

2. The basis for the request is that the findings are not supported by substantial competent evidence in the record and are not based on reasoned decision-making. *Zinke & Trumbo, Ltd.*, 242 Kan. 470, Syl 6, 749 P.2d 21 (1998); *Home Telephone Co., Inc. v. State Corporation Commission of the State of Kansas*, 31 Kan.App.2d 1002, 1011-1013, 76 P.3d 1071 (2003).

A. ALL OF THE PIPELINE SAFETY EXPERTS CONFIRMED THAT BLACK HILLS ENERGY'S SYSTEM IS SAFE

3. A determination of whether a gas utility's distribution system is safe must be decided by an expert. In this case, every expert testified the Black Hills Energy system was safe.

4. Mr. Watkins' testified that Black Hills Energy's system was safe. *Watkins Direct Testimony, pages 3-6; Watkins, Vol. I, Tr. 201.* He testified the utility adhered to all state and federal pipeline safety standards along with generally accepted industry standards. *Watkins Direct Testimony at page 4.* He indicated Black Hills Energy's Operations and Maintenance ("O&M") Manual describes in detail the manner in which the utility operates and maintains its system. *Id.* That O&M Manual is provided to the Commission on an annual basis and is regularly audited by its Staff. *Id.* Mr. Watkins testified the utility maintains predictive, preventive and corrective maintenance procedures to ensure safe, reliable natural gas delivery to all of its customers and emphasizes predictive maintenance by following its Distribution and Transmission Integrity Management Programs ("DIMP" and "TIMP"). *Id.* He expressed these programs provide a review and analysis of the utility's Kansas system and provide risk analysis based upon various factors. *Id.; Watkins, Vol. I, Tr. 184.* Mr. Watkins explained in his direct testimony and during the hearing how Black Hills Energy's preventive maintenance program is conducted concurrently with its predictive maintenance procedures and is accomplished by strict adherence to the utility's O&M Manual, which states specific intervals for inspection of the natural gas systems. *Watkins Direct Testimony, page 4.* He further explained how corrective maintenance is minimized through the effective implementation of predictive and preventive maintenance programs but that corrective maintenance is sometimes required. *Id.* When unscheduled maintenance is required the utility performs the necessary tasks by following its O&M Manual. *Id.* Mr. Watkins stated how reactive and proactive replacement of undesirable pipe is also included in Black Hills Energy's O&M Manual. *Id.* Finally, Mr. Watkins

explained that a more aggressive replacement plan is appropriate today in order to prevent massive replacement activity in the future, but added the request made in this case should not be taken in any way to suggest the utility has not or will not pro-actively replace aged pipe if such is necessary to assure safe and reliable service. *Id.* at page 7.

5. Mr. Watkins' expertise and credibility were not challenged by the Commission. Nor did any witness challenge his conclusions that Black Hills Energy's system was safe based upon the reasons given by Mr. Watkins.

6. Mr. Leo Haynos, the Commission's Chief Engineer in charge of pipeline safety, provided expert testimony which supported the testimony provided by Mr. Watkins. Mr. Haynos authored a report that was admitted into the record that stated regular leak surveys and ongoing replacement projects indicated the pipeline systems in Kansas were currently safe. *Staff Report and Recommendation, page 2, Exhibit GLS-3*. His report indicated that current surveillance and replacement programs required by Kansas Pipeline Safety Regulations indicate the natural gas pipeline systems in Kansas were safe. *Id. at page 3*. Mr. Haynos testified that with respect to the threat to public safety from leaking gas pipelines, the leaking history reported by the LDC's does not indicate that there was an imminent danger of catastrophic pipe failure in Kansas. *Haynos Direct Testimony, page 3*.

7. The Citizens Utility Ratepayer Board ("CURB") also retained an engineer to provide expert testimony in this case. Mr. McGee testified all three of the gas distribution systems in Kansas, including Black Hills Energy's system, were safe. *McGee Direct Testimony, pages 10-12; 14;17*. He testified the gas utilities are doing a good job managing their pipeline systems based upon generally declining leak rates. *Id.* Mr. McGee testified that the current pace of pipe replacement was appropriate. *McGee, Vol. I, Tr. 112*.

8. Every expert in this case considered the amount of obsolete pipe remaining to be replaced and the current rate of replacement as it related to Black Hills Energy and concluded based upon their expertise Black Hills Energy's system was safe. Therefore, there is no substantial competent evidence contained in the record to support a different conclusion. To the extent the Commission in paragraph 72 reached a different conclusion than the experts in this case, Black Hills Energy respectfully requests reconsideration or clarification of that portion of the Commission's Order.

B. BLACK HILLS ENERGY IS COMMITTED TO THE OPERATIONAL SAFETY OF ITS SYSTEM

9. The Commission's suggestion that Black Hills Energy was not committed to the operational safety of its natural gas distribution system based upon its level of investment in replacing obsolete pipe is not supported by substantial competent evidence. In fact, such a suggestion is contradicted by the evidence submitted by all parties in this docket, and is not based on reasoned decision-making. Accordingly, Black Hills Energy requests reconsideration or clarification as to this finding by the Commission in paragraph 72 of its Order.

10. Black Hills Energy submitted evidence showing how the utility has spent a significant amount in capital expenditures relating to its system's integrity, safety, and replacement of obsolete pipe. *Direct Testimony of Mr. Jacobs, sponsored by Mr. Gardner, pages 4-9*. That evidence was confirmed and backed up by the Commission Staff. Staff Witness, Mr. Grady, provided the following testimony which is in complete contradiction to the Commission's finding:

Both of those utilities [Atmos Energy and Black Hills Energy] **on a per capita basis** are spending a significant amount of capital expenditures relating to system integrity, safety, replacement of their systems. It's a significant percentage on a pro forma basis. (Emphasis added). *Grady, Vol. II, Tr. 342*.

11. Moreover, a utility's rate of replacement, in and of itself, or in comparison to another gas utility, and without consideration of all of the other relevant facts, is not a reasonable basis to

conclude a gas utility has failed to demonstrate a financial commitment to operational safety. Instead, such a conclusion must be based upon all relevant facts to be reasonable. Black Hills Energy respectfully contends the Commission's conclusion that Black Hills Energy failed to demonstrate a commitment to operational safety based solely on a comparison of its replacement rate of obsolete pipe with Kansas Gas Service ("KGS") is not based upon reason and judgment, is arbitrary and capricious, and should therefore, be reconsidered by the Commission. The Commission was required to look at all relevant facts before making such a finding. Had it done so, it would have reached a different conclusion. *See, Home Telephone Co. Inc.*, 31 Kan.App.2d at 1011-1013 (An agency action is arbitrary if it has been taken without adequate determining principles, not done according to reason or judgment, or lacks reasoned decision-making.).

12. One of those factors not considered by the Commission to determine whether a gas utility has demonstrated a commitment to operational safety is whether its system is in fact safe. As indicated above, all experts testified that Black Hills Energy's system is safe.

13. Another factor not considered by the Commission is whether the gas utility has made a reasonable investment in its system's integrity, safety and reliability. As indicated above, Mr. Grady testified Black Hills Energy is spending a **significant** amount of capital expenditures relating to its system's integrity, safety and reliability on a per capita basis. There was no evidence Black Hills Energy is spending less on its system's integrity and safety on a per capita basis than KGS.

14. Yet another key factor as to whether a gas utility has demonstrated a commitment to operational safety, which was not considered by the Commission, is whether there is any evidence that the utility's customers have been harmed in any way. To the extent the Commission suggested in its Order that customers have been harmed by Black Hills Energy's pace of replacement of obsolete pipe, or the utility has been imprudent in the pace of replacement, there is no basis or support for such

a finding. In fact, instead of customers being harmed in any way by the pace of replacement, Mr. Haynos testified during the hearing that customers have actually benefitted by the gas utilities' pace of replacement of obsolete pipe. *Haynos, Vol. I, Tr. 198*. In addition, Black Hills Energy has proposed two separate, reasonable accelerated replacement plans since 2014 for the Commission's consideration and approval. Black Hills Energy has also complied with the intent of using the GSRS statute to the fullest extent possible in order to avoid filing frequent rate cases (only one rate case filing in the last eleven years).

Mr. McGee, on behalf of CURB, provided testimony similar to Mr. Haynos. He said customers have actually financially benefitted as a result of the gas utilities extending the useful life of their obsolete pipe by doing more frequent leak surveys and patrolling the system more frequently so that replacement can be reasonably delayed. *McGee Direct Testimony*, page 5.

15. Finally, if the Commission's conclusion as to whether a gas utility has demonstrated a commitment to safety is going to be based solely on a comparison with another gas utility, then in order for that comparison and conclusion to be reasonable it must consider any differences between the gas utilities. Otherwise, the comparison is deficient. Such differences between utilities must include (i) the number of customers served by the gas utilities; (ii) the location of the systems, including the environmental and soil content differences at each location; (iii) when the original pipe was placed into service and the type of pipe that was originally placed in service; (iv) who was managing the systems when the pipe was installed; (v) when did the current management assume responsibility for the systems; (vi) what was the physical condition of the systems when they were acquired by the current management; and (vii) other differences. As suggested by Commissioner Albrecht in her concurring and dissenting opinion, these and other differences between the gas utilities must be considered in order to make such comparisons meaningful. There is no indication in the

Order that suggests the Commission considered those differences, or any other differences between the gas utilities' systems, in attempting to draw comparisons between the utilities.¹

16. Black Hills Energy respectfully requests the Commission reconsider its findings in paragraph 72 based upon these additional factors. Each of the above-mentioned factors was supported by evidence in the record and was not controverted. The Commission should find on reconsideration that Black Hills Energy has demonstrated a commitment to operational safety based on the sum of all of those factors.

II. BLACK HILLS ENERGY WILL NOT BE ABLE TO USE THE ARP AS IT IS CURRENTLY STRUCTURED

17. Black Hills Energy will not be able to use the Accelerated Replacement Program ("ARP") as it is currently structured. The condition that all bare steel main and service lines located in Class 3 locations be replaced in a ten-year period unless a waiver is obtained is unnecessary and unreasonable. It is unreasonable due to the significant rate impact it would have on our customers. Using current cost estimates, replacement of the bare steel service lines alone, would cost approximately \$58 million dollars. This would increase rates by over \$6 million. The cost of the replacement of bare steel mains would even be greater. *Watkins, Vol. I, Tr. 72 ("250 miles of bare steel main.")*.² The aggressive pace of replacement is unnecessary when compared to the pace recommended by the Commission's chief of pipeline safety, Mr. Haynos, who suggested a 30-year replacement period for all obsolete pipe would be an aggressive pace. *Haynos Direct Testimony, page 12*. Black Hills Energy's 35-year replacement plan was more in line with the recommendation made by Mr. Haynos. *Watkins, Vol. I, Tr. 212-213*.

¹Black Hills Energy would note that the premise of this docket was never about trying to compare the gas utilities.

²At approximately \$600,000.00 to \$1,000,000.00 per mile, which is the current estimated cost of replacement of bare steel main per mile, the cost of replacement will be significant.

18. The pace of replacement required under the ARP would also likely place an unnecessary and unreasonable strain on (i) the availability of qualified contractors by increasing the cost of the replacement; and (ii) the utility's relationship with the communities and residents they serve, by increasing the magnitude of the disruption in traffic due to construction relating to the pace of replacement. Black Hills Energy also does not have the current staff to implement the proposed 10-year replacement program. For these reasons, Black Hills Energy requests the Commission reconsider the 10-year condition included in the ARP mechanism.

19. The focus on prioritizing the replacement of bare steel pipe solely on whether it is located in a Class 3 location is not reasonable. A considerable amount of time was spent during the hearing discussing (i) Black Hills Energy's prioritization model; (ii) all of the factors (the location of the pipe as being just one factor), which are included in that model; and (iii) how the utility uses that model to prioritize replacement of pipe. *Vol. I, Tr. 174-187*. System integrity and public safety is best met using the prioritization model to prioritize replacement of pipe and it should be used instead of just the location factor. Black Hills Energy serves quite a few very small Kansas towns, some of which were inherited by Black Hills Energy from the municipality at the request of the Commission's pipeline safety staff for safety purposes. In some, the entire town is located in a Class 2 location. A bare steel main or service line in one of those small towns could be in more need of replacement than a bare steel main or service line in a larger town. Black Hills Energy's prioritization model should identify that fact and replace that pipe in the smaller town ahead of the pipe in the larger town for replacement. The condition in the ARP that focuses solely on whether the pipe is in a Class 3 location does not take into account the utility's need to replace the pipe that is in more need of replacement. Black Hills Energy asks the Commission to reconsider the Class 3 location condition.

20. There was also no support in the record to change the recommended five-year pilot

program to four years and no overall support for a proposal that is different than the proposal that had the support of all parties to this general investigation.

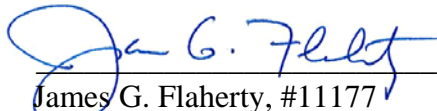
21. Finally, the requirement to implement the alternative ratemaking mechanism as part of a general rate case filing is counter-intuitive to the reason for using an alternative ratemaking mechanism, i.e., to avoid filing general rate cases. Black Hills Energy questions the need to file for the mechanism as part of a general rate case filing. Black Hills Energy is willing to implement the accelerated replacement plan it proposed in its pre-filed testimony submitted in this docket on October 8, 2015 (*Watkins Direct Testimony, pages 11-14*), in order to accelerate replacement of obsolete pipe using the recovery mechanism proposed in this docket or in its last rate case. Alternatively, Black Hills Energy recommends increasing the GSRS residential cap to \$0.80 per customer per month per year to reflect the impacts of inflation and the need to accelerate GSRS-eligible investment. This approach, along with the 35-year replacement period proposed in this docket, would address the Commission's concerns, postpone rate case filings and accomplish the goal of accelerated integrity investments.

III. CONCLUSION

22. As set forth in the testimony of each Black Hills Energy witness who testified in this case, and as substantiated in the testimony presented by Staff and CURB, Black Hills Energy's system is safe and the utility is committed to providing safe and reliable service to its customers. Over the next five-year period, Black Hills Energy has budgeted \$77 million in investment relating to its system's integrity, safety and reliability. That is a significant investment, especially considering the utility's total current rate base in Kansas is only \$140 million. Black Hills Energy compliments the Commission in finding there was a need for an alternative ratemaking mechanism that allows gas utilities to recover the cost to accelerate replacement of obsolete pipeline materials. However,

changes to that mechanism are necessary to make it workable for the utility. Moreover, the utility respectfully requests reconsideration or clarification from the Commission in an order on reconsideration that finds based upon the substantial competent evidence in the record Black Hills Energy's system is safe and that the utility has demonstrated a commitment in making significant investment in its system's integrity, safety and reliability.

Respectfully submitted,



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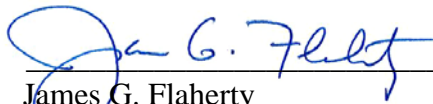
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VERIFICATION

STATE OF KANSAS)
)ss:
COUNTY OF FRANKLIN)

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy, named in the foregoing Petition for Reconsideration, and is duly authorized to make this affidavit; that he has read the foregoing Petition, and knows the contents thereof; and that the facts set forth therein are true and correct.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 27th day of September, 2017.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 27th day of September, 2017, addressed to:

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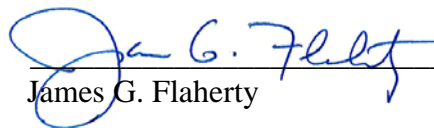
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