

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

In the Matter of the Investigation into Kansas)
Gas Service, a Division of One Gas, Inc.)
Regarding the February 2021 Winter) Docket No. 21-KGSG-332-GIG
Weather Events, as Contemplated by Docket)
No. 21-GIMX-303-MIS.)

CURB'S OBJECTION TO MOTION FOR LIMITED WAIVER

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") hereby objects to Kansas Gas Service's ("KGS" or "Company") Motion for Limited Waiver in the above-captioned docket and requests that said Motion for Limited Waiver be incorporated into KGS's financial plan for treatment of its extraordinary February 2021 costs and decided alongside the Commission's determination of said financial plan. In support thereof, CURB states the following:

1. On February 15, 2021, the Kansas Corporation Commission ("KCC" or "Commission") issued an Emergency Order in Docket No. 21-GIMX-303-MIS ("21-303 Docket") directing all jurisdictional utilities to do all things possible and necessary to ensure natural gas and electricity utility services continue to be provided to customers in Kansas.¹ The Emergency Order also authorized jurisdictional utilities to defer extraordinary costs associated with operating and providing service during the February 2021 Winter Weather Event ("Winter Event") to a regulatory asset account. The Commission will perform a review of these costs for prudence and reasonableness before authorizing collection of these costs from ratepayers.

2. On March 1, 2021, Staff issued a Report and Recommendation ("R&R") in the 21-303 docket that recommended that the KCC open company-specific investigation dockets in order to adequately and efficiently conduct inquiries on various pricing and reliability issues that came

¹ *Emergency Order*, pg. 3, Docket No. 21-GIMX-303-MIS (February 15, 2021).

from the Winter Event.² Staff reasoned that company-specific dockets would be a preferable way to receive each utility's specific financial plans and address unique considerations while leaving the 21-303 docket available to receiving information on other entities such as FERC, NERC, SPP and others.³

3. On March 9, 2021, the KCC issued an order adopting Staff's R&R in the 21-303 docket and opened company-specific dockets for the purpose of investigating the underlying issues of the Winter Event and reviewing each utility's financial plan to recover associated costs.⁴ This order also granted CURB intervention in the 21-303 docket and automatic intervention in the company-specific dockets, including the present docket.

4. On May 28, 2021, KGS filed a Motion for Limited Waiver, asking that the Commission approve a limited waiver of certain provisions of Section 11.06.02 of the Company's General Terms and Conditions ("GTC") in its filed tariffs.⁵ Specifically, KGS is seeking a waiver in how KGS calculates penalties incurred by Marketers and certain Individually Balanced Transportation Customers who failed to confirm nominations of gas use and exceeded such nominations during a Period of Curtailment ("POC") during the Winter Event. Section 11.06.02 provides that such penalties *shall* be calculated based on a multiplier applied to daily gas indexes during a POC or Operational Flow Order ("OFO").⁶

5. In its Motion for Limited Waiver, KGS alleges that "on February 9, 2021, Kansas Gas Service received notice of a standard Operational Flow Order ("OFO") from Southern Star

² *Staff's Report and Recommendation*, Docket No. 21-GIMX-303-MIS (March 1, 2021) ("Staff R&R").

³ Staff R&R at pg. 2.

⁴ *Order Adopting Staff's R&R to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark and CURB; Protective and Discovery Order*, Docket No. 21-GIMX-303-MIS (March 9, 2021).

⁵ *Motion for Limited Waiver*, Docket no. 21-KGSG-332-GIG (May 28, 2021) ("KGS Motion").

⁶ *Id.* at pg. 5, ¶8.

Central Gas Pipeline, Inc., (its upstream natural gas transmission provider) to begin on February 11, 2021. Later that same day, Kansas Gas Service issued an OFO for its transportation customers to begin on February 11, 2021 and remain in effect until further notice.”⁷ KGS further alleges that it notified all of its Marketers and Individually Balanced Transportation Customers that:

- “a. natural gas nominations for all customers with electronic flow meters (“EFM”) were to be equal to the customer’s daily usage;
- b. those customers that do not have EFM are required to make sure natural gas nominations were equal to their required daily quantity (“RDQ”); and
- c. that any usage of gas in excess of confirmed nominations would be subject to penalties.”⁸

6. KGS alleges that some of its Gas Marketers and certain Individually Balanced Transportation Customers did not balance confirmed nominations with usage, subjecting them to penalties in accordance with Section 11.06 of the GTC in the pertinent KGS tariffs.⁹ Importantly, KGS admits that “the failure of some Marketers and some Individually Balanced Transportation Customers to provide adequate gas supplies during the period of the OFO and POC jeopardized the ability of Kansas Gas Service to provide service to all its customers”¹⁰ and that “the penalty provisions are in place to discourage Marketers and Individually Balanced Transportation Customers from creating imbalances on the distribution system at critical times of operation.”¹¹ KGS further states that, “without the collection of penalties, Gas Sales Customers would subsidize the additional gas cost incurred to serve transportation customers who did not adequately supply natural gas to the Kansas Gas Service distribution system during the OFO periods and/or POC.”¹²

⁷ KGS Motion at pg. 3-4, ¶6.

⁸ Id. at pg. 4, ¶6 cont.

⁹ Id. at pg. 5, ¶8.

¹⁰ Id. at pg. 5-6, ¶9.

¹¹ Id. at pg. 7, ¶12.

¹² KGS Motion at pg. 7-8, ¶13.

7. Nonetheless, KGS asserts that the Commission should grant KGS a waiver from Section 11.06.02 of its GTC tariff to allow KGS to reduce the amounts assessed by permitting the removal of the multiplier from the penalty calculation. KGS justifies its request for the limited waiver on its assertion that “[r]emoving the multiplier as requested by Kansas Gas Service would result in assessment of substantially lower penalties that would more closely reflect the estimated additional cost of gas procured by Kansas Gas Service to meet the usage of the transportation customers who did not comply with either the OFO and/or the POC.”¹³

8. However, KGS provides no evidentiary basis showing the actual additional cost of gas procured by Kansas Gas Service to meet the usage of the transportation customers who did not comply with either the OFO and/or the POC. Therefore, if the Commission grants the limited waiver sought by KGS, KGS sales customers may bear some of the additional cost of gas procured by KGS to meet the usage of transportation customers who did not comply with either the OFO and/or the POC. Such a result would be unjust and unreasonable. CURB believes that, at a minimum, KGS should be required to show the actual additional cost of gas procured to meet the usage of the transportation customers who did not comply with either the OFO and/or the POC and that those additional gas costs should be borne by the pertinent customers. The Motion for Limited Waiver seeks a permanent, rather than a temporary solution.

9. To date, the Company has not filed a financial plan with the Commission in this docket nor has the Commission accepted any documents with findings from FERC or NERC regarding the Winter Event in the 21-303 docket. The resolution of KGS’s Motion for Limited Waiver is an integral part of the whole financial plan by which KGS will deal with the Winter

¹³KGS Motion at pg. 8, ¶13.

Event and will permanently affect the gas costs that KGS sales customers will pay. In CURB's view, determining all parts of the KGS financial plan, including issues pertaining to Transportation customers, as a whole is the common-sense way to resolve issues arising out of the Winter Event.

10. KGS argues that, under the provisions of the Company's tariff, once the Company determines that penalties will be assessed, KGS does not have the discretion or flexibility in the calculation of that penalty. KGS indicates that penalties are a result of the extraordinary market prices during the Winter Event and that violators are expected to receive extraordinary penalties.

¹⁴ KGS states that penalties under the tariff in this situation would be significantly higher than the costs incurred to serve these customers. Because these penalties flow through as a credit to other customers for the cost of gas, KGS says that it may result in an "unreasonable windfall" to KGS Sales Customers.¹⁵ While CURB does not support any unreasonable windfall to KGS Sales Customers, CURB will not stand idly by while KGS proposes that some of the actual cost of gas procured by Kansas Gas Service to meet the usage of the Transportation customers who did not comply with either the OFO and/or the POC be borne by KGS residential and small commercial customers.

11. Marketers and Individually Balanced Transportation Customers had notice of this event and of the pertinent tariff and the penalties associated with it. Yet, despite this notice, some Marketers and Individually Balanced Transportation Customers chose not to balance confirmed nominations with usage, jeopardizing the ability of KGS to provide service to all its customers. Essentially, KGS asks the Commission to allow it to pass some of the cost associated with

¹⁴ KGS Motion at pg. 6, ¶10.

¹⁵ Id. at pg. 7, ¶11; pg. 8, ¶13.

Transportation customers' violation of the pertinent tariff upon residential and small commercial ratepayers. In fact, under the KGS proposal, KGS Sales Customers indemnify KGS shareholders from any loss. Under the circumstances, including that the Commission is being asked to deal with estimates and not actual costs, KGS's solution is certainly not optimal.

Arguments

12. CURB would emphasize the context in which this request is being made. Kansans have been struggling to make ends meet during the global COVID-19 pandemic, both financially and on personal levels, for nearly 18 months. The State of Kansas has placed significant effort and attention towards the goal of achieving regionally competitive utility rates by examining rates from many different angles. Following the volatile market activity during the Winter Event, many Kansas are still asking their utilities about what their bills will look like in the future and how prices got to that point. For the reasons stated below, CURB is opposed to KGS's motion and recommends that the Commission only consider the issues raised here by KGS within the context of a larger financial plan filed by KGS, addressing the Winter Event costs.

13. CURB interprets KGS's motion to propose an all-or-nothing approach: assess the penalties at the full tariff calculation or at a level commensurate with actual costs to serve without the multiplier completely. The KCC should consider the effects of modifying the penalties upon all ratepayers based upon evidence in the record and alternatives supported thereby. At a minimum, the KCC should be able to consider allowing a penalty that captures the actual cost of service for these customers in addition to any amounts to deter such behavior in the future, as the title "penalty" would imply.

14. However, in order to strike such a balance in equity and deterrence, the KCC should be able to review the level of culpability associated with these violations. The details are unclear regarding the violations and their quantifiable harms during the Winter Event. Are these types of violations common or unusual in the industry? How do the unique circumstances of the Winter Event change the view of such practices? Why did these particular violations occur? Could better contract and tariff provisions have been established to prevent this situation? These considerations and more are important to assure customers about the rules and regulations behind utility service.

15. Therefore, CURB recommends that the Commission not approve KGS's motion to apply waivers to how KGS will calculate the penalties for violation of its GTC at this time and instead require KGS to add the request to a financial plan, as contemplated in the 21-303 docket, in order to fully evaluate the requested relief. In these regards, CURB intends to issue discovery requests to KGS to determine the extent to which the limited waiver will harm KGS Sales Customers. If KGS's motion is granted without an opportunity for CURB to examine this issue, the due process rights of CURB and the residential and small commercial ratepayers will be violated.

16. CURB also believes that KGS's request may also implicate the Filed Rate Doctrine. The doctrine specifies that a filed tariff has the effect of law governing the relationship between the utility and its customers.¹⁶ Filed rates establish protections for utility companies to avoid litigation over the reasonableness of rates by virtue of the Commission (who has been vested with authority over utility regulation) approving the filed rates and tariffs. Customers benefit from this

¹⁶ *Filed Rate Doctrine*, Esping et al., 64 Am. Jur. 2d Public Utilities § 62 (updated May 2021).

by gaining predictability and certainty to make decisions according to those filed rates and tariffs.¹⁷

17. In light of Section 11.06 and KGS's efforts to encourage these customers to confirm nominations before and during the Winter Event, one could entertain the possibility that these customers knew the risks of over-usage at the time of gas nominations and use. However, it is unclear what prompted these violations and whether there was willful or culpable behavior during the Winter Event. The KCC should take caution in issuing an order on this matter until it is comfortable that the penalties are being fairly assessed from all perspectives and in how such a deviation from the tariff would affect a larger plan. A blanket waiver necessarily rewards those who intentionally under-nominated/over-used in order to protect their own interests while reducing the incentive to prudently monitor nominations and usage to ease system-wide reliability strains. In short, the Commission should have the opportunity to review the lawfulness of the relief proposed by KGS to assure that any order issued by the Commission is lawful and reasonable.

18. To reiterate, CURB recognizes that penalties for one class of customers should not operate as an unreasonable windfall for the remaining customers. To that end, the penalties should be commensurate with the harm caused and sufficient to promote wanted behavior. Presently, these penalties with the multiplier may have the potential to place significant financial burdens on a customer. Additionally, gas marketers who represent a group of customers will likely pass these penalties onto its own customers.¹⁸ Depending on the size of the penalty, the potential for customers to default on fines and the penalties becoming bad debt expenses rises. On the other

¹⁷ Id.

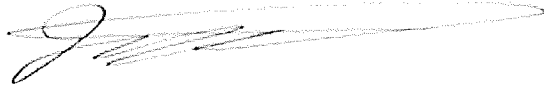
¹⁸ See KGS Motion at pg. 6, Footnote 5. "Section 11.06.03 of the GTC states that penalties for aggregation groups shall be billed to and collected from the agent representing the aggregated customers. Penalties for customers that are not part of an aggregation agreement are directly assessed the penalty."

hand, due to the high market prices at the time of the violations, CURB is concerned that customers may default on payments even under KGS's proposal. In these regards, CURB believes that there must be appropriate safeguards to protect residential and small commercial ratepayers from the unintended consequences that may flow from the motion. These safeguards are not currently set forth in the motion. CURB believes that incorporating the issue of these penalties into a comprehensive financial plan is the preferable manner to evaluate potential outcomes and would allow appropriate safeguards for KGS Sales customers to be established.

19. KGS has not indicated an urgent timeframe within which this decision must be made. KGS has not filed its financial plan with details on its method to recover Winter Event costs from the entirety of its customer base and reports and resettlements on prices may still be forthcoming. A waiver at this time would be premature and risk the need to reevaluate various aspects of these penalties and costs. CURB's recommendation does not appear to be at risk of jeopardizing anything from a timing perspective.

20. WHEREFORE, CURB respectfully requests that the Commission not approve KGS's motion for a limited waiver of its calculation of penalties as laid out in Section 11.06.02 of KGS's GTC at this time, and to instead require KGS to submit this request as part of a comprehensive financial plan to address Winter Event costs, and to issue any other relief or orders as it deems necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David W. Nickel', written over a horizontal line.

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CERTIFICATE OF SERVICE

21-KGSG-332-GIG

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 4th day of June, 2021, to the following:

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