

**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.<sup>1</sup>

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

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<sup>1</sup>Application for Accounting Order (Application), Apr. 11, 2017, p. 1.

cases, MGP costs to be amortized over a 10-year period.<sup>2</sup> The regulatory asset would not accrue carrying charges, nor be included in rate base.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> KGS also sought to keep 40% of the insurance proceeds, with the remaining 60% to be credited to customers.<sup>6</sup>

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

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;<sup>8</sup> (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;<sup>9</sup> and (3) the Commission require KGS to credit 100% of all insurance proceeds against future MGP remediation expenses.<sup>10</sup>

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<sup>2</sup>*Id.*, ¶ 3.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*, ¶ 5.

<sup>6</sup>*Id.*

<sup>7</sup>See 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.

<sup>8</sup>Direct Testimony of Justin T. Grady (Grady Direct), Sept. 8, 2017, p. 3.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*, pp. 7-8.

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

6. On September 18, 2017, Crane filed cross-answering testimony, reiterating that shareholders should be responsible for MGP costs.<sup>15</sup> 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;<sup>16</sup> and (2) to limit any deferred costs authorized by the Commission to no more than 50% of remediation costs.<sup>17</sup>

7. On September 25, 2017, KGS filed rebuttal testimony regarding the positions taken by Staff and CURB.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> On October 12, 2017, the Parties filed their Agreement and testimony in support of the Agreement.<sup>21</sup>

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<sup>11</sup>CURB was granted intervention on April 20, 2017.

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

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*, p. 6.

<sup>18</sup>Rebuttal Testimony of Dick F. Rohlf (Rohlf's 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.

<sup>19</sup>Scalf Rebuttal, p. 2.

<sup>20</sup>Joint Motion to Amend Procedural Schedule, Oct. 4, 2017, ¶ 6.

<sup>21</sup>*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,<sup>22</sup> 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.”<sup>23</sup>

#### **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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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).<sup>27</sup> KGS is allowed to accumulate in account 182.3 and seek

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

<sup>22</sup>K.S.A. 66-1,201; K.S.A. 66-1,200; K.S.A. 66-104.

<sup>23</sup>K.S.A. 66-1,202.

<sup>24</sup>Agreement, ¶ 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.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>*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.<sup>28</sup>

11. AMORTIZATION PERIOD. KGS is allowed to defer and seek recovery of 100% of the MGP Costs.<sup>29</sup> In the first rate case in which KGS seeks recovery of MGP Costs it has deferred, KGS shall use a 15-year amortization period.<sup>30</sup> In subsequent rate cases, KGS is allowed to continue to defer and seek recovery of 100% of MGP Costs.<sup>31</sup> Each respective set of MGP Costs for which KGS seeks recovery shall be considered a separate tranche.<sup>32</sup> 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.<sup>33</sup> Staff and CURB reserve the right to argue a different amortization period.<sup>34</sup> 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.<sup>35</sup> Any unamortized MGP Costs shall not be included in rate base in rate cases or accumulate carrying charges outside of a rate case.<sup>36</sup> Following Commission approval of a MGP Cost tranche's amortization period, no Party is allowed to recommend altering the MGP Cost tranches amortization period.<sup>37</sup>

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.<sup>38</sup> If KGS expects future MGP Costs net of insurance recoveries to exceed \$15 million, it shall file an application in this Docket to

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<sup>28</sup>*Id.*

<sup>29</sup>*Id.*, ¶ 9.

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*

<sup>33</sup>*Id.*

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>*Id.*, ¶ 10.

increase the \$15 million limit under the AAO.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> To the extent possible, KGS shall track and match up proceeds received from insurance with the cost paid and the related MGP site.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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<sup>39</sup>*Id.*

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*, ¶ 11.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

<sup>45</sup>*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.<sup>46</sup>

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.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup> When approving a settlement, the Commission must make an independent finding that the settlement is supported by

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<sup>46</sup>*Id.*, ¶ 12a.

<sup>47</sup>*Id.*, ¶ 12b.

<sup>48</sup>*Id.*, ¶ 12c.

<sup>49</sup>*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.<sup>50</sup>

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.<sup>51</sup>

19. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.<sup>52</sup> 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.”<sup>53</sup>

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.<sup>54</sup> CURB also reviewed the filing and stated its positions in its direct and cross-answering testimony.<sup>55</sup> 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

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

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

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

<sup>53</sup>*Id.*, at 851.

<sup>54</sup>Grady Testimony in Support, p. 9.

<sup>55</sup>*Id.*



agreed on a resolution of the issues.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> According to Staff's testimony, the Agreement resolves many of the concerns raised with the Application and results in just and reasonable rates.<sup>61</sup>

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.<sup>62</sup> 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.<sup>63</sup> 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

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

<sup>57</sup>Grady Testimony in Support, p. 10.

<sup>58</sup>*Id.*

<sup>59</sup>Agreement, ¶ 9.

<sup>60</sup>Grady Testimony in Support, p. 11.

<sup>61</sup>*Id.*, pp. 11-12.

<sup>62</sup>*Id.*, p. 12.

<sup>63</sup>*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.<sup>64</sup> 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.<sup>65</sup> Because MGP Costs will vary year-to-year, it would be a challenge to determine an appropriate level to include in base rates.<sup>66</sup> 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.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup> 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

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<sup>64</sup>Scalf Testimony in Support, pp. 11-12.

<sup>65</sup>*Id.* at p. 12.

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup>*Id.*

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

work; and KGS's efforts to recover those costs from insurance companies.<sup>70</sup> 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.<sup>71</sup>

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.<sup>72</sup> 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.<sup>73</sup> Finally, the Agreement avoids the costly and time-consuming process of fully litigating these issues before the Commission.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup> The Parties agree the Agreement, which allows for the recovery of MGP Costs in future rate cases, will ultimately result in reasonable

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<sup>70</sup>Scalf Supporting Testimony, p. 13.

<sup>71</sup>*Id.*

<sup>72</sup>Grady Supporting Testimony, pp. 6, 11, 13.

<sup>73</sup>Scalf Supporting Testimony, p. 13.

<sup>74</sup>Grady Supporting Testimony, p. 14.

<sup>75</sup>K.S.A. 66-1,202.

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

rates.<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup>

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.

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<sup>77</sup>Grady Supporting Testimony, p. 11.

<sup>78</sup>*Kansas Gas*, 239 Kan. at 490.

<sup>79</sup>Grady 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.

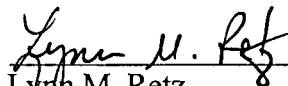
D. The Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.

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

  
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Lynn M. Retz  
Secretary to the Commission

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**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 )  
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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.

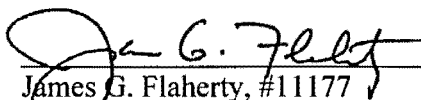
5. On September 25, 2017, Kansas Gas Service filed rebuttal testimony regarding the positions taken by Staff and CURB. Kansas Gas Service contended that Staff's and CURB's positions were contrary to the ratemaking treatment/policy approved by the Commission in the KPS Docket with respect to recovery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

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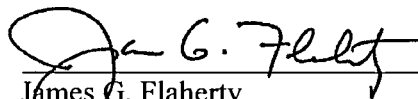
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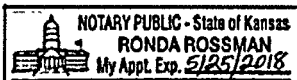
**VERIFICATION**

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 12<sup>th</sup> 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 12<sup>th</sup> day of October, 2017, addressed to:

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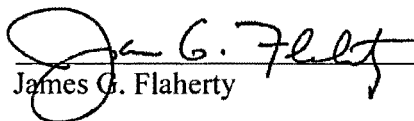
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James G. Flaherty

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	)	
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.

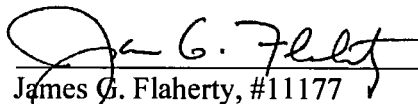
d. Unless (and only to the extent) otherwise specified in this Agreement, the Parties shall not be prejudiced, bound, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending under a separate docket; and/or (3) in 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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/s/ Robert E. Vincent

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For Commission Staff

/s/ Thomas J. Connors

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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  
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***EMAILED***

NOV 21 2017