

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

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

**OBJECTION OF KANSAS GAS SERVICE TO  
NATURAL GAS TRANSPORTATION CUSTOMER COALITION'S  
MOTION TO TAKE ADMINISTRATIVE NOTICE OF COMMISSION PRECEDENT  
AND LEGAL AUTHORITY**

1.       Kansas Gas Service, a Division of One Gas, Inc. ("Kansas Gas Service" or "Company"), hereby objects to Natural Gas Transportation Customer Coalition's ("NGTCC") *Motion to Take Administrative Notice of Commission Precedent and Legal Authority* ("Motion") as follows:

**I.       BACKGROUND**

2.       The NGTCC has filed five (5) motions within the past two months attempting to narrow the scope of the Protective Order that the Commission issued in this docket.<sup>1</sup>

3.       On June 11, 2021, before NGTCC was even given permission to intervene, it filed its first Motion to Amend the Protective Order. On June 20, the Commission denied NGTCC's Motion.

4.       On July 22, NGTCC filed a second motion in the form of a Petition for Reconsideration of the Commission's denial.

5.       On August 2, NGTCC filed a third motion, referred to as Motion to Designate as Public Documents, the February 2021 Supplier Invoices Paid by Kansas Gas Service.

6.       Kansas Gas Service objected to that Motion, which attempts to sidestep the

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<sup>1</sup> NGTCC has filed a total of fourteen pleadings (including nine motions and five supplemental pleadings) in this same period.

Protective Order, by properly highlighting that the information NGTCC seeks is protected by Kan. Stat. Ann. §§ 66-1220a(a) and 60-3320 as confidential business information and trade secrets. The Commission Staff also filed a Response to NGTCC's Motion to Designate and agreed with Kansas Gas Service that the information sought was confidential and that NGTCC had not demonstrated that any exceptions existed to overcome the Kansas' confidential protections. The Commission has yet to rule on that Motion.

7. On August 13, NGTCC filed its fourth motion. In that motion, NGTCC attempted to circumvent the Protective Order by arguing that the Kansas Gas Service's Response to a Commission Staff Information Request, dated March 26, 2021, and the information contained within, is a public record that will cause no economic harm whatsoever to Kansas Gas Service if it is made public. The information that NGTCC seeks to make public is Kansas Gas Service response to the following:

1. In January 2021, what was the estimated usage for Kansas Gas Service's sales customers (non-Transportation customers) for the month of February 2021? What was the actual usage for Kansas Gas Service's sales customers (non-Transportation customers) for the month of February 2021?

8. On August 23, Kansas Gas Service filed its Objection to NGTCC's August 13 attempt to obtain customers' estimated and actual usage data on grounds that the information was trade secret and confidential information not subject to disclosure pursuant to Kan. Stat. Ann. §§ 66-1220a(a) and 60-3320.

9. Now, NGTCC comes before the Commission with its fifth attempt to narrow the scope of the Protective Order with its Motion to Take Administrative Notice of Commission Precedent and Legal Authority. Specifically, NGTCC requests the Commission to take administrative notice of three filings and one order from a 2016 Kansas Corporation Commission

case (16-KCPE-593-ACQ):

- a. A Motion to Declassify All Staff Testimony and Exhibits, filed by the Commission Staff,
- b. A Response by Parties Opposing the Declassification,
- c. The Commission Staff's Reply, and
- d. The Commission's Order.<sup>2</sup>

10. According to the NGTCC, these pleadings are directly relevant to three motions that it previously filed:

- a. Its July 22 *Petition for Reconsideration*,
- b. Its August 2 *Motion to Designate as Public Documents the February 2021 Supplier Invoices Paid by Kansas Gas Service*, and
- c. Its August 13 *Motion to Make Public Kansas Gas Service's Response to a Commission Staff Inquiry*.<sup>3</sup>

11. NGTCC then quotes two policy paragraphs from the Commission Staff's Reply from the 2016 case—not the Commission's actual Order—as persuasive authority as to why the records in the present docket should be made public.

12. This Objection responds to the fifth and latest round of motions by NGTCC attacking the Protective Order.

**II. NGTCC'S LATEST MOTION SHOULD BE DENIED BECAUSE IT CONTAINS ARGUMENTS THAT NGTCC COULD HAVE MADE PREVIOUSLY BUT CHOSE TO OMIT; THUS, THEY HAVE BEEN WAIVED.**

13. As mentioned above, NGTCC has filed four motions previously attacking the

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<sup>2</sup> NGTCC's Motion at ¶ 3.

<sup>3</sup> *Id.* at ¶ 4.

Protective Order. However, this Motion—the fifth—is the first to cite the 2016 case. The referenced case is neither a new ruling nor a case that NGTCC was previously unaware. To the contrary, NGTCC’s counsel litigated the very case that NGTCC now cites. Piecemeal motions intended to resuscitate previous motions filed a month and weeks earlier are highly irregular, inappropriate, and constitute an abuse of the legal process.

### **III. THE HOLDING IN 2016 COMMISSION ORDER THAT NGTCC CITES FAVORS KANSAS GAS SERVICE AND NOT NGTCC.**

14. The Order from January 26, 2017, in 16-KCPE-593-ACQ pertains to a power plant company purchasing a competitor.<sup>4</sup> In the Order, the Commission found it would be “hard pressed to justify redacting such items as the number of projected job losses or the identity of power plants targeted for closure” as that type of “financial information/budget projections” do not qualify as “trade secrets,” which the two merging power plant companies effectively admitted at the hearing.<sup>5</sup> The Commission also found that the companies were not placed in any competitive disadvantage by releasing this information because the power plants are a regulated utility that “face no competition.”<sup>6</sup> Therefore, NGTCC’s argument relying on the January 26, 2017 Order falls flat.

15. The Order also does not rely upon the policy argument that NGTCC cites in Paragraph 5 of its present Motion. In issuing its ruling, the Commission did not rely on the fact that the “case involve[d] the largest public utility in the state being acquired by the holding company of the second largest public utility and affects roughly 950,000 Kansas residents, or 33% of the Kansas population” with a transaction worth \$12.2 billion dollars.<sup>7</sup> Despite NGTCC’s arguments, there is no reasonable analogy between documents regarding (1) projected job losses

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<sup>4</sup> Order on Prehearing Motions, Docket No. 16-KCPE-593-ACQ, at ¶ 1.

<sup>5</sup> *Id.* at ¶ 12.

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

<sup>7</sup> NGTCC’s Motion at ¶ 5.

and the identity of power plants targeted for closure and (2) the February 2021 Invoices and the customer usage.

16. In the same case cited by NGTCC, the Commission ordered protection of “financial modeling information provided in responses to data requests.”<sup>8</sup> This ruling involves information that is actually similar to the information that Kansas Gas Service seeks to protect regarding its estimated and actual customer usages, yet it was ignored by NGTCC.

17. Moreover, even though Commission Staff arguments do not have precedential value (as NGTCC argues), another important distinction is that the Commission Staff has not made the same arguments in this docket as it did in the power plant case from 2016. To the contrary, the Commission Staff has acknowledged that real competitive disadvantage exists to the Kansas Gas Service should trade secret and confidential business information be released.<sup>9</sup>

18. The February 2021 Supplier Invoices and the customer usage data are trade secrets and confidential business information because they have independent economic value from not being known to others. Specifically, the natural gas commodity industry—unlike the power plants in the referenced case—is an unregulated and highly competitive market. Consequently, confidentiality provisions are commonplace within the industry to ensure equal bargaining positions for both natural gas suppliers (like markets and producers) and natural gas purchasers (like Kansas Gas Service). If the details of Supplier Invoices, including the natural gas supply contract information are required to be made public and others are not, then it places the parties to those public gas supply contracts at a competitive disadvantage compared to the parties that can maintain the confidentiality of their agreements. Kansas Gas Service has made this argument numerous times now, more fully stated in its Objections dated, August 11 and August 23.

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<sup>8</sup> Order Granting Petition for Reconsideration, at ¶¶ 7–10, Docket No. 16-KCPE-593-ACQ, attached as Exhibit A.

<sup>9</sup> Commission Staff Response to NGTCC’s Motion to Designate Invoices as Public Documents, at ¶ 25.

19. NGTCC has filed numerous duplicative motions arguing the same issue. This approach is overly burdensome to the parties and the Commission Staff.

*WHEREFORE*, for the reasons set forth herein, Kansas Gas Service respectfully requests that the Commission find that NGTCC's basis for the Motion is unsupported by relevant facts, law or sound public policy and is therefore denied.

Respectfully submitted,

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VERIFICATION

STATE OF ARIZONA     )  
  )  
COUNTY OF MARICOPA   )

I, Kelly A. Daly, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

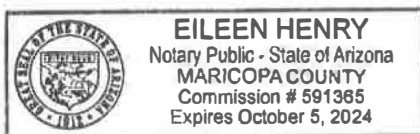
  
Affiant

SUBSCRIBED AND SWORN to before me on 8/26/2021.

  
Notary public

My Appointment Expires:

\_\_\_\_\_



### CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2021, a true and correct copy of the above and foregoing was sent electronically to the following:

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# EXHIBIT A

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

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Joint Application of )  
Great Plains Energy Incorporated, Kansas )  
City Power & Light Company and Westar ) Docket No. 16-KCPE-593-ACQ  
Energy, Inc. for Approval of the Acquisition )  
of Westar Energy, Inc. by Great Plains )  
Energy Incorporated. )

**ORDER GRANTING 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:

1. On June 28, 2016, Kansas City Power & Light Company (KCP&L) and Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed a Joint Application seeking approval for Great Plains Energy's acquisition of Westar. Great Plains Energy is the parent company of KCP&L.<sup>1</sup>

2. On July 14, 2016, the Commission issued an Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order (Order), establishing procedure for handling confidential material.<sup>2</sup> Specifically, the Order provides:

A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made. The party claiming confidentiality has the burden of proving the confidential status of the

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<sup>1</sup> Joint Application, June 28, 2016.

<sup>2</sup> Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order, July 14, 2016, ¶ 8.

information. Designating information as confidential does not establish that the information will be kept from disclosure after review by the Commission.<sup>3</sup>

3. On September 27, 2016, the Commission issued its Order Setting Procedural Schedule, establishing a January 11, 2017 deadline to file motions.<sup>4</sup> On January 10, 2017, Commission Staff (Staff) filed a Motion to Declassify All Staff Testimony and Exhibits, seeking to declassify the testimony and related exhibits of six of its witnesses to lift the confidential designation imposed by the Joint Applicants. Since the evidentiary hearing was scheduled to begin on January 30, 2017, the Commission found it necessary to address Staff's motion on an expedited basis and held a hearing on January 24, 2017.<sup>5</sup>

4. The testimony of six of Staff's eight witnesses included information designated as confidential by the Joint Applicants.<sup>6</sup> The information designated as confidential was redacted in the versions available to the public.<sup>7</sup> Of the 445 Data Requests issued by Staff, the Joint Applicants designated 129 of its responses as "confidential."<sup>8</sup> Staff claimed its testimony and exhibits should be declassified entirely for three reasons: (1) the Joint Applicants failed to adequately explain why the documents are confidential;<sup>9</sup> (2) the Joint Applicants failed to identify harm that would result from disclosure as required by KAR 82-1-221(a)(5);<sup>10</sup> and (3) the public interest in disclosure outweighs any potential harm to Joint Applicants from disclosure.<sup>11</sup>

5. On January 20, 2017, the Joint Applicants filed their Response to Staff's Motion to Declassify All Staff Testimony and Exhibits, explaining "[t]he critical majority of confidential

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<sup>3</sup> *Id.*, ¶ 10.

<sup>4</sup> Order Setting Procedural Schedule, Sept. 27, 2016, ¶ 4.

<sup>5</sup> Prehearing Officer Order Setting Hearing on Pending Motions, Jan. 13, 2017, ¶ 5.

<sup>6</sup> Staff's Motion to Declassify All Staff Testimony and Exhibits, Jan. 10, 2017, ¶ 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, ¶ 12.

<sup>9</sup> *Id.*, ¶ 9.

<sup>10</sup> *Id.*, ¶ 10.

<sup>11</sup> *Id.*, ¶ 11.



designations made by the Joint Applicants fall into the first category relating to confidential financial information/budget projections.”<sup>12</sup>

6. On January 26, 2017, the Commission issued its Order on Prehearing Motions, ordering the removal of any confidential designations other than those for attorney-client privilege, attorney work-product, or critical infrastructure information which poses a security risk if made public.<sup>13</sup> The Commission reasoned there is “a clear need for the public to be informed of the specific facts and information before the Commission” as it “makes the Commission accountable not only for its decision but also for the manner in which its decision is made”.<sup>14</sup> The parties were directed to file revised testimony in the Docket by 8:00 a.m. on January 30, 2017, which removes the redactions for any confidential designations other than: (1) attorney-client privilege, (2) attorney work-product, or (3) critical infrastructure information which poses a security risk if made public.<sup>15</sup>

7. On January 27, 2017, the Joint Applicants filed a Petition for Reconsideration and Request for Stay to retain the confidential designation of financial modeling information provided in response to data requests CURB 42, KCC Staff 153, and Staff 169.<sup>16</sup> The “very limited subset of information” the Joint Applicants seek confidential treatment of consists of:<sup>17</sup>

- two pages of Staff witness Gatewood’s direct testimony filing (pp. 82 and 83 of the pdf), representing financial modeling information provided in response to Staff DR 153;

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<sup>12</sup> Joint Applicants’ Response to Staff’s Motion to Declassify All Staff Testimony and Exhibits, Jan. 20, 2017, ¶ 5.

<sup>13</sup> Order on Prehearing Motions, Jan. 26, 2017, ¶ 15.

<sup>14</sup> *Id.*, ¶ 11.

<sup>15</sup> *Id.*, ¶ 15.

<sup>16</sup> Petition for Reconsideration and Request for Stay, Jan. 27, 2017, ¶ 5.

<sup>17</sup> *Id.*

- 132 pages of Staff witness Grady’s direct testimony filing (pp. 523-655 of the pdf), representing modeling information provided in response to Staff DR 169;
- 149 pages of BPU witness Steffen’s direct testimony (pp. 554-703 of the pdf), representing financial modeling information provided in response to CURB 42;
- 24 pages of BPU witness Lesser’s direct testimony (pp. 314-328, 399-406 and 1,586-1,587 of the pdf), representing financial modeling information provided in response to CURB 42; and
- 6 pages of KEPCo witness Dismukes’ direct testimony (pp. 134-136 and 139-141 of the pdf), representing financial modeling information provided in response to Staff DR 169.

8. The Joint Applicants emphasize their “request for reconsideration and stay is limited to the financial modeling itself. To the extent that testimony discusses the modeling, makes reference to the results of the modeling or the like, Joint Applicants do not seek to hold those discussions or references as confidential.”<sup>18</sup>

9. On January 30, 2017, the Commission heard argument on the Joint Applicants’ Petition for Reconsideration and Request for Stay.<sup>19</sup> The Commission deferred ruling on the Petition for Reconsideration, but granted the stay pending further resolution of the issue.<sup>20</sup>

10. On January 31, 2017, the Commission granted the Joint Applicants’ limited Petition for Reconsideration and directed the parties to file versions of Gatewood’s, Grady’s, Steffen’s, Lesser’s, and Dismukes’ testimony with the modeling redacted by Monday, February

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<sup>18</sup> *Id.*

<sup>19</sup> Transcript of Evidentiary Hearing (Tr.), Vol. 1, Jan. 30, 2017, pp. 14-20.

<sup>20</sup> *Id.*, p. 20.

6, 2017.<sup>21</sup> The Commission pledged to reduce its decision granting the Petition for Reconsideration to writing. Therefore, the Commission reiterates its grant of specific and limited reconsideration of the Commission's Order on Prehearing Motions to retain the confidential designations on financial modeling information provided in responses to data requests, CURB 42, KCC Staff 153, and KCC Staff 169.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Joint Applicants' request for specific and limited reconsideration of the Commission's Order on Prehearing Motions is granted. Only the financial modeling information provided in responses to data requests, CURB 42, KCC Staff 153, and KCC Staff 169 will retain their confidential designation.

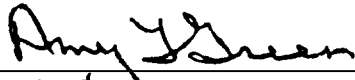
B. This order is procedural and constitutes non-final agency action.<sup>22</sup> Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Amy L. Green, Secretary to the Commission, is designated by the Commission to receive service of a petition for judicial review.<sup>23</sup>

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

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

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: FEB 14 2017

  
\_\_\_\_\_  
Amy L. Green  
Secretary to the Commission

BGF

<sup>21</sup> Tr., Vol. 2, Jan. 31, 2017, p. 378.

<sup>22</sup> K.S.A. 77-607(b)(2).

<sup>23</sup> K.S.A. 77-613(e).

**EMAILED**

FEB 14 2017

## CERTIFICATE OF SERVICE

16-KCPE-593-ACQ

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

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