

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

In the Matter of the Complaint of SWKI-Seward)
West Central, Inc. and SWKI-Stevens Southeast,) Docket No. 14-ANGG-119-COM
Inc. Against Anadarko Natural Gas Company.)

**RESPONSE OF ANADARKO NATURAL GAS COMPANY TO THE
OBJECTION OF SWKI-SEWARD WEST CENTRAL, INC. AND
SWKI-STEVENSON SOUTHEAST, INC. TO THE JOINT MOTION FOR
APPROVAL OF STIPULATED SETTLEMENT AGREEMENT**

Anadarko Natural Gas Company (“ANGC”) hereby files its Response with the State Corporation of the State of Kansas (“Commission” or “KCC”) to the January 28, 2014 Objection (“NPU Objection”) filed by SWKI-Seward West Central, Inc. (“SWKI-SWC”) and SWKI-Stevens Southeast, Inc. (“SWKI-SE”) (collectively, the “NPUs”) to the Joint Motion for Approval of Stipulated Settlement Agreement (“Joint Motion”) and corresponding Stipulated Settlement Agreement (“Settlement Agreement”) filed by the Commission Staff, ANGC, and Anadarko Energy Services Company (“AES”) (collectively, the “Settling Parties”) on January 15, 2014.

The NPUs take the wholly unsupportable and untenable position that a private party—with absolutely no rights or causes of action under a state civil penalty statute—has any right or interest to deny the resolution of an exclusive state claim.

ANGC respectfully requests the Commission overrule the NPU Objection and approve the jointly filed Settlement Agreement. The Settlement Agreement is expressly limited to the resolution of the separate and distinct civil penalty claims of the Kansas Corporation Commission, as recommended by Staff in its November 26, 2013 Report and Recommendation (“R&R”). The Settlement Agreement does not in any way affect or prejudice the existing claims contained in the NPU Complaint. It resolves and settles penalty provisions of Kansas statutes

(K.S.A. 66-138) that have no application to, or impact on, the NPU claims—but are instead exclusively reserved for the Kansas Corporation Commission.

The NPU Objection fails to recognize that the Settlement Agreement specifically and exclusively addresses Staff's allegations that ANGC and AESC may have violated K.S.A. 66-115 and K.S.A. 66-131. These Staff allegations, if ultimately ordered by the Commission, could result in the payment of civil penalties by ANGC and AESC exclusively to the Kansas Corporation Commission pursuant to K.S.A. 66-138. Contrary to the NPU Objection, the Settlement Agreement does not resolve, or affect in any way, any issue related to compliance with K.S.A. 66-109, K.S.A. 66-1,203, K.S.A. 66-117, as alleged by the NPUs, or the NPUs claim for refunds based on the contended applicability of *Sunflower Pipeline Co. v. State Corp. Comm'n*.¹

Separately, the Settling Parties provided the NPUs with notice of the Settlement Agreement precisely as required by Kansas law. According to Commission regulation, the NPUs had ten days from the filing of the Settlement Agreement to file their written objections.² The NPUs failed to submit their Objection within the ten day objection period. As a matter of law, the NPUs have waived any and all right to object to the Settlement Agreement.³

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. AESC supplied SWKI-SE with natural gas and natural gas service for fifteen years pursuant to a Gas Sales Agreement dated July 1, 1998. ANGC supplied SWKI-SWC with natural gas and natural gas service for eleven years pursuant to a separate Gas Sales Agreement dated June 1, 2002. At no time prior to the instant Complaint, did SWKI-SE or SWKI-SWC

¹ *Sunflower Pipeline Co. v. State Corp. Comm'n*, 5 Kan.App.2d 715 (1981).

² K.A.R. 82-1-230a(c).

³ *Id.*

complain to the KCC, ANGC, or AESC regarding any aspect of service under the 1998 or 2002 Gas Sales Agreements.

2. On February 11, 2013, ANGC and Black Hills Energy (“Black Hills”) filed a Joint Application in Docket No. 13-BHCG-509-ACQ.⁴ ANGC and Black Hills requested Commission approval to transfer a portion of the Hugoton Residue Delivery System (“HRDS”), and all associated ANGC and AESC customer-specific contracts, from ANGC to Black Hills. The 1998 SWKI-SE Gas Sales Agreement and the 2002 SWKI-SWC Gas Sales Agreement were included in the requested transfer. Upon Commission approval of the Joint Application, the \$0.50 per MMBtu rate enjoyed by SWKI-SE and SWKI-SWC for over a decade would increase to the moderately higher, Commission approved Black Hills tariff rate.

3. The NPUs filed the instant Complaint on August 27, 2013.⁵ The NPUs allege that ANGC and AESC failed to file the 1998 and 2002 Gas Sales Agreements in violation of K.S.A. 66-109, K.S.A. 66-1,203, and K.S.A. 66-117. The NPUs do not contend that ANGC or AESC did not precisely perform their obligations under the 1998 and 2002 Gas Sales Agreements.⁶ In fact, the NPUs agree that AESC and ANGC performed in each and every manner prescribed by the individual agreements.⁷

4. The Commission approved the Joint Application of ANGC and Black Hills on October 3, 2013.⁸

5. Staff filed its Report and Recommendation in this docket on November 26, 2013.⁹ The Staff R&R recommended the Commission assess civil penalties—under K.S.A. 66-

⁴ *Joint Application*, Docket No. 13-BHCG-509-ACQ, February 11, 2013.

⁵ *Complaint of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Against Anadarko Natural Gas Company*, Docket No. 14-ANGG-119-COM, August 27, 2013.

⁶ *Objection of of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. to Joint Motion For Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 28, 2014, at 13-14.

⁷ *Id.*, at 13-14.

⁸ *Order Approving Joint Application*, Docket No. 13-BHCG-509-ACQ, October 3, 2013.

138(a)(2)—against ANGC and AESC. Staff recommended the KCC order a \$55,000 civil penalty against AESC for an alleged violation of K.S.A. 66-131. Likewise, Staff requested the Commission impose a civil penalty of \$41,100 against ANGC for an alleged violation of K.S.A. 66-115. The civil penalties requested by Staff were asserted on behalf of the State of Kansas and would have been payable exclusively to the Kansas Corporation Commission—not the NPUs. The Staff R&R explicitly stated that Staff took no position regarding the refunds claimed by the NPUs.¹⁰

6. Settlement discussions were exclusively related to the alleged civil penalties recommended by Staff under K.S.A. 66-138. The State’s recovery of civil penalties pursuant to K.S.A. 66-138 could not be a part of any claim by the NPUs. And a finding by the Commission, if made in this Docket, would result in the payment of civil penalties to the Kansas Corporation Commission—not the NPUs. As a non-party to any civil penalty, the NPUs had no interest in, or right to settle the civil penalty claims of the KCC.

7. The NPUs, Staff, ANGC, and Advisory Counsel held a scheduling conference by telephone on January 6, 2014. During the conference, the parties agreed that before a formal procedural schedule would be established, certain threshold legal issues should be briefed by ANGC and the NPUs. Staff stated that it did not intend to file a legal brief addressing the threshold legal issues.¹¹ The parties agreed that after these threshold legal issues between the NPUs and ANGC were determined by the Commission, the Commission would establish a formal procedural schedule—including the possibility of a scheduled settlement conference. The parties did not discuss delaying or preventing settlement negotiations.

⁹ *Report and Recommendation*, Utilities Division, Docket No. 14-ANGG-119-COM, November 26, 2013.

¹⁰ *Id.*, at 6.

¹¹ Exhibit A; See also *Prehearing Officer’s Order Setting Procedural Schedule*, Docket No. 14-ANGG-119-COM, February 3, 2014, at 3.

8. The Settling Parties filed the Joint Motion and associated non-unanimous Settlement Agreement on January 15, 2014. The NPUs were served with electronic notice of the joint filing at 4:29 p.m. on January 15, 2014. Service of the Settlement Agreement on the NPUs was performed exactly as required by K.A.R. 82-1-216(b). The negotiated settlement amount is payable to the Kansas Corporation Commission.¹²

9. The NPU Objection was filed with the Commission on January 28, 2014.

II. ARGUMENT AND AUTHORITY

A. The NPUs Filed Their Written Objection to the Settlement Agreement Out-of-Time and Have Waived All Right to Object.

10. The NPUs have fully waived their right to object to the Settlement Agreement. K.A.R. 82-1-230a(a)(3) permits parties to a Commission docket to enter into non-unanimous settlement agreements that may be opposed by one or more parties. Upon the filing of a non-unanimous settlement agreement, K.A.R. 82-1-230a(c) provides that “each party objecting to the settlement agreement *shall file a written objection within 10 days after the filing of the settlement agreement.*”¹³ An opposing party’s “[f]ailure to object in a timely manner shall constitute a waiver of that party’s right to object to the settlement agreement.”¹⁴

11. K.A.R. 82-1-217 prescribes the manner in which the Commission and parties practicing before the KCC must compute **periods** of time set forth in the Kansas Administrative Regulations or applicable statutes. According to K.A.R. 82-1-217(a), the day on which the designated period of time would otherwise begin to run is not included in the Commission’s computation of time. This means that the day on which a pleading, such as the non-unanimous Settlement Agreement, is filed with the KCC does not count towards a party’s response time.

¹² See *Joint Motion for Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 15, 2014, Attachment A at 3.

¹³ K.A.R. 82-1-230a(c) (emphasis added).

¹⁴ K.A.R. 82-1-230a(c) (emphasis added).

Legal holidays are also excluded from the computation of a response time.¹⁵ The last day of a responsive period is included in the computation of time, unless that last day falls on a Saturday, Sunday, or legal holiday.¹⁶ In that case, the period runs until the end of the next weekday.¹⁷ An additional three days may be added to any period *only if service of a pleading is completed by mail*.¹⁸

12. The Settling Parties filed the Settlement Agreement on January 15, 2014. Service of the Joint Motion and Settlement Agreement to the NPU's was immediately completed via email on January 15, 2014.¹⁹ The NPU's were not served by mail.²⁰ The ten day period beginning on January 16, 2014 included a legal holiday on January 20, 2014. Excluding this day from the ten day objection period results in the ten day period ending on Sunday, January 26, 2014. Therefore, the final day for the NPU's to file their written objection to the Settlement Agreement was Monday, January 27, 2014.²¹ The NPU Objection was not filed until January 28, 2014—after the K.A.R. 82-1-230a(c) objection period had run. Thus, the NPU's completely waived any right to object to the Settlement Agreement and the NPU Objection should be overruled.

B. *The Settling Parties Were Not Required To Include the NPU's in, or Inform The NPU's of, the Informal Settlement Negotiations.*

13. The Settling Parties were not required to inform the NPU's that they were engaged in settlement discussions regarding Staff's claims. Nor was it necessary for the Settling Parties to include the NPU's in those discussions. The Commission's regulations permit parties to a KCC docket to enter into non-unanimous settlement agreements.²² A non-unanimous settlement

¹⁵ K.A.R. 82-1-217(a).

¹⁶ K.A.R. 82-1-217(a).

¹⁷ K.A.R. 82-1-217(a).

¹⁸ K.A.R. 82-1-217(c).

¹⁹ Exhibit B.

²⁰ Exhibit B.

²¹ A demonstrative illustration of the NPU's' ten day objection period is attached hereto as Exhibit C.

²² K.A.R. 82-1-230a(a)(3).

agreement by definition is “entered into by fewer than all parties to the proceeding” and is opposed by at least one party.²³ Further, the KCC has repeatedly held that “[a] *settlement of issues, all or part, with or without unanimous agreement*, will be entertained by the Commission.”²⁴

14. The Settlement Agreement exclusively resolves Staff’s recommendation that ANGC and AESC pay civil penalties pursuant to K.S.A. 66-138. A settlement to resolve state claims under K.S.A. 66-138 in no way resolves, affects, or precludes any of claims or allegations asserted by the NPUs through their Complaint.

15. Essentially, Staff’s R&R was a separate and distinct Staff action against ANGC and AESC interjected into the pending NPU Complaint docket. The relief requested by Staff was an exclusive state penalty, which in no way affects the NPUs. If Staff’s claims are not settled, are accepted by the Commission, and the recommended civil penalties are ordered by the KCC, those civil penalties will be payable only to the Kansas Corporation Commission—not to the NPUs.

16. The Staff R&R recognizes this difference and distinguishes the Staff position from the NPU Complaint. After outlining the results of Staff’s investigation and recommended relief, the Staff R&R states:

In this complaint, the NPUs request the Commission find the contracts between ANGC or AESC and the NPUs are not valid and that all rates charged by ANGC are subject to refund, with interest. ***Staff believes the contractual dispute between the parties is legal in nature and beyond the scope of this Report.*** Therefore, we

²³ K.A.R. 82-1-230a(a)(3).

²⁴ See e.g., *Order Approving Stipulated Settlement Agreement*, Docket No. 05-HDBM-302-SHO, at 2 (emphasis added.); *Order Approving Stipulated Settlement Agreement*, Docket No. 05-JAMM-445-SHO, at 2 (emphasis added.)

recommend the Commission request legal briefs from the parties regarding this issue.²⁵

Thus, other than setting forth the purported results of an investigation into the Commission's file, the Staff refrained from taking any position on the alleged statutory violations and relief requested by the NPU's.

17. The situation faced by ANGC and AESC in the docket is not unlike that of a defendant who is sued by separate plaintiffs based on different theories (e.g., contract and tort) for alleged injuries resulting from the same automobile accident. While the relevant facts of each plaintiff's case may in some ways be similar, the relief requested and need to prove specific damages is separate, distinct, and individual to each plaintiff. Add to this example, the case of the federal government claiming, perhaps, that the injuries were caused by a failure to recall and repair defective brakes. Kansas law permits a defendant to settle such individual claims separately from any distinct claims asserted by other claimants.²⁶

B. *The Settlement Agreement Was Not Contrary To and Did Not Abrogate the Parties' January 6, 2014 Agreement Regarding a Procedural Schedule.*

18. The Settlement Agreement in no way contradicts the parties' discussions or agreement during the January 6, 2014 scheduling conference.²⁷ During that conference, the parties agreed that prior to establishing a formal procedural schedule, ANGC and the NPU's would file legal briefs on certain threshold legal issues.²⁸ Following a Commission decision on the issues contained in the ANGC and NPU briefs, the KCC will issue a full procedural

²⁵ *Report and Recommendation*, Utilities Division, Docket No. 14-ANGG-119-COM, November 26, 2013, at 6 (emphasis added).

²⁶ See e.g., *Bennett v. Conrady*, 180 Kan. 485, Syl. 1 (1957) (common defendant settled two of five separate plaintiffs' claims arising from same accident).

²⁷ See *Prehearing Officer's Order Setting Procedural Schedule*, Docket No. 14-ANGG-119-COM, February 3, 2014, at 2 ("At the January 6, 2014 prehearing conference, the parties agreed to address certain threshold issues in legal briefs to allow the Commission to determine whether it has jurisdiction to hear this dispute.").

²⁸ *Id.*

schedule.²⁹ Consistent with that agreement, the parties jointly presented the Commission with a limited, initial briefing schedule.³⁰

19. ANG, AES, and Staff did not discuss, and certainly did not agree to postpone or forego settlement negotiations. The NPs' wholly unsupported claim that the Settling Parties acted in bad faith, or contrary to an alleged verbal agreement between the parties, is entirely false. Essentially, it is the outrageous position of the NPs that a private party may prevent the State from resolving State claims under a statute that provides for civil penalties payable exclusively to the State.

20. Under Kansas law and absent a clear agreement otherwise, litigants may settle a matter, or any portion of a matter, at any time.³¹ The parties to the January 6, 2014 scheduling conference did not discuss or agreed to delay or prevent settlement negotiations. Accordingly, the NPs were free to initiate settlement discussions with ANG and AES at any time. The Settling Parties were also permitted to continue their negotiations. For the reasons described above, the Settling Parties were not required to include the NPs in those negotiations. And the NPs were served with sufficient, legally required notice of the Joint Motion pursuant to Kansas law.

C. *The Settlement Agreement Meets the Commission's Five Factor Test, Is Lawful, and is in the Public Interest.*

21. Kansas law strongly favors settlement agreements.³² The Commission also encourages the "amicable resolution of disputed issues" through settlement.³³ In evaluating a proposed settlement agreement, the Commission must independently conclude that the

²⁹ *Id.*

³⁰ *Id.*

³¹ K.S.A. 77-505. See also *Order Canceling Hearing*, Docket No. 01-PNRT-929-AUD, January 24, 2002, at 2 ("The Kansas Administrative Procedures Act does not preclude informal settlement of matters that may make unnecessary more elaborate proceedings.").

³² See e.g., *Bright v. LSI Corp.*, 254 Kan. 885, 858 (1994); *Ellis v. Union Pacific R.R. Co.*, 231 Kan. 182,192 (1982).

³³ *Order Adopting Stipulation and Agreement*, Docket No. 03-MDWE-001-RTS, February 14, 2003, at 3.

agreement is a reasonable resolution of the issues.³⁴ The Commission will determine whether a proposed settlement agreement: (1) is supported by substantial competent evidence in the record as a whole; (2) will result in just and reasonable rates; and (3) is in the public interest.³⁵

22. The KCC established a five factor test to evaluate the reasonableness of non-unanimous settlement agreements in Docket No. 08-ATMG-280-RTS [hereafter, the “Atmos Settlement Order”].³⁶ The five factors are:

- (1) whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement;
- (2) whether the stipulation and agreement is supported by substantial competent evidence;
- (3) whether the stipulation and agreement conforms with applicable law;
- (4) whether the stipulation and agreement results in just and reasonable rates;
- (5) whether the results of the stipulation and agreement are in the public interest including the customers represented by the party . . . not consenting to the agreement.³⁷

The Settlement Agreement satisfies all five factors articulated by the Commission in the Atmos Settlement Order.

i. The NPU's have had an opportunity to be heard on their reasons for opposition to the Settlement Agreement.

23. The NPU's have clearly had an opportunity to be heard on their reasons for opposing the Settlement Agreement. K.A.R. 82-1-230a(c) permits any party that opposes a settlement agreement to submit a written objection within ten days after the agreement is filed. A

³⁴ *Citizens Utility Ratepayer Board v. Kansas Corp. Comm'n*, 28 Kan.App.2d 313, 316 (2000).

³⁵ *Order Approving Non-unanimous Stipulation and Agreement with Modification*, Docket No. 12-WSEE-112-RTS, April 18, 2012, at 12.

³⁶ *Order Approving Contested Settlement Agreement*, Docket No. 08-ATMG-280-RTS, May 12, 2008, at 5.

³⁷ *Order Approving Contested Settlement Agreement*, Docket No. 08-ATMG-280-RTS, May 12, 2008, at 3.

party that fails to submit its written objections within ten days waives its right (and the opportunity) to object.³⁸

24. The NPUs filed the NPU Objection to the Settlement Agreement on January 28, 2014—one day after the objection period provided by K.A.R. 82-1-230a(c) expired.³⁹ The ten day objection period afforded the NPUs sufficient time to present the Commission with their reasons for opposing the Settlement Agreement. As the NPUs failed to adhere to the Commission’s regulations, the NPUs failed to take advantage of their opportunity to be heard and have fully waived their right to oppose the Settlement Agreement.

25. Alternatively, if the Commission determines that the NPUs have not waived their right to object, the January 28, 2014 NPU Objection clearly sets forth the NPUs reasons for opposing the Settlement Agreement. The KCC determined in the Atmos Settlement Order that a party’s written objection, and subsequent participation in evidentiary hearings, provided a sufficient opportunity to oppose a non-unanimous settlement agreement.⁴⁰ If the NPU Objection is not rejected as filed out-of-time, the NPUs will still enjoy the same opportunity to present their opposition as that discussed in the Atmos Settlement Order. The NPUs had and may continue to have the opportunity to be heard on their reasons for opposition.

ii. The Settlement Agreement is supported by substantial competent evidence.

26. Substantial competent evidence is “evidence which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.”⁴¹ A Commission decision is not supported by

³⁸ K.A.R. 82-1-230a(c).

³⁹ See *Objection of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. to Joint Motion For Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 28, 2014.

⁴⁰ See *Atmos Settlement Order*, Docket No. 08-ATMG-280-RTS, May 12, 2008, at 11.

⁴¹ *Graves Truck Line, Inc. v. State Corp. Comm’n*, 215 Kan. 565, 569 (1974).

substantial competent evidence “only when the evidence shows the [Commission’s] determination ‘is so wide of the mark as to be outside of the realm of fair debate.’”⁴² The Commission is not required to articulate its findings in “minute detail,” but its findings must “be specific enough to allow judicial review of the reasonableness of the order.”⁴³

27. The evidence relied on by the Settling Parties consists of the responsive pleadings filed by ANGC and Staff’s November 26, 2013 R&R. These pleadings provide the Commission with the facts and evidence related to Staff’s civil penalty claims asserted under K.S.A. 66-115 and K.S.A. 66-131. In addition, the Joint Motion (pages 1-4), Settlement Agreement (pages 1-2), and the proposed Order Approving Stipulated Settlement Agreement (pages 1-4) each contain extensive and accurate descriptions of the evidence and factual basis on which the Settlement Agreement is based. ANGC’s pleadings, the Staff’s R&R, and the settlement documents all constitute “substantial competent evidence.” All possess “something of substance and relevant consequence” to the proceeding and furnish “a substantial basis of fact” on which the Commission can base its decision.

28. Contrary to the assertion by the NPU’s, the record with regard to Staff’s separate claims under K.S.A. 66-115 and K.S.A. 66-131 is not incomplete. And the Settling Parties are not “attempting to force settlement of an issue without allowing the aggrieved party to develop and present legal arguments to the Commission.”⁴⁴

29. While ANGC and the NPU’s have agreed to brief threshold legal issues, Staff has expressly disclaimed any interest in those pending issues. Staff has repeatedly informed the parties that its interest in this docket is limited to the issues set forth and the state specific civil

⁴² *Zinke & Trumbo, Ltd. V. Kansas Corp. Comm’n*, 242 Kan. 470,474 (1988) (quoting *Kansas-Nebraska Natural Gas Co. v. Kansas Corp. Comm’n*, 217 Kan. 604, 617 (1975)).

⁴³ *Id.*, at 475.

⁴⁴ See *Objection of of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. to Joint Motion For Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 28, 2014, at 9.

penalties requested in its R&R. The Staff's claims are separate and distinct from the claims of the NPUs, and the civil penalties recommended by Staff would in no event be payable to the NPUs. Further, the Settlement Agreement as filed does not adversely affect or prejudice the NPUs' claims. As extensively detailed above, the Settlement Agreement in no way precludes Staff from responding to discovery or being cross examined regarding the facts set forth in its R&R.

30. The NPUs claim that the Settlement Agreement is not based on substantial competent evidence because it is allegedly inconsistent with the facts set forth in Staff's R&R. This assertion is completely false and entirely unsupported by a reasonable, objective reading of the R&R and Settlement Agreement.

31. The NPUs take issue with the following provision of the Settlement Agreement, in which Staff, ANGC, and AESC agree that:

During the period July 1, 1998 through November 1, 2013, ANGC and AESC have *either*: (a) submitted to the Commission any contracts for the sale of natural gas from the Hugoton Residue Delivery System ("HRDS") or (b) that any such contract(s) that were not submitted for filing to the Commission have been executed by the contracting parties thereto, and performance thereunder has either been (i) in compliance with the terms of the applicable contracts, or (ii) performance under the contracts has taken place without complaint to the Commission, except as filed in the above entitled Docket on July 27, 2013.⁴⁵

The NPUs claim that not only is this provision inconsistent with the Staff's R&R, it also "fails to understand the nature of the NPUs' complaint."⁴⁶ When read objectively it is clear that the NPUs' issues with this provision are without merit.

⁴⁵ *Joint Motion for Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 15, 2014, Attachment A at 2-3 (emphasis added).

⁴⁶ *Objection of of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. to Joint Motion For Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 28, 2014, at 13.

32. The above provision is entirely consistent with the Staff's R&R. Beginning on the first page of the Staff R&R, Staff describes the NPUs gas sales agreements and clearly states:

Staff also notes the contracts in question:

- *Were signed by each party to the contract;*
- *Until the subject complaint was filed, no complaint regarding services provided by an Anadarko company has been received from the NPUs; and*
- *The contracts allow for either party to terminate the agreement within 30 days notice. The failure of the NPUs to terminate the contract over the last 19 years for SWKI-SWC and for the last 11 years for SWKI-SE indicates their agreement to the terms of their respective contracts.*⁴⁷

As can be seen by a side-by-side comparison, the language included in the Settlement Agreement is nearly identical to the language within Staff's R&R.

33. Finally, the Settlement Agreement language quoted above was not included in order to characterize the NPUs' view of the the "nature" of their complaint. It was merely a recitation of fact and position. This recitation was accurate and remains fully applicable to the NPU complaint. The Settlement Agreement language provides that:

- (1) ANGC and AESC supplied the NPUs with natural gas service "[d]uring the period July 1, 1998 through November 1, 2013;"
- (2) ANGC and AESC maintain that each "submitted to the Commission any contracts for the sale of natural gas from the Hugoton Residue Delivery System ("HRDS");"
- (3) The Staff R&R states that any contracts that, in Staff's view, may not have been properly submitted to the Commission were "executed by the contracting parties thereto;" and
- (4) Performance under all HRDS contracts was *either* "in compliance with the terms of the applicable contracts" *or* performance

⁴⁷ *Report and Recommendation*, Utilities Division, Docket No. 14-ANGG-119-COM, November 26, 2013, at 1-2 (emphasis added).

occurred “without complaint to the Commission, except as filed in the above entitled Docket on July 27, 2013.”

As broken down, it is clearly evident that the paragraph with which the NPUs take issue is an entirely accurate statement of fact and the positions of ANGCO, Staff, and the NPUs.

34. The Settlement Agreement is supported by substantial competent evidence. As submitted, it resolves only Staff’s separate and distinct request that ANGCO and AESC pay civil penalties to the Kansas Corporation Commission. The agreement in no way affects the pending NPU Complaint or the NPUs’ rights to develop a full record through discovery, legal briefing, oral argument, or cross examination. The Settlement Agreement is entirely consistent with the filed positions of Staff and ANGCO, and was executed only after extensive, arms-length negotiation.

iii. The Settlement Agreement conforms with applicable law.

35. The Settlement Agreement complies with all applicable state and federal law, and is supported by substantial competent evidence. The Settling Parties engaged in extensive arms-length negotiations to reach a final settlement on Staff’s separate and distinct civil penalty request. The Settling Parties heavily relied upon both the form and substance of the joint motion for approval, stipulated settlement agreement, and proposed order filed with and approved by the Commission in Docket No. 08-KMOP-032-COC (“KM Settlement”). In addition, special care was used to prevent the Settlement Agreement from having any adverse affect on the outstanding NPU Complaint or the NPUs’ rights under Kansas law. The result of these careful negotiations is a Settlement Agreement that resolves Staff’s separate claims, but allows Staff to continue as an evidentiary party in this docket.

36. The NPUs claim the Settlement Agreement is illegal because it was negotiated without their knowledge and in violation of an alleged verbal agreement. The NPU contentions

are entirely false. As extensively described above, the parties never agreed to delay settlement negotiations. The February 3, 2014 Procedural Schedule clearly shows that the parties only agreed to delay the establishment of a formal procedural schedule. Furthermore, Staff and ANGC were engaged in negotiations before and after the January 6, 2014 scheduling conference. Under no circumstance would ANGC and its counsel verbally agree to delay settlement negotiations that were ongoing both before and after such an agreement. And any claim of bad faith or circumvention of a verbal agreement on the part of ANGC and its counsel is entirely false, unsupported, and a self-serving fabrication.

37. Further, as detailed above, the Settling Parties had no obligation to include the NPUs in settlement negotiations. The Staff's request for civil penalties arose from alleged statutory violations that were entirely separate and distinct from those claimed by the NPUs. If ultimately imposed by the Commission, the civil penalties requested by Staff would be payable exclusively to the Kansas Corporation Commission and would not benefit the NPUs in any way. The NPUs do not have a recognizable interest in the civil penalty recommendation of Staff. As a result, they were not a necessary party to the Settling Parties negotiations.

38. The NPUs only have an interest in the alleged factual evidence set forth in the Staff R&R. However, the materials in the Commission's files are publically available, and may be obtained either through the KCC website or by request to the Commission. Further, the Prehearing Officer issued a Discovery and Protective Order in this docket on January 9, 2014.⁴⁸ The NPUs have the ability to obtain any public or confidential documents (with limited exceptions provided by KCC regulations) that they may consider necessary to prosecute their complaint.

⁴⁸ *Discovery and Protective Order*, Docket No. 14-ANGG-119-COM, January 9, 2014.

39. It is not the duty of the Staff to prosecute the NPU's Complaint. By statute, Staff is only required to examine the NPU Complaint upon filing, and determine whether the NPU's allegations, if true, establish a prima facie case for Commission action.⁴⁹ Staff has fulfilled this obligation. The NPUs are "large, sophisticated"⁵⁰ utilities with skilled legal counsel and operational consultants. As such, the NPUs are entirely capable of prosecuting their own complaint.

40. Kansas courts and the KCC strongly encourage the settlement of disputes.⁵¹ The Settling Parties properly negotiated a Settlement Agreement that resolves a portion of the current docket. This settlement was patterned after a similar, previously approved settlement agreement. Further, all parties with a valid interest in the settled claims actively participated in the negotiations. The claims of the NPUs were not harmed or affected by the Settling Parties' resolution. Thus, the Settlement Agreement conforms with all applicable law and should be approved by the Commission.

iv. The Settlement Agreement does not set or affect rates but is reasonable nonetheless.

41. This factor is inapplicable to the Settlement Agreement. However, the Settlement Agreement is reasonable, as it lawfully resolves Staff's civil penalty claims without adversely affecting the ongoing NPU Complaint.

v. The Settlement Agreement is in the public interest, including the interest of the NPUs and their customers.

42. The Settlement Agreement is in the public interest, as well as the interest of the NPUs and their customers. The Commission in the Atmos Settlement Order determined that this

⁴⁹ K.A.R. 82-1-220(c).

⁵⁰ *Order Approving Joint Application*, Docket No. 13-BHCG-509-ACQ, October 3, 2013, at 25.

⁵¹ See e.g., *Bright v. LSI Corp.*, 254 Kan. 885, 858 (1994); *Ellis v. Union Pacific R.R. Co.*, 231 Kan. 182,192 (1982); *Order Adopting Stipulation and Agreement*, Docket No. 03-MDWE-001-RTS, February 14, 2003, at 3.

fifth factor is a function and culmination of the other four factors described above.⁵² Therefore, if the non-unanimous Settlement Agreement does not satisfy one of the four preceding factors, it would not be in the public interest. Here, the Settlement Agreement is reasonable, conforms to applicable law, and is supported by substantial competent evidence. Further, the NPUs have been given a sufficient opportunity to be heard on their objections. The Settlement Agreement resolves only Staff’s civil penalty recommendation and preserves the rights of the NPUs (and any other party) to pursue a complaint.

43. In consideration for the settlement payment by ANGC and AESC, the KCC Staff agreed:

not to recommend or advocate any further *penalty* against ANGC and AESC for violations of public utility statutes regarding the sale and/or transportation of natural gas in question, for the period July 1, 1998 through November 1, 2013, in any KCC Docket, state or federal court, or arbitration or mediation proceeding.⁵³

The Settlement Agreement intentionally uses the word “penalty” in order to align with Staff’s claims and the language of K.S.A. 66-138—which permits the state to impose civil penalties for violations of the public utility statutes.

44. The Settlement Agreement only resolves the Staff’s civil penalty claims, and preserves the NPUs’ rights to prosecute their complaint. It does not prevent any party—including the NPUs—from filing and pursuing a complaint against ANGC or AESC, or developing a full record in this or any other complaint proceeding. The Settlement Agreement also does not prevent Staff from investigating any alleged violation by ANGC or AESC of any Kansas statute.

45. The Settlement Agreement is entirely consistent with the R&R filed by Staff and the position of ANGC in this proceeding. The agreement is reasonable, conforms with applicable

⁵² *Atmos Settlement Order*, Docket No. 08-ATMG-280-RTS, May 12, 2008, at 17.

⁵³ *Joint Motion for Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 15, 2014, Attachment A at 3 (emphasis added).

law, and is supported by substantial competent evidence. The Settlement Agreement preserves the NPU's ability to pursue its complaint case. Further, the Settlement Agreement does not prevent Staff from conducting investigations of ANGCO or AESC natural gas sales and service in Kansas. The NPU's have had and may continue to have a reasonable opportunity to be heard on their objections to the settlement agreement. The Settlement Agreement is in the public interest, including that of the NPU's and their customers, and should be approved in its entirety by the Commission.

D. *Response to the NPU's "Specific Objections to the Stipulated Settlement Agreement."*

46. The NPU Objection notes several "specific objections" to certain "statements and agreements" contained in the Settlement Agreement. Some of these "specific objections" were included in the NPU's general objection to the Settlement Agreement, and have been discussed in detail above. The remaining portions of the NPU's "specific objections" are not, upon examination, objections to the Settlement Agreement. Instead, the NPU's use those sections of their written objection to discuss and argue the contended merits of the NPU Complaint.

47. Pursuant to the Prehearing Officer's Order Setting Procedural Schedule, the parties to this docket agreed to address all threshold legal issues—including whether the KCC may order a refund or damages and Commission's jurisdiction (if any) over the parties and causes of action included in the Complaint—in legal briefs to be filed on February 19, 2014. ANGCO will briefly respond to the legal arguments improperly injected by the NPU's, but will reserve its more detailed response for legal briefing, as previously agreed by the parties and as ordered by the Prehearing Officer.

i. The Settlement Agreement will not affect the NPUs or the NPU Complaint.

48. The Settlement Agreement exclusively resolves Staff's separate and distinct request for civil penalties, payable to the Kansas Corporation Commission pursuant to K.S.A. 66-138. It in no way adversely affects the NPUs' ability to pursue their Complaint or to develop a record for decision. No attempt was made by the Settling Parties to either reach a resolution of, or characterize the "nature" of the NPUs' Complaint.

49. The NPUs specifically object to the following language within the Settlement Agreement:

During the period July 1, 1998 through November 1, 2013, ANGC and AESC have *either*: (a) submitted to the Commission any contracts for the sale of natural gas from the Hugoton Residue Delivery System ("HRDS") or (b) that any such contract(s) that were not submitted for filing to the Commission have been executed by the contracting parties thereto, and performance thereunder has either been (i) in compliance with the terms of the applicable contracts, or (ii) performance under the contracts has taken place without complaint to the Commission, except as filed in the above entitled Docket on July 27, 2013.⁵⁴

50. As extensively described above, this language objected to by the NPUs was a complete and accurate statement of the record—nothing more. This statement in no way affects the NPUs' Complaint. Indeed, the NPUs explicitly acknowledge the correctness and completeness of the statement, and that the language does not affect their pending claims, by stating their contention "that performance under the Agreements was adequate is wholly irrelevant" to the NPU Complaint.⁵⁵

⁵⁴ *Joint Motion for Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 15, 2014, Attachment A at 2-3 (emphasis added).

⁵⁵ *Objection of of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. to Joint Motion For Approval of Stipulated Settlement Agreement*, Docket No. 14-ANGG-119-COM, January 28, 2014, at 14.

51. It is worth noting that paragraph 27 of the NPU Objection provides a candid statement as to the actual “nature” of the NPU Complaint. There, the NPUs acknowledge that at all times ANGC and AESC satisfied each and every obligation contained within the individual NPU gas sales agreements. The NPUs further concede that they have not not sustained any actual damages related to ANGC or AESC natural gas sales and service. Instead, the NPUs contend that because the NPU gas sales agreements were allegedly not filed with and approved by the Commission, the NPUs are entitled to a full refund of all amounts paid for natural gas service, with interest.⁵⁶ Paragraph 27 of the NPU Objection clearly indicates that the NPU Complaint is simply an attempted regulatory “cash grab.” In essence, the NPUs seek a contended regulatory windfall—in the form of substantial refunds—without having sustained any actual injury or damages.

ii. The case law cited by the NPUs in the NPU Objection is not applicable or relevant to the Settlement Agreement or NPU Complaint.

52. The NPUs cite *Sunflower Pipeline Co. v. State Corp. Comm’n*⁵⁷ and *In re KanOkla Telephone Ass’n, Inc.*⁵⁸ to support the contention that they are entitled to a refund without having incurred any actual damage. The NPUs’ reliance on these cases is misplaced, as they are entirely inapplicable to the pending NPU Complaint.

53. In *Sunflower Pipeline Co.*, Sunflower was authorized to provide its customers with irrigation gas service pursuant to a single, KCC approved tariff rate.⁵⁹ Sunflower then entered into customer contracts at a rate greater than its single tariff rate.⁶⁰ It did not seek Commission approval to increase its tariff rate, nor did it file the contracts containing the

⁵⁶ *Id.*

⁵⁷ *Sunflower Pipeline Co. v. State Corp. Comm’n*, 5 Kan.App.2d 715 (1981).

⁵⁸ *In re KanOkla Telephone Ass’n, Inc.*, 2003 WL 21673765 (Kan.S.C.C.).

⁵⁹ *Sunflower Pipeline Co.*, 5 Kan.App.2d, at 716.

⁶⁰ *Id.*

increased contract rate.⁶¹ A customer charged the unilaterally increased tariff rate filed a complaint with the Commission.⁶² The KCC found that Sunflower had failed to comply with K.S.A. 66-117, because it did not seek Commission approval to change its filed tariff rate prior to charging its tariff customers an increased rate.⁶³ Sunflower was ordered to refund all amounts received over and above *its most recent filed tariff rate*.⁶⁴ The appellate court affirmed the KCC Order and found that the “KCC has the power to order refunds for charges *in excess of published rates*.”⁶⁵

54. Similarly, the KCC in *In re KanOkla Telephone Ass’n Inc.*, determined that a KanOkla Telephone contract was unlawful and void because it differed from the utility’s published general exchange tariff. The KCC cited *Sunflower Pipeline* to support the principle that “[a]bsent Commission approval, contracts between the utility and its customers may not establish terms, conditions or rates different from those approved terms, conditions and rates *contained in the utility’s tariffs*.”⁶⁶ The KCC found that the KanOkla contract could not be enforced by the Commission.⁶⁷

55. The *Sunflower Pipeline Co.* and *In Re KanOkla Telephone Ass’n, Inc.* cases are easily distinguishable from the instant docket. Both cases involved utilities that entered into contracts containing rates and conditions that differed from the utilities’ published tariffs. The utilities charged their customers for services in a manner that differed from the only manner authorized by the Commission. In those cases, the difference between the published utility tariffs and differing utility contracts represented an identifiable injury sustained by the customer. In

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*, at 720 (emphasis added).

⁶⁶ *In re KanOkla Telephone Ass’n, Inc.*, 2003 WL 21673765, at *1 (citing *Sunflower Pipeline Co. v. State Corp. Comm’n*, 5 Kan.App.2d 715, 719-722 (1981)).

⁶⁷ *Id.*, at *3.

Sunflower, the Commission ordered that the utility refund this difference between the tariff rate and contract rate back to its customers.

56. Here, ANGC did not have a single KCC authorized tariff rate. Instead, the Commission ordered ANGC to provide natural gas service pursuant to privately negotiated, customer specific certificates of convenience. As a result, ANGC and its customers were allowed—indeed required—to privately negotiate all rates and terms and conditions for natural gas service. ANGC, AESC, and the NPUs freely negotiated a rate of \$0.50 per MMBtu for service on the HRDS. This rate was memorialized in the NPU gas sales agreements, and both NPU agreements were filed with the KCC pursuant to ANGC’s limited certificate granted in Docket No. 00-ANGG-218-COC. The NPU rate was consistently charged by ANGC and AESC throughout the term of each NPU agreement. At all times, the NPUs received the exact service bargained for through negotiations authorized by the Commission. Unlike the customers in *Sunflower Pipeline Co.* and *In re OklaKan Telephone Ass’n, Inc.*, the NPUs were never charged a rate in excess of a published tariff, and the NPUs have not sustained any damages—refundable or otherwise.

57. Separately, *Ridgway v. Wetterhold*,⁶⁸ as cited by the NPUs, is entirely inapplicable to the Settlement Agreement and NPU Complaint. ANGC and AESC filed the individual NPU gas sales agreements with the KCC pursuant to ANGC’s limited certificate granted in Docket No. 00-ANGG-218-COC. In addition, both parties fully performed during the pendency of each NPU agreement, and neither party is attempting to recover actual damages sustained under either agreement.

⁶⁸ *Ridgway v. Wetterhold*, 96 Kan. 736 (1915).

iii. ***The NPU's are not entitled to any refund or any award of damages from the KCC.***

58. The NPU's Complaint is not and cannot be maintained as a case for refund. There is, under the NPU's case theory, no customer specific tariff to compare performance against, and to measure the difference between a filed customer specific tariff and the amount charged and paid. Pursuant to *Sunflower Pipeline Co.*, in order to allege a refund claim, the NPU's must point to a specific filed tariff rate with which ANGCO and AESC did not comply. The NPU's have not and cannot do so.

59. Most appropriately characterized, the NPU's are contending that ANGCO and AESC were required, but did not, file and receive approval of the NPU's customer specific contracts—which would thereafter become the KCC tariff for service to the NPU's. As framed by the NPU's in their Complaint, the NPU's contention is that ANGCO and AESC provided public utility service without a Certificate—a contended violation of K.S.A. 66-131.

60. K.S.A. 66-176 provides a private cause of action for damages sustained as a result of a utility's alleged violation of the Kansas Public Utility Act. Specifically, K.S.A. 66-176 provides that:

Any public utility or common carrier which violates any of the provisions of law for the regulation of public utilities or common carriers shall forfeit, for every offense, to the person, company, or corporation aggrieved thereby, ***the actual damages sustained by the party aggrieved***, together with the costs of suit and reasonable attorney fees, to be fixed by the court.⁶⁹

61. The United States District Court for the District of Kansas, in *United Cities Gas Co. v. Brock Exploration Co.*, articulated the path that a party claiming damages under K.S.A. 66-176 and the Kansas Public Utility Act must follow.⁷⁰ Chief Judge Van Bebber, former

⁶⁹ K.S.A. 66-176 (emphasis added).

⁷⁰ 995 F.Supp. 1284 (1998).

Chairman of the KCC, penned the court's opinion. According to Chief Judge Van Bebber, the Kansas Court of Appeals requires actions "seeking damages for violations of common carrier or public utility regulatory provisions" to be treated as negligence per se claims.⁷¹ Such treatment was intended to confer a private right of action upon those harmed by public utility violations.⁷²

62. In order to recover for damages under a private right of action, the plaintiff must prove two key questions: (1) that the utility violated a specific statutory provision; and (2) that the plaintiff's actual damages resulted from the violation.⁷³ The plaintiff must demonstrate that the proved statutory violation was the actual and proximate cause of its injuries.⁷⁴

63. Simply stated, the NPU's are in the wrong forum. K.S.A. 66-176 requires the NPU's to demonstrate in a Kansas court with jurisdiction:

- (1) That a violation of the Kansas Public Utility Act has occurred;⁷⁵
- (2) That the NPU's sustained damages;⁷⁶ and
- (3) That the violation of the Kansas Public Utility Act was the actual and proximate cause of the NPU's' damages.⁷⁷

64. The NPU's cannot sustain a refund claim at the KCC or private cause of action under Kansas law. As provided in paragraph 27 of the NPU Objection, the NPU's have not suffered any actual damages as a result of the alleged failure of to file. Further, the NPU's cannot identify any published tariff rate with which ANGCO or AESC have not complied. While the NPU's were free to file their Complaint, they cannot recover any refund without first proving that

⁷¹ *United Cities Gas Co. v. Brock Exploration Co.*, 995 F.Supp. 1284, 1201 (1998) (citing *Dietz v. Atchison, Topeka, & Santa Fe Ry. Co.*, 16 Kan.App.2d 342, 346-47(1991)).

⁷² *Id.*

⁷³ *Id.*, at 1292.

⁷⁴ *Id.*

⁷⁵ *United Cities Gas Co.*, 995 F.Supp. at 1292.

⁷⁶ *Id.*

⁷⁷ *Id.*

any actual damage was incurred. Absent explicit statutory authorization, the Commission is prohibited from awarding damages to any party.⁷⁸

65. Staff requested in its R&R that ANGC and AESC pay civil penalties to the Kansas Corporation Commission for separate and distinct alleged statutory violations. The Settling Parties have agreed to resolve these separate and distinct claims.⁷⁹ Thus, as will be more thoroughly set forth in ANGC's February 19, 2014 legal brief, all redressable claims have been resolved and this case should be dismissed with prejudice.

iv. AESC is not subject to the jurisdiction of the Commission.

66. Under Kansas law, AESC is not a public utility subject to the jurisdiction of the KCC. The KCC has jurisdiction over common carriers and public utilities pursuant to K.S.A. 66-104. A public utility is defined as any organization that:

*may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for . . . the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil.*⁸⁰

Kansas and federal courts have consistently held that natural gas marketing companies are not public utilities under Kansas law.⁸¹ Further, the Kansas Supreme Court recently determined that out-of-state marketers are not considered public utilities if they (1) "are not obligated to provide

⁷⁸ See *Western Kansas Express, Inc. v. Dugan Truck Lines, Inc.*, 11 Kan.App.2d 336, 341 (1986).

⁷⁹ The Settlement Agreement does not include any admission of liability on the part of ANGC or AESC for any statutory violation alleged by the Staff or NPU's.

⁸⁰ K.S.A. 66-104(a) (emphasis added).

⁸¹ See e.g., *United Cities Gas Co.*, 995 F.Supp. at 1289-90 ("Brock would be functioning as a gas marketer rather than a public utility and would need no certificate from the KCC."); *In re Appeals of Various Applicants from a Decision of Div. of Prop. Valuation of State for Tax Year 2009 Pursuant to K.S.A. 74-2438*, 313 P.3d 789, 806 (Kan. 2013).

nondiscriminatory services to the public;” (2) “do not have eminent domain powers;” and (3) “do not enjoy natural monopolies.”⁸²

67. According to K.S.A. 66-104, AESC has never been and could never become a Kansas public utility subject to the jurisdiction of the Commission. AESC has not and does not own, control, operate, or manage any portion of any pipeline or other plant in Kansas. AESC has never engaged in the commercial supply of natural gas or oil in Kansas, does not have eminent domain powers in Kansas, and is not a monopoly.


68. Instead, AESC operates as a natural gas marketing company in Kansas. AESC purchases wholesale volumes of gas from various sources. That gas is then either used to power AESC field compressors, or is sold to a very limited number of wholesale customers via private contract. This activity is far outside of the scope of the Commission’s jurisdiction under K.S.A. 66-104. Any contended allegations of the Staff asserted under K.S.A. 66-131, and the NPUs’ opinion on the sufficiency of the State civil penalties recommended by Staff, have no bearing on the KCC’s statutorily conferred jurisdiction.

WHEREFORE, ANGC and AESC respectfully request the Commission overrule the NPU Objection and approve, in its entirety, the jointly filed Settlement Agreement. As filed, the Settlement Agreement exclusively resolves the separate and distinct civil penalty claims of the Kansas Corporation Commission, as recommended by Staff in its November 26, 2013 Report and Recommendation. These civil penalties claims have no application to, or impact on the NPU claims, as they are exclusively reserved for the KCC. The Settlement Agreement does not affect or prejudice, in any way whatsoever, the existing claims contained in the NPU Complaint.

⁸² *In re Appeals of Various Applicants from a Decision of Div. of Prop. Valuation of State for Tax Year 2009 Pursuant to K.S.A. 74-2438*, 313 P.3d 789, 806 (Kan. 2013).

Respectfully submitted,

SMITHYMAN & ZAKOURA, CHARTERED

By: 
James P. Zakoura, KS Bar #7644
Carson M. Hinderks, KS Bar #25079
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210-2362
Telephone: (913) 661-9800
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carson@smizak-law.com

ATTORNEYS FOR ANADARKO NATURAL
GAS COMPANY AND ANADARKO ENERGY
SERVICES COMPANY

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

I, James P. Zakoura, being first duly sworn, state that the above and foregoing Response is true and accurate to the best of my knowledge, information and belief.

James P. Zakoura
James P. Zakoura

SUBSCRIBED AND SWORN to before me this 7th day of February, 2014.

Diane M. Walsh
Notary Public

My Appointment Expires:
08-31-2014



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been sent via email this February 7th, 2014, to:

FRANK A. CARO POLSINELLI, PC 6201 COLLEGE BLVD STE 500 OVERLAND PARK, KS 66211-2435 fcaro@polsinelli.com	ANNE E. CALLENBACH POLSINELLI, PC 6201 COLLEGE BLVD STE 500 OVERLAND PARK, KS 66211-2435 acallenbach@polsinelli.com
SAMUEL FEATHER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 s.feather@kcc.ks.gov	AMBER SMITH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 a.smith@kcc.ks.gov
BRIAN G. FEDOTIN, ADVISORY COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 b.fedotin@kcc.ks.gov	


James P. Zakoura

Carson Hinderks

From: Amber Smith [a.smith@kcc.ks.gov]
Sent: Monday, February 03, 2014 8:35 AM
To: Brian Fedotin; Anne Callenbach; Frank Caro; Sam Feather; James Zakoura; Carson Hinderks
Subject: RE: Docket No. 14- ANGG-119-COM

Mr. Prehearing Officer,

Staff is not opposed to the original agreed-upon date of Feb. 19th for initial briefs; however, as confirmation of what was discussed at the Jan. 6th prehearing conference, Staff does not intend to file an initial brief but rather reserves the right to file a reply brief as necessary.

Thanks,

Amber Smith, *Litigation Counsel*

Legal Division
Kansas Corporation Commission
1500 SW Arrowhead Road | Topeka, KS | 66604-4027
Phone (785) 271-3301 | Fax (785) 271-3167

From: Brian Fedotin
Sent: Monday, February 03, 2014 8:17 AM
To: Anne Callenbach; Frank Caro; Sam Feather; Amber Smith; James Zakoura (jim@smizak-law.com); Carson Hinderks (Carson@smizak-law.com)
Subject: Docket No. 14- ANGG-119-COM

Counsel,

I intend to issue a procedural schedule today, which adopts the parties' recommendation for initial briefs to be due Feb. 19. Does that still give parties enough time to brief the issues? If not, please let me know, and I will schedule a brief teleconference to select new dates. Thanks.

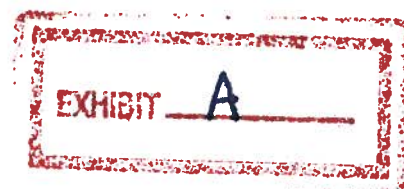
--Brian

Brian G. Fedotin
Advisory Counsel



Office of Advisory Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road | Topeka, KS | 66604-4027
Phone (785) 271-3105 | Fax (785) 271-3314 | <http://kcc.ks.gov/>

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Carson Hinderks

From: Brian Fedotin [b.fedotin@kcc.ks.gov]
Sent: Monday, February 03, 2014 8:43 AM
To: Amber Smith; Anne Callenbach; Frank Caro; Sam Feather; James Zakoura; Carson Hinderks
Subject: RE: Docket No. 14- ANGG-119-COM

Amber,
Your email is consistent with my recollection and the language of the order. Thanks.
--Brian

Brian G. Fedotin
Advisory Counsel



Office of Advisory Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road | Topeka, KS | 66604-4027
Phone (785) 271-3105 | Fax (785) 271-3314 | <http://kcc.ks.gov/>

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From: Amber Smith
Sent: Monday, February 03, 2014 8:35 AM
To: Brian Fedotin; Anne Callenbach; Frank Caro; Sam Feather; James Zakoura (jim@smizak-law.com); Carson Hinderks (Carson@smizak-law.com)
Subject: RE: Docket No. 14- ANGG-119-COM

Mr. Prehearing Officer,

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Thanks,

Amber Smith, *Litigation Counsel*
Legal Division
Kansas Corporation Commission
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Phone (785) 271-3301 | Fax (785) 271-3167

From: Brian Fedotin
Sent: Monday, February 03, 2014 8:17 AM

To: Anne Callenbach; Frank Caro; Sam Feather; Amber Smith; James Zakoura (jim@smizak-law.com); Carson Hinderks (Carson@smizak-law.com)

Subject: Docket No. 14- ANGG-119-COM

Counsel,

I intend to issue a procedural schedule today, which adopts the parties' recommendation for initial briefs to be due Feb. 19. Does that still give parties enough time to brief the issues? If not, please let me know, and I will schedule a brief teleconference to select new dates. Thanks.

--Brian

Brian G. Fedotin

Advisory Counsel



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Carson Hinderks

From: Pam Griffeth [p.griffeth@kcc.ks.gov]
Sent: Wednesday, January 15, 2014 4:29 PM
To: Sam Feather; FCARO@POLSINELLI.COM; acallenbach@polsinelli.com; Brian Fedotin; James Zakoura; Carson Hinderks; Amber Smith
Cc: Dan Ostahowski; John Bell; Justin Grady; Leo Haynos; Tom Day; DeeAnn Shupe; Gail Alderson
Subject: Docket No. 14-ANGG-119-COM - Joint Motion for Approval of Stipulated Settlement Agreement
Attachments: 14-ANGG-119-COM - Joint Motion for Approval of Stipulated Settlement Agreement.pdf
Importance: High

Please find attached the "Joint Motion for Approval of Stipulated Settlement Agreement" filed today in the above docket. This constitutes official service of the document and no hard copies will be provided.

Pam Griffeth
Administrative Specialist
Office of Litigation Counsel
Kansas Corporation Commission
p.griffeth@kcc.ks.gov
Phone (785) 271-3265
Fax (785-271-3167

This message is from the Office of Litigation Counsel of the Kansas Corporation Commission and is intended only for the addressee. The information contained in this message is confidential, may be attorney-client privileged, may be privileged work product, may constitute inside or nonpublic information under federal or state laws and is intended only for the use of the addressee. Unauthorized forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you are not the addressee, please promptly delete this message and notify the sender of the delivery error by return e-mail or call 785-271-3265. Pam Griffeth, Office of Litigation Counsel, Kansas Corporation Commission.

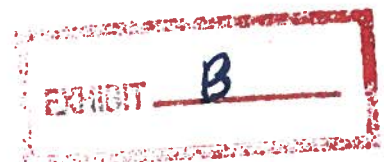


Exhibit C

January 2014

January 2014							February 2014						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4							1
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Dec 29	30	31	Jan 1, 14	2	3	4
Dec 29 - Jan 4							
	5	6	7	8	9	10	11
Jan 5 - 11							
	12	13	14	15	16	17	18
Jan 12 - 18				Settlement Agreement Filed by Staff, ANGC, and AESC	1	2	3
	19	20	21	22	23	24	25
Jan 19 - 25	4	Legal Holiday: Birthday of Martin Luther King, Jr.	5	6	7	8	9
	26	27	28	29	30	31	Feb 1
Jan 26 - Feb 1	Final day on a Sunday. K.A.R. 82-1-217(a)	10	NPU Objection filed.				