

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

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Investigation into Black Hills)
Kansas Gas Utility Company d/b/a Black Hills)
Energy Regarding the February 2021 Winter) Docket No. 21-BHCG-334-GIG
Weather Events, as Contemplated by Docket No.)
21-GIMX-303-MIS.)

In the Matter of the Application of Black Hills)
Kansas Gas Utility Company, LLC, d/b/a Black) Docket No. 21-BHCG-370-MIS
Hills Energy, for a Waiver of Tariff.)

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission finds:

1. From February 7, 2021 through February 19, 2021, Kansas experienced extreme weather events resulting in severe prolonged sub-zero temperatures across the State.
2. On February 15, 2021, the Commission issued an Emergency Order relating to the stress on utility and natural gas providers caused by the sub-zero temperatures, which were causing increased energy demand and natural gas supply constraints throughout Kansas and wholesale natural gas prices to increases from 10 to 100 times higher than normal (“Winter Event”).¹ Since Kansas utilities were facing potential reliability issues related to the prolonged arctic temperatures the Commission announced its intention to exercise its emergency powers pursuant to K.S.A. 77-536(a).² The Commission directed all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate

¹ Emergency Order, Docket No. 21-GIMX-303-MIS, In the Matter of Record Natural Gas Prices and Potential System Reliability Issues from Unprecedented and Sustained Cold Weather, pg.1 (February 15, 2021).

² *Id.* at 1-2.

transportation and electricity to interconnected, non-jurisdictional Kansas utilities.³ Utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.⁴ The Commission authorized every natural gas utility to defer extraordinary costs relating to the Winter Event to a regulatory asset account.⁵

3. On March 9, 2021, the Commission issued an order in Docket No. 21-GIMX-303-MIS adopting Commission Staff's ("Staff") recommendation to open company-specific dockets to document issues raised in the Commission's investigation into each major jurisdictional utility's performance during the February 2021 winter weather event.

4. Soon after, the Commission opened Docket 21-BHCG-334-GIG ("Docket 21-334") to investigate Black Hills Kansas Gas Utility Company d/b/a Black Hills Energy's ("Black Hills") reaction to and performance during Winter Storm Uri, and to evaluate its customer impact plan.

5. On June 16, 2021, Black Hills filed its Plan to Minimize Financial Effects of Cold Weather Event and Application for Waiver of Tariff Provisions ("Financial Plan") in Docket 21-334. In its Financial Plan filing, Black Hills reported it incurred approximately \$87.9 million dollars in extraordinary costs as a result of Winter Storm Uri.⁶ To address these costs, Black Hills proposed a cost recovery plan to recover incremental extraordinary costs incurred from the Winter Event from its sales customers over a five-year timeframe and to calculate carrying charges based on the Black Hills' current Weighted Average Cost of Capital ("WACC") of 7.98%.⁷ Black Hills' application was supported by direct testimony from Robert Daniel and Kent Kopetzky.

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.* at 2.

⁶ Black Hills' Plan to Minimize Financial Effects of Cold Weather Event and Application for Waiver of Tariff Provisions, pg. 2 (June 6, 2021).

⁷ Direct Testimony of Robert W. Daniel, pg. 2 (June 16, 2021).

6. On March 23, 2021, in Docket No. 21-BHCG-370-GIG (“Docket 21-370”), Black Hills filed an Application to waive certain penalty provisions in its tariff applicable to transportation customers during the Weather Event (“Waiver Request”). On July 20, 2021, the Commission consolidated Dockets 21-334 and 21-370.

7. Bluemark Energy, LLC (“Bluemark”),⁸ Freedom Pipeline, LLC (“Freedom Pipeline”),⁹ the National Gas Transportation Customer Coalition (“NGTCC”),¹⁰ National Beef Packing Company, LLC (“National Beef”),¹¹ the State of Kansas, *ex rel.*, Derek Schmidt, Attorney General, (“Attorney General”),¹² and the Citizens’ Utility Ratepayer Board (“CURB”) have been granted intervention in the consolidated Docket.¹³

THE AGREEMENT

8. On November 9, 2021, Black Hills, Staff, CURB, and NGTCC filed a Joint Motion to Approve Settlement Agreement. The Settlement Agreement (“Agreement”) is attached as Attachment A. The other parties neither join, nor oppose the settlement agreement.¹⁴

9. The proposed settlement allows Black Hills customers to pay for the extraordinary costs associated with the Winter Event over a five-year period from February 1, 2022, through January 31, 2027. On average, residential customer bills will increase by \$11.47/month during this period. This is a reduction from Black Hills’ originally requested plan which would have resulted

⁸ Docket No.21-GIMX-303-MIS 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, filed in docket 21-BHCG-334-GIG (March 9, 2021).

⁹ Order Granting Petition to Intervene of Freedom Pipeline, LLC (May 13, 2021).

¹⁰ Order Granting Intervention to NGTCC (July 15, 2021).

¹¹ Order Granting Petition to Intervene of the Office of Kansas Attorney General (July 27, 2021).

¹² Order Granting Petition to Intervene to National Beef Packaging Company (July 27, 2021).

¹³ Docket No. 21-GIMX-303-MIS 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, filed in docket 21-BHCG-334-GIG (March 9, 2021).

¹⁴ Direct Testimony of Robert W. Daniel, pg. 9 (June 16, 2021).

in increase in the average residential bill of \$12.23/month.¹⁵ A non-exhaustive summary of the Agreement includes:

- Because Black Hills' extraordinary gas costs of \$87,897,745 related to the Winter Event were prudently incurred, Black Hills should be allowed recovery of those costs.
- Black Hills shall extend recovery of extraordinary gas costs over five years, beginning on February 1, 2022, and ending on January 21, 2027.
 - The carrying charge for the extraordinary gas costs shall be 1.30% from when the costs were incurred through December 31, 2021; and 5.71% from period of January 1, 2022, through the end of the five-year recovery period.
 - The extraordinary gas costs and carrying charges shall be charged on a volumetric basis and allocated among sales customers based on February 2021 usage, excluding Irrigation sales customers and former City of Ford customers.
 - The volumetric charges will appear as a separate line item on customers' bills.
 - The Company will true-up actual cost recoveries to expected cost recoveries for periods ending January 31st of each year the rate is in effect.
 - The difference as a result of the true-up will be included as a charge or credit for the next twelve months. The final true-up will occur after five years, with any over or under-collected amounts to be included in the Company's Purchased Gas Adjustment ("PGA") to collect or refund any remaining differences to customers. Should Black Hills receive or recover any payments resulting from subsequent

¹⁵ Justin Grady, Direct Testimony in Support of Settlement Agreement, pg. 5 (November 22, 2021).

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 customers through its PGA/ACA, even if payments are received or recovered after the five-year recovery plan has ended.

- All penalty provisions for transportation customers pursuant to the Company's motion in Docket No. 21-BHCG-370-MIS will be waived.
- Any Black Hills' sales customer who intends on moving to transportation service during the five-year period the surcharge is effective shall be required to pay Black Hills a conversion fee prior to becoming a transportation customer. The conversion fees will be used to reduce the balance of extraordinary gas costs owed by the sales' customers.
- During the first year in which the surcharge is being recovered, from February 13, 2021, through January 31, 2022, any new Black Hills' sales customer that can provide definitive proof showing it has already paid its full natural gas costs related to Winter Storm Uri to another Kansas gas utility, shall be entitled to a waiver of the surcharge.
- Any current Black Hills' transportation customer who becomes a sales customer during the five-year surcharge period shall be entitled to a waiver of the surcharge, provided the transportation customer can provide sufficient evidence that it was not a sales customer during Winter Storm Uri and that it had fully paid its gas costs relating to Winter Storm Uri.
- Any form of federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Weather Event, would be passed to customers through the PGA/ACA.

10. On November 22, 2021, Michael P. Gorman filed testimony in support of the carrying charges stipulated in the agreement, on behalf of NGTCC.¹⁶ Gorman testified that the proposed carrying charge reflects the actual carrying costs during the initial period and attempts to minimize the cost to customers while allowing Black Hills to fully recover reasonable and prudent costs related to the Winter Event.¹⁷

11. On November 22, 2021, Josh Frantz filed testimony in support of the settlement on behalf of CURB. Mr. Frantz presented a summary of the settlement agreement and applied the Commission's five-factor test, testifying that the settlement met each of the factors.¹⁸

12. Also on November 22, 2021, Justin Grady filed testimony in support of the settlement on behalf of Staff. Mr. Grady testified that Black Hills' gas purchases during the winter storm event were largely consistent with Black Hills' previously approved Gas Purchase and Hedging plan, concluding that Black Hills' gas purchases were "prudent and necessary."¹⁹ Grady then summarized the agreement and concluded that it met the Commission's three-factor test for unanimous settlement agreements and recommended the Commission accept the Agreement as a reasonable resolution of the issues in the Docket.²⁰

13. On December 17, 2021, the Commission held an evidentiary hearing for the Agreement; Josh Frantz of CURB and Justin Grady of Staff appeared as witnesses to answer the Commission's questions. Frantz answered questions related to public awareness of costs connected with the Winter Event and CURB's interaction with the public.²¹ Justin Grady answered questions

¹⁶ Michael P. Gorman, Testimony in Support of Stipulated Settlement (November 22, 2021).

¹⁷ *Id.* at 3.

¹⁸ Josh Frantz, Testimony in Support of Settlement Agreement (November 22, 2021).

¹⁹ Justin Grady, Direct Testimony in Support of Settlement Agreement, pg. 20 (November 22, 2021).

²⁰ *Id.* at 29-30.

²¹ Transcript of December 7, 2021 Evidentiary Hearing, pg. 31-43.

generally related to Black Hills management of its purchased gas costs, carrying costs and Black Hills credit rating.²²

14. Kansas favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.²³

15. Because no party opposes the settlement agreement, it is considered unanimous²⁴ and will be evaluated using the Commission's three part test which determines whether the settlement: (1) is supported by substantial competent evidence in the record as a whole, (2) will establish just and reasonable rates, and (3) is in the public interest.²⁵

THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL AND COMPETENT EVIDENCE IN THE RECORD AS A WHOLE

16. All items agreed to and included within the Settlement Agreement are supported by substantial competent evidence in the record as a whole. Specifically, testimony in support of the Settlement was filed by Michael Gorman on behalf of NGTCC, Josh Frantz on behalf of CURB, Justin Grady on behalf of Staff, and Robert Daniels on behalf of Black Hills.

17. Staff has reviewed the reasonableness and prudence of Black Hills' purchased gas costs incurred during the Winter Event. Staff found that Black Hills' gas purchases during February 2021 were consistent with the Gas Purchase and Hedging Plan that the utility files on an annual basis.²⁶

²² *Id.* at 45-82.

²³ *See Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994) (citing cases).

²⁴ K.A.R. 82-1-230a(a)(2).

²⁵ *See*, Docket 21-BHCG-418-RTS, Order Approving Unanimous Settlement Agreement, pg.6-7 (December 30, 2021).

²⁶ Justin Grady, Direct Testimony in Support of Settlement Agreement, pg. 25 (November 22, 2021).

18. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.²⁷ Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a Commission decision lacks substantial competent evidence when the Commission's determination "is so wide of the mark as to be outside the realm of fair debate."²⁸

19. Having reviewed the record as a whole, the Commission finds the Settlement Agreement is supported by substantial competent evidence.

THE AGREEMENT WILL RESULT IN JUST AND REASONABLE RATES

20. The plan presented by Black Hills (as modified by the Agreement) recognizes that there are real costs associated with allowing customers to pay off these balances over five years (delaying full recovery of these extraordinary gas costs for a period of six years). The plan allows for the recovery of these carrying costs, reflecting the different mix of capital expected to be utilized to finance these costs over this period.

21. Black Hills' initial Financial Plan included carrying charges at Black Hills' Weighted Average Cost of Capital of 7.98%; the plan was modified as a result of the Agreement to contain carrying costs of 1.30% for calendar year 2021, and 5.71% for the period of 2022 through 2027. This reduction in carrying costs resulted in a \$7 million (33.8%) reduction of carrying charges in Black Hills' proposal from \$20.7 million originally to \$13.7 million.²⁹

22. While no customer welcomes bill increases, the Agreement allows customers to pay their portion of the Winter Event costs over a six year period at a lower interest rate than Black

²⁷ *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).

²⁸ *Id.* at 851, 856.

²⁹ Justin Grady, Direct Testimony in Support of Settlement Agreement, pg. 27 (November 22, 2021).

Hills' current WACC. Had customers been asked to pay the Winter Weather Event costs over a one year period, it would have resulted in average residential bill increases of \$53.51/month, or a 96% increase.³⁰

23. The Agreement recognizes that Black Hills should be allowed to recover reasonable and prudent costs of providing gas service, even when such costs may be extraordinary. However, the Agreement also protects customers by spreading out the time for payment and reducing carrying costs. Therefore, the Commission finds the Agreement will result in just and reasonable rates.

THE AGREEMENT IS IN THE PUBLIC INTEREST

24. The Commission notes that each party has a duty to protect the interests it represents. Black Hills has a duty to both their customers and shareholders. CURB represents the interests of residential and small commercial customers. NGTCC represents the interests of its members. Staff represents the public interest generally, placing Staff in the unique position of being required to weigh and balance the interests of all classes of Black Hills' customers, and any other interests impacted by the Commission's Order that may not be party to the proceeding.

25. In his testimony in support of the settlement agreement, Justin Grady explains that the Agreement is in the public interest because it protects ratepayers from unnecessarily high prices and/or unreliable service while allowing Black Hills to meet its financial obligations.³¹ It protects new customers who have already paid Winter Weather Event Costs to another utility. And it represents a reasonable compromise among the parties that avoids costly and time consuming litigation.

³⁰ *Id.* at 5.

³¹ *Id.* at 28.

26. The Commission agrees with Mr. Grady and finds the Agreement represents an equitable balancing of the interests of all parties. Therefore, the Commission finds the Settlement Agreement is in the public interest.

27. On January 6, 2022, Black Hills submitted a clarification filing, noting that, the Surcharge agreed to in the Settlement would be labeled as "Storm Uri Gas Charge". No party opposed this modification.

28. Based on the above, the Commission finds the Agreement is supported by substantial competent evidence in the record as a whole, results in just and reasonable rates, and is in the public interest. The Commission approves the Settlement Agreement.


THEREFORE, THE COMMISSION ORDERS:

- A. The Agreement, as modified by the January 6, 2022 clarification filing is approved.
- B. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³²

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner.

Dated: 01/27/2022.



Lynn M. Retz
Executive Director

DGC

³² K.S.A. 77-529(a)(1).

EXHIBIT A

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Investigation into Black Hills)
Kansas Gas Utility Company d/b/a Black Hills)
Energy Regarding the February 2021 Winter) Docket No. 21-BHCG-334-GIG
Weather Events, as Contemplated by Docket No.)
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In the Matter of the Application of Black Hills)
Kansas Gas Utility Company, LLC, d/b/a Black) Docket No. 21-BHCG-370-MIS
Hills Energy, for a Waiver of Tariff.)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and among Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy ("Black Hills"), the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission" respectively), the Citizens' Utility Ratepayer Board ("CURB") and Natural Gas Transportation Customer Coalition ("NGTCC"), (collectively Joint Movants"). This Agreement is being submitted to the Commission for approval pursuant to K.A.R. 82-1-230a.

I. INTRODUCTION: PROCEDURAL HISTORY OF DOCKETS

1. On February 15, 2021, the Commission issued an Emergency Order ("Emergency Order") relating to the stress on utility and natural gas providers caused by the sub-zero temperatures during Winter Storm Uri, which were causing increased energy demand and natural gas supply constraints throughout Kansas and wholesale natural gas prices to increase from 10 to 100 times higher than normal ("Winter Event").¹ The Commission stated that Kansas utilities were facing

¹Emergency Order, Docket No. 21-GIMX-303-MIS, In the Matter of Record Natural Gas Prices and Potential System Reliability Issues from Unprecedented and Sustained Cold Weather, February 15, 2021, page 1, paragraph 1 ("Emergency Order").

potential reliability issues related to the prolonged arctic temperatures and, therefore, it intended to exercise its emergency powers pursuant to K.S.A. 77-536(a).² The Commission directed all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation and electricity to interconnected, non-jurisdictional Kansas utilities.³ The Commission ordered the utilities to do everything necessary to ensure natural gas and electricity service continued to be provided to their customers in Kansas.⁴ The Commission authorized every electric and natural gas utility to defer extraordinary costs relating to the Winter Event to a regulatory asset account.⁵ The Commission also indicated that the deferred costs may also include carrying costs at the utility's weighted average cost of capital ("WACC").⁶

2. On March 9, 2021, the Commission opened Docket No. 21-BHCG-334-GIG ("334 Docket") to investigate the effects of the Winter Event on Black Hills and its customers.⁷ The Commission intended to analyze any extraordinary costs incurred during the Winter Event.⁸ The Commission ordered Black Hills to file a plan to minimize the financial impact of the Winter Event on customers.⁹

3. On March 23, 2021, in Docket No. 21-BHCG-370-MIS ("370 Docket"), Black Hills

²*Id.*, pages 1-2, paragraph 2.

³*Id.*, page 2, paragraph 3.

⁴*Id.*

⁵*Id.*, page 2, paragraph 4.

⁶*Id.*

⁷Order Adopting Staff's R&R to Open Company Specific Investigations, Docket No. 21-BHCG-334-GIG, March 9, 2021, page 5, paragraph 10.

⁸*Id.*

⁹*Id.*

filed an Application for a temporary waiver of certain penalty provisions in its tariff pertaining to transportation customers during the Winter Event because the amounts charged to Black Hills from Federal Energy Regulatory Commission ("FERC") regulated pipelines were unknown.¹⁰ The temporary waiver was granted on April 22, 2021.¹¹

4. On May 28, 2021, Black Hills filed a Motion in the 370 Docket to waive the aforementioned penalty provisions entirely, without prejudice.¹²

5. On June 16, 2021, Black Hills submitted its plan to minimize the financial impact of the Winter Event on customers in the 334 Docket ("Financial Plan").¹³ Black Hills filed pre-filed direct testimony and exhibits in support of its Financial Plan prepared by Robert W. Daniel and Kent J. Kopetzky.¹⁴ Black Hills proposed to extend recovery of the approximately \$87.9 million in extraordinary gas costs incurred as a result of the Winter Event over five years with carrying costs at Black Hills' WACC 7.98%, beginning August 1, 2021, in order to minimize the financial impact on its customers.¹⁵ Black Hills' proposal would result in an average monthly bill increase of \$12.23 for a residential customer using 56 therms per month, over the five-year period.¹⁶ Charges for recovery of the extraordinary gas costs would appear as a separate line item on the customer bills.¹⁷ The

¹⁰Application for Temporary Waiver, Docket No. 21-BHCG-370-MIS, March 23, 2021.

¹¹Order, Docket No. 21-BHCG-370-MIS, April 22, 2021.

¹²Motion, Docket No. 21-BHCG-370-MIS, May 28, 2021, page 3.

¹³Black Hills' Plan to Minimize Financial Effects of Cold Weather Event and Application for Waiver of Tariff Provisions, Docket No. 21-BHCG-334-GIG, June 16, 2021 ("Financial Plan").

¹⁴Direct Testimony of Robert W. Daniel in Support of Plan, Docket No. 21-BHCG-334-GIG, June 16, 2021; Direct Testimony of Kent J. Kopetzky in Support of Plan, Docket No. 21-BHCG-334-GIG, June 16, 2021.

¹⁵Financial Plan, page 3, paragraph 4.

¹⁶*Id*

¹⁷*Id*.

extraordinary gas costs and associated carrying costs would be allocated among sales rate schedules based on February 2021 usage and exclude the Irrigation sales rate schedule.¹⁸ Black Hills also requested a waiver of certain provisions of its tariffs for the sole purpose of recovering the extraordinary gas costs and associated carrying costs through its Financial Plan.¹⁹

6. On July 20, 2021, the Commission consolidated the 334 Docket and the 370 Docket.²⁰

7. The Commission granted intervention to the following parties (collectively, "Parties") in the 334 Docket:

- (a) BlueMark Energy, LLC ("BlueMark");²¹
- (b) Freedom Pipeline, LLC ("Freedom");²²
- (c) NGTCC;²³
- (d) National Beef Packing Company, LLC ("National Beef");²⁴
- (e) State of Kansas, *ex. rel.* Derek Schmidt, Attorney General ("AG");²⁵ and
- (f) CURB.²⁶

8. On October 7, 2021, the Staff filed a Motion for Procedural Schedule.²⁷

¹⁸*Id.*, page 3, paragraph 5.

¹⁹*Id.*, page 4, paragraph 6, a., b. and c.

²⁰Order Consolidating Dockets, Docket No. 21-BHCG-370-MIS, July 20, 2021.

²¹Order, Docket No. 21-BHCG-334-GIG, March 9, 2021.

²²Order, Docket No. 21-BHCG-334-GIG, May 13, 2021.

²³Order, Docket No. 21-BHCG-334-GIG, July 15, 2021.

²⁴Order, Docket No. 21-BHCG-334-GIG, July 27, 2021.

²⁵Order, Docket No. 21-BHCG-334-GIG, July 27, 2021.

²⁶Order, Docket No. 21-BHCG-334-GIG, March 9, 2021.

²⁷Staff's Motion for Procedural Schedule (Financial Plan and OFO Waiver Request), Docket No. 21-BHCG-334-GIG, October 7, 2021.

9. On October 28, 2021, the Commission issued an Order Granting Motion for Procedural Schedule.²⁸

10. All of the Parties participated in the technical/settlement conference held on October 26, 2021. An additional technical/settlement conference was held on November 2, 2021. This Agreement was reached on November 3, 2021, and filed on November 9, 2021. Black Hills, Staff, CURB and NGTCC have entered into this Agreement. The other Parties in the 334 Docket have indicated that they are not opposed to this Agreement. The Joint Movants plan to file testimony in support of the Agreement by November 16, 2021.

11. The Joint Movants believe that the Agreement represents a reasonable and fair resolution of this matter and that the terms contained therein are in the public interest.

II. SETTLEMENT PROVISIONS

12. The Joint Movants agree that the \$87,897,745 in extraordinary costs incurred by Black Hills during the Winter Event were prudently incurred by the utility and that Black Hills shall be allowed to recover said costs pursuant to the terms contained in this Agreement ("Extraordinary Costs").

13. In order to minimize the financial impact to Black Hills' customers of the Extraordinary Costs incurred as a result of the Winter Event, Black Hills shall extend its recovery of said costs over a five-year period beginning on February 1, 2022, and ending on January 31, 2027.

14. Black Hills shall also be permitted to recover carrying charges on the Extraordinary Costs. However, instead of the 7.98% carrying charge proposed by Black Hills, Black Hills shall be allowed carrying charges at a rate of 1.30% for the period starting when the Extraordinary Costs were incurred through the end of December 31, 2021, and at a rate of 5.71% for the period January 1, 2022,

²⁸Order Granting Motion for Procedural Schedule, Docket No. 21-BHCG-334-GIG, October 28, 2021.

through the end of the five-year recovery period. This reduction in the carrying charges results in reducing the total carrying charges from approximately \$20.7 million over the five-year period to \$13.7 million and reduces the monthly impact to the average residential customer from \$12.23 per month to \$11.47 per month.

15. The Extraordinary Costs and associated carrying costs shall be charged on a volumetric basis and allocated among the sales customer rate schedules based on February 2021 usage and exclude the Irrigation sales rate schedule and former City of Ford customers, who were not part of Black Hills during the Winter Event and are already paying charges to the City of Ford related to the Weather Event. The volumetric charges for each sales class are set forth in Appendix 1 to this Agreement.

16. The volumetric charges for the Extraordinary Costs and associated carrying costs shall appear as a separate line item surcharge on customer bills entitled "Winder Storm Uri Cost Recovery ("Surcharge") beginning February 1, 2022.

17. Black Hills will true-up actual Extraordinary Costs recoveries compared to expected recoveries for periods ending January 31st each year. In addition, this true-up will consider both the deferred tax liability associated with the extraordinary gas cost recoveries, as well as the corresponding and offsetting deferred tax asset associated with the net operating loss carryforward created by the extraordinary costs.²⁹ The difference will be included as a charge or credit for the next twelve months through the Surcharge. The final true-up will occur after five years, and any over or under collected amounts will be included in the PGA/ACA to collect or refund any remaining differences to customers. If Black Hills shall receive or recover any payments as a result of any

²⁹While the deferred tax liability and deferred tax asset currently net to zero rate base impact, the deferred tax asset may reverse over the time period of rate recovery and therefore there would be a net rate base reduction associated with these deferred taxes.

subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it shall pass those payments on to its customers through its PGA/ACA, even if those payments may be received or recovered after the five-year plan.

18. The Joint Movants agree that Black Hills' Motion in the 370 Docket to waive the penalty provisions entirely and Black Hills' request to waive any of its tariff provisions that might conflict with the terms of this Agreement, should be approved by the Commission.

19. Any Black Hills' sales customer, who intends on becoming a Black Hills' transportation customer during the five-year period in which the Surcharge is being recovered pursuant to this Agreement, shall be required to pay Black Hills a conversion fee prior to becoming a transportation customer. The conversion fee owed by the customer shall be based on the present value of the expected charges the customer would have paid as a sales customer over the remaining five-year period.

20. During the first year in which the Surcharge is being recovered pursuant to this Agreement, any new Black Hills' customer that can provide definitive proof showing it has already paid its full natural gas costs relating to the Winter Event to another Kansas utility, shall be entitled to a waiver of the Surcharge.

21. Any Black Hills' transportation customer, who becomes a Black Hills' sales customer during the five-year period in which the Surcharge is being recovered pursuant to this Agreement, shall be entitled to a waiver of the Surcharge, provided the transportation customer can provide sufficient evidence that it was not a sales customer during the Winter Event.

22. Nothing in this Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and

any statutory obligation, including the obligation to ensure that Black Hills is providing efficient and sufficient service at just and reasonable rates.

23. The Joint Movants shall have the right to present pre filed testimony in support of this Agreement. Such testimony shall be filed formally in the docket and presented by witnesses at a hearing on this Agreement. Such testimony shall be filed on or before November, 16, 2021, as required by the procedural schedule filed in this docket.

24. The Joint Movants agree to waive cross examination on all testimony filed prior to the filing of this Agreement. The Joint Movants agree that all such pre-filed testimony and exhibits may be incorporated into the record without objection. The Joint Movants agree to waive filing of post-hearing briefs.

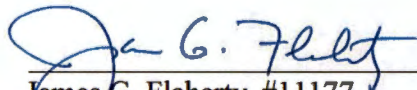
25. This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among the Joint Movants. The Joint Movants represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Joint Movants shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Joint Movants shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

26. The provisions of this Agreement have resulted from negotiations among the Joint Movants and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound,

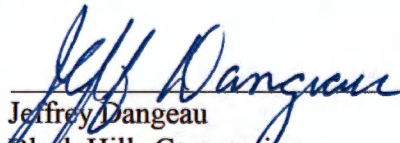
prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

27. To the extent this Agreement provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission's Director of Utilities. Such information, documents, or data shall be marked and identified with the docket number of this proceeding.

IN WITNESS WHEREOF, the Joint Movants have executed and approved this Stipulated Settlement Agreement, effective as of the 9th day of November, 2021, by subscribing their signatures below.



James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory ~ P.O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com



Jeffrey Dangeau
Black Hills Corporation
655 E. Millsap Rd.
Fayetteville, AR 72703
jeff.dangeau@blackhillscorp.com

Attorneys for Black Hills/Kansas Gas Utility Company,
LLC, d/b/a Black Hills Energy

/s/ Terri J. Pemberton

Terri J. Pemberton, #23297
Chief Litigation Counsel
Michael R. Neeley, #25027
Senior Litigation Counsel
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604
t.pemberton@kcc.ks.gov
m.neeley@kcc.ks.gov
For Commission Staff

/s/ Joseph R. Astrab

David W. Nickel, #11170
Todd E. Love, #13445
Joseph R. Astrab #26414
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax
d.nickel@curb.kansas.gov
t.love@curb.kansas.gov
j.astrab@curb.kansas.gov
Attorneys for CURB

/s/ James P. Zakoura

James P. Zakoura, #07644
Connor A. Thompson, #28668
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th Street
Overland Park, Kansas 66210
Phone: (913) 661-9800
Fax: (913) 661-9863
jim@smizak-law.com
connor@smizak-law.com
Attorneys for NGTCC

APPENDIX 1

Tariff	Proposed Rate \$/therm
RS-1	\$0.204557
SC-1	\$0.237848
SVF	\$0.197529
SVI	\$0.197529
LVI	\$0.039091
LVF	\$0.192755

CERTIFICATE OF SERVICE

21-BHCG-334-GIG, 21-BHCG-370-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
01/27/2022
electronic service on _____.

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

JEFF AUSTIN
AUSTIN LAW P.A.
7111 W. 151st St.
Suite 315
Overland Park, KS 66223
jeff@austinlawpa.com

ROB DANIEL, MGR. REG. & FINANCE
BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC
D/B/A Black Hills Energy
601 NORTH IOWA STREET
LAWRENCE, KS 66044
rob.daniel@blackhillscorp.com

ANN STICHLER, SNR. ANALYST-REG. & FINANCE
BLACK HILLS/KANSAS GAS UTILITY COMPANY LLC
D/B/A Black Hills Energy
2287 College Road
Council Bluffs, IA 51503
ann.stichler@blackhillscorp.com

JEFFREY DANGEAU, ASSOCIATE GENERAL COUNSEL
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC
D/B/A BLACK HILLS ENERGY
655 EAST MILLSAP DRIVE
FAYETTEVILLE, AR 72703
jeff.dangeau@blackhillscorp.com

DOUGLAS LAW, ASSOCIATE GENERAL COUNSEL
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC
D/B/A BLACK HILLS ENERGY
1731 Windhoek Drive
Lincoln, NE 68512
Fax: 402-829-2635
douglas.law@blackhillscorp.com

TOM STEVENS, DIRECTOR REGULATORY & FINANCE
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC
D/B/A BLACK HILLS ENERGY
655 EAST MILLSAP DRIVE
FAYETTEVILLE, AR 72703
tom.stevens@blackhillscorp.com

JULIE AGRO
BLUEMARK ENERGY
4200 East Skelly Drive
Suite 300
Tulsa, OK 74135
jagro@bluemarkenergy.com

MIKE WESTBROCK
BLUEMARK ENERGY
4200 East Skelly Drive
Suite 300
Tulsa, OK 74135
westbrock@bluemarkenergy.com

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
j.astrab@curb.kansas.gov

CERTIFICATE OF SERVICE

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TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

MONTGOMERY ESCUE, CONSULTANT
FREEDOM PIPELINE, LLC
PO BOX 622377
OVIDO, FL 33762
montgomery@escue.com

KIRK HEGER
FREEDOM PIPELINE, LLC
1901 UNIVERSITY DRIVE
LAWRENCE, KS 66044
kirkheger@gmail.com

MELANIE S. JACK, ASSISTANT ATTORNEY GENERAL
KANSAS ATTORNEY GENERAL
Consumer Protection Division
120 SW 10th Ave., 2nd Flr.
Topeka, KS 66612
melanie.jack@ag.ks.gov

KIMBERLEY DAVENPORT MEGRAIL, ASSISTANT
ATTORNEY GENERAL
KANSAS ATTORNEY GENERAL
Consumer Protection Division
120 SW 10th Ave., 2nd Flr.
Topeka, KS 66612
kim.davenport@ag.ks.gov

DEREK SCHMIDT, KANSAS ATTORNEY GENERAL
KANSAS ATTORNEY GENERAL
Consumer Protection Division
120 SW 10th Ave., 4th Flr.
Topeka, KS 66612
derek.schmidt@ag.ks.gov

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
b.fedotin@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
m.neeley@kcc.ks.gov

TERRI PEMBERTON, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
t.pemberton@kcc.ks.gov

CERTIFICATE OF SERVICE

21-BHCG-334-GIG, 21-BHCG-370-MIS

GLEENDA CAFER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
Fax: 785-233-3040
gcafer@morrislaing.com

FRANK A. CARO, JR., ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
fcaro@polsinelli.com

RICHARD L. HANSON
RICHARD L. HANSON
16171 ROAD I
LIBERAL, KS 67901
rlhanson@wbsnet.org

CONNOR A. THOMPSON
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
connor@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
jim@smizak-law.com

BRET G. WILSON, VICE PRESIDENT AND GENERAL
COUNSEL
NATIONAL BEEF PACKING COMPANY
12200 N. Ambassador Dr.
Suite 500
Kansas City, MO 64195
bret.wilson@nationalbeef.com

ANDREW O. SCHULTE, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
aschulte@polsinelli.com

LEE M. SMITHYMAN, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
lee@smizak-law.com

ROBERT E. VINCENT, ATTORNEY AT LAW
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
robert@smizak-law.com

/S/ DeeAnn Shupe
DeeAnn Shupe
