



Oklahoma Rate Case Raises Questions

A rate case before Oklahoma's Corporation Commission, which regulates public utilities in the state, involving payment for extra electricity needed due to a severe winter storm in 2021 is raising questions. Several other states were also affected by the storm.

Shortly after Bob Anthony, the heir of the Anthony Stores fortune, was elected to the Corporation Commission in Oklahoma, a lawyer who was the lobbyist for several utilities regulated by the Commission came to visit him. At the end of the meeting, the lobbyist left several one hundred-dollar bills on Anthony's desk, which led Anthony to place a call to then-U.S. attorney Bill Price. Anthony and Price had known each other since junior high school.



Oklahoma Corporation Commissioner Bob Anthony (AP Images)

Price asked Anthony to consider wearing a wire to provide evidence of corruption in the Oklahoma Corporation Commission, which he did. Anthony's work led to an exposure of corruption, sending the lobbyist and one of Anthony's fellow commissioners to prison.

Since Anthony's election in 1988, he has been a thorn in the side of both utilities in the state, and often, his fellow commissioners. It is likely that many are glad that Anthony is in his last six-year term on the Commission.

Anthony is a stickler for following the law and the state Constitution. Article 10 of the state constitution requires a balanced budget, and Anthony contends that since state government is a consumer of electricity and other power from these regulated industries, the securitization bonds the utilities are seeking is a violation of those clauses forbidding the putting of the state into debt.

Securitization is the conversion of an asset, such as a loan, into marketable securities, usually to raise money by selling them to other investors. This is what happened with the 2008 financial meltdown that almost sent America into an economic depression, when home mortgages of questionable value were thus securitized. The U.S. government bailed out many mega-banks, leaving the American taxpayer to pay the debt.

This method of securitization was sought by some of Oklahoma's largest utilities, such as Oklahoma Gas and Electric, and Oklahoma Natural Gas, to pay for the increased energy buys they made as a result of the storm. The Oklahoma Development Finance Authority reached an agreement with major users of electricity in the state, such as Walmart and Oklahoma Industrial Energy Consumers, who will receive a better deal than the average rate payer in the state.

In August of last year, the attorney general of Oklahoma expressed his support for the use of securitization bonds under the Regulated Utility Consumer Protection Act passed by the legislature in 2021. "The lower interest rates of securitization bonds will save consumers significant money over a



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likely term around 20 years,” wrote Jared Haines, an assistant attorney general. (The eventual bond case was actually 28 years).

Anthony argues that this is not true, as several other expenses, such as lawyer fees, are being put into the bonds.

Interestingly, the Oklahoma Supreme Court issued a one-page order this month, inviting the attorney general to enter the case, if he chooses to do so.

“The attorney general for the state of Oklahoma may intervene in this proceeding by filing an entry of appearance showing an intent to intervene and be heard in this proceeding no later than March 1, 2022, or advise the Court why the attorney general will not intervene in this matter by that same date.” (Emphasis added). In Oklahoma, the attorney general is supposed to represent consumers in utility rate cases before the Corporation Commission and before the state’s Supreme Court. So far, the A.G.’s office has not offered any explanation as to why they are not intervening in this particular case.

The attorney who represented the Oklahoma Industrial Consumers is a member of the same Tulsa law firm where Oklahoma’s attorney general, John O’Connor, was an attorney, before Governor Kevin Stitt appointed him to fill the unexpired term of former Attorney General Mike Hunter.

“At every stage, our political leaders have failed to look out for the public interest,” charged Voices Organized in Civic Engagement (VOICE).

Glendon Jergensen, president of VOICE, added, “To date, the legislative and executive branches as well as the Corporation Commission and attorney general have used little of their power to try and find out what happened and determine how we might prevent it from happening again.”

The Corporation Commission approved the deal by a 2-1 vote, with Commissioner Anthony voting no.

One of the commissioners, Dana Murphy, received campaign contributions from the lead attorney in the case for Oklahoma Gas and Electric. When questioned about this by the Journal Record newspaper, Murphy released letters from both the Ethics Commission and the attorney general that addressed this question. The Ethics Commission said the issue involved a statute, not a rule made by the Commission, and was therefore outside of their jurisdiction.

Murphy argued that the lawyers who worked regulated entities were not *directly* employed by them, because they were employed through their firms.

All three members of the Corporation Commission are Republicans, as is the attorney general, the governor, and almost all of the members of the state legislature. When Anthony contributed to ending the corruption at the Commission in the 1990s, state government was dominated by the Democratic Party.

What this case illustrates is that laws and rules and even constitutions are meaningless, unless the people we elect follow them. As the famed statesman, John Randolph of Roanoke — a cousin of Thomas Jefferson — said early in the 19th century, the Constitution of the United States is “just parchment” (a piece of paper) if we don’t force out elected officials to follow it.

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