

**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 Investigation of Kansas )  
Gas Service, A Division of ONE Gas of )  
Overland Park, Kansas, Regarding )  
Violation(s) of the Kansas Underground )  
Utility Damage Prevention Act (KUUDPA) ) Docket No. 16-DPAX-070-PEN  
(K.S.A. 66-1801, et seq., and K.A.R. 82-14-1 )  
through 82-14-5), and the Commission's )  
Authority to Impose Penalties and/or )  
Sanctions (K.S.A. 66-1,151) )

**ORDER GRANTING RECONSIDERATION  
AND STAYING EFFECTIVENESS OF CIVIL PENALTY**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, and being duly advised in the premises, the Commission makes the following findings and conclusions:

**I. BACKGROUND**

1. On August 20, 2015, the Commission issued a Penalty Order against Kansas Gas Service, A Division of ONE Gas (KGS) related to fifteen occasions of violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and assessed fines totaling \$7,500.

2. On September 4, 2015, KGS submitted a Petition For Review and Consideration of Issues Not Resolved in This Docket or Reconsideration For The Purpose of Further Review (Petition for Reconsideration). KGS' Petition for Reconsideration explicitly stated that KGS was not requesting a hearing.

## II. DISCUSSION

3. As noted in KGS' Petition for Reconsideration, KGS:

seeks review of the circumstances that have impacted high ticket volumes in Johnson and Wyandotte Counties, Kansas, and request reconsideration without a hearing to permit additional consideration of the unusual construction activity giving rise, in part, to the infractions that are set forth in the Oder of August 20, 2015 and for such other relief as the Commission deems appropriate.

4. Commission Staff did not file a response agreeing or objecting to KGS' Petition for Reconsideration.

5. K.S.A. 66-1813 charges the Commission with the administration and enforcement of KUUDPA.

6. K.S.A. 66-1812 states that any person who violates any provision of KUUDPA shall be subject to civil penalties as set out in K.S.A. 66-1,151.

7. K.S.A. 66-1,151 describes monetary civil penalties against any person who violates KUUDPA. Specifically, these fines may total up to \$25,000 for each violation for each day such violation exists. The maximum civil penalty for a series of related violations is \$1,000,000.

8. K.S.A. 66-1,152 allows the Commission to compromise on a penalty imposed for a violation of KUUDPA.

9. K.S.A. 66-118b requires a party to seek reconsideration of *any* order issued by the Commission in accordance with provisions of K.S.A. 77-529.

10. K.A.R. 82-14-6 allows a respondent to an alleged KUUDPA violation to request a hearing challenging the allegations set forth in the penalty order by filing a motion with the Commission within 15 days of service of a penalty order.

### III. FINDINGS AND CONCLUSIONS

11. The Commission's statute pertaining to reconsideration of *any* order of the Commission, K.S.A. 66-118b, states that such reconsideration must comply with the Kansas Administrative Procedure Act's reconsideration framework, K.S.A. 77-529.

12. In the Commission's enforcement of KUUDPA, pursuant to K.A.R. 82-14-6, as amended, the Commission may investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission. Pursuant to K.S.A. 66-1,204, should the Commission require a hearing, the Kansas Administrative Procedure Act governs such proceeding.

13. Pursuant to K.S.A. 77-529(b), the Commission has 30 days to dispose of a petition for reconsideration or the petition for reconsideration is deemed denied by operation of law.

14. The Commission finds that KGS' Petition for Reconsideration satisfies the regulatory requirement outlined in K.S.A. 66-118b.

15. The Commission finds that reconsideration of the previously issued August 20, 2015, penalty order is proper.

16. The Commission finds that the effectiveness and duty to remit payment as detailed in the August 20, 2015, penalty order should be stayed during the pendency of this reconsideration. The Commission however does not stay the effectiveness of any obligation to conduct any repair or safety directive as recommended by Staff in the August 20, 2015 Penalty Order.

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

A. Kansas Gas Service, A Division of ONE Gas' Petition for Reconsideration of the August 20, 2015, Penalty Order is hereby granted.

B. The requirement to remit payment as detailed in the August 20, 2015 Penalty Order is hereby stayed during the pendency of this reconsideration.


C. The parties have 15 days, plus three days if served by mail, from the date of service of this Order to petition for reconsideration.

D. The Commission retains jurisdiction over the subject matter and the parties for purposes of entering such further orders as it deems necessary.

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

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: OCT 0 1 2015

  
ORDER MAILED OCT 0 2 2015  
Amy L. Gilbert  
Secretary to the Commission

DLK

CERTIFICATE OF SERVICE

16-DPAX-070-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Order Granting Reconsideration and Staying Effectiveness of Civil Penalty was placed in the United States mail, postage prepaid, or hand-delivered to the following on OCT 01 2015.

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