

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

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

ORDER ON PETITION FOR RECONSIDERATION

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 and conclusions:

1. On August 23, 2023, the Commission received a Kansas Open Records Act (KORA) request from James Zakoura pursuant to K.S.A. 45-215 et. seq. Zakoura requested “ that the redacted invoices listedin Docket No. 21-BKGC-334-GIG....dated 12/31/2021, be replaced with un-redacted copies of those same invoices... [or] in the alternative ...un-redacted copies of those invoices be made available to me...”¹ The invoices requested relate to the price of gas paid by Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) during Winter Storm Uri. Zakoura states that the records requested will permit an examination of whether the payments made to Black Hills’ suppliers were consistent with Kansas law.

2. On August 24, 2023, Lynn Retz, Executive Director for the Commission, responded to Zakoura’s request and explained the process for requests for confidential information.²

¹ Notice of filing of Documents pg. 2 (September 6, 2023).

² *Id.* at 3-4.

3. The documents requested by Mr. Zakoura were redacted because they were designated confidential and trade secrets. Under K.S.A. 45-221(a)(1), a public agency shall not be required to disclose records if such disclosure is prohibited by law. Under K.A.R. 82-1-221a(b)(1), if the Commission receives a request for confidential information, the party seeking to maintain the confidentiality of the information shall respond to the request within five working days. The response shall substantiate the basis for nondisclosure, after which the entity requesting the information may reply within five working days.

4. On August 24, 2023, the Commission informed Black Hills that a request for confidential information had been received.³

5. On August 29, 2023, Black Hills responded to the information request noting that the information requested by Mr. Zakoura was considered a trade secret and should not be disclosed.⁴ Black Hills contends that disclosure would cause substantial harm to the public by interfering with Black Hills' ability to acquire gas supplies and serve the public at a reasonable price.⁵ Black Hills acquires gas supplies through a competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Black Hills' supply packages.⁶ Black Hills argues that although the documents sought included a term that required confidentiality for one year, the expiration of that year does not automatically require disclosure.⁷

6. Black Hills pointed out that the information sought by Mr. Zakoura was provided to parties in the 21-BHCG-334-GIG (21-334) Docket, including those represented by Zakoura.⁸

³ *Id.* at 6.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 8.

Black Hills believes Zakoura intends to use the information to evaluate whether to pursue litigation against Black Hills' natural gas suppliers for costs incurred as a result of Winter Storm Uri.⁹

7. Black Hills further points out that there are alternatives to disclosure of confidential information. Specifically, there is public information available which may be used to evaluate or proceed with litigation and that once litigation has begun, and additional information may be obtained through discovery.¹⁰ Alternatively, Black Hills offered to share the information with Mr. Zakoura if he is able to obtain the consent of Black Hills' suppliers.¹¹

8. On August 30, 2023, Zakoura responded to Black Hills. Zakoura states that Black Hills' "alternative" requiring Zakoura to obtain consent from Black Hills' suppliers "sets a path for failure."¹² Zakoura additionally claimed that Black Hills has not met its burden to prevent disclosure.

9. On October 12, 2023, the Commission denied Zakoura's KORA request pursuant to K.S.A. 45-221(a)(1) and K.S.A. 66-1220(a) finding that disclosure was not warranted after assessing the four-factor test found in K.S.A. 66-1220(a).

10. On October 16, 2023, Zakoura filed a Petition for Reconsideration (PFR) of the Commission's October 12, 2023 Order. On October 20, 2023, Zakoura filed an addendum to the PFR. Zakoura argues that:

- Black Hills has not properly classified its Uri invoices as "trade secrets" or "confidential." once the Commission relies upon these invoices in an Order they become subject to public disclosure;¹³

⁹ *Id.*

¹⁰ *Id.* at 9-10.

¹¹ *Id.* at 10.

¹² *Id.* at 13.

¹³ Addendum to Petition for Reconsideration, pgs. 1-4 (October 20, 2023).

- The confidentiality provision of the invoices expired after 1 year;¹⁴
- The Commission’s determination that the information should remain confidential was made without sufficient evidence.¹⁵

Zakoura requests that the Commission “look at the totality of the law and evidence in this Docket and to Reconsider the ORDER, and order the requested documents be released to the Petitioner as public documents.”¹⁶

11. On October 25, 2023, the Citizens’ Utility Ratepayer Board (CURB) filed a Petition to Intervene which was granted on November 6, 2023.

12. On October 26, 2023, Black Hills filed an answer to Zakoura’s PFR, Black Hills argues that:

- The Commission has previously determined that the invoices sought were trade secrets;¹⁷
- The invoices were properly designated as confidential at the time of submission during the 21-334 Docket;¹⁸
- Zakoura, who took part in the 21-334 Docket, did not object to the confidentiality designation at the time on behalf of himself or any of his clients;¹⁹ and
- The public is protected from unlawful gas supply prices by the Kansas Attorney General;

¹⁴ Petition for Reconsideration pgs. 2-3 (October 16, 2023).

¹⁵ *Id.* at 7-9.

¹⁶ *Id.* at 12.

¹⁷ Black Hills’ Answer to Petition and Addendum for Consideration, pgs. 4-5 (October 26, 2023).

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 5.

- Subjecting all gas supply contracts to public disclosure after one year would be harmful to the public.²⁰

13. On November 2, 2023, CURB filed a Response to Petition for Reconsideration. CURB took no position on whether the information sought by Zakoura should remain confidential or not.²¹ Rather, CURB recommended that the Commission grant the PFR to allow oral argument or a hearing in order to develop an evidentiary record on which to make a decision on the confidentiality of the Uri invoices.²²

14. The Commission has recently received several other KORA requests related to gas costs during Winter Storm Uri incurred by other jurisdictional utilities. Given the unique nature of the events of Winter Storm Uri and the amount of time that has passed, the Commission finds a more robust investigation is appropriate in this matter. Mr. Zakoura's Petition for Reconsideration is granted to allow for additional proceedings.

15. Because multiple utilities designated Winter Storm Uri natural gas invoices as confidential, the Commission orders a general investigation opened²³ to holistically consider the confidential status of certain documents related to costs incurred during Winter Storm Uri. The Commission expects its general investigation will resolve confidentiality issues for multiple documents, including those requested in the present docket. The documents requested in this docket will remain under seal until such issues are resolved.

²⁰ *Id.* at 8.

²¹ CURB's Response to Petition for Reconsideration, pgs. 4-5 (November 2, 2023).

²² *Id.* at 9.

²³ See, Docket No. 24-GIMX-376-GIV.

THEREFORE, THE COMMISSION ORDERS:

- A. Mr. Zakoura's Petition for Reconsideration is granted subject to the terms above.
- B. The Commission orders a general investigation opened to holistically consider the confidential status of certain documents related to costs incurred during Winter Storm Uri.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 11/09/2023

DGC



Lynn M. Retz
Executive Director

CERTIFICATE OF SERVICE

24-GIMX-238-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 11/09/2023.

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