Kansas Corporation Commission
Commission Meeting
October 1, 2013
11:00 a.m. 1rd floor hearing room
KCC Offices, 1500 Arrowhead, Topeka, Kansas

MINUTES

1. The Commission convened the regular scheduled open meeting of the Commission at 11:00 a.m. on October 1, 2013 in the 1rd floor hearing room of the Kansas Corporation Commission, 1500 Arrowhead, Topeka, Kansas.

2. Present: Chairman Mark Sievers (by phone), Commissioner Thomas Wright, and Commissioner Shari Albrecht (by phone)

3. The following were approved by the Commission:

    a. Commissioner Wright moved, and Commissioner Albrecht seconded, the approval of the Routine matters listed for October 1, 2013 on the 2 page document attached hereto as "Attachment B," which is included by reference herein. Chair Sievers concurred

    b. Commissioner Albrecht moved, and Chair Sievers seconded, the approval of the Consent Agenda: All listed matters for October 1, 2013 on the 3 page document attached hereto as "Attachment A," which is included by reference herein. Commissioner Wright abstained

    c. Motions to Intervene:

        i. Docket No. 14-EPDE-132-TAR In the Matter of the Application of The Empire District Electric Company Seeking Approval for an Energy Efficiency Rider Pursuant to the Commission's Order in Docket No. 10-EPDE-497-TAR.

        Commissioner Albrecht moved, and Commissioner Wright seconded, approval of the Petition to Intervene of CURB to intervene in the above-captioned docket. Chair Sievers concurred. "Attachment C" 2 pages.

    d. Noticed Items: - Discussion Regarding Proposed Order on Joint Application and Commissioner Comments

        i. Docket No. 13-BHCG-509-ACQIn the Matter of the Joint Application of Anadarko Natural Gas Company and BlackHills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, Joint Applicants, for anOrder Approving the Transfer to Black Hills of ANGC's Certificates of Convenience and Necessity With Respect to Its Natural Gas Utility Business, Including Its Transmission and Distribution Facilities Located in

the State of Kansas Used to Provide Utility Service, and for Other Related Relief.

Advisory Counsel discussed "Attachment D" attached hereto (2 pages) by line item to receive consensus from the Commissioners to either incorporate the proposed line items submitted by the Chairman into the order or to not include them.

Commissioner Albrecht moved, and Commissioner Wright seconded, to table the order till Thursday October 3, 2013 to incorporate consensus items into the order. Chair Sievers concurred

There being no further matters before the Commission, the Commission adjourned at 11:35 a.m.

Respectfully submitted,

On Behalf of Kim Christiansen/jlmp
Secretary of the Commission

Mark Sievers, Chair

Thomas E. Wright, Commissioner

Shari Feist Albrecht, Commissioner

Kansas
Corporation Commission

ITEMS OF
Consent Agenda

Post Date: Tuesday, September 24, 2013
Approval Date: Tuesday, October 1, 2013

NOTICE TO THE PUBLIC: There will be no separate discussion of Consent Agenda items as they are considered to be routine by the Kan Corporation Commission. The items are posted on the Commission's website for five business days. Unless removed from the website's Co Agenda, the orders appearing on the Consent Agenda will become the Order of the full Commission at the Commission's regularly schedul Meeting. If Commission staff or a Commissioner requests an item be removed from the Consent Agenda, the affected item may be placed c

Consent Agenda

ITEM NO.	DESCRIPTION	DOCKET NUMBER	REMOVED
1	In the matter of the failure of Hewitt Energy Group, Inc. to comply with K.A.R. 82-3-603 at the Helsel #1-3 well in Sumner County, Kansas. ***Penalty Order - Hewitt Energy Group, Inc.***	14-CONS-152-CPEN	
2	In the matter of the failure of Prolific Resources LLC ("Operator) to comply with K.A.R. 82-3-107 and K.A.R. 82-3-130 at the Rosco #2 in Barton County, Kansas ***Penalty Order - Prolific Resources LLC***	14-CONS-150-CPEN	
3	In the matter of the failure of JRC Oil Co., Inc. ("Operator") to comply with K.A.R. 82-3-107 and K.A.R. 82-3-130 at the Daniel #DH-10 and Daniel #JH-10 in Anderson County, Kansas. ***Penalty Order - JRC Oil Co., Inc.***	14-CONS-149-CPEN	
4	In the matter of the failure of Atlas Operating LLC ("Operator") to comply with K.A.R. 82-3-107 and K.A.R. 82-3-130 at the Giefer Unit #1 in Kingman County, Kansas. ***Penalty Order - Atlas Operating LLC***	14-CONS-148-CPEN	

Attachment A

Consent Agenda

ITEM NO.	DESCRIPTION	DOCKET NUMBER	REMOVED
5	In the matter of the failure of Wausau Development Corporation ("Operator") to comply with K.A.R. 82-3-111 at the Suppes #22-3 in Scott County, Kansas. ***Penalty Order - Wausau Development Corporation***	14-CONS-147-CPEN	
6	In the matter of the failure of SandRidge Exploration and Production LLC ("Operator") to comply with K.A.R. 82-3-111 at the Fitzwater #3A-9 and Fitzwater #4-9 wells in Comanche County, Kansas. ***Penalty Order - SandRidge Exploration and Production LLC***	14-CONS-146-CPEN	
7	In the Matter of the Application of Ritchie Exploration, Inc. for an Order Granting an Exception to certain Requirements of K.A.R. 82-3-107(e) relating to the Don Selenke #1 Well Located in the Southeast Quarter of Section 22, Township 13 South, Range 31 West, Gove County, Kansas. ***Order***	14-CONS-104-CEXC	
8	In the Matter of the Application of Nemaha-Marshall Electric Cooperative for Authority to Cease Transacting the Business of an Electric Public Utility in a Portion of Section 29, Township 4 South, Range 13 East in Nemaha County, Kansas. ***Order on Motion to Withdraw***	14-NMME-037-CCS	
9	In the Matter of the Investigation of Cabs Fab & Welding, Inc. of Newton, Kansas, Regarding the Violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority. ***Penalty Order***	14-TRAM-126-PEN	
10	In the Matter of the Investigation of Tool Pro LLC of Burrton, Kansas, Regarding the Violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority. ***Order Suspending Motor Carrier Operating Authority***	13-TRAM-547-PEN	
11	In the Matter of the Investigation of American Can & Scrap, Inc. of Wichita, Kansas, Regarding the Violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority. ***Order Suspending Motor Carrier Operating Authority***	12-TRAM-636-PEN	

The above-captioned matter(s) were approved by the Commission, unless noted as removed.

For the Commission :

Mark Sievers by Thos E Wr

Mark Sievers, Chairman

Abstained

Thomas E. Wright, Commissioner

Shari Feist Albrecht by Thos E Wr

Shari Feist Albrecht, Commissioner

Attest:

Kim Christiansen
Executive Director

Kansas
Corporation Commission

ITEMS OF
Open Meeting
Tuesday, 1 October, 2013,11:00 am

Routine Items

ITEM NO.	DESCRIPTION	DOCKET NUMBER	REMOVED
1	In the Matter of the Application of HEWITT ENERGY GROUP, INC., for an Order approving an Operator Compliance Agreement between itself and the Conservation Division Staff of the State Corporation Commission of Kansas for certain wells located in and Russell County, Kansas ***Order Granting Motion to Withdraw as Attorney of Record***	12-CONS-289-CMSC	
2	In the Matter of the Application of MCC Missouri LLC Filing for Kansas Video Service Authorization. ***Order on Application for VSA***	11-MMOC-480-VSA	
3	In the Matter of the Cancellation of the Certificate of Convenience and Authority Previously Granted to Digizip.com, Inc. ***Order on Request to Cancel Certificate***	14-DGZC-130-CCS	
4	In the Matter of the Application of Wamego Telecommunications Company, Inc. for Additional Kansas Universal Service Fund Support Pursuant to K.S.A. 66-2008. ***Discovery Order; Protective Order***	14-WTCT-142-KSF	

The above-captioned matter(s) were approved by the Commission, unless noted as removed.

Attachment B

For the Commission :

Mark Sievers, Chairman

Thomas E. Wright, Commissioner

Shari Feist Albrecht, Commissioner

Attest:

Kim Christiansen
Executive Director

KANSAS
Corporation Commission

MINUTES OF
Interventions

October 1, 2013: @ 11:00 a.m.

Motions to Intervene

ITEM NO.	DESCRIPTION	DOCKET NUMBER	Approved	Limited	Denied
1	In the Matter of the Application of The Empire District Electric Company Seeking Approval for an Energy Efficiency Rider Pursuant to the Commission's Order in Docket No. 10-EPDE-497-TAR. *Petition to Intervene*	14-EPDE-132-TAR			

For the Commission:

Mark Sievers by Thomas E Wright authorized by phone
Mark Sievers, Chairman

Thomas E. Wright, Commissioner

Shari Feist Albrecht by Thomas E Wright
Shari Feist Albrecht, Commissioner
as authorized by phone

Attachment C

Attest:

Kim Christiansen
Executive Director

Here are the items I would like to see reflected in the order:

Substantive Recommendations:

(1) I believe that the legal standard to be applied to this transaction is simply an assessment of whether the transaction advances the public interest and that the merger standards developed by the Commission in 1991 do not apply because this transaction is factually different than the mergers those standards were developed for;

(2) I believe this transaction advances the public interest because (a) it replaces an entity that does not wish to provide service (Anadarko) with an entity that wants to provide service (Black Hills) and will create economic incentives and mechanisms to maintain the facilities used to serve Anadarko's customers; (b) replacing Anadarko with Black Hills provides economies of scale in the form of a larger base of customers over which to spread system maintenance, operational overhead and upgrade costs which can be expected to reduce costs over time; and, (c) replacing the Anadarko contract rates with the Black Hills tariff rates reduces the undue preferences and rate differentials/discrimination that exist under current circumstances;

(3) I support adoption of Staff's proposal to phase in Black Hill's rates over 3 years but note that the difference to be spread over 3 years (the difference between Anadarko's contractually set transportation rates and Black Hills' tariff rates) varies significantly among customers – the difference between TKO's contract transport rate and Black Hills' tariff rate is 39¢ whereas the difference between SWKI's contract transport rate and Black Hills' tariff rate is 9¢, so the phase in will be more or less important to each customer depending on their contract rate;[1]

(4) I do not support mechanisms that would require that Anadarko's rates be maintained beyond the termination of its contracts nor do I support mechanisms that would prohibit Anadarko from terminating its contracts as that would require the Commission to override the terms of long standing, previously negotiated private contracts;

(5) I do not support mechanisms that would require that Black Hills rates be modified in this proceeding to create a separate/special class of customers to mirror Anadarko's contract rates as that would be unfair to Black Hills' customer base and is more properly addressed in a future rate case where Black Hills' rate design and cost allocation for large industrial customers can be addressed;

(6) as Staff recommends,[2] I support addressing Anadarko's potential compliance (or non-compliance) with K.S.A 66-131 and the Commission's order in Docket 00-ANGC-218-COC in a separate proceeding; and,

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1 Staff's Post Hearing Brief Recommending Conditional Approval of the Application, at ¶20 (Sept 13, 2013).

2 Staff Report and Recommendation at pg 4 (July 11, 2013).

Attachment D

(7) I support Staff's recommendation that Black Hills not be granted an exclusive franchise, but that Anadarko's former customers served by Black Hills retain the right to seek service from other gas providers, but recommend (a) terminating this right at the next Black Hills rate case where rates and terms for its large industrial customers are set for its Kansas business; or (b) terminating this right if and when the Commission determines that Black Hills is the certificated carrier serving the geographic area in which the Anadarko customers are located.[3]

In my view, it is important to emphasize that the contractual relationship between Anadarko and its customers was not a traditional public utility relationship:

1. The contracts were month-to-month which gave either party the right to terminate. Anadarko was free to terminate service and its customers were free to terminate service and get gas from another provider. That's not a traditional public utility relationship.

2. The contracts specified mandatory arbitration of disputes in Texas applying Texas law, not specifying that appeals be made to the Commission. For the Commission to insert itself in maintaining or mandating continuance of Anadarko's rates would override the agreements both parties made.

Because Anadarko's customers are large, sophisticated customers and for TKO and SWIKI, public utilities, they have self-help options to avoid or minimize adverse impacts, to include:

1. The purchase price in this case is $3.7 million. The parties could simply outbid Black Hills for the Anadarko assets to assure themselves of continuation of the Anadarko rates.

2. The parties could build their own pipeline to Panhandle Eastern Pipeline and secure a contract with other entities for their gas supply rather than buy gas from Black Hills.

3. The parties could band together in a coalition to negotiate a single contractual rate with Black Hills or leave the Black Hills system if Black Hills refused to offer an economically acceptable alternative.

4. The parties could initiate legal action against Anadarko for economic damages they believe might be associated with the termination of their month-to-month contract under the mandatory arbitration provisions of their contracts with Anadarko.

5. The parties could decide to simply pass the difference between the Black Hills rates and the Anadarko rates their members/customers.

6. The parties could intervene in the next Black Hills rate case to advocate a new or special rate class or file a complaint against Black Hills challenging the application of its rates to their circumstances.

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[3] Staff's Post Hearing Brief Recommending Conditional Approval of the Application, at ¶20 (Sept 13, 2013).