

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 300

6 By: Branam

7 COMMITTEE SUBSTITUTE

8 An Act relating to electric utilities; amending
9 Section 1, Chapter 161, O.S.L. 2005, as last amended
10 by Section 1, Chapter 150, O.S.L. 2008 (17 O.S. Supp.
11 2010, Section 286), which relates to recoverable
12 costs; modifying utility and Corporation Commission
13 authorization to comply with certain reasonably
14 foreseeable requirements; granting Commission
15 authority to initiate certain show cause proceedings;
16 stating requirements for certain utility plan
17 addressing compliance with certain federal
18 requirements; authorizing Commission to promulgate
19 rules by certain date; stating Commission
20 requirements for authorization of recovering certain
21 costs; stating recoverable costs; and declaring an
22 emergency.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY Section 1, Chapter 161, O.S.L.
2005, as last amended by Section 1, Chapter 150, O.S.L. 2008 (17
O.S. Supp. 2010, Section 286), is amended to read as follows:

Section 286. A. 1. The portion of costs incurred by an
electric utility, which is subject to rate regulation by the
Corporation Commission, for transmission upgrades approved by a

1 regional transmission organization to which the utility is a member
2 and resulting from an order of a federal regulatory authority having
3 legal jurisdiction over interstate regulation of transmission rates,
4 shall be presumed recoverable by the utility. The presumption
5 established in this paragraph may be rebutted by evidence that the
6 costs so incurred by the utility for the transmission upgrades
7 exceed the scope of the project authorized by the regional
8 transmission organization or order issued by the federal regulatory
9 authority having jurisdiction over interstate regulation of
10 transmission rates. The Commission shall transmit rules to
11 implement the requirements of this subsection to the Legislature on
12 or before April 1, 2006. The rules may authorize an electric
13 utility to periodically adjust its rates to recover all or a portion
14 of the costs so incurred by the utility for the transmission
15 upgrades.

16 2. Reasonable costs incurred by an electric utility for
17 transmission upgrades:

- 18 a. needed to develop wind generation in this state,
- 19 b. approved by the Southwest Power Pool, and
- 20 c. placed into service before December 31, 2013,

21 shall be presumed recoverable through a periodic adjustment in the
22 rates of the utility, provided that the presumption of the recovery
23 of such costs or the recovery of such costs through a periodic
24 adjustment in rates may be rebutted by evidence presented to the

1 Commission. The determination of whether the costs shall be
2 recovered and whether the costs shall be recovered through a
3 periodic adjustment of rates shall be made by the Commission
4 following proper notice and hearing in a cause to be filed by the
5 electric utility in which it files such information as the
6 Commission may require.

7 B. 1. An electric utility subject to rate regulation by the
8 Corporation Commission may file an application seeking Commission
9 authorization of a plan by the utility to make capital expenditures
10 for equipment or facilities necessary to comply with existing and
11 reasonably foreseeable requirements of the federal Clean Air Act
12 (CAA), the Clean Water Act (CWA), the Comprehensive Environmental
13 Response, Compensation, and Liability Act (CERCLA), the Emergency
14 Planning & Community Right-to-Know Act (EPCRA), the Endangered
15 Species Act (ESA), the National Environmental Policy Act (NEPA), the
16 Occupational Safety and Health Act (OSHA), the Oil Pollution Act
17 (OPA), the Pollution Prevention Act (PPA), the Resource Conservation
18 and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), the
19 Toxic Substances Control Act (TSCA), all as amended, and, as the
20 Commission may deem appropriate, federal, state, local or tribal
21 environmental requirements which apply to generation facilities.
22 Nothing contained within this section shall prohibit the
23 Commission's authority to initiate a show cause proceeding and
24 direct a utility to advise the Commission as to the status of any

1 utility's plan to comply with existing or reasonably foreseeable
2 environmental laws or regulations. If approved by the Commission,
3 after notice and hearing, the equipment or facilities specified in
4 the approved utility plan are conclusively presumed used and useful.
5 The utility may elect to periodically adjust its rates to recover
6 the costs of the expenditures. The utility shall file a request for
7 a review of its rates pursuant to Section 152 of this title no more
8 than twenty-four (24) months after the utility begins recovering the
9 costs through a periodic rate adjustment mechanism and no more than
10 twenty-four (24) months after the utility begins recovering the
11 costs through any subsequent periodic rate adjustment mechanism.
12 Provided further, that a periodic rate adjustment or adjustments are
13 not intended to prevent a utility from seeking cost recovery of
14 capital expenditures as otherwise may be authorized by the
15 Commission. However, the reasonableness of the costs to be
16 recovered by the utility shall be subject to Commission review and
17 approval. The Commission shall promulgate rules to implement the
18 provisions of this subsection, such rules to be transmitted to the
19 Legislature on or before April 1, 2007.

20 2. A utility plan to comply with federal, state, local or
21 tribal environmental laws or regulations may address the existing
22 and reasonably foreseeable requirements of such laws and
23 regulations. The Commission shall promulgate rules to implement the
24 provisions of this subsection on or before April 1, 2012. Nothing

1 contained within this section shall prohibit the Commission's
2 authority to initiate a show cause proceeding and direct a utility
3 to advise the Commission as to the status of any utility plan to
4 comply with existing or reasonably foreseeable environmental laws or
5 regulations. When authorizing the recovery of costs incurred by a
6 utility in compliance with a Commission-approved plan addressing
7 existing and reasonably foreseeable environmental laws, regulations
8 or requirements, the Commission may find that:

- 9 a. reasonable costs related to the permitting,
10 operations, maintenance and dispatch of the utility's
11 generation equipment or facilities are presumed
12 prudent and recoverable by the utility,
- 13 b. reasonable ancillary and incidental costs or any gains
14 or losses resulting from use of a derivative
15 instrument related to hedging programs associated with
16 long term gas procurement are recoverable,
- 17 c. reasonable stranded costs associated with the
18 conversion of an existing coal-fired generation
19 facility to a natural gas-fired generation facility,
20 replacement of an existing coal-fired generation
21 facility with a natural gas-fired generation facility,
22 or retirement of a coal-fired generation facility
23 shall be presumed prudent and recoverable by the
24 utility; "stranded costs" may be defined as any

1 undepreciated book value of the converted, replaced or
2 retired facility, the cost of converting or removing
3 any equipment or facilities and the cost of
4 terminating or modifying any commercial agreement
5 associated with the converted, replaced or retired
6 facility,

7 d. reasonable expenditures made to convert an existing
8 coal-fired facility to a natural gas-fired facility or
9 to construct a new natural gas-fired facility or
10 upgrade an existing natural gas-fired facility prior
11 to the commercial operation of the facility are
12 recoverable as Construction Work In Progress;
13 "Construction Work In Progress expenditures" are
14 defined as those expenditures identified in 18 USC
15 section 35.25, and

16 e. reasonable financial incentives or earnings related to
17 natural gas purchase power agreements, including but
18 not limited to allowing a utility to recover a margin
19 of the overall cost of a natural gas purchase power
20 agreement.

21 C. 1. An electric utility subject to rate regulation by the
22 Corporation Commission may elect to file an application seeking
23 approval by the Commission to construct a new electric generating
24 facility, to purchase an existing electric generation facility or

1 enter into a long-term contract for purchased power and capacity
2 and/or energy, subject to the provisions of this subsection. If,
3 and to the extent that, the Commission determines there is a need
4 for construction or purchase of the electric generating facility or
5 long-term purchase power contract, the generating facility or
6 contract shall be considered used and useful and its costs shall be
7 subject to cost recovery rules promulgated by the Commission. The
8 Commission shall enter an order on an application filed pursuant to
9 this subsection within two hundred forty (240) days of the filing of
10 the application, following notice and hearing and after
11 consideration of reasonable alternatives.

12 2. Following receipt of an application filed pursuant to this
13 subsection, the Corporation Commission staff may file a request to
14 assess the specific costs, to be paid by the electric utility and
15 which shall be deemed to be recoverable, for the costs associated
16 with conducting the analysis or investigation of the application
17 including, but not limited to, the cost of acquiring expert
18 witnesses, consultants, and analytical services. The request shall
19 be filed at and heard by the Corporation Commissioners in the docket
20 opened by the electric utility pursuant to this subsection. After
21 notice and hearing, the Commission shall decide the request.

22 3. Additionally, following receipt of an application filed
23 pursuant to this subsection, the Office of the Attorney General may
24 file a request with the Corporation Commission for the assessment of

1 specific costs, to be paid by the electric utility and which shall
2 be deemed to be recoverable, associated with the performance of the
3 Attorney General's duties as provided by law. Those costs may
4 include, but are not limited to, the cost of acquiring expert
5 witnesses, consultants and analytical services. The request shall
6 be filed at and heard by the Corporation Commissioners in the docket
7 opened by the electric utility pursuant to this subsection. After
8 notice and hearing, the Commission shall decide the request.

9 4. The Commission shall promulgate rules to implement the
10 provisions of this subsection. The rules shall be transmitted to
11 the Legislature on or before April 1, 2006. In promulgating rules
12 to implement the provisions of this subsection, the Commission shall
13 consider, among other things, rules which would:

- 14 a. permit contemporaneous utility recovery from its
15 customers, the amount necessary to cover the
16 Corporation Commission staff and Attorney General
17 assessments as authorized by this subsection,
- 18 b. establish how the cost of facilities approved pursuant
19 to this subsection shall be timely reviewed, approved,
20 and recovered or disapproved, and
- 21 c. establish the information which an electric utility
22 must provide when filing an application pursuant to
23 this subsection.

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1 5. The Commission shall also consider rules which may permit an
2 electric utility to begin to recover return on or return of
3 Construction-Work-In-Progress expenses prior to commercial operation
4 of a newly constructed electric generation facility subject to the
5 provisions of this subsection.

6 SECTION 2. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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