

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

In the Matter of the Complaint Against Kansas)
Gas Service by Cory Schrater.) Docket No. 24-KGSG-718-COM

**ANSWER AND MOTION TO DISMISS
PUBLIC**

Kansas Gas Service, a division of ONE Gas, Inc. (“Kansas Gas Service” or “Company”), pursuant to K.A.R. 82-1-220 and K.S.A. 60-212, respectfully files its Answer and Motion to Dismiss in the above-captioned Formal Complaint filed by Cory Schrater (“Complainant”). In support thereof, Kansas Gas Service states the following to the State Corporation Commission of the State of Kansas (“Commission”):

I. ANSWER

1. On May 9, 2024, the Complainant filed a Formal Complaint against Kansas Gas Service.
2. On July 2, 2024, the Commission issued its *Order Making Prima Facie Determination* (“Order”), wherein the Commission found the Formal Complaint met the requirements of K.A.R. 82-1-220 and served the Formal Complaint upon Kansas Gas Service for an answer. The Commission’s Order indicates the Complainant is alleging Kansas Gas Service’s billing practices do not comply with the Commission’s Billing Standards.
3. The Formal Complaint fails to state a claim upon which relief can be granted and should be dismissed.

A. General and Specific Denials

4. Unless explicitly stated herein, Kansas Gas Service generally denies the Complainant’s allegations.
5. Kansas Gas Service admits it issued a corrected bill for \$344.58.

B. Response

6. The natural gas meter at the Complainant's premises stopped registering usage in March 2022. As a result of the non-registering meter, the Complainant was not billed for natural gas consumption for approximately eighteen (18) months – between approximately March 2022 until the meter was replaced in July 2023. Between approximately March 2022 and July 2023, the Complainant's bills only included Kansas Gas Service's minimum charges.

7. In October 2023, Kansas Gas Service notified the Complainant via email about their non-registering meter. Among other things, Kansas Gas Service notified the Complainant: (1) their meter had not recorded consumption, (2) adjustments would be made to an upcoming bill to recover up to six months of estimated consumption, and (3) payment arrangements were available. A copy of this email is attached as **Exhibit A** and adopted by reference herein.

8. In October 2023, Kansas Gas Service issued a corrected bill to the Complainant for six months of estimated natural gas consumption. A copy of the corrected bill is attached hereto as **Confidential Exhibit B** and adopted by reference herein.

9. The contents of the Complainant's corrected bill, and the term of estimated consumption fully comply with and satisfy the Commission's Billing Standards.

C. Motion to Dismiss

10. Kansas Gas Service moves the Commission to dismiss the Complainant's Formal Complaint for failure to state a claim upon which relief can be granted. The Complainant's allegation that Kansas Gas Service estimated six months of consumption is not a violation of law, Commission order, or tariff. Accordingly, the Formal Complaint is factually and legally insufficient and should be dismissed for failure to state a claim upon which relief can be granted.

11. The Billing Standards create a baseline uniform rule controlling certain interactions between Kansas' Commission-regulated public utilities and their customers. Section I.C. of the Billing Standards outlines when a utility may estimate a bill *in lieu of* obtaining an actual reading. Importantly, Section I.C.e(iii) of the Billing Standards allows utilities to render a bill based on estimated meter readings as a customer's *final* or *initial* bill when an actual meter reading cannot be taken because of a broken meter or other equipment failure. Schedule GTC 4 of Kansas Gas Service's tariffs properly integrate the Commission's Billing Standards. The Commission's Billing Standards do not detail how utilities should label *corrected* bills when metering equipment fails.

12. Section 4.04.01(5)(c) of Kansas Gas Service's Commission-approved General Terms and Conditions authorizes Kansas Gas Service to estimate usage for corrected bills when an actual meter reading cannot be taken because of a broken meter or equipment failure. Kansas Gas Service issued a corrected bill to the Complainant using estimated usage.

13. Section 9.02.05(2) of Kansas Gas Service's General Terms and Conditions states:

If the meter is found not to register for any period, Company shall estimate the utility service used during this period in accordance with Section 4.05.02 Correction of Erroneous Bills.

14. Section 4.05.02(2) of Kansas Gas Service's General Terms and Conditions states:

When the Company is unable to confirm usage due to a non-registering meter, usage may be estimated by an individualized analysis based on information including, but not limited to, weather data, historical usage at the premises, and customer supplied information. No bill shall be issued to adjust a period exceeding six months due to the failure of a meter to register.

15. "Tariffs contain those terms and conditions which govern the relationship between a utility and its customers. Tariffs duly filed with the regulatory agency are generally binding on both the utility and its customers." *Farmland Indus., Inc. v. Kansas Corp. Comm'n*, 29 Kan. App.

2d 1031, 1043 (2001). Duly filed tariffs also bind the utility and the Commission until changed by further order. *Kansas Gas & Elec. Co. v. State Corp. Comm'n of State of Kan.*, 14 Kan. App. 2d 527, 536 (1990). “A legally filed tariff constitutes constructive notice.” *Grindsted Prod., Inc. v. Kansas Corp. Comm'n*, 262 Kan. 294, 311 (1997).

16. Pursuant to Sections 4.04.01, 4.05.02, and 9.02.05 of Kansas Gas Service’s General Terms and Conditions, the Complainant was billed for six months of estimated natural gas consumption. Kansas Gas Service’s correspondence informed the Complainant their corrected bills would be based on estimated consumption, and that payment plans are available. The Complainant’s corrected bills properly indicate they contain corrected charges and provide a monthly breakdown of the corrected charges. Using heating degree days to estimate consumption, Kansas Gas Service properly calculated a corrected bill for the Complainant.

17. The Formal Complaint should be dismissed for failure to state a claim upon which relief may be granted. When considering a motion to dismiss for failure to state a claim upon which relief may be granted, a court must decide it “from the well-pleaded facts of plaintiff’s petition.” *Sperry v. McKune*, 305 Kan. 469, 480 (2016). Ordinarily, on a motion to dismiss, if matters outside the pleadings are presented and not excluded, the motion must be treated as one for summary judgment under K.S.A. 60-256. *See* K.S.A. 60-212(d). However, when a complaint refers to an unattached document central to the claim, a defendant may submit an undisputed authentic copy of the document without transforming the motion to dismiss into a motion for summary judgment. *See Crosby v. ESIS Ins.*, 474 P.3d 307 (Kan. Ct. App. 2020) (unpublished opinion), *rev. denied* 314 Kan. 854 (2021). The corrected bills and correspondence included as exhibits in this Answer may be considered by the Commission in deciding this Motion.

WHEREFORE, Kansas Gas Service having fully responded to the Formal Complaint respectfully moves the Commission to dismiss the Formal Complaint for failing to state a claim upon which relief can be granted, and for such further relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Robert Elliott Vincent
Robert Elliott Vincent, KS Bar #26028
Kansas Gas Service,
a division of ONE Gas, Inc.
7421 West 129th Street
Overland Park, Kansas 66213-2634
Phone: (913) 319-8615
Fax: (913) 319-8622
Email: robert.vincent@onegas.com

Attorney for Kansas Gas Service,
a division of ONE Gas, Inc.

Exhibit A

[View this email in your browser](#)



An Update from Kansas Gas Service about your upcoming bill

Dear <<First Name>>,

This summer, we discovered your natural gas meter had stopped registering usage even though your natural gas service remained uninterrupted. We are in the process of replacing the equipment.

There is no charge for the replacement of the equipment. Adjustments **will** be made to your next natural gas bill to address the unbilled usage. These adjustments **will** reflect your estimated usage up to the past 6 months.

We apologize for any inconvenience. Should this billing create any financial challenges, we **will** work with you to set up a payment arrangement.

You may contact us at 800-794-4780 with questions.

Thank you for being our valued customer.
Kansas Gas Service Customer Service Team

Copyright (C) 2023 Kansas Gas Service. All rights reserved.

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe](#)

Confidential Exhibit B (Redacted in Full)

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

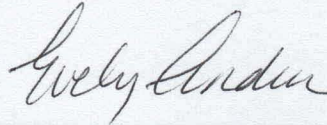
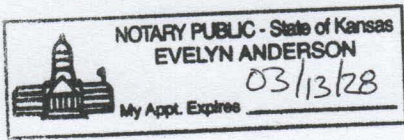
I, Robert Elliott Vincent, of lawful age, being first duly sworn upon oath, states as follows: I am a Managing Attorney for Kansas Gas Service, a Division of ONE Gas, Inc. I have read the above *Answer and Motion to Dismiss* and all the statements therein are true to the best of my knowledge, information, and belief.



Robert Elliott Vincent

Affiant

SUBSCRIBED AND SWORN to before me on 07/12/24.



Notary public

My Appointment Expires:

CERTIFICATE OF SERVICE

I, Robert Elliott Vincent, hereby certify that a copy of the above and foregoing *Answer and Motion to Dismiss* was forwarded this 12th day of July, 2024, addressed to:

CORY SCHRATER
CORY SCHRATER
201 N. MILES AVE.
VALLEY CENTER, KS 67147

AHSAN LATIF, LITIGATION
COUNSEL
KANSAS CORPORATION
COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Ahsan.Latif@ks.gov

KYLER C. WINEINGER,
ASSISTANT GENERAL
COUNSEL
KANSAS CORPORATION
COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Kyler.Wineinger@ks.gov

JANET BUCHANAN,
DIRECTOR OF RATES &
REGULATORY
KANSAS GAS SERVICE, A
DIVISION OF ONE GAS, INC.
7421 W 129TH STREET
OVERLAND PARK, KS 66213
janet.buchanan@onegas.com

ROBERT E. VINCENT,
MANAGING ATTORNEY
KANSAS GAS SERVICE, A
DIVISION OF ONE GAS, INC.
7421 W. 129TH STREET
OVERLAND PARK, KS 66213
robert.vincent@onegas.com

/s/ Robert Elliott Vincent
Robert Elliott Vincent, KS Bar No. 26028
Managing Attorney
KANSAS GAS SERVICE
A Division of ONE Gas, Inc.
7421 West 129th Street
Overland Park, Kansas 66213-5957
(913) 319-8615 Phone
(913) 319-8622 Fax
robert.vincent@onegas.com