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America's Energy Future Part I:  
A Review of Unnecessary and Burdensome Regulations

My name is Patricia D. Horn. I am Vice President of Governance and Environmental Health & Safety and Corporate Secretary for Oklahoma Gas and Electric Company ("OG&E"), an electric utility headquartered in Oklahoma City. A wholly-owned subsidiary of OGE Energy Corp. ("OGE"), OG&E serves approximately 790,000 customers in 268 communities in Oklahoma and western Arkansas. Our fossil-fuel generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, and we currently have wind power capacity of 780 megawatts or roughly 10% of our total generating capacity.

My company and I appreciate the opportunity to come before you today to provide an overview of the regulatory climate and how it affects our generation of electricity and its effect upon our customers. My statement will try to provide you with some insight into the challenges OG&E and our corporate affiliates face in light of a myriad of recently proposed or finalized federal rules, including the Environmental Protection Agency's action to implement the Regional Haze rule in Oklahoma, the Cross State Air Pollution Rule, the Hazardous Air Pollution rule (also known as "Utility MACT"), and the Interior Department's proposed listings under the Endangered Species Act. However, before I begin talking about the EPA rules and their challenges to us, I believe it is appropriate to provide some background about OG&E.

## **I. Who is OG&E?**

As you know, all utilities are not alike. They vary in many important ways: in terms of size, weather demands, financial resources, generation mix, renewable resources, and of course their state regulatory and political environment in which they operate. While the largest electric utility in Oklahoma, OG&E is considered a medium to small sized investor owned utility and lacks the resources possessed by other larger utilities.

As a state-regulated utility, OG&E bears the responsibility of its “obligation to serve” all electricity customers in its service area and we take this obligation seriously. This obligation to serve carries with it the requirement to provide reliable electric power at a reasonable cost to our customers. But beyond that, OG&E strongly believes that it is incumbent on us as a good corporate citizen to produce reliable and low cost power for our customers in an environmentally responsible manner.

A perfect example of our commitment to customers is our “2020 Goal.” In 2007, OGE’s CEO, Pete Delaney, challenged us with a goal of reaching the year 2020 without adding any new fossil-fuel generation. This was and is a significant endeavor because OG&E continues to experience steady growth in customer demand. OG&E’s 2020 Goal represented a radical departure from the electric industry business model that served customers well since at least the 1930s. Simply stated, building power plants to serve current and anticipated load growth made certain sense in meeting demands for electricity --- especially when fuel was cheaper and there were more plentiful construction resources and relatively inexpensive solutions to meet environmental requirements. Today, utilities cannot simply build power plants to meet growing demand. OG&E’s leadership recognized in 2007 that continuation of the old approach to simply build additional generation capacity is not in the best interest of our customers, our shareowners and the local economies that we serve.

First and foremost, the 2020 Goal is premised on continued commitment to investment in the day to day business of providing safe and reliable electric service, improving our operational efficiencies and engaging our customers. The 2020 Goal focuses on: increased energy efficiency programs; increased demand response through

new and expanded programs that are enabled by new smart meter technology; adding renewable wind energy; and building new transmission to bolster reliability and to support wind power. Over time, we've recognized that achieving the goal can be enhanced by a number of other initiatives, including consideration of the retirement or replacement of existing generation, changing our wholesale contract business and smart grid deployment.

OG&E's commitment to customers and its innovative thinking are paying off and have been duly recognized by significant industry observers. In 2011, OG&E was named best in class by J.D. Power and Associates for customer satisfaction. Also, I am very proud to report that OG&E was named by Electric Light and Power magazine as the 2011 Utility of the Year in North America.

#### **A. OG&E and Wind Power:**

I can report firsthand to you that the interest in environmentally friendly energy and energy conservation-oriented consumer behavior certainly exists in Oklahoma. In the western part of our state, wind farms seem to be popping up everywhere. Oklahoma has gone from virtually no wind power just a few years ago to currently being ranked 8<sup>th</sup> nationally in existing installed wind power generation capacity. By the end of 2011, OG&E had increased its wind generation to 780 MW, which represents approximately 10% of our generation portfolio. This wind energy replaces and complements fossil fuel generation and will result in more than \$1 billion in estimated customer savings over the life of those facilities. OG&E has also constructed new transmission lines between western and central Oklahoma to allow renewable power being developed in sparsely populated western Oklahoma to reach our customers and others in more heavily populated parts of our service areas in Oklahoma and Arkansas. And I might emphasize that all of these achievements in developing renewable generation are occurring without any state or federal mandates.

#### **B. OG&E and Demand Side Management and Efficiency:**

In addition to wind power, we are renewing our interest and focus on demand side management ("DSM") programs aimed at reducing energy use. OG&E has been

focusing on energy efficiency and demand response to achieve reductions in both demand and our customers' overall energy costs. OG&E has undertaken efforts to expand its traditional demand response programs and has received approval to expand its energy efficiency programs in both the Oklahoma and Arkansas jurisdictions. With additional customer education, better technology such as smart meters, and other programs, we believe that there are growing opportunities for even greater energy savings.

In 2010, OG&E began implementing its Smart Grid program, and today is viewed as a national leader in deployment of this technology. Smart Grid is critical to the success of the DSM effort and a reduction in future customer costs associated with the avoidance of additional generation capacity. In 2007, OG&E began evaluating intelligent digital meters and advanced metering infrastructure. After a successful demonstration of Smart Grid technology in northwest Oklahoma City during 2008, OG&E decided to expand Smart Grid by deploying the technology in the Norman, Oklahoma service area. The results of that pilot program convinced us of the merits of expanding our Smart Grid project system-wide. On July 1, 2010, the Oklahoma Corporation Commission issued an order approving the Company's plan to move forward with deployment of Smart Grid in Oklahoma.<sup>1</sup> This past spring, the Arkansas Public Service Commission authorized OG&E to implement Smart Grid in Arkansas. As of the end of June 2012, I am pleased to report that OG&E has over 654,000 smart meters installed or just over 80% of the system-wide deployment of smart meters. With the installation of the smart meter technology, the Company is now able to propose additional tariff options, along with an enhanced suite of on-line customer tools, to further empower customers to manage their electric bills. The early results from our Smart Grid project have been very encouraging. Based on two consumer behavior studies, residential customers are now shifting as much as 1.9 kW of demand (per participant) from the peak near 5:00 PM to off system peak during the summer. These same customers saved around \$200 on average for the year.

OG&E's goal is to reduce its capacity needs by approximately 500 MW by 2020 through its DSM and energy efficiency programs.

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<sup>1</sup> OG&E's system-wide Smart Grid program was financed on a cost share basis with OG&E and its customers paying for 64.5% and the balance defrayed through a \$130 million federal grant from DOE, which was made subject to the finalization of all administrative and contractual requirements, including completion of deployment by December, 2012. OG&E was the only investor-owned electric utility in Oklahoma and Arkansas that received a DOE grant.

### **C. OG&E and Fuel:**

OG&E's electricity rates are below the national average. OG&E's low electricity rates are largely attributable to the favorable cost implications of having a diverse generation portfolio. As stated above, OG&E's current generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, 10% wind power. This diverse fuel mix allows OG&E to maintain electricity rates below the national average because it shields customers from being too vulnerable to the price of any one particular fuel. For example, natural gas prices have recently dropped to very low levels. However, there was a time as recently as early 2010 when natural gas prices spiked to higher than expected levels. OG&E's diverse generation mix enabled OG&E's electricity rates to remain stable during this volatile period when the market forces created a wide swing in natural gas prices.

Coal is both abundant domestically and historically cheaper than natural gas. Over the past five years, OG&E's average delivered price of coal has been \$1.54 (\$/MMBtu), while the average delivered price of natural gas has been \$5.51 (\$/MMBtu). In the past few months, OG&E's delivered price of natural gas has dropped, reaching approximately \$3.82 (\$/MMBtu) in January 2012 and is still above the historic price of coal. Having a diverse fuel mix has allowed customers to benefit from this differential in fuel costs. While approximately 38 percent of our generation capacity is from coal-fired generating units, those coal units have produced approximately 60 percent of the energy, with natural gas typically being used for the balance of baseload generation and for peaking demand. We use low sulfur Powder River Basin coal which has kept both our emissions and our electricity rates to our customers low, which in turn has contributed very significantly to Oklahoma's economic viability and competitiveness. As a major gas producing state, Oklahoma's economy, and the OGE businesses benefit from the exploration and production of natural gas locally. However, if natural gas prices rise, the price advantage of coal for use in generating electricity grows. At the same time, continued use of coal brings with it significant challenges with regard to compliance with pending EPA rules.

## **II. Specific Challenges from Pending EPA Rules**

As discussed above, OG&E has an obligation to serve and provides reliable electric power at a reasonable cost to our customers in an environmentally responsible manner. OG&E's efforts to increase wind farm development and an increased emphasis on demand side management and energy efficiency programs are examples of OG&E's commitment to reducing reliance on fossil fuel generation and reducing costs to customers. However, the recent suite of EPA rules constitutes a challenge to OG&E's efforts because they effectively force OG&E to make capital intensive additions in the very near term that determine long term choices regarding its generation fleet.

With regard to meeting Regional Haze SO<sub>2</sub> emission limits, OG&E may be forced to choose whether to (i) install costly scrubber technology on its coal plants (all of which are still only halfway through their useful lives) or (ii) discontinue coal generation from units that still have much life in them and move closer to a primarily all natural gas fleet. I emphasize that this is not a set of choices in which one alternative is costly and the other is not. Each of these options alone is extremely expensive for OG&E and ultimately our customers. On top of these requirements for Regional Haze SO<sub>2</sub> issues, other EPA rules are further complicating the decision by creating new emission limits for NO<sub>x</sub>, acid gases, particulate matter, and mercury.

To put the cost quandary into perspective, OG&E hired leading industry consultants to provide cost estimates of installing scrubbers on four of OG&E's five coal units. The estimated capital cost is over \$1 billion with an increase to annual O&M of between \$70 and \$150 million. This would translate into the largest rate increase in the history of the company. In July 2011, OG&E looked at the customer impact of a scenario where dry scrubbers, low NO<sub>x</sub> burners and Activated Carbon Injection are all installed on OG&E's five coal units. The analysis showed that residential customers could see a 23 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$123 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$50,000 (which represents a 26 percent increase from the current average monthly bill).

If OG&E replaced its five coal units with natural gas generation, OG&E would face the capital costs of retiring, converting or replacing the coal units' baseload capacity and the related fuel costs stemming from more natural gas being purchased and burned. In July 2011, OG&E also looked at the customer impact of a scenario where OG&E replaced its five coal units with natural gas generation. Using our January 2011 forecast of natural gas prices, OG&E estimated that such a switch to natural gas would be even more expensive for customers than installation of five scrubbers and would lead to greater vulnerability to the price volatility of natural gas. The analysis showed that residential customers could see a 37 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$137 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$100,000 per month (which represents a 56 percent increase from the average monthly bill).

As you can readily see, either of these options involves serious rate shock for customers and would commence an adverse ripple effect on our Oklahoma economy. In our view, it is incumbent on us to work with the Oklahoma Department of Environmental Quality ("DEQ") and the EPA to develop a more common sense solution that avoids such rate shock for customers, while achieving the objectives of the major EPA rules.

#### **A. Regional Haze Rule:**

On July 6, 2005, the EPA issued its final Regional Haze Rule. This Rule requires that states submit state implementation plans ("SIPs") to address regional haze visibility impairment in 156 federally-protected parks and wilderness areas. Among other things, the EPA regulations require states over approximately a 50 year period to eliminate man-made impacts on visibility in federally protected parks and wilderness areas around the United States.

The Regional Haze Rule includes a requirement that certain large stationary sources install Best Available Retrofit Technology ("BART") to control regulated emissions such as SO<sub>2</sub> and NO<sub>x</sub>. Sources that may be required to install BART are those sources: (i) that were put in place between August 7, 1962 and August 7, 1977; (ii) that have the potential to emit 250 tons or more of a visibility-impairing air pollutant; and (iii)

whose operations fall within one or more of twenty-six listed categories, including electric power generation. OG&E has several generating units that are “BART-eligible” under the regional haze regulations, including four coal-fired units and three gas-fired units.

In January 2010, OG&E and the DEQ entered into a regional haze agreement to address the requirement of BART at OG&E’s Sooner, Muskogee and Seminole Generating Stations and finalized the Oklahoma SIP. Our state’s solution was to require OG&E to continue to burn low sulfur coal because the installation of scrubbers was not cost effective for controlling SO<sub>2</sub> emissions. In the Oklahoma SIP, the DEQ recognized that the cost for dry scrubbers is too high and the benefit too low. If EPA disagreed with that BART determination, the State SIP’s solution would give OG&E the option to either (i) achieve SO<sub>2</sub> emission reductions consistent with the installation of 4 scrubbers by 2018; or (ii) achieve SO<sub>2</sub> emission reductions consistent with 2 scrubbers and 2 complete conversions to natural gas by 2026. This flexible Oklahoma solution provided optionality to OG&E, minimized the impact on customers and the state economy, and retained increased natural gas use as an alternative. Most importantly, this solution met the visibility improvement goals of the Regional Haze rule.

In December 2011, EPA disapproved the portions of Oklahoma’s regional haze SIP that address BART for SO<sub>2</sub> and issued a Federal Implementation Plan (“FIP”) that directs OG&E to meet SO<sub>2</sub> emission limits within 5 years by either installing scrubbers on four coal units or switching that generation capacity to natural gas.

The portion of the Oklahoma SIP approved by the EPA involves installation of low NO<sub>x</sub> burners on four OG&E coal-fired units and three OG&E gas-fired units to control the NO<sub>x</sub> emissions. OG&E is in the process of moving forward with such installations, but we do so recognizing a considerable element of uncertainty since it remains to be seen whether the permitting process for such retrofits or other coming rules could implicate even greater controls. Also, the timing for the installation of the low NO<sub>x</sub> burners is five years under Regional Haze, while other rules may require acceleration on the timeline.

OG&E is studying the feasibility and cost-effectiveness of other potential ways to achieve the mandated SO<sub>2</sub> emission reductions under the Regional Haze FIP, including



installation of Dry Sorbent Injection (“DSI”) on its coal units. Since this is relatively new technology and is not currently being used on a widespread basis on larger units, a substantial amount of testing will be required. Based on current information, OG&E believes that DSI may be significantly less expensive to install and operate than scrubbers. OG&E continues to evaluate this DSI technology, but significant operational questions remain unanswered. It could be that DSI leads to additional controls that eliminate any cost savings, but it is not clear at this point. OG&E needs additional time to evaluate whether a lower cost alternative such as DSI would be effective, but the compliance deadlines from EPA and the lead-time needed to procure, permit and construct scrubbers significantly hampers our ability to consider alternative solutions that may prove to be reasonable.

In February 2012, the State of Oklahoma, OG&E and other parties filed an appeal with the Federal Court of Appeals for the 10<sup>th</sup> Circuit challenging the EPA’s FIP. In addition, in early March, the State and OG&E requested a stay of the FIP while the appeal was pending. In a most relevant and recent development, on June 22, 2012, the Court of Appeals issued an order finding that the appellants had satisfied the requirements for a stay and did indeed issue a stay of the EPA FIP pending the resolution of the appeal. This stay decision brings a sense of optimism that eventually the court will overturn EPA’s FIP and create a basis for implementing the State SIP or a regime more in keeping with the intent of the State SIP’s approach. Until that legal process reaches its culmination, though, OG&E must face the possibility of eventually complying with this very expensive rule.

#### **B. Maximum Achievable Control Technology/HAPS (MACT):**

On December 16, 2011, the EPA signed the Maximum Achievable Control Technology (MACT) regulations governing emissions of certain hazardous air pollutants from electric generating units. The final rule includes numerical standards for particulate matter (as a surrogate for toxic metals), hydrogen chloride and mercury emissions from coal-fired boilers. Compliance is required within three years after the April 2012 effective date of the rule with a possibility of a one year extension. This final rule has

also been appealed by the industry. OG&E cannot predict the outcome of any such appeals and is evaluating the regulations and what emission controls would be necessary to meet the standards and the associated costs.

OG&E believes that both scrubbers and DSI could be viable technologies for meeting the hydrogen chloride limits contained in the MACT rule. However, as stated above, additional testing is required for DSI and the three-year clock (with possible one additional year extension of the compliance deadline) essentially limits OG&E's ability to fully understand the DSI technology before making a decision on whether or not to commit to that technology for compliance. Also, the cost of DSI varies widely depending on whether DSI leads to other emission level increases that would require additional and expensive control technology. In addition to DSI to meet the MACT requirements, OG&E believes that Activated Carbon Injection ("ACI") is necessary to meet the mercury limits contained in the rule. ACI would cost approximately \$20 million to install on our five coal-fired units, plus significant annual O&M costs. However, OG&E is hesitant to invest those millions on its coal units if other regulations such as those identified elsewhere in my testimony are going to push us toward retirement or conversion of those units in the near future.

### **C. Cross State Air Pollution Rule: CSAPR**

On July 7, 2011, the EPA finalized its Cross-State Air Pollution Rule ("CSAPR") to replace the former Clean Air Interstate Rule that was remanded by a Federal court as a result of legal challenges. The final rule requires 27 states to reduce power plant emissions that contribute to ozone and particulate matter pollution in other states. On December 27, 2011, the EPA published a supplemental rule which makes six additional states, including Oklahoma, subject to the Cross-State Air Pollution Rule for NO<sub>x</sub> emissions during the ozone-season from May 1 through September 30. Under the rule, OG&E would be required to reduce ozone-season NO<sub>x</sub> emissions from its electrical generating units within the state beginning in 2012. The Cross-State Air Pollution Rule is currently being challenged in court by numerous states (including Oklahoma) and power generators. On December 30, 2011, the U.S. Court of Appeals issued a stay of the rule and later stated that the supplemental rule applicable to Oklahoma is included in the

stay of the main CSAPR rule. The argument on the merits of the main CSAPR rule was heard by the court in April 2012.

OG&E has also appealed the inclusion of Oklahoma in the supplemental CSAPR rule and this appeal process is currently on hold pending the decision of the court on the main CSAPR rule. Specifically, the basis for OG&E's inclusion in the supplemental rule is based on air emission modeling that suggests Oklahoma sources impact a single county in Michigan that actually is currently in attainment with the ambient air quality standards.

OG&E cannot predict the outcome of such challenges and is evaluating what emission controls would be necessary to meet the proposed standards, our ability to comply with the standards in the timeframe proposed by the EPA and the associated costs, which could be significant.

If the CSAPR rules stand, OG&E believes that compliance would be enormously difficult within the timelines proposed by EPA. Compliance would likely require accelerating the installation of low NO<sub>x</sub> burners and uneconomic dispatch of our generating units during peak periods coupled with reliance on large volumes of purchased power or purchased allowances (assuming that allowances are available for purchase).

#### **D. Other Regulatory Issues**

In addition, OG&E is studying the impacts on the company and our customers of various other pending EPA regulations, including changes to the National Ambient Air Quality Standards and potential Greenhouse Gas regulations. Moreover, there a number of non-air emission regulations that complicate the decisions discussed above.

#### **Section 316(b) of the Clean Water Act:**

Section 316(b) of the Federal Clean Water Act requires that the location, design, construction and capacity of cooling water intake structures reflect the "best available technology" for minimizing their adverse environmental impact via the impingement and entrainment of aquatic organisms. Based on preliminary studies performed at OG&E's generating stations, it is our opinion that our cooling water intake structures are *not* having an adverse impact to the fishery populations of the water bodies from which

cooling water is taken. In fact, two of these water bodies---Seminole and Sooner Reservoirs---support robust, healthy fishery populations which consistently meet or exceed state-established lake management goals and are considered two of the premier sport fishery lakes in the State of Oklahoma. In March 2011, the EPA proposed rules to implement Section 316(b) and, on August 18, 2011, OG&E filed comments with the EPA on the proposed rules. In June 2012, EPA published a Notice of Data Availability (NODA) in which it is seeking additional comment on a number of impingement mortality-related issues based on new information received during the initial public comment period. OG&E filed comments regarding the NODA on July 11, 2012. OG&E anticipates that the proposed rules will be finalized later in 2012. In the interim, the State of Oklahoma requires OG&E to implement best management practices related to the operation and maintenance of its existing cooling water intake structures as a condition of renewing its discharge permits. Once the EPA promulgates the final rules, OG&E may incur additional capital and/or operating costs to comply with them. The costs of complying with the final water intake standards are not currently determinable, but could be significant. When these rules are finalized, OG&E will again have to choose whether to invest new capital in existing units whose lives and continued use could be significantly affected by other rules.

**Coal Ash:**

Another example of a proposed EPA rule is the proposed rule entitled “Hazardous Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals [“CCRs”] From Electric Utilities.” The Agency is seeking to establish federal regulations designed specifically for the management of CCRs generated by the electric power sector (*i.e.*, electric utilities and independent power producers) that utilize coal to generate electricity. The two primary regulatory options on which the Agency seeks comment include (i) the regulation of CCRs destined for disposal in landfills or surface impoundments as a listed “special waste” under the hazardous waste regulations of Subtitle C of the Resource Conservation and Recovery Act (“RCRA”) and (ii) the regulation of CCRs destined for disposal in landfills or surface impoundments as a non-hazardous solid waste under Subtitle D of RCRA. The Agency is also seeking

comment regarding a number of variants under each option, including the Subtitle D "Prime" option which is identical to the Subtitle D option except that it provides for existing CCR surface impoundments to operate for the remainder of their useful lives without having to retrofit with composite liners and leachate collection systems. On November 19, 2010, OG&E submitted comments on the proposed rule. OG&E is currently evaluating how this proposed rule, if finalized, would impact OG&E's existing and future units.

**Possible Listing of Lesser Prairie Chicken under Endangered Species Act:**

OGE takes its stewardship toward wildlife species very seriously and, as reflected in our management of the fishery resources in our cooling ponds, we enjoy a well-earned good reputation for our efforts to protect Oklahoma's wildlife resources in conducting our energy businesses. In a nutshell, OGE believes that good science and good research will determine the best results for the species and the economy in our state. However, our prior experience with the listing of a species for protection under the Endangered Species Act ("ESA") demonstrated that the evaluation process employed by the Fish and Wildlife Service ("FWS") can be burdensome for impacted parties and that the lengthy review can create substantial business interruption. Several years ago, OGE's midstream pipeline business known as Enogex was unable to proceed with the construction of a pipeline enabling our pipeline customers from getting their natural gas to market due to difficulties associated with concerns for the habitat of another species, the American Burying Beetle. The problem was so acute that we had to cease construction of the pipeline with the result being that the Oklahoma producers had to shut in their wells while we negotiated the ESA process which entailed completion of a biological opinion and an assessment of the species in the area of construction. Given this experience, we have been actively engaged in the current discussion relating to the possible listing of the Lesser Prairie Chicken (LPC) under the ESA since listing that species could have similar significant impact on energy production and transportation in Oklahoma and the surrounding region that is linked to Oklahoma's energy infrastructure.

The scope and immediacy of the potential for interruption of our company's energy development is readily evident. For example, whenever Enogex builds additional

gas gathering or transmission lines in western Oklahoma we anticipate facing the same unfortunate experience with the LPC as we did with the American Burying Beetle. Similarly, our electric utility, OG&E, is currently building and operating electric transmission infrastructure in western and northwestern Oklahoma, some of which area is habitat to the LPC. Over 300 miles of high voltage power lines have been authorized for construction by the Southwest Power Pool. That transmission infrastructure provides Oklahoma customers and customers in the surrounding states with access to Oklahoma's vast wind power potential. The transmission also increases the overall reliability of the electric grid both in western Oklahoma and overall, and helps meet Oklahoma's renewable energy goal of 15%. The investment in this transmission infrastructure creates new economic opportunity for this rural part of the state, providing the many jobs generated by the construction and operation of these lines, and also enables rural communities to realize the income generated by leasing their property for wind farm development. The transmission investment also creates significant property tax revenues that materially benefit the schools and local communities in rural Oklahoma. We are concerned that the listing of the LPC could have serious adverse implications for all this beneficial economic activity.

OGE recognizes that FWS's protection of species under the ESA is an important job. To help in that effort OG&E has worked collaboratively with our state wildlife agency to implement a plan that provides for the protection, preservation and restoration of the LPC and its habitat while allowing us to continue to accomplish our important energy business for our customers, the state and the region. In particular, OG&E has partnered with the Oklahoma Department of Wildlife Conservation ("ODWC")—who we believe are the true experts on species protection in our state—and we provided \$8.65 million in funding for the ODWC's activities regarding the LPC. That OG&E funding, plus matching contributions from others, helped fund land acquisitions which expanded the Packsaddle and Beaver River Wildlife Management Areas (total 10,677 acres), implementation of conservation management plans, the establishment of 11,599 acres of conservation easements, the cost of conservation personnel at the ODWC, the development of an Oklahoma regional LPC conservation plan in association with ODWC, funding for survey research, and a process for selecting transmission routes that

avoid or minimize impact on the LPC. Indeed, at a town hall meeting last year organized by Senator Inhofe and attended by FWS Director Dan Ashe, OGE outlined our concerns and the substantial affirmative action that we and others have been taking in Oklahoma to obviate the need for a listing of the LPC. More recently, we are actively participating with the five-state LPC Interstate Working Group's ongoing work to update the Lesser Prairie Chicken Critical Habitat Assessment Tool (CHAT) and develop a range-wide management plan for the species. We strongly believe that with this kind of collaboration with the private sector, the state and federal agencies can provide appropriate protections for the LPC while avoiding the legal uncertainty and unintended consequences that can cripple the energy sector and deny Oklahomans the many benefits of energy development in our state. In our view, a listing of the LPC is unnecessary and counter-productive to the best interests of the species and to the economies of western Oklahoma, the rest of our state and to the broader region that depends on Oklahoma's energy development.

### **III. OG&E's Assessment of the regulatory climate**

On January 18, 2011, President Obama issued Executive Order 13563. OG&E was encouraged that the direction being given to EPA and the other federal agencies in that Executive Order would have a welcome, therapeutic impact in improving our ability to meet the legitimate environmental objectives that Oklahomans and Americans in general desire. But, when we observe the regulatory landscape that we are facing in 2012 in terms of the gamut of EPA's rulemakings, OG&E does not see EPA successfully balancing the Executive Order's laudable objectives of protecting public health and safety and environmental quality on the one hand with promotion of economic growth, innovation, competitiveness and job creation. OG&E does not see EPA improving its processes by using the best available science or by truly being interested in allowing for meaningful public participation and an open exchange of ideas as called for in the Executive Order. OG&E most certainly does not see EPA's regulatory approach as promoting predictability and reducing uncertainty -- if anything the compliance timelines for multiple rules, final and pending, that I have mentioned have acted to significantly increase unpredictability and uncertainty for utility investment. And OG&E does not

find that EPA has taken into sufficient account the comparative benefits and cost of its regulations from either a quantitative or qualitative perspective.

For example, OG&E does not view the EPA's rejection of Oklahoma's regional haze SIP as being consistent with the Executive Order and achieving the stated environmental results on a more cost-effective or creative basis. Also, EPA's decision to include Oklahoma in CSAPR based upon controversial modeling assumptions that show an impact on a lone county in upstate Michigan does not strike us as the use of best science. We cannot conclude that EPA is promoting economic efficiency, predictability of investment and competition by insisting on an unrealistic time line for compliance with UMACT. As embodied in the Executive Order, we expect the values of cost-effectiveness, good science, fair evaluation of alternatives and the like to be essential elements of how EPA conducts its critical mission.

It is imperative that the Committee understand that we are not wrestling with compliance with EPA's regulations in a vacuum. To the contrary, utilities such as OG&E are dealing every single day with the demands for all-time high investments in new transmission and distribution, renewable generation, efficiency and demand side improvements. These things all produce capital demands on utilities and their ratepayers at unprecedented levels and in a capital market which remains very challenging. In our case, OG&E's current capitalization is \$5.5 billion and its annual operating revenue is \$3.9 billion. Add to that an additional \$1 billion (or more) in scrubbers that EPA would require us to install just to comply with the regional haze FIP, and you can readily see the consequences. Such scrubber investment would be the largest single capital investment in OG&E's history, increase our existing capital commitments by 30 percent, and lead to dramatic increases in customer rates. A mandate to invest over \$1 billion would make it difficult for OG&E to continue focusing on things like wind energy development, energy efficiency and demand side management and will make it more difficult to invest in the base level commitments for maintaining and operating its business.

A switch to natural gas is similarly expensive because of stranded costs, pipeline construction costs, fuel cost fluctuations, and other capital costs for new or retrofitted gas-fired units. From a customer's perspective, the cost of those capital investments and



a likely higher fuel cost would together increase the price customers pay for electricity in the years to come.

OG&E's competitive electric rates are a critical contributor to Oklahoma's economic welfare and competitiveness. Jobs in Oklahoma depend on our ability to provide the energy and energy infrastructure to power the state's economy. We cannot afford to be cavalier with our customers' money, or with the impact such rate increases would have on our state's economy, jobs and competitive viability. If we can achieve the same desired environmental results at a lower cost - which we think was President Obama's laudable intention underlying Executive Order 13563 - we believe we have an obligation to do so. That is the nature of our current regional haze dispute with the EPA. OG&E and all the other interests in the state working with our state agencies came up with a SIP that improved visibility, but did not necessarily entail the expense of scrubbers.

The timetables for implementing the various rules are also creating uncertainty because the rules are not synchronized and harmonized. We can do most anything EPA rules require in a more economically rational manner if we are given enough time to do so. But, the overlay of Regional Haze mandates with potentially different technology demands and related compliance schedules for such items as UMACT, CSAPR, and the soon to be seen greenhouse gas regulations magnify our unpredictability problem significantly. For an industry that makes strategic plans covering 10 to 20 year periods, a three to four year timetable to make these very important decisions on retrofitting or conversion seems very strict.

The strict and unpredictable timetables also could affect the reliability of service. Because almost every utility in the various regions is impacted by some or all of these rules, there needs to be coordination to avoid major regional reliability problems. Not only does maintaining reliability take great care and coordination among many interested parties, it is likely to require time to plan for coordinated construction of emission control technology and the installation of needed transmission system upgrades. These considerations alone could jeopardize utilities' ability to meet EPA's compliance deadlines, not to mention creating significant costs that will be passed on to utility customers.

We want and need - and frankly our customers deserve - to be able to see how all these regulatory obligations will come together in a single regulatory matrix. We need to see all the new rules and evaluate how they relate to one another holistically. This will allow us to create a coordinated, rational plan for selecting compliance strategies from the range of options in a way that makes sense to our state economies, our ratepayers, and the environment. Once we determine what can work and at what cost, we need time to move those decisions through our state public service commissions, which have a rightful and primary role to play in all of this. We also need to coordinate with our Regional Transmission Organizations and the North American Electric Reliability Corporation ("NERC") to ensure limited reliability concerns.

EPA seems to underestimate the significant role that state public service commissions play in our industry, particularly in those states, like Oklahoma, with vertically integrated utilities. Our Oklahoma Corporation Commission and the Arkansas Public Service Commission play a legitimately primary role in reviewing all our capital investments for prudence and for rate impacts. And nothing we do as a utility - literally nothing - is done without extremely careful consideration for what our capital investments may mean for our rates and for the economic impact of those rates on our customers and our state economies. The point is that the uncertainty that EPA's rulemakings generate only prove more frustrating for us when we know we must be able to justify our compliance decisions, the rate impacts, and the prudence of our actions.

We would also appreciate some certainty regarding the development of wind power. Oklahoma has been expanding the amount of the state's wind power generation over the past several years, but the threat of the elimination of the federal Production Tax Credits and the looming threat of the Lesser Prairie Chicken being listed as an endangered species could drastically effect the expansion of wind power in Oklahoma. Wind power development can produce jobs and provide economic development opportunities in our state.

#### **IV. Conclusion**

OG&E wants to thank this Committee for allowing us to present our views and provide our perspective. We would hope that the result of the hearing today would be for

the Committee to work together on a bi-partisan basis to see the objectives of President Obama's Executive Order 13563 become elemental drivers of all that EPA, the Fish and Wildlife Service and all the federal agencies do in order to avoid adverse impact on energy production in Oklahoma and throughout the nation. We are pleased to provide any further information that the Committee may think is useful.

**Patricia D. Horn (Trish)**  
**Vice President, Governance, Environmental**  
**Health & Safety; Corporate Secretary**  
**OGE Energy Corp.**

Trish Horn serves as Vice President - Governance, Environmental, Health and Safety; Corporate Secretary for OGE Energy Corp. and Oklahoma Gas and Electric Company.

Ms. Horn was promoted to this role for OGE in 2010 where she works in corporate governance, coordinating internal governance and the OGE Board of Director activities. She also leads the corporate environmental, health & safety organization.

Ms. Horn has worked for OGE since 1997 and was previously general counsel and vice president legal, regulatory and EH&S for Enogex, its midstream energy company.

Prior to joining Enogex in 1997 she was a partner in the Oklahoma City law firm of Hall, Estill, Gable, Golden and Nelson. Her practice focused on energy, environmental, business transactions and employment law.

Ms. Horn participates in various committees of energy, legal and executive organizations. She serves on the boards of directors of the OKC Philharmonic and the Environmental Federation of Oklahoma. She has been a speaker for a variety of energy and legal conferences. She enjoys volunteering for civic and charitable organizations.

Horn holds a bachelor's degree from Southern Nazarene University and a juris doctorate from the University of Oklahoma.

*June 2012*

Committee on Oversight and Government Reform  
Witness Disclosure Requirement – "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name: Patricia D. Horn

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Oklahoma Gas & Electric Company  
Vice President, Governance and Environment Health & Safety,  
and Corporate Secretary of OGE Energy Corp.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

- Department of Energy Smart Grid Investment Award No. DE-OB0000206  
for \$130 million.
- OGE sells power at retail and wholesale to various federal entities.
- Purchase of distribution system at Tinker Air Force Base.

I certify that the above information is true and correct.

Signature:

Date:

Patricia D. Horn

July 10, 2012