

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair  
Jay S. Emler  
Dwight D. Keen

In the Matter of the Complaint Against )  
Atmos & Kansas Gas Service by Judith Burdette ) Docket No. 19-ATMG-130-COM

**ORDER DISMISSING FORMAL COMPLAINT WITH LEAVE TO AMEND**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined the pleadings submitted and being duly advised on the matter, the Commission finds as follows:

**I. BACKGROUND**

1. On October 1<sup>st</sup>, 2018, Judith Burdette (Complainant) filed a Formal Complaint against Atmos and Kansas Gas Service with the Commission.<sup>1</sup> The Formal Complaint alleged that Atmos and Kansas Gas Service cannot come to an agreement to provide Ms. Burdette gas service at her home in Shawnee, Kansas.<sup>2</sup>

2. On November 14, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.<sup>3</sup>

3. Litigation Staff reviewed underlying facts and allegations complained of in the Formal Complaint. Litigation Staff makes no recommendation regarding the validity or truthfulness of the Complainant's claims, but rather analyzes the Formal Complaint to determine if it meets the requirements contained in K.A.R. 82-1-220.

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<sup>1</sup> Complaint Against Atmos & Kansas Gas Service by Judith Burdette (Oct. 1, 2018) (Formal Complaint).

<sup>2</sup> *Id.*

<sup>3</sup> Litigation Staff's Memorandum (Nov. 14, 2018) (Legal Memorandum).

4. Litigation Staff concludes that the Complainant has not met the procedural requirements of the Commission's rules of practice and procedure. Litigation Staff noted two deficiencies in her Formal Complaint: first, the Complainant does not advise the Commission on a provision of law, or a statute, regulation, or order of the Commission that she believes has been violated by Atmos or Kansas Gas Service. Second, because the Complainant failed to state a statute, regulation, or order of the Commission, it is not possible to determine if the factual statement given is sufficient to set forth the violation concisely and in plain language.

5. Litigation Staff recommends the Commission find that the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Formal Complaint be dismissed with leave to amend the deficiencies discussed above.

## **II. FINDINGS AND CONCLUSIONS**

6. K.S.A. 66-101 *et seq.*<sup>4</sup> grants the Commission jurisdiction to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.<sup>5</sup>

7. Litigation Staff's Memorandum dated November 14, 2018, attached hereto, is hereby adopted and incorporated by reference.

8. The Commission finds the Complainant has not satisfied the procedural requirements necessary for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

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<sup>4</sup> The Commission is granted broad authority to review formal complaints. *See* K.S.A. 66-101e ("Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.").

<sup>5</sup> *See* K.S.A. 66-101d, 101g; K.S.A 66-1,201, 204, 207.

9. The Commission finds the Complainant shall be granted thirty (30) days to amend her Formal Complaint to correct the deficiencies identified above.

**IT IS, THEREFORE, ORDERED BY THE COMMISSION THAT:**

A. The Formal Complaint filed by Judith Burdette is dismissed with leave to amend pursuant to K.A.R. 82-1-220(c).

B. The Complainant shall have thirty (30) days from the date of this order to file an Amended Formal Complaint that addresses the procedural deficiencies identified. Should the Complainant fail to amend her Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

C. Parties have fifteen (15) days, plus three (3) days if service is by mail, from the date of service of this order to petition the Commission for reconsideration or request a hearing, as provided in 77-542.<sup>6</sup>

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/27/2018



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Lynn M. Retz  
Secretary to the Commission

CRM

<sup>6</sup> See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

# STATE OF KANSAS



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## MEMORANDUM LEGAL DIVISION

To: Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Dwight D. Keen

From: Carly Masenthin, Litigation Counsel

Date: November 14, 2018

Re: Docket No. 19-ATMG-130-COM  
In the Matter of the Complaint Against Atmos & Kansas Gas Service by Judith Burdette

### **EXECUTIVE SUMMARY:**

Judith Burdette (Complainant) filed a Formal Complaint against Atmos and Kansas Gas Service.<sup>1</sup> The State Corporation Commission of the State of Kansas (Commission) follows designated regulations as a matter of practice and procedure to determine if a Formal Complaint is actionable. This Formal Complaint does not satisfy the procedural requirements set forth in K.A.R. 82-1-220(b). Legal Staff recommends the Commission reject this Formal Complaint and provide the Complainant with leave to amend the deficiency found in her Formal Complaint.

### **BACKGROUND & ANALYSIS:**

On October 1, 2018, Complainant filed a Formal Complaint against Atmos and Kansas Gas Service, alleging that the two companies would not service her property because they could not come to "an equitable agreement" to do so.<sup>2</sup> Upon the filing of a Formal Complaint, the Commission must determine whether the allegations, if true, would establish a prima facie case for Commission action; part of this determination rests on whether the Formal Complaint conforms to the Commission's regulations.<sup>3</sup>

K.A.R. 82-1-220(b) requires Formal Complaints to satisfy three procedural requirements:

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<sup>1</sup> Formal Complaint Against Atmos & Kansas Gas Service, Docket No. 19-ATMG-130-COM (October 1, 2018) (Formal Complaint).

<sup>2</sup> *Id.*

<sup>3</sup> K.A.R. 82-1-220(c).

- (1) Fully and completely advise each Respondent and the Commission as to the provisions of the law or the regulations or orders of the Commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;
- (2) Set forth concisely and in plain language the facts claimed by the Complainant to constitute the violation(s); and
- (3) State the relief sought by the Complainant.

Litigation Staff reviewed the Formal Complaint and found it procedurally deficient. Specifically, the first two requirements were not met. The Complainant did not cite to any specific statutes, regulations, or orders of the Commission; therefore, it is not possible to determine if the factual statement is sufficient to meet procedural requirement (2). The Formal Complaint does list the relief sought (gas service provided to her home), so the third procedural requirement was met. Due to the Complainant's failure to meet the procedural requirements, a determination of whether the claim is actionable is not possible at this time.

No recommendation regarding the validity or truthfulness of the Complainant's claim is made, nor should any such recommendations be assumed or concluded with the filing of this memorandum. The only recommendations made here are that the Commission should find: 1) the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220; and 2) a determination of whether a *prima facie* action exists is not yet possible. K.A.R. 82-1-220(c) allows a Complainant to amend her Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

### **RECOMMENDATION:**

Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant thirty (30) days from such denial to amend her Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein, Legal Staff recommends that the Formal Complaint be dismissed without prejudice and the docket be closed.

## **CERTIFICATE OF SERVICE**

19-ATMG-130-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 11/28/2018.

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