# Kansas Administrative Regulations

## Kansas Corporation Commission

### Article 9.—Railroad Rates

**82-9-5. Market dominance.**

(a) When any new individual or joint rate is alleged to be unreasonably high, a determination of whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies shall be made by the commission within 90 days after the start of a proceeding under these rules.

(b) If the railroad proposing the rate has market dominance over the transportation to which the rate applies, a determination of whether or not the proposed rate exceeds a maximum reasonable level for that transportation shall be made.

(c) If the railroad proposing the rate does not have market dominance over the transportation to which the rate applies, no determination on the issue of reasonableness will be made.

(d) Any finding by the commission that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. § 10709(d)(2) as in effect on September 23, 1983, which is hereby adopted by reference, shall not establish a presumption that:

(1) The railroad has or does not have market dominance over such transportation; or

(2) the proposed rate exceeds or does not exceed a reasonable maximum level.

(e) The interstate commerce commission's decision in Market Dominance Determinations 365 ICC 118, applying to the market dominance standards, is hereby adopted by reference.

(f) Evidentiary guidelines in determining market dominance as set out in 365 I.C.C. 118 (1981) and 2 I.C.C.2d 1 (1985) are hereby adopted by reference.

(Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended Oct. 29, 1990.)