

**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.)

**DIRECT TESTIMONY
OF
MARK W. SMITH
ON BEHALF OF KANSAS GAS SERVICE
A DIVISION OF ONE GAS, INC.**

JANUARY 3, 2025

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1 **I. Position and Qualifications**

2 **Q. Please state your name and business address.**

3 A. My name is Mark W. Smith, and my business address is 15 E. 5th Street, Tulsa,
4 Oklahoma 74103.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am the Vice President and Treasurer for ONE Gas, Inc. (“ONE Gas”) and its division
7 Kansas Gas Service (“KGS” or the “Company”).

8 **Q. Please describe your education and professional experience.**

9 A. I have a Bachelor of Science in Accounting from Oklahoma State University, a
10 Master’s Degree in Business Administration from Phillips University, and I am also a
11 Certified Public Accountant. I have testified in cases before the Kansas Corporation
12 Commission (“Commission”), the Oklahoma Corporation Commission, Railroad
13 Commission of Texas, and Federal Energy Regulatory Commission (“FERC”). I
14 previously served on the Southern Gas Association Rate Committee where I taught a
15 portion of its Regulatory 101 course. I have worked for ONE Gas or ONE Gas’
16 predecessor, ONEOK, Inc., for over 37 years in areas that include Rates and
17 Regulatory, Corporate Accounting, Budgeting, Corporate Development, and
18 Treasury.

1 **Q. Was this testimony prepared by you or under your direct supervision?**

2 A. Yes, it was.

3 **Q. Have you previously testified before the Commission?**

4 A. Yes.

5 **II. Purpose of Testimony**

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to discuss how insurance recoveries impact the
8 amount of Manufactured Gas Plant (“MGP”) Costs recovered from customers. First, I
9 discuss what insurance is available to help offset the cost of remediating MGP sites.
10 Second, I discuss the Company’s efforts to receive insurance proceeds from various
11 insurance companies that provided coverage over the last 100 plus years for MGP
12 sites.

13 **III. Insurance Available**

14 **Q. Based on your experience and knowledge, have natural gas utilities and ONE
15 Gas been able to successfully recover proceeds from insurance companies for
16 remediation work performed at MGP sites?**

17 A. Yes, however, it has been limited. Gas utilities have been successful in recovering
18 portions of the MGP Costs through insurance coverage based on the fact that the early
19 comprehensive general liability policies (1930s to 1950s) were written without any
20 exclusions and policies issued later (1960s to 1970s) only had limited exclusions on
21 gradual pollution and environmental issues. However, starting in approximately 1972,
22 almost all insurance policies were written to exclude pollution and environmental
23 issues, regardless of whether the pollution was sudden or gradual in nature.

24 **Q. Are there any limitations that have been placed on insurance recoveries?**

1 A. Yes. Prior legal proceedings that affected MGP sites similar to KGS's have impacted
2 how insurance coverage is calculated. MGP sites must be looked at individually, and
3 the remediation cost must be spread over the period of operation up until the clean /
4 assessment period began. This means that a plant that cost \$100 million to clean could
5 be spread across 100 years and only \$1 million would be attributable to an insurance
6 policy year.

7 **Q. Please explain the general basis for making claims against the various**
8 **insurance companies.**

9 A. ONE Gas and other utilities have generally been successful in collecting
10 environmental liabilities from comprehensive general liability policies by claiming the
11 policies did not exclude environmental coverage. The provisions in the early policies
12 provided for broad liability coverage and were marketed as such by the insurance
13 industry. The basis for liability coverage under the early policies is the policy provisions
14 which provide that the insurance company will pay all sums for liability damages that
15 occur during the policy period. The utilities successful in obtaining coverage have
16 alleged that contamination at MGP sites constitutes liability damage and that such
17 damage begins at the time the contamination starts and continues until the
18 contamination is remediated. Therefore, the coverage is triggered under each policy
19 in effect during that period of time.

20 **Q. Based on your knowledge, what are some of the major challenges a utility might**
21 **face when seeking recovery of MGP Costs under the insurance policies?**

22 A. As stated in my April 11, 2017, testimony in this docket, some of the hindrances to
23 recoveries from insurance companies are as follows: 1) multiple insureds had rights
24 under the policies and that prior insureds have entered into settlement agreements on
25 these policies which included buy back provisions, 2) insolvency, 3) companies have

1 taken adverse or differing interpretation of case law in Kansas regarding the
2 recoverability of costs, 4) the allocation of costs to the various insurance policies, 5)
3 companies seek to settle claims by buying the policies, 6) some of the insurance
4 policies have a very high attachment point, 7) companies have argued that
5 government-mandated clean-up costs are not "damages" as defined in the insurance
6 policy, 8) companies have claimed that the liability damages did not occur during the
7 period in which their policies were in effect, 9) companies contend that they only have
8 a pro-rated share of any loss, 10) companies have also attempted to deny coverage
9 under the owned-property exclusion in the policy, which excludes liability damage for
10 property owned or occupied by the insured, 11) newer policies point to language that
11 exclude what the insurers refer to as gradual contamination as opposed to sudden or
12 accidental contamination, and 12) companies have sought to deny coverage on the
13 grounds that the gas utility expected or intended the property damage.

14 **IV. Recovery Efforts**

15 **Q. Since the order approving the Unanimous Settlement Agreement in this docket**
16 **has ONE Gas been able to settle any insurance policies?**

17 A. Yes. ONE Gas settled a claim with David J. Bettencourt, Acting Insurance
18 Commissioner of the State of New Hampshire, solely in his capacity as Liquidator of
19 the "The Home Insurance Company" for \$3.7 million of which the company has
20 collected \$1.78 million in cash. Additionally, ONE Gas is in negotiations with two other
21 insurers on settling their exposure to KGS's MGP sites. Negotiations have been
22 ongoing over the past three to four years, and ONE Gas anticipates negotiations will
23 continue well into 2025.

24 **Q. Does this conclude your testimony.**

25 A. Yes, it does.

