

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Complaint Against)
Kansas Gas Service, a Division of ONE Gas,)
by Pinebrooke Condominium Subdivision) Docket No. 24-KGSG-252-COM
Association, Inc. and its member residents.)

ORDER ON AMENDED COMPLAINT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission concludes the following:

1. On September 13, 2023, Pinebrooke Condominium Subdivision Association, Inc. and its member residents (Pinebrooke) submitted a complaint against Kansas Gas Service, a Division of ONE Gas, Inc. (KGS). Pinebrooke is a condominium subdivision located in Overland Park, Kansas.

2. In February 2021, Winter Storm Uri (Uri) caused a significant increase in the cost of natural gas.¹ During Uri, Pinebrooke was a transportation customer of Symmetry Energy Solutions, L.L.C. (Symmetry). Due to Uri, Pinebrooke's February 2021 natural gas bill was significantly higher than normal, Pinebrooke eventually paid Symmetry \$215,500.85 for its February 2021 natural gas usage.²

3. On November 1, 2021, Pinebrooke converted from being a transportation customer of KGS, purchasing its gas on the wholesale market through its marketer, Symmetry, to a General Sales Service retail customer of KGS.³ Pinebrooke alleges it was informed by KGS that KGS

¹ Complaint, pg. 2 (September 13, 2023).

² Id.

³ Complaint, pg. 4 (September 13, 2023).

would waive any Uri-related surcharges because Pinebrooke had already paid Symmetry for its costs related to Uri.⁴ Pinebrooke further alleges that KGS has included Uri-related surcharges on its bill since December 2022.⁵

4. In its initial Complaint, Pinebrooke claimed that because it was not a retail customer of KGS during Uri and did not cause KGS to incur any of its Uri-related costs, requiring Pinebrooke to pay the Uri surcharge “deprives Pinebrooke of due process of law and in all respects constitut[e] unfair, unjust and discriminatory rates.”⁶ Pinebrooke requested the Commission enter an Order:

A. Declaring the WESCR Tariff, if construed as justifying a General Sales Service Charge for February 2021 against Pinebrooke, as unfair, unjust and unduly discriminatory in violation of K.S.A. 66-1,203; and

B. Construing all prior orders relating to the WESCR Tariff and charges made thereunder for General Sales Service to Pinebrooke to be contrary to law and violation of: (1) the separation of powers doctrine inherent in the Kansas Constitution; (2) the due process clause of the Kansas Constitution; and K.S.A. 66-1,203.⁷

Pinebrooke requested no alternative relief aside from the requests to declare KGS’s WESCR Tariff unlawful.

5. On October 26, 2023, the Commission issued an Order on Prima Facie Determination, finding that Pinebrooke had not established a prima facie case for action by the Commission because the relief sought would violate the Utility Financing and Security Act, K.S.A. 66-1,242(b) and 66-1,252(a)(4).⁸ Pinebrooke was granted thirty days to amend its complaint.⁹

6. On November 20, 2023, Pinebrooke filed an Amended Complaint. The Amended Complaint is very similar to Pinebrooke’s original Complaint, but framed differently. Pinebrooke’s

⁴ Id.

⁵ Id.

⁶ Complaint pg. 7.

⁷ Id.

⁸ Order on Prima Facie Determination, pg. 5 (October 26, 2023).

⁹ Id. at 6.

Amended Complaint requests that the Commission enter an Order declaring that KGS assessing Pinebrooke the Uri surcharge is unreasonable, unfair and not authorized by the Commission's Financing Order.¹⁰ Pinebrooke's request for Commission action essentially rest on two arguments, which are most succinctly summarized at paragraph 32 of its Amended Complaint: "The practice of billing Pinebrooke specifically violates the representations made to Pinebrooke by KGS and also violates the terms of the Settlement Agreement...that a "Securitized Utility Tariff Charge will not be charged to transportation customers because those transportation customers are not considered retail customers as that term is used in the Act."¹¹

7. As noted above, Pinebrooke first asserts KGS's billings "violate representations made to Pinebrooke by KGS."¹² Elsewhere in its Amended Complaint, Pinebrooke describes this legal theory in more detail, stating, "Relying on KGS's promise to waive charges for the Winter Storm URI, Pinebrooke became a General Sales Service customer of KGS on November 1, 2021. Contrary to its representations made to induce Pinebrooke to become a General Sales Service customer, KGS, began invoicing Pinebrooke in December 2022, for Winter Storm Securitization Charge and continues to do so."¹³

8. To restate these arguments, Pinebrooke claims it relied to its detriment on material misrepresentations of KGS. On its face, this is a tort claim seeking a remedy of damages.¹⁴ The proper forum for a tort claim requesting damages or other claim requesting equitable relief is civil court. The Commission makes no factual findings regarding the veracity of Pinebrooke's claims

¹⁰ Amended Complaint, pgs. 10-11 (November 20, 2023).

¹¹ Amended Complaint, pg. 8.

¹² Id.

¹³ Id. at 4.

¹⁴ Pinebrooke appears to request damages at para. F of its Prayer for Relief

that KGS promised to waive the Uri surcharge or the merits of its potential tort claim. As noted above, a civil court is the proper forum for the potential adjudication of such claims.

9. Pinebrooke's second argument is that "The practice of billing Pinebrooke specifically...violates the terms of the Settlement Agreement...that a 'Securitized Utility Tariff Charge will not be charged to transportation customers....'"¹⁵ Essentially, Pinebrooke asserts the Uri surcharge does not apply to Pinebrooke because Pinebrooke is a transportation customer. Pinebrooke's allegation that the Uri surcharge is unlawfully being applied is facially invalid. In its Complaint, Pinebrooke admits it is now a retail customer and was not charged the Uri surcharge until it converted from a transportation to retail customer. Thus, by its own admission, the Uri surcharge is being correctly applied to Pinebrooke. As noted above, the question of whether Pinebrooke was somehow improperly induced to become a retail customer is separate, and the Commission is not the proper forum to determine that matter or award potential damages.

10. The Amended Complaint emphasizes that Pinebrooke did not cause KGS to incur any extraordinary costs during Uri. This is immaterial. The material facts are that under the terms of the Financing Order, the Uri surcharge applies to *all* retail customers regardless of whether and how much cost was caused by any individual customer.¹⁶ When Pinebrooke chose to switch from being a transportation customer to a retail customer, the Uri surcharge applied. Similarly, any new home or business built after Uri, or any new customer moving to the area, which chooses to take retail service from KGS will also have to pay the Uri surcharge despite the fact that it did not cause KGS to incur any extraordinary Uri costs.

¹⁵ ¶ 32

¹⁶ See, Docket No. 22-KGSG-466-TAR, Financing Order, pg. 71 (August 18, 2023).

11. Under K.A.R. 82-1-220(b)(3), formal complaints must state the relief sought by the Complainant. Inherent in the requirement that a complainant state the relief sought is the necessity that the relief must be within the Commission's power to grant.¹⁷ The Commission does not have jurisdiction to adjudicate tort claims and award relevant damages. Further, the Commission is legally unable to grant the requested relief under the Utility Financing and Security Act, K.S.A. 66-1,242(b) and 66-1,252(a)(4). Under K.S.A. 66-1,242(b) the Commission shall not determine any action taken by a public utility that is consistent with the Financing Order to be unjust or unreasonable. Under K.S.A. 66-1,252(a)(4) the Commission is prohibited from "reducing, altering or impairing securitized utility tariff charges that are to be imposed, billed, charged, collected and remitted..." until the bonds have been paid and performed in full.

12. The Commission finds that because Pinebrooke is a retail customer, assessing Pinebrooke the Uri surcharge is consistent with the Financing Order. Therefore the Commission is precluded by statute from finding that such action is unjust or unreasonable. Pinebrooke's Amended Complaint fails to set forth allegations which, if true would establish a prima facie case for action by the Commission.

THEREFORE, THE COMMISSION ORDERS:

A. The Amended Complaint fails the procedural requirements of K.A.R. 82-1-220(b) and does not establish a prima facie case for Commission action.

B. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁸

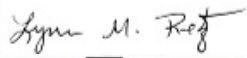
BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

¹⁷ See, Docket No. 23-EKME-426-COM, Order on Prima Facie Determination, pg. 2 (Jan. 19, 2023).

¹⁸ K.S.A. 77-529(a)(1).

Dated: 12/28/2023



Lynn M. Retz
Executive Director

DGC

CERTIFICATE OF SERVICE

24-KGSG-252-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
12/28/2023
first class mail and electronic service on _____.

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/S/ KCC Docket Room

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