

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

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

**RESPONDENT'S RESPONSE TO COMPLAINANTS'
PETITION FOR RECONSIDERATION**

Respondent, Texas-Kansas-Oklahoma Gas, LLC ("TKO"), submits this Response to Complainants' Petition for Reconsideration. The Complainants fail to allege any legitimate mistake of fact or law in the Commission's April 20, 2017 Final Order. Accordingly, the Complainants' Petition for Reconsideration must be denied.

I. Introduction

1. After two days of hearing and numerous filings by the Complainants, TKO, and Commission Staff, the Commission held that the Complainants failed to prove that TKO's use of a 13.45 pressure base in its billing calculations was unreasonable under K.S.A. 66-1,205.

2. The Complainants assert at least nine points of alleged error in their Petition for Reconsideration. Although couched as errors, Complainants' only real claim is they disagree

with the Commission’s decision to reject the theories they previously advanced in their pre and post-hearing briefs.¹

3. Their Petition for Reconsideration fails for the same reasons as their prior briefs, i.e., the Complainants ignore the explicit statutory framework under which they filed the complaint and its governing standard—reasonableness.

4. In its Final Order, the Commission identified and acknowledged the correct legal standards governing its decision, applied the undisputed facts to those standards, and found the Complainants simply failed to meet their burden. There is no basis for reconsideration, and their Petition for Reconsideration should be denied.

II. Analysis

A. The Commission’s Final Order is based on the correct legal standard and statutory framework raised in the complaint—K.S.A. 66-1,205.

5. Boiled down, Complainants’ point of error #1 is nothing more than an allegation that the Commission failed to understand their complaint. Although Complainants seek an opportunity to explain their theory more thoroughly, ultimately they advance the same theories and arguments previously made. Further, Complainants state that the Commission “fails to decide the single issue in the Complaint requiring resolution.”² TKO cannot identify what that single issue could be. For both reasons, their Petition for Reconsideration must be denied.

6. Complainants seem to agree the complaint was filed under K.S.A. 66-1,205, which sets the Commission standards for investigating and evaluating the complaint.³ As the

¹ Point of Error #7 should be summarily rejected. The Complainants did not file a petition for reconsideration within 15 days of the Commission’s April 14, 2016 Order on Jurisdiction, as required by statute and the Commission’s rules and regulations. *See* Final Order ¶12; *see also* K.S.A. 66-118b, 77-529, K.A.R. 82-1-235.

² Petition for Reconsideration, ¶10.

statute provides, the Commission can review any rule, regulation, practice or act whatsoever to determine whether it is unreasonable, unfair, unjust, etc.⁴

7. The Complainants then claim the Commission improperly narrowed the issues and focused only on abrogating contracts and failed to address: (1) the allegations in paragraphs 7-14 of the complaint,⁵ (2) their claim that TKO misrepresents its charges,⁶ and (3) their argument that TKO misrepresents its calculations.⁷ At its core, Complainants claim that by using a different pressure base than its suppliers, TKO misrepresents its charges and calculations and overcharges its customers by 9.5%.

8. Complainants' argument has not escaped anybody. The Commission addressed these alleged missing issues head-on in the Final Order. The Commission found: (1) no requirement that TKO must use the same pressure base as its supplier,⁸ (2) that the contracts are silent as to pressure base,⁹ (3) that TKO has not changed the billing methodology since entering business in Kansas,¹⁰ and (4) even with Complainants' claimed improper calculations, the prices TKO charged were lower than most suppliers in the region.¹¹ Accordingly, the Commission

³ Petition for Reconsideration, ¶¶13, 14.

⁴ Petition for Reconsideration, ¶14.

⁵ Petition for Reconsideration, ¶15.

⁶ Petition for Reconsideration, ¶16.

⁷ Petition for Reconsideration, ¶17

⁸ Final Order, ¶49.

⁹ Final Order, ¶50.

¹⁰ Final Order, ¶¶42, 46, 50.

¹¹ Final Order, ¶¶49, 50.

properly found, consistent with the legal framework of K.S.A. 66-1,205, that the Complainants failed to prove manipulation, misrepresentation, or unreasonableness.

9. Complainants simply fail to acknowledge that what they seek is for the Commission to write a new term into their contracts that is favorable to them, effective retroactively.

10. Respectfully, the Complainants have submitted numerous pleadings outlining their position, including the prehearing brief and two post-hearing briefs. To suggest they were not given due process¹² is simply baseless.

11. Related to their assertion that the Commission did not understand Complainants' claims, the Complainants take a swipe at the Commission's application of the statute to the facts here. They claim the Commission failed to analyze TKO's practices¹³ and instead focused only on the "rate." The detailed and precise language of Commission's Final Order contradicts Complainants' argument on this point as well.

12. Without a billing calculation, there can be no final price billed to the customer. TKO's billing calculation—its practice—includes the use of a 13.45 pressure base. Complainants contend 13.45 is an improper pressure base for billing calculation purposes, even though TKO's Certificate and the contracts between TKO and the Complainants are silent as to the pressure base to be utilized. As noted below, the Commission found TKO's use of 13.45 was not *per se* unreasonable.¹⁴

¹² Petition for Reconsideration, ¶20.

¹³ More specifically, Complainants claim the Commission "wholly abdicates" its legal duty and "gives lip service" to its statutory authority. Petition for Reconsideration, ¶¶50, 51. Nothing could be further from reality as set forth in the detailed and reasoned Final Order.

¹⁴ Final Order, ¶50.

13. After finding the practice was not unreasonable, the Commission took the next logical step and evaluated whether TKO's billing calculation—again, TKO's "practice" under the statutory term—led to unreasonable rates charged to the Complainants. As with the billing practice itself, the Commission found the Complainants failed to prove the billing practice resulted in unreasonable rates being charged to the Complainants.

14. Complainants' claim that the Commission improperly focused on the rate is simply a red herring. The billing practice naturally leads to the final price charged to TKO's customers, and as set forth below, the Commission properly examined both components:

- "The Complainants contend that TKO's billing practices are based on an invalid calculation methodology that results in unjust or unreasonable rates."¹⁵
- "The crux of the complaint is that TKO employed an invalid methodology for calculating the BTU of the natural gas it sold to Complainants and therefore overcharged them by 9.5%."¹⁶

15. Thus, there can be no valid argument that the Commission did not consider the issues raised by Complainants. The Commission properly examined both TKO's billing practice and the final price charged to the customers.

16. Having lost on both points, the Complainants argue an evaluation of the latter (final price) somehow infects the analysis of the former (billing practice). This argument is contrary to the Final Order, which evaluated TKO's billing methodology and rates under the reasonableness standard advanced in the complaint.¹⁷

¹⁵ Final Order, ¶48.

¹⁶ Final Order, ¶41.

¹⁷ Final Order, ¶¶46-51.

17. Finally, throughout these proceedings the Complainants have contended, as a foundational premise of their complaint, exact matching of pressure bases between TKO and its supplier is required. The Commission disagreed, finding the Complainants had no support for this contention.¹⁸ As such, the Commission found the Complainants failed to meet their statutory burden. Consequently, no further analysis is required as to what might be an unjust or unreasonable practice in some other hypothetical case.

B. Complainants do not challenge the Commission's factual findings.

18. The Commission made the following factual findings, which the Complainants have not asserted is error:

- a. TKO has used the same billing methodology since it began operations in Kansas.¹⁹
- b. TKO's billing methodology is different than that of its suppliers.²⁰
- c. There is no requirement that a utility such as TKO must use the same pressure base as its supplier.²¹
- d. None of the Complainants had contracts with Anadarko, TKO's predecessor.²²
- e. TKO negotiated its contracts with the Complainants as allowed and approved by the Commission.²³

¹⁸ Final Order, ¶49.

¹⁹ Final Order, ¶¶42, 46, 50.

²⁰ Final Order, ¶42.

²¹ Final Order, ¶49.

²² Final Order, ¶44.

²³ Final Order, ¶46.

- f. The Complainants' contracts are silent as to pressure base.²⁴
- g. The Complainants accepted these contractual terms until filing their Complaint.²⁵
- h. No party introduced any original contracts or any evidence that the contracts were changed or amended without Commission approval.²⁶
- i. The prices TKO charges its customers are among the lowest in the region.²⁷

19. Complainants' point of error #5 is a rehash of the same arguments raised in their post-hearing briefing, which the Commission properly disregarded. Although couched as factual discrepancies,²⁸ the real issue raised is whether TKO's billing practice is unreasonable given the unsupported allegation that matching between TKO and its supplier is required. As mentioned above and discussed in detail below, the Commission found—based on the Complainants' own testimony at the hearing—that matching is not required, and the Complainants do not challenge this finding.

20. Given the Commission's unchallenged factual findings, the question is whether the Complainants have provided any reason for the Commission to reconsider the application of those facts to the legal standards previously described. To support their arguments, Complainants do not allege legitimate factual errors, but instead, unfounded hyperbole.

21. Specifically, Complainants reference manipulation or some variant 17 times in their Petition for Reconsideration. In addition to "manipulation," they claim throughout their

²⁴ Final Order, ¶50.

²⁵ Final Order, ¶50.

²⁶ Final Order, ¶47.

²⁷ Final Order, ¶¶49, 50.

²⁸ Petition for Reconsideration, ¶48.

Petition for Reconsideration, using varying terminology, that TKO arbitrarily and unilaterally changed its rates, invoices, volumes and billing practices.²⁹ The Commission found “no evidence the billing parameters were manipulated in any way,”³⁰ because **there was no change in the billing methodology since TKO began operations in Kansas.**³¹ The Complainants have not challenged this specific finding.

22. In addition to manipulation and change claims, Complainants assert TKO misrepresented the gas volume sold, the MMBTUs, and the prices charged to its customers.³² However, the Commission found the Complainants’ contracts were silent as to the pressure base (the genesis of any alleged misrepresentation). The Commission further determined that until filing of the complaint, the Complainants accepted these contractual terms.

23. Complainants likely do not challenge these findings because there was not one shred of evidence that the Complainants were in any way mistaken or misled about the quantity, quality, or cost of gas they purchased. Indeed, the evidence showed they: (1) had no issue with TKO’s rates or methods until the complaint was filed seven years after they began paying TKO’s invoices, (2) did not identify any apparent difference to their gas bills when TKO commenced operations from its predecessor,³³ and (3) are willing to pay more to receive gas from another supplier.³⁴

²⁹ See, e.g., Petition for Reconsideration, ¶¶33, 34, 36, 40.

³⁰ Final Order, ¶46

³¹ Final Order, ¶46.

³² See, e.g., Petition for Reconsideration, ¶¶16, 17, 52, 53, 62, 63.

³³ Tr. Vol. 1, 88:12-14; 95:15-21; 116:18-22; 133:4-7.

³⁴ Hanson Rebuttal, 5:11-14; Tr. Vol. 1, 53:24-54:2.

24. The Complainants' arguments flowing from any claim or allegation of manipulation or misrepresentation should be summarily disregarded. Other than their challenge to the proper legal standard, Complainants' arguments and points of error #2-6 and #9 are based on this faulty premise of manipulation and misrepresentation.

25. This faulty premise includes claims that TKO (or even other utilities) *could* manipulate or misrepresent its volumes or rates in the future based on the Final Order, which is far outside the realm of any reasonable reading or interpretation of the Final Order.

26. If the Complainants wanted a specific pressure base calculation in their contract, they could have asked for one. Because the contracts were silent, Complainants failed to prove TKO's unchanged use of 13.45 to be unreasonable.

27. The Complainants' doomsday concerns about future cases or practices fail to comport with reality. The Commission is neither stretching existing law nor granting TKO permission to arbitrarily take any action it wants. TKO must operate within the bounds of its contracts and Certificate, which remain unaffected by the Final Order and which were not challenged by the Complainants. The Complainants simply failed to prove TKO's billing practice was unreasonable.

C. The Commission properly found there was no requirement that TKO must use the same pressure base as its supplier. Accordingly, there cannot be a *per se* finding of unreasonableness as requested by the Complainants.

28. Complainants have consistently argued that precise matching of pressure bases between TKO and its suppliers is required, under a number of theories. But based on Complainants' own testimony and Staff witness, Mr. Haynos, the Commission found that no such requirement existed.³⁵ Complainants do not challenge this finding.

³⁵ Final Order, ¶49.

29. Complainants make a half-hearted attempt to claim that the Commission ignored the evidence and failed to consider the “proven and scientific fact” that it is “scientifically necessary to use the same pressure base.”³⁶ The Commission did consider this *argument* but disagreed based on Complainants’ and Mr. Haynos’ testimony. Absent such a requirement for precise matching, the Commission determined TKO’s billing practice was not *per se* unreasonable.³⁷

30. As described above, the Commission went on to find the Complainants failed to show TKO’s rates were unreasonable even using this billing practice or that the Complainants’ treatment negatively impacted the public as a whole.³⁸ This finding is supported by the uncontroverted evidence that TKO’s prices were among the lowest in the region.³⁹ The Complainants have not asserted they paid too much for the gas received and even admitted they were willing to pay more.⁴⁰

31. In short, the Commission’s finding that precise matching is not required is dispositive of the entirety of the case.⁴¹ Having found the Complainants failed to meet their burden based on the uncontested evidence, the Petition for Reconsideration should be denied.

³⁶ Petition for Reconsideration, ¶49.

³⁷ Final Order, ¶51.

³⁸ *Id.*

³⁹ Final Order, ¶50.

⁴⁰ Hanson Rebuttal, 5:11-14; Tr. Vol. 1, 53:24-54:2.

⁴¹ “The Complainants rely on this argument alone as evidence that the practice results in unjust or unreasonable rates.” Final Order, ¶48.

D. The Final Order is clear on the relief afforded to the residential customers.

32. The Commission ordered TKO to refund to its residential customers the amount it actually charged over the amount set by the Commission in TKO's Certificate. TKO will comply with this Order.

33. Any claim for reconsideration about the method of calculation concerning pressure bases should be denied for the same reasons as set forth above.

III. Conclusion

34. The uncontested facts prove TKO's billing practice is not mandated in TKO's Certificate, is not in defined in its contracts, has been unchanged since it began Kansas operations, has never been challenged by the Complainants until the filing of the complaint, and ultimately results in some of the lowest prices in the region. Based on the Complainants' definition, the question presented on these uncontested facts is whether such billing practice is "irrational, foolish, unwise, absurd, silly, preposterous, senseless, stupid, injudicious, nonsensical, unphilosophical, ill-judged, exorbitant, extravagant, unfair, extortionate, excessive"⁴² or unreasonable? Although one might construe the Complainants' recent arguments as meeting such definition, TKO's billing practice and its rates certainly do not.

⁴² Petition for Reconsideration, ¶63.

WHEREFORE, TKO requests the Commission deny Complainants' Petition for Reconsideration in its entirety.

Respectfully submitted,

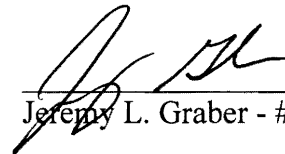
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

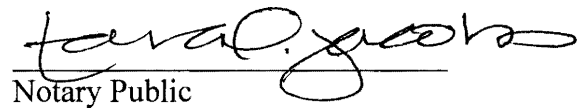
Jeremy L. Graber, of lawful age, being first duly sworn, on oath deposes and states:

I am an attorney for Texas-Kansas-Oklahoma Gas, L.L.C. in the above referenced matter. I have read the above and foregoing document, know and understand the contents thereof, and verify that the statements and allegations contained therein are true and correct, according to my knowledge, information and belief.



Jeremy L. Graber - #24064

Subscribed and sworn to before me this 15th day of May, 2017.



Notary Public

My appointment expires: 1 | 25 | 2021



CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of May, 2017, a true and correct copy of the above and foregoing was filed electronically with the Kansas Corporation Commission and a copy served via email to:

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