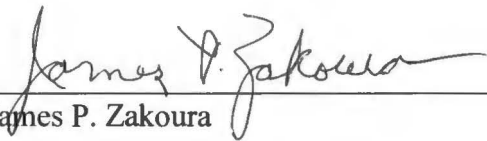


VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he has read and is familiar with the foregoing *Filing of Correspondence dated November 1, 2023*, 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 1st day of November 2023.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November 2023, the foregoing *Filing of Correspondence dated November 1, 2023*, was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

NICK SMITH, MANAGER -
REGULATORY & FINANCE
BLACK HILLS/KANSAS GAS UTILITY
COMPANY LLC
D/B/A Black Hills Energy
601 NORTH IOWA STREET
LAWRENCE, KS 66044
nick.smith@blackhillscorp.com

ROB DANIEL, DIRECTOR REGULATORY
& FINANCE
BLACK HILLS/KANSAS GAS UTILITY
COMPANY, LLC
D/B/A BLACK HILLS ENERGY
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FAYETTEVILLE, AR 72703-1002
rob.daniel@blackhillscorp.com

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ANN STICHLER, SR. ANALYST -
REGULATORY & FINANCE
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/s/ James P. Zakoura
James P. Zakoura, KS 07644
Requestor

Walsh, Diane

From: Zakoura, James
Sent: Wednesday, November 1, 2023 1:54 PM
To: Sally Conn; Lynn Retz [KCC]; 'd.cohen@kcc.ks.gov'
Cc: 'gcafer@morrislaing.com'; 'cathy.dinges@evergy.com'; Zakoura, James; Walsh, Diane
Subject: Response of KORA Requestor, James P. Zakoura, to the Evergy Response dated October 27, as supplemented by executed Affidavit on October 30, 2023.
Attachments: Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf

Summary and Factual Background

1. Requestor filed a Request pursuant to the Kansas Open Records Act ("KORA") for "Public Records" in the files and records of the Kansas Corporation Commission. (Exhibit A)
2. Requestor is in receipt of correspondence from Ms. Cafer, dated October 27, 2023, on behalf of Evergy. (Exhibit B)
3. Included with such correspondence of Ms. Cafer was an unsigned Affidavit of John Carlson, which was thereafter executed on October 30, 2023. (Exhibit C)
4. Ms. Cafer identifies the requested documents of my KORA Request as follows:

"These are invoices provided by Evergy to Staff in response to discovery conducted by Staff in the 21-329 Docket, KCC Data Request No. 18."

5. The Request of the Requestor was made pursuant to KORA, and this Request must be adjudicated in accordance with the statutory mandates of KORA.
6. The requested natural gas supplier invoices were for natural gas sales in February 2021 -- 32 months prior to this date -- November 1, 2023.

KCC Docket No. 21-EKME-329-GIE

7. KCC Docket No. 21-EKME-329-GIE was concluded on June 23, 2022 -- 15 months prior to this date -- November 1, 2023.

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220623104415.pdf?Id=2da7eba1-dbae-4ee8-a50f-7d6bae2430f8>

8. In KCC Docket No. 21-EKME-329-GIE, the KCC held that Evergy incurred \$122.2 million of "Additional Costs" in February 2021, and that those costs are to be recovered from approximately 750,000 retail ratepayers of Evergy Kansas Central. **2023 KCC Report to the Kansas Legislature, at page 2.**

[https://www.kcc.ks.gov/images/PDFs/legislative-reports/2023 Utilities and Common Carriers Report.pdf](https://www.kcc.ks.gov/images/PDFs/legislative-reports/2023%20Utilities%20and%20Common%20Carriers%20Report.pdf)

9. The KCC Order dated June 23, 2022, in KCC Docket No. 21-EKME-329-GIE, included the following;

"If Evergy Kansas Central receives any payments as a result of subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., those payments will be passed on to its customers through its RECA-5" **(Order, at Page 8)**

"19. If Evergy Kansas Central receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to its customers through its RECA, even if those payments may be received or recovered after the expiration of the two-year recovery period for the regulatory asset." **(Attachment to Order, at Paragraph 19)**

24. If Evergy Kansas Metro receives or recovers any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from Winter Storm Uri, it shall pass those payments on to its customers through its RECA, even if those payments may be received or recovered after the expiration of the one-year period for return of the regulatory liability to customers. **(Attachment to Order, at Paragraph 24)**

The Evergy Position on the KORA Request of the Requestor

10. Evergy takes the position in its Response (Exhibit B), that:

- (i) not one word of the identified natural gas supplier invoices from February 2021 is a "Public Record";
- (ii) Evergy designated the identified natural gas supplier invoices from February 2021 as "Confidential" as either "Trade secrets" or as "confidential" and the supplier invoices of February 2021 are exempt from public disclosure;
- (iii) The requested "Public Documents" were not subject to disclosure pursuant to the Protective Order in KCC Docket No. 21-EKME-329-GIE, and therefore remain exempt from public disclosure; and
- (iv) The requested documents remain exempt from public disclosure when measured against the statutory mandates of KORA.

11. Evergy is incorrect on both the facts and the law.

12. **The Commission has at no time ruled in the Winter Storm Uri Dockets that all supplier invoices from February 2021 are "trade secrets" or are confidential and exempt from disclosure.**

13. In each instance in which a request was made for supplier invoices of February 2021 in the KCC – Winter Storm Uri Dockets, the KCC required the utility claiming such exemption from public disclosure to file a "public" copy of such supplier invoices, pursuant to K.A.R. 82-1-221a. **KCC Docket No. 21-KGSG-332-GIG, dated October 14, 2021**

ORDER GRANTING IN PART, DENYING IN PART NGTCC'S PETITION FOR RECONSIDERATION OF ITS MOTIONS TO REMOVE CONFIDENTIAL DESIGNATIONS FOR CERTAIN DOCUMENTS

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/20211014102536.pdf?Id=45dea12d-047c-455b-9cb3-c37cd7df0d54>

14. In the KCC Winter Storm Uri docket, the Commission ordered Kansas Gas Service Company to file a "public" copy of the supplier invoices:

Docket No. 21 -KGSG-332-GIG October 14, 2021 (emphasis added)

ORDER GRANTING IN PART, DENYING IN PART NGTCC'S PETITION FOR RECONSIDERATION OF ITS MOTIONS TO REMOVE CONFIDENTIAL DESIGNATIONS FOR CERTAIN DOCUMENTS

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/20211014102536.pdf?Id=45dea12d-047c-455b-9cb3-c37cd7df0d54>

14. Assuming the form contract language cited by NGTCC is operative in the KGS contracts, the one-year period referenced in Section 15.10 has not run,

so certain terms of the Base Contracts are still deemed confidential by its signatories.

However, as NGTCC suggests at paragraphs 23-24 of its Petition, the existence of such contracts and the parties to those contracts are not confidential and should be subject to public disclosure. Furthermore, certain other terms of the contracts may not contain trade secrets or be otherwise commercially sensitive.

15. NGTCC's supplemental filing suggests the items it seeks to be made public are already public, as NGTCC belatedly discovered. Thus, the Commission questions whether the primary thrust of NGTCC's Petition for Reconsideration is now moot. That said, NGTCC now appears to claim that because KGS publicly disclosed some elements of the Supplier Invoices, all information in the invoices should be available to the public.

The Commission rejects this argument. NGTCC ignores that the aspects of the Invoices that are competitively sensitive, namely the margin/reservation fees KGS paid to procure gas, have been redacted. NGTCC has made no showing that the margin/reservation fees KGS paid to procure gas are not trade secrets or confidential. Simply because one element of a document is public does not render all elements of the document public. Otherwise, redactions would be pointless, and rather than produce redacted documents, parties would simply file confidential pleadings. The margin/reservation fees KGS paid to procure gas remain commercially sensitive, and properly redacted.

16. As noted in paragraph 14 above, the Commission agrees with the NGTCC position that certain elements of the KGS supplier contracts and invoices are not confidential and withholding such information has no legitimate basis.

This Commission has never allowed "blanket" confidential designations of documents, and it will not allow such a practice in this case.

Commission orders and regulations require a party to individually identify and justify redactions of confidential information. 38

With respect to the information sought by NGTCC in this case, this rule requires KGS to furnish supplier contracts and invoices and individually identify and justify any confidential designations.

While the Commission continues to find certain aspects of the documents referenced by NGTCC are subject to protection, it is not clear to the Commission that KGS has supplied public versions of such documents with only those portions redacted. As NGTCC notes, public versions of certain supplier invoices are attached with KGS' pre-filed testimony.

However, to eliminate any confusion of the record and ensure the public can view as much of KGS' gas supply information as possible, the Commission orders KGS to file public versions of all its supplier contracts and invoices relevant to the winter weather event period. Consistent with the above findings and those of prior orders, KGS should specifically identify and provide its justifications where trade secrets or commercially-sensitive information is redacted.

15. The Commission also ordered Black Hills to file “public” copies of the supplier invoices for February 2021, in **KCC Docket No. 22-GIMX-171-MIS, on December 9, 2021**, to wit:

“6. The Commission has considered the justifications provided by Kansas Gas Service and Black Hills and finds the requested information is properly designated as confidential. This finding is consistent with, and more fully explained, in prior orders issued in Docket No. 21- KGSG-332-GIG (21-332 Docket). 5 In that proceeding, the Commission accepted certain confidential designations but required Kansas Gas Service to provide "public versions of all its supplier contracts and invoices relevant to the winter weather event period." 6 Consistent with this finding, Black Hills is also required to file public versions of the above-described documents in this docket for review by Mr. McCoy and the public."

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/20211209102117.pdf?Id=2a2510eb-71b8-4022-b292-62d9b72c69ca>

16. Kansas Gas Service filed the supplier invoices with its redactions (subject to KCC approval) on October 26, 2021. <https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202110261011437519.pdf?Id=f3350678-3305-4f78-9bc7-094bd64f4194> This “public” filing of the supplier invoices was filed on the KCC web sit in KCC Docket No. 21 -KGSG-332-GIG.
17. **In response to the KCC Order dated October 14, 2021, Kansas Gas Service provided in its filing, the identity of the suppliers and the total amount paid by Kansas Gas Service to each supplier in February 2021.**
18. Requestor requested that Evergy initially provide the same public disclosure provided by Kansas Gas Service on October 21, 2021 – 2 years ago – but Evergy declined to do so.

The Kansas Open Records Act.

19. As noted above, this is a KORA Request. This Request is to be measured by the statutory mandates of KORA and is in no way related to the Protective Order entered in KCC Docket No 21-EKME-329-COC. That case has concluded 15 months ago in June 2022.
20. The Commission is an Agency of the State of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
21. **“K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.”**
22. Public records are records made, maintained, created or possessed by a public agency -- including the Commission.

23. K.S.A. 45-217 defines "Public Record" as follows:

(l) (1) "Public record" means any recorded information, regardless of form, characteristics or location, that is made, maintained or kept by or is in the possession of: (A) Any public agency

24. K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of portions of documents that are not otherwise exempt:

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

25. The requested records are presumed to be "public" unless otherwise provided by statute, and the Kansas Open Records Act is to be liberally construed to advance the state public policy.

26. Public Records are to be open for inspection "by any person." K.S.A. 45-216.

27. Public policy is that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

28. The burden of proof is on the entity seeking exemption – Evergy.

29. Under applicable Kansas law, any Commission decision on KORA matters must be supported by substantial competitive evidence.

30. Under KORA, the Commission is required to:

- A. Gather and review the requested "Public Records."
- B. Consider the argument of Evergy that all or any part of those "Public Records" are or are not exempt from public disclosure based on a statutory exemption from public disclosure,
- C. Thereafter issue an Order
- D. Based on substantial competent evidence,
- E. Which details the evidentiary basis for the Commission's Order.

31. This KORA request is not in any way limited by KCC Dockets or Protective Orders issued therein.

32. Those cases are concluded, the Commission has entered an Order on the merits of each case – the Protective Orders issued therein have no force and effect. This Request is solely governed by KORA.

The Emergency Declaration of Governor Kelly on February 14, 2021

33. On February 14, 2021, Governor Kelly declared an Emergency in Kansas because of the frigid temperatures of Winter Storm Uri.

34. This Emergency declaration of Governor Kelly, by Kansas statute, invoked all protections of the Kansas Consumer Protection Act (“KCPA”)
35. It is reasonable to believe that Governor Kelly acted to protect Kansans from price gouging, profiteering, and unconscionable prices during a “life-and-death” Emergency related to the continuous frigid temperatures of February 2021.
36. The KCPA as applicable, prevents unconscionable sales practices, price gouging, and profiteering during a declared Emergency.
37. The anti-profiteering sections of the KCPA generally provide that during a declared Emergency, a supplier may not charge more than 25% more than the business day prior to the day of declared Emergency.
38. On February 12, 2021 - the business day prior to the day of the declared Emergency, the prevailing gas Index price was \$44.78 per unit.
39. On February 13 – 16, 2021.the Index price was \$329.59 per unit.
40. On February 17, 2021, the Index Price was \$622.78 per unit.
41. To prove an entitlement to possible recovery under the various sections of the KCPA, it is necessary to evidence:
 - (1) the identity of the seller during a declared Emergency.
 - (2) the sale price per unit of sale; and
 - (3) the number of units sold at the specified price, and the total thereof.
42. Not only is the anti-profiteering portion of the KCPA at issue, but also, it’s “unconscionable pricing” provisions as well.
43. On February 1, 2021, the Index price per unit of natural gas was \$2.54 per unit and on February 17, 2021, the Index price was \$622.78 per unit.
44. This is a 24,518% increase in natural gas prices in 16 days.
45. The requested documents in my KORA request provide the critical fact investigation that is necessary for prosecuting claims for recovery of funds for retail ratepayers as may be deemed consistent with state and federal law.

The Evergy Contentions that the Natural Gas Supplier Invoices of February 2021 Are Exempt From Disclosure Under KORA

46. Evergy offers a “blanket” designation that the requested supplier invoices are:

“propriety and commercially sensitive information. The information is also considered a “trade secret” because it represents methods, techniques and processes that Evergy uses in natural gas negotiations and purchases, especially during times of unusual market conditions such as what was faced during Winter Storm Uri.” **(Exhibit B, page 3)**

47. Trade Secret” is defined as follows:

K.S.A. 60-3320(4) defines “trade secret” as follows:
“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- 48. The Evergy contention is simply a recitation of the Kansas statutory definition of a “trade secret” and offers no substantial evidence of what it is about every word of the supplier invoices of February 2021 that makes them a “trade secret.
- 49. Further, these statements of Evergy are simply argument of Counsel.
- 50. Evergy seeks to rely on the Affidavit of John Carlson (Exhibit C).
- 51. The Affidavit of John Carlson is legally deficient on its face and is not substantial competent evidence.
- 52. Affiant, John Carlson, purports to support by Affidavit, all of the matters included by Ms. Cafer in her letter – which is predominantly a discussion of Kansas statutes, KCC pleadings, KCC Orders, and Evergy policy discussions. Mr. Carlson has no basis in fact or training to testify to probably 75% of what is included in the Response of Evergy by Ms. Cafer.
- 53. Kansas law as to Affidavit testimony is as follows:

K.S.A. 60-256. Summary judgment.

(e) Affidavits or declarations; further testimony. (1) In general. A supporting or opposing affidavit or declaration must be made on personal knowledge, set out facts that would be admissible in evidence and show that the affiant or declarant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit or declaration, a sworn or certified copy must be attached to or served with the affidavit or declaration. The court may permit an affidavit or declaration to be supplemented or opposed by depositions, answers to interrogatories or additional affidavits or declarations.

- 54. Evergy argues that disclosure of its natural gas suppliers in February 2021 would violate its “trade secret.”
- 55. The Commission has ruled otherwise, as noted above in the Kansas Gas Service case and the Black Hills case, as discussed above.
- 56. Evergy argues that if purchase dates and gas flow , the price paid, and the amounts purchased were to be disclosed, it will adversely affect the ability of Evergy to acquire natural gas at competitive prices, and adversely affect supplier relationships.
- 57. These contention of Evergy are without merit.
- 58. Kansas Gas Service – which has many more suppliers than Evergy and purchases much greater volumes of natural gas than Evergy, has provided the following in the public record:

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202107301401527761.pdf?Id=ff0a9cea-1923-43f5-acd3-10703259353e>

July 30, 2021. Testimony of Matt L. Robbins. KCC Docket No. 21-KGSG-332-GIG

See Exhibit MLR – 1. All Suppliers of Kansas Gas Service and the total dollar amount of natural gas purchased from each supplier in February 2021

December 1, 2021. Testimony of Matt L. Robbins. KCC Docket No. 21-KGSG-332-GIG

Page 8 – Pipelines – Customers served and percent of total capacity on each pipeline – page 8.

Exhibit MLR-1

- Volume of natural gas purchased by day from February 11 – February 23, 2021 – GDD Callable Purchase / MMBtu
- Total GDD Callable Purchase – Dollar Amount by day from February 11 – February 23, 2021
- System-wide Average GDD Callable Price by day from February 11 – February 23, 2021 – Spot Purchases / MMBtu

Exhibit MLR-1

- Volume of natural gas purchased by day from February 11 – February 23, 2021 – Spot Purchases / MMBtu
- Total Spot Purchase – Dollar Amount by day from February 11 – February 23, 2021
- System-wide Average Spot Price by day from February 11 – February 23, 2021 – Spot Purchases / MMBtu

59. Evergy contracts for natural gas purchases on the form of contract of the North American Energy Standards Board (“Naesb”). Section 15.10 of the NAESB contract limits confidential treatment of the contract and transaction documents to one year. Evergy has no expectation of confidential treatment of the requested “Public Documents” (supplier invoices of February 2021), beyond March 2022 – a period ending 19 months ago.

Respectfully submitted,

James P. Zakoura

James P. Zakoura
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Zakoura, James

From: Zakoura, James
Sent: Tuesday, October 17, 2023 8:49 PM
To: Lynn Retz; Sally Conn; 'd.cohen@kcc.ks.gov'
Cc: 'cathy.dinges@evergy.com'; 'darrin.ives@evergy.com'; Zakoura, James
Subject: Kansas Open Records Act - Request for Public Records - KCC Docket No. 21-EKME-329-GIE - Evergy Kansas Central and Evergy Kansas Metro.

I, James P. Zakoura ("Requestor") hereby make the following Request for Public Records, to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") pursuant to the Kansas Open Records Act ("KORA").

1. The Commission is an Agency of the State of Kansas, subject to the provisions of the Kansas Open Records Act. (K.S.A. 45-215 et. seq.)
2. "K.S.A. 45-216. Public policy that records be open. (a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
3. **Public records are records made, maintained, created or possessed by a public agency - - including the Commission.**
4. **The following public records that are maintained and possessed by the KCC, are hereby requested by the Requestor:**

Requestor requests:

- (a) **unredacted copies of all natural gas sale – purchase documents (invoices), that evidence the purchase of natural gas by Evergy in the period February 9 – February 21, 2023, as examined by KCC Staff and that form the basis and detail of the Summary Table entitled "Evergy: Purchase Gas Costs by Flow date", and listed at Page 95 of the Report and Recommendation – KCC Utilities Division, dated January 19, 2022, and such Report and Recommendation filed on the KCC Web Site on January 21, 2022, and more further described as follows on Page 94 of the Report and Recommendation, as follows: <https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514>**

7. Natural Gas Spot Pricing Analysis In KCC Data Request No 18, Staff requested Evergy provide the detail of its actual natural gas fuel purchases for Staff and the Commission's review. Generally, the purchase gas purchases included fixed pricing and daily index pricing. In its response, Evergy provided a total company breakdown of its daily natural gas purchases, the total dollar amounts, MMBtu/day, and average price per MMBtu.

Evergy also provided the following summary:

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514>

2/9/2021 - Average Price – \$4.08 per MMBtu - - Total MMBtu / day – 165,385 – Total Dollars - \$678,323

2/10/2021 - Average Price – \$4.16 per MMBtu - - Total MMBtu / day – 130,055 – Total Dollars - \$540,575

2/11/2021 - Average Price – \$11.15 per MMBtu - - Total MMBtu / day – 154,824 – Total Dollars - \$1,725,715

2/12/2021 - Average Price – \$49.29 per MMBtu - - Total MMBtu / day – 114,492 – Total Dollars - \$5,643,016

2/13/2021 - Average Price – \$365.74 per MMBtu - - Total MMBtu / day – 77,608 – Total Dollars - \$28,384,104

2/14/2021 - Average Price – \$304.21 per MMBtu - - Total MMBtu / day – 45,902 – Total Dollars - \$13,963,943

2/15/2021 - Average Price – \$323.54 per MMBtu - - Total MMBtu / day – 35,114 – Total Dollars - \$11,350,130

2/16/2021 - Average Price - \$325.79 per MMBtu - - Total MMBtu / day – 165,385 – Total Dollars - \$9,479,496

2/17/2021 - Average Price – \$497.14 per MMBtu - - Total MMBtu / day – 27,236 – Total Dollars - \$13,540,222

2/18/2021 - Average Price – \$85.42 per MMBtu - - Total MMBtu / day – 118,093 – Total Dollars - \$10,088,006

2/19/2021 - Average Price – \$8.48 per MMBtu - - Total MMBtu / day – 55,000 – Total Dollars - \$466,125

2/20/2021 - Average Price – \$4.47 per MMBtu - - Total MMBtu / day – 43,750 – Total Dollars - \$195,714

2/21/2021 - Average Price – \$4.38 per MMBtu - - Total MMBtu / day – 41,750 – Total Dollars - \$183,064

Total Dollars - \$96,238,432

5. The requested documents (invoices) set forth (i) a part of the component parts of “Additional Costs” that Evergy incurred during Winter Storm Uri, and (ii) along with Additional Purchased Power Costs - - have been ordered to be paid by retail ratepayers of Evergy Kansas Central, in the amount of \$122.1 million, over a 2-year period. Requestor limits his request to only the described natural gas documents (invoices) and no purchased power costs documents / records are requested.
6. The \$122.2 million ordered by the Commission to be paid by retail ratepayers of Evergy Kansas Central, is largely made up of Additional Natural Gas costs paid by Evergy for 6 days of natural gas purchases – from February 13 through February 18, 2021.
7. The Winter Storm Uri events occurred in February 2021. The KCC final Order in KCC Docket No. 21-EKME-329-GIE was issued by the Commission on June 23, 2022.

8. The referenced KCC Staff Report and Recommendation does not indicate if the requested documents (invoices) were designated by Evergy as confidential, and if so, any contended basis for such confidential designation, either at that time, or at the current time.
9. This KORA request is made 2 years and 8 months after the requested documents (invoices) were issued, and 1 year and 8 months after lapse of any confidential treatment of transaction documents pursuant to the industry standard North American Energy Standards Board (“NAESB”) Contract. This KORA request is issued 1 year and 4 months after the Commission issued its final order in KCC Docket No. 21-EKME-329-GIE.
10. There is a compelling public interest to be served by making public all such natural gas supply cost documents, due to the amount (\$96,238,432), and further due to the fact that the Commission has ordered these costs to be paid by retail ratepayers of Evergy over a 2-year period. **The Kansas Open Records Act is to be “liberally construed and applied” to promote the public policy of the state that public records shall be open for inspection by any person.”** K.S.A 45-216.
11. In total, the KCC ordered that \$807,831,944 of “Additional Natural Gas Costs” be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records.
 - American Energies - \$317,914 – paid over 5 years.
 - Atmos Energy - \$92.7 million (total with securitization financing costs - \$118,514,030) – paid over 10 years.)
 - Black Hills Energy - \$87.9 million – paid over 5 years.
 - City of Eskridge - \$1,1 million – paid over 10 years.
 - Evergy Central - \$122.2 million – paid over 2 years.
 - Kansas Gas Service - \$366 million (total with securitization financing costs - \$450,000,000 – paid over 10 years.)
 - Southern Pioneer - \$17 million – paid over 3 years.
 - Empire - \$10.8 million – paid over 15 years.

2023 KCC Report to the Kansas Legislature, dated January 2023, at Page 2.

[https://www.kcc.ks.gov/images/PDFs/legislative-reports/2023 Utilities and Common Carriers Report.pdf](https://www.kcc.ks.gov/images/PDFs/legislative-reports/2023%20Utilities%20and%20Common%20Carriers%20Report.pdf)

- In addition, the State of Kansas provided low interest loans to municipal utilities to pay Winter Storm Uri costs in the amount of **\$78,409,646.79** (total loans at January 2023)
 - **This brings the Kansas economic impact to \$886,241,590 for 5 days “additional costs” of Winter Storm Uri.**
12. **K.S.A. 45-221 (55)(d) provides that the Commission must provide public disclosure of portions of documents that are not otherwise exempt:**

(d) If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions that are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that

the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record that pertain to such individual or individuals.

Thank you for your consideration of this Request.

Requestor respectfully further requests that the documents (invoices) requested herein, be provided as soon as is reasonable to do so.

James P. Zakoura

4. Gas Fired Generation, Gas Cuts, & Economic Cost of Transportation Cuts

Between February 9 and February 21, Evergy procured 1,137,645 MMBtu of natural gas. **Footnote 178.** During this period, Evergy received cuts from natural gas pipeline totaling 186,389 MMBtu, which were primarily related to upstream supply or capacity constraints. **Footnote 179.**

Report and Recommendation – KCC Utilities Division, dated January 19, 2022,

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514>
at Page 90.

The regional impact and magnitude of the winter event resulted in significant cost exposure due to the price volatility of the spot market. Other than smaller first of the month (FOTM) or park storage transactions, Evergy relies primarily on spot-market gas purchases through day-ahead gas transactions and to a lesser extent, intraday transactions. During the winter event, Evergy purchased all of its natural gas on the spot market. 182 In January, Evergy spot market purchases accounted for 95.7% of its transactions. **Footnote 183.**

Report and Recommendation – KCC Utilities Division, dated January 19, 2022,

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514>
at Page 92.

In KCC Data Request No 18, Staff requested Evergy provide the detail of its actual natural gas fuel purchases for Staff and the Commission's review.

Such Response of Evergy is listed at page 95

<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?id=c3651aba-c4e9-415f-a36c-a1a2c44d8514> at page 90, 92, 94

James P. Zakoura

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October 27, 2023

Lynn M. Retz, Executive Director
Custodian of Records
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

Re: Kansas Open Records Request of James Zakoura
Documents Submitted by Evergy in Docket No. 21-EKME-329-COC

Dear Ms. Retz:

This letter is in response to your correspondence dated October 20, 2023, consistent with the provisions of Commission regulation, K.A.R. 82-1-221a. Mr. James Zakoura has made a request under the Kansas Open Records Act ("KORA") for copies of unredacted natural gas purchase invoices of Evergy that contain the information submitted to the Commission by Evergy under confidential seal during the Commission's investigation conducted in Docket No. 21-EKME-329-GIG ("21-329 Docket").¹

The KORA letter requests -

"unredacted copies of all natural gas sale – purchase documents (invoices), that evidence the purchase of natural gas by Evergy in the period February 9 – February 21, 2023², as examined by KCC Staff and that form the basis and detail of the Summary Table entitled "Evergy: Purchase Gas Costs by Flow date", and listed at Page 95 of the Report and Recommendation – KCC Utilities Division, dated January 19, 2022, and such Report and Recommendation filed on the KCC Web Site on January 21, 2022, and more further described as follows on Page 94 of the Report and Recommendation, as follows:
<https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202201210923455044.pdf?Id=c3651aba-c4e9-415f-a36c-a1a2c44d8514>"

These are invoices provided by Evergy to Staff in response to discovery conducted by Staff in the 21-329 Docket, specifically, KCC Data Request No. 18.

¹ Mr. Zakoura's KORA request was attached to your October 20, 2023, correspondence. It will not be repeated in its entirety in this letter but will be referenced, as necessary, to provide a full response.

² This response assumes Mr. Zakoura meant "2021" and not "2023" here.

In accordance with K.A.R. 82-1-221a(b)(1), Evergy hereby substantiates the confidential nature of the requested invoices and objects to disclosure of this confidential information for the reasons addressed below.

A. Applicable Law

K.S.A. 45-218(a) states, in relevant part, that “All public records shall be open for inspection by any person, *except as otherwise provided by this act ...*”. (Emphasis added)

K.S.A. 45-221(a)(1) states,

(a) Except to the extent disclosure is otherwise required by law, *a public agency shall not be required to disclose:*

(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. (Emphasis added)*

K.S.A. 66-1220a prohibits the Commission from disclosing trade secrets and confidential commercial information of an entity regulated by the Commission unless disclosure is found to be warranted after consideration of certain factors. The statute reads,

Disclosure of trade secrets and confidential information, when. (a) The state corporation commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information which is a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq., and amendments thereto) or any confidential commercial information of a corporation, partnership or individual proprietorship regulated by the commission unless the commission finds that disclosure is warranted after consideration of the following 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.

K.S.A. 60-3320(4) defines “trade secret” as follows:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commission regulation, K.A.R. 82-1-221a characterizes protected information as “Any document, data, customer-specific contract, proprietary information, trade secret, or other commercial information ...”.³ It states further that “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) and (b)(2) above shall be issued by the commission *in accordance with K.S.A. 66-1220a and amendments thereto.*”⁴

B. The Invoices Requested Are Confidential

1. Mr. Zakoura states that the “referenced KCC Staff Report and Recommendation does not indicate if the requested documents (invoices) were designated by Evergy as confidential, and if so, any contended basis for such confidential designation, either at that time, or at the current time.”⁵

The requested documents were, in fact, designated by Evergy as confidential when they were provided to the Commission. The responsive documents were marked “CONFIDENTIAL” and included the following explanation of the basis for the designation:

The information provided in this response contains CONFIDENTIAL information containing market analyses or other market specific information relating to services offered in competition with others.⁶

2. The information contained in the invoices requested by Mr. Zakoura is proprietary and commercially sensitive information. The information is also considered a “trade secret” because it represents methods, techniques and processes that Evergy uses in natural gas negotiations and purchases, especially during times of unusual market conditions such as what was faced during Winter Storm URI.

The invoices show Evergy’s natural gas suppliers, purchase dates and dates of gas flow, the price paid, the individual amounts of gas purchased from each supplier for each date, and the specific terms of such pricing. The requested information has been maintained by Evergy and the Commission as highly confidential.

If publicly disclosed, it would interfere with Evergy’s ability to acquire adequate gas supplies to serve its customers at a reasonable price. Evergy acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Evergy’s gas supply packages, putting Evergy at a competitive disadvantage in acquiring gas supplies through this process and resulting in higher gas costs.

Disclosure would harm the long-term relationships between Evergy and its natural gas suppliers. If cold weather pricing events occur in the future, Evergy needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntarily disclosing gas pricing – even a few years after the event - may cause some suppliers to sell into other markets and avoid Evergy’s market. This would have a direct negative effect on Evergy and its customers.

³ Paragraph (a)

⁴ Paragraph (b)(3), emphasis added.

⁵ KORA Request, ¶ 8.

⁶ Evergy Response to KCC Data Request No. 18.

Further, if Evergy's suppliers knew that their pricing and/or terms would be public information they would have no reason to give Evergy a better price on any transaction. Additionally, if Evergy were to become aware that a natural gas supplier had charged Evergy a higher price than it charged another entity, Evergy would be less likely to use that supplier in the future. Relationships matter in the marketplace, and they are built on trust and confidentiality. Releasing pricing from even one supplier could impact future pricing from all suppliers and even "dry-up" some markets (suppliers would stop selling to us).

3. Mr. Zakoura states that his KORA request –

is made 2 years and 8 months after the requested documents (invoices) were issued, and 1 year and 8 months after lapse of any confidential treatment of transaction documents pursuant to the industry standard North American Energy Standards Board ("NAESB") Contract. This KORA request is issued 1 year and 4 months after the Commission issued its final order in KCC Docket No. 21-EKME-329-GIE.⁷

Mr. Zakoura falls short of actually asserting that the passage of time has caused the confidential nature of the information to no longer apply. However, to the extent that might be the intent behind this paragraph of the KORA Request, it is incorrect for the reasons explained above.

4. If Mr. Zakoura is arguing that invoices are no longer confidential as a result of the terms of the NAESB Contract entered into between Evergy and its natural gas suppliers, that position must also fail. Although Evergy is not contractually obligated to maintain confidentiality after one year under the NAESB Contract, that fact does not constitute a determination that the invoices are no longer confidential under the Commission's standards. Disclosure would still harm Evergy and its customers, and that is the relevant question to be considered.

The invoices that are the subject of the KORA Request are still properly classified as confidential and should continue to be handled by the Commission accordingly, pursuant to K.S.A. 66-1220a.

C. Disclosure of the Confidential Information is not Warranted Under K.S.A. 66-1220a

As stated above, when requested information is properly classified as confidential within the meaning of K.S.A. 66-1220a and K.S.A. 60-3320, the Commission must consider four factors in determining if the confidential information should be disclosed. Those four factors are addressed below.

1. **Disclosure will not aid the Commission in fulfilling its functions.**

The KORA Request does not explain how disclosure would aid the Commission in fulfilling its functions. This information is already in the KCC's possession and was considered by the Commission in its decision in the 21-329 Docket. As parties to the 21-329 Docket, Mr. Zakoura and his clients also had access. Any action relevant to the Commission's docket can be pursued

⁷ KORA Request, ¶ 9.

within that docket subject to the Commission's Protective Order. The Protective Order is relevant to the KORA Request as a result of KORA's deference to K.S.A. 66-1220a, which is the primary statutory basis for the issuance of Protective Orders.

While civil litigation is on-going regarding gas prices during the Uri storm event, it is highly speculative as to whether that litigation might somehow aid the Commission in the enforcement of its laws and Orders. Further, there is no reason to believe the outcome of the civil litigation is in any way dependent upon public disclosure of the confidential information gained in the Commission's docket. The parties to the civil litigation can obtain the same information using the discovery procedures applicable to Chapter 60 proceedings.

2. The public interest will be harmed and not benefited by disclosure.

As explained above, public disclosure of the invoices would cause substantial harm to the public interest by interfering with Evergy's ability to acquire adequate gas supplies to serve its customers at a reasonable price. Natural gas purchasing is a competitive process. Disclosure would compromise Evergy's competitive bidding activities in acquiring gas supplies through this process which will result in higher prices for customers.

Mr. Zakoura does not explain how disclosing the competitive terms of Evergy's gas supply invoices would benefit the public. He simply asserts that there is "a compelling public interest to be served by making public all such natural gas supply cost documents, due to the amount (\$96,238,432), and further due to the fact that the Commission has ordered these costs to be paid by retail ratepayers of Evergy over a 2-year period⁸, and that, "In total, the KCC ordered that \$807,831,944 of "Additional Natural Gas Costs" be collected from about 900,000 residential natural gas customers and about 750,000 electric customers in the State of Kansas. There is compelling public interest for the liberal interpretation of the Kansas Open Records Act, and for maximum transparency by the Commission of its books and records."⁹

The fact that retail ratepayers have been ordered to pay some of the high gas costs incurred during Winter Storm URI does not explain how having general public access to the confidential competitive invoices benefits the public. If district court litigation against gas suppliers or others results in the recovery of some of the URI costs, Evergy is required to pass any such amounts back to customers.

There is no explanation of who in the general public is seeking this information and for what purposes. The public interest was protected by the Commission's investigation and action taken in the 21-329 Docket. Because the 21-329 Docket has been resolved and the Settlement in the case has been approved by a final Commission Order, the public interest has been protected and disclosure does not promise additional public benefits.

As Mr. Zakoura acknowledges, the KCC reviewed the confidential gas supply pricing information and thereafter approved a 2-year plan for Evergy to recover gas costs in the amount of \$122.1 million from customers. The Commission continues to possess those confidential records. Evergy is aware that Mr. Zakoura is pursuing civil litigation against natural gas marketers, but the

⁸ KORA Request, ¶ 10.

⁹ KORA Request, ¶ 11.

Commission did not state that the confidential information submitted in the 21-329 Docket would or should be disclosed after a year so that other intervening parties could pursue their own litigation against natural gas suppliers.

3. Evergy will be harmed by disclosure.

Evergy has previously explained how public disclosure of the invoices would cause substantial harm to Evergy by interfering with its ability to acquire adequate gas supplies to serve its customers at a reasonable price. Evergy acquires gas supplies through a confidential competitive bidding process, and disclosure of the requested information could make potential suppliers reluctant to bid on Evergy's gas supply packages, putting Evergy at a competitive disadvantage in acquiring gas supplies through this process and resulting in harm to Evergy's customers through higher gas costs. Disclosure would harm the long-term relationships between Evergy and its natural gas suppliers. If cold weather pricing events occur in the future, Evergy needs to act quickly to prudently secure natural gas supplies at the prevailing market prices. The act of involuntarily disclosing gas pricing – even a few years after the event - may cause some suppliers to sell into other markets and avoid Evergy's market. This would have a direct negative effect on Evergy's operations.

Mr. Zakoura's KORA Request does not address the harm to Evergy that disclosure would cause to future gas availability or pricing from these suppliers.

4. The Commission has implemented alternatives to disclosure that serve the public interest and protect Evergy.

Factor four requires the Commission to consider alternatives to disclosure that will serve the public interest and protect the utility. The Commission has done that in the 21-329 Docket by issuing a two-tiered Protective Order that allows all parties to have access to normal confidential information and allows some parties – including Mr. Zakoura and his clients – access to all highly-confidential information, including the invoices that are the subject of the KORA Request. The Commission's process fairly and efficiently balanced the interests of the public, Evergy and its natural gas suppliers.

In addition to the highly confidential information Mr. Zakoura received as a party to the 21-329 Docket, he also has public information regarding the magnitude of natural gas supply from the overall amount approved by the Commission in the 21-329 Docket. He also has the specific list of suppliers who sold gas to Evergy during the Storm Uri event as provided to the Commission and intervening parties, and he has information from the other KCC storm dockets related to other Kansas utility companies. Mr. Zakoura and his clients could use that information to evaluate or proceed with a lawsuit and obtain additional pricing information under the appropriate discovery procedures allowed for in that lawsuit.

Evergy does not believe that Mr. Zakoura has provided adequate reasons to support disclosure of the requested confidential information under the Commission's standards.

D. Commission Precedent

Evergy's position is consistent with the Commission's recent decision on a nearly identical KORA request submitted by Mr. Zakoura seeking natural gas purchase invoices of Black Hills in Docket No. 21-BHCG-334-GIG ("21-334 Docket"). In that case, the Commission held as follows:

In considering K.S.A. 66-1220a's four factors the Commission finds the following:

- (1) No party argues that disclosure would or would not aid the Commission in fulfilling its functions. It is possible that through litigation Mr. Zakoura could discover violations of Kansas law or Commission regulations, aiding the Commission in their enforcement, but this possibility is far too attenuated from the actual disclosure, nor is it clear if the possibility of such litigation is dependent on disclosure.
- (2) The Commission agrees that disclosure of Black Hills' contracts may affect their ability to compete for low cost gas supplies in the future, which would cause harm to both Black Hills and the public.
- (3) As Black Hills points out because he was involved in the 21-BHCG-334-GIG Docket, Mr. Zakoura already has access to the information he seeks, albeit within the bounds of the Commission's Protective and Discovery Order. Alternatives to disclosure exist. Such alternatives include (a) proceeding with publicly available information, (b) obtaining consent from Black Hills' suppliers and (c) use of discovery in litigation. The Commission is aware of at least two class action cases filed by Mr. Zakoura related to natural gas suppliers during Winter Storm Uri.

After reviewing the four factors in K.S.A. 66-1220(a) the Commission finds that disclosure is not warranted.

(See also the Commission's ruling in Docket No. 21-KGSG-332-GIG, finding that substantially similar information constituted trade secrets and should not be made public, citing Docket No. 21-BHCG-334-GIG, and the Commission's Order on KORA Request in KCC Docket No. 22-GIMX-171-MIS.)

E. Affidavit of Evergy Subject Matter Expert

Included with this letter is an affidavit from John Carlson who is the Sr. Manager of Market Operations. In this role, John Carlson is responsible for the natural gas purchases and processes of Evergy. His affidavit declares the truth and accuracy of the statements contained in this letter.

F. Summary

In summary, the information requested in the KORA Request was properly classified as confidential. The information requested continues to be classified as confidential at this time. The reasons given as the basis for confidentiality when the invoices were initially submitted to the Commission are still accurate and applicable. Mr. Zakoura fails to support disclosure of the requested invoices under the terms the Commission is required to evaluate such requests, as set out in K.S.A. 66-1220a.

October 27, 2023

Page 8

Disclosure would not benefit but would cause substantial harm to the public and Evergy by interfering with Evergy's ability to acquire gas supplies and serve the public at a reasonable price.

For the foregoing reasons, Evergy respectfully requests that its confidential information not be produced in response to the KORA Request.

Respectfully,

/s/ Glenda Cafer

Glenda L. Cafer

BEFORE THE KANSAS CORPORATION COMMISSION

AFFIDAVIT OF JOHN CARLSON

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

I, John Carlson, hereby state as follows:

1. My name is John Carlson, and I am employed in the position of Sr. Manager Market Operations with Evergy, Inc ("Evergy"). I have been employed in that position for 6 years. In my position, I am responsible for the procurement and scheduling of natural gas for Evergy's generation fleet.

2. I have reviewed the letter of Evergy's counsel to which this affidavit is attached dated October 27, 2023, responding to the Kansas Open Records Act ("KORA") request of Mr. James Zakoura. I am familiar with the substance of the letter and the KORA request.

3. I hereby attest that, to the best of my knowledge and belief, the contents of Evergy's letter and representations made therein are true and correct.



John Carlson

Subscribed and sworn before me this 30th day of October, 2023.



Notary Public

My commission expires: May 30, 2026

