

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of a General Investigation)
Regarding Whether Electric Utilities Should)
be Considered an “Operator” of Private) Docket No. 17-GIME-565-GIV
Underground Lines Under the Provisions of)
the Kansas Underground Utility Damage)
Prevention Act.)

**ORDER GRANTING PETITIONS FOR RECONSIDERATION FROM SPRINT,
VERIZON, AND JOINT PETITIONERS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed the pleadings and record, and being fully advised in the premises, the Commission finds and concludes as follows:

1. On July 27, 2017, the Commission issued its *Order Opening General Investigation* “to explore the rights, obligations and liabilities that should be expected of the parties regarding the provision of locates and excavation over underground electric service lines and to develop policy positions that will ensure the uniform application of [the Kansas Underground Utility Damage Prevention Act] KUUDPA.”¹ The *Order* articulated the Commission’s desire for “broad participation from operators of underground utilities, excavators and commercial customers and provided a number of questions to elicit comments from interested parties.”²

2. On July 27, 2017, the Commission issued its *Order Assessing Costs* (Assessment Order), concluding that “the costs of this proceeding should be equally assessed to all jurisdictional gas, electric and telecom companies.”³

¹ *Order Opening General Investigation*, Ordering Clause A (July 27, 2017).

² *Id.*, ¶ 5.

³ *Order Assessing Costs*, ¶ 1 (July 27, 2017) (Assessment Order).

3. On August 14, 2017, Sprint Spectrum, L.P. and Virgin Mobile USA, L.P. (collectively, Sprint) filed a Petition for Reconsideration (PFR) of Order Assessing Costs.⁴ Likewise, on the same date, Verizon filed a Petition for Reconsideration of the same Order.⁵ Finally, AT&T, CenturyLink, the Independent Telecommunications Group, Columbus, *et al.*, Midcontinent Communications, a South Dakota general partnership, d/b/a Midco, the State Independent Alliance, Sprint Communications Company L.P., T-Mobile Central, LLC, and Cox Kansas Telcom, LLC (collectively, Joint Petitioners) filed a Joint Petition for Reconsideration of the Assessment Order.⁶

4. Sprint's and Verizon's PFRs are essentially identical, arguing that all telecommunications entities, both wireline and wireless, should be excluded from the Assessment Order⁷ because: (1) only electric utilities, not telecom companies, are the subject of the investigation in this docket;⁸ (2) the Assessment Order was served on the carriers' non-jurisdictional wireless affiliates, which cannot be legally assessed;⁹ and (3) telecom carriers should not be assessed any share of the costs of an electric-utility-specific docket "that has no application in the telecommunications context."¹⁰

5. The Joint Petitioners' PFR also argued that all telecommunications entities should be excluded from the Assessment Order¹¹ because: (1) K.S.A. 66-101d does not grant the Commission jurisdiction over telecommunications carriers;¹² (2) neither the *Order Opening General Investigation* nor Staff's Report and Recommendation mention telecommunications companies as

⁴ See Sprint's Petition for Reconsideration of Order Assessing Costs, p. 1 (Aug. 14, 2017) (Sprint PFR).

⁵ See Verizon's Petition for Reconsideration of Order Assessing Costs, p. 1, fn. 1 (Aug. 14, 2017) (Verizon PFR).

⁶ See Joint Petition for Reconsideration of Order Assessing Costs, p. 1, fns. 1-4 (Aug. 14, 2017) (Joint PFR).

⁷ Sprint PFR, ¶ 7; Verizon PFR, ¶ 7.

⁸ Sprint PFR, ¶¶ 2-3; Verizon PFR, ¶¶ 2-3.

⁹ Sprint PFR, ¶¶ 4-5; Verizon PFR, ¶¶ 4-5.

¹⁰ Sprint PFR, ¶ 6; Verizon PFR, ¶ 6.

¹¹ Joint PFR, p. 6.

¹² Joint PFR, ¶ 4. See *Order Opening General Investigation*, ¶ 3.

desired participants in this investigation;¹³ (3) the phrase “jurisdictional telecom companies” does not provide clear parameters indicating which telecom companies/carriers might be included;¹⁴ and (4) the Assessment Order provides no findings of fact or conclusions of law which justify assessing telecom carriers for the costs of an investigation addressing underground electric facilities and locates and excavation over such lines.¹⁵

6. The Assessment Order “was served on a broad spectrum of telecommunications companies/carriers,”¹⁶ including a number of wireless affiliates,¹⁷ along with the *Order Opening General Investigation* for savings and efficiency purposes, allowing the two orders to be served on a large number of recipients with one mailing. An entity’s presence on the service list does not necessarily mean the entity will be assessed. Entities that are not public utilities or common carriers pursuant to Kansas law will not be assessed a share of the costs of this investigation.¹⁸

7. While KUUDPA often brings telecommunications entities within its scope,¹⁹ and this general investigation seeks to develop an adequate record of locates practices for customer-owned underground electric service lines and to determine the definition of the term “operator” found in KUUDPA,²⁰ the Commission agrees that telecommunications utilities or common carriers are not the focus of this general investigation. Thus, the Commission finds that telecommunications entities should not share in the costs of this docket. However, the Commission expects to consider and make policy determinations that could affect excavation activities in relation to KUUDPA, and therefore, should a telecommunications utility or common carrier wish to participate in the docket at some point, it will be assessed its share of the costs accordingly.

¹³ Joint PFR, ¶¶ 5-6.

¹⁴ Joint PFR, ¶ 8.

¹⁵ Joint PFR, ¶ 9.

¹⁶ Joint PFR, ¶ 8.

¹⁷ Sprint PFR, ¶ 4; Verizon PFR, ¶ 4.

¹⁸ See K.S.A. 66-1502(a).

¹⁹ See K.S.A. 66-1801 *et seq.* and K.S.A. 66-1802 in particular.

²⁰ See *Order Opening General Investigation*, ¶ 4.

THEREFORE, THE COMMISSION ORDERS:

A. Sprint's, Verizon's, and the Joint Petitioners' Petitions for Reconsideration are granted. No telecommunications company shall be assessed a share of the costs of this proceeding under the Commission's July 27, 2017, *Order Assessing Costs*. Should a telecommunications utility or common carrier participate in the docket in the future, it will be assessed its share of the costs accordingly.

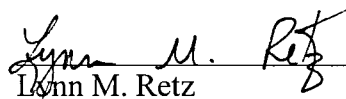
B. To the extent this Order constitutes final agency action as defined by K.S.A. 77-607(b)(1). Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review on behalf of the agency.²¹

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: **AUG 29 2017**



Lynn M. Retz
Secretary to the Commission

MJD

EMALL

AUG 29 2017

²¹ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

17-GIME-565-GIV

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on AUG 29 2017.

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