

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

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

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

**ORDER ON PRIMA FACIE DETERMINATION**

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

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

**Background**

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

3.        On February 15, 2021, pursuant to K.S.A. 77-536(a) the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS, directing all jurisdictional natural gas utilities to coordinate efforts and take all reasonable feasible, lawful and appropriate actions to

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<sup>1</sup> Complaint, pg. 2 (Sep. 13, 2023).

<sup>2</sup> Id.

ensure adequate transportation of natural gas to interconnected, non-jurisdictional Kansas utilities.<sup>3</sup> Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.<sup>4</sup> The Commission authorized every jurisdictional natural gas distribution utility that incurs extraordinary costs associated with ensuring their customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during Uri to defer those costs into a regulatory asset account.<sup>5</sup> The Commission mandated that once Uri ended, and after all costs have been accumulated and recorded, each jurisdictional utility was directed to file a compliance report detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of Uri on ratepayers over a reasonable time frame.<sup>6</sup>

4. On March 9, 2021, the Commission opened Docket No. 21-KGSG-332-GIG (21-332 Docket) to allow KGS to file its compliance report and plan to minimize the financial impacts of Uri on ratepayers.

5. On November 19, 2021, in the 21-332 Docket, parties filed a Joint Motion to Approve Settlement Agreement (Financial Plan Settlement).<sup>7</sup> Under the terms of the Financial Plan Settlement, parties agreed that:

- (1) Approximately \$366 million in extraordinary costs were incurred by KGS and that KGS should be allowed to recover those costs;
- (2) To minimize the financial impact to its customers, KGS agreed to apply for a financing order in a separate docket to authorize the issuance of Securitized

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<sup>3</sup> Emergency Order, 21-GIMX-303-MIS, pg. 2 (Feb. 15, 2021).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id at 3.

<sup>7</sup> While Symmetry originally opposed the Financial Plan Settlement, on Jan. 20, 2022 Symmetry withdrew its objection, converting the settlement into a unanimous settlement.

Utility Tariff Bonds to finance the qualified extraordinary costs resulting from Uri; and

(3) If KGS receives any payments as a result of any subsequent federal or state government relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Uri, those payments will be passed on to KGS's customers.<sup>8</sup>

6. On February 8, 2022, the Commission issued an Order Approving the Financial Plan Settlement.<sup>9</sup>

7. On March 29, 2021, the Kansas Legislature passed the Utility Financing and Security Act (K.S.A. 2021 Supp. 66-1,240-66-1,253) which became effective April 22, 2021.<sup>10</sup>

8. Under the Utility Financing and Security Act, a jurisdictional utility may request a financing order from the Commission, allowing the utility to issue securitized nonbypassable bonds to pay for qualified extraordinary costs which would cause extreme customer rate impacts if recovered through customary rate making.<sup>11</sup>

9. On November 1, 2021, Pinebrooke converted from being a transportation customer of KGS, purchasing its gas on the wholesale market through its marketer, Symmetry, to a General Sales Service retail customer of KGS.<sup>12</sup> Pinebrooke alleges it was informed by KGS that KGS would waive any Uri-related surcharges because Pinebrooke had already paid Symmetry for its

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<sup>8</sup> 21-332 Docket, Order Approving Unanimous Settlement Agreement on Kansas Gas Services' Financial Plan, pgs. 3-4 (Feb. 8, 2022).

<sup>9</sup> Id. at 10.

<sup>10</sup> [https://kslegislature.org/li\\_2022/b2021\\_22/measures/hb2072/](https://kslegislature.org/li_2022/b2021_22/measures/hb2072/).

<sup>11</sup> K.S.A. 66-1,240(b)(18).

<sup>12</sup> Complaint, pg. 4 (Sep. 13, 2023).

costs related to Uri.<sup>13</sup> Pinebrooke further alleges that KGS has included Uri-related surcharges on its bill since December 2022.<sup>14</sup>

10. On March 31, 2022, in Docket No. 22-KGSG-466-TAR (22-466 Docket), KGS requested the Commission issue a financing order for the recovery of qualified extraordinary costs associated with winter storm Uri.<sup>15</sup>

11. On August 8, 2022, the Commission approved KGS's proposed financing order.<sup>16</sup>

### **Complaint**

12. Pinebrooke claims that because it was not a retail customer of KGS during Uri and did not cause KGS to incur any of its Uri-related costs, requiring Pinebrooke to pay the Uri surcharge "deprives Pinebrooke of due process of law and in all respects constitute[s] unfair, unjust and discriminatory rates."<sup>17</sup> Pinebrooke requests the Commission enter an Order:

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

B. Construing all prior orders relating to the WESCR Tariff and charges made thereunder for General Sales Service to Pinebrooke to be contrary to law and violation of: (1) the separation of powers doctrine inherent in the Kansas Constitution; (2) the due process clause of the Kansas Constitution; and K.S.A. 66-1,203."<sup>18</sup>

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

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Docket No. 22-KGSG-466-TAR, Application for Financing Order, (Mar. 31, 2022).

<sup>16</sup> 22-466 Docket, Order Approving Unanimous Settlement Agreement (Aug. 8, 2022).

<sup>17</sup> Complaint pg. 7.

<sup>18</sup> Id.



13. Under K.A.R. 82-1-220(a) any person may initiate a complaint proceeding by filing a formal complaint with the commission in which the rates, joint rates, fares, tolls, charges, regulations, classifications, or schedules of any public utility, motor carrier, or common carrier are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential, or that allege that any service performed or to be performed is illegal, unreasonably inadequate, inefficient, or unduly insufficient, or cannot be obtained. Under subsection (b), formal complaints must meet the following criteria:

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

14. Inherent in the requirement that a complainant state relief sought by the Commission, is the necessity that the relief sought by the Complainant must be within the Commission's power to grant.<sup>19</sup> Pinebrooke's requested relief represents an improper collateral attack on the Commission's February 8, 2022 Order in the 21-332 Docket and August 8, 2022 Order in the 22-466 Docket, in which the Commission approved the WESCR tariff, finding it to be a just and reasonable rate under Kansas law.

15. Additionally, the Commission is legally unable to grant the requested relief under the Utility Financing and Security Act, K.S.A. 66-1,242(b) and 66-1,252(a)(4). Under K.S.A. 66-

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

1,242(b) the Commission shall not determine any action taken by a public utility that is consistent with the financing order to be unjust or unreasonable. Under K.S.A. 66-1,252(a)(4) the Commission is prohibited from “reducing, altering or impairing securitized utility tariff charges that are to be imposed, billed, charged, collected and remitted...” until the bonds have been paid and performed in full.

16. Because the only relief requested is a finding that the WESCR tariff is unlawful, Pinebrooke’s complaint fails to set forth allegations which, if true would establish a prima facie case for action by the Commission.

17. Pursuant to K.A.R. 82-1-220(c), Pinebrooke shall be given an opportunity to amend its formal complaint.

**THEREFORE, THE COMMISSION ORDERS:**

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

B. Complainant is given thirty days to amend. If Complainant fails to amend the formal complaint in a manner that satisfies K.A.R. 82-1-220, the formal complaint will be dismissed.

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

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

10/26/2023

Dated: \_\_\_\_\_



\_\_\_\_\_  
Lynn M. Retz  
Executive Director

DGC

**CERTIFICATE OF SERVICE**

24-KGSG-252-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
10/26/2023  
electronic service on \_\_\_\_\_.

DAVID COHEN, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.cohen@kcc.ks.gov

LEE THOMPSON, ATTORNEY  
THOMPSON LAW FIRM, LLC  
D/B/A THOMPSON LAW FIRM, LLC  
1919 N Amidon Avenue, Ste 315  
WICHITA, KS 67203-1480  
lthompson@tslawfirm.com

/S/ KCC Docket Room  
KCC Docket Room