

4. Despite having provided the information referenced above, Wheatland acknowledged that

the financial statements and Water Utility Annual Reports even though containing the plant investment, accumulated depreciation, balances for reserve accounts, capital, debt and accrued interest on debt **are not segregated into separate schedules by classification.** Applicant is preparing segregated schedules by classification which will be provided KCC staff and Movant in the nature of Data Requests.

Wheatland Response at 2 (emphasis added).¹

5. In other words, in the above quoted language, Wheatland admitted that it has not yet complied with the requirements of the MFR regulations. Moreover, Wheatland has provided no basis for excusing it from such requirements at the time of its filing. And, since Wheatland's application is based on a calendar year 2011 test year, *see* Application of Wheatland, Exhibit "B," providing data for 2010, 2011 and 2012 does not meet the requirements of the MFR regulations that data be provided "for the three calendar years preceding the test year." *See, e.g.,* K.A.R. 82-1-231(D)(ii). In this case, Wheatland was required to include data for the years 2008, 2009, and 2010.

6. Wheatland admits that "Movant is entitled to the information described in the K.A.R. sections cited above," but states that language it cites in the MFR regulations "indicate

¹ As the Commission is well aware, K.S.A. 66-117(c) provides that

for purposes of the foregoing provisions regarding the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which . . . substantially alters the facts used as a basis for such requested change of rate, shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment.

The question of whether supplementation of the application by Wheatland in order to meet the MFR regulations would require a restart of the 240-day period is left for another day. A related question is whether Wheatland's deficient application was sufficiently complete to even start the statutory period.

there is latitude given in how and when the information is provided.” Wheatland Response at 3. Wheatland’s suggestion is completely unfounded.

7. In support of its position, Wheatland relies on language in K.A.R. 82-1-231(D)(ii), K.A.R. 82-1-231(E) and K.A.R. 82-1-231(G)(iii) that it asserts provides flexibility to applicants for rate relief in providing the required information. In its argument, Wheatland misapplied language in two subsections and, in the third, relied on language that it erroneously combined from two separate subsections.

8. Wheatland would have the Commission believe that rate applicants “may” provide the historic plant information required by K.A.R. 82-1-231(D)(ii) in their applications. To the contrary, the lead-in language of K.A.R. 82-1-231(D) states “This section **shall** contain the items of plant investment **presented in the following manner.**” K.A.R. 82-1-231(D) (emphasis added). The language cited by Wheatland that states that certain information “may be submitted under this section” is in a sentence dealing with “**Additional** schedules setting forth pertinent information related to the plant,” K.A.R. 82-1-231(D)(ii) (emphasis added), and relates only to such additional, optional schedules.

9. Similarly, K.A.R. 82-1-231(E) states that “This section **shall contain**” reserve account balances “by functional classification.” (Emphasis added.) The language relied upon by Wheatland to suggest that the requirements are not mandatory is in a sentence dealing with “**analysis** of the reserve accounts” K.A.R. 82-1-231(E) (emphasis added). However, that language does not affect the requirement to file reserve account data segregated by function classification.

10. Wheatland states that K.A.R. 82-1-231(G) contains the following language: “(iii) a schedule displaying historical interest calculation or made available. If new depreciation rates

are proposed, a copy of the depreciation study shall be provided or made available.” Wheatland Response at 3 (emphasis provided by Wheatland). Wheatland argues that since this information can merely be “made available,” it is not required to be provided as part of the initial application. *Id.* However, the quoted language is actually a combination of language from K.A.R. 82-1-231(G)(iii) and K.A.R. 82-1-231(J). All of the language from the first instance of “or made available” to the end of the next sentence is in K.A.R. 82-1-231(J) and not at all applicable to the requirement to provide historical interest data. K.A.R. 82-1-231(G)(iii) does not contain any language which would indicate that inclusion of the data in the rate filing is optional. In fact, K.A.R. 82-1-231(G)(iii) requires the filing of:

(iii) a schedule displaying historical interest coverage for at least the three calendar years preceding the test year, the test year, and the 12-month period preceding the test year. The method used in the calculation shall be indicated and shall be consistent with the applicant’s bond and indenture requirements

11. It is also worth noting that Wheatland did not address at all its failure to provide historical operating data as required by the MFR regulations.

12. There is no question that the provisions of K.A.R. 82-1-231 are mandatory. As has been noted by the Kansas Court of Appeals, “The Commission’s regulations require public utilities to file detailed documentation and prefiled testimony to justify any change in rates. *See* K.A.R. 82–1–231.” *Bluestem Telephone Co. v. KCC*, ___ P.3d ___, 2013 WL 6502844 (Kan. Ct. App. 2013). The purpose of the regulations is clear – to provide Staff and intervening parties a standard set of information to analyze without the need to sift through the utility’s filings or engage in discovery. Given the short time allowed for analysis under the operation of law date provisions of K.S.A. 66-117, it is essential that all the information required by the MFR regulations be provided with the utility’s initial filing.

13. Because Wheatland failed to provide the information required by the MFR regulations, its application is deficient and should be dismissed.

WHEREFORE, Tyson moves the Commission to dismiss Wheatland's Application in this matter in its entirety and for such other and further relief as may be appropriate.

Respectfully submitted,

By 

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STATE OF MISSOURI)
)
COUNTY OF JACKSON)

ss.

VERIFICATION

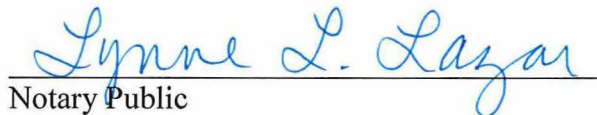
Martin J. Bregman, of lawful age, being first duly sworn, upon oath states:

That he is one of the attorneys for the Intervenor, Tyson Fresh Meats, Inc., and that he has read the above and foregoing **REPLY OF TYSON FRESH MEATS, INC. TO WHEATLAND COOPERATIVE, INC.'S RESPONSE TO MOTION TO DISMISS**, knows the contents thereof, and knows that all of the statements made therein are true.



Martin J. Bregman

Subscribed and sworn to before me this 27th day of January, 2014.



Notary Public

LYNNE L. LAZAR
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
Commission # 10394409
My Commission Expires: 8-18-2014

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2014, the above and foregoing document has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States mail, postage prepaid, addressed to the following parties of record:

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