

II. Discovery Order

3. The Commission finds that formalizing discovery procedures and clarifying the obligations of the parties will help ensure a full and efficient investigation of the issues in this docket. This Discovery Order will govern the conduct of discovery until further order of the Commission. Parties may request modified or additional discovery procedures or may request that the Commission schedule a discovery pre-hearing conference.

4. General procedures. Discovery in Commission proceedings is limited to matters that are “clearly relevant.”⁴ After a docket is opened, any party may serve upon any other party written discovery or data requests. These data requests shall identify with reasonable particularity the information or documents sought. Data requests must be designed to elicit material facts within the knowledge of the parties. Data requests that require conclusions of law or answers to hypothetical questions are generally not permitted. Cross-examination through the use of data requests is not appropriate. Copies of data requests shall be served upon all other parties to the proceeding, unless a party requests otherwise. Data requests and responses may be served by facsimile transmittal or electronic mail if agreed to by the parties. Data requests that are sent by a party after 5:00 p.m. shall be deemed to have been received the following business day.

5. Data Request Responses. Responses to Staff data requests are due within seven days.⁵ Responses to all other data requests are due within 10 days. In computing the period of time for responding, the day on which the data request was issued is not counted. Furthermore, for purposes of calculating all discovery-related deadlines, intermediate Saturdays, Sundays, and

⁴ K.A.R. 82-1-234a(a).

⁵ Per K.A.R. 82-1-217, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.”

legal holidays shall be excluded.⁶ Parties may agree to extensions or reductions of time in which to respond or object to a data request. Responses to data requests shall be verified and shall identify the person(s) who actually prepared the response and can answer additional questions relating to the response. Each data request shall be answered separately and preceded by the request to which the answer pertains. Responses shall be clearly identified and, if consisting of several pages shall be labeled and organized in a manner that makes review of the pages convenient. Parties are under a continuing duty to supplement their discovery responses upon learning that the information disclosed is incomplete or incorrect in any material respect. If a response to a data request requires the duplication of voluminous material or of material that is not easily copied because of its binding or size, a party may require that any party other than Commission Staff review the voluminous material on its own premises. If duplication of voluminous material can be accomplished without undue burden, the voluminous material may be copied at the expense of the requesting party. Voluminous material is defined as documents comprised of 200 pages or more.

6. Objections to Data Requests. If the parties have agreed to electronic service, and a party objects to answering a particular data request, the party shall object in writing to the party which issued the data request within five days of the data request.⁷ If the parties have not agreed to electronic service, and a party objects to answering a particular data request, the objecting party shall object in writing to the issuing party within five days after service, plus three days if service is by mail. The written objection shall specifically explain all grounds relied upon for objecting to each data request. Any objections not provided at this time will be considered to be waived. If an objection pertains only to part of a question, that part shall be clearly identified and the responding

⁶ This constitutes an explicit limited waiver of K.A.R. 82-1-217(a). This waiver is consistent with the Commission's precedential *Order Granting Petition for Reconsideration of Discovery Order*, issued November 10, 2016, in Docket No. 17-KPPE-092-COM.

⁷ As noted above, intermediate Saturdays, Sundays, and legal holidays shall be excluded when calculating discovery-related deadlines, which constitutes a limited waiver of K.A.R. 82-1-217(a).

party shall provide any non-objectionable information covered by the remainder of the data request. Parties shall negotiate in good faith to resolve discovery disputes. If resolution is not possible, the party seeking discovery may file a motion to compel with the Commission. Motions to compel must have the data request and response at issue attached. Motions to compel are required to be served by hand delivery, electronic mail, facsimile, or next-day delivery service. Responses to motions to compel are to be filed within three days after the motion is received.⁸ The Commission may act immediately on motions to compel if necessitated by time constraints or the procedural schedule in the docket.

7. Limitations on Discovery. The Commission may limit discovery to protect a party against unreasonable, cumulative, or duplicative discovery requests; to prevent undue delay in the proceeding; to avoid unnecessary burden, expense, or harassment; or to otherwise maintain the orderly and efficient progress of the proceeding. Upon finding that a party has abused the discovery process, the Commission may deny the right to continue discovery.

8. Sanctions. A motion for sanctions for discovery violations may be filed at any time during the proceeding or may be initiated by the Commission. A motion is to contain sufficient factual allegations to detail the violation and must specify the relief requested. Motions for sanctions are required to be served by hand delivery, electronic mail, facsimile, or next-day delivery service. Responses to motions for sanctions are to be filed within 10 days.

- a. The Commission will consider any relevant factors when reviewing a motion for sanctions, including whether discovery has been conducted in bad faith or for an improper purpose such as causing unnecessary delay or needless increase in the cost of the proceeding; whether the discovery process has been abused in seeking or resisting discovery; and whether parties have failed to obey Commission Orders.
- b. Sanctions imposed by the Commission may include limiting or disallowing further discovery; holding that designated facts be deemed admitted for purposes of the proceeding; refusing to allow a party to support or oppose

⁸ See fn. 8 above.

a claim or defense or prohibiting the party from introducing designated matters in evidence; disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests; striking pleadings or testimony; staying further proceedings until an order is obeyed; disallowing a party's right to participate in the proceeding; dismissing the application or filing with or without prejudice; requiring the offending party to pay the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and imposing any other sanction or remedy available to the Commission by law.

THEREFORE, THE COMMISSION ORDERS:

- A. The provisions of the Discovery Order shall govern the treatment of discovery procedures in this docket.
- B. Electronic service shall be utilized for serving pleadings/motions and orders.
- C. 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).⁹
- D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/29/2018



Lynn M. Retz
Secretary to the Commission

CRM/vj

⁹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

19-BHCG-149-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 11/30/2018.

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