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INSURANCE COMMISSIONER
OKLAHOMA

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

IN RE: HEARING PURSUANT TO 36 O.S. § 984 AS TO WHETHER THE OKLAHOMA HOMEOWNERS INSURANCE MARKET IS NONCOMPETITIVE	))))	**CASE NO. 26-0820-TRN**

REPLY OF THE OKLAHOMA ATTORNEY GENERAL TO THE RESPONSE OF NAMIC AND APCIA

COMES NOW the State of Oklahoma, ex rel. Gentner Drummond, Attorney General of the State of Oklahoma (the "Attorney General"), a party to this proceeding pursuant to 74 O.S. § 18b(22) and the Notice of Hearing filed herein on July 14, 2026, and submits this Reply to the Response of the National Association of Mutual Insurance Companies, Inc. ("NAMIC") and the American Property Casualty Insurance Association, Inc. ("APCIA") (together, the "Trade Associations")[1], filed September 1, 2026.

PRELIMINARY STATEMENT

The Trade Associations do not defend the status quo on the merits of any of the eleven requests in the Omnibus Pre-Hearing Motion. They stake nearly everything on a single threshold proposition: that a hearing under 36 O.S. § 984 is not an adjudicative "individual proceeding" under Article II of the Oklahoma Administrative Procedures Act, but is instead legislative "emergency

[1] Oklahoma P&C Advocacy Association by and through Brett Robinson communicated to Counsel for all Parties their intention to join the Trade Associations' Response, though they have not filed a formal response as of the date and time of the filing of this instrument. To the extent that communication is considered part of the formal record in this matter, this reply is additionally in response to Oklahoma P&C Advocacy Association.

rulemaking" under Article I. On that premise they ask this Court to deny Motions 3, 4, 7, 8, 10, and 11 as a group. (Response at 2.)

The premise fails on the text of the statute they invoke. The Oklahoma Administrative Procedures Act defines "Rule," and that definition **expressly excludes both** "the approval, disapproval or prescription of rates" **and** "orders by an agency." 75 O.S. § 250.3 (definition of "Rule," subparagraphs (b) and (e)). A § 984 proceeding produces an *order*, and the entire operative consequence of that order is the *regulation of rates*. The Trade Associations' theory requires this Court to classify as a "rule" the two things the Legislature said a rule is not.

The premise also fails under the very test the Trade Associations quote. Agency action is judicial or quasi-judicial when it "investigates, declares, and enforces liabilities as they stand on present and past facts and under laws already existing," and legislative when it "looks to the future and changes existing conditions by making a new rule to be applied thereafter." *City of Okla. City v. Okla. Corp. Comm'n*, 2024 OK 77, ¶ 28, 558 P.3d 1231, 1242. A § 984 hearing applies six fixed statutory factors to historical and present market data, in an evidentiary hearing, with a burden of proof assigned by statute to a party, and resolves the contested question whether "a reasonable degree of competition does not exist in the market." 36 O.S. § 984(A). It makes no new rule.

Finally, the Trade Associations' position is not shared by the agency whose procedures are at issue. Despite the Department's brief assertion that 36 O.S. § 984 is ambiguous and in responding to the same Motion on the same day, the Department stated that "[i]f necessary to ensure the fairness and integrity of the hearing, the Department does not object to application of Article II of the APA." (Department's Response at 1-2.) The only parties urging Article I are the Trade Associations for the industry that benefits from the presumption the Attorney General must overcome.

Because the classification question controls most of the Response, the Attorney General addresses it first (Part I), then the impartiality standard (Part II), the two motions the Trade Associations separately contest (Parts III and IV), their premature request to exclude evidence (Part V), the disparaging material directed at counsel (Part VI), and the motions they do not oppose at all (Part VII).

ARGUMENT

I. THIS IS AN ARTICLE II INDIVIDUAL PROCEEDING

1. The Administrative Procedures Act "is composed of two Articles. Article I of the Act relates to state agency filing and publication requirements for rules, and Article II relates to agency notice and hearing requirements for individual proceedings." *State ex rel. Bd. of Regents of Univ. of Okla. v. Lucas*, 2013 OK 14, ¶ 14, 297 P.3d 378, 385–86. "Any party aggrieved by a final agency order in an Article II individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to 75 O.S. §§ 318, 319, 320, 321, 322 and 323." *Id.* The Oklahoma Supreme Court has identified the markers of that track: a "§ 310 hearing," a "§ 312 final agency order," and judicial review under the Act. *Id.* ¶ 15, 297 P.3d at 386–87. Section 984 supplies all three.

A. The OAPA's definition of "Rule" excludes both orders and rate determinations.

2. This point is dispositive and the Response does not address it. The Act defines "Rule" as "any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy," and then provides that the term "does not include," among other things:

> b. the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications, . . .
>
> e. orders by an agency . . . .

75 O.S. § 250.3 (definition of "Rule").

3. Both exclusions apply here, independently and together.

a. **The determination is an order.** Section 984(A) directs that the Commissioner "issue[] an order stating that a reasonable degree of competition does not exist in the market." The Trade Associations themselves acknowledge that a § 984 proceeding culminates in an "order" and that "Order" is a defined term under the Act. (Response at 7.) Orders are carved out of the definition of "rule."

b. **The subject matter is rates.** The Trade Associations concede that "[o]nly after it is determined that a market is not competitive may the OID regulate future premium rates." (Response at 6.) A noncompetitive finding triggers rate regulation under 36 O.S. §§ 985 through 989 and 985.1. The statutory carve-out for "the approval, disapproval or prescription of rates" is expressly limited so that it does not reach an agency's own fees for licensing, permitting, inspections, or publications — confirming that it does reach precisely the kind of market rate regulation at issue here.

4. An agency action that the Act twice defines as a non-rule cannot be recharacterized as rulemaking, emergency or otherwise. Because there is no "rule," there is no "rulemaking": the Act defines "Rulemaking" as "the process employed by an agency for the formulation of a rule." 75 O.S. § 250.3 (definition of "Rulemaking").

B. Under the Trade Associations' own test, a § 984 determination is adjudicative.

5. The Trade Associations correctly state the governing distinction but misapply it. A proceeding is "judicial" (quasi-judicial) if it "investigates, declares, and enforces liabilities as they stand on present and past facts and under laws already existing," and "legislative" if it "looks to the future and changes existing conditions by making a new rule to be applied thereafter." *City of Okla. City*, 2024 OK 77, ¶ 28, 558 P.3d at 1242 (quoting *In re Application of Okla. Gas & Elec. Co.*, 2018 OK 31, ¶¶ 13–14 & nn.24–25, 417 P.3d 1196, 1201).

6. A § 984 hearing sits on the adjudicative side of that line. The Commissioner promulgates no new standard; the standard already exists. The Legislature has already fixed the six factors that govern — the number of insurers actively writing coverage, market shares and their changes over a reasonable period of time, financial or economic barriers to entry, measures of market concentration and their changes over time, long-term profitability relative to industries of comparable business risk, and the relationship of insurers' costs to revenue. 36 O.S. § 984(B)(1)(a)–(f). The hearing applies that existing law to present and past facts and declares whether a reasonable degree of competition presently exists. That is investigation and declaration "under laws already existing," not the making of "a new rule to be applied thereafter."

7. **The authority the Trade Associations lead with is distinguishable on its face.** In *City of Oklahoma City*, the Court described the proceeding under review as follows: "**No evidence was introduced and the hearing consisted entirely of argument by counsel.**" 2024 OK 77, ¶ 4, 558 P.3d at 1237. That is the opposite of a § 984 hearing, which requires evidence, assigns the burden of proof to "the party or parties advocating the position that competition does not exist," 36 O.S. § 984(A), and commands that "[a]ll determinations by the Commissioner shall be made on the basis of findings of fact and conclusions of law," *id.* § 984(B)(2). The Trade Associations rely on a case

in which no evidence was taken to argue that this Court should treat a mandatory evidentiary hearing as legislative.

8. The same case supplies the framework for the facts at issue here. The Court distinguished "adjudicative facts," meaning "facts in controversy decided by a judge or jury," from "legislative facts," meaning "facts used by the legislative body as a basis for creating legislation." *Id.* ¶ 32, 558 P.3d at 1243–44. The current state of competition in a defined Oklahoma market — measured by concentration, entry barriers, profitability, and costs-to-revenue, and proved by expert economic and actuarial testimony — is a fact in controversy to be decided on evidence. It is an adjudicative fact.

C. A § 984 proceeding has parties, and the Trade Associations are among them.

9. The Trade Associations argue there are no "parties" because the caption names none. (Response at 3.) The argument cannot survive the statutory text or their own appearance.

10. Section 984 itself speaks in terms of parties: "[t]he burden of proof in any hearing shall be placed on the **party or parties** advocating the position that competition does not exist." 36 O.S. § 984(A) (emphasis added). A statute that assigns a burden of proof to a "party" necessarily contemplates parties. The Act defines "Party" to include "a person or agency named and participating, **or properly seeking and entitled by law to participate**, in an individual proceeding." 75 O.S. § 250.3 (definition of "Party") (emphasis added). The definition does not turn on the caption.

11. The Notice of Hearing invited "all interested parties with a direct, immediate, and substantial interest" to "participate in the public hearing and offer evidence and argument on the issues involved." The Attorney General participates as a party expressly authorized by 74 O.S. §

18b(22). The Department has identified seven parties who timely filed entries of appearance. (Department's Response at 8.) NAMIC and APCIA are two of them. Having entered appearances and filed a substantive Response seeking denial of relief, the Trade Associations are poorly positioned to contend that this proceeding has no parties.

D. The determination requires the exercise of judicial discretion.

12. The Trade Associations characterize the determination as a discretion-free "yes or no." (Response at 4.) While the decision is inherently binary, it is not discretion-free. The adjudicator must weigh six evidence-intensive factors, resolve conflicts in expert economic and actuarial proof, determine whether a statutory presumption has been overcome by the party bearing the burden, and enter findings of fact and conclusions of law. That is the "exercise of discretion of a judicial nature." 75 O.S. § 250.3 (definition of "Individual proceeding"). When an agency resolves contested factual issues on evidence, it "functions much like a court." *Arbuckle Simpson Aquifer Prot. Fed'n of Okla., Inc. v. Okla. Water Res. Bd.*, 2013 OK 29, ¶ 10, 343 P.3d 1266, 1270.

E. The "errant word usage" argument asks the Court to delete the statute's operative terms.

13. The Trade Associations dismiss § 984's requirements of "findings of fact and conclusions of law," an "order," and a district-court challenge as "[e]rrant word usage." (Response at 7–8.) But these are not stray words. They are the operative commands of the statute: § 984(A) requires a hearing, assigns a burden of proof, and directs issuance of an order; § 984(B)(2) requires findings of fact and conclusions of law; § 984(B)(3) provides that the ruling "may be challenged in the district court." Read together, they describe an adjudication.

14. The canon the Trade Associations invoke does not help them. *Zaloudek Grain Co. v. CompSource Okla.*, 2012 OK 75, ¶ 7, 298 P.3d 520, 522, holds that an "inept or incorrect choice

of words" will not be construed "to defeat the real or obvious purpose of a legislative enactment." Here the words and the purpose point the same direction. It is the Trade Associations who ask this Court to defeat the obvious purpose of an evidentiary hearing with an assigned burden of proof that is expressly subject to judicial review.

F. Section 984 is not emergency rulemaking.

15. The alternative theory — that this is Article I "emergency rulemaking" under 75 O.S. § 253 — cannot be reconciled with § 253's requirements. As the Trade Organizations acknowledge, when a conflict arises between Title 36 and the Act, Title 36 controls. (Response at 9.) *See*, 36 O.S. § 313(B).

16. The defining feature of emergency rulemaking is gubernatorial approval. An emergency rule may be promulgated only "if the rule is first approved by the Governor," and the Governor may approve only upon the agency's submission of "substantial evidence that the rule is necessary as an emergency measure" for an enumerated statutory purpose. 75 O.S. § 253(A)(1). "Promulgated" is itself defined to require, for an emergency rule, approval by the Governor. 75 O.S. § 250.3 (definition of "Promulgated"). Nothing in § 984 requires or contemplates gubernatorial approval, an emergency submission, a rule impact statement, formatting review, or publication in the *Oklahoma Register*. Section 984 instead provides a hearing, a party-borne burden of proof, findings and conclusions, and an appealable order.

17. The Trade Associations' reliance on the one-year duration of a noncompetitive finding, 36 O.S. § 984(A), proves nothing. A time-limited order is still an order. Many adjudicative determinations — licenses, suspensions, and rate orders among them — carry temporal limits.

18. The § 305 petition analogy also fails. Section 305 permits an interested person to petition an agency to "promulgat[e], amend[], or repeal" a rule, with validity tested by declaratory

judgment under § 306. A request for a § 984 hearing seeks an adjudicative determination resolved on findings of fact and conclusions of law and challenged in district court under § 984(B)(3) — the individual-proceeding track, not the rule-validity track.

G. The Trade Associations misread the Omnibus Motion.

19. In a footnote, the Trade Associations assert that the Attorney General's motion "recognizes that a hearing under Section 984 is not an individual proceeding," quoting the Motion's statement that "§ 984 market competition hearings are not administrative enforcement proceedings." (Response at 4 n.1.) The quoted sentence says the opposite of what it is offered to prove. The Motion distinguished § 984 hearings from *enforcement* proceedings — in which an agency investigates, prosecutes, and adjudicates an alleged violation — in order to establish that the Commissioner's role here is that of neutral adjudicator rather than prosecutor. (Motion ¶ 78.) An adjudication need not be an enforcement action to be an individual proceeding.

H. Because Article II governs, Motions 3, 4, 7, 8, and 10 follow.

20. The Trade Associations state that their objections to Motions 3, 4, 7, 8, 10, and 11 rest "exclusively upon application of Article II of the Act." (Response at 2.) Once the classification is resolved, those objections fall with the premise. Each motion is independently grounded in the Article II provisions and Department rules governing an individual proceeding: advance disclosure of noticed materials under 75 O.S. § 310(4); a stenographic record under OAC 365:1-7-5(a) and 75 O.S. § 309(G); pre-filing and record inclusion of exhibits under § 309(F) and OAC 365:1-7-5(b); offers of proof under § 309(F)(4) and OAC 365:1-7-5(b)(3); and a written record of intermediate rulings under § 309(F)(1) and OAC 365:1-7-5(b)(1). The Trade Associations offer no independent reason to deny any of them.

21. It bears emphasis that the Department — which would bear every burden these motions impose — has stipulated or agreed in principle to Motions 4, 7, 8, and 10, and does not object to the application of Article II. (Department's Response at 2, 5, 6–7, 9.) The Trade Associations ask this Court to deny procedural protections that the agency conducting the hearing has already agreed to provide.

II. MOTION 11 — THE ADJUDICATIVE IMPARTIALITY STANDARD GOVERNS

22. Having recharacterized this proceeding as rulemaking, the Trade Associations argue that the only requirement is that the decisionmaker not have an "unalterably closed mind," citing *Association of National Advertisers, Inc. v. FTC*, 627 F.2d 1151 (D.C. Cir. 1979). (Response at 11.) That standard was crafted for, and expressly confined to, rulemaking. It has no application to an Article II individual proceeding.

23. In an adjudicative proceeding, Oklahoma law supplies a different and stricter rule. "A hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration." 75 O.S. § 316; *see Wilson v. Okla. Horse Racing Comm'n*, 1996 OK 3, ¶ 9, 910 P.2d 1020, 1022 (quoting § 316). Due process requires "the cold neutrality of an impartial judge," an objective standard "not dependent on the judge's belief," and the duty "applies equally to administrative boards acting in an adjudicatory capacity as it does to judges." *Johnson v. Bd. of Governors of Registered Dentists*, 1996 OK 41, ¶¶ 32–33, 913 P.2d 1339, 1347–48, *quoted in Arbuckle Simpson*, 2013 OK 29, ¶ 11, 343 P.3d at 1270. The duty extends to avoiding "even the appearance of impropriety." *Arbuckle Simpson*, 2013 OK 29, ¶ 13, 343 P.3d at 1271.

24. Oklahoma law addresses prejudgment through public statements directly. "A tribunal is not impartial if it is biased with respect to the factual issues to be decided at the hearing." *Wilson*, 1996 OK 3, ¶ 16, 910 P.2d at 1024. Adopting the Tenth Circuit's holding in *Staton v. Mayes*, 552 F.2d 908, 913 (10th Cir. 1977), the Court held that "firm public statements before the hearing" taking a position on the matter to be decided "reveal a tribunal not meeting the demands of due process for a hearing with fairness and the appearance of fairness." *Wilson*, 1996 OK 3, ¶ 16, 910 P.2d at 1024.

25. The Attorney General acknowledges that an agency's combination of investigative and adjudicative functions does not, standing alone, offend due process. *Withrow v. Larkin*, 421 U.S. 35, 46–47 (1975); *Lowrey v. Hodges*, 555 P.2d 1016, 1024 (Okla. 1976), *both discussed in Wilson*, 1996 OK 3, ¶¶ 8, 13, 910 P.2d at 1022–23. That is not the concern presented. Motion 11 does not object to the Department's dual role in the abstract; it addresses public statements resolving the specific factual question this Court must decide on evidence — the distinction *Wilson* drew in finding a due process violation notwithstanding *Withrow*.

The April 7, 2026 Order forecloses the Trade Associations' factual premise.

26. The Trade Associations assert that "[n]othing in the Attorney General's motion demonstrates either the OID or its Commissioner is unalterably close-minded." (Response at 11.) Exhibit F to the Motion demonstrates precisely that, and it does so under any standard.

27. On April 7, 2026, the Commissioner entered a formal, signed Order in Case No. 26-0215-COR resolving the identical question presented here, under the identical statutory factors, without holding a hearing. Paragraph 24 of that Order states: "**Taking into consideration the factors listed in 36 O.S. § 984(B)(1) and applying the findings of facts provided above, the**

evidence supports a finding that the Oklahoma homeowners insurance market is competitive and does not support a hearing pursuant to 36 O.S. § 984." (Motion, Ex. F ¶ 24.) The Order's opening recital is to the same effect: the Commissioner acted "having fully reviewed the correspondence from Mr. Sullivan **and comprehensive data relating to the current Oklahoma homeowners' insurance market.**" (*Id.* at 1.)

28. That conclusion was not incidental. Eleven consecutive paragraphs of findings — paragraphs 13 through 23, spanning pages 3 through 7 of a nine-page Order — are devoted to the competitive condition of the Oklahoma homeowners insurance market: a Herfindahl-Hirschman Index score of 1362 (*id.* ¶ 18); a Four-Firm Concentration Ratio of approximately 60% (*id.* ¶ 19); five years of combined ratios (*id.* ¶ 20); and a compilation of thirty-three 2025 rate filings (*id.* ¶ 21). Paragraph 25 adds a further merits comparison to the 2016 earthquake determination. The findings rest on the Department's own monitoring and analysis (*id.* ¶ 13), its own legislative interim-study presentation (*id.* ¶¶ 18, 20), and a press release announcing that "Economic Indicators Show Oklahoma's Homeowners Insurance Market is Competitive" (*id.* ¶ 18). No opposing evidence was taken, because no hearing was held.

29. **The Trade Associations' own authority supplies the standard that condemns this.** *Association of National Advertisers* did not hold that prejudgment is irrelevant; it held that the *adjudicatory* disqualification standard — under which a decisionmaker is disqualified if "a disinterested observer may conclude that [he] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it" — "is not applicable to the Commission's rulemaking proceeding," and adopted the "unalterably closed mind" test only for rulemaking. 627 F.2d at 1153, 1170 (quoting *Cinderella Career & Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970)). Because this is an Article II individual proceeding, the standard the Trade

Associations quote is the wrong one, and the standard their own case identifies as the right one for adjudication describes the April 7, 2026 Order precisely: the facts and the law of this question were adjudged in advance of hearing it. The same answer disposes of the analogy to legislators who "may have preconceived opinions and notions about proper policy." (Response at 11, citing *Bond v. Floyd*, 385 U.S. 116 (1966).) Legislators do not sign orders applying enumerated statutory factors to market data under headings styled "Findings of Fact" and "Conclusions of Law."

30. Under the adjudicative standard that governs, the consequence is direct: "A tribunal is not impartial if it is biased with respect to the factual issues to be decided at the hearing," and "firm public statements before the hearing" on the matter to be decided "reveal a tribunal not meeting the demands of due process for a hearing with fairness and the appearance of fairness." *Wilson*, 1996 OK 3, ¶ 16, 910 P.2d at 1024.

31. The relief requested is modest and prejudices no one. The Attorney General has not filed an affidavit of disqualification under § 316 and does not seek the Hearing Examiner's recusal. He asks for a written order affirming that he will receive a fair and impartial hearing and that the determination will rest exclusively on the hearing record — an assurance the Department itself says the law already provides. (Department's Response at 9.) An order confirming what all parties agree the law requires burdens no one.

III. MOTION 2 — THE RESPONSE IDENTIFIES NO AUTHORITY AGAINST PUBLIC OBSERVATION

32. The Trade Associations oppose a public livestream principally by attacking the Attorney General's retained counsel as motivated by "marketing" and "pecuniary interest," and by describing unrelated litigation and news coverage. (Response at 12–13.) That is argument about counsel, not about the motion. It supplies no reason to deny public observation of a proceeding the

Commissioner designated a "public hearing." The Attorney General will not respond in kind; he addresses that material separately in Part VI, where he asks that it be stricken.

33. On the law, the Trade Associations identify no rule or statute prohibiting a livestream. They concede the hearing must be open to the public. (Response at 13–14.) The Department confirms the same, citing OAC 365:1-7-4(a) ("all hearings shall be open to the public"). (Department's Response at 4.) The dispute is therefore not whether the public may observe, but whether observation may be denied to those who cannot fit in the room or do not have the means or ability to travel across the State.

34. The Trade Associations are correct that *Rivero* arose from a protective order rather than a question of public attendance, and the Attorney General cited it for the public-visibility policy it articulates, not for a holding on livestreaming. (Motion ¶ 22.) That policy — that "the exercise of judicial power should be within the public view unless confidentiality is required by law" — remains fully engaged where an adjudicator exercises quasi-judicial power over a question affecting every Oklahoma homeowner and no party has asserted any confidentiality interest. *State ex rel. Okla. State Bd. of Med. Licensure & Supervision v. Rivero*, 2021 OK 31, ¶ 76, 489 P.3d 36, 63.

35. The argument that rate questions are not yet at issue (Response at 13) misreads the motion. Motion 2 seeks observation only. It does not seek to introduce evidence about rates, to permit remote comment, or to expand the universe of parties. (Motion ¶ 25.)

IV. MOTION 9 — TIME SHOULD BE ALLOCATED BY POSITION

36. The Trade Associations urge that hearing time be allocated as in "any other public comment period under Article I of the Act." (Response at 14.) That argument depends entirely on

the failed rulemaking premise. This is not a comment period. In an Article II individual proceeding, "[o]pportunity shall be afforded all parties to respond and present evidence and argument on all issues involved," 75 O.S. § 309(C), and due process guarantees "a reasonable opportunity to know the claims of the opposing party and to meet them," *Maxwell v. Sprint PCS*, 2016 OK 41, ¶ 19, 369 P.3d 1079, 1090.

37. The Attorney General bears the burden of proof on six statutory factors, against a statutory presumption of competition. 36 O.S. § 984(A). A rule that parcels time by the number of appearing entities would give the side defending the presumption time that expands with each entry of appearance while confining the burdened side to a single share. The Department's own tally illustrates the point: of the seven parties, three — NAMIC, APCIA, and the Oklahoma P&C Advocacy Association — appear on behalf of insurers. (Department's Response at 8.)

38. The requested division is not rigid in operation. Each side apportions its half internally; the competitive-market side may designate lead counsel and lead witnesses and allocate as it sees fit; and any party may seek additional time on a showing of good cause, consistent with paragraph 3 of this Court's Order. The Attorney General also accepts the ancillary mechanics the Department proposes — a designated timekeeper and running time record, cross-examination charged to the cross-examining side, and equivalent additional time if one side exceeds its share. (Department's Response at 8–9.)

V. THE REQUEST TO EXCLUDE EVIDENCE IS PREMATURE

39. Section IV of the Response asks this Court to declare entire categories of evidence inadmissible in advance of the hearing — pending litigation, claims handling, and premium levels.

(Response at 15–16.) That request is not responsive to any relief the Attorney General seeks and is not properly before the Court on these pre-hearing motions.

40. The Attorney General agrees that the six factors in § 984(B)(1) govern the determination and that evidence must be relevant to them and to the Oklahoma homeowners market. He does not agree that relevance can be adjudicated in the abstract, before any evidence is offered. Several of the statutory factors are broad by their terms: factor (c) reaches "financial or economic barriers that could prevent new firms from entering the market"; factor (e) reaches "whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk"; and factor (f) reaches "the relationship of insurers' costs to revenue over a reasonable period of time." 36 O.S. § 984(B)(1)(c), (e), (f). Cost, revenue, and profitability evidence bears directly on factors (e) and (f).

41. **The statutory text does not make the six factors exclusive.** Section 984(B)(1) directs that the Commissioner "shall consider the following factors." It does not say "shall consider only," "solely," or "exclusively." That omission matters, because neighboring provisions are drawn in open-ended terms: § 984(A) requires that a ruling "identify the factors causing the market not to be competitive" — not the enumerated factors — and § 984(C) authorizes the Commissioner to "utilize existing relevant information, analytical systems and other sources, or rely on some combination thereof." Read together, as they must be, these provisions set a mandatory floor rather than an exclusive ceiling. *See Hamilton v. Northfield Ins. Co.*, 2020 OK 28, ¶ 9, 473 P.3d 22, 26 ("[R]elevant provisions must be considered together, where possible, to give force and effect to each."); *Am. Fid. Life Ins. Co. v. State ex rel. Holland*, 2013 OK CIV APP 51, ¶¶ 9–10, 307 P.3d 389, 392 (rejecting the contention that an enumerated list in the Insurance Code was "the exhaustive list").

42. **The Department has itself relied on the category of evidence the Trade Associations would exclude.** The April 7, 2026 Order catalogues thirty-three 2025 rate filings, reporting increases "ranging from 2.6% to 31.9%" (Motion, Ex. F ¶ 21), and then makes the magnitude of rate increases dispositive of its comparison to the 2016 earthquake determination, reasoning that "[t]he most significant contributing factor to the determination of a noncompetitive market for earthquake insurance in 2016 was the fact that earthquake carriers were seeking rate increases of four percent (4%) to three hundred percent (300%)" (*id.* ¶ 25). Evidence that the regulator treated as the most significant contributing factor in a § 984 analysis cannot be categorically irrelevant to a § 984 analysis.

43. The Act already supplies the correct mechanism. The adjudicator "may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence," and "[o]bjections to evidentiary offers may be made and shall be noted in the record." 75 O.S. § 310(1). Relevance objections should be ruled upon in context, item by item, with offers of proof preserved under the procedure Motion 8 requests and the Department has already agreed to. A blanket pre-evidentiary exclusion would prejudge the record before it exists.

VI. THE DISPARAGING MATERIAL DIRECTED AT COUNSEL SHOULD BE STRICKEN

44. The Attorney General respectfully requests an order providing that the passages of the Response directed at the character, motives, and unrelated litigation of his counsel will not be considered for any purpose in this proceeding and, in the alternative, that those passages be stricken. He asks that any ruling on this request be reduced to writing and made part of the official record.

45. **The material at issue.** In Section II, the Response juxtaposes the Attorney General's published mission statement against the assertion that his retained counsel has "a well-established track record of aggressively litigating against insurance companies," that its engagement is "part of an ongoing pattern of the Attorney General delegating the authority of his office . . . to the firm in matters adversarial to Oklahoma insurers," and that this Court "should view Whitten Burrage's request to live stream this hearing for what it truly is: a part of a marketing campaign designed to serve their own pecuniary interest in developing and promoting business, rather than to 'seek justice for the people of Oklahoma.'" (Response at 12–13.) In Section IV, the Response states that "[l]ocal news is replete with accounts of Whitten Burrage challenging one insurance company or another," that "[t]he firm has become synonymous with insurance claims handling lawsuits in this State," and that counsel "will likely try to turn a hearing about the competitiveness of the insurance market into a referendum on claims handling practices." (Response at 16.) In Section III, the Response characterizes the requested time allocation as "nothing more than an effort by Whitten Burrage to appropriate hearing time from other parties." (Response at 14.) The material is supported by a citation to a newspaper article and to a pending, unadjudicated district court case. (Response at 12 nn.3–4, 16.)

46. **The material is immaterial and impertinent by the Trade Associations' own standard.** The Response insists that the six factors in § 984(B)(1) "should exclusively serve as the evidentiary paradigm of this proceeding" and that "[p]ersons asking to provide any information not relevant to a Section 984 proceeding should be excluded." (Response at 15.) Those six factors concern the number of insurers writing coverage, market shares, barriers to entry, market concentration, long-term profitability, and the relationship of insurers' costs to revenue. 36 O.S. § 984(B)(1)(a)–(f). None concerns the identity of counsel, the composition of a law firm's practice,

or counsel's supposed motives. Whatever the correct scope of relevance in this proceeding, the Trade Associations cannot simultaneously urge the strictest possible relevance standard and devote three sections of their Response to matter that satisfies no standard at all.

47. **The material is not evidence, and it is not subject to official notice.** Findings in this proceeding "shall be based exclusively on the evidence received and on matters officially noticed." 75 O.S. § 309(H); *accord* OAC 365:1-7-6. Unsworn assertions of an opposing party's motive, made in a brief, are not evidence received. Nor may they enter through official notice: § 310(4) permits notice of "judicially cognizable facts" and "generally recognized technical or scientific facts within the agency's specialized knowledge." A newspaper article's characterization of a law firm is neither. Neither is the pendency of *State of Oklahoma ex rel. Drummond v. State Farm Fire and Casualty Co.*, CJ-2026-1066 (Cleveland Cty. Dist. Ct.), an unadjudicated case that establishes nothing about this one.

48. **This Court has authority to grant that relief.** The Oklahoma Administrative Procedures Act provides that the adjudicator "may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence," 75 O.S. § 310(1), and confines findings to "the evidence received and . . . matters officially noticed," id. § 309(H). And paragraph 5 of the Order filed July 29, 2026 reserves to the Hearing Examiner "[a]ny additional procedures . . . necessary to ensure an efficient, orderly, and fair hearing." Directing that matter bearing on no issue before this Court be disregarded — or striking it — falls comfortably within each.

49. **The governing professional standard points the same way.** A lawyer shall not, in trial, "allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence," or "state a personal opinion as to the justness of a cause." Okla. R. Prof'l Conduct 3.4(e), 5 O.S. app. 3-A. The Attorney General does not suggest that

opposing counsel acted in bad faith, and he seeks no sanction. He asks only that material which will not be supported by admissible evidence not remain in the record of a proceeding whose outcome must rest exclusively on evidence.

50. **The request serves the record.** This proceeding is destined for a certified record and, potentially, judicial review confined to that record. 75 O.S. § 321. The parties have devoted considerable effort to ensuring that the record contains what the statute requires and excludes what it does not. Speculation about why a party's lawyers took a position — untested, unsworn, and irrelevant to all six statutory factors — has no place in that record. Leaving it there also disserves the appearance of fairness the Trade Associations and the Attorney General both profess to want. *See Arbuckle Simpson*, 2013 OK 29, ¶ 13, 343 P.3d at 1271 ("The goal of the proceedings should be to ensure that all parties receive a fair hearing from a neutral hearing officer, avoiding even the appearance of impropriety.").

51. **Form of relief.** The Attorney General does not ask this Court to police the tone of an opposing brief, and he recognizes that striking material from a filed response is a step tribunals take sparingly. That is why the relief he seeks first is a ruling that the identified passages will not be considered for any purpose in determining whether a reasonable degree of competition exists in the Oklahoma homeowners insurance market. Striking them is an alternative, not a necessity. Either form of relief resolves the matter; what the Attorney General asks is that the ruling appear in writing in the record.

VII. MOTIONS 1, 5, AND 6 ARE UNOPPOSED

52. The Response raises no objection to Motion 1 (remote expert testimony under OAC 365:1-7-1(c)), Motion 5 (leave to file independent proposed findings and conclusions under 75

O.S. § 312 and OAC 365:1-7-6), or Motion 6 (designation of the official record and certified transmission on review). The Department affirmatively stipulates to Motion 1 and agrees in principle to Motions 5 and 6. (Department's Response at 2, 5, 6.) Each rests on express statutory or regulatory authority and should be granted.

CONCLUSION

53. The Trade Associations' Response rises or falls with a single contention — that this is Article I rulemaking rather than an Article II individual proceeding. The Administrative Procedures Act forecloses that contention twice over, by excluding both "orders by an agency" and "the approval, disapproval or prescription of rates" from the definition of a "rule." The Trade Associations' own authority forecloses it again, because a § 984 hearing applies existing law to present and past facts on an evidentiary record, unlike the argument-only proceeding in *City of Oklahoma City*. And the Department, which would bear the burden of every procedure at issue, does not object to Article II at all.

WHEREFORE, PREMISES CONSIDERED, the State of Oklahoma, ex rel. the Attorney General, respectfully requests that this Court (1) reject the Trade Associations' Article I argument and hold that this is an individual proceeding governed by Article II; (2) decline their invitation to exclude categories of evidence before any evidence is offered; (3) enter an order that the passages identified in Part VI will not be considered for any purpose, or in the alternative strike them; and (4) grant the Omnibus Pre-Hearing Motion, entering a written pre-hearing order granting the relief requested in Motions 1 through 11; and grant such other and further relief as is just, equitable, and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September 2026, a true and correct copy of the above and foregoing **Reply of the Oklahoma Attorney General to the Response of NAMIC and APCIA** was filed with the Oklahoma Insurance Department by electronic mail to OIDlegal@oid.ok.gov, and was served by electronic mail upon:

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