

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

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

In the Matter of the Complaint Against Kansas)
Gas Service by Betty J. Martin.) Docket No. 17-WSEE-394-COM

ORDER ADOPTING STAFF'S MEMORANDUM

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. On February 24, 2017, Betty J. Martin (Complainant) filed a Formal Complaint against Kansas Gas Service (KGS) with the Commission.¹ Complainant seeks relief for damages which she alleges were caused by unreasonable, unfair and/or unjust rates and/or regulations.²
2. On March 17, 2017, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.
3. Litigation Staff reviewed the Formal Complaint's underlying facts and allegations. While making no recommendation regarding the *validity or truthfulness* of the Complainant's claims, Litigation Staff believes the Complainant has not satisfied the procedural requirements of the Commission's rules of practice and procedure.

¹ See Complaint Against KGS by Betty J. Martin (Feb. 24, 2017) (Formal Complaint).

² See Formal Complaint.

4. The Formal Complaint does not cite to any provision of law, tariff, regulation, Commission order or statute. By not stating what KGS has violated, it is not possible to determine if the facts as presented by the Complainant constitute a violation.

5. The Formal Complaint does not set forth concisely and in plain language the facts claimed by the complainant and it fails to state the relief sought. It is not possible to ascertain if the factual statement is sufficient to determine what, if any, law, tariff, regulation, Commission order, or statute has been violated.

6. Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies identified above. However, Litigation Staff further recommends if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint be dismissed without prejudice.

II. FINDINGS AND CONCLUSIONS

7. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*³ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁴

8. Litigation Staff's Memorandum dated March 17, 2017, attached hereto is hereby adopted and incorporated by reference.

³ Specifically, the Commission is granted broad authority to review formal complaints. *See* K.S.A. 66-101e ("Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary."); *see also* K.S.A. 66-1,205(a).

⁴ *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

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

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

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Complainant shall have thirty (30) days from the date of this order to file an Amended Formal Complaint that addresses the procedural deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.


(B) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.⁵

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

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAR 28 2017



Amy L. Green
Secretary to the Commission

SLS

Order Mailed Date

MAR 29 2017

⁵K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**MEMORANDUM
LEGAL DIVISION**

TO: Pat Apple, Chairman
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Stephan Skepnek, Litigation Counsel

DATE: March 17, 2017

SUBJECT: 17-WSEE-394-COM
In the Matter of the Formal Complaint Against Kansas Gas Service by
Betty J. Martin.

EXECUTIVE SUMMARY:

Betty J. Martin (Complainant) has filed a Formal Complaint against Kansas Gas Service (KGS).¹ The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' (Commission) rules of practice and procedure. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint.

BACKGROUND & ANALYSIS:

On February 24, 2017, the Complainant filed a Formal Complaint against KGS seeking relief for damages which she alleges were caused by unreasonable, unfair and/or unjust rates and/or regulations.² Upon the filing of a Formal Complaint, the Commission must determine whether the allegations, if true, would establish a *prima facie* case for action by the Commission and whether the Formal Complaint conforms to the Commission's regulations.³

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

- (1) 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;

¹ See Complaint Against KGS by Betty Martin (Feb. 24, 2017) (Formal Complaint).

² See Formal Complaint.

³ See K.A.R. 82-1-220(c).

(2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and

(3) state the relief sought by the complainant.

Complainant's Formal Complaint has failed to comply with K.A.R. 82-1-220(b)(1) which requires that she "...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..." The Complainant does not cite any provisions of law or the regulations or orders of the commission that would entitle the Complainant to relief. Specifically, without citing to any specific tariff, regulation, Commission order or statute violated by KGS, it is not possible to determine if the factual statements constitute violations which would entitle Complainant to relief.

Additionally, Complainant's Formal Complaint has failed to comply with K.A.R. 82-1-220(b)(2) which requires Complainant to "set forth concisely and in plain language the facts claimed by the complainant to constitute the violations". The Formal Complaint alleges that in the fall of 2015, Complainant considered turning her gas service off after her gas furnace stopped working but decided against it after speaking with KGS staff about fees associated with discontinuing gas service. Complainant further alleges that after her furnace stopped working, she received a bill from KGS which charged her an unusually high amount for gas service. Complainant called KGS to resolve the matter and KGS corrected the mistake and mailed Complainant an amended bill. Complainant, however, believes the amended bill "was a bit high also". Although the Formal Complaint alleges the subsequent bill was "a bit high", her Formal Complaint does not set forth "concisely and in plain language the facts claimed by the complainant to constitute the violations".

Finally, Complainant's Formal Complaint has failed to comply with K.A.R. 82-1-220(c) which requires the Formal Complaint "state the relief sought by complainant". It is unclear from the face of the Formal Complaint what relief complainant seeks other than further relief from an amended bill which she alleges "was a bit high".

Because the Complainant's Formal Complaint has not yet satisfied the Commission's procedural requirements, a determination of *prima facie* is not possible at this time.

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

RECOMMENDATION:

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

CERTIFICATE OF SERVICE

17-KGSG-394-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on MAR 28 2017.

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/s/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

MAR 29 2017