

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

Received
on

NOV 26 2013

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

by
State Corporation Commission
of Kansas

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively), files its Report and Recommendation, and states the following:

Staff hereby files the attached Report and Recommendation recommending the Commission assess a penalty against AESC in the amount of \$55,000, assess a penalty against ANGC in the amount of \$41,100, and request ANGC and the NPU's provide legal briefs regarding the subject of a refund.

Wherefore, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

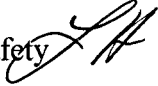
Respectfully submitted,



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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright
Commissioner Shari Feist Albrecht

FROM: Leo Haynos, Chief of Gas Operations & Pipeline Safety 
Jeff McClanahan, Director of Utilities

DATE: November 18, 2013

DATE SUBMITTED TO LEGAL: 11/21/13

DATE SUBMITTED TO COMMISSIONERS: 11/26/13

SUBJECT: Docket 14-ANGG-119-COM: In the Matter of the Complaint of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Against Anadarko Natural Gas Company.

EXECUTIVE SUMMARY:

On August 27, 2013, SWKI-Seward West Central, Inc. (SWKI-SWC), and SWKI-Stevens Southeast, Inc. (SWKI-SE), (collectively, the NPUs) filed a complaint against Anadarko Natural Gas Company (ANGC) stating that ANGC's failure to file customer specific certificates and contract rate schedules with the Commission constituted violations of K.S.A. 66-109 and 66-117. The certificates and contract rate schedules pertain to agreements between ANGC and SWKI-SWC and ANGC and SWKI-SE.

The transactions in question span a period of 19 years and include at least three Anadarko "sister" companies as well as the NPUs. The purpose of this Report and Recommendation is to provide the Commission with a chronology of the documents filed with the Commission related to this matter. Where we feel clarification is necessary, Staff also adds analysis for items listed in the chronology that are discussed in the filings previously made in the subject Docket.

From our investigation into this Docket and from the discovery undertaken in Docket 13-BHCG-509-ACQ, Staff concludes ANGC did not file contracts between ANGC and the NPUs as required by Commission Order in Docket 00-ANGG-218-COC (00-218). According to Staff records, ANGC does not have a contract with SWKI-SE, but a contract between SWKI-SE and Anadarko Energy Services Company (AESC), a sister company of ANGC, was filed with the Commission in response to the 00-218 Order. 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 of giving 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.

Staff believes ANGC's failure to comply with a Commission Order places ANGC at risk of enforcement action under KSA 66-131. In fact, the Commission took similar action in a docket involving a liquid pipeline common carrier.¹ In that case, Staff recommended the public utility/common carrier pay a civil penalty of \$50,000 for failure to comply with K.S.A. 66-131. Although the common carrier disagreed with Staff's position, it agreed in settlement to pay the proposed penalty.

BACKGROUND AND ANALYSIS:

The primary focus of ANGC and its predecessor companies is the production and gathering of natural gas. It appears that ANGC or its predecessors began sales of unprocessed natural gas to local consumers as early as the 1960s. The following paragraphs provide a brief history of the ANGC operations that are relevant to this Docket.

- Docket 67,857-U; 76-U-290; 83,532-U; 85,498-U relate to Commission Dockets in which certificates of convenience were granted to Anadarko Petroleum Company, a sister company of Panhandle Eastern Pipeline Company and Centana Energy Corporation (Centana). Centana eventually became the Kansas public utility sister company in which all of the certificates of convenience resided.
- Docket 191,217-U Centana asks to cease serving as a natural gas public utility and provides a list of customers that will be acquired by Anadarko Gathering Company ("AGC").
- August 15, 1994: Anadarko Gathering Company (AGC), through its parent company Anadarko Petroleum Corporation, purchased the Cimarron River System from Centana.
- August 18, 1994: Docket 191,218-U AGC requests the Commission issue a Limited Certificate of Convenience and Authority to serve only the customers served by Centana at that time.² AGC states it has no plans to expand service to additional customers.
- September 29, 1994: The Commission issues a Certificate of Convenience to AGC only for the customers listed in the Centana Cease Application (Docket 191,217-U).
- September 29, 1994: The Commission also orders AGC to file in its own name the exact rates and rules and regulations currently on file for Centana.
- April 24, 1998: SWKI-SE receives a Certificate of Convenience and Necessity pursuant to Docket 98-SWKG-644-COC.

¹ See Docket 08-KMOP-032-COC.

² Docket 191,218-U is also known as Docket No. 95-AGCG-073-COC.

- July 1, 1998: SWKI-SE enters into a gas sales agreement with AESC, a sister company of AGC, which was the certificated public utility at that time. AGC is not listed as a party to the contract.

Staff Comments: Because AGC operated the pipeline that was providing gas service to SWKI-SE, it is unclear how AESC was delivering gas supply to SWKI-SE without the involvement of AGC.

- Prior to 1999:³ AGC connects its 16-inch gathering line to an intrastate transmission pipeline for the purposes of transporting gas to its customers.
- September 28, 1999: 00-218 Docket requested the transfer of the limited certificate held by AGC to ANGC. As part of the application, ANGC requested approval of the assignment of the existing contract rate schedules that were “on file at the Commission pursuant to which AGC is presently providing natural gas service to its customers”.
 - In the application, “AGC and ANGC affirmatively state to the Commission that all Contract Rate Schedules currently on file at the Commission, upon approval by the Commission, will thereafter receive continuing natural gas service from ANGC pursuant to the terms of such KCC filed, Contract Rate Schedules”.
 - The AGC/ANGC application also requested the ability to file additional contracts for Commission approval.

Staff Comments: At the time of the 00-218 Application, the only Anadarko contracts on file with the Commission were the contracts originally created as part of the Centana purchase approved by the Commission in the 191,218-U Docket in 1994. The NPUs were not included in that list. The AESC/SWKI-SE contract was not addressed in the 00-218 Docket.

- May 19, 2000: Docket 00-218: The Commission approves the transfer of the AGC Certificate to ANGC and allows ANGC to file additional contracts for new customers provided that it receives Commission approval for each new contract. The Order states:
 - Natural gas service provided by Anadarko Natural Gas Company under the Limited Certificate shall be customer specific pursuant to the transferred Contract Rate Schedules and, except for such Contract Rate Schedules, the rates of Anadarko Gathering Company are hereby cancelled.
 - In connection with providing gas service to future customers, Anadarko Natural Gas Company shall file all Customer Specific Certificates and Contract Rate Schedules for review by and approval of the Commission consistent with applicable Kansas statutes and regulations.
- August 3, 2000: ANGG sends correspondence to Staff pertaining to certain sales of gas by ANGC to its customers. The correspondence informs Staff the contracts are being submitted for filing in accordance with the Commission’s Order in the 00-218 Docket.⁴

³ Page 5, Para. 7: ANGC Motion to Dismiss and Answer to Complaint in 14-ANGG-119-COM.

⁴ Exhibit 3 of ANGC Motion to Dismiss and Answer to Complaint in 14-ANGG-119-COM.

- August 6, 2000: The contract between AESC and SWKI-SE is included as a filing in the 00-218 Docket.

Staff comments: The transmittal letter which Staff presumes accompanied the AESC/SWKI-SE contract does not explain the relationship between AESC and ANGG, nor does it explain why filing the AESC/SWKI-SE contract is relevant to the Commission's 00-218 Order. The list of customers provided as an attachment to the transmittal letter includes several customers that were not on the list of customers transferred from Centana to AGC in 1994. Staff does not believe filing this contract constitutes compliance with the 00-218 Order.

- April 2, 2002: SWKI-SWC is granted a Certificate of Convenience and Necessity by the Commission in Docket 02-SSWG-611-COC
- June 1, 2002: ANGG and SWKI-SWC execute a gas sales agreement.

Staff Comments: The ANGG/SWKI-SWC contract was never filed with the Commission pursuant to the Order in 00-218.

- August 1, 2007: Five sister Anadarko companies including AESC, ANGG, and AGC enter into an agreement with Texas-Kansas-Oklahoma Gas, LLC (TKO)
- August 1, 2007: AESC enters an agreement with TKO to provide gas for TKO customers.
- August 1, 2007: TKO begins to provide natural gas service to 55 certificated Anadarko customers. ANGG and AESC continue to provide gas service to the NPU's.
- September 21, 2007, Docket 08-ANGG-295-CCN: ANGG applies to transfer its limited Certificate to Anadarko Natural Gas Company, LLC (Anadarko). The application also notifies the Commission that ANGC has sold its contracts for 55 of its certificated customers to TKO as of August 1, 2007 but subject to Commission approval.
 - The Application contains a list of ANGG certificated customers that ANGG states will be transferred to TKO subject to Commission approval.

Staff Comments: The list of customers is contained in the Anadarko application as Exhibit A. The list of customers retained by Anadarko were not included in any filing in the 08-295 Docket.

- October 2, 2007, Docket 08-TKOG-314-COC: TKO applies for a Certificate of Convenience to provide natural gas service to 55 customers certificated to Anadarko.

Staff Comments: At the time of its application to acquire the certificated customers from Anadarko, TKO had been providing gas to the Anadarko customers for 60 days. This appears to be a violation of K.S.A. 66-131 and 66-136.

- October 2, 2007, Docket 08-314: Confidential Exhibit B in the TKO filing is a natural gas supply agreement between TKO and AESC. Exhibit A Part C to this agreement contains the list of customers to be retained by Anadarko after the sale.

Staff Comments: The list in the sales agreement attached as a confidential exhibit to an application filed by TKO is the only document filed in a docket that notes the NPU's are certificated customers of ANGC. Staff does not believe filing this list of customers constitutes compliance by ANGC with the 00-218 Order.

- April 12, 2010, Docket 08-314: The Commission grants TKO a conditional Certificate to serve specific customers.
- July 12, 2010, Docket 08-ANGG-295-CCN: Staff files a memorandum providing an analysis of the Anadarko operations noting the transmission pipeline in question appears to be operating as a common carrier.
 - In its memo, Staff states: one of three Anadarko affiliates supplies gas to exit points along the transmission pipeline. The affiliates are: Anadarko Natural Gas Company; Anadarko Gathering Company LLC; and/or Anadarko Energy Services Company. Staff has not determined if any of the affiliates are charged a transportation fee by Anadarko Natural Gas Company which is considered the owner and operator of the pipeline system.
- September 6, 2011, Docket 08-314: Staff files a memorandum stating that TKO has failed to meet any of the conditions outlined by the Commission in its Order granting a Certificate to TKO.
 - Staff notes that ANGC and TKO entered into an agreement without Commission approval to transfer certificated customers to the control of TKO and that such a transaction may be a violation of K.S.A. 66-136.
- March 16, 2012, Docket 08-314: The Commission finds that TKO has met the remaining conditions from the April 12, 2010 Order and grants TKO a Certificate of Convenience to operate as a Public Utility.

CONCLUSION

A series of Anadarko Petroleum Corporation affiliates have intertwined transactions in the natural gas industry of Southwest Kansas. It is clear to Staff that while the companies are affiliates, their transactions are conducted as if they were in fact one company. A response to a Staff Data request⁵ (Attachment 1) indicates that AESC may have operated as the marketer of natural gas to various end users while ANGC has conducted business as the pipeline operator.

AESC entered into a contract with SWKI-SE to provide natural gas service. AESC is not a subsidiary company of ANGC.⁶ However, ANGC filed the AESC/SWKI-SE contract in an effort to comply with the Commission Order in the 00-218 Docket. While Staff believes ANGC made a good faith effort to comply with the Commission Order by filing this contract, Staff contends AESC is not the company certificated as a public utility in Kansas. Therefore, Staff contends AESC has been providing retail gas sales to SWKI-SE since 1998 without obtaining Commission approval to do so and is in violation of K.S.A. 66-131. The AESC/SWKI-SE Contract filed by ANGC in an attempt to comply with the 00-218 Order is irrelevant because SWKI-SE has never been a customer of ANGC.

In 2002, ANGC entered into a contract with SWKI-SWC to provide natural gas service. This contract was never filed with the Commission as required by the 00-218 Order. However, Staff contends SWKI-SWC was a public utility customer of ANGC because the 00-218 Order allowed

⁵ Response to Staff Data Request No. 6, July 12, 2010.

⁶ Response to Staff Data Request No. 1, July 1, 2010.

ANGC to acquire additional customers. ANGC's failure to file the contract in question is a violation of K.S.A. 66-117.

RECOMMENDATION

AESC has conducted business as a public utility from July 1, 1998 until the present. Staff believes this action was unintentional and was due to the failure of Anadarko to treat affiliate actions as arms-length transactions. K.S.A. 66-138(a)(2) allows the Commission to assess a civil penalty from \$100 to \$5,000 for each violation of its Orders. The contract in question was renewed every month under an evergreen provision. In Staff's opinion, each time the contract renewed and AESC did not seek certification constitutes another violation of Kansas law. Under that scenario, AESC committed 184 violations of Kansas law by operating as a public utility without obtaining a Certificate of Convenience. The penalty range for this set of violations would be from \$18,400 to \$920,000.⁷ In this case, Staff believes a civil penalty of \$300 per violation would be appropriate. Therefore, Staff recommends the Commission assess AESC civil penalties of \$55,000 for operating as a public utility without obtaining a Certificate of Convenience in violation of K.S.A. 66-131. Staff considers this approach to be similar to the action it recommended in Docket 08-KMOP-032-COC.

ANGC failed to comply with a Commission Order in the 00-218 Docket by not filing the contract between ANGC and SWKI-SWC in 2002. As noted above, the Commission has the authority to assess a civil penalty between \$100 and \$5,000 per violation of its Order. In this case, the monthly contract between the parties existed for 137 months from June 1, 2002 until October 31, 2013. Using the same logic as outlined above, ANGC's failure to comply with a Commission Order resulted in 137 violations of K.S.A. 66-115. The penalty range for this set of violations would be from \$13,700 to \$685,000. Consistent with the approach recommended with AESC, Staff believes a civil penalty of \$300 per violation would be appropriate. Therefore, Staff recommends the Commission assess ANGC civil penalties of \$41,100 for failure to comply with a Commission Order in violation of K.S.A. 66-115. Again, Staff considers this approach to be similar to the action it recommended in Docket 08-KMOP-032-COC.

In this complaint, the NPU's request the Commission find the contracts between ANGC or AESC and the NPU's 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 recommend the Commission request legal briefs from the parties regarding this issue.

⁷ The SWKI-SE/AESC contract was in effect from July 1, 1998 until October 31, 2013 when the contract was allegedly cancelled by ANGC. This time period calculates to 184 months assuming 30.45 days per month.

ATTACHMENT 1

Kansas Corporation Commission Information Request

Request No: 6

- A. Which subsidiary or affiliate of Anadarko Petroleum Corporation is considered the owner of the HRDS pipeline from the KPL Anadarko Stirrup Delivery point to the various endpoints of the system?

Anadarko Natural Gas Company

- B. Which subsidiary or affiliate of Anadarko Petroleum Corporation is considered the operator of the HRDS pipeline from the KPL Anadarko Stirrup Delivery point to the various endpoints of the system?

Anadarko Natural Gas Company

- C. Which subsidiary or affiliate of Anadarko Petroleum Corporation is considered the shipper of gas, (holds title to the gas), on the HRDS pipeline from the KPL Anadarko Stirrup Delivery point to the various endpoints of the system?

Anadarko Natural Gas Company

- D. Is Anadarko Energy Services Company a subsidiary or affiliate of Anadarko Petroleum Corporation?

Subsidiary

- E. Does any subsidiary or affiliate of Anadarko Petroleum Corporation provide gas transportation service on the HRDS system? If so, to which company, (affiliate, subsidiary, or otherwise), is such service provided?

No

Kansas Corporation Commission Information Request

Request No: 1

A. Is Anadarko Energy Services Company a subsidiary of Anadarko Natural Gas Company?

No

B. Please identify the retail sales customers for Anadarko Energy Services Company served from the HRDS pipeline.

1. Supreme Cattle Feeders, LLC

KANSAS CORPORATION COMMISSION

JUL 01 2010

UTILITIES DIVISION

CERTIFICATE OF SERVICE

14-ANGG-119-COM

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 26th day of November, 2013, to the following:

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