

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

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) Docket No. 05-CONS-222-CMSC
if gas supply is not in a dangerous condition and)
requesting joinder of this matter with Docket No.)
05-CONS-214-CMSC)

DISCOVERY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Being fully advised of all matters of record, the Commission finds as follows:

1. 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 case. 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.

2. General Procedures. Discovery in Commission proceedings is limited to matters that are “clearly relevant.” K.A.R. 82-1-234a(a). After a docket is opened, any party may serve upon any other party written discovery 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 which 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. Responses are to be provided to any party which requests them. Data requests and responses may be served by facsimile transmittal or electronic mail if agreed to by the parties. Requests for information that are received after 3:00 p.m. shall be deemed to have been received the following business day.

3. Data Request Responses. Responses to Staff data requests are due within 7 days, not counting Saturdays, Sundays or legal holidays. K.A.R. 82-1-234a(b). Responses to all other data requests are due within 10 days, not counting Saturdays, Sundays or legal holidays. In computing the period of time for responding, the day on which the data request is issued is not counted. Parties may agree to extensions or reductions of time in which to respond to 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 discovery 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 500 pages or more.

4. Objections to Data Requests. If a party objects to answering a particular data request, the party shall object in writing within 5 days of receipt of the data request, not counting Saturdays, Sundays or legal holidays. 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 a part of a question, that part shall be clearly identified and the responding 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, facsimile or next-day delivery service. Responses to motions to compel are to be filed within 3 days after the motion is received, not counting Saturdays, Sundays or legal holidays. The Commission may act immediately on motions to compel if necessitated by time constraints or the procedural schedule in the case.

5. 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 party the right to continue discovery.

6. The Commission has a standard Protective Order that establishes procedures and requirements for the production of information or data designated as confidential. Any party may file a motion for a Protective Order.

7. 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, facsimile or next-day delivery service. Responses to motions for sanctions are to be filed within 10 days, not counting Saturdays, Sundays, or legal holidays.

(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 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.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) This Discovery Order shall govern the conduct of discovery in this docket until further order of the Commission.

(B) A party may file a petition for reconsideration of this Order within 15 days of the date this Order is served. If service is by mail, three additional days may be added to the 15-day time limit to petition for reconsideration.

(C) 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.

Moline, Chr.; Wine, Comm.; Krehbiel, Comm.

Dated: APR 15 2005

ORDER MAILED

APR 15 2005

 Executive Director

Susan K. Duffy
Executive Director

SBC