

**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 Black    )  
Hills Kansas Gas Utility Company d/b/a Black    )  
Hills Energy Regarding the February 2021    ) Docket No. 21-BHCG-334-GIG  
Winter Weather Events, as Contemplated by    )  
Docket No. 21-GIMX-303-MIS.                    )

In the Matter of the Application of Black Hills    )  
Kansas Gas Utility Company, LLC d/b/a Black    ) Docket No. 21-BHCG-370-MIS  
Hills energy, for Waiver of Tariff.                )

**ORDER GRANTING PETITION TO INTERVENE**  
**OF THE OFFICE OF KANSAS ATTORNEY GENERAL**

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

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

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

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 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> On July 20, 2021, the Commission deemed it in the public interest, as a matter of judicial efficiency, to consolidate Docket No. 21-BHCG-334-GIG and Docket No. 21-BHCG-370-MIS.<sup>6</sup>

3. On July 19, 2021, the Office of Attorney General Derek Schmidt (AG) filed a Petition to Intervene, citing the Attorney General's statutory and common law authority to enforce: (1) the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623, *et seq.* and to protect consumers from suppliers who commit deceptive and unconscionable acts and practices;<sup>7</sup> (2) K.S.A. 50-6,106 (the unconscionable act of profiteering from a disaster);<sup>8</sup> and (3) the Kansas False Claims Act, K.S.A. 75-7501, *et seq.*, which prohibits making a fraudulent claim upon the State government or any political subdivision of the State.<sup>9</sup> The AG opened an ongoing investigation into natural gas

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<sup>3</sup> *Id.* ¶ 4.

<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> Order Consolidating Dockets, Docket No. Docket No. 21-BHCG-334-GIG and Docket No. 21-BHCG-370-MIS, July 20, 2021, ¶ 5.

<sup>7</sup> Petition to Intervene, July 19, 2021, ¶ 8.

<sup>8</sup> *Id.*, ¶ 9.

<sup>9</sup> *Id.*, ¶ 15.

pricing on February 19, 2021, to determine if a KCPA, KFCA, or other violation of law has occurred.<sup>10</sup>

4. To qualify for intervention, a petition must: (1) be in writing; (2) state facts demonstrating that the petitioner's legal rights, duties, privileges, and immunities, or other legal interests may be substantially affected by the proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and (3) not impair the interest of justice and the orderly and prompt conduct of the proceedings.<sup>11</sup> The Commission has broad discretion in deciding whether to grant intervention.<sup>12</sup> At any time during a proceeding, the Commission may impose limitations on an intervenor's participation.<sup>13</sup>

5. Based on the AG's broad investigatory and rule-making authority to protect the public from unscrupulous suppliers and responsibility to enforce the KCPA and act on complaints,<sup>14</sup> as well as the AG's representation of the interests of the State and the public under the doctrine of *parens patriae*, with a duty to investigate all aspects of the Kansas natural gas system to determine whether the extreme costs for natural gas during the Winter Event were the result of profiteering from a disaster, including other deceptive and unconscionable conduct in violation of the KCPA,<sup>15</sup> the Commission finds the AG has met the requirements of K.A.R. 82-1-225 and K.S.A. 77-521 and should be granted intervention in this Docket and added to the mailing list. Service of electronic notices, pleadings, communications, and correspondence should be delivered to counsel of record as follows.

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<sup>10</sup> *Id.*, ¶ 17.

<sup>11</sup> K.S.A. 77-521(b); K.A.R. 82-1-225(b).

<sup>12</sup> K.S.A. 77-521; K.A.R. 82-1-225.

<sup>13</sup> K.S.A. 77-521(c).

<sup>14</sup> *Id.*, ¶ 21.

<sup>15</sup> *Id.*, ¶ 22.

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**THEREFORE, THE COMMISSION ORDERS:**

- A. The AG's Petition to Intervene is granted.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>16</sup>

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

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 07/27/2021



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Lynn M. Retz  
Executive Director

BGF

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<sup>16</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).



**CERTIFICATE OF SERVICE**

21-BHCG-334-GIG, 21-BHCG-370-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
electronic service on 07/27/2021.

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