BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of a General Investigation into the Confidential Status of Certain Documents Related to Costs Incurred During Winter Storm Uri.

Docket No. 24-GIMX-376-GIV

PETITION FOR RECONSIDERATION AND CLARIFICATION

COMES NOW James P. Zakoura ("Requestor") and respectfully files this "Petition for

Reconsideration and Clarification" of the "SCHEDULING ORDER" dated November 28, 2023,

and states to the State Corporation Commission of the State of Kansas ("Commission" or

"KCC") as follows:

Summary

The "public interest" in disclosure of the requested documents, and the opportunity for

retail ratepayers to be permitted to fully pursue recovery of February 2021 natural gas costs, is of

paramount importance to one million retail ratepayers in Kansas.

The KCC has issued orders permitting utilities to recover \$698,017,914, plus interest and carrying charges, for essentially five days of natural gas and purchased power in February 2021.

Utility Recovery Plans

Company	Extraordinary Costs Incurred	Repayment Timeframe
American Energies	\$317,914	5 years or lump sum
Atmos Energy	\$92.7 Million	10 years
Black Hills Energy	\$87.9 Million	5 years
City of Eskridge	\$1.1 Million	10 years
Evergy Central	\$122.2 Million	2 years
Kansas Gas Service	\$366 Million	10 years
Southern Pioneer	\$17 Million	3 years
Empire	\$10.8 Million	15 years

In addition, the Kansas Legislature authorized \$100 million of loans so that municipal utilities could pay February 2021 natural gas and purchased power costs. (Attachment 1)¹

James P. Zakoura ("Requestor") filed his Kansas Open Records Act ("KORA") Request for "Public Records" of Black Hills – Kansas Gas Utility, on August 23, 2023. The requested "Public Records" were clearly described – in fact, in a redacted form, the requested documents (natural gas supplier invoices of Black Hills for February 2021) have been on the KCC web site since December 30, 2021.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301402423012.pdf?Id=43ed2f43-9764-4e9f-954f-8ed4b7d7defc

The KCC denied Requestor's KORA Request on October 12, 2023.

By ORDER dated November 9, 2023, the KCC "granted" the Petition for

Reconsideration of Requestor in the KCC - Black Hills KORA Docket, by opening a "General

Investigation," while "sealing" from public disclosure the "Public Records" of Black Hills

requested by Requestor.

14. The Commission has recently received several other KORA requests related to gas costs during Winter Storm Uri incurred by other jurisdictional utilities. Given the unique nature of the events of Winter Storm Uri and the amount of time that has passed, the Commission finds a more robust investigation is appropriate in this matter. Mr. Zakoura's Petition for Reconsideration is granted to allow for additional proceedings.

15. Because multiple utilities designated Winter Storm Uri natural gas invoices as confidential, the Commission orders a general investigation opened to holistically consider the confidential status of certain documents related to costs incurred

¹ If the City receives any recoveries as a result of settlement or litigation or other refunds of Extraordinary Costs paid by the City that relate to the extreme winter weather event of February 2021, such amounts (or any similar amounts received by the State of Kansas for the benefit of the City) will be used to pay any outstanding balance of the loan made to the City under the City Utility Low-Interest Loan Program. https://www.kansasstatetreasurer.com/assets/Files/city_utility_loan_application_20210304.pdf Application for City Utility Low-Interest Loan Program March 4, 2021

during Winter Storm Uri. The Commission expects its general investigation will resolve confidentially issues for multiple documents, including those requested in the present docket. The documents requested in this Docket will remain under seal until such issues are resolved.

On November 13, 2023, Requestor respectfully requested to the KCC that the retail

ratepayers right to seek recovery, through an action pursuant to the Kansas Consumer Protection

Act (KCPA) could be preserved while the more expansive General Investigation proceeded, by

simply requiring the utilities to identify their natural gas suppliers in February 2021, and the total

dollar amounts paid to them. Otherwise, the retail ratepayers rights to seek recovery under the

KCPA would be jeopardized.

"The Commission Can Preserve the KCPA Claims of 850,000 Retail Ratepayers, with No Adverse Effect on any Utility, By Simply Ordering the Utilities to List the Suppliers by Name and the Amount Paid to Each Such Supplier - An Identical Action Voluntarily Made by Kansas Gas Service Company on July 30, 2021. (page 6)." (Emphasis added).

This precise disclosure requested by Requestor was voluntarily made by Kansas Gas

Service Company on July 30, 2021, as described below.

This precise disclosure was made by the Oklahoma Corporation Commission for all

utilities in the State of Oklahoma, on February 10, 2022. Notice of Filing of Exhibit - Oklahoma

Corporation Commission, OCC Docket No. PUD 2022-00003, in this Docket. (Attachment 2)

This precise disclosure was widely disseminated on February 10, 2022, throughout the

State of Oklahoma by that States's largest newspaper - "The Oklahoman," - with a copy of said

news story filed in this KCC Docket.

 $\frac{https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202311281112361722.pdf?Id=777d712f-a0e8-4015-a315-a3b3dac1cadf}{2015-a315-a3b3dac1cadf}$

Atmos Energy made an extensive filing of this precise data on <u>July 30, 2021</u>, in the Railroad Commission of Texas – Case No. 00007062, as filed in this Docket.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202311271626514084.pdf?Id=2bbc79c5-ea10-44eb-b650-5b5acb0c674d

Of the three (3) states most affected by Winter Storm Uri – Texas, Oklahoma, and Kansas – only Kansas has not disclosed the identities of suppliers and the amount paid to each supplier for natural gas supplies in February 2021. Such information has been available in Oklahoma and Texas for the last 2 years or more.

The Scheduling Order.

The Scheduling Order is of such extended duration, that there is a likelihood that any requested disclosure of "Public Records" if ordered by the Commission, would come too late to preserve retail ratepayer claims for recovery of amounts charged for natural gas that may be in excess of lawful amounts.

The Scheduling Order includes a Hearing date on January 4, 2024, with no stated date for a Commission Order – and of course, likely Petitions for Reconsideration and Appeals thereafter – that may extend resolution of this disclosure issue for an extended period in 2024 - beyond the three (3) year statute of limitations of the KCPA, thus depriving retail ratepayers of the opportunity to seek redress for natural gas prices that increased from \$2.54 cents per MMBtu on February 1, 2021 to \$622.78 on February 17, 2021.

The Scheduling Order makes no note of Requestor's proposed accommodation – instead requiring Testimony of a proposal of Evergy on November 22, 2023 – to simply provide the identities of natural gas suppliers.

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While that would be an advancement of what has been publicly available from Atmos Energy, Evergy Kansas Central, and Empire District Electric – it provides no reasonable accommodation or resolution for the benefit of retail ratepayers.

The Evergy proposal fails to address and identify those suppliers that likely materially benefited from \$300 and \$600 per MMBtu natural gas sales – for which retail ratepayers will be paying for the next 10 - 15 years.

It is noteworthy that Empire's suppliers and the amount paid to each by Empire has been disclosed by the Oklahoma Corporation Commission on February 10, 2022.

The same holds true for Oklahoma Natural Gas Company – an affiliate division of Kansas Gas Service.

The OCC disclosure also identifies a sale by Westar Energy, Inc. to Public Service Company of Oklahoma for \$19,153,788, in February 2021.

Requestor certainly does not believe that it is the intention of the Commission to impair or impede the rights of retail ratepayers to seek redress under the KCPA – but the elongated schedule from August 23, 2023, to an unknown date in 2024, may effectively wash away part of the claims of retail ratepayers for redress from what may be unlawful prices for natural gas under the KCPA.

Procedural History.

1. <u>On August 23, 2023</u>, James P. Zakoura ("Requestor") Filed a Request pursuant to the Kansas Open Records Act. ("KORA") (K.S.A. 45-215 et. seq.) (Exhibit A-1), for "Public Records" (K.S.A. 45-217) of Black Hills – Kansas Gas Utility, in the possession of the Commission. The Requested "Public Records" were unredacted supplier invoices for purchases of natural gas for February 2021. These redacted invoices – which are heavily redacted and

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include only the suppliers' identities, were filed on December 30, 2021, in response to Docket No. 22-GIMX-171-MIS; Docket No. 21-BHCG-334-GIG Kansas Open Records Act Request

("KORA") – Max McCoy.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301402423012.pdf?Id=43ed2f43-9764-4e9f-954f-8ed4b7d7defc

2. The Black Hills KCC - Docket concluded on January 27, 2022, and the KCC

ordered that Black Hills was permitted to recover \$87.9 million from its retail ratepayers for

additional natural gas costs in February 2021. (ORDER APPROVING UNANIMOUS

SETTLEMENT AGREEMENT, dated January 27, 2022)

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220127103623.pdf?Id=2abc529b-8c9e-4d97-947a-0c785730690e

3. The KCC – Black Hills Order provided, at Paragraph No. 9, in part:

Should Black Hills receive or recover any payments resulting from subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to customers through its PGA/ACA, even if payments are received or recovered after the five-year recovery plan has ended.

4. KORA requires access to "Public Records" of the Commission. (K.S.A. 45-218)

5. The proponent of claims of trade secret protection has the burden of proof to show

that such information meets the statutory definition. Paradigm Alliance Inc. v. Celeritas

Technology, LLC, 659 F. Supp. 2d 1167, 1185 (U.S.D.C. Kan. 2009).

6. If access to "Public Records" is refused, KORA sets forth the applicable

procedure that must be followed, in K.S.A. 45-218:

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written

statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received. (Emphasis added.)

7. The KCC responded to Requestor's KORA Request, by letter dated August 24,

2023. (Exhibit A-2). In such KCC response, the Commission stated that the requested records for invoices dated February 2021, and a redacted copy of which were filed on the Commission's web site on December 30, 2021, were designated as "trade secrets or confidential information," and public disclosure would be reviewed by the Commission based on the criteria of K.S.A. 66-1220a.

8. The described suppliers' invoices were for contracts between Black Hills and its suppliers in February 2021, made pursuant to the form of contract of the North American Energy Standards Board (NAESB"). Section 15.10 of the NAESB Contract provides in pertinent part as follows:

"The existence of this Contract is not subject to this confidentially obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction."

9. Any contract requirement for confidential treatment of the requested "Public Documents: ended no later than March 1, 2022.

 The Commission acknowledged Requestor's KORA Request for the "Public Records" of Black Hills by letter dated August 24, 2023 (Exhibit A-3) and notified Black Hills of the request of Requestor on August 24, 2023. (Exhibit A-4).

On August 29, 2023, Black Hills responded to the request of Requestor,
 contending that the requested documents were "trade secrets." (Exhibit A-5).

On August 30, 2023, Requestor replied to the Black Hills response.
 (Exhibit A-6).

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13. On October 12, 2023, the KCC issued its "ORDER ON KORA REQUEST," denying the Request of Requestor on the basis that the requested "Public Records," were 'trade secrets' and exempt from public disclosure. (Exhibit A-7).

14. The Commission in its ORDER dated October 12, 2023, did not find that the public interest would be served by disclosure of the supplier invoices of February 2021, even though Requestor contended that the contents of the requested documents were material to the prosecution that could lead to the recovery of funds for the benefit of retail ratepayers of Black Hills, i.e. a reduction of the retail ratepayers obligation of \$87.9 million.

15. On October 16, 2023, Requestor filed his PETITION FOR

RECONSIDERATION (Exhibit A-8) of the Commission's "ORDER ON KORA REQUEST."

16. On November 2, 2023, the Citizens' Utility Ratepayer Bard ("CURB") filed its

"RESPONSE TO PETITION FOR RECONSIDERATION" (Exhibit A-9).

17. In its Response, CURB notes, at Paragraphs 8 and 9:

CURB takes note that Black Hills does not dispute that the confidentiality afforded to Black Hills' gas suppliers is confined to one year under its gas supplier contracts. (Paragraph No. 8.)

"CURB cannot see a clear nexus between disclosure of the subject invoices and Black Hills' subsequent inability to secure low-cost gas supplies." (Paragraph No. 9).

18. The Commission issued its "ORDER ON PETITION FOR RECONSIDERATION"

on November 9, 2023. (Exhibit A-10), and held in part:

"Because multiple utilities designated Winter Storm Uri natural gas invoices as confidential, the Commission orders a general investigation opened to holistically consider the confidential status of certain documents related to costs incurred during Winter Storm Uri. The Commission expects its general investigation will resolve confidentiality issues for multiple documents, including those requested in the present docket. The documents requested in this Docket will remain under seal until such issues are resolved. (Paragraph 15.)

19. Requestor filed his "PETITION FOR RECONSIDERATION AND

CLARIFICATION" on November 10, 2023. (Exhibit A-11).

20. In the PETITION, Requestor stated on page 6, as follows:

"The Commission can preserve the KCPA claims of 850,000 retail ratepayers with no adverse effect on any utility, by simply ordering the utilities to list the suppliers by name and the amount paid to each such supplier – an identical action voluntarily made by Kansas gas Service Company on July 30, 2021.

Atmos Energy.

21. On October 15, 2023, Requestor filed a KORA Request for unredacted copies of natural gas supplier invoices of Atmos Energy ("Atmos") for February 2021.

(Exhibit B-1).

22. Atmos has not disclosed on either a redacted or unredacted basis, its supplier

invoices for February 2021 in the state of Kansas.

23. Atmos publicly filed on July 30, 2021, the identity of its 50 natural gas

suppliers in Texas (Railroad Commission of Texas, Case No. 00007062) for each day in

February 2021, and the amount paid to each for each day.

(KCC NOTICE OF FILING OF EXHIBIT OF ATMOS ENERGY CORPORATION ("ATMOS"), IN THE RAILROAD COMMISSION OF TEXAS, CASE NO. 00007062, DATED JULY 30, 2021 – DIRECT TESTIMONY OF KENNETH M. MALTER – EXHIBIT KMM-1, LISTING FOR FEBRUARY 2021: (1) THE SUPPLIER IDENTITY OF 50 NATURAL GAS SUPPLIERS FOR ATMOS FOR EACH DAY OF FEBRUARY 2021, AND (2) THE AMOUNT PAID TO EACH SUPPLIER FOR NATURAL GAS PURCHASED FOR EACH DAY IN FEBRUARY 2021). (Attachment 3)

24. The KCC acknowledged receipt of Requestor's KORA Request, (Exhibit

B-2) and notified Atmos of the KORA Request. (Exhibit B-2).

25. On October 24, 2023, Atmos filed its response to Requestor's KORA Request (**Exhibit B-4**) and contended that the requested invoices remain confidential and exempt from disclosure.

26. On October 13, 2022, the Commission issued "ORDER APPROVING

UNANIMOUS SETTLEMENT AGREEMENT," in KCC Docket No. 22-ATMG-538-TAR,

wherein the KCC ordered that Atmos may recover from its retail ratepayers the amount of

\$111,809,422. This KCC Order concluded the KCC Docket concerning the recovery of the

February 2021 natural gas costs of Atmos.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/22-538_Order_Approving_Unanimous_Settlement_Agreement.pdf?Id=aafadfba-968c-4bcb-9855a314508d0d99&utm_medium=email&utm_source=govdelivery

27. The Order of the KCC that approved recovery of \$111,809,422 from retail

ratepayers of Atmos provided in part:

If Atmos recovers any payments as a result of any profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it will pass those payments on to its customers through its PGA (Purchased Gas Adjustment tariff).

28. The KCC did not assign a KCC Docket No. to the KORA Request to Atmos

and did not issue a response to Requestor pursuant to K.S.A. 45-218.

Kansas Gas Service Company, a Division of One Gas, Inc.

29. On October 16, 2023, Requestor filed a KORA Request for unredacted copies of natural gas supplier invoices of Kansas Gas Service, a division of One Gas, Inc. ("KGS") for February 2021. (Exhibit B-1), which were filed on a redacted basis on the KCC web site on November 8, 2021. The redacted invoices of KGS identity of all natural gas suppliers and the dollar amount paid to each in February 2021.

30. KGS on July 30, 2021, filed an Exhibit of witness Matt L. Robbins (Exhibit MLR-3) on July 30, 2021, in KCC Docket No. 21-KGSG-332-GIG, that lists the identity of all natural gas suppliers and the dollar amount paid to each in February 2021.

31. The Commission acknowledged Requestor's KORA Request by letter dated October 19, 2023, (<u>Exhibit B-2</u>) and notified KGS of the KORA Request on October 19, 2023. (Exhibit B-3).

32. On October 26, 2023, KGS filed its response to Requestor's KORA Request (**Exhibit B-4**) and contended that the requested invoices remain confidential and exempt

from disclosure.

33. The KCC did not assign a KCC Docket No. to the KORA Request to KGS and did not issue a response to Requestor pursuant to K.S.A. 45-218.

34. The KCC initially ordered that KGS was permitted to recover \$366,158,817

from its retail ratepayers on February 8, 2022.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220208103541.pdf?Id=172a1653-5e64-4ecd-84d9-b42bd4da664a at page 3.

35. The Order of the KCC that approved recovery of \$366,158,817 from retail

ratepayers of KGS provided in part:

If Kansas Gas Service receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it shall pass those payments on to its customers through its COGR/ACA, even if those payments may be received or recovered after the expiration of the Securitized Utility Tariff Charge.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220208103541.pdf?Id=172a1653-5e64-4ecd-84d9-b42bd4da664a Settlement Agreement, at page 8, approved by Commission Order.

Evergy.

36. On October 17, 2023, Requestor filed a KORA Request for unredacted copies of natural gas supplier invoices of Evergy Kansas Central ("EKC") for February 2021. (Exhibit D-1)

37. The Commission notified EKC of the KORA Request on October 20, 2023.

(Exhibit D-2).

38. On October 20, 2023, EKC filed its response to Requestor's KORA Request (Exhibit D-3) and contended that the requested invoices remain confidential and exempt from disclosure.

39. The KCC did not assign a KCC Docket Number to the KORA Request to

EKC and has not issued a response to Requestor pursuant to K.S.A. 45-218 of KORA.

40. The KCC ordered the retail ratepayers of EKC to pay \$122.2 million of additional natural gas and purchased power costs of EKC in February 2021.

41. The Order of the KCC that approved recovery of \$122.2 million from retail KCS provided in part:

ratepayers of KGS provided in part:

If Evergy Kansas Central receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to its customers through its RECA. https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220623104415.pdf?Id=2da7eba1-dbae-4ee8-a50f-7d6bae2430f8 (Settlement at Page 8)

Empire District Electric d/b/a Liberty.

42. On November 8, 2023, 2023, Requestor filed a KORA Request for unredacted copies of natural gas supplier invoices of Empire District Electric Company / Liberty ("Empire"), for February 2021. (Exhibit E-1).

43. The Commission acknowledged Requestor's KORA Request by letter dated November 8, 2023, (<u>Exhibit E-2</u>) and notified Empire of the KORA Request on November 8, 2023. (<u>Exhibit E-3</u>).

44. On November 24, 2023, Empire filed its response to Requestor's KORA Request (<u>Exhibit E-4</u>) and contended that the requested invoices remain confidential and exempt from disclosure.

45. The KCC did not assign a KCC Docket No. to the KORA Request to Empire and has not issued a response to Requestor pursuant to K.S.A. 45-218 of KORA.

46. The KCC ordered that Empire was permitted to recover \$10.8 million over

a 13-year period, from its retail ratepayers on June 1, 2023.

47. Empire is required to credit any recoveries from civil litigation:

If Empire shall receive or recover any 16 payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it shall pass those payments on to its customers through its ECA/ACA, even if those payments may be received or recovered after the 13-year plan. https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202304061041124309.pdf?Id=f8a83 a5f-695c-4df1-a88a-a363a2355cc1

The Kansas Corporation Commission.

48. On October 24, 2023, Requestor submitted a KORA Request for "Public

Records" of the KCC Staff that substantiated Staff's calculations of additional natural gas

costs incurred in February 2021. No natural gas supplier information was requested.

49. On October 31, 2023, the Commission denied in total, the KORA Request.

(Exhibit F-1)

50. On November 28, 2023, Requestor served a KORA Request on KCC Staff,

seeking unredacted copies of the Testimony of KCC Staff that listed 3 pages of force

majeure events on the KGS system in February 2021. (Exhibit F-2).

51. On November 30, 2023, the Commission denied the KORA Request

(Exhibit F-3).

Petition for Reconsideration and Clarification

52. Requestor respectfully requests that the KCC reconsider its Scheduling

Order as follows:

A. Order that each utility specifically identify its natural gas suppliers and the total amount paid to each supplier in February 2021. There is an overriding public interest that such information be immediately disclosed. Without such disclosure, the retail ratepayers' rights to prosecute an action under the KCPA is jeopardized. Kansas Gas Service disclosed such information on July 30, 2021. Oklahoma and Texas have long ago taken such disclosure action. Kansas is the "outlier" on public disclosure, of those states most impacted by extraordinary amounts of additional costs for natural gas and purchased power related to Winter Storm Uri. As indicated by the KGS disclosure dated July 30, 2021, the Atmos – Texas disclosure of July 30, 2021, and the OCC disclosures of February 10, 2022 - no harm has, or would be experienced, by either the utilities in Kansas or their retail ratepayers by disclosure of suppliers' identity and the amount paid to each supplier in February 2021.

(i) The enormity of the economic impact on retail ratepayers requires that the KCC immediately order that each utility specifically identify its natural gas suppliers and the total amount paid to each supplier in February 2021.

(ii) The KGS Winter Storm Uri additional costs for essentially 5 days of additional natural gas in February 2021 is \$366 million – the remaining natural gas costs of KGS for calendar year 2021 are \$257 million.

(iii) The Atmos Winter Storm Uri additional costs for essentially 5 days of additional natural gas in February 2021 is \$112 million – the remaining natural gas costs of Atmos for calendar year 2021 are \$43 million.

(iv) The Black Hills Winter Storm Uri additional costs for essentially 5 days of additional natural gas in February 2021 is \$87.9 million – the remaining natural gas costs of Black Hills for calendar year 2021 are \$57 million.

KCC – 2023 Report to the Kansas Legislature, at page 52. https://www.kcc.ks.gov/images/PDFs/legislativereports/2023_Utilities_and_Common_Carriers_Report.pdf

- B. Shorten the procedural schedule require live Testimony by all Parties on December 13, 2023, with a Commission Order no later than January 1, 2024.
- C. Promptly issue the KCC standard form Protective Order in this Docket that includes the accompanying certification of Non-Disclosure.
- D. Require KGS, Atmos, Black Hills, EKC, and Empire to file in this Docket all supplier invoices for purchases of natural gas and purchased power for the period February 10, 2021, through February 20, 2021.
- E. Require Atmos, EKC, and Empire to file in this Docket redacted copies of their invoices for purchase of natural gas and purchased power for the period February 10, 2021, through February 20, 2021.
- F. Require KCC Staff to file in this Docket the unredacted list of force majeure notices (**Exhibit F-2, herein**).
- 53. Requestor respectfully requests that the KCC clarify its Scheduling Order

as follows:

• Does the KCC intend to respond to the KORA requests of Requestor, pursuant to K.S.A. 45-218, regarding the pending Requests regarding KGS, Atmos, EKC, and Empire. If so, in what time period. Respectfully submitted,

/s/ James P. Zakoura

James P. Zakoura, KS 7644 FOULSTON SIEFKIN LLP 7500 College Blvd., Suite 1400 Overland Park, KS 66210 Telephone: 913-498-2100 Email: jzakoura@foulston.com *Requestor*

VERIFICATION

STATE OF KANSAS) ss: COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he has read and is familiar with the foregoing Petition for Reconsideration and Clarification, and the statements therein are true to the best of his knowledge, information, and belief.

James P. Zakoura

SUBSCRIBED AND SWORN to before me this 30th day of November 2023.

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Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Kansas Corporation Commission on November 30, 2023, and that one copy was delivered electronically to all parties on the service list as follows:

JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 S HICKORY PO BOX 17 OTTAWA, KS 66067 jflaherty@andersonbyrd.com

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DOUGLAS LAW, ASSOCIATE GENERAL COUNSEL BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 1731 WINDHOEK DRIVE LINCOLN, NE 68512 douglas.law@blackhillscorp.com JODI CULP, VICE PRESIDENT - GAS SUPPLY BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 2287 COLLEGE ROAD COUNCIL BLUFFS, IA 51503 jodi.culp@blackhillscorp.com

CHRISTINA L ELLIS, SENIOR PARALEGAL BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 1731 WINDHOEK DRIVE LINCOLN, NE 68512 christina.ellis@blackhillscorp.com

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<u>/s/ James P. Zakoura</u> James P. Zakoura, KS 07644 Requestor



900 SW JACKSON ST., STE 201 TOPEKA KS 66612-1235 Lynn W. Rogers KANSAS STATE TREASURER

PHONE: 785-296-3171 FAX: 785-296-7950

January 3, 2023

The following is a list of outstanding City Utility Low-Interest Loans as of January 3, 2023.

A total of 54 cities and 1 municipal energy agency submitted applications and \$78,409,646.79 in loans were approved and funded. At this time, 7 cities have repaid their loans in full.

City or	Loon Amount	Current Loan Balance
Municipal Energy Agency	Loan Amount	
City of Alma	501,450.00	92,012.83
City of Altamont	727,592.20	346,524.30
City of Argonia	294,095.51	246,940.75
City of Arma	401,281.17	330,001.93
City of Belleville	600,000.00	416,120.97
City of Burlingame	810,000.00	680,121.32
City of Burrton	500,000.00	419,830.91
City of Cassoday	181,272.16	127,842.00
City of Cawker City	100,000.00	53,939.09
City of Cheney	1,472,116.00	1,179,956.33
City of Chetopa	250,000.00	209,921.30
City of Denison	150,000.00	106,537.21
City of Eskridge	1,158,730.09	978,253.87
City of Fredonia	700,000.00	561,099.68
City of Garden City	10,074,199.15	8,459,214.99
City of Garnett	2,900,000.00	2,324,442.95
City of Halstead	2,000,000.00	1,679,323.83
City of Hesston	5,330,000.00	4,383,115.33
City of Howard	496,039.14	397,596.76
City of Humboldt	1,500,000.00	1,202,314.77
City of Jamestown	300,000.00	251,898.79
City of Kechi	970,377.95	814,789.36
City of Kingman	400,000.00	328,932.35
City of La Harpe	140,714.55	118,155.88
City of Little River	397,259.00	318,411.40
City of Louisburg	2,639,994.00	2,116,054.50
City of Lyons	3,000,000.00	2,467,061.38
City of Mcfarland	76,844.00	64,522.80

Total:	78,409,646.79	50,572,454.97
City of Ottawa	1,087,541.00	
City of Lindsborg	775,000.00	-
City of Ford	63,000.00	-
City of Dighton	200,000.00	-
City of Cimarron	597,836.64	-
City of Blue Mound	82,000.00	-
City of Auburn	130,000.00	-
Sub-total:	75,474,269.15	50,572,454.9
Kansas Power Pool	18,000,000.00	4,944,431.40
City of Winfield	54,560.65	54,560.6
City of Winfield	8,460,234.77	6,770,361.52
City of Walton	215,000.00	172,331.7
City of Uniontown	80,000.00	27,595.2
City of Sylvia	149,133.19	119,918.8
City of Spearville	250,000.00	150,288.8
City of Seneca	695,306.45	571,803.7
City of Rozel	205,382.21	168,895.6
City of Pratt	2,775,686.61	2,330,605.9
City of Partridge	110,831.19	93,060.0
City of Osawatomie	700,000.00	561,099.6
City of Osage City	1,650,000.00	1,385,442.12
City of Oberlin	312,950.00	130,687.3
City of Norton	572,741.31	271,126.10
City of Neodesha	411,253.00	273,738.9
City of Neodesha	413,747.00	1,401,715.0
City of Moundridge	1,777,477.85	1,461,715.6
City of Montezuma City of Morland	200,000.00 87,000.00	160,304.13
City of Mclouth	281,000.00	187,694.1

In accordance with KSA 75-4237 et seq, the market rate is recalculated the first business day of January using the market rate then in effect. The market rate as of January 3, 2023 is 4.68% thus the City Utility Low-Interest Loan rate is now 2.68%.

Sincerely,

Hym WI Ogen Lynn W. Rogers

Lynn W. Rogers Kansas State Treasurer

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of a General Investigation into the Confidential Status of Certain Documents Related to Costs Incurred During Winter Storm Uri.

Docket No. 24-GIMX-376-GIV

NOTICE OF FILING OF EXHIBITS OF THE OKLAHOMA CORPORATION COMMISSION IN OCC DOCKET NO. PUD 2022-00003, DATED FEBRUARY 10, 2022, LISTING FOR FEBRUARY 2021: (1) THE SUPPLIER IDENTITY, AND (2) THE AMOUNT PAID TO EACH SUPPLIER FOR NATURAL GAS PURCHASED IN FEBRUARY 2021

COMES NOW James P. Zakoura ("Requestor") and respectfully files:

"Notice of Filing of Exhibits of the Oklahoma Corporation Commission in OCC Docket No. PUD 2022-00003, Dated February 10, 2022, Listing for February 2021: (1) the Supplier Identity, and (2) the Amount Paid to each Supplier For Natural Gas Purchased in February 2021,"

and states to the State Corporation Commission of the State of Kansas ("Commission" or

"KCC") as follows:

The Oklahoma Corporation Commission

1. The KCC issued its Order in KCC Docket No. 21-EPDE-330-GIE on June 1,

2023, permitting Empire to recover \$10.8 million in "Additional Natural Gas Costs" and

"Additional Purchased Power Costs."

2. Empire District Electric (Liberty) states, on November 14, 2023, in its Response

in opposition to the Kansas Open Records Act ("KORA") of Requestor:

"Liberty's gas supply information and gas purchasing process, including its historical gas supply invoices, is clearly a trade secret and confidential commercial information." (Page 2 of Exhibit A, attached hereto.)

3. On <u>February 10, 2022</u>, the Oklahoma Corporation Commission ("OCC"), in OCC Docket PUD 2022-00003, published a listing of natural gas suppliers, and the amount paid to each natural gas supplier, by every OCC jurisdictional utility that sought recovery of either "Additional Natural Gas Costs" and "Additional Purchased Power Costs," from retail ratepayers in Oklahoma. (Exhibit B)

4. On <u>February 10, 2022</u>, the Oklahoma Corporation Commission, in Case No. PUD 2022-00003, set forth in a "public" document the suppliers of natural gas to Empire District Electric Company (Liberty) for February 2021, and the dollar amount paid to each natural gas supplier, along with the same information for purchased power costs – a total of \$144,306,537 of "Additional Natural Gas Costs," and \$93,707,456 of "Additional Purchased Power Costs."

5. On November 13, 2023, Requestor, in his "Request for Reconsideration and Clarification" of the "ORDER ON PETITION FOR RECONSIDERATION" filed in this Docket (KCC Docket No. 24-GIMX-376-GIV), stated as follows, at page 6:

"The Commission Can Preserve the KCPA Claims of 850,000 Retail Ratepayers, with No Adverse Effect on any Utility, By Simply Ordering the Utilities to List the Suppliers' by Name and the Amount Paid to Each Such Supplier-An Identical Action Voluntarily Made by Kansas Gas Service Company on July 30, 2021."

6. Requestor hereby files Notice of Filing of Exhibit of the Oklahoma Corporation Commission in OCC Docket No. PUD 2022-00003, dated <u>February 10, 2022</u>, Listing for February 2021: (1) the Supplier Identity, and (2) the Amount Paid to each Supplier For Natural Gas Purchased in February 2021, for the following (Exhibit B, attached hereto):

- Public Service Company of Oklahoma
- Empire District Electric
- Summit Utilities Oklahoma, Inc. (Formerly CenterPoint)
- Oklahoma Gas & Electric
- Oklahoma Natural Gas
- Arkansas Oklahoma Gas
- Fort Cobb Fuel Authority

- Panhandle Natural Gas
- Canadian Valley Electric Cooperative

The category of information requested by the Requestor, has been made "public" by the

Oklahoma Corporation Commission, on February 10, 2022 - - 21 months ago.

Respectfully submitted,

/s/ James P. Zakoura

James P. Zakoura, KS 7644 FOULSTON SIEFKIN LLP 7500 College Blvd., Suite 1400 Overland Park, KS 66210 Telephone: 913-498-2100 Email: jzakoura@foulston.com Requestor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Kansas Corporation Commission on November 27, 2023, and that one copy was delivered electronically to all parties on the service list as follows:

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GERARD WESTON ATMOS ENERGY CORPORATION 1555 BLAKE ST STE 400 DENVER, CO 80202 gerard.weston@atmosenergy.com

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KATHLEEN R. OCANAS, DIVISION VP OF RATES & REGULATORY AFFAIRS ATMOS ENERGY CORPORATION 25090 W 110TH TERR OLATHE, KS 66061 kathleen.ocanas@atmosenergy.com

ROB DANIEL, DIRECTOR OF REGULATORY AND FINANCE BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC D/B/A Black Hills Energy 655 EAST MILLSAP DRIVE, STE. 104 PO BOX 13288 FAYETTEVILLE, AR 72703-1002 rob.daniel@blackhillscorp.com

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Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Public Service Company of Oklahoma

Provider/Seller/Service Provider Name	Penalties Paid	T	Total Expense Paid	
Purchase Power				
Calpine Oneta Power, LLC	\$0.00	\$	1,440,061.00	
Exelon Generation Company, LLC	\$0.00	\$	73,761,323.00	
Westar Energy, Inc	\$0.00	\$	19,153,788.00	
Southwest Power Pool	\$0.00	\$	416,686,804.00	
Natural Gas Commodity				
Clearwater Enterprises, LLC	\$0.00	\$	2,993,921.00	
Eco-Energy Natural Gas, LLC	\$0.00	\$	22,621,675.00	
Enable Energy Resources, LLC	\$0.00	\$	126,405.00	
Koch Energy Services, LLC	\$0.00	\$	8,582,931.00	
Macquarie Energy, LLC	\$0.00	\$	15,369,068.00	
Mercuria Energy America, LLC	\$0.00	\$	21,099,731.00	
NextEra Energy Marketing	\$0.00	\$	18,754,496.00	
Sequent Energy Marketing, LLC	\$0.00	\$	1,346.00	
Southwest Energy Management, LP	\$0.00	S	1,993,024.00	
Spire Marketing, Inc	\$0.00	\$	3,908,650.00	
Tenaska Marketing Ventures	\$0.00	5	72,393,312.00	
United Energy Trading, LLC	\$0.00	\$	1,427.00	
natural Gas Balancing(Inbalances)				
Enable Oklahoma Intrastate Transmission, LLC	\$0.00	\$	14,288,303.00	

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Empire Distric Electric Company

Provider/Seller/Service Provider Name	Penalties Paid	To	Total Expense Paid	
Natural Gas Commodity				
BP Energy Company	\$0.00	\$	11,672,522.00	
Conexus Energy, LLC	\$0.00	\$	52,289,517.00	
ETC Marketing, Inc	\$0.00	\$	183,217.00	
Koch Energy Services, LLC	\$0.00	\$	17,524,369.00	
Spire Marketing	\$0.00	\$	472,932.00	
Tenaska Gas Storage, LLC	\$0.00	\$	62,163,980.00	
Transportation Services	1			
Southern Star Centeral Gas Pipeline, Inc	\$0.00	\$	296,782.70	
Transmission Services	1			
City Utilities of Springfield	\$0.00	\$	5,500.00	
Associated Electric	\$0.00	\$	9,670.66	
MISO	\$0.00	\$	266,961.03	
Southwest Power Pool	\$0.00	S	1,838,818.14	
Net Purchased Power	1			
Southwest Power Pool	\$0.00	\$	91,586,507.93	

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Summit Utilities Oklahoma, Inc (Formerly CenterPoint)

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
Continental Resources	\$0,00	5	18,873,500.00
Koch Energy	\$0.00	\$	1,779,786.11
Macquarie	\$0.00	\$	4,358,383.13
Mieco	\$0.00	\$	104,647.35
SES	\$0.00	\$	38,880,323.27
Spire Marketing	\$0.00	\$	82,125.05
Spotlight Energy	\$0.00	\$	2,241,382.29
SW Energy	\$0.00	\$	12,413,740.72
Targa Gas Mkt	\$0.00	\$	126,639.80

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Oklahoma Gas & Electric

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
Natural Gas Commodity			
Blue Mountain Midstream, LLC	\$0.00	\$	12,565,750.00
Cimarex Energy Co.	\$0.00	\$	16,850,602.00
Clearwater Enterprises, LLC	\$0.00	\$	29,334,136.00
Conexus Energy, LLC	\$0.00	\$	37,550.00
ConocoPhilips Company	\$0.00	\$	23,994,802.00
Continental Resources	\$0.00	\$	3,834,375.00
Devon Gas Services, LP	\$0.00	\$	6,300,555.00
Eco-Energy	\$0.00	\$	21,371,223.00
Enable Energy Resources, LLC	\$0.00	\$	16,993,423.00
Koch Energy Services, LLC	\$0.00	\$	112,608,142.00
Macquarie Cook Energy, LLC	\$0.00	\$	15,275,090.00
Mercuria	\$0.00	\$	69,957,142.00
MidCoast Marketing (uslp)	\$0.00	\$	69,300.00
Oneok Field Services Company	\$0.00	\$	10,297,785.00
Sequent Energy Management	\$0.00	\$	44,173,608.00
Southwest Energy LP	\$0.00	\$	98,598,486.00
Spire Marketing, Inc	\$0.00	\$	74,150,219.00
Tenaska Marketing Ventures	\$0.00	\$	125,428,028.00
Twin Eagle Resource Mgmt	\$0.00	\$	27,161,361.00
Vito	\$0.00	\$	32,919,651.00
Transportation Services		1	
Enable	\$0.00	5	1,673,610.00
Oklahoma Gas Transportation	\$0.00	ŝ	124,039.00
Oklahoma Natural Gas	\$0.00	\$	31,201.00
Southern Star	\$0.00	\$	39,130.00
Storage Related Expenses			
OneOk Ges Storage	\$0.00	\$	421,736.00
Purcahsed Power			
Blackwell Wind, LLC	\$0.00	\$	187,068.00
CPV Keenan Renweable Energy	\$0.00	\$	214,785.00
Taloga Wind, LLC	\$0.00	\$	187,056.00
Overruns			
Enable	\$0.00	\$	28,142.00
OneOk Gas Storage	\$0.00	. 5	42,608.00

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Oklahoma Natural Gas

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
Blue Mountain	\$0.00	\$	36,629,405.0
Castleton Commodities	\$0.00	\$	133,380.0
Chevron	\$0.00	\$	108,736,777.0
Conoco	\$0.00	\$	16,500.0
Enable Energy Resources	\$0.00	\$	7,516,200.0
ETC	\$0.00	\$	93,695,166.0
Koch	\$0.00	\$	37,375,375.0
Macquarie	\$0.00	Ş	118,720,193.0
Marabou	\$0.00	\$	185,419.0
Mercuria	\$0.00	\$	13,207,150.0
NextEra	\$0.00	\$	411,075,931.0
OFS	\$0.00	\$	7,200,000.0
Sequent	\$0.00	\$.106,401,750.0
Spire	\$0.00	\$	3,405,202.0
SW Energy	\$0.00	\$	297,161,143.0
Tenaska	\$0.00	\$	42,500,843.0
Ultimate CNG	\$0.00	\$	140,972.0

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Arkansas Oklahoma Gas

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
BP	\$0.00	\$	2,225,421.5
Element Markets	\$0.00	\$	51,244.4
Stephens Production	\$0.00	5	1,925,223.3
Spire Marketing	\$0.00	\$	42,023,756.9
Tenaska Marketing	\$0.00	\$	49,140,453.2
Williford	\$0.00	\$	854.4
Camterra	\$0.00	\$	13,683.9
Hanna Oil & Gas	\$0.00	\$	10,701.1
Crown	\$0.00	\$	3,233.3
Foundation	\$0.00	S	4,473.9
Webb	\$0.00	\$	32,987.3
Merit	\$0.00	\$	33,497.1
Titan	\$0.00	\$	4,133.4
Jaco	\$0.00	\$	1,183.9
Stigler	\$0.00	\$	3,696.1
Wentworth	\$0.00	\$	346.3
Black Hills Energy	\$0.00	\$	29,818.5

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Fort Cobb Fuel Authority

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
Symmerty/CenterPoint	\$0.00	\$	1,342.57
Clearwater ONG	\$0.00	\$	25,227.41
Clearwater	\$0.00	\$	383,824.44
CenterPoint	\$0.00	\$	258.75
Petrol Energy	\$0.00	\$	15,702.98

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Panhandle Natural Gas

Provider/Seller/Service Provider Name	Penalties Paid	Total Expense Paid	
Crown Midstream, LLC - Camrick Plant	\$0.00	\$	32,591.54
Pro Energy Solutions	\$0.00	\$	26,698.15

Oklahoma Corporation Commission Public Utility Division Cause No. PUD 2022-00003 Canadian Valley Electric Cooperative

Provider/Seller/Service Provider Name	Penalties Paid	To	ital Expense Paid
Purchased Power			
Western Farmers Electric Cooperative	\$0.00	5	15,969,775.55
Related Expense-Gross Receipts Tax			
Western Farmers Electric Cooperative	\$0.00	\$	313,935.51

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of a General Investigation into the Confidential Status of Certain Documents Related to Costs Incurred During Winter Storm Uri.

Docket No. 24-GIMX-376-GIV

NOTICE OF FILING OF EXHIBIT OF ATMOS ENERGY CORPORATION ("ATMOS"), IN THE RAILROAD COMMISSION OF TEXAS, CASE NO. 00007062, DATED JULY 30, 2021 – DIRECT TESTIMONY OF KENNETH M. MALTER – EXHIBIT KMM-1, LISTING FOR FEBRUARY 2021: (1) THE SUPPLIER IDENTITY OF 50 NATURAL GAS SUPPLIERS FOR ATMOS FOR EACH DAY OF FEBRUARY 2021, AND (2) THE AMOUNT PAID TO EACH SUPPLIER FOR NATURAL GAS PURCHASED FOR EACH DAY IN FEBRUARY 2021

COMES NOW James P. Zakoura ("Requestor") and respectfully files the following:

"Notice of Filing of Exhibit of Atmos Energy Corporation ("Atmos"), in the Railroad Commission of Texas, Case No. 00007062, Dated July 30, 2021 – Direct Testimony of Kenneth M. Malter – Exhibit KMM-1, listing for February 2021: (1) the Supplier Identity of 50 Natural Gas Suppliers for Atmos for each Day of February 2021, and (2) the Amount Paid to each Supplier For Natural Gas Purchased for Each Day in February 2021"

and states to the State Corporation Commission of the State of Kansas ("Commission" or

"KCC") as follows:

1. <u>On July 30, 2021</u>, Kenneth M. Malter, in a "public" filing, presented filed Direct

Testimony, before the Railroad Commission of Texas, in Case No. 00007062.

2. At Exhibit KMM-1 of the sworn Testimony of Mr. Malter, in Case No. 00007062,

dated July 30, 2021, Mr. Malter. (Exhibit No. 1)

- (i) "publicly" identified each of the 50 natural gas suppliers to Atmos in Texas in February 2021, and
- (ii) "publicly" provided, for each of such 50 natural gas suppliers,

- (iii) the specific dollar amount purchased, for each day of February 2021, by each of such 50 natural gas suppliers, to Atmos in Texas. (Exhibit No. 1)
- 3. On October 24, 2023, Atmos filed its Response to the Kansas Open Records Act

("KORA") request of the Requestor. (Exhibit No. 2)

4. In the Affidavit of Kenneth M. Malter, filed as a part of the Atmos Response in

Kansas to the KORA Request, (Exhibit No. 2) Mr. Mahler offers sworn Testimony, in pertinent

part, as follows:

10. . . . "If the details of any element of Atmos Energy's gas purchasing strategy, for example, the number of suppliers, names of suppliers, . . . are required to be made public and other participants in the natural gas commodity market are not required to make similar disclosures to the public, then such would place Atmos Energy at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public.

12.... If the Commission were to require Atmos Energy to disclose all gas suppliers ... then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information.

5. Counsel for Atmos, Mr. Flaherty, stated on October 24, 2023, (Exhibit No. 2) at

page 2, in part as follows:

Mr. Malter explains how the natural gas commodity industry is an unregulated and highly competitive market. <u>He explains how maintaining the confidentiality of each element of a gas purchasing strategy</u>, such as historical gas supply invoices, <u>is absolutely necessary to ensure equal bargaining positions between the different participants involved in the natural gas commodity industry are maintained and how requiring Atmos Energy to publicly disclose any elements of its gas purchasing strategy will eliminate Atmos Energy's equal bargaining position.</u>

6. The attached Affidavit of Kenneth M. Malter filed at the KCC in response to the

KORA Request (Exhibit No. 2), and the statements of Mr. Flaherty in response to the KORA

Request (Exhibit No. 2), are inconsistent and are completely at odds with the sworn Testimony

of Mr. Malter in his Direct Testimony, dated July 30, 2021, before the Railroad Commission of

Texas, in Case No. 00007062. (Exhibit No. 1.)

7. On November 13, 2023, Requestor, in his "Request for Reconsideration and

Clarification" of the "ORDER ON PETITION FOR RECONSIDERATION" filed in this Docket

(KCC Docket No. 24-GIMX0376-GIV), stated as follows, at page 6:

"The Commission Can Preserve the KCPA Claims of 850,000 Retail Ratepayers, with No Adverse Effect on any Utility, By Simply Ordering the Utilities to List the Suppliers' by Name and the Amount Paid to Each Such Supplier-An Identical Action Voluntarily Made by Kansas Gas Service Company on July 30, 2021."

8. The category of information requested by the Requestor, has been made "public"

by Atmos on July 30, 2021 - 28 months ago - at the Railroad Commission of Texas, Case No.

00007062 - Direct Testimony of Kenneth M. Malter - Exhibit KMM-1 (Exhibit No. 1).

Respectfully submitted,

/s/ James P. Zakoura

James P. Zakoura, KS 7644 FOULSTON SIEFKIN LLP 7500 College Blvd., Suite 1400 Overland Park, KS 66210 Telephone: 913-498-2100 Email: jzakoura@foulston.com *Requestor*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Kansas Corporation Commission on November 27, 2023, and that one copy was delivered electronically to all parties on the service list as follows:

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/s/ James P. Zakoura

James P. Zakoura, KS 07644 *Requestor*

CASE NO. 00007062

ATMOS ENERGY CORP., MID-TEX	§	BEFORE THE
DIVISION AND WEST TEXAS	§	
DIVISION, APPLICATION FOR	§	RAILROAD COMMISSION
CUSTOMER RATE RELIEF AND	§	
RELATED REGULATORY ASSET	§	OF TEXAS
DETERMINATION	§	

DIRECT TESTIMONY

OF

KENNETH M. MALTER

ON BEHALF OF

ATMOS ENERGY CORPORATION

July 30, 2021

Exhibit 1

1		I. INTRODUCTION AND QUALIFICATIONS
2	Q.	PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
3	Α.	My name is Kenneth M. Malter. My business address is 1100 Poydras Street,
4		Suite 3400, New Orleans, LA 70163.
5	Q.	BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?
6	A.	I am the Director of Gas Supply and Services for Atmos Energy Corporation
7		("Atmos Energy" or the "Company").
8	Q.	PLEASE SUMMARIZE YOUR RESPONSIBILITIES.
9	Α.	I am responsible for the department that is tasked with the procurement and
10		administration of gas supply and transportation services for the entire Company.
11	Q.	PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL
12		QUALIFICATIONS.
13	A.	I graduated from Louisiana State University with a BS in finance in 1989. I also
14		completed a master's degree in business administration from Tulane University in
15		1995. I have worked in various positions at Atmos Energy involving natural gas
16		markets for the past 23 years.
17	Q.	HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY
18		COMMISSIONS?
19	Α.	Yes, I have previously testified before the Mississippi Public Service Commission
20		and the Kansas Corporation Commission on Gas Supply related matters.

Atmos Energy – Kenneth M. Malter – Direct Application for Customer Rate Relief and Related Regulatory Asset Determination

STATE OF LOUISIANA § PARISH OF JEFFERSON §

AFFIDAVIT OF KENNETH M. MALTER

BEFORE ME, the undersigned authority, on this day personally appeared Kenneth M. Malter who having been placed under oath by me did depose as follows:

1. "My name is Kenneth M. Malter, 1 am over the age of eighteen (18) and fully competent to make this affidavit. 1 am employed as Director of Gas Supply and Services for Atmos Energy Corporation. The facts stated herein are true and correct based upon my personal knowledge.

 I have prepared the foregoing Direct Testimony and the information contained in this document is true and correct to the best of my knowledge."

Further affiant sayeth not.

Kenneth M. Malter

SUBSCRIBED AND SWORN TO BEFORE ME by the said Kenneth M. Malter on this 25th day of July 2021.

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Notary ID Number: 0134

MARIA C. CANGEMI NOTARY PUBLIC OUISIANA BAR NO. 20136 My Commission Is for Life.

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LIST OF EXHIBITS

EXHIBIT KMM-1	Shows the per day amounts spent on natural gas during February 2021 for the Mid-Tex Division and WTX Division by counterparty
EXHIBIT KMM-2	Shows the Baseload and other nominations made by the Company during February 2021, as well as what quantity of nominations were not delivered
CONFIDENTIAL EXHIBIT KMM-3	Shows the index prices for relevant indices for February 2021
EXHIBIT KMM-4	Contains the Affidavit of Shawn M. Audibert on behalf of Trans Louisiana Gas Pipeline, Inc.

Exhibit No. KMM-1 shows the amounts spent on natural gas commodity during the period of interest in February 2021 by counterparty by each day.

MidTex Gas Purchases

(does not include amount paid for purchase demand, storage demand and variable, transport demand and variable, sell backs)

Sum of AMOUNT	Column Labels	a la la sana	a la (a da d	-		-	-	-	-
Row Labels	2/1/2021	2/2/2021	2/3/2021	2/7/2021	2/8/2021	2/9/2021	2/10/2021	2/11/2021	2/12/2021
ARM Energy Management LLC	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00 \$26,650.00	\$107,250.00	\$133,050.00 \$26,650.00	\$262,550.00
Bedrock Production, LLC	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00
BP Energy Company	63.40.000.00	1050 555 00	\$235,000.00	\$294,250.00	\$294,250.00	\$328,850.00	\$402,790.00	\$565,380.00	\$1,638,550.00
Castleton Commodities Merchant Trading L.P.	\$248,880.00	\$252,555.00				\$49,906.25	the second se	\$477,997.25	
Cima Energy, LP	\$44,356.25	\$58,331.25	\$18,656.25	\$67,776.25	\$67,776.25	\$49,906.25	\$157,451.25	\$477,997.25	\$1,314,647.25
Cokinos Energy Corporation	4406 50		100.17	6430.44	6460.40	6200.07	6207.02	6 4 4 9 9 9	ć 430.00
COLT MIDSTREAM LLC	\$166.59	\$129.11	\$62.47	\$129.11	\$162.43	\$299.87	\$387.33	\$449.80	\$478.95
Concord Energy LLC	\$69,550.00	\$6,463.00		\$86,840.00	\$86,840.00	\$132,800.00	\$261,490.00	\$799,657.50	\$2,538,400.00
ConocoPhillips Company	\$152,670.00	\$133,200.00	\$106,850.00	\$155,070.00	\$155,070.00	\$152,355.00	\$224,275.00	\$350,298.38	\$525,769.21
Continental Resources, Inc.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,200.00	\$372,750.00
Cross Stream LLC	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00
ECO ENERGY NATURAL GAS LLC	\$82,860.00	\$44,910.00	\$37,125.00	\$49,405.00	\$49,405.00	\$46,500.00	\$76,105.00	\$208,175.00	\$443,600.00
EDF Trading North America, LLC									
ENGIE Energy Marketing NA, Inc.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$71,100.00	\$168,225.00
EnLink Gas Marketing LP	\$261,125.00	\$263,150.00	\$265,550.00	\$287,800.00	\$287,800.00	\$287,400.00	\$319,850.00	\$330,150.00	\$983,150.00
Enterprise Products Operating LLC									
EOG Resources, Inc.	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00
ETC Marketing, LTD	\$12,600.00	\$7,785.00	\$0.00	\$31,150.00	\$31,150.00	\$15,625.00	\$22,575.00	\$165,450.00	\$1,371,150.00
Exelon Generation Company, LLC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$327,000.00	\$810,750.00
HARTREE PARTNERS, L.P.									
Hydrocarbon Exchange Corporation	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00
Kinder Morgan Texas Pipeline LLC	\$86,550.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,100.00	\$341,625.00	\$825,375.00
Koch Energy Services, LLC	\$20,160.00	\$12,975.00	\$0.00	\$27,630.00	\$27,630.00	\$34,375.00	\$146,525.00	\$175,140.00	\$278,740.00
Mercuria Energy America, LLC	\$41,400.00	\$41,400.00	\$41,400.00	\$56,750.00	\$56,750.00	\$57,025.00	\$57,475.00	\$41,400.00	\$360,775.00
MIDCOAST MARKETING (U.S.) LP.	\$51,500.00	\$54,200.00	\$28,700.00	\$64,800.00	\$64,800.00	\$64,400.00	\$64,200.00	\$38,150.00	
MIECO LLC	\$18,675.00	\$18,675.00	\$18,675.00	\$18,675.00	\$18,675.00	\$18,675.00	\$38,085.00	\$54,995.00	\$606,375.00
Navitas Midstream Midland Basin LLC	\$124,125.00	\$112,000.00	\$112,000.00	\$127,450.00	\$127,450.00	\$112,000.00	\$176,700.00	\$157,200.00	\$242,556.50
NJR Energy Services Company									
Oasis Pipe Line Company Texas, LP			1						
Occidental Energy Marketing Inc	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$132,300.00	\$325,800.00
Penn Oak Services, LLC	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00
Pioneer Natural Resources USA Inc		40,020.00	+++++++++++++++++++++++++++++++++++++++		+++++++++++++++++++++++++++++++++++++++		\$16,325.00	\$95,494.00	+ + + + + + + + + + + + + + + + + + + +
Repsol Energy North America Corporation	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$48,600.00	\$40,548.00	\$162,150.00
Sequent Energy Management, L.P.	\$74,950.00	\$88,850.00	\$49,400.00	\$61,680.00	\$61,680.00	\$58,880.00	\$81,800.00	\$150,300.00	\$407,905.00
Southwest Energy, L.P.	\$77,575.00	\$109,590.00	\$45,400.001	\$120,240.00	\$120,240.00	\$39,840.00	\$129,090.00	\$131,410.00	\$253,625.00
Spotlight Energy, LLC	\$7,560.00	\$103,530.00		\$12,320.00	\$12,320.00	\$9,405.00	\$16,125.00	0101,110.00	41.00,01.0100
Symmetry Energy Solutions, LLC	\$140,385.00	\$49,250.00	\$27,897.50	\$55,550.00	\$55,550.00	\$35,660.00	\$186,300.00	\$338,825.00	\$601,943.00
Targa Gas Marketing LLC	\$136,120.00	\$133,975.00	\$121,000.00	\$121,000.00	\$121,000.00	\$121,000.00	\$140,530.00	\$166,900.00	\$121,000.00
-	\$136,120.00	\$118,510.00	\$96,950.00	\$141,620.00	\$141,620.00	\$131,955.00	\$243,575.00	\$323,950.00	\$1,711,050.00
Tenaska Gas Storage, LLC	\$144,850.00	\$116,510.00	\$90,930.00	\$62,350.00	\$62,350.00	\$151,955.00	\$243,373.00	\$323,930.00	\$195,000.00
Total Gas & Power North America Inc				\$62,330.00	\$62,550.00				\$195,000.00
Trans Louisiana Gas Pipeline, Inc.		40.00	60.00	40.00	ć0.00	60.00	6101 700 00	A443 500 00	£1.000 450 00
Twin Eagle Resource Management, LLC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$101,700.00	\$443,500.00	\$1,889,450.00
VITOL INC.	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$64,500.00	\$100,400.00	\$322,800.00
Wells Fargo Commodities LLC	\$27,285.00	\$28,662.00		\$9,686.00	\$9,686.00	\$9,628.00	\$33,762.00	\$40,969.00	\$60,260.93
WPX ENERGY MARKETING, LLC	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00
WWM Logistics, LLC									
XTO Energy, Inc.	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00
Grand Total	\$2,061,789.84	\$1,773,017.36	\$1,397,673.22	\$2,090,578.36	\$2,090,611.68	\$1,944,986.12	\$3,364,122.58	\$6,448,570.93	\$18,991,382.84

West Texas Gas Purchases

(does not include amount paid for cashin/cashouts, storage demand and variable, transport demand and variable, penalties, AMA Fee)

Sum of AMOUNT	Column Lat	iels									
Row Labels		02/01	02/02	02/03	02/07	02/	08 0.	2/09	02/10	02/11	02/12
Dacott Industries Inc	\$	35.23 \$	35.23	\$ 35.23	\$ 35.23	\$ 35.2	3 \$ 35	.23 \$	35.23	\$ 35.23	\$ 35.23
HARTREE PARTNERS, L.P.	\$	278,000.22 \$	223,845.93	\$ 187,115.38	\$ 368,220.29	\$ 368,220.2	9 \$ 351,667	.64 \$	659,103.36	\$ 877,860.17	\$ 1,905,761.74
WTG Gas Marketing Inc	\$	8,905.19 \$	8,905.19	\$ 8,905.19	\$ 8,905.19	\$ 8,905.1	9 \$ 8,905	.19 \$	8,905.19	\$ 8,905.19	\$ 8,905.19
Grand Total	\$	286,940.63 \$	232,786.34	\$ 196,055.79	\$ 377,160.70	\$ 377,160.7	0 \$ 360,600	.0s \$	668,043.77	\$ 886,800.58	\$ 1,914,702.15

Sum of AMOUNT Row Labels	2/13/2021	2/14/2021	2/15/2021	2/16/2021	2/17/2021	2/18/2021	2/19/2021	2/20/2021
ARM Energy Management LLC	\$3,655,450.00	\$2,710,200.00	\$2,710,200.00	\$0.00	\$0.00	\$802,060.26	\$1,449,855.42	\$108,431.61
Bedrock Production, LLC	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$8,661.25	\$8,661.25	\$17,322.50	\$20.653.75
BP Energy Company	\$20,050.00	\$20,030.00	\$20,030.00	\$20,030.00	\$10,916,600.00	\$5,287,500.00	\$2,012,067.50	\$198,400.00
Castleton Commodities Merchant Trading L.P.	\$18,077,000.00	\$13,067,793.27	\$6,308,408.52	\$8,719,626.04	\$13,883,374.39	\$14,386,893.18	\$5,334,709.85	\$186,350.00
Cima Energy, LP	\$19,201,694.37	\$15,907,645.63	\$10,412,111.44	\$7,388,933.31	\$11,963,590.26	\$6,638,332.44	\$1,795,305.87	\$430,667.25
Cokinos Energy Corporation	\$1,504,337.50	\$1,504,337.50	\$1,504,337.50	\$1,504,337.50	\$11,903,990.20	20,038,332.44	\$1,733,303.67	\$430,007.23
COLT MIDSTREAM LLC	\$466.46	\$541.42	\$287.37	\$570.58	\$483.12	\$483.12	\$354.01	\$216.57
Concord Energy LLC	\$19,751,275.00	\$22,251,275.00	\$10,908,700.00	\$16,196,200.00	\$24,223,400.00	\$7,671,320.00	\$334.01	3210.37
ConocoPhillips Company	\$5,432,135.94	\$5,398,052.70	\$3,889,082.08	\$3,324,146.88	\$6,206,579.57	\$10,369,149.67	\$1,498,855.68	\$303,300.00
Continental Resources, Inc.	\$2,048,850.00	\$1,968,316.44	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$83,764.62
Cross Stream LLC	\$12,900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
ECO ENERGY NATURAL GAS LLC	\$4,658,158.79	\$3,137,753.07	\$1,479,103.18	\$1,322,883.06	\$0.00	\$13,884.75	\$999,804.45	\$107,625.00
EDF Trading North America, LLC	\$4,036,136.75	\$3,137,733.07	\$1,475,105.18	\$1,522,865.00	\$7,382,800.00	\$13,004.75	\$693,200.00	\$107,625.00
ENGLE Energy Marketing NA, Inc.	\$2,712,900.00	\$2,712,900.00	\$1,643,836,54	\$1,259,147.32	\$7,582,800.00	\$0.00	\$093,200.00	\$0.00
EnLink Gas Marketing LP	\$8,301,050.00	\$6,716,672.80	\$631,417.55	\$4,496,148.90	\$98,610.05	\$82,545.45	\$120,452.00	\$216,200.00
Enterprise Products Operating LLC	\$8,975,000.00	\$8,975,000.00	\$1,968,810.00	\$1,968,460.00	\$12,500,000.00	\$10,500,000.00	\$3,678,528.00	\$210,200.00
EOG Resources, Inc.	\$65,500.00	\$65,500.00	\$65,500.00	\$1,968,460.00	\$242,835.56	\$218,703.70	\$209,600.00	\$196,500.00
ETC Marketing, LTD	\$2,647,250.00	\$2,647,250.00	\$2,380,550.00	\$2,038,503.02	\$4,765,600.00	\$283,044,450.00	\$48,884,050.00	
Exelon Generation Company, LLC	\$11,314,375.00	\$11,314,375.00	\$11,314,375.00	\$136,000.00	\$3,500,000.00	\$18,337,500.00	\$48,884,050.00	\$1,223,750.00
HARTREE PARTNERS, L.P.	\$6,280,000,00	\$5,704,000,00	\$5,344,000.00	\$5,470,000.00	the second se		\$4,824,000.00	\$351,000.00
	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$8,060,000.00	\$13,500,000.00	C12 050 00	\$30,772.16
Hydrocarbon Exchange Corporation					\$12,850.00	\$12,850.00	\$12,850.00	\$7,473.56
Kinder Morgan Texas Pipeline LLC	\$11,193,000.00	\$11,193,000.00	\$12,969,400.00	\$72,477,400.00	\$91,839,725.00	\$68,131,424.00	\$6,963,625.00	\$2,615,625.00
Koch Energy Services, LLC	\$2,546,675.00	\$2,544,074.36	\$2,704,500.00	\$3,485,508.80	\$8,166,038.18	\$6,429,585.82	\$789,250.00	\$415,500.00
Mercuria Energy America, LLC	\$662,950.00	\$451,102.06	\$609,336.19	\$621,550.00	\$1,136,125.00	\$1,106,425.00	\$352,000.00	\$146,650.00
MIDCOAST MARKETING (U.S.) L.P.	40,000,000							
MIECOLLC	\$7,702,875.00	\$5,144,756.07	\$3,539,649.89	\$2,321,243.14	\$12,963,085.00	\$5,278,415.00	\$429,936.43	\$127,875.00
Navitas Midstream Midland Basin LLC	\$1,346,920.49	\$52,653.44	\$0.00	\$0.00	\$0.00	\$0.00	\$13,440.00	\$62,720.00
NJR Energy Services Company					\$0.00	\$0.00	\$1,286,400.00	
Oasis Pipe Line Company Texas, LP		\$1,530,525.99						
Occidental Energy Marketing Inc	\$4,472,850.00	\$2,187,372.74	\$0.00	\$266,880.05	\$2,528,338.41	\$3,962,443.65	\$1,306,711.00	\$106,037.14
Penn Oak Services, LLC	\$6,925.00	\$0.00	\$0.00	\$0.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00
Pioneer Natural Resources USA Inc					\$3,237,706.53	\$3,740,459.54	\$65,071.76	
Repsol Energy North America Corporation	\$2,235,675.00	\$2,235,675.00	\$2,235,675.00	\$0.00	\$0.00	\$0.00	\$964,800.00	\$0.00
Sequent Energy Management, L.P.	\$4,092,575.00	\$3,174,422.00	\$3,174,422.00	\$3,174,422.00	\$8,078,400.00	\$5,000,700.00	\$1,510,411.00	\$375,481.00
Southwest Energy, L.P.	\$1,548,300.00	\$1,207,738.02	\$1,554,289.84	\$1,527,965.66	\$472,500.00	\$16,660,932.00	\$420,000.00	
Spotlight Energy, LLC								
Symmetry Energy Solutions, LLC	\$14,190,200.00	\$13,123,387.84	\$9,443,054.82	\$9,848,932.24	\$9,885,087.50	\$6,732,487.50	\$3,226,200.00	\$6,950.00
Targa Gas Marketing LLC	\$121,000.00	\$57,049.08	\$48,400.00	\$48,400.00	\$16,698,130.12	\$8,158,121.40	\$238,306.19	\$700,800.00
Tenaska Gas Storage, LLC	\$7,550,718.43	\$5,999,158.76	\$6,960,587.77	\$6,362,265.09	\$31,488,756.02	\$1,043,550.00	\$772,950.00	\$310,150.00
Total Gas & Power North America Inc	\$8,752,880.00	\$8,752,880.00	\$4,381,420.00	\$4,381,420.00				and the second sec
Trans Louisiana Gas Pipeline, Inc.	\$413,791.99	\$703,450.63	\$932,633.61	\$927,253.85	\$587,123.87	\$837,545.88	\$591,519.33	\$975,805.18
Twin Eagle Resource Management, LLC	\$35,049,250.00	\$32,465,750.00	\$29,975,000.00	\$21,935,393.99	\$43,386,349.92	\$34,530,040.80	\$9,670,500.00	\$475,500.00
VITOL INC.	\$4,818,250.00	\$4,725,790.23	\$3,272,100.00	\$3,272,100.00	\$8,077,900.00	\$5,000,200.00	\$1,360,300.00	\$202,300.00
Wells Fargo Commodities LLC	\$126,800.03	\$126,800.03	\$406,565.03	\$126,800.03	\$1,467,937.50	\$870,258.31	\$157,390.10	
WPX ENERGY MARKETING, LLC	\$69,500.00	\$69,500.00	\$24,600.22	\$0.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00
WWM Logistics, LLC					\$9,215,155.44	\$4,765,973.08	\$94,189.53	\$60,763.36
XTO Energy, Inc.	\$2,232.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Grand Total	\$221,581,211.00	\$199,866,199.08	\$142,831,853.55	\$184,825,716.34	\$353,070,167.69	\$543,199,320.80	\$101,820,380.62	\$10,123,686.20

West Texas Gas Purchases

(does not include amount paid for cashin/cashouts, si

Sum of Amoore										
Row Labels	02/13	02/14	02/:	15	02/16	-	02/17	 02/18	02/19	02/20
Dacott Industries Inc	\$ 35.23 \$	35.23	\$ 35.2	3 \$	35.23	\$	35.23	\$ 35.23	\$ 35.23	\$ 35.23
HARTREE PARTNERS, L.P.	\$ 36,821,012.24 \$	45,691,211.28	\$ 31,998,689.0	1 \$	74,948,819.61	\$	69,759,839.12	\$ 17,964,732.60	\$ 1,912,388.30	\$ 971,410.53
WTG Gas Marketing Inc	\$ 8,905.19 \$	8,905.19	\$ 8,905.1	9 \$	8,905.19	\$	8,905.19	\$ 8,905.19	\$ 8,905.19	\$ 8,905.19
Grand Total	\$ 36,829,952.65 \$	45,700,151.69	\$ 32,007,629.4	2 \$	74,957,760.02	\$	69,768,779.53	\$ 17,973,673.01	\$ 1,921,328.71	\$ 980,350.94

Sum of AMOUNT		-	a las heas		-	a fac lacar	-	a las lasses	Coursed Trated
Row Labels	2/21/2021	2/22/2021	2/23/2021	2/24/2021	2/25/2021	2/26/2021	2/27/2021	2/28/2021	and the second se
ARM Energy Management LLC	\$107,603.28	\$110,469.06	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00	\$41,850.00	\$12,784,869.6
Bedrock Production, LLC	\$20,653.75	\$20,653.75	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$26,650.00	\$682,906.2
BP Energy Company	\$198,400.00	\$198,400.00							\$18,811,367.50
Castleton Commodities Merchant Trading L.P.	\$186,350.00	\$186,350.00	\$260,860.00	\$257,400.00	\$327,112.50	\$235,150.00	\$235,150.00	\$235,150.00	\$86,961,032.75
Cima Energy, LP	\$430,667.25	\$430,667.25	\$49,916.25	\$45,056.25	\$86,106.25	\$45,606.25	\$45,606.25	\$45,606.25	\$77,368,069.57
Cokinos Energy Corporation									\$6,017,350.00
COLT MIDSTREAM LLC	\$170.76	\$120.78	\$49.98	\$87.46	\$158.26	\$87.46	\$45.81	\$108.28	\$6,838.61
Concord Energy LLC				\$55,700.00	\$82,200.00	\$51,900.00	\$51,900.00	\$51,900.00	\$105,440,830.50
ConocoPhillips Company	\$303,300.00	\$303,300.00	\$114,965.00	\$140,170.00	\$214,030.00	\$135,250.00	\$135,250.00	\$135,250.00	\$40,317,795.11
Continental Resources, Inc.	\$83,764.62	\$83,764.62	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,691,410.30
Cross Stream LLC	\$0.00	\$0.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$12,900.00	\$245,100.00
ECO ENERGY NATURAL GAS LLC	\$107,625.00	\$107,625.00	\$37,125.00	\$37,125.00	\$56,962.50	\$37,125.00	\$37,125.00	\$37,125.00	\$13,357,729.80
EDF Trading North America, LLC							and the second second		\$8,076,000.00
ENGIE Energy Marketing NA, Inc.	\$0.00	\$0.00	\$0.00	\$13,325.00	\$26,500.00	\$0.00	\$0.00	\$0.00	\$8,607,933.86
EnLink Gas Marketing LP	\$121,252.80	\$121,320.00	\$271,040.00	\$276,700.00	\$302,250.00	\$272,425.00	\$272,425.00	\$272,425.00	\$26,705,509.55
Enterprise Products Operating LLC									\$48,565,798.00
EOG Resources, Inc.	\$196,500.00	\$196,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$65,500.00	\$2,819,864.14
ETC Marketing, LTD	\$1,223,750.00	\$1.223,750.00	\$10,420.00	\$13,200.00	\$12,625.00	\$12,250.00	\$12,250.00	\$12,250.00	\$351,867,583.02
Exelon Generation Company, LLC	\$351,000.00	\$351,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$62,931,375.00
HARTREE PARTNERS, LP.	\$45,200.00	\$45,200.00							\$44,479,172.16
Hydrocarbon Exchange Corporation	\$7,473.56	\$7,473.56	\$7,473.56	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$12,850.00	\$338,294,24
Kinder Morgan Texas Pipeline LLC	\$2,615,625.00	\$365,625.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$281,713,024.00
Koch Energy Services, LLC	\$415,500.00	\$415,500.00	\$28,100.00	\$28,150.00	\$27,700.00	\$0.00	\$0.00	\$0.00	\$28,779,357.16
Mercuria Energy America, LLC	\$146,650.00	\$146,650.00	\$41,400.00	\$69,550.00	\$41,400.00	\$41,400.00	\$41,400.00	\$41,400.00	\$6,639,123.25
MIDCOAST MARKETING (U.S.) L.P.	41.0,050.00		\$53,600.00	\$53,700.00	\$52,800.00	\$49,900.00	\$49,900.00	\$49,900.00	\$918,150.00
MIECO LLC	\$127,875.00	\$127,875.00	\$18,675.00	\$44,225.00	\$84,800.00	\$18,675.00	\$18,675.00	\$18,675.00	\$38,834,840,53
Navitas Midstream Midland Basin LLC	\$0.00	\$0.00	\$112,000.00	\$112,000.00	\$112,000.00	\$112,000.00	\$112,000.00	\$112,000.00	\$3,804,140.43
NJR Energy Services Company	50.00	50.00	\$112,000.00	\$112,000.00	\$112,000.00	9111,000.00	\$111,000.00	\$112,000.00	\$1,285,400.00
Oasis Pipe Line Company Texas, LP									\$1,530,525.99
Occidental Energy Marketing Inc	\$141,900.00	\$141,900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$15,572,532.99
Penn Oak Services, LLC	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$6,925.00	\$173,125.00
	\$0,923.00	\$0,923.00	\$0,523.00	\$17,885.00	\$23,805.00	\$11,900.00	\$11,900.00	\$11,900.00	\$7,232,446.83
Pioneer Natural Resources USA Inc	\$0.00	\$0.00	\$0.00	\$39,975.00	\$39,675.00	\$0.00	\$11,500.00	\$0.00	\$8,002,773.00
Repsol Energy North America Corporation	\$267,618.08	\$299,693.50	\$67,635.00	\$62,600.00	\$64,922.25	\$56,750.00	\$56,750.00	\$56,750.00	\$30,728,416.83
Sequent Energy Management, LP.	\$267,618.08	\$299,093.30	\$88,960.00	\$91,905.00	\$84,940.00	\$25,950.00	\$25,950.00	\$25,950.00	\$25.018.430.52
Southwest Energy, L.P.			588,960.00	\$91,905.00	\$84,940.00	\$25,950.00	525,950.00	\$25,950.00	\$25,018,430.52
Spotlight Energy, LLC		44.949.99	444 444 44	45 4 9 9 9 9 9	4450 300 00	494 979 99	636 636 66	494 979 99	
Symmetry Energy Solutions, LLC	\$6,950.00	\$6,950.00	\$30,080.00	\$54,920.00	\$150,320.00	\$26,870.00	\$26,870.00	\$26,870.00	\$68,484,095.40
Targa Gas Marketing LLC	\$633,900.00	\$633,900.00	\$121,000.00	\$146,550.00	\$160,675.00	\$121,000.00	\$121,000.00	\$121,000.00	\$29,707,226.79
Tenaska Gas Storage, LLC	\$310,150.00	\$310,150.00	\$127,850.00	\$128,930.00	\$206,445.00	\$116,790.00	\$116,790.00	\$116,790.00	\$65,416,576.07
Total Gas & Power North America Inc									\$26,650,650.00
Trans Louisiana Gas Pipeline, Inc.	\$339,416.40	\$85,354.74							\$6,393,895.48
Twin Eagle Resource Management, LLC	\$475,500.00	\$475,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$210,873,434.71
VITOL INC.	\$202,300.00	\$202,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$31,621,240.23
Wells Fargo Commodities LLC					\$20,276.00				\$3,563,216.96
WPX ENERGY MARKETING, LLC	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$69,500.00	\$1,831,600.22
WWM Logistics, LLC	\$60,763.36	\$60,763.36							\$14,257,608.13
XTO Energy, Inc.	\$0.00	\$0.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$2,232.00	\$42,408.00
Grand Total	\$9,204,283.85	\$6,735,180.62	\$1,666,706.79	\$1,927,560.71	\$2,416,109.76	\$1,609,435.71	\$1,609,394.06	\$1,609,456.53	\$1,830,241,098.51

West Texas Gas Purchases

(does not include amount paid for cashin/cashouts, st

Sum of AMOUNT

Row Labels	02/21	02/22	02/23	 02/24	02/25	 02/26	02/27	02/28	Grand	Total
Dacott Industries Inc	\$ 35.23	\$	986.40							
HARTREE PARTNERS, L.P.	\$ 931,048.13	\$ 883,732.78	\$ 267,789.92	\$ 372,444.98	\$ 570,690.91	\$ 295,432.35	\$ 295,432.35	\$ 295,573.21	\$	290,099,851.35
WTG Gas Marketing Inc	\$ 8,905.19	\$	249,345.18							
Grand Total	\$ 939,988.54	\$ 892,673.19	\$ 276,730.33	\$ 381,385.39	\$ 579,631.32	\$ 304,372.76	\$ 304,372.76	\$ 304,513.62	\$	290,350,182.93

LAW OFFICES OF



A Limited Liability Partnership

John L. Richeson James G. Flaherty R. Scott Ryburn Keith A. Brock Thomas H. Sachse Daniel J. Keating

~ Celebrating 75 Years ~ 1947-2022 ROBERT A. ANDERSON (1920-1994)

> RICHARD C. BYRD (1920-2008)

October 24, 2023

Sent by Electronic Mail

Ms. Lynn Retz Executive Director Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604-4027

> Re: Kansas Open Records Act ("KORA") Request Docket No. 21-ATMG-333-GIG

Dear Ms. Retz:

Mr. Zakoura requests the Kansas Corporation Commission ("Commission") provide him copies of un-redacted natural gas purchase invoices submitted by Atmos Energy Corporation ("Atmos Energy") to the Commission in Docket No. 21-ATMG-333-GIG ("333 Docket"). The invoices related to natural gas supplies purchased by Atmos Energy during Storm Uri. Atmos Energy designated the redacted information as confidential because public disclosure of the information would cause substantial harm to Atmos Energy's customers by interfering with Atmos Energy's ability to acquire adequate natural gas supplies at a reasonable price. Accordingly, Atmos Energy objects to the disclosure of the un-redacted natural gas purchase invoices.

Attached to this response as **Exhibit 1**, and incorporated herein by reference, is a sworn affidavit from Mr. Kenneth Malter, Atmos Energy's Director of Gas Supply and Services (Malter Affidavit). Mr. Malter has over 25 years of experience in the natural gas market. He is currently responsible for the procurement and administration of gas supply and transportation for all of Atmos Energy's operations in its eight states. Mr. Malter sets forth his expert opinion supporting the basis for Atmos Energy's confidential designation of its natural gas supply invoices. *See, Malter Affidavit, Exhibit 1*.

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Ms. Lynn Retz Page 2 October 24, 2023

Mr. Malter explains how the natural gas commodity industry is an unregulated and highly competitive market. He explains how maintaining the confidentiality of each element of a gas purchasing strategy, such as historical gas supply invoices, is absolutely necessary to ensure equal bargaining positions between the different participants involved in the natural gas commodity industry are maintained and how requiring Atmos Energy to publicly disclose any elements of its gas purchasing strategy will eliminate Atmos Energy's equal bargaining position. He explains how elimination of that equal bargaining power would place Atmos Energy at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public. Mr. Malter provides several examples of how public disclosure of Atmos Energy's historical gas supply invoices will lead to Atmos Energy having to pay higher prices for natural gas, which will result in higher gas supply costs paid by its customers. Finally, Mr. Malter indicates that other state agencies and local governments that regulate Atmos Energy recognize and maintain the confidential designation of Atmos Energy's gas purchasing information. *See, Malter Affidavit, Exhibit 1, paragraphs 9-11.*

Under K.S.A. 66-1220a (a), the Commission has a duty not to,

disclose or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission any information which is a trade secret under the uniform trade secrets act, K.S.A. 60-3320, or any confidential commercial information of a corporation...regulated by the commission unless the commission finds that disclosure is warranted after consideration of four factors.

Atmos Energy's gas supply information, including its historical gas supply invoices, is clearly a trade secret and confidential commercial information. K.S.A. 60-3320 (4) defines "trade secret" to mean,

...information, including a formula, pattern, compilation, program, device, method, technique, or process that (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As indicated above, Mr. Malter explains in his affidavit specifically how Atmos Energy's gas supply information derives its economic value by not being known by other participants in the natural gas commodity market and how disclosure of said information could provide those participants economic value at the expense of Atmos Energy. See, Malter Affidavit, Exhibit 1, Ms. Lynn Retz Page 3 October 24, 2023

paragraphs 10-11.

Mr. Malter provides three examples where public disclosure of Atmos Energy's historical gas supply invoices could place Atmos Energy at a competitive disadvantage.

In his first example, Mr. Malter states that if the Commission were to require Atmos Energy to disclose all gas suppliers and all gas invoices for gas purchased by Atmos Energy during February 2021, then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information. Those participants would have the names of Atmos Energy's suppliers, the contract quantities, contract prices, the contract term and delivery locations. Atmos Energy, on the other hand, would have none of that information from the other participants, who are not required to publicly disclose such information. Mr. Malter states that this would mean that an industrial customer directly connected to Southern Star's interstate pipeline, who is competing against Atmos Energy for the same gas supplies, would have all of Atmos Energy's gas purchasing information. However, Atmos Energy would not have that same information relating to the industrial customer. He goes on to indicate that the equal bargaining positions of the participants in the natural gas commodity market "are turned on their heads" placing Atmos Energy and its customers at a competitive disadvantage in obtaining those gas supplies that Atmos Energy and the industrial customer are competing against each other to obtain. Mr. Malter explains that if Atmos Energy's historical gas supply information is maintained as confidential, then Atmos Energy and it customers are not placed at a disadvantage and can equally compete for natural gas supplies against the industrial customer, marketer or other gas purchaser in the natural gas commodity market. See, Malter Affidavit, Exhibit 1, paragraph 12.

Mr. Malter goes on in his affidavit to provide two examples that show that not only is Atmos Energy placed at a disadvantage at competing with other natural gas purchasers in the natural gas commodity market, it is also placed at a disadvantage in negotiating with gas suppliers, if those gas suppliers have all of Atmos Energy's historical gas contracts and invoices. See, Malter Affidavit, Exhibit 1, paragraph 13.

Both the U.S. Supreme Court and the Kansas Supreme Court recognize the importance of maintaining the confidentiality of an entity's trade secrets and commercial information. Both courts have recognized "that the common-law right of public inspection must bow before the power of the court to insure that records will not be used to "gratify private spite... or [be used] as sources of business information that might harm a litigant's competitive standing. *See, Stephens v. Van Arsdale,* 227 Kan. 676, 688(1980) (citing *Nixon v. Warner Comm'n, Inc.,* 435 U.S. 589, 598 (1978)).

This Commission has recently addressed whether natural gas supply contracts and invoices

Ms. Lynn Retz Page 4 October 24, 2023

relating to Storm Uri are confidential trade secrets protected from disclosure per the factors set forth in K.S.A. 66-1220a. See, Order on KORA Request, Docket No. 24-GIMX-238-MIS ("238 Docket"), October 12, 2023. In the 238 Docket, Mr. Zakoura filed a KORA request asking the Commission to provide un-redacted natural gas supply contracts and invoices relating to purchases made by Black Hills Energy during Storm Uri. Black Hills objected. It made the same arguments being made by Atmos Energy in this docket. The Commission applied the factors set forth in K.S.A. 66-1220a and held that natural gas supply contracts and invoices relating to Storm Uri were confidential trade secrets and not subject to disclosure. The Commission found that disclosure of contracts and invoices may affect a natural gas distribution company's ability to compete for low cost gas supplies in the future, which would cause harm to both the utility and the public. See, Order on KORA Request, 238 Docket, October 12, 2023, page 4, paragraph 10. The Commission held that it was unclear as to how disclosure would aid the Commission. It found that alternatives to disclosure existed for Mr. Zakoura through his class action cases. Id.

This Commission reached a similar conclusion a couple of times in Docket No. 21-KGSG-332-GIG ("332 Docket") relating to the same issue. In the 332 Docket, Mr. Zakoura requested on several occasions that Kansas Gas Service's natural gas supply contracts and invoices relating to Storm Uri be made public. Kansas Gas Service contended that the redacted information in the contracts and invoices constituted trade secrets and if released to the public could place the utility at a competitive disadvantage in acquiring natural gas supplies for its customers. In denying Mr. Zakoura's request, the Commission held:

...disclosure of the information as requested in NGTCC's motions holds great potential of harm to current and future Kansas natural gas customers through higher purchased gas costs. A general argument in favor of transparency cannot outweigh this very real harm to customers. The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long standing and well-reasoned Commission practices related to non-disclosure of trade secrets and confidential commercial information.

Order Denying NGTCC's Motion to Remove Confidential Designations for Certain Documents, 332 Docket, dated September 9, 2021, page 9, paragraph 17.

The Commission reached the same conclusion in Docket No. 22-GIMX-171-MIS, See, Order on KORA Request, 22-171 Docket, dated December 9, 2021, page 3, paragraph 8.

Based upon the analysis conducted by the Commission in its recent decision in the 238 Docket, and its decisions in the other above-referenced dockets, Atmos Energy requests that (1) the

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Ms. Lynn Retz Page 5 October 24, 2023

Commission find that the redacted information in the natural gas supply invoices constitute trade secrets, as defined in K.S.A. 60-3320(4); (2) based upon the factors set forth in K.S.A. 66-1220a, find that disclosure of said confidential information is not warranted; and (3) deny Mr. Zakoura's request for said confidential information.

Sincerely,

6. TRIE

James G. Flaherty jflaherty@andersonbyrd.com

JGF:rr

ec: jzakoura@foluston.com shelly.bass@atmosenergy.com

www.andersonbyrd.com

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of the Investigation into Atmos Energy Corporation Regarding the February 2021 Winter Weather Events, as Contemplated By Docket No. 21-GIMX-303-MIS

Docket No. 21-ATMG-333-GIG

AFFIDAVIT OF KENNETH M. MALTER

STATE OF LOUISIANA PARRISH OF ORLEANS, ss:

I, Kenneth M. Malter, upon being sworn, under oath, state that the following information is within my personal knowledge and belief and is true and correct:

1. My name is Kenneth M. Malter.

2. My business address in 1100 Poydras Street, Suite 3400, New Orleans, Louisiana,

70163.

 I am employed by Atmos Energy Corporation (Atmos Energy) as Director of Gas Supply and Services.

4. I graduated from Louisiana State University with a BS in finance in 1989. I also completed a master's degree in business administration from Tulane University in 1995.

 I have worked in various positions at Atmos Energy involving natural gas markets for the past 25 years.

6. As Director of Gas Supply and Services I am responsible for the department that is tasked with the procurement and administration of gas supply and transportation for all of Atmos Energy's operations in Kansas, Colorado, Texas, Tennessee, Kentucky, Louisiana, Mississippi and Virginia.

EXHIBIT 1

7. Atmos Energy submits its Gas Supply Plan (Plan) each year to the Kansas Corporation Commission (Commission) for review pursuant to the requirements contained in Atmos Energy's specific gas purchasing practices docket, Docket No. 02-GRLG-364-GPR (364 Docket).

8. The Plan provides a comprehensive framework to satisfy both the baseline and variable gas supply needs of Atmos Energy's Kansas sales customers. The Plan focuses on providing a reliable gas supply at a market based price, while taking into account Atmos Energy's operational and management requirements. Atmos Energy also submits monthly gas supply reports to the Commission in the 364 Docket.

9. Atmos Energy has consistently designated all information relating to its past, present and future gas supply strategy and portfolio as a confidential trade secret and has provided said information to the Commission for audit, review and other purposes pursuant to the protections contained in the Protective Order issued by the Commission in the 364 Docket on November 26, 2001, so that such information would be maintained as confidential and not released to the public. As explained below, Atmos Energy's gas supply information derives economic value, actual or potential, for Atmos Energy and its customers from not being generally known to and not readily ascertainable by proper means by other persons who could obtain economic value from its disclosure or use.

10. The natural gas commodity industry is an unregulated and highly competitive market. Thus, maintaining the confidentiality of each element that when combined makes up a gas purchasing strategy, is essential within the industry to ensure equal bargaining positions between and among both natural gas suppliers, like producers and marketers, and natural gas purchasers, like Atmos Energy, marketers, or individual industrial customers who purchase natural gas on the same pipeline as Atmos Energy. If the details of any element of Atmos Energy's gas purchasing strategy, for example, the number of suppliers, names of suppliers, contract quantities, contract prices, the term of the contracts, delivery locations, are required to be made public and other participants in the natural gas commodity market are not required to make similar disclosures to the public, then such would place Atmos Energy at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public.

11. If the Commission would require Atmos Energy to disclose either specific historical or current elements of Atmos Energy's gas purchasing practices, like historical gas supply invoices, then this information would be available to all natural gas suppliers and all natural gas purchasers. Given current computer technologies, software, algorithm and artificial intelligence programs, this information can be exploited by participants in the natural gas commodity market by giving them critical insights into Atmos Energy's strategy in purchasing natural gas. It eliminates the equal bargaining positions between those participants and Atmos Energy. It could lead to Atmos Energy having to pay higher prices for natural gas, which means higher gas supply costs paid by its customers.

12. If the Commission were to require Atmos Energy to disclose all gas suppliers and all gas invoices for gas purchased by Atmos Energy during February, 2021, then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information. They would have the names of Atmos Energy's suppliers, the contract quantities, contract prices, contract term and delivery locations. Atmos Energy, on the other hand, would have none of that information from the other participants, who are not required to publicly disclose such information. This would mean that an industrial customer directly connected to Southern Star's interstate pipeline, who is competing against Atmos Energy for the same gas supplies, would have all of Atmos Energy's gas purchasing information. However, Atmos Energy would not have that same

information relating to the industrial customer. The equal bargaining positions of the participants in the natural gas commodity market are turned on their heads, placing Atmos Energy and its customers at a competitive disadvantage in obtaining those gas supplies that Atmos Energy and the industrial customer are competing against each other to obtain. If Atmos Energy's historical gas supply information is maintained as confidential, then Atmos Energy and its customers are not placed at a disadvantage and can equally compete for natural gas supplies against that industrial customer, marketer or other gas purchaser in the natural gas commodity market.

13. Not only is Atmos Energy placed at a disadvantage at competing with other natural gas purchasers in the natural gas commodity market, it is also placed at a disadvantage in negotiating with gas suppliers, if those gas suppliers have all of Atmos Energy's historical gas contracts and invoices. For example, if Atmos Energy historically purchased natural gas supplies at a particular location at a price above the index price and the gas suppliers have access to that information because Atmos Energy has been required to disclose to the public its historical gas supply contracts and invoices, and Atmos Energy has no access to whether those gas suppliers have historically sold gas at that location at a price above or below the index price, Atmos Energy loses its equal bargaining position. This will likely result in Atmos Energy paying a higher price for natural gas supplies. Such also increases the chances that if multiple gas suppliers bid on selling natural gas to Atmos Energy and they all know historically that Atmos Energy has paid a price above the index price at a particular location, then such will likely result in bid prices being submitted that are relatively higher than if the gas suppliers did not have that historical information. Maintaining the confidentiality of that historical gas supply information assures equal bargaining power between Atmos Energy and those gas suppliers, resulting in competitive offers from those gas suppliers and relatively lower gas costs to customers.

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14. The confidentiality of Atmos Energy's gas purchasing information is recognized and maintained by the other state agencies and local governments that regulate Atmos Energy's natural gas distribution business.

Further affiant saith naught.

Kenneth M. Malter

SUBSCRIBED AND SWORN to before me this 24^{th} day of October, 2023, by Kenneth M. Malter.

Notary Public

Appointment/Commission Expires:

STEPHEN T. PERRIEN Notary Public Parish of Orleans, State of Louisiana My Commission is Issued for Life. Bar No. 22590 Notarial No. 49480

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of the Kansas Open Records Act Request dated August 23, 2023, by James Zakoura.

Docket No. 24-GIMX-238-MIS

NOTICE OF FILING OF DOCUMENTS

The Office of General Counsel for the State Corporation Commission of the State of Kansas

(Commission) files the attached documents regarding the Kansas Open Records Act (KORA)

request filed by James Zakoura with the Commission on August 23, 2023. Due to the confidential

nature of the records requested, the Commission will issue a decision in accordance with K.S.A.

66-1220a and its amendments.

KORA Request from James Zakoura dated August 23, 2023; KCC letter to James Zakoura dated August 24, 2023; KCC letter to Black Hills Energy dated August 24, 2023; Black Hills Energy response letter dated August 28, 2023; and Reply letter from James Zakoura dated August 30, 2023.

Respectfully Submitted,

/s/ David G. Cohen

David Cohen #27249 Assistant General Counsel Kansas Corporation Commission 1500 SW Arrowhead Rd. Topeka, KS 66604 (785) 271-3198 (Telephone) (785) 271-3354 (Fax) d.cohen@kcc.ks.gov

From:	kora_request@kcc.state.ks.us
To:	Open Records Group
Subject:	KORA Request 1692818835
Date:	Wednesday, August 23, 2023 2:27:14 PM

Wed Aug 23 14:27:15 2023

Α	KORA	request	was	submitted with these parameters:
	Name:		ame:	James P. Zakoura
				Foulston Siefkin
	Address:		ess:	7500 College Boulevard - Suite 1400
		ity:	Overland Park	
State:			ate:	Kansas
Zip:			Zip:	66210
Daytime phone:			one:	913-944-2263
E-mail:			ail:	JZakoura@foulston.com
Best contact:			act:	E-mail
Receive documents:			nts:	E-mail

Description:

Requested Documents pursuant to the Kansas Open Records Act (KORA) aEUR" I request that the redacted Invoices listed on the KCC Web Site in KCC Docket No. 21-BKGC-334-GIG - Black Hills/Kansas Gas Utility Company, Inc. aEURoeCompliance Filing for KORA Requests Nos.1 -14, aEUR dated 12/31/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. In the alternative, I request that unredacted copies of those Invoices be made available to me, so that I may designate pages therefrom for copying. These documents / invoices as they presently exist on the KCC Web Site, are almost entirely redacted and provide no public information regarding price of natural gas or volume of natural gas. These invoices are issued pursuant to the NAESB Standard Form Contract. Section 14 of the NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction ." The Invoices for the subject February 2021 natural gas purchases were issued in March 2021. The confidential NAESB Contract designation ended no later than April 2022. On January 27, 2022, the KCC approved a 5-year payment plan in the amount of ~87.9 million for payment by retail sales customers of Black Hills.. The requested records pursuant to KORA herein, detail the prices and volumes purchased that are the component parts of the ~87.9 million. As noted to Black Hills representatives, the requested documents will permit an examination of whether the payments made to suppliers of Black Hills, were consistent with applicable Kansas law. The Commission Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills, amounts recovered in future litigation. I requested the records from Black Hills that are the subject to this KORA request, prior to filing this KORA request. Black Hills denied my request for records. My request was made to Douglas Law of Black Hills. Douglas.Law@blackhillscorp.com

1500 SW Arrowhead Road Topeka, KS 66604-4027

Susan K. Duffy, Chair Dwight D. Keen, Commissioner Andrew J. French, Commissioner Kansas Corporation Commission

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

Laura Kelly, Governor

August 24, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request # 1692818835

Mr. Zakoura,

On August 23, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for the following:

I request that the redacted Invoices listed on the KCC Web Site in KCC Docket No. 21-BKGC-334-GIG - Black Hills/Kansas Gas Utility Company, Inc. Compliance Filing for KORA Requests Nos.1 -14, dated 12/31/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. In the alternative, I request that unredacted copies of those Invoices be made available to me, so that I may designate pages therefrom for copying. These documents/invoices as they presently exist on the KCC Web Site, are almost entirely redacted and provide no public information regarding price of natural gas or volume of natural gas. These invoices are issued pursuant to the NAESB Standard Form Contract. Section 14 of the NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction." The Invoices for the subject February 2021 natural gas purchases were issued in March 2021. The confidential NAESB Contract designation ended no later than April 2022. On January 27, 2022, the KCC approved a 5-year payment plan in the amount of ~87.9 million for payment by retail sales customers of Black Hills. The requested records pursuant to KORA herein, detail the prices and volumes purchased that are the component parts of the ~87.9 million. As noted to Black Hills representatives, the requested documents will permit an examination of whether the payments made to suppliers of Black Hills, were consistent with applicable Kansas law. The Commission Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills, amounts recovered in future litigation. I requested the records from Black Hills that are the subject to this KORA request, prior to filing this KORA request. Black Hills denied my request for records. My request was made to Douglas Law of Black Hills.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific

KORA Request #1692818835 Page 2

authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Black Hills Energy of your request for confidential information wherein they can respond in accordance with the regulation.

The process outlined in K.A.R. 82-1-221a(b) is:

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1)

KORA Request #1692818835 Page 3

and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,

Jun M. Retz

Lynn M. Retz Official Custodian of Records Executive Director

1500 SW Arrowhead Road Topeka, KS 66604-4027 Kansas Corporation Commission

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

Susan K. Duffy, Chair Dwight D. Keen, Commissioner Andrew J. French, Commissioner

Laura Kelly, Governor

August 24, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request # 1692818835

Mr. Zakoura,

On August 23, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for the following:

I request that the redacted Invoices listed on the KCC Web Site in KCC Docket No. 21-BKGC-334-GIG - Black Hills/Kansas Gas Utility Company, Inc. Compliance Filing for KORA Requests Nos.1 -14, dated 12/31/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. In the alternative, I request that unredacted copies of those Invoices be made available to me, so that I may designate pages therefrom for copying. These documents/invoices as they presently exist on the KCC Web Site, are almost entirely redacted and provide no public information regarding price of natural gas or volume of natural gas. These invoices are issued pursuant to the NAESB Standard Form Contract. Section 14 of the NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction." The Invoices for the subject February 2021 natural gas purchases were issued in March 2021. The confidential NAESB Contract designation ended no later than April 2022. On January 27, 2022, the KCC approved a 5-year payment plan in the amount of \sim 87.9 million for payment by retail sales customers of Black Hills. The requested records pursuant to KORA herein, detail the prices and volumes purchased that are the component parts of the ~87.9 million. As noted to Black Hills representatives, the requested documents will permit an examination of whether the payments made to suppliers of Black Hills, were consistent with applicable Kansas law. The Commission Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills, amounts recovered in future litigation. I requested the records from Black Hills that are the subject to this KORA request, prior to filing this KORA request. Black Hills denied my request for records. My request was made to Douglas Law of Black Hills.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific

KORA Request #1692818835 Page 2

authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Black Hills Energy of your request for confidential information wherein they can respond in accordance with the regulation.

The process outlined in K.A.R. 82-1-221a(b) is:

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1)

KORA Request #1692818835 Page 3

and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,

Jun M. Ref

Lynn M. Retz Official Custodian of Records Executive Director

1500 SW Arrowhead Road Topeka, KS 66604-4027

Susan K. Duffy, Chair Dwight D. Keen, Commissioner Andrew J. French, Commissioner



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

Laura Kelly, Governor

August 24, 2023

Rob Daniel Ann Stichler Jeffrey Dangeau Douglas Law Tom Stevens Nick Smith Black Hills Corporation roh.daniel@blackhillscorp.com ann.stichler@blackhillscorp.com douglas.law@blackhillscorp.com tom.stevens@blackhillscorp.com James Flaherty Anderson & Byrd, LLP 216 S. Hickory, PO Box 17 Ottawa, KS 66067 jflaherty@andersonbyrd.com

Re: August 23, 2023 Kansas Open Records Request to KCC - #1692818835

Counsel,

As attorneys of record for Black Hills Corporation in Docket No. 21-BHCG-334-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), please respond within five (5) business days of the date of this letter substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully.

Lvnn M. Retz

Executive Director Custodian of Records

cc: James Zakoura, Foulston Siefkin, JZakoura@foulston.com



Douglas J. Law Associate General Counsel Douglas.Law@blackhillscorp.com

1731 Windhoek Drive Lincoln, NE 68512 P: 402.221.2635

August 29, 2023

Ms. Lynn Retz Executive Director Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027

Re: Kansas Open Records Act Request ("KORA") Zakoura #1692818835

Dear Ms. Retz:

Background.

On August 23, 2023, Black Hills received notice of a Kansas Open Records Act ("KORA") request from Mr. James P. Zakoura seeking access to redacted natural gas purchase invoices submitted by Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy ("Black Hills") to the Kansas Corporation Commission ("KCC"), and thereafter listed on the KCC's Web Site in KCC Docket No. 21-BHCG-334-GIG – Black Hills/Kansas Gas Utility Company - Compliance.

Mr. Zakoura's KORA Request.

The KORA letter requests that the public versions of the invoices provided by Black Hills in response to the KORA Requests Nos. 1-14, dated 12/30/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. Alternatively, Mr. Zakoura requests that Black Hills provide him with unredacted copies of those documents so that Mr. Zakoura may review and designate pages for copying.

As Black Hills understands this KORA request, the primary argument for disclosure of the confidential natural gas invoices contained in the KORA requests arise from North American Energy Standards Board ("NAESB") Natural Gas Sale and Purchase Agreements ("NAESB Contract") by and between Black Hills and numerous suppliers as identified within the KORA responses under review in this request. Mr. Zakoura states that section 14 of a NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction."

Mr. Zakoura further notes that the invoices relate to natural gas purchases made by Black Hills in February 2021 and that the invoices were issued in March 2021. Mr. Zakoura points out that the confidential NAESB Contract designation contractually ended no later than April 2022.

Mr. Zakoura's KORA notice states that on January 27, 2022, in KCC Docket No. 21-BHCG-334-GIG, the KCC approved a 5-year plan in the amount of \$87.9 million for payment by retail sales customers of Black Hills. Mr. Zakoura argues that the requested records pursuant to his KORA request detail the prices and volumes purchased that are the component parts of the \$87.9 million. Mr. Zakoura states that the requested documents will permit an examination of whether the payments made to suppliers of Black Hills were consistent with applicable Kansas law.

Finally, Mr. Zakoura points out that the KCC's Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills' amounts recovered in future litigation.

Black Hills Response.

In accordance with K.A.R. 82-1-221a(b)(l), Black Hills objects to disclosure of its confidential information included within the scope of the KORA request for the following reasons:

The requested information is a trade secret within the meaning of K.S.A. 66-1220a and K.S.A. 60-3320. Under K.S.A. 66-1220a the Commission shall not disclose any information which is confidential or a trade secret unless the Commission finds that disclosure is warranted after considering four factors. Those factors are as follows:

- (1) whether disclosure will significantly aid the commission in fulfilling its functions;
- (2) the harm or benefit which disclosure will cause to the public interest;
- (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and,
- (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

Black Hills contends that the requested information has been maintained as highly confidential, and public disclosure of the requested information would cause substantial harm to the public interest and to Black Hills by interfering with its ability to acquire adequate gas supplies to serve its customers at a reasonable price.

Black Hills acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills gas supply packages, putting Black Hills at a competitive disadvantage in acquiring gas supplies through this process and resulting in harm to Black Hills' customers through higher gas costs.

Although Black Hills is not contractually obligated to maintain confidentiality after one year under the NAESB Contract, that fact does not automatically require the parties privy to those NAESB Contracts to disclose the prices thereunder voluntarily or involuntarily to the public. Black Hills believes that disclosure of its confidential information would not benefit the public and that disclosure would be harmful to future gas purchasing activities of Black Hills if the prices are disclosed as requested by Mr. Zakoura.

The confidential information sought here was provided to the parties in KCC Docket No. 21-BHCG-334-GIG subject to confidential protection. Mr. Zakoura and his clients were a party to that proceeding and had access to the confidential information for purposes directly relevant to that KCC proceeding. The parties in KCC Docket No. 21-BHGC-334-GIG settled the issues presented within that proceeding and the KCC issued an order approving that settlement agreement. Public disclosure of the confidential information is not necessary to further the KCC's duties related to Docket No. 21-BHCG-334-GIG. That matter is proceeding in accordance with the terms of the approved settlement.

As Mr. Zakoura acknowledges, the KCC reviewed the confidential gas supply pricing information and thereafter approved a 5-year plan for Black Hills to recover gas costs in the amount of \$87.9 million from Black Hills sales customers. The Commission continues to possess those confidential records.

Mr. Zakoura states that the requested documents will permit an examination of whether the payments made to suppliers of Black Hills were consistent with applicable Kansas law. However, the KCC and other parties in Docket No. 21-BHCG-334-GIG already have access to make that determination. There is no further action arising under that docket which warrants public disclosure of that confidential information now – absent parties to the contracts from voluntarily disclosing the information. As stated above, Black Hills does not believe that disclosure is in its interest or that of the public. If there is any issue directly related to KCC Docket No. 21-BHCG-334-GIG, then Mr. Zakoura and his clients may take appropriate action in KCC Docket No. 21-BHCG-334-GIG subject to the Commission's protective order in this proceeding.

As Black Hills understands this KORA request, Mr. Zakoura's intent is to evaluate whether to pursue litigation against one or more of the natural gas suppliers selling gas to Black Hills during the Storm Uri cold weather event during February 2021. Mr. Zakoura's statement that the Commission's January 27, 2022 Order in this Docket provided for a crediting to retail ratepayers of Black Hills, any amounts recovered in future litigation does not mean that other parties may compel public disclosure of information that was submitted as confidential, maintained as confidential, and still considered confidential by Black Hills and its various suppliers.

Black Hills interprets that statement to mean that if Black Hills brings litigation against suppliers or others that it is required to contribute and pass any amounts awarded through litigation through the Gas Cost Adjustment ("GCA") for the benefit of its GCA customers. The Commission did not state that the confidential information submitted in KCC Docket No. 21-BHCG-334-GIG would or should be disclosed after a year so that other intervening parties could pursue their own litigation against natural gas suppliers in the State of Kansas. Black Hills does not currently have any ongoing litigation regarding its Storm Uri gas supplies. Black Hills would comply with the KCC's order by passing through an award for damages if Black Hills pursued litigation and a judgment in favor of Black Hills.

As a matter of precedent, on September 9, 2021, the Commission ruled in Docket No. 21-KGSG-332-GIG that substantially similar information constituted trade secrets and should not be made public. In its Order Denying NGTCC's Motions to Remove Confidential Designations for Certain

Documents ("Order"), the Commission stated:

... disclosure of the information as requested in NGTCC's motions holds great potential of harm to current and future Kansas natural gas customers through higher purchased gas costs. A general argument in favor of transparency cannot outweigh this very real harm to customers. The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long-standing and well-reasoned Commission practices related to nondisclosure of trade secrets and confidential commercial information.

In accordance with its prior orders in Docket No. 21-KGSG-332-GIG, the Commission finds disclosure of appropriately designated confidential information is not warranted under K.S.A. 66-1220a. The Commission adopted that same position in KCC Docket No. 21-BHCG-334-GIG. See also, KCC Order on KORA Request in KCC Docket No. 22-GIMX-171-MIS.

Black Hills understands that there may be a difference in timing of the gas supply pricing under that KORA request versus the KORA request lodged by Mr. Zakoura. However, for the reasons provided herein, Black Hills does not believe that the reasons provided by Mr. Zakoura for disclosure of confidential information meets the Commission's test:

- (1) Black Hills contends that disclosure would not further aid the Commission as it already had and continues to have this information in its possession. That fact is also true for Mr. Zakoura and his clients. Any action relevant to this docket can be pursued within that docket subject to the Commission's Protective Order issued in Docket No. 21-BHCG-334-GIG;
- (2) Black Hills believes that disclosure of its gas supply invoicing albeit after the contractual obligation established between the parties to the NAESB contract – would not benefit the public and could harm future gas availability or pricing from these suppliers;
- (3) Black Hills further believes that because this proceeding has been resolved and the KCC approved the Settlement in Docket No. 21-BHCG-334-GIG, disclosure would harm the long-term relationships between Black Hills and the various natural gas suppliers. If cold weather pricing events occur in the future, Black Hills needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntary disclosure of gas pricing a year after that event may cause some suppliers to sell into other markets. This would have a direct negative effect on Black Hills and its PGA customers; and
- (4) Black Hills states that Mr. Zakoura has alternatives to disclosure of the confidential gas supply invoices in KCC Docket No 21-BHCG-334-GIG that will serve the public interest and protect the corporation, partnership or sole proprietorship. For example, Mr. Zakoura has public information regarding the magnitude of natural

> gas supply from the overall amount approved by the KCC in Docket No. 21-BHCG-334-GIG of \$87.9 million. Mr. Zakoura has the specific list of suppliers who sold gas to Black Hills during the Storm Uri event as provided to the KCC and other intervening parties, including those of Mr. Zakoura, in KCC Docket No. 21-BHCG-334-GIG. Mr. Zakoura also has public information from the Kansas Gas Service ("KGS") Cold Weather Event proceeding in KCC Docket No. 21-KGSG-332-GIG that provides information related to amounts paid by KGS to its gas suppliers during the Storm Uri event. Mr. Zakoura and his clients could arguably use that information to evaluate or proceed with a lawsuit and obtain additional pricing information under that lawsuit.

Finally, Black Hills would be willing to disclose the confidential pricing information to Mr. Zakoura if he and/or his clients obtain the consent of the various suppliers to disclosure of that information.

For the foregoing reasons, Black Hills respectfully requests that its confidential information not be produced in response to the KORA request.

Sincerely,

Douglas J. Law

Douglas J. Law Associate General Counsel

DL:ce

cc: James P. Zakoura Foulston Siefkin, JZakoura@foulston.com

> Rob Daniel Nick Smith Ann Stichler

FOULSTON

RETORNEYS AT LAW

James P. Zakoura

7500 COLLEGE BOULEVARD, SUITE 1400 OVERLAND PARK, KS 66210-4041

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August 30, 2023

Sally Conn Executive Secretary Kansas Corporation Commission 1500 SW Arrowhead Rd Topeka, KS 66604-4027

Email: s.conn@kcc.ks.gov

Re: KORA Request 1692818835

Dear Sally:

The following is my reply to the Response of Black Hills to the Kansas Open Records Act Request.

- The Kansas Corporation Commission issued an Order on January 27, 2022, permitting Black Hills to recover \$87.9 million from its retail customers over a 5-year period, for additional natural gas costs that the Commission determined were prudently incurred during Winter Storm URI in February 2021. <u>https://www.kcc.ks.gov/news-1-27-22</u>
- In its Order to Black Hills, and in each Order entered by the Commission wherein retail ratepayers were ordered by the KCC to pay additional natural gas costs related to Winter Storm URI, the Commission included a condition, that in the event that funds were obtained as a result of state or federal litigation that challenged the lawfulness of natural gas pricing in February 2021 - - those funds were to be credited to the account of retail ratepayers - - thus reducing their \$87.9 million financial obligation. <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220127103623.pdf?Id=2abc529b-</u> 8c9e-4d97-947a-0c785730690e Order, at Page 5.
- 3. Governor Kelly issued an Emergency Declaration on February 14, 2021. That Emergency Declaration provided protection to Kansans against price gouging and profiteering. The Kansas Consumer Protection Act (KCPA) generally provides that prices may not increase during an Emergency as declared by the Governor, by more than 25% of the business day preceding the Emergency declaration. <u>https://governor.kansas.gov/wp-content/uploads/2021/02/2-14-2021-Extreme-Weather-Disaster-Declaration-Executed.pdf</u>

 The Index Price for natural gas on the date preceding the Emergency Declaration was about \$44.78 per MMBtu. The Index Prices in February 2021 reached levels of \$329.59 and \$622.78 per MMBtu and above.

For the days of February 1 through February 7, 2021, the SSC daily index prices ranged from \$2.545 - \$3.56 per Dth. For gas delivered during the period of February 8th through 10th, the SSC daily index prices ranged from \$3.56 - \$4.03. On Thursday, February 11, 2021, the SSC daily index price increased to \$9.62 per Dth, and on Friday, February 12, 2021, the daily index price was \$44.78 per Dth. For gas delivered during the Presidents' Day holiday weekend, which included gas delivery on Saturday, February 13 through Tuesday, February 16, the SSC daily spot market gas price spiked, resulting in a daily index price settlement of \$329.595 per Dth. The SSC daily spot market prices increased even more during trading on Tuesday, February 16th for gas supply delivery on Wednesday, February 17th, reaching historical levels and settling at a SSC daily index price of \$622.785 per Dth. The SSC daily index price retracted significantly for deliveries on February 18th but remained high at a daily index price of \$44.53 per Dth, with a further decline to \$7.945 per Dth for gas deliveries on February 19th.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202106161632023058.pdf?Id=4e40bda 4-eb6b-4695-a573-03a3b83a7eff

Testimony of Kent J. Kopetzky, KCC Docket No. 21-BHGC-334-GIG, dated June 16, 2021.

- 5. The KORA request is for documents that would identify those suppliers and the prices that they charged Black Hills in February 2021, to identify those instances wherein the KCPA may have been violated, and if so, to recover funds for any violation that is found to have occurred - with those funds returned to retail ratepayers to reduce their financial obligation of \$87.9 million.
- 6. Black Hills acknowledges that the contracts at issue <u>include a one-year confidential</u> <u>designation</u>, and that those documents <u>do not have contract protection for a public</u> <u>release of the Invoices</u> that will evidence the supplier prices paid and volumes purchased from such suppliers that make up the \$87.9 million of additional costs that the Commission ordered to be paid by retail ratepayers.
- 7. Black Hills argues that the Commission should not order the release of the requested documents - contending that there is an "outside the contract" reason to not do so - that to order release of the documents, would somehow harm retail ratepayers. This argument lacks merit.

8. Essentially, Black Hills argues that its suppliers are entitled to have their contracts exempt from public disclosure, forever.

First, if that were a term (extended term confidential designation) of the supplier buyer relationship, it could be included in the NAESB contract - and it is not.

Second, Black Hills is a public utility, and that status requires public disclosure of its operations to the extent that such disclosure is for prior operating periods that would not disrupt the current reasonable operations of the public utility.

Third, under the Black Hills interpretation, virtually no documents at the Commission would be available to public view.

- The Black Hills "alternate" to KORA, is to contact the suppliers and request the public release of Invoices. <u>Essentially, Black Hills sets a path for failure, and removes</u> the KORA decision from the Commission to those suppliers that charged Black Hills more than \$600 per MMBtu.
- 10. Open Public Records are the law in Kansas, and the burden for nondisclosure is on Black Hills which it has not met.
- 11. Black Hills should not be permitted on the one hand to recover \$87.9 million from retail ratepayers, and on the other hand to imped efforts of recovery for those same retail ratepayers.

Sincerely,

FOULSTON SIEFKIN LLP

James P. Zakoura

dmw

CERTIFICATE OF SERVICE

24-GIMX-238-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing was served by electronic mail this 6th day of September, 2023, to the following:

NICK SMITH, MANAGER - REGULATORY & FINANCE BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC D/B/A Black Hills Energy 601 NORTH IOWA STREET LAWRENCE, KS 66044 nick.smith@blackhillscorp.com

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ANN STICHLER, SR. ANALYST - REGULATORY & FINANCE BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 2287 COLLEGE ROAD COUNCIL BLUFFS, IA 51503 ann.stichler@blackhillscorp.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.cohen@kcc.ks.gov

Is/ Sally Conn

Sally Conn Executive Secretary

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:

Andrew J. French, Chairperson Dwight D. Keen Annie Kuether

In the Matter of the Open Records Act Request) Docket No. 24-GIMX-238-MIS dated August 23, 2023, by James Zakoura.

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ORDER ON KORA REQUEST

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This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. On August 23, 2023, the Commission received a KORA (Kansas Open Records Act) request from James Zakoura pursuant to K.S.A. 45-215 et. seq. Zakoura requested " that the redacted invoices listedin Docket No. 21-BKGC-334-GIG....dated 12/31/2021, be replaced with un-redacted copies of those same invoices... [or] in the alternative ...un-redacted copies of those invoices be made available to me..." The invoices requested relate to the price of gas paid by Black Hills during Winter Storm Uri. Zakoura states that the records requested will permit an examination of whether the payments made to Black Hills' suppliers were consistent with Kansas law.

2. On August 24, 2023, Lynn Retz, Executive Director for the Commission, responded to Zakoura's request and explained the process for requests for confidential information.2

¹ Notice of filing of Documents pg. 2 (September 6, 2023).

^{2 1}d. at 3.4.

The documents requested by Mr. Zakoura were redacted because they were 3. considered confidential and trade secrets. Under K.S.A. 45-221(a)(1), a public agency shall not be required to disclose records if such disclosure is prohibited by law. Under K.A.R. 82-1-221a(b)(1). if the Commission receives a request for confidential information, the party seeking to maintain the confidentiality of the information shall respond to the request within five working days. The response shall substantiate the basis for nondisclosure, after which the entity requesting the information may reply within five working days.

On August 24, 2023, the Commission informed Black Hills that a request for 4. confidential information had been received.3

On August 29, 2023, Black Hills responded to the information request noting that 5 the information requested by Mr. Zakoura was considered a trade secret and should not be disclosed.⁴ Black Hills contends that disclosure would cause substantial harm to the public by interfering with Black Hills' ability to acquire gas supplies and serve the public at a reasonable price,⁵ Black Hills acquires gas supplies through a competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills' supply packages.⁶ Black Hills argues that although the documents sought included a term that required confidentiality for one year, the expiration of that year does not automatically require disclosure.7

Black Hills points out that the information sought by Mr. Zakoura was provided to 6. parties in the 21-BHCG-334-GIG docket, including those represented by Zakoura.⁸ Black Hills

² Id. at 6.

- 4 Id. at 7.
- \$ 14.
- 6 13. 1 id.
- 8 Id. at 8.

believes Zakoura intends to use the information to evaluate whether to pursue litigation against Black Hills' natural gas suppliers for costs incurred as a result of Winter Storm Uri.⁹

7. Black Hills further points out that there are alternatives to disclosure of confidential information, specifically that there is public information available which may be used to evaluate or proceed with litigation and that once litigation has begun, additional information may be obtained through discovery.¹⁰ Alternatively, Black Hills offered to share the information with Mr. Zakoura if he is able to obtain the consent of Black Hills' suppliers.¹¹

8. On August 30, 2023, Zakoura responded to Black Hills. Zakoura states that Black Hills' "alternative" requiring Zakoura to obtain consent from Black Hills' suppliers "sets a path for failure."⁴² Zakoura additionally claims that Black Hills has not met its burden to prevent disclosure.

9. Under K.S.A. 66-1220a, the Commission shall not disclose information that is confidential or a trade secret unless the Commission finds that disclosure is warranted after considering four factors. Those factors are:

(1) Whether disclosure will significantly aid the Commission in fulfilling its functions;

- (2) The harm or benefit which disclosure will cause to the public interest;
- (3) The harm disclosure will cause to the corporation, partnership or sole proprietorship; and
- (4) Alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.
- 10. In considering K.S.A. 66-1220a's four factors the Commission finds the following:

³ Id.

¹⁰ Id. at 9-10.

¹¹ Id. at 10.

¹² Id. at 1.3.

- (1) No party argues that disclosure would or would not aid the Commission in fulfilling its functions. It is possible that through litigation Mr. Zakoura could discover violations of Kansas law or Commission regulations, aiding the Commission in their enforcement, but this possibility is far too attenuated from the actual disclosure, nor is it clear if the possibility of such litigation is dependent on disclosure.
- (2) The Commission agrees that disclosure of Black Hills' contracts may affect their ability to compete for low cost gas supplies in the future, which would cause harm to both Black Hills and the public.
- (3) As Black Hills points out because he was involved in the 21-BHCG-334-GIG Docket. Mr. Zakoura already has access to the information he seeks, albeit within the bounds of the Commission's Protective and Discovery Order.¹³ Alternatives to disclosure exist. Such alternatives include (a) proceeding with publicly available information, (b) obtaining consent from Black Hills' suppliers and (c) use of discovery in litigation. The Commission is aware of at least two class action cases filed by Mr. Zakoura related to natural gas suppliers during Winter Storm Uri.

 After reviewing the four factors in K.S.A. 66-1220(a) the Commission finds that disclosure is not warranted.

THEREFORE, THE COMMISSION ORDERS:

 A. Mr. Zakoura's August 23, 2023 KORA request is denied pursuant to K.S.A. 45-221(a)(1) and K.S.A. 66-1220(a).

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹⁴

¹⁵ See KCC Docket No. 21-BHCG-334-GIG. Supplemental Protective and Discovery Orders, Jul. 8, 2021.

¹⁴ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

10/12/2023 Dated:

Agne M Rof

Executive Director

DGC

CERTIFICATE OF SERVICE

24-GIMX-238-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

electronic service on 10/12/2023

NICK SMITH, MANAGER - REGULATORY & FINANCE BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC D/B/A Black Hills Energy 601 NORTH IOWA STREET LAWRENCE, KS 66044 nick.smith@blackhillscorp.com

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DAVID COHEN, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.cohen@kcc.ks.gov

/S/ KCC Docket Room KCC Docket Room

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

)

)

In the Matter of the Open Records Act Request Dated August 23, 2023, by James Zakoura.

Docket No. 24-GIMX-238-MIS

PETITION FOR RECONSIDERATION

COMES NOW James P. Zakoura ("Petitioner") and does herein file this Petition for

Reconsideration ("PFR") of the "ORDER ON KORA REQUEST" ("ORDER") of the State

Corporation Commission of the State of Kansas ("Commission" or "KCC"), dated October 12,

2023, in this Docket. Petitioner states and alleges as follows:

1. This PFR is filed pursuant to K.S.A. 66-118a, 66-118b, 77-529, 77-621, and K.A.R.

82-1-235.

2. Petitioner states that the KCC Order is arbitrary and capricious, unreasonable, and in

violation of Kansas law (K.S.A. 77-621) in that:

• the KCC has erroneously interpreted and applied the Kansas Open Records Act ("KORA"), K.S.A. 45-217 et seq.

• the KCC action is based on a determination of fact, made or implied by the KCC, that is not supported by evidence that is substantial when viewed in light of the record as a whole; and

• the KCC action directly contravenes the open government and public transparency that is required of all state agencies of Kansas.

The ORDER Violates the Provisions of KORA

A. Factual Synopsis

3. The Commission is an Agency of the state of Kansas, subject to the provisions of the

Kansas Open Records Act. (K.S.A. 45-215 and 45-217 (k)(1).)

4. It is the public policy of the state of Kansas that public records of state agencies,

including the KCC, be open for inspection by any person unless otherwise provided by this Act, and

that the Kansas Open Records Act shall be liberally construed and applied to promote such policy.

"Public records are records made, maintained, created or possessed by a public agency - that is to

say some branch of the state or local government. "Open Government" "Frequently asked questions

about the Kansas Open Records Act." Kris W. Kobach, Kansas Attorney General.

https://ag.ks.gov/open-government/korafaq#:~:text=What%20is%20the%20purpose%20of,45%2D216(a).

"K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."

5. On August 23, 2023, Petitioner filed a Request under K.S.A. requesting:

"that the redacted invoices listed ... in Docket No. 21-BHCG-334-GIG ...dated 12/31/2021, be replaced with un-redacted copies of those same invoices ... [or] in the alternative ... un-redacted copies of those invoices be made available to me ... The invoices requested relate to the price of gas paid by Black Hills during Winter Storm Uri." (ORDER at p.1.)

6. The documents requested by Petitioner are listed on the KCC website for KCC

Docket No. 21-BHCG-334-GIG https://estar.kcc.ks.gov/estar/ViewFile.aspx/S20210616154749468

2.pdf?ld=0ca58986-8824-4db7-a3a4-faf4be9aa5f4, and as such are public records in the possession

of the KCC, pursuant to K.S.A. 45-217, and are subject to public disclosure under the Kansas Open

Records Act (K.S.A. 45-215.)

7. Each contract of Black Hills with gas suppliers during Winter Storm Uri was entered

pursuant upon the standard Form Contract of the North American Energy Standards Board

("NAESB") which includes a one-year term for "confidential" treatment of any transaction during

Winter Storm Uri, to wit:

"Section 15.10 – The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction."

Black Hills/Kansas Gas Utility Company, Inc. Compliance Filing for KORA Request 1, at page 23. https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301413497204.pdf?Id=439e abd6-903e-4b5e-80b7-39de65854512

8. The execution of natural gas supply contracts by Black Hills that included the 1-year term for confidentiality of documents (Invoices included) is uncontroverted evidence that Black Hills did at no time after one year, consider the subject invoices as confidential business information or trade secrets.

Black Hills does not dispute that there is no contractual provision that addresses
 "confidential" treatment of documents that would bar public record release, for any period after
 March 1, 2022 – 1 year and 7 months ago.

10. Black Hills has not presented any evidence of any type whatsoever indicating that the requested KCC public records, except a totally speculative contention that if almost 3 year old invoices are released to the public, it would somehow affect the ability of Black Hills to acquire natural gas supplies. Black Hills has failed to support its claim of a "trade secret" exemption from public disclosure with evidence that is "substantial and competent." Substantial competent evidence "possesses something of substance and relevant consequence, which furnishes <u>a substantial basis</u> <u>of fact</u>" to reasonably resolve the issues. *Farmland Indus. Inc. v. Kansas Corp. Comm 'n.*, 25 Kan.App.2d 849, 852 (1999). (Emphasis added.)

11. These described public records were first requested on September 22, 2021, by Max McCoy, a columnist for the Kansas Reflector, pursuant to K.S.A. 45- 215 et. seq. in KCC Docket No. 22-GIMX-171-MIS. The Commission issued an "ORDER ON KORA REQUEST," on

3

December 9, 2021. https://estar.kcc.ks.gov/estar/ViewFile.aspx/20211209102117.pdf?ld=2a2510eb

-71b8-4022-b292-62d9b72c69ca

12. The KCC denied the KORA Request (at page 4) pursuant to K.S.A. 45-221(a)(1) in

KCC Docket Nos. 22-GIMX-171-MIS (Max McCoy) and 21-BHCG-334-GIG:

"K.S.A. 45-221. Certain records not required to be open; separation of open and closed information required; disclosure of statistical information; records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, <u>state statute</u> or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. <u>75-4315d</u>, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, <u>state statute or rule</u> of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. <u>75-4315d</u>, and amendments thereto, to restrict or prohibit disclosure." (Emphasis Added.)

13. The Commission did, however, order Black Hills (at page 4) as follows:

"Black Hills shall file public versions of all its supplier contracts and invoices relevant to the winter weather event period in this docket within 10 days of the date of this Order."

14. On December 30, 2021, Black Hills filed its "cover letter" and the "public versions"

of the supplier contracts and invoices - which were 99.9% redacted, and which provided zero

information on volumes purchased, or the price of such natural gas. The Black Hills

"public version" of the ordered documents is in fact, nonresponsive.

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301005341777.pdf?Id=bdc5b427-a08c-4deebe01-52064d814cc2

- Black Hills Response to KORA Request No. 1 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301300033885.pdf?Id=69cbe705-1b3d-40ab-a041-7aa520fde277</u>
- Black Hills Response to KORA Request No. 2 December 30, 2021 75 pages:

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301310405719.pdf?Id=f9d570c3-82b4-4028-860e-5a75c870e2fc

- Black Hills Response to KORA Request No. 3 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301244358940.pdf?Id=aad56ada-028a-4b4c-86a5-c9e54346d8ed</u>
- Black Hills Response to KORA Request No. 4 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301246184729.pdf?Id=ee47d86f-6134-48fd-a36b-50b8309508fb</u>
- Black Hills Response to KORA Request No. 5 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301246184729.pdf?Id=ee47d86f-6134-48fd-a36b-50b8309508fb</u>
- Black Hills Response to KORA Request No. 6 December 30, 2021 75 pages: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301253481223.pdf?Id=bd92eef1-de73-455f-a27e-f0bd4273f401
- Black Hills Response to KORA Request No. 7 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301257077835.pdf?Id=befb2538-d4aa-49a2-8136-534a3b8301ff</u>
- Black Hills Response to KORA Request No. 8 December 30, 2021 75 pages: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301302214515.pdf?Id=6557c32c-6b43-4dec-a663-3cff971ead11
- Black Hills Response to KORA Request No. 9 December 30, 2021 75 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301304125639.pdf?Id=ac11981e-61d4-4b4e-8bff-009d7b5419db</u>
- Black Hills Response to KORA Request No. 10 December 30, 2021 75 pages: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301306161091.pdf?Id=7ecf99f7-0af8-4258-b822-3a864cc9be12
- Black Hills Response to KORA Request No. 11 December 30, 2021 75 pages: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301308232657.pdf?Id=10dee253-7aeb-4628-8a8d-0ef2f215633e
- Black Hills Response to KORA Request No. 12 December 30, 2021 75 pages: https://estar.kec.ks.gov/estar/ViewFile.aspx/S202112301335255030.pdf?Id=9be6f9d5-c5b6-4034-a7c3-6d26f3ae7839
- Black Hills Response to KORA Request No. 13 December 30, 2021 75 pages: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301500426457-13.pdf?Id=61741f85bd20-4b5a-b935-26be730281c9
- Black Hills Response to KORA Request No. 14 December 30, 2021 66 pages: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301502445843 -</u> <u>14.pdf?Id=c3bdb96a-8ce3-4d9b-8c3a-5b74f60524ed</u>
 - 15. Black Hills serves about 117,000 retail ratepayers with natural gas service in 65

Kansas communities and 48 Kansas Counties - including the cities of Lawrence, Wichita, Liberal,

and Dodge City, Kansas.

16. Winter Storm Uri occurred in February 2021 – 2 years and 7 months ago. The
"additional gas costs" related to Winter Storm Uri were incurred in the period February 13 through
February 17, 2021.

17. Two years and 7 months after invoices for Winter Storm Uri were issued – not 1 page of the invoices that form the basis for an additional charge of \$87.9 million to retail ratepayers, has been made public.

18. On January 27, 2022, the KCC issued an Order permitting Black Hills to recover

from its retail ratepayers, \$87.9 million over a 5-year period – which equates to a \$11.47 per month

increase for residential ratepayers. https://www.kcc.ks.gov/news-1-27-22

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220127103623.pdf?Id=2abc529b-8c9e-4d97-947a-0c785730690e

19. Retail ratepayers of Black Hills have been paying the \$87.9 million of additional

natural gas costs ordered by the KCC since February 2022.

20. The Commission based its determination that Black Hills was entitled to recover

\$87.9 million, based on:

- A presentation of Black Hills Winter Storm Uri supplier invoices by Black Hills (Direct Testimony of Robert W. Daniel, dated June 16, 2021 <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202106161631452455.pdf?Id=2becefa</u> <u>b-29fd-4444-b115-ce9d65f2983f</u> and
- A presentation of Black Hills Winter Storm Uri supplier invoices by KCC Staff (Direct Testimony of Robert W. Daniel, dated November 22, 2021 https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202111221511547798.pdf?Id=d21a637 c-da8b-407c-870e-4d4f1dce1e47

B. The KCC Has Erroneously Interpreted and Applied Kansas Law

21. The KCC ORDER makes a critical error of law at the outset. The KCC ORDER solely relies on speculation – the affect that public release of documents "might" have on future

natural gas contracting of Black Hills - - and fails to require Black Hills to demonstrate by

substantial component evidence that the requested information (invoices) is confidential business information that is entitled to be exempt from disclosure. Because of the public policy favoring public disclosure and the expressed legislative directive that the Kansas Open Records Act be "liberally construed," the "substantial competent evidence" standard must be strictly followed. In any event, Black Hills has provided no credible evidence of any type, instead providing only "speculation" that competitive harm "might" occur.

- The Kansas Open Records Act presumes that documents contained in public files are open records to the public, unless by substantial competent evidence it is demonstrated that an exemption applies.
- "The burden of proving an exemption from disclosure is on the agency not disclosing the information." State Dept. of SRS v. Public Employee Relations Board, 249 Kan. 163, 170 (1991); Green v. Unified Gov. of Wyandotte County, 54 Kan. App. 2d 118, Syl.2 (2017).
- Black Hills has no right to have documents (invoices) deemed exempt from disclosure, it must instead prove by substantial competent evidence that it is statutorily entitled to exempt public records from disclosure.
- There is no substantial competent evidence in the record that the documents are trade secrets.
- Instead of requiring Black Hills to prove its statutory right to an exemption of public records, the Commission misapplied the burden of proof, granting the trade secret exemption to Black Hills based on no substantial competent evidence in the record.
- In the ORDER, the Commission placed no burden of proof on Black Hills to demonstrate by substantial competent evidence that an exemption to public disclosure applied. It instead relied on non-evidence – rank speculation by counsel that if the invoices were disclosed, the natural gas contracting of Black Hills would be adversely affected.
- Not only is the contention of counsel for Black Hills rank speculation counsel is not a natural gas supply executive but is an attorney with no stated experience or expertise on the record that he is in any way qualified in natural gas contracting.
- The Commission noted that the requested information was made available to Petitioner subject to a Commission Protective Order that bars public disclosure. A Commission Protective Order is entirely inapplicable to a KORA request – the

essence of which is a determination of what documents held in a state agency's files, are open to the public.

• K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of portions of documents that are not otherwise exempt, and the Commission has not complied with KORA by not undertaking an examination of the documents (invoices) requested:

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

C. <u>The KCC Action is Based on a Determination of Fact, Made or Implied by the KCC, that is Not Supported by Evidence that is Substantial When Viewed in Light of the Record as a Whole</u>

22. There is no creditable evidence in the record in this KORA Docket that Black Hills is

entitled to an exemption that would be the basis for non-public disclosure of the requested invoices.

In fact, the entirety of the evidence in this KORA Docket is that Black Hills is not entitled to such

exemption.

- Black Hills contended that the requested invoices were trade secrets. The Commission failed to require substantial competent evidence that demonstrated the documents (invoices) were trade secrets.
- To qualify for exemption from disclosure from KORA, pursuant to K.S.A. 66-1220a and K.S.A. 60-3320(C)(4)(i) and (ii), the Commission is required to base its ruling on substantial competent evidence to meet the Kansas statutory definition of "Trade secret:"

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- There is no substantial competent evidence in the record in this Docket that the requested documents (invoices) "have economic value from not being generally known" or that Black Hills made "efforts that are reasonable under the circumstances to maintain its secrecy. In fact, the opposite is the case.
- There is no substantial competent evidence that the documents (invoices) are trade secrets.

• Black Hills entered into multiple contracts with natural gas suppliers, pursuant to the industry standard NAESB contract, that included a 1-year term for the confidential treatment of documents (including invoices) that are subject to the NAEBS contract. Black Hills argues that a defined 1-year term on confidentiality did not mean that a longer term might not be excluded – but again that is rank speculation and is not substantial competent evidence in the record.

• The NAESB Form contract contains a provision entitled "SPECIAL PROVISIONS TO BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS." If Black Hills had elected to bargain for an extended term for confidential treatment of documents beyond the NAESB 1-year term, it could have done so. It elected not to do so. There was no intent evidenced by Black Hills that confidential treatment of the requested invoices extends beyond 1-year term.

> Black Hills/Kansas Gas Utility Company, Inc. Compliance Filing for KORA Request lat page 26. https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202112301413497204.pd f?Id=439cabd6-903e-4b5e-80b7-39de65854512

D. <u>The KCC ORDER Directly Contravenes the Open Government and Public</u> <u>Transparency That Is Required of All State Agencies of Kansas</u>

23. The KCC has an ongoing responsibility to assure as much as is reasonably possible,

that its records are open to the public consistent with KORA. This KCC responsibility is entirely

independent from any specific KORA request.

24. The Kansas Open Records Act is to be liberally construed. Instead, the

Commission's ORDER simply dismissed the request for open records, with no examination of the

requested documents (invoices) to assure that any portion thereof that should be made public – is made public - and without requiring Black Hills to provide any evidence of support of its contention that all parts of the invoices are exempt from public exposure.

25. The Commission's ORDER does not provide the history of attempts to obtain public disclosure of these very documents (invoices), and the fact that the disclosure that was provided by Black Hills in December 2021 was 99.9% redacted. Essentially, the Commission's ORDER continues to preclude public disclosure.

26. Two years and 8 months after Winter Storm Uri, and one year and 8 months after the KCC Ordered 117,000 retail ratepayers of Black Hills to pay \$11.47 dollars for each of the next 60 months - \$87.9 million in total additional costs, retail ratepayers of Black Hills in 65 Kansas communities have not had public access to even one page of the 1041 pages of contracts and invoices that evidence:

- The names of the suppliers that sold the additional supplies of high-priced natural gas.
- The volumes of high-priced natural gas sold.
- The prices of sales transaction of the high-priced natural gas that was sold.
- That support the Commission's \$87.9 million additional natural gas costs placed on the retail ratepayers of Black Hills.

27. What is the evidence that the Commission relied upon in its Order to support the position of Black Hills that invoices that are almost 3 years old are "trade secrets," and not subject to public disclosure? The answer – no evidence whatsoever, only rank speculation of Black Hills, that somehow future acquisition of competitive natural gas supplies would be affected by the release of 3 year old invoices.

28. It is instructive to note that the only utility specific exemptions from KORA disclosure are (1) records of a utility pertaining to individually identifiable residential customers

(K.S.A. 45-221(B)(26) and (2) records of a utility about cyber security threats. (K.S.A. 45-

221(D)(53.)

- 29. KORA exemption in the bidding and contracting area in contrast to the expansive interpretation of Black Hills provide as follows:
 - Specifications for competitive bidding, <u>until the specifications are officially</u> <u>approved by the public agency</u>. (emphasis added) (K.S.A. 45-221(B)(27)
 - Sealed bids and related documents, <u>until a bid is accepted</u>, or all bids rejected. (emphasis added) (K.S.A. 45-221(B)(28)
 - 30. In its 2023 Report to the Kansas Legislature, the Kansas Corporation

Commission sets forth the enormous impact - - <u>\$807,831,944</u> - - of KCC Ordered payments by

retail ratepayers in the state of Kansas for additional natural gas costs during 5 days of

Winter Storm Uri - February 13 - February 17, 2021.

2023 KCC Report to the Kansas Legislature, at page 2. https://www.kcc.ks.gov/images/PDFs/legislativereports/2023_Utilities_and_Common_Carriers_Report.pdf

- American Energies \$317,914 paid over 5 years.
- Atmos Energy \$92.7 million (total with securitization financing costs \$118,514,030) paid over 10 years.)
- Black Hills Energy \$87.9 million paid over 5 years.
- City of Eskridge \$1,1 million paid over 10 years.
- Evergy Central \$122.2 million paid over 2 years.
- Kansas Gas Service \$366 million (total with securitization financing costs -\$450,000,000 - paid over 10 years.)
- Southern Pioneer \$17 million paid over 3 years.
- Empire \$10.8 million paid over 15 years.
- In addition, the State of Kansas provided low interest loans to municipal utilities to pay Winter Storm Uri costs in the amount of <u>\$78,409,646.79</u> (total loans at January 2023)
- This brings the Kansas economic impact to <u>\$886,241,590</u> for 5 days "additional costs" of Winter Storm Uri.

31. The enormity - - <u>\$807.831.944</u> - - of the KCC ordered payments by retail ratepayers

throughout the state, to be paid over the next 5 - 15 years by more than 2 million natural gas and

electric consumers in Kansas, evidences a strong public interest and the public's right to know – (a) the identities, volumes, and prices of natural gas suppliers that sold natural gas during Winter Storm Uri at prices often ranging from \$329.59 per MMBtu to \$622.78 per MMBtu during February 13 – February 17, 2021; (b) when the identical natural gas commodity sold for \$2.54 per MMBtu on February 1, 2021. Any balancing of the public interest strongly favors public disclosure of the documents (invoices) requested by Petitioner.

32. Petitioner respectfully requests that the Commission look at the totality of the law and evidence in this Docket, and to Reconsider the ORDER, and order the requested documents be released to the Petitioner as public documents.

Respectfully submitted,

/s/ James P. Zakoura

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was

served by electronic mail on the 16th day of October 2023, addressed to:

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James P. Zakoura, KS 07644 Petitioner

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the Matter of the Kansas Open Records Act Request dated August 23, 2023, by James Zakoura.

Docket No. 24-GIMX-238-MIS

RESPONSE TO PETITION FOR RECONSIDERATION

)

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and responds to the petition for reconsideration filed by James Zakoura. In response, CURB states and alleges as follows:

1. On August 23, 2023, the Kansas Corporation Commission ("Commission") received a Kansas Open Records Act (KORA) request from James Zakoura pursuant to K.S.A. 45-215 et. seq.¹ Mr. Zakoura requested that certain redacted invoices related to the price of gas paid by Black Hills during Winter Storm Uri, be replaced with un-redacted copies of the same invoices. Mr. Zakoura stated that the un-redacted records would permit an examination of whether the payments made to Black Hills' suppliers were consistent with Kansas law.²

2. On August 29, 2023, Black Hills responded, alleging that the information request should not be granted because the information requested was considered a trade secret and that disclosure would cause substantial harm to the public by interfering with Black Hills' ability to acquire gas supplies and serve the public at a reasonable price.³

3. On October 12, 2023, the Commission denied Mr. Zakoura's KORA request on the basis of K.S.A. 45-221(a)(1) and K.S.A. 66-1220a⁴. These statutes provide, in principal part:

K.S.A. 45-221(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

¹ Kansas Open Records Request of Jim Zakoura. August 23, 2023.

 $^{^{2}}Id.$

³ Black Hills Response to Kansas Open Records Request, pg. 2. August 29, 2023.

⁴ Order on KORA Request pgs. 2-4. October 12, 2023.

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court...or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court....⁵

K.S.A. 66-1220a. The state corporation commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information which is a trade secret under the uniform trade secrets act...or any confidential commercial information of a corporation, partnership or individual proprietorship regulated by the commission unless the commission finds that disclosure is warranted after consideration of the following factors:

- (1) Whether disclosure will significantly aid the commission in fulfilling its functions;
- (2) the harm or benefit which disclosure will cause to the public interest;
- (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and
- (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.⁶
- 4. On October 16, 2023, Mr. Zakoura filed a Petition for Reconsideration alleging that in

denying his KORA request, the Commission erred by misinterpreting KORA, K.S.A. 45-221, et.

seq., and failing to determine the matter on substantial and competent evidence.⁷

5. On October 25, 2023, CURB filed a Petition to Intervene in order to file comments

regarding the Petition for Reconsideration,⁸ and the Commission granted the same on October 31,

2023.9 KORA should be liberally construed to promote public transparency regarding Commission

records. On the other hand, CURB acknowledges that KORA does not require the disclosure of

confidential information that could harm a utility or the general public.

⁵ Kansas Statutes Annotated 45-221(a).

⁶ Kansas Statutes Annotated 66-1220(a).

⁷ Petition for Reconsideration, pg. 1. October 16, 2023.

⁸ Citizens' Utility Ratepayer Board Petition to Intervene. October 25, 2023.

⁹Order Granting CURB Petition to Intervene. October 31, 2023.

6. Therefore, CURB recognizes that the KORA request made by Mr. Zakoura requires the Commission to carefully weigh the interests of the public in having un-redacted access to the subject invoices against any harm to Black Hills and the public which could come about through such disclosure. Further, CURB acknowledges that the Commission has previously determined the subject invoices to be confidential information in connection with the Commission's functions in Docket No. 21-BHCG-334-GIE ("Docket 21-334"). However, the Commission issued a final order in that docket. This docket involves a KORA request made after a substantial amount of time has elapsed from the date of that order. Indeed, Black Hills concedes that the Commission could lift the confidentiality that it granted the subject invoices in Docket 21-334. Whether that confidentiality should now be lifted under KORA is the pertinent question.

7. No doubt, the Commission fully understands the importance of the KORA and the duties imposed upon Kansas governmental agencies to meet the letter and spirit of the act. Therefore, in CURB's view, the Commission's determination of Mr. Zakoura's request is important and requires careful consideration of the pertinent facts. CURB has not formed any opinion as to whether the subject invoices constitute confidential commercial information at this time. Rather, with due respect, CURB is concerned with the process by which this determination is made for purposes of compliance with KORA.

8. In Kansas, confidential business information has been defined as the commercial and financial information of a party (1) that is secret and (2) the disclosure of which could harm the business of that party.¹⁰ In these regards, CURB takes note that Black Hills does not dispute that the confidentiality afforded to Black Hills' gas suppliers is confined to one year under its gas supplier

¹⁰ See Wolfe Electric, Inc. v. Duckworth, 293 Kan. 375 (2011).

contracts. This is an important fact because it strongly indicates that there is no longer a contracted expectation for any party to keep these invoices secret. In fact, to CURB's knowledge, no supplier has intervened in this proceeding to protest disclosure of the subject invoices. Therefore, there is nothing in the record that proves that Black Hills or the subject gas suppliers are required to maintain the confidentiality of the prices paid for natural gas during Winter Storm Uri, approximately three years ago.

9. As CURB understands Black Hills' response to Mr. Zakoura's Petition for Reconsideration, the alleged potential harm is based upon speculation that disclosure could affect Black Hills' ability to compete for low-cost gas supplies in the future. It invites the conclusion that Black Hills' gas suppliers will no longer deal with Black Hills if disclosure of the subject invoices is required by the Commission. Yet the specific basis for that conclusion has not been made clear to CURB.

10. Indeed, CURB cannot ascribe such an intent upon gas suppliers merely based upon the allegations made to date. If the Commission were to require Black Hills to disclose that information, it should not reflect bad faith on behalf of Black Hills. Contracts calling for confidentiality of information generally recognize the authority of courts to disregard those confidentiality protections. In fact, Black Hills notes that the Commission does not have to continue the confidentiality that was granted in Docket 21-334 indefinitely. Finally, CURB cannot see a clear nexus between disclosure of the subject invoices and Black Hills' subsequent inability to secure lowcost gas supplies.

11. To reiterate, CURB does not take a position on the merits of this dispute. CURB fully understands the benefits of public disclosure which is inherent in KORA but also the need to protect

the ability of Black Hills to obtain reasonable gas supplies. Rather, in view of the importance of the goals of KORA, CURB merely suggests that the Commission may want to explore and determine the alleged harm to a greater extent based on a more expansive record.

12. Therefore, CURB believes that allowing an oral argument (or hearing) before ruling on the Petition for Reconsideration may provide a better record for the Commission's determination. Such a record may be beneficial to all parties if this matter is appealed. Indeed, the processes available under KORA and 66-1220a allow the Commission to explore those reasons for continued confidentiality of the subject invoices and evaluation of the potential harms of disclosure at this time. Based on the record as it currently stands, CURB queries whether there is a sufficient record about the potential harms that would come about by the Commission ordering the declassification of this information.

13. To be clear, CURB has no concern regarding Mr. Zakoura's potential use of the requested information, or his ability to obtain the information from other sources. The primary focus of this docket is whether Kansas citizens, including residential and small commercial ratepayers, have the right to know the details surrounding why their natural gas utility bills are as high as they are. That public "right to know" goes to the very heart of the public policy benefit inherent in KORA. It should not be discounted without the benefit of a full record in this case.

14. At a minimum, the circumstances in this KORA request warrant a reexamination of the facts underlying the decision not to un-redact the subjected documents. The determination of whether requested information constitutes protected trade secrets under K.S.A. 60-3320(4) is a question for the trier of fact, which in this situation is the Commission. The proponent of claims of trade secret protection has the burden of proof to show that such information meets the statutory

definition.¹¹ In its response to the Petition for Reconsideration in this docket, Black Hills relies upon the findings from other dockets in which the Commission designated documents as confidential and as trade secrets and reviewed the 66-1220a factors for disclosure in 2021.¹² CURB believes that the passage of time since the initial filing of the subject invoices and the specific terms of the confidentiality provision used by gas suppliers warrants a review by the Commission for whether that information still constitutes a trade secret under 60-3320a and whether the harm, if any, associated with that information today outweighs the public interest under the 66-1220a factors. Further, the Kansas Attorney General's Office has begun an investigation under Kansas Consumer Protection laws regarding the historic price spikes during Winter Storm Uri. Whether certain entities engaged in unconscionable business practices during Winter Storm Uri is being investigated by only a limited number of parties. CURB would submit that allowing interested stakeholders access to information through KORA requests to pursue those claims serves the public interest in light of the extraordinary circumstances of the historic price spikes during Winter Storm Uri.

15. Black Hills' suggestion that the gas supply pricing information provided in Docket 21-334 would remain confidential until the Commission determines otherwise, actually supports the need for a fully developed and detailed record to determine the appropriate course of action regarding confidentiality. Black Hills states that the Commission's previous ruling on a 2021 KORA request denying disclosure still holds true today.¹³ In Docket No. 22-GIMX-171-MIS, the Commission denied disclosure from a KORA request and relied upon its ruling from an order in Docket No. 21-KGSG-332-GIG ("Docket 21-332") for a similar request to disclose confidential

¹¹ Paradigm Alliance, Inc. v. Celeritas Technology, LLC, 659-F.Supp.2d 1167, 1185 (U.S. D. Ct of Kan. 2009).

¹² See Black Hills Answer to Petition and Addendum for Reconsideration, pg. 3-4, ¶7-9. October 26, 2023. 13 *ld.* at pgs. 4-5, ¶11.

information.¹⁴ In turn, the order in Docket 21-332 agreed with Kansas Gas Service ("KGS") in their evaluation of the 66-1220a factors. KGS, like Black Hills here, asserted that there could be harm with competitors finding out how much gas is being bid for or other information indicating the timing of the public utility's need for gas.¹⁵ In that argument, KGS concluded that the goal of providing a better public understanding of extraordinary costs was insufficient to support negating contract provisions.¹⁶ While such concerns were certainly germane in 2021, CURB believes that the passage of time and expiration of those contract provisions, particularly the ones governing confidentiality, warrant a further examination in this docket to determine whether the same harms recognized in Docket 21-332 can still be associated with this data. The public would benefit greatly from a fuller analysis by the Commission as to whether the 2021 invoices accurately reflect bidding practices and gas supply needs of today and whether the harms alluded to by Black Hills are present.

16. As noted earlier, the notion that a gas supplier would substantially change its bidding process for Black Hills due to the Commission requiring the disclosure of three year old data compiled during a historic weather and pricing event does not seem to be well-documented in the record. CURB believes that the Commission could use this opportunity to hear from Black Hills to learn more about this possibility and how widespread it is in the industry to make a fully informed decision about the likelihood of this harm from disclosure. In these regards, the Commission could also ask the parties about how other public utility commissions are handling this information, either as confidential, non-confidential or somewhere in between, as this type of data is relevant and could be very informative. Simply taking the speculation at face value without more detail only serves to

¹⁴ Order On KORA Request, Docket No. 22-GIMX-171-MIS. December 12, 2021.

¹⁵ Objection of KGS to NGTCC Motion to Make Public KGS Response, Docket No. 21-KGSG-332-GIG, pgs. 6-7 ¶21. August 23, 2021.

¹⁶ Id. at ¶20.

reinforce this exploitative situation with no transparency on the issue. If there is information that Black Hills has about such tactics from gas suppliers, the procedural protections afforded in this docket would seem to be a safe venue to receive that information.

17. Additionally, a party asserting trade secret protection must produce some evidence that the information alleged to be a "trade secret" meets the definition in K.S.A. 60-3320(4). The burden is not met by general allegations, but rather by describing "the subject matter of their trade secrets in sufficient detail to establish each element of a trade secret."¹⁷ CURB views this requirement as a threshold question to whether the information should continue to be protected under KORA and 66-1220a. At the time the records were submitted to the Commission in 2021, there were active dockets investigating the price spikes and operational performance of the utilities. A connection between the harm of disclosure and importance to those dockets existed in light of the uncertainty around gas prices and purchase practices. Since then, many utilities have taken steps to modify hedging plans and purchase strategies to account for such emergencies. Further, gas suppliers' expectation of privacy for this information has passed the one-year mark indicated in their contracts. Questions as to how gas suppliers are treating this information after the one-year requirement, whether third parties are able to ascertain this information, and Black Hills' efforts to maintain and protect such information since 2021 are relevant and have yet to be examined in this docket. In these regards, CURB cannot find a nexus between disclosure of information which is clearly allowed under the pertinent gas supplier contracts and some sort of relationship change taken by gas suppliers with respect to gas supply in the future based on the record. Certainly no gas supplier has stated as much. Black Hills has not articulated why a Commission-ordered disclosure is

¹⁷ Bradbury Co., Inc. v. Teissier-duCros, 413 F.Supp.2d 1209, 1222 (U.S. D. ct. of KS 2006).

much more harmful than a disclosure from other sources, such as the gas suppliers themselves. The allegations of harm at this point appear to be speculative. CURB does not believe that the Commission should decide an information request under KORA upon the basis of speculation.

18. Therefore, CURB urges the Commission to grant Mr. Zakoura's Petition for Reconsideration in order to allow the parties to be heard on the pertinent factors of K.S.A. 66-1220a. CURB agrees that, if disclosure of the information requested would result in higher prices for gas supplies in the future, there is a public harm that must be considered. On the other hand, there is certainly a public benefit to transparency of the requested information under KORA. In short, CURB believes that this matter should not be treated summarily and that a hearing on the facts and issues is warranted before the Commission issues a final ruling which will be subject to appeal.

WHEREFORE, CURB respectfully requests the Commission grant the Petition for Reconsideration in this Docket to allow the parties to present arguments and evidence pertaining to the factors outlined under K.S.A. 66-1220a before a final determination of Mr. Zakoura's KORA request.

Respectfully submitted,

David W. Nickel, Consumer Counsel #11170 Todd E. Love, Attorney #13445 Joseph R. Astrab, Attorney #26414 Citizens' Utility Ratepayer Board 1500 SW Arrowhead Road Topeka, KS 66604 (785) 271-3200 <u>d.nickel@curb.kansas.gov</u> <u>t.love@curb.kansas.gov</u> j.astrab@curb.kansas.gov

VERIFICATION

STATE OF KANSAS) SS: COUNTY OF SHAWNEE)

I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief under the pains and penalties of perjury.

soph R. Astrab

SUBSCRIBED AND SWORN to before me this 2nd day of November, 2023.

Notary Public

My Commission expires: 01-26-2025.

Notary Public - State of Kansas My Appl. Expires January 26, 2025

CERTIFICATE OF SERVICE

24-GIMX-238-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 2nd day of November, 2023, to the following:

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Della Smith Senior Administrative Specialist

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

Before Commissioners:

Andrew J. French, Chairperson Dwight D. Keen Annie Kuether

In the Matter of the Open Records Act Request) Docket No. 24-GIMX-238-MIS dated August 23, 2023, by James Zakoura.

ORDER ON PETITION FOR RECONSIDERATION

))

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

On August 23, 2023, the Commission received a Kansas Open Records Act 1. (KORA) request from James Zakoura pursuant to K.S.A. 45-215 et. seq. Zakoura requested " that the redacted invoices listed ... in Docket No. 21-BKGC-334-GIG....dated 12/31/2021, be replaced with un-redacted copies of those same invoices... [or] in the alternative ... un-redacted copies of those invoices be made available to me ... "1 The invoices requested relate to the price of gas paid by Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) during Winter Storm Uri. Zakoura states that the records requested will permit an examination of whether the payments made to Black Hills' suppliers were consistent with Kansas law.

On August 24, 2023, Lynn Retz, Executive Director for the Commission, 2. responded to Zakoura's request and explained the process for requests for confidential information.²

¹ Notice of filing of Documents pg. 2 (September 6, 2023).

² Id. at 3-4.

3. The documents requested by Mr. Zakoura were redacted because they were designated confidential and trade secrets. Under K.S.A. 45-221(a)(1), a public agency shall not be required to disclose records if such disclosure is prohibited by law. Under K.A.R. 82-1-221a(b)(1), if the Commission receives a request for confidential information, the party seeking to maintain the confidentiality of the information shall respond to the request within five working days. The response shall substantiate the basis for nondisclosure, after which the entity requesting the information may reply within five working days.

4. On August 24, 2023, the Commission informed Black Hills that a request for confidential information had been received.³

5. On August 29, 2023, Black Hills responded to the information request noting that the information requested by Mr. Zakoura was considered a trade secret and should not be disclosed.⁴ Black Hills contends that disclosure would cause substantial harm to the public by interfering with Black Hills' ability to acquire gas supplies and serve the public at a reasonable price.⁵ Black Hills acquires gas supplies through a competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills' supply packages.⁶ Black Hills argues that although the documents sought included a term that required confidentiality for one year, the expiration of that year does not automatically require disclosure.⁷

6. Black Hills pointed out that the information sought by Mr. Zakoura was provided to parties in the 21-BHCG-334-GIG (21-334) Docket, including those represented by Zakoura.⁸

³ Id. at 6.

⁴ Id. at 7. ⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 8.

Black Hills believes Zakoura intends to use the information to evaluate whether to pursue litigation against Black Hills' natural gas suppliers for costs incurred as a result of Winter Storm Uri.⁹

7. Black Hills further points out that there are alternatives to disclosure of confidential information. Specifically, there is public information available which may be used to evaluate or proceed with litigation and that once litigation has begun, and additional information may be obtained through discovery.¹⁰ Alternatively, Black Hills offered to share the information with Mr. Zakoura if he is able to obtain the consent of Black Hills' suppliers.¹¹

8. On August 30, 2023, Zakoura responded to Black Hills. Zakoura states that Black Hills' "alternative" requiring Zakoura to obtain consent from Black Hills' suppliers "sets a path for failure."¹² Zakoura additionally claimed that Black Hills has not met its burden to prevent disclosure.

9. On October 12, 2023, the Commission denied Zakoura's KORA request pursuant to K.S.A. 45-221(a)(1) and K.S.A. 66-1220(a) finding that disclosure was not warranted after assessing the four-factor test found in K.S.A. 66-1220(a).

10. On October 16, 2023, Zakoura filed a Petition for Reconsideration (PFR) of the Commission's October 12, 2023 Order. On October 20, 2023, Zakoura filed an addendum to the PFR. Zakoura argues that:

 Black Hills has not properly classified its Uri invoices as "trade secrets" or "confidential." once the Commission relies upon these invoices in an Order they become subject to public disclosure;¹³

⁹ Id.

¹⁰ Id. at 9-10.

¹¹ Id. at 10.

¹² Id. at 13.

¹³ Addendum to Petition for Reconsideration, pgs. 1-4 (October 20, 2023).

- The confidentiality provision of the invoices expired after 1 year;¹⁴
- The Commission's determination that the information should remain confidential was made without sufficient evidence.¹⁵

Zakoura requests that the Commission "look at the totality of the law and evidence in this Docket and to Reconsider the ORDER, and order the requested documents be released to the Petitioner as public documents."¹⁶

11. On October 25, 2023, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene which was granted on November 6, 2023.

12. On October 26, 2023, Black Hills filed an answer to Zakoura's PFR, Black Hills argues that:

- The Commission has previously determined that the invoices sought were trade secrets;¹⁷
- The invoices were properly designated as confidential at the time of submission during the 21-334 Docket;¹⁸
- Zakoura, who took part in the 21-334 Docket, did not object to the confidentiality designation at the time on behalf of himself or any of his clients;¹⁹ and
- The public is protected from unlawful gas supply prices by the Kansas Attorney General;

¹⁴ Petition for Reconsideration pgs. 2-3 (October 16, 2023).

¹⁵ Id. at 7-9.

¹⁶ *Id.* at 12.

¹⁷ Black Hills' Answer to Petition and Addendum for Consideration, pgs. 4-5 (October 26, 2023).

¹⁸ Id. at 4-5.

¹⁹ Id. at 5.

 Subjecting all gas supply contracts to public disclosure after one year would be harmful to the public.²⁰

13. On November 2, 2023, CURB filed a Response to Petition for Reconsideration. CURB took no position on whether the information sought by Zakoura should remain confidential or not.²¹ Rather, CURB recommended that the Commission grant the PFR to allow oral argument or a hearing in order to develop an evidentiary record on which to make a decision on the confidentiality of the Uri invoices.²²

14. The Commission has recently received several other KORA requests related to gas costs during Winter Storm Uri incurred by other jurisdictional utilities. Given the unique nature of the events of Winter Storm Uri and the amount of time that has passed, the Commission finds a more robust investigation is appropriate in this matter. Mr. Zakoura's Petition for Reconsideration is granted to allow for additional proceedings.

15. Because multiple utilities designated Winter Storm Uri natural gas invoices as confidential, the Commission orders a general investigation opened²³ to holistically consider the confidential status of certain documents related to costs incurred during Winter Storm Uri. The Commission expects its general investigation will resolve confidentiality issues for multiple documents, including those requested in the present docket. The documents requested in this docket will remain under seal until such issues are resolved.

²⁰ Id. at 8.

²¹ CURB's Response to Petition for Reconsideration, pgs. 4-5 (November 2, 2023).

²² Id. at 9.

²³ See, Docket No. 24-GIMX-376-GIV.

THEREFORE, THE COMMISSION ORDERS:

A. Mr. Zakoura's Petition for Reconsideration is granted subject to the terms above.

B. The Commission orders a general investigation opened to holistically consider the

confidential status of certain documents related to costs incurred during Winter Storm Uri.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 11/09/2023

Hynn M. Rof

Lynn M. Retz Executive Director

DGC

CERTIFICATE OF SERVICE

24-GIMX-238-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

electronic service on 11/09/2023

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24-GIMX-238-MIS

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/S/ KCC Docket Room KCC Docket Room

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the Matter of the Open Records Act Request Dated August 23, 2023, by James Zakoura.)	Docket No. 24-GIMX-238-MIS	
In the Matter of a General Investigation into the Confidential Status of Certain Documents Related to Costs Incurred During Winter Storm Uri))))	Docket No. 24-GIMX-376-GIV	

PETITION FOR CLARIFICATION AND RECONSIDERATION

COMES NOW James P. Zakoura ("Requestor") and respectfully Petitions the State Corporation Commission of the State of Kansas ("Commission" or "KCC") for (i) Reconsideration and Clarification of the "ORDER ON PETITION FOR RECONSIDERATION ("Order on Reconsideration") issued in KCC Docket No. 24-GIMX-238-MIS on November 9, 2023, and (ii) Clarification of the ORDER OPENING GENERAL INVESTIGATION ("General Investigation Order") issued in KCC Docket No. 24-GIMX-376-GIV, on November 9, 2023.

Requestor Petitions for Reconsideration and Clarification of the Order on Reconsideration, solely for the purpose of preserving the rights of approximately 850,000 retail ratepayers in Kansas to have a determination of their claims under the Kansas Consumer Protection Act ("KCPA") that otherwise will become barred by the statute of limitations, potentially as early as February 2024. (K.S.A. 60-512) Without the herein requested Commission action, the claims of retail ratepayers of Black Hills (\$87.9 million), Atmos Energy (\$92.7 million), Evergy Kansas Central (\$122.2 million), and Empire District Electric (Liberty) (\$10.8 million) against natural gas suppliers of those companies may be lost, with no determination on the merits by a court of law, as to whether the described \$313.6 million of ratepayer charges ordered by the KCC, are subject to refund / recovery under applicable Kansas law.

Requestor seeks Clarification of the "Order on Reconsideration" and the "General Investigation Order" to make clear the status of the five (5) pending Requests of Requestor that are made pursuant to the Kansas Open Records Act ("KORA"), and the manner in which those KORA Requests will be responded to by the Commission.

Because of the potential loss of claims by Kansas customers of Black Hills, Atmos Energy, Evergy Kansas Central, and Empire District Electric (Liberty) without the Commission action requested by Requestor, the Requestor respectfully requests that the Commission order that responses hereto be filed on or before November 17, 2023.

Summary of Relevant Facts

1. On August 23, 2023, James Zakoura requested, pursuant to K.S.A. 45-215, that the redacted invoices listed ... in Docket No. 2 I-BKGC-334-GIG dated 12/31/2021, be replaced with un-redacted copies of those same invoices ... [or] in the alternative ... un-redacted copies of those invoices be made available to Requestor.

2. The invoices requested relate to the price of natural gas paid by Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) during Winter Storm Uri. Requestor stated that the records requested would permit an examination of whether the payments made to Black Hills' suppliers were consistent with Kansas law.

3. On October 12, 2023, the Commission denied Requestor's KORA request pursuant to K.S.A. 45-221(a)(i) and K.S.A. 66-1220(a), finding that disclosure was not warranted after assessing the four-factor test found in K.S.A. 66-1220(a).

4. On October 16, 2023, Requestor filed a Petition for Reconsideration.

2

 Requestor's Petition for Reconsideration was granted subject to the terms stated in the Commission's Order on Reconsideration.

Request for Reconsideration and Clarification of the "ORDER ON PETITION FOR RECONSIDERATION"

 Requestor respectfully requests that the KCC Reconsider the following provision of its Order:

"The documents requested in this docket will remain under seal until such issues are resolved."

Relief Requested

7. The Order on Reconsideration should be Reconsidered, and the utilities should be directed to promptly file an Exhibit in the form and with the content contained in the Verified. Testimony of Matt L. Robbins on behalf of Kansas Gas Service, filed on July 30, 2021, in KCC Docket No. 21-KGSG-332-GIG (Exhibit MLR-3) (Exhibit No. 1, attached hereto). https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301401527761.pdf?ld=ff0a9cea-1923-43f5-acd3-10703259353e

8. The Requested Reconsideration is consistent with all KCC Orders in the Winter Storm Uri Dockets – and acts to both preserve the claims under the KCPA of 850,000 Kansas ratepayers and preserves the rights of all affected utilities (and all other parties) to advocate as they elect with regard to the "confidential" treatment of natural gas supplier invoices and other related documents of February 2021.

The KCC Order on Reconsideration Acts to Disenfranchise Kansas Ratepayers from their Rights under Kansas Law

9. The KCC Order on Petition on Reconsideration provides in pertinent part:

"14. The Commission has recently received several other KORA requests related to gas costs during Winter Storm Uri incurred by other jurisdictional utilities. Given the unique nature of the events of Winter Storm Uri and the amount of time that has

passed, the Commission finds a more robust investigation is appropriate in this matter. Mr. Zakoura's Petition for Reconsideration is granted to allow for additional proceedings.

15. Because multiple utilities designated Winter Storm Uri natural gas invoices as confidential, the Commission orders a general investigation opened to holistically consider the confidential status of certain documents related to costs incurred during Winter Storm Uri. The Commission expects its general investigation will resolve confidentiality issues for multiple documents, including those requested in the present docket. The documents requested in this docket will remain under seal until such issues are resolved." (Emphasis Added).

10. A private right of action under the Kansas Consumer Protection Act must be

commenced within 3 years. (K.S.A. 60-512.)

11. Arguably, any such action for recovery of amounts charged by natural gas

suppliers to Kansas utilities, that were unlawful under the KCPA, and that were thereafter

charged to retail ratepayers in Kansas, as ordered by the KCC - - must be commenced by mid-

February 2024, or if applicable, as may be extended by 90 days thereafter due to Covid pandemic extensions.

12. To preserve the opportunity for Kansas ratepayers to seek redress under the

KCPA, Requestor respectfully requests that the Order be Reconsidered to require each utility for which a KORA request is pending to provide the following information that has been provided by Kansas Gas Service:

 (a) voluntarily in "public form on July 30, 2021 (Exhibit No. 1, attached hereto;) and

(b) provided on October 25, 2021, pursuant to KCC Order dated October 14,2021.

4

The Requested Disclosure, and the Effect -- No Effect, on Kansas Gas Service and its Retail Ratepayers in Kansas

13. As noted above, Kansas Gas Service provided as early as July 30, 2021, the name

of each supplier, and the total dollar amount of natural gas sold to KGS in February 2021.

(Exhibit No. 1)

14. On October 14, 2021, the Commission issued its "ORDER GRANTING IN PART, DENVING IN PART NGTCC'S PETITION FOR RECONSIDERATION OF ITS MOTIONS TO REMOVE CONFIDENTIAL DESIGNATIONS FOR CERTAIN DOCUMENTS," stating at Paragraph 16, as follows:

"As noted in paragraph 14 above, the Commission agrees with the NGTCC position that certain elements of the KGS supplier contracts and invoices are not confidential and withholding such information has no legitimate basis. This Commission has never allowed "blanket" confidential designations of documents, and it will not allow such a practice in this case. Commission orders and regulations require a

allow such a practice in this case. Commission orders and regulations require a party to individually identify and justify redactions of confidential information. With respect to the information sought by NGTCC in this case, this rule requires KGS to furnish supplier contracts and involces and individually identify and justify any confidential designations. While the Commission continues to find certain aspects of the documents referenced by NGTCC are subject to protection, it is not clear to the Commission that KGS has supplied public versions of such documents with only those portions redacted. As NGTCC notes, public versions of certain supplier invoices are attached with KGS' pre-filed testimony. However, to eliminate any confusion of the record and ensure the public can view as much of KGS' gas supply information as possible, the Commission orders KGS to file public versions of all its supplier contracts and invoices relevant to the winter weather event period. Consistent with the above findings and those of prior orders, KGS should specifically identify and provide its justifications where trade secrets or commercially sensitive information is redacted."

2. In the Commission's Order dated October 14, 2021, the KCC ordered KGS to do the following: "B. KGS shall file public versions of all its supplier contracts and invoices relevant to the winter weather event period in this docket within 10 days of the date of this Order."

https://estar.kec.ks.gov/estar/ViewFile.aspx/8202111020917284672.pdf?ld=c3ea hb07-c37e-4800-b001-ab72c5b6f986 15. Atmos Energy, Evergy Kansas Central, and Empire District Electric (Liberty) have not filed any information that is available to the public that identifies their natural gas suppliers in February 2021, nor have these utilities quantified the amount that each supplier sold to them in February 2021. There is no "public" information of either the suppliers or the amount each supplier sold to each of these utilities in February 2021.

Black Hills, in response to the KCC Order to file "public" copies of the February
 2021 supplier invoices, redacted all information therefrom, except the suppliers' name.

17. These utilities have been in direct violation of KCC Orders in the Winter Storm Uri Dockets since at least mid-2021. To further delay even the herein requested bare modicum of compliance with Commission regulations, simply rewards their noncompliance.

<u>The Commission Can Preserve the KCPA Claims of 850,000 Retail Ratepayers,</u> with No Adverse Effect on any Utility, By Simply Ordering the Utilities to List the <u>Suppliers' by Name and the Amount Paid to Each Such Supplier-An Identical Action</u> Voluntarily Made by Kansas Gas Service Company on July 30, 2021

18. Although Black Hills, Atmos Energy, Evergy Kansas Central, and Empire District Electric (Liberty) contend that disclosure of the suppliers' identity and the amount sold by each supplier in February 2021 would cause both the utilities and their ratepayers competitive harm - - the actual experience of KGS conclusively demonstrates otherwise.

Kansas Gas Service supply and sale volumes are more than the total of Black
 Hills, Atmos Energy, Evergy Kansas Central, and Empire District Electric (Liberty) put together.

20. Kansas Gas Service voluntarily disclosed each supplier and the total amount paid to each supplier in February 2021 – in a verified filing to the Commission on July 30, 2021, in KCC Docket No. 21-KGSG-332-GIG. (Exhibit No. 1).

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21. Kansas Gas Service has met all of its natural gas supply obligations for its 650,000 residential customers in Kansas, without exception, from July 30, 2021, to the current time.

22. KCC Staff has determined that the natural gas purchasing practices of KGS are prudent, in the period of July 30, 2021 through October 31, 2023. (KCC Docket No. 02-KGSG-414-GPR).

23. Neither Kansas Gas Service nor its Kansas customers have experienced adverse effects from its disclosure on July 30, 2021, of each natural gas supplier and the total amount paid to each natural gas supplier in February 2021.

24. Kansas Gas Service has at no time contended that its public disclosures of July 30, 2021, have affected its ability to purchase required supplies of natural gas in a competitive market, or that its customers in Kansas have experienced any adverse financial impact because of its disclosures of July 30, 2021.

Technical Errors

25. Black Hills contended that the "public interest" was served by participation of the Attorney General of Kansas, because the Attorney General was a party to KCC Docket No. 21-BHCG-334-GIG and had access to "confidential / unredacted copies of the requested supplier invoices. At the KCC Business Meeting, comments seemed to endorse this Black Hills position.

26. This contention is erroneous.

27. Each person in the Docket (KCC Docket No. 21-BHCG-334-GIG) that received "confidential" information, was subject to the Protective Order in that Docket. Paragraph No. 26 of the Protective Order provides:

"26. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for

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purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding."

28. Attorneys of the Office of the Attorney General of Kansas executed on July 28,

2021, a "Nondisclosure Certificate" in KCC Docket No. 21-BHCG-334-GIG and are subject to

Paragraph No. 26 of the Protective Order.

btips://cstar.kcc.ks.gov/cstar/ViewFile.aspx/S202107301041121201.pdP?Id=73fc4cbd-43a7--120c-at25-932eec93df26

Request for Clarification

29. Requestor respectfully requests Clarification as follows:

30. Requestor filed KORA Requests with regard to "Public Records" in the possession of the KCC:

- Kansas Gas Service dated October 16, 2023
- Atmos Energy dated October 15, 2023
- Evergy Kansas Central dated October 17, 2023
- Empire District Electric (Liberty) dated November 8, 2023

None of these KORA Requests have been addressed by the Commission, and none have been assigned a KCC Docket Number.

31. In addition, Requestor filed a KORA Request for specific KCC Staff documents, which the Commission denied.

32. Requestor seeks clarification from the Commission if it has or intends to address the KORA Requests set forth in Paragraph No. 30, in the General Investigation (KCC Docket No. 24-GIMX-376-GIV), or if the Commission intends to assign a KCC Docket Number and reply to the KORA Requests listed in Paragraph No. 30 herein, in separate KCC Dockets. Respectfully submitted,

/s/ James P. Zakoura

James P. Zakoura, KS 7644 FOULSTON SIEFKIN LLP 7500 College Blvd., Suite 1400 Overland Park, KS 66210 Telephone: 913-498-2100 Email: jzakoura@fouiston.com Requestor

VERIFICATION

STATE OF KANSAS)) 85: COUNTY OF JOHNSON)

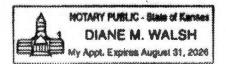
James P. Zakoura, being duly sworn upon his oath, deposes and states that he has read and is familiar with the foregoing *Petition for Clarification and Reconsideration*, and the statements therein are true to the best of his knowledge, information, and belief.

James P. Zakoury

SUBSCRIBED AND SWORN to before me this 10th day of November 2023.

Notary Publi

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the two service lists on November 10, 2023, as follows:

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/s/ James P. Zakoura

James P. Zakoura, KS 07644 Requestor

202107 ani 401007 mi Sing Date: 070302021 Sing Constration Constrainty of Raysan

In the Matter of the Application of Kansas Gas Service, a Division of ONE Gas, Inc. Regarding February 2021 Winter Weather Events, as Contemplated by Docket No. 21-GIMX-303-MIS

) Docket No. 21-KGSG-332-GIG

DIRECT TESTIMONY

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OF

MATT L. ROBBINS

ON BEHALF OF KANSAS GAS SERVICE

A DIVISION OF ONE GAS, INC.

PUBLIC VERSION

EXHIBIT 1

Vendor	Winter Weather Gas Purchases - Additional Cost	
88	\$8,682,525.00	
ETC	\$39,649,887.01	
Koch	\$5,275,362.50	
Macquarie	\$70,167,341.07	
Mieco	\$11,569,152.93	
Rock Point	\$20,450,909.25	
SouthWest Energy	\$67,685,937.84	
Tenaska	\$133,104,667.49	
NNG Imbalance Trade	-\$41,964.81	
Tenaska imb	\$126,852.19	
Tallgrass Imb	\$59,106.26	
DCP imbalance	\$415.04	
Macquarle Disputed	\$14,940,072.89	
Panhandle Penalty Credit	-\$451,029.22	
GRAND TOTAL	\$371,219,235.44	

Exhibit MLR-3

From:	Zakoura, James
To:	Lynn Retz; Sally Conn; David Cohen
Cc:	" <u>iflaherty@andersonbyrd.com</u> "; <u>shelly.bass@atmosenergy.com; stacy.williams@symmetryenergy.com; Zakoura.</u> James
Subject:	Kansas Open Records Act - Request for Public Records - KCC Docket No. 21-ATMG-333-GIG. Atmos Energy.
Date:	Sunday, October 15, 2023 4:33:32 PM

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

- 1. The Commission is an Agency of the state of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
- "K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
- 3. Public records are records made, <u>maintained</u>. <u>created or possessed by a public agency</u> - including the Commission.
- 4. In KCC Docket No. 21-ATMG-333-GIG, the KCC considered whether it was appropriate for Atmos Energy Corporation ("Atmos) to recover from its retail ratepayers in Kansas, what Atmos identified as (as <u>"Qualified Extraordinary Costs,"</u> (b) pursuant to a "Securitized Utility Tariff Charge," and (c) the method of allocating the "Qualified Extraordinary Costs" among customer classes.

The other main elements of the Plan include the: (1) identification and quantification of the Qualified Extraordinary Costs to be financed under the Plan; (2) range of time periods to be used to collect the **Qualified Extraordinary Costs** from customers under a Securitized Utility Tariff Charge that would be the same as the term of the Securitized Utility Tariff Bonds; (3) method of allocating the Qualified Extraordinary Costs among customer classes and the use of a fixed monthly Securitized Utility Tariff Charge to recover the Qualified Extraordinary Costs from customers; and (4) future rate-making process to reconcile any differences between the Securitized Utility Tariff Costs financed by the Securitized Utility Tariff Bonds and the final Securitized Utility Tariff Costs incurred by Atmos Energy relating to the Winter Event. **PLAN TO MINIMIZE THE FINANCIAL EFFECTS OF THE 2021 WINTER WEATHER EVENT, dated September 14, 2021, at pages 1 – 2.** https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202109141636073153.pdf? Id=dbb828a7-3a7c-482b-9c73-3bdb9289448f

- 5. The following public records that are maintained and possessed by the KCC, are requested:
- All unredacted invoices that evidence the sale and purchase of natural gas that are a part of the Atmos Qualified Extraordinary Costs in the amount of \$92.7 million, described in part by the KCC to wit:

<u>\$92.7 million – "ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT</u> ON ATMOS ENERGY CORPORATION'S FINANCIAL PLAN," dated March 24, 2022. https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220324102715.pdf? Id=a5b88cfd-87b2-4f84-8f1a-1753cf72b2f8&utm_medium=email&utm_source=govdelivery

\$118,514,030 - Total with securitization financing costs – paid over 10 years.

 Upon a search of this KCC Docket, the only specific reference to natural gas suppliers of Atmos, are to (a) Southwest Energy and (b) Symmetry Energy, in the Testimony of Mr. Grady in this Docket.

This is an incomplete list of natural gas suppliers to Atmos that sold natural gas to Atmos, the costs of which are included in the <u>"Qualified Extraordinary Costs of \$92.7</u> million that the KCC ordered to be recovered from retail ratepayers of Atmos.

7. The requested documents (invoices) are described, to the best of the ability of Requestor, as being maintained and possessed by the KCC as follows, by reference in the KCC Order in KCC Docket No. 21-ATMG-333-GIG - "ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT ON ATMOS ENERGY CORPORATION'S FINANCIAL PLAN," dated March 24, 2022, to wit:

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220324102715.pdf?Id=a5b88cfd-87b2-4f84-8f1a-1753cf72b2f8&utm_medium=email&utm_source=govdelivery

APPENDIX A -List of Qualified Extraordinary Costs.

5. Grady noted that **Atmos' gas purchase costs** during Winter Storm Uri were consistent with, if not lower than, prevailing market prices during this timeframe. 15 **Specifically, from February 9-21, 2021, Atmos paid a weighted average cost of \$66/MMBtu, which was \$45.82/MMBtu lower than the average market price of \$111.82/MMBtu during that same time.** 16 Grady testified that Atmos' gas purchases during Winter Storm Uri were prudent, necessary expenditures to continue providing service during this extraordinary winter weather event. 17

Footnote 17. Redacted Direct Testimony and Testimony in Support of

Settlement Agreement (Grady Testimony), Feb. 24, 2022, p. 24.

9. There is substantial competent evidence in the record to support the Financial Plan Settlement. Atmos' Financial Plan is supported by the direct testimony of Jason Schneider, Kenny Malter, Kathleen Ocanas, Bart Armstrong, and Rob Leivo. Staff performed its own independent review of Atmos' expenditures and associated carrying costs of extending the recovery of these extraordinary costs until the Securitized Bonds can be issued.23 The Financial Plan was vetted by the Parties through extensive discovery, covering all aspects of the costs incurred by Atmos and the Atmos' decisions regarding gas purchases and system operations during Winter Storm Uri.24 Testimony in support of the Financial Plan Settlement was filed by Kathleen Ocanas on behalf of Atmos. Josh Frantz of CURB, and Justin Grady of Staff. Frantz testified that based on his review of the facts contained in the Atmos' testimony and responses to the data requests, and his discussions with Atmos and Staff, he believes the Settlement Agreement's calculation of Extraordinary Costs is reasonably reflective of the extraordinary costs that Atmos incurred during Winter Storm Uri, and the agreed upon application of carrying charges is reasonably reflective of Atmos' costs associated with financing the Extraordinary Costs until the issuance of Securitized Bonds. 25

Similarly, Grady testified, "Atmos did a really good job of securing gas supplies during this storm ... they didn't do this on purpose. It was one supplier that declared force majeure."46 As Grady noted, this was the perfect storm - extremely cold temperatures in the middle of a four-day weekend, when the financial markets were closed.47 While the extraordinary costs associated with Winter Storm Uri will be a hardship for many of Atmos' customers, the Settlement Agreement eases some of the burden on ratepayers, who otherwise would have had to pay these costs in a single year. 48 Winter Storm Uri was a massive, unexpected expenditure, and securitization allows ratepayers to pay the extraordinary charges over an extended period of time to minimize the impact on their personal finances. 49

8. K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of portions of documents that are not otherwise exempt:

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

- 9. Prior to filing this Request under KORA, the Requestor contacted both the Counsel for Atmos, and the Counsel for Symmetry Energy Solutions, on August 25, 2023, and requested the voluntary production of the requested documents (invoices.)
 - Symmetry Energy Solutions responded as follows on September 1, 2023: "We feel like these are Atmos' records and have been waiting to hear their position."
 - Atmos did not reply to the Request dated August 25, 2023.

The Requestor respectfully requests that the requested documents be provided as soon as reasonably possible.

Thank you for your consideration.

James P. Zakoura Requestor

James P. Zakoura Special Counsel | FOULSTON SIEFKIN LLP 7500 College Boulevard, Suite 1400 | Overland Park, Kansas 66210 D: 913.253.2142 jzakoura@foulston.com | Bio | vCard | www.foulston.com **IMPORTANT**: This communication contains information from the law firm of Foulston Siefkin LLP which may be confidential and privileged. If it appears that this communication was addressed or sent to you in error, you may <u>not</u> use or copy this communication or any information contained therein, and you may <u>not</u> disclose this communication or the information contained therein to anyone else. In such circumstances, please notify me immediately by reply email or by telephone. Thank you.

1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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

Laura Kelly, Governor

October 18, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request rcv'd. 10.15.23 - KCC Docket No. 21-ATMG-333-GIG

Mr. Zakoura,

On October 15, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for unredacted copies of the sale and purchase of natural gas, including invoices, which are part of the Atmos Qualified Extraordinary Costs filed in Docket No. 21-ATMG-333-GIG.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and a mendments thereto, to restrict or prohibit disclosure.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection(a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Atmos Energy Corporation of your request for confidential information wherein they can response in accordance with the regulation.

October 18, 2023 Page 2

The process outlined in K.A.R. 82-1-221a(b) is:

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,

Lynn U. Ret

Lynn M. Retz Official Custodian of Records Executive Director

1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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

Laura Kelly, Governor

October 18, 2023

James Flaherty jflaherty@andersonbyrd.com

Shelly Bass shelly.bass@atmosenergy.com

Kathleen Ocanas kathleen.ocanas@atmosenergy.com

Re: October 15, 2023 Kansas Open Records Request to KCC

Counsel,

As attorneys of record for Atmos Energy Corporation in Docket No. 21-ATMG-333-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), please respond within five (5) business days of the date of this letter substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully,

Jun M. Retz

Lynn M. Retz Executive Director Custodian of Records

cc: James Zakoura, Foulston Siefkin, JZakoura@foulston.com

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> RICHARD C. BYRD (1920-2008)

October 24, 2023

Sent by Electronic Mail

Ms. Lynn Retz Executive Director Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604-4027

> Re: Kansas Open Records Act ("KORA") Request Docket No. 21-ATMG-333-GIG

Dear Ms. Retz:

Mr. Zakoura requests the Kansas Corporation Commission ("Commission") provide him copies of un-redacted natural gas purchase invoices submitted by Atmos Energy Corporation ("Atmos Energy") to the Commission in Docket No. 21-ATMG-333-GIG ("333 Docket"). The invoices related to natural gas supplies purchased by Atmos Energy during Storm Uri. Atmos Energy designated the redacted information as confidential because public disclosure of the information would cause substantial harm to Atmos Energy's customers by interfering with Atmos Energy's ability to acquire adequate natural gas supplies at a reasonable price. Accordingly, Atmos Energy objects to the disclosure of the un-redacted natural gas purchase invoices.

Attached to this response as **Exhibit 1**, and incorporated herein by reference, is a sworn affidavit from Mr. Kenneth Malter, Atmos Energy's Director of Gas Supply and Services (Malter Affidavit). Mr. Malter has over 25 years of experience in the natural gas market. He is currently responsible for the procurement and administration of gas supply and transportation for all of Atmos Energy's operations in its eight states. Mr. Malter sets forth his expert opinion supporting the basis for Atmos Energy's confidential designation of its natural gas supply invoices. *See, Malter Affidavit, Exhibit 1*.

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Exhibit B-4

Ms. Lynn Retz Page 2 October 24, 2023

Mr. Malter explains how the natural gas commodity industry is an unregulated and highly competitive market. He explains how maintaining the confidentiality of each element of a gas purchasing strategy, such as historical gas supply invoices, is absolutely necessary to ensure equal bargaining positions between the different participants involved in the natural gas commodity industry are maintained and how requiring Atmos Energy to publicly disclose any elements of its gas purchasing strategy will eliminate Atmos Energy's equal bargaining position. He explains how elimination of that equal bargaining power would place Atmos Energy at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public. Mr. Malter provides several examples of how public disclosure of Atmos Energy's historical gas supply invoices will lead to Atmos Energy having to pay higher prices for natural gas, which will result in higher gas supply costs paid by its customers. Finally, Mr. Malter indicates that other state agencies and local governments that regulate Atmos Energy recognize and maintain the confidential designation of Atmos Energy's gas purchasing information. *See, Malter Affidavit, Exhibit 1, paragraphs 9-11.*

Under K.S.A. 66-1220a (a), the Commission has a duty not to,

disclose or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission any information which is a trade secret under the uniform trade secrets act, K.S.A. 60-3320, or any confidential commercial information of a corporation...regulated by the commission unless the commission finds that disclosure is warranted after consideration of four factors.

Atmos Energy's gas supply information, including its historical gas supply invoices, is clearly a trade secret and confidential commercial information. K.S.A. 60-3320 (4) defines "trade secret" to mean,

...information, including a formula, pattern, compilation, program, device, method, technique, or process that (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As indicated above, Mr. Malter explains in his affidavit specifically how Atmos Energy's gas supply information derives its economic value by not being known by other participants in the natural gas commodity market and how disclosure of said information could provide those participants economic value at the expense of Atmos Energy. See, Malter Affidavit, Exhibit 1, Ms. Lynn Retz Page 3 October 24, 2023

paragraphs 10-11.

Mr. Malter provides three examples where public disclosure of Atmos Energy's historical gas supply invoices could place Atmos Energy at a competitive disadvantage.

In his first example, Mr. Malter states that if the Commission were to require Atmos Energy to disclose all gas suppliers and all gas invoices for gas purchased by Atmos Energy during February 2021, then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information. Those participants would have the names of Atmos Energy's suppliers, the contract quantities, contract prices, the contract term and delivery locations. Atmos Energy, on the other hand, would have none of that information from the other participants, who are not required to publicly disclose such information. Mr. Malter states that this would mean that an industrial customer directly connected to Southern Star's interstate pipeline, who is competing against Atmos Energy for the same gas supplies, would have all of Atmos Energy's gas purchasing information. However, Atmos Energy would not have that same information relating to the industrial customer. He goes on to indicate that the equal bargaining positions of the participants in the natural gas commodity market "are turned on their heads" placing Atmos Energy and its customers at a competitive disadvantage in obtaining those gas supplies that Atmos Energy and the industrial customer are competing against each other to obtain. Mr. Malter explains that if Atmos Energy's historical gas supply information is maintained as confidential, then Atmos Energy and it customers are not placed at a disadvantage and can equally compete for natural gas supplies against the industrial customer, marketer or other gas purchaser in the natural gas commodity market. See, Malter Affidavit, Exhibit 1, paragraph 12.

Mr. Malter goes on in his affidavit to provide two examples that show that not only is Atmos Energy placed at a disadvantage at competing with other natural gas purchasers in the natural gas commodity market, it is also placed at a disadvantage in negotiating with gas suppliers, if those gas suppliers have all of Atmos Energy's historical gas contracts and invoices. See, Malter Affidavit, Exhibit 1, paragraph 13.

Both the U.S. Supreme Court and the Kansas Supreme Court recognize the importance of maintaining the confidentiality of an entity's trade secrets and commercial information. Both courts have recognized "that the common-law right of public inspection must bow before the power of the court to insure that records will not be used to "gratify private spite... or [be used] as sources of business information that might harm a litigant's competitive standing. *See, Stephens v. Van Arsdale*, 227 Kan. 676, 688(1980) (citing *Nixon v. Warner Comm'n, Inc.*, 435 U.S. 589, 598 (1978)).

This Commission has recently addressed whether natural gas supply contracts and invoices

Ms. Lynn Retz Page 4 October 24, 2023

relating to Storm Uri are confidential trade secrets protected from disclosure per the factors set forth in K.S.A. 66-1220a. See, Order on KORA Request, Docket No. 24-GIMX-238-MIS ("238 Docket"), October 12, 2023. In the 238 Docket, Mr. Zakoura filed a KORA request asking the Commission to provide un-redacted natural gas supply contracts and invoices relating to purchases made by Black Hills Energy during Storm Uri. Black Hills objected. It made the same arguments being made by Atmos Energy in this docket. The Commission applied the factors set forth in K.S.A. 66-1220a and held that natural gas supply contracts and invoices relating to Storm Uri were confidential trade secrets and not subject to disclosure. The Commission found that disclosure of contracts and invoices may affect a natural gas distribution company's ability to compete for low cost gas supplies in the future, which would cause harm to both the utility and the public. See, Order on KORA Request, 238 Docket, October 12, 2023, page 4, paragraph 10. The Commission held that it was unclear as to how disclosure would aid the Commission. It found that alternatives to disclosure existed for Mr. Zakoura through his class action cases. Id.

This Commission reached a similar conclusion a couple of times in Docket No. 21-KGSG-332-GIG ("332 Docket") relating to the same issue. In the 332 Docket, Mr. Zakoura requested on several occasions that Kansas Gas Service's natural gas supply contracts and invoices relating to Storm Uri be made public. Kansas Gas Service contended that the redacted information in the contracts and invoices constituted trade secrets and if released to the public could place the utility at a competitive disadvantage in acquiring natural gas supplies for its customers. In denying Mr. Zakoura's request, the Commission held:

...disclosure of the information as requested in NGTCC's motions holds great potential of harm to current and future Kansas natural gas customers through higher purchased gas costs. A general argument in favor of transparency cannot outweigh this very real harm to customers. The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long standing and well-reasoned Commission practices related to non-disclosure of trade secrets and confidential commercial information.

Order Denying NGTCC's Motion to Remove Confidential Designations for Certain Documents, 332 Docket, dated September 9, 2021, page 9, paragraph 17.

The Commission reached the same conclusion in Docket No. 22-GIMX-171-MIS, See, Order on KORA Request, 22-171 Docket, dated December 9, 2021, page 3, paragraph 8.

Based upon the analysis conducted by the Commission in its recent decision in the 238 Docket, and its decisions in the other above-referenced dockets, Atmos Energy requests that (1) the

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Ms. Lynn Retz Page 5 October 24, 2023

Commission find that the redacted information in the natural gas supply invoices constitute trade secrets, as defined in K.S.A. 60-3320(4); (2) based upon the factors set forth in K.S.A. 66-1220a, find that disclosure of said confidential information is not warranted; and (3) deny Mr. Zakoura's request for said confidential information.

Sincerely,

6. Theld

James G. Flaherty jflaherty@andersonbyrd.com

JGF:rr

ec: jzakoura@foluston.com shelly.bass@atmosenergy.com

www.andersonbyrd.com

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

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In the Matter of the Investigation into Atmos Energy Corporation Regarding the February 2021 Winter Weather Events, as Contemplated By Docket No. 21-GIMX-303-MIS

Docket No. 21-ATMG-333-GIG

AFFIDAVIT OF KENNETH M. MALTER

STATE OF LOUISIANA PARRISH OF ORLEANS, ss:

I, Kenneth M. Malter, upon being sworn, under oath, state that the following information is within my personal knowledge and belief and is true and correct:

1. My name is Kenneth M. Malter.

2. My business address in 1100 Poydras Street, Suite 3400, New Orleans, Louisiana,

70163.

 I am employed by Atmos Energy Corporation (Atmos Energy) as Director of Gas Supply and Services.

4. I graduated from Louisiana State University with a BS in finance in 1989. I also completed a master's degree in business administration from Tulane University in 1995.

 I have worked in various positions at Atmos Energy involving natural gas markets for the past 25 years.

6. As Director of Gas Supply and Services I am responsible for the department that is tasked with the procurement and administration of gas supply and transportation for all of Atmos Energy's operations in Kansas, Colorado, Texas, Tennessee, Kentucky, Louisiana, Mississippi and Virginia.

EXHIBIT 1

7. Atmos Energy submits its Gas Supply Plan (Plan) each year to the Kansas Corporation Commission (Commission) for review pursuant to the requirements contained in Atmos Energy's specific gas purchasing practices docket, Docket No. 02-GRLG-364-GPR (364 Docket).

8. The Plan provides a comprehensive framework to satisfy both the baseline and variable gas supply needs of Atmos Energy's Kansas sales customers. The Plan focuses on providing a reliable gas supply at a market based price, while taking into account Atmos Energy's operational and management requirements. Atmos Energy also submits monthly gas supply reports to the Commission in the 364 Docket.

9. Atmos Energy has consistently designated all information relating to its past, present and future gas supply strategy and portfolio as a confidential trade secret and has provided said information to the Commission for audit, review and other purposes pursuant to the protections contained in the Protective Order issued by the Commission in the 364 Docket on November 26, 2001, so that such information would be maintained as confidential and not released to the public. As explained below, Atmos Energy's gas supply information derives economic value, actual or potential, for Atmos Energy and its customers from not being generally known to and not readily ascertainable by proper means by other persons who could obtain economic value from its disclosure or use.

10. The natural gas commodity industry is an unregulated and highly competitive market. Thus, maintaining the confidentiality of each element that when combined makes up a gas purchasing strategy, is essential within the industry to ensure equal bargaining positions between and among both natural gas suppliers, like producers and marketers, and natural gas purchasers, like Atmos Energy, marketers, or individual industrial customers who purchase natural gas on the same pipeline as Atmos Energy. If the details of any element of Atmos Energy's gas purchasing strategy, for example, the number of suppliers, names of suppliers, contract quantities, contract prices, the term of the contracts, delivery locations, are required to be made public and other participants in the natural gas commodity market are not required to make similar disclosures to the public, then such would place Atmos Energy at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public.

11. If the Commission would require Atmos Energy to disclose either specific historical or current elements of Atmos Energy's gas purchasing practices, like historical gas supply invoices, then this information would be available to all natural gas suppliers and all natural gas purchasers. Given current computer technologies, software, algorithm and artificial intelligence programs, this information can be exploited by participants in the natural gas commodity market by giving them critical insights into Atmos Energy's strategy in purchasing natural gas. It eliminates the equal bargaining positions between those participants and Atmos Energy. It could lead to Atmos Energy having to pay higher prices for natural gas, which means higher gas supply costs paid by its customers.

12. If the Commission were to require Atmos Energy to disclose all gas suppliers and all gas invoices for gas purchased by Atmos Energy during February, 2021, then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information. They would have the names of Atmos Energy's suppliers, the contract quantities, contract prices, contract term and delivery locations. Atmos Energy, on the other hand, would have none of that information from the other participants, who are not required to publicly disclose such information. This would mean that an industrial customer directly connected to Southern Star's interstate pipeline, who is competing against Atmos Energy for the same gas supplies, would have all of Atmos Energy's gas purchasing information. However, Atmos Energy would not have that same

3

information relating to the industrial customer. The equal bargaining positions of the participants in the natural gas commodity market are turned on their heads, placing Atmos Energy and its customers at a competitive disadvantage in obtaining those gas supplies that Atmos Energy and the industrial customer are competing against each other to obtain. If Atmos Energy's historical gas supply information is maintained as confidential, then Atmos Energy and its customers are not placed at a disadvantage and can equally compete for natural gas supplies against that industrial customer, marketer or other gas purchaser in the natural gas commodity market.

13. Not only is Atmos Energy placed at a disadvantage at competing with other natural gas purchasers in the natural gas commodity market, it is also placed at a disadvantage in negotiating with gas suppliers, if those gas suppliers have all of Atmos Energy's historical gas contracts and invoices. For example, if Atmos Energy historically purchased natural gas supplies at a particular location at a price above the index price and the gas suppliers have access to that information because Atmos Energy has been required to disclose to the public its historical gas supply contracts and invoices, and Atmos Energy has no access to whether those gas suppliers have historically sold gas at that location at a price above or below the index price, Atmos Energy loses its equal bargaining position. This will likely result in Atmos Energy paying a higher price for natural gas supplies. Such also increases the chances that if multiple gas suppliers bid on selling natural gas to Atmos Energy and they all know historically that Atmos Energy has paid a price above the index price at a particular location, then such will likely result in bid prices being submitted that are relatively higher than if the gas suppliers did not have that historical information. Maintaining the confidentiality of that historical gas supply information assures equal bargaining power between Atmos Energy and those gas suppliers, resulting in competitive offers from those gas suppliers and relatively lower gas costs to customers.

14. The confidentiality of Atmos Energy's gas purchasing information is recognized and maintained by the other state agencies and local governments that regulate Atmos Energy's natural gas distribution business.

Further affiant saith naught.

Kenneth M. Malter

SUBSCRIBED AND SWORN to before me this 24^{+1} day of October, 2023, by Kenneth M. Malter.

Notary Public

Appointment/Commission Expires:

STEPHEN T. PERRIEN Notary Public Parish of Orleans, State of Louisiana My Commission is Issued for Life. Bar No. 22590 Notarial No. 49480

From:	Zakoura, James
To:	Lynn Retz; Sally Conn; David Cohen
Cc:	"robert.vincent@onegas.com"; Janet.Buchanan@onegas.com; Zakoura, James
Subject:	Kansas Open Records Act - Request for Public Records - KCC Docket No. 21-KGSG-332-GIG - Kansas Gas Service Company
Date:	Monday, October 16, 2023 7:01:27 AM

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

- 1. The Commission is an Agency of the State of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
- "K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
- 3. Public records are records made, <u>maintained</u>. <u>created or possessed by a public agency</u> - including the Commission.
- 4. <u>The following public records that are maintained and possessed by the KCC, are requested</u> by the Requestor:
 - Unredacted copies of the Contracts and Transaction Documents filed at the KCC on November 8, 2021
 - https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202111081416238500.pdf?
 Id=43cfc00b-403b-42f9-adbd-ae77415985bb

The requested documents (invoices) are further described at page 8 of the Direct Testimony filed by Janet L Buchanan on July 30, 2021, (https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301402167520.pdf?ld=d50f1d81e90f-4b11-a6f4-52761e17d0cf)

and in the Testimony of Matt L. Robbins at Exhibit MLR-3 on July 30, 2021 (https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301402167520.pdf?Id=d50f1d81e90f-4b11-a6f4-52761e17d0cf)

5. The requested documents (invoices) set forth the component parts of "Additional Gas Costs" that Kansas Gas Service incurred during Winter Storm Uri, and which the KCC ordered to be paid by 648,000 residential retail ratepayers of Kansas Gas Service, that

reside in 360 communities throughout Kansas - - in the total amount of \$450 million over a <u>10-year period.</u>

- 6. The \$450 million ordered by the Commission to be paid by retail ratepayers is for 5 days of natural gas purchases from February 13 through February 17, 2021. This \$450 million amount for 5 days of natural gas, far exceeds the total amount of natural gas supply costs of Kansas Gas Service for the entire year of calendar year 2020.
- There is a compelling public interest to be served by making public all such natural gas supply cost documents, due to the enormity of the amount (\$450 million) and further because about 80% of such \$450 million will be paid by 648,00 retail ratepayers in the State of Kansas over a 10-year period.
- 8. In total, the KCC ordered that \$807,831,944 of "Additional Natural Gas Costs" be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records.
 - American Energies \$317,914 paid over 5 years.
 - Atmos Energy \$92.7 million (total with securitization financing costs -\$118,514,030) – paid over 10 years.)
 - Black Hills Energy \$87.9 million paid over 5 years.
 - City of Eskridge \$1,1 million paid over 10 years.
 - Evergy Central \$122.2 million paid over 2 years.
 - Kansas Gas Service \$366 million (total with securitization financing costs \$450,000,000 paid over 10 years.)
 - Southern Pioneer \$17 million paid over 3 years.
 - Empire \$10.8 million paid over 15 years.
 - In addition, the State of Kansas provided low interest loans to municipal utilities to pay Winter Storm Uri costs in the amount of <u>\$78,409,646.79</u> (total loans at January 2023)
 - This brings the Kansas economic impact to <u>\$886,241,590</u> for 5 days "additional costs" of Winter Storm Uri.
- Prior to filing this Request under KORA, the Requestor contacted the Counsel for Kansas Gas Service on August 28, 2023, and Kansas Gas Service provided the following response on September 5, 2023:

"I hope you are doing well. I've had a chance to visit internally on your request. As

the Commission recognized in the 21-KGSG-332-GIG docket, gas purchase invoices contain trade secrets and confidential commercial information. The Commission recognized the long standing practice of protecting this information, which still remains confidential today. Notwithstanding the NAESB provision you referred to, providing unredacted copies of our invoices would publicly reveal our gas purchasing practices and strategies, which places us and our customers at a competitive disadvantage. Kansas Gas Service respectfully declines your request to produce unredacted copies of invoices. If you have any questions please do not hesitate to contact me."

- 10. Kansas Gas Service has provided no substantial competent evidence that the requested documents (invoices) are "trade secrets and confidential commercial information."
 - The requested documents (invoices) are for transactions that occurred 2 years and 8 months ago.
 - The pertinent sale purchase documents (NAESB) specifically provide that there is no contractual confidentiality after 1 year – confidentiality of transactions ended 1 year and 8 months ago.
 - Kansas Gas Service has provided no substantial competent evidence to support its claims it only offers rank speculation.

The Requestor respectfully requests that the requested documents be provided as soon as reasonably possible.

Thank you for your consideration.

James P. Zakoura Requestor

James P. Zakoura Special Counsel | FOULSTON SIEFKIN LLP 7500 College Boulevard, Suite 1400 | Overland Park, Kansas 66210 D: 913.253.2142 jzakoura@foulston.com | Bio | vCard | www.foulston.com

IMPORTANT: This communication contains information from the law firm of Foulston Siefkin LLP which may be confidential and privileged. If it appears that this communication was addressed or sent to you in error, you may <u>not</u> use or copy this communication or any information contained therein, and you may <u>not</u> disclose this communication or the information contained therein to anyone else. In such circumstances, please notify me immediately by reply email or by telephone. Thank you.

1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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

Laura Kelly, Governor

October 19, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request rcv'd. 10.16.23 - KCC Docket No. 21-KGSG-332-GIG

Mr. Zakoura,

On October 16, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for unredacted copies of the contracts and transaction documents filed at the KCC on November 8, 2021 in Docket No. 21-KGSG-332-GIG.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Kansas

Page 2 October 19, 2023

Gas Service of your request for confidential information wherein they can respond in accordance with the regulation.

The process outlined in K.A.R. 82-1-221a(b) is:

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,

Lynn M. Retz

Lynn M. Retz Official Custodian of Records Executive Director

1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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

Laura Kelly, Governor

October 19, 2023

Janet Buchanan Kansas Gas Service janet.buchanan@onegas.com

Re: October 16, 2023 Kansas Open Records Request to KCC

Ms. Buchanan,

As attorney of record for Kansas Gas Service in Docket No. 21-KGSG-332-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), please respond within five (5) business days of the date of this letter substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully,

Lohn M. Retz Executive Director Custodian of Records

cc: James Zakoura, Foulston Siefkin, JZakoura@foulston.com



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October 26, 2023

Sent via email to l.retz@kcc.ks.gov

Lynn Retz Executive Director Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604-4027

Re: Kansas Open Records Act Request Docket No. 21-KGSG-332-GIG

Dear Ms. Retz:

On behalf of Kansas Gas Service, a division of ONE Gas, Inc. ("Kansas Gas Service"), I am writing in response to your October 19, 2023, letter to Ms. Buchanan regarding a request for confidential records made pursuant to the Kansas Open Records Act ("KORA"). Kansas Gas Service welcomes the opportunity to respond to this request. The records requested were, and remain, confidential. Pursuant to K.S.A. 66-1220a, K.S.A. 45-221, and K.A.R. 82-1-221a, Kansas Gas Service respectfully requests the Kansas Corporation Commission ("Commission") continue to treat the documents confidentially and withhold them from public disclosure.

I. Executive Summary

The natural gas commodity market is an unregulated and highly competitive marketplace. Sophisticated buyers compete for a limited supply of natural gas from sophisticated sellers. Kansas Gas Service must purchase natural gas in this competitive market to meet its service obligations. To compete, Kansas Gas Service has developed a confidential method for purchasing natural gas. If the documents requested from the Commission were released to the Requestor, Kansas Gas Service's confidential process for purchasing natural gas would be revealed. This would almost certainly cause real and irreparable harm to Kansas Gas Service and its customers. Other market participants could learn how, where, when, and for what price, Kansas Gas Service purchases natural gas. At the same time, Kansas Gas Service would have no insight into the purchasing practices of other market participants. Kansas Gas Service would be placed at a significant competitive disadvantage in the natural gas market. Accordingly, the Commission should deny the Requestor's KORA request.

II. Records Requested

The Requestor is seeking the public release of "unredacted copies of the Contracts and Transaction Documents filed at the [Commission] on November 8, 2021" (the "Requested Documents").¹ The Requested Documents contain: gas sales contracts, transaction confirmations, and invoices. The redacted portions of the Requested Documents contain specific terms and conditions related to Kansas Gas Service's natural gas purchasing practices. In the most basic terms, the redacted portions of the Requested Documents detail how Kansas Gas Service executes its gas purchasing strategies. If publicly disclosed, a sophisticated entity could reverse engineer Kansas Gas Service's confidential gas purchasing strategies and Gas Supply Plan.

¹ A "public" version of the Requested Documents, which has confidential information redacted, is available on the Commission's website.

III. Prior Commission Review of Redactions

The Commission has already extensively reviewed the confidential nature of the Requested Documents. In fact, it was the Commission's thoughtful balancing of transparency against the need to protect trade secrets that created the Public Version of the Requested Documents the Requestor now seeks to fully reveal. In Docket No. 21-KGSG-332-GIG (the "21-332 Docket"), the Natural Gas Transportation Customer Coalition ("NGTCC") made several requests to designate confidential gas supply information as public. The Commission denied this request recognizing the harm it could cause.

The Commission finds that [supplier invoices and certain responses to data requests] qualify as trade secrets under K.S.A. 66-3320 and that disclosure is not warranted after considering the factors enumerated in K.S.A. 66-1220a(a). Order Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 15 (Sep. 9, 2021)(emphasis added).

* *

NGTCC has not demonstrated that disclosure will benefit the public interest. Conversely, the record demonstrates disclosure of the information as requested in NGTCC's motions holds great potential to harm to current and future Kansas natural gas customers through higher purchased gas costs. **A** general argument in favor of transparency cannot outweigh this very real harm to customers. The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long-standing and well-reasoned Commission practices related to nondisclosure of trade secrets and confidential commercial information. Order Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 17 (Sep. 9, 2021)(emphasis added).

Later in the 21-332 Docket, the Commission took significant action to provide the public as much information as possible:

However, to eliminate any confusion of the record and **ensure the public can view as much of** *KGS' gas supply information as possible*, the Commission orders KGS to file public versions of all its supplier contracts and invoices relevant to the winter weather event period. Consistent with the above findings and those of prior orders, KGS should specifically identify and provide its justifications where trade secrets or commercially-sensitive information is redacted. <u>Order Granting in Part,</u> <u>Denying in Part NGTCC's Petition for Reconsideration of its Motions To Remove Confidential</u> <u>Designations for Certain Documents</u>, Docket No. 21-KGSG-332-GIG, ¶ 16. (Oct. 14, 2021) (emphasis added).

On November 8, 2021, Kansas Gas Service complied with the Commission's order. In so doing, Kansas Gas Service extensively detailed why portions of its contracts and invoices were properly redacted. Kansas Gas Service dedicated over ten pages of its pleading to providing: an overview of natural gas markets, the types of information redacted, and how this information could be used against Kansas Gas Service if it were publicly revealed. <u>See Second Amendment to Notice of Providing Certain Redacted Contracts of Kansas Gas Service</u>, Docket No. 21-KGSG-332-GIG, pp. 3 - 13 (Nov. 8, 2021).

To reiterate, *the Requested Records are the confidential versions of the November 8, 2021, documents*. The Commission has already examined the confidential nature of Kansas Gas Service's gas supply information. Since the Commission took significant steps to ensure the public could view "as much of [Kansas Gas Service's] gas supply information as possible," there is nothing else to publicly reveal without also revealing trade secrets or confidential commercial information.

IV. KORA and Confidential Information

Kansas Gas Service supports Kansas' public policy "that public records shall be open for inspection by any person unless otherwise provided by [the Kansas Open Records Act]." K.S.A. 45-216. While KORA sets out certain exceptions from disclosure, these "exceptions must be narrowly interpreted, and the burden is on the public agency opposing disclosure." Data Tree, LLC v. Meek, 279 Kan. 445, 454–55, 109 P.3d 1226, 1234 (2005). The Requested Documents are subject to KORA's very first exception. K.S.A. 45-221(a)(1) makes clear a public agency shall not be required to disclose records when the disclosure of which is specifically prohibited or restricted pursuant to specific federal or state laws, rules of the Kansas Supreme Court, or Senate Committee on Confirmation Oversight. KORA's plain language creates a well-defined and narrowly tailored exception – disclosure of records is not required when it is otherwise prohibited or restricted by law.

K.S.A. 66-1220a specifically prohibits the Commission from disclosing or allowing anyone to inspect trade secrets or confidential commercial information unless the Commission finds disclosure is warranted. "The most fundamental rule of statutory interpretation is that the intent of the Legislature governs if that intent can be ascertained." <u>Matter of M.M.</u>, 312 Kan. 872, 874, 482 P.3d 583, 585 (2021). "In ascertaining this intent, we begin with the plain language of the statute, giving common words their ordinary meaning." <u>Id.</u> "When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words." <u>Id.</u> Here, that intent is clear. K.S.A. 66-1220a is the very exception KORA expects.

Notwithstanding, when confidential information is sought an agency has a duty to "delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out [KORA's] purpose of making available for public inspection all disclosable parts of the public record." <u>State ex rel. Stephan v. Harder</u>, 230 Kan. 573, 583, 641 P.2d 366, 374 (1982); <u>See also K.S.A. 45-221(d)</u>. K.S.A. 66-1220a dovetails neatly with KORA's overarching public policy. K.S.A. 66-1220a allows the Commission to disclose trade secrets or confidential commercial information after evaluating four factors:

- 1. Whether disclosure will significantly aid the Commission in fulfilling its functions;
- 2. the harm or benefit which disclosure will cause to the public interest;
- 3. the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and
- alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.²

K.A.R. 82-1-221a(b) outlines the process for requesting confidential information from the Commission. If a request is made outside of an active docket, an entity seeking to maintain the confidential status of information is notified of the request and may respond to it. <u>See K.A.R. 82-1-221a(b)(1)</u>. Responses which oppose the request must substantiate the basis for nondisclosure and be served upon the Commission and Requestor. <u>See id</u>. Afterwards, the Requestor may respond. <u>See id</u>. With this information, the Commission may thoroughly evaluate K.S.A. 66-1220a's factors.

V. The Documents Sought Were Trade Secrets or Confidential Commercial Information, and Continue to Remain Confidential

The Requested Documents are trade secrets or confidential commercial information which should not be publicly disclosed. The Kansas Uniform Trade Secrets Act, K.S.A. 60-3320 *et seq*. defines a trade secret as:

² Before the Kansas Legislature enacted K.S.A. 66-1220a, similar factors were established in Sw. Bell Tel. Co. v. State Corp. Comm'n, 6 Kan. App. 2d 444, 456–57, 629 P.2d 1174, 1184 (1981). Likewise, the Court noted, "[f]or purposes of disclosure, any distinction between trade secrets and corrfidential commercial information would appear immaterial." Sw. Bell Tel. Co. v. State Corp. Comm'n, 6 Kan. App. 2d 444, 457, 629 P.2d 1174, 1184 (1981).

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. K.S.A. 60-3320(4).

The Requested Documents met, and continue to meet, this definition. The Requested Documents detail how Kansas Gas Service purchases natural gas in competitive markets to meet its service obligations. There is independent economic value in this information, which is not generally known to others, and which other persons could obtain economic value from if the process were disclosed.

Independent Economic Value from not being Known or Readily Ascertainable

The Requested Documents contain: (1) base gas sales agreements, (2) transaction confirmations, and (3) the amounts paid to meet these obligations. The redacted information contained in the Requested Documents show the program, method, technique, and process Kansas Gas Service uses to purchase natural gas supplies.

The purchase and sale of natural gas occurs in a competitive and unregulated market. The natural gas commodity market is made up of sophisticated buyers and sellers. Kansas Gas Service must compete against both buyers and sellers to secure natural gas supplies. Other sophisticated buyers seek to secure their gas needs at the lowest cost. At the same time, sophisticated sellers seek to maximize the value of their commodity. Kansas Gas Service must compete against other buyers to secure adequate supplies, while also negotiating with sellers to secure low prices. In order to compete in this market, Kansas Gas Service's strategies must remain hidden from other market participants. If other market participants knew how Kansas Gas Service intended to meet its gas needs, they could alter their own strategies to the detriment of Kansas Gas Service and its customers.

In the 21-332 Docket, Kansas Gas Service articulated eight separate pieces of information contained in the Requested Documents that, if disclosed, could significantly harm Kansas Gas Service and its customers. This information includes:

- 1. The amount of natural gas purchased in each transaction;
- 2. The index price used to purchase natural gas;
- 3. The actual price paid for natural gas;
- 4. The pipeline used to deliver the natural gas;
- 5. The location of the sale for each transaction;
- 6. The start and end date of each transaction;
- 7. The description of each transaction (i.e., special contract terms); and
- 8. The persons and contact information involved in the transaction.

If this information were publicly revealed, other market participants would be able to largely recreate Kansas Gas Service's confidential 2020 – 2021 Gas Supply Plan.³ This is because Kansas Gas Service was ordered to "file public versions of *all its supplier contracts and invoices relevant to the winter weather event period*." Order Granting in Part, Denying in Part NGTCC's Petition for Reconsideration of its Motions To Remove Confidential

³ While Kansas Gas Service is required to file the plan with the Commission annually, the filings are subject to a Protective Order. <u>See Protective</u> <u>Order</u>, Docket No. 02-KGSG-414-GPR (Dec. 17, 2001).

Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 16. (Oct. 14, 2021) (emphasis added). Relevant contracts included gas purchases for periods well outside the winter weather event (i.e., Winter Storm Uri). For example, long-term baseload or interim-term seasonal agreements may have had delivery periods that coincided with Winter Storm Uri. This presents a critical concern. Since historical purchase information provides significant insight into how Kansas Gas Service will meet its future gas supply needs, other market participants could use this information to forecast Kansas Gas Service's purchasing strategies.

In any competitive market, sophisticated market participants will use all available information to maximize their negotiation position. Other natural gas buyers could undercut Kansas Gas Service and secure lower cost supplies or transportation agreements. Likewise, sellers of natural gas would be able to determine if there were any constraints impacting Kansas Gas Service's purchasing decisions (e.g., reduced pipeline capacity or supplies at a particular location). Sellers could then use this information to secure higher prices knowing Kansas Gas Service's alternatives were limited. However, since Kansas Gas Service's Gas Supply Plan and its procurement strategy remain confidential, market participants are not able to leverage Kansas Gas Service's own strategies against itself. This represents the independent economic value of secret gas procurement strategies, which are ultimately reflected in the redacted terms of the Requested Documents.

The Requestor notes Section 15.10 of certain Base Contracts for Sale and Purchase of Natural Gas creates a one-year confidentiality obligation. According to the Requestor, since more than a year has passed since Winter Storm Uri the transactions should not be considered confidential. Unfortunately, the Requestor's argument suffers from a critical flaw. The cited confidentiality provision was never the sole justification for declaring the Requested Documents confidential (though it was certainly relevant). Rather, the base sale contracts, transaction confirmations, and invoices when taken together provide direct line-of-sight into how Kansas Gas Service purchases natural gas. In short, the redacted portions of the Requested Documents reveal the recipe, program, method, technique, and process Kansas Gas Service uses to purchase natural gas supplies. These confidential trade secrets must be protected.

Reasonable Efforts to Maintain Its Secrecy

Kansas Gas Service undertakes significant effort to keep its gas procurement strategies and Gas Supply Plan a secret. These strategies are not widely distributed or known to internal employees, and are not publicly discussed. Kansas Gas Service's Gas Supply Plan is filed confidentially with the Commission. When certain parties in the 21-332 Docket sought to publicly reveal this information, Kansas Gas Service objected heavily. Each of these actions demonstrate Kansas Gas Service continually makes a reasonable effort under the circumstances to maintain the confidential nature of its Gas Supply Plan and gas purchasing strategies. These efforts would be undone if the Requested Documents were publicly produced. Another entity would be able to largely reverse engineer Kansas Gas Service's 2020 – 2021 Gas Supply Plan, the strategies used to execute it, and use this information against Kansas Gas Service in the future.

VI. Disclosing Kansas Gas Service's Trade Secrets Does Not Meet K.S.A. 66-1220a's Factors

Having demonstrated Kansas Gas Service's gas purchasing practices meet the definition of a trade secret, the Commission must evaluate whether disclosure is justified after reviewing K.S.A. 66-1220a's factors. As the Commission has previously determined, disclosing the Requested Documents is not justified.

Publicly disclosing the Requested Documents would not significantly aid the Commission in fulfilling its duties. Kansas Gas Service provided confidential copies of the Requested Documents to the Commission and parties in the 21-332 Docket. Parties were able to review this information, come to unanimous agreements on handling the extraordinary costs incurred during Winter Storm Uri, and receive the Commission's approval. The Commission has fully reviewed Kansas Gas Service's gas supply purchasing practices, strategies, and plans. Disclosing the Requested Documents would not aid the Commission in fulfilling any of its functions. The Commission's review of how Winter Storm Uri impacted Kansas Gas Service was exhaustive and has come to its conclusion.

As the Commission found during the 21-332 Docket, disclosing the Requested Documents would harm the public interest, Kansas Gas Service, and its customers. Kansas Gas Service's negotiation position could be severely undermined, and result in higher gas costs to ratepayers. The public-at-large will see no benefit from knowing how Kansas Gas Service purchases natural gas. However, other market participants would be able to extract valuable economic information from those details. This would negatively harm the public interest either directly (through Kansas Gas Service's counterparties taking advantage of the information) or indirectly (through other parties refining their own practices in a manner that secures gas supplies before Kansas Gas Service, ultimately reducing the amount and increasing the price of gas available for Kansas Gas Service to purchase).

Finally, there are alternatives to disclosure that serve the public interest and protect Kansas Gas Service. In the 21-332 Docket, the Commission directed Kansas Gas Service to make public as much of its gas supply information as possible. The Commission carefully struck a balance between providing the public as much information as possible while preserving the confidential nature of Kansas Gas Service's purchasing practices. Kansas Gas Service fully complied with this directive and no party challenged or appealed how the Commission navigated this delicate analysis.

VII. Conclusion

Kansas Gas Service appreciates the opportunity to respond to this KORA request. Likewise, Kansas Gas Service values the public policy found within KORA on openness and transparency. As KORA itself recognizes, there are certain circumstances where this policy yields to protect sensitive information. When privacy interests are balanced with the public's need to know, and the result shows disclosing private information fails to significantly serve the principal purpose of KORA, then nondisclosure is favored if it is done in a way that complies with KORA's other requirements. See Data Tree, LLC v. Meek, 279 Kan. 445, 462, 109 P.3d 1226, 1238 (2005). Here, the Commission has done just that. The Commission has taken confidential trade secrets and made available to the public as much as possible. Disclosing additional information does not satisfy the requirements of K.S.A. 66-1220a. Absent a finding to the contrary, K.S.A. 66-1220a limits what the Commission may disclose pursuant to a KORA request. For the reasons discussed in the 21-332 Docket and reiterated herein, the Commission should deny the Requestor's KORA Request.

Respectfully submitted,

Robert Elliott Vincent

Robert Elliott Vincent Managing Attorney

cc: Sally Conn, Executive Secretary Kansas Corporation Commission s.conn@kcc.ks.gov

> James P. Zakoura Foulston Siefken, jzakoura@foulston.com

Janet Buchanan James Flaherty

Zakoura, James

From:	Zakoura, James
Sent:	Tuesday, October 17, 2023 8:49 PM
То:	Lynn Retz; Sally Conn; 'd.cohen@kcc.ks.gov'
Cc:	'cathy.dinges@evergy.com'; 'darrin.ives@evergy.com'; Zakoura, James
Subject:	Kansas Open Records Act - Request for Public Records - KCC Docket No. 21-EKME-329-
	GIE - Evergy Kansas Central and Evergy Kansas Metro.

I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

- The Commission is an Agency of the State of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
- "K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that
 public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall
 be liberally construed and applied to promote such policy."
- 3. <u>Public records are records</u> made, <u>maintained</u>, created <u>or possessed by a public agency</u> - <u>including the</u> <u>Commission</u>.
- 4. <u>The following public records that are maintained and possessed by the KCC, are hereby requested by the Requestor:</u>

Requestor requests:

(a) unredacted copies of all natural gas sale – purchase documents (invoices), that evidence the purchase of natural gas by Evergy in the period February 9 – February 21, 2023, as examined by KCC Staff and that form the basis and detail of the Summary Table entitled <u>"Evergy: Purchase Gas Costs by Flow date"</u>, and listed <u>at Page 95</u> of the <u>Report and Recommendation – KCC Utilities Division, dated January 19, 2022, and such Report and Recommendation filed on the KCC Web Site on January 21, 2022, and more further described as follows <u>on Page 94 of the Report and Recommendation, as</u> <u>follows: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?ld=c3651aba-c4e9-415f-a36c-a1a2c44d8514</u></u>

7. Natural Gas Spot Pricing Analysis In KCC Data Request No 18, Staff requested Evergy provide the detail of its actual natural gas fuel purchases for Staff and the Commission's review. Generally, the purchase gas purchases included fixed pricing and daily index pricing. In its response, Evergy provided a total company breakdown of its daily natural gas purchases, the total dollar amounts, MMBtu/day, and average price per MMBtu.

Evergy also provided the following summary:

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?ld=c3651aba-c4e9-415fa36c-a1a2c44d8514

> <u>2/9/2021 - Average Price – \$4.08 per MMBtu - - Total MMBtu / day – 165,385 – Total</u> Dollars <u>- \$678,323</u>

> > Exhibit D-1

<u>2/10/2021 - Average Price – \$4.16 per MMBtu - - Total MMBtu / day – 130,055 – Total</u> Dollars - <u>\$540,575</u>

<u>2/11/2021 - Average Price - \$11.15 per MMBtu - - Total MMBtu / day - 154,824 -</u> Total Dollars - \$1,725,715

<u>2/12/2021 - Average Price - \$49.29 per MMBtu - - Total MMBtu / day - 114,492 - Total Dollars - \$5,643,016</u>

<u>2/13/2021 - Average Price - \$365.74 per MMBtu - - Total MMBtu / day - 77,608 -</u> Total Dollars - \$28,384,104

2/14/2021 - Average Price - \$304.21 per MMBtu - - Total MMBtu / day - 45,902 -Total Dollars - \$13,963,943

<u>2/15/2021 - Average Price - \$323.54 per MMBtu - - Total MMBtu / day - 35,114 -</u> Total Dollars - \$11,350,130

<u>2/16/2021 - Average Price - \$325.79 per MMBtu - - Total MMBtu / day - 165,385 -</u> Total Dollars - \$9,479,496

<u>2/17/2021 - Average Price - \$497.14 per MMBtu - - Total MMBtu / day - 27,236 -</u> Total Dollars - \$13,540,222

2/18/2021 - Average Price - \$85.42 per MMBtu - - Total MMBtu / day - 118,093 -Total Dollars - \$10,088,006

2/19/2021 - Average Price – \$8.48 per MMBtu - - Total MMBtu / day – 55,000 – Total Dollars - \$466,125

<u>2/20/2021 - Average Price – \$4.47 per MMBtu - - Total MMBtu / day – 43,750 – Total</u> Dollars - <u>\$195,714</u>

<u>2/21/2021 - Average Price – \$4.38 per MMBtu - - Total MMBtu / day – 41,750 – Total Dollars - \$183,064</u>

Total Dollars - \$96,238,432

- 5. The requested documents (invoices) set forth (i) a part of the component parts of "Additional Costs" that Evergy incurred during Winter Storm <u>Uri</u>, and (ii) along with Additional Purchased Power Costs - - have been ordered to be paid by retail ratepayers of Evergy Kansas Central, in the amount of \$122.1 million, over a 2year period. Requestor limits his request to only the described natural gas documents (invoices) and no purchased power costs documents / records are requested.
- The \$122.2 million ordered by the Commission to be paid by retail ratepayers of Evergy Kansas Central, is largely made up of Additional Natural Gas costs paid by Evergy for 6 days of natural gas purchases – from February 13 through February 18, 2021.
- The Winter Storm Uri events occurred in February 2021. The KCC final Order in KCC Docket No. 21-EKME-329-GIE was issued by the Commission on June 23, 2022.

- 8. The referenced KCC Staff Report and Recommendation does not indicate if the requested documents (invoices) were designated by Evergy as confidential, and if so, any contended basis for such confidential designation, either at that time, or at the current time.
- 9. This KORA request is made 2 years and 8 months after the requested documents (invoices) were issued, and 1 year and 8 months after lapse of any confidential treatment of transaction documents pursuant to the industry standard North American Energy Standards Board ("NAESB") Contract. This KORA request is issued 1 year and 4 months after the Commission issued its final order in KCC Docket No. 21-EKME-329-GIE.
- 10. There is a compelling public interest to be served by making public all such natural gas supply cost documents, due to the amount (\$96,238,432), and further due to the fact that the Commission has ordered these costs to be paid by retail ratepayers of Evergy over a 2-year period. The Kansas Open Records Act is to be "liberally construed and applied" to promote the public policy of the state that public records shall be open for inspection by any person." K.S.A 45-216.
- 11. In total, the KCC ordered that \$807,831,944 of "Additional Natural Gas Costs" be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records.
 - American Energies \$317,914 paid over 5 years.
 - Atmos Energy \$92.7 million (total with securitization financing costs \$118,514,030) paid over 10 years.)
 - Black Hills Energy \$87.9 million paid over 5 years.
 - City of Eskridge \$1,1 million paid over 10 years.
 - Evergy Central \$122.2 million paid over 2 years.
 - Kansas Gas Service \$366 million (total with securitization financing costs \$450,000,000 paid over 10 years.)
 - Southern Pioneer \$17 million paid over 3 years.
 - Empire \$10.8 million paid over 15 years.

2023 KCC Report to the Kansas Legislature, dated January 2023, at Page 2. https://www.kcc.ks.gov/images/PDFs/legislative-reports/2023 Utilities and Common Carriers Report.pdf

- In addition, the State of Kansas provided low interest loans to municipal utilities to pay Winter Storm Uri costs in the amount of **\$78,409,646.79** (total loans at January 2023)
- This brings the Kansas economic impact to <u>\$886,241,590</u> for 5 days "additional costs" of Winter Storm Uri.

12. K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of <u>portions of documents</u> that are not otherwise exempt:

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that

the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

Thank you for your consideration of this Request.

Requestor respectfully further requests that the documents (invoices) requested herein, be provided as soon as is reasonable to do so.

James P. Zakoura

4. Gas Fired Generation, Gas Cuts, & Economic Cost of Transportation Cuts

Between February 9 and February 21, Evergy procured 1,137,645 MMBtu of natural gas. <u>Footnote 178.</u> During this period, Evergy received cuts from natural gas pipeline totaling 186,389 MMBtu, which were primarily related to upstream supply or capacity constraints. <u>Footnote 179.</u>

Report and Recommendation – KCC Utilities Division, dated January 19, 2022,

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514 at Page 90.

The regional impact and magnitude of the winter event resulted in significant cost exposure due to the price volatility of the spot market. Other than smaller first of the month (FOTM) or park storage transactions, Evergy relies primarily on spot-market gas purchases through day-ahead gas transactions and to a lesser extent, intraday transactions. During the winter event, Evergy purchased all of its natural gas on the spot market. 182 In January, Evergy spot market purchases accounted for 95.7% of its transactions. Footnote 183.

Report and Recommendation – KCC Utilities Division, dated January 19, 2022,

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514 at Page 92. In KCC Data Request No 18, Staff requested Evergy provide the detail of its actual natural gas fuel purchases for Staff and the Commission's review.

Such Response of Evergy is listed at page 95

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36ca1a2c44d8514 at page 90, 92, 94

James P. Zakoura

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James P. Zakoura Special Counsel | FOULSTON SIEFKIN LLP 7500 College Boulevard, Suite 1400 | Overland Park, Kansas 66210 D: 913.253.2142 jzakoura@foulston.com | Bio | vCard | www.foulston.com

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1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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

Laura Kelly, Governor

October 20, 2023

Cathy Dinges Evergy Kansas Central, Inc. Cathy.Dinges@evergy.com

Re: October 17, 2023 Kansas Open Records Request to KCC

Ms. Dinges,

As attorney of record for Evergy in Docket No. 21-EKME-329-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), please respond within five (5) business days of the date of this letter substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully,

m M. Ken Lynn M. Retz

Lýnn M. Retz Executive Director Custodian of Records

cc: James Zakoura, Foulston Siefkin, JZakoura@foulston.com



Glenda L. Cafer 800 SW Jackson, Suite 1310 Topeka, KS 66612 Phone: 785.232.2662 Direct: 785.430.2003 Fax: 785.232.9983 gcafer@morrislaing.com

October 27, 2023

Lynn M. Retz, Executive Director Custodian of Records Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604

> Re: Kansas Open Records Request of James Zakoura Documents Submitted by Evergy in Docket No. 21-EKME-329-COC

Dear Ms. Retz:

This letter is in response to your correspondence dated October 20, 2023, consistent with the provisions of Commission regulation, K.A.R. 82-1-221a. Mr. James Zakoura has made a request under the Kansas Open Records Act ("KORA") for copies of unredacted natural gas purchase invoices of Evergy that contain the information submitted to the Commission by Evergy under confidential seal during the Commission's investigation conducted in Docket No. 21-EKME-329-GIG ("21-329 Docket").¹

The KORA letter requests -

"unredacted copies of all natural gas sale – purchase documents (invoices), that evidence the purchase of natural gas by Evergy in the period February 9 – February 21, 2023², as examined by KCC Staff and that form the basis and detail of the Summary Table entitled "Evergy: Purchase Gas Costs by Flow date", and listed at Page 95 of the Report and Recommendation – KCC Utilities Division, dated January 19, 2022, and such Report and Recommendation filed on the KCC Web Site on January 21, 2022, and more further described as follows on Page 94 of the Report and Recommendation, as follows: <u>https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf</u>?Id=c3651abac4e9-415f-a36c-a1a2c44d8514"

These are invoices provided by Evergy to Staff in response to discovery conducted by Staff in the 21-329 Docket, specifically, KCC Data Request No. 18.

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¹ Mr. Zakoura's KORA request was attached to your October 20, 2023, correspondence. It will not be repeated in its entirety in this letter but will be referenced, as necessary, to provide a full response.

² This response assumes Mr. Zakoura meant "2021" and not "2023" here.

In accordance with K.A.R. 82-1-221a(b)(l), Evergy hereby substantiates the confidential nature of the requested invoices and objects to disclosure of this confidential information for the reasons addressed below.

A. <u>Applicable Law</u>

K.S.A. 45-218(a) states, in relevant part, that "All public records shall be open for inspection by any person, *except as otherwise provided by this act* ...". (Emphasis added)

K.S.A. 45-221(a)(1) states,

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee pursuant to K.S.A. 75-4315d, and attribute of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure. (Emphasis added)

K.S.A. 66-1220a prohibits the Commission from disclosuring trade secrets and confidential commercial information of an entity regulated by the Commission unless disclosure is found to be warranted after consideration of certain factors. The statute reads,

Disclosure of trade secrets and confidential information, when. (a) The state corporation commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information which is a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq., and amendments thereto) or any confidential commercial information of a corporation, partnership or individual proprietorship regulated by the commission unless the commission finds that disclosure is warranted after consideration of the following factors:

- (1) Whether disclosure will significantly aid the commission in fulfilling its functions;
- (2) the harm or benefit which disclosure will cause to the public interest;
- (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and
- (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

K.S.A. 60-3320(4) defines "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commission regulation, K.A.R. 82-1-221a characterizes protected information as "Any document, data, customer-specific contract, proprietary information, trade secret, or other commercial information ...".³ It states further that "A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission *in accordance with K.S.A. 66-1220a and amendments thereto*."⁴

B. The Invoices Requested Are Confidential

1. Mr. Zakoura states that the "referenced KCC Staff Report and Recommendation does not indicate if the requested documents (invoices) were designated by Evergy as confidential, and if so, any contended basis for such confidential designation, either at that time, or at the current time."⁵

The requested documents were, in fact, designated by Evergy as confidential when they were provided to the Commission. The responsive documents were marked "CONFIDENTIAL" and included the following explanation of the basis for the designation:

The information provided in this response contains CONFIDENTIAL information containing market analyses or other market specific information relating to services offered in competition with others.⁶

2. The information contained in the invoices requested by Mr. Zakoura is proprietary and commercially sensitive information. The information is also considered a "trade secret" because it represents methods, techniques and processes that Evergy uses in natural gas negotiations and purchases, especially during times of unusual market conditions such as what was faced during Winter Storm URI.

The invoices show Evergy's natural gas suppliers, purchase dates and dates of gas flow, the price paid, the individual amounts of gas purchased from each supplier for each date, and the specific terms of such pricing. The requested information has been maintained by Evergy and the Commission as highly confidential.

If publicly disclosed, it would interfere with Evergy's ability to acquire adequate gas supplies to serve its customers at a reasonable price. Evergy acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Evergy's gas supply packages, putting Evergy at a competitive disadvantage in acquiring gas supplies through this process and resulting in higher gas costs.

Disclosure would harm the long-term relationships between Evergy and its natural gas suppliers. If cold weather pricing events occur in the future, Evergy needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntarily disclosing gas pricing – even a few years after the event - may cause some suppliers to sell into other markets and avoid Evergy's market. This would have a direct negative effect on Evergy and its customers.

³ Paragraph (a)

⁴ Paragraph (b)(3), emphasis added.

⁵ KORA Request, ¶ 8.

⁶ Evergy Response to KCC Data Request No. 18.

Further, if Evergy's suppliers knew that their pricing and/or terms would be public information they would have no reason to give Evergy a better price on any transaction. Additionally, if Evergy were to become aware that a natural gas supplier had charged Evergy a higher price than it charged another entity, Evergy would be less likely to use that supplier in the future. Relationships matter in the marketplace, and they are built on trust and confidentiality. Releasing pricing from even one supplier could impact future pricing from all suppliers and even "dry-up" some markets (suppliers would stop selling to us).

3. Mr. Zakoura states that his KORA request -

is made 2 years and 8 months after the requested documents (invoices) were issued, and 1 year and 8 months after lapse of any confidential treatment of transaction documents pursuant to the industry standard North American Energy Standards Board ("NAESB") Contract. This KORA request is issued 1 year and 4 months after the Commission issued its final order in KCC Docket No. 21-EKME-329-GIE.⁷

Mr. Zakoura falls short of actually asserting that the passage of time has caused the confidential nature of the information to no longer apply. However, to the extent that might be the intent behind this paragraph of the KORA Request, it is incorrect for the reasons explained above.

4. If Mr. Zakoura is arguing that invoices are no longer confidential as a result of the terms of the NAESB Contract entered into between Evergy and its natural gas suppliers, that position must also fail. Although Evergy is not contractually obligated to maintain confidentiality after one year under the NAESB Contract, that fact does not constitute a determination that the invoices are no longer confidential under the Commission's standards. Disclosure would still harm Evergy and its customers, and that is the relevant question to be considered.

The invoices that are the subject of the KORA Request are still properly classified as confidential and should continue to be handled by the Commission accordingly, pursuant to K.S.A. 66-1220a.

C. Disclosure of the Confidential Information is not Warranted Under K.S.A. 66-1220a

As stated above, when requested information is properly classified as confidential within the meaning of K.S.A. 66-1220a and K.S.A. 60-3320, the Commission must consider four factors in determining if the confidential information should be disclosed. Those four factors are addressed below.

1. Disclosure will not aid the Commission in fulfilling its functions.

The KORA Request does not explain how disclosure would aid the Commission in fulfilling its functions. This information is already in the KCC's possession and was considered by the Commission in its decision in the 21-329 Docket. As parties to the 21-329 Docket, Mr. Zakoura and his clients also had access. Any action relevant to the Commission's docket can be pursued

⁷ KORA Request, ¶ 9.

within that docket subject to the Commission's Protective Order. The Protective Order is relevant to the KORA Request as a result of KORA's deference to K.S.A. 66-1220a, which is the primary statutory basis for the issuance of Protective Orders.

While civil litigation is on-going regarding gas prices during the Uri storm event, it is highly speculative as to whether that litigation might somehow aid the Commission in the enforcement of its laws and Orders. Further, there is no reason to believe the outcome of the civil litigation is in any way dependent upon public disclosure of the confidential information gained in the Commission's docket. The parties to the civil litigation can obtain the same information using the discovery procedures applicable to Chapter 60 proceedings.

2. <u>The public interest will be harmed and not benefited by disclosure.</u>

As explained above, public disclosure of the invoices would cause substantial harm to the public interest by interfering with Evergy's ability to acquire adequate gas supplies to serve its customers at a reasonable price. Natural gas purchasing is a competitive process. Disclosure would compromise Evergy's competitive bidding activities in acquiring gas supplies through this process which will result in higher prices for customers.

Mr. Zakoura does not explain how disclosing the competitive terms of Evergy's gas supply invoices would benefit the public. He simply asserts that there is "a compelling public interest to be served by making public all such natural gas supply cost documents, due to the amount (\$96,238,432), and further due to the fact that the Commission has ordered these costs to be paid by retail ratepayers of Evergy over a 2-year period⁸, and that, "In total, the KCC ordered that \$807,831,944 of "Additional Natural Gas Costs" be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records."⁹

The fact that retail ratepayers have been ordered to pay some of the high gas costs incurred during Winter Storm URI does not explain how having general public access to the confidential competitive invoices benefits the public. If district court litigation against gas suppliers or others results in the recovery of some of the URI costs, Evergy is required to pass any such amounts back to customers.

There is no explanation of who in the general public is seeking this information and for what purposes. The public interest was protected by the Commission's investigation and action taken in the 21-329 Docket. Because the 21-329 Docket has been resolved and the Settlement in the case has been approved by a final Commission Order, the public interest has been protected and disclosure does not promise additional public benefits.

As Mr. Zakoura acknowledges, the KCC reviewed the confidential gas supply pricing information and thereafter approved a 2-year plan for Evergy to recover gas costs in the amount of \$122.1 million from customers. The Commission continues to possess those confidential records. Evergy is aware that Mr. Zakoura is pursuing civil litigation against natural gas marketers, but the

⁸ KORA Request, ¶ 10.

⁹ KORA Request, ¶ 11.

Commission did not state that the confidential information submitted in the 21-329 Docket would or should be disclosed after a year so that other intervening parties could pursue their own litigation against natural gas suppliers.

3. Evergy will be harmed by disclosure.

Evergy has previously explained how public disclosure of the invoices would cause substantial harm to Evergy by interfering with its ability to acquire adequate gas supplies to serve its customers at a reasonable price. Evergy acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Evergy's gas supply packages, putting Evergy at a competitive disadvantage in acquiring gas supplies through this process and resulting in harm to Evergy's customers through higher gas costs. Disclosure would harm the long-term relationships between Evergy and its natural gas suppliers. If cold weather pricing events occur in the future, Evergy needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntarily disclosing gas pricing – even a few years after the event - may cause some suppliers to sell into other markets and avoid Evergy's market. This would have a direct negative effect on Evergy's operations.

Mr. Zakoura's KORA Request does not address the harm to Evergy that disclosure would cause to future gas availability or pricing from these suppliers.

4. <u>The Commission has implemented alternatives to disclosure that serve the public interest and protect Evergy.</u>

Factor four requires the Commission to consider alternatives to disclosure that will serve the public interest and protect the utility. The Commission has done that in the 21-329 Docket by issuing a two-tiered Protective Order that allows all parties to have access to normal confidential information and allows some parties – including Mr. Zakoura and his clients – access to all highly-confidential information, including the invoices that are the subject of the KORA Request. The Commission's process fairly and efficiently balanced the interests of the public, Evergy and its natural gas suppliers.

In addition to the highly confidential information Mr. Zakoura received as a party to the 21-329 Docket, he also has public information regarding the magnitude of natural gas supply from the overall amount approved by the Commission in the 21-329 Docket. He also has the specific list of suppliers who sold gas to Evergy during the Storm Uri event as provided to the Commission and intervening parties, and he has information from the other KCC storm dockets related to other Kansas utility companies. Mr. Zakoura and his clients could use that information to evaluate or proceed with a lawsuit and obtain additional pricing information under the appropriate discovery procedures allowed for in that lawsuit.

Evergy does not believe that Mr. Zakoura has provided adequate reasons to support disclosure of the requested confidential information under the Commission's standards.

D. Commission Precedent

Evergy's position is consistent with the Commission's recent decision on a nearly identical KORA request submitted by Mr. Zakoura seeking natural gas purchase invoices of Black Hills in Docket No. 21-BHCG-334-GIG ("21-334 Docket"). In that case, the Commission held as follows:

In considering K.S.A. 66-1220a's four factors the Commission finds the following:

- (1) No party argues that disclosure would or would not aid the Commission in fulfilling its functions. It is possible that through litigation Mr. Zakoura could discover violations of Kansas law or Commission regulations, aiding the Commission in their enforcement, but this possibility is far too attenuated from the actual disclosure, nor is it clear if the possibility of such litigation is dependent on disclosure.
- (2) The Commission agrees that disclosure of Black Hills' contracts may affect their ability to compete for low cost gas supplies in the future, which would cause harm to both Black Hills and the public.
- (3) As Black Hills points out because he was involved in the 21-BHCG-334-GIG Docket, Mr. Zakoura already has access to the information he seeks, albeit within the bounds of the Commission's Protective and Discovery Order. Alternatives to disclosure exist. Such alternatives include (a) proceeding with publicly available information, (b) obtaining consent from Black Hills' suppliers and (c) use of discovery in litigation. The Commission is aware of at least two class action cases filed by Mr. Zakoura related to natural gas suppliers during Winter Storm Uri.

After reviewing the four factors in K.S.A. 66-1220(a) the Commission finds that disclosure is not warranted.

(See also the Commission's ruling in Docket No. 21-KGSG-332-GIG, finding that substantially similar information constituted trade secrets and should not be made public, citing Docket No. 21-BHCG-334-GIG, and the Commission's Order on KORA Request in KCC Docket No. 22-GIMX-171-MIS.)

E. Affidavit of Evergy Subject Matter Expert

Included with this letter is an affidavit from John Carlson who is the Sr. Manager of Market Operations. In this role, John Carlson is responsible for the natural gas purchases and processes of Evergy. His affidavit declares the truth and accuracy of the statements contained in this letter.

F. Summary

In summary, the information requested in the KORA Request was properly classified as confidential. The information requested continues to be classified as confidential at this time. The reasons given as the basis for confidentiality when the invoices were initially submitted to the Commission are still accurate and applicable. Mr. Zakoura fails to support disclosure of the requested invoices under the terms the Commission is required to evaluate such requests, as set out in K.S.A. 66-1220a.

Disclosure would not benefit but would cause substantial harm to the public and Evergy by interfering with Evergy's ability to acquire gas supplies and serve the public at a reasonable price.

For the foregoing reasons, Evergy respectfully requests that its confidential information not be produced in response to the KORA Request.

Respectfully,

Is Glenda Cafer

Glenda L. Cafer



Glenda L. Cafer 800 SW Jackson, Suite 1310 Topeka, KS 66612 Phone: 785.232.2662 Direct: 785.430.2003 Fax: 785.232.9983 gcafer@morrislaing.com

October 27, 2023

Lynn M. Retz, Executive Director Custodian of Records Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604

> Re: Kansas Open Records Request of James Zakoura Documents Submitted by Evergy in Docket No. 21-EKME-329-COC

Dear Ms. Retz:

Please find attached the notarized affidavit of Mr. John Carlson. This notarized affidavit should be substituted for the one included with Evergy's response letter submitted in the above referenced matter on Friday, October 27, 2023.

Thank you.

Respectfully,

Isl Glenda Cafer

Glenda L. Cafer

WICHITA . TOPEKA . WEST PALM BEACH

BEFORE THE KANSAS CORPORATION COMMISSION

AFFIDAVIT OF JOHN CARLSON

STATE OF KANSAS)
) 55
COUNTY OF SHAWNEE)

I, John Carlson, hereby state as follows:

My name is John Carlson, and I am employed in the position of Sr. Manager Market 1. Operations with Evergy, Inc ("Evergy"). I have been employed in that position for 6 years. In my position, I am responsible for the procurement and scheduling of natural gas for Evergy's generation fleet.

2. I have reviewed the letter of Evergy's counsel to which this affidavit is attached dated October 27, 2023, responding to the Kansas Open Records Act ("KORA") request of Mr. James Zakoura. 1 am familiar with the substance of the letter and the KORA request.

I hereby attest that, to the best of my knowledge and belief, the contents of Evergy's 3. letter and representations made therein are true and correct.

	A	In Conton
John Carlson	0	

Subscribed and sworn before me this 30th day of October, 2023.

Notary Public

NOTARY PUBLIC - State of Kansa LESLIE R. WINES WAPPT EXPIRES

My commission expires: May 30, 2026

Page 1 of 1

From:	Zakoura, James
To:	Sally Conn [KCC]; Lynn Retz [KCC]; Brian Fedotin [KCC]; David Cohen [KCC]
Cc:	Zakoura, James
Subject:	KORA Request of James P. Zakoura for "Public Records" maintained and in the possession of the Kansas Corporation Commission. "The Empire District Electric Company d/b/a Liberty - KCC Docket No. 21-EPDE=330- GIE
Date:	Wednesday, November 8, 2023 12:05:52 PM

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

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I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

Applicable Law - The Kansas Open Records Act ("KORA") - K.S.A. 45-215 et. seq.

- 1. The Commission is an Agency of the state of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
- 2. **"K.S.A. 45-216. Public policy that records be open.** (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
- 3. Public records are records made, <u>maintained</u>, <u>created or possessed by a public agency</u> - including the Commission.
- 4. K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of <u>portions</u> of documents that are not otherwise exempt:

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

KCC Docket No. 21-EPDE=330-GIE . "The Empire District Electric Company d/b/a Liberty

5. In KCC Docket No. 21-EPDE=330-GIE, the KCC considered whether it was appropriate for "The Empire District Electric Company d/b/a Liberty to recover from its retail ratepayers in Kansas, the amount of \$10.806,957. The KCC Order held that such amount could be recovered by Liberty from its retail ratepayers in Kansas. This amount will be recovered over a 13-year period, and with interest thereon will total \$16.6 million to be recovered from retail ratepayers of Liberty.

> https://www.kcc.ks.gov/news-6-1-23 KCC News Release, dated June 1, 2023 **"KCC approves settlement agreement allowing Liberty-Empire to** recover winter storm costs over time"

https://estar.kcc.ks.gov/estar/ViewFile.aspx/20230601104131.pdf? Id=65185978-65be-4424-ab30-733231a7c273

KCC Docket No. 21-EPDE-330-GIE – The Empire District Electric Company d/b/a Liberty

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT, dated June 1, 2023

6. The KCC Order permitted Liberty to recover from each of its residential ratepayers, the amount of \$893.88 for 5 - 6 days of electric power in February 2021.

 Liberty described the volume (85,500 MMBtu) of natural gas purchased at "Gas Daily Index Prices" during February 2021, that ranged in price from \$329.00 per MMBtu / unit. to \$622.00 per MMBtu / unit.

Liberty described the volume (24,650 MMBtu) purchased at the First of Month, Inside FERC Gas Market, at a price of \$2.54 per MMBtu / unit.

"Yes. As the possibility for cold weather increased, Liberty purchased additional natural 2 gas to secure enough supply to run our combined cycle units at their economic max if 3 needed and to minimize the premium on the gas daily delivered ("GDD") as the weather forecasts began to predict colder temperatures. The additional quantities were procured for the period of February 9 – February 19 resulting in a total secured quantity of approximately 110,000 DTh of natural gas per day. As a result, the total amount of natural gas available for the period of February 9, 2021 – February 19, 2021, was as 8 follows:

- 24,650 DTh/day from IFERC monthly
- 85,500 DTh/day from Gas Daily Index SSCGP (includes 30,000 DTh/day AMA)

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202211231624232181.pdf? Id=0f9fb8c2-d6d5-41a6-8db0-beb55d331da9

Direct Testimony of Aaron J. Doll, dated November 23, 2022, at page 7, in KCC Docket No. 21-EPDE-330-GIE

8. The following Public Records that are maintained and possessed by the KCC, are requested:

All unredacted invoices that evidence the purchase by or on behalf of Liberty of:

 85,500 DTh/day from Gas Daily Index – SSCGP (includes 30,000 DTh/day AMA)

The Requestor respectfully requests that the requested documents be provided as soon as reasonably possible.

Thank you for your consideration.

James P. Zakoura Requestor

James P. Zakoura Special Counsel | FOULSTON SIEFKIN LLP 7500 College Boulevard, Suite 1400 | Overland Park, Kansas 66210 D: 913.253.2142 jzakoura@foulston.com | Bio | vCard | www.foulston.com

IMPORTANT: This communication contains information from the law firm of Foulston Siefkin LLP which may be confidential and privileged. If it appears that this communication was addressed or sent to you in error, you may <u>not</u> use or copy this communication or any information contained therein, and you may <u>not</u> disclose this communication or the information contained therein to anyone else. In such circumstances, please notify me immediately by reply email or by telephone. Thank you.

1500 SW Arrowhead Road Tapeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner Kansas Corporation Commission

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

Laura Kelly, Governor

November 8, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request rcv'd. 11.8.23 - KCC Docket No. 21-EPDE-330-GIG

Mr. Zakoura,

On November 8, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for "all unredacted copies invoices that evidence the purchase by or on behalf of Liberty of 85,500 DTh/day from Gas Daily Index – SSCGP (includes 30,000 DTh/day AMA)" filed in Docket No. 21-EPDE-330-GIG.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Empire

District Electric Company of your request for confidential information wherein they can response in accordance with the regulation. Page 2 November 8, 2023

The process outlined in K.A.R. 82-1-221a(b) is:

(1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.

(2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.

(3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1) and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,

Jym U. Pet

Lynn M. Retz Official Custodian of Records Executive Director

1500 SW Arrowhead Road Topeka, KS 66604-4027

Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner



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Laura Kelly, Governor

November 8, 2023

Diana Carter Director, Legal Services The Empire District Electric Co. d/b/a Liberty Diana.Carter@libertyutilities.com James G. Flaherty Anderson & Byrd, LLP jflaherty@andersonbyrd.com

Charlotte Emery Senior Director, Rates & Regulatory Affairs The Empire District Electric Co. d/b/a Liberty Charlotte.Emergy@libertyutilities.com

Re: November 8, 2023 Kansas Open Records Request to KCC

Ms. Carter, Ms. Emery and Mr. Flaherty,

As counsel of record for The Empire District Electric Company d/b/a Liberty in KCC Docket No. 21-EPDE-330-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), please respond within five (5) business days of the date of this letter substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully,

- M. K

Lynn M. Retz Executive Director Custodian of Records

cc: James Zakoura, Foulston Siefkir, JZakoura@foulston.com

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November 14, 2023

Sent by Electronic Mail

Ms. Lynn M. Retz Executive Director Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, Kansas 66604-4027

> Re: Kansas Open Records Act ("KORA") Request Docket No. 21-EPDE-330-GIG

Dear Ms. Retz:

Mr. Zakoura requests the Kansas Corporation Commission ("Commission") provide him copies of un-redacted natural gas purchase invoices submitted by The Empire District Electric Company d/b/a Liberty ("Liberty") to the Commission in Docket No. 21-EPDE-330-GIG ("330 Docket"). The invoices related to natural gas fuel supplies purchased by Liberty during Storm Uri. Liberty designated the redacted information as confidential trade secrets because public disclosure of the information would cause substantial harm to Liberty's customers by interfering with Liberty's ability to acquire adequate natural gas fuel supplies at a reasonable price. Accordingly, Liberty objects to the disclosure of the un-redacted natural gas purchase invoices.

Liberty purchases natural gas supplies in order to fuel its natural gas powered electric generation units. Those generation units include Riverton 10, Riverton 11, Stateline 1, Energy Center 1, 2, 3 and 4, Riverton 12 and the Stateline Combined Cycle unit. The natural gas commodity industry is an unregulated and highly competitive market. In general, maintaining the confidentiality of each element of a natural gas purchasing strategy is absolutely essential to ensure equal bargaining positions between the different participants involved in the natural gas commodity industry. More specifically, if Liberty is required to publicly disclose any element of its gas purchasing strategy, it would eliminate Liberty's equal bargaining position. Elimination of that equal bargaining power

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Ms. Lynn M. Retz Page 2 November 14, 2023

would place Liberty at a competitive disadvantage compared to those participants who are not required to disclose elements of their gas purchasing or gas sales strategies to the public.

Under K.S.A. 66-1220a (a), the Commission has a duty not to "disclose or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, **any information which is a trade secret under the uniform trade secrets act, K.S.A. 60-3320**, or any confidential commercial information of a corporation...regulated by the commission unless the commission finds that disclosure is warranted after consideration of four factors." (Emphasis added).

Liberty's gas supply information and gas purchasing process, including its historical gas supply invoices, is clearly a trade secret and confidential commercial information. K.S.A. 60-3320(4) defines "trade secret" to mean,

...information, including a formula, pattern, compilation, program, device, method, technique, or process that (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Liberty's gas supply information clearly meets the definition of a trade secret. Liberty's gas supply information derives its economic value by not being known by other participants in the natural gas commodity market. Moreover, disclosure of said information could provide those participants economic value at the expense of Liberty and its utility customers.

If the Commission were to require Liberty to disclose un-redacted natural gas supply invoices for natural gas purchased by Liberty to fuel its generation units during February 2021, then all of the participants in the natural gas commodity market (both suppliers and other purchasers) would have access to that information. Those participants would have the names of Liberty's suppliers, specific contract quantities, specific contract prices, specific contract terms and delivery locations. Liberty, on the other hand, would have none of that information from any of the other participants in the natural gas commodity market, who are not required to publicly disclose such information. This would mean that a municipality or industrial customer directly connected to Southern Star's interstate pipeline, who is competing against Liberty for the same natural gas supplies to fuel their electric generators or their natural gas fired boilers, would have all of Liberty's natural gas purchasing information. However, Liberty would not have that same information relating to the municipality or industrial customer. Liberty and its customers would be placed at a competitive disadvantage in Ms. Lynn M. Retz Page 3 November 14, 2023

obtaining those natural gas supplies that it and the municipality and the industrial customer are competing against each other to obtain. If Liberty's historical gas supply information is maintained as confidential, then it and its customers are not placed at a disadvantage and can equally compete for natural gas supplies against the municipality, the industrial customer, the marketer or other gas purchaser in the natural gas commodity market.

Not only is Liberty placed at a disadvantage at competing with other natural gas purchasers in the natural gas commodity market if its information is released to the public, it is also placed at a disadvantage in negotiating with gas suppliers, if those gas suppliers have all of Liberty's historical gas contracts and invoices. If gas suppliers can extrapolate the information in Liberty's February 2021 natural gas invoices to determine whether Liberty pays below or above the index price at certain delivery locations because that information has been made public, then Liberty and its customers lose their equal bargaining powers because Liberty does not have that same information from the gas suppliers because that information is not subject to public disclosure.

Both the U.S. Supreme Court and the Kansas Supreme Court recognize the importance of maintaining the confidentiality of an entity's trade secrets and commercial information. Both courts have recognized "that the common-law right of public inspection must bow before the power of the court to insure that records will not be used to gratify private spite...or [be used] as sources of business information that might harm a litigant's competitive standing." See, Stephens v. Van Arsdale, 227 Kan. 676, 688(1980) (citing Nixon v. Warner Comm'n, Inc., 435 U.S. 589, 598 (1978).

This Commission has recently addressed whether natural gas supply contracts and invoices relating to Storm Uri are confidential trade secrets protected from disclosure per the factors set forth in K.S.A. 66-1220a. *See, Order on KORA Request,* Docket No. 24-GIMX-238-MIS ("238 Docket"), October 12, 2023. In the 238 Docket, Mr. Zakoura filed a KORA request asking the Commission to provide un-redacted natural gas supply contracts and invoices relating to purchases made by Black Hills Energy during Storm Uri. Black Hills objected. It made the same arguments being made by Liberty in this docket. The Commission applied the factors set forth in K.S.A. 66-1220a and held that natural gas supply contracts and invoices relating to Storm Uri were confidential trade secrets and not subject to disclosure. The Commission found that disclosure of contracts and invoices may affect a natural gas distribution company's ability to compete for low cost gas supplies in the future, which would cause harm to both the utility and the public. *See, Order on KORA Request,* 238 Docket, October 12, 2023, page 4, paragraph 10. The Commission held that it was unclear as to how disclosure would aid the Commission. It found that alternatives to disclosure existed for Mr. Zakoura through his class action cases. *Id.*

This Commission reached a similar conclusion a couple of times in Docket No.

Ms. Lynn M. Retz Page 4 November 14, 2023

21-KGSG-332-GIG ("332 Docket") relating to the same issue. In the 332 Docket, Mr. Zakoura requested on several occasions that Kansas Gas Service's natural gas supply contracts and invoices relating to Storm Uri be made public. Kansas Gas Service contended that the redacted information in the contracts and invoices constituted trade secrets and if released to the public could place the utility at a competitive disadvantage in acquiring natural gas supplies for its customers. In denying Mr. Zakoura's request, the Commission held:

...disclosure of the information as requested in NGTCC's motions holds great potential of harm to current and future Kansas natural gas customers through higher purchased gas costs. A general argument in favor of transparency cannot outweigh this very real harm to customers. The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long standing and well-reasoned Commission practices related to non-disclosure of trade secrets and confidential commercial information.

Order Denying NGTCC's Motion to Remove Confidential Designations for Certain Documents, 332 Docket, dated September 9, 2021, page 9, paragraph 17.

The Commission reached the same conclusion in Docket No. 22-GIMX-171-MIS, See, Order on KORA Request, 22-171 Docket, dated December 9, 2021, page 3, paragraph 8.

More recently, the Commission issued an Order Opening General Investigation in Docket No. 24-GIMX-376-GIV (November 9, 2023). The Commission noted that it has recently received several requests from Mr. Zakoura for the Commission to publicly disclose natural gas invoices relating to Storm Uri. The Commission stated that in the Storm Uri dockets, including Liberty's Storm Uri docket, all parties, including, Staff, CURB and the Kansas Attorney General's Office had access to all of the natural gas supply information subject to the Protective Orders issued by the Commission in order to protect the confidential gas supply information from being released to the public. The Commission concluded that while it is generally disinclined to revisit its confidentiality designations, given the unique nature of Storm Uri and the passage of time, causes it to reevaluate whether the confidential designation relating to the natural gas supply information relating to Storm Uri "should remain in place, be modified, or lifted, entirely." Id. at paragraphs 2-3, page 2. Based upon this recent Order, it would appear to be appropriate that a decision on Mr. Zakoura's request for Liberty's un-redacted natural gas supply invoices relating to Storm Uri be deferred to the Commission's general investigation. The Commission took a similar position in the 238 Docket, where it maintained the confidential designation on Black Hills' un-redacted gas supply invoices until a decision is made in the general investigation. Order on Petition for Reconsideration, 238 Docket, page 5, paragraph 15 (November 9, 2023).

Ms. Lynn M. Retz Page 5 November 14, 2023

Based upon the analysis conducted by the Commission in its recent decision in the 238 Docket, and its decisions in the other above-referenced dockets, Liberty requests that (1) the Commission find that the redacted information in the natural gas supply invoices constitute trade secrets, as defined in K.S.A. 60-3320(4); (2) based upon the factors set forth in K.S.A. 66-1220a, find that disclosure of said confidential information is not warranted; and (3) deny Mr. Zakoura's request for said confidential information. In the alternative, Liberty requests that the Commission retain the confidential designation on the requested documents and defer Mr. Zakoura's request to its general investigation.

Sincerely,

James G. Flaherty jflaherty@andersonbyrd.com

JGF:rr

ec: jzakoura@foulston.com diana.carter@libertyutilities.com

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Laura Kelly, Governor

October 31, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request rcv'd. 10.24.23 – KCC Docket Nos. 21-BHCG-334-GIG; 21-BHCG-370-MIS; 21-KGSG-332-GIG; 21-ATMG-333-GIG; and 21-EKME-329-GIE

Mr. Zakoura,

On October 24, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for all documents prepared by KCC Staff that supports or substantiates the calculation of: (1) \$87.9 million of "Additional Natural Gas Costs" that KCC Staff recommended be recovered from retail sales gas customers of Black Hills, in KCC Docket Nos. 21-BHCG-334-GIG and 21-BHCG-370-MIS; (2) \$358,086,241 of "Additional Natural Gas Costs" that KCC Staff recommended be recovered from retail sales gas customers of Kansas Gas Service, in KCC Docket No. 21-KGSG-332-GIG; (3) \$102,517,847 of "Additional Natural Gas Costs" that KCC Staff recommended be recovered from retail sales gas customers of Atmos Energy, in KCC Docket No. 21-ATMG-333-GIG; and (4) \$122.2 million of "Additional Natural Gas Costs" that KCC Staff recommended be recovered from retail sales gas customers of Energy, in KCC Docket No. 21-ATMG-333-GIG; and (4) \$122.2 million of "Additional Natural Gas Costs" that KCC Staff recommended be recovered from retail sales electric customers of Evergy Kansas Central, in KCC Docket No. 21-EKME-329-GIE.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

(1) Whether disclosure will significantly aid the commission in fulfilling its functions;

(2) the harm or benefit which disclosure will cause to the public interest;

(3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

(4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

(b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

After weighing the four factors in K.S.A. 66-1220a, disclosure will not aid the Commission in fulfilling its function, and would likely harm regulated utilities. Also, if the information sought is for the purposes of litigation, it can be obtained through discovery. Thus, your request is denied pursuant to K.S.A. 66-1220a.

Pursuant to K.S.A. 45-221(a)(20) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:



Page 2 October 31, 2023

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

Thus, to the extent you are seeking Staff's notes, preliminary drafts and recommendations, Requests 1-4 are denied, pursuant to K.S.A. 45-221(a)(20).

Sincerely,

Isl Brian G. Fedotin

Brian G. Fedotin General Counsel

Zakoura, James

From:	Zakoura, James
Sent:	Tuesday, November 28, 2023 9:13 AM
To:	Sally Conn; Lynn Retz [KCC]; 'b.fedotin@kcc.ks.gov'; Justin Grady
Cc:	Zakoura, James
Subject:	Kansas Open Records Act Request of James P. Zakoura, dated November 28, 2023.
Attachments:	Exhibit A.pdf

Please reference the following":

https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202111301630588291.pdf?Id=e2aa450e-92f7-4926-a35c-da77b98c3855 In the Matter of the Investigation into Kansas Gas Service Company, a Division of One Gas Inc. Regarding the February 2021 Winter Weather Events, as Contemplated by Docket No. 21-GIMX-303-MIS. Docket No. 21-KGSG-332-GIG Direct Testimony and Testimony in Support of Settlement Agreement, of Justin T. Grady Utilities Division, Kansas Corporation Commission November 30, 2021

I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

The following Public Records that are maintained and possessed by the KCC, are requested:

Exhibit A pages, attached hereto, of the Testimony of Mr. Grady, are requested to be produced on an unredacted, complete basis.

Applicable Law - The Kansas Open Records Act ("KORA") - K.S.A. 45-215 et. seq.

- The Commission is an Agency of the state of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
- 2. **"K.S.A. 45-216. Public policy that records be open.** (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
- Public records are records made, <u>maintained</u>, <u>created or possessed by a public agency</u> - including the Commission.
- 4. K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of <u>portions of documents that</u> <u>are not otherwise exempt:</u>

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is

for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

KCC Docket No. 21-KGSG-332-GIG

- 5. In KCC Docket No. 21-KGSG-332-GIG, KCC Staff Witness, Justin T. Grady, in his Testimony dated November 30, 2021, included a 3 page listing of force majeure events by:
 - Number #
 - Date
 - Pipeline
 - Supplier
 - Dth/day Actual
 - Dth/day Contract
 - Cut
 - Force Majeure Letter

All of such information in the Testimony of Mr. Grady is redacted on the first 2 pages, and on the third page, all supplier identities are redacted.

The three referenced pages of the Testimony of Mr. Grady are attached hereto. Exhibit A.

6. The following Public Records that are maintained and possessed by the KCC, are requested:

Exhibit A pages, attached hereto, of the Testimony of Mr. Grady, are requested to be produced on an unredacted, complete basis.

The Requestor respectfully requests that the requested documents be provided as soon as reasonably possible.

Thank you for your consideration.

James P. Zakoura Requestor

James P. Zakoura

Special Counsel | FOULSTON SIEFKIN LLP

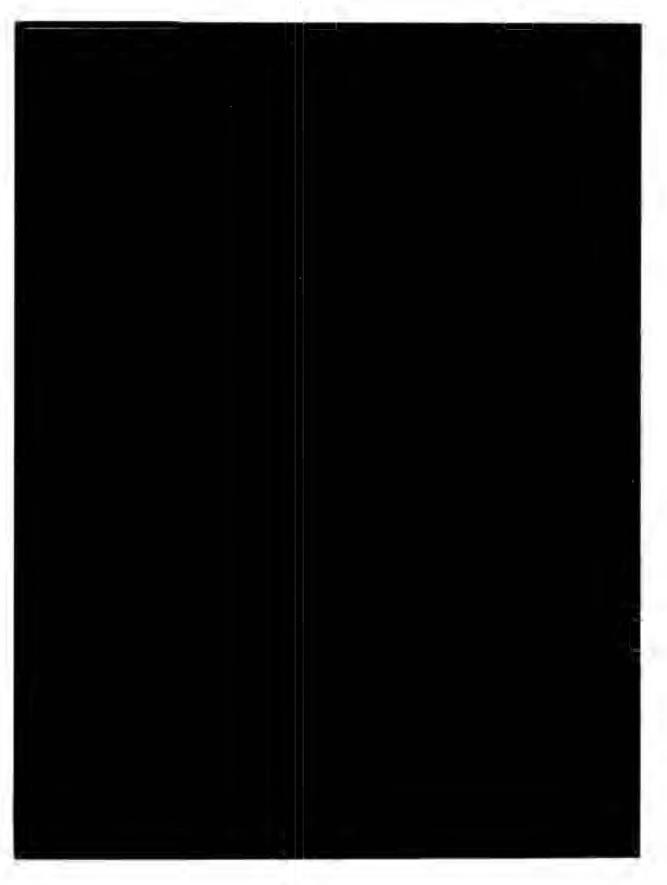
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IMPORTANT: This communication contains information from the law firm of Foulston Siefkin LLP which may be confidential and privileged. If it appears that this communication was addressed or sent to you in error, you may <u>not</u> use or copy this communication or any information contained therein, and you may <u>not</u> disclose this communication or the information contained therein to anyone else. In such circumstances, please notify me immediately by reply email or by telephone. Thank you.

CONFIDENTIAL

# Date	Pipeline	Supplier	Oth/day Actual	Dth/day Contract	Cut	Force Majeure Letter





CONFIDENTIAL

#	Supplier Notified	Areas	Begin Date E	ind	
1		Sequent Contract	2/11/21		
2		Jayhawk Plant	2/11/21		
3		Blanket NAESB 1618	2/19/21	2/23/21	
4		Gov. Abbott NAESB FMJ	2/12/21		
5		Various			
6		ANR Pipeline	2/11/21		
7		Jayhawk Plant	2/11/21	2/19/21	
8		Panhandle Field Zone	2/18/21	2/19/21	
9		OK FMJ	2/8/21		
10		Jayhawk Plant	2/12/21	2/19/21	
11		Enable Pawnee /KPC	2/12/21	2/19/21	
12		Jayhawk Plant	2/9/21		
13		ONG FMJ	2/12/21		

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Andrew J. French, Chairperson Dwight D. Keen, Commissioner Annie Kuether, Commissioner Laura Kelly, Governor

November 30, 2023

James P. Zakoura Foulston Siefkin 7500 College Blvd., Ste. 1400 Overland Park, KS 66210 JZakoura@foulston.com

Re: KORA Request rcv'd. 11.28.23 – KCC Docket No. 21-KGSG-332-GIG

Mr. Zakoura,

On November 29, 2023, we received your request for unredacted pages from Justin Grady's testimony filed on November 30, 2021, in Docket No 21-KGSG-332-GIG. Your request appears to cover only 3 pages of testimony, but you did not provide the page numbers you wanted. Instead, you created an Exhibit A with the redacted, unnumbered pages.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors.

As you are aware, while the requested information is confidential, those designations are being addressed in the 24-GIMX-376-GIV Docket. You have been granted intervention in that Docket.

Pursuant to K.S.A. 45-221(a)(20), records specifically prohibited or restricted by state statute are not subject to disclosure.

Sincerely,

|s| Brian G. Fedotin

Brian G. Fedotin General Counsel