

FILED

**BEFORE THE INSURANCE COMMISSIONER OF THE SEP 01 2026
STATE OF OKLAHOMA**

IN RE: HEARING PURUSANT TO 36 O.S. § 984)
AS TO WHETHER THE OKLAHOMA)
HOMEOWNER'S INSURANCE)
MARKET IS NONCOMPETITIVE)

**INSURANCE COMMISSIONER
OKLAHOMA**
Case No. 26-0820-TRN

**RESPONSE TO THE ATTORNEY GENERAL'S OMNIBUS PRE-HEARING MOTION
AND PROPOSED STIPULATIONS**

The State of Oklahoma, *ex rel.* Glen Mulready, Insurance Commissioner (the "Department"), by and through counsel, Antuanya "Bo" DeBose and Nicole Nash, hereby responds to the Attorney General's ("OAG") Omnibus Pre-Hearing Motion (the "Motion") filed August 25, 2026. The Department respectfully requests this Hearing Examiner consider the following responses and proposed stipulations regarding pre-hearing relief, and in support states as follows:

I. BACKGROUND AND PROCEDURAL POSTURE

1. The Department agrees with the background and procedural posture stated in the Motion (¶¶ 1 through 5) and offers to stipulate to the same.

II. GOVERNING LEGAL FRAMEWORK

2. The Department agrees with and will stipulate to the governing legal framework stated in the Motion (¶¶ 6 through 11) with the exceptions enumerated below:

- a. The Department believes there is some ambiguity whether 36 O.S. § 984 establishes an individual proceeding or rulemaking proceeding under the Administrative Procedures Act ("APA"), 75 O.S. §§ 250 *et seq.* Section 984 refers to both an order and a rule. The APA defines a "rule" as, in part, "any agency statement or group of related statements of general applicability and future effect that implements,

interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency,” and defines an “individual proceeding” as “the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.” 75 O.S. § 250.3(9) and (20). In 2016, the Department held a noncompetitive market hearing regarding earthquake insurance and the procedure employed did not follow Article II of the APA. If necessary to ensure the fairness and integrity of the hearing, the Department does not object to application of Article II of the APA.

- b. Due process means that all parties with standing should have meaningful opportunity to be heard in a meaningful time and in a meaningful manner—not just the parties carrying the burden of proof.

III. RESPONSES TO THE OAG’S MOTIONS

Motion 1 – OAG’s Motion to Permit Expert Witnesses to Appear and Testify Remotely

3. The Department agrees that OAC 365:1-7-1(c) states appearances by parties of record and testimony by witnesses may be offered remotely, via telephone or other available electronic means at a hearing.

4. The Department agrees generally with the basis stated in the Motion (§§ 12 through 18) and offers to stipulate to allow the OAG’s expert witness to appear and testify remotely at the September 14, 2026 hearing (the “Hearing”).

5. Additionally, the Department requests that any of its own witnesses, if needed, be allowed to appear and testify remotely at the Hearing.

Motion 2 – OAG’s Motion for a Virtual Attendance Option for the Public

6. While the Department agrees that the determination at the conclusion of the Hearing is relevant to every homeowner in Oklahoma, the Department asks the Hearing Examiner not to enter an order directing the Hearing be live streamed or to permit remote observation.

7. **In person attendance is available.** The hearing will be held at the Oklahoma State Capital, in Multipurpose Room 100. This room is larger than most court rooms at the Oklahoma County Courthouse and has a greater seating capacity than any room at the Oklahoma Insurance Department.

8. **The hearing’s recording and transcript are both public record.** The Oklahoma Open Records Act (“OOR Act”) establishes that all records of public bodies and public officials shall be open to any person for inspection, copying, or reproduction. This very notion is the Oklahoma Supreme Court’s conclusion in the case cited in the Motion. (*See State ex rel. Oklahoma State Bd. of Med. Licensure & Supervision v. Rivero*, 2021 OK 31, ¶ 2, 489 P.3d 36, 41). The Department, as a state agency, qualifies as a public body subject to this mandate. The stated purpose of the OOR Act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently exercise their inherent political power. (*See 51 O.S. § 24A.2*). Oklahoma citizens and media, along with anyone else interested, are allowed to review the evidence and testimony given during the Hearing by simply requesting the recording and transcript. Therefore, no one is deprived of the opportunity to review the evidence presented and the arguments made during the hearing if the Hearing Examiner denies the request to live stream the hearing.

9. **There is no statutory requirement for public hearings to be live streamed.** While OAC 365:1-7-4(a) states all hearings shall be open to the public, there is no statute or regulation that require public hearings to be live streamed, or that require an option to view the hearing remotely. Further, the Department does not live stream its hearings and it does not possess the software to do so.

Motion 3—OAG’s Motion for Advance Disclosure of All Materials the Commissioner or Hearing Examiner Intends to Notice or Consider.

10. While the Department agrees to disclose all witnesses and exhibits it intends to present to the Hearing Examiner during the Hearing, the Department will only stipulate to doing so on the deadline set by the Hearing Examiner for all parties to exchange witness lists and pre-marked exhibits.

11. **There is no statutory requirement to produce records not intended to be presented during the hearing.** The notice issued in this matter on July 14, 2026 complies with 75 O.S. § 309(B). Further, § 309(F)(2) states the record in an individual proceeding shall include evidence received or considered *at the individual proceeding* (emphasis added). Lastly, § 309(H) states any findings of fact made by the Hearing Examiner in this matter must be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record. Therefore, the Department is only statutorily required to disclose all witnesses and exhibits it plans to present during the Hearing for consideration by the Hearing Examiner.

Motion 4—OAG’s Motion for a Court Reporter and a Full Stenographic Record

12. The Department agrees generally to this Motion and offers to stipulate to the creation of a full stenographic record of the proceedings in the above captioned matter, which shall be made by a competent court reporter pursuant to OAC 365:1-7-5(a) and 75 O.S. § 309(G), at the expense of the requestor.

13. Pursuant to 75 O.S. § 309(G), the Department electronically records, but does not automatically transcribe, all administrative proceedings, which it offers to produce to all parties upon the conclusion of the hearing.

Motion 5—OAG’s Motion for Leave to File Independent Proposed Findings of Fact and Conclusions of Law

14. The Department agrees only to stipulate to each party filing independent proposed findings of fact and conclusions of law following the Hearing pursuant to 75 O.S. § 312(A)(2), however statutory timelines make the proposed filing deadline challenging.

15. **Statutory deadlines hinder the proposed timeline for filing.** Pursuant to 36 O.S. § 319, within thirty (30) days after termination of the hearing or of any rehearing thereof or reargument thereon, unless such time is extended by stipulation, a final order shall be issued. Therefore, any proposed findings of fact and conclusions of law must be submitted timely enough to allow the Hearing Examiner to consider them and issue his final order prior to the thirty (30) day statutory deadline. The OAG requests this Hearing Examiner establish a deadline twenty (20) days after the court reporter’s certified transcript is delivered to the parties, with optional responses due ten (10) days thereafter. The proposed timeline comprises the entire period for the Hearing Examiner to issue his order. The Department requests that the Hearing Examiner establish a shorter deadline for the parties to submit their proposed findings of fact and conclusions of law following the Hearing.

Motion 6—OAG’s Motion to Formally Designate the Official Record and to Require Transmission of a Complete Certified Record on Review

16. The Department agrees generally to this Motion and offers to stipulate that in the event a party to this matter files a petition for judicial review, the Department will certify and transmit the entire record of the proceeding to the Oklahoma County District Court in accordance with 75 O.S. §§ 309 and 320, along with 36 O.S. § 320.

17. **Material not offered before or during the administrative hearing should not be included in the official record.** The OAG requests the Hearing Examiner to require “. . . *that any staff memorandum, market analysis, data compilation, or other material received or reviewed by the Commissioner, the Department, or the Hearing Examiner in connection with this proceeding be made part of the record and accessible to all parties.*” (See the Motion, pg. 19(c)). This request is overly broad. 75 O.S. § 309(F)(2) states the record in an individual proceeding shall include evidence received or considered *at the individual proceeding* (emphasis added). Lastly, § 309(H) states any findings of fact made by the Hearing Examiner in this matter must be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record. Therefore, the official record is limited to the witnesses, exhibits, and arguments submitted to the Hearing Examiner for consideration.

Motion 7—OAG’s Motion to Pre-File Exhibits and to Establish a Pre-Hearing Exhibit Exchange Procedure.

18. The Department agrees generally to this Motion and offers to stipulate to establishing a reciprocal pre-filing and exchange procedure for all exhibits and witness lists. The Department requests the Hearing Examiner to establish a reasonable deadline to file and exchange exhibits and witness lists prior to the hearing, along with a deadline to file written objections and/or Motions in Limine.

19. **Good cause exceptions should be allowed.** The Department further offers to stipulate that exhibits not timely pre-filed should be allowed to be offered and admitted upon a showing of good cause, a showing of foundation and authenticity, and an opportunity for opposing parties to review the proposed exhibit.

Motion 8—OAG’s Motion to Establish a Formal Offer of Proof Procedure for Excluded Evidence

20. The Department agrees generally to this Motion and offers to stipulate to an order authorizing formal offers of proof by narrative summary of counsel, transcribed in the court reporter’s stenographic record, as to any evidence, testimony, or exhibit excluded by the Hearing Examiner. Any excluded exhibit may be docketed and maintained as part of the official record of the proceedings in this matter.

Motion 9—OAG’s Motion for Equitable Allocation of Hearing Time

21. The Department asks this Hearing Examiner not to enter an order allocating hearing time between the two positions stated in the Motion and instead requests an order allocating equal time to each participant. The OAG itself recognizes that the Oklahoma Constitution art. 2, § 7 and procedural due process principles require “the opportunity to be heard in meaningful time and in a meaningful manner.” (See the Motion, pg. 4, ¶ 10). Due process protections apply to all persons, not just the party(ies) bearing the burden of proof. See OKLA. CONST. art. 2, § 7.

22. Furthermore, the Department objects to any characterizations of this proceeding as having only two (2) sides and of the Department advocating for a certain side. The Commissioner has appointed an independent hearing examiner to ensure that an objective determination is made based on the law and evidence presented. The Department’s foremost intent is to implement the law in accordance with the intent of the Oklahoma Legislature and to establish its compliance with the same.

23. **There are only seven (7) parties to this proceeding.** Pursuant to the order filed in this matter on July 29, 2026, the deadline for all individuals wishing to participate in the Hearing to file an entry of appearance (“EOA”) was August 26, 2026 at 5:00pm. Although it was initially unknown how many parties would be participating in the Hearing, there are now only seven (7) parties who have timely filed EOAs. The participating parties are: **1) the Department 2) Craig MacIntyre 3) The National Association of Mutual Insurance Companies, Inc. (“NAMIC”) 4) the American Property and Casualty Insurance Association (“APCIA”) 5) the Oklahoma P&C Advocacy Association (the “Association”) 6) the OAG 7) Bob Sullivan.** With only seven (7) participants, the risk of an unfair result due to a per-party allocation of time is minimal.

24. **The legal argument of each party is unknown at this time.** Since there has been no briefing or arguments made in this matter yet, the respective legal argument of most parties is unknown at this time. With the parties’ position unknown, allocating time based on the argument made in the Motion has an inherent risk of unfairness.

25. **Insurers are already grouped in this matter.** Although the notice filed in this matter was served on more than one hundred (100) insurers, no individual insurance companies have filed EOAs or asked to participate in the Hearing. However, there are two (2) associations that have entered appearances on behalf of insurers. Therefore the “ . . . *grouping of insurers to minimize duplicate presentations . . .*” contemplated in paragraph 2 of the Hearing Examiner’s July 29, 2026 order has been substantially achieved.

26. The Department does offer to stipulate to an order that:

- a. designates a timekeeper and directs that a running time record be maintained;
- b. provides that time spent in cross-examination is charged to the cross-examining side;

- c. provides that if any party exceeds their allocated share of time, the other parties shall receive an equivalent amount of additional time; and
- d. preserves the ability of any party to seek additional time upon a showing of good cause.

Motion 10—OAG’s Motion for a Written Pre-Hearing Order

27. The Department agrees generally with the basis stated in this Motion and offers to stipulate to the entry of a written pre-hearing order memorializing all rulings made at the pre-hearing conference.

Motion 11—OAG’s Motion for Fair and Impartial Hearing

28. The Department rejects the argument that there is a need for the Hearing Examiner to enter an order “. . . *guaranteeing and affirming* . . .” the OAG shall be afforded a fair and impartial hearing, as that guarantee is clearly established in statute. An unwarranted, pre-conceived notion of bias or undue influence argued by a party without strict evidence thereof does not justify such a pre-emptive order.

29. **Nothing in statute or regulation prohibits the Department from being a party in these proceedings.** There is no language in 36 O.S. Section 984 that prohibits the Department from participating in the Hearing. In fact, there are several instances throughout the Oklahoma Insurance Code under which hearings are not “administrative enforcement proceedings,” however the Department is a party and presents evidence to an independent hearing examiner. An example of this is found in 36 O.S. § 1633(D) regarding “Form A” filings. The outcome of the Hearing directly impacts the rights and interests of the Department. A finding that the homeowner’s insurance market in Oklahoma is noncompetitive would require immediate change to the Department’s processes and procedures for reviewing and approving rate filings and would require

additional expenditures from the Department for the possible hiring of and/or contracting with additional staffing resources.

30. **The Department may offer evidence for the Hearing Examiner's consideration.** Pursuant to 75 O.S. § 309(C), opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Although the burden of proof in this hearing is on any party advocating the position that competition does not exist in the Oklahoma homeowner's insurance market, the official record of this proceeding would be incomplete without an objective presentation of relevant evidence by the Department. This presentation of evidence can be done without advocating for a position of whether or not a competitive market exists.

31. **The Commissioner's prior media statements should not be considered by the Hearing Examiner.** As previously stated, 75 O.S. § 309(F)(2) states the record in an individual proceeding shall include evidence received or considered *at the individual proceeding* (emphasis added). Additionally, 75 O.S. § 309(H) states any findings of fact made by the Hearing Examiner in this matter must be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record. Therefore, the Hearing Examiner should not consider any prior media statements not introduced during the Hearing and made apart of the official record of these proceedings. By attaching the referenced media statements to the Motion (*See the Motion, Exhibits A, B, C, D, and E*), the OAG interjects the very potential influence and bias he now seeks an order to prohibit.

32. **Past hearing denied due to lack of standing.** The Motion fails to mention that the primary reason the Commissioner denied Bob Sullivan's ("Mr. Sullivan") prior hearing request was because he did not establish that he had standing to request such a hearing. (*See the Motion, Exhibit F, ¶ 24*). Mr. Sullivan's request did not establish any personal stake or impacted interest in

the outcome of the hearing other than a general interest in protecting consumers. As cited by the OAG, 74 O.S. § 18b(22) states that one of the duties of the OAG is to represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Commissioner or in any other state or federal judicial or administrative proceeding.

IV. The Department's Motions

In addition to the above-mentioned responses and proposed stipulations, the Department respectfully submits the follow two (2) motions and requests for pre-hearing relief for consideration:

Motion 1—The Department's Motion for any party bearing the burden of proof to present its case in chief first.

33. The Department moves for an order requiring any party bearing the burden of proof pursuant to 36 O.S. § 984(A) to present evidence first.

34. **The party bearing the burden of proof is generally required to present evidence first.** While both the OAPA and Oklahoma Insurance Code are silent on this aspect, the party bearing the burden of proof is generally required to present evidence first. Oklahoma courts have recognized that once the party bearing the burden of proof presents sufficient initial evidence, the burden to proceed with evidence may shift to the opposing party. In Thompson v. State ex rel. Bd. of Trs. of Oklahoma Pub. Emps. Ret. Sys., the Oklahoma Supreme Court held that once OPERS established its burden of proof through felony conviction records, the burden then shifted to the opposing party to proceed with evidence to explain or contradict the agency's showing. (See Thompson v. State ex rel. Bd. of Trustees of Oklahoma Pub. Employees Ret. Sys., 2011 OK 89, ¶ 11, 264 P.3d 1251, 1255.) Oklahoma civil procedures statute 12 O.S. § 577 also provides persuasive precedent and states that the party bearing the burden present his case first. Since the

OAG bears the burden of proof in the matter at hand, the OAG should submit sufficient initial evidence.

Motion 2—The Department’s Motion in Limine to limit evidence and argument presented to the six (6) factors found in 36 O.S. § 984.

35. The Department moves for an order limiting any evidence and argument presented during the hearing to only that which is relevant to the six (6) factors found in 36 O.S. § 984(B) and to only the Oklahoma homeowner’s market.

36. **36 O.S. § 984 only prescribes six (6) factors for consideration.** Pursuant to 36 O.S. § 984(B), “[in] determining whether a reasonable degree of competition exists within a line of insurance, the Commissioner shall consider the following factors: 1) the number of insurers actively engaged in writing coverage, 2) market shares of the leading writers and the changes in market shares over a reasonable period of time, 3) existence of financial or economic barriers that could prevent new firms from entering the market, 4) measures of market concentration and changes of market concentration over time, 5) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk, and 6) the relationship of insurers' costs to revenue over a reasonable period of time.” (emphasis added). Therefore, these six (6) factors are the only factors the Hearing Examiner should consider during the Hearing and any evidence or argument presented should be relevant to those factors, relevant only to the Oklahoma homeowner’s market, and should not include irrelevant and potentially prejudicial testimony or other evidence relating to claims handling practices and rate affordability and rate increase impacts on consumers.

V. Conclusion

WHEREFORE, the Department respectfully asks the Hearing Examiner to consider the responses, proposed stipulations, and motions submitted, and grant such relief as he deems just.

**GLEN MULREADY
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CERTIFICATE OF MAILING

I, Antuanya "Bo" DeBose, hereby certify that a true and correct copy of the above and foregoing *Response* was mailed by first class U.S. Mail and by certified mail with postage prepaid and return receipt requested, along with electronic mail on this 1st day of August, 2026 to:

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