

**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 RESPONSE TO ANSWERS TO MOTION FOR LIMITED WAIVER**

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) hereby responds to WoodRiver Energy, LLC’s (“WoodRiver”) *Answer of WoodRiver Energy, LLC to Motion for Limited Waiver*, filed on June 7, 2021; BlueMark Energy, LLC’s (“BlueMark”) *Answer to Motion for Limited Waiver*, filed June 7, 2021; Bonavia Properties, LLC’s (“Bonavia”) *Bonavia Properties, LLC’s Objection and Response to Kansas Gas Services Company’s Motion for Limited Waiver*, filed June 9, 2021; and *BlueMark Energy, LLC Reply to Answers to Motion for Limited Waiver*, filed June 14, 2021, in the above-captioned docket. In support thereof, CURB states the following:

**Background**

1. Subsequent to the opening of this docket, several gas marketers and customers of KGS petitioned for and have been granted intervention. For purposes of this response, CURB will be focused on the issues and arguments presented by the following intervenors, as they all essentially share the same positions: WoodRiver,<sup>1</sup> BlueMark,<sup>2</sup> and Bonavia.<sup>3</sup> WoodRiver and BlueMark are both gas marketing companies who serve commercial and industrial customers in Kansas, including those on Kansas Gas Service’s (“KGS”) system, and identify as “Marketers” as

<sup>1</sup> Granted intervention on March 30, 2021.

<sup>2</sup> Automatically granted intervention in this docket by virtue of intervention in Docket No. 21-GIMX-303-MIS.

<sup>3</sup> Granted intervention on May 4, 2021.

defined in the Motion for Limited Waiver.<sup>4</sup> Bonavia is a Kansas customer of BlueMark and is also served off of KGS's system.<sup>5</sup>

2. On May 28, 2021, KGS filed a Motion for Limited Waiver ("KGS's Motion" or "Motion"), asking that the Kansas Corporation Commission ("KCC" or "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.<sup>6</sup> Specifically, KGS seeks 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").<sup>7</sup>

3. On June 7, 2021, WoodRiver and BlueMark filed their own responses to KGS's motion. All three parties offered their support for KGS's recommendation to eliminate the multiplier in KGS's tariffs for penalties related to over/under nominations during the Winter Event POC.<sup>8</sup> However, these parties all objected to the imposition of any penalty by KGS for their own specific reasons and suggested modifications for levied penalties.<sup>9</sup> Additionally, WoodRiver asked that relief be provided by the Commission for customers who delivered their Required Daily

---

<sup>4</sup> *Petition to Intervene of WoodRiver Energy, LLC*, pg. 3, ¶8; *Answer to Motion for Limited Waiver*, pg. 1, ¶1 (June 7, 2021) ("BlueMark Answer"); *Answer of WoodRiver Energy, LLC To Motion for Limited Waiver*, pg. 1, ¶1, pg. 2, ¶4 (June 7, 2021) ("WoodRiver Answer").

<sup>5</sup> *Boanavia Properties, LLC Petition to Intervene*, pg. 7, ¶7; *Bonavia Properties, LLC's Objection and Response to Kansas Gas Services Company's Motion for Limited Waiver*, pg. 1, ¶1 (June 9, 2021). ("Bonavia Answer").

<sup>6</sup> *Motion for Limited Waiver*, Docket no. 21-KGSG-332-GIG (May 28, 2021). ("KGS Motion").

<sup>7</sup> *Id.* at pg. 5, ¶8.

<sup>8</sup> WoodRiver Answer at pg. 5, ¶11; BlueMark Answer at pg. 5, ¶12; Bonavia Answer at pg. 2, ¶6.

<sup>9</sup> See BlueMark Answer at pg. 6, ¶14.

Quantity (“RDQ”) of gas to KGS, even when actual usage was below their RDQ to avoid penalization. WoodRiver reasoned that when RDQ customers were faced with the choice of incurring the penalties under KGS’s tariff or buying gas at the raised spot market prices to meet the RDQ, these customers chose to buy gas to minimize the risk and costs of being penalized for violating the tariff.<sup>10</sup> WoodRiver also indicated that this purchased gas was used by KGS to serve its customers. Had these customers known that penalties may be reduced at a later time, WoodRiver contends that these RDQ customers would not have exposed themselves to the volatile gas market during the Winter Event, especially in light of KGS’s concurrent requests to curtail usage.<sup>11</sup>

4. On June 9, 2021, Bonavia filed a response addressing the KGS Motion, CURB’s objection, and the WoodRiver Answer. Bonavia largely supported CURB’s objection insofar as CURB recommended that the totality of the issues should be resolved as part of a comprehensive financial plan to address Winter Event costs.<sup>12</sup> Bonavia further provided its support for WoodRiver’s arguments regarding RDQ customers’ reliance on KGS’s tariffs when deciding its buying practices during the Winter Event.<sup>13</sup> Bonavia also recommended that the Commission pursue additional evaluation of the facts and examine the effects of KGS’ financial plan and based on “actual factual evidence in the record, not estimates....”<sup>14</sup>

5. On June 14, 2021, BlueMark filed a reply to WoodRiver’s Answer, providing its support for WoodRiver’s arguments regarding RDQ customers and relief beyond KGS’s current

---

<sup>10</sup> WoodRiver Answer at pg. 5-6, ¶¶14-7.

<sup>11</sup> WoodRiver Answer at pg. 6, ¶¶16-7.

<sup>12</sup> Bonavia Answer at pg. 1-2, ¶2.

<sup>13</sup> Id. at ¶5.

<sup>14</sup> Id at pg. 3, ¶7.

request.<sup>15</sup>

6. On June 14, 2021, KGS filed its response to CURB's objection to the Motion.<sup>16</sup> KGS's response primarily focused on CURB's objection, but indicated that the total amount of penalties to be assessed under its proposal is \$117,224,479,<sup>17</sup> which represents the costs of gas purchased by KGS to balance the nominations of these gas marketers and transportation customers.<sup>18</sup>

### Arguments

7. The responses and comments from these intervenors further supports CURB's position that additional questions and answers should be examined before the Commission makes the decision to waive the provisions of one of KGS's tariffs. All three customers have indicated that each one may be assessed a penalty, but have not yet been presented a bill. Although KGS has provided an exact figure on the penalties it seeks to impose, it is unclear how much of this amount is attributable to each violating entity. Given these customers' opposition to the mere assessment of penalties and the request for relief for RDQ customers, that final number may still be subject to change.<sup>19</sup> However, CURB would emphasize that these costs were incurred as a result of a violation of a filed tariff and the Commission should be cautious of reducing these customers' share of the costs. If the Commission grants relief as outlined in WoodRiver's and BlueMark's Answers, there is a risk that those reductions from KGS's total assessment are passed onto the rest

---

<sup>15</sup> *Reply to Answers to Motion for Limited Waiver*, pg. 2-3, ¶4 (June 14, 2021).

<sup>16</sup> *Kansas Gas Service's Response to Objection to Motion for Limited Waiver* (June 14, 2021) ("KGS's Response").

<sup>17</sup> KGS Response at pg. 5, ¶7.

<sup>18</sup> This Response is not intended to be a complete response to KGS's June 14, 2021 Response and the issues it raises. CURB may elect to address that in a separate filing.

<sup>19</sup> This presumes that KGS's identification of violating entities is not final and there is recourse for appeal for these customers. It is unclear whether this is the case.

of KGS's customers. Such an outcome should be avoided and further examined in the context of a comprehensive plan or report on the total Winter Event costs.

8. While CURB understands and appreciates the efforts that WoodRiver and other RDQ customers took to avoid violating KGS's tariff while trying to comply with curtailment orders, the Commission should shy away from acting as an economic backstop for such customers. In essence, WoodRiver and others claim that their reliance on KGS's tariff and the comparative cost considerations warrant a return of some amount of money spent on spot market gas purchases because KGS has announced that it wishes to remove a significant multiplier from the penalty. But for this penalty being a possibility, WoodRiver and others claim that they would not have been exposed to the high market prices. Unlike KGS, these customers do not appear to have considered the impact that their tariff violations and spot market purchases may have had on the system, such as increased potential for unplanned outages on the system<sup>20</sup> or driving up natural gas prices. The decision to purchase spot market gas and to comply with RDQ nominations was a primarily financial one for these entities that exposed the continued supply of energy to essential human services to additional risk during the Winter Event. As such, the Commission should not be the body to insure these kinds of economic gambles.

9. As referenced in CURB's objection, the Filed Rate doctrine provides that filed tariffs approved by regulatory bodies provide parties sufficient information and certainty to make usage decisions.<sup>21</sup> The parties acknowledge that these tariffs were in effect at the time of the RDQ nominations and the language of the tariff was not in dispute during the Winter Event.<sup>22</sup> While

---

<sup>20</sup> KGS Motion at pg. 5-6, ¶9.

<sup>21</sup> See *CURB's Objection to Motion for Limited Waiver*, pg. 7, ¶16.

<sup>22</sup> WoodRiver Answer at pg. 5, ¶13; BlueMark Answer at pg. 5, ¶13.

CURB is not asserting that the Filed Rate Doctrine must be implicated, the Commission's role in the relationship between KGS and its customers was fulfilled when the Commission approved KGS's filed tariffs. However, the request to waive the tariff provisions after the fact and the position that these parties have taken does raise the doctrine's profile in this issue. It is unclear whether the RDQ customers would be raising similar arguments for relief from gas purchases if KGS had not made its request to waive the multiplier in its tariff and enforced the penalty as it is written. In any event, economic gambles such as these by the RDQ customers should not be borne by all ratepayers, especially when the Commission is already being asked to consider a significant break from the filed tariff penalties.

10. The Commission should deny the request to provide relief to RDQ customers as set out in the WoodRiver Answer until a time when treatment of the remaining costs is determined for the rest of KGS's customers, especially residential and small commercial customers. The Record lacks evidence that supports an expedited timeframe for this request, so it is unlikely that some type of irreparable harm will occur if such a request is delayed until a comprehensive financial plan is filed. These Marketers and customers were in a unique position with KGS in that these customers received advanced and detailed notice of the issues that were forthcoming with the Winter Event.<sup>23</sup> In particular, WoodRiver and BlueMark both received notices and warnings about cold weather issues starting on February 4, 2021, well before residential ratepayers had learned of the potential for system problems and soaring market prices.<sup>24</sup> CURB believes that information on how RDQ customers prepared their nominations and gas supplies in advance of rising spot market

---

<sup>23</sup> BlueMark Answer at pg. 3, ¶¶5-6; WoodRiver Answer at pg. 3, ¶¶5-6.

<sup>24</sup> Id.

prices and supply constraints is relevant to this issue. At a minimum, the Marketers' assertions of good-faith efforts were not enough to persuade KGS to ignore the violations of the tariff. Presently, the Record does not have enough information to explain why that is.

11. The penalties in Section 11.06.02 of the GTC are based on the type of flow order that is violated and warrants a finding against additional relief for RDQ customers who violated KGS's tariff. The penalty multiplier grows as the type of order or curtailment period becomes more severe.<sup>25</sup> CURB presumes that this is intentional in order to deter unauthorized over- and under-deliveries during those increasingly critical periods. As stated above, these customers made a choice to use and buy gas based primarily on personal expense to themselves at the risk of further straining gas supplies and KGS's system as a whole. That kind of competitive gamesmanship should not be rewarded in a regulatory setting. According to KGS, these kinds of violations have the potential to lead to unplanned outages. Even without specifics, the dangers that such an event can cause were amplified during the Winter Event. Although KGS has not provided the calculations for its \$117 million cost of gas, the amount of unbalanced nominations during the POC is likely to be a significant figure, even when factoring in the extreme market prices. Even without proper context to compare these kinds of violations, it is apparent that these instances are attention-worthy.

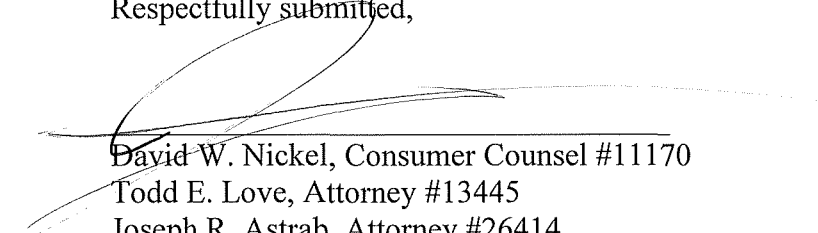
12. WHEREFORE, CURB respectfully requests that the Commission deny WoodRiver's request to grant relief to RDQ customers who claim to have incurred additional gas costs for their reliance upon KGS's filed tariffs and to deny any request to modify any aspect of the penalties at this time until consideration of a comprehensive financial plan and/or report on

---

<sup>25</sup> KGS Motion at pg. 5, ¶8.

Winter Event costs can be done and to provide any orders as it deems necessary.

Respectfully submitted,

  
David W. Nickel, Consumer Counsel #11170

Todd E. Love, Attorney #13445

Joseph R. Astrab, Attorney #26414

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

[d.nickel@curb.kansas.gov](mailto:d.nickel@curb.kansas.gov)

[t.love@curb.kansas.gov](mailto:t.love@curb.kansas.gov)

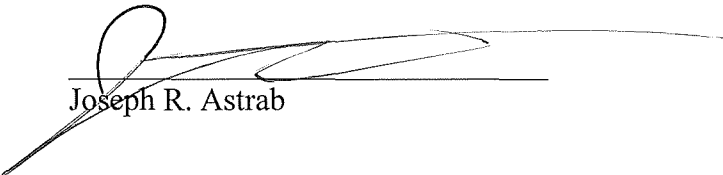
[j.astrab@curb.kansas.gov](mailto:j.astrab@curb.kansas.gov)



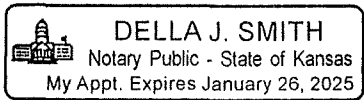
**VERIFICATION**

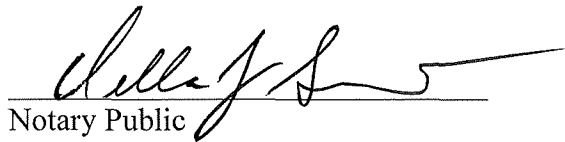
STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )        ss:

I, Joseph R. Astrab, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Joseph R. Astrab

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of June, 2021.



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

My Commission expires: 01-26-2025.

**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 17<sup>th</sup> day of June, 2021, to the following:

ALEX GOLDBERG, Attorney at Law  
ALEX GOLDBERG  
1104 E. 21<sup>st</sup> PLACE  
TULSA, OK 74114  
[alexantongoldberg@gmail.com](mailto:alexantongoldberg@gmail.com)

JACOB G. HOLLY, ATTORNEY  
FOULSTON SIEFKIN LLP  
822 S. KANSAS AVENUE, STE 200  
TOPEKA, KS 66612-1203  
[jholly@foulston.com](mailto:jholly@foulston.com)

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S. HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
[jflaherty@andersonbyrd.com](mailto:jflaherty@andersonbyrd.com)

C. EDWARD WATSON, ATTORNEY  
FOULSTON SIEFKIN LLP  
1551 N WATERFRONT PKWY, STE 100  
WICHITA, KS 67206-4466  
[cewatson@foulston.com](mailto:cwatson@foulston.com)

JEFF AUSTIN  
AUSTIN LAW P.A.  
7111 W. 151<sup>st</sup> ST., STE 315  
OVERLAND PARK, KS 66223  
[jeff@austinlawpa.com](mailto:jeff@austinlawpa.com)

BRIAN G. FEDOTIN, GENERAL  
COUNSEL  
KANSAS CORPORATION  
COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov)

JULIE AGRO  
BLUEMARK ENERGY  
4200 EAST SKELLY DRIVE, STE 300  
TULSA, OK 74135  
[jagro@bluemarkenergy.com](mailto:jagro@bluemarkenergy.com)

CARLY MASENTHIN, LITIGATION  
COUNSEL  
KANSAS CORPORATION  
COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[c.masenthin@kcc.ks.gov](mailto:c.masenthin@kcc.ks.gov)

MIKE WESTBROCK  
BLUEMARK ENERGY  
4200 EAST SKELLY DRIVE, STE 300  
TULSA, OK 74135  
[westbrock@bluemarkenergy.com](mailto:westbrock@bluemarkenergy.com)

TERRI PEMBERTON, CHIEF  
LITIGATION COUNSEL  
KANSAS CORPORATION  
COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[t.pemberton@KCC.KS.GOV](mailto:t.pemberton@KCC.KS.GOV)

LARRY WEBER  
BONAVIA PROPERTIES, LLC  
GARVEY CENTER  
250 W. DOUGLAS, STE 100  
WICHITA, KS 67202  
[larry@garveycenter.com](mailto:larry@garveycenter.com)

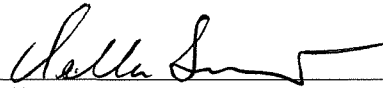
JANET BUCHANAN, DIRECTOR-  
REGULATORY AFFAIRS  
KANSAS GAS SERVICE, A DIVISION  
OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
[janet.buchanan@onegas.com](mailto:janet.buchanan@onegas.com)

JEREMY L. GRABER  
FOULSTON SIEFKIN LLP  
822 S KANSAS AVENUE, STE 200  
TOPEKA, KS 66612-1203  
[jgraber@FOULSTON.COM](mailto:jgraber@FOULSTON.COM)

JUDY JENKINS  
HITCHYE, MANAGING ATTORNEY  
KANSAS GAS SERVICE, A DIVISION  
OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
[judy.jenkins@onegas.com](mailto:judy.jenkins@onegas.com)

KELLY A. DALY  
SNELL & WILMER, LLP  
ONE AIRIZONA CENTER  
PHOENIX, AZ 85004  
[kdaly@swlaw.com](mailto:kdaly@swlaw.com)

DON KRATTENMAKER, Vice President  
WOODRIVER ENERGY, LLC  
633 17<sup>th</sup> ST., STE 1410  
DENVER, CO 80202  
[don.krattenmaker@woodriverenergy.com](mailto:don.krattenmaker@woodriverenergy.com)



---

Della Smith  
Senior Administrative Specialist