BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of SWKI-Seward West Central, Inc., and SWKI-Stevens Southeast, Inc. Against Anadarko Natural Gas Company.	)))	Docket No. 14-ANGG-119-COM

PETITION FOR RECONSIDERATION OF ORDER ON CONTRACT STATUS

SWKI-Seward West Central, Inc. ("SWKI-SWC"), and SWKI-Stevens Southeast, Inc. ("SWKI-SE"), (collectively, the "SWKIs"), pursuant to K.S.A. 77-529(a)(1) and K.A.R. 82-1-235, hereby file with the State Corporation Commission of the State of Kansas ("KCC" or "Commission") this Petition for Reconsideration ("Petition") of the Commission's August 6, 2019 Order on Contract Status ("Order"). In support of its Petition, the SWKIs state as follows:

Introduction

1. The lengthy procedural history prior to the Court of Appeals' remand to the Commission is succinctly set forth in the Order, and the SWKIs will not restate it here.

2. On January 12, 2018, the Court of Appeals of the State of Kansas issued its Memorandum Opinion in the case *of SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. v. the Kansas Corporation Commission and Anadarko Natural Gas Company LLC*.[1]

3. The Court agreed with the SWKIs that they stated a cognizable claim for relief and that the KCC erred in denying relief. The Court specifically held that the KCC erred in concluding that the SWKIs, by alleging that Anadarko's contracts were illegal for having failed to file them with the Commission, had failed to state a claim upon which relief could be granted.

[1] *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, 408 P.3d 1006, 2018 WL 385692, (hereafter "Court of Appeals Decision").

The Court remanded the case to the KCC for additional proceedings to determine if the natural gas contracts at issue were ever filed at the KCC. If not, the Commission is directed to determine if the SWKI's are entitled to a remedy for Anadarko's violations.

4. The Commission's Order on Contract Status found that the 1998 Gas Sales Agreement ("GSA") between Anadarko Energy Services Company and SWKI-SE and the 2002 GSA between Anadarko and SWKI-SWC were either not timely filed with the Commission or not filed at all in violation of Kansas law.[2] Having found that that Anadarko failed to file or timely file the 1998 and 2002 GSAs, the Court of Appeals directed the Commission "to determine, in its discretion, if the SWKIs are entitled to a remedy for Anadarko's violations."[3]

5. The Commission found, based upon a variety of arguments, that the SWKIs were not harmed by Anadarko's failure to file or timely file the 1998 and 2002 GSAs, and therefore are not entitled to a remedy for Anadarko's violations. The Commission's finding that the SWKIs were not harmed and are therefore not entitled to a remedy is both contrary to the evidence in this matter and the Court of Appeals' directions on remand. Each Commission finding will be addressed in turn below.

I. Grounds for Reconsideration

6. As more fully set forth below, the SWKIs request that the Commission reconsider its August 6, 2019 Order on Contract Status based upon the following: (i) the Commission engaged in unlawful procedure that denied the SWKIs due process; (ii) the Commission failed to address an issue requiring resolution and abused its discretion in that it specifically failed to address what remedy is appropriate; (iii) the Commission failed to comply with the Court of Appeals' directives on remand; (iv) the Commission failed to determine whether the unfiled rates

[2] Order at ¶¶ 15, 17.

[3] Court of Appeals Decision at *14.

are just and reasonable; (v) the Commission's Order does not address or discuss the applicability of the Filed Rate Doctrine; (vi) the Commission's Order is not supported by substantial, competent evidence when viewed in light of the record as a whole; (vii) the Commission's Order is not reasonable and is otherwise arbitrary and capricious in that it does not set forth findings of fact and conclusions of law such that a reviewing court may be apprised of the foundation for its conclusions; and (viii) the Commission's Order is otherwise arbitrary, illegal and capricious.

II. Argument

A. The Commission's Order on Contract Status Denies the SWKIs Due Process and Is Based on Erroneous Assumptions, Not Evidence

7. This complaint was filed on August 27, 2013. The allegations in the complaint have been investigated by the parties and the Commission Staff, and a lengthy discussion of applicable facts and legal standards has traveled through the Commission, to the District Court of Shawnee County, Kansas, to the Kansas Court of Appeals, and back again to the Commission. The Commission's most recent Order on Contract Status makes a variety of quasi-judicial assumptions of harm or lack thereof to the SWKIs without any evidentiary support whatsoever. At no point in time has the Commission held an evidentiary hearing at which it might collect evidentiary support. In the Commission's February 26, 2015 Order Denying Reconsideration, the Commission noted that the "issues the SWKIs raise with the Order are legal ones, not questions of fact, thus a hearing would not have added anything beyond what was already addressed through briefing."[4] Whether the SWKIs have been harmed by Anadarko's violations of Kansas law is a question of fact that requires the Commission to receive and review evidence.

[4] *Order Denying SWKI-Seward West Central, Inc. and SWKI-Stevens Southeast, Inc. Petition for Reconsideration*, February 26, 2015 at ¶ 12.

8. Though the standards for meeting due process requirements vary to assure the basic fairness of each particular action according to its circumstances,[5] the basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner.[6] In determining whether due process rights attach, it is important to distinguish between an investigation and a hearing or adjudication. The term "hearing" is appropriate to quasi-judicial proceedings while "investigation" is appropriately used with regard to non-judicial functions of an administrative agency and the seeking of information for future use rather than proceedings in which action is taken against someone.[7] Quasi-judicial "is a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, draw conclusions as a basis for official actions and exercise discretion of judicial nature."[8] The Kansas Supreme Court notes that "where an administrative agency makes a determination of a quasi-judicial nature, the parties to the adjudication must be accorded the traditional safeguards of a trial."[9] Notably, the Kansas Supreme Court has found that "where an administrative body acts in a quasi-judicial capacity the requirements of due process will attach to the proceedings held before it."[10]

9. Any reviewing court is required to "determine whether the evidence supporting the [agency's] factual findings is substantial when considered in light of *all* the evidence."[11] The Commission's orders are required to be based upon substantial competent evidence. Substantial

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[5] *Kempke v. Kansas Dept. of Revenue*, 281 Kan 770, 776 (2006).

[6] *Alliance Mortgage Co. v. Pastine*, 281 Kan 1266, 1275 (2006).

[7] *Atchison, Topeka and Santa Fe Railway Co. v. Kansas Comm'n on Civil Rights*, 215 Kan 911, 918 (1974).

[8] *Thompson v. Amis*, 208 Kan 658, 663 (1972).

[9] Id., quoting *Hannah v. Larche*, 363 U.S. 420, 445, 80 S.Ct. 1502 (1960).

[10] *Adams v. Marshall*, 212 Kan 595, 599 (1973).

[11] *Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan.App.2d 360, 362 (2009) (Emphasis in original.)

competent evidence is evidence that must possess something of substance and relevant consequence, and it must furnish a substantial basis of fact from which the issues tendered can reasonably be resolved.[12] In addition, the KCC's actions must have foundation and be supported by facts in the record for the order to be considered reasonable and not arbitrary and capricious.[13]

10. The Commission is also required by statute to craft its orders to clearly advise any appellate court of its rationale in rendering the order. If judicial review of any Commission decision is sought, it will be pursuant to the Kansas Judicial Review Act ("KJRA").[14] The Commission must therefore separately state findings of fact, conclusions of law, and policy reasons for its decision. Any findings of fact must be based exclusively upon the evidence in the record and any matters officially noticed in this proceeding.[15] The Commission must base any determination of fact upon evidence supported by the appropriate standard of proof that is substantial when viewed in light of the record as a whole.[16] Substantial, competent evidence is evidence which possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.[17] By statute, the phrase in "light of the record as a whole" means that the adequacy of evidence in the record to support a particular finding of fact will be judged "in light of all the relevant evidence in the record cited by any party that detracts from such finding as well as all of the relevant evidence compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any

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[12] *Southwestern Bell Tel. Co. v. Kansas Corporation Commission*, 4 Kan.App.2d 44, 46, 602 P.2d 131 (1979), *rev. denied* 227 Kan 927 (1980).

[13] K.S.A. 77-621(c)(8); *Williams Natural Gas Co. v. Kansas Corp. Comm'n*, 22 Kan App.2d 326, 334-35.

[14] K.S.A. 77-601, *et seq.*

[15] K.S.A. 77-526(c) and (d).

[16] K.S.A. 2010 Supp. 77-621 (c)(7).

[17] *Jones v. Kansas Gas & Elec. Co.*, 222 Kan. 390, 397, (1977); *see also Williams Natural Gas Co. v. Kansas Corp. Comm'n,* 22 Kan. App.2d 326, 334-35 (1996) (review denied).

party that supports such finding, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.[18]

11. In discussing amendments to the KJRA, including the adoption of K.S.A. 77-621(d) defining "in light of the record as a whole," the Kansas Supreme Court concluded that new subsection (d) alters an appellate court's analysis in three ways: "(1) it requires review of the evidence both supporting and contradicting the [agency's] findings; (2) it requires an examination of the presiding officer's credibility determination, if any; and (3) it requires review of the agency's explanation as to why the evidence supports its findings."[19]

1. The Commission's Erroneous Assumptions Are Not Evidence

12. The Commission asserts that the SWKIs have acknowledged that both parties have performed their obligations under the GSAs.[20] The Commission then takes the unfathomable leap that, due to such acknowledgement, "by the SWKIs own admission, they were not harmed by Anadarko's alleged failure to file the Gas Service Agreements." Whether the parties performed under the agreements is not relevant, as recognized by the *Sunflower* court. The *Sunflower* court held that the fact that rates might have been paid voluntarily by the customer does not defeat a claim under the Filed Rate Doctrine.

> Whether the payments were voluntary in the case at bar is a question of fact that was not decided by the KCC, but such determination is not necessary herein because the right of the KCC to order refunds is not shown by Sunflower to be derivative from the rights of the irrigators [customers]. Rather, the right is derived from the implied power to enforce rate orders. The KCC would have power to make such orders of

[18] K.S.A. 2010 Supp. 77-621(d).

[19] *Redd v. Kansas Truck Center*, 291 Kan. 176, 182-83, 239 P.3d 66, 72 (2010.)

[20] Order at ¶ 19.

refunds regardless of whether the irrigators would be able to bring such an action in their own right.[21]

13. "Harm" to the SWKIs includes having paid the contractual rates years prior to the filing of rates for approval—and the resultant lost time value of money.

14. Whether both parties performed their obligations pursuant to the agreements is immaterial. The fact that the SWKIs accepted natural gas at the rates demanded by Anadarko does not relieve the Commission of its statutory duty to ascertain whether rates are just and reasonable at the time they are being charged. Both Federal and Kansas courts have held that the presence of a contractual arrangement at rates different than those approved by the applicable regulatory body, or when no rate has been approved by the applicable regulatory body, are in violation of the Filed Rate Doctrine.[22] In fact, if performance by both entities under a contractual arrangement was sufficient to relieve the Commission of its obligation to discharge its statutory duties to review and approve rates, the *Sunflower* cases would have been wrongly decided and the Commission would be powerless to regulate the rates of public utilities within the state.

15. Moreover, whether the parties performed under the agreements does not and cannot relieve the Commission of its statutory authority and duty to review all rates to ensure that they are not unjust, unreasonable, not unduly preferential or unduly discriminatory. Pursuant to K.S.A. 66-1,202, the Commission is given full power, authority and jurisdiction to supervise and control the natural gas public utilities doing business in Kansas, and is empowered

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[21] *Sunflower Pipeline Co. v. Kansas Corporation Commission*, 5 Kan. App. 2d 715, 722-23 (1981).

[22] See, *e.g.*, *Arkansas Louisiana Gas Co., v. Hall*, 453 U.S. 571, 582 (1981) *Michigan Electric Transmission Co., v. Midland Cogeneration Venture*, 737F.Supp.2d 715, 728-730 (E.D. Mich. 2010); *In re Carolina Power & Light Co.*, 87 F.E.R.C. ¶ 61,083 (1999); *Sunflower Pipeline Co. v. The State Corporation Commission of the State of Kansas*, 3 Kan.App.2d 683, 600 P.2d 794 (1979)("*Sunflower I*"); *Sunflower Pipeline Co. v. The State Corporation Commission of the State of Kansas*, 5 Kan.App.2d 715, rev. denied 229 Kan. 671, 624 P.2d 466 (1981)("*Sunflower II*"); *Farmland Indust. v. Kansas Corporation Commission*, 29 Kan.App.2d 1031, 1039, 37 P.3d 640 (2001).

to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. Pursuant to K.S.A. 66-1,203, every natural gas public utility doing business in Kansas shall publish and file with the Commission copies of all schedules of rates and shall furnish the Commission copies of all rules and regulations and contracts between natural gas public utilities pertaining to any and all jurisdictional services. Further, in accordance with K.S.A. 66-109, Kansas' codification of the Filed Rate Doctrine, no public utility shall knowingly or willfully charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state.

16. The Commission's assumption that the rates were "freely negotiated" is wholly inaccurate and is not the legal standard here. The GSAs were presented to the SWKIs as contracts of adhesion, and were "take it or leave it" agreements. The Commission has no evidence upon which it bases its conclusion that the rates were "freely negotiated", in part because the Commission has received no evidence at all in this proceeding. Moreover, the Commission makes the assumption that since both parties performed under the agreements, the rates are just and reasonable for the services rendered.[23] It is the Commission's duty to review rates to ensure they are just and reasonable, and the Commission's assumption that, since the rates were paid by the SWKIs they are therefore reasonable, is a violation of the Commission's statutory duty.

17. The Commission erred in not providing an opportunity for the SWKIs to present evidence regarding the harm incurred, an analysis of what a reasonable rate should be, and the appropriate level of remedy.

2. The Commission Continues to Rely Upon Theories Rejected by the Court of Appeals

[23] Order at ¶ 20.

18. In holding that the Commission erred in concluding that the SWKIs Complaint failed to state a claim, the Court of Appeals specifically held that:

> A complaint which reports that a public utility's rates are unlawful is consistent with asserting that such rates are unreasonable, unfair, or unjust. This broad reading of K.S.A. 66-1,205 is also consistent with K.S.A. 66-1,207 which, like many similar statutes governing the Commission's authority, requires that statutory provisions granting the Commission power 'shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the Commission.[24]

The Commission cannot repeat its same argument that the SWKIs failed to raise allegations of unjust and unreasonable rates, given that the Court of Appeals expressly found that the SWKIs allegation of unlawfulness amounts to precisely the same thing.

19. Further, the Commission's argument that the SWKIs never claimed the GSA prices were unjust and unreasonable is patently false. In its initial Complaint in this proceeding, the SWKIs specifically stated that the rates it paid pursuant to the contracts were far in excess of rates paid by other Anadarko customers for the same service and that the rates charged to the SWKIs were unlawful due to the fact that they had never been reviewed by or approved by the Commission.[25] The SWKIs have noted in pleadings that the rate differential between what the SWKIs paid and what Anadarko charged another one of the seven contract customers for the same service and during the same period was 500% higher, without consideration of interest and the time value of money calculation discussed by the Court of Appeals.[26] The Commission has been aware of this rate differential long prior to the filing of this Complaint, because both the

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[24] Court of Appeals Decision at *9.

[25] See Complaint at ¶ ¶ 11, 14.

[26] Response to Anadarko Petition for Reconsideration of Discovery and Protective Order, September 14, 2018 at 4.

SWKIs and Black Hills introduced evidence of this rate disparity in the Black Hills proceeding[27] that a cost of service analysis of ANGC's rates revealed $.107[28] as a reasonable rate, in stark contrast to the $.50 paid by the SWKIs for multiple years.

B. The Commission Abused its Discretion by Failing to Address an Issue Requiring Resolution; Namely, What Remedy is Appropriate

20. The title of the Order, "Order on Contract Status", suggests that the Commission only performed half of the analysis required by the Court of Appeals. However, the content of the Order reveals that the Commission made findings pertaining to whether the contracts were filed and then simply relies upon assumptions and conclusory remarks for the second half of the analysis, that of an appropriate remedy, required by the Court of Appeals.

21. The Commission makes precisely the same errors in this Order as it did in its January 15, 2015 Order that was overturned and remanded by the Court of Appeals. In the face of explicit directions otherwise, the Commission fails to "exercise [its] discretion by evaluating what remedy would be appropriate."[29] Instead, the Commission's Order states that "since there is neither an allegation of, nor evidence of unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential rates, the Commission has *no authority* to adjust the rates contained in the GSAs."[30] The Order goes on to claim that "giving a refund to the SWKIs would be the equivalent of adjusting the rates, and is *beyond the Commission's authority.*"[31] These holdings by the Commission fly in the face of the Court of Appeals' holdings:

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[27] Docket No. 13-BHCG-509-ACQ.

[28] See, SWKI Exhibit 3, attached to the Direct Testimony of Christopher Pflaum, PhD, Docket No. 13-BHCG-509-ACQ.

[29] Court of Appeals Decision at *14.

[30] Order at ¶ 20 (emphasis added).

[31] *Id.* (emphasis added).

> It was the *Sunflower* panel that recognized this lack of explicit authority but held that under K.S.A. 66-101—which granted the Commission 'full power, authority and jurisdiction to supervise and control the public utilities ... doing business in the state'—the Commission had the statutory authority 'as a means of ... enforcing its power to regulate rates' to determine appropriate remedies for violations of approved tariffs, *including ordering refunds* to customers charged rates higher than those authorized by the utility's filed tariff. Similarly, we hold here that in instances where a reasonable rate goes unfiled, *the Commission has the statutory authority* to order a remedy, a remedy that may include the time value of money paid by the customer pursuant to an unfiled rate."[32]

22. By claiming lack of authority, the Commission once again "abused its discretion by summarily rejecting the SWKI's requested remedy out of hand."[33]

23. The Commission perpetuates its errors by continuing to apply an all-or-nothing analysis, which was rejected by the Court of Appeals. The Order states, "[g]ranting the SWKIs' demand for a full refund for fifteen years of gas purchases, plus interest, would not result in just and reasonable rates."[34] This is the wrong analysis, as the Court of Appeals distinguished the full refund requirements of *Sunflower*, and found that the Commission has "discretion to order an appropriate remedy under the circumstances," including an amount less than the full amounts paid under the contracts.[35] The Court of Appeals relied on precedent from the Federal Energy Regulatory Commission ("FERC") for the proposition that the Commission has broad discretion to fashion a remedy, noting that the time value of money paid under the contracts is an appropriate remedy, even when the unfiled rates are reasonable.[36]

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[32] Court of Appeals Decision at *13 (internal citations omitted) (quoting *Sunflower Pipeline Co. v. Kansas Corporation Commission*, 5 Kan. App. 2d at 719-20).

[33] *Id.* at *14.

[34] Order at ¶ 20.

[35] Court of Appeals Decision at *14.

[36] *Id.* at *13.

24. The time value of money reflects the fact that the utility has no right to collect money from the customers until the date that the contracts are filed.[37] Accordingly, the utility must return the time value of money to the customer for the period that it unlawfully collected rates, even if the rates are later deemed to be reasonable. Moreover, the FERC precedent provides that the time value of money refunds are to be collected in addition to any refunds that may be required if the rate is not just and reasonable after a cost-basis analysis.[38] As noted above, the SWKIs have repeatedly alleged that the rates in the GSAs were far higher than rates charged to similarly situated customers for the same service. Accordingly, the Commission clearly has the authority to order a remedy, which should *at the very least* compensate the SWKIs for the time value of money for the entire period the rates were unfiled and unapproved. In order to determine whether the time value of money or additional remedies are appropriate—due to a cost-basis analysis and the discrepancy between the rates charged under the unfiled contracts and those charged to other customers—the Commission must provide an opportunity for the SWKIs to present evidence regarding the harm incurred and the appropriate level of remedy. This was the unmistakable intention of the Court of Appeals when it told the Commission it must *evaluate* what remedy would be appropriate.[39]

25. The time value of money remedy is an enforcement mechanism under the Filed Rate Doctrine. During the nearly six years this Complaint has been pending, the Commission has repeatedly declined to address the applicability of the Filed Rate Doctrine to this case. The Court of Appeals deemed the Filed Rate Doctrine to be of such importance to the resolution of

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[37] *See, Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979-61,980 (July 30, 1993).

[38] *See, Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 57 Fed. Reg. 59338 at 61,979 n. 11 (December 15, 1992).

[39] Court of Appeals Decision at *14.

this matter that it devoted eight pages of its twenty-seven page Memorandum Decision to discussion of the doctrine. In summarizing several cases analyzing the Filed Rate Doctrine, the Court noted that these cases "support the proposition that in the absence of a filed rate, should the appropriate regulatory agency deem the rate reasonable, the time value of the money collected from the unfiled rate is a permissible remedy available under a regulatory agency's broad powers to set and approve rates."[40]

26. This Court of Appeals holding, that "in instances where a reasonable rate goes unfiled, the Commission has the statutory authority to order a remedy, a remedy which may include the time value of money paid by the customer pursuant to an unfiled rate"[41] was flatly ignored by the Commission. Neither the Commission nor Anadarko challenged the Court of Appeals' decision and cannot now ignore the Court's discussion of the FERC's time value of money analysis.

C. The Commission Failed to Comply With the Court of Appeals' Directives on Remand.

27. The Court of Appeals' directives on remand were clear and simple: the case is remanded to the Commission for additional proceedings to determine if the natural gas contracts at issue were ever filed at the KCC. If not, the Commission is directed to determine if the SWKI's are entitled to a remedy for Anadarko's violations.

28. The Order on Contract Status notes that the 2002 GSA has never been found, and so concludes that it was not filed.[42] The Order goes on to say that Anadarko failed to comply with K.S.A. 66-117(a)'s requirement to file the proposed 1998 GSA at least thirty days before its

[40] Court of Appeals Decision at *13.

[41] Court of Appeals Decision at *13.

[42] Order at ¶¶ 11-12.

effective date.[43] The SWKIs dispute the finding that the 1998 GSA was ever properly filed for approval and specifically request reconsideration of this issue. Confusingly, the Order then states that "having found Anadarko failed to timely file the 1998 and 2002 GSAs, the Commission was 'directed to determine, in its discretion in the SWKIs are entitled to a remedy for Anadarko's violations.'"[44] This statement begs the question as to whether the 2002 was not filed, or was not timely filed, since the Commission makes both statements.

29. The Order erroneously suggests that the SWKIs are seeking equitable relief.[45] The Order further suggests that the parties must seek equitable relief pursuant to arbitration in Texas. The assumption that the SWKIs are seeking equitable relief is factually erroneous and ignores the clear statement by the Court of Appeals that the Commission is the appropriate entity to fashion a remedy for Anadarko's violations. As the Court of Appeals directed, the SWKIs are requesting that the KCC exercise its statutory authority to fashion a remedy pursuant to the broad authority and jurisdiction to approve and enforce rates in KSA 66-101, as noted by the *Sunflower* court and the Court of Appeals.

30. Further, the Commission asserts that since the SWKIs' complaint alleges Anadarko violated the law and a Commission order by failing to file the contracts, "the proper remedy is for the Commission to sanction Anadarko, not to reward the SWKIs."[46] The Commission further noted that "the SWKIs are not entitled to a remedy for Anadarko's violations."[47] Presumably as support for these conclusions, the Commission stated that it levied a $50,000 fine against Anadarko for its failure to comply with Commission Orders, as evidenced

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[43] Order at ¶ 17.

[44] Order at ¶ 18.

[45] Order at ¶ 21.

[46] Order at¶ 23.

[47] Id.

by the January 15, 2014 Stipulated Settlement Agreement. The Commission stated that such fine is an appropriate sanction for Anadarko's violation of public utility statutes regarding the sale and transportation of natural gas to the SWKIs from July 1998 through November 2013.

31. The Commission's assertions demonstrate a profound lack of understanding of both its statutory obligations and the decision rendered by the Court of Appeals that remanded this case to the Commission for further proceedings.

32. The Commission's reliance on its assessment of a fine against Anadarko is no substitute for a remedy redressing the harm sustained by the SWKIs and is in error. Both the Stipulated Settlement Agreement and Anadarko's September 8, 2014 Motion for Approval of the January 15, 2014 Joint Motion for Approval of Stipulated Settlement Agreement expressly distinguish between a fine and any remedy pursued by the SWKIs and state that:

> The Joint Motion and Settlement Agreement are expressly limited to the resolution of the Staff's separate, distinct, and state-specific civil penalty claims asserted pursuant to K.S.A. 66-115 and K.S.A. 66-131. The Settlement Agreement does not in any way resolve, affect, or prejudice the outstanding claims advanced by the NPUs under K.S.A. 66-109, K.S.A. 66-1,203, or K.S.A. 66-117.[48]
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> * * * * * * * *
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> Except as otherwise provided herein, this Stipulated Settlement Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any remaining, non-settled portions of this docket, or any other proceeding before this Commission or in any court.[49]

33. The Commission's arguments suggesting that the SWKIs are entitled to no remedy are collateral attacks on the decision rendered in this case by the Court of Appeals. The Court explicitly stated that the Commission has the power and jurisdiction to order redress for Anadarko's violations, and they provide specific guidance on what those remedies might be.

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[48] *Anadarko Natural Gas Company's Motion for Approval of the January 15, 2014 Joint Motion for Approval of Stipulated Settlement Agreement*, September 8, 2014 at ¶ 4.

[49] Stipulated Settlement Agreement at ¶ 10.

34. While the Court of Appeals acknowledged that the Commission had already fined Anadarko for operating as a public utility without a certificate and for its failure to file the GSAs, the Court of Appeals went on to specifically find that "[g]iven that the Commission has the authority and the discretion to order an appropriate remedy under the circumstances, it must exercise that discretion by evaluating what remedy would be appropriate...instead, the Commission abused its discretion by summarily rejecting the SWKIs requested remedy out of hand."[50]

35. The Commission has neither heard nor received any evidence regarding an appropriate remedy and this failure results in the SWKIs being denied due process of law. The Commission erred in failing to follow the clear hint from the Court of Appeals to consider a "remedy which may include the time value of money paid by the customer pursuant to an unfiled rate."[51]

WHEREFORE, the SWKIs respectfully request that the Commission reconsider its Order on Contract Status; schedule an evidentiary hearing, and for any such further relief that the Commission may deem just and appropriate.

[50] Court of Appeals Decision at *14.

[51] Id. at *13-14.

Respectfully submitted,

POLSINELLI PC

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VERIFICATION

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

I, Anne E. Callenbach, being duly sworn, on oath state that I am counsel to SWKI-Seward West Central, Inc., and SWKI-Stevens Southeast, Inc., that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

By: A Callenbach
Anne E. Callenbach

The foregoing pleading was subscribed and sworn to before me this August 21, 2019.

KIM L. ASHURST
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES 8-9-2020
COMMISSION # 12457303

Kim L. Ashurst
Notary Public

My Commission Expires:

8-9-2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been ✓ emailed, ___ faxed, ___ hand-delivered and/or mailed, First Class, postage prepaid, this August 21 2019, to:

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