

**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 MOTION REQUESTING ISSUANCE OF A SUBPOENA

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 (21-303 Docket), 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.¹ Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.² 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.³ The Commission mandated that once Winter Storm Uri ended, and after all costs have been

¹ Emergency Order, 21-GIMX-303-MIS, Feb. 15, 2021, ¶ 3.

² *Id.*

³ *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.⁴

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.⁵ The Commission's Order also included a Protective/Discovery Order.

3. On May 28, 2021, Kansas Gas Service (KGS) filed a Motion for Limited Waiver from Section 11.06 of its tariff provisions to remove the multipliers from the calculation of penalties incurred by Marketers and Individually Balanced Transportation Customers for violating KGS' Operational Flow Orders and/or Period Curtailment Orders issued during Winter Storm Uri.⁶

4. 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.⁷

5. On July 30, 2021, the Natural Gas Transportation Customer Coalition⁸ (NGTCC) filed a Motion Requesting the Issuance of a Subpoena Compelling Testimony and Production Of Documents from S & P Global Platts Gas Daily,⁹ for all documents relating to the S & P Global Platts Gas Daily Index for Southern Star Pipeline from February 10-20, 2021, and further compelling the testimony of records custodian witness(es) to explain the subpoenaed documents

⁴ *Id.* ¶5.

⁵ 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.

⁶ Motion for Limited Waiver, May 28, 2021, ¶ 12.

⁷ Supplemental Protective and Discovery Order, June 10, 2021, ¶ 6.

⁸ NGTCC was granted intervention on July 1, 2021.

⁹ Motion of the Natural Gas Transportation Customer Coalition Requesting the Commission Issue a Subpoena Compelling Testimony and Production of Documents from S & P Global Platts Gas Daily Pursuant to K.S.A. 66-150 and K.A.R. 82-1-227, July 30, 2021.

and in what manner they were used, included or excluded from the Gas Daily Index Prices for the period February 10-20, 2021.¹⁰ NGTCC considers S & P Global to be the leading independent provider of information and benchmark prices for the commodity and energy markets.¹¹ NGTCC also seeks stays on: (1) any use of the S & P Global Platts Gas Daily Index Price posting as a reference in any KCC approved tariff and/or as the basis for the collection of any penalty, until the Commission completes its review of S & P Global Gas Daily Price Index Postings, and issues a further Order regarding the utilization of S & P Global Gas Daily Price Index Postings from February 2021,¹² and (2) the pass through to Kansas ratepayers costs resulting from a price term referencing the S & P Global Platts Gas Daily Price Index until the Commission completes its review of S & P Global Platts Gas Daily Price Index and issues an Order on the utilization of S & P Global Gas Daily Price Index Postings from February 2021.¹³

6. On August 3, 2021, NGTCC supplemented its Request to Issue a Subpoena by adding KGS' responses to Data Requests, to purportedly evidence that KGS has failed to investigate, challenge, or appeal the Index Pricing that is the basis of the requested \$451 million recovery from Kansas ratepayers.¹⁴

7. On August 6, 2021, Intervenors Bonavia Properties, L.L.C., Catholic Diocese of Wichita, and TempleLive Wichita LLC endorsed NGTCC's Motion to Issue a Subpoena to S & P Global, claiming the "entire foundation of KGS's financial plan and tariff hinge on the legitimacy of the S&P Global Platts gas daily index."¹⁵

¹⁰ *Id.*, p. 10.

¹¹ *Id.*, ¶ 4.

¹² *Id.*, p. 11.

¹³ *Id.*

¹⁴ Supplement to Motion of the Natural Gas Transportation Customer Coalition Requesting the Commission Issue a Subpoena, Aug. 3, 2021, ¶ 6.

¹⁵ Joinder to Motion of the Natural Gas Transportation Customer Coalition Requesting the Commission Issue a Subpoena Compelling Testimony and Production of Documents from S & P Global Platts Gas Daily Pursuant to K.S.A. 66-150 and K.A.R. 82-1-227, Aug. 6, 2021, p. 1.

8. On August 27, 2021, Staff filed its opposition to NGTCC's motion for a subpoena, questioning the jurisdictional authority to provide NGTCC the relief requested.¹⁶ Staff notes that the Federal Energy Regulatory Commission (FERC) monitors the publication of indices, such as S & P Global, and requires all data providers to register with it, and subjects all market participants to potential audit by FERC.¹⁷ Staff explains, FERC's Office of Enforcement (OE), rather than the Commission, has the authority to investigate market behavior relating to the data reported to S & P and take corrective action where a market participant behaves inappropriately.¹⁸ The FERC already has an open docket relating to price indices.¹⁹

9. The Commission shares NGTCC's concerns regarding the wholesale natural gas markets and potential market manipulation. However, as explained in Staff's response, the power to investigate wholesale market behavior relating to the data reported to S & P Global and take corrective action where a market participant behaves inappropriately rests with the FERC, not the Commission. As noted by Staff, FERC already has an open docket relating to price indices.²⁰

10. While NGTCC may raise legitimate concerns, this Commission is simply not the forum for such an investigation. This Commission is focused on the behavior of its jurisdictional utilities and whether they acted reasonably and prudently, under the circumstances. However, if suppliers, traders, or other entities engaged in market manipulation or price gouging within the wholesale market, as NGTCC posits, FERC's investigation is intended to uncover such actions. As noted in Staff's Response, this Commission does not have authority to recalculate wholesale

¹⁶ Response of Commission Staff to the Natural Gas Transportation Customer Coalition's Motion for Subpoena, Motion for Administrative Notice, and Motion to Stay Request for Waiver, Aug. 27, 2021, ¶ 8.

¹⁷ *Id.*, ¶ 11.

¹⁸ *Id.*, ¶ 12.

¹⁹ *Id.*

²⁰ Response of Commission Staff to the Natural Gas Transportation Customer Coalition's Motion for Subpoena, Motion for Administrative Notice, and Motion to Stay Request for Waiver, ¶ 12.

prices – that authority rests on the federal level.²¹ So long as KGS has prudently followed its traditional gas purchase practices, and given the fact that this Commission ordered KGS and other utilities “to do all things possible and necessary to ensure natural gas...services continue to be provided to their customers in the State,” we agree it would be inequitable to disallow recovery of purchased gas costs based on a suspicion of wholesale market manipulation before such investigation has concluded at the federal level. This Commission anticipates any decision in this proceeding will include provisions for Kansas customer compensation in the event FERC’s investigation yields a finding of market manipulation in the future.

11. Further, given that FERC is the agency tasked with investigating and taking corrective action in the wholesale natural gas markets, the Commission’s authority to issue and enforce the subpoena requested by NGTCC is questionable, at best. Under Kansas law, administrative subpoenas must satisfy three requirements: (1) the agency must be authorized to make the inquiry, (2) it must not be too indefinite, and (3) and the information sought must be relevant to the inquiry.²² The Commission agrees with Staff that because the authority to investigate market behavior and enforce compliance rests with the FERC, the validity of a State administrative subpoena issued to S & P Global regarding the Southern Star index is questionable.²³

12. The Commission also notes the Office of Attorney General Derek Schmidt (AG) is a party to this case and has an ongoing investigation into natural gas pricing to determine if there have been any violations of the Kansas Consumer Protection Act, the Kansas False Claims

²¹ *Id.*, ¶ 13.

²² *Hansa Center for Optimum Health, LLC v. State*, 52 Kan.App.2d 503, 509 (2016) citing *Hines, Inc. v. State ex rel. Beyer*, 28 Kan.App.2d 181, 183 (2000).

²³ Response of Commission Staff to the Natural Gas Transportation Customer Coalition’s Motion for Subpoena, Motion for Administrative Notice, and Motion to Stay Request for Waiver, ¶ 12.

Act, or any other violation of law.²⁴ The AG has broad authority to issue subpoenas in its ongoing investigation.

13. There is some question as to the validity of a Commission-issued subpoena to an entity outside its jurisdiction, and because the FERC and the AG have ongoing investigations, the Commission believes that those entities have adequate authority and discretion to exercise their broad subpoena powers under the circumstances. Accordingly, NGTCC's motion for issuance of a subpoena to S & P Global is denied.

THEREFORE, THE COMMISSION ORDERS:

A. NGTCC's Motion Requesting the Commission Issue a Subpoena Compelling Testimony and Production of Documents from S & P Global Platts Gas Daily is denied.

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).²⁵

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 09/09/2021



Lynn M. Retz
Executive Director

BGF

²⁴ Order Granting Petition to Intervene of the Office of Kansas Attorney General, July 27, 2021, ¶ 3.

²⁵ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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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 electronic service on 09/09/2021.

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