

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

In the Matter of the Investigation into Kansas )  
Gas Service Company, 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. )

**MOTION FOR RECONSIDERATION OF THE COMMISSION'S ORDER OF  
SEPTEMBER 9, 2021 DENYING NGTCC's MOTIONS TO REMOVE CONFIDENTIAL  
DESIGNATIONS FOR CERTAIN DOCUMENTS**

COMES NOW the Natural Gas Transportation Customer Coalition (NGTCC)<sup>1</sup> and for its  
Petition for Reconsideration of the Order of the State Corporation Commission of the State of  
Kansas ("Commission" or "KCC") (attached as Exhibit A hereto), respectfully states and alleges  
as follows:

NGTCC respectfully requests the Commission Reconsider its Order Denying NGTCC's  
Motions to Remove Confidential Designations of September 9, 2021, in part, because critical  
information that is central to the determination of this Disclosure Issue / Confidentiality Issue - -  
has not yet been provided to the Commission by Kansas Gas Service ("KGS"). In this case, KGS  
has not addressed for the Commission, the direct effect that the "Base Contract" or "Master  
Contract" will have on the issue of confidentiality. The "Base Contract" is the foundational  
document upon which the supplier documents requested to be made public by NGTCC, are  
based.

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<sup>1</sup> NGTCC is a coalition of about 400 natural gas customers, many of which use the KGS system. In this Docket, KGS contends that during parts of February 2021, some suppliers of NGTCC members failed to supply sufficient quantities of natural gas used by NGTCC members. KGS contends that this failure of supply required KGS to purchase natural gas on behalf of NGTCC members. The contracts and invoices that are the subject of the Order are those contracts and invoices pursuant to which KGS contends it purchased gas supply that was delivered to NGTCC members.

In 99% of natural gas transactions, the “Base Contract” will be the contract form of the North American Energy Standards Board Inc. – the NAEBS Contract – (Exhibit B). The NAEBS contract was first developed in 2002, and for 20 years has included the following terms:

15.10 . . . The existence of this Contract is not subject to confidentiality obligation. . . . The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

Section 2.32. “Transaction Confirmation” shall mean a document . . . setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

Contrary to the contention of KGS, unless the described Section 15.10 of the NAEBS contract has been deleted, the contract specifically provides that the existence of the contract is not confidential, and the Seller and Buyer of the requested contract may be immediately disclosed to the public.

Further, the Confirmations and Invoices related thereto are not “trade secrets” in that there is no expectation of confidential treatment after one year, and therefore there is no continuing economic value to either the Confirmations or Sales Invoices – the subject of the NGTCC Motion, at a date no later than February 23, 2022.

NGTCC respectfully requests that KGS be ordered by the Commission to report by verified statement if the “Base Contracts” and “Master Agreements” include the Confidential provisions of the NAEBS contract set forth above. The Seller, the “Base Contract” / “Master Contract,” and the date thereof, are listed on each of the “Confirmations” that are the subject of the NGTCC Motion.

### **Introduction**

1. The Commission through the years has shown a deep commitment to public transparency. In recent years, through the use of technology, the KCC has deepened its

commitment to keep the public informed, and to make public participation in Commission proceedings widely available throughout the state.

2. However, in this Docket, in the opinion of NGTCC, the Commission has taken a step backward on the issue of transparency. NGTCC requests that the Commission Reconsider its Order of September 9, 2021 and recalibrate the public posture of the case to advance public transparency.

3. What is really at stake here, is whether the public can look at what goes on at the Commission, and feel that they have been treated fairly, that they have been granted participation at the KCC to a degree that is proportionate to what they have at stake – the “public interest.”

4. On September 9, 2021, the Commission denied the NGTCC Motion to Make Public the supplier contracts and supplier invoices of those suppliers that during a 7-day period in February 2021, charged Kansas Gas Service (KGS) about \$400 million for natural gas - during a Disaster period declared by Governor Kelly.

5. Four hundred million dollars for a 7-day supply of natural gas – about \$600 for every KGS residential ratepayer - is such a huge amount of money, that it will likely have to be repaid over a 10-year period, so that the repayment amount does not crowd out of the budget for Kansans at lower income levels, life necessities such as food, shelter, and medicine.

6. Residential ratepayers of KGS will pay 79% of the \$451 million, and small businesses will pay 9% of the \$451 million. These are economically crippling amounts for Kansas and its residents.

7. Absent the Commission’s favorable Reconsideration of its Order, the Kansas public will never know the identities of these suppliers, the contracts of these suppliers, and the amount paid to any of these suppliers - - that have placed a \$400 million burden on KGS ratepayers. Sound

public policy would not exclude the Kansas public from the full disclosure of these matters which have placed such a heavy financial burden on them. A reasonable view of the Commission's Order, coupled with the documented history of this Docket, reflects that the public has not been provided a meaningful opportunity to view and participate in this case.

8. NGTCC acknowledges the deep commitment of the Commission to public transparency, and therefore requests that the Commission view the matter, not simply from the standpoint of a Reconsideration of the Order, but also a consideration of the Docket as a whole, to set the course for open government and public transparency. NGTCC respectfully requests that it be permitted to advise the Commission herein of the overall status of public transparency in this Docket to aid the Commission's overall consideration of the public interest.

### **Procedural History**

9. On June 11, 2021, NGTCC filed a Motion to Amend the Protective Order in this Docket. NGTCC proposed that it be made clear from the beginning in this KCC Docket, that critical central documents in this case – namely the supplier contracts and invoices – did not qualify for confidential protection that would effectively take those critical documents out of public view. KGS and the KCC Staff opposed this NGTCC Motion. The Commission in its Order dated July 20, 2021, denied the NGTCC Motion, saying it was “premature.”

10. In response thereto, NGTCC took 2 actions: (1) it immediately and unsuccessfully contacted KGS in an effort to resolve the disclosure matter on a negotiated basis; and (2) it filed a Motion for Reconsideration of the Commission's denial of the NGTCC Motion to Amend the Protective Order. (Attached hereto as Exhibit C)

11. This Motion for Reconsideration dated July 22, 2021 specifically advised the Commission of the ongoing public disclosure disputes between the parties that were, in the opinion



of NGTCC, frustrating the appropriate level of public transparency, and therefore public disclosure, that the Commission strives to maintain. (Exhibit A at pp. 4-7)

12. With regard to the Motion to Make Public the described supplier documents, as noted in the Commission's Order of September 9, 2021 – both KGS and KCC Staff opposed public release of the described supplier documents.

### **Public Disclosure Disputes In This Docket**

13. The statutes and the public policy of the State of Kansas require open government. All records at the KCC are public records – unless they are properly excluded from the public based on statutory exemptions.

14. In this docket, the Commission has issued a Protective Order. It permits a party such as KGS to designate documents as “Confidential” and exempt from public disclosure. Under terms of the Protective Order, if any party designates documents as Confidential – the documents so designated retain confidential status until further order of the Commission that removes the confidential status. The KCC requires that any individual that elects to see documents that have been designated as confidential, must execute a Non-Disclosure Agreement. If for any reason an individual discloses confidential information – that individual is subject to sanctions by the Commission.

15. In this case, KGS designated the described supplier documents as confidential. KGS has not only designated as confidential the described supplier documents as confidential – but also has designated as confidential most of the critical documents in this case that would be necessary for the public or the media to understand the important events of February 2021, and the enormous costs that will be passed through to KGS ratepayers in this Docket.

16. KGS has designated as Confidential the following categories of documents, as well as many others:

- the daily sales volumes and the daily dollar costs for the critical period of February 11 – 23;
- all information concerning gas storage levels and gas storage injections and gas withdrawals for February 2021;
- all daily sales volumes;
- all daily transportation volumes;
- all of the 10-year historical gas cost information;
- the herein described supplier contracts and invoices;
- the KGS gas sales and revenue reports to the U. S. Energy Information Administration (EIA); and
- all information related to the volumes and dollar amounts for the gas supply categories designated as base volumes, callable volumes, and spot volumes.

17. Essentially, for the critical period of February 2021, the public cannot view or know: (1) the volumes of gas sold or transported on a daily basis or in the critical winter period, (2) the supplier identity or the prices charged by the supplier for gas, (3) the manner in which gas storage was used to meet consumer needs, or (4) how KGS operated to meet the consumer need for gas, or even historical gas costs of KGS.

#### **The Commission Order Denying Public Release of the Supplier Documents**

18. The Commission denied the Motion of NGTCC on several grounds. NGTCC submits that the reasons advanced by the Commission are not sufficient in fact or law the paramount need for public disclosure. NGTCC contends that the Commission's Order does not

reflect sound public policy and does not appropriately reflect the public policy of the State of Kansas regarding open government and public transparency. In the opinion of NGTCC, this Commission Order was handicapped by the fact that the Commission did not have before it, relevant information described by NGTCC herein.

19. The KCC Order Denying the NGTCC Motion for Public Disclosure states the following in support of its decision to deny Public Disclosure:

- (1) The information is commercial business information, which is confidential and a trade secret, thus exempt from disclosure;
- (2) Disclosure of the information could harm KGS and somehow result in higher consumer costs;
- (3) The information is available to anyone that executes a Nondisclosure Agreement, including representatives of NGTCC;
- (4) The information has been available to NGTCC;
- (5) The public is well represented by the Citizens' Utility Ratepayer Board, KCC Staff, and the Attorney General; and
- (6) Public Disclosure will not aid the Commission.

20. None of the reasons listed by the Commission in its Order are sufficient in fact or law to deny public transparency required for open public discourse and discussion of the natural gas pricing calamity.

21. The **first** point of this or any analysis of public transparency, is that all documents in the possession of the KCC are always public, unless there is a basis for nondisclosure.

22. The **last** point of this or any analysis of public transparency, which supersedes all other considerations, is whether public release of the documents is in the public interest. The Commission's Order acknowledges these standards.

23. KGS designated the supplier documents as commercial information, claiming that the commercial status of a document that is not normally made public, makes it a trade secret, and entitles the document to be exempt from public disclosure. The KCC Staff supported that position, and the Commission agreed. NGTCC believes the position advanced by KGS did not appropriately include all documents relevant to the Commission's inquiry. The suppliers' identity and the contracts were not confidential. The Base Contracts are forms available on the internet. There is no economic value lost to KGS if they are disclosed to the public, as they were never viewed to have confidential treatment for any extended period of time. Further, they are simply former contracts no longer applicable, and they hold no present or future value as the transaction they confirm has taken place. No reasonable analysis would consider the commercial documents to be trade secrets and even KGS did not consider them such – they were offered no contract protection.

24. The existence of and parties to the commercial documents are not confidential. KGS has stated previously that it utilizes NAESB form contracts when purchasing natural gas. NAESB form contracts explicitly state "The existence of this Contract is not subject to this confidentiality obligation." *See* Exhibit B at Section 15.10. Accordingly, the basic form of the transaction and the parties entering the transactions in question are not protected by the very terms of the form contracts themselves. Therefore, the Commission should at the very least, allow public disclosure of the parties to the contracts resulting in the supplier invoices NGTCC seeks to make public. The parties to those contracts, if using the form contract as previously stated, have

recognized that the existence of a relationship between the parties and the fact that they do business with one another is not confidential.

25. Further, the NAESB form contract states “[t]he terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.” *See Exhibit B at Section 15.10.* While NGTCC submits that one year has not passed since February 2021, certainly, the fact that the parties to the contracts themselves have agreed to a time limited confidentiality term should be taken into consideration by the Commission. The supplier contracts evidence past commercial activity only, and they are not exempt from public disclosure. By the very terms of the contracts, the confidentiality of the terms of the contracts is lifted after one year.

26. Further, the argument that disclosure of the commercial documents may harm KGS is without merit. Thankfully, KGS is not currently buying natural gas at \$329.59 per MMBtu and \$622.78 per MMBtu, and so public release of the supplier documents cannot have a detrimental effect on either KGS or its customers. It is not reasonable to contend that past commercial activity constitutes “trade secrets” and receives a blanket exemption from public disclosure – if that were the case, the public would be excluded from all investigations of any kind. Investigations always deal with past commercial conduct – that is what is investigated. There is no reasonable basis to argue inactive former contracts are “trade secrets.” Importantly, the contracts do not provide for confidential treatment of the Seller identities or the existence of the contracts.

26. KGS contended that release of the supplier documents would cause KGS customers to pay higher costs in the future. KGS contended that suppliers would not do business with KGS in the future if their contracts were released to the public. The KCC Staff supported this position, and the Commission agreed. In response, NGTCC states that it is not concerned about offending suppliers that charged KGS \$400 million for 7 days of gas supply, during a Disaster. Second, it is

a concern to NGTCC, that KGS apparently continues to do business with suppliers that charged \$2.54 per MMBtu on February 1 and charged \$622.78 per MMBtu on February 17, 2021. No one forced these suppliers to increase the price of gas by about 25,000% in 16 days – the suppliers chose to do that. This contention of KGS does not support nondisclosure. Further, these contracts and invoices represent past history from which much should be learned.

27. The Order notes that any person can view the supplier documents if they execute a Nondisclosure Agreement. Essentially, the Commission states that since NGTCC representatives have executed Nondisclosure Agreements, they have not been harmed by the fact that the supplier documents are not available to the public. This argument turns Kansas open government policy on its head. Just because a person can view documents pursuant to a Protective Order that subjects the person to sanctions for disclosure, offers no support for consideration of whether a document is, or is not entitled to protection from public disclosure.

28. The Order states that the public interest is represented, and the public's right to open government is protected, because the Citizens' Utility Ratepayer Board (CURB), the KCC Staff, and the Attorney General (AG) are parties to this Docket. The individuals representing CURB, Staff, and the Attorney General all must execute Nondisclosure Agreements and are not permitted to discuss documents designated as confidential with the public. They are subject to sanctions if they do so. This contention offers no support for deeming the supplier documents exempt from disclosure. The fact that certain representatives of the public can view documents upon execution of a Non-Disclosure Agreement is completely unrelated to the requirement that the KCC operate as an open government agency to all of the public. Open public records are required for meaningful discourse by the very Kansas residents that will ultimately pay the commercial invoices.

28. Finally, the Commission stated that public disclosure would not aid the Commission in consideration of this Docket. Essentially, the Commission statement may infer that public involvement is not likely to be important to the Commission. NGTCC does not believe the Commission puts an unimportant value on public participation, but instead places a high value on public participation. The statement offers no support for the Order.

### **Conclusion**

There is far more at stake here, than simply the Commission's consideration of the NGTCC Motion for Reconsideration, or whether the various contentions of KGS, KCC Staff, or NGTCC are best reasoned and most supportable. The KCC impacts almost every Kansan every month, on the receipt of their natural gas and electric bills. No other part of state government affects Kansans more directly and more frequently than the KCC. It's important for the KCC to get this right – to protect the public interest.

This issue does not arise if natural gas is \$2.54 per MMBtu. It is an entirely different situation, and life changing to KGS ratepayers and to the entire state of Kansas, when natural gas is \$622.78 per MMBtu.

All things considered, is it fair to the ratepayers of KGS, that they be ordered to pay \$451 million of supplier gas costs to KGS, and not be able to have available for review if they choose to do so - the contracts and invoices of those suppliers? Does the Commission feel that this result is in the best public interest of Kansas?

Determining just what is the public interest, and how best to protect it, is an extraordinarily difficult task. Here, however, that determination is clear. Public disclosure of documents associated with natural gas pricing, or at the very least who charged prices of \$329.59 MMBtu and

\$622.781 MMBtu, will promote this public discourse which is necessary to fully evaluate and protect the interests of the residents, businesses, and utilities of the State of Kansas.

Respectfully submitted,

/s/ James P. Zakoura

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**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON        )

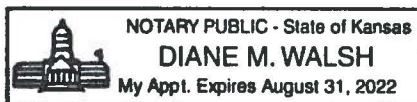
James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Natural Gas Transportation Customer Coalition, that he has read and is familiar with the foregoing *Motion for Reconsideration of the Commission's Order of September 9, 2021 Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents*, and that the statements therein are true to the best of his knowledge, information, and belief.

  
James P. Zakoura

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

  
Notary Public

My Appointment Expires:



### **CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of September, 2021, the foregoing *Motion for Reconsideration of the Commission's Order of September 9, 2021 Denying NGTCC's Motions to Remove Confidential Designations for Certain Documents* was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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/s/ James P. Zakoura  
James P. Zakoura

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

Before Commissioners:                    Andrew J. French, Chairperson  
   Dwight D. Keen  
   Susan K. Duffy

In the Matter of the Investigation into Kansas    )  
Gas Service Company, 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.                                )

**ORDER DENYING NGTCC'S MOTIONS TO REMOVE CONFIDENTIAL  
DESIGNATIONS FOR CERTAIN DOCUMENTS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1.       On February 15, 2021, pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.<sup>1</sup> Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.<sup>2</sup> The Commission authorized every jurisdictional natural gas distribution utility that incurs extraordinary costs associated with ensuring their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during Winter Storm Uri to defer those costs to a regulatory asset account.<sup>3</sup> The Commission mandated that once Winter Storm Uri ended, and after all costs have been

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<sup>1</sup> Emergency Order, 21-GIMX-303-MIS, Feb. 15, 2021, ¶ 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* ¶ 4.



accumulated and recorded, each jurisdictional utility is directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.<sup>4</sup>

2. On March 9, 2021, the Commission issued an Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations, which initiated this Docket.<sup>5</sup> The Commission's Order also included a Protective/Discovery Order.

3. On June 10, 2021, the Commission issued a Supplemental Protective and Discovery Order to allow the Office of the Kansas Attorney General to review discovery produced in this Docket.<sup>6</sup>

4. On June 11, 2021, the Natural Gas Transportation Customer Coalition<sup>7</sup> (NGTCC) filed a Motion to Amend the Protective Order, to prevent the following types of documents to be labeled as confidential:

- Requests by KGS for supplies of natural gas, made in February 2021;
- Responses by suppliers in response to requests by KGS for supplies of natural gas, made for usage in February 2021;
- Draft and final invoices of KGS to marketers and/or aggregators of natural gas, for alleged under delivery of natural gas supplies, for re-delivery by KGS to natural gas transport end use customers for usage in February 2021; and
- All invoices tendered to KGS by natural gas suppliers, and all amounts paid by KGS to those suppliers for February 2021 natural gas usage, including any KGS-

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<sup>4</sup> *Id.* ¶ 5.

<sup>5</sup> Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective and Discovery Order, 21-303 Docket, March 9, 2021, ¶ 10.

<sup>6</sup> Supplemental Protective and Discovery Order, June 10, 2021, ¶ 6.

<sup>7</sup> NGTCC was granted intervention on July 1, 2021.



purchaser reservation of rights letters sent to suppliers or like-kind qualified payments.<sup>8</sup>

In acknowledging its request was “not in the normal course,”<sup>9</sup> NGTCC claimed the documents are of the highest interest to the public, and the Kansas Legislature,<sup>10</sup> and therefore should not be treated as confidential.

5. On July 20, 2021, the Commission denied NGTCC’s Motion to Amend the Protective Order as premature, explaining that if NGTCC or other parties believe information has been improperly designated confidential or if they believe public disclosure of specific identifiable confidential information is warranted under the framework of K.S.A. 66-1220a, they can move to have those specific documents made public if and when such information is designated as confidential.<sup>11</sup>

6. On July 22, 2021, NGTCC filed a Petition for Reconsideration of the Order Denying Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule. On August 2, 2021, NGTCC filed a Motion to Designate as Public Documents the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS), rendering its Petition for Reconsideration moot.<sup>12</sup> In its August 2 Motion, NGTCC explained that in response to its good faith request to KGS to make natural gas supplier invoices “public,” KGS deemed all supplier invoices as “Confidential” and exempt from public disclosure.<sup>13</sup>

7. NGTCC argues it is difficult for a public hearing to be meaningful if the public does not have access to: (1) the winter gas supply plan, (2) the amounts charged by stated

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<sup>8</sup> Motion to Amend the Protective Order, June 11, 2021, ¶ 1.

<sup>9</sup> *Id.*, ¶ 4.

<sup>10</sup> *Id.*, ¶ 2.

<sup>11</sup> Order on Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule, July 20, 2021, ¶ 19.

<sup>12</sup> The Petition for Reconsideration was denied by operation of law on August 23, 2021. *See* K.S.A. 77-529(b).

<sup>13</sup> Motion to Designate as Public Documents, the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS), July 22, 2021, ¶¶ 9-10.

suppliers of natural gas, (3) the categories of contract purchases, (4) the price/cost of gas in storage, (5) storage withdrawal and injection volumes, and (6) gas hedging plans affecting price.<sup>14</sup> Furthermore, NGTCC claims KGS offers no support, detail, or explanation as to why the supplier information is Confidential.<sup>15</sup> NGTCC seeks to have the confidential designations removed from the supplier invoices produced by KGS in discovery responses.<sup>16</sup>

8. On August 11, 2021, KGS filed its Objection to NGTCC'S Motion to Designate as Public Documents, noting that rather than cite to any legal authority supporting the public release of documents, NGTCC simply states, without making those invoices public, it cannot envision a "meaningful" public hearing.<sup>17</sup> KGS asserts the February 2021 Supplier Invoices satisfy the definition of "trade secret" as defined by K.S.A. 60-3320,<sup>18</sup> because: (1) making the details of Supplier Invoices, including the natural gas supply contract information publicly available would place the parties to those gas supply contracts at a competitive disadvantage;<sup>19</sup> and (2) KGS has taken reasonable efforts to maintain the secrecy and confidentiality of these documents.<sup>20</sup> KGS also claims the February 2021 Supplier Invoices qualify as proprietary commercial or financial information as set forth by the U.S. Supreme Court, the Kansas Supreme Court, and FOIA.<sup>21</sup>

9. KGS also contends NGTCC presents no persuasive arguments to compel the release of "trade secret" and "confidential information."<sup>22</sup> Specifically, KGS claims NGTCC fails to identify which, if any of K.S.A. 66-1220a(a)'s four factors would compel the

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<sup>14</sup> *Id.*, ¶ 10.

<sup>15</sup> *Id.*, ¶ 12.

<sup>16</sup> *Id.*, p. 6-7.

<sup>17</sup> Objection of Kansas Gas Service to Natural Gas Transportation Customer Coalition's Motion to Designate as Public Documents, Aug. 11, 2021, ¶ 9.

<sup>18</sup> *Id.*, ¶ 13.

<sup>19</sup> *Id.*, ¶ 14.

<sup>20</sup> *Id.*, ¶ 15.

<sup>21</sup> *Id.*, ¶ 16.

<sup>22</sup> *Id.*, ¶ 18.

Commission to order KGS and its natural gas suppliers to release “trade secret” and “confidential information.”<sup>23</sup> In its discussion of the four statutory factors, KGS contends the factors weigh strongly in favor of maintaining the confidential designations. KGS asserts disclosure is not necessary for the Commission to conduct a full investigation and could place KGS at competitive disadvantage in negotiating future natural gas prices with suppliers, resulting in higher prices paid by retail customers.<sup>24</sup>

10. On August 12, 2021, NGTCC filed its Reply to KGS’ Objection, characterizing the essence of the position as, “it is in the public interest for ratepayers – primarily Residential and Small General Service Ratepayers and gas transportation customers – to have transparency of those who charged KGS \$373,026,315 for seven (7) days of natural gas and that Kansas ratepayers will be repaying over the next 5, 7, or 10 years.”<sup>25</sup> NGTCC also disputes KGS’ claim that the supplier invoices have economic value because disclosure would adversely affect bargaining power in a competitive marketplace.<sup>26</sup> The basis for NGTCC’s assertion appears to be its belief that KGS does not negotiate specific prices with specific suppliers because KGS competitively bids its supply contracts in advance of winter or business month, and these contract prices are tied to a market index.<sup>27</sup>

11. On August 12, 2021, Commission Staff (Staff) filed its Response to NGTCC’s Motion to Designate as Public Documents the February 2021 Supplier Invoices paid by Kansas Gas Service Company.<sup>28</sup> While acknowledging the extraordinary nature of Winter Storm Uri, Staff does not believe it justifies deviating from traditional Commission practice related to

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, ¶ 21-25.

<sup>25</sup> Reply of the Natural Gas Transportation Customer Coalition to the Objection of Kansas Gas Service, Aug. 12, 2021, ¶ 10.

<sup>26</sup> *Id.*, ¶ 12.

<sup>27</sup> *Id.*, ¶ 14.

<sup>28</sup> Response of Commission Staff to the Natural Gas Transportation Customer Coalition’s Motion to Designate as Public Documents the February 2021 Supplier Invoices paid by Kansas Gas Service Company, Aug. 12, 2021, ¶ 20.

confidentiality.<sup>29</sup> Staff also notes all of the parties to the Docket that have signed a non-disclosure agreement have access to the confidential information.<sup>30</sup> Staff believes NGTCC has not made a sufficient showing that disclosure of the requested confidential information is warranted under K.S.A. 66-1220a because: (1) public disclosure would not significantly aid the Commission in conducting a thorough investigation into the events of the Winter Storm Uri; (2) Staff, which is tasked with representing the public generally, is already engaged in an extensive investigation into KGS and its operations during the Winter Storm Uri; and (3) any benefit to the public that could potentially be derived from disclosure is far outweighed by the harm to come from that disclosure.<sup>31</sup>

12. On August 13, 2021, NGTCC filed a Motion to Make Public a Document of KGS, concerning Data Requests (DRs) issued by Staff to KGS seeking the estimated usage for KGS' sales customers (non-Transportation customers) for the month of February 2021 and the actual usage.<sup>32</sup> NGTCC claims the DR response contains no confidential information and is merely a simple volumetric historical listing.<sup>33</sup> NGTCC sees no harm to KGS and great benefits to the general public and the Commission by explaining to the public in a single, concise document, the impact that the prolonged cold temperatures had on our state and the volumes of gas required to sustain Kansas families and businesses during February 2021.<sup>34</sup> NGTCC also requests the Commission order KGS to pay \$660 of its attorney fees, incurred in preparing its Motion.<sup>35</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, ¶ 21.

<sup>32</sup> Motion of the Natural Gas Transportation Customer Coalition to Make Public a Document of Kansas Gas Service Company, Aug. 13, 2021, ¶ 1.

<sup>33</sup> *Id.*, ¶ 11.

<sup>34</sup> *Id.*, ¶ 14.

<sup>35</sup> *Id.*, ¶ 15.

13. On August 23, 2021, KGS filed an Objection to NGTCC's Motion to Make Public a Confidential Response from KGS to Commission Staff, explaining the estimated and actual usage data contained in its confidential response satisfies the first prong of Kansas's two-prong trade secret analysis because that information has independent economic value in the natural gas commodity industry, an unregulated and highly competitive market.<sup>36</sup> KGS asserts that if the Commission discloses the amount of gas estimated and purchased, then this information can be exploited by these or other natural gas suppliers in the future by giving them critical insights into how much gas Kansas Gas Service needs for a given window, resulting in higher gas supply costs for Kansas Gas Service's customers.<sup>37</sup> KGS reiterates it has taken reasonable efforts to maintain the secrecy and confidentiality of the documents produced in response to Staff's DR, satisfying the second prong of the trade secret definition.<sup>38</sup> As with NGTCC's other pending motion, KGS contends NGTCC has failed to assert facts that satisfy the four factors of K.S.A. 66-1220a(a).<sup>39</sup>

14. Also on August 23, 2021, KGS filed a Sur-Reply in Support of its Objection to NGTCC's Motion to Designate as Public Documents, "to clarify misrepresentations and factual errors asserted by NGTCC...."<sup>40</sup> KGS identifies three misrepresentations or factual errors asserted by NGTCC. First, according to KGS, in Paragraph 14, NGTCC incorrectly characterizes how KGS purchases its gas supply, leading NGTCC to incorrectly state the manner in which KGS acquires its gas will not be adversely impacted by the disclosure of these invoices

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<sup>36</sup> Objection of Kansas Gas Service to Natural Gas Transportation Customer Coalition's Motion to Make Public a Confidential Response by the Kansas Gas Service to the Kansas Corporation Commission Staff, Aug. 23, 2021, ¶ 15.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, ¶ 16.

<sup>39</sup> *Id.*, ¶ 18.

<sup>40</sup> Sur-Reply in Support Kansas Gas Service's Objection to Natural Gas Transportation Customer Coalition's Motion to Designate as Public Documents, Aug. 23, 2021, ¶ 11.

and thereby the terms of the contracts.<sup>41</sup> KGS explains it uses a bid process to determine the lowest premium (or the highest discount) that is added to (or deducted from) the index prices, and that disclosure of the adder or the discount will likely affect the willingness of suppliers to bid in the future and thus place KGS at a competitive disadvantage.<sup>42</sup> Second, in Paragraph 15, KGS asserts NGTCC incorrectly suggests that KGS has not reported fixed price contracts to S&P Global Platts Gas Daily Index in over a year because KGS only acquires gas supply at the index price.<sup>43</sup> KGS advises there is no causal connection between reporting to the Platts Index and the level of the Company's gas supply at the index price and that its fixed price contracts represent a very small portion of its total natural gas portfolio.<sup>44</sup> Third, in Paragraph 16, KGS states that it does not negotiate the index price, the market at large sets the Platts Index and cannot refuse to purchase gas from marketers that are selling natural gas at the index price, because if all of the marketers are selling at the index price there would be no one left to purchase the natural gas.<sup>45</sup>

15. The Commission denies NGTCC's Motions to Designate the February 2021 Supplier Invoices and KGS' Responses to Staff's DR as public documents. The Commission finds that both sets of documents 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).

16. Disclosure of the documents will not aid the Commission in fulfilling its functions. First, Staff already has access to the documents, as do the other parties, including NGTCC. Since NGTCC has included the documents in its confidential filings, the Commission

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<sup>41</sup> *Id.*, ¶ 12.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, ¶ 13.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, ¶ 14.

itself has access to the documents. Making the highly technical documents available to the general public will not advance the Commission's ability to conduct its investigation.

17. NGTCC has failed to provide a compelling reason to disclose the documents. Essentially, NGTCC argues Winter Storm Uri is an extraordinary event, so the public should have access to all materials produced in the investigation. In addition to Staff and CURB, the Office of the Kansas Attorney General (AG) is actively participating in this Docket and will receive all documents, including those designated confidential. Therefore, between Staff, CURB, and the AG, the general public is well represented in this proceeding. 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.

18. The Commission denies NGTCC's request for attorney fees. Generally, a Kansas court may not award attorney fees absent a statute authorizing the award or an agreement between the parties allowing attorney fees.<sup>46</sup> Here, NGTCC does not cite to any statute authorizing the Commission to award it attorney fees under these circumstances, nor does it claim any agreement among the parties allowing attorney fees.

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<sup>46</sup> *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 162 (2013), citing *Unruh v. Purina Mills*, 289 Kan. 1185, 1200 (2009); *United States Fidelity & Guaranty Co. v. Maish*, 21 Kan.App.2d 885, 905-06 (1995).

**THEREFORE, THE COMMISSION ORDERS:**

A. NGTCC's August 2, 2021 Motion to Designate as Public Documents, the February 2021 Supplier Invoices Paid by Kansas Gas Service Company (KGS) is denied.

B. NGTCC's August 13, 2021 Motion of the Natural Gas Transportation Customer Coalition to Make Public a Document of Kansas Gas Service Company, concerning Data Requests issued by Staff to KGS is denied.

C. NGTCC's request for attorney fees is denied.

D. 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>47</sup>

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

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 09/09/2021



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Lynn M. Retz  
Executive Director

BGF

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<sup>47</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).



## **CERTIFICATE OF SERVICE**

21-KGSG-332-GIG

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
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**CERTIFICATE OF SERVICE**

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\* Denotes those receiving the Confidential version

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

**The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.**

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.



- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

<b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b>	
<b>Cover Standard:</b>	
3.2.	The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.



**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

## **SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES**

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## **SECTION 6. TAXES**

**The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.**

### **Buyer Pays At and After Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

### **Seller Pays Before and At Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## **SECTION 7. BILLING, PAYMENT, AND AUDIT**

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is

not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

### **Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and



Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.



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

In the Matter of the Investigation into Kansas )  
Gas Service Company, 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. )

**PETITION FOR RECONSIDERATION OF THE “ORDER DENYING  
MOTION TO AMEND PROTECTIVE ORDER; ORDER DIRECTING  
THE PARTIES TO SUBMIT A PROPOSED PROCEDURAL SCHEDULE”**

COMES NOW the Natural Gas Transportation Customer Coalition (“Coalition”)<sup>1</sup> and for  
its Petition for Reconsideration, states to the State Corporation Commission of the State of  
Kansas (“Commission” or “KCC”) the following:

**Procedural History**

1. The Coalition states, as if fully set out herein, the Procedural History as set forth  
in Paragraph Nos.1-18 of the Commission’s Order dated July 20, 2021.

2. The Coalition seeks Reconsideration of the following provision of the  
Commission’s Order as set forth at Paragraph 19 of the Order to-wit:

The Commission denies NGTCC’s Motion to Amend the Protective  
Order as premature. The Commission agrees with the Gas Marketers  
that NGTCC’s Motion is premature. NGTCC argues the price paid  
for natural gas, to be recovered from ratepayers, is neither  
commercially confidential information nor trade secrets, and cannot  
be considered confidential under the Commission’s Protective

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<sup>1</sup> The Coalition includes 178 Kansas School Districts that are members of the Kansas Joint Utilities Management Program (KJUMP) administered by the Kansas Association of School Boards (KASB); institutions of higher education, including Kansas State University, Wichita State University, the University of Kansas, and KU Medical Center; the healthcare community, including Associated Purchasing Service Corporation, the group purchasing organization of the Kansas Hospital Association; the faith community, including the parishes and schools of the Archdiocese of Kansas City in Kansas, Temple Bnei Yehudah, and Catholic Care Centers; the business community, including Associated Wholesale Grocers, Futamura, the J.M. Smicker Company, AGCO Corporation, and Hammersmith Manufacturing; and the hospitality industry, including Hulsing Hotels and Drury Hotels.



Order as it does not satisfy the minimum statutory requirement for confidential designation. Thus, if NGTCC is correct, and the information is not confidential, there is no need to preemptively lift protections because no such protections will apply. If, on the other hand, information is legitimately designated as confidential, there is a statutory process (outlined by NGTCC in its motion) which allows the Commission to review the specific confidential information and consider policy arguments that may warrant disclosure. If NGTCC or other parties believe information has been improperly designated confidential or if they believe public disclosure of specific identifiable confidential information is warranted under the framework of K.S.A. 66-1220a, they can move to have those specific documents made public if and when such information is designated as confidential.

3. The Commission's Order should be reconsidered and amended in that it includes incorrect statements of fact, and in practice, will inhibit public participation in this Docket. The existing Protective Order establishes a framework for a Hearing in this Docket that will be largely nonpublic, with critical documents secreted away from the public in a situation where the public may be asked to pay hundreds of millions of dollars of natural gas costs that were incurred in February 2021, to-wit:

(1) The Coalition Motion to Amend the Protective Order is not "premature."

It sought an Amendment to the existing Protective Order, and did not seek a determination under the Protective Order. The Coalition Motion is timely;<sup>2</sup>

(2) The Commission's Order of July 20, 2021, unnecessarily increases the time that must be expended by all parties, and the expenses of Commission participation will materially increase for all parties;

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<sup>2</sup> As stated in the Protective Order, "[p]arties may request modified or additional discovery procedures. . ." and therefore the Coalition's request is not premature. (Protective Order, at ¶ 27)

(3) The Commission's Order of July 20, 2021, makes public participation prohibitively time consuming and expensive, thereby working against expansive public participation;

(4) The Commission's Order of July 20, 2021, because of the press of the overall workload of the Commission and its Staff, makes implementation of the Protective Order an impractical and unworkable undertaking; and

(5) In total, the Commission's Order of July 20, 2021, will likely lead to a Hearing that is largely nonpublic in nature, with critical documents secreted away from the public, in a case of tremendous economic impact which will have devastating economic consequences for Kansas families and Kansas businesses.

#### **Argument in Support of Reconsideration**

##### **The Coalition Motion is not "premature."**

4. The Coalition did not seek in its Motion, a determination by the Commission, on the issue of whether any specific supplier invoice was properly – or not properly, designated as Confidential under the existing Protective Order in this Docket. Instead in an effort to reasonably save time and money (i.e. judicial economy) and to foster public participation, the Coalition sought a Limited Amendment to the existing Protective Order.

5. The four stated categories of documents set forth in the Coalition Motion are critical to both the public and the Commission in its consideration of the costs and pass through of costs to Kansas ratepayer and transport customers in Kansas. The 350 Kansas Coalition members are currently facing about tens of millions of gas commodity costs for February 2021. It is critical to them that participation in KCC proceedings be as economical as reasonably possible.

6. The Coalition's Motion - - so as to avoid controversy - - was very limited in time, very limited in the scope of documents requested, and was targeted to those documents that the Coalition determined would be critical to both the Commission and the public of Kansas - - those families, schools, and businesses that will pay the supplier invoices that are the subject of the Coalition's Motion.

7. A very predictable and immediate result flowed from the Order of July 20, 2021.

8. In its 10:00 o'clock a.m. Business Meeting of July 20, 2021, the Commission approved an Order that denied the Coalition's Motion stating that it was premature. This KCC Order was mailed to the Parties by the KCC at 11:31 o'clock a.m. on July 20, 2021. At 6:52 p.m. on July 20, 2021, KGS provided Counsel for the Coalition the described supplier invoices. The entirety of each page of the supplier invoices was designated as Confidential - - even the invoice dates and invoice page numbers.

**The Commission's Order Unnecessarily Increases the Time that Must be Expended by all Parties, and the Expenses of Commission Participation by All Parties.**

9. Essentially, all of the documents produced by KGS in this Docket, that would be necessary for a reasoned understanding of the important facts related to February 2021 supply and costs, have been designated by KGS as Confidential. Absent the approval of the Motion of the Coalition, and further attention by the Commission to the issue of public transparency and open government, this Docket will be essentially closed to the public. KGS has designated as "Confidential" all of its responses to Information Requests of the Coalition and other interested parties to-wit:

**Coalition Data Information Request 2-05:**

Please provide the following: Please provide all supplier invoices for the purchase of natural gas for use / delivery in February 2021.

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**Coalition Data Information Request 2-03:**

Please provide the following: Please provide the total amount of natural gas purchases, for each day of the month of February 2021, separated by the following categories:

- a. “Contract purchases” of base load;
- b. “Callable purchases;” and
- c. “Spot purchases.”

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**Coalition Data Information Request 2-06:**

Please provide the following: Please provide the following information pertaining to storage:

- a. Please provide, by month, the price paid for and amount of natural gas injections into storage for the period January 2020 through March 2021.
- b. Please provide and describe the methodology KGS uses to calculate the cost basis of storage withdrawals (example, FIFO, LIFO).
- c. Please provide the weighted average cost of storage gas, by month, for the period January 2020 to March 2021.

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**Coalition Data Information Request 2-04:**

Please provide the following: Please provide the following natural gas storage withdrawal and injection amounts:

- a. The total amount of natural gas storage withdrawals, for each day of the month of February 2021.
- b. The total amount of natural gas storage injections, for each day of the month of February 2021.
- c. The total amount of natural gas storage withdrawals, for each day of the month of January 2021.
- d. The total amount of natural gas storage injections, for each day of the month of January 2021.

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**KCC Data Information Request KCC-005:**

Please provide the following: Please provide copies of all written communication (i.e. emails, attachments, documents, workpapers, etc.) between Kansas Gas Service and Natural Gas Fuel Marketers/Suppliers pertaining to the utility & #39;s purchases of natural gas (potential or actual) from marketing companies for the dates of February 9, 2021 through February 21, 2021.

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**KCC Data Information Request KCC-005:**

Please provide the following: 1. Did Kansas Gas Service experience any gas supply or transportation limitations/disruptions during the winter weather event? If so, please detail these issues. Did those supply or transportation limitations result in natural gas distribution service limitations during the event?

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**CURB Data Information Request CURB-009:**

Please provide the following: Over the past ten years, please identify all occurrences where the average price of gas increased by at least 25% from one day to the next. For each occurrence, please provide the before and after dates and prices. If known, please indicate the underlying cause of each price spike (e.g., extreme cold weather).

**KGS Response:**

This response contains financial and business information the Company has deemed and treats as “CONFIDENTIAL” and as such, the information contained herein is subject to the Confidential treatment and protections proscribed in K.S.A. 66-1220a., K.A.R. 82-1-221a and the Protection Order issued in this docket. The improper release of the confidential information may result in irreparable economic harm to the Company and its customers.

**The Commission's Order and the Existing Protective Order Are Both Impractical and Unworkable Without Amendment**

10. The press of the overall workload of the Commission and its Staff,<sup>3</sup> make implementation of the existing Protective Order both impractical and unworkable.

11. In Fiscal Year 2020, the Commission issued 1,120 Orders, held 88 Business Meetings, 5 Evidentiary Hearings, and 2 Public Hearings. (KCC Report to the Kansas Legislature at p. 2) Staff support was critical to these listed Commission activities. With this level of Commission workload, it is both impractical and unworkable to reasonably believe that the Commission and its Staff can act as a timely arbiter of disputes among the parties as to appropriate designations of Confidential treatment, while balancing the Kansas state policy of transparency of governmental action.

12. In large volume document cases, such as the Evergy STP Docket (21-EKME-088-GIE), the volume of document designations in dispute, and the requirements of the existing Protective Order, do not yield timely resolution of disputes that could lead to greater public transparency. In the Evergy STP Docket, on January 4, 2021, the Joint Movants sought to redesignate as public, numerous documents designated as Confidential by Evergy - - principally a Study prepared by the Boston Consulting Group (GCG), and materials regarding electric rate impacts. The matter was briefed in full as of January 27, 2021. A ruling on the issue of confidential treatment on the disputed documents, in the opinion of the Coalition, would require very extended review and analysis, because of the voluminous nature of the GCG Study. Even upon issuance of an Order, the parties would have the right to petition for reconsideration and to file an appeal. To

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<sup>3</sup> The Protective Order provides at p. 25: the Commission Staff should be prepared to challenge a confidential designation when Staff believes the information does not meet the definition of confidential information.

date a ruling on the confidential designation dispute in the Evergy STP Docket has not been issued, and the Procedural Schedule in that Docket has concluded.

13. Absent the approval of reasoned amendments to the Protective Order, such as the Limited Amendment of the Coalition, the sheer volume of documents in the 4 large Winter Storm cases at the Commission - - KGS, Black Hills, Atmos Energy and Evergy - - will likely far outweigh the ability of the Commission and its Staff to timely process disputes related to Confidential designations. This problem becomes yet larger if any utility seeks to finance costs through the recently enacted Kansas Securitization Legislation - - which has no regulatory or statutory precedent in Kansas.

14. Given the number of open dockets and the sheer volume of documents contained therein, it would be prudent of the Commission to make the reasoned amendments to the Protective Order as requested by the Coalition. Alternatively, the Commission should consider appointing a Special Master that could resolve any discovery disputes in a timely fashion.

**The Commission's Order, and the Existing Protective Order, Make Broad Based Public Participation, Prohibitively Expensive and Time Consuming.**

14. Faced with a large volume of documents designated as Confidential - - a representative of a city, a county, or group of Kansas families or businesses of any type is faced with this choice: (a) participate on the basis of only "public" documents and be excluded from the review of such critical documents and any Hearing related thereto; or (b) execute a non-disclosure certificate and review Confidential documents, but without the ability to discuss critical documents with governing city councils, county commissions, and/or boards of directors. This "Holson's Choice" is why every reasonable effort must be made to make as many documents "public" in KCC Dockets as is reasonably possible.



As noted by the Sierra Club in the STP Docket:<sup>4</sup>

The STP Docket should have been an opportunity for an open and transparent vetting of Evergy's near-term plans. But Evergy's presentation of information to customers and other stakeholders has not lived up to that standard . . . Blanket confidentiality designations placed on all resource planning documents should be removed with only legitimate trade secrets and personnel information redacted.

15. The same can be said of KGS. Its blanket designations of confidentiality make "public" participation meaningless, because it will be uninformed. To become "informed" and to review critical documents, comes with the inability to communicate to the government unit, or the findings and conclusions arrived at, based on the review of critical but Confidential documents.

**The Commission's Order Will Likely Lead to a Hearing That Is Largely Non-Public in Nature.**

17. With so many critical documents designated as confidential by KGS, the Hearing in this Docket will of necessity be mostly closed to the public. If a public hearing cannot address (a) offers for natural gas in February 2021; (b) supplier prices for natural gas in February 2021, (c) storage injections and withdrawals in February 2021; (d) pipeline operations and pipeline failures in February 2021; and (e) natural gas operational planning in February 2021 - - the Kansas public will be shut out from any meaningful consideration and participation in all critical areas except one - - they will still be permitted, in fact required, to pay all of the costs associated with the Winter Storm of February 2021.<sup>5</sup>

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<sup>4</sup> Sierra Club's Comments on Evergy's Sustainability Transformation Plan, April 16, 2021, KCC Docket No. 21-EKME-088-GIE.

<sup>5</sup> The Coalition is aware that these documents expand upon the four categories of information the Coalition originally requested be made public. However, the Coalition believes such information should be made public for the same reasons stated in the Coalition's Motion to Amend the Protective Order and those stated in this Petition for Reconsideration.

## CONCLUSION

It is the position of KGS that:

- KGS offers to obtain natural gas supplies in February 2021 are Confidential
- February supplier invoices are Confidential;
- Natural gas storage costs are Confidential;
- Natural gas injections and withdrawals in February 2021 are Confidential;
- Upstream pipeline operations in February 2021 are Confidential
- Natural gas historical prices are Confidential.

Being a “Public” utility must have meaning, but the “public” is being shut out of this Docket. The Coalition respectfully requests that the Commission require that a public utility Docket, include the public.

Respectfully submitted,

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*Attorneys for the Natural Gas Transportation  
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**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON        )

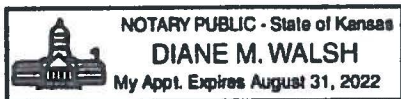
James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Natural Gas Transportation Customer Coalition, that he has read and is familiar with the foregoing *Petition for Reconsideration of the "Order Denying Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule,"* 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 22<sup>nd</sup> day of July, 2021.

  
Notary Public

My Appointment Expires:



### CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2021, the foregoing *Petition for Reconsideration of the "Order Denying Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule"* was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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