

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

In the Matter of the Kansas Open Records )  
Act Request dated August 23, 2023, by ) Docket No. 24-GIMX-238-MIS  
James Zakoura. )

**NOTICE OF FILING OF DOCUMENTS**

The Office of General Counsel for the State Corporation Commission of the State of Kansas (Commission) files the attached documents regarding the Kansas Open Records Act (KORA) request filed by James Zakoura with the Commission on August 23, 2023. Due to the confidential nature of the records requested, the Commission will issue a decision in accordance with K.S.A. 66-1220a and its amendments.

KORA Request from James Zakoura dated August 23, 2023;  
KCC letter to James Zakoura dated August 24, 2023;  
KCC letter to Black Hills Energy dated August 24, 2023;  
Black Hills Energy response letter dated August 28, 2023; and  
Reply letter from James Zakoura dated August 30, 2023.

Respectfully Submitted,

/s/ David G. Cohen  
David Cohen #27249  
Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
(785) 271-3198 (Telephone)  
(785) 271-3354 (Fax)  
d.cohen@kcc.ks.gov

**From:** [kora\\_request@kcc.state.ks.us](mailto:kora_request@kcc.state.ks.us)  
**To:** [Open Records Group](#)  
**Subject:** KORA Request 1692818835  
**Date:** Wednesday, August 23, 2023 2:27:14 PM

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Wed Aug 23 14:27:15 2023

A KORA request was submitted with these parameters:

Name: James P. Zakoura  
Company: Foulston Siefkin  
Address: 7500 College Boulevard - Suite 1400  
City: Overland Park  
State: Kansas  
Zip: 66210  
Daytime phone: 913-944-2263  
E-mail: JZakoura@foulston.com  
Best contact: E-mail  
Receive documents: E-mail

Description:

Requested Documents pursuant to the Kansas Open Records Act (KORA) aEUR" I request that the redacted Invoices listed on the KCC Web Site in KCC Docket No. 21-BKGC-334-GIG - Black Hills/Kansas Gas Utility Company, Inc. aEUR" be replaced on the KCC Web Site with unredacted copies of those same invoices.

In the alternative, I request that unredacted copies of those Invoices be made available to me, so that I may designate pages therefrom for copying.

These documents / invoices as they presently exist on the KCC Web Site, are almost entirely redacted and provide no public information regarding price of natural gas or volume of natural gas.

These invoices are issued pursuant to the NAESB Standard Form Contract. Section 14 of the NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction ."

The Invoices for the subject February 2021 natural gas purchases were issued in March 2021.

The confidential NAESB Contract designation ended no later than April 2022.

On January 27, 2022, the KCC approved a 5-year payment plan in the amount of ~87.9 million for payment by retail sales customers of Black Hills..

The requested records pursuant to KORA herein, detail the prices and volumes purchased that are the component parts of the ~87.9 million. As noted to Black Hills representatives, the requested documents will permit an examination of whether the payments made to suppliers of Black Hills, were consistent with applicable Kansas law.

The Commission Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills, amounts recovered in future litigation.

I requested the records from Black Hills that are the subject to this KORA request, prior to filing this KORA request.

Black Hills denied my request for records. My request was made to Douglas Law of Black Hills. [Douglas.Law@blackhillscorp.com](mailto:Douglas.Law@blackhillscorp.com)

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3100  
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Susan K. Duffly, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

August 24, 2023

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

Re: KORA Request # 1692818835

Mr. Zakoura,

On August 23, 2023, we received your request for records in the possession of the Kansas Corporation Commission (KCC) for the following:

I request that the redacted Invoices listed on the KCC Web Site in KCC Docket No. 21-BKGC-334-GIG - Black Hills/Kansas Gas Utility Company, Inc. Compliance Filing for KORA Requests Nos. 1 - 14, dated 12/31/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. In the alternative, I request that unredacted copies of those Invoices be made available to me, so that I may designate pages therefrom for copying.

These documents/invoices as they presently exist on the KCC Web Site, are almost entirely redacted and provide no public information regarding price of natural gas or volume of natural gas. These invoices are issued pursuant to the NAESB Standard Form Contract. Section 14 of the NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction."

The Invoices for the subject February 2021 natural gas purchases were issued in March 2021. The confidential NAESB Contract designation ended no later than April 2022. On January 27, 2022, the KCC approved a 5-year payment plan in the amount of ~\$87.9 million for payment by retail sales customers of Black Hills. The requested records pursuant to KORA herein, detail the prices and volumes purchased that are the component parts of the ~\$87.9 million. As noted to Black Hills representatives, the requested documents will permit an examination of whether the payments made to suppliers of Black Hills, were consistent with applicable Kansas law.

The Commission Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills, amounts recovered in future litigation. I requested the records from Black Hills that are the subject to this KORA request, prior to filing this KORA request. Black Hills denied my request for records. My request was made to Douglas Law of Black Hills.

Pursuant to K.S.A. 45-221(a)(1) which states that records specifically prohibited or restricted by state statute are not subject to disclosure:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific

authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

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

- (1) Whether disclosure will significantly aid the commission in fulfilling its functions;
  - (2) the harm or benefit which disclosure will cause to the public interest;
  - (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and
  - (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.
- (b) If the state corporation commission finds that disclosure is warranted pursuant to subsection (a) the commission shall give the corporation, partnership or individual proprietorship notice before disclosing the trade secret or confidential commercial information.

Kansas Administrative Regulation (K.A.R.) 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission. The Commission will notify Black Hills Energy of your request for confidential information wherein they can respond in accordance with the regulation.

The process outlined in K.A.R. 82-1-221a(b) is:

- (1) If a request for information classified as confidential is not filed as a motion in an active KCC docket, the entity seeking to maintain the confidential status of the information shall be notified by the commission of the request. The entity seeking to maintain the confidential status shall have five working days after service, plus three days if service is by mail, to respond to this request. Any response filed with the commission in opposition to a request shall substantiate the basis for nondisclosure and shall be served upon the commission and the entity requesting disclosure. The entity requesting disclosure may reply to the response within five working days after service, plus three days if service is by mail, by serving a reply upon the entity seeking to maintain nondisclosure and upon the commission.
- (2) A request made by a party to a docket for disclosure of confidential documents or information contained within the docket shall be made by motion. No party shall request disclosure from the commission of information classified as confidential until the party has requested the information in writing from the party seeking to maintain its confidential nature and this request has been denied. The motion shall proceed in accordance with the Kansas corporation commission's rules of practice and procedure, K.A.R. 82-1-201 et seq.
- (3) A determination of the confidential nature of the information and whether or not to require the disclosure of the confidential information requested under paragraphs (b)(1)

KORA Request #1692818835  
Page 3

and (b)(2) above shall be issued by the commission in accordance with K.S.A. 66-1220a and amendments thereto.

Respectfully,



Lynn M. Retz  
Official Custodian of Records  
Executive Director

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

August 24, 2023

Rob Daniel  
Ann Stichler  
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Douglas Law  
Tom Stevens  
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Black Hills Corporation

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Re: August 23, 2023 Kansas Open Records Request to KCC - #1692818835

Counsel,

As attorneys of record for Black Hills Corporation in Docket No. 21-BHCG-334-GIG, this letter is to inform you that a request has been made with the Kansas Corporation Commission (KCC or Commission) to disclose certain documents which are confidential regarding the February 2021 winter weather event. The request is enclosed for your review.

Pursuant to K.S.A. 45-221(a)(1), the KCC is not required to disclose records restricted by state statute. K.S.A. 66-1220a prohibits disclosure of any confidential information of entities regulated by the KCC, except upon a contrary finding by the Commission. K.A.R. 82-1-221a(b)(1) proscribes the process by which requests and disclosure of such information shall come before the Commission.

In accordance with K.A.R. 82-1-221a(b)(1), **please respond within five (5) business days of the date of this letter** substantiating the basis for nondisclosure if confidential treatment is still requested. Please be sure to serve your response, if any, on the Commission and the requestor whose information can be found below.

Please feel free to contact me if you have any questions.

Respectfully,

Lynn M. Retz  
Executive Director  
Custodian of Records

cc: James Zakoura, Foulston Siefkin, [JZakoura@foulston.com](mailto:JZakoura@foulston.com)



**Douglas J. Law**  
Associate General Counsel  
Douglas.Law@blackhillscorp.com

1731 Windhoek Drive  
Lincoln, NE 68512  
P: 402.221.2635

August 29, 2023

Ms. Lynn Retz Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Re: Kansas Open Records Act Request (“KORA”)  
Zakoura #1692818835

Dear Ms. Retz:

**Background.**

On August 23, 2023, Black Hills received notice of a Kansas Open Records Act (“KORA”) request from Mr. James P. Zakoura seeking access to redacted natural gas purchase invoices submitted by Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (“Black Hills”) to the Kansas Corporation Commission (“KCC”), and thereafter listed on the KCC’s Web Site in KCC Docket No. 21-BHCG-334-GIG – Black Hills/Kansas Gas Utility Company - Compliance.

**Mr. Zakoura’s KORA Request.**

The KORA letter requests that the public versions of the invoices provided by Black Hills in response to the KORA Requests Nos. 1-14, dated 12/30/2021, be replaced on the KCC Web Site with unredacted copies of those same invoices. Alternatively, Mr. Zakoura requests that Black Hills provide him with unredacted copies of those documents so that Mr. Zakoura may review and designate pages for copying.

As Black Hills understands this KORA request, the primary argument for disclosure of the confidential natural gas invoices contained in the KORA requests arise from North American Energy Standards Board (“NAESB”) Natural Gas Sale and Purchase Agreements (“NAESB Contract”) by and between Black Hills and numerous suppliers as identified within the KORA responses under review in this request. Mr. Zakoura states that section 14 of a NAESB Contract provides in part: "The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction."

Mr. Zakoura further notes that the invoices relate to natural gas purchases made by Black Hills in February 2021 and that the invoices were issued in March 2021. Mr. Zakoura points out that the confidential NAESB Contract designation contractually ended no later than April 2022.

Mr. Zakoura's KORA notice states that on January 27, 2022, in KCC Docket No. 21-BHCG-334-GIG, the KCC approved a 5-year plan in the amount of \$87.9 million for payment by retail sales customers of Black Hills. Mr. Zakoura argues that the requested records pursuant to his KORA request detail the prices and volumes purchased that are the component parts of the \$87.9 million. Mr. Zakoura states that the requested documents will permit an examination of whether the payments made to suppliers of Black Hills were consistent with applicable Kansas law.

Finally, Mr. Zakoura points out that the KCC's Order in this Docket, dated January 27, 2022, provided for a crediting to retail ratepayers of Black Hills' amounts recovered in future litigation.

### **Black Hills Response.**

In accordance with K.A.R. 82-1-221a(b)(1), Black Hills objects to disclosure of its confidential information included within the scope of the KORA request for the following reasons:

The requested information is a trade secret within the meaning of K.S.A. 66-1220a and K.S.A. 60-3320. Under K.S.A. 66-1220a the Commission shall not disclose any information which is confidential or a trade secret unless the Commission finds that disclosure is warranted after considering four factors. Those factors are as follows:

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

Black Hills contends that the requested information has been maintained as highly confidential, and public disclosure of the requested information would cause substantial harm to the public interest and to Black Hills by interfering with its ability to acquire adequate gas supplies to serve its customers at a reasonable price.

Black Hills acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills gas supply packages, putting Black Hills at a competitive disadvantage in acquiring gas supplies through this process and resulting in harm to Black Hills' customers through higher gas costs.

Although Black Hills is not contractually obligated to maintain confidentiality after one year under the NAESB Contract, that fact does not automatically require the parties privy to those NAESB Contracts to disclose the prices thereunder voluntarily or involuntarily to the public. Black Hills believes that disclosure of its confidential information would not benefit the public and that disclosure would be harmful to future gas purchasing activities of Black Hills if the prices are disclosed as requested by Mr. Zakoura.



The confidential information sought here was provided to the parties in KCC Docket No. 21-BHCG-334-GIG subject to confidential protection. Mr. Zakoura and his clients were a party to that proceeding and had access to the confidential information for purposes directly relevant to that KCC proceeding. The parties in KCC Docket No. 21-BHCG-334-GIG settled the issues presented within that proceeding and the KCC issued an order approving that settlement agreement. Public disclosure of the confidential information is not necessary to further the KCC's duties related to Docket No. 21-BHCG-334-GIG. That matter is proceeding in accordance with the terms of the approved settlement.

As Mr. Zakoura acknowledges, the KCC reviewed the confidential gas supply pricing information and thereafter approved a 5-year plan for Black Hills to recover gas costs in the amount of \$87.9 million from Black Hills sales customers. The Commission continues to possess those confidential records.

Mr. Zakoura states that the requested documents will permit an examination of whether the payments made to suppliers of Black Hills were consistent with applicable Kansas law. However, the KCC and other parties in Docket No. 21-BHCG-334-GIG already have access to make that determination. There is no further action arising under that docket which warrants public disclosure of that confidential information now – absent parties to the contracts from voluntarily disclosing the information. As stated above, Black Hills does not believe that disclosure is in its interest or that of the public. If there is any issue directly related to KCC Docket No. 21-BHCG-334-GIG, then Mr. Zakoura and his clients may take appropriate action in KCC Docket No. 21-BHCG-334-GIG subject to the Commission's protective order in this proceeding.

As Black Hills understands this KORA request, Mr. Zakoura's intent is to evaluate whether to pursue litigation against one or more of the natural gas suppliers selling gas to Black Hills during the Storm Uri cold weather event during February 2021. Mr. Zakoura's statement that the Commission's January 27, 2022 Order in this Docket provided for a crediting to retail ratepayers of Black Hills, any amounts recovered in future litigation does not mean that other parties may compel public disclosure of information that was submitted as confidential, maintained as confidential, and still considered confidential by Black Hills and its various suppliers.

Black Hills interprets that statement to mean that if Black Hills brings litigation against suppliers or others that it is required to contribute and pass any amounts awarded through litigation through the Gas Cost Adjustment ("GCA") for the benefit of its GCA customers. The Commission did not state that the confidential information submitted in KCC Docket No. 21-BHCG-334-GIG would or should be disclosed after a year so that other intervening parties could pursue their own litigation against natural gas suppliers in the State of Kansas. Black Hills does not currently have any ongoing litigation regarding its Storm Uri gas supplies. Black Hills would comply with the KCC's order by passing through an award for damages if Black Hills pursued litigation and a judgment in favor of Black Hills.

As a matter of precedent, on September 9, 2021, the Commission ruled in Docket No. 21-KGSG-332-GIG that substantially similar information constituted trade secrets and should not be made public. In its Order Denying NGTCC's Motions to Remove Confidential Designations for Certain

Documents (“Order”), the Commission stated:

. . . disclosure of the information as requested in NGTCC's motions holds great potential of 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.

In accordance with its prior orders in Docket No. 21-KGSG-332-GIG, the Commission finds disclosure of appropriately designated confidential information is not warranted under K.S.A. 66-1220a. The Commission adopted that same position in KCC Docket No. 21-BHCG-334-GIG. *See also, KCC Order on KORA Request in KCC Docket No. 22-GIMX-171-MIS.*

Black Hills understands that there may be a difference in timing of the gas supply pricing under that KORA request versus the KORA request lodged by Mr. Zakoura. However, for the reasons provided herein, Black Hills does not believe that the reasons provided by Mr. Zakoura for disclosure of confidential information meets the Commission’s test:

- (1) Black Hills contends that disclosure would not further aid the Commission as it already had and continues to have this information in its possession. That fact is also true for Mr. Zakoura and his clients. Any action relevant to this docket can be pursued within that docket subject to the Commission’s Protective Order issued in Docket No. 21-BHCG-334-GIG;
- (2) Black Hills believes that disclosure of its gas supply invoicing – albeit after the contractual obligation established between the parties to the NAESB contract – would not benefit the public and could harm future gas availability or pricing from these suppliers;
- (3) Black Hills further believes that because this proceeding has been resolved and the KCC approved the Settlement in Docket No. 21-BHCG-334-GIG, disclosure would harm the long-term relationships between Black Hills and the various natural gas suppliers. If cold weather pricing events occur in the future, Black Hills needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntary disclosure of gas pricing a year after that event may cause some suppliers to sell into other markets. This would have a direct negative effect on Black Hills and its PGA customers; and
- (4) Black Hills states that Mr. Zakoura has alternatives to disclosure of the confidential gas supply invoices in KCC Docket No 21-BHCG-334-GIG that will serve the public interest and protect the corporation, partnership or sole proprietorship. For example, Mr. Zakoura has public information regarding the magnitude of natural

gas supply from the overall amount approved by the KCC in Docket No. 21-BHCG-334-GIG of \$87.9 million. Mr. Zakoura has the specific list of suppliers who sold gas to Black Hills during the Storm Uri event as provided to the KCC and other intervening parties, including those of Mr. Zakoura, in KCC Docket No. 21-BHCG-334-GIG. Mr. Zakoura also has public information from the Kansas Gas Service (“KGS”) Cold Weather Event proceeding in KCC Docket No. 21-KGSG-332-GIG that provides information related to amounts paid by KGS to its gas suppliers during the Storm Uri event. Mr. Zakoura and his clients could arguably use that information to evaluate or proceed with a lawsuit and obtain additional pricing information under that lawsuit.

Finally, Black Hills would be willing to disclose the confidential pricing information to Mr. Zakoura if he and/or his clients obtain the consent of the various suppliers to disclosure of that information.

For the foregoing reasons, Black Hills respectfully requests that its confidential information not be produced in response to the KORA request.

Sincerely,

*Douglas J. Law*

Douglas J. Law  
Associate General Counsel

DL:ce

cc: James P. Zakoura  
Foulston Siefkin,  
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Rob Daniel  
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# FOULSTON

ATTORNEYS AT LAW

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August 30, 2023

Sally Conn  
Executive Secretary  
Kansas Corporation Commission  
1500 SW Arrowhead Rd  
Topeka, KS 66604-4027

Email: [s.conn@kcc.ks.gov](mailto:s.conn@kcc.ks.gov)

Re: KORA Request 1692818835

Dear Sally:

The following is my reply to the Response of Black Hills to the Kansas Open Records Act Request.

1. The Kansas Corporation Commission issued an Order on January 27, 2022, permitting Black Hills to recover \$87.9 million from its retail customers over a 5-year period, for additional natural gas costs that the Commission determined were prudently incurred during Winter Storm URI in February 2021.  
<https://www.kcc.ks.gov/news-1-27-22>
2. In its Order to Black Hills, and in each Order entered by the Commission wherein retail ratepayers were ordered by the KCC to pay additional natural gas costs related to Winter Storm URI, the Commission included a condition, that in the event that funds were obtained as a result of state or federal litigation that challenged the lawfulness of natural gas pricing in February 2021 - - those funds were to be credited to the account of retail ratepayers - - thus reducing their \$87.9 million financial obligation.  
<https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220127103623.pdf?Id=2abc529b-8c9e-4d97-947a-0c785730690e> Order, at Page 5.
3. Governor Kelly issued an Emergency Declaration on February 14, 2021. That Emergency Declaration provided protection to Kansans against price gouging and profiteering. The Kansas Consumer Protection Act (KCPA) generally provides that prices may not increase during an Emergency as declared by the Governor, by more than 25% of the business day preceding the Emergency declaration.  
<https://governor.kansas.gov/wp-content/uploads/2021/02/2-14-2021-Extreme-Weather-Disaster-Declaration-Executed.pdf>

4. The Index Price for natural gas on the date preceding the Emergency Declaration was about \$44.78 per MMBtu. The Index Prices in February 2021 reached levels of \$329.59 and \$622.78 per MMBtu and above.

For the days of February 1 through February 7, 2021, the SSC daily index prices ranged from \$2.545 - \$3.56 per Dth. For gas delivered during the period of February 8th through 10th, the SSC daily index prices ranged from \$3.56 - \$4.03. On Thursday, February 11, 2021, the SSC daily index price increased to \$9.62 per Dth, and on Friday, February 12, 2021, the daily index price was \$44.78 per Dth. For gas delivered during the Presidents' Day holiday weekend, which included gas delivery on Saturday, February 13 through Tuesday, February 16, the SSC daily spot market gas price spiked, resulting in a daily index price settlement of \$329.595 per Dth. The SSC daily spot market prices increased even more during trading on Tuesday, February 16th for gas supply delivery on Wednesday, February 17th, reaching historical levels and settling at a SSC daily index price of \$622.785 per Dth. The SSC daily index price retracted significantly for deliveries on February 18th but remained high at a daily index price of \$44.53 per Dth, with a further decline to \$7.945 per Dth for gas deliveries on February 19th.

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202106161632023058.pdf?Id=4e40bda4-eb6b-4695-a573-03a3b83a7eff>

Testimony of Kent J. Kopetzky, KCC Docket No. 21-BHGC-334-GIG, dated June 16, 2021.

5. The KORA request is for documents that would identify those suppliers and the prices that they charged Black Hills in February 2021, to identify those instances wherein the KCPA may have been violated, and if so, to recover funds for any violation that is found to have occurred - - with those funds returned to retail ratepayers to reduce their financial obligation of \$87.9 million.
6. Black Hills acknowledges that the contracts at issue include a one-year confidential designation, and that those documents do not have contract protection for a public release of the Invoices that will evidence the supplier prices paid and volumes purchased from such suppliers that make up the \$87.9 million of additional costs that the Commission ordered to be paid by retail ratepayers.
7. Black Hills argues that the Commission should not order the release of the requested documents - - contending that there is an "outside the contract" reason to not do so - - that to order release of the documents, would somehow harm retail ratepayers. This argument lacks merit.

8. Essentially, Black Hills argues that its suppliers are entitled to have their contracts exempt from public disclosure, forever.

First, if that were a term (extended term confidential designation) of the supplier - buyer relationship, it could be included in the NAESB contract - and it is not.

Second, Black Hills is a public utility, and that status requires public disclosure of its operations to the extent that such disclosure is for prior operating periods that would not disrupt the current reasonable operations of the public utility.

Third, under the Black Hills interpretation, virtually no documents at the Commission would be available to public view.

9. The Black Hills "alternate" to KORA, is to contact the suppliers and request the public release of Invoices. Essentially, Black Hills sets a path for failure, and removes the KORA decision from the Commission to those suppliers that charged Black Hills more than \$600 per MMBtu.
10. Open Public Records are the law in Kansas, and the burden for nondisclosure is on Black Hills - which it has not met.
11. Black Hills should not be permitted on the one hand to recover \$87.9 million from retail ratepayers, and on the other hand to impeded efforts of recovery for those same retail ratepayers.

Sincerely,

FOULSTON SIEFKIN LLP

James P. Zakoura

## **CERTIFICATE OF SERVICE**

24-GIMX-238-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing was served by electronic mail this 6th day of September, 2023, to the following:

NICK SMITH, MANAGER - REGULATORY & FINANCE  
BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC  
D/B/A Black Hills Energy  
601 NORTH IOWA STREET  
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nick.smith@blackhillscorp.com

ROB DANIEL, DIRECTOR REGULATORY & FINANCE  
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC  
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ANN STICHLER, SR. ANALYST - REGULATORY &  
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