

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Application of Freedom Pipeline,)
LLC, for Approval of Its Sales For Resale Customer) Docket No. 23-FRPG-_461-CON
Contracts.)

DIRECT TESTIMONY OF KIRK HEGER
ON BEHALF OF FREEDOM PIPELINE, LLC

I. INTRODUCTION

1 **Q. Please state your name, business address, and career and educational background.**

2 A. My name is Kirk Heger, 1901 University Dr., Lawrence, Kansas. I am a fourth-generation
3 farmer in Stevens County. My family has farmed in Stevens County for over 115 years. I
4 am Chairman of Freedom Pipeline L.L.C ("Freedom"). I am also the President of one of
5 the non-profit public utilities ("NPUs"), SWKI-Stevens Southeast, Inc. SWKI-Southeast
6 was the first NPU formed in Southwest Kansas in 1998 and was formed to provide
7 irrigation fuel to member-owners. SWKI-Southeast serves approximately 40,000 acres of
8 farmland.

9 **Q. Have you ever provided testimony before the Kansas Corporation Commission**
10 **("Commission" or "KCC")?**

11 A. Yes, I provided testimony in Docket No. 14-FRPG-599-COC ("14-599 Docket") in support
12 of Freedom Pipeline's ("Freedom") Second Amended Application, and I filed testimony in
13 support of the parties' Settlement Agreement and in Docket No. 15-TKOG-236-COC as a

1 Complainant. I have been involved in a number of other dockets and proceedings at the
2 KCC.

3 **Q. What is the purpose of your testimony?**

4 A. I am offering testimony on behalf of Freedom Pipeline in support of its Application for
5 approval of its Sales for Resale contracts to be used with its existing and future
6 customers. These contracts are attached to the Application as **Confidential Exhibit A** and
7 **Confidential Exhibit B**.

8 My testimony also discusses the history of the formation of the NPUs, the purpose
9 of Freedom pipeline, and background on the NPUs' application to form Freedom Pipeline.
10 I also briefly address the status of Freedom's discussions with Black Hills regarding service
11 to Moscow, Kansas, and I address risk factors that could negatively impact FPL operating
12 margins in the future.

13 **Q. Please briefly summarize the regulatory events leading up to Freedom Pipeline's**
14 **application in this proceeding.**

15 A. On June 26, 2014, Freedom Pipeline filed its initial application with the Commission
16 requesting a certificate of convenience and necessity as an NPU to provide natural gas
17 service in portions of Stevens, Grant, and Seward Counties, Kansas to its six member-
18 owners¹ for the purpose of providing fuel for the irrigation of land devoted to agricultural
19 use. In its initial application, Freedom Pipeline stated that it would be a nonprofit utility
20 owned, operated and managed by the six existing NPUs and that it would comply with the
21 provisions of K.S.A. 66-104c(a).

¹ Freedom is comprised of and was created by the following: SWKI Stevens North, Inc.; SWKI Spikes North, Inc.; SWKI Stevens Southeast, Inc.; SWKI Seward West Central, Inc.; SWKI Stevens NE, Inc.; and SWKI Stevens SW, Inc. (collectively referred to as "NPUs" or "members").

1 On December 3, 2014, Freedom filed an Amended Application. In its initial
2 application, Freedom requested a specific geographic service territory that encompassed
3 specific portions of Stevens, Grant, and Seward Counties, Kansas. In order to alleviate the
4 concerns regarding service territory that were expressed by several intervenors in the
5 docket and to expedite Commission approval of Freedom's application so that construction
6 of the pipeline could begin, Freedom amended its application to eliminate its request for a
7 specific geographic service territory. Instead, Freedom requested Commission approval of
8 a certificate of convenience for transmission rights only so that it could build the pipeline
9 to serve its member-owners.

10 Ultimately, on March 24, 2015, the Commission issued an Order Denying
11 Freedom's Application. The Commission's Order noted that it did not oppose the
12 pipeline, but rather had concerns regarding the ownership structure of the line.

13 Therefore, on April 23, 2015, Freedom filed its Second Amended Application to
14 establish Freedom as an open access pipeline. Black Hills and Atmos Energy ("Atmos")
15 initially filed protests to the Second Amended Application, but the Second Amended
16 Application was ultimately resolved by settlement agreement between Freedom, Atmos,
17 Black Hills, and Commission Staff. Upon approval of the settlement agreement, the Second
18 Amended Application was granted on August 4, 2015.

19 **Q. What were the terms of Freedom's certificate?**

20 A. The settlement agreement reached between Commission Staff, Atmos and Black Hills that
21 was approved by the Commission contained the following terms:

- 22 • All parties agreed not to oppose Freedom's pending application.

- Freedom agreed not to serve customers or municipalities served by Atmos or customers within Black Hills' certificated service territory.
- Black Hills and Atmos agreed not to serve any of the NPUs or any existing customers of the NPUs.

Upon completion of the pipeline,²

- Freedom agreed to apply for a maximum tariff rate for transportation services on the pipeline and submit any contracts between Freedom and any other parties providing a transportation rate discounted below the maximum tariff rate to the Commission for review.
- Freedom agreed to negotiate a transportation agreement for Freedom to provide transportation service to Black Hills at a receipt point located near Moscow, Kansas, and to submit such agreement to the Commission for approval.

Q. What was the next regulatory step taken by Freedom?

A. On April 7, 2016, Freedom filed an application in Docket 16-FRPG-452-CON ("16-452 Docket") for approval of six natural gas purchase and sale contracts between Freedom and its members, the NPUs. The Commission granted Freedom's application in the 16-452 Docket, and further ordered that, after completion of construction of the line, Freedom was to file a maximum tariff rate for approval.

Q. When was the pipeline completed?

A. The first phase was completed in 2017 and the second phase in 2020.³

Q. Did Freedom file its maximum tariff rate thereafter?

² This reference is to completion of Phases 1 and 2 of the pipeline. See Footnote 3.

³ The Commission approved a third phase of construction that could occur at some future date.

1 A. Not immediately. Freedom spoke a few times with Staff regarding the filing and began
2 working on its preparation. However, Freedom is a small entity and was forced to focus its
3 resources other directions between 2020 and 2022. Specifically, Freedom was dealing with
4 the impacts of the COVID pandemic and with establishing a test year to determine the
5 appropriate cost of service for the pipeline.

6 **Q. What happened then?**

7 A. On September 30, 2022, Staff filed a Report and Recommendation in this docket
8 recommending that the Commission issue a show cause for Freedom to file its tariff and
9 contracts. Freedom responded with an explanation for the delay and committed to having
10 the application on file no later than November 11, 2022. On October 25, 2022, the
11 Commission issued an Order accepting Freedom's commitment to make its filing by
12 November 11, 2022.⁴ This Application is the required filing.

13 II. HISTORY OF FREEDOM PIPELINE

14 **Q. Briefly describe the history of and genesis of the NPUs and their importance to**
15 **agriculture in Kansas?**

16 A. The NPUs were organized and developed to provide a durable supply of natural gas to the
17 agricultural community in Western Kansas. Historically, the farmers in Western Kansas
18 used field natural gas supply to power their irrigation motors, their homes, their grain
19 dryers, etc. They would receive this natural gas from the thousands of natural gas wells
20 that produced natural gas, and the gathering systems that gathered the gas and transported
21 it to the interstate pipeline.

⁴ November 11th turned out to be a holiday, so the filing is being made the next business day, November 14, 2022.

1 As the natural gas producing companies moved to mine the Hugoton Field, they
2 installed compression equipment along the gathering lines. This compression equipment
3 increased pressure at certain points in the gathering systems, but effectively reduced the
4 pressure at the wellhead in the field and in the gathering systems upstream of these
5 compression sites. As a result, the natural gas wells and their gathering systems no longer
6 produced sufficient pressure to supply the farmers' irrigation motors and other demand.
7 Along with the reduced supply, the lowered pressure in the field ultimately caused the
8 pressure to drop to a vacuum. This situation created a path for contaminants to enter the
9 gas stream and H₂S was very present. Therefore, the agricultural community was forced
10 to look for new alternatives for their supply of natural gas.

11 **Q. Were the established utilities in the area able to serve the farmers' needs?**

12 A. No. The local utilities in the area were not able to respond to the need due to their lack
13 of infrastructure in the rural community. Nor did they have the organizational ability to
14 aggregate and organize the farmers and determine their natural gas needs.

15 **Q. So where did that leave you?**

16 A. The farmers realized that as a matter of necessity they would be required to get into the
17 natural gas distribution business. As a result, the farmers began the process of forming
18 NPUs to affordably, reliably and safely provide natural gas for agricultural purposes to the
19 unserved or underserved agricultural market. The first NPU in Kansas was established in
20 1998. Ten more NPUs have been established since then.

21 **Q. Please describe the organizational, management and governing structure of the**
22 **NPUs?**

1 A. The NPUs are organized and formed under K.S.A. 66-104c, which allows for the formation
2 of non-profit public utilities. Each NPU is owned by its owner/members, and each member
3 has an equal vote regarding governing decisions of the NPU. Each NPU has a Board of
4 Directors to operate and manage the NPU. However, the day-to-day operations of the
5 pipeline are delegated to Rick Hanson of Hanson Engineering, who is also filing Direct
6 Testimony in this case. Mr. Hanson answers to the Board of Directors in overseeing and
7 managing the NPUs.

8 **Q. Please describe the problem the NPUs were attempting to solve by construction of**
9 **the pipeline, and how Freedom's pipeline actually solves those problems.**

10 A. As briefly discussed above, when the farmer/owners of the NPUs originally designed and
11 constructed the first pipeline distribution systems they operated and managed, these
12 systems interconnected with high pressure compressor stations located close to the
13 irrigation demand of some of the NPUs. Other NPU distribution systems were located
14 close to intrastate pipelines located in their immediate area. Most of these interconnects
15 were with gathering pipelines that transported unprocessed or minimally processed gas.
16 Although a small number of these interconnections theoretically allowed for the delivery
17 of more refined and dehydrated gas to be used by the famer/owners, these interconnections
18 had a very short supply life and were owned by distribution utilities that charged additional
19 costs that made the receipt and use of this processed gas generally uneconomical and
20 impractical for agricultural purposes.

21 This problem caused the NPUs to reconsider their model for delivery of their source
22 gas from the unprocessed interconnections. In general, the NPUs began to recognize the
23 following additional concerns: high costs of the natural gas liquids (NGLs) that were

1 contained in their delivery stream, barriers to access to a cleaner gas that did not contain
2 the impurities that affected their operations, and declining delivery pressures that
3 eventually functionally undermine the NPU's delivery system.

4 Looking forward, the NPUs recognized that, in order to assure access to reliable,
5 safe and affordable gas to be used for their agricultural purposes, they would need to build
6 their own functioning gas supply system connected to a high pressure processed gas source.
7 This system would allow the NPUs to access processed gas on major interstate and
8 intrastate systems, importantly receiving gas from sources other than the long-standing
9 Hugoton field; sources that comparatively would be less depleted and provide sufficiently
10 combustible yet safe forms of natural gas. As a result, Freedom Pipeline LLC was born.

11 **Q. What was the original concept for Freedom Pipeline, and how did that change over**
12 **time?**

13 A. Freedom Pipeline LLC was originally conceived to be a non-profit utility with six (6)
14 member/owner non-profit utilities. The rationale for this structure was simply that the NPU
15 owners of Freedom intended only to serve themselves, and that if any new third parties
16 sought access to the pipeline, such third parties could simply become members of one of
17 the NPUs and participate in this process like the other owners of the NPUs. However, when
18 Freedom sought certification consistent with that intent in the 14-599 Docket, the
19 Commission believed it was important and in the public interest to allow the public, if
20 desirable, to have access to and to use the pipeline. Therefore, Freedom received
21 authorization from the KCC to become a for-profit public utility.

22 **Q. Please describe the process for construction and completion of the pipeline, including**
23 **financing, management and oversight by Freedom's owners, the NPUs.**

1 A. The NPU's formed a Board of Directors to govern Freedom, and they worked with local
2 banks to provide financing for the construction. Freedom engaged its consulting engineer
3 to design the pipeline, landmen to acquire the right of way, and natural gas consultants to
4 provide gas supply contracts and negotiate interconnect agreements. Currently, Freedom's
5 pipeline has three (3) interconnections: one with Black Hills, one with Kansas Gas Service,
6 and one with Tallgrass Interstate Gas Transmission, LLC.

7 As stated above, the first phase of Freedom Pipeline was built and finished in 2017.
8 The second phase of the pipeline was completed in late 2020 and started first deliveries at
9 the beginning of the 2021 irrigation season.⁵

10 **Q. Is the pipeline functioning and providing a benefit to the public and its customers?**

11 A. Yes. Freedom Pipeline has successfully delivered natural gas to the local rural communities
12 of Stevens, Seward and Grant Counties in 2021 and 2022. Freedom has met its purpose of
13 providing a safe, durable, economic and clean supply of natural gas to its Members' farms,
14 homes, and agricultural businesses.

15 **Q. Please describe how the pipeline serves the needs of the farmers who, through the**
16 **NPU's, created Freedom, and describe why the financial structure has been**
17 **successful?**

18 A. In short, had the farmers who created the NPU's and Freedom not taken the initiative to
19 create these entities in order to provide natural gas for irrigation purposes, the hardships
20 encountered by the community would be very present. Not only would the cost of energy
21 have increased exponentially, but the safety and logistics to deliver the energy would be
22 next to impossible. Several of the irrigation units are located under the center pivot systems

⁵ As stated above in Footnote 3, the Commission approved a third phase of construction that could occur at some future date.

1 which does not allow for overhead lines or easy deliveries of other fuels. The market
2 conditions had become such that the owner/members would not have had reliable access
3 to safe and usable natural gas to power their irrigation engines. If they had lost their gas
4 supply, there would have been substantial negative impacts, not only on their farms, but
5 also on their communities, surrounding businesses, and governmental entities. This history
6 demonstrates that the NPU's have a viable business model, they are able to negotiate gas
7 sources and work with gas providers, and through this model are able to maintain their
8 natural gas service so they can continue to operate and provide positive impact for their
9 communities and the State of Kansas.

10 The NPU's and Freedom Pipeline were critical because no one else but the farmers
11 themselves have the most focused interest in securing, protecting, and providing gas for
12 their continued successful operation of natural gas to irrigate their farm operations in
13 Southwest Kansas and Central Kansas. The farmers involved are sophisticated, capable,
14 financially secure and experienced farmers who understand what it takes to make their
15 business successful. Their success has not happened by accident, but as a result of active
16 board members who understood the relevance of their work. These farmers best understand
17 what is needed to secure safe, reliable and usable gas sources, and as a result of their efforts
18 have been able to do so throughout Kansas since 1998. Since 2017, Freedom has been able
19 to build on this model and put it to use in its surrounding community and for its
20 owner/members.

21 **Q. Is the proposal in this Application consistent with the goals in creating Freedom**
22 **Pipeline?**

1 A. The overriding goal was to ensure adequate gas supply to Freedom's NPU members.
2 Because the Commission determined in the 14-599 Docket that Freedom should be
3 available to third parties instead of just providing service to its members as an NPU, the
4 contracts proposed in this docket are necessary.

5 **Q. How will Freedom handle requests for service from non-member customers if they**
6 **occur?**

7 A. Upon request for service by a third party, Freedom will determine if sufficient capacity is
8 available to serve that customer. If such capacity is determined to be available and the
9 third party becomes a customer of Freedom, Freedom will treat that new customer in a
10 nondiscriminatory basis, the same as it treats the NPUs.

11 **Q. Do you foresee there will be much, if any, demand for service on Freedom by non-**
12 **members?**

13 A. No, I don't. To date, Freedom has not received any requests from a non-member for service
14 on the pipeline even though the first phase became operational in 2017, and Freedom does
15 not expect to receive such requests because there are no potential customers in the area
16 who are likely to use Freedom's facilities. Either Freedom is restricted from providing
17 service to most other potential customers under the terms of the 14-599 settlement
18 agreement⁶, or customers have more efficient and cost-effective options available to them
19 for service (because they are located closer to another pipeline).

20 **Q. In the Application, Freedom states that it intends to provide Sales for Resale service**
21 **to any third-party seeking service off the Freedom system. Why is the Company**
22 **seeking to provide this type of service rather than open access transport service?**

⁶ As explained earlier, Freedom's certificate was granted on the condition that Freedom would not serve customers or municipalities served by Atmos or customers within Black Hills' certificated service territory.

1 A. First, I wish to emphasize that Freedom is not actively seeking to serve additional load.
2 Freedom is proposing to provide such service only to comply with the terms of the 14-599
3 Settlement Agreement, and in response to the Staff's request to make our system available
4 to unaffiliated third parties should any such customers emerge and request service.
5 Freedom's organization does not have any employees; it relies upon independent
6 professional contractors to operate the system and provide any necessary accounting and
7 legal services.

8 The point is that Freedom wishes to keep its operations as simple as possible,
9 incurring the minimal level of costs necessary to operate a safe and efficient system. We
10 are familiar with the nature of providing Sale for Resale service as that is the nature of
11 service provided to the NPU's. We view the provision of open access transmission to be
12 more complex, which would increase our costs associated with new and incremental
13 obligations such as balancing the load of new customers. This results in incremental costs
14 to be incurred by all of Freedom's member customers. Such additional complexity is not
15 necessary, nor would it provide customer benefits, in my opinion. In summary we wish to
16 keep our operations simple and consistent with the service we currently provide to the
17 NPU-members.

18 **Q. Are you asking the KCC to reconsider its decision that Freedom be an open access**
19 **pipeline?**

20 A. Not in this Application because that would run contrary to the Settlement Agreement.
21 However, we are asking that the purpose the NPU's had in building the pipeline and the
22 nature of its operations be kept in mind as the Commission considers the terms proposed
23 in this Application.

III. OVERVIEW OF APPLICATION

Q. Please provide an overview of the Application filed by Freedom in this case.

In the 16-452 Docket, Freedom filed six natural gas purchase and sale contracts between Freedom and its six member-owners. Staff recommended approval of the methodology for calculating the rate and recommended approval on an interim basis of the six contracts until such time as actual construction and financing costs of the first two phases of the pipeline were known.

That is what Freedom is now providing the Commission in this Application. In addition, Freedom is providing the contract to be used with non-NPU customers who may request service in the future.

A. The rates in the NPU contract and the third-party contract are the same. Freedom is proposing a monthly customer charge of \$350 with a volumetric rate of \$.8483 for both NPU and third-party customers.

1 **Q. Are there any changes proposed in the contracts as compared to the terms under the**
2 **interim approved contracts?**

3 A. Yes. The following is a list of changes between the contracts:

- 4 1) They are updated to reflect that the pipelines have been built.
- 5 2) Delivery Fee changed from a formula based on anticipated expenses to a flat
6 \$.8483/MMBtu.
- 7 3) Added a Meter Fee of \$350 per meter.
- 8 4) Amended the deadlines for payment of gas delivered.
- 9 5) Amended the Letter of Credit requirements to permit flexibility as to the posting
10 and the amount of same.
- 11 6) Adjusted the term for the NPUs to start December 1, 2022, and for third party
12 contracts a term of one year and year-to-year thereafter.
- 13 7) Added a provision that Seller may require the installation or upgrade of the
14 interconnect equipment and facilities, including but not limited to electronic
15 measurement equipment, at Buyer's expense.
- 16 8) Added a provision that acknowledges that Seller's contracts with its gas suppliers
17 may contain a provision to determine a replacement price if the index upon which
18 the price is calculated is unavailable or a suspension of the markets occurs, and the
19 quantity, quality and/or price of gas sold to Buyer shall be affected to account for
20 the changes in Seller's supply of gas.

21 **IV. FINANCIAL RISKS**

22 **Q. Is Freedom's revenue stream subject to risks outside its control?**

1 A. Yes. Freedom does not have a diverse customer base and variations in precipitation will
2 impact its net operating margin. Other significant risks faced by Freedom in generating
3 operation revenue include the price of commodities and costs of inputs to produce the
4 commodity, all of which can be volatile. These factors suggest that annual operating
5 revenue may vary significantly. Finally, Freedom does not have a profit motive, as do
6 investor-owned utilities.

7 **Q. Do those risks justify allowing Freedom some latitude in establishing its rates and the**
8 **structure of its service?**

9 A. I believe so. The Commission should recognize the factors that may impact the cash-flow
10 needs of Freedom in its consideration of this case. Freedom believes the proposed rate
11 structure is necessary to accommodate these potential risks going forward. Hopefully the
12 Commission will grant some deference to the management of Freedom when evaluating
13 this proposal and find that the proposed terms and rates are reasonable.

14 **V. BLACK HILLS SERVICE AGREEMENT**

15 **Q. Please address the Black Hills agreement for providing service to the City of Moscow,**
16 **Kansas.**

17 A. In the Commission's August 4, 2015 Order in the 14-599 Docket, one of the terms of the
18 settlement agreement approved by the Commission provided that Freedom would negotiate
19 with Black Hills an arrangement whereby Freedom would provide service to Black Hills
20 at a receipt point located near Moscow, Kansas.

21 **Q. Has that arrangement been worked out between Freedom and Black Hills?**

22 A. Not yet, but we continue to talk with Black Hills and hope to have something for the
23 Commission to consider soon. After years of adversarial litigation with Black Hills, a good

1 relationship between the companies has begun to develop. This is a positive and it should
2 set the stage for Freedom to be able to work out an arrangement with Black Hills that is
3 beneficial to both companies and the customers in Moscow.

4 **Q. Does that conclude your testimony?**

5 A. Yes.

VERIFICATION

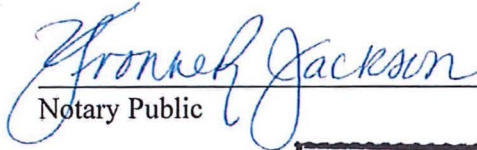
STATE OF KANSAS)
) ss
COUNTY OF Stevens)

The undersigned, Kirk Heger, upon oath first duly sworn, states that he is on the Board of Freedom Pipeline, LLC, that he has reviewed the foregoing *Direct Testimony*, that he is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of his knowledge and belief.

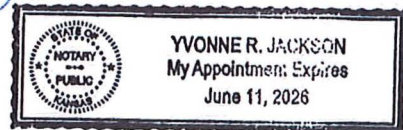


Kirk Heger

Subscribed and sworn to before me this 14th day of November 2022.


Notary Public

My appointment expires: June 11, 2026



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing *Direct Testimony* was electronically served this 14th day of November, 2022 to:

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