

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

In the Matter of a General Investigation)	
Regarding the Acceleration of)	Docket No. 15-GIMG-343-GIG
Replacement of Natural Gas Pipelines)	
Constructed of Obsolete Materials)	
Considered to be a Safety Risk.)	

CURB's Response to Petitions for Reconsideration

The Citizens' Utility Ratepayer Board (CURB) herein responds to the petitions for reconsideration which were filed by Atmos Energy Corporation ("Atmos"), Kansas Gas Service, a division of One Gas, Inc. ("KGS"), and Black Hills/Kansas Utility Company, LLC ("Black Hills"). For the reasons stated below, CURB urges the Commission to deny the filed petitions for reconsideration of the Commission's Final Order in this docket.

I. Introduction

1. The Commission's Staff requested that the Commission open this docket to consider the approval of accelerated pipeline replacement with a cost recovery surcharge. In explaining the need for a surcharge, Staff's memo noted that much of the state's natural gas infrastructure is old and obsolete, and stated, "[A]s pipe ages, failure will become more frequent, and more frequent failures increase the probability of at least one of the failures being catastrophic in nature. Delaying pipe replacement until a threat to public safety is obviously not good public policy."¹

¹ KCC Docket No. 15-GIMG-343-GIG, *Recommendation to Initiate a General Investigation Regarding the Acceleration of Replacement of Natural Gas Pipelines Constructed of Obsolete Materials Considered to be a Safety Risk*, filed as an attachment to *Order Opening General Investigation*, p. 3 (Mar. 12, 2015).

2. The Commission ordered that an investigation be opened in this docket on March 12, 2015, and on March 19, 2015, the Commission issued an Order Setting Procedural Schedule.²

3. The docket was set for hearing to be held on March 29 and March 30, 2016. The following issues were addressed at the hearing:

- “a) Is it in the public interest for the Kansas gas utilities to accelerate replacement of pipelines constructed of obsolete materials?
- b) If the Commission finds programs for the accelerated replacement of obsolete pipe to be in the public interest:
 - 1) What are the necessary and appropriate parameters of the programs; and
 - 2) Should the gas utilities be allowed to recover the costs of the programs through an alternative ratemaking mechanism; and
 - 3) What type of alternative ratemaking mechanism is most appropriate for recovery of program costs?”³

4. On September 12, 2017, the Commission issued a Final Order in this docket approving an accelerated pipeline replacement and cost recovery program under certain conditions (“ARP”) which are described in the Final Order.⁴ It would unduly lengthen this pleading to fully describe the ARP as contained in the Final Order. It would suffice to state that the ARP does not give any party all that they wanted in this docket, nor does it totally discount any party’s entire position. The ARP reasonably attempts to balance the interests of the parties on all material issues.

5. The gas utilities allege that certain parts of the Commission’s Final Order are not supported by substantial evidence and are unreasonable. Moreover, KGS outlines a number of questions which it believes the Commission should address with respect to the Commission’s

² Order Setting Procedural Schedule (March 12, 2015).

³ Final Order, p. 2 (September 12, 2017).

⁴ Final Order (September 12, 2017).

ARP. Atmos believes that it is entitled to have an evidentiary hearing on certain issues raised by the Commission's ARP. These allegations and requests will be discussed below.

6. CURB believes that the Commission's Final Order very thoroughly discusses the evidence as it pertains to the key issues, and provides a well-reasoned analysis and a balanced resolution with respect to the need for accelerated pipeline replacement in Kansas and the cost recovery associated therewith. Contrary to the gas utilities in this case, CURB perceives that the Final Order is supported by substantial evidence in light of the evidentiary record as a whole. Therefore, CURB believes that the petitions for reconsideration filed by the gas utilities in this docket are without merit and should be denied.

7. However, for the reasons set out below, CURB believes that there may be some merit in allowing the parties (within the timeframe set out for the gas utilities to file their 10-year plans for replacement of bare steel pipelines in Class 3 locations, or as it may be extended by the Commission) to file alternative pipeline replacement program proposals which meet the policy directions of the Commission as set forth in the Final Order. In these regards, the policy concerns of the Commission have been identified in the Final Order. Thus, the parties now should be able to work out an agreeable accelerated pipeline replacement program which will meet the Commission's overarching policy concerns. The resolution of any issues involved in these programs (with approval of the Commission) before each gas utility's next rate case would lead to clarified policy goals and administrative efficiency. Having a deadline within which to file these alternative programs with the Commission for approval ensures that all pertinent issues are discussed and resolved in a timely fashion. At oral argument on the petitions for reconsideration, which CURB requests, the means to achieve these program refinements could be discussed by the parties.

II. The Commission's Final Order is Lawful and Reasonable.

8. No Kansas gas utility appears to argue that the Commission acted beyond its legal authority in issuing the Final Order. Rather, each gas utility argues that certain aspects of the Commission's Final Order are unreasonable as not being supported by substantial evidence. Before discussing the utilities' allegations, the scope of Kansas law on reasonableness of administrative orders will be outlined.

A. Kansas Law on Reasonableness of Administrative Orders.

9. Kansas law is clear that an order issued by an administrative agency is reasonable if it is supported by substantial competent evidence.⁵ Substantial evidence refers to evidence possessing something of substance and relevant consequence to induce the conclusion that the decision was proper, furnishing a basis of fact from which the issue raised could be easily resolved.⁶ Stated differently, substantial evidence is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion.⁷

10. Significantly, an agency's action must be based on a determination of fact, made or implied by the agency that is supported by evidence that is substantial when viewed in light of the record as a whole.⁸ In this respect, a reviewing court will: "(1) review evidence which supports and which contradicts the agency's findings; (2) examine the presiding officer's credibility determination, if any; and (3) review the agency's explanation as to why the evidence supports its findings."⁹ However a reviewing court may not substitute its judgment for that of the

⁵ *Farmland Industries, Inc. v. Kansas Corporation Commission*, 24 Kan.App.2d 172, 175, 943 P.2d 470, rev. denied 263 Kan. 885 (1997).

⁶ *Ward v. Allen County Hospital*, 50 Kan.App.2d 280, 285, 324 P.3d 1122 (2014).

⁷ *In re Appeal of Collingwood Grain, Inc.*, 257 Kan. 237, 237, 891 P.2d 422, 423 (1995)(Syl. ¶ 2).

⁸ *K.S.A. 77-621(c)(7)*.

⁹ *Williams v. Petromark Drilling*, 299 Kan. 792, 795, 326 P.3d 1057 (2014).

Commission even though there may be conflicting evidence in the record that would support a contrary result.¹⁰ It follows that gas utilities should not be allowed to substitute their judgment for that of the Commission.

11. Indeed, Kansas courts recognize that the Commission's decisions involve the difficult problems of policy, accounting, economics and other special knowledge that go into fixing utility rates.¹¹ Thus, the Commission is vested with wide discretion and its findings have a presumption of validity on review.¹² The Kansas Supreme Court has determined that it is up to the Commission to determine the weight to be given to testimony presented in cases before it.¹³

B. The Final Order is Reasonably Based Upon Substantial Evidence.

12. The transcript of the hearings in this docket manifests a vast array of positions and supporting testimony brought before the Commission on the intricate issues of pipeline replacement and associated cost recovery. The Final Order contains over twenty pages of summarized testimony. It is not necessary to restate that summarization, but it is important to note that the evidence ranged from CURB's position that neither accelerated pipeline replacement program nor extraordinary cost recovery is necessary to the positions of the gas utilities that accelerated pipeline replacement and extraordinary cost recovery are necessary for the safety of Kansans. The Commission's ARP formed a balance of these various positions.

13. Although the Commission could have given the gas utilities everything they wanted, a majority of the Commission determined to balance those demands against the needs of the Kansas ratepayer to keep utility costs reasonable, being mindful of the paramount goal to keep Kansans safe. While it is true that no party presented the exact program parameters adopted

¹⁰ *Western Resources, Inc. v. Kansas Corporation Commission*, 30 Kan.App.2d 348, 348, 42 P.3d 162, rev. denied 274 Kan. 1119 (2002) (Syl. ¶ 2).

¹¹ *Williams Natural Gas Co. v. State Corp. Com'n of State of Kan.*, 22 Kan.App.2d 326, 335, 916 P.2d 52 (1996).

¹² *Central Kansas Power Co. v. State Corporation Commission*, 221 Kan. 505, 561 P.2d 779 (1977).

¹³ *Colorado Interstate Gas Company v. State Corporation Commission*, 192 Kan. 1, 21,386 P.2d 266 (1963).

by the Commission, Kansas law does not limit the Commission to being merely able to adopt or reject that which is presented by the parties. The Commission has always had duty and authority to legislate in order to balance the interests of affected stakeholders in cases before it.¹⁴

14. Illustrative of the lawful authority of the Commission to establish a program which balances the interests of the parties is *Mobil Exploration & Producing U.S., Inc., et al, v. State Corporation Commission*, 258 Kan. 796, 908 P.2d 1276 (1995). One of the issues determined in that case dealt with the accumulation of the unproduced balance of gas authorized by the Commission to be produced by wells in the Kansas Hugoton field. For example, if the Commission authorized a particular Hugoton well to produce 2,000 Mcf of gas in a month (known as a production allowable), and the well only produced 500 Mcf during that month, the well could accumulate the unproduced balance of 1,500 Mcf and could produce it at a later time – in addition to the later month’s production allowable.

15. One of the parties to the gas conservation docket heard by the Commission, OXY USA Inc. (“OXY”) presented evidence that all accumulated underproduction should be permanently canceled by a deadline of approximately three years after the docket was closed. Other parties opposed OXY and presented testimony in support of their positions. The Commission rejected OXY’s proposal and, instead, provided a 10-year timeframe for wells to produce accumulated underproduction before it was permanently cancelled (which would result in the well being unable to produce any underproduction after the 10-year timeframe elapsed). The Commission’s decision on this issue was appealed to the Kansas Supreme Court.

16. In its appeal to the Kansas Supreme Court, OXY argued that the Commission’s order was unreasonable as not supported by substantial evidence. In these regards, OXY pointed

¹⁴ See *Kansas Gas and Elec. Co. v. State Corp. Commission*, 239 Kan. 483, 490, 720 P.2d 1063 (1986); *Power Comm’n v. Hope Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

out that no party argued for a 10-year timeframe adopted by the Commission. The Court disagreed, stating:

“It is true that no evidence was presented specifically advocating a 10-year time period for the production of pre-1994 underage. Nevertheless, there was evidence in the record that OXY's proposal was too harsh and would damage correlative rights. There was also evidence that the production of underage was essential to the protection of correlative rights and that if the underage proposal was amended, a reasonable time was needed to permit those producers relying on the present BPO a chance to increase production and produce their accumulated underage.”¹⁵

The Kansas Supreme Court approved the 10-year timeframe established by the Commission, as based upon substantial evidence.¹⁶

17. Essentially, the Kansas Supreme Court held that the Commission could reasonably balance the various interests of the parties in dockets before the Commission by positing a resolution which was not specifically sponsored by a party's testimony, provided that the record evidence as a whole provided a basis for the resolution. In other words, the fact that a program advanced by the Commission formed a compromise of the positions urged by the parties does not necessarily mean that the particular program was not supported by substantial evidence. Rather, the test is whether or not the evidence in the record as a whole could allow a reasonable person to conclude as the Commission has concluded. Further, it is imperative that the Commission provide a reasonably detailed roadmap as to how it made that decision.

18. CURB perceives that the Commission has met its obligation to base its Final Order upon substantial evidence. It believes that the record evidence considered as a whole could lead a reasonable person to arrive at the ARP adopted by the Commission.

¹⁵ *Mobil Exploration & Producing U.S., Inc., et al, v. State Corporation Commission*, 258 Kan. 796, 843, 908 P.2d 1276 (1995).

¹⁶ *Id.*

Therefore CURB believes that the Commission's Final Order is reasonable, even though it does not merely parrot exactly what any particular party argued in this docket.

19. To the contrary, the gas utilities argue that the Commission must adopt exactly the positions argued by the parties in this docket. Not only is this not lawfully required, it is terrible public policy. The gas utilities' positions would lead to parties being able to usurp the policy-making function of the Commission, which is an integral part of good utility regulation.

20. With that perspective, a review of the allegations made in the gas utilities' petitions for reconsideration shows that these allegations of error are without merit. Thus the Commission should deny the petitions for reconsideration. These allegations will be discussed below.

21. It appears that, principal among the gas utilities' complaints is that the Commission's decision to require gas utilities to submit a 10-year plan to replace bare steel pipeline in Class 3 locations is not supported by substantial evidence.¹⁷ This is a very interesting argument since all of the gas utilities testified vehemently that public safety dictates that these pipelines be replaced on a much expedited basis. Take, for example how Atmos Witness John S. McDill emphasized the need for accelerated pipeline replacement in Kansas:

"Early one evening, I received a call from our local manager telling me there had been an explosion and fire and we had employees on the scene investigating with local officials. ...When we arrived at the scene, I was not prepared to see the complete devastation of the home. Only portions of the exterior walls of the house remained and debris was scattered in parts of trees and in nearby neighbors' yards. I could only think about the person who lost her life and the surviving family....As we conducted our

¹⁷ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 3-5 (September 27, 2017); Petition for Reconsideration of Atmos Energy Corporation, pp. 2-4 (September 27, 2017); Petition for Reconsideration of Black Hills Energy, pp. 7-8 (September 27, 2017).

investigation, we determined that the cause of the incident was due to corrosion leak as a result of a small section of a steel service line that was isolated from cathodic protection....My heart sank even further when I learned that the natural gas which fueled the explosion came from the system we had the responsibility of operating and maintaining. In our industry, we always have to ask ourselves if we are doing enough and have we considered all the possibilities. We are entrusted to operate a safe and reliable system and we always have to challenge ourselves to think about conditions that may exist but we do not know about. We have to be relentless in our efforts...."¹⁸

Given this testimony, a reasonable person could conclude that bare steel pipelines are an imminent threat to human safety, and that these pipelines must be replaced very quickly, at least in populous areas. Now that the Commission has taken the gas utilities at their word,¹⁹ they now want to change their testimony.

22. In actuality, the gas utilities want the Commission to determine that the bare steel pipelines need to be replaced but only at the pace that the gas utilities deem to be necessary to spur rate base growth opportunities.²⁰ It must be borne in mind that the gas utilities have the obligation to keep their pipelines safe and reliable, and the gas utilities have historically failed at the fundamental task of replacing pipelines on as timely a basis as needed.²¹ Therefore, if the ratepayer is to be surcharged for an accelerated pace of pipeline replacement which is due (at least partially) to the gas utilities' fault, it is unquestionably reasonable that ratepayers should get something (in the form of additional safety) for the additional surcharges. In these regards, KCC staff witness Leo Haynos testified:

¹⁸ Prefiled Direct Testimony of John S. McDill for Atmos Energy Corporation, pp. 7-8 (October 8, 2015)

¹⁹ Final Order, p. 35 (September 12, 2017).

²⁰ Transcript, Vol. 2, pp. 406-407 (Andrea Crane).

²¹ Transcript Vol. I, p. 199, (Randall Spector) p. 199, (Jerry A. Watkins); p. 200 (John S. McDill).

“You know, you can replace pipe and keep it really safe if you replaced it every five years. But it would be really expensive in that hypothetical situation.”²²

KCC staff witness Justin Grady testified:

“But, you know, this topic, this discussion, this business of choosing an alternative ratemaking mechanism, it doesn't lend itself to right or wrong or black or white answers right there. This is a spectrum. And to be honest with you, I've been sort of surprised that an annual type method like GSRS just wouldn't work.”²³

Albeit Mr. Grady was testifying about cost recovery mechanisms, his remarks concerning the spectrum of possibilities is also true with regard to pipeline replacement itself, and certainly shows support for a pipeline replacement program modeling the GSRS. The Commission's accelerated pipeline replacement is clearly justified based upon the various testimony and recommendations of the experts in this docket, which had a very broad range.

23. Certainly, the Final Order demonstrates that the Commission was very concerned with the lack of safety caused by the poor shape of bare steel pipelines in Class 3 locations. If the Commission wanted to cause the pipeline situation to be “very safe,” there was testimony which would support a five-year replacement plan. Rather, the Commission chose to replace those particular pipelines in 10 years; certainly that timeframe was justified by the evidence in the record as a whole. It was clearly a balance between safety and ratepayer cost.

24. Aside from this particular evidence, the Commission's decision is reasonable based upon the evidentiary record as a whole. Read in context, it is clear that the Commission is not requiring pipeline replacement within 10 years, but is merely requiring that a 10-year bare steel pipeline replacement plan be formulated for evaluation

²² Haynos, Vol. I, Tr. 198.

²³ Grady, Vol. II, Tr. 329.

purposes (it is not a final plan). CURB perceives that, once these plans are formulated and filed, the gas utilities, CURB, Commission staff can then refine the replacement plan to form a best fit between safety and costs issues (to be approved by the Commission).

25. Although the findings of the Commission could make it abundantly clear that the 10-year plan is merely a starting point of discussion, a reasonable person surely could conclude on the basis of the evidence that bare steel pipelines should generally be replaced at a quicker pace than the pace recommended by the gas utilities. Moreover, no party would disagree that the Commission's ARP has to start somewhere. In short, the decision to require the gas utilities to formulate a 10-year plan to replace bare steel pipeline in Class 3 locations, as a starting point towards development of an accelerated pipeline replacement plan is supported by substantial evidence, as a majority of the parties submitted various pipeline replacement plans which they termed as malleable.

26. The gas utilities also complain that the four-year pilot program is without evidentiary support.²⁴ However the Commission's decision in these regards again represents a balance between the positions of some of the gas utilities supporting various pipeline replacement pilot programs and CURB's position that an accelerated pipeline replacement program together with a surcharge or deferral cost recovery system are unnecessary and could result in ratepayer confusion.²⁵ Interestingly, KGS presented evidence that a five-year pilot program was completely unnecessary.²⁶

27. Moreover, the Commission's decision to use a four-year pilot is justified by the Commission's decision to put a staggered three-year voluntary rate moratorium

²⁴ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 11-12 (September 27, 2017); Petition for Reconsideration of Atmos Energy Corporation, pp. 2-4 (September 27, 2017).

²⁵ Prefiled Direct Testimony of Edward McGee for CURB, p. 3; Prefiled Direct Testimony of Andrea Crane for CURB, pp. 29-30.

²⁶ Prefiled Direct Testimony of David Dittmore for Kansas Gas Service, a Division of One Gas, Inc., p. 11.

into effect, essentially putting these two aspects of the Commission's Final Order in sync.²⁷ There certainly is evidentiary support for a three-year rate moratorium in connection with the accelerated pipeline replacement program and cost recovery mechanisms.²⁸ It is indubitably reasonable for the Commission to coordinate various aspects of the ARP which it adopted.

28. Furthermore, there is no indication in the petitions for reconsideration that a four-year versus a five-year pilot program materially affect accelerated pipeline replacement. The Commission retains jurisdiction of pipeline replacement and could terminate the program or extend it as the public interest dictates. It is hard to fathom that the gas utilities will be able to justify their programs in five years but cannot do so in four years. Given the record as a whole, it is certainly reasonable to expedite final review of the Commission's ARP by one year and to coordinate it with other aspects of the ARP.

29. The gas utilities also universally complain that there is no evidence in the record which would justify the Commission's finding that the lackadaisical manner in which pipelines have been replaced is due to the fault of the gas utilities, has resulted in safety issues, has been to the detriment of the ratepayer, and has benefited the shareholder.²⁹ Yet, there is evidence directly supporting these findings. Commissioner Apple asked each of the gas utilities whose fault was it that the pipelines are in such need for accelerated replacement. All responded that they were at fault.³⁰ Andrea Crane for CURB echoed the gas utilities' admission of fault. She noted that it certainly was not the

²⁷ Final Order, p. 41 (September 12, 2017).

²⁸ Prefiled Direct Testimony of Justin Grady for Commission Staff, p. 4.

²⁹ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 6-8 (September 27, 2017); Petition for Reconsideration of Atmos Energy Corporation, pp. 6-13 (September 27, 2017); Petition for Reconsideration of Black Hills Energy, pp. 2-7 (September 27, 2017).

³⁰ Transcript Vol. I, p. 199, (Randall Spector) p. 199, (Jerry A. Watkins); p. 200 (John S. McDill).

ratepayer's fault that pipeline replacement fell to such a low priority.³¹ She also noted that these pipelines could have been replaced under the traditional ratemaking model.³² Andrea Crane also testified that the accelerated pipeline replacement programs were being sold as a means to shareholder earnings growth.³³

30. How the gas utilities can argue that their pipelines now need to be replaced at an accelerated pace but also argue that this need is not due to their failure to timely replace their pipelines is beleaguering. Moreover, the gas utilities argument that the Commission found that pipelines are "currently" unsafe is a mischaracterization of the Final Order.³⁴ No party contended that any gas utility's pipeline is currently unsafe.³⁵ Clearly, read in context, the emphasis in the Final Order is to keep those pipelines free from catastrophic failure in the immediate future.³⁶

31. Atmos and KGS further complain that there is no substantial evidence which could justify the Commission's condition that cost recovery for pipeline replacement on a surcharge basis should only apply to pipeline replacement which exceeds average replacement expenditures for years 2014, 2015 and 2016.³⁷ However, this concept was supported by the testimony of CURB witness Andrea Crane who also supported the \$0.40 per month per customer cap on expenditures.³⁸ Clearly there was evidence in the record that the accelerated pipeline replacement program should be

³¹ Transcript, Vol. II, p. 303, lines 19-23, (Andrea C. Crane).

³² Prefiled Testimony of Andrea Crane for CURB, p. 5; pp 21-23.

³³ Prefiled Testimony of Andrea Crane for CURB, pp 22-28.

³⁴ Petition for Reconsideration of Atmos Energy Corporation, p. 5 (September 27, 2017); Petition for Reconsideration of Black Hills Energy, p. 1 (September 27, 2017).

³⁵ Prefiled Direct Testimony of Gary Smith for Atmos Energy Corporation, p. 8; Prefiled Direct Testimony of Randal B. Spector for Kansas Gas Service, a Division of One Gas, Inc., p. 3; Prefiled Direct Testimony of Jerry A. Watkins for Black Hills Energy, p. 5.

³⁶ Final Order, pp. 36-37 (September 12, 2017).

³⁷ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 9-10 (September 27, 2017); Petition for Reconsideration of Atmos Energy Corporation, pp. 2-4 (September 27, 2017)

³⁸ Prefiled Testimony of Andrea Crane for CURB, pp 22-23, p. 34.

structured so as to reasonably protect the ratepayer from rate shock. It is interesting that Black Hills complains that the 10-year bare steel replacement program is “unreasonable due to the significant impact it would have on our customers.”³⁹

32. Black Hills asserts that the requirement to implement the alternative ratemaking mechanism as part of a general rate case filing is counter-intuitive to the reason for using an alternative ratemaking mechanism, i.e., to avoid filing general rate cases.⁴⁰ It is not counter-intuitive to CURB. What Black Hills fails to understand is that the Commission is requiring that pipeline replacement and cost recovery be conducted under the status quo until after the Commission evaluates the same in the next rate case. It is again a balance between CURB’s position that no accelerated pipeline replacement program with a surcharge cost recovery mechanism is necessary and the gas utilities’ positions which demand those programs now.

33. Black Hills and Atmos argue that prioritizing the replacement of bare steel pipe solely on whether it is located in a Class 3 location is unreasonable, essentially arguing that the Commission dismissed the models used by the gas utilities to prioritize the replacement of pipelines.⁴¹ This argument is flawed because it ignores the fact that gas utilities can use the GSRS to replace pipes or can incur the cost to replace pipes and use traditional ratemaking to recover the replacement costs. The gas utilities forget that this docket merely brings about a pilot project. There was abundant evidence in the record that the pilot program for accelerated pipeline replacement is and should be designed to increase safety in populous areas.⁴²

34. Certainly, in view of the evidence as a whole, it is reasonable to start this pilot project in populous locations, such as Class 3 locations. Black Hills’ argument is actually

³⁹ Petition for Reconsideration of Black Hills Energy, p. 7 (September 27, 2017).

⁴⁰ Petition for Reconsideration of Black Hills Energy, p. 9 (September 27, 2017).

⁴¹ Petition for Reconsideration of Black Hills Energy, p. 8 (September 27, 2017); Petition for Reconsideration of Atmos Energy Corporation, pp. 3-4 (September 27, 2017).

⁴² See, for example, Prefiled Direct Testimony of Leo Haynos for the Commission Staff, pp. 2-3.

positing that the utilities, not the Commission, should determine the scope, pace and design of this pilot project. However, under Kansas law, since the Commission's decision is based upon evidence and is reasonable, the Commission's judgment on these issues prevails, as it should.

35. KGS argues that the Commission Final Order ignores the deferred cost recovery mechanism it presented with respect to pipeline replacement, even though KGS acknowledges that the Commission mentions this mechanism.⁴³ Although the Commission did not specifically state all of the reasons why a surcharge recovery mechanism is preferable to KGS's deferred cost recovery mechanism, the Commission made it clear that the surcharge mechanism is preferred because it closely resembles the GSRS.⁴⁴ The Commission also stated that one of its goals is to balance the cost to the ratepayer with the need to replace pipelines on an accelerated basis.⁴⁵ Although the Commission could, in its discretion, make it abundantly clear that the deferred cost recovery mechanism does away with all regulatory lag and is rejected on that basis, the nexus between this reasoning and the Commission's decision to use the surcharge mechanism is obvious.

36. KGS also asserts that the Commission's requirement to develop an annual lost and unaccounted for gas report ("LAUF") is not supported by the evidence.⁴⁶ However, there certainly was testimony in the record from the gas utilities that accelerated pipeline replacement would benefit ratepayers in the form of less gas leaks.⁴⁷ Thus, the development of the LAUF would be helpful for the Commission to determine the benefits to ratepayers arising from less gas leaks in the utilities' systems, all other things being equal. The Commission certainly should be able to design reports from an accelerated pipeline replacement program to ensure that it is

⁴³ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 13-14 (September 27, 2017)

⁴⁴ Final Order, pp. 40-41 (September 12, 2017).

⁴⁵ Final Order, p. 42 (September 12, 2017).

⁴⁶ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 12-13 (September 27, 2017)

⁴⁷ Transcript, Vol. II, pp. 246-248 (Gary Smith).

providing a concrete benefit. The Commission's decision in these regards is suitable and is reasonable.

C. Requests by KGS and Atmos for a Hearing to Present Additional Evidence or to Supplement the Record

37. Atmos contends that it needs to provide additional evidence in this docket relative to the following questions:

- (1) the ARP will only apply to expenditures for replacement of obsolete infrastructure that exceed current expenditures as defined by the majority as the average replacement expenditures for years 2014, 2015, and 2016.
- (2) the ARP will only be available to those gas utilities that can provide a 10-year programmatic replacement of all of its bare steel service/yard lines and all of its bare steel mains in Class 3 locations.
- (3) the amount to be recovered under the ARP shall be limited to 40 cents per customer per month coupled with the 10-year Replacement requirement.⁴⁸

Additionally, KGS raises a number of questions which it believes should be investigated, which include the following:

- a. What are the rate impacts on customers if the utilities are required to compress replacement programs into a 10-year period?
- b. Did the Commission consider that a program requiring removal of all bare steel and cast iron mains in Class 3 locations within the 10-year ARP time frame would divert resources from other projects that present higher safety risks?
- c. Does the \$.40 cap on ARP charges established in the Final Order permit recovery of costs appropriately and reasonably incurred to comply with the 10-year mandate?
- d. What resource constraints would hinder or otherwise negatively impact an unreasonably compressed pipeline replacement schedule?
- e. What impact would implementation of a 10-year pipeline replacement program have on affected towns and cities?⁴⁹

⁴⁸ Petition for Reconsideration of Atmos Energy Corporation, pp. 2-4 (September 27, 2017)

⁴⁹ Petition for Reconsideration of Kansas Gas Service, a Division of One Gas, Inc., pp. 3-6 (September 27, 2017)

Although CURB believes that it is not legally necessary for the Commission to provide the specific relief requested by these gas utilities, CURB believes that it is in the public interest to allow the gas utilities an opportunity to discuss alternatives (or refinements) to the Commission's decision, provided that the parameters of the Commission's decision are upheld.

38. Therefore, CURB would request that the Commission provide a period of time within which the gas utilities could propose alternatives to the pipeline replacement program set out in the Final Order, but that these alternatives keep the major parameters of the pilot program, as follows:

- a. The pilot program should be limited to four years and may be terminated by the Commission or the parties, upon hearing;
- b. Initial pipeline replacement shall be in Class 3 locations and shall be limited to bare steel pipe.
- c. The volunteer rate case moratorium, as set forth in the Final Order shall be maintained.
- d. The utilities shall propose a base amount of pipeline replacement which will be recovered through traditional rate cases, with pipeline replacement exceeding that base to be recovered through a surcharge in addition to the GSRS.
- e. The Commission's cap of \$0.80 (inclusive of the \$0.40 cap in the GSRS) shall be maintained.
- f. The gas utilities shall propose such reports as will show the costs and benefits of their accelerated pipeline replacement programs.
- g. Any alternative suggestions proposed by the gas utilities shall be reviewed by Commission Staff and CURB, so that their comments can be made before Commission approval, modification or rejection.

39. Under this proposal, the Commission's Final Order would stay in place, but the gas utilities could propose refinements on aspects of the ARP while maintaining the Commission's policy objectives. KCC staff and CURB would review the proposals and provide

comments or reports and recommendations (in the case of KCC staff). The Commission would be free to accept, reject or modify these proposals; and in the case of rejection, the Commission's Final Order would stand.

40. CURB believes that by allowing the gas utilities an opportunity to make refinements or alternative proposals to those set out in the Commission's Final Order will satisfy the issues raised by Atmos and KGS in a systematic matter. By having Commission approval or rejection prior to the utilities' next rate cases will foster administrative efficiency at that time. Therefore, CURB believes that this proposal is in the public interest and would request that the Commission approve the same. Upon this basis, CURB requests that the Commission set the petitions for reconsideration for hearing to discuss the benefits of additional testimony and/or collaboration between the gas utilities, Commission staff and CURB on these issues to arrive at refinements to the ARP set out in the Final Order.

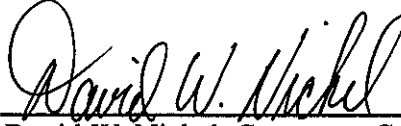
III. Conclusion.

41. CURB believes that the Commission's Final Order is lawful and reasonable. No party asserts that the Commission's Final Order is unlawful. Moreover, the Commission's findings are based upon substantial evidence. The Commission's ARP forms a balance of the various positions urged by the parties in this docket. Since the Commission's order is reasonable, CURB believes that the petitions for reconsideration filed herein by the gas utilities are without merit and should be denied.

42. However, CURB believes that it is in the public interest for the Commission to provide a period of time within which the gas utilities could propose alternatives/refinements to the pipeline replacement program set out in the Final Order, but that these refinements keep the major parameters of the pilot program, as set out above. In these regards, by setting the petitions

for reconsideration for hearing, the benefits of this means to achieve a resolution of the issues in this docket can be weighed and approved, modified or rejected by the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Nickel". The signature is written in a cursive style with a large, looped initial "D".

David W. Nickel, Consumer Counsel #11170

Thomas J. Connors, Attorney #27039

Todd E. Love, Attorney #13445

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

(785) 271-3116 Fax

d.nickel@curb.kansas.gov

tj.connors@curb.kansas.gov

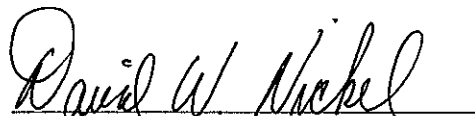
t.love@curb.kansas.gov

VERIFICATION

STATE OF KANSAS)

COUNTY OF SHAWNEE) ss:

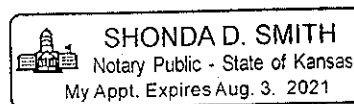
I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am Consumer Counsel for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.


David W. Nickel

SUBSCRIBED AND SWORN to before me this 9th day of October, 2017.


Notary Public

My Commission expires: 08-03-2021.



CERTIFICATE OF SERVICE

15-GIMG-343-GIG

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 9th day of October, 2017, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

JENNIFER G. RIES, VICE PRESIDENT, RATES AND REGULATORY AFFAIRS-
COLORADO/KANSAS
ATMOS ENERGY CORPORATION
1555 BLAKE ST STE 400
DENVER, CO 80202
jennifer.ries@atmosenergy.com

ROBERT J. AMDOR, MANAGER, REGULATORY SERVICES
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY
1102 E FIRST ST
PAPILLION, NE 68046
robert.amdor@blackhillscorp.com

PATRICK JOYCE, SR MANAGING COUNSEL
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY
601 N IOWA ST
LAWRENCE, KS 66044
patrick.joyce@blackhillscorp.com

SAMUEL FEATHER, OFFICE OF GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
s.feather@kcc.ks.gov

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
r.vincent@kcc.ks.gov

JANET BUCHANAN, MANAGER OF RATES & ANALYSIS
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421 W 129TH ST
OVERLAND PARK, KS 66213-2713
janet.buchanan@onegas.com

CERTIFICATE OF SERVICE

15-GIMG-343-GIG

JUDY JENKINS
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421 W 129TH ST
OVERLAND PARK, KS 66213-2634
judy.jenkins@onegas.com

JAMES H. JEFFRIES
MOORE & VAN ALLEN PLLC
100 NORTH TYRON STREET
STE 4700
CHARLOTTE, NC 28202-4003
JIMJEFFRIES@MVALAW.COM

WALKER HENDRIX
ARMSTRONG TEASDALE, LLP
2345 GRAND BOULEVARD, SUITE 2000
KANSAS CITY, MO 64108-2617
whendrix@armstrongteasdale.com

C. MICHAEL LENNEN, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY CHTD
800 SW JACKSON STE 1310
TOPEKA, KS 66612-1216
mlennen@morrislaing.com



Shonda Smith
Office Manager