



3. The documents requested by Mr. Zakoura were redacted because they were considered confidential and trade secrets. Under K.S.A. 45-221(a)(1), a public agency shall not be required to disclose records if such disclosure is prohibited by law. Under K.A.R. 82-1-221a(b)(1), if the Commission receives a request for confidential information, the party seeking to maintain the confidentiality of the information shall respond to the request within five working days. The response shall substantiate the basis for nondisclosure, after which the entity requesting the information may reply within five working days.

4. On August 24, 2023, the Commission informed Black Hills that a request for confidential information had been received.<sup>3</sup>

5. On August 29, 2023, Black Hills responded to the information request noting that the information requested by Mr. Zakoura was considered a trade secret and should not be disclosed.<sup>4</sup> Black Hills contends that disclosure would cause substantial harm to the public by interfering with Black Hills' ability to acquire gas supplies and serve the public at a reasonable price.<sup>5</sup> Black Hills acquires gas supplies through a competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills' supply packages.<sup>6</sup> Black Hills argues that although the documents sought included a term that required confidentiality for one year, the expiration of that year does not automatically require disclosure.<sup>7</sup>

6. Black Hills points out that the information sought by Mr. Zakoura was provided to parties in the 21-BHCG-334-GIG docket, including those represented by Zakoura.<sup>8</sup> Black Hills

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<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 8.

believes Zakoura intends to use the information to evaluate whether to pursue litigation against Black Hills' natural gas suppliers for costs incurred as a result of Winter Storm Uri.<sup>9</sup>

7. Black Hills further points out that there are alternatives to disclosure of confidential information, specifically that there is public information available which may be used to evaluate or proceed with litigation and that once litigation has begun, additional information may be obtained through discovery.<sup>10</sup> Alternatively, Black Hills offered to share the information with Mr. Zakoura if he is able to obtain the consent of Black Hills' suppliers.<sup>11</sup>

8. On August 30, 2023, Zakoura responded to Black Hills. Zakoura states that Black Hills' "alternative" requiring Zakoura to obtain consent from Black Hills' suppliers "sets a path for failure."<sup>12</sup> Zakoura additionally claims that Black Hills has not met its burden to prevent disclosure.

9. Under K.S.A. 66-1220a, the Commission shall not disclose information that is confidential or a trade secret unless the Commission finds that disclosure is warranted after considering four factors. Those factors are:

- (1) Whether disclosure will significantly aid the Commission in fulfilling its functions;
- (2) The harm or benefit which disclosure will cause to the public interest;
- (3) The harm disclosure will cause to the corporation, partnership or sole proprietorship;
- and
- (4) Alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

10. In considering K.S.A. 66-1220a's four factors the Commission finds the following:

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 9-10.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 13.



- (1) No party argues that disclosure would or would not aid the Commission in fulfilling its functions. It is possible that through litigation Mr. Zakoura could discover violations of Kansas law or Commission regulations, aiding the Commission in their enforcement, but this possibility is far too attenuated from the actual disclosure, nor is it clear if the possibility of such litigation is dependent on disclosure.
- (2) The Commission agrees that disclosure of Black Hills' contracts may affect their ability to compete for low cost gas supplies in the future, which would cause harm to both Black Hills and the public.
- (3) As Black Hills points out because he was involved in the 21-BHCG-334-GIG Docket, Mr. Zakoura already has access to the information he seeks, albeit within the bounds of the Commission's Protective and Discovery Order.<sup>13</sup> Alternatives to disclosure exist. Such alternatives include (a) proceeding with publicly available information, (b) obtaining consent from Black Hills' suppliers and (c) use of discovery in litigation. The Commission is aware of at least two class action cases filed by Mr. Zakoura related to natural gas suppliers during Winter Storm Uri.

11. After reviewing the four factors in K.S.A. 66-1220(a) the Commission finds that disclosure is not warranted..

**THEREFORE, THE COMMISSION ORDERS:**

A. Mr. Zakoura's August 23, 2023 KORA request is denied pursuant to K.S.A. 45-221(a)(1) and K.S.A. 66-1220(a).

B. 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>14</sup>

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<sup>13</sup> See KCC Docket No. 21-BHCG-334-GIG, Supplemental Protective and Discovery Orders, Jul. 8, 2021.

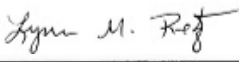
<sup>14</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 10/12/2023

DGC

  
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Lynn M. Retz  
Executive Director

## CERTIFICATE OF SERVICE

24-GIMX-238-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/12/2023.

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