

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

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

**ADDENDUM TO PETITION FOR RECONSIDERATION**

COMES NOW the Requestor, James P. Zakoura, and for his “Addendum to Petition for Reconsideration,” states to the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) as follows:

1.     The analysis contained in the Commission’s Order dated October 12, 2023, is incorrect in its recitation of the facts, and inconsistent with Kansas law on open records.

**The Commission’s Inaccurate Factual Analysis**

2     For documents to be considered exempt from public disclosure, those documents must either be a “trade secret under the uniform trade secrets act (K.S.A. 60-3320 et. seq. and amendments thereto) or confidential commercial information. If properly designated as confidential information, the Commission must consider the factors included in K.S.A. 66-1220a prior to public disclosure of documents that are claimed to be confidential.

**Are the Requested Documents Properly Designated as Confidential and are they Entitled to be Exempt From Public Disclosure Under KORA.**

3     Black Hills has not contended at any time that the requested invoices are trade secrets under the Uniform Trade Secrets Act of Kansas.

4.     Black Hills has not at any time provided or addressed support for its claim of confidentiality, other than a generalized statement of the criteria included in K.S.A. 66-1220a,

and an unsubstantiated claim that disclosure of supplier invoices would cause harm to the public and to Black Hills.

5. Instead, Black Hills has for the first time in August 2023 contended that the requested documents (invoices) would cause harm to Black Hills and its customers if the documents (invoices) – or any supplier invoices for that matter - were disclosed to the public.

6. Black Hills does not contend that the contents of the requested documents (invoices) are confidential, but instead claims that the disclosure of any invoices in general, including the requested documents (invoices), are confidential information exempt from disclosure under K.S.A. 66-1220a.

7. Black Hills cannot contend the contents of the documents (invoices) makes them confidential – (a) the document (invoices) are for purchases made in February 2021; (b) the KCC Docket closed on January 27, 2022; and (c) Black Hills has been collecting the additional Winter Storm Uri costs for one year and seven months. In addition, the supplier contracts all had a one-year term for confidentiality.

8. K.A.R. 82-221a requires that a party seeking a confidential designation of documents that it contends are exempt from disclosure, must AT THE TIME OF FILING of those documents: (a) state the basis of the claimed exemption from disclosure with specificity, and (b) provide the Commission, both (i) a copy of the documents that are not redacted and that are marked “confidential” and (ii) a redacted copy of the documents, marked as public.

9. Black Hills did not do so. The Commission ordered Black Hills to ADDITIONALLY file in December 2021, a public, redacted copy of the requested invoices, to the confidential copy of the supplier invoices that had been provided to KCC Staff.

10. The redacted copy of the requested invoices was filed with the Commission and those redacted public copies are 99.9% blacked out - showing only the name of the natural gas supplier, with no further per unit price or other cost information, or further public information related to natural gas volumes or prices.

11. The Commission has never ruled on the issue of whether the Black Hills documents AT THE TIME OF FILING were properly designated as confidential or whether any designation with specificity was ever made - and Requestor believes no such specific designation was ever made by Black Hills. Further, the Commission never ruled on the issue of whether the redacted and filed public copies were consistent with Kansas law and the Commission's Order.

12. The KCC Docket that considered the Winter Storm Uri costs of Black Hills (Docket Nos. 21-BHCG-334-GIG and 21-BHCG-370-MIS) was closed by the Commission on January 27, 2022 – the date of the filing of the ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT that permitted Black Hills to recover from its retail ratepayers \$87.9 million dollars over a five-year period.

13. Since the Black Hills Winter Storm Uri Docket was closed on January 27, 2022, there is no applicability of K.S.A. 66-1220a which states:

“Whether disclosure will significantly aid the commission in fulfilling its functions”  
because the Commission's Docket was concluded on January 27, 2022 – there is no further Commission function to be performed in that Docket.

14. As noted above, Black Hills has at no time provided the Commission any reasons stated with specificity that would support any contention that the requested documents (invoices) are entitled to confidential treatment and an exemption from public disclosure under K.S.A. 66-

1220a. Black Hills has not provided any substantial competent evidence of any harm which disclosure would cause the public interest or any harm to Black Hills.

15. As noted, Black Hills has neither provided to the Commission with specific justification to support a confidential designation at the time the documents (invoices) were filed at the Commission and has not at any time thereafter provided any substantial competent evidence of any harm to either the public interest or Black Hills. The documents (invoices) filed by Black Hills at the Commission are presumed to be public and available to Requestor unless a statutory exemption prohibits disclosure. Black Hills has failed to provide any credible evidence of any kind that would show that the contents of the documents (invoices) are confidential or that invoices generally are non-disclosable because of harm to either the public interest or Black Hills.

16. The Commission's Order stating that Requestor has not demonstrated that the public interest would be served if the documents (invoices) are disclosed misapplies the burden or proof under KORA and places the burden on the Requestor rather than Black Hills - - and is otherwise simply incorrect.

17. Commission Orders related to Winter Storm Uri require that related costs in the amount of \$807,831,944 be paid by retail ratepayers in Kansas – included therein the amount of \$87.9 million payable by retail ratepayers of Black Hills.

18. The Commission's Order failing to make the requested documents (invoices) disclosable is not an "attenuated" public interest, but is instead a critical component to calculate that amount of damages that may be recoverable by retail ratepayers under the Kansas Consumer Protection Act. The Commission's failure to disclose these documents (invoices) impedes the factual analysis that is necessary to calculate if, and in what amount retail ratepayers may be

entitled to relief under the Kansas Consumer Protection Act. The Commission’s KORA Orders may prevent what otherwise may be an opportunity for retail ratepayers to recoup a part of the \$807,831,944 that the Commission has ordered them to pay over the next ten years – for 5-6 days of natural gas in February 2021.

**The Requested Documents (Invoices) Are Not Confidential And Have Been Made Available From Other Governmental Agencies Since March 2021.**

19. Upon a Kansas Open Records Act request, made by Requestor to the Kansas Municipal Gas Agency and the Kansas Municipal Energy Agency, Requestor was provided with unredacted copies all natural gas supplier invoices for January 2021 and February 2021 by the following suppliers as well as additional suppliers – eight suppliers in total:

- BP Energy
- Southwest Energy Corp
- Macquarie Energy LLC
- CIMA Energy, L.P.

**The Commission’s Order Dated January 27, 2022, by Operation of Law Has Made the Requested Documents (Invoices) “Public Documents” Subject to Disclosure under KORA.**

20. An equally important KORA issue in this case is whether the Commission can base an Order on supplier invoices that permits Black Hills to collect \$87.9 million from retail ratepayers, and not disclose to the public the underlying basis (the requested invoices) for the total \$87.9 million Order. It is Requestor’s position that under Kansas law related to open records, that the Commission Order based on natural gas invoices to substantiate the \$87.9 million Order, makes those natural gas supplier invoices subject to the Kansas Open Records Act. Once the Commission relies on records / invoices for a public Order - those underlying

records that form the basis of the Commission Order, are public under the Kansas Open Records Act.

21. The Commission has already made these requested supplier invoices a part of the public record by operation of law, by relying on these invoices as the basis of its Order permitting Black Hills to recover \$87.9 million of Winter Storm URI supplier costs from retail ratepayers in Kansas.

22. The Commission may arguably consider supplier invoices to be confidential if properly designated under Kansas law until the Commission issues its order in a case that terminates that case proceeding. However, the Commission may not evade the applicability of the Kansas Open Records Act by simply aggregating unidentified supplier invoices to arrive at a total amount (\$87.9 million in this case). The Commission clearly accessed the supplier invoices and relied upon an analysis of those invoices to determine the total amount that the Commission ordered would be paid as additional costs related to Winter Storm Uri. Under KORA, the Commission may not issue an order that relies on critical documents that underlie the order, without making those critical documents subject to public disclosure.

23. The Commission Order on the described documents (invoices) affects 1.6 million Kansas consumers in the amount of \$807,831,944. The public interest requires the requested documents (invoices) be open public records.

Respectfully submitted,

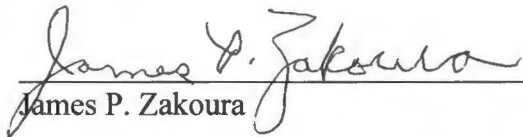
/s/ James P. Zakoura

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**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 *Addendum to Petition for 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 20th day of October 2023.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires:



