

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

Before Commissioners: Susan K. Duffy, Chair
 Dwight D. Keen
 Andrew J. French

In the Matter of a General Investigation)
Regarding the Rate Study and Assessment) Docket No. 20-GIME-068-GIE
Expenses Resulting from Substitute for Senate)
Bill No. 69.)

ORDER ON AECOM STUDY CONFIDENTIAL DESIGNATIONS

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. Substitute for Senate Bill No. 69 (SB 69), signed by Governor Laura Kelly on April 10, 2019, and effective on April 19, 2019,¹ directed the Legislative Coordinating Council (LCC) to authorize a rate study of Kansas electric utilities. The utilities subject to the study include electric public utilities, electric cooperative public utilities exempt from Commission jurisdiction, and the three (3) largest municipally-owned or operated electric utilities by customer count.

2. On July 2, 2020, AECOM² produced a confidential version and a heavily redacted, public version of its Study of Consequential Issues Materially Affecting Kansas Electricity Rates (Study), the second part of the study of electric rates ordered in SB 69. That same day, Commission Staff (Staff) filed the public version of the Study in this Docket.

3. On July 6, 2020, the Kansas Industrial Consumers Group, Inc. (KIC) filed its Petition to Intervene and Requests for Confidentiality Rationale and Production of Confidential

¹ Substitute for S.B. 69 (2019).

² AECOM was hired by the LCC to prepare the second part of the rate study.

Report, noting significant portions of the Study are redacted and unavailable for review by public or the Kansas Legislature.³ KIC explains that the Study does not indicate why information was redacted, other than being designated by the utilities and asks the Commission to require AECOM to supplement its Study with a statement regarding the specific grounds and rationale for its redactions.⁴ KIC also requests the Commission direct AECOM to file the confidential version of the Study in this Docket, so parties that have executed a nondisclosure agreement are able to access the Study and contest any confidentiality designations.⁵ The Commission shares the concerns voiced by KIC.

4. On July 7, 2020, Staff filed its Notice Regarding Confidentiality, explaining that based on its initial review, it is unclear why some of the information in the Study, particularly material in aggregate form, otherwise obtainable in public records, is redacted as confidential.⁶ Staff advises that it has asked AECOM to supply the justification for each of the confidential designations, and reminded AECOM that the Commission's general rules regarding confidentiality require parties claiming confidentiality to justify such designations.⁷ In addition to the Commission's confidentiality rules, Staff noted that the voluminous confidential designations prevent the Legislature from fully reviewing the Study it commissioned.⁸ The Commission shares the concerns voiced by Staff.

5. Staff is presently working with AECOM to address the confidentiality issues to allow for a meaningful publicly-available report, but until the confidentiality issues are worked

³ Petition to Intervene of the Kansas Industrial Consumers Group, Inc., Request for Confidentiality Rationale, and Request for Production of Confidential Report, July 6, 2020, ¶ 10.

⁴ *Id.*, ¶ 13.

⁵ *Id.*, ¶ 14.

⁶ Notice of Commission Staff Regarding Confidentiality, July 7, 2020, ¶ 5.

⁷ *Id.*, ¶ 7.

⁸ *Id.*

out, Staff recommends that the Commission not disseminate the confidential version of the report.⁹

6. While AECOM is not jurisdictional to the Commission, SB 69 provides that the Commission shall decide any dispute regarding the provision of information, including the establishment of reasonable protections for the treatment of confidential information.¹⁰ The Commission has already issued a Protective Order,¹¹ establishing reasonable protections for confidential information. The Commission appreciates that Staff is diligently working to assist AECOM. Staff is directed to continue to assist AECOM in submitting a public version of the Study that complies with the Protective Order in this docket, including the requirement that every designation of confidential information must be accompanied by a justification for such designation.

7. A new public version of the Study, including justifications of all confidential designations, should be filed with the Commission by July 28, 2020. To the extent a legitimate justification cannot be supplied for any currently-redacted portions of the Study, those portions should be made public through the filing of the updated public version of the Study. Because this is a public study commissioned by the Kansas Legislature, the Commission strongly encourages AECOM and the utilities to redact only critically necessary information.

8. If AECOM is unable to supply justifications for its confidential designations and submit an updated public version of the Study by July 28, 2020, Staff is directed to file a report with the Commission on the status of the confidentiality issues.

9. The Commission strongly encourages the removal of redactions but recognizes certain confidential designations may be necessary. To the extent certain portions of the Study

⁹ *Id.*, ¶ 8.

¹⁰ SB 69, Sec.1(b)(3).

¹¹ Protective and Discovery Order, Oct. 17, 2019, ¶ 7.

remain confidential following Staff and AECOM's review, Staff shall report to the Commission on a process allowing parties to this Docket to receive the confidential version of the Study.

THEREFORE, THE COMMISSION ORDERS:

A. Staff is directed to assist AECOM in submitting a new public version of the Study, which either removes or provides legitimate justification for any redactions. Staff shall file any new public version of the Study in this Docket.

B. If AECOM is unable to submit a new public version that can be shared by July 28, 2020, Staff is directed to file a report with the Commission on the status of the confidentiality issues.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹²

BY THE COMMISSION, IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 07/14/2020



Lynn M. Retz
Executive Director

BGF

¹²K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-GIME-068-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 07/14/2020.

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