

<sup>2</sup> 218 Order, pp. 6-7.

to Black Hills Energy ("Black Hills"). In their Joint Application to the Commission, ANGC and Black Hills listed all seven<sup>3</sup> of ANGC's remaining contract customers.<sup>4</sup> In its Report and Recommendation in that docket, Staff of the Commission ("Staff") stated, "it appears that ANGC failed to file [six of its seven] customer contracts for Commission approval as required by Commission Order in Docket 00-ANGG-218-COC."<sup>5</sup> As detailed below, this statement was not correct.

### **C. Docket No. 14-ANGG-119-COM**

3. On August 27, 2013, relying solely on the above statement in Staff's R&R, SWKI-Seward West Central, Inc. ("SWKI-SWC"), and SWKI-Stevens Southeast, Inc. ("SWKI-SSE") (collectively, "SWKIs"), two of ANGC's seven contract customers, filed a Complaint against ANGC.<sup>6</sup> In their Complaint, SWKIs alleged ANGC failed to file two natural gas sales agreements with the Commission. One agreement was initially executed in 1998 by SWKI-SSE and Anadarko Energy Services Company ("AESC") ("1998 Agreement").<sup>7</sup> The other agreement, between ANGC and SWKI-SWC, was executed in 2002 ("2002 Agreement").<sup>8</sup> SWKIs sought a finding that ANGC violated K.S.A. 66-109 and K.S.A. 66-117 by failing to file both the 1998 Agreement and the 2002 Agreement with the Commission, and, therefore, all rates charged by ANGC under such contracts were unlawful, void, and subject to refund with interest.<sup>9</sup>

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<sup>3</sup> The KCC had previously approved the transfer of most of ANGC's contract customers to Texas-Kansas-Oklahoma Gas, LLC ("TKO") in consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC; See Order Granting Applications with Conditions, April 12, 2010.

<sup>4</sup> See Exhibit A, listing ANGC's seven contract customers at the time of the 509 Docket. This Exhibit was initially included as Exhibit 1 to the Joint Application of Anadarko and Black Hills Energy in the 509 Docket.

<sup>5</sup> Docket No. 13-BHCG-509-ACQ, Staff Report & Recommendation, July 11, 2013, p. 2. (13-509 R&R, p. 2.)

<sup>6</sup> Complaint of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. against Anadarko Natural Gas Company, August 27, 2013, ¶ 7. (Complaint, ¶ 7.)

<sup>7</sup> A KCC file-stamped copy of the 1998 Agreement is included with Exhibit B, attached hereto. At page 9, Article 10.1, the 1998 Agreement expressly allowed AESC to assign the contract to its affiliates (including ANGC).

<sup>8</sup> A copy of the 2002 Agreement is attached as Exhibit C.

<sup>9</sup> Complaint, ¶ 14.

4. On October 7, 2013, ANGK filed its Motion to Dismiss and Answer to Complaint. In this filing, ANGK stated the 1998 Agreement was filed with the Commission in 2000, when ANGK became a natural gas utility.<sup>10</sup> ANGK also described the 2002 Agreement, noting its terms were materially identical to those of the 1998 Agreement, and verified it had also been filed in accordance with Commission orders.<sup>11</sup>

5. In addition to the initial contract filings, the Commission was further notified of the 1998 and 2002 Agreements in 2007 when the contracts were listed as ongoing ANGK customer agreements in consolidated KCC Docket Nos. 08-TKOG-314-COC and 08-ANGG-295-CCN ("TKO Certificate Docket").<sup>12</sup> The SWKIs were granted full intervention and actively participated in the TKO Certificate Docket through the "Southwest Kansas Irrigation Association," of which the SWKIs were primary and active members.<sup>13</sup>

6. On November 26, 2013, Staff filed its Report and Recommendation ("R&R") in this Complaint docket. In its R&R, Staff detailed its investigation of the allegations in SWKIs' Complaint, stating,

"The purpose of this Report and Recommendation is to provide the Commission with a chronology of the documents filed with the Commission related to this matter. Where we feel clarification is necessary, Staff also adds analysis for items listed in the chronology that are discussed in the filings previously made in the subject Docket."<sup>14</sup>

Regarding the 1998 and 2002 Agreements, Staff further noted,

- [The contracts were] signed by each party to the contract;

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<sup>10</sup> ANGK's Motion to Dismiss and Answer to Complaint, October 13, 2018, ¶¶ 5-8. (ANGK Answer, ¶¶ 5-8.)

<sup>11</sup> ANGK Answer, ¶¶ 9-10.

<sup>12</sup> ANGK Answer, ¶ 10; Docket No. 08-TKOG-314-COC, Application, October 2, 2007, Confidential Exhibit B.

<sup>13</sup> See Docket No. 08-TKOG-314-COC, Petition to Intervene and Motion for Consolidation of Dockets by the Southwest Kansas Irrigation Association, October 15, 2007; See also Docket No. 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, February 27, 2008.

<sup>14</sup> Notice of Filing of Staff's Report and Recommendation, November 26, 2013, Report and Recommendation, p. 1. (14-119 R&R, p. 1).

- Until the subject complaint was filed, no complaint regarding services provided by an Anadarko company has been received from the [SWKIs]; and
- The contracts allow for either party to terminate the agreement within 30 days of giving notice. The failure of the [SWKIs] to terminate the contract over the last 19 years for SWKI-SWC and for the last 11 years for SWKI-SE indicates their agreement to the terms of their respective contracts.<sup>15</sup>

7. As a result of its investigation, Staff recommended ANGCO be ordered to pay a civil penalty for an administrative violation – the alleged failure to file the 2002 Agreement in compliance with its customer-specific Certificate.<sup>16</sup> Staff further recommended AESC be ordered to pay a civil penalty for allegedly operating as a public utility without obtaining a Certificate of Convenience in violation of K.S.A. 66-131, despite also finding ANGCO had made a "good faith effort to comply with the Commission Order [in the 218 Docket]."<sup>17</sup> Staff did not recommend any remedy be provided to SWKIs for the alleged violations.

8. On January 15, 2014, Staff, ANGCO, and AESC submitted a Stipulated Settlement Agreement ("Settlement") for Commission approval.<sup>18</sup> Under the terms of the Settlement, ANGCO and AESC agreed to jointly pay a \$50,000 civil penalty to resolve any and all alleged violations implicated by Staff's investigation.<sup>19</sup> However, ANGCO and AESC's payment of such penalty was not an admission of any liability or violations of law, and the companies expressly deny the alleged violations.<sup>20</sup>

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<sup>15</sup> 14-119 R&R, p. 2.

<sup>16</sup> 14-119 R&R, p. 6.

<sup>17</sup> 14-119 R&R, p. 6. ANGCO and AESC maintain no unauthorized service was provided by AESC. Although the 1998 Agreement was originally executed by AESC, service was provided by ANGCO following receipt of its certificate in 2000. As noted above, this transfer of AESC's contractual position was expressly allowed under the 1998 Agreement, and ANGCO fully informed the Commission it was the entity providing service (see Exhibit B, Transmittal Letter dated August 3, 2000).

<sup>18</sup> Joint Motion for Approval of Stipulated Settlement Agreement, January 15, 2014. (14-119 Settlement.)

<sup>19</sup> 14-119 Settlement, ¶ 6; Specifically, Staff agreed "not to recommend or advocate any further penalty against ANGCO or AESC for violations of public utility statutes regarding the sale and/or transportation of natural gas in question, for the period July 1, 1998 through November 1, 2013, in any KCC Docket, state or federal court, or arbitration or mediation proceeding."

<sup>20</sup> 14-119 Settlement, ¶ 6(d).

9. On January 15, 2015, the Commission issued an Order approving the Settlement and dismissing SWKIs' Complaint.<sup>21</sup> In its Order, the Commission reasoned the Complaint should be summarily dismissed because SWKIs "admit their claim is based on a failure to file the agreements, rather than any allegation that the rates in those agreements are unfair, unjust, unreasonable, or unjustly discriminatory or unduly preferential rate."<sup>22</sup> Absent such an allegation, the Commission found SWKIs had failed to state a claim under either K.S.A. 66-154a or 66-1,205.

10. The Commission also approved the Settlement as a fair resolution of the allegations contained in Staff's R&R. The Commission expressly found the Settlement to be in the public interest because it would "enforce [the Commission's] rules and regulations" by assessing an appropriate penalty upon ANGCO and AESC for an alleged failure to comply with K.S.A. 66-131, while avoiding a costly and time consuming fully-litigated hearing.<sup>23</sup>

#### **D. Appellate Proceedings**

11. SWKIs appealed the Commission's dismissal of their Complaint to the District Courts and, ultimately, the Kansas Court of Appeals. Anadarko will not discuss the appellate proceedings at length. However, the Kansas Court of Appeals, in an unpublished decision, remanded this matter to the Commission "for additional proceedings to determine if the contracts were ever filed and approved by the Commission. If not, the Commission is directed to determine, in its discretion, if the SWKIs are entitled to a remedy for Anadarko's violations."<sup>24</sup>

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<sup>21</sup> Order Granting Anadarko Natural Gas Company's Motion to Dismiss Complaint with Prejudice and Granting Joint Motion for Approval of Stipulated Settlement Agreement, January 15, 2015. (Order Dismissing Complaint.)

<sup>22</sup> Order Dismissing Complaint, ¶ 14.

<sup>23</sup> Order Dismissing Complaint, ¶¶ 18-19, 28-29.

<sup>24</sup> *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692 at \*27 (Kan. Ct. App. 2018) (unpublished opinion).

## **E. Remand Proceedings**

12. On October 4, 2018, the Commission issued an Order setting this matter for additional proceedings. In its Order, the Commission directed the parties to "engage in discovery to determine whether the disputed contracts were filed and approved."<sup>25</sup> The Commission further directed Anadarko and SWKIs to "submit briefs with evidentiary support to demonstrate whether the contracts were filed and approved" by January 11, 2019.<sup>26</sup>

## **II. Analysis**

### **A. Legal Standards**

13. Pursuant to K.S.A. 66-131, no public utility may transact business in the state of Kansas until it obtains a certificate of convenience and necessity from the Commission. As cited above, ANGC was granted a limited certificate of convenience and necessity to provide natural gas service in Docket No. 00-ANGG-218-COC. More specifically, ANGC was granted authority to transact the business of a public utility on a customer-specific basis through bilaterally-negotiated contracts with its customers.<sup>27</sup>

14. For new gas service customers, the Commission ordered ANGC to "file all Customer Specific Certificates and Contract Rate Schedules for review by and approval of the Commission *consistent with applicable Kansas statutes and regulations*."<sup>28</sup> This requirement is consistent with K.S.A. 66-1,203, which requires every natural gas public utility to "publish and

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<sup>25</sup> Order Denying Anadarko's Petition for Reconsideration of Discovery and Protective Order, October 4, 2018, ¶ 18.

<sup>26</sup> Order Denying Anadarko's Petition for Reconsideration of Discovery and Protective Order, ¶ 18.

<sup>27</sup> 00-218 Order, pp. 6-7; "Natural gas service provided by Anadarko Natural Gas Company under the Limited Certificate shall be customer specific pursuant to the transferred Contract Rate Schedules," and "In connection with providing gas service to future customers, Anadarko Natural Gas Company shall file all Customer Specific Certificates and Contract Rate Schedules for review by and approval of the Commission consistent with applicable Kansas statutes and regulations."

<sup>28</sup> 00-218 Order, pp. 6-7. (Emphasis added.)

file with the commission copies of all schedules of rates and...furnish the commission copies of all rules and regulations and contracts between natural gas public utilities pertaining to any and all jurisdictional services to be rendered by such natural gas public utilities."

15. In Kansas, the procedure for approving contract rates is addressed by K.S.A. 66-117, which provides no "changed rate" will become effective unless it is filed with the Commission.<sup>29</sup> When a rate is filed with the Commission, it may be suspended and investigated for up to 240 days. If the rate is not suspended within 30 days, it is deemed approved by the KCC.<sup>30</sup>

16. Therefore, pursuant to ANGC's Certificate, consistent with Kansas law, ANGC was required to file all customer-specific natural gas service contracts for Commission approval. Pursuant to K.S.A. 66-117, filed rates may become approved by order of the Commission or through the passage of time and operation of law under K.S.A. 66-117(c).

**B. The 1998 Agreement was Filed with the Commission in Docket No. 00-ANGG-218-COC and Approved by Operation of Law.**

17. Since the time SWKIs' Complaint was initially filed in 2013, ANGC has maintained the 1998 Agreement was filed with the Commission in compliance with the conditions of ANGC's Certificate.<sup>31</sup> However, ANGC did not possess a KCC "file-stamped" copy of the 1998 Agreement to conclusively demonstrate the filing, and the 1998 Agreement could not be located in the KCC's official records of docket filings.<sup>32</sup> ANGC's assurances were further contradicted by Staff's statement (in the 509 Docket) that ANGC had apparently not filed six of its seven customer

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<sup>29</sup> K.S.A. 66-117(a).

<sup>30</sup> When initially suspended, rates filed with the KCC are deemed approved if the KCC does not issue a final order on such rates within 240 days.

<sup>31</sup> ANGC Answer, October 7, 2013, ¶¶ 7-8; Reply of Anadarko Natural Gas Company to the Response of SWKI-Seward West Central, Inc. and SWKI-Stevens South East, Inc. to Anadarko's Motion to Dismiss and Answer to Complaint, ¶¶ 1-7.

<sup>32</sup> See Exhibit D showing a listing of docket filings in the 00-218 Docket.

contracts, including the 1998 and 2002 Contracts.<sup>33</sup> Since 2013, however, new information has been discovered.

18. On October 29, 2018, Staff provided the parties a Memorandum regarding its continuing efforts to locate the 1998 and 2002 Agreements in the files and records of either the Commission or the Staff. A copy of Staff's Memorandum and its attachments, dated September 14, 2018, is attached hereto as Exhibit B.

19. In its Memorandum, Staff described the various locations it has searched for the 1998 and 2002 Agreements. These locations included the KCC's official files and records, encompassing all records of filings in Commission dockets. Staff's search also covered non-official locations, including various boxes, file cabinets, and paper files on the second floor of the KCC Headquarters.

20. As a result of its search, Staff located an official KCC "file-stamped" copy of the 1998 Agreement in a file cabinet "in the area east of the Senior Administrative Assistant's bunker and along the south hallway on the 2<sup>nd</sup> floor of the KCC building."<sup>34</sup> The file stamp bears the signature of the KCC's Executive Director, Jeffrey S. Wagaman, and conclusively demonstrates the 1998 Agreement was officially received by the Commission and filed in Docket No. 00-ANGG-218-COC on August 16, 2000.<sup>35</sup>

21. With the 1998 Agreement, Staff also discovered a transmittal letter dated August 3, 2000, and dozens of additional ANG C gas service contracts bearing KCC file-stamps.<sup>36</sup>

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<sup>33</sup> 13-509 R&R, p. 2.

<sup>34</sup> Exhibit B, p. 2.

<sup>35</sup> See Exhibit B, File stamp shown on cover page of 1998 Agreement attached to Staff's Memorandum. K.A.R. 82-1-206(c) states, "All communications and documents properly addressed or filed shall be deemed to be officially received by the commission when actually delivered at the office of the executive director of the commission." The KCC file-stamp (indicating filing) and signature of the Mr. Wagaman (indicating receipt by the Executive Director) demonstrate the 1998 Agreement was "officially received" by the Commission.

<sup>36</sup> See Transmittal letter dated August 3, 2000, included with Exhibit B. In response to ANG C DR 1, Staff provided



ANGC's transmittal letter expressly indicated the contracts, including the 1998 Agreement, were being submitted "for filing with the Kansas Corporation Commission"..."[in] accordance with the Order and Certificate issued on May 19, 2000 in [Docket No. 00-ANGG-218-COC]...."<sup>37</sup>

22. The Commission did not suspend or otherwise reject the 1998 Agreement. Therefore, the 1998 Agreement was approved by this Commission, and its rates and terms are just and reasonable under Kansas law.<sup>38</sup>

**C. The 2002 Contract was Filed by ANGC in the Ordinary Course of its Regulatory Compliance Operations.**

23. As noted above, the SWKIs' Complaint was initially prompted by a KCC Staff R&R filed in July of 2013 in the 13-509 Docket. In that R&R, Staff stated ANGC had apparently failed to file six of its seven existing customer contracts with the KCC. This assertion encompassed the 1998 Agreement, the 2002 Agreement, and several other natural gas sales agreements between ANGC and its customers. The seven contracts referenced in Staff's R&R included natural gas sales agreements with the following customers:

- 1) National Beef Packing Company, LLC;
- 2) Supreme Cattle Feeders, LLC;
- 3) SWKI-Seward West Central, Inc. (SWKI-SWC);
- 4) SWKI-Stevens Southeast, Inc. (SWKI-SSE);
- 5) Anadarko Energy Services Company (AESC);
- 6) Texas-Kansas-Oklahoma Gas, LLC (TKO); and
- 7) Black Hills Energy

24. Though it was an understandable statement at the time, Staff's assertion was not correct. In fact, all of the seven ANGC contracts were likely filed with the Commission in accordance with the requirements of ANGC's certificate.

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fifty KCC file-stamped ANGC natural gas sales agreements, including the SWKI-SSE and AEC agreements.

<sup>37</sup> See Transmittal letter dated August 3, 2000, included with Exhibit B.

<sup>38</sup> K.S.A. 66-117(c); *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n of State of Kansas*, 28 Kan. App. 2d 313, 321, 16 P.3d 319, 326 (2000).

25. Staff noted the Black Hills Energy contract was filed in KCC Docket No. 95-AGCG-073-COC. In addition, the Natural Gas Sales Agreement between ANGCO and TKO was attached to – and an integral component of – TKO's Application to acquire and serve many of ANGCO's customers in 2007.<sup>39</sup> In fact, the Commission required an *expansion* of ANGCO's obligation to provide natural gas service to TKO, as a condition of the transaction's approval.<sup>40</sup>

26. The SWKI-SSE and AESC contracts were both filed with the Commission in Docket No. 00-ANGG-218-COC on August 16, 2000, as evidenced by file-stamped copies of the contracts provided by Staff in discovery.<sup>41</sup> And the transmittal letter found with those contracts also listed the National Beef and Supreme Cattle Feeders contracts, noting they were previously "filed with the KCC under AGC's previous Limited Certificate."<sup>42</sup>

27. The only document that has not yet been located is a file-stamped copy of the 2002 Agreement between ANGCO and SWKI-SWC (which is materially identical to the 1998 Agreement). Similar to the 1998 Agreement and dozens of other contracts filed with the KCC, ANGCO has consistently asserted the 2002 Agreement was filed with the KCC in the ordinary course of its regulatory operations.<sup>43</sup> As discussed above, ANGCO's assertions have proven correct for each of the other contracts – though the proof has emerged over the course of several years.

28. Anadarko does not raise the above issues to disparage the KCC, its Staff, or its historical record-keeping practices in any manner. The simple and unfortunate fact is that Anadarko has also been unable to locate relevant regulatory records from 15-20 years ago. While this is unfortunate, it does not demonstrate certain documents were not filed with the KCC.

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<sup>39</sup> See Docket No. 08-TKOG-314-COC, Confidential Application, October 2, 2007.

<sup>40</sup> See Docket No. 08-TKOG-314-COC, Order Granting Applications with Conditions, April 12, 2010, ¶ 48.

<sup>41</sup> Staff's Response to ANGCO DR 1. In this response, KCC Staff provided fifty file-stamped ANGCO natural gas sales agreements, including the SWKI-SSE and AEC agreements.

<sup>42</sup> See Exhibit B, "Exhibit A" to the transmittal letter included with Staff's memorandum.

<sup>43</sup> See ANGCO Answer, October 7, 2013, ¶ 10.

Instead, the present situation very clearly demonstrates record-keeping – particularly the record-keeping of previous decades – was not perfect. It has taken years to locate certain records, and certain other records may never be locatable.

29. We now know certain ANGCO contracts exist in the Commission's official records, yet they were not discovered during Staff's initial research of this issue. More importantly, we also know dozens of ANGCO customer contracts were received by the Executive Director and "filed" in a docket but do not reside in the KCC's official records of that docket (SWKI-SSE, AESC, etc.).<sup>44</sup> It is very likely the 2002 Agreement was also received by the Executive Director and "filed" in a docket, even though the Commission's records of docket filings do not reflect it. This was precisely the situation for the 1998 Agreement and dozens of other ANGCO contracts until they were discovered in September of 2018. This demonstrates why a conclusive finding of "non-filing" – at one specific point in time – is both unfair and impossible. New information is continually discovered, and highly relevant information from decades past may never be discoverable.

30. In addition, ANGCO emphasizes that the Commission was consistently kept informed of ANGCO's gas service to SWKI-SWC over the years. SWKI-SWC was initially granted a certificate to provide natural gas service to its members in Docket No. 02-SSWG-611-COC. In that proceeding, KCC Staff supported SWKI-SWC's Application, stating,

Staff is well informed as to the plans, engineering and related details associated with Applicant's intent to provide rural gas service to the requested territory. Following issuance of its certificate under the Commission's April 2, 2002 Order, Applicant has been in continuous communication with Staff concerning its construction schedule and installation of its pipeline and associated facilities in its certificated territory. Staff is also mindful of the urgency associated with the lack of a reliable supply of natural gas faced by irrigation farmers in southwest Kansas.

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<sup>44</sup> See Exhibit D; See also, Exhibit B and Staff's Response to ANGCO DR 1 wherein dozens of natural gas sales agreements, filed in the 00-218 Docket, were provided.

Therefore, Staff would also agree that this matter merits expeditious consideration by the Commission.<sup>45</sup>

It is very difficult – if not impossible – to imagine a scenario where SWKI-SWC would be granted a Certificate without the Commission investigating its source of gas. SWKI-SWC's gas supply would have been a primary item of inquiry for KCC Staff. As evidenced by Staff's statement, the relationship between SWKI-SWC and ANGC was well known at that time.

31. Later, in the TKO Certificate Docket, SWKI-SWC was clearly listed as a contract customer being retained by ANGC.<sup>46</sup> Finally, in the 509 Docket, ANGC listed SWKI-SWC as one of its seven contract customers. At no time did ANGC hide or obscure its gas service to SWKI-SWC. On the contrary, ANGC performed in the exact manner expected of a regulated public utility.

32. In addition, ANGC provided gas service to SWKI-SWC on the exact same terms as those approved by the Commission for SWKI-SSE and on materially similar pricing terms to those approved for an ANGC affiliate, Anadarko Petroleum Corporation, during the same time period.<sup>47</sup> ANGC's transparent and non-discriminatory conduct provides additional support for the position that the 2002 Agreement had been filed with the Commission. ANGC's actions are evidence the company understood the 2002 Agreement was jurisdictional to the KCC and subject to the conditions of ANGC's limited certificate.

33. ANGC readily admits it does not possess a file-stamped copy of the 2002 Agreement – just as it did not possess a file-stamped copy of the 1998 Agreement until very

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<sup>45</sup> Docket No. 02-SSWG-611-COC, Staff's Response to Applicant's Motion to Amend Application; Dismiss Protest and for Entry of an Emergency Order Issuing a Certificate; And Staff's Reply to Intervenor's Response to Applicant's Motion, May 1, 2002, ¶ 11.

<sup>46</sup> Docket No. 08-TKOG-314-COC, Confidential Application, October 2, 2007.

<sup>47</sup> See Exhibit E, KCC file-stamped 1998 Natural Gas Sales Agreement between AESC and Anadarko Petroleum Corporation ("APC"). Aside from a minimum price term in SWKI's contracts, the volumetric price per MMBtu charged to APC was identical to the price charged to SWKI-SWC and SWKI-SSE – an index price plus fifty cents.

recently. However, as detailed above, ANGC had a consistent record of filing jurisdictional customer contracts with the KCC and always listed SWKI-SWC as a jurisdictional customer. The totality of the circumstances suggests the 2002 Agreement, like the 1998 Agreement and dozens of other jurisdictional contracts, was filed in the ordinary course of ANGC's regulatory operations and was approved by operation of law. Based on the above facts, the Commission does not have a substantial basis to conclude the 2002 Agreement was *not* filed with the Commission.

### **III. Conclusion**

34. The record as a whole supports a finding that the 1998 Agreement was filed with the Commission in compliance with ANGC's Certificate and approved by operation of law. The record as a whole also supports a finding that the 2002 Agreement was filed with the Commission in the ordinary course of ANGC's regulatory operations and approved by operation of law. Alternatively, the record would support a finding that the Commission cannot conclusively determine whether the 2002 Agreement was filed and approved.

35. The Court of Appeals has directed the Commission "to determine if the contracts were ever filed and approved by the Commission." Starting on October 4, 2018, the parties engaged in substantial discovery to allow the Commission to answer this question. The record now conclusively demonstrates one contract was filed and approved by the Commission. The record also demonstrates the other contract was likely filed in the ordinary course, and a conclusive finding of non-filing is unsupportable under the facts of this case. Based on that record, the Commission has fulfilled its mandate from the Court.

36. Because both contracts were likely filed with, and approved by, the Commission, there is no need for additional proceedings regarding a remedy for SWKIs. However, as comprehensively detailed in a previous filing, such a remedy would be inappropriate – even

assuming *arguendo* that the contracts were not filed with the Commission.<sup>48</sup> Moreover, there is now no doubt the 1998 Agreement was approved by the KCC, making its rates just and reasonable under Kansas law. And those are the same rates charged under the 2002 Agreement.

37. Anadarko has already paid the State of Kansas a substantial civil penalty of \$50,000 to resolve these allegations. Additional proceedings exploring a potential extra "remedy" for the SWKIs are simply unwarranted by the circumstances.

WHEREFORE, ANGCO respectfully requests the Commission find the 1998 and 2002 Agreements were filed with the Commission in compliance with ANGCO's Certificate.

Respectfully submitted,

/s/ **Andrew J. French**

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**Attorneys for Anadarko Natural Gas Company**

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<sup>48</sup> See Petition for Reconsideration of Discovery and Protective Order, September 4, 2018, ¶¶ 28-55.

**VERIFICATION**

STATE OF KANSAS       )  
                                  ) ss:  
COUNTY OF JOHNSON   )

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for Anadarko Natural Gas Company, that he has read and is familiar with the foregoing *Brief on Contract Filing*, and the statements therein are true to the best of his knowledge, information, and belief.



\_\_\_\_\_  
Andrew J. French

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of January, 2019.



\_\_\_\_\_  
Notary Public

My Appointment Expires:



EXHIBIT 1

ANGC Customer List

Customer Name & Address

National Beef Packing Company, LLC  
12200 N. Ambassador Dr., Suite 500  
Kansas City, MO 64163  
Contact: Bud Ludwig

Supreme Cattle Feeders, LLC  
19016 Road I  
Kismet, KS 67859  
Contact: Nancy Parsons

SWKI - Seward - West Central, Inc.  
c/o Hitch Farms  
P.O. Box 1308  
Guymon, OK 73942  
Contact: Jason Hitch

SWKI - Stevens Southeast  
P.O. Box 100  
Hugoton, KS 67951  
Contact: Kirk W. Heger

Anadarko Energy Services Company  
1200 Timberloch Place  
The Woodlands, TX 77380-1046  
Contact: Mike Friend

Texas-Kansas-Oklahoma Gas, LLC  
P.O. Box 1194  
Dalhart, TX 79022  
Contact: Mike McEvers

Black Hills Energy  
1102 E. 1st Street  
Papillion, NE 68046  
Contact: Kent Kopetzky



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GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

**To: Leo Haynos**

**From: Pat Renner**

**Re: Summary of the Search for the Anadarko Contract with SWKI – Seward – West Central**

**Date: September 14, 2018**

**As you requested, I have searched for an Anadarko/SWKI – Seward – West Central natural gas contract. I have not found a filed or approved copy of this contract (except where the contract was filed in the complaint docket 14-ANGG-119-COM) after searching in the following areas:**

- 1) KCC's eStar system. This is the docket search system that can be found on the KCC website. Searched for any docket with Anadarko or SWKI-Seward-West Central in its name. Note that I did find a copy of a Anadarko Natural Gas Company Gas Sales Agreement with SWKI-Seward-West Central, Inc. in the complaint docket 14-ANGG-119-COM – this contract did not have a KCC stamp on it. Also, note that I found a termination notice of the SWKI –Seward-West Central, Inc. Gas Sales Agreement with Anadarko Natural Gas Company in docket 00-ANGG-218-COC that was dated September 25, 2013. Searched using the contract designation CON and the Certificate of Convenience COC designation. Searched using the SSWG designation which SWKI-Seward-West Central's two certificate dockets (02-SSWG-611-COC and 08-SSWG-1007-COC) were filed under. Searched docket 00-ANGG-218-COC. Searched all Natural Gas dockets with a "02", "03", and "04" designations. Searched all dockets with a 218 designation.
- 2) KCC's legacy Oracle electronic file system– Searched for any docket with Anadarko or SWKI-Seward-West Central in its name. Search included docket 00-ANGG-218-COC. The Oracle system is used to find the location (i.e. cartridge number, blip number) of docket documents kept on microfilm.
- 3) The Anadarko files in the 4 drawer file cabinet containing Gas and Electric Sales Contracts found in the area east of the Senior Administrative Assistant's bunker and along the south hallway on the 2<sup>nd</sup> floor of the KCC building (paper files).
- 4) The 16 boxes labeled "Gas Contracts Purchase/Supply Transportation Juris. Marketer- (Rangeline)" found in the storage room along the north hallway and west of the breakroom on 2<sup>nd</sup> floor KCC building (paper files).
- 5) The Gas Certificates file also found in the storage room along the north hallway and west of the breakroom on 2<sup>nd</sup> floor KCC building (paper files).

- 6) The microfilm indexes on paper (indexes are in paper form and kept in binders – located in the microfilm room, 2<sup>nd</sup> floor, KCC building) for an Anadarko contract with SWKI – Seward – West Central.
- 7) Docket Room’s electronic index of documents stored in off-site storage (the Archives) – these were microfilmed first then the documents were shipped to the off-site storage facility.
- 8) Gary Dawdy’s files (paper files).

**As a result of searching for an Anadarko/SWKI-Seward-West Central contract I did find the following documents (these documents were found in a Anadarko file folder which was inside the 4 drawer file cabinet that contains Gas and Electric Sales Contracts located in the area east of the Senior Administrative Assistant’s bunker and along the south hallway on the 2<sup>nd</sup> floor of the KCC building) that may be of interest:**

- 1) Anadarko Petroleum Corporation’s letter (see PDF file below) dated August 3, 2000 with attached Exhibit A listing various sales points that Anadarko Natural Gas Company served. Note that it looks like the docket number at the top of the front page was corrected. In Exhibit A, page 2, SWKI-Stevens-SE, Inc. is listed as a gas sales point. Also, note that on page 2 of this Anadarko letter, at the bottom of the page, is a possible Anadarko file name [\\data01\users\tlpcon\data\winword\kcc-hrds-contracts-ltr.doc](#) . Maybe Anadarko can search for this file or files with similar nomenclature to find evidence of filing the Anadarko/SWKI-Seward-West Central contract with the KCC.



Anadarko\_00-ANGG  
-218-COC.pdf

- 2) Anadarko Energy Services Company/SWKI-Stevens- South East, Inc. contract dated July 1, 1998 (see PDF file below) with a KCC “Filed” stamp, August 16, 2000, in docket 00-ANGG-218-COC. Note that it looks like the stamped docket number was corrected.



SWKI-STEVEN-SOU  
TH EAST.pdf

ANADARKO PETROLEUM CORPORATION

DIRECT (281) 874-3495 • FAX (281) 874-3434 • TEL (281) 875-1101  
17001 NORTHCHASE DRIVE • P.O. BOX 1330 • HOUSTON, TEXAS 77251-1330



THOMASINE L. PANTAZIS  
ATTORNEY

August 3, 2000

Mr. Gary W. Dawdy  
Utilities Division  
Kansas Corporation Commission  
1500 S. W. Arrowhead Road  
Topeka, Kansas 66604

RE: Docket No. 00-ANGC-218-COC

Dear Mr. Dawdy:

In accordance with the Order and Certificate issued on May 19, 2000 in the above referenced proceeding, Anadarko Natural Gas Company ("ANGC") hereby submits for filing with the Kansas Corporation Commission the enclosed gas service contracts (the "Contracts") pertaining to certain sales of gas by ANGC from the Hugoton Residue Delivery System ("HRDS") and from points previously served by Anadarko Gathering Company under its Limited Certificate, which service has now been assumed by ANGC.

The attached Exhibit "A" lists the gas sales points currently served by ANGC. As indicated by the attached Exhibit "A", certain Contracts are already on file with the KCC, in connection with the Limited Certificate previously held by Anadarko Gathering Company, and are therefore not enclosed with this transmittal. Also, please note that several other Contracts, due to their age and other factors, are not enclosed pending location of a complete instrument suitable for filing. Those Contracts are:

- |   |                |
|---|----------------|
| • Millie Corp.                          | Meter No. 6941 |
| • Millie Cop.                           | Meter No. 6962 |
| • Ivan Headrick/J.S. Grover & C. Grover | Meter No. 6554 |
| • Ivan Headrick/J.S. Grover             | Meter No. 6961 |

Copies of such Contracts will follow at a later date.

STATE CORPORATION COMMISSION

AUG 4 2000

UTILITIES DIVISION

Kansas Corporation Commission  
August 3, 2000  
Page 2

In accordance with K.S.A. §66-1,203 and §66-1220a, AGC hereby requests that the Commission maintain the confidentiality of the Contracts by prohibiting disclosure of any of the provisions of the Contracts to any third parties.

Please send me a date-stamped copy of this filing at your earliest convenience.

Sincerely,

  
Thomasine L. Pantazis

Enclosures

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- \* Indicates name shown as a "Buyer" on the contract.  
■ Indicates contract filed with KCC under AGC's previous Limited Certificate.

**EXHIBIT "A"**

**ANADARKO NATURAL GAS COMPANY  
SALES POINT(S) FROM  
HUGOTON RESIDUE DELIVERY SYSTEM**

<u>Meter Name</u>	<u>Meter No.</u>	<u>Meter Location</u>
<b><u>Irrigation Sales:</u></b>		
Wayne Johnson/Thelma Morgan*	06705	SE 23-33S-38W
Nick R. Hatcher, et al	06983	SE 9-34S-34W
David Strickland/Daniel Strickland*	06670	SW 6-33S-33W
Millie Corp.	06941	SE 21-32S-33W
Millie Corp.	06962	SW 33-32S-33W
Steve Harper/M and A Investment*	35682	SW 32-32S-33W
Roger Gillespie/Ray A. Morgan*	35683	SE 23-33S-33W
Fred Bloom/Norman Bloom*	35686	C 22-34S-34W
Ron Heger/C.R. Barber*	06912	SW 20-33S-37W
Henry Guttridge	06940	NE 19-33S-34W
Clifford Shuck/Gene Shuck*	06970	NW 20-33S-34W
Nick Hatcher	35685	SE 34-34S-34W
Gilbert Coulter	35702	SW 22-33S-38W
Darrell Skinner	35708	NW 21-33S-35W
Circle H Farms/Kirk W. Heger	35715	NE 21-33S-35W
Richard James	35710	NE 22-33S-36W
James Persinger/Marjorie Persinger	35731	NE 19-33S-36W
Circle H Farms/Kirk W. Heger	35734	SW 21-33S-37W
Charles Harper	35727	NE 22-33S-35W
Thomas Harper	35726	N/2 24-33S-35W
Chris T. Heger/Betty Lee*	35750	SW 21-33S-37W



<u>Meter Name</u>	<u>Meter Number</u>	<u>Meter Location</u>
Jason M. Dale/Kansas University Endowment Association*	35758	NE 20-33S-35W
Paul Light/R.C. Buddenburg*	06945	NE 26-33S-39W
Ronald K. Heger/J & T Heirs*	35767	NW 24-33S-36W
Darrell G. Skinner	35782	NE 20-33S-35W

**Domestic Customers:**

Nick Hatcher / G.L. Potroff*	35629	SE 34-34S-34W
Charles L. Forward	35775	NW 24-33S-35W

**Small Commercial Sales:**

Supreme Feeders Co. ■	06848	SE 15-32S-33W
Hitch Unit Generator Fuel (APC)	35680	11-33S-34W
SWKI-Stevens-SE, Inc.	33374	

**Industrial/Wholesale Sales**

Utilicorp United (City of Liberal) ■ --		
Quinque PNG Sales 1	55159	3-35S-34W
Quinque PNG Sales 2	55160	3-35S-34W
PNG Crossover 1	55148	3-35S-33W
PNG Crossover 2	55149	28-34S-33W
KSCB Radio Station	40533	34-34S-33W
Seward Co. Fire Station	40538	15-32S-33W
Utilicorp United (Cimarron Electric) ■ --		
Cimarron (West Plains) Electric	55183	
Panhandle Cimarron River	12262	
National Beef ■	55289	

**Meter Name**

**Meter Number**

**Fuel Points:**

Hugoton Gathering System Compressor Fuel (AESC) --

Hugoton Station Fuel #1	77613
Hugoton Station Fuel #2	77614
Hugoton Station Fuel #3	77615
Hugs Station Fuel	77939
Hugs "A" Fuel	78035
Hugs "C" Fuel	78036
Wideawake Fuel	55286
West Woods Fuel	55257
East Woods Fuel	77596
West Ward 1 Fuel	77790
West Ward 2 Fuel	77792
HUGS "B" Fuel	78037
Central Booster Fuel	77711

**EXHIBIT "A" (CONTINUED)**

**ACTIVE METERS ON HUGOTON GATHERING SYSTEM  
PREVIOUSLY SERVED BY ANADARKO GATHERING COMPANY  
UNDER ITS LIMITED CERTIFICATE,  
NOW TO BE SERVED BY ANADARKO NATURAL GAS COMPANY  
(WILL BE SERVED WITH WET GAS)**

<b><u>Meter Name</u></b>	<b><u>Meter Number</u></b>	<b><u>IGSA Number</u></b>
<b><u>Irrigation Meters:</u></b>		
Ivan Headrick/J.S. Grover & C. Grover*	6554	#2
Nick R. and R.L Hatcher	6621	#249
H. E. Box	6643	#5
ROCO Inc.	6652	#8
Amigo Feeders/Amigo Ranch*	6673	#11
Jennifer Black/G. Black*	6674	#12
Bill Hittle/F. J. Keefer*	6740	#15
R. L. Hatcher (prior E.A. Gowers)	6738	#16
R. Swan	6737	#17
W. B. Fox	6783	#19
Richard Farrar/W. L. Farrar*	6784	#20
Wes Coats/E. B. James*	6808	#26
F. Bloom/E.J.B Crowder & M. H. Bush*	6635	#27
J. D. Marteney	6916	#43
James B. Kramer/Pelajo Properties*	6956	#56
Ivan Headrick/J. S. Grover*	6961	#2
Ed Strickland/D. E. Strickland*	35616	#80
Abram Friesen (prior F.W. Stefan)	6632	#274
Harden Farms	6736	#14



<u>Meter Name</u>	<u>Meter Number</u>	<u>DGSA Number</u>
<b><u>Domestic Customers:</u></b>		
Clodfelter, Wayne	6780	#305
Hammock, Ralph/Eugene McAhren*	6675	#304
Hammock, Ralph (McBride)/C. S. Corell*	6857	#303
Smith, James F.	35628	#302
R. L. Hanson	6960	#306

**Industrial/Wholesale Sales:**

Utilicorp United (City of Liberal) ■ --	
Liberal 1-32	55115
Liberal "B" 1-32	55117
Garrettsville Station	55242

Revised 08/03/2000

**GAS SALES AGREEMENT**

DATED July 1, 1998

**BY AND BETWEEN**

**ANADARKO ENERGY SERVICES COMPANY**

**AND**

**SWKI - STEVENS - SOUTH EAST, INC.**

**IGSA #500**

00-ANGC-218-COC  
Filed  
Kansas Corporation Commission  
August 16, 2000  
/s/ Jeffrey S. Wasaman

*SWKI - Stevens - SE, Inc.*

*Meta # 33374*

**GAS SALES AGREEMENT**

**I N D E X**

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## GAS SALES AGREEMENT

THIS GAS SALES AGREEMENT ("Agreement") is made and entered into this 1st day of July, 1998, by and between ANADARKO ENERGY SERVICES COMPANY, a Delaware corporation ("Seller"), and SWKI - STEVENS - SOUTH EAST, INC., a Kansas certificated Non-profit Public Utility ("Buyer").

WHEREAS, Buyer desires to purchase from Seller, in accordance with the provisions of this Agreement, certain quantities of natural gas; and

WHEREAS, Seller is willing to sell such quantities of natural gas to Buyer in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, Seller and Buyer hereby agree as follows:

### ARTICLE I DEFINITIONS

Except in those certain instances where the context clearly indicates another meaning, the following terms when used in this Agreement shall have the following meanings:

1.1 "Btu" shall mean one British Thermal Unit, which is the amount of heat required to raise the temperature of one (1) pound of water from fifty-nine degrees (59°) Fahrenheit to sixty degrees (60°) Fahrenheit.



1.2 **“Btu Content”** shall mean the number of MMBtu's contained in the quantity of gas delivered hereunder and shall be determined by multiplying the volume of gas (Mcf) by its corresponding Heating Value (MMbtu/cf).

1.3 **“Day”** shall mean a period of twenty-four (24) consecutive hours beginning at 5:00 a.m. Central Time on any calendar day and ending at 5:00 a.m. Central Time on the calendar day immediately following.

1.4 **“Delivery Point”** shall mean the outlet flange of each of the relevant measurement facilities identified on Exhibit “A” hereto at which Seller delivers gas to Buyer hereunder.

1.5 **“Heating Value”** shall mean the number of British Thermal Units (Btu's) produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and under a constant pressure of 14.65 Psia, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state. The Heating Value so determined shall be corrected to “dry” conditions for purposes of determining the Btu Content of Seller's gas.

1.6 **“Mcf”** shall mean one thousand (1,000) cubic feet of gas at a pressure of 14.65 Psia and at a temperature of sixty degrees (60°) Fahrenheit cubic feet of gas.

1.7 **“MMBtu” or “dekatherm” or “Dth”** shall mean one million (1,000,000) Btu's.

1.8 **“Month”** shall mean a period beginning at 5:00 a.m. Central Time on the first day of a calendar month and ending at 5:00 a.m. Central Time on the first day of the calendar month immediately following.

1.9 “Natural gas” or “gas” shall mean natural gas of the quality delivered by Transporter on behalf of Seller to the Delivery Point, from time to time, for sale to Buyer hereunder.

1.10 “Psia” shall mean pounds per square inch absolute.

1.11 “Transporter” shall mean any entity which physically transports gas to the Delivery Point on behalf of Seller for sale to Buyer hereunder.

1.12 “Transporter’s Facilities” shall mean those pipeline and appurtenant facilities utilized by any given Transporter to transport gas to the Delivery Point on behalf of Seller for delivery to Buyer hereunder.

## ARTICLE II QUANTITY

2.1 Subject to the provisions of this Agreement, Buyer shall purchase from Seller at the Delivery Point on a best efforts basis all of the natural gas necessary each day to satisfy all of Buyer’s gas requirements; provided, however, that in no event shall Seller be obligated to sell to Buyer quantities of gas in excess of 1,600 Dth./day, unless Seller and Buyer otherwise expressly agree in writing.

## ARTICLE III DELIVERY POINT(S); TRANSPORTATION; AND FACILITIES

3.1 All gas sold hereunder shall be delivered to Buyer at any one or more of the Delivery Point(s) set forth on Exhibit “A” hereto, which is incorporated by reference herein.



3.2 Seller shall be responsible for arranging, at its sole discretion and expense, for all upstream transportation service necessary to deliver all gas quantities to be sold to Buyer at the Delivery Point. Buyer shall be responsible for arranging, at its sole risk and expense, for all downstream transportation service necessary to receive all gas quantities to be purchased from Seller at the Delivery Point.

#### ARTICLE IV PRICE

- 4.1 The price per MMBtu for all gas sold by Seller to Buyer hereunder shall be the greater of:
- (a) \$1.50 per MMBtu; or
  - (b) the sum of (i) the Panhandle Eastern Pipe Line Company "Index" price to "Texas, Oklahoma (mainline)," as published in the first issue of Inside F.E.R.C.'s Gas Market Report, under the section entitled "Prices of Spot Gas Delivered to Pipelines," for the month in which gas was delivered by Seller to Buyer (the "Index Price"); plus (ii) fifty cents (\$0.50) per MMBtu. If Inside F.E.R.C.'s Gas Market Report discontinues publishing the Index Price, the parties shall utilize a mutually acceptable substitute index price for determining the price of gas sold in accordance with Section 4.1.
- 4.2 Buyer shall pay a surcharge of \$50.00 per Delivery Point each month whether or not any gas is used by Buyer during that month. The surcharge covers the cost of routine meter maintenance, determination of volumes, accounting and other operational costs incurred by Seller in connection with the sale of gas hereunder.
- 4.3 The price for gas sold by Seller to Buyer hereunder shall be exclusive of any and all applicable sales or use tax. Seller shall be responsible for any and all taxes, royalties, or other assessments levied upon the gas prior to delivery to Buyer hereunder. Buyer shall be responsible for any and all taxes and assessments, including but not limited to sales or use taxes levied upon

the gas, upon or after delivery to Buyer hereunder.

## **ARTICLE V**

### **TERM**

5.1 This Agreement shall be effective on the date first stated above and shall remain in full force and effect for a primary term of one (1) month, commencing on the first day of the month following the date the facilities described in Section 3.3 are placed in service, and month-to-month thereafter; provided, however, either party may terminate this Agreement upon expiration of the primary term, by the provision of written notice to the other party not less than thirty (30) days prior to any such expiration date. Termination of this Agreement shall not relieve either party from any obligations previously accrued hereunder.

## **ARTICLE VI**

### **BILLING AND PAYMENT**

6.1 On or about the first (1st) business day of each month, Seller shall invoice Buyer for gas sold to Buyer during the previous month. Seller's invoice shall be sent by telecopy and shall indicate, for deliveries to Buyer during the previous month: (a) the thermal and volumetric quantities delivered to each Delivery Point; (b) the aggregate thermal and volumetric quantities delivered to all of the Delivery Point(s); and (c) the total amount due Seller hereunder. Buyer shall pay Seller the total amount due hereunder by wire transfer within two (2) business days following receipt of Seller's invoice ("Due Date").

6.2 Commencing on the date following the Due Date, interest shall accrue on any unpaid balance, including any undisputed unpaid balance subsequently determined to be owed to Seller, at the "Prime Rate" published daily in the Wall Street Journal in the "Money Rates" column plus two percent (2%) until same is paid; provided, however, that such rate shall not exceed the maximum



lawful rate established in the state where the Delivery Point(s) is (are) located. In the event the Prime Rate plus two percent (2%) exceeds the maximum lawful rate, the applicable interest rate shall be the maximum lawful rate. If Buyer disputes the amount of any invoice, or any part thereof, Buyer shall nevertheless pay to Seller the full invoiced amount. If it is ultimately determined that Buyer did not owe a disputed amount, or any part thereof, Seller shall refund such amount to Buyer within five (5) days of such determination, including interest on such amount calculated from the date paid at the rate provided for in this Article VI.

6.3 Each party shall have the right, at all reasonable times and upon reasonable prior written notice, to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation, or payment made pursuant to the provisions of this Agreement. Any such examination shall be conducted during normal business hours and in the appropriate office of the party owning such books, records and charts as mutually agreed to by Buyer and Seller. If any such examination reveals any inaccuracy in any payment theretofore made, the necessary adjustment in such payment shall be promptly made, provided that no adjustment for any payment made shall be made, and payments shall be considered final, after the lapse of two (2) years from the rendition thereof, except to the extent that either party has noted a specific exception to the other party in writing during that period.

## ARTICLE VII

### CREDIT REQUIREMENTS AND DEFAULT

7.1 Should the creditworthiness or financial responsibility of Buyer become unsatisfactory to Seller at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made or receipts accepted hereunder. In the event Buyer: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) defaults in the payment or performance of any obligation to Seller under this Agreement; (iii) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause under any

bankruptcy or similar law for the protection of creditors or has such petition filed or proceeding commenced against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) fails to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within forty-eight (48) hours of a reasonable request by Seller, then Seller shall have the right to suspend deliveries or withhold receipts of gas hereunder, offset any or all amounts due Seller against any or all amounts due Buyer under this or any other agreement between the parties, and/or terminate this Agreement without prior notice, in addition to any and all other remedies available hereunder or pursuant to law.

## ARTICLE VIII

### QUALITY; MEASUREMENT; PRESSURE

8.1 All of the gas delivered to Buyer at the Delivery Point shall meet Transporter's applicable gas quality specifications in effect at the time of delivery, as such specifications may be revised by Transporter from time to time.

8.2 All measurement of gas delivered to Buyer hereunder shall be performed by Transporter at the Delivery Point in accordance with Transporter's standard measurement practices in effect at the time of delivery. All measurement performed by Transporter shall be deemed conclusive as between Buyer and Seller for all purposes hereunder.

8.3 All gas delivered to Buyer hereunder shall be delivered at the Delivery Point at the pressures prevailing in Transporter's Facilities, as such pressure may fluctuate from time to time. Seller is under no obligation to deliver gas covered hereunder to Buyer at any minimum or maximum delivery pressure. Buyer shall be solely responsible for regulation of gas pressure in all of Buyer's facilities located at or downstream of the Delivery Point.



8.4 BUYER UNDERSTANDS THAT THE GAS SUPPLIED HEREUNDER IS UNTREATED RAW GAS AS PRODUCED AT A WELL, THAT THE SUPPLY MAY BE VARIABLE AND MAY AT ANY TIME AND WITHOUT NOTICE TEMPORARILY OR PERMANENTLY CEASE, THAT THE GAS MAY CONTAIN IMPURITIES, INCLUDING BUT NOT LIMITED TO FREE WATER, NATURAL GASOLINE OR OTHER LIQUIDS, CARBON DIOXIDE (CO<sub>2</sub>), AND HYDROGEN SULFIDE (H<sub>2</sub>S) THAT THE GAS IS NOT ARTIFICIALLY ODORIZED AND THAT THE PRESSURE AT THE DELIVERY POINT MAY FLUCTUATE AND, WITH RESPECT TO ALL OF THE FOREGOING, BUYER ASSUMES THE RISK THEREOF.

8.5 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ALL SALES MADE BY SELLER HEREUNDER ARE MADE WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE IX TITLE

9.1 Title to all gas delivered hereunder shall pass from Seller to Buyer at the relevant Delivery Point. Seller warrants that at the time of delivery to Buyer, Seller will have either title to or all necessary legal authority to sell all gas delivered to Buyer. Seller further warrants that all gas sold to Buyer hereunder will be free from any and all liens, charges, adverse claims and encumbrances of any kind or character at the time of delivery to Buyer. Seller shall defend and indemnify Buyer from any liabilities, costs and expenses to any third parties (including court costs and reasonable attorney's fees) pertaining in any manner to Seller's title to or right to sell any gas delivered to Buyer hereunder.

**ARTICLE X**  
**SUCCESSION AND ASSIGNMENT**

**10.1** Neither party hereto may assign any of its rights, obligations or interests under this Agreement without the prior express written consent of the other party,<sup>1</sup> which consent may not be unreasonably withheld; provided, however, that such prior written consent shall not be required in the event of assignment by either party to an affiliate of that party. No conveyance or transfer of interest of either party shall be binding upon the other party until such party has been furnished with written notice and a certified copy of such conveyance or transfer. This Agreement shall be binding upon the respective successors and assigns of the parties hereto.

**ARTICLE XI**  
**LIABILITY AND FORCE MAJEURE**

**11.1** Seller and Buyer each assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and hold harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to or death of persons, arising out of the installation, maintenance and operation of the property and equipment of the indemnifying party.

**11.2** As between the parties hereto, Seller shall be deemed to be in exclusive control and possession of the gas, and shall be responsible for any loss, injury or damage caused thereby, until the same shall have been received by Buyer at the Delivery Point; and Buyer shall be deemed to be in exclusive control and possession of the gas and shall be responsible for any loss, injury or damage caused thereby upon and after receipt of such gas by Buyer from Seller at the Delivery Point.

**11.3** If by reason of force majeure either party is rendered unable, wholly or in part, to carry out



any of its obligations under this Agreement, other than the obligation to make any payments due, then following the provision of written notice to the other party which describes the force majeure event in reasonably full particulars, such affected party shall be excused from performance of such impaired obligations hereunder during the continuance of any inability so caused. For purposes of this Agreement, the term "force majeure" shall mean acts of God; strike; lockout; fire; war; acts of the public enemy; riot; civil disturbance; explosion; breakdown or accident to machinery, lines of pipe or plants; interruption of transportation for the making of repairs, maintenance or alterations of wells, machinery, lines of pipe or plants; freezing of wells or lines of pipe; failure of wells or appurtenant facilities; regulation or order of a governmental agency; inability to secure, or the delays in acquiring at reasonable costs, materials, equipment, easements, right-of-way, grants, servitudes, permits or licenses; partial or entire failure of gas supply or demand over which neither party has control; inclement weather that necessitates extraordinary measures and expense to construct facilities and/or maintain operations; or any other cause or causes beyond the reasonable control of the party, whether of the kind herein enumerated or otherwise. This Agreement shall not be terminated by reason of suspension due to any one or more of the causes above set forth. A force majeure period shall not serve to extend the term of this Agreement.

**ARTICLE XII**  
**NOTICES AND COMMUNICATIONS**

**12.1** All notices, communications, requests, statements or payments authorized or required between the parties, and/or required by any of the provisions of this Agreement, shall be given in writing, unless otherwise expressly provided herein. Such notices, communications, requests, statements or payments may be transmitted via United States first class mail, fax, telecopy or similar electronic communication, or prepaid overnight delivery. Such notices, requests, statements, or payments, as applicable, shall be considered as duly delivered as of the receipt date indicated on the fax, telecopy or similar electronic communication, or the postmark date when mailed by United States mail to the other party at the following address:

<b>If to Buyer:</b>	<b>Invoices, Notices and Correspondence:</b>	SWKI – STEVENS – SOUTH EAST, INC. P.O. Box 100 Hugoton, KS 67951 Attn: Kirk W. Heger, President Telephone: (316) 544-2688 Telecopy: (316) 544-2188
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<b>Invoices To:</b>	CITIZENS STATE BANK. P.O. Box 728 Hugoton, KS 67951 Attn: Lauren Zabel Telephone: (316) 544-4331 Telecopy: (316) 544-4134
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If to Seller: **Notices and  
Correspondence:**

ANADARKO ENERGY SERVICES COMPANY  
P.O. Box 351  
Liberal KS 67905-0351  
Attn: Norn B. Bartel, Gas Control Supervisor  
Telephone: (316) 629-4323  
Telecopy: (316) 629-4399

**And a copy to:**

ANADARKO ENERGY SERVICES COMPANY  
P. O. Box 1330  
Houston, TX 77251-1330  
Attn: Marketing Administration  
Telephone: (281) 875-1101  
Telecopy: (281) 876-8663

**Payments:  
(Wire)**

ANADARKO ENERGY SERVICES COMPANY  
Mellon Bank, N. A.  
Pittsburgh, PA  
Account No. 1157237  
Transit Routing No. 043000261

Either party may change any address under this Article by giving prior written notice to the other party.

### **ARTICLE XIII ARBITRATION**

**13.1** Any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof, shall be finally settled by arbitration conducted expeditiously in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes by three independent and impartial arbitrators, of whom each party shall appoint one. The arbitration shall be governed by the United States Arbitration Act, 9



U.S.C. Section 1-16, as same may be amended from time to time, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Houston, Texas. The arbitrators are not empowered to award incidental, consequential, indirect, special, punitive or exemplary damages, and each party hereby irrevocably waives any damages other than actual direct damages.

#### **ARTICLE XIV**

#### **MISCELLANEOUS**

**14.1** This Agreement is subject to all applicable and valid orders, laws, rules and regulations of all duly constituted governmental authorities having jurisdiction or control over the parties or the subject matter of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable in any jurisdiction, then to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible. The invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

**14.2 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE APPLICATION OF ANY PRINCIPLES REGARDING CONFLICT OF LAWS WHICH OTHERWISE MIGHT SUBJECT THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION.**

**14.3** The waiver by either party of any breach of any of the provisions of this Agreement by the other party shall not constitute a continuing waiver of any other breaches of this Agreement by such other party, regardless of the nature of any such breach.



**14.4 IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER PARTY HEREUNDER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES.**

**14.5** The parties hereto agree that all of the terms and provisions of this Agreement are confidential, and shall use all reasonable efforts to prevent disclosure of any of the provisions of this Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its agents, consultants, affiliates and independent public accountants and/or as may be necessary for it to comply with any legal obligation or court order.


**14.6** This Agreement shall not create any rights in favor of any third parties, and no provision of this Agreement shall be construed as creating any obligation for the benefit of, or rights in favor of, any person or entity other than the parties hereto.

**14.7** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior and contemporaneous agreements and understandings between the parties, whether oral or written, concerning the subject matter hereof. This Agreement may not be amended, modified, or revised in any manner except by execution by both parties of a written instrument which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

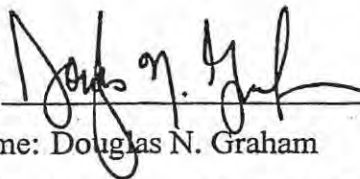
**BUYER:**

**SWKI – STEVENS – SOUTH EAST, INC.**

By:  \_\_\_\_\_  
Name: Kirk W. Heger  
Title: President

**SELLER:**

**ANADARKO ENERGY SERVICES  
COMPANY**

By:  \_\_\_\_\_  
Name: Douglas N. Graham  
Title: Manager, Gas Marketing

**EXHIBIT "A"**

TO GAS SALES AGREEMENT BETWEEN  
ANADARKO ENERGY SERVICES COMPANY  
AND

SWKI - STEVENS - SOUTH EAST, INC.

DATED July 1, 1998

**DELIVERY POINT(S)**

1. The outlet side of Anadarko Gathering Company's ("AGC") Meter #033374, located on AGC's 16-inch gathering line, approximately 2600' FEL and 220' FNL of the NE/4 of Section 23, Township 33 South, Range 36 West, Stevens, County, Kansas.

**GAS SALES AGREEMENT**

DATED April 1, 2012

**BY AND BETWEEN**

**ANADARKO NATURAL GAS COMPANY**

**AND**

**SWKI - SEWARD - WEST CENTRAL, INC.**

**IGSA #540**

**GAS SALES AGREEMENT**

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**GAS SALES AGREEMENT**

**THIS GAS SALES AGREEMENT** ("Agreement") is made and entered into this 1<sup>st</sup> day of June, 2002, by and between **ANADARKO NATURAL GAS COMPANY**, a Delaware corporation ("Seller"), and **SWKI – SEWARD – WEST CENTRAL, INC.**, a Kansas certificated Non-profit Public Utility ("Buyer").

**WHEREAS**, Buyer desires to purchase from Seller, in accordance with the provisions of this Agreement, certain quantities of natural gas; and

**WHEREAS**, Seller is willing to sell such quantities of natural gas to Buyer in accordance with the provisions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants herein contained, Seller and Buyer hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Except in those certain instances where the context clearly indicates another meaning, the following terms when used in this Agreement shall have the following meanings:

1.1 "Btu" shall mean one British Thermal Unit, which is the amount of heat required to raise the temperature of one (1) pound of water from fifty-nine degrees (59°) Fahrenheit to sixty degrees (60°) Fahrenheit.

1.2 **"Btu Content"** shall mean the number of MMBtu's contained in the quantity of gas delivered hereunder and shall be determined by multiplying the volume of gas (Mcf) by its corresponding Heating Value (MMbtu/cf).

1.3 **"Day"** shall mean a period of twenty-four (24) consecutive hours beginning at 5:00 a.m. Central Time on any calendar day and ending at 5:00 a.m. Central Time on the calendar day immediately following.

1.4 **"Delivery Point"** shall mean the outlet flange of each of the relevant measurement facilities identified on Exhibit "A" hereto at which Seller delivers gas to Buyer hereunder.

1.5 **"Heating Value"** shall mean the number of British Thermal Units (Btu's) produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and under a constant pressure of 14.65 Psia, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state. The Heating Value so determined shall be corrected to "dry" conditions for purposes of determining the Btu Content of Seller's gas.

1.6 **"Mcf"** shall mean one thousand (1,000) cubic feet of gas at a pressure of 14.65 Psia and at a temperature of sixty degrees (60°) Fahrenheit cubic feet of gas.

1.7 **"MMBtu" or "dekatherm" or "Dth"** shall mean one million (1,000,000) Btu's.

1.8 **"Month"** shall mean a period beginning at 5:00 a.m. Central Time on the first day of a calendar month and ending at 5:00 a.m. Central Time on the first day of the calendar month immediately following.

1.9 "Natural gas" or "gas" shall mean natural gas of the quality delivered by Transporter on behalf of Seller to the Delivery Point, from time to time, for sale to Buyer hereunder.

1.10 "Psia" shall mean pounds per square inch absolute.

1.11 "Transporter" shall mean any entity which physically transports gas to the Delivery Point on behalf of Seller for sale to Buyer hereunder.

1.12 "Transporter's Facilities" shall mean those pipeline and appurtenant facilities utilized by any given Transporter to transport gas to the Delivery Point on behalf of Seller for delivery to Buyer hereunder.

## ARTICLE II QUANTITY

2.1 Subject to the provisions of this Agreement, Buyer shall purchase from Seller at the Delivery Point on a best efforts basis all of the natural gas necessary each day to satisfy all of Buyer's gas requirements; provided, however, that in no event shall Seller be obligated to sell to Buyer quantities of gas in excess of 750 Dth./day, unless Seller and Buyer otherwise expressly agree in writing.

## ARTICLE III DELIVERY POINT(S); TRANSPORTATION; AND FACILITIES

3.1 All gas sold hereunder shall be delivered to Buyer at any one or more of the Delivery Point(s) set forth on Exhibit "A" hereto, which is incorporated by reference herein.



3.2 Seller shall be responsible for arranging, at its sole discretion and expense, for all upstream transportation service necessary to deliver all gas quantities to be sold to Buyer at the Delivery Point. Buyer shall be responsible for arranging, at its sole risk and expense, for all downstream transportation service necessary to receive all gas quantities to be purchased from Seller at the Delivery Point.

#### ARTICLE IV PRICE

4.1 The price per MMBtu for all gas sold by Seller to Buyer hereunder shall be the greater of:

- (a) \$1.50 per MMBtu; or
- (b) the sum of (i) the Panhandle Eastern Pipe Line Company "Index" price to "Texas, Oklahoma (mainline)," as published in the first issue of Inside F.E.R.C.'s Gas Market Report, under the section entitled "Prices of Spot Gas Delivered to Pipelines," for the month in which gas was delivered by Seller to Buyer (the "Index Price"); plus (ii) fifty cents (\$0.50) per MMBtu. If Inside F.E.R.C.'s Gas Market Report discontinues publishing the Index Price, the parties shall utilize a mutually acceptable substitute index price for determining the price of gas sold in accordance with Section 4.1.

4.2 Buyer shall pay a surcharge of \$50.00 per Delivery Point each month whether or not any gas is used by Buyer during that month. The surcharge covers the cost of routine meter maintenance, determination of volumes, accounting and other operational costs incurred by Seller in connection with the sale of gas hereunder.

4.3 The price for gas sold by Seller to Buyer hereunder shall be exclusive of any and all applicable sales or use tax. Seller shall be responsible for any and all taxes, royalties, or other assessments levied upon the gas prior to delivery to Buyer hereunder. Buyer shall be responsible for any and all taxes and assessments, including but not limited to sales or use taxes levied upon

the gas, upon or after delivery to Buyer hereunder.

#### **ARTICLE V**

##### **TERM**

5.1 This Agreement shall be effective on the date first stated above and shall remain in full force and effect for a primary term of one (1) month, commencing on the first day of the month following the date the facilities are placed in service, and month-to-month thereafter; provided, however, either party may terminate this Agreement upon expiration of the primary term, by the provision of written notice to the other party not less than thirty (30) days prior to any such expiration date. Termination of this Agreement shall not relieve either party from any obligations previously accrued hereunder.

#### **ARTICLE VI**

##### **BILLING AND PAYMENT**

6.1 On or about the first (1st) business day of each month, Seller shall invoice Buyer for gas sold to Buyer during the previous month. Seller's invoice shall be sent by telecopy and shall indicate, for deliveries to Buyer during the previous month: (a) the thermal and volumetric quantities delivered to each Delivery Point; (b) the aggregate thermal and volumetric quantities delivered to all of the Delivery Point(s); and (c) the total amount due Seller hereunder. Buyer shall pay Seller the total amount due hereunder by wire transfer within two (2) business days following receipt of Seller's invoice ("Due Date").

6.2 Commencing on the date following the Due Date, interest shall accrue on any unpaid balance, including any undisputed unpaid balance subsequently determined to be owed to Seller, at the "Prime Rate" published daily in the Wall Street Journal in the "Money Rates" column plus two percent (2%) until same is paid; provided, however, that such rate shall not exceed the maximum

lawful rate established in the state where the Delivery Point(s) is (are) located. In the event the Prime Rate plus two percent (2%) exceeds the maximum lawful rate, the applicable interest rate shall be the maximum lawful rate. If Buyer disputes the amount of any invoice, or any part thereof, Buyer shall nevertheless pay to Seller the full invoiced amount. If it is ultimately determined that Buyer did not owe a disputed amount, or any part thereof, Seller shall refund such amount to Buyer within five (5) days of such determination, including interest on such amount calculated from the date paid at the rate provided for in this Article VI.

6.3 Each party shall have the right, at all reasonable times and upon reasonable prior written notice, to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation, or payment made pursuant to the provisions of this Agreement. Any such examination shall be conducted during normal business hours and in the appropriate office of the party owning such books, records and charts as mutually agreed to by Buyer and Seller. If any such examination reveals any inaccuracy in any payment theretofore made, the necessary adjustment in such payment shall be promptly made, provided that no adjustment for any payment made shall be made, and payments shall be considered final, after the lapse of two (2) years from the rendition thereof, except to the extent that either party has noted a specific exception to the other party in writing during that period.

## ARTICLE VII CREDIT REQUIREMENTS AND DEFAULT

7.1 Should the creditworthiness or financial responsibility of Buyer become unsatisfactory to Seller at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made or receipts accepted hereunder. In the event Buyer: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) defaults in the payment or performance of any obligation to Seller under this Agreement; (iii) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause under any

bankruptcy or similar law for the protection of creditors or has such petition filed or proceeding commenced against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) fails to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within forty-eight (48) hours of a reasonable request by Seller, then Seller shall have the right to suspend deliveries or withhold receipts of gas hereunder, offset any or all amounts due Seller against any or all amounts due Buyer under this or any other agreement between the parties, and/or terminate this Agreement without prior notice, in addition to any and all other remedies available hereunder or pursuant to law.

## **ARTICLE VIII**

### **QUALITY; MEASUREMENT; PRESSURE**

**8.1** All of the gas delivered to Buyer at the Delivery Point shall meet Transporter's applicable gas quality specifications in effect at the time of delivery, as such specifications may be revised by Transporter from time to time.

**8.2** All measurement of gas delivered to Buyer hereunder shall be performed by Transporter at the Delivery Point in accordance with Transporter's standard measurement practices in effect at the time of delivery. All measurement performed by Transporter shall be deemed conclusive as between Buyer and Seller for all purposes hereunder.

**8.3** All gas delivered to Buyer hereunder shall be delivered at the Delivery Point at the pressures prevailing in Transporter's Facilities, as such pressure may fluctuate from time to time. Seller is under no obligation to deliver gas covered hereunder to Buyer at any minimum or maximum delivery pressure. Buyer shall be solely responsible for regulation of gas pressure in all of Buyer's facilities located at or downstream of the Delivery Point.

**8.4 BUYER UNDERSTANDS THAT THE GAS SUPPLIED HEREUNDER IS**

UNTREATED RAW GAS AS PRODUCED AT A WELL, THAT THE SUPPLY MAY BE VARIABLE AND MAY AT ANY TIME AND WITHOUT NOTICE TEMPORARILY OR PERMANENTLY CEASE, THAT THE GAS MAY CONTAIN IMPURITIES, INCLUDING BUT NOT LIMITED TO FREE WATER, NATURAL GASOLINE OR OTHER LIQUIDS, CARBON DIOXIDE (CO<sub>2</sub>), AND HYDROGEN SULFIDE (H<sub>2</sub>S) THAT THE GAS IS NOT ARTIFICIALLY ODORIZED AND THAT THE PRESSURE AT THE DELIVERY POINT MAY FLUCTUATE AND, WITH RESPECT TO ALL OF THE FOREGOING, BUYER ASSUMES THE RISK THEREOF.

8.5 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ALL SALES MADE BY SELLER HEREUNDER ARE MADE WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE IX TITLE AND CERTIFICATION

- 9.1 Title to all gas delivered hereunder shall pass from Seller to Buyer at the relevant Delivery Point. Seller warrants that at the time of delivery to Buyer, Seller will have either title to or all necessary legal authority to sell all gas delivered to Buyer. Seller further warrants that all gas sold to Buyer hereunder will be free from any and all liens, charges, adverse claims and encumbrances of any kind or character at the time of delivery to Buyer. Seller shall defend and indemnify Buyer from any liabilities, costs and expenses to any third parties (including court costs and reasonable attorney's fees) pertaining in any manner to Seller's title to or right to sell any gas delivered to Buyer hereunder.
- 9.2 Buyer hereby represent and warrants that it has received approval from all applicable local, state and federal agencies with respect to all gas delivered to Buyer hereunder for the subsequent resale of said gas by Buyer. Such approvals shall be a condition precedent to

**Seller's obligation to perform hereunder.** Buyer shall defend and indemnify Seller from any liabilities, costs and expenses (including court costs and reasonable attorney's fees) pertaining in any manner to Seller's breach of this Section 9.2 or Seller's lack of approval from any governmental agency to purchase and resell the gas delivered to Buyer hereunder.

## **ARTICLE X SUCCESSION AND ASSIGNMENT**

10.1 Neither party hereto may assign any of its rights, obligations or interests under this Agreement without the prior express written consent of the other party, which consent may not be unreasonably withheld; provided, however, that such prior written consent shall not be required in the event of assignment by either party to an affiliate of that party. No conveyance or transfer of interest of either party shall be binding upon the other party until such party has been furnished with written notice and a certified copy of such conveyance or transfer. This Agreement shall be binding upon the respective successors and assigns of the parties hereto.

## **ARTICLE XI LIABILITY AND FORCE MAJEURE**

11.1 Seller and Buyer each assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and hold harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to or death of persons, arising out of the installation, maintenance and operation of the property and equipment of the indemnifying party.

11.2 As between the parties hereto, Seller shall be deemed to be in exclusive control and



possession of the gas, and shall be responsible for any loss, injury or damage caused thereby, until the same shall have been received by Buyer at the Delivery Point; and Buyer shall be deemed to be in exclusive control and possession of the gas and shall be responsible for any loss, injury or damage caused thereby upon and after receipt of such gas by Buyer from Seller at the Delivery Point.

11.3 If by reason of force majeure either party is rendered unable, wholly or in part, to carry out any of its obligations under this Agreement, other than the obligation to make any payments due, then following the provision of written notice to the other party which describes the force majeure event in reasonably full particulars, such affected party shall be excused from performance of such impaired obligations hereunder during the continuance of any inability so caused. For purposes of this Agreement, the term "force majeure" shall mean acts of God; strike; lockout; fire; war; acts of the public enemy; riot; civil disturbance; explosion; breakdown or accident to machinery, lines of pipe or plants; interruption of transportation for the making of repairs, maintenance or alterations of wells, machinery, lines of pipe or plants; freezing of wells or lines of pipe; failure of wells or appurtenant facilities; regulation or order of a governmental agency; inability to secure, or the delays in acquiring at reasonable costs, materials, equipment, easements, right-of-way, grants, servitudes, permits or licenses; partial or entire failure of gas supply or demand over which neither party has control; inclement weather that necessitates extraordinary measures and expense to construct facilities and/or maintain operations; or any other cause or causes beyond the reasonable control of the party, whether of the kind herein enumerated or otherwise. This Agreement shall not be terminated by reason of suspension due to any one or more of the causes above set forth. A force majeure period shall not serve to extend the term of this Agreement.



**ARTICLE XII**  
**NOTICES AND COMMUNICATIONS**

12.1 All notices, communications, requests, statements or payments authorized or required between the parties, and/or required by any of the provisions of this Agreement, shall be given in writing, unless otherwise expressly provided herein. Such notices, communications, requests, statements or payments may be transmitted via United States first class mail, fax, telecopy or similar electronic communication, or prepaid overnight delivery. Such notices, requests, statements, or payments, as applicable, shall be considered as duly delivered as of the receipt date indicated on the fax, telecopy or similar electronic communication, or the postmark date when mailed by United States mail to the other party at the following address:

If to Buyer:	<b>Invoices, Notices and Correspondence:</b>	SWKI - SEWARD - WEST CENTRAL, INC. c/o Hitch Farms P.O. Box 1308 Guymon, OK 73942 Attn: Jason Hitch, President Telephone: (580) 338-8575 Telecopy: (580) 338-5322
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<b>Invoices To:</b>	SWKI - SEWARD - WEST CENTRAL, INC. c/o Hanson Engineering, L.C. Rural Route 2, Box 49 Liberal, KS 67901 Attn: Richard L. Hanson Telephone: (620) 626-5777 Telecopy: (620) 624-3369
---------------------	--

If to Seller: **Notices and  
Correspondence:**

ANADARKO NATURAL GAS COMPANY  
701 S. Taylor, Suite 400  
Amarillo, TX 79101  
Attn: Norm B. Bartel, Gas Control Supervisor  
Telephone: (806) 457-4630  
Telecopy: (806) 457-4695

**And a copy to:**

ANADARKO NATURAL GAS COMPANY  
Anadarko Tower  
1201 Lake Robbins Drive  
The Woodlands, TX 77380  
Attn: Marketing Administration  
Telephone: (832) 636-5635  
Telecopy: (281) 636-7104

**Payments:  
(Wire)**

ANADARKO NATURAL GAS COMPANY  
Mellon Bank, N. A.  
Pittsburgh, PA  
Account No. 1157237  
Transit Routing No. 043000261

Either party may change any address under this Article by giving prior written notice to the other party.

### **ARTICLE XIII ARBITRATION**

13.1 Any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof, shall be finally settled by arbitration conducted expeditiously in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes by three independent and impartial arbitrators, of whom each party shall appoint one. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C.

Section 1-16, as same may be amended from time to time, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Houston, Texas. The arbitrators are not empowered to award incidental, consequential, indirect, special, punitive or exemplary damages, and each party hereby irrevocably waives any damages other than actual direct damages.

**ARTICLE XIV  
MISCELLANEOUS**

14.1 This Agreement is subject to all applicable and valid orders, laws, rules and regulations of all duly constituted governmental authorities having jurisdiction or control over the parties or the subject matter of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable in any jurisdiction, then to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible. The invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

**14.2 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE APPLICATION OF ANY PRINCIPLES REGARDING CONFLICT OF LAWS WHICH OTHERWISE MIGHT SUBJECT THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION.**

14.3 The waiver by either party of any breach of any of the provisions of this Agreement by the other party shall not constitute a continuing waiver of any other breaches of this Agreement by such other party, regardless of the nature of any such breach.

**14.4 NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER PARTY FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, LOSS PROFITS OR INDIRECT DAMAGES WHETHER OR NOT SUCH DAMAGES WERE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, COMPARATIVE, CONTRIBUTORY, ACTIVE, PASSIVE, GROSS, OR OTHERWISE), WILLFUL MISCONDUCT, STRICT LIABILITY, OR OTHER FAULT OF THE OTHER PARTY.**

14.5 The parties hereto agree that all of the terms and provisions of this Agreement are confidential, and shall use all reasonable efforts to prevent disclosure of any of the provisions of this Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its agents, consultants, affiliates and independent public accountants and/or as may be necessary for it to comply with any legal obligation or court order.

14.6 This Agreement shall not create any rights in favor of any third parties, and no provision of this Agreement shall be construed as creating any obligation for the benefit of, or rights in favor of, any person or entity other than the parties hereto.

14.7 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior and contemporaneous agreements and understandings between the parties, whether oral or written, concerning the subject matter hereof. This Agreement may not be amended, modified, or revised in any manner except by execution by both parties of a written instrument which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

**BUYER:**

**SWKI - SEWARD - WEST CENTRAL,  
INC.**

By: \_\_\_\_\_

Name: Jason Hitch

Title: President

**SELLER:**

**ANADARKO NATURAL GAS  
COMPANY**

By: \_\_\_\_\_

Name: Richard J. Sharples Danny Rea

Title: Sr. VP, Marketing & Minerals  
Vice President, Field Services

EXHIBIT "A"  
TO GAS SALES AGREEMENT BETWEEN  
ANADARKO NATURAL GAS COMPANY  
AND  
SWKI - SEWARD - WEST CENTRAL, INC.  
DATED June 1, 2002

DELIVERY POINT(S)

1. The outlet side of Anadarko Natural Gas Company's ("ANGC") Meter #033524, located on ANGC's 12-inch transmission line, approximately 71' FWL and 220' FNL of the NW/4 of Section 21, Township 33 South, Range 34 West, Seward, County, Kansas.


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**Docket 00-ANGG-218-COC**
[Details](#) [Documents](#) [Service List](#) [Staff Assignments](#) [Testimony/Briefs](#) [Hearing Dates](#)
**Docket Documents**

6 documents

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	Document Type	Description	Date Filed	Filed By
	Filing	In the Matter of the Joint Application of Anadarko Gathering Company an Anadarko Natural Gas Company for the Approval of the State Corporation Commission of the State of Kansas for the Transfer of Limited Certificate, the Amendment of Limited Certificate Files:	9/28/1999	
	Order	Order Suspending. (5-25-2000) Files:	10/7/1999	
	Order	Order Assessing Costs Effective February 14, 2000. Files:	2/7/2000	
	Filing	Staff Report and Recommendation Files:	5/8/2000	
	Order	Order Granting Anadarko Gathering Co. and Anadarko Natural Gas Co.'s Joint Application as Modified in the Order. Files:	5/19/2000	
	Filing	Anadarko Natural Gas Company Submitting Termination of Contract Rate Schedules Pursuant to Limited Certificate Files:	9/25/2013	HINDERKS, CARSON M.

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**GAS SALES AGREEMENT**

**DATED JULY 1, 1998**

**BY AND BETWEEN**

**ANADARKO ENERGY SERVICES COMPANY**

**AND**

**ANADARKO PETROLEUM CORPORATION**

FILE NAME.

SSA - 1563



DOC



LAND



DIV

00-ANGG-218-COC

Filed

Kansas Corporation Commission

August 16, 2000

/S/ Jeffrey S. Wasaman

# GAS SALES AGREEMENT

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## **GAS SALES AGREEMENT**

**THIS GAS SALES AGREEMENT** ("Agreement") is made and entered into this 1st day of July, 1998, by and between **ANADARKO ENERGY SERVICES COMPANY**, a Delaware corporation ("Seller"), and **ANADARKO PETROLEUM CORPORATION**, a Delaware corporation ("Buyer").

**WHEREAS**, Buyer desires to purchase from Seller, in accordance with the provisions of this Agreement, certain quantities of natural gas; and

**WHEREAS**, Seller is willing to sell such quantities of natural gas to Buyer in accordance with the provisions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants herein contained, Seller and Buyer hereby agree as follows:

### **ARTICLE I DEFINITIONS**

Except in those certain instances where the context clearly indicates another meaning, the following terms when used in this Agreement shall have the following meanings:

**1.1 "Btu"** shall mean one British Thermal Unit, which is the amount of heat required to raise the temperature of one (1) pound of water from fifty-nine degrees (59°) Fahrenheit to sixty degrees (60°) Fahrenheit.

**1.2 "Btu Content"** shall mean the number of MMBtu's contained in the quantity of gas delivered hereunder and shall be determined by multiplying the volume of gas (Mcf) by its corresponding Heating Value (Mbtu/cf).

**1.3 "Day"** shall mean a period of twenty-four (24) consecutive hours beginning at 5:00 a.m. Central Time on any calendar day and ending at 5:00 a.m. Central Time on the calendar day immediately following.

**1.4 "Delivery Point"** shall mean the outlet flange of each of the relevant measurement facilities identified on Exhibit "A" hereto at which Seller delivers gas to Buyer hereunder.

**1.5 "Heating Value"** shall mean the number of British Thermal Units (Btu's) produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and under a constant pressure of 14.65 Psia, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state. The Heating Value so determined shall be corrected to "dry" conditions for purposes of determining the Btu Content of Seller's gas.

**1.6 "Mcf"** shall mean one thousand (1,000) cubic feet of gas at a pressure of 14.65 Psia and at a temperature of sixty degrees (60°) Fahrenheit cubic feet of gas.

**1.7 "MMBtu" or "dekatherm" or "Dth"** shall mean one million (1,000,000) Btu's.

**1.8 "Month"** shall mean a period beginning at 5:00 a.m. Central Time on the first day of a calendar month and ending at 5:00 a.m. Central Time on the first day of the calendar month immediately following.

**1.9** "Natural gas" or "gas" shall mean natural gas of the quality delivered by Transporter on behalf of Seller to the Delivery Point, from time to time, for sale to Buyer hereunder.

**1.10** "Psia" shall mean pounds per square inch absolute.

**1.11** "Transporter" shall mean any entity which physically transports gas to the Delivery Point on behalf of Seller for sale to Buyer hereunder.

**1.12** "Transporter's Facilities" shall mean those pipeline and appurtenant facilities utilized by any given Transporter to transport gas to the Delivery Point on behalf of Seller for delivery to Buyer hereunder.

## ARTICLE II QUANTITY

**2.1** Subject to the provisions of this Agreement, Buyer shall purchase from Seller at the Delivery Point on a best efforts basis all of the natural gas necessary each day to satisfy all of Buyer's gas requirements; provided, however, that in no event shall Seller be obligated to sell to Buyer quantities of gas in excess of 1,000 Dth./day, unless Seller and Buyer otherwise expressly agree in writing.

**2.2** No later than December 31st of each year during the term hereof, Buyer shall provide Seller with Buyer's written, nonbinding, good-faith estimate of the monthly aggregate and monthly peak day quantities of gas which Buyer reasonably anticipates purchasing from Seller each month during the following contract year.



2.3 (a) Buyer recognizes that deliveries of gas hereunder by Transporter is subject to nomination by Seller each month. Therefore, Buyer shall, on or before the twentieth (20th) day of each month, submit to Seller by fax communication the quantity of gas to be delivered in the following month for purchase and receipt hereunder, which will be inclusive of any fuel and loss requirements. In the event Seller cannot deliver one hundred percent (100%) of the volumes nominated by Buyer, net of fuel and loss requirements, Seller agrees to notify Buyer (by phone or fax) on or prior to the later of: (i) five (5) days after receipt of Buyer's nomination; or (ii) five (5) business days prior to the end of the month; of the volume Seller can deliver, otherwise, it will be deemed that Seller will deliver one hundred percent (100%) of the volume so nominated. Notwithstanding the foregoing, Buyer shall use its best efforts to provide Seller with advanced notice of any anticipated material change in its receipts of gas at the Delivery Point(s). Such advanced notice will consist of a forty-eight (48) hour initial notice and a twenty-six (26) hour final notice prior to the delivery change.

(b) To the extent that Transporter assesses any type of operational penalty or charge against Buyer or Seller, including without limitation any imbalance, scheduling, or variance charges, then as between Buyer and Seller, the party responsible for causing such charges to be incurred shall be responsible for payment of such charges. Buyer and Seller shall cooperate in good faith at all times to the fullest extent practicable to prevent the incurrence of any such charges from Transporter. However, if such charges are assessed against Buyer and are attributable to or caused by Seller; then Buyer shall submit an invoice to Seller for such charges and Seller agrees to remit payment to Buyer for such charges within thirty (30) days of receipt of Buyer's invoice. Likewise, if such charges are assessed against Seller and are attributable to or caused by Buyer; then Seller shall submit an invoice to Buyer for such charges and Buyer agrees to remit payment to Seller for such charges within thirty (30) days of receipt of Seller's invoice.

**ARTICLE III**  
**DELIVERY POINT(S); TRANSPORTATION; AND FACILITIES**

**3.1** All gas sold hereunder shall be delivered to Buyer at any one or more of the Delivery Point(s) set forth on Exhibit "A" hereto, which is incorporated by reference herein.

**3.2** Seller shall be responsible for arranging, at its sole discretion and expense, for all upstream transportation service necessary to deliver all gas quantities to be sold to Buyer at the Delivery Point. Buyer shall be responsible for arranging, at its sole expense, for all downstream transportation service necessary to receive all gas quantities to be purchased from Seller at the Delivery Point.

**3.3** Buyer will install or cause to be installed, a two-inch (2") tap, sidegate, and metering facilities on a segment of Transporter's gathering system, located in the SW/4 of Section 11, Township 33 South, Range 34 West, Seward County, Kansas. The facilities will be installed according to Transporter's standard specifications, practices, and procedures. All facilities installed shall remain the property of Buyer or Buyer's designee. Buyer or Buyer's designee shall be responsible for operation and maintenance of the interconnection facilities.

**ARTICLE IV**  
**PRICE**

4.1 The price per MMBtu for all gas sold by Seller to Buyer hereunder shall be the sum of: (a) the Panhandle Eastern Pipe Line Company "Index" price to "Texas, Oklahoma (mainline)," as published in the first issue of Inside F.E.R.C.'s Gas Market Report, under the section entitled "Prices of Spot Gas Delivered to Pipelines," for the month in which gas was delivered by Seller to Buyer (the "Index Price"); and (b) fifty cents (\$0.50) per MMBtu. If Inside F.E.R.C.'s Gas Market Report discontinues publishing the Index Price, the parties shall utilize a mutually acceptable substitute index price for determining the price of gas sold in accordance with Section 4.1.

4.2 The price for gas sold by Seller to Buyer hereunder shall be exclusive of any and all applicable sales or use tax. Seller shall be responsible for any and all taxes, royalties, or other assessments levied upon the gas prior to delivery to Buyer hereunder. Buyer shall be responsible for any and all taxes and assessments, including but not limited to sales or use taxes levied upon the gas, upon or subsequent to delivery to Buyer hereunder.

**ARTICLE V**  
**TERM**

**5.1** This Agreement shall be effective on the date first stated above and shall remain in full force and effect for a primary term of one (1) month, commencing on the first day of the month following the date the facilities described in Section 3.3 are placed in service, and month-to-month thereafter; provided, however, either party may terminate this Agreement upon expiration of the primary term, by the provision of written notice to the other party not less than thirty (30) days prior to any such expiration date. Termination of this Agreement shall not relieve either party from any obligations previously accrued hereunder.

**ARTICLE VI**  
**BILLING AND PAYMENT**

**6.1** No later than the fifteenth (15th) day of each month, Seller shall invoice Buyer for gas sold to Buyer during the previous month. Seller's invoice shall indicate, for deliveries to Buyer during the previous month: (a) the thermal and volumetric quantities delivered to each of the Delivery Point; (b) the aggregate thermal and volumetric quantities delivered to all of the Delivery Point; and (c) the total amount due Seller hereunder. Buyer shall pay Seller the total amount due hereunder by wire transfer by the later of the twenty-fifth (25th) day of the billing month, or ten (10) days following the date of Seller's invoice ("Due Date").

**6.2** Commencing on the date following the Due Date, interest shall accrue on any unpaid balance, including any undisputed unpaid balance subsequently determined to be owed to Seller, at the "Prime Rate" published daily in the Wall Street Journal in the "Money Rates" column plus two percent (2%) until same is paid; provided, however, that such rate shall not exceed the maximum lawful rate established in the state where the Delivery Point(s) is (are) located. In the event the Prime Rate plus two percent (2%) exceeds the maximum lawful rate, the applicable interest rate shall be the maximum lawful rate. If Buyer disputes the amount of any invoice, or any part thereof, Buyer shall nevertheless pay to Seller the full invoiced amount. If it is ultimately determined that Buyer did not owe a disputed amount, or any part thereof, Seller shall refund such amount to Buyer within five (5) days of such determination, including interest on such amount calculated from the date paid at the rate provided for in this Article VI.

**6.3** Each party shall have the right, at all reasonable times and upon reasonable prior written notice, to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation, or payment made pursuant to the provisions of this Agreement. Any such examination shall be conducted during normal business hours and in the appropriate office of the party owning such books, records and charts as mutually agreed to by Buyer and Seller. If any such examination reveals any inaccuracy in any payment theretofore made, the necessary adjustment in such payment shall be promptly made, provided that no adjustment for any payment made shall be made, and payments shall be considered final, after the lapse of two (2) years from the rendition thereof, except to the extent that either party has noted a specific exception to the other party in writing during that period.



**ARTICLE VII**  
**CREDIT REQUIREMENTS AND DEFAULT**

**7.1** Should the creditworthiness or financial responsibility of Buyer become unsatisfactory to Seller at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made or receipts accepted hereunder. In the event Buyer: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) defaults in the payment or performance of any obligation to Seller under this Agreement; (iii) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such petition filed or proceeding commenced against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) fails to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within forty-eight (48) hours of a reasonable request by Seller, then Seller shall have the right to suspend deliveries or withhold receipts of gas hereunder, offset any or all amounts due Seller against any or all amounts due Buyer under this or any other agreement between the parties, and/or terminate this Agreement without prior notice, in addition to any and all other remedies available hereunder or pursuant to law.

**ARTICLE VIII**  
**QUALITY; MEASUREMENT; PRESSURE**

**8.1** All of the gas delivered to Buyer at the Delivery Point shall meet Transporter's applicable gas quality specifications in effect at the time of delivery, as such specifications may be revised by Transporter from time to time.

**8.2** All measurement of gas delivered to Buyer hereunder shall be performed by Transporter at the Delivery Point in accordance with Transporter's standard measurement practices in effect at the time of delivery. All measurement performed by Transporter shall be deemed conclusive as between Buyer and Seller for all purposes hereunder.

**8.3** All gas delivered to Buyer hereunder shall be delivered at the Delivery Point at the pressures prevailing in Transporter's Facilities, as such pressure may fluctuate from time to time. Seller is under no obligation to deliver gas covered hereunder to Buyer at any minimum or maximum delivery pressure. Buyer shall be solely responsible for regulation of gas pressure in all of Buyer's facilities located at or downstream of the Delivery Point.

**8.4** BUYER UNDERSTANDS, AND ASSUMES THE RISKS ASSOCIATED THEREWITH, THAT THE GAS SUPPLIED HEREUNDER IS UNTREATED RAW GAS AS PRODUCED AT A WELL, THAT THE GAS MAY CONTAIN IMPURITIES, INCLUDING BUT NOT LIMITED TO FREE WATER, NATURAL GASOLINE OR OTHER LIQUIDS, CARBON DIOXIDE (CO<sub>2</sub>), AND HYDROGEN SULFIDE (H<sub>2</sub>S) AND THAT THE GAS IS NOT ARTIFICIALLY ODORIZED.

**8.5** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ALL SALES MADE BY SELLER HEREUNDER ARE MADE WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**ARTICLE IX**  
**TITLE**

**9.1** Title to all gas delivered hereunder shall pass from Seller to Buyer at the relevant Delivery Point. Seller warrants that at the time of delivery to Buyer, Seller will have either title to or all necessary legal authority to sell all gas delivered to Buyer. Seller further warrants that all gas sold to Buyer hereunder will be free from any and all liens, charges, adverse claims and encumbrances of any kind or character at the time of delivery to Buyer. Seller shall defend and indemnify Buyer from any liabilities, costs and expenses to any third parties (including court costs and reasonable attorney's fees) pertaining in any manner to Seller's title to or right to sell any gas delivered to Buyer hereunder.

**ARTICLE X**  
**SUCCESSION AND ASSIGNMENT**

**10.1** Neither party hereto may assign any of its rights, obligations or interests under this Agreement without the prior express written consent of the other party, which consent may not be unreasonably withheld; provided, however, that such prior written consent shall not be required in the event of assignment by either party to an affiliate of that party. No conveyance or transfer of interest of either party shall be binding upon the other party until such party has been furnished with written notice and a certified copy of such conveyance or transfer. This Agreement shall be binding upon the respective successors and assigns of the parties hereto.

**ARTICLE XI**  
**LIABILITY AND FORCE MAJEURE**

**11.1** Seller and Buyer each assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and hold harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to or death of persons, arising out of the installation, maintenance and operation of the property and equipment of the indemnifying party.

**11.2** As between the parties hereto, Seller shall be deemed to be in exclusive control and possession of the gas, and shall be responsible for any loss, injury or damage caused thereby, until the same shall have been received by Buyer at the Delivery Point, and Buyer shall be deemed to be in exclusive control and possession of the gas following receipt of such gas by Buyer from Seller at the Delivery Point, and thereafter Buyer shall be responsible for any loss, injury or damage caused thereby.

**11.3** If by reason of force majeure either party is rendered unable, wholly or in part, to carry out any of its obligations under this Agreement, other than the obligation to make any payments due, then following the provision of written notice to the other party which describes the force majeure event in reasonably full particulars, such affected party shall be excused from performance of such impaired obligations hereunder during the continuance of any inability so caused. For purposes of this Agreement, the term "force majeure" shall mean acts of God; strike; lockout; fire; war; acts of the public enemy; riot; civil disturbance; explosion; breakdown or accident to machinery, lines of pipe or plants; interruption of transportation for the making of repairs, maintenance or alterations of wells, machinery, lines of pipe or plants; freezing of wells or lines of pipe; failure of wells or appurtenant facilities; regulation or order of a governmental agency; inability to secure, or the delays in acquiring at reasonable costs, materials, equipment, easements, right-of-way, grants, servitudes, permits or licenses; partial or entire failure of gas supply or demand over which neither party has control; inclement weather that necessitates extraordinary measures and expense to

construct facilities and/or maintain operations; or any other cause or causes beyond the reasonable control of the party, whether of the kind herein enumerated or otherwise. This Agreement shall not be terminated by reason of suspension due to any one or more of the causes above set forth. A force majeure period shall not serve to extend the term of this Agreement.

## ARTICLE XII NOTICES AND COMMUNICATIONS

**12.1** All notices, communications, requests, statements or payments authorized or required between the parties, and/or required by any of the provisions of this Agreement, shall be given in writing, unless otherwise expressly provided herein. Such notices, communications, requests, statements or payments may be transmitted via United States first class mail, fax, telecopy or similar electronic communication, or prepaid overnight delivery. Such notices, requests, statements, or payments, as applicable, shall be considered as duly delivered as of the receipt date indicated on the fax, telecopy or similar electronic communication, or the postmark date when mailed by United States mail to the other party at the following address:

If to Buyer:   **Notices, Statements and  
Invoices:**

ANADARKO PETROLEUM CORPORATION  
P.O. Box 1330  
Houston, TX 77251-1330  
Attn: Marketing Administration  
Telephone:   (281) 875-1101  
Telecopy:    (281) 876-8663

If to Seller:   **Notices:**

ANADARKO ENERGY SERVICES COMPANY  
P. O. Box 1330  
Houston, TX 77251-1330  
Attn: Marketing Administration  
Telephone:   (281) 875-1101  
Telecopy:    (281) 876-8663

If to Seller: **Payments:**  
**(Wire)**

ANADARKO ENERGY SERVICES COMPANY  
Mellon Bank, N. A.  
Pittsburgh, PA  
Account No. 1157237  
Transit Routing No. 043000261

Either party may change any address under this Article by giving prior written notice to the other party.

### **ARTICLE XIII**

### **ARBITRATION**

**13.1** Any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof, shall be finally settled by arbitration conducted expeditiously in accordance with the Center for Public Resources ("CPR") Rules for Non-Administered Arbitration of Business Disputes by three independent and impartial arbitrators, selected by CPR in accordance with Rule 6 of the CPR Rules. The arbitration shall be governed by the Uniform Arbitration Act, V.T.C.A., Civil Practice and Remedies Code §§171.001 through 171.020, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Houston, Texas, unless otherwise agreed by the parties hereto. The arbitrators are not empowered to award, consequential, indirect, special, punitive or exemplary damages, and each party hereby irrevocably waives any damages in excess of actual damages.



**ARTICLE XIV  
MISCELLANEOUS**

**14.1** This Agreement is subject to all applicable and valid orders, laws, rules and regulations of all duly constituted governmental authorities having jurisdiction or control over the parties or the subject matter of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable in any jurisdiction, then to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible. The invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

**14.2 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE APPLICATION OF ANY PRINCIPLES REGARDING CONFLICT OF LAWS WHICH OTHERWISE MIGHT SUBJECT THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION.**

**14.3** The waiver by either party of any breach of any of the provisions of this Agreement by the other party shall not constitute a continuing waiver of any other breaches of this Agreement by such other party, regardless of the nature of any such breach.

**14.4 IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER PARTY HEREUNDER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES.**

14.5 The parties hereto agree that all of the terms and provisions of this Agreement are confidential, and shall use all reasonable efforts to prevent disclosure of any of the provisions of this Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its agents, consultants, affiliates and independent public accountants and/or as may be necessary for it to comply with any legal obligation or court order.

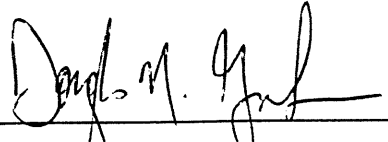
14.6 This Agreement shall not create any rights in favor of any third parties, and no provision of this Agreement shall be construed as creating any obligation for the benefit of, or rights in favor of, any person or entity other than the parties hereto.


14.7 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior and contemporaneous agreements and understandings between the parties, whether oral or written, concerning the subject matter hereof. This Agreement may not be amended, modified, or revised in any manner except by execution by both parties of a written instrument which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

ANADARKO PETROLEUM CORPORATION  
("BUYER")

ANADARKO ENERGY SERVICES COMPANY  
("SELLER")

By:   
Name: DOUGLAS N. GRAHAM  
Title: AGENT AND ATTORNEY-IN-FACT

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**TO**  
**GAS SALES AGREEMENT**  
**BETWEEN**  
**ANADARKO ENERGY SERVICES COMPANY**  
**AND**  
**ANADARKO PETROLEUM CORPORATION**

**DATED JULY 1, 1998**

**DELIVERY POINT(S)**

1. Anadarko Gathering Company's ("AGC") Meter Station # 035680, located on AGC's 6-inch gathering line, approximately in the SW/4 Section 11-T33S-R34W, Seward County, Kansas.

### **CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 11<sup>th</sup> day of January, 2019, to the parties below:

COLE BAILEY, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3167 <a href="mailto:c.bailey@kcc.ks.gov">c.bailey@kcc.ks.gov</a>	BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 <a href="mailto:b.fedotin@kcc.ks.gov">b.fedotin@kcc.ks.gov</a>
AMBER SMITH, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3167 <a href="mailto:a.smith@kcc.ks.gov">a.smith@kcc.ks.gov</a>	ANNE E. CALLENBACH, ATTORNEY POL SINELLI PC 900 W 48TH PLACE STE 900 KANSAS CITY, MO 64112 Fax: 913-451-6205 <a href="mailto:acallenbach@polsinelli.com">acallenbach@polsinelli.com</a>
FRANK A. CARO, JR., ATTORNEY POL SINELLI PC 900 W 48TH PLACE STE 900 KANSAS CITY, MO 64112 Fax: 816-753-1536 <a href="mailto:fcaro@polsinelli.com">fcaro@polsinelli.com</a>	CARLY MASENTHIN, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3167 <a href="mailto:c.masenthin@kcc.ks.gov">c.masenthin@kcc.ks.gov</a>

/s/ **Andrew J. French**

James P. Zakoura

Andrew J. French

SMITHYMAN & ZAKOURA, CHARTERED