

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

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

|  |   |                             |
|--|---|-----------------------------|
| In the Matter of the Complaint of Merit Energy | ) | Docket No. 16-CONS-564-CINV |
| Company against ONEOK Field Services           | ) |                             |
| Company, LLC to establish just and reasonable  | ) | License No. 32446           |
| charges for gas gathering pursuant to K.A.R.   | ) |                             |
| 82-3-802                                       | ) |                             |
| _____  | ) |                             |

**PUBLIC VERSION**

**ONEOK FIELD SERVICES COMPANY, L.L.C.'S RESPONSE  
TO THE PETITION FOR RECONSIDERATION OF  
MERIT ENERGY COMPANY AND MERIT HUGOTON, LP**

ONEOK Field Services Company, L.L.C. ("OFS") responds to the Petition for Reconsideration (the "Petition for Reconsideration") filed by Merit Energy Company and Merit Hugoton, L.P. ("Merit").

First, Merit argues that the Commission erred by not using the average high and average low gathering fees reported on the GG-1's to establish a range of reasonableness, but must admit that the \$0.68/MCF fee adopted by the Commission falls within the range of those averages. Specifically, \$0.68/MCF falls within the average low fee (\$0.44/MCF) and the average high fee

(\$0.71) charged by OFS as revealed by the GG-1's.<sup>1</sup> Closing Memorandum and Proposed Findings of Fact and Conclusions of Law of Merit Energy Company and Merit Hugoton, LP ("Merit's Post-Hearing Brief"), Exhibit 1. In addition to falling with the range of those averages, the \$0.68/MCF fee ordered by the Commission is meaningfully less than the \$[REDACTED]/MCF average fee that OFS charges to transport gas to WTG under the 51 contracts renegotiated with other producers in 2015.<sup>2</sup>

Second, Merit suggests that "[a]t the very least the Commission should have started with the \$[REDACTED]/MCF, which represents the average fee under the 51 contracts, and then subtracted \$[REDACTED]/MCF to yield \$[REDACTED]/MCF as the fee to move Merit's gas from the wellhead to WTG." Petition for Reconsideration, p. 8. Merit's suggestion that the \$[REDACTED]/MCF fee under those contracts should be reduced by \$[REDACTED]/MCF is flawed. The \$[REDACTED]/MCF average fee that OFS charges under those 51 renegotiated contracts is actually the fee that is paid by those producers to transport their gas to WTG (i.e., the same service received by Merit). Ms. Moldenhauer testified that OFS retains a portion of the value of the commodities to cover the cost of processing, representing a "fee" in addition to the \$[REDACTED]. Tr. p. 161, l. 19 – p. 162, l. 4. The cost of processing includes the \$[REDACTED]/MCF fee that is paid by OFS to transport that gas across WTG to the processing plant. *Id.* Therefore, if the Commission were to adopt the \$[REDACTED]/MCF fee charged by OFS under the 51 contracts renegotiated in 2015 as Merit suggests, that \$[REDACTED]/MCF should not be reduced by \$[REDACTED]/MCF. OFS would accept that \$[REDACTED]/MCF fee in this docket.

OFS will respond to the Petition for Reconsideration, paragraph by paragraph, as follows:

---

<sup>1</sup> These average fees include both gathering fees and compression fees since Merit utilizes both of those services on OFS's gathering system. The only way that Merit can argue that the \$0.68 falls outside the range of those averages is to either ignore compression fees or rely on Staff's arbitrary allowance of 10% of the compression fee.

<sup>2</sup> As explained below herein, the \$[REDACTED]/MCF fee is for taking that gas to WTG and, because the \$[REDACTED]/MCF charged by WTG is paid by OFS, that fee should not be reduced by \$[REDACTED]/MCF when comparing to what Merit is charged.

1. Merit argues that the Commission improperly ignored evidence that Merit claims supports using averages of gathering fees in lieu of using the high and low fees reported in the GG-1 reports as a factor to determine the justness and reasonableness of OFS's gathering fee. See Petition for Reconsideration, ¶ 1, pp. 2-4.

Merit, Staff and OFS each provided the Commission with an analysis of the information disclosed in the GG-1's and each used averages in their analysis. However, those parties did not agree what numbers should be included in those averages and on how those averages should be calculated. Merit used a simple average of the weighted averages reported in the GG-1's, i.e., an average of an average. Merit's Post-Hearing Brief, Ex. 1. Staff used a simple average of an arbitrary combination of the transportation fee plus 10% of the gathering fee. Staff Post-Hearing Brief, p. 3. OFS used volumetric weighted averages in its calculations. OFS Post-Hearing Brief, pp. 13-15. OFS described and demonstrated how its volumetric weighted average provided a more accurate analysis of the GG-1 data than the averages that were presented by Merit and Staff. *Id.* at pp. 14-15; OFS Reply to Staff's Post-Hearing Brief, pp. 2-3. However, as the Commission properly noted in the Order, no party provided any evidence why the Commission should not consider the full range of high and low fees reported in the GG-1's to determine the range of reasonableness. Order, ¶ 37. In other words, although the parties presented some evidence supporting the use of averages, no party provided evidence that the Commission's reliance on actual reported rates rather than on averages of reported rates to establish the range of reasonableness was improper. In setting fees, the Commission is considered an expert and has the discretion to reject the testimony of any party. See *Western Resources, Inc. v. Kansas Corporation Comm'n.*, 30 Kan.App.2d 348, Syl. ¶ 2, 42 P.3d 162 (2002).

Merit's only argument for using averages was the alleged removal of "outliers" among the reported actual fees. Petition for Reconsideration, pp. 2-3. However, absent evidence to the contrary, the Commission can only assume that those alleged "outliers" are actual contracts agreed to by two parties in an arms-length negotiation. The Commission can fairly assume that was a "market based" transaction. Merit provided no evidence that any such "outlier" was in fact not appropriate to consider or was not a "market-based" fee. In its Petition for Reconsideration, the only "outlier" cited by Merit is Anadarko's gathering fee of \$1.35/MCF. However, OFS's witness Kyle Pearson testified that Anadarko's gathering system was one of only three gathering systems in southwest Kansas that were comparable to the OFS gathering system and, for that reason, was not an "outlier." OFS Post Hearing Brief, pp. 15-16. Moreover, even if the Commission were to exclude Anadarko's \$1.35/MCF fee as an "outlier" in establishing the range of reasonableness, there are still the \$1.14/MCF fee on DCP-Grant County and the \$0.92/MCF fee on DCP-Richfield that are both significantly higher than the \$0.68/MCF fee set by the Commission. Therefore, even excluding the only alleged "outlier" pointed out by Merit, the \$0.68/MCF fee is well within the range of reasonableness established by the Commission.

Merit and Staff both presented evidence that individual gathering fees were reflective of the actual market for gathering services. Merit's witness Bower testified that individual gathering agreements "absolutely establish a market." Order, ¶ 33. Staff's witness Bell testified that fees disclosed in the GG-1's could and should be considered to evaluate the market. *Id.* In its post-hearing brief, OFS stated that the information reported in the GG-1's can provide "a limited snapshot of the market for gathering services" in southwest Kansas. Order, ¶ 38. Thus, the Commission's decision to use the full range of reported actual fees as disclosed in the GG-1's

to determine the range of reasonableness was supported by evidence that such fees are reflective of the actual market for gathering services in southwest Kansas.

2. Merit argues that "[b]y all measures" the \$[REDACTED]/MCF is outside the range of reasonableness and the \$0.68/MCF is "outside . . . or at least at the high end" of that range. Petition for Reconsideration, p. 4. That argument is valid as to the \$[REDACTED]/MCF fee only if you limit the "range of reasonableness" to the range created by low average and high average gathering fees. As shown above, that limitation is not supported by the evidence. Moreover, that argument is not true if you consider the 51 contracts that OFS renegotiated in 2015 in which the weighted average fee received by OFS was \$[REDACTED]/MCF. Order, ¶ 43. Thus, by at least one measure, the \$[REDACTED]/MCF fee is well within the range of reasonableness. Moreover, as shown above herein, even using averages of low rates and high rates in the GG-1's to establish a range of reasonableness, the \$0.68/MCF fee is within that range.

3.-4. Merit points out that "[e]ven the Commission noted the '\$[REDACTED]/MCF gathering fee does not fall within the range of high and low fees that OFS charges other producers.'" Petition for Reconsideration, p. 5. While paragraph 86 of the Order does make that finding, the evidence presented by both Merit and OFS is contrary to that statement. The following table shows the high fees reported in the GG-1's for gathering and compression charged by OFS as taken from the schedules that were attached to Merit's post-hearing brief and OFS's post-hearing brief:

| System     | Merit (Reported High Fee) |             |          |     | OFS (Reported High Fee) |             |          |
|------------|---------------------------|-------------|----------|-----|-------------------------|-------------|----------|
|            | Gathering                 | Compression | Combined |     | Gathering               | Compression | Combined |
| Hugoton    | 0.81                      | 0.30        | 1.11     | (a) | 0.809                   | 0.304       | 1.113    |
| Finney 1   | 0.98                      | -           | 0.98     |     | (b)                     |             |          |
| Sublette   | 0.73                      | 0.24        | 0.97     |     | 0.728                   | 0.241       | 0.969    |
| Haskell    | 0.71                      | 0.23        | 0.94     |     | 0.705                   | 0.231       | 0.936    |
| Seward     | 0.72                      | 0.17        | 0.89     |     | 0.724                   | 0.172       | 0.896    |
| Finney 4   | 0.61                      | 0.21        | 0.82     |     | 0.608                   | 0.206       | 0.814    |
| Finney 2   | 0.54                      | 0.22        | 0.76     |     | 0.538                   | 0.223       | 0.761    |
| Beaverco12 | 0.62                      | -           | 0.62     | (b) |                         |             |          |
| Tate       | 0.57                      | -           | 0.57     |     | 0.566                   | -           | 0.566    |
| Lakin      | 0.53                      | -           | 0.53     |     | 0.525                   | -           | 0.525    |
| Syracuse   | 0.51                      | -           | 0.51     | (b) |                         |             |          |
| Kearney NC | 0.42                      | -           | 0.42     |     | 0.419                   | -           | 0.419    |
| Morton NC  | 0.41                      | -           | 0.41     |     | 0.412                   | -           | 0.412    |
| Finney NC  | 0.36                      | -           | 0.36     |     | 0.364                   | -           | 0.364    |

Merit's Post-Hearing Brief, Ex. 1; OFS Post-Hearing Brief, Ex. A, p. 2. In this table, all of the reported high fees for gathering and compression (i.e., the services used by Merit) charged by OFS that are above the black line exceed \$[REDACTED]/MCF. Thus, there were 5 systems on which the high reported fee charged by OFS was greater than \$[REDACTED]/MCF.<sup>3</sup> Thus, the \$[REDACTED]/MCF fee is less than the rate charged to many producers and does fall within the range of fees charged by OFS to other producers. Moreover, even if you were to give "credit" to Merit as a "low user of compression," the \$[REDACTED]/MCF fee does reflect a discount from the highest levels of gathering and compression fees charged by OFS to other producers.

5.-7. Merit argues that reconsideration is required based upon "the Commission's fundamental misunderstanding" of the significance that even a few cents per MCF makes on the operator. Petition for Reconsideration, ¶ 5, p. 6. That issue, however, is a "red herring" because the Commission did not make any findings regarding that impact, and the Commission did not base its decision on the economic impact of the gathering fee on either party.

<sup>3</sup> The 5 gathering systems that are "above the line" cannot be considered "outliers" since those 5 systems represent approximately 44% of the total volume of gas reported on all of those OFS systems.

Merit's argument assumes that the Commission made a finding or otherwise concluded that the \$0.68/MCF fee ordered by the Commission will not have a significant adverse economic impact on Merit. The Commission made no such finding. In fact, when discussing "Factor 7: Fiscal Impact to All Parties" (See Order at ¶¶ 71 – 74), the Commission concluded that it would be speculative to give any weight to that factor when reviewing the gathering fee at issue in this docket. Therefore, the Commission did not consider that factor in reaching its decision in this docket.

Moreover, the economic impact of gathering fees is simply a matter of "which side of the fence" you are on. The economic benefit to Merit of a lower gathering fee is equal to the economic detriment to OFS from that lower gathering fee. Both parties are equally impacted, in opposite directions, by any change in gathering fee.<sup>4</sup> For that reason, the Commission properly declined to take into consideration the economic impact of the gathering fee on either party.

Finally, Merit supports this argument by describing the adverse economic impact on Merit of any increase in the gathering fee under the 2007 Contract. That argument, and the consideration of that evidence by the Commission, is improper. The 2007 Contract is not at issue in this docket and is not impacted by the Commission's decision in this docket. In addition, the 2007 Contract terminates on [REDACTED]. No new gathering fee has been either discussed or decided upon for the volumes of gas transported by OFS under that contract, so the economic impact on either party is not known at this time. For Merit to ask the Commission to consider, when ruling on the merits of the complaint at issue in this docket, how its decision in this docket may impact Merit under another unrelated contract is improper.

8. The Commission correctly determined that Merit presented no evidence that the 51 other producers who signed new contracts with OFS in 2015 were unable or unwilling to file

---

<sup>4</sup> Assuming that commodity prices remain constant.

complaints if they thought that doing so was necessary. The Commission may properly take judicial notice of its docket and determine that no such complaints have been filed. Moreover, all of the evidence that Merit presented in support of this argument was circumstantial, and consisted of reasons why those producers may have been motivated not to file complaints. However, Merit presented no direct evidence from any of those 51 producers to support its argument and for the Commission to find that any of those producers were unable or unwilling to file complaints would be pure speculation.

In conclusion, Merit argues that "there is no basis in the record" for using \$[REDACTED]/MCF as a starting point "other than it lies between \$0.02/MF and \$1.35/MCF." Petition for Reconsideration, p. 8. Merit ignores that \$[REDACTED]/MCF was the fee that was offered to Merit by OFS and is the subject of Merit's complaint in this docket. That fee was the only logical starting point that the Commission could have used. The Commission's sole task in these proceedings was to determine whether the \$[REDACTED]/MCF fee offered by OFS was unreasonable, unjust or discriminatory. This was not a "rate making" proceeding. The Commission's sole task was to consider and evaluate the reasonableness of the \$[REDACTED]/MCF fee at issue in this docket. For that reason, the Commission was compelled to start its analysis with that fee. For the reasons set forth herein, the Petition for Reconsideration filed by Merit should be denied.

*s/ David E. Bengtson*

---

David E. Bengtson (#12184)  
STINSON LEONARD STREET LLP  
1625 N. Waterfront Parkway, Suite 300  
Wichita, Kansas 67206-6620  
(316) 265-8800  
Fax: (316) 265-1349

*Attorneys for ONEOK Field Services Company, L.L.C.*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of March, 2017, the foregoing ONEOK Field Services Company, L.L.C.'s Response to the Petition for Reconsideration of Merit Energy Company and Merit Hugoton, LP was electronically filed with the Kansas Corporation Commission and served electronically to:

Jeff Kennedy  
Stanford J. Smith  
Martin, Pringle, Oliver, Wallace & Bauer, L.L.P.  
100 N. Broadway, Suite 500  
Wichita, KS 67202  
[jkennedy@martinpringle.com](mailto:jkennedy@martinpringle.com)  
[sjsmith@martinpringle.com](mailto:sjsmith@martinpringle.com)  
*Attorneys for Merit Energy Company*

John G. McCannon  
Litigation Counsel  
Kansas Corporation Commission  
266 N. Main St, Suite 220  
Wichita, Kansas 67202-1513  
[j.mccannon@kcc.ks.gov](mailto:j.mccannon@kcc.ks.gov)

s/ David E. Bengtson  
David E. Bengtson, #12184  
*Attorneys for ONEOK Field Services Company, L.L.C.*