

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

STATE CORPORATION COMMISSION

APR 04 2005

In the matter of the Complaint of Aquila, Inc.)
against ONEOK Field Services Company,)
requesting an emergency order of the Commission)
directing ONEOK Field Services to continue to)
serve Aquila's customers if gas supply is not in a)
dangerous condition and requesting joinder of this)
matter with Docket No. 05-CONS-214-CMSC.)

 Docket Room

Docket No. 05-CONS-222-CMSC

**RESPONSE OF ONEOK FIELD SERVICES COMPANY TO
COMPLAINT, MOTION FOR EMERGENCY RELIEF, AND
MOTION FOR JOINDER OF PROCEEDINGS**

ONEOK Field Services Company ("Field Services"), in response to the Complaint, Motion for Emergency Relief, and Motion for Joinder of Proceedings (the "Complaint") of Aquila, Inc. ("Aquila") filed herein on March 24, 2005, alleges and states in support thereof the following:

1. Field Services admits the allegations of Paragraph 1 of the Complaint.
2. In regard to Paragraph 2 of the Complaint, Field Services admits that it operates natural gas gathering systems in Kansas and is subject to the jurisdiction of the State Corporation Commission of the State of Kansas (the "Commission") insofar as specifically provided by K.S.A. 55-1,101, *et seq.* In contrast to the Commission's jurisdiction to regulate Field Services's charges for gathering services, Field Services specifically denies that the Commission has jurisdiction to enjoin Field Services from discontinuing the delivery of gas to Aquila for natural gas service to its utility customers that may contain potentially dangerous levels of hydrogen sulfide under the facade that to do otherwise would be unjustly discriminatory and unduly

preferential to all users of the gathering systems. Field Services further specifically denies that the Complaint is sufficient to invoke the jurisdiction of the Commission pursuant to K.S.A. § 55-1,104(b). Field Services further asserts that the Complaint does not meet the criteria set forth in K.A.R. § 82-3-802(d).

3. In regard to Paragraph 3 of the Complaint, Field Services admits that the Commission has full power, authority and jurisdiction to regulate natural gas public utilities operating in Kansas. Field Services, however, again specifically denies that the Commission has jurisdiction to enjoin Field Services from discontinuing the delivery of gas containing potentially dangerous levels of hydrogen sulfide to Aquila for natural gas service to its utility customers.

4. In regard to Paragraph 4 of the Complaint, Field Services admits that the Commission may use emergency proceedings in situations involving an immediate danger to the public safety, health or welfare. Field Services specifically denies, however, that the Commission has jurisdiction over natural gas gathering systems in Kansas other than to regulate their charges for gathering services and it has no jurisdiction to enjoin a gathering system operator from delivering gas to an end-user that may contain potentially dangerous levels of hydrogen sulfide that would endanger the safety, health, or welfare of such end-user.

5. Field Services admits the allegations contained in Paragraph 5 of the Complaint.

6. Field Services admits the allegations contained in Paragraph 6 of the Complaint.

7. In regard to Paragraph 7 of the Complaint, Field Services admits that counsel for Aquila sent a letter to Field Services on February 4, 2005, stating that Aquila would establish replacement fuel supplies to its utility customers being disconnected from Field Services's

gathering system and sought the agreement of Field Services that such action on the part of Aquila would not constitute an admission of liability on the part of Aquila that it had the obligation to furnish such replacement fuel supplies to its utility customers. Field Services declined to sign the agreement proposed by Aquila. Attached hereto as Exhibits "A" and "B," respectively, are copies of the letter from Aquila's counsel dated February 4, 2005, and the letter from Field Services's counsel dated February 7, 2005.

8. In regard to Paragraph 8 of the Complaint, Field Services admits that it had numerous telephone conversations with Aquila concerning the gravity of the elevated levels of hydrogen sulfide on its gathering system and the threat to Aquila's utility customers. Field Services denies that the letter from Aquila dated February 8, 2005, a copy of which is attached as Exhibit 2 to the Complaint, accurately describes the full extent of the telephone conversations between Aquila and Field Services.

9. In regard to Paragraph 9 of the Complaint, Field Services admits that it sent to Aquila the letter dated February 9, 2005, a copy of which is attached as Exhibit 3 to the Complaint. Field Services further admits that its February 9 letter states that deliveries to Aquila for natural gas service to all of its residential customers were to be discontinued without "undue delay." Despite the apparent suggestion by Aquila that it was unaware of the "further investigation and development of new facts concerning the deterioration of gas quality" stated in Field Services's February 9 letter, Aquila itself participated in part of that investigation. In this regard, new facts were discovered when Aquila and Field Services began disconnecting the Aquila residential customer delivery taps from Field Services's gathering system on February 4, 2005. Seven of the residential customer meter locations disconnected on February 4 and 11, 2005, were found to have elevated levels of hydrogen sulfide, ranging from 8 ppm to 48 ppm.

Among the Aquila residential customers disconnected from Field Services's gathering system was the Faith Baptist Church located in Finney County, Kansas. At the time the Church was disconnected, along with the trailer home of its pastor receiving gas from the same tap, the reading taken at the meter location showed 36 ppm for hydrogen sulfide.

10. In regard to Paragraph 10 of the Complaint, Field Services admits that Aquila sent to it the letter from its counsel dated February 9, 2005, a copy of which is attached as Exhibit 4 to the Complaint. Field Services specifically denies, however, that it had failed to provide information to Aquila demonstrating the potential risks to their utility customers. More evident, however, from Aquila's February 9 letter is its reluctance to permit the disconnection of any of its utility customers despite its own knowledge of the elevated levels of hydrogen sulfide.

11. In regard to Paragraph 11 of the Complaint, Field Services admits that its counsel sent to Aquila's counsel the letter dated February 11, 2005, a copy of which is attached as Exhibit 5 to the Complaint. That letter points out many of the inaccuracies contained in Aquila's February 9 letter referred to in Paragraph 10, above. Field Services specifically denies that it has failed to provide to Aquila documents and information which substantiate and justify its determination that the elevated levels of hydrogen sulfide on its gathering system required the discontinuation of gas deliveries to Aquila for natural gas service to its residential and domestic use customers.

12. In regard to Paragraph 12 of the Complaint, Field Services admits that after Aquila received notice from Field Services of the elevated levels of hydrogen sulfide on its gathering system and then itself being confronted with the potential gravity of the situation by actually observing elevated levels of hydrogen sulfide at its customer meter locations, such as the

Faith Baptist Church, Aquila finally agreed to assist Field Services in disconnecting the delivery point taps of its residential and domestic use customers. Field Services is without knowledge or information sufficient to either admit or deny whether Aquila's duties and obligations as a natural gas public utility within the State of Kansas required it to convert its residential and domestic use customers to propane or electric service or otherwise obtain alternate energy sources. While significantly elevated levels of hydrogen sulfide were observed at only seven Aquila customer meter locations, these readings, which were as high as 48 ppm, demonstrated the potential gravity of the situation. The lack of additional readings of significantly elevated levels of hydrogen sulfide at other Aquila customer meter locations does not mean that those utility customers are not at risk for periodic elevated levels of hydrogen sulfide. The readings taken by Field Services are for only a specific point in time and cannot take into account how long there had been such an elevated level of hydrogen sulfide or whether there were even higher levels of hydrogen sulfide before or after the reading was taken. Field Services is aware that many of the wells connected to its gathering systems either have treating equipment or have otherwise been treated for hydrogen sulfide. Elevated hydrogen sulfide levels, including readings as high as 486 ppm, have been observed by Field Services at receipt point meters located near producing wells throughout its gathering systems. Field Services's gathering systems are common systems, which means that the various segments of the gathering systems are all interconnected so that areas of the gathering system that have elevated levels of hydrogen sulfide are not isolated from other areas. In addition, the operating conditions of the more than 2600 miles of pipeline and 3200 wells connected to the gathering systems, in view of the declining pressures and natural gas production, are constantly changing. The fact that an elevated level of hydrogen sulfide may not be observed at a delivery point tap at one specific point in time does

not mean that days, hours or even minutes later, that the hydrogen sulfide levels cannot fluctuate to elevated levels as flow and pressure conditions on the gathering systems periodically change. In the past, the risk of elevated levels of hydrogen sulfide at utility customer delivery point taps has been historically suppressed by the natural effect of the blending of various sources of natural gas connected to the gathering systems. However, as flow and pressure conditions change due to declining well production and occasional system outages, the benefits of the blending of the different sources of natural gas have become uncertain. It's simply a matter of time, whether today, tomorrow or a year from now, that an incident that could have been prevented will occur if Field Services is enjoined from discontinuing gas deliveries for natural gas service to end-users when there are elevated levels of hydrogen sulfide.

13. Field Services admits the allegations contained in Paragraph 13 of the Complaint.

14. In regard to the allegations contained in Paragraph 14 of the Complaint, Field Services admits that it has not provided Aquila nor the Commission any industry data concerning levels at which hydrogen sulfide becomes unacceptably corrosive or harmful to human health. As the Commission itself has admitted in other proceedings (Docket No. 05-CONS-214-CMSC), however, no such data exists. In contrast to what Aquila suggests by bringing this proceeding, Field Services does not believe that such data should first be collected in total disregard of the risks that may be facing its utility customers. Further, Aquila and the Commission know that Field Services is bound by the quality specifications of the 4 ppm limit contained in the tariffs for its downstream interstate interconnections, Northern Natural Gas Company and Kinder Morgan Interstate Transmission, LLC, whose tariffs and quality specifications have been found to be just, fair, and reasonable as approved by the Federal Energy Regulatory Commission. In regard to the harm to human health, reliance by Aquila on OSHA standards as a safe harbor for

the acceptable levels of hydrogen sulfide that Aquila's utility customers can withstand without any adverse effects is misplaced. The OSHA standard to which Aquila refers, 29 C.F.R. §1910.1000(b), provides a ceiling of 20 ppm for healthy workers based upon an 8-hour time weighted average in any 8-hour workshift of a 40-hour work week. OSHA standards also require employers to constantly monitor toxic and hazardous substances levels to assure that employees are not subjected to levels higher than the prescribed exposure limits in the workplace, as well as to maintain emergency response procedures when levels exceed the established limits. Further, other studies on the extreme toxicity of hydrogen sulfide would seem to indicate that even lower threshold limits should apply when dealing with residential and domestic use customers, and most especially children in those homes. *See Draft Toxicological Profile for Hydrogen Sulfide*, prepared by the U.S. Department of Health Services, Public Health Service, Agency for Toxic Substances and Disease Registry, located at <http://www.atsdr.cdc.gov/toxprofiles/tp114.html>. While Field Services does not object to providing additional data to the Commission, Field Services does object to being enjoined from discontinuing deliveries to Aquila for natural gas service to its utility customers while the Commission attempts to determine what the appropriate limits of exposure to elevated levels of hydrogen sulfide to such customers should be when, in the meantime, those same customers may suffer from the toxic and corrosive effects of hydrogen sulfide.

15. In regard to the allegations of Paragraph 15 of the Complaint, Field Services specifically denies those allegations and refers the Commission to the facts set forth in Paragraph 14, above. The 4 ppm standard that Field Services has noted previously is based upon the Federal Energy Regulatory Commission approved tariff provisions of the interstate pipelines to

which its gathering systems interconnect. Field Services enforces the same standard with producers delivering gas into its gathering systems.

16. Field Services specifically denies the allegations contained in Paragraph 16 of the Complaint. Field Services further alleges that the data supplied by Field Services to Aquila and claimed by Aquila as not warranting the discontinuance of deliveries to its utility customers by Field Services ignores the only evidence presented on the issue. While the readings taken by Field Services are at receipt point meters located near the producing wells, the elevated levels of hydrogen sulfide clearly show that if those same levels are present at the downstream customer meter locations of Aquila there can be no question that the safety and health of those customers of Aquila are at risk. Due to the uncertainty of the blending effect from the various sources of natural gas connected to Field Services's gathering systems as noted in Paragraph 12, above, the risk from elevated levels of hydrogen sulfide at Aquila customer meter locations will only become more uncertain. As noted previously, the readings taken by Field Services are taken only for a specific point in time and do not take into account how long the hydrogen sulfide contamination may have been at that level or whether it may have been at higher levels before or after the reading. As a normal practice, Field Services takes readings along with gas samples from each well connected to its gathering systems only on an annual basis unless a purchase contract specifies otherwise. Any additional readings were taken as a result of interstate pipelines notifying Field Services that they were receiving gas from Field Services' gathering systems that contained hydrogen sulfide levels in excess of 4 ppm. The readings taken were significant and were by no means random. Further, what may have been done in the past does not bear on what should be done now. The discontinuance of gas deliveries to utility customers

connected to its gathering systems by Field Services has been solely for the protection of the safety and health of those end-users.

17. In regard to the allegations contained in Paragraph 17 of the Complaint, Field Services admits that it has followed a practice of immediately shutting in wells that exceed acceptable levels of hydrogen sulfide. Field Services specifically denies that such a practice, which was in fact implemented and followed, would make it unnecessary to curtail deliveries to utility customers of Aquila. Field Services has repeatedly notified producers with wells connected to its gathering systems of the continuing problems with hydrogen sulfide gas. Notwithstanding those notices and repeated shutting in of wells, Field Services has continued to have readings for elevated hydrogen sulfide levels, some as high as 486 ppm.

18. Field Services specifically denies the allegations contained in Paragraph 18 of the Complaint.

19. In regard to the allegations contained in Paragraph 19 of the Complaint, Field Services states that such allegations are categorically untrue and made without any factual basis by Aquila. Aquila has no facts to support such allegations and they consist of nothing more than rank speculation. The only reason why Field Services has and may otherwise seek to discontinue gas deliveries to Aquila for natural gas service to its utility customers is for the protection of the safety and health of those customers. Field Services will not speculate as to what Aquila's motivation may be in bringing this proceeding.

20. Field Services specifically denies the allegations contained in Paragraph 20 of the Complaint. Field Services specifically denies that K.S.A. § 55-1,108 has any application to this proceeding and that the relief sought involves an immediate danger to the public health, safety,

or welfare under K.S.A. § 77-536(a)(1). In contrast, should the Commission grant the relief requested by Aquila, it would place the safety and health of Aquila's utility customers at risk.

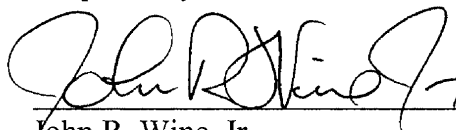
21. Field Services admits the allegations contained in Paragraph 21 of the Complaint.

22. In regard to the allegations contained in Paragraph 22 of the Complaint, Field Services admits that the Commission entered its Order Granting Motion for Emergency Relief and Setting Matter for Hearing in Docket No. 05-CONS-214-CMSC on March 16, 2005. Field Services specifically denies that the relief afforded Midwest Energy, Inc. by that Order would be appropriate relief for Aquila.

23. Field Services specifically denies the allegations contained in Paragraph 23 of the Complaint.

WHEREFORE, based upon the foregoing, Field Services respectfully requests that all relief requested by the Complaint be denied, and that this proceeding should be dismissed.

Respectfully submitted,



John R. Wine, Jr.
Kansas Bar #10016
Attorney at Law
410 NE 43rd Street
Topeka, Kansas 66617
(785) 220-7676
jwine2@cox.net

Lynn W. Hursh
Kansas Bar # 10191
ARMSTRONG TEASDALE LLP
2345 Grand Boulevard, Suite 2000
Kansas City, Missouri 64108
(816) 221-3420

Fax No. (816) 221-0786

Attorneys for ONEOK Field Services Company

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

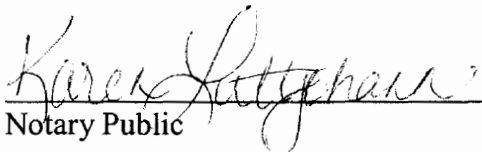
I, John R. Wine, Jr., of lawful age, after being first duly sworn upon his oath, states:

That he is one of the attorneys for the above-named respondent, ONEOK Field Services Company; that he has read the above Response and, upon information and belief, states that the facts and matters therein appearing are true and correct to the best of his knowledge and belief.



John R. Wine, Jr.

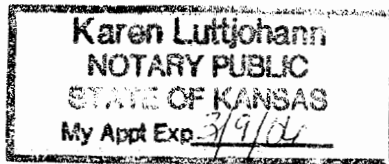
SUBSCRIBED AND SWORN to before me this 4th day of April, 2005.



Notary Public

My Commission expires:

March 9, 2006



CERTIFICATE OF SERVICE

I hereby certify that the original and seven copies of the foregoing document was served on April 4, 2005, by making hand delivery to:

Susan K. Duffy
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

And that a true and correct copy was placed in the United States mail, postage prepaid, to the following:

Don Low
Director of Utility Operations
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Susan Cunningham
General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

W. Robert Alderson
Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C.
2101 SW 21st Street
Topeka, Kansas 66604-3174

Patrick J. Joyce
Blackwell Sanders Peper Martin, LLP
1620 Dodge Street, Suite 2100
Omaha, Nebraska 68105



John R. Wine, Jr.
Attorney for ONEOK Field Services
Company