

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                    Thomas E. Wright, Chairman  
    Joseph F. Harkins  
    Ward Loyd

In the Matter of the Investigation of Affiliate    )  
and Ring-Fencing Rules Applicable to all        )  
Kansas Electric and Gas Public Utilities.        )        Docket No. 06-GIMX-181-GIV

ORDER ADOPTING REPORT OF STAFF AND ACTIVE PARTICIPATING UTILITIES  
AND APPROVING PROCEDURE FOR FILING INFORMATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1.       The Commission's Staff filed a Report and Recommendation in Docket No. 01-WSRE-949-GIE (01-949),<sup>1</sup> recommending the Commission open a general investigation into affiliate transactions and ring-fencing rules, due in part to the repeal of the Public Utility Holding Company Act of 1935 (PUHCA). On August 30, 2005, the Commission issued an Order Opening Investigation<sup>2</sup> to initiate this proceeding. The Commission made all electric and gas entities subject to the Commission's jurisdiction parties to this docket.<sup>3</sup> In Staff's Third Report and Recommendation, Staff clarified that the term "public utility," as used in this proceeding, would not include cooperatives; thus, Staff's recommendations apply to investor-owned public utilities.<sup>4</sup>

2.       In addition to Staff, the following utilities are involved as active parties in this proceeding: Atmos Energy; The Empire District Electric Company (Empire); Black Hills/Kansas

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<sup>1</sup> Docket No. 01-WSRE-949-GIE (01-949), *In the Matter of the Investigation of Actions of Western Resources, Inc. to Separate Its Jurisdictional Electric Public Utility Business From Its Unregulated Businesses*, Staff's Report and Recommendation, filed July 26, 2005 (01-949 Staff Report).

<sup>2</sup> Order Opening Investigation, filed August 30, 2005 (Aug. 30, 2005 Order).

<sup>3</sup> Aug. 30, 2005 Order, ¶ 5.

<sup>4</sup> Staff's Third Report and Recommendation, filed May 14, 2007, page 6.

Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills), as successor to Aquila, Inc.; Kansas City Power & Light (KCPL); ONEOK, Inc. and Kansas Gas Service, a division of ONEOK (ONEOK); Westar Energy, Inc., and Kansas Gas and Electric Company (Westar); Kansas Electric Cooperatives, Inc. (KEC); Kansas Electric Power Co-op, Inc. (KEPCo); Midwest Energy, Inc. (Midwest); Sunflower Electric Power Corporation and Mid-Kansas Electric Cooperative (Sunflower/MKEC); and Wheatland Electric Cooperative, Inc. Also, the Citizens' Utility Ratepayers Board (CURB) intervened in this docket. The parties listed in this paragraph have constituted active parties for service of comments, testimony, briefs, and Orders, other than the Commission's final order deciding this proceeding.

3. In an Order Scheduling Comments and Prehearing Conference, issued April 23, 2010, the Commission narrowed the focus of this investigation "to consider the utilities' claim that information is already available under current rules and statutes that will allow Staff to have information needed to review affiliate transactions."<sup>5</sup> To advance this docket, the Commission also adopted the following policy statement on affiliate transactions: "The policy of this Commission is to effectively protect utility customers from the potential harm caused by non-utility business losses incurred by the utility and to prevent non-utility businesses from being subsidized by the utility business."<sup>6</sup> To clarify what information Staff needs to obtain to monitor affiliate transactions, the Commission identified in Attachment A to the April 23, 2010 Order (Attachment A) the specific information utilities must make available to Staff. The Commission adopted this list "as the essential information utilities are required to provide Staff to enable it to review transactions involving regulated utilities and non-regulated affiliates."<sup>7</sup>

4. The Commission directed the active parties to file comments addressing and providing details regarding each item listed in Attachment A.<sup>8</sup> The Commission recognized Staff's review of essential information in Attachment A might trigger additional questions,

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<sup>5</sup> April 23, 2010 Order, ¶ 14.

<sup>6</sup> April 23, 2010 Order, ¶ 18.

<sup>7</sup> April 23, 2010 Order, ¶¶ 22.

<sup>8</sup> April 23, 2010 Order, ¶ 23.

resulting in Staff making further inquiries of an individual utility about its transactions with a non-regulated affiliate. The Commission also recognized some information utilities provide might need to be treated as confidential under K.S.A. 2009 Supp. 66-1220a.<sup>9</sup>

5. The Commission set deadlines for utilities, CURB, and other intervenors desiring to be heard to file comments. The Commission also scheduled a prehearing conference for November 3, 2010, to discuss (1) proposals regarding how to provide information in Attachment A to Staff, (2) any contested issues identified in comments, (3) proposals on how to handle confidential information, and (4) further procedures in this docket.<sup>10</sup>

6. On July 14, 2010, Staff filed a Motion for Extension of Time on behalf of all active parties asking the Commission to revise the schedule to allow active parties to collaborate about how utilities will provide Staff with information contained in Attachment A. The Motion was granted and active parties were directed to file a report setting out what issues had been resolved, what contested issues remained, and what, if any, further procedure should be implemented in this docket. After the deadline was extended, the Report of the Commission Staff and the Active Participating Parties (the Report) was filed on October 27, 2010.

7. A Prehearing Conference was conducted on November 3, 2010, with Prehearing Officer Martha J. Coffman presiding. Transcript of Prehearing Conference on November 3, 2010 (Tr.). Appearances at the Prehearing Conference were as follows: Dana Bradbury on behalf of Commission staff (Staff) and the public generally; Niki Christopher on behalf of CURB; Walker Hendrix on behalf of ONEOK and its division Kansas Gas Service; James G. Flaherty on behalf of Atmos, Black Hills, and Empire; Glenda Cafer on behalf of KCPL; and Pete Sumners on behalf of Westar.<sup>11</sup> Staff reported on Notice of the Prehearing Conference.<sup>12</sup> Hearing no objection to Notice, the Prehearing Officer found that notice was properly given and that jurisdiction existed to proceed.<sup>13</sup>

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<sup>9</sup> April 23, 2010 Order, ¶¶ 23-24.

<sup>10</sup> April 23, 2010 Order, ¶¶ 27-28.

<sup>11</sup> Tr., pages 3-4.

<sup>12</sup> Tr., pages 4-5.

<sup>13</sup> Tr., page 5.

8. The Prehearing Officer recognized parties attending the Prehearing Conference included Staff, CURB and those utilities approving the agreement set out in the Report. These utilities, referred to as the Active Participating Utilities, include Atmos, Empire, Black Hills, KCPL, ONEOK, and Westar. Staff Counsel Bradbury stated other active parties in the docket had reduced their participation in the collaborative discussion and were not parties to the resulting agreement. However, all active participants, including CURB, were served with the Report setting out procedures for providing Staff with information listed in Attachment A to the April 23, 2010 Order.<sup>14</sup>

9. The Prehearing Officer discussed with the parties the procedure to recommend for this proceeding. Under K.A.R. 82-1-230a, parties were allowed 10 days, plus three additional days if served by mail, to object to the agreement in the Report; this deadline had not expired at the time of the Prehearing Conference. The Prehearing Officer set a deadline of November 12, 2010, for objecting under K.A.R. 82-1-230a and, if needed, a deadline of November 22, 2010, to file a response.<sup>15</sup> During this discussion, CURB Counsel Christopher stated CURB would not object to the settlement and did not oppose concluding this docket without a hearing. Tr., page 12. Parties agreed further comments discussing the Report were not necessary in light of the numerous comments already filed in this docket. Parties agreed no hearing was needed and recommended the Commission decide whether to approve the agreement in the Report based upon the current record.<sup>16</sup> The Prehearing Officer agreed with the parties' recommendation.<sup>17</sup>

10. The Prehearing Officer reports that no objections were filed to the Report. The Prehearing Officer recommends the Commission (1) accept the Report of Staff and the Active Participating Utilities, (2) approve the agreed upon method for providing information to Staff as set out in the Report, and (3) serve this Order and the Report on all electric and gas entities subject to the Commission's jurisdiction. The Prehearing Officer further recommends the

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<sup>14</sup> Tr., page 6.

<sup>15</sup> Tr., page 7.

<sup>16</sup> Tr., pages 9-12, 14-15.

<sup>17</sup> Tr., pages 13-14.

Commission find procedures set out in the Report will apply to investor-owned public utilities and be used in utility-specific compliance docket, except to the extent a modification is approved.

#### FINDINGS AND CONCLUSIONS

11. This proceeding has a lengthy history addressing important questions regarding interactions between regulated utilities and non-regulated affiliates. Several proposals have been presented to address this issue. Unfortunately, many delays have occurred, some due to other business before this agency. In refocusing this docket in the April 23, 2010 Order, the Commission sought to resolve these important issues by ensuring Staff had information needed to identify problems involving transactions between regulated utilities and non-regulated affiliates. The Commission applauds the collaborative efforts of the Active Participating Utilities and Staff to resolve how Staff can acquire information it needs to review these transactions.

12. The Commission notes that the Report restates the information Staff previously identified as essential to review non-regulated affiliate transactions, as listed in Attachment A to the April 23, 2010 Order. After restating this information, the Report describes how this information will be provided to Staff. The Commission agrees with the proposal to submit this information in individual compliance dockets for investor-owned utilities; this will allow the information to be reviewed as needed but to be treated as confidential if appropriate. Based upon the numerous comments previously filed in this proceeding, and taking into account the important questions that have been raised in this proceeding, the Commission accepts the Report of Staff and the Active Participating Utilities as a reasonable resolution of the issues identified in this general investigation. The Commission approves the agreed-to procedures for filing information set forth in the Report, which will provide Staff with information previously identified in Attachment A to the April 23, 2010 Order as necessary to review transactions between regulated utilities and non-regulated affiliate. The Commission directs that this Order and the Report be served on all electric and gas entities subject to the Commission's jurisdiction. If no Petitions for Reconsideration are received, this docket will be closed when that deadline expires.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission accepts the Report of Staff and the Active Participating Utilities as a reasonable resolution of the issues identified in this general investigation and approves the agreed-to procedures for providing this information to Staff, as set forth in the Report. The Commission finds these procedures will apply to all investor-owned utilities except to the extent modified in utility-specific compliance dockets that are opened to receive this information.

(B) The Commission directs that this Order and the Report be served on all electric and gas entities subject to the Commission's jurisdiction.

(C) Parties have fifteen days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

(D) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Harkins, Com.; Loyd, Com.

Dated: DEC 03 2010

ORDERED MAILED

DEC 03 2010

 EXECUTIVE DIRECTOR

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Susan K. Duffy  
Executive Director

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