

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Investigation into Kansas	§	
Gas Service Company, a Division of One Gas	§	Docket No. 21-KGSG-332-GIG
Inc. Regarding the February 2021 Winter	§	
Weather Events	§	

**CONSTELLATION'S RESPONSE TO  
CATHOLIC DIOCESE OF WICHITA'S MOTION TO COMPEL**

Constellation NewEnergy—Gas Division, LLC's ("Constellation") files this response to the Catholic Diocese of Wichita's ("Diocese") Motion to Compel (the "Motion") related to the Diocese's Data Requests Nos. 1 and 2.

**Introduction and Summary of Response**

This dispute concerns Kansas Gas Service Company's ("KGS") request for a limited waiver of operational flow order ("OFO") penalties under its tariff. The Commission's March 2021 Staff Report states that the proceeding will also consider how jurisdictional electric and natural gas utilities were prepared for and responded to the February 2021 winter weather event.

Constellation is a natural gas marketer; it is not a natural gas utility, nor is it "jurisdictional" in that it is not rate-regulated by state public utility commissions. Constellation intervened in this action to assert its interest in the resolution of KGS's request to waive penalties, to address costs that KGS allocated to Constellation and its customers, and to provide input on any proposed rule changes.

In its Motion, the Diocese noted that Constellation did not provide a verification. Constellation has provided a verification, as well as more detailed responses.

Next, the Diocese seeks to compel documents and data from Constellation unrelated to the pending docket. With respect to its Requests 1-D and 1-E, the Diocese seeks to compel data related to: (i) spot market purchases during January, February and March 2021 for Constellation's

customers in Kansas; (ii) analysis of those purchases; and (iii) details regarding the supplier, cost, and volume of every purchase. The Diocese also seeks data related to its requests 1-F and 1-G, which relate to Constellation's total monthly cost for natural gas for January, February, and March 2021 and details regarding the supplier, purchase dates, and purchase price for all volumes purchased.

The resolution of these requests is straight-forward. Constellation has already told the Diocese that it did not buy gas on the spot market. Accordingly, there is no other data to provide in connection with Requests 1-D and 1-E. For the other two requests, the Diocese's requests seek to vastly expand the scope of this proceeding beyond the jurisdictional natural gas utility for purposes of a "comparison." *See* Motion at ¶25. This comparative rationale is entirely without merit because the business model and legal standards applicable to KGS and Constellation are vastly different. Further, to allow such discovery in this regulatory proceeding would obscure the focus of this proceeding and vastly expand discovery by and between all parties from a scope targeted to this regulatory proceeding to wide open discovery that is more akin to and appropriate for potential civil litigation. Constellation's purchases and pricing is not directly or indirectly relevant to the scope of this proceeding, nor is it even likely to lead to relevant information for this proceeding. This is not a prudence case, and even if there were a basis for inquiring into KGS's natural gas purchases, that logic does not apply or extend to Constellation. The Commission should deny the Motion.

#### **Verification Provided for Response to Request Nos. 1 and 2**

The Diocese's Motion notes that Constellation failed to provide a verification with its responses to the Diocese's Data Requests Nos. 1 and 2. Constellation has now provided the required verification to its responses. *See* Exhibit 1. Constellation also provided more detailed

First Amended Responses to the Diocese's Data Requests Nos. 1 and 2, and those responses are verified. *See* Exhibit 2.

**Requests 1-D and 1-E Are Not Relevant and There Is Nothing to Compel**

Requests 1-D and 1-E seek information related to natural gas purchases on the spot market. *See* Exhibit 2 at p. 1. The Commission should deny this request for two reasons. First, as discussed in the section below, the requested information is not a subject of dispute or inquiry in this docket, nor does it have any bearing on any of the pending issues. Second, Constellation did not purchase natural gas on the spot market, as it has repeatedly told the Diocese. Rather, Constellation purchased all natural gas through a wholesale supplier. There is no spot market data of Constellation that may be disclosed or provided, and, thus, there is nothing to compel. Constellation does not have any responsive data beyond the information it already provided to the Diocese. *Id.*

**Requests 1-F and 1-G Are Not Relevant and No More Information Should Be Required**

**A. *Constellation Responded Appropriately to the Diocese's Requests.***

Requests 1-F and 1-G seek details related to the total monthly cost for natural gas to provide service to Constellation's Kansas customers for January, February, and March 2021, including all volumes purchased, all suppliers, all dates of purchase, and all prices paid for all natural gas during that period. *See* Exhibit 2 at p. 2. Constellation responded to these requests appropriately by noting the general nature of its purchases but that the details of Constellation's pricing and commercial arrangements are far outside of the scope of this action. *See id.*

**B. *This is Not a Prudence and Reasonableness Docket.***

In its Motion, the Diocese claims that additional data is required in connection with Requests 1-F and 1-G because this docket concerns "prudence and reasonableness." *See* Motion

at p. 4. That is simply incorrect. This docket concerns waiver of KGS's OFO penalties and how jurisdictional electric and natural gas utilities were prepared for and responded to the February 2021 winter weather event. *See* Staff Report at pp. 5-7.

In its Emergency Order in Docket No. 21-GIMX-303-MIS, the Commission ordered that Commission indicated that "all deferred costs shall be segregated by detailed cost category and shall contain enough detail for the Commission to perform a subsequent review for prudence and reasonableness," but that prudence and reasonableness review – if it is later required – will relate to KGS or other regulated gas or electric utilities, not Constellation. Additionally, no prudence and reasonableness review is occurring in this docket; it is simply possible that such a review could occur in another docket at another time, if necessary.

Under the Commission's Order and K.A.R. 82-1-234a(a), "*Discovery shall be limited to matters that are clearly relevant to the proceeding involved.*" That standard is not met in connection with the Motion. As the Diocese noted in its Motion, from the outset, Constellation has maintained that Constellation's data and documents related to the "*cost of natural gas purchased to serve Constellation's Kansas customers in February of 2021 does not have any bearing on any of the issues in this proceeding.*" *See* Motion at p. 3 and Exhibit 2 at p. 2. Constellation's observation was and remains true.

This docket is not a prudence and reasonableness review related to KGS's purchases. Even if KGS's purchases were within the scope of discovery and this proceeding involved an inquiry into the prudence of KGS's purchases – which it does not – then Constellation's costs of natural gas, its supply arrangements, and related issues would *still* not be within the scope of this docket, either jurisdictionally or as a subject matter. Based on Kansas law<sup>1</sup> and the Commission's clear

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<sup>1</sup> *See generally*, K.S.A. §66-104e-g.

orders and the proceedings in this docket to date, there is no basis to consider the prudence and reasonableness, or as a fundamentally flawed comparative analysis, the natural gas purchases of the gas marketers.

In sum, compelling the discovery the Diocese seeks would convert this proceeding into a prudency review of the entire natural gas industry (regulated utility and marketers alike) by using a flawed analysis of data by means of an extra-jurisdictional reach of the Commission. This discovery is out of bounds and falls far short of what is “clearly relevant” to this docket. It does not serve the public interest for the Commission to allow this proceeding to become an unfocused fishing expedition, in aid of either prospective litigation or a profoundly flawed comparative analysis, outside of its jurisdiction. It is in the public interest for the Commission to keep this regulatory proceeding focused on KGS’s motion for a limited waiver.

### **Conclusion**

After reviewing the Motion, this Response, Constellation’s First Amended Responses to the Diocese’s requests, and the verification of those responses, Constellation respectfully requests that the Commission deny the Motion. Constellation has fully satisfied its discovery obligations, and Constellation continues to participate appropriately and in good faith in discovery. The Commission should decline the Diocese’s requests for Constellation to produce purchasing, cost, or so-called prudence data related to Constellation or its wholesale supplier, all of which are far outside the scope of this docket.

Respectfully submitted,

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Constellation NewEnergy—Gas Division, LLC*

**CERTIFICATE OF SERVICE**

I certify that on September 3, 2021, a copy of this document was served on all parties on the attached mailing list in accordance with the applicable service procedures.

/s/ Kerry Morgan  
Kerry Morgan

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**VERIFICATION**

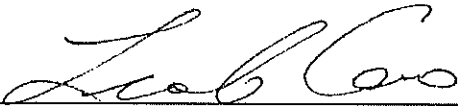
1. My name is Leonardo G. Caro. I provide this verification in connection with Constellation NewEnergy—Gas Division, LLC's ("Constellation") Responses to the Catholic Diocese of Wichita's Data Requests. I serve as Senior Vice President, Commercial & Industrial Gas Sales for Constellation.

2. I have read Constellation's responses to the Catholic Diocese of Wichita's Data Requests, and I am familiar with their contents. These answers were prepared by Constellation's representatives and attorneys. In my capacity as an officer of Constellation I believe the responses are accurate, and on that ground, and in that capacity, I allege that to the best of my knowledge and belief the answers are true and correct.

3. I reserve the right to make any changes in the responses if it should appear at any time that omissions or errors have been made, or that additional or more accurate information has been obtained.

I declare under penalty of perjury in my capacity as an officer of Constellation that the foregoing is true and correct to the best of my knowledge and belief.

Date: 09/02/2021

  
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Leonardo G. Caro,  
Senior Vice President, Commercial & Industrial Gas Sales



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**CONSTELLATION'S FIRST AMENDED REPONSES TO  
CATHOLIC DIOCESE OF WICHITA'S DATA REQUESTS**

Constellation NewEnergy—Gas Division, LLC (“Constellation”) serves these *First Amended Responses to Data Requests 1A-2B to Constellation* by the Catholic Diocese of Wichita (“Diocese”). Constellation amends its responses based on additional information and investigation related to the requests.

DR 1A. Does Constellation NewEnergy – Gas Division, LLC engage in natural gas hedging? If so, was the hedging strategy used successful in mitigating the extreme price swings experienced during this event? What gas purchasing practices/strategies were utilized during the winter weather event?

Response: Constellation receives supplies of natural gas through its wholesale supplier Exelon Generation Company, LLC (“Exelon Generation”). Constellation offers customers certain products through which customers can decide the extent to which they want to be supplied at variable market prices.

DR 1B. Did Constellation NewEnergy – Gas Division, LLC utilize gas storage to mitigate the extreme natural gas price increases experienced during the winter weather event? If so, please detail the amount of gas storage utilized during the event.

Response: Constellation receives its natural gas supply for Kansas customers from Exelon Generation and does not hold storage rights.

DR 1C. For stored natural gas referenced in paragraph B above, please provide the cost of gas withdrawn from inventory during the winter weather event and the accounting methodology used for stored gas inventory.

Response: See response to DR 1B above.

DR 1D. From February 9-21, 2021, what percentage of gas supplied to Constellation NewEnergy – Gas Division, LLC’s Kansas customers was purchased on the spot market? Please provide the detail for the gas purchased on the spot market, including volumes purchased, the date of purchase, the supplier, and the price paid per volume.

Response: This request seeks documents or information that is not in Constellation’s possession, custody, or control. Constellation purchased natural gas through Exelon Generation. Constellation is not able to identify what percentage of that natural gas was

EXHIBIT

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acquired through the spot market or to provide the other information requested by the Diocese. The requested information is also not a subject of dispute or inquiry in this docket, nor does it have any bearing on any of those issues.

DR 1E. For the month of February 2021, what percentage of gas supplied to Constellation NewEnergy – Gas Division, LLC’s Kansas customers was purchased on the spot market? For the months of January 2021 and March 2021, what percentage of gas supplied to Constellation NewEnergy – Gas Division, LLC’s Kansas customers was purchased on the spot market?

Response: See response to DR 1D above.

DR 1F. Please detail the total monthly cost for natural gas purchased to serve Constellation NewEnergy – Gas Division, LLC’s Kansas customers in February of 2021, including volumes purchased, the date of purchase, the supplier, and the price paid per volume.

Response: All of the requested information is outside the scope of the dispute and inquiries in this docket. Additionally, the cost of natural gas purchased to serve Constellation’s Kansas customers in February 2021 does not have any bearing on any of the issues in this proceeding. In addition, as described above, the gas provided to serve Constellation’s Kansas customers is supplied by Exelon Generation.

DR 1G. How much did the total cost of gas purchased for Kansas customers in February 2021 compare to total gas purchased in January 2021 and March 2021.

Response: See response to DR 1F above.

DR 2A. Please describe in detail what steps Constellation NewEnergy – Gas Division, LLC took to limit or prevent the financial impact of the winter weather event for its Kansas customers, including detail on the steps taken in response to the following events:

- i. Southern Star Pipeline’s system-wide Operational Flow Order issued on February 9, 2021.
- ii. Kansas Gas Service’s Operational Flow Order issued on February 11, 2021
- iii. Kansas Governor Kelly’s State of Disaster Emergency Declaration issued on February 14, 2021.
- iv. Kansas Gas Service’s Curtailment Order issued on February 15, 2021.

Response: Constellation took a number of steps to limit or prevent the financial impact of the winter weather event for its Kansas customers. In written correspondence, Constellation made customers aware of the potential for extremely high prices and encouraged customers to reduce their consumption. Constellation’s account managers also began reaching out to individual customers to alert them to the issuance of Operational Flow Orders and subsequent events, to the increases in prices, and to try to answer any questions that they might have. Constellation also attempted to secure additional supplies of natural gas through its wholesale supplier Exelon Generation.

DR 2B. Please provide copies of all notices Constellation NewEnergy – Gas Division, LLC issued to its Kansas customers during the month of February 2021 relating to the winter weather event or extreme natural gas prices? If different notices were sent to different customers, please explain why different notices were sent and identify notices Constellation NewEnergy – Gas Division,

LLC issued to the Catholic Diocese entities.

Response: Constellation has previously produced the requested documents and correspondence.

Respectfully submitted,

/s/ Kerry Morgan

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**VERIFICATION TO CONSTELLATION'S FIRST AMENDED RESPONSES**


1. My name is Leonardo G. Caro. I provide this verification in connection with Constellation NewEnergy - Gas Division, LLC's ("Constellation") First Amended Responses to the Catholic Diocese of Wichita's Data Requests. I serve as Senior Vice President, Commercial & Industrial Gas Sales for Constellation.

2. I have read Constellation's First Amended Responses to the Catholic Diocese of Wichita's Data Requests, and I am familiar with their contents. These answers were updated with new information and were prepared by Constellation's representatives and attorneys. In my capacity as an officer of Constellation I believe the responses are accurate, and on that ground, and in that capacity, I allege that to the best of my knowledge and belief the answers are true and correct.

3. I reserve the right to make any changes in the responses if it should appear at any time that omissions or errors have been made, or that additional or more accurate information has been obtained.

I declare under penalty of perjury in my capacity as an officer of Constellation that the foregoing is true and correct to the best of my knowledge and belief.

Date: 09/03/2021



Leonardo G. Caro,  
Senior Vice President, Commercial & Industrial Gas Sales