

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

In the Matter of the Application of Kansas)
Gas and Electric Company for Approval of)
the Amendment to the Energy Supply) Docket No. 18-KG&E-303-CON
Agreement Between Kansas Gas and)
Electric Company and Occidental Chemical)
Corporation.)

RESPONSE TO OCCIDENTAL'S RESPONSE TO STAFF'S MOTION TO COMPEL

The Staff of the Kansas Corporation Commission (“Staff” and “Commission,” respectively), hereby states the following in response to Occidental Chemical Corporation’s (Occidental’s) *Response to Motion to Compel* (Response):

Staff Attempted to Resolve the Dispute in Good Faith

1. Occidental asserts in its Response that Staff has failed to abide by K.S.A. 60-237(a)(1) because Staff did not in good faith confer with Occidental regarding its failure to respond to discovery in an effort to obtain it without court action. Occidental also argued that Staff did not certify the same.

2. Both of these allegations should be rejected. Staff’s Motion to Compel indicated the steps taken to resolve the dispute (e-mails and phone calls).¹ The e-mails were attached to the Motion. The Motion to Compel was signed by Staff counsel and verified.

3. From Staff’s perspective, Occidental is simply asking the Commission to allow it to provide an evasive answer, which should be treated as a failure to disclose under K.S.A. § 60-237(a)(4). Staff has acted in good faith. Staff is simply unwilling to accept an evasive response to its request.

¹Staff counsel phone records indicate phone calls were held 4/11/19 and 4/13/19.

Credibility Evidence is Relevant

4. Occidental argues that because Occidental and Westar have provided sworn and verified testimony that Occidental is at a price disadvantage at its Wichita facilities, Staff should be required to accept alternative evidence that Occidental believes can prove the statements.

5. Staff should be allowed to conduct its investigation as it sees fit. Objections to discovery should be based upon the rules of evidence and other legally identified privileges. There is no “alternative evidence” objection that Staff is aware of and no citations have been provided by Occidental. Again, the argument is simply an attempt to evade providing a response to Staff’s actual Data Request.

6. Furthermore, Staff should be allowed to test the credibility of the sworn testimony through discovery of relevant information. As was discovered by Staff through Data Request No. 8, Chad Luce’s sworn statement regarding Occidental’s price disadvantage was based upon vocal statements from Occidental, rather than his personal knowledge. This fact weighs on the credibility of his statements. The actual 2017 invoices will also weigh on the credibility of the statements. All that is required for relevancy is that the information has a tendency in reason to prove any material fact.

Staff’s Request is not Burdensome

7. Occidental argues that Staff’s request for 2017 invoices and Tariffs is burdensome, quoting language that litigants cannot “use broadswords where scalpels will suffice.” Staff is only asking for invoices from 2017 and the associated rate schedules for those invoices. The request is limited to one year of data. The request is not burdensome and the data is relevant to this case.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission grant Staff's Motion to Compel.

Respectfully Submitted,



Michael Neeley, S. Ct. #25027
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STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

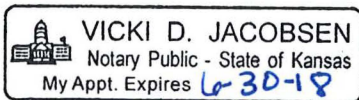
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Response to Occidental's Response to Staff's Motion to Compel* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 19th day of April, 2018.


Notary Public

My Appointment Expires: June 30, 2018

CERTIFICATE OF SERVICE

18-KG&E-303-CON

I, the undersigned, certify that a true and correct copy of the above and foregoing Response to Occidental's Response to Staff's Motion to Compel was served via electronic service this 19th day of April, 2018, to the following:

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CERTIFICATE OF SERVICE

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Vicki Jacobsen
