

**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 28, 2023

COMES NOW the Requestor and files the attached email as previously served on the parties dated October 28, 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,

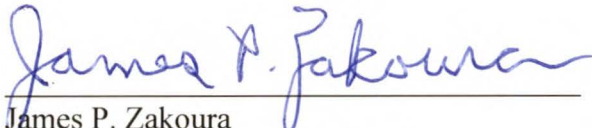
/s/ James P. Zakoura

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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 *Filing of Correspondence dated October 28, 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: Saturday, October 28, 2023 1:15 PM
To: Sally Conn; Lynn Retz; 'd.cohen@kcc.ks.gov'
Cc: Daniel, Rob; Law, Douglas; Smith, Nick; Stichler, Ann; Culp, Jodi; Eyre, Marc; Kopetzky, Kent; Slocum, Ward; James G. Flaherty - Anderson & Byrd LLP (jflaherty@andersonbyrd.com); shelly.bass@atmosenergy.com; 'gcafer@morrisslaing.com'; 'cathy.dinges@evergy.com'; 'd.nickel@curb.kansas.gov'; 't.love@curb.kansas.gov'; 'j.astrab@curb.kansas.gov'
Subject: Petition for Reconsideration of the KCC Order dated October 12, 2023 in KCC Docket No. Docket No. 24-GIMX-238-MIS - Addendum dated October 28, 2023.

The Commission has failed to follow the procedures of the Kansas Open Records Act ("KORA") and has denied the Requestor his due process of law under KORA.

1. Requestor made a Request for "Public Records" maintained in the files and records of the KCC. (K.S.A. 45-216).
2. The Request of the Requestor was made pursuant to the provisions of the Kansas Open Records Act ("KORA.") (K.S.A. 45-215, et. seq.)
3. Requestor identified the "Public Records" requested – the unredacted supplier invoices of Black Hills for February 2021 – by specific reference to the redacted "Compliance Filing for KORA" as made by Black Hills as they appear (items 1 – 14) on the KCC Web Site. KCC Docket No. 21-BHCG-334-GIG, dated December 30, 2021. <https://estar.kcc.ks.gov/estar/portal/kscg/page/docket-docs/PSC/DocketDetails.aspx?DocketId=815b0be6-aaa2-43f2-9e22-23624c2fa69b>
4. The Commission did not rule upon the issue of whether the filing by Black Hills on December 30, 2021, complied with public disclosure of those documents pursuant to the Protective Order entered by the Commission in KCC Docket No. 21-BHCG-334-GIG.
5. Upon the filing of the Requestor's KORA Request, under Kansas law (K.S.A. 45-218) the Commission is required to:
 - (i) identify such requested "Public Records" and
 - (ii) determine that those "Public Records," as identified "shall be open for inspection by any person,"
 - (iii) except as otherwise provided by this act, and
 - (iv) suitable facilities shall be made available by each public agency for this purpose. (K.S.A. 45-218)
6. KORA requires the requested "Public Records" to be a part of the Administrative Record of the KORA Request, in the identical manner that those "Public Records" are maintained in the Commission's files.
7. Without the identification and inclusion of the "Public Records" in the administrative record of the KORA request, in the identical manner that those "Public Records" are maintained in the Commission's files,

a reviewing court cannot review whether the KCC considered and lawfully applied the KORA standards to determine what part, if any of such "Public Records" as maintained in the Commission's files and records, have been properly designated under KORA as "Trade Secrets" or "Confidential" (collectively, "Confidential") and "exempt from public disclosure" - - and are therefore not open for inspection by the public.

8. Inclusion of the KCC's "Public Records" in the identical manner that those "Public Records" are maintained in the Commission's files and records, as part of the record in the KORA administrative file, evidences to any reviewing court that the Commission has or has not reviewed the identified "Public Records" and properly considered and applied the statutory provisions of KORA in the consideration of each KORA request to those identified documents – including the KORA request of Requestor herein.
9. All "Public Records" maintained in the files and records of the KCC are open for inspection by the Requestor (K.S.A. 45-215 and 45-216) unless and only to the extent that any portion of a "Public Record" is determined by the KCC to be "Confidential" and "exempt from public disclosure," under applicable Kansas law.
10. Only those specific portions of "Public Records" in the Commission's files and records that are properly shown to be "Confidential" and "exempt from public disclosure" are not "Public Records" - - the non-Confidential portions of any "Public Record" that is maintained in the files and records of the KCC must be made available for inspection by the public. (K.S.A. 45-215 and 45-216.)
11. **K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of portions of Public Records that are not otherwise exempt:**

"If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals."

12. If any requested "Public Record" has been designated by an entity as "Confidential" and "exempt from public disclosure," the Commission is tasked with the statutory duty under KORA to:
 - (1) review the "Public Record" (in this case, the unredacted supplier invoices from February 2021 requested by Requestor), in the identical manner that those "Public Records" are maintained in the Commission's books and records.
 - (2) consider the claim of confidentiality advanced by Black Hills of those "Public Records", as those "public Records" are maintained in the books and records of the Commission; and
 - (3) issue a Commission Order that decides what portions of the requested "Public Records" are open for public inspection pursuant to K.S.A. 45-215 and 45-218.
13. In this case, the KCC issued its Order of October 12, 2021, denying public inspection of the requested "Public Records" under KORA, without ever identifying and reviewing the requested "Public Records" in the identical manner that those "Public Records" are maintained in the Commission's files. Without identifying and reviewing the requested "Public Records" as they reside in the identical manner that those "Public Records" are maintained in the Commission's files - - the Commission cannot determine what portions of those "Public Records," if any, are exempt from public disclosure.

14. Therefore, the Commission's Order dated October 12, 2023, that determined that the "Public Records" are "Confidential" and "exempt from public disclosure," as contended by Black Hills - - is unreasonable, arbitrary, and capricious, and not supported by substantial competent evidence.
15. Simply stated, the Commission failed to conduct the analysis required by KORA to "exempt from public disclosure," "Public Records" maintained by the KCC.
16. The Commission's Order dated October 12, 2023, does not indicate that the Commission in any manner reviewed or even looked at the requested "Public Records" in the identical manner that those "Public Records" are maintained in the Commission's files (unredacted), and thereafter considered and determined whether the claim of Black Hills that the "Public Documents" are "Confidential" under applicable Kansas law, in whole or in part, has been supported by substantial competent evidence.
17. The Commission cannot discharge its statutory responsibility under KORA without reviewing the "Public Records" maintained in the files and records of the Commission, and thereafter, measuring any claim of confidentiality against the content of the "Public Record" as contained in the Commission's files and records.
18. The Commission's Order dated October 12, 2023, is unreasonable, arbitrary, and capricious, and in violation of Requestor's due process of law in that:
 - (i) the Commission did not access, review, and consider the requested "Public Records" in the KCC's files and records, that were requested by Requestor.
 - (ii) the Commission did not, therefore, consider whether the contended claims of "Confidential" treatment for all or any part of the requested "Public Documents" was in compliance with any provision of Kansas law that exempts all or any part of "public Records" from public inspection pursuant to KORA.
 - (iii) therefore, the Commission issued its order of October 12, 2023, without any substantial competent evidence in the administrative record that supports the KCC determination that the supplier invoices of February 2021 or any part thereof are "Confidential" and exempt from public disclosure.
 - (iv) Requestor was denied his due process of law protection that requires the KCC to follow Kansas statutory procedures for the inspection of "Public Records" in the books and records of the KCC.
19. The failure of the Commission to follow the KORA statutes, is further highlighted by the additional failure of the Commission to follow its own regulations.
20. K.A.R. 82-1-221a provides that if an entity contends that all or any part of a document is claimed to be "Confidential" and "exempt from public disclosure," the entity filing such document with the KCC - which is a "Public Record" until exempted under Kansas law - - must label the KCC filed document as "Confidential" and provide sufficient detail to demonstrate a good faith basis for the contention that all or any part of such "Confidential" document is arguably "Confidential" under applicable Kansas law.
21. K.A.R. 82-1-221a and Commission practice require that at the time an entity provides a document is designated as "Confidential," the entity must at the same time file a "public" version of the document - with only those portions of such document redacted from such document, that are claimed to be "Confidential" and "exempt from disclosure."
22. The purpose of K.A.R. 82-1-221a is to provide a basis for the Commission to discharge its statutory responsibility under KORA :

- (i) to compare the "Public Record" as it appears in the Commission's books and records,
 - (ii) to any claim of "Confidential" treatment that would exempt such "Public Record" from public disclosure and thus be exempt from inspection by the public.
23. No "Public Record" in the files and records of the KCC the KCC is "presumed" to be Confidential - - in fact the opposite is the case.
24. "Public Records" are presumed to be open for inspection by the public (K.S.A. 45-216) unless and until a claim for confidential treatment under applicable Kansas law is evidenced by substantial competent evidence.
25. The Commission has failed to follow Kansas statutes in consideration of my KORA Request.
26. Requestor has been denied the protections that the KORA provides for those persons requesting the inspection of Public Records maintained in the books and records of the KCC.
27. I respectfully request the Commission Reconsider its Order of October 12, 2023, and follow the statutory procedures set forth in KORA in the consideration of my KORA Request.

James P. Zakoura

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