

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

OCT 21 2013

In the Matter of the Complaint of SWKI-Seward)
West Central, Inc., and SWKI-Stevens Southeast,)
Inc. Against Anadarko Natural Gas Company.)

by
State Corporation Commission
of Kansas

Docket No. 14-ANGG-119-COM

**RESPONSE OF SWKI-SEWARD WEST CENTRAL, INC. AND SWKI-STEVEN
SOUTHEAST, INC. TO ANADARKO NATURAL GAS COMPANY'S MOTION TO
DISMISS AND ANSWER TO COMPLAINT**

COME NOW, SWKI-Seward West Central, Inc. ("SWKI-SWC"), and SWKI-Stevens Southeast, Inc. ("SWKI-SE"), (collectively, the "NPU") and hereby file its *Response* with the State Corporation Commission of the State of Kansas ("KCC" or "Commission") to *the Motion to Dismiss and Answer to Complaint* ("Motion") filed by Anadarko Natural Gas Company ("ANGC") on October 7, 2013. In support of its Response, the NPUs allege and state as follows:

I. Introduction

1. ANGC asserts that there is no legal or factual basis for the NPUs' Complaint, and spends nearly twenty-five pages attempting to support that contention. The NPUs' response to ANGC is simple: ANGC has not and cannot prove that the NPU Agreements¹ were filed with and approved by the Commission. If ANGC can demonstrate that the contracts in question were: 1) filed with the Commission, as opposed to submitting them to the Commission Staff; 2) assigned a docket number; and 3) approved by the Commission in a written Order as required by Kansas law and ANGC's tariff, the NPUs will withdraw their Complaint.

2. The NPUs suggest that if ANGC were able to demonstrate that the contracts were filed with and approved by the Commission, it would have succinctly done so in its *Motion*.

¹ ANGC provides natural gas to SWKI-SE pursuant to a Gas Sales Agreement dated July 1, 1998. ANGC provides natural gas to SWKI-SWC pursuant to a nearly identical Gas Sales Agreement dated June 1, 2002. These contracts were attached to the NPUs' Complaint as confidential exhibits.

Rather, ANGC 's *Motion* did nothing of the sort. In fact, in reading ANGC's *Motion*, it was made abundantly clear that no such filings were made.

3. ANGC makes a number of arguments that the NPU's will respond to, including:
 - i. The NPU's engaged in no full and proper investigation of the facts prior to filing its Complaint;
 - ii. The 1998 Agreement with SWKI-SE was deemed approved thirty days after it was submitted for filing in accordance with K.S.A. 66-117;
 - iii. The 2002 Agreement with SWKI-SWC was deemed approved thirty days after it was submitted for filing in accordance with K.S.A. 66-117;
 - iv. Even if the 2002 Agreement with SWKI-SWC was not submitted for filing, since the pricing and terms and conditions in the 2002 Agreement are identical to the 1998 Agreement, the pricing terms are *de facto* the lawful rate;
 - v. The NPU's are required to arbitrate any disputes relating to the 1998 and 2002 Agreements;
 - vi. The NPU's may not contractually challenge payments for natural gas service beyond the most recent two years; and
 - vii. The NPU's arguments are inconsistent with its position in Docket No. 13-BHCG-509-ACQ and therefore the NPU's have acted in bad faith.

II. Executive Summary

4. Kansas law requires certain contracts and rate schedules to be filed with and approved by the Commission. ANGC has not filed the NPU's' Agreements with the Commission and received Commission approval of the Agreements. The failure to do so renders the rates contained in the Agreements unlawful.

5. The Commission's regulations provide clear direction and a detailed process for making official filings with the Commission. Kansas regulations make it clear that documents are not filed with the Commission unless and until they are appropriately directed to the executive director of the Commission. K.A.R. 82-1-206(a) provides that "[a]ll written communications to the commission shall be addressed to the executive director of the commission at its Topeka office, unless otherwise specifically directed by the commission or any commissioner." K.A.R. 82-1-206(c) specifies that "[a]ll 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." K.A.R. 82-1-212 provides that "[e]ach matter coming before the commission and requiring a decision by the commission shall be known as a docket and shall receive a docket number and a descriptive title." K.A.R. 82-1-215(b) states that "[u]pon filing, the original shall be placed by the executive director of the commission in the official records of the commission, and the duplicate copies shall be distributed as directed by the commission." K.A.R. 82-2-204(f) provides that the "formal record" or "record" shall consist of a number of enumerated documents, when filed with the commission.

6. The policy behind these regulations is presumably so that any and all interested parties, and the Commission and its Staff, can be made aware of official filings, maintain deadlines, adequately track and record the positions of all parties, and maintain the official rulings and records of the Commission. Absent the adherence to these regulations, and the maintenance of the Commission's official files in the docket room, the Commission's files would be at utter chaos at best, and at worst, nonexistent.

7. ANGC was required to file the contracts with the Commission and seek approval of the contracts. The burden is on ANGC to prove that the contracts were filed with and approved by the Commission as required by Kansas law, and they have not done so. ANGC's circumvention of the Commission's filing regulations and Kansas law governing approval of contracts and rates should not be condoned.

8. Absent the filing with and approval by the Commission, the contract rates are unlawful and void. To the NPU's knowledge, and in direct contravention of Kansas law, ANGC's own filed tariff, and the Order in Docket No. 00-ANGC-218-COC, which required all contracts to be filed with and approved by the Commission, ANGC never filed the NPUs' Gas Sales Agreements² for approval by the Commission. Mentioning the existence of the NPUs' contracts in an Order is not filing and approving, and finding a courtesy copy of one of the NPUs' contracts buried in a filing in an unrelated docket is not filing and approving. Kansas regulations clearly specify the procedure for making an official filing with the Commission, and ANGC has failed to file and receive Commission approval of the contracts. Unless and until ANGC affirmatively proves, by the production of a Commission Order referencing the NPU contracts by name, approving the same, and thereby establishing the contractual rates as lawful, the contracts remain unlawful and the NPUs are entitled to a full refund, with interest, as was provided in the *Sunflower Pipeline* case.³

III. NPU Response to ANGC's Allegations

² It should be noted that ANGC appears to also argue that the 1998 agreement may not have been jurisdictional to the KCC when first executed, but perhaps later became jurisdictional to the KCC when the HRDS was reconfigured in 1999-2000. ANGC makes this suggestion, noting that since this agreement originally provided for the delivery of natural gas from AGC's 16-inch gathering line, and stating that sales from gathering systems are not, and have never been, KCC jurisdictional. See ANGC Motion at ¶¶ 2; 25. In response, the NPUs refer ANGC to K.S.A. 55-1,102, which requires all rates charged for gas gathering services to be filed with the Commission.

³ *Sunflower Pipeline Co. v. The State Corporation Commission of the State of Kansas*, 719-720, 624 P.2d 466 (1981) (rev. denied.)

A. The NPU's Performed Sufficient Due Diligence Prior to Filing the Complaint

7. Throughout its *Motion*, ANGC suggests that the NPUs made no factual investigation prior to filing its Complaint, and instead filed the Complaint “in apparent sole reliance on Staff’s statement.”⁴ ANGC further asserts that “SWKI engaged in no factual research or due diligence of any type prior to filing its specious Complaint”⁵; has filed its Complaint in “bad faith”⁶; filed the Complaint “without any material level of due diligence and investigation”⁷; and that the Complaint “was not filed after due and proper investigation of the facts and matters alleged in the Complaint.”⁸

8. The NPUs deny ANGC’s allegations of bad faith and lack of due diligence.

Staff’s Report and Recommendation stated:

In testimony filed in this Docket, ANGC characterizes the seven customers as public utility customers served under customer specific and contract specific limited Certificates of public Convenience and Necessity issued by the Commission. However, **Staff concludes that only one of the customers listed in the Application can be identified as having a Commission Order approving the ANGC contract to provide utility service. Rather, it appears that ANGC failed to file the customer contracts for Commission approval as required by Commission Order in Docket No. 00-ANGG-218-COC.** (Emphasis supplied.)

ANGC had the opportunity to respond to Staff’s Report and Recommendation and challenge the statement made by Staff or provide direct evidence that the contracts had been filed with and approved by the Commission. ANGC chose not to do so. Upon receipt of Staff’s

⁴ ANGC here refers to Staff’s July 11, 2013 Report and Recommendation at page 4, filed in Docket No. 13-BHCG-509-ACQ (hereafter, “Staff’s Report and Recommendation”), wherein Staff stated that it found that only one of the seven customer-specific contracts had a Commission Order approving such contract for service.

⁵ ANGC *Motion* at ¶ 21.

⁶ *Id.* at ¶38.

⁷ *Id.*

⁸ ANGC *Motion* at p. 23.

Report and Recommendation, the NPUs painstakingly went through each Commission docket, including the 1994 docket on microfilm, that purported to establish, approve or transfer its customer-specific certificates or contracts. These dockets begin with KCC Docket No. 191,218-U, in which Anadarko Gathering Company (“AGC”) sought limited authority from the Commission to be certificated as a public utility under the provisions of K.S.A. 66-104 to operate the Cimarron River System, a pipeline owned and operated by Centana and located in Meade, Seward, Stevens and Morton Counties, Kansas and to serve the customers currently provided service by Centana. An Order granting AGC a limited certificate of convenience and authority was issued on September 29, 1994.

9. As ANGC correctly notes in its *Motion*, on September 28, 1999, AGC and ANGC filed a joint application in Docket No. 00-ANGG-218-COC (the “218 docket”), requesting that the Commission approve the transfer to ANGC of the limited certificate granted to AGC in Docket No. 191,218-U, and permitting service to all of AGC’s certificated customers. In its joint application, AGC and ANGC requested that the Commission “approve the assignment from AGC to ANGC of all of the Contract Rate Schedules currently on file at the Commission pursuant to which AGC is presently providing natural service to its customers.”⁹ The joint application further noted that “all service to certificated customers of AGC is pursuant to Contract Rate Schedules as filed and approved by the Commission.”¹⁰

10. Notably, neither of the NPU contracts at issue in the present proceeding were yet in existence when AGC was issued a limited certificate of convenience and authority on September 29, 1994 in Docket No. 191,218-U. ANGC provides natural gas to SWKI-SE

⁹ *Joint Application of Anadarko Gathering Company and Anadarko Natural Gas Company*, Docket No. 00-ANGG-218-COC, filed September 28, 1999, at ¶7.

¹⁰ *Id.* at ¶ 8.

pursuant to a Gas Sales Agreement dated July 1, 1998. ANGC provides natural gas to SWKI-SWC pursuant to a Gas Sales Agreement dated June 1, 2002. The 1998 SWKI-SE contract presumably was in existence at the time AGC and ANGC filed its Joint Application in the 218 docket in September, 1999, however, no contracts to be transferred to ANGC are referenced by date or by customer in any pleading or order filed in Docket No. 00-ANGG-218-COC.

11. The Staff Memorandum in the 218 docket, dated May 8, 2000, notes that the “Joint Applicants have provided a Certificate of Service certifying that a copy of the above-captioned Joint Application has been mailed to all individuals and companies who are currently existing customers served under the Limited Certificate.”¹¹ This Certificate of Service was not made a part of the Joint Application, Staff’s Memorandum, or the Commission Order rendered in Docket No. 00-ANGG-218-COC. The Certificate of Service attached to the Joint Application states that service was made to “all those individuals and companies which have currently existing contractual Rate Schedules, filed and approved by the KCC, and pursuant to which natural gas service is provided pursuant to limited certificate [sic] by Anadarko Gathering Company to such parties.” No customer names or addresses appear on the service list.

12. Further, ANGC’s current *Motion* states that the “AGC-ANGC Joint Application affirmed that the AGC customer-specific list from Docket No. 191,218-U was the list of customers being served by the HRDS.”¹² ANGC further states that in the May 19, 2000 Order and Certificate in the 218 docket, “the Commission Order transferred the existing HRDS customer-specific certificates (including the 1998 Agreement) from AGC to ANGC.”¹³ Both of these statements by ANGC are blatantly false and the record does not support these statements.

¹¹ May 8, 2000 Staff Memorandum in Docket No. 00-ANGG-218-COC at p. 3.

¹² ANGC Motion at ¶ 5.

¹³ ANGC Motion at ¶ 6.

Notably absent from both the AGC-ANGC Joint Application, and the Commission Order granting the transfer of the limited certificate are 1) any references to the HRDS or its customers; and 2) any customer names, meter locations, or any other customer-specific identifying information whatsoever.

13. Further, neither NPU has ever received service from Anadarko Gathering Company. Accordingly, the Certificate of Service in the 218 docket indicating that service of the Joint Application was made to “all those individuals and companies which have currently existing contractual Rate Schedules, filed and approved by the KCC, and pursuant to which natural gas service is provided... by Anadarko Gathering Company” does not affirmatively demonstrate that as of September 27, 1999¹⁴, the 1998 SWKI-SE Agreement with ANGC was on file with and approved by the Commission.

14. As noted in ANGC’s *Motion*, on September 21, 2007, ANGC filed an Application with the KCC in Docket No. 08-ANNG-295-CCN (the “295 docket”). In its *Motion*, ANGC claims that as part of the 295 docket, ANGC submitted both the 1998 Agreement with SWKI-SE and the 2002 Agreement with SWKI-SWC.¹⁵ ANGC further claims that ANGC had previously filed the 2002 Agreement with the KCC.¹⁶ Again, ANGC’s claims are not supported by the record. As support for these contentions, ANGC’s footnote directs the reader to Exhibit 5 to the *Motion*. Exhibit 5 is ANGC’s June 6, 2013 response to a Staff data request in Docket No. 13-BHCG-509-ACQ, which consists of a narrative and associated attachments. As part of the narrative, ANGC asserts that “the third group of customer contracts reviewed by KCC Staff [in the 295 docket] consisted of those customers retained by Anadarko and served under the limited,

¹⁴ September 27, 1999 is the date of the Certificate of Service.

¹⁵ ANGC *Motion* at ¶ 10.

¹⁶ *Id.*

customer specific certificate issued in KCC Docket No. 00-ANGG-218-COC.”¹⁷ As established above, there was no customer list filed or submitted in Docket No. 00-ANGG-218-COC, so there is no conceivable way for ANGC to prove that the NPU contracts have been filed with and approved by the Commission. This “third group of customer contracts” referred to in the June 2013 data request response presumably is Part C of the Attachment to Exhibit 5, which consists of the heading “Jurisdictional Customers Remaining with Anadarko A-1, Part C”, followed by a list of customers and meter numbers. The NPUs concede that SWKI-Stevens-SE, Inc. and SWKI-Seward-West Central Inc. appear on this list, but submit that this does not in any fashion demonstrate that these contracts were filed with and approved by the Commission. In addition, ANGC provides absolutely no support for its contention that the 2002 Agreement had been previously filed with the KCC.

15. Continuing on its circuitous route, ANGC states in its *Motion* that the 295 docket and Docket No. 08-TKOG-314-COC (the “TKO docket”) were consolidated in February 2008. ANGC also refers to Staff’s February 2009 memorandum in the TKO docket. Staff noted in that Memorandum, “[t]he certificate was limited to serving a defined list of customers according to the terms and conditions included in a natural gas sale/purchase contract. The gas sales contract for each customer is filed with the Commission.”¹⁸ The Commission Order issued in these consolidated dockets refers to the Staff Memorandum and also repeats the language quoted above from the Staff Memorandum. However, as demonstrated above, and which will be repeated throughout this Response, a review of the 218 docket reveals that there was no defined

¹⁷ See ANGC *Motion*, Exhibit 5.

¹⁸ Staff Memorandum, Consolidated Docket Nos. 09-ANGG-295-CCN and 08-TKOG-314-COC, February 12, 2009, at p. 1.

list of customers, and no contracts were filed with the Commission in Docket No. 00-ANGG-218-COC.

16. ANGC asserts that the NPU contracts were filed with the Commission because various dockets make reference to such contracts. For example, ANGC notes that Staff's TKO docket Memorandum stated that the contracts were filed with the Commission, so it must be true. The Commission Order in the TKO docket stated that the contracts were filed with the Commission, so it must be true. In other words, the only alleged proof that the contracts were filed with the Commission is because it has been an oft-repeated mantra in numerous dockets dating back to 1999. But no party, not Staff, not ANGC, and certainly not the NPUs, has any definitive evidence that the 1998 contract with SWKI-Stevens-SE, Inc. and the 2002 contract with SWKI-Seward-West Central Inc. have ever been filed with and approved by the Commission.

17. This lack of evidence is no more resolutely proven than by ANGC itself in its meandering attempt to show that the NPUs' contracts were filed with the Commission. ANGC's *Motion* states that on August 3, 2000, in accordance with the Order issued in the 218 docket, ANGC submitted for filing with the KCC gas service contracts "pertaining to certain sales of gas by ANGC... and from points previously served by Anadarko Gathering Company under its Limited Certificate on the HRDS."¹⁹ As support for its contention, ANGC references Exhibit 3 to its Motion, which is a 2007 fax cover sheet from former KCC Staff member Dorothy Myrick to counsel for ANGC. The cover sheet has a handwritten note that states "[i]ncludes copy of Exhibit A, gas sales points received on 8/3/2000. Total of 43 contracts were submitted with Exhibit A." Affixed to this fax is the August 3, 2000 letter from Anadarko to KCC Staff member

¹⁹ ANGC *Motion* at ¶ 7.

Gary Dawdy which notes that “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.” Again, ANGCO relies upon the repeated assertion fallacy—the contracts are obviously on file because someone says they are. However, unless and until ANGCO affirmatively proves, by the production of a Commission Order referencing the NPU contracts by name, approving the same, and thereby establishing the contractual rates as lawful, the contracts remain unlawful and the NPUs are entitled to a full refund, with interest.

18. The NPUs believe they have sufficiently demonstrated the level of due diligence that was employed prior to filing its Complaint.

B. The 1998 and 2002 Agreements Could Not Have Been “Deemed Approved” by the Commission In Accordance with K.S.A. 66-117 Because They Were Never Filed With the Commission

19. ANGCO attempts to evade the obvious fact that there are no Commission Orders approving the NPU contracts by asserting that such contracts were “deemed approved” by operation of law in accordance with K.S.A. 66-117.²⁰ The NPUs contend that the contracts could not have been “deemed approved” by the Commission because they were never filed with the Commission. K.S.A. 66-117 (a) states, in relevant part:

Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier **except by filing the same with the commission at least 30 days prior to the proposed effective date.** (Emphasis supplied.)

K.S.A. 66-117 (b) states, in relevant part:

²⁰ See ANGCO Motion at ¶¶ 6, 7, 9, 13, 14, 16.

Whenever any common carrier or public utility governed by the provisions of this act **files with the state corporation commission** a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own Motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate.... (Emphasis supplied.)

K.S.A. 66-117(c) states, in relevant part:

If the commission does not suspend the proposed schedule within 30 days of the date the same is **filed by the public utility** or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate...within 240 days after the carrier or **utility files its application requesting the proposed change**, then the schedule shall be deemed approved by the commission and the proposed change shall be effective immediately....(Emphasis supplied.)

20. Kansas case law makes it clear that K.S.A. 66-117 applies when any public utility is requesting approval of a rate or a change in its rates or services that will have an impact on its customers.²¹ Although natural gas contracts are not specifically mentioned in the statute, the Kansas Court of Appeals has held that these type of contracts clearly would fall within the meaning of the statutory phrase “practice pertaining to the service or rates of such public utility.”²² In *Kansas Pipeline Partnership v. State Corporation Commission of the State of Kansas*, the Court of Appeals found that the KPP contracts at issue would change the practices pertaining to services made available by KPP for Western Resources’ customers. Accordingly, the Court noted, K.S.A. 66-117(b) required KPP to request Commission approval of the contracts.²³

²¹ *Kansas Pipeline Partnership v. State Corporation Commission of the State of Kansas*, 22 Kan.App.2d 410, 416 (1996) (rev. denied.)

²² *Id.*

²³ *Id.* at 419.

21. In numerous references throughout its Motion, ANGC states that the NPU contracts were submitted to Staff personnel. For example, as discussed above, ANGC relies upon a 2007 fax transmittal cover sheet from former Staff member Dorothy Myrick that had attached to it an Anadarko letter submitted to Staff member Gary Dawdy.²⁴ ANGC also states that all HRDS contracts were “filed with KCC Staff Member Gary W. Dawdy.”²⁵ ANGC further refers to Staff testimony by Leo Haynos in the evidentiary hearing in Docket No. 13-BHCG-509-ACQ, wherein Mr. Haynos testified several times that the 1998 SWKI-SE Agreement was either “in Staff’s files” or “filed with the Commission Staff.”²⁶ Rather than providing the confirmation ANGC sought that the contracts had been filed with and approved by the Commission, ANGC’s cross-examination of Mr. Haynos instead proves the NPUs’ position. As Mr. Haynos testified:

Q. [By Anadarko counsel] I’m not going to ask you questions about the exhibit. But this is what you referred to in your testimony, and this is what you indicated might suggest to you that there were other contracts filed at the Commission in that time period?

Mr. Haynos: There were contracts **filed with Staff, yes. This is the beginning of some work we have to do to pour [sic] over where all these are.**²⁷ (Emphasis supplied.)

Mr. Haynos clearly testified that certain contracts were submitted to Staff, and not the Commission. Mr. Haynos’ testimony also clearly demonstrates that even Staff does not know where all the contracts are, which means that they certainly could not have been filed with and approved by the Commission, because if they had been, they would be readily obtainable from an official docket.

²⁴ ANGC Motion at ¶ 8.

²⁵ *Id.* at ¶ 23.

²⁶ *Id.* at ¶ ¶ 18, 19.

²⁷ See ANGC Motion at ¶ 20; See also Transcript of Evidentiary Hearing in Docket No. 13-BHCG-509-ACQ, at 519-521.

22. Whether the contracts were or were not provided to Commission Staff is immaterial. Staff is a valuable, necessary component of the Commission's mandate to supervise and control the public utilities doing business in Kansas, but Staff does not have the authority to approve filings. Only the Commission has this authority, and however knowledgeable the Commission may be, it is not omniscient and can only act upon the filings it officially receives. Kansas regulations make it clear that documents are not filed with the Commission unless and until they are appropriately directed to the executive director of the Commission. K.A.R. 82-1-206(a) provides that "[a]ll written communications to the commission shall be addressed to the executive director of the commission at its Topeka office, unless otherwise specifically directed by the commission or any commissioner." K.A.R. 82-1-206(c) specifies that "[a]ll 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." K.A.R. 82-1-212 provides that "[e]ach matter coming before the commission and requiring a decision by the commission shall be known as a docket and shall receive a docket number and a descriptive title." K.A.R. 82-1-215(b) states that "[u]pon filing, the original shall be placed by the executive director of the commission in the official records of the commission, and the duplicate copies shall be distributed as directed by the commission." K.A.R. 82-2-204(f) provides that the "formal record" or "record" shall consist of a number of enumerated documents, when filed with the commission.

23. ANGK appears to recognize the requirement that documents must actually be filed with the Commission, as in its application in 2000 in the 218 docket it requested that the Commission enter an Order "to approve additional contracts as KCC Contract Rate Schedules, as

they are separately filed in this docket.”²⁸ Interestingly, no filings were made in the 218 docket from May 19, 2000, the date of the Order granting the joint application, to September 25, 2013, the date on which ANGC submitted its notice of termination of the NPU contracts that are at issue in this case. Notably, in that same joint application in the 218 docket, ANGC requested Commission approval of the Exhibit A attached to the joint application, wherein it is stated “Natural gas sales service shall be pursuant to a Contract that contains provisions mutually acceptable to the Buyer and Anadarko Natural Gas Company. No service under any such Contract shall be effective until such Contract has been filed with and approved by the Kansas Corporation Commission.” This language was adopted in the Commission’s Order in the 218 docket and is reflected in the file-stamped tariffs returned by Staff to counsel for ANGC. This fact is reflected in a June 7, 2000 cover letter from KCC Staff to James P. Zakoura enclosing the file-stamped tariffs.²⁹

24. ANGC’s arguments that the contracts were submitted to the Commission Staff, and then “deemed approved” when no Commission Order was issued approving the contracts within the time limitations outlined in K.S.A. 66-117 is preposterous and without any basis in Kansas law. If this argument is considered by the Commission to have even a whisper of validity, the NPUs request that the Commission momentarily envision the outright pandemonium that will ensue. Public utilities all across the State of Kansas could fax reams of rate cases to Staff, surreptitiously wait thirty days, and then revel in the colossal rate increases that were “deemed approved.” Even more farcical is ANGC’s argument that because the 2002 Agreement

²⁸ Joint Application of Anadarko Gathering Company and Anadarko Natural Gas Company, September 28, 1999, at p. 7.

²⁹ See Letter from KCC Staff to James P. Zakoura, dated June 7, 2000, and included file-stamped tariffs in Docket No. 00-ANGG-218-COC, at Schedule “Contract Service.” A copy of this letter and the file-stamped tariffs is attached to this Response as **Exhibit A**.

contains identical terms to the 1998 Agreement, it too was “deemed approved” because it was submitted to the Commission Staff.

25. ANGC goes even further towards the absurd when it contends that the NPU agreements were submitted to Staff and have been on file with the Commission “since August 3, 2000, at the latest” or that they were “again approved” in an unrelated docket many years later.³⁰ K.S.A. 66-117(a) clearly requires a proposed rate to be filed at least thirty days prior to the proposed effective date, not years after the fact. These arguments should be rejected outright by the Commission as absurd.

C. The Commission Has Jurisdiction to Resolve These Matters, and the NPUs Are Not Limited to Seeking a Remedy Through Arbitration

26. ANGC asserts that the Commission is without jurisdiction to adjudicate this matter and the Complaint must be dismissed. In support of this contention, ANGC refers to Article 13.1 of each Agreement which states, in part, that “Any dispute arising out of or relating to this Agreement or the breach, termination, or validity thereof, shall be finally settled by arbitration...The place of arbitration shall be in Houston, Texas.” The NPU Complaint is not a contract dispute, in which an arbitrator needs to find facts and apply the contract terms. The Complaint involves the supervisory jurisdiction of the Commission, which has the power and authority to enforce Kansas law pertaining to the filing and approval of public utility rates. As a matter of policy, the Commission has the power to review contracts between utilities and their customers to protect the public interest. The Commission’s role in protecting the public interest is codified in the statutes requiring public utilities to file customer contracts with the Commission.

³⁰ See ANGC *Motion* at ¶¶ 31, 50, 51, 52.

27. Moreover, ANGC's argument overlooks Article 14.1 of the Agreement, which provides that "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." Pursuant to K.S.A. 66-1,202, the Commission is given full power, authority and jurisdiction to supervise and control the natural gas public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. Pursuant to K.S.A. 66-1,203, every natural gas public utility doing business in Kansas shall publish and file with the Commission copies of all schedules of rates and shall furnish the Commission copies of all rules and regulations and contracts between natural gas public utilities pertaining to any and all jurisdictional services. Further, in accordance with K.S.A. 66-109, no public utility shall knowingly or willfully charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state.

28. There can be no question that the Commission is a duly constituted governmental authority having jurisdiction or control over the parties or the subject matter of the NPU's Agreements. In addition, Article 13.1 does not stand for the proposition that arbitration is the only method of dispute resolution for matters arising out of the Agreement, but that arbitration is the final method of dispute resolution. As noted, Article 13.1 states, in part, that "Any dispute arising out of or relating to this Agreement or the breach, termination, or validity thereof, shall be finally settled by arbitration...The place of arbitration shall be in Houston, Texas." The NPU's are not challenging in their Complaint the validity of the Agreement, or suggesting there has been a breach or termination thereof. Rather, the NPU's allege that the rates charged pursuant to the Agreement are unlawful and void because the Agreements were not filed with and

approved by the Commission in accordance with Kansas law and ANGC's own tariffs regarding contract service.

29. When the terms of a contract are clearly set forth in the instrument itself, the court may only consider the four corners of the instrument to ascertain the parties' intent.³¹ Unambiguous contracts are enforced according to their plain, general, and common meaning in order to ensure the intentions of the parties are enforced.³² In interpreting a contract, the court may not isolate one particular sentence or provision, but must construe and consider the entire instrument from its four corners.³³ When provisions within the agreement appear to conflict, it is the court's duty to attempt to reconcile those provisions and give full effect to all the terms, if possible.³⁴ Kansas law makes it clear that Article 13.1 and Article 14.1 of the Agreements must be read in harmony, and effect must be given to all the terms. As such, the NPU's submit that the Commission does have jurisdiction to hear this matter, pursuant to both its statutory grant of authority and Article 14.1 of the Agreements.

D. The NPU's Are Not Limited to Only Challenging Payments Made to ANGC For Natural Gas Service Beyond the Most Recent Two Years

26. K.S.A. 66-109 provides that no public utility shall knowingly or willfully charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state. The Kansas Court of Appeals in *Sunflower Pipeline Co. v. The State Corporation Commission of the State of Kansas* (hereafter, "Sunflower Pipeline"), recognized that where a natural gas public utility charges a contract rate in excess of its last authorized or filed rate, the Commission has the power and authority to establish a lawful rate and order

³¹ *Carrothers Constr. Co. v. City of South Hutchinson*, 288 Kan 743, 751, 207 P.3d 231 (2009).

³² *Johnson County Bank v. Ross*, 28 Kan.App.2d 8, 10, 13 P.3d 351 (2000).

³³ *City of Arkansas City v. Bruton*, 284 Kan. 815, 832-33, 166 P.3d 992 (2007).

³⁴ *Johnson County Bank v. Ross*, 28 Kan.App.2d 8 at 10.

refunds for any overcharges.³⁵ In *Sunflower Pipeline*, no timeframe limiting the period for which refunds can be ordered was either considered or established. Instead, the Court of Appeals specifically concluded that a “full refund should be ordered when charges are not made pursuant to a rate legal at the time of the charge.”³⁶ The Court also concluded that since the contracts were void as against public policy, any less than a full restitution to the customers would be depriving them of their property without due process of law.³⁷ Unlike in the *Sunflower Pipeline* case, ANGC is not an unsophisticated operator of a natural gas pipeline and they had and continue to have the benefit of experienced Kansas counsel knowledgeable of the Commission rule and regulations.

27. Furthermore, Article 6.3 of the Agreements, cited by ANGC, pertains to refunds or adjustments made for inaccuracies in payments discovered through an examination of ANGC’s books and records. The NPU’s are not claiming that there was any inaccuracy in any payment made by the NPU’s to ANGC; rather, that the rates charged by ANGC are unlawful because the Agreements were never filed with and approved by the Commission in violation of Kansas statutes, Kansas case law and Commission Orders. Accordingly, Article 6.3 is inapplicable and the NPU’s are not contractually obligated to limit any request for refunds to the immediately preceding two-year period.

E. The Positions Advanced in this Complaint Are Not Inconsistent With the NPU’s Position in Docket No. 13-BHCG-509-ACQ

28. ANGC correctly states that the NPU’s’ brief in Docket No. 13-BHCG-509-ACQ suggested that the Commission could approve the acquisition predicated upon the condition that

³⁵ *Sunflower Pipeline Co. v. The State Corporation Commission of the State of Kansas*, 719-720, 624 P.2d 466 (1981) (rev. denied.)

³⁶ *Id.* at 721.

³⁷ *Id.* at 722.

current ANGC contractual rates or their equivalent must remain in effect pending Black Hills' next rate case, at which time a full cost-of-service analysis must be performed.³⁸ ANGC takes this statement entirely out of context and attempts to imbue it with some malevolent intent, indeed going so far as to accuse the NPUs of bad faith pleading. As demonstrated in its post-hearing brief in that proceeding, Black Hills' proposal to place all current customers on Black Hills' distribution tariff rates will cause the NPUs' rates for natural gas service to nearly double. The NPUs were simply observing that preserving the *status quo* rate was far preferable than seeing a 100% increase in its rates for natural gas service.

CONCLUSION

Absent the filing with and approval by the Commission, the contract rates are unlawful and void. To the NPUs' knowledge, and in direct contravention of Kansas law, ANGC's own tariff, and the Order in Docket No. 00-ANGC-218-COC, which required all contracts to be filed with and approved by the Commission, ANGC never filed the NPUs' Gas Sales Agreements³⁹ for approval by the Commission. Kansas regulations clearly specify the procedure for making an official filing with the Commission, and ANGC has failed to file and receive Commission approval of the contracts. Unless and until ANGC affirmatively proves, by the production of a Commission Order referencing the NPU contracts by name, approving the same, and thereby establishing the contractual rates as lawful, the contracts remain unlawful and the NPUs are entitled to a full refund, with interest, as was provided in the *Sunflower Pipeline* case.

³⁸ Post-Hearing Brief of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc., Docket No. 13-BHCG-509-ACQ at 4.

³⁹ It should be noted that ANGC appears to also argue that the 1998 agreement may not have been jurisdictional to the KCC when first executed, but perhaps later became jurisdictional to the KCC when the HRDS was reconfigured in 1999-2000. ANGC makes this suggestion, noting that since this agreement originally provided for the delivery of natural gas from AGC's 16-inch gathering line, and stating that sales from gathering systems are not, and have never been, KCC jurisdictional. See ANGC Motion at ¶¶ 2; 25. In response, the NPUs refer ANGC to K.S.A. 55-1,102, which requires all rates charged for gas gathering services to be filed with the Commission.

WHEREFORE, the NPU's respectfully request that the Commission accept this Response; deny ANGC's Motion to Dismiss; deny ANGC's request for a Commission Order requiring the NPU's to pay all ANGC costs, including attorney's fees, incurred in this proceeding; direct the parties to work with Staff to establish a mutually agreeable procedural schedule that includes an evidentiary hearing; and for any such further relief that the Commission may deem just and appropriate.

Respectfully submitted,

POLSINELLI PC

By: 

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ATTORNEYS FOR SWKI-SEWARD WEST CENTRAL,
INC. AND SWKI-STEVEN'S SOUTHEAST, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been X emailed, ___ faxed, ___ hand-delivered and/or mailed, First Class, postage prepaid, this October 21 2013, to:

Sam Feather
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

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

Dana Bradbury
General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
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James Zakoura, Esq.
Smithyman & Zakoura, Chtd.
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Attention: Mike Friend

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Ottawa, KS 66067

SWKI-Seward-West Central, Inc.
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Attention: Jason Hitch

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Attention: Kent Kopetzky

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Agricultural Energy Services
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1551 N. Waterfront Pkwy, Ste 100
Wichita, KS 67206



Anne E. Callenbach



Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Utilities Division
June 7, 2000

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) 00-ANGG-218-COC
Certificate, the Cancellation of Terms and Conditions of Service)
and Rates, and the Approval of Terms and Conditions of Service)
and Rates, and the Approval of Assignment of Contract Rate)
Schedules.)

James P. Zakoura
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 W 110th Street
Overland Park, KS 66210-2346

Dear Mr. Zakoura:

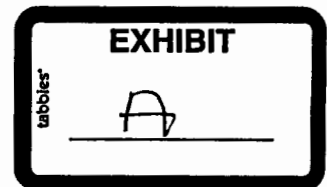
Enclosed is your above-captioned filing which was filed by this Commission on May 19, 2000.

Sincerely,

Larry W. Holloway
Acting Director

GDD:ram

Enc.



THE STATE CORPORATION COMMISSION OF KANSAS

Index No. _____

SCHEDULE _____ Title Page _____

Anadarko Natural Gas Company
(Name of Issuing Utility)

Replacing Schedule _____ Sheet _____

(Territory to which schedule is applicable)

which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 1 Sheets

NATURAL GAS TARIFF
OF
ANADARKO NATURAL GAS COMPANY

FILED WITH THE
KANSAS CORPORATION COMMISSION

00ANGG218C 0C
Commission File Number _____

Issued _____
Month Day Year

FILED _____ MAY 19 2000 _____

Effective MAY 19 2000

THE STATE CORPORATION COMMISSION

By Suzanne Suter ~~Corporate~~ Secretary
Signature of Officer Title

OF KANSAS

By Jeffrey D. Wagoner Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

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Natural Gas Contract Service	1
Standards on Billing Practices	1 - 24
Rate Schedule SF Service Fees	1
General Rules and Regulations	1 - 11

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Commission File Number _____

Issued _____
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FILED MAY 19 2000

Effective MAY 19 2000
Month Day

THE STATE CORPORATION COMMISSION
OF KANSAS

By Suzanne Suter **Suzanne Suter**
Signature of Officer Corporate Secretary Title

By Jeffrey L. Wagoner Secretary
JLW

Index No. _____

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE Statement of Applicability

Anadarko Natural Gas Company
(Name of Issuing Utility)

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Sheet 1 of 1 Sheets

STATEMENT OF APPLICABILITY

This Natural Gas Tariff is applicable to natural gas service provided by Anadarko Natural Gas Company in accordance with the Certificate and Order issued by the Kansas Corporation Commission in Docket No. 00-ANGG-218-COC

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THE STATE CORPORATION COMMISSION
OF KANSAS

By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary Title

By Jeffrey S. Wagoner Jeffrey S. Wagoner
Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

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SCHEDULE Contract Service

Anadarko Natural Gas Company
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No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 1 Sheets

NATURAL GAS CONTACT SERVICE

Natural gas sales service shall be pursuant to a Contract that contains provisions mutually acceptable to the Buyer and Anadarko Natural Gas Company. No service under any such Contract shall be effective until such Contract has been filed with and approved by the Kansas Corporation Commission.

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By Suzanne Suter **Corporate Secretary**
Signature of Officer Title

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OF KANSAS

By Jeffrey A. Wagoner Secretary
[Signature]

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SCHEDULE Service Fees

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RATE SCHEDULE FOR SERVICE FEES

The following schedule of fees and charges shall be collected by the utility in accordance with the provisions of the Rules and Regulations:

- | | | |
|----|---|----------|
| 1. | Temporary Service Minimum Fee | \$ 25.00 |
| 2. | Meter Reading Fee | \$ 24.00 |
| 3. | Returned Check Charge
A charge not exceeding \$10.00, the maximum provided by K.S.A. 21-3707 | |
| 4. | Collection Charge | \$ 8.00 |
| 5. | Disconnection Charge | \$ 8.00 |
| 6. | Reconnection Charge | \$ 15.00 |
| 7. | Meter Test Fee | \$ 40.00 |

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THE STATE CORPORATION COMMISSION
OF KANSAS

By Suzanne Suter Corporate Secretary
Signature of Officer Title

By Jeffrey S. Wagoner Secretary
Signature

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

Anadarko Natural Gas Company
(Name of Issuing Utility)

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Sheet 1 of 11 Sheets

GENERAL RULES AND REGULATIONS

1. **DEFINITIONS:**

(a) Seller - The term "Seller" as used herein designates Anadarko Natural Gas Company.

(b) Buyer - The term "Buyer" as used herein designates any purchaser.

(c) Commission - The term "Commission" as used herein designates the State Corporation Commission of the State of Kansas or any successor to such Commission having jurisdiction of the subject matter hereof.

(d) MCF - The term "MCF" as used herein means 1,000 cubic feet of gas as specified in the Commission Rules No. 3-301.

(e) BTU - The term "BTU" is herein used to mean British Thermal Unit, the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

(f) Heating Value - The term "Heating Value" shall mean the number of BTU 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 60° Fahrenheit, if saturated with water vapor and under a pressure equivalent to that of 30 inches of mercury at 32° Fahrenheit and under standard gravitational force (acceleration 32.17 feet per second with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion to the liquid state.

(g) Qualified - The term "Qualified" shall refer to those certain purchasers entitled to gas service from Seller in accordance with the Limited Certificate and Order issued in Docket No. 00-ANGG-218-COC.

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Month Day

By Suzanne Suter ^{Suzanne Suter} Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
OF KANSAS

By Robby L. Wagoner Secretary
RWB

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

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2. APPLICABILITY TO VARIOUS TYPES OF SERVICE

These General Rules and Regulations will be generally applicable to all types of gas service.

3. DELIVERY CONDITIONS

(a) Delivery Pressure - Deliveries of gas for Commercial, Domestic and Small Commercial Buyers and Schools shall be made at a pressure of approximately 4 ounces above atmospheric pressure, unless the Buyer requires delivery at a greater pressure.

Delivery pressure for other types of service shall be in accordance with the contract negotiated with each Buyer. The Seller shall use due care and diligence to furnish gas to each Buyer at the pressure such Buyer may require up to, but not exceeding the pressure available in the Seller's transmission pipe line at the Point of Delivery; provided, however that the Seller shall be obligated to deliver gas at the pressures provided in the contracts with Buyers. Buyer shall install, operate and maintain at its own expense, such regulating devices as may be necessary to regulate the pressure of gas after delivery to Buyer.

(b) Point of Delivery - The Point of Delivery for each Buyer shall be at the point of connection between the service facilities of the Seller and those of the Buyer.

(c) Quality - All gas delivered shall conform to Section 4 - "Standards of Quality" of the Commission Rules, Docket No. 34,856-U.

4. MEASURING EQUIPMENT

(a) Installation and Operation - The Seller will install, maintain and operate at or near each Point of Delivery, a meter or meters and other necessary measuring equipment by which the volumes of gas delivered to Buyer shall be measured.

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By Suzanne Suter Corporate Secretary
Signature of Officer Title

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OF KANSAS

By Jeffrey D. Wagoner Secretary
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THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

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Whenever the meter is located on Buyer's premises, the Buyer shall provide a site suitable to Seller for the meter, or meters, and other measuring equipment.

(b) Access to Measuring Equipment - The Seller's employees or authorized agents shall have access to the Seller's meters, pipes and all other equipment for the purpose of inspection, repair, or determination of quantity of gas consumed. Buyer shall have access to the Seller's measuring equipment at all reasonable times, but the reading, calibrating and adjusting thereof, and changing of charts if necessary, shall be done only by employees or agents of the Seller.

(c) Check Measuring Equipment - Buyer may install, maintain and operate such check measuring equipment, at or near Point of Delivery, as it shall desire, provided that such equipment shall be so installed as not to interfere with the operation of Seller's measuring equipment. Seller shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof, and changing of charts if needed, shall be done only by Buyer. Measurements of gas, unless otherwise provided in the contract, shall be determined from the Seller's meters only.

(d) Failure of Meters - If, for any reason, meters are out of service or repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, the volume of gas delivered for the period such meters are out of repair shall be estimated upon the basis of the best data available, using the first of the following methods which is feasible:

- (1) By using the registration of any check meter or meters if installed and accurately registering.
- (2) By correcting the error if the percentage of error is ascertainable by test or mathematical calculation.

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THE STATE CORPORATION COMMISSION
OF KANSAS

By Robby S. Wagoner _____
Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

Anadarko Natural Gas Company
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(3) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

(e) Test of Meters

(1) Positive Displacement Meters - The Seller shall test its meter, or meters, at least once in each five (5) year period, and at the test shall adjust the meter to record accurately. If Buyer complains of the registration of the meter, the meter will be tested as to its correctness, upon request of Buyer. Buyer agrees that he will, at the time of making such request, deposit with Seller a sum of money sufficient to cover all expense arising from the removal, testing and replacement of the meter, including labor, haulage, and all other necessary expense connected therewith. If the meter is found upon test to be correct, or in error to an extent not exceeding 1% fast or 2% slow, Seller shall retain such part of said deposit as was actually expended in the removal, testing and replacement of the meter, and if the deposit should be insufficient to fully cover said actual expense, Buyer shall pay the difference, and if the amount deposited is more than the actual expense, the balance will be refunded to Buyer. If upon test the meter is found to be incorrect to the extent of more than 1% fast or 2% slow, Seller will refund to the Buyer the entire amount of his deposit and will adjust the meter reading from the first day of the billing month immediately preceding the month in which the meter is removed for test to date of such removal.

(2) Orifice Meters and Other Equipment - The accuracy of the Seller's measuring equipment, including but not limited to orifice meters, recording calorimeter, recording gravimeters

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Signature of Officer Title

By Jeffrey D. Wagoner Secretary
Signature

THE STATE CORPORATION COMMISSION OF KANSAS

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SCHEDULE General Rules and Regulations

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and dewpoint apparatus shall be verified by the Seller and, if requested, in the presence of representatives of the Buyer, at least once in each five (5) year period. If any party at any time desires a special test of any meter, it promptly will notify the other, and the parties will then cooperate to secure an immediate calibration test.

(f) Correction of Measuring Error

(1) Meter Tests at Customer's Request - Upon written request by a customer, Company shall test the accuracy of the customer's meter. If the results of the test show the meter accurate within the limits of two percent fast or two percent slow, the customer shall be assessed a Meter Test Fee, as stated in compliance with this Tariff. The cost of the test and related expenses shall be borne by Company if the meter is more than two percent fast or two percent slow. If the meter is found to be more than two percent fast or two percent slow, Company shall refund to, or may collect from, the customer the overcharge or undercharge in accordance with Subsection 4(f)(2), Adjustment of Bills for Meter Error.

(2) Adjustment of Bills for Meter Error - When a billing adjustment is prepared for metering error, it shall be based on the calculated corrected meter readings for a period not exceeding six months or for the time the meter has been in service at that location if less than six months. If it can be shown that the error was due to some cause, the date of which can be fixed, the over charge or under charge shall be computed back to, but not beyond, such date. If the meter is found not to register for any period, Company shall estimate the utility service used during this period in accordance with this Tariff. No bill shall be issued for a period exceeding 12 months for the failure of a meter to register. Company may permit payments to be made in installments over a reasonable

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OF KANSAS

By Robyn L. Wagoner _____
Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

Anadarko Natural Gas Company
(Name of Issuing Utility)

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period of time. No refund or bill less than the amount stated in this Tariff need be issued or made.

5. POSSESSION OF GAS

(a) Seller shall be deemed to be in control and possession of the gas deliverable to Buyer until it shall have been delivered to Buyer at the Point of Delivery; after which, Buyer shall be deemed to be in control and possession thereof.

(b) Buyer shall have no responsibility with respect to any gas deliverable to it until it is delivered to Buyer or on account of anything which may be done, happen or arise with respect to said gas before such delivery, and Seller shall have no responsibility with respect to such gas after its delivery to Buyer or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

6. INDEMNIFICATIONS

Neither Seller nor Buyer shall be held responsible or liable for damages for the acts or conducts of the other, and each party will indemnify and hold harmless the other from claims or demands on account thereof.

7. LIMITATIONS ON LIABILITY

In the event either Seller or Buyer is rendered unable, wholly or in part, by force majeure to carry out its contractual obligations, other than to make payments due for gas delivered, then upon such party's giving notice and full particulars of such force majeure in writing or by telegraph (or orally and subsequently confirmed in writing or by telegraph) to the other party as soon as possible after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the Commission File Number

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Month Day Year

By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary Title

THE STATE CORPORATION COMMISSION
OF KANSAS

By Jeffrey D. Wagoner Secretary
H90

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

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continuance of any inability so caused but for no longer period, and such cause, as far as possible, shall be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the necessity for making repairs to or alterations of machinery, or lines of pipe, freezing of lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include:

(a) in those instances where either party is required to obtain servitudes, right-of-way grants, permits or licenses to enable such party to fulfill its obligations, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable costs and after the exercise of reasonable diligence, such servitudes, right-of-way grants, permits or licenses, and

(b) in those instances where either party is required to furnish materials and supplies for the purpose of constructing or maintaining facilities, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies. The settlement of strikes or lockouts and other differences with workmen shall be entirely within the discretion of the party having the difficulty and at the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

8. RATES

The Seller will render bills for services at the legal rates based on contracts on file with the Commission which are subject to change in any manner authorized or permitted by law.

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By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary
Title

THE STATE CORPORATION COMMISSION
OF KANSAS

By Robyn L. Wagoner Secretary
RW

THE STATE CORPORATION COMMISSION OF KANSAS

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9. REGULATIONS

These Rules and Regulations and the contracts executed with Buyers shall be subject to all relevant present and future state and federal laws, and all rules, regulations and orders of any regulatory authority having jurisdiction in the premises. Neither Buyer nor Seller shall be held in default for failure to perform hereunder if such failure is due to compliance with such rules, regulations, laws or order.

10. APPLICATION FOR SERVICE

Application for gas service shall be made in writing by all prospective Buyers to the Seller. Seller shall, as promptly as practical, supply the Buyer with the service in accordance with applicable rules and regulations and tariffs as approved and filed with the Commission.

11. EXTENSION POLICIES

(a) Large and Medium Industrial and Resale Buyers - Seller will deliver to Buyer the agreed contract requirements at a mutually agreeable point on Seller's pipeline. Seller will construct the necessary pipeline extension and metering facilities to the point of delivery. Buyer shall be responsible for construction of the necessary service pipe on the outlet side of Seller's metering facilities to Buyer's installation.

(b) Small Industrial and Commercial Buyers - Seller will expend up to \$500 for each Small Industrial and Commercial Buyer toward the total cost of the necessary facilities to render service, including the cost of meters. The excess cost, if any, shall be borne by the Buyer payable in a lump sum upon completion of construction or through a monthly service charge in addition to Buyer's regular billing rate. Such service charge shall be collected monthly until the excess

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Suzanne Suter
Title

By Robyn L. Wagoner Secretary
LWS

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

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investment required has been fully liquidated. The extension lateral and necessary meters and regulators to point of delivery shall remain the property of Seller and be maintained by it.

(c) Domestic, Small Commercial, and Oil and Gas Lease Operation Buyers - Seller will expend up to \$150 per metered customer toward the total cost of the necessary facilities to render service to Domestic and Small Commercial Buyers, including the cost of meters. The excess cost, if any, shall be borne by each Buyer payable in a lump sum upon completion of construction or through a monthly service charge in addition to Buyer's regular billing rate. Such service charge shall be collected monthly until the excess investment required has been fully liquidated. The extension lateral and necessary meters and regulators to Point of Delivery shall remain the property of Seller and be maintained by it.

(d) Schools and Public Buildings - Seller will expend up to \$1500 for each school and public building toward the total cost of the necessary facilities to render service, including the cost of meters. The amount of the balance of such costs, if any, shall be determined on completion of construction and shall be borne by Buyer. Seller shall be reimbursed for such balance without interest by Buyer in a lump sum or in equal monthly payments and a final payment of the remaining balance thereof. The gas shall be delivered by Seller to Buyer at the outlet side of Seller's Measuring Station to be located at a mutually agreeable point on Seller's pipeline.

(e) Agricultural Service Buyers - Seller will expend up to \$500 for each Agricultural Service Buyer toward the total cost of the necessary facilities to render service, including the cost of meters. The excess cost, if any, shall be borne by the Buyer payable in a lump sum upon completion of construction or through a monthly service charge in addition to Buyer's regular billing rate. Such service charge shall be collected monthly until the excess investment required has been fully liquidated. The extension lateral and necessary meters and regulators to Point of Delivery shall remain the property of Seller and be maintained by it.

00ANGG218C0C
Commission File Number _____

Issued _____
Month Day Year

FILED MAY 19 2000

Effective MAY 19 2000
Month Day Year

THE STATE CORPORATION COMMISSION
OF KANSAS

By Suzanne Suter Corporate Secretary
Signature of Officer Title

By Anthony D. Wagoner Secretary
Signature Title

THE STATE CORPORATION COMMISSION OF KANSAS

SCHEDULE General Rules and Regulations

Anadarko Natural Gas Company
(Name of Issuing Utility)

Replacing Schedule _____ Sheet _____

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which was filed _____

No supplement or separate understanding shall modify the tariff as shown hereon.

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12. ALTERATION OF RULES AND REGULATIONS

No agent or employee has the right to modify or alter the application, rates, terms, conditions, rules or regulations or to make any promises or representations not contained herein, supplements thereto and revisions thereof.

13. CURTAILMENT OF PRORATION OF NATURAL GAS - PRIORITY OF SERVICE

Priority Categories. Each customer's requirements shall be classified in accordance with the following priority categories to be utilized by Seller for allocating available gas service, listed in descending order of priority.

CATEGORY 1. All residential customers and commercial customers using less than 500 Mcf per month and hospitals approved by the State Corporation Commission as having no alternate fuel capability.

CATEGORY 2. Agricultural users, with priority in the following order:

- a. Alfalfa dehydration
- b. Irrigation
- c. Grain drying

CATEGORY 3. Commercial customers using more than 500 Mcf per month; gas for plant protection when no alternate fuel is feasible; and schools, hospitals with alternate fuel capabilities and institutions.

CATEGORY 4. Oil production.

CATEGORY 5. All commercial and industries uses not otherwise specified.

Commission File Number 00ANGG218C0C

Issued _____
Month Day Year

Effective MAY 19 2000
Month Day Year

By Suzanne Suter Suzanne Suter
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FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
OF KANSAS

By Jeffrey A. Chapman Secretary
HSC

THE STATE CORPORATION COMMISSION OF KANSAS

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CATEGORY 6.

- a. Process gas and gas for industrial feedstock.
- b. Industrial uses of less than 500 Mcf per day, where alternate fuel capabilities can meet such requirements.

CATEGORY 7. Industrial requirements of 500 Mcf or more per day but less than 5,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

CATEGORY 8. Industrial requirements of 5,000 Mcf or more per day but less than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

CATEGORY 9. All commercial and industrial requirements of 10,000 Mcf or more per day, where alternate fuel capabilities can meet such requirements, with priority in the following order:

- a. Commercial and industrial requirements
- b. Boiler fuel requirements.

To assist in implementation and enforcement of the curtailments under the priorities set out in this order, Seller may impose penalties for volumetric overruns or violations of the schedule of priorities, not to exceed \$10.00 per Mcf.

00ANGG218C0C
Commission File Number

Issued _____
Month Day Year

Effective MAY 19 2000
Month Day Year

By [Signature] _____
Signature of Officer Corporate Secretary Title

FILED MAY 19 2000

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SECTION 1 STANDARDS ON BILLING PRACTICES

A. Contents of a Bill:

- (1) The utility shall normally bill each customer each billing period in accordance with its applicable rate schedules. Billings may be issued on a monthly, self-billing, turn-around or other basis as may be in accordance with the practices of the particular utility and the orders of the Commission. Each utility bill issued to a customer shall show:
 - (a) The beginning and ending meter registration for the reading period, except that estimated billings shall disclose that it is based on estimated usage;
 - (b) The date of the meter reading and the date of the bill;
 - (c) The final date by which a payment can be received before a delinquency charge is imposed;
 - (d) The actual or estimated usage during the billing period;
 - (e) The amount due for prompt payment and the amount due after delinquency in payment;
 - (f) The fuel, power or purchase gas adjustment in cents per thousand cubic feet (¢/MCF) and the total amount due;
 - (g) The amount of additional charges due for past due accounts, security deposits, collection, connection or disconnection charges, installment payments, and other utility charges authorized by the Commission;
 - (h) The total amount due for the current billing period;
 - (i) The amount due for sales taxes stated separately; and
 - (j) The address and telephone number of the utility and the identification of the person or office where a customer may report a disputed bill, make an inquiry concerning a bill, delinquency or termination of service, or otherwise complain.

00ANGG218C0C
Commission File Number _____

Issued _____
Month Day Year

Effective MAY 19 2000

By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary Title

FILED MAY 19 2000

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OF KANSAS

By Roby L. Wagoner Secretary
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- (2) The bill shall also show any adjustment to previous billings based on estimated usage or customer meter readings. The adjustment shall be made after actual usage has been determined by a meter reading by the utility, pursuant to Subsections I B(2) and C(2). The adjustment shall be calculated for the period between the prior and the most recent meter reading by the utility. If the adjustment shows a net balance due to the utility, the customer shall be given the opportunity, if requested, to pay the additional charges in equal installments over a period of time equal to the adjusted billing period. If a net balance is due to the customer, the customer shall be given either a credit on subsequent bills or a refund, if the overpayment exceeded \$10 and a refund is requested.
- (3) The utility may include on the bill for utility services other charges for special services. Special services are those not authorized by tariff or otherwise specifically regulated by the Commission, such as the sale of merchandise, insulation or service performed in connection therewith. Charges for special services shall be designated clearly and separately from charges for utility services. If the customer makes partial payment for the total bill, the utility shall credit payment: a) first to the balance outstanding for utility service beginning with the oldest service debt, b) then to additional utility charges (such as disconnection/reconnection fees), and c) then to special charges as defined above.
- (4) If the customer is paying under a level or average payment plan, each bill shall also clearly disclose the overage or underage of the amounts paid to date as compared to the cumulative actual usage, in dollars, to date.
- (5) If the customer is paying down an arrearage under the Cold Weather Rule or other payment plan, those monthly amounts shall be printed on the bill and clearly labeled.

B. Customer meter reading:

00ANGG218C0C
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Effective MAY 19 2000

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Suzanne Suter
Corporate Secretary

FILED MAY 19 2000

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Secretary
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- (1) The utility may request customers in sparsely populated areas to read their meters at intervals approximating the billing period. Requests for readings by the customer shall be on printed forms provided by the utility, such forms to contain instructions as to methods of reading. In the event the customer does not furnish a meter reading pursuant to this Subsection for two consecutive periods, the utility may read the meter and charge the customer a meter reading charge as provided in rules and regulations filed with and approved by the Commission.
- (2) Meter readings by the customer, though used for billing purposes, shall not be considered final. Such customers' meters will be read at least once a year by the utility and an adjustment shall be made in accordance with Section I A(2). A final bill, when service is discontinued, must be based upon an actual reading by the utility, except as provided in Subsection I C(1)(e).

C. Estimated usage:

- (1) The utility may render a bill based on estimated usage only if the estimating procedures employed by the utility and any substantial changes in those procedures have been approved by the Commission and the bill is rendered.
 - (a) To seasonal customers, provided an appropriate tariff is on file with the Commission and an actual reading is obtained before each change in the seasonal cycle;
 - (b) When extreme weather conditions, emergencies, work stoppages or other circumstances beyond the utility's control prevent actual meter readings;
 - (c) When the utility is unable to reasonably obtain access to the customer's premises for the purpose of reading the meter and efforts to obtain a customer

00ANGG218C0C
Commission File Number _____

Issued _____
Month Day Year

Effective MAY 19 2000
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By Suzanne Suter Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
OF KANSAS

By Robb D. Wagoner Secretary

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- reading of the meter, such as mailing or leaving preaddressed forms upon which the customer may note the readings, are unavailing;
- (d) When the customer does not furnish a meter reading as requested by the utility; or
 - (e) Notwithstanding Subsections (a) - (d), the utility may also render a bill based on estimate usage as a customer's final or initial bill only when:
 - (i) the customer so requests and any necessary adjustments are made to the bill upon a subsequent actual meter reading by the utility,
 - (ii) an actual meter reading would not show actual customer usage but is used in estimating usage, or
 - (iii) an actual meter reading cannot be taken because of broken meter or other equipment failure.

The utility may not, however, render a bill based on estimated usage for more than three (3) consecutive billing periods or six (6) months, whichever is less. Before rendering an estimated bill under Subsection (a) and (b), the utility may request the customer to provide a meter reading upon preaddressed forms.

- (2) When a utility renders an estimated bill in accordance with this section, it shall:
 - (a) Maintain accurate records of the reasons therefor and efforts made to secure an actual reading;
 - (b) Clearly disclose on the bill that it is based on estimated usage; and
 - (c) Make an appropriate adjustment upon subsequent reading of the meter.

00ANGG218C00
Commission File Number _____

Issued _____
Month Day Year

Effective MAY 19 2000

By Suzanne Suter Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
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By Robyn L. Wagoner Secretary
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- (3) A utility may also render a bill based on estimated usage when the customer is paying under an average or level payment plan under which payments are based on an estimated or projected average use if:
 - (a) The plan has been approved by the Commission;
 - (b) Actual meter readings are made, except as provided in I C(1) above; and
 - (c) The disclosures required by 1 A(4) are made.

D. Responsibility for payment of a bill

- (1) A utility shall not threaten or refuse service to, or threaten or disconnect the service of, an individual for an outstanding debt on an account unless that individual either signed the service agreement on the account or agreed orally at the time service was established to be responsible for the account. The only exception to this rule is when the individual and the customer who signed the service agreement or agreed orally at the time service was established to be responsible for the account, lived together when the debt was incurred and continue to live together.
- (2) The utility shall not threaten or refuse service to or threaten or disconnect the service of an individual for an outstanding debt more than five (5) years old if the service agreement was signed and three (3) years old if the agreement was oral.

E. Once a year, each utility shall mail to each of its customers a notice apprising them of the Commission's complaint procedure including its role in settling complaints which have reached an impasse. The notice should include the Commission's Consumer Protection Office's telephone number as well as a comment/complaint form concerning the utility's performance. The notices or copies of the notices shall be sent to the Commission.

00ANGG218C0C
Commission File Number

Issued _____
Month Day Year

Effective MAY 19 2000
Month Day Year

By Suzanne Suter Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
OF KANSAS

By Robert L. Wagoner Secretary

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SECTION II STANDARDS ON DELAYED PAYMENT CHARGES

A. All bills for utility service are due and payable upon receipt. A customer of a utility providing both electric and gas service shall be informed of and be able to specify to which service the payment(s) are to be applied, regardless of whether the payments are for current usage or arrearages. A bill shall be deemed delinquent if payment thereof is not received by the utility or its authorized agent on or before the date stated on the bill which date shall be:

- (1) For residential customers, except those on non-arrearage average payment plans and the Arrearage Average Payment Plan in Subsection (E), the last date on which payment received can, in the normal and reasonable course of the utility's procedures, be credited to the customer's account in preparing his next normal billing.
- (2) For residential customers on non-arrearage average payment plans and the Arrearage Average Payment Plan in Subsection (E), an additional five (5) days shall be added to the normal due date and any payment received by the utility within the extra five (5) days shall be counted as an on-time payment with no penalty due. The utility may continue to show only the normal due date on the bill provided:
 - (a) Customers on average payment plans are informed they have the additional five (5) days; and
 - (b) Inadvertent late payment charges paid to the utility within the five (5) days are credited to the customer's account.
- (3) For all other customers, the fifteenth (15th) day after date of billing.

00ANGG218C 0C

Commission File Number _____

Issued _____
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Effective MAY 19 2000
Month Day

By Suzanne Suter Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
OF KANSAS

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- B. When a bill becomes delinquent, a later payment charge in an amount equal to two percent (2%) of the delinquent amount owed for current utility service will be added to the customer's bill, and any collection effort by the utility shall be initiated.
- C. If the last calendar day for remittance falls on a Sunday, legal holiday or other day when the offices of the utility are not open to the general public, the final payment date shall be extended through the next business day.
- D. If a commercial customer is consistently unable to pay its bills on time due to bill-paying procedures, the utility shall offer to mail a copy of the bills to the customer's bill-paying office at the same time it is delivered to the local business. If the customer chooses, the utility shall offer the customer the option of paying a one percent (1%) late fee every month for a time extension of 14 days. The utility may discontinue this option for the customer after the customer requests it or the customer fails to pay the bill within the 29 days established by this provision.
- E. Arrearage Average Payment Plan - An average payment plan similar to the Cold Weather Rule average payment plan must be one of the options available to residential customers with arrears. The customer will have up to 12 months to pay off an arrearage with the initial payment being the arrearage plus the bill for consumption during the most recent billing period for which service was provided, divided by 12. Arreages from a previous Cold Weather Rule plan or Arrearage Average Payment Plan must be paid off before entering into this plan. Customers must be informed of this option.
- F. The utility may discontinue service for a delinquent bill after issuing the notice required by Section IV. As stated in said notice, if collection is made at the customer's premises or service is discontinued because of non-payment of a bill, the utility shall require a collection or

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Commission File Number _____

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Effective MAY 19 2000
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disconnection charge. Such collection or disconnection charge shall be as provided in rules and regulations filed and approved by the Commission.

After disconnection of service for non-payment of a bill, should service be reconnected in accordance with the appropriate provisions of the utility's rules, regulations and tariffs, a reconnection charge shall be applied. Such reconnection charge shall be as provided in rules and regulations filed with and approved by the Commission.

SECTION III STANDARDS ON SECURITY DEPOSIT PRACTICE

A. The utility may require the customer to provide reasonable credit information to the utility before service is made available. A utility may request positive identification (defined as a photo with name) from residential customers. If positive identification is not immediately available, a customer providing a full deposit should have at least two (2) months to secure positive identification and up to two (2) additional months if payments are kept current. A commensurate period should be allowed for less than a full deposit. The utility may at the time of application for service, require a deposit to guarantee payment of bills for utility service rendered if:

- (1) The utility establishes that the customer has an unsatisfactory credit rating, or has an insufficient prior credit history upon which a credit rating may be based.
- (2) The customer has outstanding, with a utility, an undisputed and unpaid service account which accrued within the last five (5) years if the service agreement was signed, or three (3) years if service was provided after an oral agreement.

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Commission File Number _____

Issued _____
Month Day Year

Effective MAY 19 2000
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FILED MAY 19 2000

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- (3) the customer has, in an unauthorized manner, interfered with, or diverted or used (meter bypass), the service of a utility within the last five (5) years.
- B. The utility may at any time after application for service, upon five (5) days written notice, require a deposit to guarantee payment of bills for utility service rendered if:
 - (1) The customer has outstanding, with the utility, an undisputed and unpaid service account which accrued within the last five (5) years if the service agreement was signed, or three (3) years if service was provided after an oral agreement.
 - (2) The customer has, in an unauthorized manner, interfered with, or diverted or used (meter bypass), the service of the utility within the last five (5) years.
 - (3) The customer fails to pay an undisputed bill before the delinquency date for three (3) consecutive billing periods, one of which is at least 60 days in arrears.
- C. No deposit shall be required by any utility because of customer's rate, sex, creed, national origin, marital status, age, number of dependents, source of income or geographical area of residence.
- D. The amount of the cash deposit or surety bond required shall not exceed the amount of that customer's projected average two month's bill(s) for residential and small commercial customers. For other customers, such deposit shall not exceed the amount of that customer's projected largest two month's bill(s). If a customer has been documented to be diverting service (meter bypass), an additional deposit based on one (1) month's average use may be assessed. For purposes of establishing deposits and projecting monthly bills, the utility shall consider the length of time the customer can reasonably be expected to take service, past consumption patters, end use of the service, and consumption patterns of other similar customers. The

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Commission File Number _____

Issued _____
Month Day Year

Effective MAY 19 2000
Month Day Year

By Suzanne Suter Corporate Secretary
Signature of Officer Title

FILED MAY 19 2000

THE STATE CORPORATION COMMISSION
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amount of the cash deposit or surety bond may be adjusted if the character or volume of the customer's service should change.

The customer shall be informed of, and the utility shall permit, payment of any required residential or small commercial deposit in equal installments over a period of at least four months when deposits are based on two average months' usage. An additional two (2) months shall be given to customers who have been assessed an additional deposit due to documented diversion (meter bypass). Disconnection for nonpayment of deposit shall be governed by Section IV. For purposes of this section, a small commercial customer is one which uses no more than 50 MCF of natural gas in an average month.

E. A utility shall maintain a record of all deposits received from customers, showing the name of each customer, the address of the premises for which the deposit is maintained, the date and amount of deposit, and the date and amount of interest paid.

F. Whenever a security deposit is accepted, the utility will issue to the customer a non-assignable receipt containing the following minimum information:

- (1) Name of customer
- (2) Place of deposit
- (3) Date of deposit
- (4) Amount of deposit
- (5) Utility name and address, signature and title of the utility employee receiving deposit

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Commission File Number _____

Issued _____
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FILED MAY 19 2000

Effective MAY 19 2000
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- (6) Current annual interest rate earned on deposit
- (7) Statement of the terms and conditions governing the use, retention and return of deposits, to include a statement that deposits taken from residential customers shall be either credited with interest to their utility bills, or if requested, refunded, after customer has paid nine (9) of the last twelve (12) bills on time and no undisputed bill was unpaid after 30 days beyond due date. Deposits taken from non-residential customers of under \$500 shall be returned after 36 months of on-time payment. The payments need not be consecutive. Non-residential deposits of \$500 or more may be retained until termination of service.

However, in lieu of a receipt, the utility may indicate on the monthly customer billing the amount of any security deposit retained by the utility, provided that the information required by Subsections (6) and (7) above is otherwise individually given in writing to the customer. In all cases a receipt shall be given upon customer's request.

G. Upon termination of service, if the deposit is not to be transferred, the utility will refund the deposit to the customer less any unpaid utility bills due the utility. Deposits taken from residential customers shall be either credited with interest to their utility bills or, if requested, refunded, after the customer has paid nine (9) out of the last twelve (12) bills on time and no undisputed bill was unpaid after 30 days beyond due date. The month(s) of a disputed bill(s) shall be ignored in this calculation. Non-residential deposits of under \$500 shall be returned after 36 months of on-time payment. The payments need not be consecutive. Non-residential deposits of \$500 or more may be retained until termination of service. A deposit need not be returned until all undisputed amounts are paid. When refunded or credited, the deposit shall include accrued simple interest at a rate not less than that provided by K.S.A. 12-822 and amendments.

00ANGG218C0C
Commission File Number _____

Issued _____
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Effective MAY 19 2000
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By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary
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FILED MAY 19 2000

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- H. Interest payments on residential or non-residential deposits shall be credited to the customer's bill or refunded at least once a year.
- I. Service deposits shall be nontransferable from one customer to another customer; however, upon termination of the customer's service at the service address, the utility may transfer the deposit to the customer's new active account.
- J. In lieu of the security deposit, a utility shall accept the written guarantee of any of its residential customers with no deposit on file or may accept the written guarantee of a responsible party as surety for a residential customer service account. The utility may require the guarantor to sign an agreement allowing utility to transfer the customer's debt to the guarantor's account. In the event the customer's debt is transferred to the guarantor's account, the guarantor will have the same time to pay the deposit as a new customer and can be disconnected for nonpayment under conditions set out in Section IV or the Cold Weather Rule. The utility shall not hold the guarantor liable for sums in excess of the maximum amount of the required cash deposit or for attorney or collection fees.

The guarantor shall be released upon nondelinquent payment by residential customer of all undisputed proper charges for utility service as outlined in III. G., or upon termination of service and payment of utility bills.

SECTION IV STANDARDS ON DISCONTINUANCE OF SERVICE PRACTICES

- A. The utility may discontinue or refuse service for any of the following reasons:
 - (1) When the customer requests it.

00ANGG218C0C
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Issued _____
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Effective MAY 19 2000
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FILED MAY 19 2000

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- (2) When the service is abandoned.
- (3) When a utility bill becomes delinquent as provided in Section II A, after proper notice, as provided in Section IV E.
- (4) When a dangerous condition exists on the customer's premises.
- (5) When the customer fails to provide credit information, security deposit or guarantee, as set forth in Section III A and J, or has a previous undisputed and unpaid separate account for utility service with the same utility.
- (6) When the customer misrepresents his or her identity for the purpose of obtaining utility service.
- (7) When the customer refuses to grant utility personnel access, during normal working hours, to equipment installed upon the premises of the customer for the purpose of inspection, meter reading, maintenance or replacement.
- (8) When the customer violates any rule of the utility which violation adversely affects the safety of the customer or other persons, or the integrity of the utility's delivery system.
- (9) When the customer causes or permits unauthorized interference with, or diversion or use of (meter bypass), utility service situated or delivered on or about the customer's premises.

B. None of the following shall constitute sufficient cause for a utility to discontinue service:

- (1) The failure of a customer to pay for special charges as defined in I.A.(3).

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Effective MAY 19 2000
Month Day Year

By Suzanne Suter Corporate Secretary
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FILED MAY 19 2000

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By Robby L. Wagoner Secretary
RWB

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(2) The failure of the customer to pay for service received at a concurrent and separate metering point, residence or location. In the event of discontinuance or termination of service at a separate metering point, residence, or location in accordance with these rules, a utility may transfer any unpaid balance to any other service account with the customer's written consent; provided, however, that in the event of the failure of the customer to pay a final bill at any metering point, residence or location, the utility may transfer such unpaid balance to any successive service account opened by the customer for the same class of service, and may discontinue service at such successive metering point, residence or location for nonpayment of such transferred amount.

(3) the failure of the customer to pay for a different class of service received at the same location. The placing of more than one meter at the same location for the purpose of billing the usage of specific devices under optional rate schedules or provisions is not construed as a different class of service for the purpose of this rule.

(4) The failure of a customer to pay a bill which is in dispute provided; however, that the customer pays that portion of the bill not in dispute.

(5) The failure to pay an unpaid service account more than five (5) years old if the service agreement was signed and three (3) years old if agreement was oral.

C. Except for discontinuance pursuant to IV A(1), (2), (4), (8) and (9), utility shall not discontinue service unless:

(1) At the time of the proposed discontinuance, for one hour after discontinuance and on the full work day following discontinuance, the utility office or authorized personnel identified in the notice given pursuant to Subsections E and F(2) are open or available

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FILED MAY 19 2000

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to the customer for the purpose of making pay arrangements, preventing discontinuance or obtaining reconnection.

- (2) The utility employee who is to disconnect service is also authorized to accept payment of amounts due for utility charges and thereby either avert disconnection or provide for reconnection.

D. Discontinuance in special circumstances.

- (1) If a residential customer notifies the utility and establishes that:
 - (a) Discontinuance would be especially dangerous to the health of the customer, resident member of the customer's family or other permanent resident of the premises where service is rendered, and
 - (b) (i) Such customer is unable to pay for such service in accordance with the requirements of the utility's billing or (ii) is able to pay for such service only in installments;

The utility shall either allow payment in reasonable installments or postpone discontinuance of service for at least twenty-one (21) days so that the customer can make arrangements for reasonable installment payments.

E. Notice of discontinuance of service:

- (1) The utility will give the customer ten (10) days written notice before discontinuing service, unless the discontinuance is upon customer request, or involves a dangerous condition, a violation of utility rules or unauthorized interference, diversion or use of

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By Suzanne Suter ~~Corporate Secretary~~
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FILED MAY 19 2000

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service, Section IV A(1), (2), (4), (8) or (9), in which case the utility may discontinue service immediately. However, if the utility has knowledge that persons other than the customer or members of the customer's family are residing at the premises where unauthorized interference, diversion, or use (meter bypass) is taking place, the utility shall give such persons a two (2) days written or twenty-four (24) hour oral notice prior to discontinuance.

- (2) Utilities which can prove that a customer has received service by using a false identity may disconnect the customer 48 hours after a personal or phone contact is made with the customer of record and the telephone number of the Commission's Consumer Protection Office is given to the customer, or ten (10) days after a disconnect notice is sent, whichever is quicker.
- (3) A notice separate from other utility bills, information or advertising, shall be sent to the account name and address and in the case of residential occupancy, to the address where service is provided, if different. Service of notice by mail is complete upon mailing. A utility shall maintain an accurate record of the date of mailing and the effective dates of the notice. The notice shall be effective for one (1) month after initial date upon which and after which service can be disconnected.
- (4) The utility should notify, or attempt to notify, customers by phone at least two (2) days before they are to be disconnected.
- (5) If the records of the utility show that the service account which it proposes to discontinue serves more than one residential dwelling unit, the utility shall also post a notice of discontinuance in a common area of the residential building served. Such notice shall be posted at least five (5) days prior to the discontinuance date specified therein.

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Effective MAY 19 2000

By Suzanne Suter Corporate Secretary
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FILED MAY 19 2000

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F. The notice(s) required by Section IV E shall contain the following information:

- (1) The name and address of the customer and the address, if different, where service is rendered.
- (2) A clear and concise statement of the reason for the proposed discontinuance of service and the cost and conditions for reconnection.
- (3) The dates between which service can be discontinued unless the customer takes appropriate action.
- (4) Terms under which the customer may avoid discontinuance.
- (5) A statement that discontinuance may be postponed or avoided if customer can demonstrate that special circumstances prevent complete payment and satisfactory credit arrangements are made with the utility for moneys not in dispute.
- (6) A statement reasonably calculated to apprise the customer of the availability of an administrative procedure which may be utilized in the event of a bona fide dispute or under other circumstances, such as provided in IV D. The address, telephone number and name of the utility office or personnel empowered to review disputed bills, rectify errors, and prevent disconnection, shall be clearly set forth. The notice shall state that the customer may meet with a designated employee of the utility and may present his or her reason for disputing a bill or the utility's reasons for discontinuance, requesting credit arrangements or requesting a postponement of discontinuance.

G. The employee of the utility who is to disconnect service shall:

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By Jeffrey S. Wagoner Jeffrey S. Wagoner
Secretary

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- (1) Immediately preceding the discontinuance of service, make a reasonable effort to:
 - (a) Contact and identify himself or herself to the customer or responsible person then upon the premises and shall announce the purpose of his or her presence;
 - (b) Identify and record the name of the person contacted;
 - (c) Accept payment of all amounts tendered to him which are necessary to avert disconnection;
 - (d) Record statements disputing the accuracy of the delinquent bill;
 - (e) Record statements disputing the accuracy of the utility's findings concerning the cause for discontinuance; and
 - (f) Record statements concerning the medical condition of any permanent resident of the premises.

- (2) If contact with the customer is not made, the employee shall leave a notice upon the premises in a manner conspicuous to the customer disclosing the date and time of discontinuance and giving the address and telephone number of the utility where the customer may arrange to have service restored.

H. Restoration of service:

- (1) Upon the customer's request, a utility shall restore service promptly when the cause of discontinuance of service has been eliminated, applicable restoration charges paid and, if required, satisfactory credit arrangements have been made.

- (2) At all times, every effort shall be made to restore service on the restoration day requested, and in any event, restoration shall be made no later than the next business day following the day requested by the customer.

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FILED MAY 19 2000

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By Anthony S. Wagoner Secretary
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(3) The utility may charge a reasonable fee for the restoration of service as provided in Section II F.

I. Review of disputed:

(1) When a customer advises the utility prior to the date of the proposed discontinuance of service that all or any part of any billing as rendered is in dispute or that the utility's reasons for discontinuance are factually invalid, the utility shall:

- (a) Immediately record the date, time and place the complaint is made;
- (b) Postpone discontinuance until a full investigation is completed and the dispute found to be invalid;
- (c) Investigate the dispute promptly and completely; and
- (d) Attempt to resolve the dispute informally in a manner mutually satisfactory to both parties.

(2) A customer may advise a utility that a bill is in dispute in any reasonable manner such as by written notice, in person or by telephone call directed to the appropriate personnel of the utility.

(3) A utility, in attempting to resolve the dispute in a mutually satisfactory manner, may employ telephone communication, personal meetings, formal or informal hearings, on-site visits or any other technique reasonably conducive to settlement of the dispute.

(4) In the event that a dispute is not resolved to the satisfaction of the customer, after full investigation, and the utility intends to proceed with discontinuance, the utility shall advise the customer of formal and informal procedures available before the Commission. The utility may then discontinue service if proper notice has been given.

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FILED MAY 19 2000

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SECTION V COLD WEATHER RULE

A. Availability

The provisions of the Cold Weather Rule (CWR) allow for special payment and disconnection procedures for any Kansas residential customer with unpaid arrearages to retain or restore utility service throughout the cold weather period, which extends from November 1 through March 31.

B. No Disconnections When Temperature Is Below 35 Degrees

A utility shall not disconnect a customer's service between November 1 and March 31 when the local national weather service office forecasts the temperature will drop below 35 degrees or will be in the mid-30s or colder within the following 48-hour period unless:

- (1) It is at the customer's request.
- (2) The service is abandoned.
- (3) A dangerous condition exists on the customer's premises.
- (4) The customer violates any rule of the utility which adversely affects the safety of the customer or other persons, or the physical integrity of the utility's delivery system.
- (5) The customer causes or permits unauthorized interference with, or diversion or use of (meter bypass) utility service situated or delivered on or about the customer's premises.

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Effective MAY 19 2000
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By Suzanne Suter Suzanne Suter
Signature of Officer Corporate Secretary Title

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In any of these situations, the utility may disconnect the service immediately. Services disconnected under (3), (4) or (5) above must be restored as soon as possible after the physical problems as defined in (3), (4) and (5) above have been corrected.

In order to keep from getting disconnected when the temperature is 35 degrees or above, or to get reconnected regardless of temperature, a customer must comply with the provisions of the Good Faith Test.

C. Good Faith Test

The requirements of the Good Faith Test are not applicable when the temperature is forecast to drop below 35 degrees or be in the mid-30s or colder within the next 48-hour period. To meet the Good Faith Test and qualify for the benefits of the Cold Weather Rule, the customer shall:

- (1) Inform the utility of the customer's inability to pay the bill in full.
- (2) Give sufficient information to allow the utility to make a payment agreement.
- (3) Make an initial payment of the arrearage plus the bill for consumption during the most recent billing period for which service was provided divided by twelve (12).
- (4) Apply for federal, state, local or other funds for which the customer is eligible.
- (5) Enter a level payment plan (rolling average favored) for current and future consumption with arrears paid in equal installments over the next eleven (11) months.
- (6) Not illegally divert (bypass meter) utility service.

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Issued _____
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Effective MAY 19 2000

By Suzanne Suter Corporate Secretary
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(7) Not default on a payment plan.

D. Responsibilities of the Utilities

(1) Mail a written notice of the Cold Weather Rule once a year at least 30 days prior to the CWR period to each residential customer who is currently receiving service as well as to each residential customer who has been disconnected during or after the most recent cold weather period and who remains without service. Each utility shall file a copy of the notice with the Commission.

(2) Send one written notice mailed first class at least ten (10) days prior to termination of service. A customer may not be disconnected until a 48-hour forecast above the activating temperature is predicted by the National Weather Service. During the first 24 hours, which will be the day prior to disconnection, the utility shall make at least one telephone call attempt with the customer of record and make one attempt at a personal contact with the customer of record on the day prior to termination of service if telephone contact on that day was not made. The telephone call attempt(s) and personal contact the day prior to disconnection is in addition to the already existing notice requirements contained in the Commission's standards under Section IV. If the customer is not contacted during the phone call(s) or the personal contact the day prior to termination of service, the utility employee shall leave a disconnect message on the door on the day prior to disconnect. There will be no charge for this service. On the day of disconnection, the utility must receive a 24-hour forecast above the activating temperature from the National Weather Service. If the temperature is then forecast to be below the activating temperature, the disconnection may not be carried out and the utility must wait for another 48-hour forecast above the activating temperature and follow the same procedures prior to disconnection.

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Commission File Number _____

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Effective MAY 19 2000

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OF KANSAS

By Robyn S. Upton Secretary

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Utilities shall in the telephone contact(s), the ten (10) day written notice, the personal contact and the disconnect message on the door in addition to the existing requirements contained in Section IV, also inform the customer of the existence of the Cold Weather Rule - that the customer can avoid disconnection by complying with the customer Good Faith Test - and the telephone number of the Commission's Consumer Protection Office.

- (3) Inform the customer of, or provide a list of, the Good Faith requirements.
- (4) Inform the customer of, or provide a list of, organizations where funds are available to pay utility bills.
- (5) Inform the customer of, or provide a list of, all other pay arrangements for which the customer might qualify.
- (6) Adopt and inform customers about a third-party notification plan.

E. Other Provisions

- (1) Deposits made in conjunction with the Cold Weather Rule may be amortized over a twelve (12) month period. Written notice of this shall be provided to each customer required to make a deposit.
- (2) Utilities should inform their customers of the long-range advantages of weatherization programs.
- (3) Upon documentation by the utility that diversion of service has occurred (meter bypass) and that the customer has benefitted from diversion, the customer shall be deemed in

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breach of the Good Faith Test. Such breach may be cured by payment by the customer for the value of the diverted service. The value of such use shall be estimated based on historic use of such customer or such residence.

- (4) Any customer who has defaulted in the most recent cold weather period and remains in default has breached the requirements of the Good Faith Test. To cure such default, the customer shall make an initial payment as set forth in the Good Faith Test, pay any disconnect and reconnect charges incurred as a result of such default and comply with the provisions of the Good Faith Test.
- (5) Utilities should encourage customers to renegotiate Cold Weather Rule payments if they receive utility or other lump-sum assistance.

SECTION VI WAIVER OF REQUIREMENTS

The requirements contained in these standards may be waived in individual cases by the Commission upon written request by the utility and a showing that compliance with the requirement would serve the interests of neither the utility nor the customer.

SECTION VII CHANGE IN OCCUPANCY

If the utility receives an oral connect or disconnect request, a record, utilizing a unique number of the utility employee's name or code, should be made of the request. The record should be retained for at least four months.

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Issued _____
 Month Day Year
 Effective MAY 19 2000
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 By Suzanne Foster Corporate Secretary
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FILED MAY 19 2000
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October 21, 2013

VIA FACSIMILE
AND U.S. MAIL
(785) 271-3303

Ms. Kim Christiansen
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Received
on
OCT 21 2013
by
State Corporation Commission
of Kansas

Re: **Docket No. 14-ANGG-119-COM**

Dear Ms. Christiansen:

Please accept for filing this facsimile copy of the **Response of SWKI-Seward West Central, Inc. and SWKI Stevens Southeast, Inc. to Anadarko Natural Gas Company's Motion to Dismiss and Answer to Complaint to be filed on behalf of SWKI-Seward West Central, Inc. and SWKI Stevens Southeast, Inc.**

We are forwarding by regular mail the original and eight copies of the **Response** for filing.

Please file stamp the extra copy of the **Response** and transmittal letter and return it to me in the self-addressed, stamped envelope. Thank you for your assistance and attention to this matter.

Sincerely

Anne E. Callenbach

AEC:bks

Encl.

Cc: **Montgomery Escue**
All Parties

polsinelli.com

Chicago Dallas Denver Kansas City Los Angeles New York Phoenix St. Louis Washington, D.C. Wilmington
Polsinelli PC, Polsinelli LLP in California

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