

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of a General Investigation into            )  
the Confidential Status of Certain Documents        ) Docket No. 24-GIMX-376-GIV  
Related to Costs Incurred During Winter Storm    )  
Uri.    )

**NOTICE OF FILING OF EXHIBIT – “DEFENDANT MIECO LLC’S INDIVIDUAL  
MOTION TO DISMISS” IN CASE NO: 6:23-CV-01192-JAR-GEB.  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS**

COMES NOW James P. Zakoura ("Requestor") and respectfully files the following:

Notice of Filing of Exhibit D – “Defendant MIECO LLC’s Individual  
Motion to Dismiss” in Case No: 6:23-cv-01192-JAR-GEB. United States  
District Court for the District of Kansas

and states to the State Corporation Commission of the State of Kansas ("Commission" or  
"KCC") as follows:

1. The stated position in this Docket (KCC Docket No. 24-GIMX-376-GIV) of  
Kansas Gas Service (KGS), is that KGS contracts for the purchase of natural gas in February  
2021, are “trade secrets” under applicable Kansas law (Exhibit A, attached hereto), and are  
exempt from disclosure under the Kansas Open Records Act (KORA.) The “redacted” (by KGS)  
MIECO Invoice for February 2021 is attached herewith as Exhibit B.
2. This “trade secret” position of KGS, is shared by Black Hills – Kansas Gas  
Utility, Atmos Energy, Evergy Kansas Central, and Empire District Electric (and the KCC –  
Exhibit C) in their responses to the KORA request of Requestor.
3. On November 20, 2023, MIECO LLC (“MIECO”) filed “Defendant MIECO  
LLC’s Individual Motion to Dismiss” in Case No.: 6:23-cv-01192-JAR-GEB. United States  
District Court for the District of Kansas. (Exhibit D, attached hereto.)

4. As a part of such Motion to Dismiss, is the “Declaration of Cory Rowan” – the General Manager, Natural Gas Trading, Rockies-Midwest Market for MIECO.

5. Mr. Rowan provides all specific details of the MIECO – KGS “supplier – purchaser” relationship, including:

- A detailed description of the 5 contracts that existed in February 2021.
- The volume for each contract.
- The price of each contract.
- The delivery point for each contract.
- The Transaction Confirmation for each Contract.
- The “Special Conditions” for a specific contract.

6. MIECO neither sought nor received any “confidential” treatment for the described Federal Court pleading:

7. The public filed contract documents of the supplier – purchaser relationship between MIECO and Kansas Gas Service, yield the following prices by reference to “public” Price Index postings of “Inside FERC Gas Market Report,” and “Gas Daily.”

Contract #1 – 10,000 MMBtu per day – limit of 80,000 per month  
Price – Inside FERC / First of Month – CIG Rocky Mountains \$2.40 / MMBtu

Contract 2 – February 12 – 16, 2021 – 10,000 MMBtu per day – Price – Gas Daily Cheyenne Hub plus 3 cents per MMBtu

- February 12, 2021 - \$14.87 / MMBtu (Gas Daily Cheyenne Hub, plus 3 cents)
- February 13 – 16, 2021 - \$187.72 (Gas Daily Cheyenne Hub, plus 3 cents)

Contract 3 – February 12 – 17, 2021 – 5,000 MMBtu per day – Price – Gas Daily Cheyenne Hub plus 10 cents per MMBtu

- February 12, 2021 - \$14.94 / MMBtu (Gas Daily Cheyenne Hub, plus 10 cents)
- February 13 – 16, 2021 - \$187.79 (Gas Daily Cheyenne Hub, plus 10 cents)
- February 17, 2021 - \$92.695 - (Gas Daily Cheyenne Hub, plus 10 cents)

Contract 4 – February 20 – 22, 2021 – 30,000 MMBtu per day – Price – Gas Daily Cheyenne Hub plus zero cents per MMBtu  
February 20, 2021 –

- February 20 – 22, 2021 - \$3.73 - (Gas Daily Cheyenne Hub, plus zero cents)

8. The MIECO filing in Federal Court evidences the fact that the supplier – purchaser contracts for natural gas supplied in February 2021 are not “trade secrets” and are not exempt from disclosure under applicable Kansas law.

Respectfully submitted,

*/s/ James P. Zakoura*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was electronically filed with the Kansas Corporation Commission on November 27, 2023, and that one copy was delivered electronically to all parties on the service list as follows:

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# Kansas Gas Service.

A Division of ONE Gas

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October 26, 2023

Sent via email to l.retz@kcc.ks.gov

Lynn Retz  
Executive Director  
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Re: Kansas Open Records Act Request  
Docket No. 21-KGSG-332-GIG

Dear Ms. Retz:

On behalf of Kansas Gas Service, a division of ONE Gas, Inc. ("Kansas Gas Service"), I am writing in response to your October 19, 2023, letter to Ms. Buchanan regarding a request for confidential records made pursuant to the Kansas Open Records Act ("KORA"). Kansas Gas Service welcomes the opportunity to respond to this request. The records requested were, and remain, confidential. Pursuant to K.S.A. 66-1220a, K.S.A. 45-221, and K.A.R. 82-1-221a, Kansas Gas Service respectfully requests the Kansas Corporation Commission ("Commission") continue to treat the documents confidentially and withhold them from public disclosure.

## I. Executive Summary

The natural gas commodity market is an unregulated and highly competitive marketplace. Sophisticated buyers compete for a limited supply of natural gas from sophisticated sellers. Kansas Gas Service must purchase natural gas in this competitive market to meet its service obligations. To compete, Kansas Gas Service has developed a confidential method for purchasing natural gas. If the documents requested from the Commission were released to the Requestor, Kansas Gas Service's confidential process for purchasing natural gas would be revealed. This would almost certainly cause real and irreparable harm to Kansas Gas Service and its customers. Other market participants could learn how, where, when, and for what price, Kansas Gas Service purchases natural gas. At the same time, Kansas Gas Service would have no insight into the purchasing practices of other market participants. Kansas Gas Service would be placed at a significant competitive disadvantage in the natural gas market. Accordingly, the Commission should deny the Requestor's KORA request.

## II. Records Requested

The Requestor is seeking the public release of "unredacted copies of the Contracts and Transaction Documents filed at the [Commission] on November 8, 2021" (the "Requested Documents").<sup>1</sup> The Requested Documents contain: gas sales contracts, transaction confirmations, and invoices. The redacted portions of the Requested Documents contain specific terms and conditions related to Kansas Gas Service's natural gas purchasing practices. In the most basic terms, the redacted portions of the Requested Documents detail how Kansas Gas Service executes its gas purchasing strategies. If publicly disclosed, a sophisticated entity could reverse engineer Kansas Gas Service's confidential gas purchasing strategies and Gas Supply Plan.

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<sup>1</sup> A "public" version of the Requested Documents, which has confidential information redacted, is available on the Commission's website.

*Exhibit A*

### III. Prior Commission Review of Redactions

The Commission has already extensively reviewed the confidential nature of the Requested Documents. In fact, it was the Commission's thoughtful balancing of transparency against the need to protect trade secrets that created the Public Version of the Requested Documents the Requestor now seeks to fully reveal. In Docket No. 21-KGSG-332-GIG (the "21-332 Docket"), the Natural Gas Transportation Customer Coalition ("NGTCC") made several requests to designate confidential gas supply information as public. The Commission denied this request recognizing the harm it could cause.

***The Commission finds that [supplier invoices and certain responses to data requests] qualify as trade secrets under K.S.A. 66-3320 and that disclosure is not warranted after considering the factors enumerated in K.S.A. 66-1220a(a). Order Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 15 (Sep. 9, 2021)(emphasis added).***

NGTCC has not demonstrated that disclosure will benefit the public interest. Conversely, the record demonstrates disclosure of the information as requested in NGTCC's motions holds great potential to harm to current and future Kansas natural gas customers through higher purchased gas costs. ***A general argument in favor of transparency cannot outweigh this very real harm to customers.*** The Commission agrees with Staff that the extraordinary nature of Winter Storm Uri does not warrant deviating from long-standing and well-reasoned Commission practices related to nondisclosure of trade secrets and confidential commercial information. Order Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 17 (Sep. 9, 2021)(emphasis added).

Later in the 21-332 Docket, the Commission took significant action to provide the public as much information as possible:

However, to eliminate any confusion of the record and ***ensure the public can view as much of KGS' gas supply information as possible***, the Commission orders KGS to file public versions of all its supplier contracts and invoices relevant to the winter weather event period. Consistent with the above findings and those of prior orders, KGS should specifically identify and provide its justifications where trade secrets or commercially-sensitive information is redacted. Order Granting in Part, Denying in Part NGTCC's Petition for Reconsideration of its Motions To Remove Confidential Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 16. (Oct. 14, 2021) (emphasis added).

On November 8, 2021, Kansas Gas Service complied with the Commission's order. In so doing, Kansas Gas Service extensively detailed why portions of its contracts and invoices were properly redacted. Kansas Gas Service dedicated over ten pages of its pleading to providing: an overview of natural gas markets, the types of information redacted, and how this information could be used against Kansas Gas Service if it were publicly revealed. See Second Amendment to Notice of Providing Certain Redacted Contracts of Kansas Gas Service, Docket No. 21-KGSG-332-GIG, pp. 3 - 13 (Nov. 8, 2021).

To reiterate, ***the Requested Records are the confidential versions of the November 8, 2021, documents.*** The Commission has already examined the confidential nature of Kansas Gas Service's gas supply information. Since the Commission took significant steps to ensure the public could view "as much of [Kansas Gas Service's] gas supply information as possible," there is nothing else to publicly reveal without also revealing trade secrets or confidential commercial information.



#### IV. KORA and Confidential Information

Kansas Gas Service supports Kansas' public policy "that public records shall be open for inspection by any person unless otherwise provided by [the Kansas Open Records Act]." K.S.A. 45-216. While KORA sets out certain exceptions from disclosure, these "exceptions must be narrowly interpreted, and the burden is on the public agency opposing disclosure." Data Tree, LLC v. Meek, 279 Kan. 445, 454–55, 109 P.3d 1226, 1234 (2005). The Requested Documents are subject to KORA's very first exception. K.S.A. 45-221(a)(1) makes clear a public agency shall not be required to disclose records when the disclosure of which is specifically prohibited or restricted pursuant to specific federal or state laws, rules of the Kansas Supreme Court, or Senate Committee on Confirmation Oversight. KORA's plain language creates a well-defined and narrowly tailored exception – disclosure of records is not required when it is otherwise prohibited or restricted by law.

K.S.A. 66-1220a specifically prohibits the Commission from disclosing or allowing anyone to inspect trade secrets or confidential commercial information unless the Commission finds disclosure is warranted. "The most fundamental rule of statutory interpretation is that the intent of the Legislature governs if that intent can be ascertained." Matter of M.M., 312 Kan. 872, 874, 482 P.3d 583, 585 (2021). "In ascertaining this intent, we begin with the plain language of the statute, giving common words their ordinary meaning." Id. "When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words." Id. Here, that intent is clear. K.S.A. 66-1220a is the very exception KORA expects.

Notwithstanding, when confidential information is sought an agency has a duty to "delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out [KORA's] purpose of making available for public inspection all disclosable parts of the public record." State ex rel. Stephan v. Harder, 230 Kan. 573, 583, 641 P.2d 366, 374 (1982); See also K.S.A. 45-221(d). K.S.A. 66-1220a dovetails neatly with KORA's overarching public policy. K.S.A. 66-1220a allows the Commission to disclose trade secrets or confidential commercial information after evaluating four factors:

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 which 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.<sup>2</sup>

K.A.R. 82-1-221a(b) outlines the process for requesting confidential information from the Commission. If a request is made outside of an active docket, an entity seeking to maintain the confidential status of information is notified of the request and may respond to it. See K.A.R. 82-1-221a(b)(1). Responses which oppose the request must substantiate the basis for nondisclosure and be served upon the Commission and Requestor. See id. Afterwards, the Requestor may respond. See id. With this information, the Commission may thoroughly evaluate K.S.A. 66-1220a's factors.

#### V. The Documents Sought Were Trade Secrets or Confidential Commercial Information, and Continue to Remain Confidential

The Requested Documents are trade secrets or confidential commercial information which should not be publicly disclosed. The Kansas Uniform Trade Secrets Act, K.S.A. 60-3320 *et seq.* defines a trade secret as:

<sup>2</sup> Before the Kansas Legislature enacted K.S.A. 66-1220a, similar factors were established in Sw. Bell Tel. Co. v. State Corp. Comm'n, 6 Kan. App. 2d 444, 456–57, 629 P.2d 1174, 1184 (1981). Likewise, the Court noted, "[f]or purposes of disclosure, any distinction between trade secrets and confidential commercial information would appear immaterial." Sw. Bell Tel. Co. v. State Corp. Comm'n, 6 Kan. App. 2d 444, 457, 629 P.2d 1174, 1184 (1981).

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. K.S.A. 60-3320(4).

The Requested Documents met, and continue to meet, this definition. The Requested Documents detail how Kansas Gas Service purchases natural gas in competitive markets to meet its service obligations. There is independent economic value in this information, which is not generally known to others, and which other persons could obtain economic value from if the process were disclosed.

***Independent Economic Value from not being Known or Readily Ascertainable***

The Requested Documents contain: (1) base gas sales agreements, (2) transaction confirmations, and (3) the amounts paid to meet these obligations. The redacted information contained in the Requested Documents show the program, method, technique, and process Kansas Gas Service uses to purchase natural gas supplies.

The purchase and sale of natural gas occurs in a competitive and unregulated market. The natural gas commodity market is made up of sophisticated buyers and sellers. Kansas Gas Service must compete against both buyers and sellers to secure natural gas supplies. Other sophisticated buyers seek to secure their gas needs at the lowest cost. At the same time, sophisticated sellers seek to maximize the value of their commodity. Kansas Gas Service must compete against other buyers to secure adequate supplies, while also negotiating with sellers to secure low prices. In order to compete in this market, Kansas Gas Service's strategies must remain hidden from other market participants. If other market participants knew how Kansas Gas Service intended to meet its gas needs, they could alter their own strategies to the detriment of Kansas Gas Service and its customers.

In the 21-332 Docket, Kansas Gas Service articulated eight separate pieces of information contained in the Requested Documents that, if disclosed, could significantly harm Kansas Gas Service and its customers. This information includes:

1. The amount of natural gas purchased in each transaction;
2. The index price used to purchase natural gas;
3. The actual price paid for natural gas;
4. The pipeline used to deliver the natural gas;
5. The location of the sale for each transaction;
6. The start and end date of each transaction;
7. The description of each transaction (i.e., special contract terms); and
8. The persons and contact information involved in the transaction.

If this information were publicly revealed, other market participants would be able to largely recreate Kansas Gas Service's confidential 2020 – 2021 Gas Supply Plan.<sup>3</sup> This is because Kansas Gas Service was ordered to "file public versions of ***all its supplier contracts and invoices relevant to the winter weather event period.***" Order Granting in Part, Denying in Part NGTCC's Petition for Reconsideration of its Motions To Remove Confidential

<sup>3</sup> While Kansas Gas Service is required to file the plan with the Commission annually, the filings are subject to a Protective Order. See Protective Order, Docket No. 02-KGSG-414-GPR (Dec. 17, 2001).



Designations for Certain Documents, Docket No. 21-KGSG-332-GIG, ¶ 16. (Oct. 14, 2021) (emphasis added). Relevant contracts included gas purchases for periods well outside the winter weather event (i.e., Winter Storm Uri). For example, long-term baseload or interim-term seasonal agreements may have had delivery periods that coincided with Winter Storm Uri. This presents a critical concern. Since historical purchase information provides significant insight into how Kansas Gas Service will meet its future gas supply needs, other market participants could use this information to forecast Kansas Gas Service's purchasing strategies.

In any competitive market, sophisticated market participants will use all available information to maximize their negotiation position. Other natural gas buyers could undercut Kansas Gas Service and secure lower cost supplies or transportation agreements. Likewise, sellers of natural gas would be able to determine if there were any constraints impacting Kansas Gas Service's purchasing decisions (e.g., reduced pipeline capacity or supplies at a particular location). Sellers could then use this information to secure higher prices knowing Kansas Gas Service's alternatives were limited. However, since Kansas Gas Service's Gas Supply Plan and its procurement strategy remain confidential, market participants are not able to leverage Kansas Gas Service's own strategies against itself. This represents the independent economic value of secret gas procurement strategies, which are ultimately reflected in the redacted terms of the Requested Documents.

The Requestor notes Section 15.10 of certain Base Contracts for Sale and Purchase of Natural Gas creates a one-year confidentiality obligation. According to the Requestor, since more than a year has passed since Winter Storm Uri the transactions should not be considered confidential. Unfortunately, the Requestor's argument suffers from a critical flaw. The cited confidentiality provision was never the sole justification for declaring the Requested Documents confidential (though it was certainly relevant). Rather, the base sale contracts, transaction confirmations, and invoices when taken together provide direct line-of-sight into how Kansas Gas Service purchases natural gas. In short, the redacted portions of the Requested Documents reveal the recipe, program, method, technique, and process Kansas Gas Service uses to purchase natural gas supplies. These confidential trade secrets must be protected.

#### ***Reasonable Efforts to Maintain Its Secrecy***

Kansas Gas Service undertakes significant effort to keep its gas procurement strategies and Gas Supply Plan a secret. These strategies are not widely distributed or known to internal employees, and are not publicly discussed. Kansas Gas Service's Gas Supply Plan is filed confidentially with the Commission. When certain parties in the 21-332 Docket sought to publicly reveal this information, Kansas Gas Service objected heavily. Each of these actions demonstrate Kansas Gas Service continually makes a reasonable effort under the circumstances to maintain the confidential nature of its Gas Supply Plan and gas purchasing strategies. These efforts would be undone if the Requested Documents were publicly produced. Another entity would be able to largely reverse engineer Kansas Gas Service's 2020 – 2021 Gas Supply Plan, the strategies used to execute it, and use this information against Kansas Gas Service in the future.

#### **VI. Disclosing Kansas Gas Service's Trade Secrets Does Not Meet K.S.A. 66-1220a's Factors**

Having demonstrated Kansas Gas Service's gas purchasing practices meet the definition of a trade secret, the Commission must evaluate whether disclosure is justified after reviewing K.S.A. 66-1220a's factors. As the Commission has previously determined, disclosing the Requested Documents is not justified.

Publicly disclosing the Requested Documents would not significantly aid the Commission in fulfilling its duties. Kansas Gas Service provided confidential copies of the Requested Documents to the Commission and parties in the 21-332 Docket. Parties were able to review this information, come to unanimous agreements on handling the extraordinary costs incurred during Winter Storm Uri, and receive the Commission's approval. The Commission has fully reviewed Kansas Gas Service's gas supply purchasing practices, strategies, and plans. Disclosing the Requested Documents would not aid the Commission in fulfilling any of its functions. The Commission's review of how Winter Storm Uri impacted Kansas Gas Service was exhaustive and has come to its conclusion.

As the Commission found during the 21-332 Docket, disclosing the Requested Documents would harm the public interest, Kansas Gas Service, and its customers. Kansas Gas Service's negotiation position could be severely undermined, and result in higher gas costs to ratepayers. The public-at-large will see no benefit from knowing how Kansas Gas Service purchases natural gas. However, other market participants would be able to extract valuable economic information from those details. This would negatively harm the public interest either directly (through Kansas Gas Service's counterparties taking advantage of the information) or indirectly (through other parties refining their own practices in a manner that secures gas supplies before Kansas Gas Service, ultimately reducing the amount and increasing the price of gas available for Kansas Gas Service to purchase).

Finally, there are alternatives to disclosure that serve the public interest and protect Kansas Gas Service. In the 21-332 Docket, the Commission directed Kansas Gas Service to make public as much of its gas supply information as possible. The Commission carefully struck a balance between providing the public as much information as possible while preserving the confidential nature of Kansas Gas Service's purchasing practices. Kansas Gas Service fully complied with this directive and no party challenged or appealed how the Commission navigated this delicate analysis.

## VII. Conclusion

Kansas Gas Service appreciates the opportunity to respond to this KORA request. Likewise, Kansas Gas Service values the public policy found within KORA on openness and transparency. As KORA itself recognizes, there are certain circumstances where this policy yields to protect sensitive information. When privacy interests are balanced with the public's need to know, and the result shows disclosing private information fails to significantly serve the principal purpose of KORA, then nondisclosure is favored if it is done in a way that complies with KORA's other requirements. See *Data Tree, LLC v. Meek*, 279 Kan. 445, 462, 109 P.3d 1226, 1238 (2005). Here, the Commission has done just that. The Commission has taken confidential trade secrets and made available to the public as much as possible. Disclosing additional information does not satisfy the requirements of K.S.A. 66-1220a. Absent a finding to the contrary, K.S.A. 66-1220a limits what the Commission may disclose pursuant to a KORA request. For the reasons discussed in the 21-332 Docket and reiterated herein, the Commission should deny the Requestor's KORA Request.

Respectfully submitted,

*Robert Elliott Vincent*

Robert Elliott Vincent  
Managing Attorney

cc: Sally Conn, Executive Secretary  
Kansas Corporation Commission  
s.conn@kcc.ks.gov

James P. Zakoura  
Foulston Siefken,  
jzakoura@foulston.com

Janet Buchanan  
James Flaherty

# CONFIDENTIAL

## MIECO LLC

Shoreline Square 301 East Ocean Blvd., Suite 1100 Long Beach, CA 90802-4832

Tel: [REDACTED]

Fax: [REDACTED]

### INVOICE

Kansas Gas Service, a div of ONE Gas Inc.  
7421 W 129th Street

Overland Park, KS 66213  
United States of America

Tel: [REDACTED]

**DUE DATE: Thursday, March 25, 2021**

**AMOUNT DUE: USD 12,324,260.54**

**INVOICE NO.: 281068**  
**INVOICE DATE: March 2, 2021**

Our Refer  
Your Refer

Billing Inq

Tel: [REDACTED]  
Fax: [REDACTED]

TRADE	TRADE DATE	PRODUCT/COST DESCRIPTION	LOCATION	START DATE	END DATE	QUANTITY
[REDACTED]	7/22/2020	Physical Sell Primary Settlement	[REDACTED]	2/1/2021	2/28/2021	[REDACTED]
[REDACTED]	7/22/2020	Physical Sell Demand Fee	[REDACTED]	2/1/2021	2/28/2021	[REDACTED]
[REDACTED]	2/11/2021	Physical Sell Primary Settlement	[REDACTED]	2/12/2021	2/16/2021	[REDACTED]
[REDACTED]	2/12/2021	Physical Sell Primary Settlement	[REDACTED]	2/13/2021	2/17/2021	[REDACTED]
[REDACTED]	2/19/2021	Physical Sell Primary Settlement	[REDACTED]	2/20/2021	2/22/2021	[REDACTED]

Transported Over [REDACTED]

*Exhibit B*



~~CONFIDENTIAL~~

Settlement To

PLEASE PAY ACCORDING TO THE FOLLOWING INSTRUCTIONS:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

October 31, 2023

James P. Zakoura  
Foulston Siefkin  
7500 College Blvd., Ste. 1400  
Overland Park, KS 66210  
[JZakoura@foulston.com](mailto:JZakoura@foulston.com)

Re: KORA Request rcv'd. 10.24.23 – KCC Docket Nos. 21-BHCG-334-GIG; 21-BHCG-370-MIS; 21-KGSG-332-GIG; 21-ATMG-333-GIG; and 21-EKME-329-GIE

Mr. Zakoura,

On October 24, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for all documents prepared by KCC Staff that supports or substantiates the calculation of: (1) \$87.9 million of “Additional Natural Gas Costs” that KCC Staff recommended be recovered from retail sales gas customers of Black Hills, in KCC Docket Nos. 21-BHCG-334-GIG and 21-BHCG-370-MIS; (2) \$358,086,241 of “Additional Natural Gas Costs” that KCC Staff recommended be recovered from retail sales gas customers of Kansas Gas Service, in KCC Docket No. 21-KGSG-332-GIG; (3) \$102,517,847 of “Additional Natural Gas Costs” that KCC Staff recommended be recovered from retail sales gas customers of Atmos Energy, in KCC Docket No. 21-ATMG-333-GIG; and (4) \$122.2 million of “Additional Natural Gas Costs” that KCC Staff recommended be recovered from retail sales electric customers of Evergy Kansas Central, in KCC Docket No. 21-EKME-329-GIE.

Pursuant to K.S.A. 66-1220a, the Commission shall not disclose or allow inspection of a trade secret or confidential information of a corporation, partnership or individual proprietorship regulated by the Commission, unless the Commission finds disclosure is warranted after consideration of four factors:

- (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 which 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.
- (b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

After weighing the four factors in K.S.A. 66-1220a, disclosure will not aid the Commission in fulfilling its function, and would likely harm regulated utilities. Also, if the information sought is for the purposes of litigation, it can be obtained through discovery. Thus, your request is denied pursuant to K.S.A. 66-1220a.

Pursuant to K.S.A. 45-221(a)(20) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

*Exhibit C*

Page 2  
October 31, 2023

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

Thus, to the extent you are seeking Staff's notes, preliminary drafts and recommendations, Requests 1-4 are denied, pursuant to K.S.A. 45-221(a)(20).

Sincerely,

*/s/ Brian G. Fedotin*

Brian G. Fedotin  
General Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Russ Mehl, Edmund Gross, Trudy  
Boyer, Steve Anderson, and Gregory  
Steadman, individually and on behalf  
of all other similarly situated,

Plaintiffs

v.

BP Energy Company, Southwest  
Energy L. P., Macquarie Energy LLC,  
Energy Transfer, L.P., Tenaska, Inc.,  
d/b/a Tenaska Marketing Ventures,  
MIECO, LLC, and Rockpoint Gas  
Storage, LLC,

Defendants

Civil File No. 23-cv-01192- DDC-GEB

**DEFENDANT MIECO LLC’S INDIVIDUAL MOTION TO DISMISS**

Defendant MIECO LLC (“MIECO”) joins in the arguments set forth in Defendants’ joint Motion to Dismiss (Dkt. 63-64). Additionally, MIECO moves to dismiss the Complaint pursuant Fed. R. Civ. Proc. 12(b)(6) on the additional basis that none of the transactions at issue between MIECO and Kansas Gas Service (“KGS”) took place in Kansas. Consequently, those transactions do not fall within the ambit of the Kansas Consumer Protection Act, Kan. Stat. Ann. § 50-623 *et seq.* (“KCPA”).

The Complaint alleges violations the KCPA, which applies exclusively to “consumer transactions.” *See* Kan. Stat. Ann. §§ 50-626, 50-627. The Act defines a “consumer transactions” to mean a “sale, lease, assignment or other disposition for value of property or services” *within Kansas*. *See* Kan. Stat. Ann. § 50-624(c).

None of the transactions at issue between MIECO and KGS involved transactions within Kansas. Each of the contracts between MIECO and KGS specified that MIECO would deliver natural gas to KGA at the “Cheyenne Hub” in Colorado, just south of the Wyoming border. *See* Declaration of Cory Rowan at ¶¶ 2 – 3 and Ex. A. Because the delivery of wholesale natural gas to a distribution company in northern Colorado does not fall within the definition of “consumer transactions” in the KCPA, the Complaint fails to state an actionable claim against MIECO. For this reason, in addition to the reasons set forth in Defendants’ joint motion to dismiss, the Complaint should be dismissed in its entirety with respect to MIECO.

Dated: November 20, 2023

Respectfully submitted,

/s/ Cameron E. Grant

Brent N. Coverdale KS #18798

Cameron E. Grant KS #28388

SCHARHORST AST KENNARD GRIFFIN, PC.

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E-Mail: bcoverdale@sakg.com

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Creighton R. Magid (Admitted *Pro Hac Vice*)

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Washington, DC 20005

Telephone: (202) 442-3555

Facsimile: (202) 315-3852

magid.chip@dorsey.com

*Attorneys for Defendant MIECO LLC*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

Russ Mehl, Edmund Gross, Trudy Boyer,  
Steve Anderson, and Gregory Steadman,  
individually and on behalf of all those  
similarly situated,

Plaintiffs,

v.

BP Energy Company, Southwest Energy  
L.P., Macquarie Energy LLC, Energy  
Transfer, L.P., Tenaska, Inc., d/b/a  
Tenaska Marketing Ventures, MIECO,  
LLC, and Rockpoint Gas Storage, LLC,

Defendants.

Case No: 6:23-cv-01192-JAR-GEB

**DECLARATION OF CORY ROWAN**

I, Cory Rowan, hereby declare as follows:

1. I am the General Manager, Natural Gas Trading, Rockies-Midwest Market for MIECO LLC (“MIECO”). I am over 18 years of age and make this Declaration of my own personal knowledge.

2. In February 2021, MIECO had four, and only four, contracts to deliver natural gas to Kansas Gas Service:

- a. A contract to deliver 10,100 MMBtu per day from November 1, 2020, through March 31, 2021, at the Cheyenne Hub “Thunder Chief” interconnection between the Wyoming Interstate Company pipeline and the Cheyenne Plains Gas Pipeline in Weld County, Colorado, just south of the Wyoming state line, and priced at the *Inside FERC* first-of-the-month index price for the “CIG Rockies” index plus 6 cents per MMBtu;

- b. A contract to deliver 10,000 MMBtu per day from February 12 through February 16, 2021, at the Cheyenne Hub in Weld County, Colorado, just south of the Wyoming state line, and priced at the *Gas Daily* index price for the Cheyenne Hub, plus 3 cents per MMBtu;
- c. A contract to deliver 5,000 MMBtu per day from February 13 through February 17, 2021, at the Cheyenne Hub in Weld County, Colorado, just south of the Wyoming state line, and priced at the *Gas Daily* index price for the Cheyenne Hub, plus 10 cents per MMBtu; and
- d. A contract to deliver 10,000 MMBtu per day from February 12 through February 16, 2021, at the Cheyenne Hub in Weld County, Colorado, just south of the Wyoming state line, and priced at the *Gas Daily* index price for the Cheyenne Hub, plus 3 cents per MMBtu;
- e. A contract to deliver 30,000 MMBtu per day from February 20 through February 20, 2021, at the Cheyenne Hub in Weld County, Colorado, just south of the Wyoming state line, and priced at the *Gas Daily* index price for the Cheyenne Hub.

3. True and correct copies of the Transaction Confirmations memorializing these four transactions are attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November, 2023, at Westminster, Colorado.

  
\_\_\_\_\_  
Cory Rowan

# **EXHIBIT A**

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

MIECO INC

Date: 7/22/2020  
Transaction Confirmation #: 780563

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated 3/3/2010. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**BUYER:**  
Kansas Gas Service, a div of ONE Gas Inc.  
7421 W 129th Street  
Overland Park, KS 66213  
Attn: Contract Administration  
Phone: 913-344-8836  
Fax: 913-344-8837  
Base Contract: NAESB  
Transporter: CHEY

**SELLER:**  
MIECO INC.-DV  
Shoreline Square, 301 East Ocean Boulevard  
Long Beach, CA 90802-4828  
Attn: Contract Administration  
Phone: 562-951-1765  
Fax: 562-901-2385  
Base Contract: NAESB  
Transporter: CHEY

**Contract Price Formula:** IF CIG Rocky Mtns \$0.0600 / MMBtu

**Delivery Period:** Begin: 11/1/2020 End: 3/31/2021

**Performance Obligation and Contract Quantity:** Firm Gas: 10,100 per Day MMBtu

**Delivery Point:** CHEY-WIC Thunder Chf

**Special Conditions:** On any given day during the delivery period listed above, Kansas Gas Service has the right to call from MIECO Inc. a volume ranging from 0-10,100 MMBtu/day not to be more than 8 days or to exceed 80,000 MMBtu in a given month. In addition, total deliveries for the term shall not exceed 303,000 MMBtu for the term.

Daily time notification shall be no later than 7:30 CST day-ahead whereas weekends and holidays are ratable nominations subject to all ICE postings. Kansas Gas Service shall pay a demand fee to MIECO Inc. of \$250,000.00 total for the term and payable ratable per month over 5 months (\$50,000.00 per month).

Buyer: Kansas Gas Service, a div of ONE Gas Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Seller: MIECO INC.-DV  
By: *David E. Engbrock*  
Title: Dave Engbrock, Vice President  
Date: 7/22/2020



TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

MIECO LLC

Date: 2/11/2021  
Transaction Confirmation #: 839056

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated 3/3/2010. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**BUYER:**  
Kansas Gas Service, a div of ONE Gas Inc.  
7421 W 129th Street  
Overland Park, KS 66213  
Attn: Contract Administration  
Phone: 913-344-8836  
Fax: 913-344-8837  
Base Contract: NAESB  
Transporter: CHEY

**SELLER:**  
MIECO LLC.-DV  
Shoreline Square, 301 East Ocean Boulevard  
Long Beach, CA 90802-4828  
Attn: Contract Administration  
Phone: 562-951-1765  
E-mail: [gasconfirms@mieco.com](mailto:gasconfirms@mieco.com)  
Base Contract: NAESB  
Transporter: CHEY

**Contract Price Formula:** GD Cheyenne Hub \$0.0300 / MMBtu

**Delivery Period:** Begin: 2/12/2021 End: 2/16/2021

**Performance Obligation and Contract Quantity:** Firm Gas: 10,000 per Day MMBtu

**Delivery Point:** CHEY

**Special Conditions:**

Buyer: Kansas Gas Service, a div of ONE Gas Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Seller: MIECO LLC.-DV  
By: *David E. Engbrock*  
Title: Dave Engbrock, Vice President  
Date: 2/11/2021



TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

MIECO LLC

Date: 2/12/2021  
Transaction Confirmation #: 840541

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated 3/3/2010. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**BUYER:**  
Kansas Gas Service, a div of ONE Gas Inc.  
7421 W 129th Street  
Overland Park, KS 66213  
Attn: Contract Administration  
Phone: 913-344-8836  
Fax: 913-344-8837  
Base Contract: NAESB  
Transporter: CHEY

**SELLER:**  
MIECO LLC.-DV  
Shoreline Square, 301 East Ocean Boulevard  
Long Beach, CA 90802-4828  
Attn: Contract Administration  
Phone: 562-951-1765  
Fax: 562-901-2385  
Base Contract: NAESB  
Transporter: CHEY

**Contract Price Formula:** GD Cheyenne Hub \$0.1000 / MMBtu

**Delivery Period:** Begin: 2/13/2021 End: 2/17/2021

**Performance Obligation and Contract Quantity:** Firm Gas: 5,000 per Day MMBtu

**Delivery Point:** CHEY

**Special Conditions:**

Buyer: Kansas Gas Service, a div of ONE Gas Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Seller: MIECO LLC.-DV  
By: *Dave E. Engbrock*  
Title: Dave Engbrock, Vice President  
Date: 2/12/2021

TRANSACTION CONFIRMATION

FOR IMMEDIATE DELIVERY

MIECO LLC

Date: 2/19/2021  
Transaction Confirmation #: 841707

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated 3/3/2010. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

**BUYER:**  
Kansas Gas Service, a div of ONE Gas Inc.  
7421 W 129th Street  
Overland Park, KS 66213  
Attn: Contract Administration  
Phone: 913-344-8836  
Fax: 913-344-8837  
Base Contract: NAESB  
Transporter: CHEY

**SELLER:**  
MIECO LLC.-DV  
Shoreline Square, 301 East Ocean Boulevard  
Long Beach, CA 90802-4828  
Attn: Contract Administration  
Phone: 562-951-1765  
E-mail: [gasconfirms@mieco.com](mailto:gasconfirms@mieco.com)  
Base Contract: NAESB  
Transporter: CHEY

**Contract Price Formula:** GD Cheyenne Hub \$0.0000 / MMBtu

**Delivery Period:** Begin: 2/20/2021 End: 2/22/2021

**Performance Obligation and Contract Quantity:** Firm Gas: 30,000 per Day MMBtu

**Delivery Point:** CHEY

**Special Conditions:**

Buyer: Kansas Gas Service, a div of ONE Gas Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Seller: MIECO LLC.-DV  
By: *Dave E. Engbrock*  
Title: Dave Engbrock, Vice President  
Date: 2/19/2021