

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

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

**ORDER DENYING ANADARKO'S PETITION FOR RECONSIDERATION OF
DISCOVERY AND PROTECTIVE ORDER**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On August 27, 2013, SWKI-Seward West Central, Inc. (SWKI-SWC) and SWKI-Stevens Southeast, Inc. (SWKI-SE) (collectively SWKIs) filed a Complaint against Anadarko Natural Gas Company (Anadarko) alleging the SWKIs overpaid for natural gas from Anadarko off the Hugoton Residue Delivery System, and therefore is entitled to a refund.¹ In their Complaint, the SWKIs request a Commission finding that Anadarko has failed to file certain contracts with the Commission for approval in violation of K.S.A. 66-109 and K.S.A. 66-117 and a Commission order finding that all rates charged by Anadarko in excess of the latest lawfully established, Commission-approved rate are unlawful, void, and subject to refund with interest.²

¹ Complaint of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Against Anadarko Natural Gas Company, Aug. 27, 2013, ¶ 11.

² *Id.*, ¶ 14.

2. The contracts in question are a Gas Sales Agreement between Anadarko Energy Services Company (AES) and SWKI-SE, dated July 1, 1998 (1998 GSA) and a Gas Sales Agreement between Anadarko and SWKI-SWC, dated June 1, 2002 (2002 GSA). In Docket No. 13-BHCG-509-ACQ (509 Docket), Commission Staff (Staff) filed a Report and Recommendation stating it “was unable to locate any Commission Orders approving contracts for six of the customers listed in Exhibit 1 of the Application.”³ The Gas Supply Agreements were two of the six contracts that could not be accounted for. Upon learning Staff could not locate any orders approving the contracts, the SWKIs filed their Complaint.

3. On October 7, 2013, Anadarko filed its Motion to Dismiss and Answer to Complaint: claiming (1) the Complaint fails to state a claim upon which relief can be granted;⁴ (2) the 1998 GSA was filed with the Commission no later than August 3, 2000, and thus deemed approved pursuant to K.S.A. 66-117 for at least thirteen years;⁵ and (3) the 2002 GSA was filed in 2002, and refiled in 2008 and 2013.⁶

4. On January 15, 2015, the Commission issued its Order Granting Anadarko Natural Gas Company’s Motion to Dismiss Complaint with Prejudice and Granting Joint Motion for Approval of Stipulated Settlement Agreement (Order). The Commission relied on both K.S.A. 66-154a and K.S.A. 66-1,205 to conclude the SWKIs’ admission that their claim is based on a failure to file the agreements, and not an allegation that the rates in those agreements are unfair, unjust, unreasonable, or unjustly discriminatory or unduly preferential, and as a result, found their complaint fails to present a cause of action upon which relief can be granted by the

³ Anadarko Natural Gas Company’s Motion to Dismiss and Answer to Complaint, Oct. 7, 2013, p. 2.

⁴ *Id.*, ¶ 21.

⁵ *Id.*, ¶ 22.

⁶ *Id.*, ¶ 29.

Commission.⁷ In finding the Commission lacks the authority to alter the contractual obligations of the 1998 and 2002 GSAs, the Order explained the Commission may still levy fines or penalties for failure to comply with Commission orders.⁸ Consistent with this authority, the Commission approved the Stipulated Settlement Agreement, which required Anadarko and AES to jointly pay \$50,000 in civil penalties.

5. On January 30, 2015, the SWKIs filed their Petition for Reconsideration of the Order. In essence, the SWKIs argue the Commission erred in failing to address K.S.A. 66-117, K.S.A. 66-1,203, and the filed rate doctrine, which resulted in the Order being unreasonable, arbitrary and capricious, and unsupported by substantial, competent evidence.⁹ Specifically the SWKIs seek retraction of the dismissal with prejudice of their complaint and a full evidentiary hearing on their complaint.¹⁰ The SWKIs' Petition for Reconsideration does not contest the portion of the Order approving the SSA.

6. On February 26, 2015, the Commission denied the SWKIs' Petition for Reconsideration. In denying the Petition for Reconsideration, the Commission reasoned that by filing the Complaint under K.S.A. 66-1,205, the SWKIs admit that K.S.A. 66-1,205 applies.¹¹ The Commission explained that absent a complaint that satisfies K.S.A. 66-1,205, the SWKIs have no cause of action as the Commission lacks jurisdiction to hear the Complaint.¹²

⁷ Order Granting Anadarko Natural Gas Company's Motion to Dismiss Complaint with Prejudice and Granting Joint Motion for Approval of Stipulated Settlement Agreement, Jan. 15, 2015, ¶¶ 14, 16.

⁸ *Id.*, ¶ 18.

⁹ SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Petition for Reconsideration of the Commission's January 15, 2015 Order (PFR), Jan. 30, 2015, pp. 1-2.

¹⁰ *Id.*, p. 2.

¹¹ Order Denying SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Petition for Reconsideration, Feb. 26, 2015, ¶¶ 15-16.

¹² *Id.*, ¶¶ 16-18.

7. On March 27, 2015, the SWKIs filed a Petition for Judicial Review in Stevens County, Kansas. Upon Anadarko's Motion for Change of Venue, the District Court of Stevens County transferred the appeal to the District Court of Shawnee County.

8. On September 26, 2016, the District Court issued its Memorandum Decision and Order, denying the SWKI's Petition for Review. The District Court concluded the SWKIs failed to state a claim upon which relief can be granted because: (1) they failed to allege the rates were "unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential; (2) as private entities, K.S.A. 66-117 does not provide them authority to challenge a contract; and (3) K.S.A. 66-1,203 does not create cause of action.

9. The SWKIs appealed the District Court's decision to the Court of Appeals. On January 12, 2018, the Court of Appeals reversed the Commission's Order and remanded the matter to the Commission "for additional proceedings to determine if the contracts were ever filed and approved by the Commission. If not, the Commission is directed to determine, in its discretion, if the SWKIs are entitled to a remedy for Anadarko's violations."¹³

10. On June 14, 2018, the Prehearing Officer conducted a status conference with the parties to discuss the next steps.¹⁴ The Prehearing Officer questioned the parties as to whether additional discovery was necessary to determine if the contracts were filed and approved or if the parties were willing to stipulate as to the status of the contracts. The parties were unable to agree to a procedure to determine the status of the disputed contracts.¹⁵

11. On July 30, 2018, the SWKIs propounded discovery upon Anadarko seeking documents evidencing the disputed contracts were filed and approved. On August 6, 2018,

¹³ *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692 at *27 (Kan. Ct. App. 2018) (unpublished opinion).

¹⁴ Petition for Reconsideration of a Discovery and Protective Order, Sept. 4, 2018, ¶ 15.

¹⁵ *Id.*, ¶ 16.

Anadarko filed its Objections to the SWKIs' document requests, arguing this matter is currently dismissed and the Commission's January 9, 2014 Discovery Order is no longer in effect.

12. In response, on August 23, 2018, the Commission issued a new Discovery and Protective Order.

13. On September 4, 2018, Anadarko took the usual step of filing a Petition for Reconsideration of a Discovery and Protective Order. In its Petition for Reconsideration, Anadarko asserts the Commission's Discovery Order is unreasonable because (1) additional evidentiary proceedings are unnecessary, and (2) the Discovery Order did not include any guidance regarding the nature or scope of additional evidentiary proceedings.¹⁶ Specifically, Anadarko faults the Discovery Order for not explaining why additional discovery procedures are needed on remand.¹⁷ The Commission is puzzled by this argument, as the Court of Appeals directed the Commission to hold "additional proceedings to determine if the contracts were ever filed and approved by the Commission."¹⁸

14. On September 14, 2018, the SWKIs filed their Response to Anadarko Petition for Reconsideration of Discovery and Protective Order, accusing Anadarko of grossly mischaracterizing the proceedings before the Commission and the Court of Appeals' opinion¹⁹ by suggesting the Commission merely needs to restate its findings from its Order to comply with the Court of Appeals' opinion.²⁰ Instead, the SWKIs interpret the Court of Appeals as directing the Commission to hold additional proceedings to determine whether the contracts were filed and

¹⁶ *Id.*, ¶ 22.

¹⁷ *Id.*, ¶ 40.

¹⁸ *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692 at *27

¹⁹ Response to Anadarko Petition for Reconsideration of Discovery and Protective Order, Sept. 14, 2018, ¶ 5.

²⁰ *Id.*, ¶ 10.

approved and if not, determine whether the SWKIs are entitled to any relief.²¹ The SWKIs urge the Commission to: (1) uphold its Discovery and Protective Order; (2) direct Anadarko to respond to the discovery requests issued on July 30, 2018; (3) issue an order outlining the procedures going forward; and (4) establish a settlement process.²²

15. On September 24, 2018, Anadarko filed its Reply to SWKIs' Response to Anadarko Petition for Reconsideration of Discovery and Protective Order, mainly to rebut the SWKIs' accusations that the Petition for Reconsideration was "disingenuous and misleading."²³

16. The Court of Appeals remands this matter to the Commission for "additional proceedings to determine if the contracts were ever filed and approved by the Commission."²⁴ The Commission is mindful that Anadarko "specifically requested the Commission consider the substantial costs and very limited public benefits of additional evidentiary proceedings in this matter."²⁵ In an attempt to avoid unnecessary costs, the Commission reissued its Discovery Order to allow the parties to develop evidence to present to the Commission on the status of the disputed contracts. The Court of Appeals' directive came in two parts; the first being to determine whether the contracts were filed or approved. The Commission believes allowing discovery to go forward is the most efficient way to answer that threshold issue. Since the Commission believes it is appropriate for discovery to go forward, a discovery order is necessary. Accordingly, the Commission denies Anadarko's Petition for Reconsideration.

²¹ *Id.*, ¶ 18.

²² *Id.*, p. 13.

²³ Reply to SWKIs' Response to Anadarko Petition for Reconsideration of Discovery and Protective Order, Sept. 24, 2018, ¶3.

²⁴ *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692 at *27.

²⁵ Petition for Reconsideration of a Discovery and Protective Order, ¶ 25.

17. The SWKIs urge the Commission to compel Anadarko to respond to the discovery responses issued on July 30, 2018. The Commission declines to do so at this time, since the SWKIs have not filed a motion to compel.

18. The Commission finds the parties should engage in discovery to determine whether the disputed contracts were filed and approved. Discovery on the issue of whether the contracts were filed and approved should conclude by December 4, 2018. By January 11, 2019, Anadarko and the SWKIs shall submit briefs with evidentiary support to demonstrate whether the contracts were filed and approved. Staff may file a brief by January 11, 2019, if it so chooses.

19. The Commission denies the SWKIs' request to establish a settlement process. The parties are free to engage in settlement discussions without the Commission establishing a process.

THEREFORE, THE COMMISSION ORDERS:

- A. Anadarko's Petition for Reconsideration is denied.
- B. The parties should engage in discovery on the issue of whether the contracts were filed and approved. The discovery period on that issue ends on December 4, 2018.
- C. By January 11, 2019, the parties should file briefs demonstrating whether the contracts were filed and approved.
- D. This order is procedural and constitutes non-final agency action.²⁶ Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Lynn M.

²⁶ K.S.A. 77-607(b)(2).

Retz, Secretary to the Commission, is designated by the Commission to receive service of a petition for judicial review.²⁷

E. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 10/04/2018



Lynn M. Retz
Secretary to the Commission

BGF

²⁷ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

14-ANGG-119-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 10/04/2018.

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