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ORIGINAL

APPENDIX A

8a



2026 OK 24

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
OF OKLAHOMA

APR 21 2026

SELDEN JONES
CLERK

TOM GANN,

Appellant,

v.

STATE OF OKLAHOMA, ex rel.,
OKLAHOMA CORPORATION
COMMISSION, and PUBLIC SERVICE
COMPANY of OKLAHOMA,

Appellees.

No. 122,861
FOR OFFICIAL PUBLICATION

Rec'd (date)	4-21-26
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APPEAL FROM OKLAHOMA CORPORATION COMMISSION,
CAUSE NO. PUD2023-000086, ORDER NO. 746624

¶ 0 The Oklahoma Corporation Commission entered a final order in a public utility rate proceeding. State Representative Tom Gann, *pro se*, appealed that final order (Final Order). Under Okla. Const. art. IX, § 20, this Court retained the appeal as the Court with exclusive appellate jurisdiction. We conclude that the issues Gann raises in this appeal were not raised and exhausted before the Corporation Commission. The Final Order of the Corporation Commission is affirmed.

ORDER OF THE CORPORATION COMMISSION AFFIRMED

Tom Gann, Pro Se, Oklahoma City, Oklahoma, for Appellant.

Garry M. Gaskins, Ellen Carr, Ashley N. Youngblood, Thomas Grossnicklaus, Office of the Attorney General of the State of Oklahoma, Oklahoma City, Oklahoma, for Appellee State of Oklahoma.

Patricia L. Franz, Daniel P. Boyle, Oklahoma Corporation Commission, Oklahoma City, Oklahoma, for Appellee Oklahoma Corporation Commission.

Melanie W. Rughani, Anthony J. Hendricks, Randall J. Yates, Crowe & Dunlevy, P.C., Oklahoma City, Oklahoma, for Appellee Public Service Company of Oklahoma.

Thomas P. Schroedter, Hall Estill Hardwick Gable Golden & Nelson P.C., Oklahoma City, Oklahoma, for Appellee Oklahoma Industrial Energy Consumers.

JETT, J.:

¶ 1 The Oklahoma Constitution delegates ratemaking for public utilities to the Corporation Commission. Okla. Const. art. IX, § 18. Guided by Article IX's text and structure, this Court has required issues involving ratemaking to be presented and decided by the Corporation Commission in the first instance. *State ex rel. Cartwright v. Okla. Nat. Gas Co.*, 1982 OK 11, ¶ 12, 640 P.2d 1341, 1346; *Turpen v. Okla. Corp. Comm'n*, 1988 OK 126, ¶ 28, 769 P.2d 1309, 1321; *Okla. Elec. Co-op., Inc. v. State ex rel. Okla. Corp. Comm'n*, 1995 OK 91, ¶ 18, 903 P.2d 321, 324–25. The requirement that issues be exhausted at the Corporation Commission ensures that the judicial branch does not intrude on the Commission's policymaking prerogative.

¶ 2 In this case, Appellant Representative Tom Gann asks this Court to reverse the Corporation Commission's order modifying the rates charged by Public Service Company of Oklahoma (PSO) to customers. Mr. Gann seeks this relief based on issues that were not presented to and decided by the Commission. During the Commission proceedings, neither Gann nor any of the participants at the Corporation Commission argued that the evidence presented regarding an audit required by 74 O.S. § 9078 was insufficient. Similarly, no one moved to disqualify Corporation Commissioner Todd Hiatt from participating in this matter at the Commission.

¶ 3 Article IX of the Oklahoma Constitution and Supreme Court precedent require that we refrain from deciding these issues in the first instance on appeal. *Cartwright*, 1982 OK 11, ¶ 12, 640 P.2d at 1346; *Turpen*, 1988 OK 126, ¶ 28, 769 P.2d at 1321; *Okla. Elec. Co-op.*, 1995 OK 91, ¶ 18, 903 P.2d at 324–25. No record was

developed on these issues at the Commission, and the elected commissioners did not have an opportunity to exercise their judgment.

¶ 4 Gann's collateral attack on three unappealed orders entered at least two years ago also fails. As with Gann's arguments supporting his direct appeal of the Final Order setting PSO's rates, no party collaterally attacked the previous final orders in the proceedings before the Commission. This fact alone precludes Gann's collateral attack.

¶ 5 Additionally, Gann has not demonstrated that the Final Order directly before this Court relied on the previous orders to even raise the possibility of a collateral attack. And he is statutorily prohibited from contesting the validity of the Winter Storm Cost charge authorized by the Final Financing Order in a previous Commission cause, which provides the revenue to repay ratepayer-backed bonds previously approved by this Court. 74 O.S. § 9079; *see also In re Okla. Dev. Fin. Auth.*, 2022 OK 48, ¶ 13, 511 P.3d 1048, 1051. Gann's collateral attack lacks merit.

¶ 6 The Corporation Commission's Final Order (No. 746624) is affirmed.¹

I.

¶ 7 On April 23, 2021, the Oklahoma Legislature enacted the February 2021 Regulated Utility Consumer Protection Act (the Act) to address "the significant economic impact of the extreme weather event that occurred during the month of

¹ In Representative Gann's Application to Exceed Page Limit and Take Judicial Notice dated Oct. 29, 2020, Representative Gann asked this Court to take judicial notice of what is purported to be a prior version of 74 O.S. § 9078. This Court reserved ruling on the motion. (Order dated Nov. 6, 2025). That motion is now denied.

February 2021.” 74 O.S. § 9071. “The cost of natural gas for the Oklahoma utilities during the two weeks of extreme cold exceeded their entire fuel acquisition cost in 2020.” *In re Okla. Dev. Fin. Auth.*, 2022 OK 41, ¶ 2, 510 P.3d 165, 166–67. Absent legislative intervention, utility customers would have faced unprecedented utility bills. *Id.* at 166. The Act allowed ratepayer-backed bonds to issue so customers could pay the utility bill resulting from the winter storm at lower amounts over a longer period. 74 O.S. § 9071.

¶ 8 On April 28, 2021, PSO filed an application to establish and securitize the costs incurred due to the February 2021 extreme weather event in PUD2021-000076. The Commission entered a Final Financing Order (No. 723434) approving PSO’s fuel and financing costs on February 10, 2022. The Final Financing Order permitted the Oklahoma Development Finance Authority to issue ratepayer-backed bonds. 74 O.S. § 9076(A)(1). PSO was authorized to add a Winter Storm Cost charge (WSC charge) to the monthly bill of every customer to service and repay the ratepayer-backed bonds. 74 O.S. §§ 9072(5), 9072(8), 9074(A)(3).²

¶ 9 Upon approval of the Final Financing Order, Oklahoma Development Finance Authority filed an application to approve the bonds, which this Court

² The WSC charges constitute an irrevocable and nonbypassable mechanism “under which the regulated utility will recover from customers an amount necessary to service, repay and administer the ratepayer-backed bonds.” *Id.* § 9074(A)(3). “The rights and interests to receive revenues collected by a regulated utility through the irrevocable and nonbypassable mechanism” constitutes “a securitization property right.” 74 O.S. § 9075(A). The Financing Order contemplated that PSO would sell the securitization property to the Oklahoma Development Finance Authority, who in turn and simultaneously would issue the bonds, and pledge the securitization property and any other collateral to the payment of the bonds. *See id.* § 9077(A). The proceeds of the bond sale would be paid to PSO. *Id.*

granted. *In re Okla. Dev. Fin. Auth.*, 2022 OK 48, ¶ 1, 511 P.3d at 1049. Pursuant to 74 O.S. § 9079, “that decision shall be conclusive . . . , and thereafter the bonds so approved and *the revenues pledged to their payment shall be incontestable in any court in this state.*” (Emphasis added.) The revenues pledged to the payment of the bonds are the amounts collected from PSO’s customers pursuant to the WSC charge.

¶ 10 The Act set forth continuing requirements for public utilities that securitized winter costs. It requires that “[a]n audit . . . shall be part of any general rate case filed by a regulated utility currently affected by a financing order with outstanding ratepayer-backed bonds.” *Id.* § 9078. This audit compares “all amounts received from customers” by the utility because of the cost recovery charge with “the amounts paid by the utility to the Oklahoma Development Finance Authority or other holder of securitization property.” *Id.*

¶ 11 On November 8, 2023, PSO gave notice at the Corporation Commission that it intended to initiate a ratemaking proceeding. Because PSO previously issued a bond pursuant to the Act, the ratemaking proceeding was subject to 74 O.S. § 9078. The Attorney General, who represents and protects the collective interests of all utility consumers of this state in rate-related proceedings, entered an appearance in the proceeding. *See* 74 O.S. § 18b(A)(21). Other parties to the Commission proceeding included the Petroleum Alliance of Oklahoma, Oklahoma Industrial Energy Consumers, American Association of Retired Persons, Walmart, and the United States Department of Defense. Appellant Gann did not file an entry of appearance or otherwise attempt to intervene at the Corporation Commission.

¶ 12 On January 31, 2024, PSO filed its formal application to modify its rates. PSO introduced thousands of pages of evidence in support of its application. Throughout the proceeding, PSO submitted additional testimony and documentary evidence. In response, the various parties to the proceeding filed opposing responsive testimony and documentary evidence also spanning thousands of pages. In total, the record in this proceeding is over 16,000 pages. Appellant Gann proffered no responsive testimony or documentary evidence.

¶ 13 On August 28, 2024, the Commission heard public comment on the ratemaking application. Gann did not appear and, at the time, had submitted no written comment.

¶ 14 At the beginning of October 2024, all parties except AARP entered an Amended Joint Stipulation and Settlement Agreement.³ The Commissioners and an administrative law judge held a joint hearing to consider the proposed settlement agreement and the stipulated rates on October 3, 2024. Commissioners Todd Hiatt and Kim David were present. No party moved to disqualify Commissioner Hiatt or asked Hiatt to recuse.⁴

³ AARP opposed the settlement agreement on the grounds that it did not include an agreed cap on rate increases for residential customers. The exceptions filed by AARP have no connection to the appeal filed by Mr. Gann.

⁴ Gann repeatedly references news reports that are not part of the evidentiary record in this case alleging extremely troubling behavior by Commissioner Hiatt. Because no party moved to disqualify Commissioner Hiatt at the Corporation commission, no factual record was developed regarding his alleged conduct. As detailed below, we offer no opinion as to the propriety (or impropriety) of Commissioner Hiatt's conduct because the issue was not developed to allow for judicial review. Neither do we decide the legal question of whether a commissioner is subject to disqualification in a ratemaking proceeding.

¶ 15 At the October 3rd hearing, PSO, Oklahoma Industrial Energy Consumers, the Attorney General, and the Commission's Public Utility Division presented witnesses who testified that the stipulated rates were fair, just, and reasonable. Andrew Scribner from the Public Utilities Division also testified and filed testimony about the audit of all amounts received from customers to pay the ratepayer-backed bonds as set forth in 74 O.S. § 9078. No party objected to PSO's compliance with § 9078, and no evidence was presented to suggest that § 9078 was not followed.⁵ Gann did not participate in the October 3, 2024 hearing.

¶ 16 On October 25, 2024, the administrative law judge issued a report and recommendation regarding the settlement agreement and the stipulated rates presented at the October 3rd hearing. The report noted that Mr. Scribner's testimony about the PSO audit complied with 74 O.S. § 9078 and recommended approval of the rates, charges, and tariffs in the amount contemplated in the settlement agreement. No party objected to the administrative law judge's report and recommendation on the basis that PSO failed to comply with 74 O.S. § 9078.

¶ 17 Rather than participating in the Commission's objection and evidentiary process, Appellant Gann chose to submit comments after the October 3rd settlement and rate hearing concluded, the record in the proceeding closed, and the objection

⁵ Commissioner Anthony filed a public comment in this case on March 25, 2024. The comment was titled, "Commissioner Bob Anthony asks, 'WHERE'S THE AUDIT?' on behalf of utility customers. Spoiler Alert: There aren't any yet." A public comment is not evidence; assuming for purposes of the argument that a sitting Commissioner could raise an issue (no small assumption), Commissioner Anthony did not "either by affirmative evidence, or objection," raise the issue that Mr. Gann now attempts to raise on appeal. *Okla. Elec. Co-op., Inc.*, 1995 OK 91, ¶ 18, 903 P.2d at 325.

period to the report and recommendation expired. Gann submitted four comments on December 16, 2024, and a fifth comment on December 19, 2024. None of Gann's comments addressed PSO's compliance with 74 O.S. § 9078. Instead, all five comments were targeted at Commissioner Hiatt's participation in the proceeding in light of sexual misconduct allegations made against the commissioner.⁶ Neither Gann nor any other party took the affirmative step of moving to disqualify Hiatt.

¶ 18 On January 15, 2025, the Commission entered a Final Order approving the settlement agreement and the stipulated rates, charges, and tariffs.

¶ 19 Mr. Gann appealed the Commission's Final Order on February 13, 2025. Gann argues that the Final Order should be reversed because Commissioner Hiatt participated in the proceedings. He also claims PSO failed to produce sufficient evidence that it satisfied 74 O.S. § 9078. Finally, Gann collaterally attacks orders from two previous Commission proceedings.

II.

¶ 20 We first address standing and conclude that Mr. Gann has standing to appeal the Final Order. Standing is a threshold question to be determined before the Court addresses any other issue. *Cox Oklahoma Telecom, LLC v. State ex rel. Okla. Corp. Comm'n*, 2007 OK 55, ¶ 5, 164 P.3d 150, 154. The Oklahoma Constitution provides a unique rule for who has the right to appeal a Corporation Commission order prescribing rates. "From any action of the Corporation Commission prescribing

⁶ After the Commission entered the final order, Gann submitted two additional comments on February 11, 2025.

rates . . . appeal may be taken by any party affected, or by any person deeming himself aggrieved by any such action . . . directly to the Supreme Court of the State of Oklahoma” Okla. Const. art. IX, § 20. Thus, there are two categories of appellants: affected parties and persons (*i.e.* non-parties) aggrieved by the ratemaking order.

¶ 21 Representative Gann was not a party to the Corporation Commission proceeding; however, he is a person aggrieved by the ratemaking order. An aggrieved person is one whose pecuniary interest in the subject matter is directly and injuriously affected. *See Missouri-Kansas-Texas R. Co. v. State*, 1985 OK 108, ¶ 13, 712 P.2d 40, 42–43. A ratepayer subject to a ratemaking order is a person aggrieved by the order. Because Mr. Gann is a PSO ratepayer, he has standing to appeal the PSO rate established by the Commission.⁷

III.

A.

¶ 22 While Gann meets the threshold requirement of standing, the specific issues he attempts to raise are not subject to this Court’s appellate review in this case. According to Article IX, Section 20 of the Oklahoma Constitution, “[t]he Supreme Court’s review of appealable orders of the Corporation Commission shall be judicial only” Generally, a litigant may not raise an issue for the first time on appeal. *Bane v. Anderson, Bryant & Co.*, 1989 OK 140, ¶ 24, 786 P.2d 1230, 1236. The

⁷ Gann’s standing in this case derives from his status as a PSO ratepayer. His position as a member of the House of Representatives does not, in itself, confer standing. *See State ex rel. Fugate v. Stitt*, 2025 OK 54, ¶ 15, 577 P.3d 265, 270.

same rule—that issues must ordinarily be exhausted in the original tribunal—applies to appeals from administrative agencies. *Bivins v. State ex rel. Okla. Mem'l Hosp.*, 1996 OK 5, ¶ 19, 917 P.2d 456, 464. And we have applied the issue exhaustion requirement to appeals from a Corporation Commission final order. *Cartwright*, 1982 OK 11, ¶ 12, 640 P.2d at 1346; *Turpen*, 1988 OK 126, ¶ 28, 769 P.2d at 1321; *Okla. Elec. Co-op.*, 1995 OK 91, ¶ 18, 903 P.2d at 324–25.

¶ 23 In *Cartwright v. Oklahoma Natural Gas Co.*, the Attorney General appealed a final order from a Corporation Commission ratemaking proceeding. 1982 OK 11, ¶¶ 1–3, 640 P.2d at 1343–44. The Court held that “matters which could have been presented before the Commission . . . and which were not presented . . . are precluded from review by this court on appeal by a party who is adversary thereto.” *Id.* ¶ 12, 640 P.2d at 1346. The Court explained, “[o]rderly procedure and good administration require that objections available in proceedings . . . be made while [the Commission] has an opportunity for reconsideration and correction at the time appropriate under its practice.” *Id.* ¶ 11, 640 P.2d at 1346. The requirement that an issue be exhausted prevents an adversary from sitting quietly by until a proceeding is closed to lodge its complaint, which could have been addressed if timely presented to the Commission. *Id.* This furthers “the purposes for which the Commission was created and of the adversary system which gives those purposes fulfilment.” *Id.*

¶ 24 Issue exhaustion applies with equal force to parties and non-parties to the underlying Corporation Commission proceeding. In *Oklahoma Electric Co-op v. State*, the Oklahoma Electric Cooperative appealed a final order by the Commission in a

proceeding in which it declined to intervene and become a party. 1995 OK 91, ¶¶ 7-9, 903 P.2d at 323. Though the cooperative made a public comment, it “failed to present either by affirmative evidence, or objection, those issues which it now raises on appeal.” *Id.* ¶ 18, 903 P.2d at 325. Applying *Cartwright*, this Court concluded that the non-exhausted issues would not be entertained on appeal. *Id.*

B.

¶ 25 As in *Cartwright* and *Oklahoma Electric Co-op*, Mr. Gann raises issues on appeal that could have been squarely presented to the Corporation Commission but were not. This is fatal to the appeal in this case.

1.

¶ 26 Mr. Gann’s first argument—that the Final Order should be reversed because PSO did not introduce sufficient evidence of a § 9078 audit—fails for multiple reasons. Andrew Scribner from the Public Utilities Division testified at the October 3rd hearing that PSO complied with the audit requirement of 74 O.S. § 9078. Neither Gann nor any other party objected to Mr. Scribner’s live testimony or to Scribner’s written testimony about compliance with § 9078. Quite logically, the Commission rules contemplate that evidentiary objections are preserved by actually making the objection. Okla. Admin. Code § 165:5-13-3(f). In this case, the issue of the sufficiency of evidence to satisfy § 9078 was not exhausted at the Commission because there was no objection to the admissibility of Scribner’s testimony nor to the sufficiency of any other evidence regarding the § 9078 audit.

¶ 27 Similarly, neither Gann nor any other party submitted exceptions to the administrative law judge’s report and recommendation that referenced Scribner’s

testimony about § 9078. *See* Okla. Admin. Code § 165:5-13-5. And no one moved for rehearing nor applied to vacate the Final Order that also referenced § 9078 compliance. *See* Okla. Admin. Code § 165:5-17-1(a). If Gann was permitted to pursue his § 9078 argument now for the first time on appeal, it would allow exactly what *Cartwright* sought to prohibit—quietly sitting by until it is no longer possible to cure an alleged defect in the original tribunal. 1982 OK 11, ¶¶ 7, 11, 640 P.2d 1341, 1345–46.

¶ 28 Finally, there is no support in Oklahoma law that public comments made by former Commissioner Anthony regarding audits under the Act constitutes issue exhaustion. *See supra*. n.5. This Court has never held that a Corporation Commissioner, who is the decisionmaker in a ratemaking proceeding, can make a substantive objection that will raise an issue for appellate review. Moreover, the Commission rules specify that public comments are not evidence but merely argument. Okla. Admin. Code § 165:5-13-3(k). *Oklahoma Electric Co-op* specifies that issues are exhausted and preserved by affirmative evidence or objection. 1995 OK 91, ¶ 18, 903 P.2d at 325. Making a public comment does not suffice. *Id.* ¶ 7, 903 P.2d at 323. A single Commissioner's public comment does not exhaust and develop an issue for appellate review.

2.

¶ 29 For similar reasons, Mr. Gann fares no better with his second argument that the Final Order must be reversed because Commissioner Hiatt participated in the ratemaking proceedings. We need not reach the issue of whether a Corporation Commissioner may ever be disqualified in a ratemaking proceeding because no party

in this case moved to disqualify Commissioner Hiett at the Commission. Mr. Gann had ample opportunity to do so. *See* Okla. Admin. Code § 165:5-9-4(a). Instead, he waited until the record in the case was closed and filed a series of public comments, which are neither evidence nor legal objections. Okla. Admin. Code § 165:5-13-3(k); *Okla. Elec. Co-op.*, 1995 OK 91, ¶ 18, 903 P.2d at 324–25.

¶ 30 Because no party moved to disqualify Commissioner Hiett, we conclude that this issue was not exhausted and cannot be raised by Mr. Gann for the first time in this appeal.

C.

¶ 31 Mr. Gann's collateral attack of previous Corporation Commission orders is without merit. A litigant collaterally attacks a judgment when the attack is pursued in a manner not provided by law; "that is, in some other way than by appeal, writ of error, certiorari, or motion for a new trial." *In re Hyde*, 2011 OK 31, ¶ 11, 255 P.3d 411, 414 (citing *State ex rel. Comm'n of Land Office v. Corp. Comm'n*, 1979 OK 16, ¶ 9, 590 P.2d 674, 677). Mr. Gann seeks to overturn three orders entered by the Corporation Commission in two previous Commission causes, PUD2021-000076 and PUD2022-000093.⁸ This Court's review shall be judicial only, and Gann seeks relief this Court cannot and will not afford for multiple reasons.

⁸ Mr. Gann collaterally attacks three Commission orders in this appeal. The first—in PUD2021-000076—is the Final Financing Order (No. 723434) financing order approving the issuance of bonds and establishing the revenues to pay the bonds. The second and third orders—in PUD2022-000093—are a final order (No. 738226) and an order modifying the final order (No. 738571) in a previous rate case involving PSO.

¶ 32 First, no party at the Corporation Commission pursued the collateral attack that Gann presents to this Court. Gann's collateral attack suffers the same fatal flaw as the direct appeal: the issue was not raised and exhausted at the Corporation Commission. *Cartwright*, 1982 OK 11, ¶ 12, 640 P.2d at 1346; *Okla. Elec. Co-op.*, 1995 OK 91, ¶ 18, 903 P.2d at 324–25. This Court will not entertain Gann's collateral attack in the first instance on appeal.

¶ 33 Second, Gann fails to demonstrate what the law requires at the outset for this Court to consider the merits of the collateral attack. He fails to show that the Commission relied on any of the collaterally attacked orders in entering the order on direct appeal. This Court considers the merits of a collateral attack when a litigant shows that the order on direct appeal relied on the previous orders subject to the collateral attack. *State ex rel. Comm'rs Land Office v. Corp. Comm'n*, 1979 OK 16, ¶ 10, 590 P.2d 674, 677. Here, the Final Order on direct appeal modified the rates that PSO may charge, but the Final Order did not alter the WSC charge established by the Final Financing Order in PUD2021-000076. Similarly, this ratemaking does not rely on the final orders in PSO's previous ratemaking in PUD2022-000093. Because the Commission in this case did not rely on the order from PUD2021-000076 or PUD2022-000093, the collateral attack on Orders No. 723434, No. 738226, and No. 738571 must fail.

¶ 34 Third, Gann's attack on the validity of the Winter Storm Cost charge authorized by the Final Financing Order (No. 723434) is prohibited by 74 O.S. § 9079. The Final Financing Order in PUD2021-000076 authorized the Oklahoma

Development Finance Authority to issue ratepayer-backed bonds and authorized PSO to collect the WSC charges to repay the bonds. Neither Gann nor anyone else appealed the Final Financing Order.

¶ 35 Upon approval of the Final Financing Order, the Oklahoma Development Finance Authority filed an application with this Court to approve the bonds. *In re Okla. Dev. Fin. Auth.*, 2022 OK 48, ¶ 1, 511 P.3d at 1049. This Court approved the bonds and concluded that “the ratepayer-backed bonds for [PSO] conform to the Act as PSO’s Final Financing Order also sets out the parameters of the bonds’ issuance, terms, conditions, requirements, and interest.” *Id.* ¶ 10, 511 P.3d at 1051.

¶ 36 In Mr. Gann’s collateral attack, he requests that the Final Financing Order be declared void and that this Court order the Corporation Commission

(a) to prevent any further collection of the WSC charge implemented pursuant to [the Final Financing Order] . . . and, (b) to order the amounts that have already been collected to be refunded to customers, because a void judgment is no judgment at all.

(Gann Brief-in-Chief at 48 (citation modified).) The relief Mr. Gann requests is barred by statute. According to 74 O.S. § 9079,

“[t]he decision of the Court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the Authority, the state, its officers, agents and instrumentalities, and all other persons, and thereafter the bonds so approved and *the revenues pledged to their payment shall be incontestable in any court in this state.*”

(Emphasis added.) The amounts collected from PSO’s customers pursuant to the WSC charge are the “revenues pledged” to the payment of the ratepayer-backed bonds previously approved by this Court. Section 9079 definitively prohibits the type of collateral attack Gann lodges against the Final Financing Order.

¶ 37 We reject Mr. Gann's attempt to collaterally attack orders in PUD2021-000076 and PUD2022-000093.

IV.

¶ 38 Appellant Gann's attempt to overturn the Final Order in PUD2023-000086 cannot succeed because the issues he raises on appeal were not exhausted at the Corporation Commission. We also reject Gann's attempt to collaterally attack orders in PUD2021-000076 and PUD2022-000093.

FINAL ORDER OF THE CORPORATION COMMISSION AFFIRMED

Rowe, C.J. (by separate writing), Winchester, Edmondson, Combs, Gurich, Darby, Kane, and Jett, JJ., concur.

Kuehn, V.C.J., not participating.

ORIGINAL

24a



2026 OK 24
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 21 2026

SELDEN JONES
CLERK

Tom Gann,

Appellant,

v.

State of Oklahoma, *ex rel.*, Oklahoma
Corporation Commission, and Public
Service Company of Oklahoma,

Appellees.

Case No. 122,861

FOR OFFICIAL
PUBLICATION

Rec'd (date)	7-21-20
Posted	PE
Mailed	PE
Distrib	PE
Publish	☒ yes ☐ no

ROWE, C.J., CONCURRING:

¶1 In February 2021, record-setting cold temperatures plagued the State of Oklahoma for fourteen (14) days, causing a shortage of natural gas. Oklahoma's utility companies continued to purchase natural gas during the winter storm at incredibly high prices, which exceeded their entire fuel acquisition cost in 2020. To recover fuel expenses, the Oklahoma Legislature passed the February 2021 Regulated Utility Consumer Protection Act¹ ("the Act") to provide for the issuance of ratepayer backed bonds to Oklahoma utility companies and "allow customers to pay their utility bills at a lower amount over a longer period." 74 O.S. § 9071.

¶2 The Public Service Company of Oklahoma ("PSO"), among other utility companies, submitted its application with the Corporation Commission to determine that PSO incurred \$675,200,000 in fuel costs during the February 2021

¹ 74 O.S.2021, §§ 9070-9081.

winter storm. PSO, the Commission's Public Utility Division, the Oklahoma Attorney General's office, and other large stakeholders (including the American Association of Retired Persons (AARP), Walmart, and Oklahoma Industrial Energy Consumers) entered settlement negotiations regarding PSO's application. *Id.* All the parties, except AARP and the Attorney General, entered into a Settlement Agreement that approved PSO to recover \$688,000,000. *Id.*

¶3 After evidence for and against the Settlement Agreement was presented in hearings before an administrative law judge and the Corporation Commission, the Corporation Commission issued a Final Financing Order approving the \$688,000,000 in fuel costs, financing costs, and interest. Thereafter, the Oklahoma Development Finance Authority filed its application for this Court to assume original jurisdiction for the approval of the ratepayer backed bonds, as required by 74 O.S. § 9079, which we approved in *In re Application of Oklahoma Development Finance Authority*, 2022 OK 48, 511 P.3d 1048.

¶4 In January 2024, PSO filed an application with the Corporation Commission requesting approval to increase rates and charges. Following hearings before an administrative law judge and the Commission, the application was approved, and a final order was entered January 15, 2025. Mr. Gann subsequently filed this appeal raising three issues on appeal:

- (1) Whether the Commission failed to conduct an audit of PSO's 2021 Winter Storm Bonds in accordance with 74 O.S. § 9078;

(2) Whether Commissioner Hiatt should have recused himself in the underlying case, and if his failure to do so violated PSO customers' due process rights; and

(3) Whether the Ethics Commission has the exclusive power to interpret Ethics Rules.

¶5 In 2022, to pay for the unprecedented costs of the winter storm, we approved \$3,270,000,000 in bonded indebtedness to be borne by the people of Oklahoma—an amount near one third of the State's FY 2022 budget appropriations of approximately \$9,060,000,000. Because Protesters did not raise their concerns below or appeal the Final Financing Order, their questions concerning the approval of over 3 billion dollars went unanswered. And even though the Protesters submitted their legitimate questions to us concerning the settlement agreement, our review was limited to determining whether the bonds facially violated the law. 74 O.S. § 9079.

¶6 Today, the bell has been rung and cannot be unring. Once we approved the issuance of the bonds, state law forbids any collateral attack on their validity. 74 O.S. § 9079. I am sympathetic that questions then and now remain unanswered, but the Court's task is to say what the law is not what it should be. *Bailey v. State of Oklahoma ex rel. Service Oklahoma*, 2025 OK 34, 572 P.3d 1026, 1034 (Rowe, C.J., concurring in part, dissenting in part). Because the issues Mr. Gann raises before us were not exhausted below, they cannot now be raised on appeal.



APPENDIX B 27a
ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUN 29 2026

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
WILSON JONES
CLERK
MONDAY, JUNE 29, 2026

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

122,107 Karina Gaspar Serrano and Yolanda Serrano Rubio v. Joyce Brown
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

→ 122,861 Tom Gann v. State of Oklahoma *ex rel.* Oklahoma Corporation
Commission and Public Service Company of Oklahoma
Petition for rehearing is denied.
CONCUR: Rowe, C.J., Winchester, Edmondson, Gurich, Darby, Kane,
and Jett, JJ.
DISSENTS: Combs, J.
NOT PARTICIPATING: Kuehn, V.C.J.

123,085 In the Matter of J.T., a deprived minor child:
Lindsey Tailor v. State of Oklahoma
Petition for certiorari is denied.
CONCUR: Kuehn, V.C.J., Winchester, Edmondson, Combs, Gurich,
Darby, Kane, and Jett, JJ.
DISSENTS: Rowe, C.J.

124,098 J&R Shotcrete & Pools, LLC v. The Honorable Michael Tupper; and
Sarah Hilder; Emi Alsobrook, OKC Pool Service, LLC, and Cary Daniels
Application to assume original jurisdiction is denied.
ALL JUSTICES CONCUR.

124,130 Pacer D. Eubanks v. The Honorable John David Luton, Special Judge
District Court of Wagoner County; and Anna L. Eubanks
Application to assume original jurisdiction is denied.
CONCUR: Rowe, C.J., Kuehn, V.C.J., Winchester, Edmondson, Combs,
and Jett, JJ.
DISSENTS: Gurich, Darby, and Kane, JJ.
Darby, J., dissenting:
"I would remand for entry of a proper order."

Rec'd (date)	6-29-26
Posted	
Mailed	
Distrib	
Publish	yes ☒ no ☐

CHIEF JUSTICE