

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

In the Matter of the Application of Kansas)
Gas Service, a Division of ONE Gas, Inc. for)
Approval of an Accounting Order to Track)
Expenses Associated with the Investigating,) Docket No. 17-KGSG-455-ACT
Testing, Monitoring, Remediating and Other)
Work Performed at the Manufactured Gas)
Plant Sites Managed by Kansas Gas Service.)

**DIRECT TESTIMONY
OF
JANET L. BUCHANAN
ON BEHALF OF KANSAS GAS SERVICE
A DIVISION OF ONE GAS, INC.**

JANUARY 3, 2025

DIRECT TESTIMONY
OF
JANET L. BUCHANAN
ON BEHALF OF KANSAS GAS SERVICE
A DIVISION OF ONE GAS, INC.
DOCKET NO. 17-KGSG-455-ACT

1 **I. Position and Qualifications**

2 **Q. Please state your name and business address.**

3 A. My name is Janet L. Buchanan, and my business address is 7421 W. 129th Street,
4 Overland Park, Kansas 66213.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am the Director of Rates and Regulatory Reporting for Kansas Gas Service, a
7 division of ONE Gas, Inc. (“KGS” or the “Company”).

8 **Q. Please describe your education and professional experience.**

9 A. I earned a Bachelor of Arts degree and a Master of Arts degree in economics from the
10 University of Kansas. From June 1993 through August 1998 and from May 1999
11 through August 2011, I worked for the Kansas Corporation Commission
12 (“Commission”) in various positions with varying levels of responsibility for examining
13 rates for natural gas, electric, and telecommunications utilities, researching current
14 policy issues within the industries, and managing projects. The positions I held
15 included: Utility Rates Analyst, Senior Research Economist, Managing Research
16 Economist, Telecommunications Economist, Senior Telecommunications Analyst,
17 Senior Managing Research Analyst, Chief of Telecommunications and Chief of Energy
18 Efficiency and Telecommunications. In September 2011, I joined Texas Gas Service

1 Company, a division of ONE Gas as a Manager of Rates and Regulatory Analysis. I
2 was promoted to my current position in October 2017.

3 **Q. Was this testimony prepared by you or under your direct supervision?**

4 A. Yes, it was.

5 **Q. Have you previously testified before the Kansas Corporation Commission**
6 **(“Commission”)?**

7 A. Yes, I have testified before the Commission on numerous occasions.

8 **II. Purpose of Application and Testimony and Identification of Witnesses**
9 **Supporting Application**

10 **Q. What is the purpose of KGS’s Application?**

11 A. KGS is requesting to increase the cap on an Accounting Authority Order (“AAO”)
12 issued by the Commission related to Manufactured Gas Plant (“MGP”) Costs by \$17
13 million. KGS’s current AAO for MGP costs is capped at \$15 million, net of insurance
14 recoveries. The effect of KGS’s request is to increase the AAO for MGP Costs to \$32
15 million from \$15 million.¹

16 **Q. Can you provide a brief history of KGS’s prior request to recover MGP Costs?**

17 A. On April 11, 2017, KGS filed an application seeking an AAO to defer costs incurred
18 after January 1, 2017, associated with KGS’s obligation to perform environmental
19 investigation, testing, monitoring, remediation, and other work at MGP sites. On
20 November 21, 2017, the Commission issued an order approving a Unanimous
21 Settlement Agreement reached between KGS, Commission Staff, and the Citizens’
22 Utility Ratepayer Board (“CURB”). The Settlement Agreement provided KGS with

¹ MGP Costs are defined in the Settlement Agreement. See Unanimous Settlement Agreement, ¶ 8, attached to Order Approving Unanimous Settlement Agreement, Docket No. 17-KGSG-455-ACT (Nov. 21, 2017) (“Settlement Agreement”).

1 accounting authority to defer MGP Costs, incurred after January 1, 2017, up to \$15
2 million net of insurance proceeds.²

3 **Q. Why is KGS submitting a new application in this docket?**

4 A. The Unanimous Settlement Agreement that authorized the AAO specified that if costs
5 associated with the investigation and remediation of MGP sites, regulatory costs
6 associated with oversight by the Kansas Department of Health and Environment
7 (“KDHE”), and costs incurred in pursuit of insurance recoveries exceeded \$15 million,
8 then KGS would need to file an application in this docket, Docket Number
9 17-KGSG-455-ACT (“17-455 Docket”), to request an increase in the cap. With this
10 Application, KGS is requesting to increase the cap by \$17.0 million and to maintain all
11 other provisions of the settlement agreement approved by the Commission in this
12 docket.

13 **Q. What is the purpose of your testimony?**

14 A. I provide testimony focusing on three topics. First, I provide an overview of why KGS
15 has the obligation for remediating certain MGP sites in Kansas. Then, I discuss the
16 Unanimous Settlement Agreement approved by the Commission, in this docket, on
17 November 21, 2017. Finally, along with Ms. Emma Romi, I support the requested
18 increase in the cap on the AAO, while maintaining the other regulatory treatment
19 previously agreed to by stakeholders and approved by the Commission.

20 **Q. Can you please introduce the other witnesses providing testimony supporting
21 this application?**

22 A. Yes. Ms. Emma Romi, a Remediation Section Manager within the Environmental
23 Services section at Burns & McDonnell, provides testimony on behalf of the Company
24 which includes a brief history of MGP sites in Kansas, a description of the work that

² Id.

1 has been undertaken at MGP sites managed by KGS along with an overview of the
2 qualified costs that have been incurred, and an explanation of cost increases
3 associated with the Company's MGP obligations.

4 Mr. Mark Smith, Vice President and Treasurer for ONE Gas, Inc., provides
5 testimony concerning the insurance recoveries that have offset some of the costs
6 incurred and the Company's continuing efforts to collect insurance proceeds.

7 **III. General Background Concerning MGP Sites Managed by KGS**

8 **Q. Why is KGS responsible for managing and remediating former MGP sites?**

9 A. The responsibility for managing and remediating former MGP sites stems from a
10 Consent Order between the KDHE and KGS's predecessor, Western Resources, Inc.
11 ("WRI"). Attached to my testimony as "Exhibit JLB-1" is a copy of the Consent Order
12 that was agreed to by KDHE and WRI on October 7, 1994, in KDHE Case No. 94-E-
13 0172. The Consent Order outlines obligations of WRI relative to certain environmental
14 investigation and remedial activities ("environmental performance") at the MGP sites.
15 The Consent Order, at the time it was entered into, pertained to MGP sites located in
16 Hutchinson and Leavenworth, only.³ It also makes clear that WRI would comply with
17 and be bound by the terms of the Consent Order.⁴

18 **Q. What was the overall purpose of the Consent Order?**

19 A. The purpose of the Consent Order was to develop effective response activities
20 designed to determine the source, nature, extent and impact of MGP contamination
21 by requiring WRI to perform certain activities specified in the Consent Order.⁵ The
22 Consent Order allowed KDHE and WRI to add or delete other MGP sites to be covered
23 by the Consent Order.⁶ Subsequently, amendments were made to the Consent Order

³ Exhibit JLB-1, Exhibit A.

⁴ Exhibit JLB-1, pages 1 – 2.

⁵ Exhibit JLB-1, pages 2 – 3.

⁶ Exhibit JLB-1, page 3.

1 to include the coverage of additional MGP sites. Exhibit JLB-2 provides a timeline
2 showing when various amendments were made to the Consent Order. Exhibit JLB-3
3 contains the amendments to the Consent Order.

4 **Q. Why did KGS become responsible for carrying out the requirements of the**
5 **Consent Order?**

6 A. From my review of the Stipulation and Agreement, the Order Approving the Stipulation
7 and Agreement, and Staff Witness Mr. Paul Dietz's direct testimony (which served as
8 the basis of the environmental provision contained in the Stipulation and Agreement)
9 in Docket No. 97-WSRG-486-MER ("486 Docket"),⁷ it is my understanding that the
10 Commission specifically required KGS to assume the environmental performance as
11 practiced by WRI at the time WRI sold its Kansas natural gas business to ONEOK,
12 Inc. in 1997, including WRI's performance under the Consent Order.⁸ Since these
13 MGP sites were historically used to provide natural gas service to customers, it was
14 determined to be reasonable for them to be sold as part of the natural gas business
15 and assumed by KGS. Based upon the testimony filed by Mr. Dietz in the 486 Docket,
16 the Consent Order then covered five MGP sites. However, Mr. Dietz indicated that
17 there were likely other sites to be covered by the Consent Order in the future. Mr.
18 Dietz also indicated that managing MGP sites will include, ". . . extensive and ongoing
19 projects which will require expertise and resources for many years."⁹ He
20 recommended, and the Commission ultimately approved, a requirement for KGS to
21 work with KDHE in order to maintain the environmental performance practiced by WRI
22 under the Consent Order.¹⁰ Upon approval of the Stipulation and Agreement in the

⁷ These documents are provided in Exhibit JLB-4.

⁸ Exhibit JLB-4, *Order Approving Stipulation and Agreement*, Docket No. 97-WSRG-486-MET, page 15, paragraph 35(October 3, 1997).

⁹ Exhibit JLB-4, *Direct Testimony of Paul Dietz*, Docket No., 97-WSRG-486-MER, pp. 7 through 10 (September 2, 1997).

¹⁰ *Id.*

1 486 Docket, KGS became responsible for carrying out the requirements contained in
2 the Consent Order.

3 The number of MGP sites covered by the Consent Order has increased since
4 KGS was ordered to comply with the Consent Order. KGS and KDHE continue to
5 work under the Consent Order in a cooperative manner to schedule and prioritize the
6 environmental work performed at the MGP sites being managed by the Company.
7 The scope of the environmental work performed (and expected to be performed in
8 the future) continues to be refined as the investigative work (that has been
9 conducted at the sites since 1997) is still ongoing. Ms. Romi provides a discussion
10 of the environmental work performed by KGS to date.

11 **IV. Background on Accounting and Regulatory Treatment**

12 **Q. Please explain how KGS initially accounted for costs associated with its**
13 **environmental performance obligations under the Consent Order.**

14 A. When it acquired the gas properties owned by WRI in 1997, ONEOK, Inc., the
15 predecessor to ONE Gas, Inc., established an accrued liability or environmental
16 reserve of \$12.6 million in its financial records. The initial liability represented an
17 estimate, based on facts known to the parties in 1997, of costs associated with
18 environmental issues, including the MGP sites for which KGS is responsible. As
19 funds were spent in the subsequent years, the accrued liability was reduced. KGS
20 did not seek recovery from customers of any MGP costs incurred between
21 November 1, 1997, and December 31, 2016. In the third and fourth quarters of
22 2016, KGS recorded an additional liability totaling \$4.5 million to reflect an estimate
23 of additional MGP costs identified by KGS.

24 **Q. Did KGS request a change in accounting treatment for costs incurred after**
25 **December 31, 2016?**

1 A. Yes. On April 11, 2017, KGS filed an application seeking approval of an AAO to
2 accumulate, defer and recover costs incurred after January 1, 2017, associated with
3 its obligation to perform environmental investigating, testing, monitoring, remediating
4 and other work at MGP sites in this docket. The regulatory treatment sought by KGS
5 was consistent with the treatment approved by the Commission in Docket No.
6 185,507-U, which focused on similar environmental costs incurred by Kansas Public
7 Service Company in the work performed at an MGP site.¹¹ ONE Gas, Inc.,
8 continued to modify the accrued liability or environmental reserve as estimates of
9 additional costs were identified.

10 **Q. How was KGS's request resolved?**

11 A. Staff, CURB and KGS were able to reach a Unanimous Settlement Agreement, that
12 was filed with the Commission on October 12, 2017, and is attached to this testimony
13 as Exhibit JLB-5. The Unanimous Settlement Agreement specified that the
14 Commission would issue one AAO to cover all 12 MGP sites and all cash expenditures
15 made by KGS after January 1, 2017, that qualified as "MGP Costs." Those costs
16 would be deferred to FERC Account 182.3.¹²

17 **Q. How were MGP Costs defined?**

18 A. MGP Costs were defined as,

19 actual and prudent external costs incurred after January 1, 2017, and
20 which are necessary for the investigation and remediation work at
21 MGP sites approved by KDHE . . . MGP Costs will also include
22 regulatory costs (except internal labor costs) incurred related to MGP
23 site oversight by the KDHE, as well as costs incurred in this
24 Commission docket and any compliance docket. Further, MGP Costs
25 will include those actual and prudent costs incurred in the pursuit of
26 insurance recoveries to reimburse Kansas Gas Service for MGP
27 Costs as defined in this Agreement. MGP Costs will not include
28 internal labor costs. MGP Costs will also not include any and all costs
29 incurred by [KGS] relating to any causes of action or any [third-party]

¹¹ Order dated July 14, 1993, Docket No. 185,507-U.

¹² Unanimous Settlement Agreement, October 12, 2017, paragraph 8.

1 claims relating to the MGP sites, including but not limited to claims for
2 [third-party damages], claims for injunctive relief, declaratory
3 judgements, claims pertaining to nuisance and/or claims formed
4 under the common law ("Non-MGP Costs").¹³
5

6 **Q. Did the Unanimous Settlement Agreement address how costs would be**
7 **recovered in a rate case?**

8 A. Yes. KGS would be allowed to seek approval to recover these costs in subsequent
9 rate cases. Among other things, the Unanimous Settlement Agreement established
10 parameters around the amortization of the deferred costs. In the first rate case
11 following the issuance of an AAO, it was agreed the MGP Costs deferred and included
12 in the case would be amortized over a 15-year period. This would be considered the
13 first tranche of MGP Costs. For any tranches of MGP Costs to be recovered in
14 subsequent rate cases, the amortization period proposed by KGS could not result in
15 customers paying greater than the net present value of 60 percent of MGP Costs. This
16 provision assured that KGS's shareholders would be required to pay for a portion of
17 the MGP Costs. In future cases, Staff and CURB could argue for a different
18 amortization period, resulting in a different sharing of cost between KGS investors and
19 customers. Once an amortization period has been approved by the Commission for a
20 particular tranche of costs, KGS, Staff and CURB agreed they would not argue for a
21 different amortization of the unamortized portion of the tranche in a subsequent rate
22 case.¹⁴

23 Additionally, the unamortized portion of MGP Costs would not be included in rate
24 base nor would carrying charges be applied.¹⁵

25 **Q. Was there a limit on the total MGP Costs that could be deferred to FERC Account**
26 **183.2?**

¹³ Id.

¹⁴ Id., paragraph 9.

¹⁵ Id.

1 A. Yes. As mentioned previously, Staff, CURB and KGS agreed to cap the dollar amount
2 of MGP Costs to be deferred. The Unanimous Settlement Agreement established a
3 cap of \$15 million net of insurance proceeds. If KGS expected future MGP Costs net
4 of insurance recoveries to exceed \$15 million, then the Company was required to file
5 an application in this docket to increase the limit under the AAO¹⁶

6 **Q. Did the Unanimous Settlement Agreement address how insurance proceeds**
7 **should be treated?**

8 A. Yes. All insurance proceeds (100 percent) paid to KGS for costs incurred in the
9 investigation and remediation work at MGP sites after January 1, 2017, were to be
10 used to offset the gross MGP Costs.

11 **Q. Was the Unanimous Settlement Agreement approved by the Commission?**

12 A. Yes. The Commission issued an order approving the Unanimous Settlement
13 Agreement on November 21, 2017. The Order Approving Unanimous Settlement
14 Agreement (“17-455 Order”) is attached as Exhibit JLB-6.

15 **Q. Has KGS submitted any tranches of MGP Costs for recovery since the**
16 **Commission’s approval of the Unanimous Settlement Agreement?**

17 A. Yes, consistent with the Unanimous Settlement Agreement and the 17-455 Order,
18 KGS has requested recovery of two tranches of MGP Costs. In Docket No. 18-KGSG-
19 560-RTS, KGS requested that approximately \$1.5 million in MGP Costs be amortized
20 over 15 years. The Commission approved a settlement agreement which included the
21 15-year amortization of these MGP Costs.¹⁷ In Docket No. 24-KGSG-610-RTS, KGS
22 requested that a second tranche of MGP Costs totaling approximately \$13.5 million

¹⁶ Id., paragraph 10.

¹⁷ Order Approving Partial Unanimous Settlement Agreement, Docket No. 18-KGSG-560-RTS (Feb. 5, 2019).

1 be amortized over 15 years. The Commission approved a settlement agreement
2 which included this amortization of the second tranche of MGP Costs.¹⁸

3 **V. KGS Proposal for Increased Cap and Regulatory Treatment**

4 **Q. Has KGS incurred MGP Costs that are in excess of the \$15 million cap
5 established in this docket?**

6 A. Yes. KGS has incurred actual MGP Costs, net of insurance proceeds, which exceed
7 the \$15 million cap by approximately \$2.35 million. From discussions with Staff and
8 CURB during periodic meetings to discuss progress on investigative and remediation
9 work at MGP sites, KGS believed Staff preferred that KGS receive KDHE approval of
10 a remediation plan for Atchison to gain a better understanding of potential future MGP
11 Costs before requesting an increase to the cap. However, factors beyond KGS's
12 control can affect the KDHE's timeline to review a Corrective Action Study and approve
13 a preferred remediation path. Because KGS has been incurring MGP Costs in excess
14 of the cap since August 2022, and because the Unanimous Settlement Agreement
15 requires a filing to increase the cap when this occurs, the Company believes it is
16 reasonable to make this request to increase the cap for expenses covered by the AAO
17 while work on the remediation plan for Atchison progresses.

18 **Q. What is the proposed cap for MGP Costs?**

19 A. KGS is proposing to set the new cap at a total of \$32.0 million or to increase the current
20 cap by \$17.0 million.

21 **Q. How was the proposed cap for MGP Costs developed by KGS?**

22 A. KGS reviewed the MGP Costs incurred by MGP site and by month from August 2022
23 through October 31, 2024. This amount was approximately \$3,831,838. Insurance
24 proceeds of \$1,481,460 were subtracted from this amount resulting in net MGP Costs

¹⁸ Order Approving Unanimous Settlement Agreement, Docket No. 24-KGSG-610-RTS (Oct. 3, 2024).

1 of \$2,350,378. Additionally, KGS reviewed the remaining environmental reserve by
2 MGP site as of October 31, 2024, which totals \$17,002,599. The balance of the
3 environmental reserve is KGS's current estimate of future expenditures related to
4 investigation and remediation work at MGP sites managed by KGS under the KDHE
5 Consent Order. The net MGP Costs in excess of the cap together with the reserve,
6 \$32 million, represent a reasonable proposed cap. Please see Exhibit JLB-7 for a
7 summary of the costs incurred by MGP site by month since August 2022 and the
8 reserve balance by MGP site.

9 **Q. Do KGS investors anticipate that the Company will be requesting an increase to**
10 **the cap and the continued opportunity to recover MGP Costs?**

11 A. Yes. In the Forms 10-Q and Forms 10-K that are filed with the Securities and
12 Exchange Commission, ONE Gas includes information concerning the recovery of
13 costs associated with the remediation of MGP sites. For example, in the Form 10-Q
14 filed by ONE Gas for the period ending September 30, 2024, ONE Gas stated the
15 following:

16 We have an AAO that allows Kansas Gas Service to defer and seek
17 recovery of costs necessary for investigation and remediation at,
18 and nearby, these 12 former MGP sites that are incurred after
19 January 1, 2017, up to a cap of \$15 million, net of any related
20 insurance recoveries. Costs approved for recovery in a future rate
21 proceeding would then be amortized over a 15-year period. The
22 unamortized amounts will not be included in rate base or
23 accumulate carrying charges. Following a determination that future
24 investigation and remediation work approved by KDHE exceeds
25 \$15 million, net of any related insurance recoveries, Kansas Gas
26 Service will be required to file an application with the KCC for
27 approval to increase the \$15 million cap. In January 2024, we
28 received \$1.5 million in insurance proceeds for remediation costs
29 related to these sites. At September 30, 2024 and December 31,
30 2023, we have deferred \$30.4 million and \$32 million, respectively,
31 for accrued investigation and remediation costs pursuant to our

1 AAO. Kansas Gas Service expects to file an application in the first
2 quarter of 2025 for amounts deferred in excess of the cap.¹⁹
3
4

5 **Q. What is the effect of increasing the AAO cap on KGS's customers?**

6 A. Both KGS and its customers would continue to share in the cost to remediate former
7 MGP sites. There would continue to be significant review of the MGP Costs.
8 Remediation work is only performed after KDHE review. As Ms. Romi indicates in her
9 testimony, a comprehensive Corrective Action Study must be prepared for each MGP
10 site and KDHE must issue an Agency Decision Statement that selects the preferred
11 remedy. Staff and CURB would continue to review the costs incurred by KGS to
12 implement the remediation approved by KDHE. KGS would continue to provide
13 documentation with the annual reporting requirement as well as any additional
14 requested support during a rate case review. Any effect on the rates paid by KGS
15 customer only occurs following the review of and the approval of an amortization of
16 the MGP Costs in the context of a rate case.

17 **Q. Is KGS requesting any additional changes to the regulatory treatment and**
18 **reporting requirements set out in the Unanimous Settlement Agreement**
19 **approved by the Commission?**

20 A. No. KGS is requesting that all other provisions of the Unanimous Settlement
21 Agreement remain in place. That is, the following provisions would be maintained:

- 22 • the definition of MGP Costs;
- 23 • the amortization period proposed by KGS for recovery of MGP Costs cannot
24 result in customers paying greater than the net present value of 60 percent of
25 MGP Costs;

¹⁹ Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Quarterly Period Ended September 30, 2024, pages 21 -22.

- 1 • Staff and CURB may propose an amortization period which results in a different
- 2 level of sharing;
- 3 • the amortization period for a particular tranche of MGP Costs cannot be
- 4 modified once approved by the Commission;
- 5 • MGP Costs will not be included in rate base and no carrying charge will be
- 6 applied;
- 7 • 100 percent of insurance proceeds will be utilized to offset MGP Costs;
- 8 • The annual reporting requirements; and,
- 9 • the notification requirement for anticipated remediation projects with costs
- 10 expected to exceed \$1 million.

11 **Q. How will any potential MGP Costs in excess of KGS's proposed cap be treated?**

12 A. KGS would be required to submit a new application in this docket to propose an

13 increase to the cap to capture MGP Costs incurred in the future which are in excess

14 of the new cap. By retaining all other terms of the Unanimous Settlement Agreement,

15 KGS will be required to present information to all stakeholders supporting the need to

16 adjust the cap. As indicated by Ms. Romi, Corrective Action Studies have not been

17 developed for several MGP sites. As these studies are developed, it is possible that

18 KGS will need to adjust the environmental reserve to reflect estimates of additional

19 MGP Costs that have been refined as the details of the remediation work become

20 known as well as to reflect the then current cost environment. To the extent required,

21 the Company would request a further increase in the cap based on then available

22 information.

23 **Q. Does this conclude your testimony.**

24 A. Yes, it does.

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Janet L Buchanan, being duly sworn upon her oath, deposes and states that she is the Director of Rates and Regulatory Reporting for Kansas Gas Service, a division of ONE Gas, Inc., that she has read and is familiar with the foregoing Testimony filed herewith; and that the statements made therein are true to the best of her knowledge, information, and belief.



Janet L. Buchanan

Subscribed and sworn to before me this 19th day of December 2024.



NOTARY PUBLIC

My appointment Expires:

06/21/2026

STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT
CONSENT ORDER

WESTERN RESOURCES INC.
Case No. 94-E-0172

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DEPARTMENT

TABLE OF CONTENTS

ARTICLE I.	JURISDICTION	1
ARTICLE II.	STATEMENT OF PURPOSE	2
ARTICLE III.	STATEMENT OF FACTS	3
ARTICLE IV.	CONCLUSIONS OF LAW	5
ARTICLE V.	DETERMINATIONS	6
ARTICLE VI.	WORK TO BE PERFORMED	6
ARTICLE VII.	DESIGNATED PROJECT COORDINATORS	10
ARTICLE VIII.	ACCESS AND DATA DOCUMENT AVAILABILITY	11
ARTICLE IX.	RECORD PRESERVATION	13
ARTICLE X.	RESERVATION OF RIGHTS	14
ARTICLE XI.	REIMBURSEMENT OF COSTS	14
ARTICLE XII.	SUCCESSFUL COMPLETION OF THE RESPECTIVE ACTIVITY	15
ARTICLE XIII.	FORBEARANCE FROM ADDITIONAL STUDIES	15
ARTICLE XIV.	OTHER CLAIMS	16
ARTICLE XV.	OTHER APPLICABLE LAWS	16
ARTICLE XVI.	LIABILITY	16
ARTICLE XVII.	EFFECTIVE DATE	17
ARTICLE XVIII.	PENALTIES FOR NON-COMPLIANCE	17
ARTICLE XIX.	SUBSEQUENT MODIFICATION	17
ARTICLE XX.	PARTIES BOUND	18
ARTICLE XXI.	FORCE MAJEURE	19
ARTICLE XXII.	DISPUTE RESOLUTION	20
ARTICLE XXIII.	ADDITIONAL SIGNATORIES	20
ARTICLE XXIV.	TERMINATION AND SATISFACTION	21
ARTICLE XXV.	CONTRIBUTION AND PROTECTION/EFFECT OF SETTLEMENT	21

STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT
CONSENT ORDER

IN THE MATTER OF:)	CONSENT ORDER
)	
)	
WESTERN RESOURCES INC.)	No. 94-E-0172

ARTICLE I. JURISDICTION

1. This Consent Order is entered into by Western Resources Inc. (hereinafter referred to as "Western Resources" or "Respondent") and the Kansas Department of Health and Environment (hereinafter, "KDHE") pursuant to K.S.A. 65-3430, 65-3453 and 65-3455. The Consent Order concerns the performance by Western Resources of certain environmental investigation and remedial activities at a former manufactured gas plants ("MGPs" or "Sites") located across the State of Kansas. The legal description of each Site is included in Exhibit A which is attached hereto and incorporated into this Consent Order.

2. Respondent's participation in this Consent Order shall not constitute or be construed as an admission of liability, for any purposes, or an admission of KDHE's findings or determinations contained in this Consent Order. However, by signing this Consent Order, Respondent consents to KDHE's jurisdiction to issue this Consent Order, and agrees to comply with and be bound by the terms of this Consent Order and will not contest the Secretary's jurisdiction to enforce the terms of this Consent Order in

accordance with K.S.A. 65-3453.

3. In the event that the applicable Kansas or federal environmental statutes are modified or amended after the effective date hereof, and except for completed actions and/or operable units, KDHE and Respondent agree that any activities required to be performed at the Site (or at additional Sites as mutually agreed by the Parties) pursuant to this Consent Order will be subject to the newly modified or amended Kansas or federal environmental statutes.

4. Western Resources and KDHE acknowledge that the MGPs listed on Exhibit "A" were owned and/or operated by multiple corporate entities and/or individuals and that the real estate constituting the Site may be owned by parties who did or did not own/operate the Site. The MGPs listed on Exhibit "A" are presented for informational purposes only and do not constitute an admission of liability, for any purposes, by Western Resources. KDHE has not at this time made findings or determinations that Western Resources is a liable party at the MGPs listed on Exhibit "A".

5. Western Resources may present information to KDHE that evidences or refutes that Western Resources, its predecessors, or other unrelated corporate and/or individual parties are potentially liable at a specific MGP. KDHE agrees to consider such information and determine an appropriate course of action.

ARTICLE II. STATEMENT OF PURPOSE

1. In entering into this Consent Order, the mutual objective of KDHE and the Respondent is to expedite effective response activity to determine the source, nature, extent and impact of MGP contamination by performing one or more of the following

activities: PA, CI/CAS, CAP/CA, RI/FS, RD/RA, SI, ESI or removal or other remedial action as mutually agreed upon by the parties in accordance with the selected respective Statement of Work ("SOW"), if one exists or a modified SOW agreed to by both parties. In the event that a CERCLA response action is selected, the work shall be undertaken in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300 et seq. commonly referred to as the "NCP").

2. Western Resources and KDHE intend that this Consent Order may be modified, upon the parties' mutual consent, to add or delete MGP's for appropriate environmental investigation activities. Either Western Resources or KDHE may propose to add or delete MGP sites under the provisions of Article XIX of this Consent Order. The exact format and procedures for subsequent environmental investigations and/or removal and/or other remedial action(s) must be mutually agreed upon by the parties.

ARTICLE III. STATEMENT OF FACTS

1. Beginning in the 1850's, the manufactured gas industry provided gas service in Kansas.

2. Manufactured gas plants produced gas for lighting and heating purposes by converting coal (and sometimes coal and petroleum) into a gas product.

3. The United States Environmental Protection Agency has estimated that manufactured gas plants operated at over 1500 locations throughout the United States.

4. The availability of natural gas delivered by pipeline made manufactured gas obsolete and manufactured gas production was

limited to peaking loads and finally was terminated by the 1950's.

5. By-products of manufactured gas production such as coal tar were produced because the coal was not wholly consumed during manufacturing. Coal tars were valuable by-products and were typically stored on-site for sale and transported to users as an ingredient in the manufacture of asphalt, cosmetics, chewing gum, plastics and other products.

6. Residuals of manufactured gas production include certain substances that possessed no economic value such as emulsified coal tars, purifier (or oxide) box materials, clinker and sometimes petroleum. Residuals may have been stored on-site in a variety of above and below ground structures.

As a purification step during the production of manufactured gas, oxide boxes were commonly used to remove contaminants from the manufactured gas. Purifier box materials typically consist of wood chips, iron oxide, and chemicals removed from the manufactured gas during purification, such as iron sulfides and stable ferrocyanide complexes. Weathered spent oxide box filler exhibits an intense blue pigmentation caused by ferric ferrocyanide, $Fe_4[Fe(CN)_6]_3$, a chemical compound which is used commercially as a pigment and is commonly known as Prussian Blue. The Merck Index lists the use of Prussian Blue as a pigment in applications such as printing inks, paints, alkyl resin enamels, linoleum, carbon papers and artists colors.

7. Some MGP's have been listed on the United States Environmental Protection Agency's National Priorities List because the presence of coal gasification residuals were found to present a significant exposure risk to human health or the environment.

8. Chemical constituents which have been found in coal gasification residuals include polynuclear aromatic hydrocarbons, volatile aromatics, metals, phenolics and various inorganics.

9. Western Resources and KDHE recognize that the manufactured gas industry's past practices were state-of-the art at the time, but that these historic practices may not reflect modern environmental requirements.

10. The Respondent desires to insure that the public health, welfare and the environment at or near the Site is protected from any release or threat of release of hazardous substances.

11. Site specific Findings of Fact are set forth in Exhibit 2, attached hereto.

ARTICLE IV. CONCLUSIONS OF LAW

The following Conclusions of Law are not admitted or consented to by the Respondent, but have been determined solely by KDHE for purposes of this Consent Order only.

1. Certain of the waste previously described and the constituents thereof released or threatened to be released are "hazardous substances" as defined in K.S.A. 65-3452a.

2. Under the terms of Article I, Paragraph 5, of this Consent Order, the KDHE may determine that at certain MGPs, the Respondent is a "person responsible for the health or environmental hazard created by the hazardous substance" as defined in K.S.A. 65-3453(a)(3). Other corporate entities and/or individuals not identified in this Consent Order may also be a person responsible for the health or environmental hazard created by the hazardous substance.

ARTICLE V. DETERMINATIONS

Based on the Statement of Facts and Conclusions of Law set forth above, which are not admitted or consented to by the Respondent, KDHE has determined that the actual or threatened or potential releases(s) of hazardous substances into the surface water and ground water, and onto the soils of the Site constitutes an actual or potential threat to public health and the environment. KDHE finds that the actions required by this Consent Order are in accordance with K.S.A.'s 65-3443, 65-3453 and 65-3455, and are necessary to protect the public health and the environment.

ARTICLE VI. WORK TO BE PERFORMED

It is hereby AGREED TO AND ORDERED that, following Respondent's selection of a response action for a specific site and KDHE's approval of that selection, Respondent will prepare a draft Work Plan consistent with the appropriate KDHE Scope of Work ("SOW") appearing on Page 3.

1. Within ninety (90) days of the mutual selection of the response action for a specific site in accordance with Article II, Western Resources shall submit the respective draft Work Plan to KDHE. All submittals shall be developed in accordance with this Consent Order, the SOW and those portions of applicable guidance documents provided by KDHE.

The Work Plan shall describe the field activities called for in the Statement of Work. The Work Plan shall be developed consistent with the NCP, if appropriate, and in accordance with appropriate U.S. EPA and KDHE guidance.

2. Western Resources shall, implement the work described in

the Work Plan in accordance with the implementation schedule contained in the approved Work Plan for the Site. As approved, each component of the Work Plan, and approved modifications thereto, shall be deemed incorporated into this Consent Order and made an enforceable part of this Consent Order. All work shall be conducted in accordance with, and not inconsistent with the Act, CERCLA, the NCP (if appropriate) and any amendments thereto, and the requirements of this Consent Order, including any standards, specifications, and schedules contained in the Statement of Work and the Work Plan.

3. Each MGP-specific Work Plan shall contain an implementation schedule which outlines the schedule for submission of deliverables for the response action.

4. The Quality Assurance Project Plan ("QAPP") shall, at a minimum, describe the quality control, quality assurance, sampling protocol, and chain of custody procedures that shall be implemented in carrying out the tasks required by this Consent Order. The QAPP shall be developed in accordance and not inconsistent with the U.S. EPA "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80), EPA-600/4-83-004; NTIS PB 83-170514.

5. The Respondent shall prepare a Field Sampling Plan (FSP) specifying the necessary activities to obtain representative and valid site data as required by the SOW. The FSP shall state the sampling objectives; necessary equipment; sampling types, locations, and frequency; analysis of interest; and a schedule of sampling events. The FSP shall be prepared in accordance with the methods and procedures outlined in the United States Environmental

Protection Agency documents EPA/540/G-89/004 (Guidance for Conducting Remedial Investigation and Feasibility Study Under CERCLA) and EPA/540/P-87/001 (A Compendium of Superfund Field Operation Methods).

6. Western Resources shall submit a Site Health and Safety Plan. This Plan shall be in conformance with applicable Occupational Safety and Health Administration and EPA requirements, including, but not limited to, those at 29 C.F.R. Part 1910. KDHE may review and comment on the Site Health and Safety Plan, however KDHE will not approve or disapprove the Site Health and Safety Plan.

7. Respondent shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of KDHE, Respondent shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, KDHE shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Consent Order. KDHE shall notify Respondent at least seven (7) days before conducting any sampling under this Consent Order, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity.

8. The Respondent shall provide KDHE with written quarterly Site specific progress reports. At a minimum these progress reports shall: (1) describe the actions taken to achieve compliance

with the Consent Order for the reporting period; and (2) describe the actions scheduled for the next reporting period. These reports shall be mailed to KDHE by the tenth day of each quarter following the date of this Consent Order. These progress reports shall continue until the earlier of three events occurs: Respondent submits the respective final Site specific document and such Site specific document is approved by KDHE; KDHE discontinues the progress report requirement in writing; or until the termination of this Consent Order pursuant to ARTICLE XXIV.

9. After review of each plan, report, or other item which is required to be submitted for approval pursuant to this Consent Order, KDHE will:

- a. approve, in whole or in part, the submission;
- b. approve the submission upon specified conditions;
- c. disapprove, in whole or in part, the submission directing the Respondent to modify the submission; or
- d. any combination of the above.

After receipt of Notice of Disapproval (in whole or in part), the Respondent may either: (1) amend and submit to KDHE revised reports and perform such additional or modified work to cure the deficiencies in the reports or work agreed to in accordance with KDHE's recommendations, or (2) invoke the Dispute Resolution procedures in ARTICLE XXII.

In the event of subsequent disapproval of such revised reports or additional or modified work and subsequent invocation by Respondent of the Dispute Resolution procedures in ARTICLE XXII, KDHE retains the right to perform additional or modified work, prepare the reports, pursuant to its authority under K.S.A. 65-

3453(a), and/or undertake any judicial or other remedy available to it by law.

10. If the response action is pursuant to CERCLA, the activities conducted by the Respondent pursuant to this Consent Order under and consistent with the approved Work Plan, are believed to be consistent with the National Contingency Plan.

ARTICLE VII. DESIGNATED PROJECT COORDINATORS

Within fifteen (15) days of the effective date of this Consent Order, the Respondent shall designate a Project Coordinator, and KDHE hereby designates Gary Watkins as its Project Coordinator. The Project Coordinators so designated shall be responsible for overseeing the duties and responsibilities of their respective parties. It is understood that the Respondent's Project Coordinator shall not have responsibility for overseeing the discharge of the responsibilities of KDHE; and, likewise, KDHE's project Coordinator shall not have responsibility for overseeing the discharge of the responsibilities of the Respondent. Communications between KDHE and the Respondent and all documents, including reports, approvals and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

The Respondent and KDHE each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) business days prior to the change.

The absence of KDHE's Project Coordinator at the work site

shall not be cause for stoppage of work, nor cause for rejection of the results of any work.

The Project Coordinators do not have the authority to modify in any way the terms of this Order except as provided under ARTICLE XIX of this Consent Order.

ARTICLE VIII. ACCESS AND DATA DOCUMENT AVAILABILITY

To the extent that the Respondent controls the Site, KDHE and/or its authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times without prior notification for the purposes of, among others: inspecting data records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the provisions of this Consent Order; conducting such tests as KDHE or the Project Coordinator deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to KDHE by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, pertaining to work undertaken pursuant to this Consent Order. Nothing contained herein shall be deemed a waiver of the attorney-client privilege or the protection provided by the attorney work product doctrine.

To the extent that the Site or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than the Respondent, Respondent shall use reasonable efforts to secure from such persons access for Respondent, as well as for KDHE, and its

representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Order. In the event Respondent is unsuccessful, KDHE agrees to assist Respondent in gaining such access.

The Respondent may assert a business confidentiality claim covering part or all of the information submitted pursuant to the terms of this Consent Order in the manner set out in K.S.A. 65-3447. The information covered by such a claim will be disclosed by KDHE only to the extent, and by the means of the procedures, set forth in K.S.A. 65-3447. Such a claim may be made by placing on the information, at the time it is submitted to KDHE, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by KDHE. If confidential treatment is sought only until a certain date or until occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by KDHE, it may be made available to the public by KDHE without further notice to the Respondent.

All of the above shall not be subject to notice by KDHE to the Respondent of KDHE's intention to exercise its rights to conduct inspections, including the authority to make copies of tests, test results, pictures, sound recordings and documents. Notwithstanding the above, at least five (5) business days notice shall be given to the Respondent prior to KDHE's exercising of said right if KDHE requests the presence of the Respondent's contractor.

ARTICLE IX. RECORD PRESERVATION

The Respondent shall preserve, during the period of this Consent Order and for a minimum of six (6) years after the Consent Order's termination, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Sites or work performed pursuant to this Consent Order, notwithstanding any document retention policy to the contrary. The records and documents may be retained by the Respondent on microfilm or other appropriate medium. After this six year period, the Respondent shall notify KDHE not less than sixty (60) calendar days prior to the destruction of any such documents. Upon request by KDHE, the Respondent shall make available to KDHE, such records or copies of any such records. Said documents may be destroyed and/or discarded by Respondent if KDHE does not request records within sixty (60) days. Notwithstanding the foregoing, any and all records and documents referenced above may be destroyed without notice ten (10) years after the termination of this Consent Order.

All attorney documents, and all internal memorandums, letters and other such material of Respondent, not submitted to KDHE, between Respondent and its affiliated corporations, their directors, officers, and employees, or the officers, employees, and representatives of Respondent, are deemed confidential by Respondent. KDHE does not admit these documents are privileged for the purpose of discovery.

ARTICLE X. RESERVATION OF RIGHTS

1. It is agreed between KDHE and the Respondent that the

Respondent will undertake studies and actions under this Consent Order with the State of Kansas as represented by KDHE, and that the Respondent intends to continue such work with KDHE for compliance with the terms of this Consent Order. Should it be determined subsequent to the entry of this Consent Order that additional tasks not mentioned in this Consent Order need to be accomplished, KDHE reserves the right to require the Respondent to perform these additional investigative and/or remedial tasks consistent with the scope and intent of this Consent Order. In the event that Respondent declines to perform any additional or modified tasks, the Respondent reserves the right to seek Dispute Resolution.

ARTICLE XI. REIMBURSEMENT OF COSTS

The Respondent shall, pursuant to K.S.A. 65-3453(a)(4), reimburse KDHE for response (including, if appropriate, development of a baseline risk assessment, community relation plan, public information program and maintenance of the administrative file) and oversight costs incurred with respect to this Consent Order. KDHE agrees to provide Respondent a Site specific written description of its costs and expenses (including its contractors). KDHE hereby agrees to waive and forego collection from the Respondent of any and all response and oversight costs incurred prior to the date of this Consent Order. Future reimbursement demands for KDHE costs and expenses incurred after the effective date of this Consent Order will be sent to the Respondent and payment is due within sixty (60) calendar days of receipt of the accounting, except for those charges which are contested. Contested charges are subject to dispute resolution.

ARTICLE XII. SUCCESSFUL COMPLETION OF THE RESPECTIVE ACTIVITY

Upon completion of the requirements of this Consent Order, including the payment of response and oversight costs incurred by KDHE in accordance with ARTICLE XI, KDHE shall use its best efforts to issue within thirty (30) days certification to the Respondent that the responsibilities under this Consent Order have been completed and successfully discharged and that the work as performed on the specific site is believed to be consistent with the provisions of the National Contingency Plan.

ARTICLE XIII. FORBEARANCE FROM ADDITIONAL STUDIES

KDHE agrees that the activities being undertaken by the Respondent for this Site constitute the only response action which KDHE is undertaking or is causing to be undertaken for the Site. The parties hereto understand and agree that other governmental agencies may have jurisdiction over the subject matter of this Order and that it is in the public interest to conduct the response action for this Site consistent with all applicable programs.

The above paragraph shall not preclude KDHE from undertaking or causing to be undertaken any investigations that may be necessary to study conditions at or near the Site which presents actual or potential threats to the public health or welfare or the environment. In the event that KDHE determines that such further investigations are necessary, KDHE agrees to use its best efforts to avoid duplication of and interference with the Respondents' activities under this Consent Order, and shall initiate such studies or require the Respondent to initiate such studies only after notice to the Respondent of KDHE's intent and statement of

facts supporting the need for such studies.

ARTICLE XIV. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release by any party of any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from each Site.

ARTICLE XV. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable, local, state, and federal laws and regulations. It is understood that both KDHE and the Respondent shall notify each other of all applicable, local, state, and federal laws and regulations.

ARTICLE XVI. LIABILITY

Neither the State of Kansas nor the Respondent, nor any agent thereof shall be liable for any injuries or damage to persons or property from acts or omissions of the other, nor its servants, receivers, trustees, successors or assigns, including but not limited to firms, corporations, subsidiaries, contractors, or consultants in carrying out activities required of the parties to

this Consent Order and pursuant to this Consent Order. Neither the State of Kansas, nor any agency thereof shall be held out as a party of any contract entered into by the Respondent in carrying out activities pursuant to this Consent Order.

ARTICLE XVII. EFFECTIVE DATE

The effective date of this Consent Order shall be the date last inscribed on the signature page.

ARTICLE XVIII. PENALTIES FOR NON-COMPLIANCE

The Respondent is advised that violation or failure or refusal to comply with this Consent Order, or any portion thereof, may subject the Respondent to civil penalties under K.S.A. 65-3419, K.S.A. 65-170d and/or K.S.A. 65-3444. If said failure is caused by KDHE's delay, Respondent shall be given time commensurate with said delay to effect a cure prior to the imposition of any penalty. The Respondent reserves the right to contest any such penalties. Penalties shall not accrue during good faith dispute about work to be performed or during good faith contests of penalties assessed.

ARTICLE XIX. SUBSEQUENT MODIFICATION

This Consent Order may be amended only by the mutual agreement of KDHE and the Respondent. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by KDHE and the Respondent. The Respondent may, upon mutual agreement with KDHE and in accordance with the provisions of this ARTICLE XIX, modify this Consent Order so that another Site (or Sites) is made part of this Consent Order, in

which case such additional Site (or Sites) shall be subject to the provisions of this Consent Order.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by KDHE, incorporated into this Consent Order. Any noncompliance with such approved reports, plans, specifications, schedules and attachments may be considered by KDHE to be failure to achieve the requirements of this Consent Order and, upon conclusion of the Dispute Resolution procedures set forth in ARTICLE XXII may subject the Respondent to appropriate penalties as provided by law.

No formal advice, guidance, suggestions, or comments by KDHE regarding reports, plans, specification, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Such advice or suggestions shall not be binding upon Respondent unless committed to writing as modifications to this Consent Order.

ARTICLE XX. PARTIES BOUND

This Consent Order shall apply to and be binding upon KDHE and the Respondent, their agents, successors, and assigns and upon all persons, contractors, and consultant acting under or for either KDHE or the Respondent or both. This Consent Order shall not be interpreted to in any way restrict Respondent's ability to transfer assets or real property. The Respondent shall provide a copy of this Consent Order to each contractor, sub-contractor, and consultant retained to conduct any portion of the work performed pursuant to this Consent Order prior to said contractor's, sub-

contractor's, or consultant's initiation of work to be conducted under this Consent Order, unless such work has already been initiated or completed prior to the date of this Consent Order, in which case a copy shall be provided as soon thereafter as is reasonably practicable.

ARTICLE XXI. FORCE MAJEURE

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proof that the delay was caused by circumstances beyond the reasonable control of the Respondent which could not have been overcome by due diligence. The Respondent shall promptly notify KDHE's Project Coordinator orally within seven (7) days and shall, within twenty-one (21) calendar days of such oral notification to KDHE, notify KDHE in writing of the anticipated length and cause of the delay, and measures taken and/or to be taken to prevent or minimize the delay, and timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to request a waiver of the requirements of this Consent Order.

ARTICLE XXII. DISPUTE RESOLUTION

If the Respondent objects to any decision made by KDHE pursuant to this Consent Order, the Respondent shall notify KDHE in writing of their objections within fourteen (14) days of receipt of the decision. KDHE and the Respondent shall then have an additional sixty (60) days from the receipt by KDHE of the notification of objection to reach agreement. After this sixty (60) day period, KDHE shall immediately provide a written statement of its decisions to the Respondent. No liability of any kind, including penalties, shall accrue or be payable during the period of the Dispute Resolution. The decision of KDHE is final agency action subject to judicial review under Kansas Judicial Review Act (K.S.A. 77-601 et seq.) in the event the agency decision is arbitrary and capricious.

ARTICLE XXIII. ADDITIONAL SIGNATORIES

Other parties who wish to assist in achieving the purposes of this Consent Order may become Respondent - signatories to the Consent Order after its original effective date upon the concurrence of KDHE and the Respondent. Any party that becomes a Respondent - signatory after the effective date of this Consent Order shall be deemed, for the purposes of its rights and obligations under this Consent Order, to have been a signatory Respondent as of the effective date of this Consent Order.

ARTICLE XXIV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied thirty (30) days after completion of the requirements of ARTICLE VI

and the payment of response and oversight costs incurred by KDHE in accordance with ARTICLE XI. KDHE shall use its best efforts to issue within thirty (30) days certification to the Respondent that the responsibilities under this Consent Order have been completed and successfully discharged and that the work is believed to be consistent with the provisions of the National Contingency Plan, if appropriate. Any questions regarding this Order should be directed to:

Gary Watkins
Kansas Department of Health and Environment
Bureau of Environmental Remediation
Forbes Field, Building 740
Topeka, Kansas 66620-0001

ARTICLE XXV. CONTRIBUTION AND PROTECTION/EFFECT OF SETTLEMENT

The Parties agree that the Respondent, with regard to claims for Contribution against the Respondent for matters addressed by this Consent Order, is entitled to such protection from contribution actions or claims as provided by Kansas or federal law.

IN WITNESS WHEREOF, KDHE and the Respondent have executed this document by their duly authorized representatives on the respective dates written hereunder.

This Consent Order shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

Robert C. Harder
Robert C. Harder, Secretary
Kansas Department of Health
and Environment

10/7/94
Date

R.M. Haden
Richard M. Haden
Executive Vice President
Field Services
Kansas Power & Light Company

9-15-94
Date

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of October 1994, I deposited a true and correct copy of the above and foregoing Consent Order in the United States Mail, postage prepaid, and addressed to:

Jeffrey Southard
Western Resources Legal Department
818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601

Sheesa Johnson
KDHE Staff Person

EXHIBIT A

Location of Site - City	Address (Legal Description)
Hutchinson	200 West Second {Lots 44, 46, 48, 50, 52, 54, 56 & 58, Second Avenue West, City of Hutchinson, Kansas}
Leavenworth	Short and South Main Sts. {Commencing at the NE corner of Block N, City of Leaven- worth Proper; thence West to the East line of Main Street; thence South on said East line of Main Street 150 feet; thence East to the East line of said Block N; thence North on the East line of said block to the place of begin- ning (commencing point), being a tract measuring 150 feet by 110 feet}
	and
	{All that part and portion of Block N, City of Leavenworth Proper; lying between Main and Second Streets and South of Short Street}

Manufactured Gas Plant Consent Order History/Summary

92-E-493: KDHE/Western Resources, Inc. (WRI)

- WRI agreed to do preliminary assessments at 20 MGP sites listed on the EPA's National Priorities List (under CERCLA Superfund)
- The list of 20 included the 12 sites that came to OGS

94-E--172: KDHE/Western Resources, Inc. (WRI)

- WRI agreed to conduct investigations and remediations at Hutchinson and Leavenworth
- WRI agreed to accept the terms of this CO for any other sites added at a later date.

Amendment 1: January 17, 1996

- Added Newton site

Amendment 2: August 13, 1996

- Added Parsons site

Amendment 3: October 8, 1996

- Added Kansas City site (2 parcels)

Amendment 4: December 10, 1997

- Added WAI, Inc. (ONEOK) as Respondent-Signatory
- WAI excluded from Newton site, excluded if Arkansas City and/or Pittsburg added

Amendment 5: January 13, 2003

- Added Arkansas City site (West Star Energy)

Amendment 6: May 5, 2003

- Changed Western Resources, Inc. to Westar Energy, Inc.
- Changed WAI, Inc. to ONEOK, Inc., added 8 sites to ONEOK liability

Abilene	Junction City
Atchison	Manhattan
Concordia	Salina
Emporia	Topeka

Amendment 7: July 26, 2010

- Added Pittsburg site (West Star Energy)

Amendment 8: January 31, 2014 (Labeled "Eighth Amendment")

- Added and substituted ONE Gas, Inc. as a Respondent in place of ONEOK.

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

WESTAR

IN THE MATTER OF)
WESTERN RESOURCES, INC.)
)
)
_____)

Case No. 94-E-0172

AMENDMENT TO CONSENT ORDER

Now on this 17 day of January, 1998, the Kansas Department of Health and Environment (KDHE) and Western Resources, Inc. mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E--0172 pursuant to Article XIX of said Order.

The parties hereby add the following site to Exhibit A:

The former manufactured gas plant ("MGP") site located at 206 West Second Street, Newton, Kansas ("Newton MGP").

The KDHE has determined that for the purposes of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the Newton MGP. Such release constitutes an actual or potential threat to public health and the environment. Said plant is hereby incorporated into and made a part of said order and is subject to all terms and conditions thereof.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

James J. O'Connell
James J. O'Connell, Secretary
Kansas Department of Health
and Environment

17 Jan 96
Date

R. M. Haden
Richard M. Haden
Executive Vice President
Field Services
Kansas Power & Light Company

12-19-95
Date

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing document was served this 18th day of JANUARY, 1996, by United States Mail, first class, postage prepaid, to the following:

Alan Kettle
WESTERN RESOURCES
818 Kansas Avenue
Topeka, Kansas 66603

Linda Smith Ward
KDHE Staff Person

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF)
WESTERN RESOURCES, INC.)
)
_____)

Case No. 94-E-0172

AMENDMENT TO CONSENT ORDER

Now on this 13th day of August, 1996, the Kansas Department of Health and Environment (KDHE) and Western Resources, Inc., mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 pursuant to Article XIX of said Order.

The parties hereby add the following site to Exhibit A:

The former manufactured gas plant ("MGP") site located at the southeast corner of the intersection of Morton and 21st Streets in Parsons, Kansas, described as Lots four (4), five (5), six (6), seven (7), and eight (8), Block Number eighty-nine (89) of the City of Parsons, Kansas. ("Parson MGP")

The KDHE has determined that for the purposes of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the Parson MGP. Such release constitutes an actual or potential threat to public health and the environment. Said Plant is hereby incorporated into and made a part of said order and is subject to all terms and conditions thereof.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

James F. O'Connell
James F. O'Connell, Secretary
Kansas Department of Health
and Environment

13 August 1996
Date

R. M. Haden
Richard M. Haden
Executive Vice President
Field Services
Western Resources, Inc.

7/19/96
Date

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing document was served this 15 day of August, 1996, by United States Mail, first class, postage prepaid, to the following:

Linda Smith Word
KDHE Staff Person

STATE OF KANSAS

RECEIVED

DEPARTMENT OF HEALTH AND ENVIRONMENT

NOV - 4 1996

IN THE MATTER OF)
WESTERN RESOURCES, INC.)
)
)
_____)

Case No. 94-E-0172

BUREAU OF ENVIRONMENTAL REMEDIATION

AMENDMENT TO CONSENT ORDER

Now on this 8th day of October, 1996, the Kansas Department of Health and Environment (KDHE) and Western Resources, Inc., mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 pursuant to Article XIX of said Order.

The parties hereby add the following site to Exhibit A:

The former manufactured gas plant ("MGP") site located at the northeast and southeast corners of the intersection of 3rd Street and Everett Avenue in Kansas City, Kansas, described as Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), Block Twenty-one (21), Wyandotte City, now in and a part of Kansas City, Wyandotte County, Kansas (in the southeast quarter of Section 3, Township 11, Range 25, in Wyandotte County, Kansas),

and

Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), Block Twenty-two (22), Wyandotte City, now in and a part of Kansas City, Wyandotte County, Kansas.

Commonly known as 1407 North 3rd Street, Kansas City, Kansas.

The KDHE has determined that for the purposes of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the

Kansas City, Kansas, MGP. Such release constitutes an actual or potential threat to public health and the environment. Said Plant is hereby incorporated into and made a part of said order and is subject to all terms and conditions thereof.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

James J. O'Connell
James J. O'Connell, Secretary
Kansas Department of Health
and Environment

8 Oct 96
Date

R. M. Haden
Richard M. Haden
Executive Vice President
Field Services
Western Resources, Inc.

8/9/96
Date

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing document was served this 9th day of October, 1996, by United States Mail, first class, postage prepaid, to the following:

Ginda Smith Ward
KDHE Staff Person

STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF)
WESTERN RESOURCES, INC.)
)
)
)
)
_____)

Case No. 94-E-0172

*Westar
= Ark City
= Newton
= Pittsburg*

AMENDMENT TO CONSENT ORDER

Now on this 10th day of December, 1997, the Kansas Department of Health and Environment ("KDHE"), Western Resources, Inc., and WAI, Inc., ("WAI") mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 ("Consent Order") pursuant to Article XXIII of said Order.

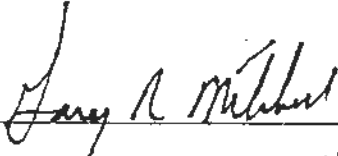
The parties hereby add WAI, Inc., as a Respondent-Signatory to assist in achieving the purposes of the Consent Order with the following exceptions:

1. The parties hereby agree that WAI will not be deemed a Respondent-Signatory for purpose of the Consent Order with respect to the former Manufactured Gas Plant ("MGP") site located at 206 West Second Street, Newton, Kansas ("Newton MGP"); and
2. Pursuant to Article II.2 of the Consent Order, the parties may mutually consent to add or delete former MGPs for appropriate environmental investigation activities. The parties hereby agree that if the parties ever add the former MGP sites located in Arkansas City, Kansas, and Pittsburg, Kansas, as requiring environmental investigation activities under this Consent Order, WAI will not be deemed a Respondent-Signatory with respect to those sites.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

*WAI = Oneok
WAI ≠ Westar Energy*

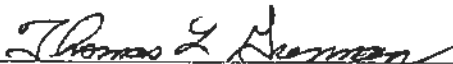
Kansas Department of Health and Environment



, Secretary

12-10-97
Date

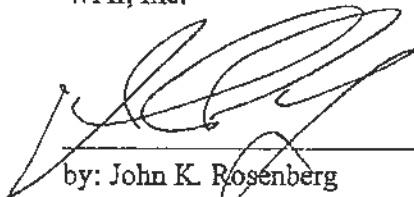
Western Resources, Inc.



by: Thomas L. Grennan
Title: Vice President, Generation Services

November 24, 1997
Date

WAI, Inc.



by: John K. Rosenberg
Title: President

November 24, 1997
Date

CERTIFICATE OF MAILING

I hereby certify that on this 11 day of December, 1997, a true and correct copy of the above and foregoing Amendment to Consent Order was deposited in the U.S. mail, postage prepaid, and addressed to:

Galen Biery
Legal Department
Western Resources, Inc.
818 Kansas Avenue
Topeka, Kansas 66612


KDHE Staff Member

*Rob - Jackie
File*

CONCURRENCE SHEET

BUREAU OF ENVIRONMENTAL REMEDIATION

	Name	Date	Comments
Project Manager			
Unit Chief			
Section Chief			
Bureau Manager	[Redacted]	11/4/97	Western Resources - One Oak - Amendment
Legal Office	<i>P. [Redacted]</i>	12/5/97	
Director of Legal	<i>J. Anderson</i>	12/8/97	
Director of Env.	<i>[Redacted]</i>	12/9/97	
Secretary	<i>gan</i>	12/10/97	

IN THE MATTER OF:

CASE NUMBER:

PLEASE RETURN TO OFFICE OF LEGAL SERVICES

*Re: Western Resources, Inc.
(94 E. 0172)*

*12/11/97 Signed Amendment to Consent
Order to Legal*

RECEIVED

DEC 11 1997

BUREAU OF ENVIRONMENTAL REMEDIATION



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

RECEIVED

December 11, 1997

DEC 12 1997

Western Resources, Inc.
Legal Department
Attn: Galen Biery
818 Kansas Ave.
Topeka, Kansas 66612

BUREAU OF
ENVIRONMENTAL
REMEDICATION

Re: Amendment to Western
Resources Consent Agreement

Dear Galen,

I am forwarding two copies of the above-referenced Amendment, which has been signed by the Secretary, to you for appropriate distribution.

Please advise if I need to take further action in this matter.

Happy Holidays,

L. Patricia Casey

STATE OF KANSAS
THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In the Matter of
Western Resources, Inc.

Case No. 94-E-0172

AMENDMENT TO CONSENT ORDER

Now on this 13th day of January, 2003, the Kansas Department of Health and Environment ("KDHE") and Western Resources Inc., mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 ("Consent Order") pursuant to Article XIX of said Order.

The parties hereby add the following site (hereinafter "Site") to Exhibit A:

The Arkansas City, Former Manufactured Gas Plant (Ark City FMGP) site address is, 715 south First Street, Arkansas City, Kansas, 67005. The site is located, " ... at a point 615.5 feet south and 30 feet west of the northeast corner of the northeast quarter [NE 1/4] of Section thirty-six (36), Township thirty-four (34) south, Range three (3) east. Thence south two hundred sixteen and 3/4 (216 3/4) feet to a stone. Thence westerly two hundred thirty and 3/4 (230 3/4) feet right of way of canal and a stone. Thence north westerly along said right of way two hundred forty three and 7/12 (243 7/12) feet to a stone. Thence easterly three hundred forty two (342) feet to beginning."

The KDIIE has determined that for the purposes of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the Site. Such release constitutes an actual or potential threat to public health and the environment. The Site is hereby incorporated into and made a part of said order and is subject to all terms and conditions thereof.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

Kansas Department of Health and Environment

Clyde D. Graeber

Clyde D. Graeber, Secretary

1-13-03
Date

Western Resources, Inc. , dba Westar Energy

By: *Kelly B. Harrison*

January 2, 2003
Date

Printed Name: Kelly B. Harrison

Title: VP - Regulatory

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of January, 2003, a true and correct copy of the above and foregoing Consent Order was deposited in the United States Mail, postage prepaid, and addressed to:

Kama J. Maruska
KDHE Staff Person

CZ-018-70044 2.0

Exhibit JLB-3

RECEIVED

JAN 15 2003

BUREAU OF ENVIRONMENTAL REMEDIATION



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
KATHLEEN SEBELIUS, GOVERNOR
Roderick L. Bremby, Secretary

January 15, 2003

Tom Brown, P.E.
Sr. Manager, Water and Waste Programs
818 South Kansas Avenue
PO Box 889
Topeka Kansas 66601

Re: Western Resources, Inc. (Arkansas City, Kansas)
Case No. 94-E-0172

Dear Mr. Brown:

Enclosed is your copy of the executed Amendment to Consent Order for the above referenced facility.

Thank you for your cooperation and if you have additional concerns or questions, feel free to contact Erika Bessey at (785) 296-5334.

Sincerely,
Kama J Maruska
Kama J Maruska
KDHE Staff Member

encl

pc John Cook

LEGAL SERVICES

Charles Curtis Building
1000 SW Jackson Suite 560
(785) 296-5334

Printed on Recycled Paper

Topeka, KS 66612-1368
FAX (785) 296-7119 or 291-3607

ONEOK AMENDMENT

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF)
WESTERN RESOURCES, INC.)
)
)
_____)

Case No. 94-E-0172

AMENDMENT TO CONSENT ORDER

Now on this 5th day of May, 2003, the Kansas Department of Health and Environment (KDHE), Westar Energy, Inc., formerly known as Western Resources, Inc., and ONEOK, Inc., formerly known as WAI, Inc., mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 pursuant to Article XIX of said Order.

The parties hereby add the following former manufactured gas plant (MGP) sites to Exhibit A of the subject Order:

ATCHISON COUNTY

Intersection of Main and South Seventh Streets in Atchison, Kansas, described as:

Lots Five (5) through Seven (7), Block Forty-six (46), Old Atchison,

AND

Lots One (1) through Three (3) Block Forty-seven (47), Old Atchison,

AND

Lots One (1) through Five (5), Block Five (5) in L.C. Challiss Addition to the City of Atchison, all in the City of Atchison, Atchison County, Kansas.

CLOUD COUNTY

410 Mill Street in Concordia, Kansas, described as:

A part of Mill Block 195 and vacated 2nd Street, City of Concordia, Cloud County, Kansas; more particularly described as follows:

A tract beginning at a point 150.0 feet North of the Northwest corner of Mill Block 176, City of Concordia, and on the East side of Republic Street, and South side of Mill Street; thence East on the South side of Mill Street and 150.0 feet North of the North line of said Block 176, 230.9 feet to the approximate East right of way line of the abandoned Union Pacific Railroad spur; thence Southerly 150.6 feet on the said approximate East right of way line to the North line of said Block 175 and 15.5 feet East of the Northwest corner of said Lot 7, Block 176; thence West on the North line of Block 176, 243.5 feet to the Northwest corner of said Block 176 and the East line of Republic Street; thence North on the East line of Republic Street, 150.0 feet to the point of beginning.

DICKINSON COUNTY

Intersection of South Mulberry and West South Second Streets in Abilene, Kansas, described as:

All of Lots numbered Five (5), Six (6), Seven (7), and Eight (8) in Block Ten (10), original Town of Abilene, Dickinson County, Kansas.

GEARY COUNTY

325 Southeast Fourth Street in Junction City, Kansas, described as:

A parcel of land in Lots numbered Two (2) and Three (3), Section Twelve (12), township Twelve (12), Range Five (5) East of the 6th principal meridian, Geary County, Kansas, described as follows: beginning at the southeast corner of Block Forty-one (41) in Junction City, running thence east to the west line of the right of way of the Union Pacific Railway Company, thence in a southerly direction along the west line of the right of way to a point in the east line of Block number fifty-seven (57) in Junction City, Kansas, where the west line of said right of way intersects said Block Fifty-seven (57); thence north along the east corporate limits of Junction City to the place of beginning.

LYON COUNTY

Intersection of East Third and North Mechanic Streets in Emporia, Kansas, described as:

Even Lots 30 through 42, Mechanics Street, City of Emporia, Lyon County, Kansas.

RILEY COUNTY

Intersection of South Eleventh and El Paso Streets in Manhattan, Kansas, described as:

Lots 437, 438, 439, and 440, Ward 5, City of Manhattan, Riley County, Kansas.

SALINE COUNTY

403 North Third Street in Salina, Kansas, described as:

Lots 14, 16, and 18, Block 50, Original Plat, City of Salina, Saline County, Kansas. (a/k/a Lots 14,16, and 18 on 3rd Street, Original Town of Salina)

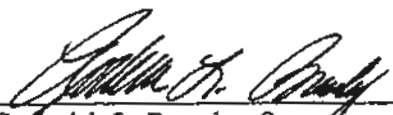
SHAWNEE COUNTY

200 East First Street in Topeka, Kansas, described as:

Odd Lots 13 through 23 on North Monroe Street; Even Lots 122 through 144 on East First Street; All in Crane's Addition to the City of Topeka, Shawnee county, Kansas.

The KDHE has determined that for the purposes of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the above listed MGP Sites. Such release constitutes an actual or potential threat to public health and the environment. Said sites are hereby incorporated into and made a part of said Order and are subject to all terms and conditions thereof.

This amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.


Roderick L. Bremby, Secretary
Kansas Department of Health
and Environment

5-5-03
Date

Kelly B. Ham
Westar Energy, Inc.

April 10, 2007
Date

[Signature]
ONEOK, Inc.



4/11/03
Date

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing document was served this 5th day of May, 2003, by United States Mail, first class, postage prepaid, to the following:

Westar Energy, Inc.
818 S. Kansas Avenue
Topeka, KS 66612
Attn: Martin J. Bregman
Executive Director, Law

ONEOK, Inc.
P.O. Box 871
Tulsa, OK 74102
Attn: Sue Griffin
Associate General Counsel

KANSAS DEPARTMENT OF HEALTH
AND ENVIRONMENT

Kama J. Maruska
By: Kama J. Maruska
Title: Senior Admin. Assistant



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Exhibit JLB-3
RECEIVED
MAY 06 2003
BUREAU OF
ENVIRONMENTAL REMEDIATION

May 5, 2003

ONEOK, Inc.
Attn: Sue Griffin
Associate General Counsel
PO Box 871
Tulsa, OK 74102

Westar Energy, Inc.
Attn: Martin J. Bergmann
Executive Director, Law
818 S Kansas Avenue
Topeka, KS 66612

Re: Western Resources, Inc.
Case No. 94-E-0172

Dear Ms. Griffin and Mr. Bergmann:

Enclosed is your copy of the executed Amendment to Consent Order for the above referenced facility.

Thank you for your cooperation and if you have additional concerns or questions, feel free to contact Erika Bessey at (785) 296-5334.

Sincerely,

Kama J Maruska

Senior Administrative Assistant

encl

pc John Cook

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF)	
)	Case No. 94-E-0172
WESTERN RESOURCES, INC.)	
)	
_____)	

AMENDMENT TO CONSENT ORDER

Now on this 26th day of July, 2010, the Kansas Department of Health and Environment (KDHE) and WESTAR ENERGY, Inc., (formerly known as Western Resources, Inc.), and ONEOK, Inc., (formerly known as WAI, Inc.), agree to amend the terms of the Consent Order entered into Case No. 94-E-0172 pursuant to Articles II and XIX of said Order by adding the following former manufactured gas plant (MGP) site to Exhibit A of the subject Order:

CRAWFORD COUNTY

The former manufactured gas plant ("MGP") site located at 2nd and Locust Streets (southwest corner), Pittsburg, Kansas ("Pittsburg MGP")

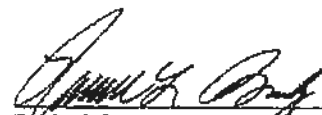
"Lots two hundred and eleven (211), two hundred and twelve (212), two hundred and thirteen (213), two hundred and fourteen (214), two hundred and fifteen (215), and two hundred and sixteen (216), Block thirty-nine (39) in the 'Town of Pittsburg' now the City of Pittsburg, Kansas, according to the plat thereof."

Provided however, that pursuant to the Amendment to Consent Order, dated December 10, 1997, wherein WAI, Inc, (now known as ONEOK, Inc.) was added as a Respondent-Signatory of Consent Order Case, No. 94-E-0172, and wherein it was explicitly provided that WAI, Inc, will not be deemed a Respondent-Signatory of the former MGP site in

Pittsburg, Kansas, ONEOK, Inc f/k/a/ WAI, Inc, shall not be considered a Respondent-Signatory nor be bound to perform remedial activities as provided in the Order at this site, and the responsibility for remedial activities at the Pittsburg MGP under the Consent Order shall be with Westar Energy, Inc., f/k/a Western Resources, Inc..

The KDHE has determined that for the purpose of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the former Pittsburg MGP. Such release constitutes an actual or potential threat to public health and the environment. Said MGP is hereby incorporated into and made a part of said Order and is subject to all terms and conditions thereof.

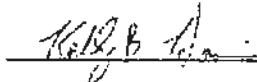
This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.



Roderick L. Bremby, Secretary
Kansas Department of
Health and Environment

7/26/2010
Date

WESTAR Energy, Inc.

By: *Kelly B. Harrison*
VP - Transmission + Environmental


June 29, 2010
Date

ONEOK, Inc.

By:

Date

Pittsburg, Kansas, ONEOK, Inc f/k/a/ WAI, Inc, shall not be considered a Respondent-Signatory nor be bound to perform remedial activities as provided in the Order at this site, and the responsibility for remedial activities at the Pittsburg MGP under the Consent Order shall be with Westar Energy, Inc., f/k/a Western Resources, Inc..

The KDHE has determined that for the purpose of the Order only, an actual or threatened or potential release(s) of hazardous substances into the environment exists at the former Pittsburg MGP. Such release constitutes an actual or potential threat to public health and the environment. Said MGP is hereby incorporated into and made a part of said Order and is subject to all terms and conditions thereof.

This Amendment shall be effective as of the date signed by the Secretary, Kansas Department of Health and Environment.

Roderick L. Bremby, Secretary
Kansas Department of
Health and Environment

Date

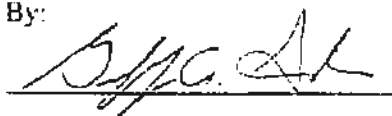
WESTAR Energy, Inc.

By:

Date

ONEOK, Inc.

By:



07/12/10
Date

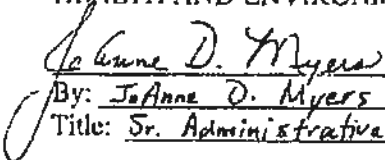
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was served this 28th day of July, 2010, by United States Mail, first class, postage prepaid, to the following:

WESTAR ENERGY
818 South Kansas Avenue
PO Box 889
Topeka, Kansas 66601
Attn: Craig Swartzendruber, Manager
Environmental Compliance Systems

ONEOK, Inc.
100 West Fifth Street
Tulsa, OK 74103-4298
P.O. Box 871
Tulsa, OK 74102-0871
Attn: Vicky C. Hale
Vice President and Associate General Counsel -
Compliance and Regulatory

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT


By: JoAnne D. Myers
Title: Sr. Administrative Assitant

**STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT**

<p>IN THE MATTER OF</p> <p>WESTERN RESOURCES, INC.</p> <p>Westar Energy, Inc. f/k/a</p> <p>Western Resources , Inc.,</p> <p>and</p> <p>ONEOK, Inc. f/k/a</p> <p>WAI, Inc.</p> <p><u>Respondents.</u></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 94-E-0172</p>
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EIGHTH AMENDMENT TO CONSENT ORDER

(“Eighth Amendment”)

Effective the 31st day of January, 2014, (“Date of Eighth Amendment”) the Kansas Department of Health and Environment (“KDHE”), Westar Energy, Inc., formerly known as Western Resources, Inc. (“Westar”), ONEOK, Inc., formerly known as WAI, Inc. (“ONEOK”), and ONE Gas, Inc. (collectively the “Parties”), mutually agree to amend the terms of the Consent Order entered into in Case No. 94-E-0172 (the “Consent Order”), on October 7, 1994, and all subsequent Amendments to the Consent Order, pursuant to Article XXIII of said Consent Order.

The Parties hereby mutually agree to add and substitute ONE Gas, Inc., as a Respondent in place of ONEOK, to meet the terms of the Consent Order and all Amendments to the Consent Order. This Eighth Amendment shall be effective as of the above Date of the Eighth Amendment.

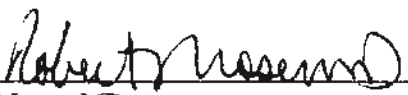
ONE Gas, Inc, upon receipt of this signed Eighth Amendment shall designate a project coordinator who shall be responsible for overseeing the implementation of this Consent Order and shall provide said coordinator's name and contact information to KDHE.

Each Party has full knowledge of and has consented to this Eighth Amendment to the Consent Order, and represents and warrants that each person who executes this Eighth Amendment to the Consent Order on its behalf is duly authorized to execute this Eighth Amendment on behalf of the respective Party and legally bind the Party represented to this Eighth Amendment.

IT IS SO ORDERED.

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT

By:

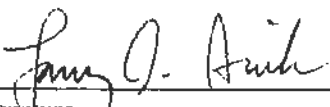


Robert Moser, MD
Secretary

1/13/2014
Date

Westar Energy, Inc.

By:



Signature

Larry D. Irick
Vice President, General Counsel and Corporate Secretary

1/2/14
Date

ONEOK, Inc

By:



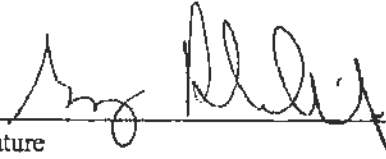
Wesley J. Christensen
Signature

Wesley J. Christensen
Senior Vice President, Operations

1/2/18
Date

ONE Gas, Inc.

By:


Signature



Greg Phillips
Senior Vice President, Operations

01/07/2014
Date

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copy of the above and foregoing document was served this 14th day of January, 2014, by United States Mail, first-class, postage pre-paid, to the following:

Westar Energy, Inc.
818 S. Kansas Avenue
Topeka, KS 66612
Attn: Patrick Smith, Esq.

ONEOK, Inc.
100 West Fifth Street, MD 2-2
Tulsa, OK 74103
Attn.: David C. McSweeney, Esq.

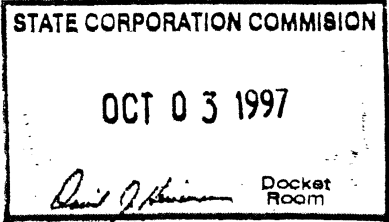
ONE Gas, Inc.
100 West Fifth Street, MD 2-2
Tulsa, OK 74103
Attn.: Joseph L. McCormick, Esq.



KDHE Staff Member

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

Before Commissioners: John Wine, Chair
Susan M. Seltsam, Commissioner
Cynthia L. Claus, Commissioner



In the Matter of the Joint Application of Western Resources, Inc.,)
ONEOK Inc., and WAI, Inc. for Approval of the Contribution from)
Western Resources, Inc. to WAI, Inc. of all of the Natural Gas) Docket No.
Transportation and Distribution Assets, Subsidies and Certificates of) 97-WSRG-486-MER
Western Resources, Inc.; for the Merger of WAI, Inc. with ONEOK,)
Inc.; for the Acquisition by Western Resources, Inc. of Shares of)
Capital Stock of WAI, Inc.; for Authority for WAI, Inc. to Issue Stock)
and Instruments of Debt; and for Related Relief.)
)

**JOINT MOTION FOR COMMISSION APPROVAL
OF STIPULATION AND AGREEMENT**

COME Now before the State Corporation Commission of the State of Kansas ["Commission"], Western Resources, Inc. ["Western Resources"], ONEOK Inc. ["ONEOK"], WAI, Inc. ["WAI"], the Citizens' Utility Ratepayer Board ["CURB"], and the Commission Staff ["Staff"], and hereby file this Joint Motion requesting that the Commission issue an Order accepting the Stipulation and Agreement and finding that the authority sought in the Application be granted subject to the terms and conditions set forth in the Stipulation and Agreement. In support of their Joint Motion, the parties state as follows:

1. Western Resources is a Kansas corporation, in good standing in all respects, with its principal offices and place of business located at 8 18 Kansas Avenue, Topeka, Kansas 666 12. Western Resources presently owns and operates a gas distribution system in portions of Kansas, including the Mid Continent Marketing Center, pursuant to certificates of public convenience and necessity issued by the KCC and subject to the jurisdiction of the KCC and Westar Gas Marketing Inc. There is already on file with the KCC restated Articles of Incorporation and Bylaws which are incorporated herein by reference.
2. ONEOK is a Delaware corporation with its principal offices and place of business located at 100 West Fifth Street, Tulsa, Oklahoma 74103. As more fully described below, ONEOK is a

diversified energy company engaged in the production, gathering, storage, transportation, distribution and marketing of natural gas. Through its division, Oklahoma Natural Gas (ONG), ONEOK serves approximately 730,000 natural gas utility customers in Oklahoma. A certified copy of the Certificate of Incorporation and Bylaws of ONEOK was attached to the Joint Application, marked as Schedule I, and is incorporated herein for all purposes.

3. WAI will be an Oklahoma corporation incorporated for the purposes of this transaction. At the conclusion of the transaction, ONEOK will be merged with and into WAI, the separate existence of ONEOK will cease, and WAI will continue as the surviving corporation. WAI plans to change its name to ONEOK, Inc. at the time the transaction is completed. A certified copy of WAI's Articles of Incorporation and Bylaws has been filed, marked as Schedule 2, and is incorporated herein for all purposes. A certified copy of WAI's authority to do business in Kansas was filed marked Schedule 3 and is incorporated herein for all purposes.

4. On February 24, 1997 Western Resources, ONEOK and WAI filed a Joint Application seeking an Order and Certificate authorizing Western Resources to contribute to WAI all of its natural gas transportation and distribution properties in the State of Kansas, including its certificates and the capital stock of certain subsidiaries; authorizing ONEOK to merge with WAI; authorizing Western Resources to acquire shares of the capital stock of WAI; authorizing WAI to issue capital stock and instrument of debt; and for all other related relief that may be required to fulfill the intents and purposes of the parties to the transactions.

5. On March 3, 1997 CURB filed its Petition to Intervene which was granted by the KCC. On March 5, 1997, Motion to Intervene were filed by Local Union 304 of the International Brotherhood of Electric Workers, AFL-CIO; the United Steelworkers of America, AFL-CIO; and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States

and Canada. On March 17, 1997, a Petition for Intervention was filed by Mountain Iron & Supply Company. On April 2, 1997, a Petition to Intervene was filed by Williams Natural Gas Company. On July 9, 1997, a Motion to Intervene was filed by the Board of Public Utilities of Kansas City, Kansas. The Commission has granted limited intervention to the above-named parties.

6. On July 8, 1997 the KCC issued a procedural order in this proceeding. Pursuant to said Order, Staff and CURB were directed to file direct testimony on September 2, 1997. Joint Applicants were ordered to file rebuttal testimony on September 26, 1997. A technical hearing was scheduled for October 6, 1997.

7. Western Resources, ONEOK, WAI, Staff and CURB have reached a Stipulation and Agreement as to all issues which have been raised in this proceeding. The Stipulation and Agreement is attached hereto and incorporated herein by reference. The Stipulation and Agreement has also been provided to the other parties of record who have been granted limited intervention.

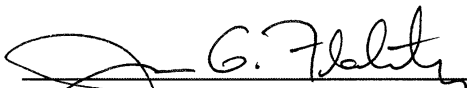
8. Western Resources, ONEOK, WAI, Staff and CURB have agreed, that in accordance with the acquisition and merger standards articulated by the Commission in the Kansas Power & Light Company, KCA Corporation and Kansas Gas & Electric Company merger, Docket No. 174,155-U, and subject to the following conditions, the Joint Application filed in this proceeding and the authority requested therein should be approved and granted by the Commission. The conditions on approval of the Joint Application are as set out in the attached Stipulation and Agreement.

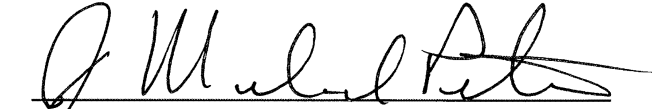
9. Western Resources, ONEOK, WAI, Staff and CURB respectfully request that the Commission consider and rule on this motion as a preliminary matter at the technical hearing set for October 6, 1997. The Joint Applicants and Staff will each present a witness to testify as to why this Stipulation and Agreement is in the public interest. Under the terms of the Stipulation and Agreement, if the Commission approves and grants this Motion, the parties have agreed to submit the prefiled

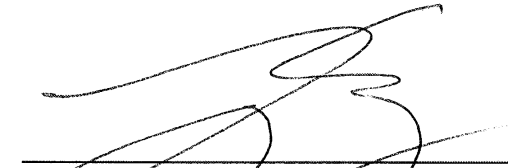
testimony and exhibits into the record and waive cross examination of the witnesses. In the event the Commission would deny this Motion, the parties have agreed to proceed with the hearing. Staff shall be allowed to submit live surrebuttal testimony at the technical hearing if this Motion is denied.

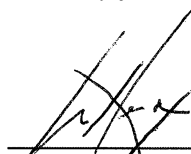
WHEREFORE, for the reasons set forth herein, Western Resources, ONEOK, WAI, Staff and CURB request that this Joint Motion be granted and that the Stipulation and Agreement be approved and the authority sought by the Joint Applicants, as conditioned by the terms contained in the Joint Application, be granted.

Dated this 3rd day of October, 1997.


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(785) 27 1-324 1
Attorney for CURB

CERTIFICATE OF SERVICE

(Docket No. 97-WSRG-486-MER)

I, LisaBerry, hereby certify that a copy of the foregoing **“JOINT MOTION FOR COMMISSION APPROVAL OF STIPULATION AND AGREEMENT”** was placed in the United States mail, first class postage prepaid, this 3rd day of October, 1997, to:

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James Ludwig
Executive Director, Regulatory Affairs
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Topeka, Kansas 6660 1

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ON BEHALF OF:
- WESTERN RESOURCES, INC.
- ONEOK INC.
- WAI, INC.

Walker Hendrix
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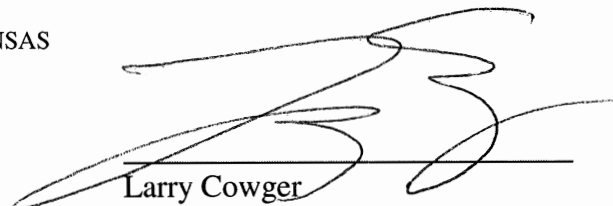
ON BEHALF OF:

- UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA
- UNITED STEELWORKERS OF AMERICA,
AFL-CIO
- INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO

Gregg D. Ottinger
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1575 Eye Street, N.W.
Washington, D.C. 20005-1175

ON BEHALF OF

- BOARD OF PUBLIC UTILITIES OF KANSAS
CITY, KANSAS



Larry Cowger

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of Western Resources, Inc., ONEOK Inc., and WAI, Inc. for Approval of the Transfer from Western Resources, Inc. to WAI, Inc. of all of the Natural Gas Transportation and Distribution Assets, Subsidiaries and Certificates of Western Resources, Inc.; for the Merger of WAI, Inc., with ONEOK Inc.; for the acquisition by Western Resources, Inc. of Shares of Capital Stock of WAI, Inc.; for Authority for WAI, Inc. to Issue Stock and Instruments of Debt; and for Related Relief)
)
)
)
)
) Docket No. 97-WSRG-486-MER
)
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STIPULATION AND AGREEMENT

Western Resources, Inc. (Western or Western Resources), ONEOK Inc. (ONEOK), WAI, Inc. (WAI) (collectively “Joint Applicants”), the Kansas Corporation Commission Staff (Staff), and the Citizens’ Utility Ratepayers Board (CURB) have reached the following stipulations and agreements. This Stipulation and Agreement is submitted to the Kansas Corporation Commission (KCC or Commission) by the above-mentioned parties for approval pursuant to the terms set forth herein.

I. DESCRIPTION OF THE PROCEEDINGS

1. Western is a Kansas corporation, in good standing in all respects, with its principal offices and place of business located at 8 18 Kansas Avenue, Topeka, Kansas 66612. Western presently owns and operates a gas distribution system in portions of Kansas, including the Mid Continent Marketing Center, pursuant to certificates of public convenience and necessity issued by the KCC and subject to the jurisdiction of the KCC and Westar Gas Marketing Inc. There is already on file with the KCC restated Articles of Incorporation and Bylaws which are incorporated herein

by reference.

2. ONEOK is a Delaware corporation with its principal offices and place of business located at 100 West Fifth Street, Tulsa, Oklahoma 74103. As more fully described below, ONEOK is a diversified energy company engaged in the production, gathering, storage, transportation, distribution and marketing of natural gas. Through its division, Oklahoma Natural Gas (ONG), ONEOK serves approximately 730,000 natural gas utility customers in Oklahoma. A certified copy of the Certificate of Incorporation and Bylaws of ONEOK was attached to the Joint Application, marked as Schedule I, and is incorporated herein for all purposes.

3. WAI will be an Oklahoma corporation incorporated for the purposes of this transaction. At the conclusion of the transaction, ONEOK will be merged with and into WAI, the separate existence of ONEOK will cease, and WAI will continue as the surviving corporation. WAI plans to change its name to ONEOK, Inc. at the time the transaction is completed. A certified copy of WAI's Articles of Incorporation and Bylaws has been filed, marked as Schedule 2, and is incorporated herein for all purposes. A certified copy of WAI's authority to do business in Kansas was filed marked Schedule 3 and is incorporated herein for all purposes.

4. On February 24, 1997 Western, ONEOK and WAI filed a Joint Application seeking an Order and Certificate authorizing Western to contribute to WAI all of its natural gas transportation and distribution properties in the State of Kansas, including its certificates and the capital stock of certain subsidiaries; authorizing ONEOK to merge with WAI; authorizing Western to acquire shares of the capital stock of WAI; authorizing WAI to issue capital stock and instrument of debt; and for all other related relief that may be required to fulfill the intents and purposes of the parties to the transactions.

5. On March 3, 1997 CURB filed its Petition to Intervene which was granted by the KCC. On March 5, 1997, Motions to Intervene were filed by Local Union 304 of the International Brotherhood of Electric Workers, AFL-CIO; the United Steelworkers of America, AFL-CIO; and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. On March 17, 1997, a Petition for Intervention was filed by Mountain Iron & Supply Company. On April 2, 1997, a Petition to Intervene was filed by Williams Natural Gas Company. On July 9, 1997, a Motion to Intervene was filed by the Board of Public Utilities of Kansas City, Kansas.

6. On July 8, 1997 the KCC issued a procedural order in this proceeding. Pursuant to said Order, Staff and CURB were directed to file direct testimony on September 2, 1997. Joint Applicants were ordered to file rebuttal testimony on September 26, 1997. A technical hearing was scheduled for October 6, 1997.

II. TERMS OF THE STIPULATION AND AGREEMENT

7. Subject to the conditions and reservations set forth herein, the parties have evaluated the proposed Western-ONEOK-WA1 transaction under the standards articulated by the KCC in the Kansas Power & Light Company, KCA Corporation and Kansas Gas & Electric Company acquisition proceedings, KCC Docket No. 174,155-Q and agree that, in accordance with those standards, adoption of this Stipulation and Agreement is in the public interest.

A. CONDITIONS ON APPROVAL OF APPLICATION OF MERGER

8. The signatories to this Stipulation and Agreement will recommend to the KCC, and support at any hearing for approval of this settlement, that the transaction more fully described in

the application in this case resulting in the ownership and operation of the Western gas business by ONEOK and the acquisition of ONEOK stock by Western be approved and that the following conditions be ordered as part of that approval:

A. Reservations Relating to Public Comments.

Pursuant to the Commission's scheduling order, the public is allowed to provide written comments to the Commission concerning the proposed transaction between Western and ONEOK. That public comment period runs through October 6, 1997. If after reviewing the public comments, Staff or CURB believe that additional terms should be included in this Stipulation and Agreement, Staff and CURB shall have the right to submit those additional terms to Western and ONEOK for their review and approval. If the parties are unable to reach agreement on the additional terms arising from the public comments, then Staff and CURB reserve the right to withdraw from the Stipulation and Agreement and shall not be bound by any of the agreements or provisions hereof. If Staff or CURB withdraw from this Stipulation and Agreement, then this matter shall proceed to hearing as scheduled.

B. Quality of Service Standards.

The parties recognize that for purposes of this case, the Commission has no experience with ONEOK as the manager of a gas utility and the Commission Staff wishes to establish special performance standards to assure quality of service for Western Resources' existing Kansas gas customers.

ONEOK will commit to maintain the same quality of service as that now provided by Western. Such quality of service will be measured by the quality of service guidelines, to be reported annually to the KCC, as set forth in the testimony of Staff Witness Buchanan

with certain modifications, as will be specified below.

a) For clarification, the following standards are adapted from Ms. Buchanan's testimony:

The answered call rate shall exceed 95% per year. For the purpose of assessing penalties, a departure of actual performance from the standard of 0.5% will be necessary to reach the first 1% deviation and a departure of .25% will be expressed as a 1% deviation thereafter. For example:

An answered call rate of 94.50% = 1% deviation
 An answered call rate of 94.25% = 2% deviation
 An answered call rate of 94.00% = 3% deviation
 An answered call rate of 93.75% = 4% deviation

The number of estimated bills per 1000 customers should not exceed 2 14 per year. In addition, the Commission's decision in Docket No. 97-GIMG-514-GIG (a review of billing practices) should replace this standard and should also replace any penalty or rewards for the estimated bill standard which are established by the Commission in this docket. For the purpose of assessing penalties, a departure of actual performance from the standard of 5% will be expressed as a 1% deviation. For example:

225 estimated bill per 1000 customers = 1% deviation
 236 estimated bill per 1000 customers = 2% deviation
 247 estimated bill per 1000 customers = 3% deviation

Ninety-six percent (96%) of tracked complaints should be responded to within 24 hours. Deviations will be expressed in increments of 1%. For example:

95.04% of tracked complaints responded to in 24 hours = 1% deviation
 94.08% of tracked complaints responded to in 24 hours = 2% deviation
 93.12% of tracked complaints responded to in 24 hours = 3% deviation

On an annual basis, the average response time to odor reports should not exceed 27.50 minutes. For the purpose of assessing penalties, a departure of thirty (30) seconds of actual performance from the standard will be expressed as a 1% deviation.

For example:

- Response time of 28.00 minutes = 1% deviation
- Response time of 28.50 minutes = 2% deviation
- Response time of 29.00 minutes = 3% deviation

On an annual basis, the average age of leaks in inventory should not exceed 18 months. Deviations will be expressed in increments of 1%. For example:

- Average age of leak in inventory of 18.18 months = 1% deviation
- Average age of leak in inventory of 18.36 months = 2% deviation
- Average age of leak in inventory of 18.54 months = 3% deviation

b) The Service Appointment standard recommended in testimony will be eliminated and ONEOK agrees to adopt Western’s Service Guarantee program. The Service Guarantee Program assures customers that the company will keep service appointments. The company will credit the customer 25 percent of the current month’s energy bill, up to \$250, if the company fails to keep the appointment.

c) The parties recognize that there may be certain extraordinary events which occur from time to time, which are (1) beyond the control of the utility, such as an act of nature, and (2) which may effect the utility’s ability to meet the service standards agreed hereto. Upon the occurrence of one of these extraordinary events (as that term is further defined in paragraph 0), ONEOK shall document the event and the impact that said event has had on the performance of the utility. Before assessing penalties, the Commission will give ONEOK the opportunity to present

such documentation. The Commission's staff and CURB will have the opportunity to respond to ONEOK's claims. After considering the information provided by the parties, the Commission will determine whether it is appropriate to deviate from the penalty schedule.

d) Penalties will be determined as follows:

Each standard will be worth 20 points in a 100 point index. If ONEOK's performance falls below any of the five (5) established standards, points will be deducted for each standard which falls below the baseline. The deduction will be based on the percentage by which the standard falls below the baseline (see part (a) for a discussion of the calculation of a 1% deviation). For example, if actual performance falls below the standard by 2%, the deduction would be .4 points ($20 \times .02$). If ONEOK achieves or exceeds the baseline in any particular standard, it will receive the full 20 points. The net point total will be calculated by adding together the total points from each standard. A penalty will be imposed on an annual (12 month) basis when the point total falls to 99.8 or below according to the following scale:

99 - 99.8 points	\$100,000
98 - 98.9	\$250,000
97 - 97.9	\$500,000
96 - 96.9	\$750,000
94 - 95.9	\$1,500,000
93.9 and under	\$2,000,000

Thus, if the company's performance meets each standard, it will have a total of 100 points and no penalty will be assessed. No penalties will be assessed until the company's performance deviates from at least one standard by 1%. The maximum

penalty which can be assessed is \$2,000,000.

Penalties will be assessed by the Commission only upon application by Staff for the assessment of a penalty and upon full opportunity for ONEOK to present evidence of any extraordinary events, as defined herein at paragraphs B(c) and 0, to the Commission.

e) In addition, ONEOK agrees to continue the current pipeline safety program, which includes the items beyond the minimum standards such as retaining their audit staff and the proactive approach to pipeline safety compliance monitoring, retaining their materials laboratory and staff to evaluate products and conduct failure analyses, cast iron and bare steel replacement practices, and low pressure distribution system upgrades. ONEOK agrees to continue Western's practice of cooperating with the Staff when making changes to its operating standards manual. The Commission's Pipeline Safety staff will monitor ONEOK's commitment to these items. Further, ONEOK agrees to continue the Project Deserve program or a similar program which provides low income customers with bill payment assistance. ONEOK agrees to continue Western's informal practice of not disconnecting a customer if the amount owed by the customer is less than \$100.00 for a bill less than 30 days overdue and if the amount owed is less than \$50.00 for bills that are 60 days or more overdue unless ONEOK determines that a policy change is warranted for business purposes, at which time ONEOK agrees to notify the Commission of the change and the reason for the change.

f) Nothing in this agreement shall imply that the five stated quality of

service standards comprise all criteria by which service quality can be evaluated. The parties acknowledge that the special performance standards adopted herein are not currently required for existing Kansas utilities.

g) ONEOK agrees that a diminishment of the quality of service compared to that delivered by the incumbent provider, Western, is not in the public interest.

h) The parties to this Stipulation and Agreement agree that if the Commission has not established statewide utility performance standards and penalties and/or rewards within three years from the date of closing of this transaction, ONEOK shall be allowed to petition the Commission to modify or eliminate the performance standards and penalties agreed to herein.

Except as otherwise specifically provided herein, it is specifically agreed that the parties to this Stipulation and Agreement shall not be deemed to have approved or acquiesced in the performance standards or penalty provisions set forth herein in any future proceedings before the Commission in which performance standards or penalties and/or rewards are considered.

C. Capital Structure.

In its next rate filing ONEOK shall base its request upon its actual capital structure not to exceed 57% equity, (which reflects ONEOK's capital structure as of August 1, 1997). If its actual equity capitalization ratio exceeds 57%, ONEOK agrees to base its request upon a hypothetical capital structure, not to exceed a common equity component of 57%. Staff and other parties shall have the right to argue that the filed equity capitalization (hypothetical

or actual) is atypical and should not be adopted in the Commission's determination of appropriate rates.

D. Rate Filing Moratorium.

ONEOK will not file a general rate increase sooner than 36 months from the closing of the transaction provided that the Commission issues in this case its order allowing ONEOK to receive the accounting orders previously issued to Western and to continue to defer SFAS 106 and SFAS 112 costs as a recoverable regulatory asset. The deferral shall continue until the date new general rates become effective. ONEOK shall begin expensing the SFAS 106 and SFAS 112 costs when rates from its next rate case become effective. The parties recognize that the 240 day statutory time in which the KCC must act on a rate change will extend the effective time of any rate increase to more than three years from the date of closing.

This provision does not preclude ONEOK from proposing changes in rates related to cost of gas pursuant to the KCC rules related to PGA and ACA clauses or from complying with the KCC's rules or new policies concerning non-traditional rate structures, unbundled rates, new services, incentive rates, or other rates which would provide voluntary options for customers. This provision does not preclude ONEOK from filing a revenue neutral rate design case during the moratorium period. This provision shall not be binding on ONEOK, if there are changes in law or other extraordinary events over which ONEOK has no control and which result in a material adverse change in ONEOK's Kansas jurisdictional natural gas business revenues, revenue requirements, or operations.

E. Impact on Electric Customers of Western.

Western Resources acknowledges that evidence in this case supports the potential for a \$4.6 million to a \$5.2 million flowback of administrative costs to its electric cost of service. Unless an offsetting benefit is shown, any incremental cost of this transaction imposed on its remaining electric utility business should be removed from cost of service in its next electric rate determination. Western Resources agrees that it will have the burden of showing that there has been no detriment to electric customers from this transaction but will be entitled to demonstrate that the costs have been mitigated or offset, in whole or in part, by benefits attributable to the ONEOK/Western Resources alliance.

F. Acquisition Premium.

In no event shall Western or ONEOK seek or be permitted to recover a portion of the acquisition premium attributable to this transaction from ONEOK or Western's Kansas jurisdictional customers.

G. Proposed Tariff Changes.

ONEOK will withdraw the proposed tariff changes it filed in this application and may request these specific tariff changes in a separate proceeding. The signatories agree not to object, on procedural grounds, to ONEOK seeking these tariff changes outside a general rate proceeding. Such separate proceeding is not constrained by the provisions of paragraph D, above.

H. Transaction Costs.

The Kansas jurisdictional portion of the Merger transaction costs will be amortized and recovered in rates over a 40 year period with no rate base treatment. Recovery of transaction costs will be limited to actual prudent and reasonable costs directly related to

effectuating the merger.

I. Affiliates.

In response to the concerns about affiliate relations, ONEOK acknowledges that the operation of the Kansas gas business will be governed by the applicable Kansas statutes and rules of the KCC governing affiliate relations. In addition ONEOK agrees to develop a cost allocation manual which details how costs are directly charged, assigned and allocated between its jurisdictions and affiliates, and to provide Staff with a copy of the manual upon completion.

J. Effective Date of Approval of Merger.

These signatories to this Stipulation and Agreement request that the approval of the Joint Application filed in this matter be effective on or before October 15, 1997.

K. Environmental Standards.

ONEOK will maintain the relative level of environmental performance practiced by Western as of August 21, 1997, including the number of employees currently and exclusively assigned to Kansas gas environmental matters. Staff reserves the right to address the subject of a decline of environmental performance and propose appropriate remedies to the Commission.

L. Marketing Agreement.

The Marketing Agreement has not been provided to the Commission Staff. The Joint Applicants will submit their Marketing Agreement to the Staff of the KCC upon its completion. Nothing in this agreement shall prohibit the Staff or CURB from raising regulatory issues associated with the marketing agreement in future proceedings, with either

Western and/or ONEOK.

M. Income Tax Implications.

Tax counsel for the Joint Applicants have yet to provide an opinion on whether the transaction is tax free in nature. This opinion shall be provided to the Staff of the KCC upon receipt by the Joint Applicants. To the extent that the transaction is not in all material respects a “tax free” transaction, this stipulation shall be deemed null and void. Further, ratepayers shall be held harmless from all negative tax implications (whether deemed by all parties to be material or non-material) arising from this transaction.

N. Procedure.

The terms of this settlement will be submitted to the KCC for its approval. It is contemplated that the Joint Applicants will prefile their rebuttal testimony and that Staff be afforded the opportunity for live surrebuttal, but that the hearing scheduled in this docket will be limited, as to the signatories to this settlement, to the question of the approval of this agreement. In the event that the settlement is not approved in its entirety, without modification, then the record shall be reopened for the submission of rebuttal testimony and cross examination of witnesses. In such event, the substantive provisions of this settlement shall be void and of no effect and may not be admitted into evidence for any purpose.

O. Definitions.

For purposes of this settlement, the term “extraordinary event” which is beyond the control of the utility shall include acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes fires, storms, floods, washouts, arrests and restraints of

governments and people, acts, orders, laws or regulations or government authority, civil disturbances, explosions breakage or accident to machinery or lines of pipe other than those caused by the utility's negligence, the necessity for making repairs or alterations to machinery, equipment or lines of pipe, freezing of lines of pipe which could not have been prevented by the utility's use of standard and custom industry practice, partial or entire failure of supply of natural gas which could not have been prevented by the utility's use of standard and custom industry practice, acts of independent and unaffiliated third parties which damage or interfere with the kind herein enumerated or otherwise beyond the control of the utility.

If using standard and custom industry practice, the utility could have avoided the extraordinary event, then the impact of such event shall not be removed from the measurement of the performance of the utility. The utility shall be responsible for the work of all affiliates and independent contractors who perform utility service and the performance by all affiliates and independent contractors shall be included in the measurements which have been agreed to herein.

III. RESERVATIONS

9. Except as specifically provided above, this Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and none of the signatories of this Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation and Agreement in any other proceeding or in this proceeding should the Stipulation and Agreement not be accepted by the KCC in its entirety, or should the acquisition and merger not occur.

10. Except as otherwise specifically provided herein, the parties to this Stipulation and Agreement shall not be deemed to have approved or acquiesced to any rate making principle, valuation method, depreciation principle or method, or rate design proposal underlying or allegedly underling this Stipulation and Agreement. Further, this Stipulation and Agreement does not foreclose Staff, CURB, or other parties from challenging the appropriateness of any cost of service in any future rate case filed by ONEOK.

11. In the event the KCC accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights to cross examine witnesses, and present oral arguments or written briefs to the KCC. The parties also waive their rights to request reconsideration of the KCC order approving this Stipulation and Agreement and waive their rights to seek judicial review of said order.

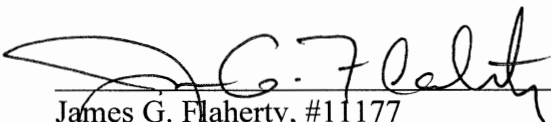
12. The terms set forth in the Stipulation and Agreement are the result of extensive negotiations among the signatory parties. Because the terms are interdependent, if the KCC does not approve and adopt all of the terms of this Stipulation and Agreement, this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.


13. The Staff shall have the right to submit to the KCC, in memorandum form, an explanation of its rationale for entering into this Stipulation and Agreement, and to provide the KCC whatever further explanations the KCC requests. The Staffs memorandum shall not become a part of the record of this proceeding in the event the KCC does not approve the Stipulation and Agreement. Any rationales advanced by the Staff in such a memorandum are its own and not acquiesced in or otherwise adopted by the other parties.

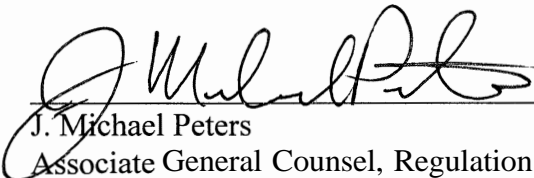
14. This agreement may be executed in several counterparts and all so executed shall constitute but one and the same instrument binding all parties hereto, notwithstanding that all of the parties are not signatory to the same counterparts, each of which shall be fully effective as an original.

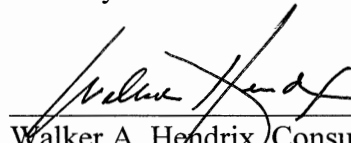
WHEREFORE, on behalf of their respective clients, the undersigned attorneys respectfully request that the KCC approve this Stipulation and Agreement in its entirety and that the KCC issue an order in this matter approving the Application for an Order and Certificate authorizing Western to contribute to WAI all of its natural gas transportation and distribution properties in the State of Kansas, including its certificates and the capital stock of certain subsidiaries; authorizing ONEOK to merge with WAI; authorizing Western to acquire shares of the capital stock of WAI; authorizing WAI to issue capital stock and instruments of debt; and for all other related relief that may be required to fulfill the intents and purposes of the parties to the transaction.

DATED this 30th day of OCTOBER, 1997.


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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
 Susan M. Seltsam
 Cynthia L. Claus

In the Matter of the Joint Application of Western)
Resources, Inc., ONEOK Inc., and WAI, Inc. for)
Approval of the Contribution from Western)
Resources, Inc. to WAI, Inc. of all of the Natural)
Gas Transportation and Distribution Assets,)
Subsidiaries and Certificates of Western Resources,)
Inc.; for the Merger of WAI, Inc. with ONEOK,)
Inc.; for the Acquisition by Western Resources, Inc.)
of Shares of Capital Stock of WAI, Inc.; for)
Authority for WAI, Inc. to Issue Stock and)
Instruments of Debt; and for Related Relief.)

Docket No.
97-WSRG-486-MER

Order No. 12
ORDER GRANTING JOINT MOTION AND APPROVING
STIPULATION AND AGREEMENT

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds as follows:

Procedural And Jurisdictional Statement

1. On February 24, 1997, Western Resources, Inc. ("Western" or "WRI"), ONEOK, Inc. ("ONEOK"), and WAI, Inc. ("WAI") (collectively "Joint Applicants") filed an Application requesting approval: to transfer all of Western's natural gas assets, certificates and debt to WAI; to merge ONEOK into WAI; for Western to acquire shares of the capital stock of WAI; for WAI to issue capital stock and debt instruments; and, other related relief.

2. Western is a Kansas corporation in good standing, properly certificated by the Commission as a local distribution company. ONEOK is a Delaware corporation. ONEOK is a diversified energy company engaged in the production, gathering, storage, transportation, distribution and marketing of natural gas. Through its division, Oklahoma Natural Gas ("ONG"), ONEOK serves approximately 730,000 natural gas utility retail customers in Oklahoma. If the proposed Stipulation is approved, the new ONEOK or WAI will become a public utility under the provisions of K.S.A. 66-104 and be subject to the Commission's jurisdiction as a local distribution company doing business in the State of Kansas.

3. On March 11, 1997, the Commission suspended the Joint Application and deferred the effective date 240 days from the date of the Joint Application to allow sufficient time for full investigation of the matter.

4. On March 28, 1997, Joint Applicants filed a Motion to Amend Joint Application to include additional schedules, exhibits and testimony. Joint Applicants stated that the amended application should be "deemed a new application" for the purposes of K.S.A. 66-117(b)(1) and the 240-day period should recommence from the date the amendment was filed.

5. On July 8, 1997, the Commission issued an Order directing Western to provide notice to its customers of the Joint Application by both direct billing inserts and publication in county newspapers in each county served by Western. The Commission also directed Western to notify its customers of the opportunity to file written comments with

the Commission on or before October 6, 1997. The Commission also scheduled the hearing to be held on October 6, 1997.

6. On October 6, 1997 the technical hearing was held. Having found proper notice, the Commission found it had jurisdiction to hear this matter at that time and date. Appearances of counsel were: James G. Flaherty on behalf of ONEOK and WAI; J. Michael Peters on behalf of Western; Walker Hendrix and Brady Cantrell on behalf of the Citizens' Utility Ratepayer Board ("CURB"); Gregg D. Ottinger on behalf of the Board of Public Utility ("BPU"); and Larry Cowger and Eric Heath on behalf of Staff. The United Steelworkers of America, AFL-CIO ("Steelworkers Union"), the Local Union 304 of the International Brotherhood of Electrical Workers, AFL-CIO ("Local 304"), the United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of the United States and Canada ("United Association") (collectively referred to as "the Unions") and Williams Natural Gas Company ("WNG") did not appear at the October 6 hearing. At the hearing Joint Applicants, CURB, and Staff presented the Stipulation and Agreement ("Stipulation") resolving all disputed matters in this proceeding. The parties agreed to submit the testimony and exhibits into the record and waived the right to cross-examine. (Tr. at 6).

7. During his opening statement, counsel for Staff stated that the signatory parties tried to contact the other intervenors on Friday, October 3, 1997, and supply them with the joint motion and proposed Stipulation. Staff asked the Commission to take administrative notice of the fact that the intervenor, Mountain Iron and Supply Company

(Mountain Iron), indicated by letter dated September 30, 1997, that it would not participate in the October 6 hearing. Counsel for Staff further stated that Mountain Iron faxed a letter to the parties on October 6, 1997, that Mountain Iron concurs with the Stipulation. (Tr. at 7). At the hearing, counsel for BPU asked to file comments on the Stipulation. The Commission granted BPU's request and allowed BPU to file comments by October 10, 1997.

8. On October 10, 1997, BPU filed its comments on the Stipulation. BPU states that in response to its concerns ONEOK has agreed that it will not close or reduce operations at the downtown Kansas City office during the three-year period following the closing of the merger at issue in this proceeding. The three-year period coincides with the minimum three-year rate moratorium and quality of service plan which are contained in the Stipulation.

9. BPU further stated that ONEOK has agreed that should it determine to out source meter reading or billing services for Kansas City operations in the future, it will provide any request for proposal to BPU. BPU shall be given an opportunity to submit a bid to provide those services to ONEOK and ONEOK shall give good faith consideration to that bid. ONEOK and BPU also agreed on an arrangement to provide price stability for certain BPU gas purchases. In light of these agreements BPU has no objection to the Stipulation. However, BPU noted that these agreements and its lack of objection to the Stipulation are conditioned upon ONEOK and Western closing the transaction at issue in this proceeding.

10. Joint Applicants requested approval of their merger application pursuant to K.S.A. 66-104, 66-125, 66-127, 66-136 and 66-1,200, *et seq.* K.S.A. 66-125 is limited to investor owned electric utilities incorporated in the State of Kansas. In the present case the securities will be issued by new ONEOK, and thus are not subject to the provisions of K.S.A. 66-125. K.S.A. 66-127 prohibits any public utility, domestic or foreign, from purchasing or acquiring, taking or holding any part of any capital stock, bonds or other forms of indebtedness of any competing utility either as owner or pledgee, unless authorized by the Commission. K.S.A. 66-136 provides that no certificate granted to a public utility shall be assigned or transferred, nor shall any contract or agreement affecting such certificate be valid or of any force or effect unless approved by the Commission.

11. Western is a natural gas public utility, as defined in K.S.A. 66-104, authorized to do business in the state of Kansas and subject to the jurisdiction of the Commission. Furthermore, the surviving corporation, ONEOK will be a natural gas public utility as defined by K.S.A. 66-104 subject to the jurisdiction of the Commission. Therefore, the Commission has authority and jurisdiction over the subject matter and parties herein pursuant to K.S.A. 66-104, 66-125, 66-127, 66-136 and 66-1,200, *et seq.* K.S.A. 66-125.

STANDARD OF REVIEW OF SETTLEMENT AGREEMENTS

12. The parties evaluated the proposed Western-ONEOK-WAI transaction under the standards articulated by the Commission in the Kansas Power & Light Company, KCA Corporation and Kansas Gas & Electric Company acquisition proceedings, Docket Nos. 172,745-U and 174,155-U ("1991 Merger Order"). In that proceeding the Commission

adopted specific factors it weighs and considers in determining whether proposed transactions promote the public interest. The parties agree that in accordance with those standards adoption of the Stipulation is in the public interest.

13. The 1991 Merger Order outlined a general standard to govern whether a merger or acquisition is in the public interest as it related to the KPL/KGE merger. (See 1991 Merger Order at 34). Utility mergers are complex transactions that affect both ratepayers and shareholders for many years to come and have significant implications for the utility service to be provided. In view of this potential public impact, a merger should be approved where the applicant can demonstrate that the merger will promote the public interest. (1991 Merger Order at 35) (emphasis added). The Commission's interpretation of the public interest standard has never been static. In this case, the Commission recognizes the 1991 standards and revises those standards to apply to today's mergers especially with respect to quality of service.

14. The Commission's determination on the Stipulation must constitute a reasoned decision supported by substantial competent evidence. The Commission's decision is also subject to the requirements of the Kansas Administrative Procedure Act ("KAPA") that agency actions not be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. *Southwest Kan. Royalty Owners Ass'n. v. Kansas Corporation Comm'n*, 244 Kan. 157, 165, 769 P.2d 1 (1989). See also, K.S.A. 77-621(c) (1989).

15. Generally, settlements are favored in the law. *Bright v. LSI Corp.*, 254 Kan. 853, 859 P.2d 686 (1994). The Commission, like a trial court dealing in matters affecting public

interest, is not controlled by stipulation, settlement offers or other agreements. If the Commission approves a settlement, unanimous or otherwise, it is effectively adopting that settlement as its own independent resolution on the merits of the case. *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 94 S.Ct. 2328, 41 L.Ed. 2d 72 (1974).

16. Joint Applicants, CURB and Staff were the signatory parties to the Stipulation. At the October 6 hearing, only the signatory parties to the Stipulation and BPU appeared. Mountain Iron faxed a letter to the parties concurring with the Stipulation. BPU has filed its comments and does not object to the Stipulation. No party has filed an objection to the Stipulation. WNG and the Unions did not appear at the hearing nor did they file any comment to the Stipulation. In view of these facts, the Commission considers the Stipulation to be unanimous.

STIPULATION AND AGREEMENT

17. **Reservations Relating to Public Comments.** Under this provision Staff and CURB reserved the right to submit additional terms to the Stipulation if they believed, after reviewing the comments submitted by the public, additional terms were needed. The parties would then have an opportunity to reach agreement on any additional terms. If no agreement on additional terms was achieved, Staff and CURB reserved the right to withdraw from the Stipulation and not be bound by any provision thereof. The public comment period ran through October 6, 1997. Staff and CURB have not filed any additional terms to the Stipulation since the comment period ended.

18. **Quality of Service Standards.** Under this section ONEOK will commit to maintain the same quality of service as that now provided by Western. The quality of service will be measured by the quality of service guidelines to be reported annually to the Commission. The Stipulation adopted the standards from the testimony of Ms. Buchanan, Staff's witness. (Dittemore, Tr. at 48). There are five methods that quality of service will be measured by ONEOK:

- i) The answered call rate shall exceed ninety-five (95) percent per year. For the purpose of assessing penalties, a departure of actual performance from the standard of 0.5 percent will be necessary to reach the first 1 percent deviation and a departure of .25 percent will be expressed as a 1 percent deviation thereafter;
- ii) the number of estimated bills per 1000 customers should not exceed 214 per year. (Buchanan's testimony at 10). In addition, the Commission's decision in Docket No. 97-GIMG-514-GIG (a review of billing practices) should replace this standard and any penalty or reward for the estimated bill standard which is established by the Commission in this docket. For the purpose of assessing penalties, a departure of actual performance from the standard of 5 percent will be expressed as a 1 percent deviation;
- iii) ninety-six (96) percent of tracked complaints should be responded to within 24 hours (Buchanan's testimony at 11-12);
- iv) the average response time to odor reports should not exceed 27.50 minutes. For the purpose of assessing penalties, a departure of thirty (30) seconds of actual performance from the standard will be expressed as a 1 percent deviation.; and
- v) the average age of leaks in inventory should not exceed 18 months. Deviations will be expressed in increments of 1 percent. (See also Dittemore, Tr. at 48).

19. In Section IIB(b) the Service Appointment standard recommended in the testimony will be eliminated and ONEOK agrees to adopt Western's Service Guarantee program. This service standard assures customers that the company will keep service appointments. ONEOK will credit the customer 25 percent of the current month's energy bill, up to \$250, if the company fails to keep the appointment. This is not a program that is subject to the Commission's tariff. It is currently a voluntary program of Western that ONEOK will adopt as part of its customer service operation. (See also, Martin, Tr. at 38-39).

20. Under Section IIB(c) the parties recognize that there may be certain extraordinary events which occur that are beyond the control of the utility and which may effect the utility's ability to meet the service standards under the terms of the Stipulation. Should such an event occur, ONEOK shall document the event and its impact on ONEOK's performance. ONEOK will have an opportunity to present its claims to the Commission and the Commission will determine whether it is appropriate to assess a penalty.

21. The quality of service standards under Section IIB(d) set significant financial penalties if quality of service falls below the standards which the customers now enjoy. The potential penalties range from \$100,000 up to a maximum of \$2 million per year. (Dittemore, Tr. at 49). Each standard will be worth 20 points in a 100 point index. If ONEOK's performance falls below any of the five established standards, points will be deducted for each standard which falls below the baseline. Should the company's performance meet each standard, it will have 100 points with no penalty. No penalty will be assessed until the company's performance deviates from at least one standard by one

percent. Only upon application by Staff and after a full opportunity for ONEOK to present evidence of any extraordinary events shall the Commission assess penalty.

22. Under Section IIB(e) ONEOK agrees to continue: i) the current pipeline safety program; ii) Western's practice of cooperating with Staff when making changes to its operating standards manual; iii) the Project Deserve program or a similar program which provides low income customers with bill payment assistance; and, iv) Western's informal practice of not disconnecting a customer if the amount owed by the customer is less than \$100.00 for a bill less than 30 days overdue, or if the amount owed is less than \$50.00 for bills that are 60 days or more overdue, unless ONEOK determines that a policy change is warranted, at which time ONEOK agrees to notify the Commission of the change.

23. Section IIB(f) provides that nothing in the Stipulation shall imply that the five stated quality of service standards comprise all the criteria by which the service quality can be evaluated. The signatory parties also acknowledged that the special performance standards adopted by the Stipulation are not currently required for existing Kansas utilities.

24. ONEOK agrees in Section IIB(g) that a diminishment of the quality of service compared to that delivered by Western is not in the public interest.

25. Under Section IIB(h) the parties agree that if the Commission has not established statewide utility performance standards and penalties or rewards within three years from the date of the closing of the transaction, ONEOK shall be allowed to petition

the Commission to modify or eliminate the performance standards and penalties agreed to in the Stipulation.

26. **Capital Structure.** ONEOK agrees in Section II(C) that in its next general rate filing it shall base its request upon its actual capital structure not to exceed 57 percent equity (which reflects ONEOK's capital structure as of August 1, 1997). If its actual equity capitalization ratio exceeds 57 percent, ONEOK agrees to base its request upon a hypothetical capital structure, not to exceed a common equity component of 57 percent. Staff and the other parties shall have the right to argue that the filed equity capitalization is atypical and should not be adopted in the Commission's determination of appropriate rates. This section caps the maximum amount of equity within ONEOK's capital structure on which ONEOK could include in the next general rate filing. (*See* Dittmore, Tr. at 49).

27. **Rate Filing Moratorium.** Under Section II(D) ONEOK agrees not to file a general rate increase sooner than 36 months from the closing of the transaction, provided that the Commission issues an order allowing ONEOK to receive the accounting orders previously issued to Western and to continue to defer SFAS 106 and SFAS 112 costs as a recoverable regulatory asset. This is confirmed by the testimony of Mr. Eugene Dubay on behalf of ONEOK. (Tr. at 20). ONEOK may propose a rate change related to cost of gas pursuant to the Commission rules related to PGA and ACA clauses or other rates which would provide voluntary options for customers. This provision does not preclude ONEOK from filing a revenue neutral rate design case during the moratorium period. Under this provision the customers will not experience an increase in rates for three years. The

testimony submitted into record suggested that under the existing rate structure, Western could be under-earning. However, the Commission reviewed and approved the Western's rates as recently as December, 1996. The Commission believes the existing rates are within the low end of "zone of reasonableness" and will allow ONEOK to maintain its financial integrity and its ability to attract capital. Nonetheless, the rate moratorium could result in ratepayer savings of at least \$12 million per year during the moratorium period. The moratorium will have the effect of an incentive mechanism to encourage ONEOK to become more economically efficient.

28. **Impact On Electric Customers Of Western.** Western acknowledges in Section II(E) that evidence in the case supports the potential for a \$4.6 to \$5.2 million flowback of administrative costs to its electric cost of service, with the range representing Western's number and Staff's number. (Tr. at 73). The Stipulation also states that unless an offsetting benefit is shown, any incremental cost of this transaction imposed on Western's remaining electric utility business should be removed from cost of service in its next electric rate determination. Western has the burden to show that there is no detriment to electric customers as a result of the transaction. However, Western is entitled to show that these costs have been offset or mitigated by benefits directly resulting from the alliance. (See also Tr. at 40 and 79).

29. **Acquisition Premium.** An acquisition premium is the difference between the market value of compensation received and the underlying net book value of assets acquired in a utility transaction. (Dittemore's testimony at 15). Under Section II(F) neither

Western nor ONEOK shall seek or be permitted to recover a portion of the acquisition premium attributable to this transaction from ONEOK's or Western's Kansas jurisdictional customers. (See also Dubay, Tr. at 20). This means that neither ONEOK nor Western can later file an application seeking to recover this premium. No Kansas customers will have to pay any additional charge for this premium, which is estimated to be \$64 million. (Tr. at 47).

30. **Proposed Tariff Changes.** In Section II(G) ONEOK agrees to withdraw the proposed tariff changes it filed in this application but may request those specific tariff changes in a separate proceeding. The signatory parties agree not to object on procedural grounds to ONEOK seeking these tariff changes outside a general rate proceeding. This separate proceeding is not constrained by the provision of the Rate Moratorium provision under section IID. At the hearing of October 6, 1997, Mr. Dubay testified that those tariff changes would be mainly in purchased gas adjustments (PGA). (Dubay, Tr. at 60-63). Mr. Dittmore also testified that ONEOK may file some PGA tariff whereby the cost of gas component would be fixed for a period of time. It is Mr. Dittmore's belief that ONEOK may file for the line extension tariffs and the miscellaneous service charge increases contained in the original Joint Application and not be in violation of the Stipulation. Staff will have the right to object and participate in any of these tariff changes proceedings. (Dittmore, Tr. at 83).

31. During the public comment period the Consumer Protection Office of the Commission received a total of 144 comments. 121 comments were opposed to the

approval of the merger or were opposed to the proposed tariff changes such as the initiation charge and/or the increase in the reconnection charge. These comments also expressed concerns regarding the quality of service. Seven comments were in support of approving the merger. Of the remaining 15 contacts, the topics ranged from inquiries to objections on the customer notification card. The Commission notes that the majority of the comments concerned the proposed tariff changes and quality of service. Under the Stipulation, ONEOK has agreed to withdraw the tariff changes. Although under the Stipulation ONEOK has the right to file these specific tariff changes within the three year moratorium, the filing will have to be outside a general rate proceeding and will be subject to full Commission review. Further, the Stipulation provides and adopts the strict quality of service standards similar to those proposed by Staff in its testimony.

32. **Transaction Costs.** The transaction costs have been estimated to be \$7 million. (Tr. at 81). The Kansas jurisdictional portion of the merger transaction costs will be amortized and recovered in rates over a forty (40) year period with no rate base treatment. The recovery of transaction costs will be limited to actual prudent and reasonable costs directly related to effectuating the merger. The Stipulation indicates that the transaction costs are not to be included in the rate base. At the October 6 hearing, Mr. Dubay agreed with Staff that 45 percent of the transaction costs are Kansas jurisdictional. (Dubay, Tr. at 66).

33. **Affiliates.** Under Section II(I) ONEOK acknowledges that the operation of the Kansas gas business will be governed by the applicable Kansas statutes and rules of the

Commission governing affiliate relations. ONEOK also agrees to develop a cost allocation manual detailing how costs are directly charged, assigned and allocated between its jurisdictions and affiliates, and to provide Staff with a copy of the manual upon completion.

Miscellaneous Provisions:

34. The signatory parties request that the approval of the Joint Application be effective on or before October 15, 1997.

35. ONEOK agrees to maintain the level of environmental performance practiced by Western as of August 21, 1997, including the number of employees currently and exclusively assigned to Kansas gas environmental matters. Under this provision Staff reserves the right to address the subject of a decline of environmental performance and to propose appropriate remedies to the Commission.

36. Joint Applicants agree to submit their Marketing Agreement to Staff upon its completion. Nothing in the agreement shall prohibit the Staff or CURB from raising regulatory issues associated with the marketing agreement in future proceedings with either Western or ONEOK. Mr. Dubay testified at the hearing that he anticipated having the marketing agreement done within the next two weeks. It is Mr. Dubay's understanding that the agreement will only address the marketing of home security systems on behalf of Western. (Dubay, Tr. at 66).

37. Assurance from Joint Applicants' tax counsel is to be provided to Staff. Joint Applicants have stated that ratepayers shall be held harmless from all negative tax

implications arising from this transaction. (See also Dubay, Tr. at 70). There were questions raised at the hearing regarding when the Stipulation shall be deemed null and void. Mr. Dubay stated that at this point he perceives nothing that would change the agreement to make it null and void. Further, ONEOK and Western have not discussed changing any of the terms of the agreement. (Dubay, Tr. at 67, 68).

38. The Stipulation has been submitted to the Commission for approval and contains an entirety clause. Should the Stipulation not be approved in its entirety without modification, the record will be reopened for the submission of rebuttal testimony and cross examination of witnesses. If this occurs, the substantive provisions of this Stipulation are null and void and may not be admitted as evidence for any purpose.

39. The definitions, terms of standard and custom industry practice, and the reservations are set forth in the Stipulation. These provisions are hereby adopted by reference.

**THE STIPULATION IS REASONABLE AND SHOULD BE
APPROVED IN THE PUBLIC INTEREST**

40. The Commission recognizes that stipulations contain compromises by all parties. In determining whether a stipulation is in the public interest, consideration must be given to both the immediate and future effects on consumers.

41. ONEOK is qualified by its experience in Oklahoma and financial strength to operate in the natural gas industry in Kansas. ONEOK will provide Western's customers with continuity of the same quality of service and is subject to penalties if it fails to comply as described above. The Stipulation provides a moratorium on a general rate increase for

three years from the closing of the subject transaction, giving ONEOK and consumers rate stability for these three years.

42. In the 1991 Merger Order the Commission determined that merger-generated savings should be quantifiable and realizable. The Kansas jurisdictional portion of the merger transaction costs will be amortized and recovered in rates over a 40 year period with no rate base treatment. Further, Western agrees that any incremental cost of this merger transaction imposed on its remaining electric utility business should be removed from cost of service for purposes of determining future rates, except to the extent Western is able to demonstrate that these costs have been offset by benefits directly resulting from the subject transaction.

43. Approving the Stipulation will result in a number of benefits to the Kansas ratepayers and the shareholders of the Joint Applicants. The Commission finds that there is substantial competent evidence, based on the prefiled testimony and exhibits of record, to support the provisions in the Stipulation. The Stipulation is a reasonable settlement of many issues that arose from the Joint Application. The Commission finds that it is in the public interest to approve the Stipulation. This document is the result of long negotiations and compromise between the parties and for the benefit of the ratepayers. However, the Commission, by approving the Stipulation, is not establishing a precedent for future proceedings.

44. The Joint Application and Stipulation meet the statutory criteria as previously discussed. The Commission approves the transactions contemplated by Western, ONEOK,

and WAI including (i) Western's contribution of assets, certificates and debt to WAI; (ii) the issuance of the capital stock of WAI by Western; (iii) the merger of ONEOK and WAI; and (iv) the issuance by WAI of its capital stock to shareholders of ONEOK and assumption by WAI of ONEOK's debt.

45. The Commission hereby authorizes Western, effective upon consummation of the merger, to discontinue all gas services. The Commission hereby authorizes WAI (ONEOK,) to succeed to all of Western's rights, title and interests in its natural gas utility plant and facilities, and to all franchises, certificates, consents and permits relating to the operation of such plant and facilities pursuant to K.S.A. 66-136.

46. The Commission notes that, following the merger, Western will own up to 9.9 percent of the outstanding common stock of ONEOK. Western will also have preferred stock equaling up to 45 percent of the outstanding equity of ONEOK. If the Public Utilities Holding Company Act (PUHCA) is repealed, or if an exemption is obtained by ONEOK, Western may, at its option, convert, the preferred stock to common stock. (Crane's testimony at 8-9). The Commission will require ONEOK and Western to provide notice promptly if this event occurs. The Commission reminds the parties that no assignment or transfer of certificate or agreement impacting Kansas ratepayers may be implemented without the prior approval of the Commission. (K.S.A. 66-136).

47. In event the transaction is not closed, as contemplated by the Stipulation and Agreement, the parties shall notify the Commission immediately and such notification shall

constitute a new application and the 240-day statutory provision of K.S.A. 66-117(b) shall be restarted.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

The Joint Motion for Commission Approval of Stipulation and Agreement filed by the Joint Applicants, CURB and Staff is hereby granted and the Stipulation and Agreement is hereby approved in its entirety as set forth in this Order.

The additional agreements between ONEOK and BPU are hereby approved.

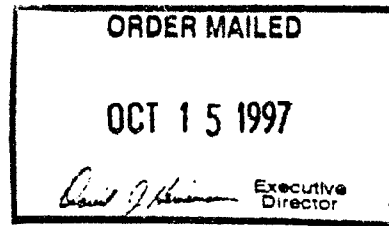
A party may file a petition for reconsideration of this Order within fifteen (15) days of the service of this Order. If this Order is mailed, service is complete upon mailing, and three days may be added to the above time limit.

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

BY THE COMMISSION IT IS SO ORDERED.

Wine Chr.; Seltsam, Com.; Claus, Com.

Da.ed: OCT 15 1997



David Heinemann
Executive Director

Q: Please state your name and your business address.

A: Paul Dietz, Kansas Corporation Commission, 1500 S.W. Arrowhead Rd., Topeka, Kansas 66604-4027.

Q: In what capacity are you employed by the Commission?

A: I am employed as a Senior Research Economist. My responsibilities include the analysis of various issues related to regulatory policy and the analysis of certain rate case issues.

Q: What is your educational background?

A: I possess a Bachelor of Science degree in Economics from the University of Kansas, and I am pursuing a Master's degree in Business Administration also from the University of Kansas.

Q: What is contained in this testimony?

A: This testimony is divided into two sections. In **Section One**, I support Staff's weather normalization of OneOk's revenues for the test year ending November 30, 1996. In **Section Two**, I support Staff's position on the effects of the merger on the Kansas environment.

Section One:

Weather Normalization AdjustmentPurpose of this testimony:**Q: What is the purpose of your testimony in this proceeding?**

A: I am supporting Staff's estimate of weather normalization "adjustments" to Western Resources' pre merger annual revenues for the year ending November 30, 1996. Staff's objective is to rebut the evidence supplied by OneOk Inc. in the testimony of Eugene N. Dubay regarding his proposed weather norming "adjustment" of \$7,673,000. Typically, a weather norming adjustment would not be performed at the time of a merger application. However, because OneOk's assertions and analyses that Western Resources is under earning are based upon and include a weather normalized quantity, Staff has performed the following weather norming analysis.

Q: Why is Staff concerned about weather normalization adjustments in general?

A: Rates are determined on the basis of information accumulated during a 12-month historical period called the TEST YEAR. This accumulated information includes sales, operating costs, and revenue -- all variables that can be affected by weather if the customers demanding natural gas are sensitive to weather conditions (particularly air temperature). Thus, if the actual weather during the test year is equal to normal weather (defined by Staff to be the NOAA 30-year average), then test year sales, operating costs, and revenues are taken as normal vis a vis the weather component of gas demand. However, if the weather for the test year is not normal, as in the present case, test year sales, operating costs, and revenue would not be normal and should be adjusted before they are used to calculate rates. This adjustment will help ensure that rates are not skewed by the effects of abnormal weather experienced during the test year. Staff notes that in the present special case, only test year revenues are

being adjusted.

Q: What are Staff's recommended weather normalization adjustments for OneOk?

A: For the Test Year ending November 30, 1996:

Residential volume adjustment: -1,792,200 mcf

Commercial volume adjustment: - 747,861 mcf

Commercial Transportation adj: - 220,061 mcf

Resale volume adjustment: - 10,504 mcf

Total volume adjustment: -2,770,626 mcf

Q: Did Staff follow its usual method for obtaining an estimate?

A: Yes it did, but with one proviso. Staff made a few consolidations of weather stations used previously in 193-305-U. A full description of Staff's approach in the present case appears below.

Q: Has Staff's method of weather normalization been accepted by the Commission in previous cases?

A: While not formally accepted, the Commission has approved the settlement of many rate cases (e.g., Docket No's 193,306-U, 193,307-U, 192,781-U, 191,990-U, Etc.) in which Staff's method was applied to produce Staff's weather normalization adjustments.⁽¹⁾

Weather Normalizing Adjustment

Q: How did Staff derive the weather normalizing adjustment for the present case?

A: Staff's procedure is summarized by four basic steps:

1. Select reasonable weather stations.
2. Calculate departures of actual temperatures from normal and determine customer counts.
3. Estimate customer sensitivity to temperature.
4. Use adjustment formulas to calculate adjustments.

Step One: Select reasonable weather stations

Q: How does Staff select weather stations?

A: Because actual weather conditions vary widely across Kansas, significant consideration must be given to weather station selection -- especially across an area as large as the one in the present case.⁽²⁾ Staff uses the following criteria to select weather stations:

1.) Partition (or disaggregate) the utility's service territory into smaller regions (keeping in mind that each of these subregions must contain a weather station). This partitioning depends on a number of factors such as: the availability of company data on a disaggregated basis, the availability of weather data at different locations, and the location of the major customer concentrations. 2.) For each subregion, select a weather station.

More frequently than not, Staff selects the weather station closest to the largest city in each of Staff's selected subregions. By selecting weather stations this way, Staff ensures actual weather conditions are being sampled exactly in those locations where there exists large concentrations of customers with (potentially) weather sensitive loads. Staff strives to select its weather stations closest to reasonably large, yet possibly diffusely located, concentrations of consumers.⁽³⁾ See Exhibit PD-1 for a list of Staff's selected weather stations. In the present case, due to Staff's time constraint, Staff consolidated the 20 preferred weather stations selected in Docket 193,305-U (96-WSRG-099-RTS) into 12 stations. Consideration for grouping stations experiencing like weather under normal conditions was a guiding principle for **this consolidation**.

**Step Two: Calculate departures of actual temperatures from normal
and determine customer counts.**

Q: How does Staff determine the deviation of actual temperature from normal temperature over the test year?

A: Each of Staff's selected weather stations is supervised by the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service. Monthly actual and normal cooling and heating degree days are found in the NOAA publication titled, Climatological Data of Kansas. Both cooling and heating degree days are derived by calculating the daily average air temperature difference from a base of 65 degrees Fahrenheit - a temperature considered to be comfort neutral for most people.⁽⁴⁾ Thus, for a cooling degree day one would calculate: $((\text{observed daily low temperature} + \text{observed daily high temperature}) / 2) - 65$ degrees (please note that any result that is less than zero for both cooling and heating degree days is by definition equal to zero for calculation purposes). For a heating degree day, one would calculate: $65 - ((\text{observed daily low temperature} + \text{observed daily high temperature}) / 2)$. These daily calculations are then summed according to months and are reported as monthly actual cooling or heating degree days.

The normal cooling and heating degree days that Staff uses in its calculations are the statistical mean derived from 30 years of monthly observations at each weather station as calculated and reported by the NOAA. Finally, Staff calculates the deviation of monthly actual temperature from monthly normal temperature over the test year by subtracting Actual HDD from Normal HDD (called the HDD departure), and Actual CDD from Normal CDD (called the CDD departure). Exhibit PD-2 shows the temperature departures used by Staff in the present case.

Q: Has Staff adjusted this weather data to compensate for the timing adjustment used in Docket 193-305-U and 193-306-U?

A: Yes, it has. The need for this adjustment stems from the manner in which the sales data are collected and recorded by the Local Distribution Company (LDC). The LDC does not attempt to read the meters of all customers or even all customers of a particular class on the same day. Instead, the LDC reads the meters throughout the month based on a billing cycle it has developed. For example, meters read February 1st are booked as February sales even though they are clearly January actual sales that have been affected by January weather. Likewise, meters read February 14th contain half January and half February sales with their corresponding weather. Finally, meters read February 28th contain mostly February actual sales that have been affected by February weather. This produces a timing difference between booked sales and actual sales which Staff must correct in its analysis. Thus, the weather data is adjusted to more closely match the period of booked

sales. Staff does this by averaging the weather over the current and preceding time period. For example:

Let AveHDD(t) denote the averaged HDDs for month t and t-1.

It is calculated as follows: $\text{AveHDD}(t) = (\text{HDD}(t) + \text{HDD}(t-1))/2$

Q: How did Staff determine customer counts?

A: Monthly customer count data was provided by Western Resources and reviewed by staff for discontinuities, possible recording errors, and possible outliers.

Step Three: Estimate customer sensitivity to temperature

Q: How does Staff estimate the temperature sensitivity of consumer demand?

A: Staff uses a simple regression model and ordinary least squares (OLS) estimation in order to arrive at its estimates. A complete description of this process can be found in Docket 193,305-U and consolidated Dockets 193,306-U - 193,307-U.

Q: Did Staff perform this regression analysis in the present case?

A: No, Staff did not. Instead, Staff extrapolated the sensitivity calculations (i.e., beta coefficients) derived in the analysis submitted by Staff witness Janet Buchanan in Docket 193,305-U to the present case. This analysis was developed in the course of Western Resources' last natural gas rate case. It involved the same territory, roughly the same populations, and roughly the same housing and appliance stock as the present case does. Staff believes it is likely that the weather sensitivity of a large population like the one that appears in both cases changes very slowly over time. Such change is typically the result of technological improvement and increased fuel efficiency. Thus, because a short period of time has passed relative to the amount of time needed to change a large population's sensitivities, Staff has applied the sensitivities determined in 193,305-U to the present case. The Beta coefficients used in the present case are shown in Exhibit PD-3.

Step Four: Use adjustment formulas to calculate sales adjustments.

Q: What adjustment mechanism was used to determine the recommended adjustments?

A: The basic adjustment mechanism can be stated as follows:

$$\text{WNA} = (\text{HDD departure}) \times (\text{Beta}_1) \times (\text{Customers})$$

where,

WNA = total adjustment

HDD departure = total units of departure from normal

$Beta_1$ = average customer usage per unit change in temp (beta coefficient)

Customers = average number of test year customers

Q: Can you please explain how the adjustment mechanism works?

A: Suppose temperatures are cooler than normal during the winter season. The units of departure from normal in this example will be negative since actual heating degree days (HDDs) will be greater than normal HDDs. For each unit of departure, the average customer's usage will be adjusted based on the estimated coefficient $Beta_1$. Multiplying this per customer adjustment by the average number of customers in a particular class and region gives the total adjustment to sales volume for that class in that region. In this example, the adjustment to test year sales is negative (as was expected) since the test year sales volume would have been higher than normal given the abnormally cold temperatures.

Notice how the adjustment mechanism works:

1) When actual temperatures are normal (i.e., the units of departure equal zero) the adjustment is always zero;

When actual temperatures are cooler than normal the adjustment is always negative;

When actual temperatures are warmer than normal the adjustment is always positive.

Q: What are your recommended adjustments for each of the customer classes in each region?

A: The recommended adjustments for residential, commercial, commercial transportation, and sales for resale customers in each region are listed in Tables PD-4, respectively. In general, the test year temperature was colder than normal. Therefore, sales units (measured in Mcf's) must be subtracted from the actual test year sales volume to more closely reflect the volume of sales that would have occurred had test year temperatures been normal. Staff recommends a total weather normalizing adjustment of -2,770,626 mcf for the year ended November 30, 1996.

Q: How does this compare with OneOk's proposed adjustment?

A: OneOk only proposed a revenue adjustment in their testimony, not a volume adjustment. Staff Witness Bell presents Staff's accounting adjustment to reflect the sales adjustments supported in this testimony.

Comparison of Weather Normalization Methodologies

Q: Did OneOk use the weather normalization method agreed to by Staff, Western Resources, and the Commission in previous S&A's ?

A: No, OneOk did not. In fact, they ignored the method spelled out in the Commission approved S&A issued for the combined electric dockets, 193,306-U and 193-307-U, which is the same basic method spelled out in the gas docket number 193,305-U. Western Resources and Staff both use this basic method for gas and electric cases. Staff expects OneOk to adopt the Western Resources / Staff method for any future filings with the Commission since this basic method has been agreed to by the parties involved up to this point.

Q: How does OneOk's weather normalization adjustment (WNA) method in the present case compare with the method promoted by Staff?

A: OneOk's WNA in the present case falls far short of the method promoted by Staff and Western Resources. Staff data request number 187 shows the calculations OneOk made to reach its WNA. OneOk did not perform any regression analysis of customer sensitivity to weather in their analysis. In addition, OneOk selected only four weather stations to represent the weather for the entire state of Kansas during the test year (Wichita, Chanute, Topeka, and Salina). The simple median of the percentage variance from normal weather was then selected from these four sites. No weighting was given to the populations surrounding these stations, meaning that the weather for Chanute was given as much weight at the weather in Wichita. This resulted in OneOk's conclusion that the weather for WRI's entire service territory was 5.01 % below normal.

OneOk did not take into consideration that the weather around major population centers was quite different from their 5.01 % estimate. For example, Olathe weather was less than one percent different from normal as opposed to Topeka's six and one-half percent difference. Thus, Olathe's weather could have been used to determine the WNA more accurately for Johnson County's weather sensitive customers. In general, OneOk's model does a poor job of linking populations with the weather they experienced during the test year. Because of this fact, OneOk's method likely produces results that are widely variable, and therefore, are less reliable.

Finally, OneOk calculated its adjustment based on residential customers alone. No indication was given to Staff from OneOk that showed consideration for commercial gas consumption, commercial gas transportation, or irrigation customers. Staff has demonstrated that these customers do have sensitivity to weather. This is seen by Staff to as a defect in OneOk's general method.

Section Two:

Merger Standards Regarding Effects on the Environment and Public Health

Purpose of this testimony:

Q: What is the purpose of your testimony in this section?

A: This testimony addresses Staff's position on the application of the Commission's merger standards regarding the effects of a merger on the Kansas environment. The Commission defined its merger standards in Docket Nos. 172,745-U and 174,155-U⁽⁵⁾. While all of these merger standards apply in the immediate case, I will only address two of them in this testimony. They are: the effect of the transaction on the environment, and what effect the transaction has on public safety (ie., Public health). Staff is concerned that New OneOk may not maintain Western Resources' current commitment to meeting (and / or exceeding) Kansas environmental standards. Staff believes that the treatment of environmental matters by Western Resources (WRI) in Kansas may be quite different from what other utilities would provide on a forward going basis. The Commission may want to consider steps to ensure that WRI's current and historical environmental management efforts (hereafter, WRI's environmental performance) is not degraded by the actions of New OneOk management should the proposed merger be approved.

Q: Does Kansas have a regulatory agency that promulgates and enforces the Kansas environmental standards?

A: Yes. The Department of Health and Environment has jurisdiction over these matters. They are required to monitor environmental compliance issues like the ones currently encountered by WRI.

Q: Will KDHE continue to monitor and regulate the efforts of the proposed New OneOK environmental management in Kansas should the merger be approved?

A: Yes, this department is perhaps the best resource Kansas rate payers have to ensure that any management team responsible for environmental management maintains acceptable compliance performance. The KDHE already has consent order agreements with WRI that bind any successors, including New OneOk, should the merger be approved.

Q: How does KDHE perceive WRI's environmental management efforts in the present case?

A: The KDHE wrote in its response to Staff data request 356 that,

"Western Resource's environmental management program in Kansas is rated very good to excellent. Western Resources has been very aggressive in addressing both known and newly discovered environmental problems. The only delays that have occurred can be explained by funding issues which are generally addressed through the annual budgeting process.

KDHE would rank Western Resources' environmental management efforts as compared with other utilities as one of the top utilities operating in Kansas.

KDHE is very satisfied with Western Resource's environmental performance. It is KDHE's opinion that Western Resource's environmental program is a 'model' program which other utilities should strive to achieve."

Q: It appears that WRI's environmental performance is good relative to other Kansas utilities. Does Staff have any evidence that suggests WRI's environmental performance may be relatively better than other non-Kansas utilities?

A: Yes, but it's limited to how WRI compares to OneOk specifically, rather than how WRI compares to other non-Kansas utilities generally. WRI performed a due diligence study of OneOk's current environmental management program, in which WRI expressed concern over several issues regarding OneOk's ability to manage the environmental concerns of Kansas. WRI states, " **_**"[\(6\)](#) OneOk confirmed WRI's claims in data request number 119.

Q: What were the concerns WRI had about OneOk's Manufactured Gas Plant (MGP) Sites?

A: WRI states, "*** [\(7\)](#) ** **". WRI is either involved or has liability in no less than 15 MGP sites which will require **ongoing** environmental management resources regardless of who is managing the company. At any rate, it appears that OneOk's management and personnel is less experienced in this area than WRI's.

Q: What is WRI's current treatment of MGP sites?

A: WRI's treatment of MGP sites is described in KDHE consent order #94-E-0172. WRI indicated in data request number 106 that it is actively involved in 5 sites (ie., Leavenworth, Kansas City, Kansas, Parsons, Newton, and Hutchinson) and has liability in 10 more sites (ie., Atchison, Topeka, Emporia, Abilene, Manhattan, Junction City, Salina, Concordia, Arkansas City, And Pittsburg). These are extensive and ongoing projects which will require expertise and resources for many years. WRI's current and ongoing environmental management efforts appear to be split between these MGP sites and their air emission evaluation and permitting program.

Q: What specific concerns did WRI have regarding OneOk's air emissions program?

A: WRI felt that, "*** **"(8) WRI states in data request number 108 that this is most likely caused by the fact that the State of Oklahoma was one of the last states to submit a Title V permitting program to the US EPA for approval. OneOk has since begun to institute an air emission evaluation and permitting program.

Q: Has WRI instituted an air emission evaluation and permitting program?

A: Yes. WRI has successfully instituted an ongoing air emission evaluation and permitting program. This indicates that WRI has more experience operating this type of program than OneOk.

Q: What were the concerns WRI had about OneOk's mercury meter site program?

A: WRI states, "*** **"(9) (Staff emphasis added).

Q: Has WRI addressed mercury meter site cleanup?

A: WRI has completed its mercury meter site cleanup as specified under a KDHE consent order. Again, this highlights WRI's superior level of environmental management experience when compared to OneOk's.

Q: What is Staff's primary concern regarding OneOk's proposed treatment of environmental issues in Kansas?

A: Staff encourages the Commission to determine whether a benchmark is needed to ensure that the historic performance of WRI's environmental management in Kansas is maintained on a forward going basis. Staff is concerned that the quality of environmental management provided currently by WRI may decline on a forward going basis without such a benchmark in place. In addition, Staff is also concerned that elements of WRI's environmental management program currently engaged in long term environmental projects in Kansas could be sent to manage Oklahoma projects to the detriment of the Kansas environment.

Q: Is it significant that Staff's misgivings follow from the misgivings expressed by WRI regarding OneOk's willingness or ability to manage Kansas environmental concerns?

A: It is very significant since this highlights a difference not only between WRI and OneOk, but possibly between Kansas regulation and Oklahoma regulation. In a nutshell, Staff has found that a possible difference exists between WRI's environmental performance and what may be New OneOk's environmental performance. Because actual Kansas environmental standards (as faced by WRI) are much higher than OneOk's are in Oklahoma, this suggests OneOk's management will be less seasoned to operate in Kansas.

Q: Does OneOk address Staff's concerns in their filing?

A: No, it does not. In fact, OneOk highlights Staff's concerns in their filing. In data request number 119, OneOk states, "It should be noted that a major difference between WRI and ONEOK is the organizational structure of their respective employee groups. WRI utilizes organized labor for many functions, which requires very specific work procedures and identifiable responsibilities for each employee and work unit...ONEOK and its subsidiaries have a nonunionized work environment predicated on employee versatility, work synergies, and empowerment. This enables ONEOK to decentralize functional control..." Staff contends that environmental

management, which includes such activities as air and drinking water monitoring, soil and drinking water remediation, etc., requires professionals trained for this task, and not just whoever has been "empowered" to do the job. Finally, OneOk states, "Our experience with compliance activities leads us to believe that much of the compliance workload is project oriented or short term in duration and usually the result of new regulation and enforcement." Staff contends that WR's involvement in the Kansas MGP sites is not short term. In fact, in data request number 134 WRI expects it's remediation effort at these sites to last at least 10 years.

Q: Is it possible that WRI has MGP superfund sites in its territory while OneOk does not?

A: It's possible, but not likely. Since coal gasification was the most common way for municipalities to obtain gas until it was available by long-distance pipe in the 1930's, it is unlikely that all of the municipalities in OneOk's current and historic service territories avoided the coal gasification process. It appears to Staff that it is not a question of whether OneOk has liability for MGP's, but when will OneOk be found by the Oklahoma environmental regulatory authorities to have liability for MGP's. When this occurs, OneOk management will need human resources with extensive experience in MGP site remediation in addition to the proper equipment. Assuming the merger, and on a forward-looking basis, these resources could be provided by New OneOk employees (many being former WRI employees) who may already be involved in long term Kansas environmental projects.

Q: What are the characteristics of the Environmental Management Department OneOk is proposing for the merged company?

A: Because the precise details of the New OneOk are still being developed, the management of OneOk could only provide sketchy details of their treatment of environmental management in the proposed new company. However, they do indicate that there will not be an Environmental Management Department (EMD). Instead, the function performed by the EMD will be rolled into a general technical services department responsible for other regulatory functions besides environmental concerns within Kansas including workplace, public, and pipeline safety.

Q: Does it appear that New OneOk may degrade the environmental management programs already put into place by WRI?

A: Not necessarily. However, WRI was asked in data request number 111 what its estimate of environmental staff requirements would be assuming the merger. They responded, "Assuming some synergies of expertise will occur in the merger, an equivalent environmental staff covering both states might be expected to be in the 7-10 FTE range." OneOk's proposal falls far short of this range. In fact, OneOk shows in its "Analysis of Cost Savings Potential" that it intends to allocate one manager of environmental services, one environmental engineer, one environmental specialist, and one industrial hygienist to Kansas and zero environmental employees to Oklahoma. This translates to a shift from one current WRI environmental management employee per 132,000 customers to one New OneOk environmental employee per 347,000 customers. This is another factor that makes Staff believe that erosion of WRI's environmental performance is possible. To counter this possible erosion, the Commission may want to monitor forward going environmental management efforts and resources in Kansas should the merger be approved.

Q: What is the current state of WRI's environmental management department?

A: WRI indicates in data request number 107 that it has an environmental management department which consists of industrial hygiene, laboratory services, and an engineering staff. Their department's budget is \$2,140,902 for 1997. This department has been in existence since 1984 and has 15 full time employees. Of these 15, 5 full time equivalent positions are allocated to the gas operations in Kansas. WRI has an environmental policy manual, training procedures, and an extensive record keeping system.

Q: What experiences, qualifications, and resources do the current WRI environmental management employees allocated to gas concerns possess?

A: These are shown in exhibit PD-5

Q: Can the quality of the experiences, qualifications, and resources of these employees be associated with the excellent environmental performance of WRI?

A: Yes, they can. It appears to Staff that maintaining the quality of WRI's current environmental management personnel is critical to maintaining WRI's relative environmental performance on a forward going basis. The Commission may want to include this issue in any benchmark it develops.

Q: Is Staff encouraging the Commission to institute safeguards to monitor the quality of New OneOk's environmental management in Kansas to ensure the maintenance of WRI's current performance in this area?

A: Yes it is. Should the merger be allowed, the Commission may want to institute either direct or indirect safeguards to help ensure the maintenance of relative environmental performance in Kansas. One option is annual KDHE performance reviews submitted to staff by New OneOk. Such reviews could indicate movement away from the quality of environmental management currently practiced by WRI. Staff notes that the KDHE is the best authority for such reviews since it is the state authority with jurisdiction over environmental matters in Kansas. Another option available would be for the Commission to require that the number of Kansas customers per environmental management employee ratio be maintained at the levels presently provided. Finally, a related option would be for the Commission to require New OneOk to maintain the quality of its environmental management employee resources available for Kansas projects at their present levels.

Q: Does this conclude your testimony?

A: Yes it does.

1. Additionally, Staff's method is very similar to the method currently being used by Western Resources for both gas and electric weather normalization.
2. WRI operates in approximately 80 counties, from as far north as Washington, as far south as Sumner, as far east as Johnson, and as far west as Grant. This is an area as long as the state and nearly as wide. Obviously, the weather encountered by WRI is as about as variable as the weather encountered by the state as a whole.
3. A priori, Staff expects higher correlation between customer use and temperature change the closer the customer and the weather station. For example, for customers located in Topeka, Staff expects their use to be more highly correlated with Topeka weather as opposed to Emporia's weather, or any other more distant weather. Striving to obtain higher correlation in this way serves to improve the subsequent regression analysis and results on which the weather normalization adjustment is primarily based.
4. That is, a temperature where most people do not use electricity for air heating or cooling.
5. The merger between Kansas Power & Light and Kansas Gas & Electric Company (see Order P. 35-36)
6. WRI response to Staff's data request number 1.
7. Ibid.
8. Ibid.
9. Ibid.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas)
Service, a Division of ONE Gas, Inc. for)
Approval of an Accounting Order to Track)
Expenses Associated with the Investigating,)
Testing, Monitoring, Remediating and Other)
Work Performed at the Manufactured Gas)
Plant Sites Managed by Kansas Gas Service.)

Docket No. 17-KGSG-455-ACT

JOINT MOTION TO APPROVE UNANIMOUS SETTLEMENT AGREEMENT

Kansas Gas Service, a division of ONE Gas, Inc., ("Kansas Gas Service"), the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) and the Citizens' Utility Ratepayer Board ("CURB"), collectively Joint Movants, move the Commission for an order approving the attached Unanimous Settlement Agreement ("Agreement") pursuant to K.A.R. 82-1-230a. In support of their Motion, Joint Movants state as follows:

1. Kansas Gas Service is a jurisdictional public utility as defined by K.S.A. 66-104 and is providing natural gas utility service in Kansas pursuant to grants of authority from the Commission.
2. On April 11, 2017, Kansas Gas Service filed an application seeking approval of an Accounting Authority Order ("AAO") to accumulate, defer and recover costs incurred after January 1, 2017, associated with Kansas Gas Service's obligation to perform environmental investigating, testing, monitoring, remediating and other work on specific natural gas facilities used in the past to manufacture gas and the real property where those facilities were located, as well as nearby properties ("MGP Sites"), which are being managed by Kansas Gas Service and performed under a Consent Order with the State of Kansas Department of Health and Environment ("KDHE") in KDHE Case No.

94-E-0172 on October 7, 1994, by Kansas Gas Service's predecessor, Western Resources, Inc., ("WRI") and several amendments thereto (collectively "Consent Order") and Section II. A, paragraph 8 (K) of the Stipulation and Agreement approved by the Commission in Docket No. 97-WSRG-486-MER ("486 Docket") by Order dated October 15, 1997.

3. Kansas Gas Service sought regulatory treatment consistent with the treatment approved by the Commission in Docket No. 185,507-U (Order dated July 14, 1993) for similar environmental costs incurred in the work performed at an MGP site managed by Kansas Public Service Company ("KPS Docket"). Accordingly, Kansas Gas Service sought authority to accumulate in account 186, and recover in subsequent rate cases, MGP Costs to be amortized over a ten-year period. The regulatory asset would not accrue carrying charges, nor be included in rate base. The absence of accrued carrying charges and exclusion from rate base represents an economic cost absorbed by Kansas Gas Service and was intended to effectively result in a sharing of the costs between customers and shareholders on a 60% / 40% basis. Kansas Gas Service also sought permission to retain proceeds from insurance companies to cover \$9.49 million in MGP Costs paid by Kansas Gas Service between 1998 and December 31, 2016. Kansas Gas Service also sought permission to keep 40% of the insurance proceeds. The remaining 60% of the insurance proceeds would be credited to customers as allowed under the KPS Docket.

4. On September 8, 2017, Staff and CURB filed testimony. Staff recommended that both Kansas Gas Service's AAO and its requested ratemaking treatment for insurance proceeds be denied at this time. Staff also recommended the Commission endorse a framework in which all future ratepayer recovery of MGP Costs over \$1 million per MGP site be accomplished by reducing the net

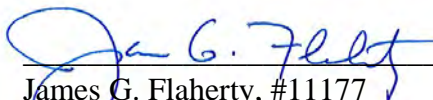
MGP Costs (net of insurance recoveries) amount by 40%, then amortizing the remaining balance over 10 years with carrying cost afforded to the unamortized balance at Kansas Gas Service's Commission approved Weighted Average Cost of Capital ("WACC"). Staff indicated that its proposed treatment accomplished the same ratemaking/policy goal that the Commission intended in the KPS Docket. Finally, Staff recommended that the Commission require Kansas Gas Service to credit 100% of all insurance proceeds against future MGP remediation expenses. CURB recommended that the Commission deny Kansas Gas Service's request and find that these costs should be recovered from Kansas Gas Service's shareholders. To the extent that the Commission would find that some recovery from ratepayers was appropriate, then CURB recommended the Commission should limit any deferral to 50% of remediation costs with ratemaking treatment for any deferral to be examined in a base rate case. CURB also recommended that internal labor costs not be included in any deferral.

5. On September 25, 2017, Kansas Gas Service filed rebuttal testimony regarding the positions taken by Staff and CURB. Kansas Gas Service contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery of MGP Costs and treatment of insurance proceeds relating to those MGP Costs.

6. Pursuant to the procedural schedule approved by the Commission in this matter, Kansas Gas Service, Staff and CURB held a settlement conference on September 28, 2017. Those settlement discussions have continued intermittently over a two-week period. As a result of those discussions, the Parties reached this Unanimous Settlement Agreement ("Agreement") to present to the Commission for approval. The Agreement is a unanimous settlement agreement as that term is

defined by K.A.R. 82-1-230a in that all parties to this docket have approved the Agreement and the Agreement addresses all issues in this docket.

WHEREFORE, Joint Movants respectfully request that the Commission grant the relief requested herein.



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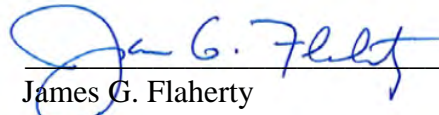
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Attorneys for CURB

VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states that he is the attorney for Kansas Gas Service, A Division of ONE Gas, Inc.; that he has read the forgoing Joint Motion to Approve Unanimous Settlement Agreement and the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 12th day of October 2017.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Motion to Approve Unanimous Settlement Agreement was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 12th day of October, 2017, addressed to:

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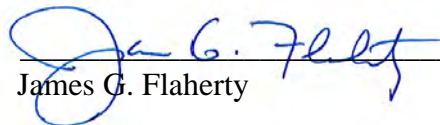
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James G. Flaherty

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas)
Service, a Division of ONE Gas, Inc. for)
Approval of an Accounting Order to Track)
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Docket No. 17-KGSG-455-ACT

UNANIMOUS SETTLEMENT AGREEMENT

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I. INTRODUCTION

1. Kansas Gas Service is a jurisdictional public utility as defined by K.S.A. 66-104 and is providing natural gas utility service in Kansas pursuant to grants of authority from the Commission.

2. On April 11, 2017, Kansas Gas Service filed an application seeking approval of an Accounting Authority Order ("AAO") to accumulate, defer and recover costs incurred after January 1, 2017, associated with Kansas Gas Service's obligation to perform environmental investigating, testing, monitoring, remediating and other work on specific natural gas facilities used in the past to manufacture gas and the real property where those facilities were located, as well as nearby properties ("MGP Sites"), which are being managed by Kansas Gas Service and performed under a Consent Order with the State of Kansas Department of Health and Environment ("KDHE") in KDHE Case No. 94-E-0172 on October 7, 1994, by Kansas Gas Service's predecessor, Western Resources, Inc., ("WRI") and several amendments thereto (collectively "Consent Order") and Section II. A, paragraph

8 (K) of the Stipulation and Agreement approved by the Commission in Docket No. 97-WSRG-486-MER ("486 Docket") by Order dated October 15, 1997.

3. Kansas Gas Service sought regulatory treatment consistent with the treatment approved by the Commission in Docket No. 185,507-U (Order dated July 14, 1993) for similar environmental costs incurred in the work performed at an MGP site managed by Kansas Public Service Company ("KPS Docket"). Accordingly, Kansas Gas Service sought authority to accumulate in account 186, and recover in subsequent rate cases, MGP Costs to be amortized over a ten-year period. The regulatory asset would not accrue carrying charges, nor be included in rate base. The absence of accrued carrying charges and exclusion from rate base represents an economic cost absorbed by Kansas Gas Service and was intended to effectively result in a sharing of the costs between customers and shareholders on a 60% / 40% basis. Kansas Gas Service also sought permission to retain proceeds from insurance companies to cover \$9.49 million in MGP Costs paid by Kansas Gas Service between 1998 and December 31, 2016. Kansas Gas Service also sought permission to keep 40% of the insurance proceeds. The remaining 60% of the insurance proceeds would be credited to customers as allowed under the KPS Docket.

4. On September 8, 2017, Staff and CURB filed testimony. Staff recommended that both Kansas Gas Service's AAO and its requested ratemaking treatment for insurance proceeds be denied at this time. Staff also recommended the Commission endorse a framework in which all future ratepayer recovery of MGP Costs over \$1 million per MGP site be accomplished by reducing the net MGP Costs (net of insurance recoveries) amount by 40%, then amortizing the remaining balance over 10 years with carrying cost afforded to the unamortized balance at Kansas Gas Service's Commission approved Weighted Average Cost of Capital ("WACC"). Staff indicated that its proposed treatment

accomplished the same ratemaking/policy goal that the Commission intended in the KPS Docket. Finally, Staff recommended that the Commission require Kansas Gas Service to credit 100% of all insurance proceeds against future MGP remediation expenses. CURB recommended that the Commission deny Kansas Gas Service's request and find that these costs should be recovered from Kansas Gas Service's shareholders. To the extent that the Commission would find that some recovery from ratepayers was appropriate, then CURB recommended the Commission should limit any deferral to 50% of remediation costs with ratemaking treatment for any deferral to be examined in a base rate case. CURB also recommended that internal labor costs not be included in any deferral.

5. On September 25, 2017, Kansas Gas Service filed rebuttal testimony regarding the positions taken by Staff and CURB. Kansas Gas Service contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery of MGP Costs and treatment of insurance proceeds relating to those MGP Costs.

6. Pursuant to the procedural schedule approved by the Commission in this matter, Kansas Gas Service, Staff and CURB held a settlement conference on September 28, 2017. Those settlement discussions have continued intermittently over a two-week period. As a result of those discussions, the Parties reached this Unanimous Settlement Agreement ("Agreement") to present to the Commission for approval. The Agreement is a unanimous settlement agreement as that term is defined by K.A.R. 82-1-230a in that all parties to this docket have approved the Agreement and the Agreement addresses all issues in this docket.

II. TERMS OF THE SETTLEMENT AGREEMENT

7. **RECOMMEND APPROVAL.** The Parties agree to recommend that the Commission

find this Agreement to be in the public interest and that the terms set forth below should be adopted by the Commission. The Parties stipulate and agree as follows:

8. ACCOUNTING AUTHORITY ORDER. The Commission will issue one AAO that will cover all MGP sites and all cash expenditures made by Kansas Gas Service after January 1, 2017, relating to all MGP Costs. MGP Costs are defined as actual and prudent external costs incurred after January 1, 2017, and which are necessary for the investigation and remediation work at MGP sites approved by KDHE (hereinafter referred to as "MGP Costs"). MGP Costs will also include regulatory costs (except internal labor costs) incurred related to MGP site oversight by the KDHE, as well as costs incurred in this Commission docket and any compliance docket. Further, MGP Costs will include those actual and prudent costs incurred in the pursuit of insurance recoveries to reimburse Kansas Gas Service for MGP Costs as defined in this Agreement. MGP Costs will not include internal labor costs. MGP Costs will also not include any and all costs incurred by Kansas Gas Service relating to any causes of action or any third party claims relating to the MGP sites, including but not limited to claims for third party-damages, claims for injunctive relief, declaratory judgements, claims pertaining to nuisance and/or claims formed under the common law ("Non-MGP Costs"). Kansas Gas Service shall be allowed to accumulate in account 182.3 and seek approval to recover in subsequent rate cases, the actual and prudent MGP Costs it incurs beginning on January 1, 2017, at the twelve (12) former manufactured gas plant ("MGP") sites currently managed by Kansas Gas Service, which are identified in this docket.

9. AMORTIZATION PERIOD. Kansas Gas Service will be allowed to defer and seek recovery of 100% of the MGP Costs as defined in this Agreement. For the first rate case in which Kansas Gas Service seeks recovery of MGP Costs that it has deferred, Kansas Gas Service shall use

a 15-year amortization period. Kansas Gas Service shall be allowed to continue to defer and seek recovery of 100% of MGP Costs as defined in this Agreement in subsequent rate cases. Each respective set of MGP Costs Kansas Gas Service seeks recovery of shall be considered a separate tranche. Excluding the first tranche, which shall be assigned a 15-year amortization period, Kansas Gas Service shall be allowed to seek an amortization period for each separate tranche of MGP Costs provided the amortization period cannot result in ratepayers paying greater than the net present value of 60% of MGP Costs. Parties, other than Kansas Gas Service, reserve the right to argue a different amortization period should apply as necessary to effectuate any and all degrees of ratepayer / shareholder cost recovery. Kansas Gas Service reserves the right to rebut the positions of other Parties in the event other Parties recommend an amortization period that would result in ratepayers paying less than the net present value of 60% of MGP Costs. Any unamortized MGP Costs shall not be included in rate base in rate cases or accumulate carrying charges outside of a rate case. Once a MGP Cost tranche's amortization period has been approved by the Commission, no Party shall be allowed to recommend the MGP Cost tranche's amortization period should be altered.

10. CAPON AAO. The expenditures relating to the MGP Costs covered by the AAO shall be limited to \$15 million net of insurance recoveries under the AAO. If future MGP Costs net of insurance recoveries are expected to exceed \$15 million, then Kansas Gas Service will be required to file an application in this docket for approval to increase the \$15 million amount under the AAO. Staff and CURB reserve the right to challenge a request to increase the \$15 million cap, and in these regards, do not waive their unequivocal right to reassert any argument posed in this docket with respect to any such requested increase, including the assertion that any such increase should be borne entirely by shareholders of Kansas Gas Service and Kansas Gas Service reserves the right to reassert

any rebuttal argument posed in this docket should Staff or CURB reassert any argument posed in this docket in relation to a request to increase the cap.

11. REGULATORY TREATMENT OF INSURANCE PROCEEDS. One hundred percent (100%) of the proceeds paid by insurance companies after January 1, 2017, in reimbursement to Kansas Gas Service for investigation and remediation costs incurred, in connection with the investigation and remediation work at the MGP sites approved by KDHE included in this Application (i.e., MGP Costs) shall be applied by Kansas Gas Service to reduce the gross MGP Costs, as defined above. To the extent possible, Kansas Gas Service shall track and match up proceeds received from insurance with the cost paid and the MGP site to which it is related. The Parties understand and agree that other general liability claims could be made against the insurance policies for recovery of Non-MGP Costs, but neither the costs related to those claims or any insurance proceeds relating to those claims shall be covered under this AAO and this Agreement. At the time the Parties mutually agree that this docket or compliance docket can be closed and there are insurance proceeds in excess of the MGP Costs paid by insurance companies to reimburse Kansas Gas Service for MGP Costs (as defined herein) that Kansas Gas Service has asked its customers to pay, then Kansas Gas Service shall be allowed to retain those excess insurance proceeds at the time the Commission closes out the docket. Upon closure of the docket, Kansas Gas Service will not be permitted to seek recovery from Kansas ratepayers of future MGP Costs related to Kansas Gas Service's Kansas MGP sites, regardless of whether or not such MGP Costs are known or unknown, definite or contingent, or arise from MGP sites covered by this Agreement or otherwise.

12. REPORTING REQUIREMENTS. Kansas Gas Service shall comply with the following reporting requirements under the AAO:

a. Kansas Gas Service shall file an annual report on or before April 1 of each year in a compliance docket that shall include: (1) all reports provided to KDHE during the preceding calendar year; (2) a summary of the MGP Costs incurred in the preceding calendar year; (3) a description of the scheduled work conducted in the preceding calendar year and to be conducted in the subsequent calendar year as well as a cost estimate for such work; and (4) the amount of insurance proceeds received, if any, associated with MGP Costs in the preceding year.

b. Kansas Gas Service shall also to the extent possible, include in the annual report: (i) MGP Costs (and invoices reflecting those MGP Costs) broken down by MGP site and (ii) proceeds paid by the insurance company to reimburse KGS for MGP Costs matched up to MGP Cost invoices and broken down by MGP site if possible.

c. In addition to the above mentioned reporting requirements, if Kansas Gas Service becomes aware of additional remediation projects that are reasonably expected to exceed \$1 million, it shall meet with the Staff and CURB to provide them the scope of the work to be performed under the project that has been approved by KDHE. During this meeting Kansas Gas Service will provide the estimated cost for the work to be performed, an explanation with support of how the work will be performed, an explanation of the reasonableness of the work to be performed, an explanation as to what other options Kansas Gas Service evaluated, and an explanation as to why the option chosen by Kansas Gas Service and approved by the KDHE was selected over the other options.

13. MISCELLANEOUS PROVISIONS.

a. This Agreement fully resolves issues specifically addressed in this Agreement.

The terms contained in this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

b. The terms in this Agreement have resulted from extensive negotiations among the Parties and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, any Party has the option to terminate this Agreement and, if so terminated, none of the Parties shall be bound, prejudiced, or in any way affected by any of the terms contained in this Agreement, unless otherwise provided herein. If this Agreement is terminated under this provision, then the Parties agree to seek the first available hearing date on the Commission's calendar for an evidentiary hearing on the merits of the issues raised in this docket.

c. It is the Parties' intent to pre file testimony in support of the Agreement and to present those witnesses in support of this Agreement at a hearing before the Commission. The Parties agree to move for the admission of all pre filed testimony and exhibits and to waive cross examination of all witnesses, provided that the Parties may be allowed to ask witnesses questions relating to any questions posed by the Commission at the hearing on this Agreement.

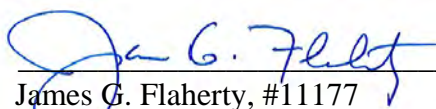
d. Unless (and only to the extent) otherwise specified in this Agreement, the Parties shall not be prejudiced, bound, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same.

e. This Agreement does not prejudice or waive any Party's rights, positions, claims, assertions, or arguments in any proceeding in this docket, or any other proceedings

before this Commission or in any court.

f. If the Commission approves this Agreement in its entirety and incorporates the same into its final order in this docket, the Parties intend to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

AGREED TO AND ACCEPTED this _____ day of October, 2017, by:



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**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 Application of Kansas Gas)
 Service, a Division of ONE Gas, Inc. for)
 Approval of an Accounting Order to Track)
 Expenses Associated with the Investigating,) Docket No. 17-KGSG-455-ACT
 Testing, Monitoring, Remediating and Other)
 Work Performed at the Manufactured Gas Plant)
 Sites Managed by Kansas Gas Service.)

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

1. On April 11, 2017, Kansas Gas Service (KGS) filed an Application seeking approval of an Accounting Authority Order (AAO) to accumulate, defer and recover costs incurred after January 1, 2017, associated with its obligation to perform environmental investigating, testing, monitoring, remediating and other work on specific natural gas facilities, the real property where those facilities were located, and nearby properties (MGP Sites) managed by KGS and performed under a Consent Order with the State of Kansas Department of Health and Environment (KDHE) in KDHE Case No. 94-E-0172 on October 7, 1994, by KGS’s predecessor, Western Resources, Inc., and Section II. A, paragraph 8(K) of the Stipulation and Agreement approved by the Commission in Docket No. 97-WSRG-486-MER.¹

2. Consistent with the treatment approved by the Commission in Docket No. 185,507-U, KGS sought authority to accumulate in account 186, and recover in subsequent rate

¹Application for Accounting Order (Application), Apr. 11, 2017, p. 1.

cases, MGP costs to be amortized over a 10-year period.² The regulatory asset would not accrue carrying charges, nor be included in rate base.³ The absence of accrued carrying charges and exclusion from rate base represents an economic cost absorbed by KGS and intended to share costs between customers and shareholders on a 60%/40% basis.⁴ KGS also sought permission to retain proceeds from insurance companies to cover \$9.49 million in MGP costs paid by KGS between November 1, 1997, and December 31, 2016.⁵ KGS also sought to keep 40% of the insurance proceeds, with the remaining 60% to be credited to customers.⁶

3. In support of its Application, KGS submitted testimony and exhibits of three witnesses: David Dittmore, James Haugh, and Mark W. Smith.⁷

4. On September 8, 2017, Commission Staff (Staff) filed its testimony, recommending (1): both KGS's AAO and its requested ratemaking treatment for insurance proceeds be denied at this time;⁸ (2) the Commission endorse a framework in which all future ratepayer recovery of MGP costs over \$1 million per MGP site be accomplished by reducing the net MGP costs (net of insurance recoveries) amount by 40%, then amortizing the remaining balance over 10 years with carrying cost afforded to the unamortized balance at KGS's Commission approved Weighted Average Cost of Capital;⁹ and (3) the Commission require KGS to credit 100% of all insurance proceeds against future MGP remediation expenses.¹⁰

²*Id.*, ¶ 3.

³*Id.*

⁴*Id.*

⁵*Id.*, ¶ 5.

⁶*Id.*

⁷See Direct Testimony and Exhibits of David N. Dittmore (Dittmore Direct), Apr. 11, 2017; Direct Testimony and Exhibits of James Haugh (Haught Direct), Apr. 11, 2017; and Direct Testimony and Exhibits of Mark W. Smith (Smith Direct), Apr. 11, 2017.

⁸Direct Testimony of Justin T. Grady (Grady Direct), Sept. 8, 2017, p. 3.

⁹*Id.*

¹⁰*Id.*, pp. 7-8.

5. On September 8, 2017, Andrea C. Crane filed Direct Testimony on behalf of the Citizens' Utility Ratepayer Board (CURB),¹¹ recommending denial of KGS's request and that these costs should be recovered from KGS's shareholders.¹² In the alternative, CURB recommended excluding internal labor cost for any deferral,¹³ limiting any deferral to 50% of remediation costs and addressing ratemaking treatment for any deferral in a rate case.¹⁴

6. On September 18, 2017, Crane filed cross-answering testimony, reiterating that shareholders should be responsible for MGP costs.¹⁵ However, if the Commission determined that ratepayers should be responsible for MGP costs, CURB recommended modifying Staff's proposal: (1) to delay specifying any particular ratemaking treatment for prudently deferred costs,¹⁶ and (2) to limit any deferred costs authorized by the Commission to no more than 50% of remediation costs.¹⁷

7. On September 25, 2017, KGS filed rebuttal testimony regarding the positions taken by Staff and CURB.¹⁸ KGS contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery of MGP costs and treatment of insurance proceeds relating to those MGP Costs.¹⁹

8. On October 4, 2017, KGS, Staff and CURB (Parties) informed the Commission they had reached a unanimous settlement agreement, in principle, addressing all issues.²⁰ On October 12, 2017, the Parties filed their Agreement and testimony in support of the Agreement.²¹

¹¹CURB was granted intervention on April 20, 2017.

¹² Direct Testimony of Andrea C. Crane (Crane Direct), Sept. 8, 2017, p. 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵Cross-Answering Testimony of Andrea C. Crane, Sept. 18, 2017, p. 5.

¹⁶*Id.*

¹⁷*Id.*, p. 6.

¹⁸Rebuttal Testimony of Dick F. Rohlfs (Rohlfs Rebuttal), Sept. 25, 2017; Rebuttal Testimony of James E. Haught (Haught Rebuttal), Sept. 25, 2017; Rebuttal Testimony of David Scalf (Scalf Rebuttal), Sept. 25, 2017; and Rebuttal Testimony of Mark W. Smith (Smith Rebuttal), Sept. 25, 2017.

¹⁹Scalf Rebuttal, p. 2.

²⁰Joint Motion to Amend Procedural Schedule, Oct. 4, 2017, ¶ 6.

²¹*See* Joint Motion to Approve Unanimous Settlement Agreement (Agreement), Oct. 12, 2017; Justin T. Grady's Testimony in Support of Agreement, (Grady Supporting Testimony) Oct. 12, 2017; Andrea Crane's Testimony in Support of Agreement (Crane Supporting Testimony), Oct. 12, 2017; and David Scalf's Testimony in Support of

9. The Commission has full power, authority and jurisdiction to supervise and control natural gas public utilities doing business in Kansas and is empowered to do all things necessary and convenient to exercise that power, authority and jurisdiction. As a natural gas public utility as defined in K.S.A. 66-104,²² KGS is subject to Commission jurisdiction and is “required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such natural gas public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations.”²³

THE UNANIMOUS SETTLEMENT AGREEMENT

10. ACCOUNTING AUTHORITY ORDER. The Commission will issue an AAO covering all MGP sites and all cash expenditures made by KGS after January 1, 2017, relating to all MGP costs.²⁴ MGP Costs will also include regulatory costs (except internal labor costs) incurred related to MGP site oversight by the KDHE, and costs incurred in this Docket and any compliance docket.²⁵ Further, MGP Costs will include those actual and prudent costs incurred in the pursuit of insurance recoveries to reimburse KGS for MGP Costs as defined in the Agreement.²⁶ MGP Costs do not include any costs incurred by KGS relating to any causes of action or any third-party claims relating to the MGP sites, including (but not limited to): claims for third party-damages, claims for injunctive relief, declaratory judgements, claims pertaining to nuisance and/or claims formed under the common law (Non-MGP Costs).²⁷ KGS is allowed to accumulate in account 182.3 and seek

Agreement (Scalf Supporting Testimony), Oct. 12, 2017.

²²K.S.A. 66-1,201; K.S.A. 66-1,200; K.S.A. 66-104.

²³K.S.A. 66-1,202.

²⁴Agreement, ¶ 8. MGP costs are defined as actual and prudent external costs incurred after January 1, 2017, and which are necessary for the investigation and remediation work at MGP sites approved by KDHE.

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

recovery in subsequent rate cases of the actual and prudent MGP Costs it incurs beginning on January 1, 2017, at the twelve (12) former MGP sites identified in this Docket.²⁸

11. AMORTIZATION PERIOD. KGS is allowed to defer and seek recovery of 100% of the MGP Costs.²⁹ In the first rate case in which KGS seeks recovery of MGP Costs it has deferred, KGS shall use a 15-year amortization period.³⁰ In subsequent rate cases, KGS is allowed to continue to defer and seek recovery of 100% of MGP Costs.³¹ Each respective set of MGP Costs for which KGS seeks recovery shall be considered a separate tranche.³² Other than the first tranche, which is assigned a 15-year amortization period, KGS is allowed to seek an amortization period for each separate tranche of MGP Costs that does not result in ratepayers paying more than the net present value of 60% of MGP Costs.³³ Staff and CURB reserve the right to argue a different amortization period.³⁴ KGS reserves the right to rebut the positions of other Parties recommending an amortization period resulting in ratepayers paying less than the net present value of 60% of MGP Costs.³⁵ Any unamortized MGP Costs shall not be included in rate base in rate cases or accumulate carrying charges outside of a rate case.³⁶ Following Commission approval of a MGP Cost tranche's amortization period, no Party is allowed to recommend altering the MGP Cost tranches amortization period.³⁷

12. CAP ON AAO. Expenditures relating to the MGP Costs covered by the AAO shall be limited to \$15 million net of insurance recoveries under the AAO.³⁸ If KGS expects future MGP Costs net of insurance recoveries to exceed \$15 million, it shall file an application in this Docket to

²⁸*Id.*

²⁹*Id.*, ¶ 9.

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*, ¶ 10.

increase the \$15 million limit under the AAO.³⁹ Staff and CURB reserve the right to challenge any request to increase the \$15 million cap, including the right to reassert any argument with respect to any such requested increase. Likewise, KGS reserves the right to reassert any rebuttal argument to a request to increase the cap.⁴⁰

13. REGULATORY TREATMENT OF INSURANCE PROCEEDS. KGS shall apply one hundred percent (100%) of the proceeds paid by insurance companies after January 1, 2017, in reimbursement to KGS for investigation and remediation costs incurred (in connection with the investigation and remediation work performed at the MGP sites as approved by KDHE and included in this Application (MGP Costs)) to reduce the gross MGP Costs.⁴¹ To the extent possible, KGS shall track and match up proceeds received from insurance with the cost paid and the related MGP site.⁴²

14. The Parties agree that while other general liability claims made against the insurance policies for recovery of Non-MGP Costs may occur, neither the costs related to those claims nor any insurance proceeds relating to those claims are covered under the AAO and the Agreement.⁴³

15. When the Parties mutually agree this Docket or a compliance docket can be closed, if there are insurance proceeds remaining in excess of the MGP Costs that KGS has asked its customers to pay, KGS may retain those excess insurance proceeds.⁴⁴ But KGS will not be permitted to seek recovery from Kansas ratepayers of future MGP costs related to its Kansas MGP sites or arise from MGP sites covered by this Agreement.⁴⁵

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*, ¶ 11.

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

16. REPORTING REQUIREMENTS.

a. KGS shall file an annual report each April 1 in a compliance docket that includes: (1) all reports provided to KDHE during the preceding calendar year; (2) a summary of the MGP Costs incurred in the preceding calendar year; (3) a description of the scheduled work conducted in the preceding calendar year and to be conducted in the subsequent calendar year as well as a cost estimate for such work; and (4) the amount of insurance proceeds received, if any, associated with MGP Costs in the preceding year.⁴⁶

b. To the extent possible, the annual report should include: (i) MGP Costs (and invoices reflecting those MGP Costs) broken down by MGP site and (ii) proceeds paid by the insurance company to reimburse KGS for MGP Costs matched up to MGP Cost invoices and broken down by MGP site.⁴⁷

c. If KGS becomes aware of additional remediation projects that are reasonably expected to exceed \$1 million, it shall meet with the Staff and CURB to provide them the scope of the work to be performed under the KDHE-approved project. During this meeting KGS will provide the estimated cost for the work to be performed, and explanations of how the work will be performed, the reasonableness of the work to be performed, what other options KGS evaluated, and why KGS selected that option over the other options.⁴⁸

17. The law generally favors compromise and settlement of disputes between parties entering into an agreement knowingly and in good faith to settle the dispute.⁴⁹ When approving a settlement, the Commission must make an independent finding that the settlement is supported by

⁴⁶*Id.*, ¶ 12a.

⁴⁷*Id.*, ¶ 12b.

⁴⁸*Id.*, ¶ 12c.

⁴⁹*Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-242 (2001).

substantial competent evidence in the record as a whole, establishes just and reasonable rates, and is in the public interest.⁵⁰

18. The Agreement is a unanimous settlement agreement as defined by K.A.R. 82-1-230a. Therefore, there is no need to apply the five-factor test.⁵¹

19. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.⁵² Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a court can only find that a Commission decision is not supported by substantial competent evidence when the evidence shows “the [Commission’s] determination is so wide of the mark as to be outside the realm of fair debate.”⁵³

20. The Agreement is supported by KGS’s Application and the Parties’ direct, cross-answering, and rebuttal testimony. Staff analyzed the Application and formed its own conclusions which were filed in Staff’s direct testimony.⁵⁴ CURB also reviewed the filing and stated its positions in its direct and cross-answering testimony.⁵⁵ The Commission reviewed a record that contained prefiled testimony from all of the Parties and the Joint Motion for Approval of Unanimous Settlement Agreement. The filed positions along with the testimony provided by the Parties, in support of the Agreement, represent the body of evidence the Commission relies on to make a determination of whether the terms contained in the Agreement represent a reasonable resolution of the issues presented in this case. Based on the testimony filed by the Parties in support of the Agreement, all the Parties relied on this evidence in negotiations and eventually

⁵⁰*Citizens’ Util. Ratepayer Bd. v. Kansas Corp. Comm’n.*, 27 Kan.App.2d 313, 316 (2000); rev. denied March 20, 2001.

⁵¹See Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, May 12, 2008, ¶¶ 9-10.

⁵²*Farmland Indus., Inc. v. Kansas Corp. Comm’n.*, 25 Kan.App.2d 849, 852 (1999).

⁵³*Id.*, at 851.

⁵⁴Grady Testimony in Support, p. 9.

⁵⁵*Id.*

agreed on a resolution of the issues.⁵⁶ Accordingly, the Commission finds that the Agreement is supported by substantial competent evidence in the record as a whole.

21. Staff indicated the terms of the Agreement are consistent with its expectations if it were to fully litigate this Docket.⁵⁷ For example, the 15-year amortization period was negotiated in recognition that in today's low capital cost environment, recovering 100% of the MGP costs over 10 years (without carrying charges) did not equate to the 60%/40% "effective" sharing of MGP Costs.⁵⁸ The Agreement provides for a process for the Parties to argue for different amortization periods in the future in order to effectuate a sharing of MGP Costs which cannot result in ratepayers paying greater than the net present value of 60% of MGP Costs.⁵⁹

22. The Commission also finds the Agreement will result in just and reasonable rates. While the Agreement technically does not affect current rates, it does provide an AAO that will likely affect rates in the future.⁶⁰ According to Staff's testimony, the Agreement resolves many of the concerns raised with the Application and results in just and reasonable rates.⁶¹

23. Under the Agreement, KGS will be required to credit 100% of the insurance proceeds received in reimbursement of MGP Costs to the regulatory asset.⁶² As a result, only *net* MGP Costs, (gross MGP Costs less insurance proceeds specifically related to those MGP Costs) will be amortized and recovered from ratepayers.⁶³ By requiring KGS to submit extensive and detailed reporting on an annual basis regarding the extent of MGP Costs and remediation activities, by MGP site, and to meet with Staff and CURB when a significant MGP remediation project (\$1 million or more) is identified, the Agreement will assist the Commission in setting just and

⁵⁶See Joint Motion to Approve Unanimous Settlement Agreement, Oct. 12, 2017, ¶ 6.

⁵⁷Grady Testimony in Support, p. 10.

⁵⁸*Id.*

⁵⁹Agreement, ¶ 9.

⁶⁰Grady Testimony in Support, p. 11.

⁶¹*Id.*, pp. 11-12.

⁶²*Id.*, p. 12.

⁶³*Id.*

reasonable rates for KGS in the future. By establishing a cap on the AAO and requiring KGS to seek additional accounting authority if it plans on extending that cap, the Agreement will result in an amortized cost to be recovered from customers that is known, measurable and consistent.⁶⁴ In the absence of the accounting order and regulatory treatment proposed under the Agreement, there would likely be a question of whether test period costs represented a normalized level of ongoing MGP Costs to be included in KGS's revenue requirement.⁶⁵ Because MGP Costs will vary year-to-year, it would be a challenge to determine an appropriate level to include in base rates.⁶⁶ The provisions in the Agreement require that the MGP Costs be amortized over a specific period, (i.e., in the first rate case over a 15-year period), thus establishing a straight-forward, consistent approach to annual cost recovery.⁶⁷

24. Under the terms in the Agreement, KGS's customers will not incur the total economic cost associated with MGP expenditures because KGS is foregoing a request for carrying charges and rate base recognition of the unamortized MGP Costs.⁶⁸ The amortization period for the first tranche of MGP Costs and process for future MGP cost tranches agreed to by the Parties will effectively result in the ratepayers paying no greater than the net present value of 60% of the MGP Costs and will provide KGS not only an incentive to efficiently and effectively manage investigative and remediation work and costs at the MGP sites, but also provide an incentive to aggressively pursue the recovery of those costs from insurance companies.⁶⁹ In addition, the reporting requirements contained in the Agreement will allow Staff, CURB and the Commission to track: the work being conducted at the MGP sites; the actual and estimated costs relating to that

⁶⁴Scalf Testimony in Support, pp. 11-12.

⁶⁵*Id.* at p. 12.

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.* at p. 13; *See also* Agreement, pp. 4-5.

work; and KGS's efforts to recover those costs from insurance companies.⁷⁰ Finally, Staff, CURB and the Commission will have the opportunity to review and approve the MGP Costs in subsequent rate cases before the MGP Costs are placed in rates for recovery.⁷¹

25. The Commission also finds the Agreement is in the public interest. The representatives of varied interests were able to collaborate and present a unanimous resolution of the issues in this case. CURB represents the interests of residential and small general service ratepayers, KGS represents the interest of the company and its shareholders and Staff represents the interests of the public generally.

26. The Agreement resolves the treatment of MGP costs and insurance proceeds in advance of future KGS rate cases.⁷² Approval of the Agreement adopts a balanced approach in the regulatory/policy cost-sharing and incentive mechanism to fund the continued investigation and remediation of the MGP sites, benefitting customer and the public through clean air and water.⁷³ Finally, the Agreement avoids the costly and time-consuming process of fully litigating these issues before the Commission.⁷⁴

27. Having reviewed the record as a whole, the Commission finds and concludes that substantial competent evidence supports approval of the Agreement in its entirety. Every natural gas public utility in Kansas is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.⁷⁵ Under Kansas Supreme Court precedent, rates must fall within a "zone of reasonableness" which balances the interests of investors versus ratepayers, present versus future ratepayers, and the public interest.⁷⁶ The Parties agree the Agreement, which allows for the recovery of MGP Costs in future rate cases, will ultimately result in reasonable

⁷⁰Scalf Supporting Testimony, p. 13.

⁷¹*Id.*

⁷²Grady Supporting Testimony, pp. 6, 11, 13.

⁷³Scalf Supporting Testimony, p. 13.

⁷⁴Grady Supporting Testimony, p. 14.

⁷⁵K.S.A. 66-1,202.

⁷⁶*Kansas Gas & Elec. Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 488 (1986).

rates.⁷⁷ Accordingly, the Commission finds the Agreement fairly represents a balance of the Parties' interests and reaches a reasonable result that is supported by the evidence.

28. The requirement of just and reasonable rates incorporates the "zone of reasonableness" test used to determine whether the rate is within an elusive range of reasonableness in calculating a fair rate of return.⁷⁸ The Commission considered the competing interests it must take into account, and finds the terms which allow for recovery of MGP Costs in future rates fall within the "zone of reasonableness." There is substantial evidence in the record that the agreed-upon regulatory treatment of MGP Costs and insurance proceeds relating to those MGP Costs will provide KGS sufficient revenues and cash flows to meet its financial obligations, yet will keep rates as low as possible while maintaining reliable service for its customers. The Commission finds and concludes approval of the Agreement will result in just and reasonable rates for KGS and its customers.

29. The Commission finds that approval of the Agreement is in the public interest. The Parties agree the terms of the Agreement represent an equitable balancing of the interests of all Parties and are in the public interest and should be approved by the Commission. The Commission further finds the public interest is served by minimizing the cost of litigation that would be passed on to ratepayers.⁷⁹

30. After a careful review and consideration of the evidence in the record, the Commission finds that the attached Agreement is supported by substantial competent evidence in the record as a whole, will result in just and reasonable rates, and is in the public interest. Therefore, the Commission approves the Agreement in its entirety.

⁷⁷Grady Supporting Testimony, p. 11.

⁷⁸*Kansas Gas*, 239 Kan. at 490.

⁷⁹Grady Supporting Testimony, p. 14.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion to Approve the Unanimous Settlement Agreement is granted. The Unanimous Settlement Agreement is approved in its entirety. The terms of the attached Unanimous Settlement Agreement are incorporated into this Order.

B. The Commission approves the Accounting Authority Order as set forth in the Unanimous Settlement Agreement. KGS is allowed to accumulate in account 182.3 and seek recovery of actual and prudent MGP Costs in subsequent rate cases it incurs beginning on January 1, 2017, at the twelve (12) former MGP sites identified in this Docket.

C. The Commission approves the regulatory treatment of the insurance proceeds associated with the MGP Costs as set forth in the Agreement.

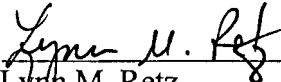
D. The Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.

E. The Commission retains jurisdiction over the subject matter and the Parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner.

Dated: NOV 21 2017



Lynn M. Retz
Secretary to the Commission

BGF

EMAILED

NOV 21 2017

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas)
Service, a Division of ONE Gas, Inc. for)
Approval of an Accounting Order to Track)
Expenses Associated with the Investigating,)
Testing, Monitoring, Remediating and Other)
Work Performed at the Manufactured Gas)
Plant Sites Managed by Kansas Gas Service.)

Docket No. 17-KGSG-455-ACT

JOINT MOTION TO APPROVE UNANIMOUS SETTLEMENT AGREEMENT

Kansas Gas Service, a division of ONE Gas, Inc., ("Kansas Gas Service"), the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) and the Citizens' Utility Ratepayer Board ("CURB"), collectively Joint Movants, move the Commission for an order approving the attached Unanimous Settlement Agreement ("Agreement") pursuant to K.A.R. 82-1-230a. In support of their Motion, Joint Movants state as follows:

1. Kansas Gas Service is a jurisdictional public utility as defined by K.S.A. 66-104 and is providing natural gas utility service in Kansas pursuant to grants of authority from the Commission.
2. On April 11, 2017, Kansas Gas Service filed an application seeking approval of an Accounting Authority Order ("AAO") to accumulate, defer and recover costs incurred after January 1, 2017, associated with Kansas Gas Service's obligation to perform environmental investigating, testing, monitoring, remediating and other work on specific natural gas facilities used in the past to manufacture gas and the real property where those facilities were located, as well as nearby properties ("MGP Sites"), which are being managed by Kansas Gas Service and performed under a Consent Order with the State of Kansas Department of Health and Environment ("KDHE") in KDHE Case No.

94-E-0172 on October 7, 1994, by Kansas Gas Service's predecessor, Western Resources, Inc., ("WRI") and several amendments thereto (collectively "Consent Order") and Section II. A, paragraph 8 (K) of the Stipulation and Agreement approved by the Commission in Docket No. 97-WSRG-486-MER ("486 Docket") by Order dated October 15, 1997.

3. Kansas Gas Service sought regulatory treatment consistent with the treatment approved by the Commission in Docket No. 185,507-U (Order dated July 14, 1993) for similar environmental costs incurred in the work performed at an MGP site managed by Kansas Public Service Company ("KPS Docket"). Accordingly, Kansas Gas Service sought authority to accumulate in account 186, and recover in subsequent rate cases, MGP Costs to be amortized over a ten-year period. The regulatory asset would not accrue carrying charges, nor be included in rate base. The absence of accrued carrying charges and exclusion from rate base represents an economic cost absorbed by Kansas Gas Service and was intended to effectively result in a sharing of the costs between customers and shareholders on a 60% / 40% basis. Kansas Gas Service also sought permission to retain proceeds from insurance companies to cover \$9.49 million in MGP Costs paid by Kansas Gas Service between 1998 and December 31, 2016. Kansas Gas Service also sought permission to keep 40% of the insurance proceeds. The remaining 60% of the insurance proceeds would be credited to customers as allowed under the KPS Docket.

4. On September 8, 2017, Staff and CURB filed testimony. Staff recommended that both Kansas Gas Service's AAO and its requested ratemaking treatment for insurance proceeds be denied at this time. Staff also recommended the Commission endorse a framework in which all future ratepayer recovery of MGP Costs over \$1 million per MGP site be accomplished by reducing the net

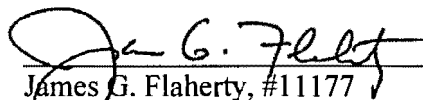
MGP Costs (net of insurance recoveries) amount by 40%, then amortizing the remaining balance over 10 years with carrying cost afforded to the unamortized balance at Kansas Gas Service's Commission approved Weighted Average Cost of Capital ("WACC"). Staff indicated that its proposed treatment accomplished the same ratemaking/policy goal that the Commission intended in the KPS Docket. Finally, Staff recommended that the Commission require Kansas Gas Service to credit 100% of all insurance proceeds against future MGP remediation expenses. CURB recommended that the Commission deny Kansas Gas Service's request and find that these costs should be recovered from Kansas Gas Service's shareholders. To the extent that the Commission would find that some recovery from ratepayers was appropriate, then CURB recommended the Commission should limit any deferral to 50% of remediation costs with ratemaking treatment for any deferral to be examined in a base rate case. CURB also recommended that internal labor costs not be included in any deferral.

5. On September 25, 2017, Kansas Gas Service filed rebuttal testimony regarding the positions taken by Staff and CURB. Kansas Gas Service contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery of MGP Costs and treatment of insurance proceeds relating to those MGP Costs.

6. Pursuant to the procedural schedule approved by the Commission in this matter, Kansas Gas Service, Staff and CURB held a settlement conference on September 28, 2017. Those settlement discussions have continued intermittently over a two-week period. As a result of those discussions, the Parties reached this Unanimous Settlement Agreement ("Agreement") to present to the Commission for approval. The Agreement is a unanimous settlement agreement as that term is

defined by K.A.R. 82-1-230a in that all parties to this docket have approved the Agreement and the Agreement addresses all issues in this docket.

WHEREFORE, Joint Movants respectfully request that the Commission grant the relief requested herein.



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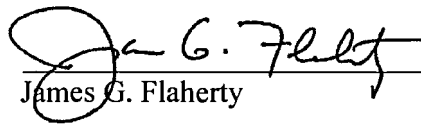
t.love@curb.kansas.gov

Attorneys for CURB

VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states that he is the attorney for Kansas Gas Service, A Division of ONE Gas, Inc.; that he has read the forgoing Joint Motion to Approve Unanimous Settlement Agreement and the statements contained therein are true.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 12th day of October 2017.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Motion to Approve Unanimous Settlement Agreement was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 12th day of October, 2017, addressed to:

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Todd E. Love
t.love@curb.kansas.gov

David W. Nickel
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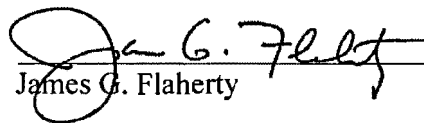
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James G. Flaherty

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas)
Service, a Division of ONE Gas, Inc. for)
Approval of an Accounting Order to Track)
Expenses Associated with the Investigating,) Docket No. 17-KGSG-455-ACT
Testing, Monitoring, Remediating and Other)
Work Performed at the Manufactured Gas)
Plant Sites Managed by Kansas Gas Service.)

UNANIMOUS SETTLEMENT AGREEMENT

Kansas Gas Service, a division of ONE Gas, Inc., ("Kansas Gas Service"), the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) and the Citizens' Utility Ratepayer Board ("CURB"), collectively "Parties," agree as follows:

I. INTRODUCTION

1. Kansas Gas Service is a jurisdictional public utility as defined by K.S.A. 66-104 and is providing natural gas utility service in Kansas pursuant to grants of authority from the Commission.

2. On April 11, 2017, Kansas Gas Service filed an application seeking approval of an Accounting Authority Order ("AAO") to accumulate, defer and recover costs incurred after January 1, 2017, associated with Kansas Gas Service's obligation to perform environmental investigating, testing, monitoring, remediating and other work on specific natural gas facilities used in the past to manufacture gas and the real property where those facilities were located, as well as nearby properties ("MGP Sites"), which are being managed by Kansas Gas Service and performed under a Consent Order with the State of Kansas Department of Health and Environment ("KDHE") in KDHE Case No. 94-E-0172 on October 7, 1994, by Kansas Gas Service's predecessor, Western Resources, Inc., ("WRI") and several amendments thereto (collectively "Consent Order") and Section II. A, paragraph

8 (K) of the Stipulation and Agreement approved by the Commission in Docket No. 97-WSRG-486-MER ("486 Docket") by Order dated October 15, 1997.

3. Kansas Gas Service sought regulatory treatment consistent with the treatment approved by the Commission in Docket No. 185,507-U (Order dated July 14, 1993) for similar environmental costs incurred in the work performed at an MGP site managed by Kansas Public Service Company ("KPS Docket"). Accordingly, Kansas Gas Service sought authority to accumulate in account 186, and recover in subsequent rate cases, MGP Costs to be amortized over a ten-year period. The regulatory asset would not accrue carrying charges, nor be included in rate base. The absence of accrued carrying charges and exclusion from rate base represents an economic cost absorbed by Kansas Gas Service and was intended to effectively result in a sharing of the costs between customers and shareholders on a 60%/40% basis. Kansas Gas Service also sought permission to retain proceeds from insurance companies to cover \$9.49 million in MGP Costs paid by Kansas Gas Service between 1998 and December 31, 2016. Kansas Gas Service also sought permission to keep 40% of the insurance proceeds. The remaining 60% of the insurance proceeds would be credited to customers as allowed under the KPS Docket.

4. On September 8, 2017, Staff and CURB filed testimony. Staff recommended that both Kansas Gas Service's AAO and its requested ratemaking treatment for insurance proceeds be denied at this time. Staff also recommended the Commission endorse a framework in which all future ratepayer recovery of MGP Costs over \$1 million per MGP site be accomplished by reducing the net MGP Costs (net of insurance recoveries) amount by 40%, then amortizing the remaining balance over 10 years with carrying cost afforded to the unamortized balance at Kansas Gas Service's Commission approved Weighted Average Cost of Capital ("WACC"). Staff indicated that its proposed treatment

accomplished the same ratemaking/policy goal that the Commission intended in the KPS Docket. Finally, Staff recommended that the Commission require Kansas Gas Service to credit 100% of all insurance proceeds against future MGP remediation expenses. CURB recommended that the Commission deny Kansas Gas Service's request and find that these costs should be recovered from Kansas Gas Service's shareholders. To the extent that the Commission would find that some recovery from ratepayers was appropriate, then CURB recommended the Commission should limit any deferral to 50% of remediation costs with ratemaking treatment for any deferral to be examined in a base rate case. CURB also recommended that internal labor costs not be included in any deferral.

5. On September 25, 2017, Kansas Gas Service filed rebuttal testimony regarding the positions taken by Staff and CURB. Kansas Gas Service contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery of MGP Costs and treatment of insurance proceeds relating to those MGP Costs.

6. Pursuant to the procedural schedule approved by the Commission in this matter, Kansas Gas Service, Staff and CURB held a settlement conference on September 28, 2017. Those settlement discussions have continued intermittently over a two-week period. As a result of those discussions, the Parties reached this Unanimous Settlement Agreement ("Agreement") to present to the Commission for approval. The Agreement is a unanimous settlement agreement as that term is defined by K.A.R. 82-1-230a in that all parties to this docket have approved the Agreement and the Agreement addresses all issues in this docket.

II. TERMS OF THE SETTLEMENT AGREEMENT

7. **RECOMMEND APPROVAL.** The Parties agree to recommend that the Commission

find this Agreement to be in the public interest and that the terms set forth below should be adopted by the Commission. The Parties stipulate and agree as follows:

8. ACCOUNTING AUTHORITY ORDER. The Commission will issue one AAO that will cover all MGP sites and all cash expenditures made by Kansas Gas Service after January 1, 2017, relating to all MGP Costs. MGP Costs are defined as actual and prudent external costs incurred after January 1, 2017, and which are necessary for the investigation and remediation work at MGP sites approved by KDHE (hereinafter referred to as "MGP Costs"). MGP Costs will also include regulatory costs (except internal labor costs) incurred related to MGP site oversight by the KDHE, as well as costs incurred in this Commission docket and any compliance docket. Further, MGP Costs will include those actual and prudent costs incurred in the pursuit of insurance recoveries to reimburse Kansas Gas Service for MGP Costs as defined in this Agreement. MGP Costs will not include internal labor costs. MGP Costs will also not include any and all costs incurred by Kansas Gas Service relating to any causes of action or any third party claims relating to the MGP sites, including but not limited to claims for third party-damages, claims for injunctive relief, declaratory judgements, claims pertaining to nuisance and/or claims formed under the common law ("Non-MGP Costs"). Kansas Gas Service shall be allowed to accumulate in account 182.3 and seek approval to recover in subsequent rate cases, the actual and prudent MGP Costs it incurs beginning on January 1, 2017, at the twelve (12) former manufactured gas plant ("MGP") sites currently managed by Kansas Gas Service, which are identified in this docket.

9. AMORTIZATION PERIOD. Kansas Gas Service will be allowed to defer and seek recovery of 100% of the MGP Costs as defined in this Agreement. For the first rate case in which Kansas Gas Service seeks recovery of MGP Costs that it has deferred, Kansas Gas Service shall use

a 15-year amortization period. Kansas Gas Service shall be allowed to continue to defer and seek recovery of 100% of MGP Costs as defined in this Agreement in subsequent rate cases. Each respective set of MGP Costs Kansas Gas Service seeks recovery of shall be considered a separate tranche. Excluding the first tranche, which shall be assigned a 15-year amortization period, Kansas Gas Service shall be allowed to seek an amortization period for each separate tranche of MGP Costs provided the amortization period cannot result in ratepayers paying greater than the net present value of 60% of MGP Costs. Parties, other than Kansas Gas Service, reserve the right to argue a different amortization period should apply as necessary to effectuate any and all degrees of ratepayer / shareholder cost recovery. Kansas Gas Service reserves the right to rebut the positions of other Parties in the event other Parties recommend an amortization period that would result in ratepayers paying less than the net present value of 60% of MGP Costs. Any unamortized MGP Costs shall not be included in rate base in rate cases or accumulate carrying charges outside of a rate case. Once a MGP Cost tranche's amortization period has been approved by the Commission, no Party shall be allowed to recommend the MGP Cost tranche's amortization period should be altered.

10. CAP ON AAO. The expenditures relating to the MGP Costs covered by the AAO shall be limited to \$15 million net of insurance recoveries under the AAO. If future MGP Costs net of insurance recoveries are expected to exceed \$15 million, then Kansas Gas Service will be required to file an application in this docket for approval to increase the \$15 million amount under the AAO. Staff and CURB reserve the right to challenge a request to increase the \$15 million cap, and in these regards, do not waive their unequivocal right to reassert any argument posed in this docket with respect to any such requested increase, including the assertion that any such increase should be borne entirely by shareholders of Kansas Gas Service and Kansas Gas Service reserves the right to reassert

any rebuttal argument posed in this docket should Staff or CURB reassert any argument posed in this docket in relation to a request to increase the cap.

11. **REGULATORY TREATMENT OF INSURANCE PROCEEDS.** One hundred percent (100%) of the proceeds paid by insurance companies after January 1, 2017, in reimbursement to Kansas Gas Service for investigation and remediation costs incurred, in connection with the investigation and remediation work at the MGP sites approved by KDHE included in this Application (i.e., MGP Costs) shall be applied by Kansas Gas Service to reduce the gross MGP Costs, as defined above. To the extent possible, Kansas Gas Service shall track and match up proceeds received from insurance with the cost paid and the MGP site to which it is related. The Parties understand and agree that other general liability claims could be made against the insurance policies for recovery of Non-MGP Costs, but neither the costs related to those claims or any insurance proceeds relating to those claims shall be covered under this AAO and this Agreement. At the time the Parties mutually agree that this docket or compliance docket can be closed and there are insurance proceeds in excess of the MGP Costs paid by insurance companies to reimburse Kansas Gas Service for MGP Costs (as defined herein) that Kansas Gas Service has asked its customers to pay, then Kansas Gas Service shall be allowed to retain those excess insurance proceeds at the time the Commission closes out the docket. Upon closure of the docket, Kansas Gas Service will not be permitted to seek recovery from Kansas ratepayers of future MGP Costs related to Kansas Gas Service's Kansas MGP sites, regardless of whether or not such MGP Costs are known or unknown, definite or contingent, or arise from MGP sites covered by this Agreement or otherwise.

12. **REPORTING REQUIREMENTS.** Kansas Gas Service shall comply with the following reporting requirements under the AAO:

a. Kansas Gas Service shall file an annual report on or before April 1 of each year in a compliance docket that shall include: (1) all reports provided to KDHE during the preceding calendar year; (2) a summary of the MGP Costs incurred in the preceding calendar year; (3) a description of the scheduled work conducted in the preceding calendar year and to be conducted in the subsequent calendar year as well as a cost estimate for such work; and (4) the amount of insurance proceeds received, if any, associated with MGP Costs in the preceding year.

b. Kansas Gas Service shall also to the extent possible, include in the annual report: (i) MGP Costs (and invoices reflecting those MGP Costs) broken down by MGP site and (ii) proceeds paid by the insurance company to reimburse KGS for MGP Costs matched up to MGP Cost invoices and broken down by MGP site if possible.

c. In addition to the above mentioned reporting requirements, if Kansas Gas Service becomes aware of additional remediation projects that are reasonably expected to exceed \$1 million, it shall meet with the Staff and CURB to provide them the scope of the work to be performed under the project that has been approved by KDHE. During this meeting Kansas Gas Service will provide the estimated cost for the work to be performed, an explanation with support of how the work will be performed, an explanation of the reasonableness of the work to be performed, an explanation as to what other options Kansas Gas Service evaluated, and an explanation as to why the option chosen by Kansas Gas Service and approved by the KDHE was selected over the other options.

13. MISCELLANEOUS PROVISIONS.

a. This Agreement fully resolves issues specifically addressed in this Agreement.

The terms contained in this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

b. The terms in this Agreement have resulted from extensive negotiations among the Parties and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, any Party has the option to terminate this Agreement and, if so terminated, none of the Parties shall be bound, prejudiced, or in any way affected by any of the terms contained in this Agreement, unless otherwise provided herein. If this Agreement is terminated under this provision, then the Parties agree to seek the first available hearing date on the Commission's calendar for an evidentiary hearing on the merits of the issues raised in this docket.

c. It is the Parties' intent to pre file testimony in support of the Agreement and to present those witnesses in support of this Agreement at a hearing before the Commission. The Parties agree to move for the admission of all pre filed testimony and exhibits and to waive cross examination of all witnesses, provided that the Parties may be allowed to ask witnesses questions relating to any questions posed by the Commission at the hearing on this Agreement.

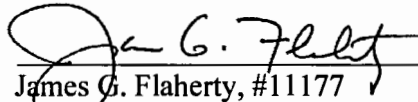
d. Unless (and only to the extent) otherwise specified in this Agreement, the Parties shall not be prejudiced, bound, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same.

e. This Agreement does not prejudice or waive any Party's rights, positions, claims, assertions, or arguments in any proceeding in this docket, or any other proceedings

before this Commission or in any court.

f. If the Commission approves this Agreement in its entirety and incorporates the same into its final order in this docket, the Parties intend to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

AGREED TO AND ACCEPTED this _____ day of October, 2017, by:



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Attorneys for CURB

CERTIFICATE OF SERVICE

17-KGSG-455-ACT

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on NOV 21 2017

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CERTIFICATE OF SERVICE

17-KGSG-455-ACT

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/s/ DeeAnn Shupe
DeeAnn Shupe

EMAILED

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	Actual Expenses in Excess of \$15 Million AAO Limit					
Kansas MGP Sites	2022	2023	2024	Total	Current Reserve as of 10/31/2024	Balance by Site
MGP Abilene	\$ 2,164,017	\$ 59,578	\$ 46,524	\$ 2,270,118	\$ -	\$ 2,270,118
MGP Atchison	\$ 63,789	\$ 133,838	\$ 285,549	\$ 483,175	\$ 6,728,470	\$ 7,211,645
MGP Concordia	\$ 730	\$ 3,805	\$ 206	\$ 4,741	\$ -	\$ 4,741
MGP Emporia	\$ 971	\$ 824	\$ 206	\$ 2,001	\$ -	\$ 2,001
MGP General	\$ 44,006	\$ 253,934	\$ 135,038	\$ 432,978	\$ -	\$ 432,978
MGP Hutchinson	\$ 9,131	\$ 6,748	\$ 23,398	\$ 39,276	\$ -	\$ 39,276
MGP Junction City	\$ 40,996	\$ 53,980	\$ 33,151	\$ 128,128	\$ -	\$ 128,128
MGP Kansas City	\$ 33,274	\$ 46,353	\$ 37,831	\$ 117,458	\$ 446,312	\$ 563,770
MGP Leavenworth	\$ 1,290	\$ 618	\$ -	\$ 1,908	\$ -	\$ 1,908
MGP Manhattan	\$ 106,520	\$ 110,202	\$ 112,773	\$ 329,494	\$ 7,260,148	\$ 7,589,642
MGP Parsons	\$ -	\$ 824	\$ 206	\$ 1,030	\$ -	\$ 1,030
MGP Salina	\$ 8,457	\$ 3,405	\$ 7,934	\$ 19,796	\$ 217,291	\$ 237,087
MGP Topeka	\$ 1,118	\$ 412	\$ 206	\$ 1,736	\$ -	\$ 1,736
Subtotal	\$ 2,474,298	\$ 674,520	\$ 683,020	\$ 3,831,838	\$ 14,652,221	\$ 18,484,059
MGP Insurance Proceeds	\$ -	\$ -	\$ (1,481,460)	\$ (1,481,460)	\$ -	\$ (1,481,460)
Total	\$ 2,474,298	\$ 674,520	\$ (798,441)	\$ 2,350,378	\$ 14,652,221	\$ 17,002,599