BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint Against TEXAS-KANSAS-OKLAHOMA GAS, LLC **Respondent**	)	
For an Order for Adjustment and Refund of Unfair, Unreasonable and Unjust rates for the Sale of Natural Gas for Irrigation based on Inaccurate and/or false pressure base measurements.	)	Docket No. 15-TKOG-236-COM
By Circle H. Farms, LLC, Richard L. Hanson, Rome Farms and Stegman Farms Partnership **Complainants**	)	

NOTICE OF FILING CORRECTED TESTIMONY

The attorneys for Respondent Texas-Kansas-Oklahoma-Gas, LLC ("TKO") files the attached Corrected Direct Testimony of Michael McEvers. The only change is the inclusion of line numbers on each page that were inadvertently excluded in the finalized version filed on October 6, 2016. Commission Staff and Complainants do not oppose this correction, which will assist in the briefing process.

Respectfully Submitted,

/s Jeremy L. Graber

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By Circle H. Farms, LLC, Richard L. Hanson,	)	
Rome Farms and Stegman Farms Partnership	)	
Complainants	)	

DIRECT TESTIMONY
of
MICHAEL MCEVERS

on behalf of

TEXAS-KANSAS-OKLAHOMA GAS, LLC.

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Exhibits

MM-1	Commission Staff's Memorandum filed February 12, 2009 (Docket No. 08-TKOG-314-COC)
MM-2	April 12, 2010 Order granting TKO's Application with Conditions (Docket No. 08-TKOG-314-COC)
MM-3	March 19, 2012 Order granting TKO's Limited Certificate of Public Convenience and Authority (Docket No. 08-TKOG-314-COC)
MM-4	Sample Bill (redacted)
MM-5	September, 2007 bill (redacted)

DIRECT TESTIMONY
OF
MICHAEL MCEVERS

I. WITNESS IDENTIFICATION AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Michael McEvers. My business address is 1318 David Lane, Dalhart, Texas 79022.

Q. On whose behalf are you testifying in this proceeding?

A. I am filing testimony on behalf of the respondent, Texas-Kansas-Oklahoma Gas, LLC. ("TKO"). TKO is a Texas limited liability company.

Q. What is your position at TKO?

A. I am the managing member.

Q. Are you affiliated with any other gas related entities?

A. I am also one of the owners of North Texas Meter Service, which provides various meter reading and meter testing services. My dad started that company, and I have been working with them for about all my life.

Q. Please describe any technical or other training you have received relating to the gas business.

A. I have been certified by Dresser from 1983 to the present in Field Testing and Dresser Meter Repair. Plus, I have been engaged in the business of gas distribution my entire adult life.

Q. Please describe the professional experience of TKO's owners and employees.

A. The owners have over 75 years' experience in gas measurement, which was noted in Commission's Staff's February 12, 2009 Memorandum in Docket 08-TKOG-

314-COC (Exhibit MM-1). All of our testers are PRC (Pipeline Regulatory Commission) certified. In total, TKO's employees have over 350 years in fieldwork, pipeline, regulatory, and natural gas experience.

Q. Please discuss the business operations of TKO generally.

A. We serve customers in Texas, Kansas, and Oklahoma. TKO has been in operation for nearly 20 years. TKO operates a natural gas system in Morse, Texas, and mainline taps from Oklahoma City up through Kansas. We are a regulated public utility in Texas with a tariff but do not have a tariff in Oklahoma.

Q. Please discuss the business operations of TKO in Kansas.

A. In 2007, TKO entered into a contract with Anadarko Natural Gas Company, L.L.C. ("Anadarko") to purchase the rights to service 182 of Anadarko's retail gas customers in Kansas. Essentially, we maintain the pipeline between the main gas line and the customers' point of interception or tap. TKO also reads meters, handles billing, and other activities related to the conduct of a gas service business.

Q. In addition to handling these services for your customers, do you provide similar billing and related activities for other entities in other jurisdictions?

A. Yes. We perform the billing, meter reading, and other back office support for Superior Pipeline, Targa, ConocoPhillips, Merit, Panhandle Field Service, and DCP (Duke ConocoPhillips).

Q. Please discuss your public utility status in Kansas.

A. TKO filed an Application for a limited certificate of public convenience in 2007—in connection with the purchase of the contracts from Anadarko—which was granted with conditions on April 12, 2010, with a final order entered March 19, 2012. Docket No. 08-TKOG-314-COC. In Kansas, TKO services primarily agricultural irrigators. TKO's certificate is limited in that its customers are those filed with the Commission with the terms set forth on the individual customer contracts, as opposed to a more common tariff.

Q. Do your customers' contracts have different terms?

A. Yes. They are all fairly similar, but some have different rates, term lengths, and other matters that have been individually negotiated.

Q. Can you describe the process to obtain the Certificate in 2010 and 2012?

A. In 2007 we filed our initial Application to take over the service from Anadarko. At about the same time, Anadarko filed a request to transfer its certificated natural gas customers to TKO. The dockets were combined. As an obligation to obtain its certificate, TKO had to make available to the Commission its books, records, and customer contracts. All the contracts had to be filed with the Commission. Commission's examination included reviewing the customer contracts to ensure the "terms, conditions, and gas sales price are reasonable." [April 12, 2010 Order, Exhibit MM-2] The Commission ultimately granted TKO's certificate, finding among other things, that TKO's business would promote the public convenience. [March 19, 2012 Order, Exhibit MM-3]

Q. Were any of the Complainants involved in that certificate process?

A. Indirectly, yes. In this case, Circle H Farms is connected with Kirk Heger, and I assume Mr. Heger is an owner of that entity. In the 2008 docket (08-TKOG-314-COC), Southwest Kansas Irrigation Association ("SWKI") intervened, by and through its president, who was also Mr. Heger. Therefore, while different entities are involved, Mr. Heger and his entity, SWKI, were involved in TKO's 2008 certificate-granting docket. SWKI is a competitor of TKO in this geographic area.

II. SUMMARY OF TESTIMONY

Q. Please summarize your testimony.

A. My testimony will provide the Commission with a description of TKO's billing methodology and explain why it is reasonable and why the Complainants' complaint has no merit. TKO utilizes a pressure base of 13.45 PSIA when calculating its Kansas customers' volume for the purpose of determining their total bill. The Complainants assert TKO's methodology violates industry standard and is therefore unreasonable and arbitrary. TKO disagrees. TKO utilizes this pressure for all Kansas customers. From the information available, including customer invoices, the 13.45 pressure base has been used since TKO began servicing Kansas customers in 2007. Until TKO received the complaint in this case, TKO has never received an allegation that it was miscalculating its customers' bills or that its billing practices or total bills were unreasonable. The Complainants' evidence and statements in this case do not suggest the billing practices are unreasonable; instead, they simply are trying to tamp out competition to further their personal interests. Based upon my education and experience, TKO's billing methodology is reasonable, as well as the total price charged to its irrigator customers.

III. <u>TKO'S BILLING METHODOLOGY AND REASONABLENESS</u>

Q. Can you summarize your understanding of the complaint as asserted by the Complainants?

A. Yes. I understand the complaint to be two-fold. First, the residential customer, Mr. Hanson, asserts that the price TKO charged is in excess of the price in TKO's certificate. Second, and I believe this seems to be the primary issue in this case, Complainants argue that TKO's use of 13.45 PSIA in its billing practice is unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential because it is contrary to industry practice.

Q. What specifically do Complainants allege is improper about TKO's use of 13.45 PSIA?

A. The Complainants state that TKO's pressure base (i.e. 13.45) should be identical to its supplier's pressure base, which they assert is 14.73.

Q. Is the Complainants' requested refund and alleged fix concerning the 13.45 PSIA the same as Commission Staff's recommendation?

A. No. Commission Staff has asserted the pressure base should be 14.65 PSIA based upon a 1961 docket (Docket 34,856-U, effective January 16, 1961).

Q. Are you aware of any allegation from the Complainants or Commission Staff that the total price charged to the customers is unreasonable given the amount of gas consumed?

A. No. They have not made any allegation that the total price is unreasonable. And further, I believe the total price charged is more than reasonable and cheaper than many of TKO's competitors.

Q. At a basic level, how are TKO's customers' bills calculated?

A. We determine the volume of gas going through the customer's meter, convert that to MMBTUs, and then multiply the result times the rate set forth in the customer's contract. More specifically, based upon a sample bill attached as Exhibit MM-4 (redacted), the price associated with the cost of gas is calculated as follows:

> 13.2 is added to the line pressure (37 in this case), resulting in 50.2. This amount is divided by 13.45, generating a correction factor of 3.73234201. The correction factor is multiplied times the difference in the meter reads (119), resulting in the total MCF for that period 441.149. The MCF is then multiplied by the BTU, 1.083, generating the MMBTU (481.102). The MMBTU is then multiplied by the contract determined gas price, resulting in the total due for the cost of gas.

Q. Where do you obtain the BTU value (1.083 in the example above) when calculating the customer's bill?

A. From our supplier, which during most of this time period would have been Anadarko for these Complainants.

Q. Does the BTU number vary month to month?

A. Yes it can, but not substantially.

Q. How does your supplier's cost of gas and related calculation affect the customer's total cost of gas and related calculation?

A. They have no direct relation. We have contracts with our suppliers, which determine the costs to be paid to those suppliers. Our customers' rates (including the Complainants') are determined by their individual contracts and are tied to an index. The total price paid to our supplier (including the rate and volume) for a given period has no bearing on the total price reflected on each customer's invoice.

Q. The Complainants assert that your volume calculation, and specifically the pressure base, must precisely match your supplier's. Do you agree?

A. Of course not. We pay our suppliers based upon the contracts with our suppliers. As mentioned previously, the volume and rate calculation for paying our suppliers does not impact the volume and rate charged to our customers based on their separate contracts. There is simply no relationship or privity between our customers and our suppliers.

Q. The Complainants have argued that TKO manipulates its calculations, which then permits it to sell more gas than it purchases resulting in more revenue for TKO. Do you believe your calculations are manipulative?

A. No. The Complainants are comparing apples and oranges. As an initial matter, there has been no allegation that the Complainants' meters are improperly measuring gas volume (i.e. a quantity complaint). Second, there has been no allegation that the gas the Complainants received and consumed was of a lesser quality than the Complainants contracted for (i.e. a quality complaint). Third, there has been no complaint that the Complainants' total bills are unreasonable. Fourth, the volume and bill calculation for all of TKO's customers is the same. In my experience, reasonableness and consistency are the key components, and the Complainants ignore that when focusing purely on this matching concept.

Q. As you know, this dispute centers around the use of 13.45 PSIA in the correction factor. When did you start using 13.45 PSIA?

A. I do not recall. It has been quite some time ago.

Q. In this case, Complainants produced certain bills, some of which go back to 2007. Based on those bills, does it appear that TKO was using a pressure base of 13.45 since 2007?

A. Yes, and I don't have any reason to believe otherwise.

Q. Attached is a bill dated September 3, 2007, marked Exhibit MM-5 (redacted), Doing the same calculation described above, does this bill reflect a pressure base of 13.45 PSIA in the correction factor?

A. Yes.

Q. Once you started utilizing a pressure base of 13.45 PSIA, did you ever change to a different pressure base?

A. No.

Q. Does the billing methodology for all of your Kansas customers include a pressure base of 13.45?

A. Yes.

Q. Are any Kansas customers treated differently?

A. No.

Q. When TKO was going through the certificate process described above, did the Commission or its staff instruct you to include a specific pressure base in your contracts?

A. No.

Q. When TKO was going through the certificate process described above, did the Commission or its staff direct or instruct you to utilize a specific pressure base in your calculations of the customers' bills?

A. No.

Q. Did the Commission or its staff direct you to or provide you with a copy of the 1961 docket (Docket 34,856-U, effective January 16, 1961)?

A. No.

Q. During the almost five-year process of obtaining your final certificate, did the Commission or its staff raise any issue about your billing methodology or use of 13.45 PSIA?

A. No.

Q. Would that information, your billing calculation and use of 13.45 PSIA, have been made available to the Commission and its staff?

A. Certainly. They looked at about everything in our records and files, including our contracts and associated rates, during that process, and I believe we provided everything they asked for.

Q. If during the review process you had been directed to use a different pressure factor that would have decreased your revenue, would you have increased your rates?

A. I cannot predict what I would have done, but I believe so, otherwise our margin would have been too low. The customers would not have been in any different position because their total invoice would have been unchanged.

Q. What do you mean their total invoice would have been unchanged?

A. If the increased rate would have proportionally matched the decreased volume (purely by reason of a calculation change), the customer's total bill would have been unchanged. For the same gas consumed, the total invoice would be the same because the two inputs (pressure and rate) could be adjusted with simple math resulting in the same output.

Q. Do you use different pressure bases in Texas and Oklahoma?

A. Yes, depending on elevation.

Q. Is that consistent with your understanding of industry practice?

A. Yes.

Q. What do you base that on?

A. Other companies/utilities and their bills and information, including those companies that we do various work for mentioned previously.

Q. Before this case started, were you aware that the BTU value from your supplier was calculated using a specific pressure base?

A. No.

Q. Before this case started, were you aware what pressure base TKO's supplier, Anadarko, used in the BTU value they gave TKO?

A. No. According to Anadarko, they were using 14.73 for one of the billing periods that we asked for in response to a Commission Staff data request.

Q. Is this the same pressure base in the 1961 docket discussed above?

A. No. The 1961 docket states the pressure base is 14.65 PSIA.

Q. Do you have any idea where 14.65 and 14.73 PSIA come from?

A. I am not certain, but I believe 14.73 is the pressure based on the elevation of Houston, Texas, and 14.65 is the pressure based on the elevation of Dallas, Texas.

Q. What is roughly the pressure adjusted for the elevation in Southwest Kansas where your Kansas customers are located?

A. Between 13 and 13.5 PSIA.

Q. Why do gas companies use different pressures?

A. There is not an exact science when setting pressures, and companies use different methods. Many measurement factors affect a customer's total bill.

Q. What are some of those factors?

A. For example, many of these customers are receiving wellhead gas that has varying BTUs and pressures. These varying factors cannot be all adjusted to be 100% accurate. This is the same for various pressures that gas utilities use. Elevations vary amongst a distribution network, which may cover several states. The important thing is that a reasonable method is selected and uniformly applied to all customers, in addition, of course, to having properly working meters.

Q. In addition to measurement, what else affects a customer's total bill?

A. Indirectly, all of TKO's costs. Our only way to recover our costs and earn a profit is through billing customers. This includes not only the cost of our gas, but overhead, delivery, employees, etc. Specifically, the bill is calculated using difference of the customer's meter readings, line pressure, atmospheric pressure, the pressure base, the BTU, and of course, the contractual rate. These all affect the customer's total bill.

Q. Has there been any allegation that the function of your meters or meter reading has been faulty?

A. No.

Q. Other than pressure base, was there any allegation the other bill inputs you mentioned (line pressure, atmospheric pressure, BTU, contractual rate) are incorrect?

A. No.

Q. Was there any allegation that those bill inputs (line pressure, atmospheric pressure, BTU, contractual rate) are unreasonable?

A. No.

Q. Has there been any allegation that the customer's total bill is unreasonable?

A. No.

Q. During this proceeding, have you had the opportunity to review some of the filed tariffs of other gas utilities in Kansas?

A. Yes.

Q: Do those utilities consistently use 14.65 PSIA as stated in the 1961 docket?

A. Not necessarily. Black Hills Energy uses 14.73 PSI, according to their tariff.

Q. From these public utilities' tariffs, does the pressure base for calculating their volume match the pressure base for purposes of the BTU?

A. Not necessarily. According to Mr. Leo Haynos from the Commission, Atmos Energy Corporation and Kansas Gas Service utilize a pressure base for calculating volume that is different than the pressure base for calculating BTU.

Q. Do you understand generally how the tariffs referenced above are set?

A. Generally, yes, and I have been through the process in Texas. The utility goes through a significant process among the KCC staff, the customers, and sometimes the customer representative (CURB in Kansas). Through the process, they typically arrive at an agreed revenue requirement and associated billing methodology that is ultimately approved by the Kansas Corporation Commission. If the parties cannot agree, the Commission takes evidence and sets the tariff.

Q. So the KCC approved these tariffs of Atmos Energy Corporation and Kansas Gas Service where the pressure base for volume differed from the pressure for BTU?

A. That appears to be the case.

Q. Turning back to the bill discussed above, you use 13.2 when calculating the correction factor. Based on the tariffs previously discussed, do they use 13.2?

A. Not necessarily. It appears Atmos and Kansas Gas Service use 14.4. I cannot determine Black Hills' number.

Q. What does 14.4 relate to?

A. I don't know why they use 14.4. 14.4 psi is the pressure at 500 feet above sea level.

Q. If TKO used 14.4 as opposed to 13.2, would that increase your customers' bills?

A. Yes, because it increases the numerator in the correction factor calculation outlined above. In the sample bill outlined above, it would increase the correction factor by 2.39% (the sum of 14.4 plus 37 divided by 13.45 equals 3.8216 (rounded). Difference between 3.8216 current correction factor of 3.73234201 is

.089219. .089219 divided by 3.73234201 is 2.39%). Carried through, this would increase the bill by 2.39%.

Q. Are you aware if the 14.4 PSI (or 13.2 PSI in your case) is regulated by the KCC?

A. I am not aware of any rules or regulation.

Q. What would be the impact on the customers' bills if you utilized 14.65 PSIA as opposed to 13.45 PSIA and all else remained constant?

A. I believe it would decrease that portion of a customer's bill relating to the cost of gas.

Q. All else remaining constant, what would be the impact on the customers' bills if you utilized 14.65 PSIA instead of 13.45 PSIA and also changed the 13.2 factor to 14.4?

A. The total bill would decrease but less than if we only adjusted the 13.45 PSIA pressure base.

Q. When was the first time that TKO heard from any of the Complainants that TKO was allegedly overcharging them?

A. Rick Hanson contacted me in 2014.

Q. What did he say?

A. He said that TKO was doing the billing wrong and asked us to spell out our billing methods.

Q. Did TKO respond?

A. Yes. We explained how we did our billing, and he did not have anything to say in response. Next thing we received was something from his attorney.

Q. Did Mr. Hanson say you were using an improper pressure base?

A. I do not recall.

Q. Have any of the Complainants stated the total invoice they have paid is unreasonably high compared to your competitors in the area?

A. No.

Q. Has there been any allegation by the Complainants that your meters are faulty or that the gas measurements are otherwise inaccurate?

A. No.

Q. Has there been any allegation by the Complainants that the total price paid for the volume of gas consumed (regardless how measured) was unreasonable?

A. Not to my knowledge. Again, there has been no allegation that the gas volume, meter readings, or rate per unit is unreasonable or inaccurate. The sole complaint, I believe, is that TKO's billing methodology, and specifically the pressure base, is incorrect.

Q. Were you familiar with these Complainants before this proceeding began?

A. Yes, generally. Mr. Hanson is the owner of Hanson Engineering, which reads meters for a number of the gas producers in the area. He is a competitor of TKO and the other entity I mentioned previously, North Texas Meter Service. I believe Mr. Heger and some of the other Complainants are involved with, affiliated with, and/or part owners of the SWKI gas entities. Specifically, I believe Mr. Heger is President of Southwest Kansas Irrigation Association. As noted above, he was involved in our initial certificate-granting process. These SWKI entities are distributors in the area that are generally less regulated than TKO and directly competing with TKO. I believe the complaint was initiated out of a desire to obtain a competitive advantage and not for any other purpose.

Q. Can you describe, generally, what the Complainants seek?

A. Based on their Complaint and other filings in this case, I believe they are seeking a refund of 9.5% of the cost of gas going back to 2007, the year we purchased the contracts from Anadarko.

Q. How would such a refund impact your business?

A. Not to be dramatic, but if it was a refund to all customers for that period, it could put us out of business, in Kansas anyway. As mentioned previously, our prices are competitive. Further, after the Commission approved Black Hills' purchase of certain of Anadarko's gas lines in 2013 (and correspondingly Black Hills' higher prices), our costs increased significantly without any offsetting revenue. We set our rates, given our billing methods, to earn the revenues that we did. Retroactively modifying the billing method without a corresponding rate change would be very detrimental to TKO.

AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF Hartley)

MICHAEL MCEVERS, first being sworn on his oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachments and am familiar with their contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.

MICHAEL MCEVERS

Subscribed and sworn to before me this 6th day of October, 2016 by MICHAEL MCEVERS.

KARI SELLS
Notary Public, State of Texas
My Commission Expires
March 30, 2017

Notary Public, State of Texas

My Commission Expires: 3-30-17

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

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter of the Application of Anadarko Natural Gas Company, L.L.C., for the Transfer of Certificates of Public Convenience and Necessity.	)	Docket No. 08-ANGG-295-CCN
In the Matter of the Application of Texas-Kansas-Oklahoma Gas, L.L.C., for a Limited Certificate of Public Convenience and Necessity	)	Docket No. 08-TKOG-314-COC

NOTICE OF FILING OF STAFF MEMORANDUM

COMES NOW the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and for its Notice of Filing of Staff Memorandums states as follows:

1. Staff hereby files the attached Staff Memorandum including confidential exhibits 1(a) –1(e) recommending the Commission approve the transfer of certificates of convenience from Anadarko to TKO, subject to certain conditions.

WHEREFORE, Staff requests the Commission consider its memorandum and for such other and further relief as the Commission deems just and proper.

Respectfully submitted

Dana Bradbury, S.Ct. #11939
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
(785) 271-3196 (Telephone)
(785) 271-3167 (Facsimile)
For Commission Staff

**EXHIBIT
MM-1**

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Dana Bradbury, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Notice of Filing of Staff Memorandum* and believes that the statements therein are true to the best of her knowledge, information and belief.

Dana Bradbury, S.Ct. #11939
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 12th day of February 2009.

State of Kansas
08-17-2011

Notary Public

My Appointment Expires: August 17, 2011

KANSAS
CORPORATION COMMISSION

Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner

MEMORANDUM

To: Chairman Wright
Commissioner Moffet
Commissioner Harkins

From: Laura Bowman LB
Leo Haynos LH
Jeff McClanahan JMc

Date: February 11, 2009

Re: Docket No. 08-ANGG-295-CCN. In the Matter of the Application of Anadarko Natural Gas Company, LLC, for Transfer of Certificates of Public Convenience and Necessity.

Docket No. 08-TKOG-314-COC. In the Matter of the Application of Texas-Kansas-Oklahoma Gas, L.L.C., for a Limited Certificate of Public Convenience and Necessity.

Date Filed to Legal: 2/12/09

Date Filed to the Commissioners: 2/12/09

STAFF REPORT AND RECOMMENDATION

I.

BACKGROUND AND DESCRIPTION OF TRANSACTION

Anadarko Gas Gathering Company operates a gas gathering system and an intrastate natural gas transmission pipeline in Southwestern Kansas. In September of 1999, Anadarko was granted a limited certificate by the Kansas Corporation Commission to provide natural gas service to customers connected to its natural gas transmission system. The certificate was limited to serving a defined list of customers according to the terms and conditions included in a natural gas sale/purchase contract. The gas sales contract for each customer is filed with the Commission. In addition to those customers served by Anadarko as public utility customers, Anadarko also serves end use customers connected to its gas gathering system. As natural gas consumers connected to a gas gathering system, this group of customers is not jurisdictional to the Commission under the public utility statutes found in K.S.A. 66-101 et seq. Gas sales to customers connected to exit taps on gas gathering systems are, however, provided with Commission oversight under the natural gas gathering statutes found in K.S.A. 55-1,111.

On August 1, 2007, Anadarko sold Texas-Kansas-Oklahoma, L.L.C., (TKO), its gas sales meters and the right to sell natural gas to all of Anadarko's farm and irrigation natural gas customers in Kansas[1]. TKO began providing service to these customers as of August 1, 2007.

On September 21, 2007, Anadarko Natural Gas Company, L.L.C. filed an application requesting the Commission's approval to transfer 55 of its certificated natural gas customers to TKO. This application also requested the Commission approve the conversion of Anadarko's corporate structure from a corporation to a limited liability company.

On October 2, 2007, TKO filed an application for a limited Certificate of Public Convenience and Authority in order to serve 182 natural gas customers previously served by Anadarko. TKO is requesting a customer specific certificate similar to the current Anadarko certificate in which all gas sales are provided through contracts with each customer. As proposed in the application, all contracts would be subject to the review and approval of the Commission prior to becoming effective. The customer limited certificate includes 55 irrigation customers currently included in the Anadarko limited public utility certificate approved in Docket No. 00-ANGG-218-COC. In this case, the current contracts for the 55 customers would be transferred to TKO. The current contracts provide gas only for irrigation service and have a 30 day term that extends month-to-month until terminated by either party. TKO also requested approval to provide public utility service to the 127 exit tap customers that had been served by Anadarko as gas gathering exit tap customers. Because TKO does not operate a gas gathering system, retail sales of gas to the exit tap customers will become a public utility function as defined in K.S.A. 66-104.

II.

APPLICABLE LEGAL STANDARDS

K.S.A. 66-104 defines a public utility as:

> "[a]...company...that...control[s] [or]operate[s] ...any equipment...or...plant...for the...conveyance of ...gas through pipelines... except pipelines less than 15 miles in length and not operated ...for the general commercial supply of gas... and all companies for the... furnishing of heat, light, water or power"

According to the sale agreement between Anadarko and TKO, TKO purchased the gas sales meters to the above described customer list and provides retail gas service. Although the definition of a public utility includes an exemption for pipeline facilities less than 15 miles in length, it is clear the exemption only applies if the operator does not operate the facility for the general commercial supply of gas. Because TKO provides retail sales of gas to these customers, Staff concludes TKO meets the definition of a public utility.

[1] Exhibit A-1 of Purchase and Sale Agreement between Anadarko and TKO.

With the approval of this application, Anadarko will remain an operator of a gas gathering system providing service to exit tap customers, (TKO). As such, the statutory requirements of K.S.A. 55-1,111 still apply to Anadarko. That is, the Commission has jurisdiction to arbitrate disputes between Anadarko and TKO, and the Commission has jurisdiction to determine if non-profit utilities organized pursuant to K.S.A. 66-104c may access the Anadarko gathering system to receive natural gas service for agricultural purposes.

Under Kansas law, a public utility shall not transact the business of a public utility until it has first obtained a certificate from the Commission that the public convenience will be promoted thereby.[2] K S. A. 2001 Supp. 66-131. Likewise, no assignment or transfer of a certificate of convenience, or contract referring to or affecting such certificate is valid unless approved by the Commission. K. S. A. 2001 Supp. 66-136. In determining whether a certificate of convenience and necessity should be granted, the public convenience ought to be the Commission's primary concern, the interest of the public utility company already serving the territory secondary and the desires of the Applicants, a relatively minor consideration. *Kansas Gas & Electric Co. v. Public Service Commission,* 122 Kan. 462, 466, 251 P. 1097 (1977). The public convenience means the convenience of the public, not of any particular individuals. Public necessity means a public need without which the public would be inconvenienced. *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission,* 130 Kan 777, 288 P. 755 (1930); *Central Kansas Power Co. v. State Corporation Commission,* 206 Kan 670, 482 P.2d 1 (1971). The public convenience and necessity is established by proof of the conditions existing in the territory to be served. *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission,* 130 Kan 777, 288 P. 755 (1930). Typically, the Commission considers, *inter alia*, whether the proposed facilities are adequate from an engineering and pipeline safety standpoint, and whether the Applicant has the technical, managerial and financial ability to operate the utility[3].
The Commission also has authority to impose lawful and reasonable conditions on the granting of a certificate. A condition is lawful if it is within the statutory authority of the Commission and all statutory and procedural rules are followed. A condition is reasonable if based on substantial competent evidence. *Kansas Electric Power Coop. Inc. v. Kansas Corporation Commission,* 235 Kan. 661, 665,683 P.2d 1235 (1984).

All of Staff's data requests to Anadarko and TKO and their responses are available upon request. Data request responses marked confidential by the company will be treated as such and filed under seal. However, various data request responses will be cited in Staff's Report. Staff requests that all Exhibits to this Report be made part of the official record in this case.

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[2] The Commission's jurisdiction extends to wholesale gas sales involving gas that is purchased and sold within the state of Kansas. K.S.A. 66-104.

[3] In the Matter of the application of Phenix Transmission Company for a limited Order and Certificate authorizing Applicant to do business as a public utility in the transportation and sale of natural gas as may be required under private contract that may be effected form time to time at points on the Applicants system. Docket No. 143,306-U; 84-PXTG-385-C, order issued May 29, 1985; In the Matter of the

III.

DISCUSSION AND ANALYSIS

A. MANAGERIAL AND TECHNICAL ABILITY

TKO is a limited liability corporation in the state of Texas, and has been in operation for ten (10) years. TKO is in good standing with the State of Texas and is registered as a Foreign Limited Liability Company in the State of Kansas. TKO partners, Michael McEvers, Dean Brown, and Bryan Smalley have over 100 years combined experience in gas distribution. In addition, they also have 75 years experience in the measurement of gas, providing TKO with sufficient managerial, technical, and financial experience to provide efficient and sufficient service.

B. FINANCIAL ABILITY

PURCHASE PRICE AND REQUIRED UPGRADES

Pursuant to the terms defined in the Purchase and Sales Agreement, Assignment, and Assumption Agreement, TKO is purchasing interest in and to those certain facilities, pipes, and installations set forth in Exhibit A-1, and associated Real Property interests set forth in Exhibit A-2 located in Grant, Morton, Stevens, and Seward Counties, Kansas, and those Gas Sales/Purchase Agreements associated with Exhibit A-1 and A-2 customers. TKO has purchased the aforementioned pipelines, fixtures, equipment and personal property for $325,000. Pursuant to the contract listed above, TKO is required to install its own electronic flow measurements (EFM) at five meter locations. The KCC estimates the maximum cost to be around $50,000 to replace all five meters. TKO must remove and return the current Anadarko EFM within six months subsequent to the Closing of this docket. In addition, TKO is also required to repair or replace all meters at the Delivery points on or before August 1, 2009. The cost to purchase and replace all of the meters is estimated to be $1,200 per meter or $218,400 in total. With the exception of the aforementioned agreed upon replacements listed above, no substantial unplanned repairs are likely to occur in the near future. TKO plans on financing the meter replacements listed above through the monthly customer charge that is stated in the customer contracts.[4]

FINANCIAL CONDITION

Staff issued a series of data requests to ascertain TKO's financial health and whether TKO has the financial ability to operate the assets in question. From a review of the information received, Staff concludes TKO's financial ability to operate the acquired assets is sufficient. Staff reviewed TKO's financial statements for the years 2004 through 2007. Although TKO has not earned a sizable net income, they have remained profitable since 2004.[5] When comparing

[4] See response to KCC Data Request No. 11.
[5] Staff did not review TKO's financial statements prior to 2004.

TKO's net income from 2006 to 2007, it appears a majority of TKO's net income is associated with the Aquila gas division, purchased in November of 2006. Total net income for seven divisions of TKO Gas, LLC, for the year 2006 reflects $64,923. With the addition of Anadarko system, the net income for the year 2007 reflects $1,387,106 where net income solely related to the Anadarko system was $100,483.[6]

OPERATING RISKS

Pursuant to the Purchase and Sale Agreement, Assignment, and Assumption Agreement, TKO is only acquiring individual irrigation contracts therefore, operating costs will be minimal. A majority of the operating costs are seasonal occurring between April and November forcing TKO to budget revenues to cover costs in months in which gas sales are low. Additional costs can also occur if the system does not meet minimum safety standards or major unplanned repairs occur. If a company can not generate sufficient cash flows or defer cash, financial detriment could occur, if repairs are required. But as stated above, TKO is only purchasing meters so unplanned costly repairs are not likely to occur, mitigating risk. Anadarko would ultimately be responsible for any repairs to the pipeline prior to where TKO meters connect. If TKO does not have the ability to operate with current cash on hand due to unplanned expenses, outside financing is available.[7]

CONTRACT TERMS AND DEFAULT

TKO has entered into a confidential two (2) year contract with Anadarko to purchase natural gas. Anadarko will provide the necessary natural gas supply to meet the gas supply/sales demand pursuant to the Gas Sales Agreement. This agreement commences August 1, 2007 and extends through July 30, 2009. Once the two year contract expires, TKO will have the option to purchase gas from Anadarko on a year-to year contract basis.

Article VII – Credit Requirements and Default states Anadarko has the right to suspend and/or terminate the Gas Supply Agreement should TKO not be able to meet the six obligations stated on page 10 of the Gas Sales Agreement.[8] As a safeguard in the event that TKO defaults on these obligations, Staff recommends that Anadarko be required, as a condition precedent to approval of this transaction, to agree to continue providing natural gas to the 182 customers as a last resort. Anadarko is the most logical utility to provide service, given they operate the gas gathering system TKO customers are connected to. Furthermore, by seeking approval of this transaction, Anadarko is at least implicitly vouching for the ability of TKO to provide service. It is therefore only appropriate to provide the irrigation customers affected by this transaction, some level of protection, by ensuring safe and reliable continuous service. It should be emphasized that Staff only recommends that Anadarko provide this contingency service as a last

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[6] This total does not include depreciation and amortization for the year end 2007, because TKO's CPA Loveday Christie and Associates, figures depreciation for TKO Gas, LLC, when the company's income taxes are prepared. See TKO's response to KCC Data Request No. 35.

[7] See response to KCC Data Request No. 20 for a list of all TKO creditors. TKO's primary outside sources of cash consists of financing through the First State Bank, Larry McEvers, or with cash reserves from current owner.

[8] The six obligations TKO is required to meet are stated on page 10 of the Confidential Gas Sales Agreement attached to the Application as Exhibit B.

resort. It will primarily and ultimately be TKO's responsibility to serve the irrigation customers pursuant to the Gas Sales Agreement.

Staff is aware that numerous questions and details associated with Anadarko assuming responsibility of TKO's customers would exist. Staff would suggest that Anadarko and TKO should be required to enter into a contractual Agreement, prior to the Commission approval of the applications in this docket, to outline all details associated with Anadarko's supply of gas upon TKO default.

C. OPERATIONS

QUALITY, DELIVERABILITY, AND SUPPLY OF GAS

As mentioned earlier, the infrastructure and gas supply for the proposed TKO customers is owned and operated by Anadarko. Therefore, TKO's service to its customers is dependent on the operations of the Anadarko system. Staff considers the 55 customers receiving gas from the Anadarko transmission system to have a stable supply of pipeline quality gas. However, the remaining 127 TKO customers are connected to the Anadarko gas gathering system. Because of the variability in production and gathering operations, TKO will have limited control over the gas deliverability pressure and the quality of the gas supplied to the exit tap customers. As a public utility, TKO will be required to provide sufficient and efficient service to its customers, (K.S.A. 66-1,202). In Staff's opinion, sufficient and efficient service must be evaluated within the context of the available supply and the unique operating conditions of providing distribution service from a gas gathering system. In this case, Staff recommends the baseline reference for quality of service should be the quality of service these customers have historically received from Anadarko. TKO is applying for a limited certificate to serve a defined list of customers according to the terms and conditions included in a natural gas sale/purchase contract which is negotiated with each customer. Provided the terms of service remain consistent with the previous Anadarko customer contracts, Staff believes TKO would meet the sufficient and efficient service requirement under its certificate. Although the contracts in question acknowledge the possibility of curtailment, Staff believes TKO should be required to provide as much notice as possible if abandonment of service because of supply issues becomes necessary. It has been Staff's experience that utilities providing service to exit tap customers have no firm forecast of future supply availability. As part of providing sufficient and efficient service, Staff suggests that TKO be required to establish a close working relationship with the company providing transportation service to the exit tap customer. More robust and timely communications between the utility and operator of the gathering system should result in a more dependable forecast of future supplies.

D. COMMISSION OVERSIGHT OF TKO

Because the proposed application will create a public utility that is limited to a defined list of customers with individual gas purchase contracts, Staff anticipates Commission oversight will be limited to reviewing the customer contracts to assure the terms, conditions, and gas sales price are reasonable. If the contracts were found to be discriminatory or unreasonable, the Commission would have the right to set rates using any of the rate making policies available. In order to assist Staff in reviewing the contracts, Staff requests TKO provide a summary of certain parameters for each contract. An example of this summary is provided as Exhibit 2.

E. MERGER STANDARDS

Staff reviewed this transaction in light of the Commission's merger standards presented in Docket No. 172,745-U. Technically, the standards only apply to the transfer of assets from one public utility to another. In this case, the transaction in question more closely resembles the creation of a public utility rather than a merger. While not all of the standards apply to this transaction, they do provide a starting point for a formal investigation in to any acquisition of a public utility. Staff will address the first three merger standards, and requests the remaining standards be waived given that they do not apply to this transaction since it involves individual irrigation contracts. The merger standards, decided in Docket No. 172,745-U, are addressed as follows.

a) The effect of the transaction on consumers, including:

i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand alone entities if the transaction did not occur.

The irrigation contacts were owned by Anadarko, an experienced, profitable and financially sound utility. Anadarko has the financial strength to operate and maintain the system and/or implement most any Commission policy. TKO as stated above has the financial capabilities to generate a positive cash flow, with the ability to incur additional financing if needed. They also have the technical and managerial expertise to operate the irrigation contracts in a safe, efficient manner. In addition, they have the ability to implement most any Commission policy.[9] Although TKO is a small utility, it appears they have the capabilities to continue operating the irrigation contracts effectively.

As the Commission is aware, there have been serious issues in the past in regards to small closely held gas utilities. Recent examples are Superior Energy and Miami Pipeline. In both of these examples, residential ratepayer's welfare and safety were at risk due to serious financial problems that caused Superior to file for bankruptcy and Miami to be sold off in pieces and have some customers abandoned to stave off bankruptcy. Because of the prior experiences with Superior and Miami, Staff is very reluctant to approve any acquisitions by small closely held gas utilities. However, in the current case, TKO is serving only irrigation customers who have the ability to switch to alternative sources of fuel if needed.

[9] TKO is currently has regulated operations in Morse, Texas and Greenfield, Oklahoma therefore Commission oversight is not a new concept to TKO. Implementing Kansas Commission policy should not be of concern.

ii) **Reasonableness of the purchase price including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range.**

TKO purchased the 182 irrigation customers stated above for $325,000. In a typical merger or acquisition, to determine reasonableness of the purchase price, Staff would compare the net book value of all taps to the total purchase price. Since TKO is purchasing irrigations customers, Staff is unsure as to whether an acquisition premium was paid, and whether TKO identified any quantifiable merger savings. In addition, if a rate case was to be filed, Staff will use an operating margin based rate making approach; therefore, any net book value related to TKO's assets would not be applicable. TKO's purchase price was based on an internal calculation and knowledge of current market prices in relation to each tap at the time of the purchase. Additionally, this process was complete prior to TKO filing an Application with the KCC. Since TKO is operating with individual customer contracts, any premium associated with the purchase is not applicable. However, if for any reason a rate case is filed, Staff requests that the Commission disallow the inclusion of any acquisition premium dollar amounts from the filing.

iii) **Whether ratepayer benefits from the transaction can be quantified.**

With any acquisition ratepayer benefits are hard to quantify and are often subjective. In this instance, benefits do not exist within the individual contracts, because TKO is assuming the current Anadarko contracts. But more importantly, TKO will become a public utility regulated by the KCC, providing a higher level of protection for customers. Not only will contract changes be reviewed, but if prices become unreasonable, the ability to file a rate case will exist.[10]

iv) **Whether there are operational synergies that justify payment of a premium in excess of book value.**

Not applicable.

v) **The effect of the proposed transaction on the existing competition.**

Not applicable.

b) The effect of the transaction on the environment.

Not applicable.

c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to the communities in the area served by the resulting public utility operations in the state.

[10] Contract terms are usually negotiated between the company and customers, therefore differences in prices could possibly exist. By filing a rate case, all customers would pay the same rate.

Not applicable.

d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.

Not applicable.

e) The effect of the transaction on affected public utility shareholders.

Not applicable.

f) Whether the transaction maximizes the use of Kansas energy resources.

Not applicable.

g) Whether the transaction will reduce the possibility of economic waste.

Not applicable.

h) What impact, if any, the transaction has on the public safety.

Not applicable.

F. RECOMMENDATION:

Staff recommends the Commission grant TKO a Limited Certificate of Public Convenience and Necessity in order to serve 182 natural gas customers, contingent upon the following conditions:

1. All customer contracts shall be in writing (i.e., no verbal contracts) and shall be filed with KCC. The verbal contracts listed in Exhibit 1 must be reduced to writing and filed with the KCC. The following provides a breakdown of Exhibit 1:
    a. Exhibit 1(a): Customers listed on TKO Exhibit A-1, Part A – A paper copy of the contract has been filed with the KCC. No further information is needed.
    b. Exhibit 1(b): Customers listed on TKO Exhibit A-1, Part A – A verbal contract exists.
    c. Exhibit 1(c): Customers listed on TKO Exhibit A-1, Part B – A paper copy of the contract has been filed with the KCC. No further information is needed.
    d. Exhibit 1(d): Customers listed on TKO Exhibit A-2/Chapter 55 – A paper copy of the contract has been filed. No further information is needed.
    e. Exhibit 1(e): Customers listed on TKO Exhibit A-2/Chapter 55 – A verbal contract exists.

    TKO will have all contracts on file with the KCC within 60 days of a Commission Order approving the acquisition. If TKO enters into a new contract, or if an old contract is updated, changed, or re-negotiated, a copy of the new contract is to be submitted to the KCC within 30 days of the date the contract was entered. Kansas Statute 66-101c states every public utility shall provide the Commission with a copy of all rules and regulations, contracts, and schedules of rates. If TKO does not have all customers under a written contract or if it chooses to file a tariff to establish rates rather than the customer contracts, mentioned above, a rate case will be filed with the KCC, and rates will be set for all irrigation customers not under contract. If TKO is in good faith negotiations with an irrigation customer(s), and is not able to file a contract within 60 days of a Commission Order approving the acquisition, TKO will request a waiver of this directive and seek additional time to file the contract. The request for waiver shall include the following information: customer name, address, meter number, additional time requested, and a brief discussion as to why they are unable to file the contract by the initial deadline. All requests for waivers are to be submitted to the KCC within 45 days of a Commission Order approving the acquisition.

2. TKO shall file all gas purchase contracts with KCC within 30 days of a Commission Order approving the acquisition.

3. A contract summary is to be provided to KCC with a list of major parameters, as outlined by Staff. A contract summary has been comprised as shown in Exhibit 1, but will need to be updated when all verbal contracts are replaced with actual contracts. If TKO changes or enters into a new contract, as mentioned above, TKO will ensure all necessary information is provided to the KCC, to update the contract summary. A copy of the summary stating the major parameters is attached as Exhibit 2.

4. TKO will be required to file an annual report with the Commission, on or before May 1 of the proceeding calendar year (beginning in 2009). Annual report requirements will be filed in accordance with K.S.A. 66-123. If TKO believes they can not comply with a specific section, they should submit a request to waive the specific section.

5. TKO shall use the FERC Uniform System of Accounts for gas utilities as the basis for its accounting system.

6. All non-jurisdictional customers previously served by Anadarko, will now become jurisdictional under TKO. TKO shall provide notice to all customers, stating that TKO is a regulated public utility in the State of Kansas, and TKO is under the jurisdiction of the KCC. The notice should include KCC contact information. TKO should provide the KCC with a copy of the notice, along with a list of all Kansas customers receiving the notice.

7. TKO shall enter into a contract with Anadarko to ensure the supply of gas to irrigation customers is not interrupted, in the event the Gas Sales Agreement with TKO is suspended or terminated or TKO is financially unable to supply the gas. The agreement should state that Anadarko or its successors will supply gas to TKO's distribution system for an interim period, not less than 60 days, if necessary to provide customers with a sufficient transition period to transfer to a different source of fuel. During the interim period, TKO will continue distributing the gas to irrigation customers. In addition, irrigation customer gas usage payments shall be forwarded to Anadarko to pay for gas supplied during the interim period. The agreement should remain in effect for a period of five consecutive years, beginning 30 days of a Commission Order approving the acquisition.

8. If at any time TKO is required to or requests to file a rate case, TKO agrees that it will not request recovery of an acquisition premium.

9. TKO will be required to file with the KCC for approval if the company ownership or structure is changed. For example a LLC becoming a MLP or incorporating.

CC: Don Low
Jeff McClanahan
Tom Stratton
Susan Duffy
Marge Petty

Exhibit 1(a)

This Exhibit Contains Confidential Information

Exhibit 1(b)

This Exhibit Contains Confidential Information

Exhibit 1(c)

This Exhibit Contains Confidential Information

Exhibit 1(d)

This Exhibit Contains Confidential Information

Exhibit 1(e)

This Exhibit Contains Confidential Information

Exhibit 2

TEXAS KANSAS OKLAHOMA GAS, LLC
CONTRACT SUMMARY
YEAR 2008

CONTRACT TERMS

DATE	METER NUMBER	CUSTOMER	INDEX	TRANSP. MARGIN	DELIVERY CHARGE (PER MMBTU)	MONTHLY SURCHARGE	FL&U	CHANGE OF NOTICE	TERM OF CONTRACT	EVERGREEN PROVISION (YES/NO)

CERTIFICATE OF SERVICE

08-ANGG-295-CCN 08-TROG-314-COC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoin Notice of Filing of Staff Memorandum was placed in the United States mail, postage prepaid, or hand-delivered this 12th day of February, 2009, to the following:

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CONFIDENTIAL INFORMATION

(Located in Docket Room)

In the Matter of the Application of Anadarko Natural Gas Company LLC for Transfer of Certificates of Public Convenience and Necessity.

08-ANGG-295-CCN

In the Matter of the City of Eskridge Seeking Commission Approval of its New Minimum Standards for Bill Payment Methods.

08-TKOG-314-COC

Confidential Exhibits 1(a) - 1(e) to Staff's Memorandum Dated February 11, 2009

FILE DATE:

February 12, 2009

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins

In the Matter of the Application of Anadarko Natural Gas Company, LLC, for Transfer of Certificates of Public Convenience and Necessity.	)	Docket No. 08-ANGG-295-CCN
In the Matter of the Application of Texas-Kansas-Oklahoma Gas, L.L.C., For a Limited Certificate of Public Convenience and Necessity.	)	Docket No. 08-TKOG-314-COC

ORDER GRANTING APPLICATIONS WITH CONDITIONS

The above-captioned matters come before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. On September 21, 2007, Anadarko Natural Gas Company LLC submitted an Application (1) to transfer the Limited Certificate of Anadarko Natural Gas Company to Anadarko Natural Gas Company LLC and (2) to transfer the rights and obligations to provide natural gas service to customers listed on Exhibit A, as attached to the Application. These customers are currently served under the Commission's ORDER AND CERTIFICATE issued on May 19, 2000, to Anadarko Natural Gas Company in KCC Docket No. 00-ANGG-218-COC. Anadarko Application, p. 1.

2. On October 2, 2007, Texas-Kansas-Oklahoma Gas, L.L.C., (TKO) filed an Application for a Limited Certificate of Public Convenience and Authority, pursuant to K.S.A. 66-104 and 66-131, to serve specific customers listed in Exhibit A to its Application, which is the same list of customers contained in Exhibit A to Anadarko's Application. TKO asks that the Commission grant it a Limited Certificate to meet service obligations under the contracts, also

EXHIBIT
MM-2

listed in Exhibit A, as well as a tariff reciting that service will be provided pursuant to the terms of the applicable contract. TKO Application, ¶¶ 3, 8.

3. Southwest Kansas Irrigation Association (SWKIA) was granted permission to intervene. Feb. 27, 2008 Order, ¶ 12. SWKIA was formed to represent its members, who are agricultural irrigators in Southwest Kansas, regarding legislative and administrative issues that might adversely impact the price, source, or quality of natural gas service they rely upon for their livelihood. These dockets were consolidated for purposes of investigating overlapping issues, developing a record, conducting an evidentiary hearing, and other matters as deemed appropriate by the Commission. Feb. 27, 2008 Order, ¶14. The Commission in this Order will address all issues raised in these two dockets.

4. The Commission's staff (Staff) filed a Memorandum regarding these applications on February 12, 2009. Staff's Memorandum provided background information regarding the relationship between Anadarko and TKO, discussed the applicable legal standards regarding these Applications, and recommended approval of the Applications with several conditions. The Commission issued a standard Protective Order on February 17, 2009. On February 25, 2009, the Commission issued a Discovery Order as well as an Order designating a Prehearing Officer and granting SWKIA until April 17, 2009, to respond to Staff's Memorandum. Subsequently, a discovery dispute arose between the parties regarding information contained in Exhibit A to the Applications, with Staff treating some information as confidential and declining to provide it to SWKIA. As part of this discovery dispute, on March 3, 2009, the Prehearing Officer issued an Order granting TKO's request to stay Staff's response to SWKIA Data Request No. 1 regarding the disputed confidentiality of certain information.

5. On November 25, 2009, the Prehearing Officer issued an Order that lifted this stay, having been informed by SWKIA that, as a result of collaboration among the parties, the outstanding discovery dispute had been resolved and the proceedings were ready to proceed to final resolution. The Prehearing Officer's Order accepted the filing of SWKIA's Response to Staff's Memorandum and set a deadline for Staff and TKO to reply to SWKIA's Response. Nov.

25, 2009, Order, ¶¶ 5-6. Staff filed its reply to SWKIA's Response on January 14, 2010. TKO did not submit a response to Staff's Memorandum filed February 12, 2009, or a reply to SWKIA's Response.

6. The Commission has jurisdiction over these Applications pursuant to K.S.A. 66-101, *et seq.*; K.S.A. 2009 Supp. 66-104 & 66-136; K.S.A. 66-117, 66-131 and 66-1,200, *et seq.* In this Order, the Commission approves Anadarko's request to transfer its certificates of public convenience and necessity to TKO and TKO's request for a limited certificate of public convenience and necessity with nine conditions discussed and set forth below.

<u>FINDINGS AND CONCLUSIONS</u>

7. Staff's Memorandum contains a detailed explanation of the circumstances surrounding these Applications and evaluation of the applicable standards that apply herein. The Commission will briefly summarize the background that lead to this proceeding and then review Staff's analysis and specific recommendations set forth in its memorandum.

I. Background Information.

8. Anadarko serves two sets of customers that are the subject of the Applications. First, Anadarko serves a defined list of customers connected to its natural gas transmission system as public utility customers according to terms and conditions included in a natural gas sales/purchase contract; the gas sales contract for each certificated customer is filed with the Commission. These certificated customers were identified in Anadarko's limited public utility certificate, as approved in KCC Docket No. 00-ANGG-218-COC (00-218). Second, Anadarko serves customers who are connected to Anadarko's gas-gathering system as exit-tap customers. Exit-tap customers on a gas-gathering system are not jurisdictional to the Commission under public utility statutes at K.S.A. 66-101, *et seq.*; instead, the Commission oversees service to these end-use customers under the natural gas gathering statute at K.S.A. 55-1,111. Staff Memo, pp 1-2. The Applications reflect Anadarko's sale of these two sets of customers to TKO.

9. On August 1, 2007, Anadarko sold to TKO its gas sales meters and its right to sell natural gas to 55 certificated natural gas customers, which are farm and irrigation natural gas

customers in Kansas. TKO began providing this service as of August 1, 2007. On September 21, 2007, Anadarko filed its Application in KCC Docket No. 08-ANGG-295-CCN (08-295), asking the Commission to approve its transfer of these certificated natural gas customers to TKO and to approve conversion of Anadarko's corporate structure from a corporation to a limited liability company. Staff Memo, p. 2.

10. On October 2, 2007, TKO filed an Application for a limited certificate of public convenience to serve Anadarko's 55 certificated natural gas customers and to serve the 127 exit-tap customers that Anadarko served as end-use customers on its gas-gathering system. TKO is requesting a customer-specific certificate, similar to Anadarko's current certificate, in which all gas sales are provided through contracts with each customer. Under such a certificate, these contracts will be submitted to the Commission for review and approval before becoming effective. If TKO's Application is approved, Anadarko's certificated customers under Docket 00-218 will be transferred to TKO and TKO will be permitted to provide public utility service to the exit-tap customers now served by Anadarko as gas-gathering end-use customers. Unlike Anadarko, TKO does not operate a gas-gathering system. As a result, TKO's retail sale of gas to exit-tap customers on Anadarko's gas-gathering system will constitute a public utility function under K.S.A. 66-101, *et seq*. Staff Memo, p. 2. To provide service to these customers, TKO must be certificated under K.S.A. 66-131.

II. Applicable Legal Standards.

11. The term "public utility" is defined at K.S.A. 2009 Supp. 66-104. If the Commission grants a limited certificate as requested, TKO will be conveying gas through pipelines to provide the general commercial supply of gas to its identified list of customers and will meet the definition of a public utility. Staff Memo, p. 2. On the other hand, Anadarko will continue to operate its gas-gathering system to provide service to exit-tap customers listed in TKO's limited certificate and will remain subject to requirements of K.S.A. 2009 Supp. 55-1,111. Under this statute, the Commission has jurisdiction to arbitrate disputes between Anadarko and TKO and to determine if non-profit utilities organized under K.S.A. 66-104c can access

Anadarko's gas-gathering system to receive natural gas service for agricultural purposes. Staff Memo, p. 3.

12. A public utility shall not transact business within Kansas until the Commission has issued a certificate finding its transaction of business will promote the public convenience. K.S.A. 66-131. In determining whether to grant an application for a certificate of convenience under K.S.A. 66-131, the Kansas Supreme Court has described the proper focus of the Commission's inquiry as follows: "The public convenience and necessity or lack thereof is best established by proof of the conditions existing in the territory to be served, and it is the province of the public service commission to draw its own conclusions and form its opinion from the proof of the conditions in the territory." *Central Kansas Power Co. v. State Corporation Commission*, 206 Kan. 670, 677, 482 P.2d 1 (1971) (citation omitted). Policy considerations that should be taken into account include whether any resulting competition will be ruinous or publicly beneficial, whether the proposed action will promote adequate and efficient service, and whether the action will unnecessarily duplicate facilities designed for the same purpose in the same area. 206 Kan. at 677. The Court stated consideration of public necessity does not mean that absolute need must be shown; instead, here necessity means "a public need without which the public is inconvenienced to the extent of being handicapped." 206 Kan. at 676.

13. The Kansas Supreme Court has further noted that, in evaluating an application for certification, the public convenience should be the Commission's primary concern, the interest of public utility companies already serving the territory its secondary concern, and the desires and solicitations of the applicant a relatively minor consideration. *Kansas Gas & Electric Co. v. Public Service Com.*, 122 Kan. 462, 466, 251 Pac. 1097 (1927). In its memorandum, Staff noted that typically "the Commission considers, *inter alia*, whether the proposed facilities are adequate from an engineering and pipeline safety standpoint, and whether the Applicant has the technical, managerial and financial ability to operate the utility." Staff Memo, page 3, *citing* KCC Docket No. 143,306-U; 84-PXTG-385-C, Order issued May 29, 1985.

14. If a request for a certificate is granted, the Commission has authority to impose lawful and reasonable conditions in granting the certificate. A lawful condition is within the statutory authority of the Commission if all statutory and procedural rules are followed; a condition is reasonable if based on substantial competent evidence. *Kansas Electric Power Coop., Inc. v. Kansas Corporation Comm'n*, 235 Kan. 661, 665, 683 P.2d 1235 (1984).

III. Analysis of Applications.

15. Staff considered five areas in analyzing the Applications: Managerial and technical ability, financial ability, operations, Commission oversight of TKO, and merger standards used for any acquisition of a public utility. Staff made recommendations in discussing these areas and then set out a list of nine recommended conditions to impose as part of approving these two Applications. SWKIA responded to Staff's Memorandum, noting that its primary interest is ensuring the price and quality of natural gas utilized by SWKIA members will not deteriorate as a result of their transfer of TKO. SWKIA Response, ¶ 7. SWKIA discussed Staff's nine conditions and asked the Commission to consider several additional protections for irrigations customers. The Commission will review Staff's analysis and proposals by Staff and SWKIA to place conditions on Anadarko and TRO if their Applications are granted.

A. Managerial and Technical Ability

16. Staff noted TKO is a limited liability corporation in the state of Texas that is in good standing and has been operating for 10 years. In Kansas, TKO is registered as a Foreign Limited Liability Company. Partners of TKO have over 100 years combined experience in gas distribution and 75 years experience in measurement of gas. Thus, Staff concluded TKO has sufficient managerial, technical, and financial experience to provide efficient and sufficient service if granted a limited certificate of convenience. Staff Memo, p. 4. The Commission notes that SWKIA stated one reason for its participation in this docket was to ascertain the management stability of TKO to determine to what extent this may impact TKO's ability to provide efficient and sufficient service. SWKIA Response, ¶ 7. SWKIA did not voice a specific concern regarding TKO's managerial and technical ability. Based upon the experience noted by Staff, the

Commission finds TKO has demonstrated it has the managerial and technical ability to operate as a public utility for the identified services.

B. Financial Ability

17. In its review, Staff took into account several considerations concerning TKO's ability to address financial matters in the event TKO is granted a limited certificate of convenience and necessity. The Commission notes that SWKIA stated one reason for its participation in this docket was to ascertain the financial stability of TKO to determine to what extent this may impact TKO's ability to provide efficient and sufficient service. SWKIA Response, ¶ 7. SWKIA did not specifically challenge TKO's financial ability but instead offered suggestions to supplement Staff's nine conditions to ensure access to information allowing for price transparency; SWKIA noted TKO's financial stability and integrity are of critical importance to its members. SWKIA Response, ¶ 24. The Commission will consider Staff's evaluation in reviewing TKO's financial ability and will discuss SWKIA's proposals when addressing relevant conditions recommended by Staff.

18. Purchase price and required upgrades. Staff noted that, under the terms of TKO's Agreement with Anadarko, TKO is purchasing interest in and to (1) those certain facilities, pipes, and installations set forth in Exhibit A-1 and associated real property interests set forth in Exhibit A-2 that are located in Grant, Morton, Stevens, and Seward Counties, Kansas, and (2) those Gas Sales/Purchase Agreements associated with Exhibit A-1 and A-2 customers. TKO has purchased these pipelines, fixtures, equipment and personal property for $325,000. TKO must install electronic flow measurements (EFM) at five meter locations, at an estimated cost of $50,000. TKO must remove and return Anadarko's current EFM within 6 months of closing this docket. Also, TKO must repair or replace meters, with a total estimated cost of approximately $218,400. TKO plans to finance these meter replacements and upgrades through monthly customer charges, as set forth in customer contracts. Staff Memo, p. 4. The Commission notes that TKO has been operating the assets, which were purchased in 2008 from Anadarko, while these Applications have been pending. Although the Commission cannot condone a company's operation of assets

before final approval of the transfer, the Commission recognizes that it has not received complaints regarding the operation of these assets while this docket has been pending.

19. Financial Condition. After reviewing TKO's responses to a series of data requests, Staff concluded that TKO has sufficient financial ability to operate the acquired assets. Staff reviewed TKO's financial statements for years 2004 through 2007 and found that, although TKO did not earn a large net income, TKO has been profitable since 2004. Staff Memo, p. 4. Staff noted that a majority of TKO's net income from 2006 to 2007 was associated with the Aquila gas division that TKO purchased in November 2006. Staff estimated TKO's total net income with the addition of the Anadarko system for 2007 would reflect $1,387,106. Staff Memo, p. 5.

20. Operating Risks. Because, under TKO's Agreement to purchase Anadarko's assets, TKO is only acquiring individual irrigation contracts, TKO's operating costs are expected to be minimal. A majority of TKO's operating costs will be seasonal and occur during April to November. Due to the seasonal nature of these costs, TKO will be forced to budget revenues to cover costs in months in which gas sales are low. TKO can incur additional costs if the system does not meet minimum safety standards or if major unplanned repairs are required. In Staff's view, TKO's risk of unplanned costly repairs is mitigated because TKO is only purchasing meters; Anadarko will be responsible for any repairs to the pipeline before it connects to TKO meters. Staff further noted that, if TKO does not have the ability to operate with current cash on hand due to unplanned expenses, TKO has outside financing available.

21. Contract Terms and Default. TKO and Anadarko entered into a confidential 2-year contract for Anadarko to provide TKO with the natural gas supply needed to meet gas supply/sales demand under the Gas Sales Agreement. Application, Confidential Exh. 2. This agreement commenced August 1, 2007, and extended through July 30, 2009; following expiration of the contract, TKO has an option to purchase gas from Anadarko on a year-to-year contract basis. Under the Gas Sales Agreement, Anadarko has the right to suspend and/or terminate the Gas Supply Agreement if TKO cannot meet six obligations that are listed in the Confidential Gas Sales Agreement.

22. In the event TKO defaults on its obligations under the Confidential Gas Sales Agreement and Anadarko exercises its right to suspend and/or terminate, Staff has proposed that, as a condition precedent to approval of this transaction, Anadarko agree to continue providing natural gas as a last resort. As support, Staff pointed out that Anadarko is the most logical utility to provide this service because TKO customers are connected to Anadarko's gas-gathering system. In addition, by asking the Commission to approve this transaction, Anadarko is implicitly vouching for TKO's ability to serve these customers. Staff recommended the Commission require Anadarko to provide these irrigation customers with some level of assurance that, as a last resort, a safe and reliable service will continue on a contingency basis. Staff Memo, pp. 5-6. Under Staff's proposal, TKO will have the primary and ultimate responsibility to serve these irrigation customers under the Gas Sales Agreement. Due to many questions that will arise if Anadarko must assume responsibility of TKO's customers, Staff proposed the Commission require Anadarko and TKO to enter into a contractual agreement outlining what will happen if Anadarko must supply gas under default of TKO. Staff Memo, p. 6.

23. Based upon Staff's analysis, the Commission concludes that TKO has the financial ability to purchase the assets identified and to provide meter installation, replacement, and repair. Staff points to several concerns regarding TKO's ability to ensure safe and reliable gas service if TKO cannot meet its obligations to Anadarko under the Gas Supply Agreement and if Anadarko exercises its right to suspend or terminate this Agreement. The Commission agrees with Staff that, by asking for approval of this transaction, Anadarko implicitly supports a finding that TKO has the financial ability to assume these customers and to continue providing safe and reliable service. The Commission finds it appropriate to require Anadarko, as a condition for approving its Application, to enter into a contractual agreement with TKO to supply gas to these customers in the event TKO defaults and Anadarko exercises its right to suspend or terminate this contract. The Commission will evaluate details of Staff's proposal in reviewing Condition #7.

C. Operations: Quality, Deliverability, and Supply of Gas.

24. The infrastructure and gas supply for TKO's proposed customers are owned and operated by Anadarko; thus, TKO's service to its customers is dependent upon operation of the Anadarko system. Commercial customers receiving gas from the Anadarko transmission system have a stable supply of pipeline quality gas, but customers connected to the Anadarko gas-gathering system are subject to variability in production and gathering operations. Staff noted TKO is required to provide "sufficient and efficient service" to its customers, K.S.A. 66-1,202, but pointed out TKO will have limited control over the gas deliverability pressure and the quality of the gas supplied to exit-tap customers. In Staff's opinion, sufficient and efficient service must be evaluated within the context of the available supply and the unique operating conditions of providing distribution service from a gas-gathering system. Staff recommended the Commission use, as a baseline reference for quality of service, the quality of service these customers have historically received from Anadarko.

25. Assuming the terms of service for this defined list of customers remains consistent with the previous contracts for Anadarko's customers, Staff concluded TKO will meet the sufficient and efficient service requirements under its limited certificate. Although these contracts recognize curtailment of service is possible, Staff recommended TKO be required to provide as much notice as possible to customers if service must be curtailed due to supply issues. As a public utility, TKO is required to file a notice of gas availability under K.S.A. 55-1,109. Staff suggested TKO establish a close working relationship with the company providing transportation service to exit-tap customers, which is Anadarko for now, to encourage a more dependable forecast of future supplies.

D. Commission Oversight of TKO.

26. If these Applications are granted, TKO will be a public utility that is limited to serving a defined list of customers under individual gas purchase contracts. Staff has anticipated that Commission oversight of TKO will be limited to review of customer contracts to ensure the terms, conditions, and gas sales price are reasonable. If the contracts are found to be

discriminatory or unreasonable, then the Commission will have authority to set rates using any available rate-making policies. To assist in reviewing these contracts, Staff in Condition #2 asked that TKO be required to provide a summary of certain parameters for each contract, as reflected in Exhibit 2 to Staff's Memorandum. The Commission will address Condition #2 below.

E. Merger Standards.

27. Staff reviewed this transaction in light of merger standards the Commission adopted to assist in analyzing mergers between two public utilities. See Consolidated Docket Nos. 172,745-U & 174,155-D, Order filed November 15, 1991. These standards are frequently used by Staff and the Commission when evaluating a transfer of assets from one public utility to another. Staff recognized not all the merger standards apply here and urged waiver to those standards that do not assist in this review. Staff discussed three standards it found applicable.

1. Effect of the transaction on the financial condition of the new entity compared to financial condition of the stand-alone entities if the transaction did not occur.

28. Regarding this standard, Staff noted that the contracts with irrigators were owned by Anadarko, which is an experienced, profitable and financially sound utility. Staff had no concern about Anadarko's financial ability to operate and maintain its system and to implement Commission policy. Staff concluded TKO had the financial capability to generate a positive cash flow and incur additional financing if needed. Also, Staff found TKO possessed technical and managerial expertise to operate these irrigation contracts in a safe, efficient manner and should be able to implement Commission policy. Even though TKO is a small utility, Staff found TKO has the ability to continue operating the irrigation contracts effectively. Staff expressed concern about recent experiences involving small closely held gas utilities that became unable to continue providing sufficient and efficient service to customers. Although noting its reluctance to approve any acquisitions by a small, closely-held gas utility, Staff pointed out that TKO is serving only irrigation customers, which can switch to alternative sources of fuel if needed. Staff Memo., p. 7.

2. Reasonableness of purchase price in light of savings demonstrated from a merger.

29. Typically, in reviewing a proposed merger or acquisition of assets to determine if a purchase price is reasonable, Staff compares the net book value of all assets to the total purchase price; thus, here Staff would compare the net book value of taps to the total purchase price. But TKO is purchasing irrigation customers. Staff did not determine whether an acquisition premium was paid or whether TKO identified any quantifiable merger savings. TKO purchased 182 irrigation customers for $325,000. Staff noted that a rate case would use an operating margin based rate-making approach, making any net book value related to TKO's assets inapplicable. The process used for this transaction employed a purchase price based on an internal calculation and knowledge of current market prices related to each tap at the time of the purchase, which was completed before TKO filed its Application. Because TKO is operating with individual customer contracts, Staff concluded any premium associated with the purchase is not applicable and the Commission should disallow any acquisition premium dollar amounts if a rate case is filed. Staff Memo., p. 8. Condition #8 below disallows any acquisition premium.

3. Quantifiable ratepayer benefits from the transaction.

30. Staff noted that, in any acquisition, ratepayer benefits are hard to quantify and are often subjective. Here, ratepayers will not experience additional benefits from this transaction because TKO is assuming Anadarko's current contracts without changing ratepayer benefits included in individual contracts. But as a result of this transaction, TKO will become a public utility that is regulated by the Commission. In Staff's view, this will provide a higher level of protection for customers. Pursuant to this regulation, the Commission will review contract changes and, if prices become unreasonable, a rate case can be filed. Therefore, Staff concluded this transaction will result in a quantified benefit for ratepayers. Staff Memo, p. 8.

IV. Staff's Recommendations for Conditions on Approval of These Applications.

31. Staff made suggestions in its analysis and then recommended nine conditions be imposed in granting these Applications. The Commission has reviewed each of Staff's nine conditions as well as SWKIA's response and further proposals. The Commission notes that

neither Anadarko nor TKO responded to Staff's recommended conditions or to SWKIA's requested additional conditions. The Commission finds Staff's recommendations are reasonable and adopts the nine conditions proposed by Staff in approving these Applications.

#1. All customer contracts shall be in writing and filed with the Commission.

32. Every public utility must provide the Commission with a copy of its rules and regulations, contracts, and schedule of rates. K.S.A. 66-101c. Staff expressed concern that some contracts here were verbal agreements not reduced to writing, pointing out which contracts listed in TKO's attachment to its Application were still verbal. Staff recommended the Commission require TKO to reduce all verbal contracts to writing and to submit all written contracts within 60 days after filing any order approving TKO's Application. Staff further recommended that, if TKO enters into a new contract, or if an old contract is updated, changed or re-negotiated, a copy of the new contract be submitted in writing to the Commission within 30 days after entering into the contract. Staff Memo, pp 9-10. If TKO does not have a written contract with all customers, or if TKO chooses to file a tariff to establish rates instead of customer contracts, Staff recommended TKO file a rate case allowing the Commission to set rates for all irrigation customers not under contract. To the extent TKO is involved in good faith negotiations with a customer and unable to file a contract within 60 days of an order approving the acquisition, Staff recommended TKO be required to request a waiver of this directive within 45 days of the Order. Staff proposed the request for a waiver provide: the customer's name, address, meter number, additional time requested, and brief discussion explaining why the contract could not be filed by the initial deadline. Staff Memo, p. 10.

33. SWKIA agreed with Condition #1 requiring all contracts between TKO and its customers to be in writing, noting this requirement will assist in evaluating price consistency and other contract terms. Referencing the earlier discovery dispute in this proceeding, SWKIA asked that Staff review its prior position on confidential designation of contract summaries and make every effort to keep data public as new contracts are filed. SWKIA Response, ¶ 9-12. SWKIA reiterated its concern with price transparency in TKO's assumption of these contracts. SWKIA

argued its members must rely on Commission Staff to protect their interests because customers do not have access to confidential pricing and contract information, and it urged steps be taken to remove the confidential designation from TKO contracts. SWKIA Response, ¶¶ 13-16.

34. In Reply, Staff noted SWKIA had advised Staff and the Commission that its discovery dispute with TKO had been resolved. Staff stated the only information still designated as confidential in the contracts TKO sought to acquire were the names of customers and owners. If these Application are approved, Staff predicted Commission oversight will be limited to reviewing customer contracts to assure that their terms, conditions, and gas sales price are reasonable. If found to be discriminatory or unreasonable, the Commission will be able to set rates using any rate-making policies available. Staff Reply, ¶¶ 6-8.

35. The Commission adopts Condition #1, requiring TKO to reduce all contracts to writing and to submit all written contracts to the Commission by June 11, 2010, which is 60 days from the filing of this Order. For those contracts that TKO cannot submit in writing within the 60-day timeframe, the Commission orders that by May 27, 2010, which is 45 days from the date of this Order, TKO request permission to waive the 60-day deadline. This request should include the customer's name and address, the meter number, the additional time requested to provide a written contract, and a brief discussion of why TKO was unable to file a written contract by the 60-day deadline. Staff Memo, pp 9-10. If TKO enters into a new contract, or if an old contract is updated, changed or re-negotiated, a copy of the new contract shall be submitted in writing to the Commission within 30 days after entering into the contract. If TKO fails to comply with filing deadlines set out in this Order, Staff shall bring this to the Commission's attention and the need to impose civil penalties for failure to comply with reporting requirements shall be considered. K.S.A. 66-123. The Commission declines to address the issue of confidentiality at this time. When filing its summaries, TKO can designate what information, if any, it deems confidential. K.S.A. 2009 Supp. 66-1220a. Staff too may raise an issue regarding confidential information. K.S.A. 66-101c. If SWKIA disputes a confidential designation, the issue can be addressed and decided at that time.

#2. All gas purchase contracts shall be filed within 30 days of this Order.

36. Staff recommends that TKO be directed to file all gas purchase contracts with the Commission within 30 days after an order approving TKO's acquisition of these assets if filed. Staff Memo., p. 10. SWKIA agreed with this recommendation. SWKIA Response, ¶ 17. The Commission finds Condition #2 is reasonable and directs TKO to file a copy of all gas purchase contracts by <u>May 12, 2010</u>, which is 30 days from the filing of this Order.

#3. TKO shall submit contract summaries listing major parameters as in Exhibit 2.

37. In Condition #3, Staff asked the Commission to require TKO to provide a summary of contracts containing certain parameters for each contract, citing parameters set out in Exhibit 2 to Staff's Memorandum. Staff proposed that TKO file updated summaries of written contracts when all verbal contracts are replaced with actual contracts or if TKO changed or entered into a new contract. Staff Memo., p. 10. SWKIA agreed with Condition #3 but suggested Staff provide parties with quarterly updates summarizing the contracts reduced to writing. SWKIA Resp., ¶¶ 18-19. In Reply, Staff proposed TKO provide contract summaries initially on a quarterly basis until all verbal contracts have been reduced to writing and thereafter on an annual basis. Staff Reply, ¶ 8.

38. The Commission adopts Condition #3 and requires TKO to file summaries containing information about major parameters, as set out in Exhibit 2 to Staff's Memorandum. TKO shall file summaries of contracts initially on a quarterly basis until all verbal contracts have been reduced to writing and thereafter on an annual basis. These summaries shall be filed in a compliance sub-docket related to this proceeding, No. 08-TKOG-314-COC-CPL-1, as detailed in Ordering Clause (C), #3. The first summary shall be filed by <u>July 1, 2010</u>, and quarterly thereafter on October 1, January 1, and April 1 until all contracts have been reduced to writing and, thereafter, annual summaries shall be filed by January 1. The Commission denies SWKIA's request that Staff provide updated summaries of written contracts, noting SWKIA will be able access summaries in the sub-docket.

#4. TKO shall file an annual report under K.S.A. 66-123.

39. Staff recommended that, beginning in 2009, TKO on or before May 1 be required to file an annual report regarding the preceding calendar year. K.S.A. 66-123. If TKO is not able to comply with a specific requirement for filing of an annual report, Staff proposed that TKO be required to request a waiver of that specific provision. Staff Memo., p. 10. SWKIA agreed with Condition #4 and urged its approval. SWKIA Response, ¶ 20.

40. The Commission finds that TKO, as a public utility operating under the Commission's authority, is required to file an annual report that complies with K.S.A. 66-123. The Commission adopts Condition #4 and requires TKO to file an annual report by July 1, 2010, for the preceding calendar year of 2009. All subsequent annual reports, beginning in the year 2011, shall be filed by May 1 regarding the preceding calendar year. If TKO cannot comply with a specific requirement for filing of an annual report under K.S.A. 66-123, then TKO is required to request a waiver of that provision.

#5. TKO shall use the FERC Uniform System of Accounts for gas utilities.

41. Staff recommends that the Commission require TKO to use the Uniform System of Accounts of the Federal Energy Regulatory Commission (FERC) as the basis for its accounting system. Staff Memo., p. 10. This accounting system is used by other gas utilities regulated by the Commission. SWKIA agreed with Condition #5.

42. The Commission adopts Condition #5. By requiring TKO to use the FERC Uniform System of Accounts for gas utilities as the basis for its accounting system, TKO will be relying upon a method of accounting commonly used throughout the industry. TKO's implementation of this accounting system will assist with the Commission's review and oversight of TKO's operations.

#6. TKO shall give notice that the Commission has jurisdiction over its customers.

43. Staff noted that, if these applications are approved, all non-jurisdictional Anadarko customers will become jurisdictional customers of TKO. In Condition #6, Staff urged the Commission to require TKO to give notice to its customers that TKO is a regulated public utility

under the jurisdiction of the Commission and to include contact information for the Commission. Staff proposed TKO provide the Commission with its notice and a list of all Kansas customers receiving it. Staff Memo., p. 10. SWKIA approved Condition #6 and noted that, because TKO will be considered a public utility, many of its concerns will be met under the regulatory scrutiny provided by the Commission and its Staff.

44. The Commission approves Condition #6. TKO will give its customers notice that it is a regulated public utility under the jurisdiction of the Commission and include contact information for the Commission. The Commission directs TKO to submit a copy of its proposed notice to the Prehearing Officer and to parties in this proceeding by May 12, 2010. Parties may submit suggestions or recommendations regarding this notice by May 17, 2010. After reviewing the notice and any comments by the parties, the Prehearing Officer will decide any disputed issues regarding contents of the notice to be provided TKO's customers.

#7. TKO and Anadarko shall agree to ensure an uninterrupted gas supply.

45. In its Memorandum, Staff discussed that, as a condition to approving this transaction, the Commission should consider requiring Anadarko to agree to provide natural gas to customers TKO seeks to acquire as a last resort if TKO cannot meet the obligations of the Gas Sales Agreement. Staff Memo., p. 5. In Condition #7, Staff urged that the Commission condition approval of these Applications upon TKO and Anadarko entering into an agreement that details how the gas supply will continue uninterrupted to irrigation customers if conditions in the Gas Sales Agreement are not met or TKO is unable financially to supply the gas and Anadarko exercises its right to suspend and/or terminate the Gas Sales Agreement. Staff recommended this agreement require Anadarko or its successors to supply gas to TKO's distribution system for an interim period of not less than 60 days if necessary to give customers sufficient time to transfer from natural gas to a different source of fuel. During this interim period, Staff proposed that TKO continue distributing the gas to irrigation customers and that irrigation customers' gas usage payments be forwarded to Anadarko to pay for supply gas. Staff proposed this Agreement be

required to remain in effect for a period of five consecutive years, beginning 30 days after an order is issued approving these Applications and allowing this acquisition. Staff Memo., p. 10.

46. SWKIA expressed interest in reviewing a contract as recommended by Staff once it became available. SWKIA pointed out that Anadarko operates both a gas-gathering system and an intrastate natural gas transmission pipeline in Southwestern Kansas and that TKO's service is dependent upon the stable operation of the Anadarko system. SWKIA Response, ¶¶ 25-26. SWKIA asserted that it cannot ascertain the tariff or transportation rates relating to the Anadarko Transmission system and that the degree of price transparency related to the operation of the Anadarko transmission system is unclear. SWKIA asked the Commission to clarify the difference between Anadarko's certificates of Public Convenience and Necessity and, noting Anadarko's transmission system today is serving multiple commercial delivery points including the city of Liberal, SWKIA argued that Anadarko's certificates should be reviewed by the Commission. SWKIA Response, ¶¶ 27.

47. In Reply, Staff noted that Anadarko had been granted a Limited Certificate to serve specific customers. Staff recognized circumstances may have changed since Anadarko was granted its Limited Certificate and acknowledged that a review of policies regarding the Anadarko pipeline might be reasonable. But Staff urged this review be conducted in a separate general docket, not in this proceeding. Staff Reply, ¶¶ 10-11 .

48. The Commission approves Staff's Condition #7. As a condition of approving theses Applications, Anadarko or its successors shall be required to supply gas to TKO's customers during an interim period in the event the Gas Sales Agreement between Anadarko and TKO is suspended or terminated or TKO is financially unable to supply gas. TKO and Anadarko shall enter into a contract that sets out the details of how gas will be supplied during such an interim period of not less than 60 days if necessary to provide customers with a sufficient transition period to transfer to a different source of fuel. During the interim period, TKO will continue to distribute the gas to its irrigation customers while irrigation customer gas usage payments shall be forwarded to Anadarko to pay for gas supplied. The Agreement shall remain in

effect for a period of five consecutive years beginning 30 days after a Commission Order approving the Applications that set forth this acquisition. This Agreement shall be filed with the Commission in compliance sub-docket No. 08-TKOG-314-COC-CPL-1 by July 12, 2010, which is 90 days from the filing of this Order.

49. The Commission recognizes SWKIA's primary interesting in ensuring its members will have access to safe, reliable, and stable gas supply on just, reasonable, and nondiscriminatory terms. Anadarko has applied to transfer its Limited Certificate to a difference company structure and to transfer its rights and obligations related to a defined set of customers to TKO. Although a need may exist to clarify operation of the Anadarko transmission system, the Commission declines to address this issue in this proceeding. The Commission finds that a review of the operation of Anadarko's transmission system should occur in a separate, general docket. To this end, the Commission directs Staff to review information regarding the Anadarko transmission system and file a report by July 12, 2010, stating its recommendation on whether a need exists for the Commission to open an investigation of Anadarko's operations of its transmission system.

#8. TKO will not request recovery of an acquisition premium if it files a rate case.

50. Condition #8 urges the Commission not to allow TKO to request recovery of an acquisition premium if at any time TKO is required to or seeks to file a rate case. Staff Memo., p. 11. In reviewing the merger standard addressing the reasonableness of the purchase price in light of savings demonstrated from a merger, Staff noted the difficulty in evaluating savings demonstrated from this transaction and pointed out that, if a rate case was filed, Staff would use an operating margin based rate-making approach. Because TKO is operating with individual customer contracts, Staff asserted any premium associated with the purchase of these customers should be disallowed in a rate case. Staff Memo., p. 8. SWKIA agreed with Condition #8. SWKIA Response, ¶ 28.

51. The Commission approves Condition #8. This transaction involves acquisition of individual customer contracts. The process used to determine the purchase price was based on an internal calculation and knowledge of current market prices related to each contract at the time of

the purchase. The Commission finds that, as a condition to approving its Application, TKO will not be allowed to seek recovery of an acquisition premium for this transaction if TKO is required to or asks to file a rate case.

#9. Commission approval is required if TKO's company ownership or structure changes.

52. As its final condition, Staff proposed that TKO be required to seek Commission approval if the company ownership or structure changes. For example, the Commission would need to approve a decision by TKO to incorporate or change from a Limited Liability Company to a Master Limited Partnership. Staff Memo., 11. SWKIA agreed with Condition #9. SWKIA Response, ¶ 29.

53. The Commission approves Condition #9 and orders that TKO seek Commission approval before changing company ownership or structure. This includes a decision by TKO to change from a LLC to a MLP or to become incorporated.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby grants Anadarko's request to transfer the Limited Certificate of Anadarko Natural Gas Company to Anadarko Natural Gas Company LLC.

(B) The Commission grants Anadarko's request to transfer to TKO its rights and obligations to provide natural gas service to customers listed on Exhibit A, as attached to its Application, pursuant to Conditions #1 through #9 adopted in this Order.

(C) The Commission grants TKO's request for a Limited Certificate of Public Convenience and Authority to serve specific customers listed in Exhibit A to its Application, pursuant to Conditions #1 through #9 adopted in this Order.

(D) The Commission adopts the following conditions in approving the Applications of TKO and Anadarko:

#1. TKO shall reduce all contracts to writing and submit all written contracts by June 11, 2010, which is 60 days from the filing of this Order. To the extent TKO cannot submit contracts in writing by May 27, 2010, which is 45 days of the filing of this Order, TKO shall request permission to waive the 60-day deadline, providing the customer's name and address, the meter number, the additional time requested to comply, and a discussion of why this deadline could not be met. If TKO enters into a new contract, or if an old contract is updated, changed or re-negotiated, the new contract shall be submitted in writing within 30 days after entering into the contract. This Condition is discussed above in ¶ 35.

#2. TKO shall file all gas purchase contracts with the Commission by May 12, 2010, as discussed in ¶ 36.

#3. TKO shall file summaries of its written contracts that contain information about major parameters as set out in Exhibit 2 to Staff's Memorandum. Beginning July 1, 2010, these summaries shall be filed initially on a quarterly basis until all verbal contracts have been reduced to writing and thereafter provided on an annual basis by January 1, as set forth in ¶ 38. The summaries shall be filed in a compliance sub-docket, Docket No. 08-TKOG-314-COC-CPL-1. Staff shall review each summary as filed and advise the Commission if further action should be taken. The compliance requirement will continue indefinitely until the Commission issues a further order ending this requirement. This condition is discussed above in ¶¶ 37-38.

#4. TKO is required to file an annual report regarding the preceding calendar year in compliance with K.S.A. 66-123. TKO's first annual report for preceding calendar year 2009 is due by July 1, 2010, and subsequent annual reports shall be filed by May 1 regarding the preceding calendar year. If TKO cannot comply with a specific requirement for filing an annual report under K.S.A. 66-123, TKO shall request a waiver, as discussed above in ¶¶ 39-40.

#5. TKO shall use the FERC Uniform System of Accounts for gas utilities as the basis for its accounting system, as discussed above in ¶¶ 41-42.

#6. TKO shall give notice to its customers that it is a regulated public utility under the jurisdiction of the Commission pursuant to the requirements set forth above in ¶¶ 43-44. TKO shall submit its proposed notice to the Prehearing Officer by May 12, 2010; any responses shall be filed by May 21, 2010, as discussed in paragraph 44.

#7. TKO and Anadarko shall reach an agreement for Anadarko to provide natural gas to customers TKO acquires under its limited certificate issued in this Order that complies with the requirements set forth above in ¶ 48, and discussed more broadly in ¶¶ 45-49. This Agreement shall be filed by July 12, 2010, in sub-docket No. 08-TKOG-314-COC, as set forth in ¶ 48. Staff is directed to review available information regarding the Anadarko Transmission system and file a report in Docket 08-ANGG-295-CCN, stating its recommendation on whether a need exists for the Commission to open an investigation of Anadarko's operations, as discussed in ¶ 49.

#8. TKO is not allowed to request recovery of an acquisition premium if it is required to or seeks an opportunity to file a rate case, as discussed above in ¶¶ 50-51.

#9. TKO is required to seek Commission approval if it seeks to change company ownership or structure, as discussed in ¶¶ 52-53.

(E) This is a procedural order and constitutes non-final agency action. K.S.A. 77-607(b)(2). Parties have 15 days, plus three days if service is by mail, from the service of this Order to petition for reconsideration. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

(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.

Wright, Chmn; Harkins, Com.

Dated: APR 12 2010

ORDERED MAILED

APR 13 2010

EXECUTIVE DIRECTOR

Susan K. Duffy
Executive Director

mjc

2012.03.19 10:17:58
Kansas Corporation Commission
/S/ Patrice Petersen-Klein

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

In the Matter of the Application of Texas-Kansas-Oklahoma Gas, L.L.C. for a Limited Certificate of Public Convenience and Necessity.	))))	Docket No. 08-TKOG-314-COC

ORDER GRANTING LIMITED CERTIFICATE OF PUBLIC CONVENIENCE AND AUTHORITY

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

1. On September 21, 2007, Anadarko Natural Gas Company LLC (Anadarko) filed an Application to transfer the rights and obligations to provide natural gas service to customers listed in Exhibit A of Anadarko's Application.[1]

2. On October 2, 2007, Texas-Kansas-Oklahoma Gas, L.L.C., (TKO) filed an Application in the instant docket for a Limited Certificate of Public Convenience and Authority, pursuant to K.S.A. 66-104 and 66-131 to serve the customers in Exhibit A of TKO's Application. This list of customers included the same list as Exhibit A of Anadarko's Application.

3. On February 27, 2008, Southwest Kansas Irrigation Association was granted permission to intervene in this proceeding.

4. On April 12, 2010, the Commission issued a Procedural Order granting Anadarko's request to transfer to TKO its rights and obligations to provide natural gas service to customers listed in Exhibit A of TKO's and Anadarko's Applications. The Commission's

[1] Anadarko's Application was filed in Docket No. 08-ANGG-295-CCN.

EXHIBIT MM-3

Procedural Order also conditionally approved TKO's request for a Limited Certificate of Public Convenience and Authority with nine preconditions.

5. On September 6, 2011, Staff of the Commission (Staff) provided a Report and Recommendation on TKO's filing and an update on TKO's compliance with the nine conditions ordered by the Commission. Staff stated that TKO was not in compliance with three conditions.

6. On February 22, 2012, Staff provided its most recent Report and Recommendation on TKO's filing. Staff's Report and Recommendation is made a part hereof by reference.

7. Staff analyzed the three remaining conditions in which TKO was to be in compliance. Staff provided its reasons why it believes TKO has complied with those three remaining conditions.

8. Staff recommended that TKO's request for a Limited Certificate of Public Convenience and Authority to serve specific customers listed in Exhibit A to TKO's Application be approved subject to the following conditions:

(a) TKO shall provide a copy of all new or re-negotiated contracts by January 1 of each year;

(b) TKO shall file on an annual basis by January 1, as set for in ¶38 of the Commission's April 12, 2011 Order, a copy of an updated contract summary. The summary shall be filed in compliance sub-docket, Docket No. 08-TKOG-COC-CPL-1; and

(c) TKO shall file an annual report with the Commission.

9. Staff also stated that during its review of the contract summary provided by TKO, Staff discovered that TKO is servicing residential customers. Staff stated that it believes it is appropriate for TKO to continue servicing these customers. In order to ensure these residential customers are protected, Staff recommended:

(a) TKO provide notice to each customer listed in Exhibit C of Staff's Report and Recommendation;

(b) TKO freeze the current rate as shown in Exhibit C;

(c) TKO be limited to only serve the six customers listed in Exhibit C;

(d) TKO be required to convert each residential customer to another fuel source, such as propane, if for any reason TKO cannot provide gas service.

10. Upon review of Staff's Report and Recommendation, the Commission adopts Staff's February 22, 2012 Report and Recommendation and grants TKO's request for a Limited Certificate of Public Convenience and Authority subject to the conditions set forth in subparagraphs 8 (a) through (c) and 9 (a) through (d) above.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Texas-Kansas-Oklahoma Gas, L.L.C.'s Application for a Limited Certificate of Public Convenience and Authority is hereby approved, subject to the conditions set forth in subparagraphs 8 (a) through (c) and 9 (a) through (d) above.

B. The parties have fifteen days, plus three days if service is by mail, from the date the order was served in which to petition the Commission for reconsideration of any issues decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529.

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

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: MAR 16 2012

ORDER MAILED MAR 19 2012

Patrice Petersen-Klein
Executive Director

RB

IN RE: DOCKET NO. **08-TKOG-314-COC** DATE MAR 1 6 2012

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

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

C. EDWARD WATSON II., ATTORNEY
FOULSTON & SIEFKIN LLP
1551 N WATERFRONT PKWY STE 100
WICHITA, KS 67206-4466

RAY BERGMEIER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
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KIRK HEGER, PRESIDENT
SOUTHWEST KANSAS IRRIGATION ASSOCIATION
PO BOX 254
ULYSSES, KS 67880-0254

MONTGOMERY ESCUE
SOUTHWEST KANSAS NON-PROFIT UTILITIES
AGRICULTURAL ENERGY SERVICES INC
1755 W BROADWAY STREET SUITE 6
OVIEDO, FL 32765

ORDER MAILED MAR 1 9 2012

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.

TEXAS – KANSAS – OKLAHOMA GAS LLC
P.O. BOX 1194
DALHART, TX 79022
806-244-4210 FAX 806-244-4211

ACCOUNT NUMBER	AMOUNT TO BE PAID AFTER DUE DATE	DUE DATE	IF RECEIVED BY DUE DATE
[redacted]	[redacted]	**7/3/2014**	[redacted]

Office Hours
8:00 a.m. to 5:00 p.m.
Monday thru Friday
Please make check payable to:
Texas – Kansas – Oklahoma Gas, LLC
P.O. Box 1194
Dalhart, TX 79022
Return this stub with your payment.
Thank You.

[redacted]

DETACH HERE

ACCOUNT NUMBER	SERVICE ADDRESS				
[redacted]	[redacted]	SERVICE DAYS	**29**	**GAS PRICE**	[redacted]
		SERVICE FROM	**5/15/2014**	SERVICE TO	**6/16/2014**

METER	RATE	PRESS	CORR FACT	PREV READ	CURR READ	MCF	BTU	MMBTU	CURRENT DUE
[redacted]	[redacted]	37	3.732	8598	8717	444.149	1.083	481.102	[redacted]

PREV AMT
PAYMENT
METER CHARGE [redacted] [redacted]

TOTAL DUE [redacted]

NET DUE IF RECEIVED BY DUE DATE
AMOUNT TO BE PAID AFTER DUE DATE [redacted]

WEBSITE: www.tkogas.com

Copies of Tariff rates & rules are available upon request

TODAY'S MESSAGE

EXHIBIT MM-4

TEXAS – KANSAS – OKLAHOMA GAS LLC
P.O. BOX 1194
DALHART, TX 79022

IF YOU SMELL GAS CALL
806-244-4210

ACCOUNT SUMMARY

Address: [redacted] **Account No:** [redacted] **Bill Date:** 09/03/07 **Reading:** ACTUAL

Explanation	Read Date From	Read Date To	Service Days	Current Read	Previous Read	Billable Consumption	Amount
GAS-RATE: [redacted]	07/26/07	08/22/07	27	7999	7736	[redacted]	[redacted]
METER NUMBER: 9837582							
MMBTU = 1.0890							
CORRECTION FACTOR = 3.6580							
PRESSURE FACTOR = 36.0000							
METER READING CHARGE-RATE: [redacted]							[redacted]

Due On or Before 09/10/07 [redacted]

Due After 09/10/07 [redacted]

GAS PRICE [redacted]

Received 9/5/07

BILLING INQUIRY OR CUSTOMER SERVICE
TEXAS-KANSAS-OKLAHOMA GAS, LLC
TEL: 806-333-4210
FAX: 806-244-8404
EMAIL:

Business Hours
8:00 A.M. TO 5:00 P.M.
MONDAY THRU FRIDAY
WEB SITE: www.tkogas.com
Emergency: 806-333-4210

PLEASE MAKE CHECK OR MONEY ORDER PAYABLE TO:
TEXAS-KANSAS-OKLAHOMA GAS, LLC
PO BOX 1194
DALHART, TX 79022