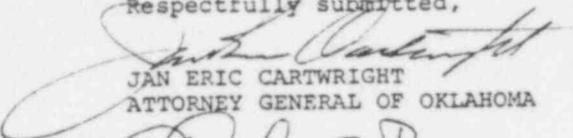
The State further requests that proper orders be issued:

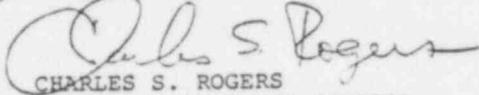
- A. Consistent with the findings made relative to financing and operating Black Fox Station.
- B. That PSO specifically be ordered to refund overcharges due to off-system sales, improper weather normalization, and wheeling.

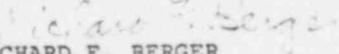
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Respectfully submitted,


JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA


CHARLES S. ROGERS
ASSISTANT ATTORNEY GENERAL

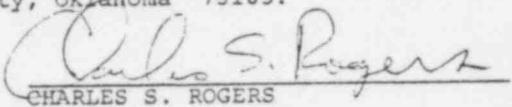

RICHARD F. BERGER
ASSISTANT ATTORNEY GENERAL

112 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-3921

ATTORNEYS FOR THE STATE OF OKLAHOMA

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 1979, a true and correct copy of the foregoing document was mailed, postage prepaid, to: Mr. R. O. Newman, President, Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119 and to Mr. Lee Cook, General Counsel, Oklahoma Corporation Commission, Jim Thorpe Building, Oklahoma City, Oklahoma 73105.


CHARLES S. ROGERS

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