

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

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

ORDER ON JURISDICTIONAL ISSUE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission finds:

I. Background

1. On February 2, 2015, Commission Staff (Staff) submitted a Report and Recommendation (R&R) recommending the Commission open a general investigation docket to receive comments on proposed parameters of an accelerated natural gas pipeline replacement program.¹

2. On March 12, 2015, the Commission issued an Order Opening General Investigation (Order) adopting the recommendations set forth in Staff's R&R.² The Order agreed with Staff's recommendation to request comments on seven specific issues, and requested the parties initially address the question of whether the Commission has jurisdictional authority to establish alternative ratemaking methodologies for pipe replacement that go beyond the

¹ Staff Report & Recommendation, February 2, 2015, p.1 (Staff R&R).

² Order Opening General Investigation, March 12, 2015 (Order).

parameters established under the Gas Safety and Reliability Policy Act (GSRS)³ before addressing the other issues.⁴ The Order stated the Commission may request further comments following a decision on the jurisdictional question.⁵

3. On April 17, 2015, the respective parties to this docket filed their briefs on the jurisdictional issue. In general, the Local Distribution Companies (LDCs) and Commission Staff (Staff) argued the GSRS does not preclude the Commission from implementing an additional ratemaking methodology to replace pipelines considered to be a safety risk and recover the costs of such replacement from ratepayers. The Citizens' Utility Ratepayer Board (CURB) disagreed, arguing the GSRS is the sole avenue for pipeline replacement and cost recovery outside of general rate cases, and thus limits the Commission's authority to establish an alternative program.

II. Findings and Conclusions

4. The Commission's general ratemaking authority is broad and plainly authorized under Kansas law. The Kansas Legislature has granted the Commission "full power, authority and jurisdiction to supervise and control the natural gas public utilities"⁶ In exercising such power, the Commission has the "power to . . . require all natural gas public utilities . . . to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service"⁷ Furthermore, "...all grants of power, authority and jurisdiction...made to the commission [within the Natural Gas Act] shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of [the]

³ K.S.A. 66-2201, *et seq.*

⁴ Order, p. 3.

⁵ *Id.*

⁶ K.S.A. 66-1,201.

⁷ K.S.A. 66-1,202.

act are expressly granted to and conferred upon the commission.”⁸

5. Additionally, although K.S.A. 66-117 generally requires any change in rates to be approved upon individual application, the statute’s language expressly allows the Commission to prescribe alternative methodologies.⁹ In fact, the Kansas Court of Appeals has specifically recognized this authority and found such methodologies may include mechanisms such as surcharges and riders that allow for automatic rate adjustments outside of a general rate proceeding.¹⁰

6. The GSRS statute, by its express terms, does not purport to be the exclusive means of cost-recovery for all infrastructure system replacement. The statute merely provides one optional avenue of cost recovery in the time between rate cases for a specific subset of infrastructure repair and replacement.

7. The GSRS program contains several very favorable terms to LDCs that restrict the Commission’s traditional ratemaking powers. These terms are balanced out by a \$0.40 per customer cap that limits the use of the GSRS. The Commission finds any new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.

8. Furthermore, the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program. GSRS projects are very specifically defined to include only 1) infrastructure projects to comply with state or federal safety requirements and 2) facility relocations required due to public works projects.

⁸ K.S.A. 66-1,207.

⁹ See K.S.A. 66-117(a).

¹⁰ *Kansas Indus. Consumers Group, Inc. v. The State Corp. Comm’n of the State of Kansas*, 36 Kan. App. 2d 83, 92-94, 138 P.3d 338, 347-48 (2006) (KIC case).

Alternatively, Staff's proposed accelerated pipeline replacement program would cover system-wide replacement of all pipeline infrastructure constructed of obsolete materials considered to be a safety risk. Therefore, both the scopes and goals of the GSRS program and Staff's proposed program are quite different.

9. The *expressio unius* doctrine – to express or include one thing implies the exclusion of the other¹¹ – is a canon of interpretation used to determine legislative intent when it is not otherwise discernible from the words of the statute.¹² The plain language of the GSRS statute is not ambiguous; therefore, the Commission need not apply the doctrine. Furthermore, in the KIC case, the Kansas Court of Appeals held that the doctrine should not be applied to the Commission's ratemaking powers because the legislature has granted the Commission broad quasi-legislative ratemaking authority, and that broad grant of power overcomes any argument that the Commission has not been expressly authorized to prescribe a specific ratemaking methodology.¹³ Therefore, the Commission's broad ratemaking authority acts as a backstop where the legislature has not explicitly prescribed the method in which that ratemaking authority should be wielded.

10. The Kansas legislature has created various surcharges by statute. However, the legislature has not specifically authorized a surcharge for accelerated replacement of gas pipelines constructed of obsolete materials. Under the holding in the KIC Case, the absence of specific statutory authorization does not limit the Commission's ability to create a surcharge for accelerated replacement of gas pipelines constructed of obsolete materials. Only an express statutory limitation will defeat the legislature's grant of broad ratemaking authority to the

¹¹ *Expressio unius est exclusio alterius*, Black's Law Dictionary (10th ed. 2014).

¹² *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P. 2d 1228 (1998).

¹³ *See KIC v. KCC*, 36 Kan. App. 2d at 97.

Commission, and the GSRS statute does not contain such an express statutory limitation.

11. The Commission agrees with the LDCs and Staff that the GSRS is an optional mechanism for cost recovery for certain infrastructure replacement projects and does not limit the Commission's authority to implement additional alternative ratemaking methodologies for recovery of costs related to accelerated replacement of natural gas pipelines considered to be a safety risk. The Commission therefore concludes it has jurisdictional authority to establish alternative ratemaking mechanisms, including both surcharges and deferred cost recovery mechanisms, for recovery of costs associated with accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.

12. As the Commission discussed above, the GSRS and any proposed pipeline replacement program would be separate in their scope and policy goals. The Commission concludes it does not have jurisdictional authority to expand or change the GSRS. The Commission respects the legislative process that created the GSRS and will not expand or change that program.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission has 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.

B. Prehearing Officer Jay Van Blaricum will contact the parties to develop a procedural schedule for the remainder of this proceeding.


C. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order in which to petition the Commission for reconsideration.¹⁴

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner.

Dated: JUN 18 2015


ORDER MAILED JUN 19 2015

Amy L. Gilbert
Secretary

JV

¹⁴ K.S.A. 66-118b; K.S.A. 2014 Supp. 77-529(a)(1).

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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ORDER MAILED JUN 19 2015

The Docket Room hereby certified that on this _____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
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