

**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

FILING OF CORRESPONDENCE DATED OCTOBER 25, 2023

COMES NOW the Requestor and files the attached email as previously served on the parties dated October 25, 2023 (Attachment A). As the attached email indicates, the email was copied to all parties of record herein, but it was not electronically filed and did not therein include a required Certificate of Service for this Docket.

Respectfully submitted,

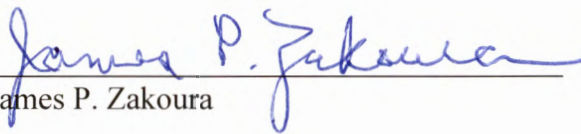
 /s/ James P. Zakoura

James P. Zakoura, KS 7644
FOULSTON SIEFKIN LLP
7500 College Blvd., Suite 1400
Overland Park, KS 66210
Telephone: 913-498-2100
Email: jzakoura@foulston.com
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 *Filing of Correspondence dated October 25, 2023*, 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 1st day of November 2023.



Notary Public

My Appointment Expires:



Zakoura, James

From: Zakoura, James
Sent: Wednesday, October 25, 2023 9:39 AM
To: Sally Conn; Lynn Retz; 'd.cohen@kcc.ks.gov'
Cc: 'jflaherty@andersonbyrd.com'; shelly.bass@atmosenergy.com;
'douglas.law@blackhillscorp.com'; Dangeau, Jeff
Subject: Addendum dated October 25, 2023, of the Reply of James P. Zakoura . KORA Request for the February 2021 natural gas supplier invoices of Atmos Energy.
Attachments: Attachment 1.pdf; Attachment 2.pdf

James P. Zakoura, Requestor, states as follows:

1. Records (documents) in the possession of the KCC are presumed to be public records, unless a party asserts a claim of confidentiality and the party making the claim meets its burden of proof that such documents are exempt from disclosure under applicable Kansas law. Requestor's Reply dated October 24, 2023, addresses the issue of why the Atmos contention asserting confidential treatment of all invoices should be denied. This Reply will address the "public interest" in disclosure of supplier invoices of February 2021.
2. Mr. Grady's Testimony in the Atmos – Winter Storm Uri case, states that Southwest Energy contracted to deliver in February 2021 for the benefit of Atmos, on the Kansas Gas Service Pipeline, the amount of 55,000 MMBtu.
3. Mr. Grady included in his Testimony, a Response of Atmos to a KCC Staff Information Request, that Southwest Energy declared force majeure on its contract with Atmos and cut 32,730 MMBtu of natural gas deliveries on February 14, February 15, February 16, and February 17, 2021. **(Attachment No. 1.) Docket No. 21-ATMG-333-GIG, dated February 24, 2022. ATTACHMENT 1 TO STAFF DR NO. 1-08**

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202202241521433408.pdf?id=03780e89-8063-4678-a7d0-5fcfab30ea56>

4. Because Southwest Energy did not deliver contract volumes to Atmos, the decision was made by Atmos to withdraw natural gas from the system of Kansas Gas Service that Atmos did not own, during this same period in February 2021.
5. The KCC approved a penalty assessment by KGS against Atmos, in the amount of \$9,559,372 – which the KCC permitted Atmos to charge and collect from the retail ratepayers of Atmos. **Testimony of Justin T. Grady, Docket No. 21-ATMG-333-GIG, dated February 24, 2022, at page 24.**

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202202241521433408.pdf?id=03780e89-8063-4678-a7d0-5fcfab30ea56>

6. During the same period in February 2021 that Southwest Energy cut 32,730 MMBtu of natural gas to Atmos - - Southwest Energy was supplying natural gas to Kansas Gas Service with "Additional Gas Costs" to Kansas Gas Service and its retail ratepayers in the amount of \$67,685,937.84.

Direct Testimony of Matt L. Robbins, On Behalf of Kansas Gas Service, dated July 30, 2021, at Exhibit MLR – 3, (Attachment No. 2) https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301401527761.pdf?id=ff0a9cea-1923-43f5-acd3-10703259353e

7. It is further noted that in the KGS Docket, although the entity names have been designated as “confidential,” an entity that failed to provide supply volumes for its gas transportation customers during Winter Storm Uri, during the same period in February 2021 sold volumes to Kansas Gas Service at very high costs, which were included for recovery from retail ratepayers.
8. Although further investigation is necessary, there are certainly very strong indications that instead of allocating available natural gas supplies in the event of force majeure on a ratable basis among contract customers, available natural gas was sold to whomever would pay the highest price – which the KCC ordered in the final instance to be paid by retail ratepayers in Kansas.
9. The fact that in the Commission’s records there is evidence that supply was cut by a supplier (Southwest Energy) to the detriment of the retail customers of Atmos but was not cut but instead was sold at high prices (\$67,685,937.84) to customers of Kansas Gas Service - - should be of great concern and great alarm to the KCC.
10. In addition, as noted in the Commission’s records in numerous instances, there were dozens of instances of force majeure during Winter Storm Uri with the effect that natural gas supplies that were contracted for at low prices, were replaced by volumes sold at much higher prices. To Requestor’s knowledge, none of the local distribution companies investigated or challenged such contended declarations of force majeure.
11. The Kansas Consumer Protection Act (KCPA) provides Kansans relief from fraudulent practices, unconscionable practices, price gouging and profiteering. The public interest supports the public release of the supplier invoices during Winter Storm Uri. It is in the public interest that prosecution on behalf of retail ratepayers go forward – there is \$807 million at stake for those customers – a far greater public interest that the wholly speculative bases for no-public disclosure advanced by the KCC jurisdictional utilities. They have been kept whole by KCC Orders – it is the retail ratepayers who are “on the hook” for \$807 million of Additional Gas Costs.
12. No KCC jurisdictional natural gas distribution company has investigated or prosecuted the “sell it where the highest price will be paid – contracts be damned” actions of natural gas suppliers during Winter Storm Uri, nor have KCC jurisdictional natural gas companies challenged any force majeure declarations to confirm they were legitimate and the effects of which were shared equally by all contract customers.
13. In each KCC Order in the Winter Storm Uri Dockets, the KCC has included a provision that provides for credit to retail ratepayers in Kansas in the event a state or federal court or government agency orders profit disgorgement, refunds, penalties, or civil refunds related to prices charged for natural gas in Kansas during Winter Storm Uri.
14. In total, the KCC ordered that \$807,831,944 of “Additional Natural Gas Costs” be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records.
 - American Energies - \$317,914 – paid over 5 years.
 - Atmos Energy - \$92.7 million (total with securitization financing costs - \$118,514,030) – paid over 10 years.)
 - Black Hills Energy - \$87.9 million – paid over 5 years.
 - City of Eskridge - \$1,1 million – paid over 10 years.
 - Evergy Central - \$122.2 million – paid over 2 years.
 - Kansas Gas Service - \$366 million (total with securitization financing costs - \$450,000,000 – paid over 10 years.)
 - Southern Pioneer - \$17 million – paid over 3 years.
 - Empire - \$10.8 million – paid over 15 years.

15. In the opinion of Requestor, the public interest requires that the requested supplier invoices be disclosed to the public so that the private right of action under the KCPA and other applicable Kansas law, as provided by Kaansas statutes, can go forward for the benefit of retail ratepayers that have been ordered by the KCC to pay \$807,831,944 of Additional Natural Gas costs over the next 10 years.

16. I would respectfully request that this Reply on the "public interest" issue, not only be filed in this Atmos KORA Docket, but also as an addendum filing in Requestor's Petition for Reconsideration in the Black Hilld Docket - Docket No. 24-GIMX-238-MIS.

Respectfully submitted.

Jim Zakoura

James P. Zakoura

Special Counsel | FOULSTON SIEFKIN LLP

7500 College Boulevard, Suite 1400 | Overland Park, Kansas 66210

D: 913.253.2142

jzakoura@foulston.com | Bio | vCard | www.foulston.com

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