

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION )  
OF OKLAHOMA GAS AND ELECTRIC )  
COMPANY FOR AN ORDER OF THE )  
COMMISSION AUTHORIZING ) CAUSE NO. PUD 201700496  
APPLICANT TO MODIFY ITS RATES, )  
CHARGES AND TARIFFS FOR RETAIL )  
ELECTRIC SERVICE IN OKLAHOMA )

REBUTTAL TESTIMONY  
OF  
MARK E. GARRETT

**FILED**  
MAY 29 2018  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

REVENUE REQUIREMENT ISSUES

ON BEHALF  
OF

OKLAHOMA INDUSTRIAL ENERGY CONSUMERS ("OIEC")  
AND  
OKLAHOMA ENERGY RESULTS, LLC ("OER")

May 29, 2018

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**I. WITNESS IDENTIFICATION AND PURPOSE OF TESTIMONY**

1 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A: My name is Mark E. Garrett. My business address is 4028 Oakdale Farm Circle,  
3 Edmond, Oklahoma 73013.

4

5 **Q: WHAT IS YOUR PRESENT OCCUPATION?**

6 A: I am the President of Garrett Group, LLC, a firm specializing in public utility regulation,  
7 litigation and consulting services.

8

9 **Q: DID YOU SUBMIT REVENUE REQUIREMENT TESTIMONY ON MAY 2, 2018**  
10 **IN THIS PROCEEDING?**

11 A: Yes, I did.

12

13 **Q: WERE YOUR EDUCATIONAL BACKGROUND AND YOUR PROFESSIONAL**  
14 **EXPERIENCE RELATED TO UTILITY REGULATION ADDRESSED IN THAT**  
15 **TESTIMONY?**

16 A: Yes, they were.

17

18 **Q: HAVE YOUR QUALIFICATIONS BEEN ACCEPTED BY THIS COMMISSION**  
19 **IN PROCEEDINGS DEALING WITH REVENUE REQUIREMENT ISSUES?**

20 A: Yes, they have. A more complete description of my qualifications and a list of the  
21 proceedings in which I have been involved are attached to my Revenue Requirement

1 Testimony filed May 2, 2018.

2  
3 **Q: ON WHOSE BEHALF ARE YOU APPEARING IN THESE PROCEEDINGS?**

4 A: I am appearing on behalf of Oklahoma Industrial Energy Consumers (“OIEC”) and  
5 Oklahoma Energy Results, LLC (“OER”).

6  
7 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A: The purpose of my Rebuttal Testimony is to address Oklahoma Corporation Commission  
9 Public Utility Division Staff (“Staff”) witness Rush’s recommendation in his Responsive  
10 Testimony to include 100% of short-term incentive compensation costs in the rates of  
11 Oklahoma Gas and Electric Company (“OG&E” or the “Company”).

12  
13 **II. STAFF RECOMMENDATION ON INCENTIVES LACKS MERIT**

14 **Q: WHAT IS STAFF RECOMMENDING WITH RESPECT TO INCENTIVE**  
15 **COMPENSATION?**

16 A: In his revenue requirement testimony, Staff witness Rush recommends including 100%  
17 of OG&E’s short-term incentive expense in rates. This is a significant departure from  
18 the Oklahoma Corporation Commission’s (the Commission) long-standing policy of  
19 excluding from rates 50% of the short-term incentive costs. Going back more than 25  
20 years, the Commission has excluded at least 50% of the short-term incentive costs for  
21 regulated utilities without a sharing mechanism for excess earnings.<sup>1</sup> To my knowledge

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<sup>1</sup> In one case, Cause No. PUD 1191001190, the Commission excluded 100% of ONG’s incentive plan and in another case, Cause No. PUD 200500151, the Commission excluded 60% of OG&E’s short-term incentive plan.

1 the Commission has never allowed recovery of 100% of the short-term incentive costs  
2 for ratepayers for either OG&E or PSO as Staff now recommends.

3  
4 **Q: WHAT IS STAFF'S RATIONALE FOR ITS RECOMMENDED DEPRATURE**  
5 **FROM THE COMMISSION'S LONG-STANDING AND CONSISTENET**  
6 **TREATMENT OF THIS ISSUE?**

7 A: Staff raises no new arguments. In support of his recommendation to allow 100% of  
8 short-term incentives, Mr. Rush testifies that "the Company needs a variety of  
9 employees with experience, knowledge, and skills to provide efficient and affordable  
10 electric service to its customers."<sup>2</sup> This is not a new argument nor is it a new situation.  
11 The Company, as is the case with every regulated utility, has always needed employees  
12 with experience, knowledge, and skills to provide efficient and affordable service.  
13 Moreover, OG&E has consistently paid its employees incentives and the Commission  
14 has consistently excluded at least 50% of the costs of these payments from rates.

15  
16 **Q: DOES OG&E'S MEMBERSHIP IN THE SPP JUSTIFY STAFF'S**  
17 **RECOMMENDED CHANGE IN COMMISSION POLICY WITH RESPECT TO**  
18 **INCENTIVE COMPENSATION?**

19 A: No. OG&E's membership in the SPP is not new and has no bearing on the issue of  
20 incentive compensation. Mr. Rush claims that OG&E's membership in the SPP adds  
21 increased complexities for some of its employees.<sup>3</sup> Even if true, OG&E's membership

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<sup>2</sup> See Rush direct testimony at page 45, lines 17-19.

<sup>3</sup> See Rush direct testimony at page 46, lines 5-17.

1 in the SPP would not warrant such an extreme change in the Commission's policy on  
2 incentive compensation. First, OG&E has been a member of the SPP for a long period of  
3 time. Any purported increased complexities would apply to only a few employees and  
4 would likely be offset by decreased responsibilities in other areas. For example,  
5 OG&E's membership in the SPP has eliminated the need for its employees to make  
6 generation fleet dispatch decisions. This fact alone indicates that OG&E's employees  
7 have less responsibility, not more, as result of OG&E membership in the SPP. OG&E's  
8 SPP membership is not a factor that should affect the Commission's analysis of the  
9 incentive compensation issues.

10  
11 **Q: WHAT OTHER RATIONALE DOES STAFF PROVIDE FOR ITS**  
12 **RECOMMENDED DEPARTURE FROM THE COMMISSION'S LONG-**  
13 **STANDING TREATMENT OF THIS ISSUES?**

14 A: Mr. Rush testifies that "although there is a financial component included in the  
15 Company's incentive compensation package, payout of the compensation is not  
16 "triggered" by financial performance."<sup>4</sup> Again, this is not a new circumstance. It is true  
17 that OG&E's plan does not have a financial trigger. Nevertheless, the Commission has  
18 consistently excluded a portion of the incentive compensation because OG&E's  
19 incentive compensation plan is heavily weighted toward financial performance measures  
20 which benefit shareholders more than ratepayers.

21 Mr. Rush perhaps misunderstands a point I addressed in my responsive  
22 testimony. In my responsive testimony, I observed that plans with a financial trigger are

1 treated more severely by the Public Utility Commission of Texas (“Texas PUC”). This  
2 does not mean, however, that the absence of a financial trigger justifies recovery of  
3 100% of incentive compensation from ratepayers. Rather, the Texas PUC disallows  
4 100% of the incentive plan costs *directly* tied to financial performance, and 50% of the  
5 plan cost *indirectly* tied to financial performance, when the plan has a financial trigger.  
6 The rationale is that, when a plan has a financial trigger, the plan is either directly or  
7 indirectly tied to financial performance. There is no debate that OG&E’s plan is tied  
8 significantly to financial performance. The fact that it does not include a financial  
9 trigger does not justify allocation of 100% of the incentive compensation costs to  
10 ratepayers.

11  
12 **Q: DOES MR. RUSH PROVIDE ANY OTHER RATIONALE?**

13 A: Mr. Rush testifies that the short-term plan has four metrics, (1) earnings per share, (2)  
14 O&M savings, (3) customer satisfaction and (4) safety. He further testifies that these  
15 four metrics benefit the Company, the ratepayers, and the shareholders.<sup>5</sup> He discusses  
16 each metric and explains how each metric benefits both the ratepayers and the  
17 shareholders. He then concludes from this discussion that OG&E’s ratepayers should  
18 bear all of the costs of the incentives. The problem with this conclusion, is that his  
19 analysis – that the metrics benefit both shareholders and ratepayers – supports a sharing  
20 of these costs. This is precisely why the Commission in this state, and in virtually every  
21 other state, shares these costs between ratepayers and shareholders. Ratepayers and

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<sup>4</sup> See Rush direct testimony at page 46, lines 20-22.

<sup>5</sup> See Rush direct testimony at page 46, line 22 through page 49.

1 shareholders both benefit from financial performance measures, but the shareholders  
2 clearly benefit more. That is why these costs are typically allocated to the shareholders  
3 and should be so allocated in this case. As to customer satisfaction measure,  
4 shareholders and ratepayers both benefit from these measures, but customers typically  
5 benefit more. That is why these costs are typically included in rates. The Commission  
6 does not perform an in-depth analysis as to who benefits more from each metric, it  
7 merely splits the costs of the incentives 50/50 between ratepayers and shareholders,  
8 recognizing that both benefit from these plans. Mr. Rush's analysis regarding benefits  
9 actually supports the Commission's long-standing treatment of these costs.

10  
11 **Q: DOS MR. RUSH PROVIDE ANY OTHER RATIONALE FOR HIS POSITION?**

12 A: Yes. He states that "PUD believes that it is prudent for the Company to have a  
13 comprehensive incentive plan."<sup>6</sup> Again, this is nothing new. The Company does have a  
14 comprehensive incentive plan and has had one for many years. Moreover, OG&E is  
15 going to have a comprehensive incentive plan whether it is included in rates or not. This  
16 is the case with most every regulated utility. Virtually all utilities offer comprehensive  
17 incentive plans and to my knowledge, virtually no regulatory commission allows all of  
18 the costs of those plans to be included in rates. The question is not whether a utility will  
19 offer incentive compensation but who pays for it. Most regulatory commissions  
20 understand that some portion, if not all, of incentive plan costs should be borne by  
21 shareholders.

1 Q: WHY DO YOU BELIEVE THERE NEEDS TO BE SOME CHANGED  
2 CIRCUMSTANCE OR NEW RATIONALE TO JUSTIFY INCLUDING 100% OF  
3 INCENTIVE PAY IN RATES?

4 A: With the Commission's 25-year policy of excluding 50% of short-term incentive pay,  
5 there would need to be a significant change in circumstances for the Commission to  
6 reverse its policy on this issue. There has been no testimony offered which shows any  
7 new circumstances nor have new arguments been raised supporting any such change.

8

9 Q: HOW HAS THE COMMISSION TREATED THESE COSTS IN THE PAST?

10 A: In virtually every litigated rate case over the past 25-year period involving major utilities  
11 with operations in Oklahoma (that do not have a sharing mechanism for excess  
12 earnings), the Commission has excluded at least half of the short-term incentive costs.  
13 These cases included the following:

<u>Oklahoma Utility</u>	<u>Cause Number</u>
Oklahoma Natural Gas Company	Cause No. PUD 91-1190
Oklahoma Natural Gas Company	Cause No. PUD 200400610
Public Service Company of Oklahoma	Cause No. PUD 200600285
Public Service Company of Oklahoma	Cause No. PUD 200800144
Public Service Company of Oklahoma	Cause No. PUD 201500208
Public Service Company of Oklahoma	Cause No. PUD 201700151
Oklahoma Gas and Electric Company	Cause No. PUD 200500151
Oklahoma Gas and Electric Company	Cause No. PUD 201500273

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<sup>6</sup> See Rush direct testimony at page 50, lines 2.  
Rebuttal Testimony of Mark E. Garrett  
Cause No. PUD 201700496

1 **Q: WHAT DO YOU RECOMMEND?**

2 A: I recommend that the Commission maintain its long-standing policy of excluding 50% of  
3 short term incentive costs from rates and reject Staff's proposed departure from the  
4 Commission's long-standing policy on this issue.

5 **Q: DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

6 A: Yes, it does.

**CERTIFICATE OF MAILING**

On this 29th day of May 2018, a true and correct copy of the above and foregoing was sent via electronic mail to the following interested parties:

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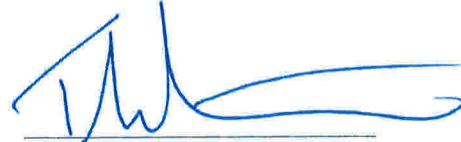
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