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Oklahoma Corporation Commission
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Submitted via electronic mail

Supplemental Public Comments of Oklahoma Sierra Club
Cause No. PUD 202000083 – In Re: Inquiry of the Oklahoma Corporation Commission to
Examine Issues Related to Energy and Public Utilities

Oklahoma Sierra Club submits these Supplemental Public Comments in response to the Oklahoma Corporation Commission’s (“OCC” or “Commission”) June 24, 2021, Second Amended Notice of Inquiry in Cause No. PUD 202000083—having submitted an initial set of Public Comments on October 19, 2020. Sierra Club’s initial comments focused primarily on the issues of battery storage, so-called “renewable” natural gas and related infrastructure, and electric vehicles (“EVs”) and Compressed Natural Gas (“CNG”) vehicles. Sierra Club hereby reaffirms, and continues to urge the Commission to consider, those 2020 comments in the record. Now, as a supplementary matter, Sierra Club submits the instant comments in response to subheading D of the Notice of Inquiry, “Statewide Utility Rate Transparency and Reporting.”

As discussed herein, Sierra Club respectfully urges the Commission to consider and eventually implement improvements to the rules and practices governing the examination of utilities’ Integrated Resource Plans (“IRPs”). Specifically, Sierra Club urges the Commission to initiate a rulemaking that would amend OAC 165:35-37, and to reform any related uncodified practices as appropriate, in order (a) to make both the IRP planning process, and the substance of IRPs themselves, actually known and accessible to the public, which at present does not learn about the proceedings and cannot access draft IRPs through the OCC website; and (b) to make the process of stakeholder engagement and Commission review more robust and actually likely to result in better-considered, prudent long-term resource plans. Both of these reforms would further the value of rate transparency, implicated by Subheading D of the Notice of Inquiry in this cause, as well as the ultimate result of just and reasonable rates. Currently, the IRP process at the OCC does not feature meaningful oversight of, or improvements to, the IRPs that utilities

submit. Instead, the process is essentially just an opportunity for utilities to tell a select group of stakeholders what they intend on doing, with no chance that a utility will be compelled to respond to criticism—whether from stakeholders, the public, or the Commission itself—or to amend their IRP accordingly.

To illustrate the problematic consequences of having only a perfunctory process—one with no meaningful scrutiny, consequential dialogue, or “teeth” in the proceeding—one need look no further than the extraordinarily divergent 2021 IRPs submitted this fall by Oklahoma Gas and Electric Company (“OG&E”) and Public Service Company of Oklahoma (“PSO”). On the one hand, OG&E says it plans on running three coal-fired power plants until the mid/late 2040s—despite coal units’ low and declining capacity factors, among other vulnerabilities—and also plans on adding four new gas-fired units over the next decade.¹ On the other hand, PSO plans on retiring its last coal plant by 2026 and adding no new gas, only renewables and demand response.² Granting that their respective systems and projections are not identical, of course, there is no way that such fundamentally divergent plans are both prudent. But perhaps the stark divergence is not so surprising in view of the fact that OG&E admitted, at its September 16, 2021, IRP public meeting, that it did not let its planning model consider earlier, potentially more economical retirement dates for its five coal units. Rather, OG&E simply “hard coded” those retirement dates into its model’s framework, and assessed only a much narrower set of resource addition and replacement questions. What’s more, OG&E could not indicate when or if, as a matter of prudent periodic updating of planning inputs and forecasts, it would revisit those hard-coded retirement assumptions, which are apparently arbitrary and way out of step with industry trends. OG&E balked at the suggestion that the required IRP exercise is a precisely appropriate occasion in which do so, and suggested that the onus is instead on an interested stakeholder to raise and press the question of optimal retirement dates in some other proceeding, such as a fuel adjustment clause docket or rate case.

If Oklahoma had a more procedurally robust IRP process, however—e.g., one with discovery, witness examination, briefing, and an opinion from the Commission concerning the reasonableness of the utility’s planning process and output, not to mention improved transparency and a meaningful opportunity for public participation—then no utility could get away with such a hands-off approach to resource planning, which blatantly risks imposing an enormous unnecessary financial burden on its ratepayers. Accordingly, Sierra Club respectfully requests that the Commission consider amending the prevailing IRP rules and practices, including along the lines of the recommendations discussed herein.

¹ OG&E IRP at 19-20, 24, B-1; August 19, 2021, Technical Conference (OG&E identifying the projected retirement date for the two units of its River Valley coal plant, which the IRP does not include, as 2048).

² PSO IRP at 7, 122-23.

I. Sierra Club and Its Oklahoma Members

Sierra Club is America's largest and oldest grassroots environmental group, with more than 3.5 million members and supporters nationwide. The Oklahoma Chapter of Sierra Club, organized in 1972, currently has more than 4,400 members spread across every county in the state. These members reside, work, or recreate around the various energy facilities in Oklahoma, and are residential customers of our state's various utility companies. Having advocated on behalf of, and engaged legislatively and legally, in all of the matters for which the Commission seeks input, Oklahoma Sierra Club has technical expertise on the various issues raised in this cause, as well as perspective on corresponding regulatory treatment and financial implications. In general, Oklahoma Sierra Club opposes uneconomical, highly polluting fossil-based energy, and favors affordable, clean, and renewable energy resources and infrastructure instead, which can bring significant cost savings to ratepayers in addition to public health benefits, climate benefits, and sustainable job growth.

II. Failure to Inform the Public and Enable Public Participation; Recommendations

The first essential point that Sierra Club wishes to underscore is that the IRP process in Oklahoma is not meaningfully open to members of the public. This means that ratepayers are not able to see, and weigh in on, the long-term plans of their monopoly utility that will impact their pocketbooks (not to mention their lungs). It is axiomatic as a policy matter, and also essential in order to put the *public* in the "public meeting" required by OAC 165:35-37-3, that Oklahoma's citizenry be afforded real notice and real opportunities to comment on these IRPs.

As things stand, the general public does not receive notice when a utility submits its draft IRP to the Commission. *See* OAC 165:35-37-5(a)-(b) (requiring only that the Commission and an undefined set of "stakeholders" be notified). No OCC docket number is created, and the submission is not otherwise announced on the OCC website. Rather, only a small group of institutional stakeholders—and only those who happen to be fortunate enough to be included on a somewhat arbitrary, hit-or-miss list—receive the draft IRP via email for their consideration. (Sierra Club, for instance, was not initially included on either OG&E's or PSO's 2021 IRP email lists, despite having been a significant participant in past OCC cases and otherwise being a known stakeholder; Sierra Club had to learn of the draft IRPs through another participant and then write to the utility asking to be added to the email chain.) Further, even if a member of the public somehow learns of the utility's submission, they are not able to access the draft IRP being considered, as the Commission does not post draft IRPs on the OCC website for review (a point

the undersigned confirmed with Commission staff, beyond personal efforts at searching).³ Instead, the onus is on a member of the public not only to learn of the draft but also to request it from the utility. OAC 165:35-37-3(c).

Later, the public only learns about the “public meeting,” OAC 165:35-37-3, concerning the draft IRP, at most a few days in advance of the meeting, at the outset of that week, when the OCC’s meeting schedule is disclosed. This short notice precludes participation by anyone who cannot promptly rearrange their schedule to attend a meeting on a workday morning—likely the majority of people, including many workers and parents. Compounding that problem, there is no apparent way to submit written comments, which is especially critical for those who cannot attend the meeting. Moreover, even if one can attend, the public still does not even have ready access to the draft IRP at this point (individuals must request a copy from the utility—hoping that they know whom to contact), thereby precluding folks from conveniently reviewing the very thing whose substance they are supposed to comment on at the meeting. Only after the whole process is finished—after the utility has submitted its finalized IRP, following the initial technical conference and the subsequent “public meeting”—does the IRP finally get posted to the OCC website. Even then, the posting appears to be done without announcement and not especially promptly. (At the time the instant filing was finalized, nearly three weeks after the submission of OG&E’s final 2021 IRP, the document had not been added to the OCC website’s archive of IRPs. *See* <https://oklahoma.gov/occ/divisions/public-utility/pudreports.html>.)

In light of those shortcomings and obstacles, Sierra Club urges the Commission to commence a rulemaking to consider amendments to OAC 165:35-37, and also to implement reforms of any uncodified practices as needed, in order to improve transparency and achieve meaningful notice and access for the public in IRP proceedings. Without limitation, one such improvement should be prominently posting on the OCC website notice of when a utility has submitted its draft IRP, along with the draft itself. Another should be the Commission making a practice of flagging for the public the anticipated, but expressly tentative, date of the public meeting at least two weeks in advance of such date (doing so tentatively should not run afoul of

³ Nor do the utilities make a point of advising the public of the IRP process and providing a readily accessible draft. For instance, a member of the public seeking OG&E’s draft 2021 IRP online would have first needed to know that the IRP process was underway, and would have needed to be a savvy enough web browser to navigate through the relatively obscure “Investor Relations” tab at bottom of page—not exactly an intuitive fork in the road for your average ratepayer—and then further through ‘Regulatory Filings’ in order to get to the document. *See* <https://www.oge.com/>. Meanwhile, PSO (through the website of its parent company, AEP), appears not to post its IRPs at all; it merely links to the OCC’s general website—which, again, does not feature draft IRPs—even if someone is savvy enough in the first place to know to navigate through the ‘Investors’ and ‘Regulatory’ tabs. *See* <https://aep.com/>.

public meetings legal requirements), so that folks can try to plan accordingly. The Commission should also specify a clear channel for the public to submit written comments on the draft IRP, for the benefits of utilities' consideration and a memorialized record. Other ideas could be explored as well.

III. Deficiencies in the Stakeholder and Commission Review Process; Recommendations

Separate from its failure to inform and engage the public, Oklahoma's IRP process is procedurally feeble and perfunctory vis-à-vis stakeholders and the Commission itself. The process simply does not facilitate the kind of meaningful, muscular scrutiny and input needed to compel the utility actually to take a hard look at its resource planning; to respond to deeply informed and constructive criticism; and accordingly to adjust its plans as appropriate. Making the process more procedurally robust—as works well in a wide variety of other jurisdictions—would benefit ratepayers as well as the utilities themselves.

The following deficiencies and weaknesses, at least, prevail under Oklahoma's current IRP rules and practices:

1. Only a handful of stakeholders who happen to be included by the utility on a particular email thread are initially provided with the draft IRP and invited to attend the technical conference and public meeting; no notice is given on the OCC website. Others must hear through word of mouth that the process has commenced, and request to be added to the thread.
2. Discovery is not permitted on the draft IRP, so neither stakeholders nor the Commission can probe, with any serious depth or formality, the utility's assumptions, inputs, methods, reasoning, or conclusions. Stakeholders and Commissioners may ask a few questions at the conference and meeting, and the utility can choose to respond orally or potentially in follow-up emails, but only if and to the extent the utility wishes, being under no obligation.
3. There is no opportunity for stakeholders or the Commission to examine witnesses who will attest, either at length or under oath, to the IRP's procedures and substance.
4. There is no express opportunity for stakeholders to provide their own testimony, written or oral, responding to the draft IRP.
5. There is no opportunity for stakeholders to submit, into a formal, memorialized written record, any comments or briefs concerning the reasonableness of the IRP. Indeed, there is hardly any record at all, other than summary "minutes" from the technical conference being noted in the utility's final IRP, and a video recording of the public meeting being accessible online.
6. The utility need not—and, if OG&E's 2021 IRP process is any indication, does not—actually incorporate feedback received at the technical conference into either a revised draft IRP in

advance of the public meeting, or into the final IRP it provides to the Commission at the culmination of the process. *See* OAC 165:35-37-5(d).

7. The Commission issues no order, opinion, or other formal guidance regarding the draft or final IRP. At most, Commissioners may choose to suggest their individual feelings through questions and comments at the technical conference or public meeting. The utility is under no obligation to respond to any Commission input, however, in either that same proceeding or the utility's next IRP.

Those limitations render the Oklahoma IRP process essentially perfunctory: the utility simply informs stakeholders and the Commission what it plans on doing, and is not subject to any meaningful scrutiny or real pressure to improve their plan, no matter what the plan's perceived or undetected flaws may be.

This is not how it is elsewhere. In a diverse host of other jurisdictions all around the country, resource planning actually routinely improves throughout the proceeding, or at least errors and deficiencies are fixed between one plan and the next. These other jurisdictions hold IRP proceedings as contested or quasi-contested cases, with robust procedures designed to ferret out weaknesses in the utility's planning, suggest improvements, and compel the utility to respond to well-founded criticisms, either in the same proceeding or the next IRP. This prevents the utility from going too far down the road with a bad, unimproved resource plan, such that before we know it, we have arrived at a preapproval docket or rate case in which a utility is seeking approval of something suboptimal, claiming urgency and acknowledging only a relatively narrow set of feasible alternatives (if any) at this point, when a better solution could have been designed earlier on, if the IRP had previously been subjected to closer scrutiny and advice, particularly when the whole of the resource system was being examined holistically. That is precisely what IRP proceedings should compel—and what they do in fact routinely and workably compel in many other jurisdictions, to the benefit of ratepayers and utilities alike.

Sierra Club respectfully recommends that the Commission initiate a rulemaking to amending OAC 165:35-37, along with any corresponding uncodified prevailing practices, to add at least some of the following procedural features of IRP proceedings adopted—and applauded—elsewhere:

1. *Contested cases and meaningful review by the Commission.* The Commission develops and informs the utility of the criteria by which an IRP should be developed and will be assessed. After the IRP is filed, the Commission first determines whether an IRP is technically complete according to minimum formal filing requirements, and retains the authority to require the utility to make modifications to the IRP after submission. The Commission sets a procedural schedule, including for intervention, discovery, and hearing(s). Interested entities

may file intervene in the proceeding if they satisfy criteria promulgated by the Commission (if not set out by statute). Utilities do not withhold information, from the regulator or intervening parties in the IRP docket, except pursuant a protective order. *See* Ariz. Admin. Code § R14-2-703(L), (M); Colo. Code Regs. § 723-3:3603(b). The Commission and intervening parties retain the right to discover non-privileged documents involved in the process of IRP development. *See, e.g.*, Mich. Comp. Laws Ann. § 460.6t(7); Minn R. 7843.0300(8); S.C. Code § 58-37-40(C)(1); *see also* 807 Ky. Admin. Regs. 5:058 (in practice, allowing discovery). The Commission issues a decision approving or rejecting, in whole or in part, the substance of the IRP. *See, e.g.*, Ariz. Admin. Code § R14-2-704(A); Colo. Code Regs. § 723-3:3617(b); S.C. Code § 58-37-40(C)(2). Regulatory staff may issue a precursor report to help inform the Commission’s ultimate decision. *See, e.g.*, 807 Ky. Admin. Regs. 5:058, Section 11. Approval of a utility’s IRP does not constitute pre-approval of the prudence of, or future recoverability of costs associated with, the plans/actions listed in the IRP. *See, e.g.*, Minn. Stat. Ann. § 216B.2422(2)(b) (2017); S.C. Code § 58-37-40(C)(4).

2. *Thorough documentation and reporting requirements.* Utilities submit a minimum of relevant substantive information and analyses in the IRP, including: planning environment; load forecast; existing resources assessment; needs assessment; new resource options; assumptions and forecasts; resource plan development; caveats and limitations; action plan; prior action plan implementation status update; and avoided cost calculation. *See, e.g.*, Ark. Admin. Code § 126.03.22-4; Ariz. Admin. Code § R14-2-703; 807 Ky. Admin. Regs. 5:058; S.C. Code § 58-37-40(B)(1). Utilities fully document their planning process; retain all documentation for submission with the IRP; and explain and justify all of their assumptions, modeling, and analysis, as well as provide all sources relied upon in its analysis with the IRP. *See, e.g.*, Ariz. Admin. Code § R14-2-703(C)(3); Colo. Code Regs. §§ 723-3:3604, 3606(e); Minn. R. 7843.0400(3)(A)-(D). Utilities must publish their IRPs in their full and complete form on the utility’s website. *See, e.g.*, Mich. Comp. Laws Ann. 460.6t(h).
3. *A clear statement of purpose.* The purpose of an IRP is to ensure that a utility creates a long-term resource plan that minimizes costs and risks in arriving at a solution for the utility’s customers, to ensure that the near-term actions of the utility align with its long-term plans, and to engage regulators and the public in planning, consistent with state policy. Accordingly, utilities must include a statement of purpose, which encourages them to consider the objectives of an IRP throughout the pre-submission process, and provides the Commission with a benchmark by which to evaluate the completeness and quality of a submitted IRP. *See, e.g.*, Ark. Admin. Code 126.03.22-4(4.5); *In re Public Utility Commission of Oregon*, 255 P.U.R.4th 367, App. A, Guideline 1(d), (Jan. 8, 2007), *corrected by In re Public Utility Commission of Oregon*, 2007 WL 534555 (Feb. 9, 2007).
4. *Robust stakeholder involvement in plan formation.* Utilities engage with stakeholders early and regularly, which is critical to the formation of a consensus plan and the public interest. Rather than litigating a purely utility-driven plan after its submission—a process that may not

result in a satisfactory outcome to any party—utilities gather and reflect input during the IRP’s formation. Utilities actively solicit and incorporate both stakeholder commentary and Commission involvement throughout the IRP development process. *See, e.g.*, Ark. Admin. Code 126.03.22-2, -4(4.8). Utilities meet with stakeholders at regular intervals in the planning process. *See, e.g.*, Mich. Comp. Laws Ann. § 460.6t(i) (2017).

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The Oklahoma Chapter of Sierra Club sincerely thanks the Commission for soliciting information on all the subjects at issue in this cause, critical to our thousands of members, and for considering both sets of Sierra Club’s public comments to date. The undersigned anticipates attending the October 21, 2021, public meeting in this cause and can speak further to these issues at that time. Please do not hesitate to let us know if the Commission has any questions.

Dated: October 20, 2021

Sincerely,

/s/ Matthew E. Miller

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