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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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APPLICATION OF PUBLIC SERVICE COMPANY OF OKLAHOMA, AN OKLAHOMA CORPORATION, FOR AN ADJUSTMENT IN ITS RATES AND CHARGES FOR ELECTRIC SERVICE IN THE STATE OF OKLAHOMA.	)))))	CAUSE NO. 26959 ORDER NO. 180877

HEARINGS: Hearing on Staff's Motion: June 23, 1980
Hearing for Interim Relief: October 31, 1980

APPEARANCES: SEE OFFICIAL RECORD

BY THE COMMISSION:

On June 6, 1980, Public Service Company of Oklahoma (PSO) filed its application seeking permanent rate relief and an interim rate increase in connection with its Oklahoma jurisdictional portion of its business relating to the generation, transmission, distribution, and sale of electric energy in the State of Oklahoma. On June 18, 1980, Staff filed its motion seeking compliance by Applicant with Rule No. 2.30 of the Minimum Standard Filing Requirements of this Commission in support of a request by a public utility doing business in Oklahoma for a proposed change in rates or charges, and on June 23, 1980, this Commission entered its Order No. 171516 in this Cause which Order adopted a stipulation of the parties of record and directed Applicant to file a new proceeding for permanent rate relief based upon a test year ending June 30, 1980. The above-entitled Cause Number was limited to an evaluation of Applicant's request for emergency interim relief as set forth in its application. In the same order this Commission provided any relief granted in this Cause on an interim basis should be subject to final review and adjustment if necessary, at such time as an order shall issue by this Commission in connection with the Application for permanent rate relief which Applicant was directed to file under separate Cause and which is now pending under Cause No. 27068. On July 25, 1980, this Commission entered its Notice and Order Setting Request for Emergency Temporary Increase in Rates for Hearing which Notice and Order provided for a pre-hearing conference to be held on August 28, 1980, and for Hearing on the Merits to be held on September 2, 1980, and continuing thereafter until completed. At the appointed time on August 28, 1980, a pre-hearing conference was held in connection with this Cause, and thereafter on the 2nd day of September, 1980, this Cause came on for hearing pursuant to said Notice and Order, at which time the Commission was advised of a defect of Notice. Thereafter, on the 25th day of September, 1980, the Commission entered its Amended Notice and Order Setting Request for Emergency Temporary Increase in Rates for Hearing, for the 31st day of October, 1980, and resuming thereafter, on the 5th day of November, 1980.

Thereafter, on the 31st day of October, 1980, after due and proper notice of these proceedings had been made and given as required by law and the order of this Commission, this matter came on for hearing before the Commission En Banc, and the Commission proceeded to receive evidence and testimony in connection with Public Service Company's request for temporary rate increase together with statement made by various parties both in favor of and opposed to the temporary request. The Commission took this Cause under advisement and the same comes on now for determination and order of the Commission.

FINDINGS AND CONCLUSIONS

This Commission had occasion earlier this year to consider for the first time the propriety of granting interim rate relief to a major electric utility (see In the Matter of the Application of Oklahoma Gas and Electric Company an Oklahoma Corporation, Cause No. 26782, Order No. 156818). At that time we concluded that the decision to grant or not to grant interim rate relief is a policy matter within the discretion of this Commission, and in our decision in that case we determined that it was appropriate to analyze the alternatives which this Commission faces in the regulatory framework as it exists in this state in defining our policy for this type of request. In that case we examined two alternatives which were available

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an administrative substitution approach and a financial emergency approach. As we stated in Order No. 166818 we believe that in spite of serious under staffing problems which are suffered by this Commission, the utilities and the ratepayers of Oklahoma are entitled to receive decisions in rate cases pending before us in a reasonable time frame. We also recognize that the historic test year approach which we use in evaluating revenue requirements for our regulated utilities becomes less representative of the true costs of business experienced by regulated utilities with the passage of time. This Commission has in the case now before it as in other cases required the utility to update its test year so that the most current data which can be verified is available for auditing purposes.

While the use of the most current data reduces the time period for attrition in earnings, that attrition nevertheless occurs between the end of the test period and the date of a new permanent rate order. The administrative substitution approach allows this Commission to reduce the effect of inflation over time while protecting the ratepayer from any over-recovery during the interim period. A utility is to demonstrate a critical emergency condition before allowing interim relief is to engage in brinksmanship regulation. We believe that to require a utility to demonstrate a critical emergency condition could well result in a deterioration of service with a negative impact on the ratepayers as well as the regulated industry. Conversely, as we have said in the past, interim relief should not guarantee the company the ability to earn its weighted cost of capital as established in its last permanent rate order. Within these guidelines we adopt the administrative substitution approach as an appropriate method for this Commission to utilize in awarding interim relief, under bond, to slow the effects of inflation, regulatory lag, and attrition in earnings.

Howard W. Motley, Director of Public Utilities Division for this Commission, testified that the Applicant in this case has Oklahoma jurisdictional net utility plant in service investment as of July 31, 1980, amounting to $678,245,726. This amount included Northeastern Unit #3, a base load, coal fired plant the majority of which was not included in rate base in this company's last rate order, but which became operational in December of 1979. Operation of this plant results in a direct fuel savings to Applicant's customers, and the evidence in this case unequivocably establishes that this plant was used and useful to Public Service Company's customers.

This Company experienced a net system peak demand for generating capacity of 2,839 megaWatts during July of this year. With Northeastern #3 (450 mW) on line this company had an actual reserve capacity on July 16, 1980 of 3.4%. Even if the company had experienced a normal summer season, the inclusion of this new coal plant would have resulted in a reserve capacity of 14.6% - substantially below the optimum industry standard.

It is true that management selected the test year for this company's last permanent rate case. It is also true that Northeastern #3 did not become operational until well after the closing date which management chose for the evaluation period. But the record now before us clearly establishes that without the benefit of this coal fired plant to support its system capacity to meet the system requirements Applicant would not have had sufficient capacity to meet the system peak load experienced this past summer. Today, this coal plant is earning no return at all to the Company. AFUDC earnings on this investment stopped when the unit became plant-in-service about a year ago. In a case such as this where a company is earning nothing on a major investment which has demonstrated its usefulness beyond question, we believe it would be confiscatory to refuse to allow some recognition to that investment for ratemaking purposes on an interim basis.

Without the benefit of advanced planning hearings, we continue to believe that the inclusion of Construction Work in Progress in rate base for new generation and transmission facilities is inappropriate; therefore, no consideration is being given to SO's Northeastern Unit No. 4 in this interim proceeding. It did not become operational until September 16, 1980. This plant will be considered in connection with the company's permanent application.

...ly disallow any inclusion of Construction Work in Progress fo... nuclear Black Fox Project. This Commission has meticulous... ...ted expenses relating to Black Fox in all previous proceedings, and w... continue to do so now. Public Service Company has yet to receive a construction... permit from the Nuclear Regulatory Commission, and there is growing uncertainty... that such a permit will be issued. This Commission does not look favorably upon... expenditures for a project so veiled with problems and uncertainties. Accordingly,... we will continue to exclude expenditures for Black Fox for ratemaking purposes... until the economic implications of this project can be fully reviewed by this... Commission. We continue to urge the company to cooperate with the advance... planning efforts of this Commission so that in a proper case construction projects... can be realistically evaluated for ratemaking purposes.

Applicant has presented substantial evidence to justify some interim relief by making a prima facie showing of attrition of earnings and by the demonstrated contribution which Northeastern Unit #3 made to Public Service Company's customers, as reflected above. Applicant presented testimony of its Senior Vice-President for Fianance that it should have an Interim Rate Increase of $59,000,000, annualized. Staff presented testimony reflecting a minimum level revenue deficiency of 41.3 million dollars which amount staff recommended as a temporary interim rate increase to the Company predicated upon a rate of return of 10.64%.

We find that Public Service Company should be allowed to recover Interim Relief in the amount of 41.3 million dollars. We further find that the increase granted herein should be recovered based upon actual kilowatt hour sales for the twelve months ended July 31, 1980, as outlined in Exhibit Number 30.

There are many factors which need to be considered by us at the time we take up the question of Public Service Company's general rate request including off-system sales, load management, jurisdictional rate base, and revenue and expense adjustments. This Commission recognizes its authority to issue interim relief under bond and subject to refund as has been done in other jurisdictions. See Mountain States Telephone and Telegraph Co. v. New Mexico State Corporation Commission, 563 P.2d 588, (1977); Application of Kauai Elec. Division (Hawaii), 590 P.2d 524. Accordingly, we find that the Company should execute a refund bond conditioned such that Applicant will faithfully and promptly refund to its customers the relief granted pursuant to this Order and which may be subsequently ordered refunded by this Commission in further proceedings in connection with their current filing for permanent rate relief, with interest thereon at the rate of 15% per anum from the date such surcharges are received by the Applicant from its customers.

ORDER

IT IS, THEREFORE, THE ORDER OF THIS COMMISSION that the Applicant be and it is hereby authorized to recover Interim Rate Relief under bond in the amount of 41.3 million dollars annually and that said increase be recovered based upon actual kilowatt hour sales for the twelve months ended July 31, 1980, all as herein above set forth.

DONE AND PERFORMED this 12 day of December, 1980.

CORPORATION COMMISSION OF OKLAHOMA

HAMP BAKER, Chairman

DISSENTING OPINION
BILL DAWSON, Vice-Chairman

NORMA EAGLETON, Commissioner

ATTEST:

BERDEE S. HOLT, Secretary

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APPLICATION OF PUBLIC SERVICE)
COMPANY OF OKLAHOMA, AN) 81 NOV 16 P3:25
ADJUSTMENT IN ITS RATE AND)
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CAUSE NO. 26959

DAWSON, B., DISSENTING.

Applicant in this case has been before this Commission on a number of occasions during the past couple of years and consideration of its present application cannot, of course, be separated entirely from the regulatory history that immediately proceeded it. That regulatory history is a unique one which does not argue well for relief in the present instance.

After a long period of years without any such requests being made, this case represents the second request which this Commission has received for emergency interim relief from a major utility in the past year. Because of the nature of an emergency hearing and the lack of a thorough audit many details are, by necessity, ignored. And it is noteworthy that it was this attention to detail that reduced a $35 million rate increase request to a several million dollar rate decrease order in the present applicant's regular rate case.

Given the general public's strong desire for close scrutiny of rate applications and the Commission's Constitutional and statutory duty to provide the same before granting relief, it is of paramount importance, then, that the type of relief here sought--i.e., allowance of a rate increase without close scrutiny--be allowed only sparingly, if at all. Overly permissive precedents in this style of case can make a mockery of our Constitutionally and statutorily established regulatory system.

In the last case of this nature to be presented to us Oklahoma Gas & Electric Company was granted an emergency rate increase. This Commissioner dissented as to the amount of relief allowed, but agreed with the essential analysis set out in the Order as to the very limited grounds on which the Commission may base emergency relief. The Commission noted as follows:

> We are advised by Mr. Howard Motley, Director of Public Utilities, that we have at least two alternatives to examine as reflected in his testimony: an Administrative Substitution Approach and a Financial Emergency Approach. The Administrative Substitution Approach amounts to a substitute for the normal ratemaking process in which temporary relief would be granted more or less automatically because of our inability to reach a well founded decision in a reasonable period of time, for whatever reason. We believe that in spite of serious understaffing problems which are suffered by this Commission, the utilities and the ratepayers of Oklahoma are entitled to receive decisions in rate cases pending before us in a reasonable time frame.
>
> A second avenue offered on this record is the Financial Emergency Approach. In determining what constitutes the threshold of a financial emergency for our public utilities we recognize our obligations to the utility and the ratepayer. If we define financial emergency to mean "Will the company become insolvent?" we come precipitously close to placing our utilities as well as utility customers in serious jeopardy. Conversely, if we grant interim relief on an emergency basis to guarantee the company the ability to earn at the return on equity level in the last rate case without first having had the opportunity to analyze and evaluate the books and records of the company we place an unnecessary burden on the ratepayers to pay the cost of possibly imprudent management decisions which should properly be borne by the company's stockholders.
>
> We recognize, of course, that our utilities are entitled to earn a reasonable rate of return. What constitutes a reasonable rate of return is dependent upon a large variety of factors well recognized in the rate making process which need not be outlined here. It is apparent that a return on equity of 0.5% is not reasonable assuming management by the company is prudent. See Southwestern Bell Telephone Company v. State et al., 202 Okla. 291, 214 P.2d 715 (1949). At the same time, however, management should be able to establish that the utility is experiencing a deterioration of earnings in spite of all reasonable and prudent efforts to reduce costs and avoid the erosion of earnings.

PSO reports to be experiencing a return on equity of over 10% or 20 times that which Southwestern Bell was earning. The further question of whether they are experiencing a deterioration of earnings in spite of all reasonable and prudent efforts to reduce costs and avoid the erosion of earnings and the question as to whom any delay in hearing of its regular rate application should be attributed require a more indepth analysis.

PSO requests the emergency interim relief on more than one ground. Spokesmen for the Company state that it has experienced a deterioration of its financial condition to the point that financing cannot be obtained on reasonable terms. They claim that the Company is not able to earn a reasonable return on its investment because of the addition of new generating facilities which have been placed in service. Finally, they claim that its rates do not yield a reasonable return on present investments.

The actual purpose of this interim relief must be carefully considered. PSO's witness, Mr. Stratton, testified that the emergency relief being asked for will directly affect PSO's ability to fund and pay for Black Fox, the only major construction they have planned in the near future.

The Black Fox plant has not been approved as yet and PSO does not have a construction permit for it. The Commission must be hesitant to allow the Company to issue bonds to fund and pay for a plant which the Company has not had approved.

In Cause No. 26824 PSO sought authority to create, issue and sell securities. The Commission stated in its Order that it would be willing to allow refinancing of construction projects underway (specifically including the Northeastern No. 3 & 4 plants), but was unwilling to approve and allow refinancing for any new program for which necessary construction

permits had not issued, need had not been established and satisfactory economic justification had not been presented. PSO elected not to produce the evidence which would allow the Commission to grant authority to issue bonds based on that distinction. The Company elected instead, to enter a "loan agreement" which would obtain capital financing at an interest rate substantially higher than the 15-15.5% range which would have been available from a bond issue. That action certainly raises the question of whether all reasonable and prudent efforts have been taken by management to reduce costs and avoid the erosion of earnings.

PSO's single witness in this case, Mr. Stratton, testified that the Company's rate application is couched in terms of financial parameters looked to by the investment community. He states that PSO's financial deterioration does not stem primarily from construction. It is clear however, that to the extent that the Commission disagrees with PSO's construction program, that construction program and the Commission's treatment of it does have a casual relationship to the deteriorating financial condition. Until and unless an effective advanced planning procedure is fully implemented, this problem will have to be faced.

PSO has resisted attempts by the Commission to engage in advanced planning. Their actions have delayed the development of such procedure by months. Absence of that procedure keeps the Commission in the awkward position of having to exclude any capacity, which the Commissioners find to be a product of imprudent investments, after it has been built.

To the extent, then, that PSO has failed to act on the opportunities for funding that this Commission has granted it and has prevented development of reasonable and more efficient procedures, they are responsible for the situation

in which they find themselves now. The ratepayers cannot be asked to bail them out of such a self-created condition.

The Company has included Northeast #3 in their net utility plant in service. They cite $799 million as their net plant in service. As General Counsel for the Commission pointed out on cross examination, this figure represents the total Company plant in service. In the last major rate case it was determined that the Oklahoma Corporation Commission regulates only 85.2% of the total, or $680,748,000.

The staff has also included Northeastern #3 in their net utility plant in service. The staff calculated the Oklahoma jurisdictional net utility plant in service to be $678,245,726 and the Company rate base to be $621,883,506.

In the last major rate case, Cause No. 26669, the Commission calculated the Oklahoma jurisdictional rate base to be $445,702,502. Staff witness accounted for the difference as due to the inclusion of Northeastern #3. To determine that Northeastern #3 was used and useful, the staff has looked to the net system peak demand during the extremely hot summer of 1980. Staff chose not to normalize for weather conditions.

With a normalized peak demand, witness Motley testified that the Company would have realized a reserve capacity of approximately 14% with the inclusion of Northeastern #3. And testimony in the last regular rate case for applicant gives ample reason to wonder whether that figure might be extremely conservative. It was noted in that case that PSO has committed 100MW of Northeastern No. 3--fully one-fourth of its capacity--to its off-system sales. And it was further noted that the Company was attempting to dispose of its Tennessee Valley Authority allotment--an amount equivalent to almost one-half of Northeastern No. 3's capacity. Apparently the

applicant had disposed of the TVA allotment before the summer peak it reports, but that matter warrants further examination.

In the abbreviated case before us there was no detailed examination, inquiry and cross-examination of the applicant's witness as to the summer peak usage that was reported. What such examination, inquiry and cross-examination will reveal remains to be seen.

The Company witness stated he was not prepared, at the time of the emergency hearing, to address questions pertaining to PSO's ability to purchase power during their period of peak demand. He was not prepared to discuss the Company's forecasting methodology or justify its need for additional capacity. In light of these facts, it would seem inappropriate to include new plants in the rate base which have not been justified in a general rate case.

Witness Stratton testified that PSO has not put any load management techniques in practice except perhaps a few interruptible rates. This is an indication that PSO has had no real incentive to encourage conservation. The emergency hearing is not a satisfactory opportunity to consider all aspects of conservation but all indicators may be considered when determining if the management has acted in a reasonable and prudent manner to reduce costs and avoid erosion of earnings.

In light of the above comments concerning the need for a cautious approach in an emergency hearing with no attention to details, and the uncertainty, at this point, as to the applicant's actual capacity needs as relates to the Oklahoma customer, it would seem more appropriate to use the rate base calculated in the last regular rate case rather than speculate as to whether the Commission will include the plants which have been added since that time. Staff late filed Exhibit

No. 32 reveals a revenue deficiency of only $4,804,975 when the rate base calculated in the last regular rate case for applicant is used.

In the applicant's last regular rate case (Cause No. 26669), Mr. Umesh Mather, witness for Coalition for Fair Utility Rates utilized a time series analysis to predict off-system sales for the Company and the Commission adopted that analysis. Apparently, neither the company nor the staff utilized such an analysis for the purpose of the emergency hearing.

The staff's test year ended July 31, 1980. As a result the full impact of the revenues realized due to the abnormally hot summer were not included. This refers to both sales to the customers and off-system sales.

The Company's test year ends December 31, 1980, with budgeted figures for the last 6 months. The Company has further updated their figures through September.

It is noteworthy that the Company's revenues from off-system sales in the third quarter (July, August, September) account for over half of their revenues from off-system sales for the first 9 months of the year.

Company witness Stratton testified that there is a "buyer's market" for power in this area. It would thus appear that with the addition of Northeastern #4 and the 30% or better reserve capacity it will result in there is good reason to suppose that revenues from off-system sales will increase even further.

In summary, then, PSO has unmistakenly made whatever economic bed it lies in at this point. It would be patently unfair to the public to now give that Company specially expedited treatment, involving minimal case presentation and

Commission review--given its own refusal to act on this Commission's prior order of refund for its ratepayers and insistence on paying higher than necessary construction costs.

And another factor strongly mitigates against such relief as is here sought. In its April 3, 1980 order in Cause No. 26824 (PSO's application for authority to issue securities) this Commission stated

> the Black Fox plant planned by PSO faces its own set of peculiar circumstances because of the nature of its fuel source. Assuming, arguendo, that additional capacity is needed, this Commission is duty bound to analyze this project in terms of the overall investment cost, the cost and availability of fuel supply, the efficiency factor for this type of generation plant, the effect a plant of this magnitude (750 megawatts to PSO from Unit #1) will have on the Applicant's required reserve margin, and the costs associated with decommissioning at the end of the plant's useful life. Other questions which require answers include who will pay for clean-up costs associated with nuclear accidents? And how will nuclear waste material be managed, transported and stored?

The applicant has, heretofore at least, failed to manifest any desire or willingness to work with the Commission toward a full and proper hearing wherein those matters listed by the Commission and others as suggested by the Attorney General in his Application of April 12, 1979 (Cause No. 26582) might be fully considered--toward the end of a determination by this Commission of whether proposed expenditures on the Black Fox plant are necessary. Absent such manifestation of desire or willingness, the granting of the relief sought in this case can only be viewed as an unwarranted strengthening of applicant's commitment to a decision that may eventually prove fatal to its economic well-being.

The granting of the relief sought in this case might reasonably be interpreted as (1) condoning Company circumvention of Commission orders, (2) awarding possibly imprudent

management, (3) providing a disincentive to development of conservation alternatives, and (4) sending improper signals to other regulated entities.

Ignoring all the foregoing one might submit that no great harm will be done in allowing the amount recommended by staff as interim relief under bond. For, it can be reasoned, the Order in the upcoming permanent rate case will call for a refund if the interim relief proves warranted. But such an approach significantly alters the normal rate-making process.

The normal ratemaking process has the ratepayers charged with paying higher rates only if the Company presents a case that withstands full scrutiny. When relief is granted in such a case as the present one the ratepayer is told to pay a higher rate in anticipation of what might happen, with the promise that the Company will be ordered to pay him back if it does not finally prove its case.

And, of course, any order of a refund may prove to be an empty gesture. PSO has helped make that clear. They were, after all, ordered to refund $15,102,122 as a result of hearings held in Cause No. 26669. That Order was issued May 7, 1980. PSO appealed that Order to the Oklahoma Supreme Court. The record for appeal consideration is still being prepared. Meanwhile the Company is seeking and, by the majority order in this cause, receiving a rate increase. The merited benefit of the refund ordered has been effectively negated by the passage of time. The promise of a refund is proving to be fruitless. There is no reason to believe that a grant of interim relief if followed by an eventual refund order in the present case would have any different result.

For all of the reasons above stated I respectfully dissent.

BILL DAWSON, Vice Chairman

ATTEST:

BERDEE HOLT, Secretary

BD/cjg