

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of a General Investigation into)
the Confidential Status of Certain Documents) Docket No. 24-GIMX-376-GIV
Related to Costs Incurred During Winter Storm)
Uri.

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 1-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)(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).

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

5. 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”**

6. 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?Id=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.

**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, DENYING 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 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 invoices 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.kcc.ks.gov/estar/ViewFile.aspx/S202111020917284672.pdf?Id=c3eabb07-e37e-4800-b001-ab72ebb6f986>

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.

16. 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.

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

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.

19. 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).

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

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.

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301041121201.pdf?Id=73fe4cbd-43a7-420c-af25-932eee93df26>

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,

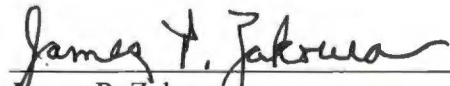
/s/ James P. Zakoura

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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 Clarification and Reconsideration*, 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 10th day of November 2023.



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 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
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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)
)

DIRECT TESTIMONY
OF
MATT L. ROBBINS
ON BEHALF OF KANSAS GAS SERVICE
A DIVISION OF ONE GAS, INC.
PUBLIC VERSION

EXHIBIT 1

Exhibit MLR-3

Vendor	Winter Weather Gas Purchases - Additional Cost
BP	\$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
Macquarie Disputed	\$14,940,072.89
Panhandle Penalty Credit	-\$451,029.22
GRAND TOTAL	\$371,219,235.44