

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

In the Matter of the Investigation into Atmos Energy)
Corporation regarding the February 2021 Winter) Docket No. 21-ATMG-333-GIG
Weather Events, as contemplated by)
Docket No. 21-GIMX-303-MIS)

PETITION TO INTERVENE

COMES NOW, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, and petitions the Corporation Commission (“Commission”) of the State of Kansas for intervention in the above-captioned case pursuant to K.S.A. 77-521. In support of its petition, the Office of Attorney General Derek Schmidt (“OAG”) alleges as follows:

1. On February 15, 2021, the Commission issued an Emergency Order in the 21-GIMX-303-MIS Docket (“Emergency Order”), pursuant to K.S.A. 77-536(a), to exercise its powers to protect the public from immediate danger to health, safety, and welfare.

2. The Emergency Order was issued in response to the February 14, 2021, State of Disaster Emergency issued by Kansas Governor Kelly “due to wind chill warnings and stress on utility and natural gas providers, noting that the current subzero temperatures are causing increased energy demand and natural gas supply constraints throughout Kansas.” (Emergency Order at p. 1.)

3. Pursuant to the Emergency Order: All jurisdictional natural gas and electric utilities are required “to coordinate effort and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities. Jurisdictional natural gas and electric utilities

are ordered to do everything necessary to ensure natural gas and electricity service continues to be provided to their customers in Kansas.” (Emergency Order at p. 3.)

4. Also, pursuant to the Emergency Order, “[t]he Commission authorizes every jurisdictional electric and natural gas distribution utility that incurs extraordinary costs associated with ensuring that their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during this unprecedented cold weather even to defer those costs to a regulatory asset account.” The deferred costs may also include carrying costs and must be accounted for in detail. (Emergency Order at p. 4.)

5. The Emergency Order establishes a mechanism where rate recovery may be sought in a future proceeding.

6. The Emergency Order directs that: “[o]nce this 2021 Winter Weather Event is over, and after all costs have been accumulated and recorded, each jurisdictional utility is directed to file a compliance report in this 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.” (Emergency Order at p. 5.)

7. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the State of Kansas.

8. The Attorney General has statutory and common law authority to enforce the Kansas Consumer Protection Act, (“KCPA”) K.S.A. 50-623, *et seq.* which purpose is to protect consumers from suppliers who commit deceptive and unconscionable acts and practices.

9. Specifically, the OAG has authority to enforce the unconscionable act of profiteering from a disaster. K.S.A. 50-6, 106. Profiteering from a disaster means an unjustifiable

increase during the time of a disaster of a “necessary property or service” including consumer use of natural gas during the time of the disaster.

10. A “consumer” is defined as “an individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes.” K.S.A.50-624(b).

11. During the 2021 Winter Weather Event natural gas utilities acted as a “supplier” as that term is defined by K.S.A. 50-624(1). The term supplier includes “a manufacturer, distributor, dealer, seller, lessor, assignor, or other person who in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not dealing directly with the consumer.” This definition includes non-jurisdictional natural gas marketers.

12. During the 2021 Winter Weather Event natural gas utilities engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

13. During the 2021 Winter Weather Event natural gas utilities engaged in consumer transactions with Kansas “consumers,” as that term is defined in K.S.A. 50-624(b).

14. The OAG has received complaints from consumers, businesses, and state agencies regarding price gouging for natural gas during the 2021 Winter Weather Event.

15. The OAG has exclusive authority to enforce the Kansas False Claims Act, K.S.A. 75-7501, *et seq.* (“KFCA”), which prohibits making a fraudulent claim upon the State government and any political subdivision thereof.

16. A “political subdivision” includes political or taxing subdivisions of the state, including municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups or administrative units thereof, receiving or expending and supported, in whole or in part, by public funds. K.S.A. 75-7502(c).

17. The OAG opened an investigation into natural gas pricing on February 19, 2021, to determine if a KCPA, KFCA, or other violation of law has occurred. This investigation is ongoing.

18. On July 8, 2021, the Commission issued supplemental protective and discovery orders directing Staff to share discovery to assist the OAG in performing its duties under K.S.A. 75-702 and 75-708.

19. Pursuant to K.S.A. 77-521(a), the OAG's legal interests on behalf of Kansas consumers and state and political subdivisions are substantially affected by this proceeding and granting the OAG's petition to intervene will not impair the orderly and prompt conduct of this action. The events that led to unprecedented increases in the price of natural gas directly impacts Kansas consumers and governmental entities who will bear the extraordinary cost of the natural gas spikes.

20. Violations of the KFCA are subject to civil proceedings initiated by the Office of the Kansas Attorney General pursuant to K.S.A. 75-7504.

21. The Attorney General has broad investigatory and rule-making authority for the purpose of protecting the public from unscrupulous suppliers and is given the discretion to exercise these powers to further the public interest. The Attorney General is required to enforce the KCPA throughout the state and receive and act on complaints. K.S.A. 50-628; *State ex rel. Miller v. Midwest Serv. Bur. of Topeka, Inc.*, 229 Kan. 322, 324, 623 P.2d 1343.

22. The OAG acts in the interests of the state and for the protection of the public under the doctrine of *parens patriae*. It is the duty of the OAG 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.

23. The KCPA grants the Attorney General the right to bring an action to have a practice declared illegal under the KCPA, to collect actual damages on behalf of aggrieved consumers, to seek civil penalties, and to obtain reimbursement for reasonable expenses and investigation fees, K.S.A. 50-632(a)(4).

24. The duties of the OAG require enforcement of the KCPA throughout the state in cooperation with federal, state and local officials. K.S.A. 50-628(a). Intervention in this investigation will avoid duplication of efforts to determine whether price gouging and other KCPA violations occurred in the natural gas market in Kansas.

25. The OAG is the state agency with authority to enforce the KCPA and has a substantial interest in the outcome of this proceeding that is not adequately represented by any other party. The rights, duties, privileges, immunities or other legal interests of Kansas consumers may be substantially affected by this proceeding. K.S.A. 77-521(a)(2).

26. Violations of the KFCA include, but are not limited to, knowingly making a false claim for payment and making or using a false record or statement for payment or approval. K.S.A. 75-7503(a)(1)-(8).

27. Under the KFCA, the OAG may seek injunctive relief, damages, refund of money falsely obtained, civil penalties, attorney fees and costs and any other remedies available under Kansas law. K.S.A. 75-7503 and K.S.A. 75-7507.

28. The OAG meets the standards for intervention under the Kansas Administrative Procedures Act. Allowing the OAG to intervene is in the interests of justice because it will ensure citizens of Kansas are protected from price gouging. The actions of the Commission

regarding how the costs of the 2021 Winter Weather Event will be determined has an impact on consumers and governmental entities throughout the state.

29. The OAG therefore requests the Commission grant the OAG's Petition to Intervene, allow full participation in this docket, including but not limited to the right to conduct discovery, file pleadings, testimony, and at hearings.

30. All communications and correspondence to the Office of Attorney General Derek Schmidt, including service of electronic notices, pleadings and orders of the Commission, are requested to be sent to the following:

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WHEREFORE, the Office of the Attorney General respectfully requests the Commission enter an Order allowing it to intervene in this proceeding and for all other relief which the Commission deems just and proper.

Respectfully submitted:

By:

/s/ *Derek Schmidt* _____

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STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

I, Melanie Jack, verify under penalty of perjury that I have caused the foregoing pleading to be prepared; that I have read and reviewed the same; and that the contents thereof are true and correct to the best of my information, knowledge and belief.

/s/ Melanie Jack _____

CERTIFICATE OF SERVICE

I, undersigned, hereby certify that on the 19th day of July 2021, a true and correct copy of the above and foregoing pleading was electronically served on the following:

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