

¹ Order Denying Settlement Agreement, ¶¶6-7.

II. ARGUMENT

5. Operator's petition for reconsideration should be granted, and the Commission should approve the Settlement Agreement as written, executed, and filed. There are two primary reasons for supporting the approval of the Settlement Agreement at issue. First, Operator's petition for reconsideration cures the Commission's only identified issue with the Settlement Agreement as originally submitted. Second, as a matter of law, the Settlement Agreement was legally sufficient as originally submitted.

A. Operator's Petition for Reconsideration Cures the Commission's Only Stated Grounds for Denial of the Settlement Agreement.

6. Operator's filing demonstrates that it was Operator that had written and then crossed out the words "not clear," on the Settlement Agreement prior to returning the agreement to Staff, rather than Staff crossing out the notations upon receipt but prior to submission to the Commission, or a third person crossing out the notations without the knowledge of either party.² Since this was the only basis for the Commission's denial of the settlement, the Commission should grant Operator's petition for reconsideration and approve the Settlement Agreement, signed by both parties, which would resolve all issues in this docket.

B. The Settlement Agreement as Submitted by Staff was Legally Sufficient.

7. Even if the Commission does not accept the argument that Operator's filing cures the only stated grounds for the Commission's denial of the Settlement Agreement, the Commission should still approve the Settlement Agreement because it was legally sufficient as originally submitted. Staff believes this to be the case for two reasons.

² Staff crossing out the notations would have been a remarkable ethical breach. *See, e.g.*, Kansas Rules Relating to Discipline of Attorneys, Rule 226, 3.3 Advocate: Candor Toward the Tribunal; Rule 226, 3.4 Advocate: Fairness to Opposing Party and Counsel; and Rule 226, 4.1 Transactions with Persons other than Clients: Truthfulness in Statements to Others.

8. First, Staff's March 13, 2018, motion to approve the Settlement Agreement stated "the Commission should disregard the Operator's handwritten notations, which are not substantive."³ Operator could have filed a response to Staff's motion if it wished to assert the notations were not Operator's, or if Operator wished to contest the non-substantive nature of the notations, or if Operator wished to contest the appropriateness of the Settlement Agreement as signed. Operator, however, did none of these things. The Commission's grounds for denial, therefore, were contrary to the uncontested assertions of Staff, and the Settlement Agreement should therefore be approved.

9. Second, the Commission's only stated grounds for denying the Settlement Agreement as originally submitted was that it was unable to determine who had crossed out the words "not clear" in the margins, and thus "whether the Operator was agreeing to something that was unclear to him," so the Commission was uncertain whether a "meeting of the minds" occurred.⁴ Under Kansas law, however, "An offer and acceptance are commonly referred to as the acts by which the parties have a 'meeting of the minds'."⁵ Further, "a person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms."⁶ In the present case, both parties signed the Settlement Agreement, clearly evidencing offer and acceptance, i.e. a meeting of the minds. In other words, the fact that a party wrote "not clear" in the margins has no bearing on whether a meeting of the minds occurred. By signing the Settlement Agreement, Operator legally accepted it. Accordingly, the Settlement Agreement should be approved.

³ Motion to Approve Settlement Agreement, ¶3.

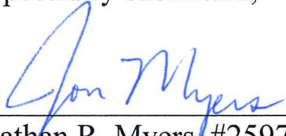
⁴ Order Denying Settlement Agreement, ¶6-7.

⁵ Kansas Pattern Jury Instructions Civil, Chapter 124.04, A. Meeting of the Minds (November 2016 Update).

⁶ *Rosenbaum v. Texas Energies, Inc.*, 241 Kan. 295, 299 (1972).

WHEREFORE, Staff files this Response in Support of Operator's Petition for Reconsideration, and for the reasons more fully set forth above respectfully requests the Settlement Agreement as executed and filed in this docket on March 13, 2018, be approved.

Respectfully submitted,



Jonathan R. Myers, #25975

Lauren N. Wright, #27616

Litigation Counsel, Kansas Corporation Commission

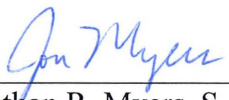
266 N. Main, Suite 220, Wichita, Kansas 67202

Phone: 316-337-6200; Fax: 316-337-6211

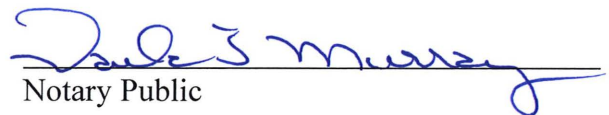
VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

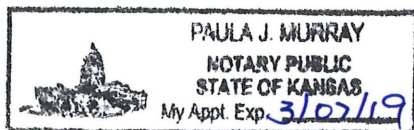
Jonathan R. Myers, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Motion*, and attests that the statements therein are true to the best of his knowledge, information and belief.


Jonathan R. Myers, S. Ct. #25975
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 16 day of APR, 2018.


Notary Public

My Appointment Expires: 3/07/19



CERTIFICATE OF SERVICE

18-CONS-3190-CPEN

I, the undersigned, certify that the true copy of the attached Motion has been served to the following parties by means of first class mail and electronic service on 4/16/18.

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/s/ Paula J. Murray

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