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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 06 2005

CONSERVATION DIVISION
WICHITA, KS

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

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

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)

**ORDER DENYING MOTION FOR EMERGENCY RELIEF, CONSOLIDATING
PROCEEDINGS FOR HEARING AND ESTABLISHING HEARING PROCEDURES**

NOW, the above-captioned matters come before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission hereby issues its Order Denying Motion for Emergency Relief, Consolidating Proceedings for Hearing and Establishing Hearing Procedures.

I. BACKGROUND

1. On March 15, 2005, Midwest Energy, Inc. (Midwest) filed its Complaint and Motion for Emergency Relief (Midwest Complaint) against ONEOK Field Services (OFS). The Midwest Complaint was based on threatened termination of deliveries of natural gas to delivery points for certain Midwest residential customers because of observed increasing levels of hydrogen sulfide (H₂S) on the OFS gathering system.

2. On March 16, 2005, the Commission issued its Order Granting Emergency Relief and Setting Matter for Hearing. Emergency relief was granted to assure the continuation of natural gas service to certain residential customers during winter weather conditions. Provisions for monitoring H₂S levels, provision of an alternate energy source where any meter must be removed and for notification to customers were included as part of the emergency relief.

3. The March 16 Order set this matter for evidentiary hearing on April 11, 2005 and established the broad areas of inquiry on which the Commission would hear testimony.

4. On March 24, 2005, in a separate docket, Aquila, Inc. (Aquila) filed its Complaint Against ONEOK Field Services Company, Motion for Emergency Relief and Motion for Joinder of Proceedings (Aquila Complaint). The Aquila Complaint also addresses the termination of service because of alleged elevated levels of H₂S. However, in Aquila's case, the deliveries to residential customers have been terminated and substitute energy sources have been provided. Aquila's concerns in its request for emergency relief are centered on irrigation and commercial customers which have not been disconnected and as to which OFS has not given notice of an intent to terminate service.

5. On March 28, 2005 OFS filed its Response of ONEOK Field Services Company to Complaint and Motion for Emergency Relief in the Midwest Complaint docket. The OFS Response presents general and specific admissions and denials to the statements contained in the Midwest Complaint. In addition, while OFS admits that the Commission may use emergency proceedings in situations involving an immediate danger to the public safety, health and welfare, OFS specifically denies that the Commission has jurisdiction over natural gas gathering systems in Kansas other than to regulate their charges for gathering services.

6. On April 5, 2005, OFS filed its Response of ONEOK Field Services Company to Complaint, Motion for Emergency Relief, and Motion for Joinder of Proceedings in the Aquila Complaint docket. In addition to the general and specific admissions and denials to the statements contained in the Aquila Complaint, the OFS Response confirms that the residential customers have been disconnected from the OFS system.

II. DISCUSSION

A. Aquila's Motion for Emergency Relief

7. Aquila brings its Motion for Emergency Relief pursuant to K.S.A. 77-536(a)(1), which provides for such relief "[i]n a situation involving an immediate danger to public health, safety or welfare requiring immediate state agency action." Accordingly, the Commission must decide whether the allegations contained in the Aquila Complaint are sufficient to find an immediate danger to public health, safety or welfare and whether the requested emergency relief will prevent that immediate danger.

8. Based on Aquila's Complaint and OFS' Response to the Aquila Complaint, it is agreed that service to Aquila's residential customers served by OFS' gathering system has been terminated and substitute sources of energy provided. Therefore, there is no emergency involving residential customers.

9. Paragraph 13 of the Aquila Complaint quotes from a letter from OFS to the Commission stating, "While [OFS] presently intends to continue to supply gas to Aquila and Midwest for service to their irrigation utility customers, it reserves the right to immediately discontinue supplying gas if it believes that there may be any hazard from the gas. ... Because of the uncertainties of the present situation, [OFS] encourages Aquila, Midwest, and their

customers to continue to investigate alternate sources of energy." The OFS Response admits the allegations of this paragraph.

10. The Commission will apply emergency measures only in the clearest cases of impending public harm. Here, no residential customers are affected. Furthermore, while OFS "reserves the right" to terminate service to Aquila's irrigation and commercial customers which remain on the OFS gathering system, it has not given notice of termination at this time.

11. The Commission, therefore, will deny the Motion for Emergency Relief filed by Aquila. The circumstances presented here are not the same as presented concerning the Midwest residential customers. This determination is without prejudice to any subsequent filing Aquila may make if OFS actually terminates or gives notice of termination of service to the irrigation or other commercial customers and Aquila can show the requisite immediate danger to the public health, safety or welfare. This is only a determination that such a showing has not been made here.

B. Consolidation of Proceedings

12. It is clear that both the Midwest Complaint and the Aquila Complaint involve the same legal issues of jurisdiction and factual issues of the appropriate standards for H₂S content in natural gas, the appropriate remedies for such H₂S gas in the OFS gathering system and the consequences for customers served from that system. K.A.R. 82-1-224(b) provides for consolidation of proceedings for hearing on a common record if the Commission deems it to be in the public interest to do so.

13. It is apparent that administrative economy will be served if the evidentiary proceedings involving both cases can be handled in one proceeding, on a consolidated record. OFS is a common party to both complaints and the subject matter of the two complaints is

virtually identical, in both cases involving questions of the appropriate reaction of the parties to observed levels of H₂S in gas intended to be distributed to residential and irrigation/commercial customers.

14. Accordingly, the Commission will order the consolidation of the Midwest Complaint and the Aquila Complaint to be heard in a common proceeding on a common record.

C. Hearing Procedures

15. In its March 16, 2005 Order in the Midwest Complaint docket, the Commission set the matter for hearing on April 11, 2005. The consolidated cases will be heard together on that date.

16. Because of the short time frame involved, the Commission waives the provisions of K.A.R. 82-1-229 which contemplate the use of prefiled testimony in written question and answer form. Testimony of all parties will be presented live at the hearing. In addition, the Commission waives the provisions of K.A.R. 82-1-221 which require the filing of exhibits and other documentary evidence 10 days prior to hearing. The use of exhibits or other documentary evidence will be admitted or denied pursuant to standard evidentiary procedures utilized by the Commission.

17. As has been noted in other cases, the Commission has substantial discretion to conduct hearings in a manner and with procedures tailored to the proceeding at hand. The Commission concludes that the testimony in this case will be best presented in panel form. Midwest, Aquila and OFS, respectively, shall present panels of witnesses which shall consist of those persons who have the requisite knowledge and authority to speak about the issues presented in these complaints and to represent the interests of each party.

18. As complainants bearing the burden of proof, Midwest and Aquila will first present their panels followed by OFS. Midwest and Aquila will then be given an opportunity for rebuttal at their request.

19. To facilitate the receipt of information that the Commission will need to determine the issues in this case, the Commission has developed a list of questions or issues that it directs each party, as appropriate, to be prepared to address. These are as follows:

- a. Provide industry data or practices concerning the level at which H₂S renders the gas quality unacceptable for residential, irrigation or commercial use.
- b. Provide support (or refutation) for the OFS determination that elevated H₂S levels render the gas quality unacceptable for residential, irrigation or commercial use.
- c. OFS to defend why the data available required a sudden change over the practices and procedures followed by OFS for the last three years.
- d. Is the measured H₂S in the gathering system currently at a dangerous level? Why or why not.
- e. What are the appropriate means, methods and practices that OFS may implement to assure just, reasonable and safe service to end use customers?
- f. Should the LDC be required to take on the safety responsibility for serving unprocessed gas to its customer?
- g. Present and review data collected at customer meters since the Commission's March 16, 2005 Emergency Order went into effect.
- h. Present and review results from daily testing at wells including showing the proximity of the wells to the affected customers.

- i. Present and review results of OFS' further investigation and development of new facts concerning deterioration of gas quality. Include frequency of testing, location and values of highest readings, location of closest customer meters in relation to highest readings and readings at these customer meters.
- j. Provide data to show the H₂S range established by OFS contracts for allowing delivery into the gathering system.
- k. OFS to demonstrate it has the ability to implement or enforce any existing contractual requirements for producers.
- l. OFS/Aquila to provide terms of contract between OFS and Aquila giving Aquila the right to provide service through OFS' meters.
- m. OFS/Aquila to provide terms of contract between OFS and Aquila that stipulates control over meter operations.
- n. Aquila to provide gas purchase contract and any terms related to gas quality or curtailment.
- o. OFS to provide terms of contract between OFS and OEMT that allows OFS to curtail gas supply to OEMT that affects OEMT's ability to supply Midwest Energy.
- p. ONEOK/Midwest to provide terms of contract between OFS and Midwest that allows Midwest to connect service meters to OFS facilities and the terms of who controls those meter connections.
- q. Provide OEMT and Midwest gas supply contract terms related to gas quality and curtailment of supply.

r. Provide contract terms between Midwest and residential customers (*e.g.*, tariff) that relate to gas quality and gas supply for end use customers connected to gathering lines and for end use customers connected to distribution piping.

s. Provide contract terms between Aquila and residential customers (*e.g.*, tariff) that relate to gas quality and gas supply for end use customers connected to gathering lines and for end use customers connected to distribution piping.

t. Any other matter that any party desires to bring to the Commission's attention in this matter.

20. In addition to the issues set out in paragraph 19 above to be addressed by witnesses at the April 11, 2005 hearing, the Commission believes that written briefs are appropriate to address the following legal issues:

a. All parties to address the applicability of the definition of gas gathering services applying to end-use customers or to shippers.

b. All parties to discuss why the curtailment of gas supply to residential customers is or is not unreasonable or discriminatory under K.S.A. 55-1,101 *et seq.*

A briefing schedule will be addressed at the prehearing conference scheduled in paragraph 21 below.

21. To facilitate the resolution of any questions concerning the procedures for the consolidated hearing, and in recognition of the short time frame involved making written motions and responses impractical, the Commission will convene a prehearing conference on Friday, April 8, 2005, at 1:30 p.m., in the third floor hearing room at the Commission's office, 1500 SW Arrowhead Road, Topeka, Kansas.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. For the reasons set out in paragraphs 7 through 11 above, the Commission hereby denies Aquila's request for emergency relief contained in its March 24, 2005 Complaint Against ONEOK Field Services Company, Motion for Emergency Relief and Motion for Joinder of Proceedings.

B. For the reasons set out in paragraphs 12 through 14 above, the Commission hereby grants Aquila's request to join in the April 11, 2005 hearing previously ordered in the Midwest Complaint docket. Aquila's request is contained in its March 24, 2005 Complaint Against ONEOK Field Services Company, Motion for Emergency Relief and Motion for Joinder of Proceedings.

C. The hearing procedures outlined in paragraphs 15 through 21 above are hereby ordered for use at the April 11, 2005 hearing previously scheduled in the Midwest Complaint docket and referenced herein. In addition, the Commission hereby schedules a prehearing conference to further clarify and address hearing procedures to be utilized at the April 11 hearing and to address the submission of briefs as contemplated in paragraph 20 above. The Commission appoints Susan B. Cunningham to preside over the prehearing conference. In addition, Ms. Cunningham is instructed to hear procedural matters as they develop in these dockets and recommend Commission action regarding the same. As set out in paragraph 21 above, the prehearing conference will be held on **Friday, April 8, 2005, at 1:30 p.m.**, in the third floor hearing room at the Commission's office, 1500 SW Arrowhead Road, Topeka, Kansas. In accordance with K.S.A. 77-516, the prehearing conference, without further notice, may be converted into a conference hearing or summary proceeding for disposition of the matter.

A party who fails to attend or participate in the prehearing conference may be held in default in these proceedings.

D. This Order shall be served and is effective upon service by facsimile transmission upon counsel of record. A party may file a petition for reconsideration of this Order within 15 days of service of this Order. If this Order is mailed, service is complete upon mailing, and three days may be added to the above time frame. Petitions for reconsideration should be served on the Executive Director of the Commission at the Commission's Topeka office, 1500 SW Arrowhead Road, Topeka, Kansas.

E. All further pleadings in this docket should be served on the Executive Director of the Commission at the Commission's Topeka office, 1500 SW Arrowhead Road, Topeka, Kansas.

F. 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.; Krehbiel, Com.; Moffet, Com.

Dated: APR 06 2005

ORDER MAILED

APR 06 2005

 Executive Director

Susan K. Duffy
Executive Director

SBC