

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

In the Matter of the Investigation into Kansas)
Gas Service, a Division of One Gas, Inc.)
Regarding the February 2021 Winter) Docket No. 21-KGSG-332-GIG
Weather Events, as Contemplated by Docket)
No. 21-GIMX-303-MIS.)

**POST-HEARING BRIEF OF CITIZENS' UTILITY RATEPAYER BOARD
IN SUPPORT OF NON-UNANIMOUS SETTLEMENT AGREEMENT**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits this post-hearing brief in support of the non-unanimous Settlement Agreement filed with the Commission on November 19, 2021 ("Financial Plan Settlement Agreement").

INTRODUCTION AND SCOPE OF POST-HEARING BRIEF

1. The Financial Plan Settlement Agreement pertains to the Plan to Minimize the Financial Effects of the 2021 Winter Weather Event (also referred to as Winter Storm Uri or the Weather Event) filed by Kansas Gas Service, a Division of One Gas, Inc., (KGS) on July 30, 2021. This post-hearing brief supports the request of KGS, KCC Staff, CURB, along with the Natural Gas Transportation Customer Coalition with respect to certain issues, (together, "the signatories") that the Kansas Corporation Commission ("Commission" or KCC) approve the Financial Plan Settlement Agreement. In particular, the signatories to the Financial Plan Settlement Agreement ask the Commission to approve, among other provisions, the amount of extraordinary costs incurred by KGS in providing continued service to its customers during Winter Storm Uri ("Qualified Extraordinary Costs"). This amount includes carrying charges to be paid by KGS's retail sales customers.

2. The issues that the Commission will determine relative to the Financial Plan Settlement Agreement are only some of the issues to be addressed in this docket as a whole. The signatories have asked the Commission to consider several issues later in this docket or in a subsequent docket. One important deferred issue is the allocation and payment terms of amounts owed to KGS by its marketers,

for amounts purchased by individual transportation customers during Winter Storm Uri, as set forth in the Amended Nonunanimous Settlement Agreement (pertaining to the Motion for Limited Waiver) filed with the Commission on December 1, 2021.

3. In connection with that issue, CURB requested the signatories to provide in the Financial Plan Settlement Agreement how defaults, if any, by marketers of amounts that they owe KGS would be treated. In these regards, CURB was opposed to the retail sales customers being solely responsible for Winter Storm Uri costs caused by marketers. Upon information and in good faith, CURB understood that the signatories agreed to defer that issue to a later proceeding. CURB agreed that the issue would be best handled at a later proceeding when CURB and the other parties fully address this issue. In fact, without the agreement to defer that particular issue, CURB would not have executed the Financial Plan Settlement Agreement. **CURB requests that the Commission recognize the parties' agreement that the issue of marketer and transport customer defaults is not part of the Financial Plan Settlement Agreement and the parties will defer the issue to a later hearing.**

4. In another phase of this docket, the parties will address what steps KGS can and should take to prevent the catastrophic consequences arising out of another winter storm like Winter Storm Uri. Furthermore, the parties have agreed to participate in a related but subsequent docket wherein the Commission will determine the provisions of a Financing Order pertaining to the issuance of securitized bonds to finance the Qualified Extraordinary Costs.

5. All of the parties, except one, either support the Financial Plan Settlement Agreement or do not object to the same. Symmetry Energy Solutions, LLC (“Symmetry”) opposes the Financial Plan Settlement Agreement. Therefore, the Financial Plan Settlement Agreement is non-unanimous.

ABREVIATED PROCEDURAL BACKGROUND

6. In mid-February 2021, Winter Storm Uri imposed extreme and unprecedented freezing weather conditions across the U.S. It caused widespread infrastructure and operational problems for

the production and delivery of natural gas, leading to sudden and sustained natural gas supply disruptions and substantially higher than normal wholesale natural gas prices.¹

7. Pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), on February 15, 2021.² Among other things, the Emergency Order directed all jurisdictional natural gas and electric utilities to do everything necessary to ensure that their customers and the customers of interconnected, non-jurisdictional Kansas utilities continued to receive service during Winter Storm Uri.³ Additionally, the Commission authorized jurisdictional natural gas and electric utilities to defer into a regulatory asset any extraordinary costs associated with meeting that duty.⁴ The Commission required the deferral accounts to be segregated by detailed cost categories and to contain sufficient information for the Commission to perform a subsequent review for prudence and reasonableness.⁵ The Emergency Order stated that the deferral is for accounting purposes only, and that ratepayer recovery would be determined in future proceedings.⁶

8. On February 26, 2021, Bluemark Energy, LLC (“Bluemark”) filed a Petition to Intervene.⁷ On March 1, 2021, Kansas Corporation Commission Staff (“KCC Staff”) filed a Report and Recommendation in Docket No. 21-GIMX-303-GIV.⁸ CURB filed a Petition to Intervene and Motion for Protective Order and Discovery Order in that docket on the same date.⁹

¹ Josh Frantz, Testimony In Support Of Settlement Agreement (November 30, 2021).

² *Emergency Order*, ¶1, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Bluemark Energy, LLC Petition to Intervene Docket No. 21-GIMX-303 (February 26, 2021).

⁸ Staff Report and Recommendation. Docket No. 21-GIMX-303 (March 1, 2021).

⁹ CURB Petition to Intervene and Motion for Protective Order and Discovery Order. Docket No. 21-GIMX-303 (March 1, 2021).

9. On March 9, 2021, the Commission issued an Order Adopting KCC Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective and Discovery Order. Accordingly, the Commission assigned this company-specific docket to KGS in order to document issues raised in the Commission's investigation of KGS's reactions to and performance during Winter Storm Uri, as well as to record KGS's specific filings for financial impact plans.¹⁰ Additionally the Commission granted the petitions to intervene filed by Bluemark and CURB.

10. Between March 9, 2021 and July 1, 2021, the Natural Gas Transportation Customer Coalition (NGTCC), Constellation NewEnergy-Gas Division, LLC (Constellation), the Catholic Diocese of Wichita, and TempleLive Wichita LLC filed petitions to intervene.¹¹ These were granted by the Commission on July 1, 2021.¹² State of Kansas, *ex rel.* Derek Schmidt, Attorney General, filed a Petition to Intervene on July 19, 2021, and the Commission granted the same on July 27, 2021.¹³ Symmetry filed its Petition to Intervene on July 26, 2021, and the Commission granted it on August 5, 2021. The Commission has granted intervention to several other parties in this docket.¹⁴

11. On July 30, 2021, KGS filed its Plan to Minimize the Financial Effects of the 2021 Winter Weather Event.¹⁵ Subsequent to that filing, the parties engaged in several settlement conferences with respect to the amount of Qualified Extraordinary Costs incurred by KGS in connection with Winter Storm Uri, among other issues.¹⁶ Those conferences proved fruitful and on

¹⁰ Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order On Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective And Discovery Order (March 9, 2021).

¹¹ Order Granting Intervention to the Natural Gas Transportation Customer Coalition; Constellation Newenergy - Gas Division, LLC; Catholic Diocese of Wichita; Templelive Wichita LLC; Order Granting Motions for Admission *Pro Hac Vice Of Amy L. Baird, Joshua Harden* (July 1, 2021).

¹² *Id.*

¹³ Order Granting Petition to Intervene of the Office of Kansas Attorney General (July 27, 2021).

¹⁴ See Joint Motion to Approve Settlement Agreement (November 19, 2021).

¹⁵ Plan To Minimize the Financial Effects of the 2021 Winter Weather Event (July 30, 2021).

¹⁶ Joint Motion to Approve Settlement Agreement (November 19, 2021).

November 19, 2021, the signatories filed a Joint Motion to Approve Settlement Agreement, pursuant to K.A.R. 82-1-230a, asking the Commission to approve the Financial Plan Settlement Agreement.¹⁷

12. The Financial Plan Settlement Agreement amends KGS's Plan to Minimize the Financial Effects of the 2021 Winter Weather Event. The Financial Plan Settlement Agreement has the following (non-exhaustive) key provisions:

- a. KGS should be allowed to recover approximately \$366,158,817 in Qualified Extraordinary Costs incurred due to Winter Storm Uri, exclusive of \$14,940,073 associated with a disputed Macquarie invoice ("disputed amount"); KGS may seek recovery of the disputed amount if the dispute is not resolved by the time KGS files an application for a Financial Order.
- b. In a separate docket, KGS will file an application with the KCC for a Financing Order pursuant to the Kansas Utility Financing and Securitization Act; the Qualified Extraordinary Costs will be trued-up and verified when KGS files its application for a Financing Order.
- c. Carrying charges applicable to the Qualified Extraordinary Costs will be calculated using a rate of 2.0% per annum until the issuance of securitized bonds pursuant to the Financing Order.
- d. By December 31, 2022, KGS will propose a tariff to assist low-income customers.

13. CURB,¹⁸ KCC Staff,¹⁹ KGS,²⁰ and NGTCC²¹ filed testimony in support of the Financial Plan Settlement Agreement. Symmetry did not file testimony before the December 17, 2021, hearing on the Financial Plan Settlement Agreement and asked the Commission to be able to address it at the hearing on the Amended Nonunanimous Settlement Agreement.²² CURB will address Symmetry's testimony in connection with that hearing.

¹⁷ Id.

¹⁸ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board (November 30, 2021).

¹⁹ Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement (November 30, 2021).

²⁰ Testimony of Janet L. Buchanan in Support of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf Of Kansas Gas Service, a Division Of One Gas, Inc. (November 30, 2021).

²¹ Testimony in Support of Stipulated Settlement of Michael P. Gorman (November 30, 2021). Mr. Gorman supports only the 2.0% carrying charge provision of the Financial Plan Settlement Agreement.

²² Symmetry filed testimony in opposition on December 20, 2021. See Testimony of Justin Clapper in Opposition of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf of Symmetry Energy Solutions, LLC (December 20, 2021).

ARGUMENTS AND AUTHORITIES

14. The Commission has established five factors that it reviews concerning whether to approve non-unanimous settlement agreements. These five factors are:

- a. Whether each party had an opportunity to be heard on reasons for opposing the settlement;
- b. Whether the settlement is supported by substantial competent evidence in the record as a whole;
- c. Whether the settlement will result in just and reasonable rates;
- d. Whether the settlement conforms to applicable law; and
- e. Whether the results of the settlement are in the public interest.²³

Essentially, these factors allow the Commission to make an independent finding, supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates.²⁴ Kansas appellate courts have accepted such a finding, if supported by substantial competent evidence in the record as a whole, to be a lawful and reasonable determination.²⁵

15. CURB believes the Financial Plan Settlement Agreement satisfies all five factors. Therefore, CURB believes it to be reasonable for the Commission to approve the Financial Plan Settlement Agreement. However, if the Commission adjusts the Qualified Extraordinary Costs upon the basis of Symmetry's testimony, CURB believes that the adjustment should be applicable to the Financial Plan Settlement Agreement. CURB will address the five factors below.

A. Each party has had an opportunity to be heard on reasons for opposing the non-deferred issues in the Financial Plan Settlement Agreement.

16. Essentially, this factor requires the Commission to provide due process for all parties. Obviously, it requires compliance with the Kansas Administrative Procedure Act (KAPA). In *Suburban Medical Center v. Olathe Community Hosp.*, 226 Kan. 320, 597 P.2d 654 (1979), the Kansas

²³ Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS (May 12, 2008).

²⁴ *Id.*

²⁵ *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 28 Kan. App. 2d 313, 316 (2000), rev. denied, (citing *Farmand Industries*, 24 Kan. App. 2d at 186-87 [1997]).

Supreme Court summarized the procedures needed to comply with due process:

An administrative hearing, particularly where the proceedings are judicial or quasi-judicial, must be fair, or as it is frequently stated, full and fair, fair and adequate, or fair and open. The right to a full hearing includes a reasonable opportunity to know the claims of the opposing party and to meet them. In order that an administrative hearing be fair, there must be adequate notice of the issues, and the issues must be clearly defined. All parties must be apprised of the evidence, so that they may test, explain, or rebut it. They must be given an opportunity to cross-examine witnesses and to present evidence, including rebuttal evidence, and the administrative body must decide on the basis of the evidence.²⁶

17. The Commission has allowed all parties to be heard regarding the non-deferred issues of the Financial Plan Settlement Agreement. The Commission has complied with its procedural regulations and the KAPA. Moreover, the Commission has provided an ample opportunity for all parties to exercise their due process rights.

18. First, notice of the issues in this case has been provided to the parties as early as the Commission's February 15, 2021, Order. There, the Commission directed:

Each jurisdictional utility to file a compliance report in this Docket detailing the extent of such costs [Extraordinary Costs] incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame, once the 2021 Winter Weather Event ends.²⁷

19. Second, all parties have had adequate time and opportunity to understand the focus of this docket and the issues and evidence that pertain to it. The Commission opened this docket on March 9, 2021, and has promptly granted intervention to each party who sought to intervene in this docket. KGS filed its Financial Plan in this docket on July 30, 2021, along with the testimony of several KGS witnesses who support the Financial Plan. Over 150 days has elapsed since KGS made that filing. The Commission's March 9, 2021, Order provided customary discovery procedures, including the normal procedure by which confidential information is handled pursuant to K.S.A.

²⁶ *Suburban Medical Center v. Olathe Community Hosp.*, 226 Kan. 320, Syl. ¶ 4, 597 P.2d 654 (1979).

²⁷ Emergency Order, Feb. 15, 2021, ¶ 6.

66-1220a. The parties have engaged in substantial discovery through data requests. As noted by KGS witness Janet Buchanan, KGS has responded to over 230 discovery requests served by KCC Staff, CURB and the other parties in this docket by providing thousands of pages of documents relating to all aspects of the costs incurred by KGS and the components of KGS's Financial Plan.²⁸ KGS has hosted two technical settlement conferences and a number of breakout sessions with KGS retail customers, KGS marketers and individual transportation customers.²⁹

20. Third, the Commission issued a procedural order in this case on November 4, 2021.³⁰ The procedural order, as amended,³¹ allows the parties to be heard on all non-deferred issues. Finally, the Commission heard evidence concerning the Financial Plan Settlement Agreement on December 17, 2021. At the hearing, the Commission allowed all parties to file testimony and allowed Symmetry to conduct cross-examination. All parties may file briefs.

21. Thus, the Commission has provided a full and fair hearing for all intervening parties. The first factor of the five-factor test is satisfied.

B. The Financial Plan Settlement Agreement is supported by substantial competent evidence in the record as a whole.

22. The Financial Plan Settlement Agreement is supported by substantial competent evidence in the record as a whole. Three witnesses support all aspects of the Financial Plan Settlement Agreement: KGS witness Janet Buchanan,³² KCC Staff witness Justin T. Grady,³³ and CURB witness

²⁸ Testimony of Janet L. Buchanan in Support of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf Of Kansas Gas Service, a Division Of One Gas, Inc., p. 6 (November 30, 2021).

²⁹ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, p. 10 (November 30, 2021).

³⁰ Order Establishing Procedural Schedule for Financial Plan (November 4, 2021).

³¹ Order Amending Procedural Schedule for Financial Plan (November 30, 2021).

³² Testimony of Janet L. Buchanan in Support of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf Of Kansas Gas Service, a Division Of One Gas, Inc. (November 30, 2021).

³³ Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement (November 30, 2021).

Josh Frantz.³⁴ NGTCC witness Mike Gorman supports the 2.0% carrying charge in the Financial Plan Settlement Agreement.³⁵ In addition, several KGS witnesses provided testimony over various aspects of the KGS Financial Plan and Qualified Extraordinary Costs as filed with the KCC on July 30, 2021.³⁶ Key aspects of these witnesses' testimony will be discussed below.

23. Substantial competent evidence is that evidence “which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.”³⁷ As will be shown below, the testimony of the above-identified witnesses constitutes substantial evidence in light of the record as a whole that would justify the Commission's approval of the Financial Plan Settlement Agreement. CURB will specifically address the substantial competent evidence that supports the three main issues of the Financial Plan.³⁸

- a) KGS prudently incurred the Qualified Extraordinary Costs outlined in the Financial Plan Settlement Agreement.

24. The evidence in the record as a whole supports a determination that KGS prudently incurred the Qualified Extraordinary Costs. Prudence in relation to utility regulation by the Commission has a common and ordinary meaning.³⁹ In these regards, the Kansas Supreme Court notes

³⁴ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board (November 30, 2021).

³⁵ Testimony in Support of Stipulated Settlement of Michael P. Gorman (November 30, 2021).

³⁶ See Direct Testimonies of Mark W. Smith, Sean C. Postlethwait, Bernadette M. Johnson, and Matt L. Robbins on Behalf of Kansas Gas Service, a Division of One Gas, Inc. (July 30, 2021).

³⁷ *Kansas Gas and Electric Co. v. State Corporation Commission of the State of Kansas*, 14 Kan. App. 2d 527 at 531, 794 P. 2d 1165 (1990).

³⁸ CURB notes that the above-identified witnesses present evidence on all non-deferred issues set out in the Financial Plan. Thus, CURB believes that the Commission can simply refer to the record to find the substantial competent evidence that supports Commission approval of the Financial Plan Settlement Agreement. Therefore, it would unnecessarily lengthen this Post-Hearing Brief to restate all of the evidence supporting each aspect of the Financial Plan. Rather, CURB notes that Symmetry (the only party who opposes the Financial Plan) disputes the prudence of the Qualified Extraordinary Costs set out in the Financial Plan Settlement Agreement, as well as the reasonableness of the carrying costs to finance repayment of those costs. For brevity, CURB will specifically address only those issues and the intended KGS application for a financing order that is associated therewith.

³⁹ *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, 503, 720 P. 2d 1063 (1986).

that Black’s Law dictionary defines prudence as “carefulness, precaution, attentiveness and good judgment.”⁴⁰ These concepts are integral to the Commission’s definition of prudence.

25. The Commission has defined “prudence” as “how reasonable persons, with the skill and knowledge attributed to reasonable utility managers, should have been expected to cope with the circumstances and problems.”⁴¹ Likewise, the Federal Energy Regulatory Commission (FERC) has determined that in performing the duty “to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management...would have made, in good faith, under the same circumstances, and at the relevant point in time.”⁴²

26. In the case of Winter Storm Uri, the circumstances faced by KGS were rare and extreme. KGS had never before experienced circumstances like Winter Storm Uri.⁴³ KGS’s parent company, ONE Gas, Inc., faced several gas supply issues: high customer demand; the inability of gas suppliers to deliver gas; and spiking commodity prices.⁴⁴ In order to cope with these extreme conditions, KGS composed a Field Operations management team, which it tasked with telephonic meetings to adjust KGS’s daily plans to respond to the ever-changing situation.⁴⁵

27. The Commission recognized these rare and extreme circumstances,⁴⁶ issuing an Emergency Order on February 15, 2021. However, KGS had already been dealing with the extreme weather and low temperatures for five days. KGS was already committed to maintaining service and

⁴⁰ Id. at 495, citing Black’s Law Dictionary 1104 (5th ed. 1979).

⁴¹ See *Kansas Gas and Electric Co. v. State Corporation Commission of the State of Kansas*, 14 Kan. App. 2d 527, 539, 794 P. 2d 1165 (1990).

⁴² *New England Power Co.*, 31 F.E.R.C. Para. 61,047 at 61,084 (1985).

⁴³ Direct Testimony of Matt L. Robbins on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 13 (July 30, 2021).

⁴⁴ Direct Testimony of Mark W. Smith on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., pp. 6-7 (July 30, 2021).

⁴⁵ Id.

⁴⁶ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, pp. 10-11 (November 30, 2021).

protecting human life.⁴⁷ Yet, it is important to note that the Commission's emergency order dictated that KGS do everything necessary to keep service available to customers and the customers of interconnected, non-jurisdictional Kansas utilities.⁴⁸

28. CURB believes that KGS prudently met the obligations imposed by the Commission's Emergency Order. KGS secured supply from existing contracted baseload, contracted callable and storage, as well as spot gas daily indexed additional supply gas to meet system demands. KGS's daily purchasing decisions during the Weather Event were based on securing supply for peak design demand, meeting operational upstream pipeline balancing needs and supporting KGS system demands to serve all customers.⁴⁹ Moreover, starting on February 13, 2021, KGS sent conservation messages to customers through social media, local news outlets and direct emails.⁵⁰ On February 15, 2021, KGS issued an Emergency Natural Gas Period of Curtailment to marketers and individually balanced transportation customers and non-residential gas sales customers. KGS called the largest commercial customers to ask for curtailment of use to a level to maintain the integrity of a particular facility.⁵¹ KGS intended these efforts to maintain system pressures and the overall integrity of the KGS system.⁵²

29. With regard to KGS's prudence, CURB analyst Josh Frantz reviewed the testimony of the various KGS witnesses in support of the Financial Plan.⁵³ Mr. Frantz noted that KGS, along with

⁴⁷ Direct Testimony of Janet Buchanan on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 21 (July 30, 2021).

⁴⁸ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, p. 4 (November 30, 2021).

⁴⁹ Direct Testimony of Matt L. Robbins on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 21 (July 30, 2021).

⁵⁰ Direct Testimony of Sean C. Postlethwait on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 14 (July 30, 2021).

⁵¹ Id.

⁵² Id.

⁵³ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, p. 10 (November 30, 2021)

all other jurisdictional utilities, were ordered to “do all things possible and necessary to ensure natural gas and electricity utility services continue to be provided to their customers in the State.”⁵⁴ He testified that, “In spite of the volatility of the natural gas market conditions and other issues outside of the Company’s control, KGS's distribution system performed well. In fact, KGS maintained service to 99.9% of its residential customers throughout the state.”⁵⁵ Mr. Frantz testified that KGS did that which the Commission ordered it to do.

30. Moreover, Mr. Frantz testified, “The unprecedented weather, supply, demand, and pricing conditions that developed during the Weather Event could not reasonably have been anticipated at the time KGS entered into its gas purchasing plan contracts, months in advance of the Weather Event.”⁵⁶ However, during the Weather Event, for several days in succession, natural gas index prices vastly exceeded any previously fathomable price and usage was approximately double the average daily volumes under normal weather conditions.⁵⁷ KGS did not have any control over the market price of gas that was available during the Winter Event.⁵⁸

31. Furthermore, Mr. Frantz noted that KGS was not alone in these regards. Mr. Frantz testified, “Nearly every state in the Midwest is now facing unprecedented, extraordinary natural gas costs due to the effects of Winter Storm Uri. In Texas, highly publicized, widespread utility service disruptions even led to the loss of life.”⁵⁹ This evidence compels the conclusion that if KGS failed in

⁵⁴ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 4 (November 30, 2021).

⁵⁵ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, pp. 11-12 (November 30, 2021).

⁵⁶ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 12 (November 30, 2021).

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 11 (November 30, 2021).

its duty to keep costs reasonably low during the Weather Event, so did every other utility in the region. It is simply not plausible that all utilities missed the mark. Rather, as Mr. Frantz testified, “when viewing KGS’s actions during the Weather Event without the lens of hindsight, the Company responded adequately to an unprecedented crisis.”⁶⁰ Therefore, he concludes, “the agreed upon calculation of Extraordinary Costs is reasonably reflective of the extraordinary costs that were incurred by the Company to serve customers during February 2021.”⁶¹

b) The 2.0% Carrying Costs until Securitization Bonds are issued is Reasonable.

32. The reasonableness of the 2.0% carrying costs for the Qualified Extraordinary Costs is supported by substantial and competent evidence. It is important to note that the 2.0% rate is a compromise between parties rather than actual carrying costs incurred by KGS. In fact, KGS’s initial Financial Plan filing proposed an 8.6% carrying charge until securitization bonds are issued.⁶² Through settlement negotiations, that charge was reduced to a rate of 2.0%. KGS, Staff, CURB and NGTCC all filed testimony supporting the reasonableness of the agreed-upon 2.0% carrying charge.⁶³ However, if the Commission determines that the 2.0% carrying charge is unreasonable upon the basis of Symmetry’s testimony, CURB believes that the lower carrying charge should apply to the Financial Plan Settlement Agreement.

33. KGS witness Buchanan testified that, from KGS’s perspective, the 2.0% carrying charge is reasonable given the cost of debt incurred to finance the Qualified Extraordinary Costs and the risk associated with the variable rate increasing prior to the issuance of Securitized Utility Tariff

⁶⁰ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 13 (November 30, 2021).

⁶¹ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 14 (November 30, 2021).

⁶² Direct Testimony of Janet L. Buchanan on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 15 (July 30, 2021).

⁶³ Id.

Bonds.⁶⁴ KGS reasoned that its original Financial Plan complied with the Commission’s Emergency Order in that it included carrying charges at KGS’ Weighted Average Cost of Capital (WACC) of 8.60%. Yet, KGS agreed to reduce the carrying costs of 2%, resulting in a \$55 million (78%) reduction of carrying charges in KGS’ proposal from \$70.2 million to \$15.2 million.⁶⁵ NGTCC witness Gorman testified that the 2% carrying charge rate included in the Financial Plan Settlement Agreement reasonably proxies the short-term interest cost under the temporary borrowing facility that ONE Gas, Inc. (the parent of KGS) entered into to provide liquidity for the Qualified Extraordinary Costs (being 1.5585%).⁶⁶ He testified that the 2% interest rate for carrying costs recognizes the 1.5585% actual borrowing costs plus a small allowance for any increase in the floating interest rate.⁶⁷

34. CURB supports the application of 2.0% carrying costs until securitization bonds are issued. Mr. Frantz noted that KGS contended that it was entitled to carrying costs equal to its WACC until securitization bonds are issued in this docket.⁶⁸ KGS relied upon the KCC Staff’s interpretation of the Commission’s emergency order for that position.⁶⁹ However, Mr. Frantz explains that, “an application of KGS’s WACC would be inappropriate in this circumstance and would not be reasonably reflective of actual financing charges associated with the Qualified Extraordinary Costs. Allowance of an unreasonably high carrying charge could result in a windfall for KGS, stemming from a disastrous event. Meanwhile, utility customers face severe financial consequences from the Weather Event.”

⁶⁴ Direct Testimony of Janet L. Buchanan on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. 16 (July 30, 2021).

⁶⁵ Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement, p.7 (November 30, 2021).

⁶⁶ Testimony and Exhibits in Support of Stipulated Settlement of Michael P. Gorman, p.5-6 (November 30, 2021).

⁶⁷ Id.

⁶⁸ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, p. 15 (November 30, 2021).

⁶⁹ Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement, p. 7 (November 30, 2021).

35. Mr. Frantz expressed his belief that the rate of 2.0%, for the period starting when the Qualified Extraordinary Costs were incurred through the issuance of Securitized Bonds (approx. January 31, 2023), is reasonably reflective of the short-term financing rates incurred by the Company to cover the Qualified Extraordinary Costs and, therefore, he supports this provision of the Agreement.⁷⁰ Methodology aside, the lower carrying charge percentage agreed upon by the Signatories would drastically reduce the total carrying charges from \$70 million to approximately \$15 million when compared to the Company's initial proposal.⁷¹

c) The Use of Securitization to Recover the Qualified Extraordinary Costs.

36. CURB supports the use of securitization to recover the Qualified Extraordinary Costs. Mr. Frantz testified that he expects the securitization process will result in just and reasonable rates.⁷² He testified that it is the most appropriate, low-cost path forward to finance the Qualified Extraordinary Costs incurred by KGS. The initial projections for the Securitized Bond rates presented by KGS, circa July 2021, indicate a rate in the range of 1.0% – 1.8%, depending upon term length.⁷³ The potential use of securitization to finance the Qualified Extraordinary Costs has not been disputed. The terms of securitization will be determined by the Commission at a later hearing upon further evidence.

37. In sum, the evidence in the record as a whole compels the determination that the Financial Plan Settlement Agreement is just and reasonable. Therefore, the record evidence as a whole justifies the Commission's approval of the Financial Plan Settlement Agreement.

⁷⁰ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, p. 14 (November 30, 2021).

⁷¹ Id.

⁷² Id.

⁷³ Id.

C. The Financial Plan Settlement Agreement will result in just and reasonable rates.

38. The Financial Plan Settlement Agreement will result in just and reasonable rates. This finding is important since the Commission is statutorily mandated to require all jurisdictional natural gas public utilities to establish and maintain just and reasonable rates.⁷⁴ To meet this statutory duty, the Kansas Supreme Court has held:

In establishing rates, the KCC is required to balance the public need for adequate, efficient, and reasonable service with the public utility's need for sufficient revenue to meet the cost of furnishing service and earn a reasonable profit.⁷⁵

39. The Commission has elaborated on that general principle as follows:

In setting rates, the Commission's goal is to balance the interests of all concerned parties and develop a rate within the 'zone of reasonableness.' The parties whose interests must be considered and balanced include: (1) the utility's investors vs. the ratepayers; (2) present vs. future ratepayers; and (3) the public interest.⁷⁶

40. As a precursor to recovery by rates established through securitization, a primary focus of this docket is to determine the extraordinary costs that KGS prudently incurred providing adequate and sufficient service throughout Winter Storm Uri.⁷⁷ Several parties have intervened in this docket and have determined for themselves that the Qualified Extraordinary Costs were prudently incurred by KGS. CURB believes that they were.

41. If the Commission finds that KGS prudently incurred the Qualified Extraordinary Costs, then it follows that the Commission should allow KGS to recover the same. Indeed, the Kansas Court of Appeals has held that utilities are entitled to recover prudently incurred expenses in a rate-making proceeding.⁷⁸ Therefore, the above-discussed evidence pertaining to the prudence of KGS's

⁷⁴ K.S.A. 66-1,202.

⁷⁵ *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 773, 986 P.2d 377 (1999).

⁷⁶ *Order on KCP&L's Request for a Rate Change, 15-KCPE-116-RTS*, citing *Kansas Gas & Elec. Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 500 (1986).

⁷⁷ See *Emergency Order*, ¶1, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

⁷⁸ *Columbus Telephone Co., Inc. v. Kansas Corp. Commission*, 31 Kan.App.2d 828, 833, 75 P.3d 257 (2003), citing *Gas Service Co. v. Kansas Corporation Commission*, 4 Kan.App.2d 623, 635, 609 P.2d 1157 (1980).

expenses incurred to maintain service during Winter Storm Uri is relevant here. CURB believes such evidence justifies the conclusion that KGS's recovery of the Qualified Extraordinary Costs set forth in the Financial Plan Settlement Agreement is just and reasonable.

42. Indeed, recovery of the prudent expenses incurred by KGS to maintain service during Winter Storm Uri strikes a balance between the ratepayers' need for reasonable service with the public utility's need for sufficient revenue to meet the cost of furnishing that service. Recovery of the Qualified Extraordinary Costs, being prudently incurred, meets the test prescribed by the Kansas Supreme Court in *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*⁷⁹ Therefore, the recovery of the Qualified Extraordinary Costs, as between KGS and its customers, is just and reasonable.

43. The Financial Plan Settlement Agreement also balances the interests of present and future ratepayers and the public interest. The testimony of KGS witness Buchanan, KCC Staff witness Grady and CURB witness Frantz address this issue. The evidence pertaining to the balance between present and future ratepayers will be addressed below while the balance afforded to the public interest is addressed last in this brief.

44. CURB believes that substantial and competent evidence supports the proposition that the Financial Plan properly balances the interests of present and future ratepayers. KGS witness Buchanan testified on the allocation of Qualified Extraordinary Costs between customer classes. She states that because the extraordinary costs are primarily associated with gas costs, KGS proposes to allocate to customer classes based on each customer class's percentage of the total estimated February sales volumes.⁸⁰ She testified that an allocation based on usage ensures that the costs caused by a class

⁷⁹ *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 773, 986 P.2d 377 (1999).

⁸⁰ Direct Testimony of Janet L. Buchanan on Behalf of Kansas Gas Service, A Division of ONE Gas, Inc., p. (July 30, 2021).

of customers will be paid by that class of customers, and that this allocation would be utilized until all extraordinary costs are recovered.⁸¹ Since gas demand drove the need to purchase high cost gas, this allocation seems reasonable.

45. Furthermore, KCC Staff witness Grady testified that the Financial Plan would allow KGS Sales customers to pay the Qualified Extraordinary Costs over a period determined to be appropriate by the Commission after KGS files an application for a Financing Order pursuant to the Utility Financing and Securitization Act (“Act”).⁸² Obviously all parties to the Financial Plan Settlement Agreement contemplated that the Financing Order and, in particular, the period under which securitized bonds are repaid would allow the Commission to balance the interests of present versus future KGS ratepayers with respect to the Extraordinary Costs.

46. Moreover, Mr. Grady testified that, while these charges are sure to be a hardship for many KGS customers, it is less of a hardship than it would be to pay for these costs through the Cost of Gas Rider (“COGR”). He testified that the COGR would have required ratepayers to pay the Qualified Extraordinary Costs over a one-year period, beginning in July 2021.⁸³

47. Mr. Frantz noted that KGS has pledged to file a tariff for low-income ratepayer assistance.⁸⁴ This tariff would obviate some of the hardship suffered by many KGS customers (as noted by Mr. Grady).⁸⁵ CURB intends to take an active role in coordinating this effort with KGS in order to develop a collaborative and inclusive process establishing this tariff. The end goals of this provision

⁸¹ Id.

⁸² Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement, p. 5 (November 30, 2021).

⁸³ Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement, pp. 5-6 (November 30, 2021).

⁸⁴ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, pp. 15-16 (November 30, 2021).

⁸⁵ Id.

are to expand on the dialog around the energy burden that many Kansans face and to take affirmative steps to assuage that hardship.

48. KGS witness Buchanan also testified that the Financial Plan's intended use of securitized bonds would spread the repayment of the Qualified Extraordinary Costs over a reasonable period.⁸⁶ The Financial Plan Settlement Agreement contemplates that KGS will apply for a Financing Order in a separate docket pursuant to the applicable provisions contained in the Act for the benefit of utility customers. The Financing Order would authorize the issuance of Securitized Utility Tariff Bonds to finance the Qualified Extraordinary Costs to minimize the financial impact on KGS and its customers, consistent with the Kansas legislature's intent in passing the Act.⁸⁷

49. CURB believes that the use of securitization will help make repayment of the Qualified Extraordinary Costs just and reasonable. CURB witness Frantz notes that the terms pertaining to the use of securitization bonds will be determined in a separate docket and will help to alleviate the burden of rate shock on ratepayers.⁸⁸ Therefore, CURB believes that the Commission should determine that the Financial Plan Settlement Agreement results in just and reasonable rates.

D. The Financial Plan Settlement Agreement conforms to applicable law.

50. Well-settled Kansas law permits the Commission to approve a non-unanimous settlement agreement. The Commission can adopt the agreement if it makes findings on the merits that the agreement is fair, just and reasonable and supported by evidence in the record.⁸⁹ The Commission has conducted this hearing in accordance with its rules and regulations and the Kansas

⁸⁶ Testimony of Janet L. Buchanan in Support of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf Of Kansas Gas Service, a Division Of One Gas, Inc., p. 14 (November 30, 2021).

⁸⁷ Id.

⁸⁸ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, pp. 13-14 (November 30, 2021).

⁸⁹ See *Mobil Moundridge Telephone Company, Inc., v. Kansas Corporation Commission*, 36 P.3d 523 (Table) Unpublished Opinion *Oil Corp. v. FPC*, 417 U.S. 283, 314, 94 S.Ct. 2328, 2348-49, 41 L.Ed.2d 72 (1974); *Farmland Industries, Inc. v. Kansas Corporation Comm'n*, 24 Kan.App.2d 172, 943 P.2d 470 (1997).

Administrative Procedure Act. As indicated earlier, CURB anticipates that the Commission will weigh all testimony before issuing its order herein and that the record evidence compels the Commission's approval of the Financial Plan Settlement Agreement. Therefore, CURB believes that the Financial Plan Settlement Agreement conforms to applicable law.

E. The results of the Financial Plan Settlement Agreement are in the public interest.

51. Several witnesses testify that the results of the Financial Plan Settlement Agreement are in the public interest. CURB witness Frantz testifies that several parties representing a wide range of constituents have evaluated the Financial Plan Settlement Agreement and have not objected to its terms.⁹⁰ He cites the low carrying charges, claw back protections for consumers in the event that profiteering occurred during Winter Storm Uri and the low-income tariff as key provisions that promote the public interest.⁹¹ Staff witness Grady also noted that the number of diverse parties being almost able to resolve the issues unanimously through the Financial Plan Settlement Agreement is evidence that it meets the public interest.⁹² Like Mr. Frantz, Mr. Grady discusses a litany of provisions in the Financial Plan Settlement Agreement that promote the public interest, such as the fact that monthly repayment amounts have been substantially reduced due to low carrying charges of 2.0% and the use of securitization.⁹³ KGS witness Buchanan testifies, "Given the extraordinary circumstances of the Winter Event, the Agreement allows for a path forward for KGS to best minimize the

⁹⁰ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens' Utility Ratepayer Board, p.16 (November 30, 2021)

⁹¹ Id.

⁹² Justin Grady. Direct Testimony and Testimony in Support of Settlement Agreement, pp. 36-37 (November 30, 2021)

⁹³ Id.

financial impact of the Winter Event on its gas sales customers.”⁹⁴ All of this testimony shows that the Financial Plan Settlement Agreement benefits the public at large.

52. While CURB believes that this testimony is sufficient for the Commission to determine that the Financial Plan Settlement Agreement is in the public interest, it is interesting that no witness defines precisely what the “public interest” is for review purposes. In some respects, the public interest appears to be an amorphous term generally urged to support the positions of the parties.

53. CURB believes that the public interest in this docket is the adequacy of service by KGS during Winter Storm Unit at just and reasonable rates. The Financial Plan Settlement Agreement promotes the public interest since it is a reasonable manner by which the Commission’s directives towards these public needs are resolved. Below, CURB will outline why it believes the Financial Plan meets these two aspects of the public interest.

54. First, the public interest is essential to utility regulation because it is the justification of such regulation. Indeed, utilities are regulated because they operate property that is clothed with the public interest. That legal principle in utility regulation is well known and long-standing.

55. Indeed, research of the concept of the public interest, justifying state regulation of utilities shows that the concept stems from *Munn v. Illinois*, 94 U.S. 113 (1876). In that case, the U.S. Supreme Court stated, “Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.”⁹⁵ Common sense would lead one to conclude that for the Commission to promote the “public interest” is to regulate utilities in a manner that supports the interests of the public at large.

⁹⁴ Testimony of Janet L. Buchanan in Support of the Nonunanimous Settlement Agreement on the Financial Plan on Behalf Of Kansas Gas Service, a Division Of One Gas, Inc., p. 16 (November 30, 2021).

⁹⁵ *Munn v. Illinois*, 94 U.S. 113, 126 (1876).

56. In CURB’s view, the interest of the public at large is espoused in K.S.A. 66-1,202. That statute requires natural gas utilities “To furnish reasonably efficient and sufficient service [and] to establish just and reasonable rates, charges and exactions...”⁹⁶ Essentially, K.S.A. 66-1,202 states defines the public interest in this docket.

57. Indeed, CURB believes that the Commission articulated the public interest in maintaining gas service to Kansans, particularly human needs customers in its Emergency Order. In addition, the Commission reiterated that it would review all expenditures made by KGS to ensure that they were just and reasonable. In CURB’s view, the Commission’s Emergency Order confirms KGS’s obligations under Kansas law in light of the horrific winter storm that Kansas was suffering. The emergency order, as well as the proceedings to arrive at a resolution of the issues raised in the order, constitute the public interest in this docket.

58. The Financial Plan Settlement Agreement meets the public interest. KGS performed as it was directed by the Commission in the Emergency Order. The Emergency Order required KGS to do all things necessary to ensure that Kansas ratepayers have continual service. As Mr. Frantz’ testified, “In spite of the volatility of the natural gas market conditions and other issues outside of the Company’s control, KGS's distribution system performed well. In fact, KGS maintained service to 99.9% of its residential customers throughout the state.”⁹⁷

59. The second aspect of the public interest met by the Financial Plan Settlement Agreement is the just and reasonable rates that emanate from it. The reasonableness of the rates is shown in the testimony discussed earlier in this post-hearing brief. Based on the foregoing proof, CURB believes that the Financial Plan Settlement Agreement is in the public interest in all respects.

⁹⁶ K.S.A. 66-1,202.

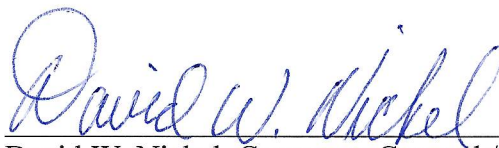
⁹⁷ Testimony in Support of Settlement Agreement Josh Frantz on Behalf of the Citizens’ Utility Ratepayer Board, pp. 11-12 (November 30, 2021)

CONCLUSION

60. Winter Storm Uri occurred in February 2021. It has taken most of a year to review and analyze the evidence, have technical settlement conferences and a hearing before the Commission. Yet, these proceedings are not through. Work remains regarding the improvements that can be made to the regulatory system to avoid the costs and risk that Kansans endured. Furthermore, an application for a financing order will need to be approved before repayment of the Qualified Extraordinary Costs can begin. However, approval of the Financial Plan Settlement Agreement is a necessary step towards total resolution of all issues in this docket.

61. Therefore, with due haste, the Commission should lay the foundation for further proceedings by approving the Financial Plan Settlement Agreement. Through the dedication of much time and expense, the parties to this docket have submitted a non-unanimous settlement agreement. That settlement agreement meets the factors that the Commission requires for its approval. CURB urges the Commission to approve the Financial Plan Settlement Agreement.

Respectfully submitted,



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21-KGSG-332-GIG

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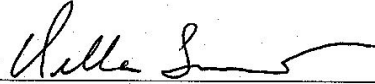
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