THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

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

ORDER DENYING PETITION FOR RECONSIDERATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files, the Commission finds and concludes:

1. The issue before the Commission is whether a natural gas provider charging a higher gas price and higher delivery charge to a customer than it charges one of its affiliates is unfair, unjust, unreasonable or unjustly discriminatory or unduly preferential. In their Complaint, the SWKI-Seward West Central, Inc. (SWKI-SWC) and SWKI-Stevens Southeast, Inc. (SWKI-SE) (collectively SWKIs) claim that by being charged higher prices than Anadarko's affiliates, they were charged unfair, unjust, unreasonable or unjustly discriminatory or unduly preferential rates, while Anadarko Natural Gas Company (Anadarko) claims the different rates do not constitute unfair, unjust, unreasonable or unjustly discriminatory or unduly preferential rates.

2. On August 27, 2013, the SWKIs filed a Complaint against 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 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] On January 15, 2015, the Commission dismissed the SWKIs' Complaint.[3]

3. On March 27, 2015, the SWKIs filed a Petition for Judicial Review. 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."[4]

4. On August 6, 2019, the Commission issued an Order on Contract Status, finding the SWKIs have not been harmed by Anadarko's failure to timely file the 1998 and 2002 Gas Service Agreements (GSAs), and therefore, are not entitled to a remedy for Anadarko's violations.[5] On October 16, 2019, the SWKIs filed a second Petition for Judicial Review. On April 8, 2022, the Court of Appeals remanded the matter back to the Commission to determine whether the contract rates charged by Anadarko are unlawful, void, and subject to refund with interest. Specifically, the Court directed the Commission to "determine whether the SWKIs are entitled to a remedy for Anadarko's failure to register the gas service agreements, keeping in mind the prior panel's holding that a claim of illegal rates for failing to register the contracts is

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[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.
[3] 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.
[4] *SWKI-Seward W Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692 at *14 (Kan. Ct. App. 2018) (unpublished opinion).
[5] Order on Contract Status, Aug. 6, 2019, Ordering Clause A.

equivalent to a claim the rates were unreasonable, unfair, or unjust. *However, we stress that a remedy is not required, and the discretion on whether to grant a remedy to the SWKIs remains with the Commission.*"[6] (emphasis added) The Court of Appeals reiterated, "If it determines a remedy is appropriate, the Commission should apply the time value of money. *However, we again emphasize that the Commission is not required to order a remedy.*"[7] (emphasis added)

5. On April 18, 2023, the Parties filed prehearing briefs. The SWKIs claim the rates were unreasonable because Anadarko charged lower rates to its affiliate, without evidence that it is more expensive to serve the SWKIs than the Anadarko affiliate.[8] The SWKIs claim the Commission "must order a refund of the $0.40 per MMBtu cost differential" between the affiliate's "unduly preferential" rate and the SWKIs "unjustly discriminatory rate" and (2) the "time value of money" on all amounts paid to Anadarko prior to the Commission determining in this proceeding the "reasonableness" of the ANGC rates.[9]

6. Anadarko explains the parties operated as if the contracts were filed and approved by the Commission.[10] Anadarko claims the SWKIs had an inconsistent and unpredictable load profile and no minimum volume purchase obligations and could terminate on 30 days' notice, all of which contributed to the need to charge them a higher rate.[11] Anadarko also claims that despite having the option of purchasing gas from Exxon, Duke Energy, Kansas Gas Service, Atmos, or Black Hills, the SWKIs still chose Anadarko, affirming the reasonableness of

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[6] *SWKI-Seward West Central v. Kansas Corp. Comm'n*, 2022 WL 1052231, at * 8 (Kan. Ct. App. 2022) (unpublished opinion).
[7] *Id.*, *11.
[8] Complainants' Pre-Hearing Brief, Apr. 18, 2023, pp. 22-23.
[9] *Id.*, p. 24.
[10] Pre-Hearing Brief of Anadarko Natural Gas Company, Apr. 18, 2023, ¶ 4.
[11] *Id.*, ¶¶ 151, 153.

Anadarko's rates.[12] Anadarko claims the rates it charged the SWKIs were well below the rates the SWKIs paid to Freedom Pipeline, which is owned by the SWKIs,[13] and the rates charged by Kansas Gas Service, Midwest Energy, and Atmos.[14] Similarly, Anadarko argues that in the 13-BHCG-509-ACQ Docket (13-509 Docket), the SWKIs wanted to continue receiving service under the 1998 and 2002 Agreements with Anadarko, rather than face a nearly 40% increase in rates from switching to Black Hills.[15]

7. On June 9, 2023, the Commission held an evidentiary hearing. The Parties appeared by counsel. The SWKIs presented five witnesses, Anadarko presented two witnesses, and Leo Haynos of Commission Staff (Staff) testified.[16] All of the witnesses were subject to Commissioner questions and cross-examination.

8. Following the evidentiary hearing, the SWKIs and Anadarko filed post-hearing briefs and reply briefs. The SWKIs claim it is unjust and unreasonable for Anadarko to charge them a 50 cent delivery charge, when it charged its affiliate only a 10 cent delivery charge.[17] The SWKIs claim there was no evidence to support a claim it cost Anadarko more to serve the SWKIs than its affiliate.[18] Accordingly, the SWKIs state, "the Commission must determine that the 50 cent Delivery Charge was 'unreasonable' and order a refund, with interest, of the 40 cent differential from the AESC Delivery Charge."[19]

9. Anadarko explains that on the same day that it executed the 1998 GSA with SWKIs, it also executed a Gas Sales Agreement with one of its affiliates with identical delivery

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[12] *Id.*, ¶ 159.
[13] *Id.*, ¶ 145.
[14] *Id.*, ¶ 146.
[15] *Id.*, ¶ 37.
[16] Transcript of Evidentiary Hearing (Transcript), June 9, 2023, pp. 2-4.
[17] Initial Post Hearing Brief of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc., July 10, 2023, ¶ 37.
[18] *Id.*, ¶ 39.
[19] *Id.*, ¶ 41.

pricing.[20] Anadarko reiterates that in 2013, the SWKIs urged the Commission to allow them to remain as Anadarko customers, rather than be transferred to Black Hills' customers, because Black Hills' rates were nearly 40% higher than the rates Anadarko was charging the SWKIs.[21] Essentially, Anadarko contends from 2006 through 2013, Anadarko's rates were significantly lower than any other alternative gas supplier.[22]

10. The SWKIs' post hearing reply brief states that no competent witness testified that the rates they paid were just and reasonable.[23] The SWKIs dispute Anadarko's claim that the 13-509 Docket suggests Anadarko's 50 cent delivery charge is reasonable.[24] Instead, the SWKIs contend the absence of any justification for the 40 cent difference in delivery charge to them over Anadarko's affiliates demonstrate the challenged rates are unreasonable.[25]

11. Anadarko's post hearing reply brief accuses the SWKIs of ignoring evidence that the rates are reasonable.[26] Specifically, Anadarko explains the price differential is justified because the gas sold to its affiliate was used for the compressor and transmission on the Anadarko pipeline, while the SWKIs' gas was not.[27] Similarly, Anadarko contends the 40 cent differential was due in part to the expense of delivering dry, processed gas to the SWKIs, instead of the wet, unprocessed gas delivered to its affiliate.[28]

12. On November 7, 2024, the Commission issued its Order Denying the Complaint, finding that the 1998 GSA rates were just and reasonable because its rates were identical to rates

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[20] Post-Hearing Brief of Anadarko Natural Gas Company, July 10, 2023, ¶ 12.
[21] *Id.*, ¶ 17.
[22] *Id.*, p. 18.
[23] Post Hearing Reply Brief of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc., July 24, 2023, ¶ 6.
[24] *Id.*, ¶ 17.
[25] *Id.*
[26] Anadarko's Reply to the SWKIs' Post Hearing Brief, July 24, 2023, p. 8.
[27] *Id.*, ¶ 22.
[28] *Id.*, ¶ 23.

in an affiliate contract signed the exact same day,[29] and that the 2002 GSA rates were within the Zone of Reasonableness.[30] By finding that both GSAs were just and reasonable, the Commission determined that the SWKIs were not entitled to any relief.[31]

13. On November 22, 2024, the SWKIs filed a Petition for Reconsideration of Order Denying Complaint dated November 7, 2024 (PFR), claiming the Commission's Order fails to follow the mandates of the District Court and the Court of Appeals and should be reconsidered.[32] The SWKIs offer nine grounds for reconsideration: (1) the Commission engaged in unlawful procedure by not placing the burden of proof on Anadarko; (2) the Commission failed to address an issue requiring resolution and abused its discretion by failing to address the Filed Rate Doctrine and what remedy is appropriate under the Filed Rate Doctrine; (3) the Commission failed to comply with the mandates of the District Court and Court of Appeals; (4) the Commission ruling that the unfiled rates are just and reasonable is arbitrary and capricious and unreasonable and is without foundation in fact and not supported by substantial competent evidence; (5) the Commission's Order does not address or discuss the applicability of the Filed Rate Doctrine; (6) the Commission did not properly exercise its discretion and/or abused its discretion in determining that the SWKIs are not entitled to a remedy; (7) in ruling that the SWKIs are not entitled to a remedy, the Commission erroneously interpreted or applied the law and the decision is arbitrary and capricious and unreasonable and is without foundation in fact and not supported by substantial competent evidence; (8) that the Commission's Order is not reasonable and is otherwise arbitrary and capricious and does not set forth findings of fact and

[29] Order Denying Complaint, Nov. 7, 2024, P 17.
[30] *Id.*, PP 30, 32
[31] *Id.*, P 33.
[32] Petition for Reconsideration of Order Denying Complaint dated November 7, 2024 (PFR), Nov. 22, 2024, P 18.

conclusions of law such that a reviewing court may be apprised of the foundation for its conclusions; and (9) the Commission's Order is otherwise unreasonable, arbitrary, or capricious and is not supported by substantial, competent evidence.[33]

14. Of those nine issues, there is substantial overlap. Both issues 2 and 5 essentially argue the Commission failed to address the Filed Rate Doctrine. Issues 4, 7, and 8 essentially argue the Order is arbitrary and capricious and not supported by substantial, competent evidence. The SWKIs' arguments boil down to the Commission failed to apply the correct burden of proof in assessing the reasonableness of the rates, failed to apply the Filed Rate Doctrine, misinterpreted the law, the Commission's Order was not supported by substantial, competent evidence, and the Commission acted arbitrarily and capriciously.

15. On December 2, 2024, Anadarko filed its Response to the SWKIs' PFR, explaining the Commission followed the Court's mandate, and that since the Commission found the rates in the GSAs were just and reasonable, that the Filed Rate Doctrine is inapplicable.[34]

16. On December 11, 2024, the SWKIs filed their Reply to Anadarko, explaining that Anadarko continues to litigate the issue of whether the GSAs were filed despite the Commission's prior ruling that the two GSAs were not filed.[35] The Commission agrees with the SWKIs that it is law of the case that the two GSAs were not filed. The SWKIs also state any suggestion that the Commission followed the appellate mandate is laughable and accuse Anadarko of wrongly claiming the courts never held the Filed Rate Doctrine should be applied.[36]

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[33] *Id.*, ¶ 19.
[34] Anadarko Natural Gas Company's Response to the SWKIs' Petition for Reconsideration, Dec. 2, 2024, p. 2.
[35] Reply to Anadarko Natural Gas Company's Response to SWKI Petition for Reconsideration of Order Denying Complaint, Dec. 11, 2024, ¶ 2.
[36] *Id.*, pp. 3, 6.

In arguing the Commission failed to follow appellate mandates, the SWKIs focus on the District Court's findings, rather than the subsequent Court of Appeals' opinions.[37]

The Commission properly reviewed the disputed GSAs on a de novo basis

17. The SWKIs claim the Commission erred by not placing the burden of proof on Anadarko. The SWKIs cite K.S.A. 66-1,205(a) to claim the Commission erred in failing to place the burden of the GSAs' reasonableness on Anadarko.[38] But K.S.A. 66-1,205 is silent on the burden of proof. K.S.A. 66-1,205(a) provides:

> Upon a complaint in writing made against any natural gas public utility governed by this act that any rates or rules and regulations of such natural gas public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any rule and regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such natural gas public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such natural gas public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary. No order changing such rates, rules and regulations, practices or acts complained of shall be made or entered by the commission without a formal public hearing in accordance with the provisions of the Kansas administrative procedure act, of which due notice shall be given by the commission to such natural gas public utility or to such complainant or complainants, if any. Any public investigation or hearing which the commission shall have power to make or to hold may be made or held before any one or more commissioners. All investigations, hearings, decisions and orders made by a commissioner shall be deemed the investigations, hearings, decisions and orders of the commission, when approved by the commission.

K.S.A. 66-1,205(a) simply gives the Commission the power to investigate a written complaint that a natural gas public utility has charged unjust, unreasonable, unjustly discriminatory or unduly preferential rates.

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[37] *See id.*, ¶¶ 10-13.
[38] PFR, ¶ 43.

18. The burden of proof where a complaint alleges unfiled rates are unreasonable is a matter of first impression. SWKI witness Dittemore acknowledges that traditionally the complainant bears the burden of proof, but speculates that since the disputed GSAs were never filed, the burden would shift to Anadarko.[39] However, Dittemore offers no authority to support his speculation. Furthermore, Dittemore appears to assume Anadarko would have the burden of proof to demonstrate the rates were just and reasonable when the GSAs were submitted to the Commission for approval. But unlike a rate case, where the utility bears the burden because it files an application to increase rates, here we are presented with a negotiated contract. A negotiated contract would be submitted by both contracting parties for approval. Thus, both parties to a negotiated contract would have the burden of proof. There has been no showing that only one party to a contract has the duty or burden to demonstrate its reasonableness when submitted to the Commission for approval.

19. The Commission essentially performed a *de novo* review of the GSAs, which is the standard it applies when it reviews a contract for approval. It remains the appropriate standard to review a contract, whether it was timely submitted for approval or not. By applying a *de novo* standard, if anything, the SWKIs received a more favorable standard than it was entitled to as a complainant.

20. The SWKIs offer no authority to demonstrate the Commission should have placed the burden of proof on Anadarko, therefore, the SWKIs' argument fails.

[39] Transcript, p. 115.

Once the Commission determined the rates in the GSAs were just and reasonable, there was no need to apply the Filed Rate Doctrine

21. The Court of Appeals never directed the Commission to *apply* the Filed Rate Doctrine. Instead, it stated, "[o]n remand, the Commission should *address* the filed rate doctrine and consider to what extent the time value of money *may* be an appropriate remedy."[40] (emphasis added) The Commission did address the Filed Rate Doctrine in paragraph 33 of its Order Denying Complaint, explaining the Filed Rate Doctrine would only apply if the Commission determined the rates were unreasonable. Additionally, in paragraph 21, the Commission noted SWKI witness Dittemore acknowledges Anadarko's limited contract-specific certificate authorizes Anadarko to furnish natural gas through negotiated contracts, and allows them to charge different rates to members of the same class.[41] In contrast, the Filed Rate Doctrine forbids public utilities from charging different rates to members of the same class than what is specified in printed schedules.[42] Here, there are no printed schedules covering a class of customers, only individually negotiated contracts among individually, uniquely situated customers. Accordingly, the Filed Rate Doctrine does not provide any relief to the SWKIs.

22. While perhaps the Commission should have been more detailed in addressing the Filed Rate Doctrine, it did explain that the SWKIs argued the Filed Rate Doctrine required a refund of any unreasonable rates,[43] and because it determined the rates in both the 1998 and 2002 GSAs were reasonable, the Filed Rate Doctrine did not provide any remedy to the SWKIs.[44] The SWKIs seem to suggest that even though the Court of Appeals gave the Commission discretion

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[40] *SWKI-Seward West Central v. Kansas Corp. Comm'n*, 2022 WL 1052231, at * 11 (Kan. Ct. App. 2022). (unpublished opinion).
[41] Order Denying Complaint, ¶ 21.
[42] *SWKI-Seward West Central v. Kansas Corp. Comm'n*, 2018 WL 385692, at * 7 (Kan. Ct. App. 2018) (unpublished opinion).
[43] Order Denying Complaint, ¶ 33.
[44] *Id.*

on whether to grant a remedy and stressed that a remedy is not required, the Commission was required to provide relief through the Filed Rate Doctrine. That suggestion ignores the Court's repeated grant of discretion to the Commission.

23. The SWKIs claim without any factual basis that "it is uncontroverted that [Anadarko] illegally received payment from SWKIs prior to their rate being reviewed and determined by the Commission to be 'reasonable' in the *Order Denying Complaint* of November 7, 2024."[45] There has been no showing that the SWKIs' payments were illegal. The SWKIs claim they were harmed by paying the unfiled rate for 24 years.[46] Apparently, the SWKIs contend that even though the Commission determined the contractual rates to be just and reasonable, the SWKIs are entitled to the time value of money from July 1, 1998 to November 7, 2024 on the 1998 GSA and from June 1, 2002 to November 7, 2024 for the 2002 GSA. The SWKIs' contention ignores the plain language from the Court of Appeals that the time value of money is a *permissible* remedy. Under the SWKIs' interpretation, the time value of money is a mandatory remedy. But, there is no support for the SWKIs' interpretation. It defies logic to award the time value of money for a rate that is determined to be reasonable. If that was the case, the Court of Appeals would have declared that the rates in the GSAs were unreasonable and directed the Commission to determine the time value of money and appropriate interest to make the SWKIs whole. But by finding the rates are just and reasonable, the SWKIs are already whole. An award of the time value of money would simply unjustly enrich the SWKIs. Thus, as the Order Denying Complaint stated, the Filed Rate Doctrine does not provide any remedy when the rates are determined to be reasonable.[47]

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[45] PFR, ¶ 23.
[46] *Id.*, ¶ 27.
[47] *See* Order Denying Complaint, ¶ 33.

24. The SWKIs claim the Court of Appeals held the Filed Rate Doctrine applies even when the Commission finds that the unfiled rate is reasonable[48] ignores the Court of Appeals' statement, "in the absence of a filed rate, should the appropriate regulatory agency deem the rate reasonable, the time value of money collected from the unfiled rate is a *permissible* remedy available under a regulatory agency's broad powers to set and approve rates."[49] (emphasis added) The Court of Appeals did not require the Commission to award the time value of money. It simply stated it was a *permissible* remedy. Since the Commission determined the rates were just and reasonable, the time value of money was not an appropriate remedy. The SWKIs used the gas while the GSAs were in effect, awarding them the time value of money for gas they used decades ago makes no sense. Also mandating the Commission award the time value of money as a remedy contradicts the Court's clear directive, "the discretion on whether to grant a remedy to the SWKIs remains with the Commission."[50] For emphasis, the Court of Appeals reiterated, "we again emphasize that the Commission is not required to order a remedy."[51]

The Commission followed the Court of Appeals' mandate

25. While the SWKIs accuse the Commission of ignoring the Court's mandate, they themselves ignore the Court's language "we stress that a remedy is not required, and the discretion on whether to grant a remedy to the SWKIs remains with the Commission."[52] On remand, the Commission was charged with exercising its discretionary authority to determine whether the SWKIs are entitled to a remedy.[53] The Commission determined the SWKIs are not

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[48] PFR, ¶ 31.
[49] *SWKI-Seward West Central v. Kansas Corp. Comm'n*, 2022 WL 1052231, at * 11 (Kan. Ct. App. 2022). (unpublished opinion).
[50] *Id.*, * 8.
[51] *Id.*, *11.
[52] *Id.*, * 8.
[53] *Id.*, *11.

entitled to a remedy because the contractual rates were just and reasonable. The SWKIs acknowledge the Commission determined they are not entitled to a remedy. Thus, the Commission followed the mandate from the Court of Appeals.

26. The SWKIs attempt to rewrite the Court of Appeals' opinion to state that the Commission must provide a remedy under the Filed Rate Doctrine, but has discretion to issue additional remedies. Rather than follow the Court's mandate, the SWKIs are asking the Commission to disregard the Court of Appeals' directive that, "If [the Commission] determines a remedy is appropriate, the Commission should apply the time value of money. However, we again emphasize that the Commission is not required to order a remedy."[54] The Commission provided a detailed explanation of why the rates contained in the two GSAs were reasonable and why a remedy is not appropriate. In doing so, there was no reason to apply the time value of money. Awarding the time value of money is only appropriate after finding a remedy is appropriate.

27. The SWKIs' insistence on ignoring the Court's express delegation of authority to the Commission to determine whether a remedy is appropriate is similar to their attempt to delete the word permissible from the Court's statement, "the time value of money collected from the unfiled rate is a *permissible* remedy available under a regulatory agency's broad powers to set and approve rates." (emphasis added).

28. The Commission complied with the Court's mandate to determine whether the SWKIs are entitled to a remedy for Anadarko's failure to register the GSAs.[55] The Commission's determination that remedy was inappropriate was consistent with the Court's mandate since the Court "stress[ed] that a remedy is not required, and the discretion on whether

[54] *Id.*, *11.
[55] *Id.*, *8.

to grant a remedy to the SWKIs remains with the Commission."[56] A finding that the Commission violated the Court's mandate is only possible by completely ignoring the explicit holding of the Court of Appeals.

The Commission's finding that the rates are just and reasonable are supported by substantial, competent evidence

29. The SWKIs' argument that the Commission failed to analyze the reasonableness of the 1998 GSA[57] ignores paragraph 17 of the Order, where the Commission relies on the testimony of their own witness David Dittemore that the default rate that Anadarko charges its affiliate would be an appropriate rate.[58] The Commission adopted the standard suggested by the SWKIs' own witness to determine the reasonableness of the 1998 GSA. The SWKIs acknowledge that when they accuse the Commission of disregarding competent evidence and erroneously relying on a GSA between Anadarko and one of its affiliates.[59] The SWKIs' claim that the Commission made up the law by using that affiliate GSA to evaluate the reasonableness of the 1998 GSA[60] ignores the testimony of their own witness Dittemore.

30. The SWKIs believe the Commission should have only considered Dittemore's prefiled testimony that the Commission should examine Anadarko's costs to provide service under a traditional rate of return approach.[61] First, there is no evidence that the Commission uses rate of return analysis when reviewing contracts. Traditionally, the Commission does not use rate of return analysis when parties submit a negotiated contract for approval. Instead, the Commission applies a fairly deferential standard to negotiated contracts. Second, the SWKIs

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[56] *Id.*
[57] PFR, ¶ 47.
[58] Order Denying Complaint, ¶ 17.
[59] *See* PFR, ¶ 55.
[60] *Id.*
[61] *Id.*, ¶ 48.

offer no rationale for the Commission to favor Dittemore's prefiled testimony over the testimony he provided in cross-examination by a Commissioner. The Commission gave greater evidentiary weight to his spontaneous testimony at hearing during cross-examination versus prefiled testimony that was probably prepared with the assistance of counsel. Regardless, the SWKIs offer no reason to ignore Dittemore's testimony that an affiliate transaction is a good measure of a reasonable rate. The Commission found Dittemore's live testimony to be persuasive and applied it to the 1998 GSA.

31. The SWKIs make no attempt to explain why an affiliate contract entered into the same day as the 1998 GSAs and with identical price terms should not be dispositive on the question of reasonableness. By charging the SWKIs the same rates and fees that it charged an affiliate, Anadarko did not charge a discriminatory rate to the SWKIs in the 1998 GSA. Dittemore admitted, the prices for both contracts were the same.[62]

32. The SWKIs offer no compelling reason to reconsider the Commission finding that the 1998 GSA is reasonable under the standards proposed by their own witness. Nor do the SWKIs effectively rebut their own witness' admission that the prices for the July 1, 1998 GSA and the July 1, 1998 affiliate contracts were the same.

33. As the Commission noted in its Order Denying Complaint, unlike the 1998 GSA, which is easily compared to an affiliate contract executed the same day, the record does not include any affiliate contracts signed the same day as the 2002 GSA.[63] Therefore, determining the reasonableness of the 2002 GSA is more involved. The age of the contract further complicates the Commission's task. The Commission investigated whether the rates charged in the 2002 GSA was within the zone of reasonableness. In *Kansas Gas and Electric Co. v. Kansas*

[62] Transcript, p. 141.
[63] Order Denying Complaint, ¶ 20.

Corporation Commission, 239 Kan. 483 (1986), the Kansas Supreme Court explained that "[t]he leading cases in this area clearly indicate that the goal should be a rate fixed within the 'zone of reasonableness' after the application of a balancing test in which the interests of all concerned parties are considered."[64] The "zone of reasonableness" is not a fixed number. The only concern is whether a rate is so unreasonably low or so unreasonably high as to be unlawful and should be determined by the Commission.[65] The Commission has broad discretion to decide what constitutes a just and reasonable utility rate.[66]

34. It is noteworthy that the SWKIs do not dispute the zone of reasonableness is the proper standard to apply in evaluating rates. Instead, they simply take issue with which contracts the Commission used to assess the reasonableness of the 2002 GSA. The SWKIs complain that the Commission erred by using the contracts in Exhibit A-43 in determining the zone of reasonableness.[67] The SWKIs argue that the four contracts the Commission relied on in Exhibit A-43 lacked sufficient information to determine whether the services were the same,[68] or whether those four contracts had been approved by the Commission.[69] But the Commission did not rely solely on Exhibit A-43. The Commission also used SWKI Exhibit 9 to determine the zone of reasonableness.[70] SWKI Exhibit 9 listed six contracts. Of those six contracts, SWKI-SWC is paying the second highest delivery charge.[71] Thus, the SWKIs' own exhibit suggests the rates in the 2002 GSA are within the zone of reasonableness.

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[64] *Kansas Gas and Electric Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 488 (1986).
[65] *Id.*, at 490, *citing SW Bell Telephone Co. v. Kansas Corp. Comm'n*, 192 Kan. 39 (1963).
[66] *Citizens' Utility Ratepayer Board v. Kansas Corp. Comm'n,* 47 Kan.App.2d 1112, 1131 (2012).
[67] *See* PFR, ¶ 71.
[68] *Id.*
[69] *Id.*, ¶ 73.
[70] *See* Order Denying Complaint, ¶¶ 29-30.
[71] *Id.*, ¶ 29.

35. The SWKIs' Petition for Reconsideration completely ignores Anadarko's limited contract-specific certificate which authorizes Anadarko to negotiate different rates with different customers. That is precisely what happened with the 2002 GSAs, yet the SWKIs claim different rates equate to unfair, unjust, and unreasonable rates. The fact that the rates are different are not enough to show unreasonableness. As the Commission's Order explained, Anadarko's limited contract-specific certificate allows it to sell natural gas through negotiated contracts.[72] The Commission noted Dittemore acknowledges that Anadarko's certificate allows them to charge different rates to members of the same class.[73] Under Anadarko's certificate, there is no requirement that the negotiated contract rates are the same for each customer.[74] Since the GSAs were individually negotiated, rather than filed tariff rate schedules for all customers within a specified class, the Filed Rate Doctrine is inapplicable.[75] The Filed Rate Doctrine forbids public utilities from charging different amounts than what is specified in printed schedules or classification.[76] Since the GSAs are individual contracts, rather than class-wide schedules, the Filed Rate Doctrine does not provide any relief to the SWKIs.

36. The SWKIs contend the Commission erred in failing to consider other Anadarko rates charged to Black Hills Energy (Black Hills), National Beef Company, LLC (National Beef), and Texas-Kansas-Oklahoma Gas, LLC (TKO) that were lower than the rates charged to the SWKIs.[77] Those rates are listed in SWKI Exhibit 9. Exhibit 9 also lists a rate for Supreme

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[72] Order Denying Complaint, ¶ 21.
[73] *Id.*
[74] *Id.*
[75] *See* Anadarko Natural Gas Company's Response to the SWKIs' Petition for Reconsideration, ¶ 27.
[76] *SWKI-Seward West Central v. Kansas Corp. Comm'n*, 2018 WL 385692, at * 7 (Kan. Ct. App. 2018) (unpublished opinion).
[77] PFR, ¶ 65.

Cattle Feeders, LLC which is higher than the rates in the 2002 GSA. Thus, the 2002 GSA is within the zone of reasonableness.

37. The SWKIs claim there was no competent evidence showing Anadarko incurred greater costs to provide natural gas to the SWKIs than other customers.[78] The Commission heard contradictory evidence on this point. On behalf of the SWKIs, both Heger and Escue testified the SWKIs received dry (processed) gas from Anadarko.[79] Heger did not know the cost to process the liquids out of natural gas.[80] Escue admitted that the cost to dry gas varies from place to place, and could not calculate the cost.[81] Both Heger and Escue testified they did not know whether the natural gas that Anadarko delivered to Black Hills was wet or dry, but surmised it must be dry because it was on the same line that Anadarko used to serve the SWKIs.[82] On behalf of Anadarko, Johnson testified that the natural gas delivered to Black Hills was wet, and that a portion of the gas delivered to TKO was also wet.[83] Therefore, there is no support for the SWKIs' claim that they adduced competent evidence that Anadarko provided the same type of natural gas to the SWKIs that Anadarko provided to Black Hills, National Beef, and TKO.

38. Similarly, there was also a dispute over whether it was appropriate for Anadarko to charge the SWKIs a higher rate due to the nature of their load profile.[84] The SWKIs claim they were unable to verify whether they had different load profiles from other Anadarko customers because Anadarko refused to provide that information.[85] But, the SWKIs never filed a motion to compel discovery of that information with the Commission. So, the question of

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[78] *Id.*, ₱ 53.
[79] Transcript, pp. 68, 194.
[80] *Id.*, pp. 68, 194.
[81] *Id.*, p. 195.
[82] *Id.*, p. 68.
[83] *Id.*, p. 213.
[84] Transcript, p. 112.
[85] *Id.*, pp. 112-13.

whether it was appropriate for Anadarko to charge the SWKIs a higher rate due to the nature of the SWKIs' load profile remains open.

39. As the Commission explained in its Order Denying Complaint, the SWKIs' initial complaint was filed in August 2013, over a decade after the second disputed GSA was executed, and most of the witnesses lacked firsthand knowledge of the contract negotiations that occurred nearly 25 years ago.[86] Due to the age of the GSAs, it is understandable that the Parties have different understanding and recollections of whether the various contracts were for wet or dry gas and whether the natural gas purchasers had similar load profiles. As a result, the record presented to the Commission is imperfect. Since the Commission was presented with an incomplete, stale record, it understandably relied heavily on the zone of reasonableness principle.

40. The zone of reasonableness analysis is also consistent with Anadarko's certificate, which expressly allows for different rates to different customers.

41. The SWKIs attempt to show the rates in the 2002 GSA are unjust and unreasonable by relying on a notice that Anadarko sent to its customers in 2013 that it would be replacing all of its existing contracts with a uniform delivery charge.[87] The 2013 notice is not compelling evidence that rates agreed to in 2002 are unjust and unreasonable. If anything, Anadarko's decision to make a change in 2013 suggests its existing charges were not high enough. Additionally, the Commission finds that events from 2013 have no bearing on whether a contract negotiated and signed in 2002 contained just and reasonable rates. If the 2002 GSA had been timely submitted for review to the Commission, the Commission would not have been able to anticipate events more than a decade in the future. As the Commission explained in its

[86] Order Denying Complaint, P 10.
[87] PFR, P 53.

Order Denying Complaint, it examined contracts signed within a similar time range as the 2002 GSA to determine the reasonableness of the 2002 GSA. The Commission should not have given any weight to a request to change rates in 2013.

42. The Commission's finding that both the 1998 and 2002 GSA were just and reasonable is supported by substantial, competent evidence.

43. Finally, the SWKIs allege the Commission's findings were arbitrary and capricious. Our Supreme Court defines unreasonable, arbitrary, or capricious as acting without regard to the benefit and harm of all interested parties.[88] To be found arbitrary and capricious, an agency's action must be unreasonable or without foundation in fact.[89] An allegation an agency acted arbitrarily and capriciously is an attack on the *quality* of the agency's reasoning.[90] The Commission gave a detailed description of its reasoning. While the SWKIs disagree with the Commission's reasoning, the SWKIs fail to demonstrate the Commission acted unreasonably or without foundation in fact.

44. The Commission is given great discretion in setting rates.[91] Kansas courts treat the Commission as experts in the highly complex task of setting utility rates.[92] The SWKIs fail to show the Commission abused its discretion in finding the 1998 and 2002 GSA were reasonable, and that therefore, the SWKIs are not entitled to any remedies.

45. The Commission denies the SWKIs' Petition for Reconsideration in its entirety.

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[88] *Farmland Indus., Inc. v. Kansas Corp. Comm'n,* 25 Kan. App.2d 849, 852 (1999), *citing Zinke & Trumbo, Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 475 (1988).
[89] *Farmland,* 25 Kan. App. 2d at 852, *citing Zinke*, 242 Kan. at 474-75.
[90] *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 47 Kan. App. 2d 1112, 1128 (2012).
[91] *Kansas Gas & Elec. Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 495 (1986), *Western Resources, Inc. v. Kansas Corp. Comm'n*, 30 Kan. App. 2d 348, 352 (2002); Citizens' Util., 28 Kan. App. 2d 313, 325 (2000); Farmland, 25 Kan. App. 2d at 851.
[92] Kansas Gas, 239 Kan. at 495, Western Resources, 30 Kan. App. 2d at 352; *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan. App. 2d at 325; Farmland, 25 Kan. App. 2d at 851.

THEREFORE, THE COMMISSION ORDERS:

A. The SWKIs' Petition for Reconsideration is denied.

B. This Order constitutes final agency action.[93] Any request for review of this action shall be in accordance with K.S.A. 77-607 and K.S.A. 77-613. Lynn M. Retz, Executive Director, is designated by the Commission to receive service of a petition for judicial review.[94]

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson (recusing); Keen, Commissioner; Kuether, Commissioner

Dated: 12/19/2024

Lynn M. Retz
Executive Director

BGF

[93] K.S.A. 77-607(b)(l).
[94] K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

14-ANGG-119-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 12/19/2024.

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