

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation)
Regarding the Acceleration of Replacement of)
Natural Gas Pipelines Constructed of Obsolete)
Materials Considered to be a Safety Risk)
Docket No. 15-GIMG-343-GIG

**RESPONSE OF ATMOS ENERGY AND BLACK HILLS ENERGY
TO CURB'S PETITION FOR RECONSIDERATION**

Atmos Energy and Black Hills/Kansas Gas Utility, LLC, d/b/a Black Hills Energy ("Black Hills Energy") request that the Kansas Corporation Commission ("Commission") deny the Citizens' Utility Ratepayer Board's ("CURB") petition for reconsideration filed in the above-captioned docket on July 6, 2015. CURB is challenging the Commission's decision issued on June 18, 2015. In that decision, the Commission held it had "jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk." *Order on Jurisdictional Issue* issued in Docket No. 15-GIMG-343-GIG, page 4 ("June 18, 2015 Order"). Atmos Energy and Black Hills Energy submit the following in support of their request that CURB's petition for reconsideration be denied:

1. CURB concedes the Commission under its general powers has authority to establish alternative rate making methodologies to allow utilities to recover their costs outside the context of a general rate case filing. However, according to CURB, the one exception to that authority, is the Commission cannot alter a specific alternative rate making mechanism or portion of a specific alternative rate making mechanism that has been approved by the Legislature. CURB argues in its petition for reconsideration, as it did in its original brief on the jurisdictional issue, that the Commission is attempting to alter the GSRS Act by finding that it has authority to adopt a

system-wide obsolete pipeline replacement program because such a program would not be separate and distinct from the projects covered under the GSRS Act. In other words, CURB argues the Commission has no authority to consider an alternative ratemaking mechanism for recovery of costs relating to the accelerated replacement of natural gas pipe constructed of obsolete materials considered to be a safety risk because the Legislature required those projects and the costs relating to those projects be recovered through the utility's GSRS surcharge. The problem with CURB's argument is the plain and unambiguous language in the GSRS Act specifically identified the types of pipeline replacement projects covered by GSRS and those projects did not include a system-wide obsolete pipeline replacement program. The Commission has already fully addressed this argument in its June 18, 2015, Order. Accordingly, CURB's petition for reconsideration should be denied.

2. As explained by the Commission in its June 18, 2015, Order, CURB's argument fails because the GSRS Act was adopted by the Legislature to require the Commission to allow natural gas utilities on a voluntary basis to recover costs relating to only two specific types of projects: (1) costs incurred by the utility to comply with pipeline safety requirements, i.e., costs related to projects dealing with fixing leaking pipes, cathodic protection, and other items specifically mentioned in the pipeline safety act; and (2) costs incurred by the utility when it is requested by government entities to relocate its pipeline. K.S.A. 66-2202(f), which defines the projects covered by the GSRS, states as follows:

(f) "natural gas utility plant projects" may consist only of the following:

(1) Mains, valves, service lines, regulator stations, vaults and other pipeline system components **installed to comply with state and federal safety requirements as replacements for existing facilities;**

(2) Main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing

the integrity of pipeline system components **undertaken to comply with state or federal safety requirements**; and

(3) **facility relocations** required due to construction or improvement of a highway, road, street, public way or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the natural gas public utility.

K.S.A. 66-2202(f)(1)(2) and (3). Emphasis added. As determined by the Commission, the definition of projects covered by the GSRS did not include a system-wide obsolete pipeline replacement program and the scope of such program is different than the defined-projects covered under the GSRS Act. Accordingly, the Commission is not attempting to unlawfully alter the provisions of the GSRS Act, as suggested by CURB, by considering an alternative rate recovery mechanism relating to cost recovery of accelerated replacement of obsolete piping considered to be a safety risk.

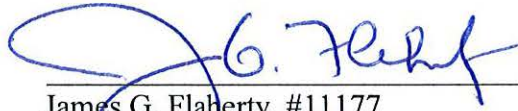
3. As also indicated by the Commission, there is no language contained in the GSRS Act suggesting the Legislature intended for the Commission to be precluded from looking at an alternative rate mechanism to allow recovery of costs relating to the acceleration of replacement of obsolete piping. Nor is there any language suggesting that natural gas utilities are precluded from requesting some other type of recovery mechanism, or that the GSRS surcharge was the only mechanism that could be approved by the Commission with respect to pipeline replacement. Instead, the GSRS Act simply required the Commission to allow a utility to implement a GSRS surcharge when requested by the utility to recover costs relating to the two specific types of projects identified in the GSRS Act. Accordingly, CURB's petition for reconsideration should be denied.

4. Atmos Energy and Black Hills Energy have reviewed Staff's response to CURB's petition for reconsideration and concur with the statements and arguments being made by Staff.

WHEREFORE, for the reasons set forth herein, and the reasons set forth in Staff's response

to CURB's petition for reconsideration, Atmos Energy and Black Hills Energy request the Commission issue an order denying CURB's petition for reconsideration.

Respectfully submitted,



James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory, P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com
Attorneys for Atmos Energy



James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory, P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com

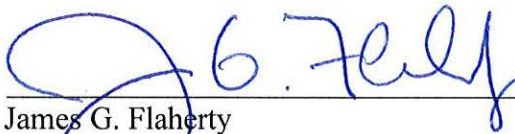
Patrick J. Joyce
Senior Managing Counsel
Black Hills Corporation
1102 East 1st Street
Papillion, Nebraska 68046
(402) 221-2691, telephone
patrick.joyce@blackhillscorp.com

Attorneys for Black Hills/Kansas Gas Utility Company,
LLC, d/b/a Black Hills Energy

VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states: That he is an attorney for Atmos Energy and Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy; that he has read the above and foregoing Response to CURB's Petition for Reconsideration; knows the contents thereof; and that the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 16th day of July, 2015.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Response of Atmos Energy and Black Hills Energy to CURB's Petition for Reconsideration was served by electronic service on this 16th day of July, 2015, to the following parties:

Niki Christopher
n.christopher@curb.kansas.gov

David Springe
d.springe@curb.kansas.gov

Andrew French
a.french@kcc.ks.gov

Brian G. Fedotin
b.fedotin@kcc.ks.gov

David N. Dittmore
david.dittmore@onegas.com

Walker A. Hendrix
whendrix@onegas.com


James G. Flaherty