

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

Before Commissioners:                    Andrew J. French, Chairperson  
   Dwight D. Keen  
   Susan K. Duffy

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

**ORDER DENYING NGTCC'S MOTIONS TO REMOVE CONFIDENTIAL  
DESIGNATIONS FOR CERTAIN DOCUMENTS**

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 February 15, 2021, pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.<sup>1</sup> Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.<sup>2</sup> The Commission authorized every jurisdictional natural gas distribution utility that incurs extraordinary costs associated with ensuring their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during Winter Storm Uri to defer those costs to a regulatory asset account.<sup>3</sup> The Commission mandated that once Winter Storm Uri ended, and after all costs have been

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<sup>1</sup> Emergency Order, 21-GIMX-303-MIS, Feb. 15, 2021, ¶ 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* ¶ 4.

accumulated and recorded, each jurisdictional utility is directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.<sup>4</sup>

2. On March 9, 2021, the Commission issued an Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations, which initiated this Docket.<sup>5</sup> The Commission's Order also included a Protective/Discovery Order.

3. On June 10, 2021, the Commission issued a Supplemental Protective and Discovery Order to allow the Office of the Kansas Attorney General to review discovery produced in this Docket.<sup>6</sup>

4. On June 11, 2021, the Natural Gas Transportation Customer Coalition<sup>7</sup> (NGTCC) filed a Motion to Amend the Protective Order, to prevent the following types of documents to be labeled as confidential:

- Requests by KGS for supplies of natural gas, made in February 2021;
- Responses by suppliers in response to requests by KGS for supplies of natural gas, made for usage in February 2021;
- Draft and final invoices of KGS to marketers and/or aggregators of natural gas, for alleged under delivery of natural gas supplies, for re-delivery by KGS to natural gas transport end use customers for usage in February 2021; and
- All invoices tendered to KGS by natural gas suppliers, and all amounts paid by KGS to those suppliers for February 2021 natural gas usage, including any KGS-

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<sup>4</sup> *Id.* ¶ 5.

<sup>5</sup> 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, 21-303 Docket, March 9, 2021, ¶ 10.

<sup>6</sup> Supplemental Protective and Discovery Order, June 10, 2021, ¶ 6.

<sup>7</sup> NGTCC was granted intervention on July 1, 2021.

purchaser reservation of rights letters sent to suppliers or like-kind qualified payments.<sup>8</sup>

In acknowledging its request was “not in the normal course,”<sup>9</sup> NGTCC claimed the documents are of the highest interest to the public, and the Kansas Legislature,<sup>10</sup> and therefore should not be treated as confidential.

5. On July 20, 2021, the Commission denied NGTCC’s Motion to Amend the Protective Order as premature, explaining that if NGTCC or other parties believe information has been improperly designated confidential or if they believe public disclosure of specific identifiable confidential information is warranted under the framework of K.S.A. 66-1220a, they can move to have those specific documents made public if and when such information is designated as confidential.<sup>11</sup>

6. On July 22, 2021, NGTCC filed a Petition for Reconsideration of the Order Denying Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule. On August 2, 2021, NGTCC filed a Motion to Designate as Public Documents the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS), rendering its Petition for Reconsideration moot.<sup>12</sup> In its August 2 Motion, NGTCC explained that in response to its good faith request to KGS to make natural gas supplier invoices “public,” KGS deemed all supplier invoices as “Confidential” and exempt from public disclosure.<sup>13</sup>

7. NGTCC argues it is difficult for a public hearing to be meaningful if the public does not have access to: (1) the winter gas supply plan, (2) the amounts charged by stated

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<sup>8</sup> Motion to Amend the Protective Order, June 11, 2021, ¶ 1.

<sup>9</sup> *Id.*, ¶ 4.

<sup>10</sup> *Id.*, ¶ 2.

<sup>11</sup> Order on Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule, July 20, 2021, ¶ 19.

<sup>12</sup> The Petition for Reconsideration was denied by operation of law on August 23, 2021. *See* K.S.A. 77-529(b).

<sup>13</sup> Motion to Designate as Public Documents, the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS), July 22, 2021, ¶¶ 9-10.

suppliers of natural gas, (3) the categories of contract purchases, (4) the price/cost of gas in storage, (5) storage withdrawal and injection volumes, and (6) gas hedging plans affecting price.<sup>14</sup> Furthermore, NGTCC claims KGS offers no support, detail, or explanation as to why the supplier information is Confidential.<sup>15</sup> NGTCC seeks to have the confidential designations removed from the supplier invoices produced by KGS in discovery responses.<sup>16</sup>

8. On August 11, 2021, KGS filed its Objection to NGTCC'S Motion to Designate as Public Documents, noting that rather than cite to any legal authority supporting the public release of documents, NGTCC simply states, without making those invoices public, it cannot envision a "meaningful" public hearing.<sup>17</sup> KGS asserts the February 2021 Supplier Invoices satisfy the definition of "trade secret" as defined by K.S.A. 60-3320,<sup>18</sup> because: (1) making the details of Supplier Invoices, including the natural gas supply contract information publicly available would place the parties to those gas supply contracts at a competitive disadvantage;<sup>19</sup> and (2) KGS has taken reasonable efforts to maintain the secrecy and confidentiality of these documents.<sup>20</sup> KGS also claims the February 2021 Supplier Invoices qualify as proprietary commercial or financial information as set forth by the U.S. Supreme Court, the Kansas Supreme Court, and FOIA.<sup>21</sup>

9. KGS also contends NGTCC presents no persuasive arguments to compel the release of "trade secret" and "confidential information."<sup>22</sup> Specifically, KGS claims NGTCC fails to identify which, if any of K.S.A. 66-1220a(a)'s four factors would compel the

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<sup>14</sup> *Id.*, ¶ 10.

<sup>15</sup> *Id.*, ¶ 12.

<sup>16</sup> *Id.*, p. 6-7.

<sup>17</sup> Objection of Kansas Gas Service to Natural Gas Transportation Customer Coalition's Motion to Designate as Public Documents, Aug. 11, 2021, ¶ 9.

<sup>18</sup> *Id.*, ¶ 13.

<sup>19</sup> *Id.*, ¶ 14.

<sup>20</sup> *Id.*, ¶ 15.

<sup>21</sup> *Id.*, ¶ 16.

<sup>22</sup> *Id.*, ¶ 18.

Commission to order KGS and its natural gas suppliers to release “trade secret” and “confidential information.”<sup>23</sup> In its discussion of the four statutory factors, KGS contends the factors weigh strongly in favor of maintaining the confidential designations. KGS asserts disclosure is not necessary for the Commission to conduct a full investigation and could place KGS at competitive disadvantage in negotiating future natural gas prices with suppliers, resulting in higher prices paid by retail customers.<sup>24</sup>

10. On August 12, 2021, NGTCC filed its Reply to KGS’ Objection, characterizing the essence of the position as, “it is in the public interest for ratepayers – primarily Residential and Small General Service Ratepayers and gas transportation customers – to have transparency of those who charged KGS \$373,026,315 for seven (7) days of natural gas and that Kansas ratepayers will be repaying over the next 5, 7, or 10 years.”<sup>25</sup> NGTCC also disputes KGS’ claim that the supplier invoices have economic value because disclosure would adversely affect bargaining power in a competitive marketplace.<sup>26</sup> The basis for NGTCC’s assertion appears to be its belief that KGS does not negotiate specific prices with specific suppliers because KGS competitively bids its supply contracts in advance of winter or business month, and these contract prices are tied to a market index.<sup>27</sup>

11. On August 12, 2021, Commission Staff (Staff) filed its Response to NGTCC’s Motion to Designate as Public Documents the February 2021 Supplier Invoices paid by Kansas Gas Service Company.<sup>28</sup> While acknowledging the extraordinary nature of Winter Storm Uri, Staff does not believe it justifies deviating from traditional Commission practice related to

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, ¶ 21-25.

<sup>25</sup> Reply of the Natural Gas Transportation Customer Coalition to the Objection of Kansas Gas Service, Aug. 12, 2021, ¶ 10.

<sup>26</sup> *Id.*, ¶ 12.

<sup>27</sup> *Id.*, ¶ 14.

<sup>28</sup> Response of Commission Staff to the Natural Gas Transportation Customer Coalition’s Motion to Designate as Public Documents the February 2021 Supplier Invoices paid by Kansas Gas Service Company, Aug. 12, 2021, ¶ 20.

confidentiality.<sup>29</sup> Staff also notes all of the parties to the Docket that have signed a non-disclosure agreement have access to the confidential information.<sup>30</sup> Staff believes NGTCC has not made a sufficient showing that disclosure of the requested confidential information is warranted under K.S.A. 66-1220a because: (1) public disclosure would not significantly aid the Commission in conducting a thorough investigation into the events of the Winter Storm Uri; (2) Staff, which is tasked with representing the public generally, is already engaged in an extensive investigation into KGS and its operations during the Winter Storm Uri; and (3) any benefit to the public that could potentially be derived from disclosure is far outweighed by the harm to come from that disclosure.<sup>31</sup>

12. On August 13, 2021, NGTCC filed a Motion to Make Public a Document of KGS, concerning Data Requests (DRs) issued by Staff to KGS seeking the estimated usage for KGS' sales customers (non-Transportation customers) for the month of February 2021 and the actual usage.<sup>32</sup> NGTCC claims the DR response contains no confidential information and is merely a simple volumetric historical listing.<sup>33</sup> NGTCC sees no harm to KGS and great benefits to the general public and the Commission by explaining to the public in a single, concise document, the impact that the prolonged cold temperatures had on our state and the volumes of gas required to sustain Kansas families and businesses during February 2021.<sup>34</sup> NGTCC also requests the Commission order KGS to pay \$660 of its attorney fees, incurred in preparing its Motion.<sup>35</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, ¶ 21.

<sup>32</sup> Motion of the Natural Gas Transportation Customer Coalition to Make Public a Document of Kansas Gas Service Company, Aug. 13, 2021, ¶ 1.

<sup>33</sup> *Id.*, ¶ 11.

<sup>34</sup> *Id.*, ¶ 14.

<sup>35</sup> *Id.*, ¶ 15.

13. On August 23, 2021, KGS filed an Objection to NGTCC's Motion to Make Public a Confidential Response from KGS to Commission Staff, explaining the estimated and actual usage data contained in its confidential response satisfies the first prong of Kansas's two-prong trade secret analysis because that information has independent economic value in the natural gas commodity industry, an unregulated and highly competitive market.<sup>36</sup> KGS asserts that if the Commission discloses the amount of gas estimated and purchased, then this information can be exploited by these or other natural gas suppliers in the future by giving them critical insights into how much gas Kansas Gas Service needs for a given window, resulting in higher gas supply costs for Kansas Gas Service's customers.<sup>37</sup> KGS reiterates it has taken reasonable efforts to maintain the secrecy and confidentiality of the documents produced in response to Staff's DR, satisfying the second prong of the trade secret definition.<sup>38</sup> As with NGTCC's other pending motion, KGS contends NGTCC has failed to assert facts that satisfy the four factors of K.S.A. 66-1220a(a).<sup>39</sup>

14. Also on August 23, 2021, KGS filed a Sur-Reply in Support of its Objection to NGTCC's Motion to Designate as Public Documents, "to clarify misrepresentations and factual errors asserted by NGTCC...."<sup>40</sup> KGS identifies three misrepresentations or factual errors asserted by NGTCC. First, according to KGS, in Paragraph 14, NGTCC incorrectly characterizes how KGS purchases its gas supply, leading NGTCC to incorrectly state the manner in which KGS acquires its gas will not be adversely impacted by the disclosure of these invoices

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<sup>36</sup> Objection of Kansas Gas Service to Natural Gas Transportation Customer Coalition's Motion to Make Public a Confidential Response by the Kansas Gas Service to the Kansas Corporation Commission Staff, Aug. 23, 2021, ¶ 15.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, ¶ 16.

<sup>39</sup> *Id.*, ¶ 18.

<sup>40</sup> Sur-Reply in Support Kansas Gas Service's Objection to Natural Gas Transportation Customer Coalition's Motion to Designate as Public Documents, Aug. 23, 2021, ¶ 11.

and thereby the terms of the contracts.<sup>41</sup> KGS explains it uses a bid process to determine the lowest premium (or the highest discount) that is added to (or deducted from) the index prices, and that disclosure of the adder or the discount will likely affect the willingness of suppliers to bid in the future and thus place KGS at a competitive disadvantage.<sup>42</sup> Second, in Paragraph 15, KGS asserts NGTCC incorrectly suggests that KGS has not reported fixed price contracts to S&P Global Platts Gas Daily Index in over a year because KGS only acquires gas supply at the index price.<sup>43</sup> KGS advises there is no causal connection between reporting to the Platts Index and the level of the Company's gas supply at the index price and that its fixed price contracts represent a very small portion of its total natural gas portfolio.<sup>44</sup> Third, in Paragraph 16, KGS states that it does not negotiate the index price, the market at large sets the Platts Index and cannot refuse to purchase gas from marketers that are selling natural gas at the index price, because if all of the marketers are selling at the index price there would be no one left to purchase the natural gas.<sup>45</sup>

15. The Commission denies NGTCC's Motions to Designate the February 2021 Supplier Invoices and KGS' Responses to Staff's DR as public documents. The Commission finds that both sets of documents 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).

16. Disclosure of the documents will not aid the Commission in fulfilling its functions. First, Staff already has access to the documents, as do the other parties, including NGTCC. Since NGTCC has included the documents in its confidential filings, the Commission

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<sup>41</sup>*Id.*, ¶ 12.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*, ¶ 13.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*, ¶ 14.



itself has access to the documents. Making the highly technical documents available to the general public will not advance the Commission's ability to conduct its investigation.

17. NGTCC has failed to provide a compelling reason to disclose the documents. Essentially, NGTCC argues Winter Storm Uri is an extraordinary event, so the public should have access to all materials produced in the investigation. In addition to Staff and CURB, the Office of the Kansas Attorney General (AG) is actively participating in this Docket and will receive all documents, including those designated confidential. Therefore, between Staff, CURB, and the AG, the general public is well represented in this proceeding. 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.

18. The Commission denies NGTCC's request for attorney fees. Generally, a Kansas court may not award attorney fees absent a statute authorizing the award or an agreement between the parties allowing attorney fees.<sup>46</sup> Here, NGTCC does not cite to any statute authorizing the Commission to award it attorney fees under these circumstances, nor does it claim any agreement among the parties allowing attorney fees.

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<sup>46</sup> *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 162 (2013), citing *Unruh v. Purina Mills*, 289 Kan. 1185, 1200 (2009); *United States Fidelity & Guaranty Co. v. Maish*, 21 Kan.App.2d 885, 905-06 (1995).

**THEREFORE, THE COMMISSION ORDERS:**

A. NGTCC's August 2, 2021 Motion to Designate as Public Documents, the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS) is denied.

B. NGTCC's August 13, 2021 Motion of the Natural Gas Transportation Customer Coalition to Make Public a Document of Kansas Gas Service Company, concerning Data Requests issued by Staff to KGS is denied.

C. NGTCC's request for attorney fees is denied.

D. 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).<sup>47</sup>

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

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 09/09/2021



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Lynn M. Retz  
Executive Director

BGF

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<sup>47</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

## **CERTIFICATE OF SERVICE**

21-KGSG-332-GIG

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 09/09/2021.

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