

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

In the Matter of the Complaint Against      )  
Kansas Gas Service Company and NPL      ) Docket No. 16-KGSG-102-COM  
by Virginia L. Mendez      )

**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 finds as follows:

**I. BACKGROUND**

1. On August 24, 2015, Virginia L. Mendez (Complainant) filed a Formal Complaint (Complaint) against Kansas Gas Service Company (KGS) and NPL with the Commission, attached hereto as "Attachment A", alleging that the manner in which KGS and NPL<sup>1</sup> are replacing gas lines in Complainant's neighborhood is unreasonable and unsafe.<sup>2</sup>

2. On August 28, 2015, Litigation Staff for the Commission prepared a Memorandum analyzing the Complaint for compliance with Commission regulations.<sup>3</sup>

*Safety Argument*

3. Litigation Staff recommends the Commission find that the Complainant's safety argument substantially complies with the procedural requirements of K.A.R. 82-1-220 and

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<sup>1</sup> Legal Staff noted that NPL is a contractor of KGS.

<sup>2</sup> Complaint Against Kansas Gas Service Company and NPL by Virginia L. Mendez, August 24, 2015 (Formal Complaint).

<sup>3</sup> Legal Staff's Memorandum, August 28, 2015.

establishes a *prima facie*<sup>4</sup> case for Commission action.<sup>5</sup> Staff notes that the Amended Complaint does not specifically cite to any violation of law, rule or order in support of its argument and is thus not in compliance with K.A.R. 82-1-220(b)(1).<sup>6</sup> However, Staff recommends the Commission waive K.A.R. 82-1-200(b)(1) for good cause.<sup>7</sup>

## II. FINDINGS AND CONCLUSIONS

4. The Commission is satisfied that jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*<sup>8</sup> Specifically, the Commission may investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities. Furthermore, the Commission is granted authority over each natural gas public utility's equipment, manner of conduct, and management to protect public safety.<sup>9</sup>

5. The Commission finds that Litigation Staff's Memorandum dated August 28, 2015, attached hereto as Attachment "B" is hereby adopted and incorporated by reference.

### IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Complainant's safety argument substantially complies with the procedural requirements of K.A.R. 82-1-220.

(B) K.A.R. 82-1-220(b)(1) is waived for good cause.

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<sup>4</sup> *Wallace, Saunders, Austin, Brown & Enochs, Chartered v. Louisburg Grain Co.*, 250 Kan. 54, 61, 824 P.2d 933, 939 (1992), (*Prima facie* evidence denotes evidence which, if left unexplained or uncontradicted, would be sufficient to carry the case to the jury and sustain a verdict in favor of the plaintiff on the issue it supports.).

<sup>5</sup> Legal Staff's Memorandum, August 28, 2015.

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> *Id.* at pp. 2-3.

<sup>8</sup> 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 regulations, 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.").

<sup>9</sup> *See* K.S.A. 66-1,208.

(C) The Formal Complaint establishes a *prima facie* case for Commission action.

(D) The Formal Complaint is to be served upon KGS.

(E) Staff shall investigate this matter and submit a Report and Recommendation to the Commission.

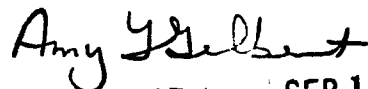
(F) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein.<sup>10</sup>

(G) 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.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: SEP 10 2015

  
Order Mailed Date SEP 11 2015  
Amy L. Gilbert  
Secretary to the Commission

SRF/tc

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<sup>10</sup> K.S.A. 66-118b; K.S.A. 2014 Supp. 77-529(a)(1).

Kansas Corporation Commission

AUG 27 2015

KANSAS CORPORATION COMMISSION  
OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTIONFormal Complaint  
February 2015

Office of Litigation Counsel

## FORMAL COMPLAINT

2015.08.26 08:54:51

Kansas Corporation Commission

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINT AGAINST

Kansas Gas Service Company  
(Respondent, name of utility company) and NPL

by

Virginia L. Mendez  
(Complainant, your name)For Commission  
use only

DOCKET NO.

16-KGSG-102-COM

Please provide complainant (your) contact information:

Full Name(s): Virginia Lee Mendez  
Address: 2229 S.W. Boswell Ct. Topeka, KS-66611  
Daytime Phone: 785-783-2555  
E-mail Address (optional): none don't Have a ComputerReceived  
on

AUG 24 2015

## FORMAL COMPLAINT

Virginia L. Mendez  
(Your name)by  
State Corporation Commission  
of Kansas

states that the above-named respondent is a public utility providing service in Kansas and is subject to the jurisdiction of the State Corporation Commission.

The facts and circumstances surrounding the complaint are set out in detail below:  
(Be specific and as brief as possible. If necessary, attach additional sheets.)

In January of 2015 NPL trucks came to my Neighborhood and started digging up yards to Replace our gas lines. They dug up some yards 4 times, Covered holes and dug them up again & Again.  
on July 6, 2015 KGS Supervisor was in Neighbor-

(Continued on the other side)

**Formal Complaint** *continued*

Complainant requests that the respondent utility be required to provide an answer to the complaint and requests the following action be ordered by the Commission. (State action or result desired.)

hood. I asked him "How many times are you guys going to dig up these yards?" His reply was "Until these folks get them right, I keep finding mistakes."

Then he told the foreman off NPL. "you didn't put these lines in correctly. You spliced new lines onto old lines. You were suppose to take out old lines and put in all new ones." "Can't you see there's a school here and all these people in this Area, you leave these lines the way they are and this whole neighborhood will blow up." "I'm surprised it hasn't blown up already!"

and for such further order or orders as the Commission may deem necessary.

VERIFICATION: I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint form are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

Hughes L. Mendy  
Complainant's (your) signature

8/24/2015  
Date signed

**FILING INSTRUCTIONS**

This form may be filed in person at the Kansas Corporation Commission's Office or by mail. All formal complaints, whether filed by mail or delivered in person, must be directed to:

Acting Executive Secretary  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

For more information about the formal complaint process please refer to the instructions provided with this form or visit the KCC website: <http://kcc.ks.gov/>, Consumer Assistance, Filing a Complaint. You may also contact our Consumer Assistance staff toll-free at 1-800-662-0027 or by e-mail at [public.affairs@kcc.ks.gov](mailto:public.affairs@kcc.ks.gov).

Virginia mendez Complaint  
against Ks. Gas Serv. Co,

Pg II

After hearing all that I started  
talking to my neighbors. These are  
thing I found out.

In may A. J. Stout School had  
to be evacuated due to Strong gas  
fumes.

The house at 2313 S.W. Boswell Ct,  
had Several Episodes turning into a  
Continuous Smell of gas odor.

While NPL was working on  
main gas line at 2240 S.W. Boswell Ct  
there was odor of gas in air X 2 days  
fire department was out here and  
NPL employees argued with them that  
they didn't have to turn gas off  
to work on gaslines.

where main gas line for Neighbor-  
hood at 2240 S.W. Boswell Ct, there's  
a big 100 yr. old tree that NPL dug  
around - damaging it's roots. This tree  
is close to the house at 2240  
S.W. Boswell Ct, and is in danger  
of falling on 2 small children  
and their mom. The tree gives  
when I put my body weight  
against it,

Virginia L mendez

Virginia Mendez Complaint  
against KS. Gas Serv. Co.

Pg III

So far I or the lady who rents the house at 2240 S.W. Boswell Ct. haven't been able to get anyone to remove the tree.

Upon further investigation Neighbors on Jewell St. and Plass St. have told me that they saw NPL employees take Duct Tape out of their pockets to tape joints of gas lines together before they covered them up in their yards. When these folks questioned them about this they were told to shut up because they're stupid.

Further east on 21st Street a family told me their yard was dug up 11 times.

After further inquiries I have been told 2 Apartment Complexes in Sacramento, Ca, 1 Apartment Bldg. in Cincinnati, Oh. and one Apartment Bldg in New York City have blown up while or right after NPL has worked on Gas lines.

My question is "Why are these people Allowed to Continue with their practices that are possibly killing people and putting people in so much danger?"

To resolve my concerns I want these gaslines on Jewell and Plass Reinspected before everyone turns on heat for the winter.

Virginia Mendez

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Shari Feist Albrecht, Chair  
Jay Scott Emler, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

**MEMORANDUM  
LEGAL DIVISION**

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

**FROM:** Samuel Feather, Litigation Counsel

**DATE:** August 28, 2015

**SUBJECT:** 16-KGSG-102-COM  
In the Matter of the Complaint Against Kansas Gas Service Company and  
NPL by Virginia L. Mendez

**EXECUTIVE SUMMARY:**

Virginia L. Mendez (Complainant) filed a Formal Complaint<sup>1</sup> on August 24, 2015, wherein Complainant alleges that the manner in which Kansas Gas Service Company (KGS) and NPL are replacing gas lines in Complainant's neighborhood is unreasonable and unsafe. Legal Staff recommends the Commission accept the Formal Complaint as it relates to the Complainant's safety argument and forward the Formal Complaint to KGS.

**BACKGROUND & ANALYSIS:**

On August 24, 2015, the Complainant filed a Formal Complaint (Complaint) against KGS and NPL due to the attempted replacement of gas lines in Complainant's neighborhood.<sup>2</sup> The Complaint alleges that the manner in which KGS and NPL<sup>3</sup> are replacing gas lines is unreasonable and unsafe. Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a prime [sic] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."<sup>4</sup>

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;

<sup>1</sup> Complaint Against Kansas Gas Service Company and NPL by Virginia L. Mendez, August 24, 2015 (Formal Complaint).

<sup>2</sup> See *Formal Complaint*.

<sup>3</sup> Legal Staff notes that NPL is not a public utility but a contractor for KGS.

<sup>4</sup> 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.

### *Safety Argument*

The Complaint's concise narrative provides notice to KGS, NPL and the Commission that the Complainant is alleging that KGS, through its contractor NPL, is replacing gas lines in a manner which creates a risk to public safety and thus complies with procedural requirement (2).

The Complaint requests that KGS re-inspect gas lines on "Jewel and Plass".<sup>5</sup> The Amended Complaint clearly states the relief sought and thus complies with procedural requirement (3).

The Amended Complaint does not expressly cite to any law, regulation, or order in support of its safety argument and thus does not comply with procedural requirement (1). However, the Commission has the discretion to waive its regulations for good cause if it is in the public interest to do so unless otherwise required by law.<sup>6</sup> The detailed requirements of the Commission's regulation are more restrictive than that ordinarily required by law.<sup>7</sup>

The Commission has been given full power, authority and jurisdiction to supervise and control the natural gas public utilities doing business in Kansas.<sup>8</sup> Furthermore, the Commission is granted authority over each natural gas public utility's equipment, manner of conduct, and management to protect public safety.<sup>9</sup> Legal Staff believes that the Complaint provides sufficient detail to notify KGS, NPL and the Commission that the Complainant is asking the Commission to exercise its authority to protect public safety from the alleged harm of the replaced gas lines.

The public interest is not served by dismissing the complaints of customers without legal representation for deficiencies of procedural requirements that are more stringent than that required by Kansas law.<sup>10</sup> Thus the Complaint substantially complies with the

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<sup>5</sup> Formal Complaint, p. 3.

<sup>6</sup> K.A.R. 82-1-202.

<sup>7</sup> See, K.S.A. 66-101e, (the specific language of the statute allows for a complaint based solely on an unreasonable practice, K.A.R. 82-1-220(b) places the additional burden of alleging a specific violation of law, tariff or order which is not required by statute and may place an undue burden on complainants not represented by legal counsel); See also, *Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 99, 744 P.2d 806, 811 (1987) (as long as the opponent is apprised of the facts that entitle the plaintiff to relief, it is not necessary to spell out a legal theory of relief in the pleadings).

<sup>8</sup> K.S.A. 66-1,201.

<sup>9</sup> See K.S.A. 66-1,208.

<sup>10</sup> K.S.A. 66-155 obligates Legal Staff with the duty to prosecute suits on behalf of parties complaining of unjust discrimination by a public utility or other violations of the public utility act. Legal Staff believes full representation of the Complainant in this case would be an unnecessary use of Commission resources and is evidence of further good cause for the Commission to waive K.A.R. 82-1-220(b)(1).

procedural requirements of K.A.R. 82-1-220 and the Commission should waive K.A.R. 82-1-220(b)(1) for good cause.

This Memorandum makes no recommendation regarding the *validity or veracity* of the Complainant's claims.

**RECOMMENDATION:**

Legal Staff recommends the Commission find:

- The Complainant's safety argument substantially complies with the procedural requirements of K.A.R. 82-1-220;
- K.A.R. 82-1-220(b)(1) should be waived for good cause;
- The Complaint establishes a *prima facie* case for Commission action;<sup>11</sup>
- The Complaint should be served upon KGS;
- Staff should be directed to investigate this matter and submit a Report and Recommendation to the Commission.

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<sup>11</sup> *Wallace, Saunders, Austin, Brown & Enochs, Chartered v. Louisburg Grain Co.*, 250 Kan. 54, 61, 824 P.2d 933, 939 (1992), (*Prima facie* evidence denotes evidence which, if left unexplained or uncontradicted, would be sufficient to carry the case to the jury and sustain a verdict in favor of the plaintiff on the issue it supports.).

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
SAMUEL FEATHER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
DAVID N. DITTEMORE, MANAGER OF RATES & ANALYSIS KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2634		
WALKER HENDRIX, COMPLAINTS KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2634		
JUDY JENKINS KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2634		
VIRGINIA LEE MENDEZ VIRGINIA L. MENDEZ 2229 SW BOSWELL CT TOPEKA, KS 66611		

Order Mailed Date **SEP 11 2015**

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.