

sample test during his testimony at the evidentiary hearing.³ Staff further stated that “[t]he report outlining these test results was not previously part of this docket,” but “Staff believes admitting this report as a late-filed exhibit will help provide clarity to the record.”⁴ Staff attached the report to its Motion as “Staff Hrg. Exhibit 1.”

4. On July 27, 2018, Protestant James Bondurant filed an Objection to Motion to Open the Record and File Late-Filed Exhibit, asking that the Motion be denied and stricken from the record.⁵

FINDINGS AND CONCLUSIONS:

5. Mr. Bondurant offers four arguments in opposition to Staff’s Motion, which the Commission will address in turn. First, Mr. Bondurant argued that “[a]ll parties agreed to be bound by [the] schedule” in this docket “and any information not filed in pre-filed testimony was not allowed to be entered on the record.”⁶ This argument lacks merit. Mr. Bondurant provides no evidentiary basis for his assertions. While the Commission issues procedural schedules,⁷ the Commission has discretion to alter such schedules and approve extensions of procedural deadlines.⁸ Moreover, there is no evidentiary or logical basis for Mr. Bondurant’s claim that the only information that would be allowed into the record must be in pre-filed testimony. The Commission’s ruling that Midstates and Staff would be able to address at hearing any new information the Bondurants might raise in their pre-filed testimony⁹ refutes such a claim.

6. Mr. Bondurant’s assertion that Staff had ample time to submit the subject Exhibit, while true, does not necessitate an absolute bar to its admission. The Commission and all parties

³ Motion to Open the Record and File Late-Filed Exhibit, ¶ 5 (July 23, 2018) (Motion).

⁴ Motion, ¶ 5.

⁵ Objection to Motion to Open the Record and File Late-Filed Exhibit, p. 1 (July 27, 2018) (Objection).

⁶ Objection, ¶ 1.

⁷ See e.g. *Order Setting Procedural Schedule* (Mar. 27, 2018).

⁸ See K.A.R. 82-1-217(b). See also K.A.R. 82-1-238(a); *Order Amending Procedural Schedule* (June 7, 2018).

⁹ See *Order Amending Procedural Schedule*, ¶ 13.

involved have a vital interest in a clear record of Commission proceedings, and therefore, the Commission has discretion to re-open the record and allow late-filed exhibits.¹⁰

7. Mr. Bondurant's claim that he is precluded from any cross-examination on the subject Exhibit also fails. Staff witness Knobel testified at the hearing concerning the information in the subject Exhibit.¹¹ Mr. Bondurant did not object to this testimony or its admission into the record. Instead, he cross-examined Mr. Knobel on it¹² and asked whether copies of the lab reports were available.¹³ Mr. Bondurant's assertion that he "was not allowed to ask [his] expert witness anything at the hearing nor introduce any new material"¹⁴ is beside the point. Mr. Bondurant had the opportunity at the hearing to object to Mr. Knobel's testimony on the report, to ask Mr. Knobel for the evidentiary basis for his testimony on the report, and to cross-examine Mr. Knobel on his testimony on the report. Thus, the Commission finds Mr. Bondurant's argument on this point to be without merit.

8. Finally, the Commission is unpersuaded by Mr. Bondurant's argument that because Staff's proffered Exhibit refers to the Thrasher lease, and not the Hadl lease, it should be denied.¹⁵ The Thrasher lease and Hadl lease are located on adjacent Sections,¹⁶ and thus, the report appears to be relevant. Moreover, Mr. Bondurant's argument goes more to the weight to be given the subject Exhibit, rather than to its admissibility.

¹⁰ See K.A.R. 82-1-230(g) and (k).

¹¹ Tr., p. 67, lines 10-19.

¹² Tr., p. 71, line 24 through p. 73, line 22.

¹³ Tr., p. 72, line 11.

¹⁴ Objection, ¶ 3.

¹⁵ Objection, ¶ 4.

¹⁶ See Docket No. 18-CONS-3195-CUIC, Application, p. 1; Docket No. 18-CONS-3196-CUIC, Application, p. 1 (Oct. 12, 2017).

9. Based on the above, the Commission finds good cause exists to re-open the record in this proceeding and authorize Staff to late-file "Staff Hrg. Exhibit 1."¹⁷ Thus, the Commission finds that Staff's Motion to Open the Record and File Late-Filed Exhibit should be granted.


THEREFORE, THE COMMISSION ORDERS:

- A. Staff's Motion to Open the Record and File Late-Filed Exhibit is granted.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁸
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/09/2018 _____



Lynn M. Retz
Secretary to the Commission

Mailed Date: 08/10/2018 _____

MJD

¹⁷ See K.A.R. 82-1-230(g) and (k).

¹⁸ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CONS-3195-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
08/09/2019
first class mail and electronic service on _____.

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