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Kansas Corporation
Commission

**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 Kansas Gas Service Company, a Division of One Gas Inc., Regarding the February 2021 Winter Weather Events, as Contemplated by Docket No. 21-GIMX-303-MIS.	)	Docket No. 21-KGSG-332-GIG

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT ON WAIVER OF THE PENALTIES UNDER KANSAS GAS SERVICE'S TARIFF

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On February 15, 2021, pursuant to K.S.A. 77-536(a), the Commission issued an Emergency Order in Docket No. 21-GIMX-303-MIS (Docket 21-303), directing all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities.[1] Jurisdictional natural gas utilities were ordered to do everything necessary to ensure natural gas service continued to be provided to their customers in Kansas.[2] The Commission authorized every jurisdictional natural gas distribution utility that incurs extraordinary costs associated with ensuring their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continue to receive utility service during Winter Storm Uri to defer those costs to a regulatory asset account.[3] The Commission mandated that once Winter Storm Uri ended, and after all costs have been

[1] Emergency Order, 21-GIMX-303-MIS, Feb. 15, 2021, ¶ 3.
[2] *Id.*
[3] *Id.* ¶ 4.

accumulated and recorded, each jurisdictional utility is directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.[4]

2. On March 9, 2021, the Commission issued an Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations, which initiated this Docket.[5] The Commission's Order also included a Protective/Discovery Order.

3. On February 9, 2021, Kansas Gas Service Company, a Division of One Gas Inc. (KGS) issued an Operational Flow Order (OFO) for its transportation customers to begin on February 11, 2021 and remain in effect until further notice. On February 14, 2021, KGS determined it was necessary to restrict usage for all but residential and human needs customers, and issued a Curtailment Notice to become effective February 15, 2021, to remain in effect until further notice.

4. On May 28, 2021, KGS filed a Motion for Limited Waiver of Section 11.06 of the General Terms and Conditions in its tariffs.[6] Section 11.06 provides that "[a] customer's unauthorized usage under an OFO or POC [Period of Curtailment] may cause the incurrence of penalties."[7] Specifically, Section 11.06.02 details how penalties should be calculated:

(1) Standard OFO Penalties:

> For each day of the Standard OFO, the greater of $5 or 2½ times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) times the MMBtu of Unauthorized Over- or Under-Deliveries that exceed the tolerance level applicable under Section 11.06.01.

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[4] *Id.* ¶ 5.

[5] Order Adopting Staff's Report and Recommendation to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark Energy, LLC and CURB; Protective and Discovery Order, 21-303 Docket, March 9, 2021, ¶ 10.

[6] Motion for Limited Waiver, May 28, 2021, p. 9.

[7] *Id.*, ¶ 8.

(2) Emergency OFO Penalties:

For each day of the Emergency OFO, the greater of $10 or 5 times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) times the MMBtu of Unauthorized Over- or Under-Deliveries that exceed the tolerance level applicable under Section 11.06.01.

(3) POC Penalties:

For each day of the POC, the greater of $20 or 10 times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) times the MMBtu of Unauthorized Over- or Under-Deliveries that exceed the tolerance level applicable under Section 11.06.01.

5. In its Motion for Limited Waiver, KGS explained it is appropriate to assess penalties in this instance against some Marketers and some Individually Balanced Transportation Customers whose failure to provide adequate gas supplies during the period of the OFO and POC jeopardized KGS' ability to provide service to all its customers.[8] However, under its tariff, once it is determined that penalties will be assessed, KGS has no discretion or flexibility in the calculation of the penalty amount.[9] Due to the extraordinarily high market gas prices experienced during the periods of the OFO and POC, KGS believes the resulting penalties to Marketers and Individually Balanced Transportation Customers would be extraordinary.[10] Thus, KGS requested a waiver from Section 11.06.02 to allow it to remove the multiplier from the penalty calculation, which it believes would allow it to recover the cost of gas purchases which were required to keep the system in balance and operating when Marketers and Individually Balanced Transportation Customers did not provide adequate gas supplies during the winter weather event.[11]

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[8] *Id.*, ¶ 9.
[9] *Id.*, ¶ 10.
[10] *Id.*
[11] *Id.*, ¶ 12.

6. On June 4, 2021, the Citizens' Utility Ratepayer Board (CURB) filed its Objection to KGS' Motion for Limited Waiver out of concern that granting the waiver will result in KGS sales customers bearing additional costs for gas used by transportation customers who did not comply with the tariff.[12] At a minimum, CURB believes KGS should be required to show the actual additional costs of meeting the usage of the transportation customers who did not comply with either the OFO and/or the POC.[13]

7. On June 7, 2021, BlueMark Energy, LLC (BlueMark)[14] and WoodRiver Energy, LLC (WoodRiver)[15] responded to KGS' Motion for Limited Waiver, expressing their support for eliminating the multipliers from all KGS' penalty calculations,[16] while making the additional request to waive all penalties.[17] If penalties are applied, BlueMark argues they should be based on actual KGS purchased volumes and prices.[18] For purchases on behalf of BlueMark customers and BlueMark cuts, the relevant price should be the Gas Daily price the day after BlueMark received notice; and for purchases that cannot be tied to BlueMark customers and BlueMark cuts, the relevant price should be the Gas Daily Monthly average for February.[19] On June 9, 2021, Bonavia Properties, L.L.C (Bonavia)[20] agreed it should be spared any penalty and suggested the issue of waiving penalties needs further evaluation to avoid unfair penalties and windfalls.[21]

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[12] CURB's Objection to Motion for Limited Waiver June 4, 2021, ¶ 8.
[13] *Id.*
[14] BlueMark was granted intervention on March 9, 2021.
[15] WoodRiver was granted intervention on March 30, 2021.
[16] Answer to Motion for Limited Waiver (BlueMark Answer), June 7, 2021, ¶ 12; Answer of WoodRiver Energy, LLC to Motion for Limited Waiver (WoodRiver Answer), June 7, 2021, ¶ 11.
[17] BlueMark Answer, ¶ 14; WoodRiver Answer, pp. 6-7.
[18] BlueMark Answer, ¶ 14.
[19] *Id.*
[20] Bonavia was granted intervention on May 4, 2021.
[21] Bonavia Properties, L.L.C.'s Objection and Response to Kansas Gas Services Company's Motion for Limited Waiver, June 9, 2021, ¶ 6.

8. On June 14, 2021, BlueMark filed its reply, echoing WoodRiver's argument that Required Daily Quantity (RDQ) customers and RDQ volumes should receive special consideration in this proceeding.[22] Also on June 14, 2021, KGS urged the Commission to reject CURB's objection.[23]

9. On June 17, 2021, KGS urged the Commission to reject the gas marketing companies' and customers' (BlueMark, Bonavia and WoodRiver) arguments and expeditiously grant its Motion for Limited Waiver.[24] Also, on June 17, 2021, CURB responded to the natural gas marketers and their customers by urging the Commission to deny: (1) WoodRiver's request to grant relief to RDQ customers who claim to have incurred additional gas costs in reliance on KGS' tariffs, and (2) any request to modify the penalties until it considers a comprehensive financial plan and/or report.[25]

10. On June 23, 2021, Commission Staff (Staff) noted that while penalties may be warranted, it is not reasonable to multiply unforeseen and extraordinarily high prices.[26] Staff is generally supportive of KGS' Motion, but recommends a procedural schedule to address KGS' waiver request.[27] Staff did not believe a decision on KGS' waiver request needs to be deferred until KGS files its financial plan.[28]

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[22] Reply to Answers to Motion for Limited Waiver, June 14, 2021. ¶ 4.
[23] Kansas Gas Service's Response to Objection to Motion for Limited Waiver, June 14, 2021, ¶ 4.
[24] Response of Kansas Gas Service to the Answers and Objections of Bluemark Energy, LLC, Bonavia Properties, L.L.C. and Woodriver Energy, LLC, June 17, 2021, ¶ 4.
[25] CURB's Response to Answers to Motion for Limited Waiver, June 17, 2021, ¶ 12.
[26] Response of Commission Staff to KGS' Motion for Limited Waiver and the Responses to that Motion filed by CURB, BlueMark, WoodRiver, and Bonavia, June 23, 2021, ¶ 57.
[27] *Id.*, ¶ 63.
[28] *Id.*, ¶ 64.

11. On June 29, 2021, Natural Gas Transportation Customer Coalition (NGTCC)[29] urged the Commission to: (1) defer a decision on KGS's request for Waiver, so ongoing investigations may continue,[30] and (2) establish a procedural schedule.[31]

12. On August 17, 2021, NGTCC sought a stay of KGS' Limited Motion for Waiver.[32] Staff advised staying a decision on KGS' Limited Motion for Waiver was unnecessary and recommended denying NGTCC's Stay Motion.[33]

13. On October 8, 2021, KGS, Staff, CURB, BlueMark, WoodRiver, Constellation NewEnergy-Gas Division, LLC (Constellation),[34] and Atmos Energy Corporation (Atmos)[35] filed a Joint Motion to Approve Nonunanimous Settlement Agreement (Penalty Waiver Settlement). Under the Nonunanimous Settlement Agreement:

- The OFO multiplier and the POC multiplier for the month of February 2021 are waived for all marketers and Individually Based Transportation Customers;[36]
- During the OFO and POC issued in February 2021, all daily unauthorized usage by marketers and Individually Based Transportation Customers will be calculated to reflect the difference between the customer's Section 11.06 Tariff required authorized usage of natural gas (plus any applicable tolerance) and the natural gas volumes delivered by the customer into the KGS system;[37]

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[29] NGTCC was granted intervention on July 1, 2021.
[30] Response of the NGTCC to Kansas Gas Service, a Division of One Gas, Inc., and Commission Staff's Responses to CURB, BlueMark, WoodRiver, and Bonavia, June 29, 2021, ¶ 2.
[31] *Id.*, ¶ 24.
[32] Motion of the Natural Gas Transportation Customer Coalition to Stay the Request for Waiver filed by Kansas Gas Service Company, Aug. 17, 2021.
[33] Response of Commission Staff to the Natural Gas Transportation Customer Coalition's Motion for Subpoena, Motion for Administrative Notice, and Motion to Stay Request for Waiver, Aug. 27, 2021, ¶ 20.
[34] Constellation was granted intervention on July 1, 2021.
[35] Atmos was granted intervention on August 17, 2021.
[36] Nonunaminous Settlement Agreement, Oct. 8, 2021, ¶ 10.
[37] *Id.*, ¶ 11.

- The carrying charge approved in the Commission's Emergency Order will be applied to all amounts owed for February 2021 until such time as the amounts are paid in full;[38]
- If KGS 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 the Winter Event, those payments will be passed on to its customers;[39] and
- Within 30-days of the Settlement being approved, KGS will schedule a workshop to explore revising its tariff in accordance with lessons learned during Winter Storm Uri.[40]

14. On October 14, 2021, pursuant to K.A.R. 82-1-230a(c), NGTCC filed its written objection to the Non-Unanimous Settlement Agreement. On October 18, 2021, Symmetry Energy Solutions, LLC (Symmetry)[41] filed its objection to the Non-Unanimous Settlement Agreement. Symmetry claimed the non-unanimous settlement is the result of an artificially expedited process lacking basic due process and denying parties access to information required to adequately evaluate the proposed settlement.[42] Symmetry argued it and other gas marketers have not been given sufficient opportunity for vetting of the many issues raised by the proposed settlement.[43]

15. On December 1, 2021, the Non-Unanimous Settlement Agreement was modified to: (1) reduce carrying charge rates from 8.6% (KGS' weighted average cost of capital as provided for in the Commission's Emergency Order) to 2.0%; and (2) add language clarifying that all penalty payments from marketers and Individually Balance Transportation Customers

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[38] *Id.*, ¶ 15.
[39] *Id.*, ¶ 17.
[40] *Id.*, ¶ 19.
[41] Symmetry was granted intervention on August 5, 2021.
[42] Symmetry's Objection and Response in Opposition to Motion to Approve Nonunanimous Settlement Agreement, Oct. 18, 2021, ¶ 23.
[43] *Id.*, ¶ 27.

that are received by KGS prior to the filing for a Finance Order will be used by KGS to reduce the Qualified Extraordinary Costs to be recovered using the Securitized Utility Bonds; and all penalty amounts received after that filing will be credited to KGS' sales customers through the COGR/ACA on an annual basis.[44] As a result of those modifications, six additional parties (NGTCC, the Catholic Diocese of Wichita,[45] TempleLive Wichita LLC,[46] Central Christian Church of Wichita, Kansas,[47] Foley Equipment Company and Foley Rebuild Center, LLC (Foley),[48] and Bonavia) added their support to the Non-Unanimous Settlement Agreement.[49]

16. On December 1, 2021, testimony in support of the Amended Non-Unanimous Settlement Agreement was filed by Kenneth M. Malter on behalf of Atmos, Janet Buchanan and Matt L. Robbins of KGS, Josh Frantz of CURB, and Justin Grady of Staff. Malter testified the events that caused Atmos to incur penalties on KGS were unavoidable, and therefore, from a policy perspective, it does not make sense to impose a punitive penalty charge on companies like Atmos Energy that continued to service in accordance with the Commission's Emergency Order.[50] Buchanan testified it is appropriate to assess penalties due to the failure of some Marketers and Individually Balanced Transportation Customers to secure and/or deliver natural gas supplies to meet their obligations during the period of the OFO and POC, jeopardizing KGS' ability to provide service and endangering the livelihood and safety of individuals in the

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[44] Motion to Approve Amended Nonunanimous Settlement Agreement, Dec. 1, 2021, ¶ 7.
[45] The Catholic Diocese of Wichita was granted intervention on July 1, 2021.
[46] TempleLive Wichita LLC was granted intervention on July 1, 2021.
[47] Central Christian Church of Wichita, Kansas was granted intervention on October 21, 2021. *See* Order on Prima Facie Determination; Granting Intervention in the 21-KGSG-332-GIG Docket, Docket No. 22-KGSG-018-COM, Oct. 21, 2021, ¶ 8.
[48] Foley Equipment Company and Foley Rebuild Center, LLC were granted intervention on October 21, 2021. *See* Order on Prima Facie Determination; Granting Intervention in the 21-KGSG-332-GIG Docket, Docket No. 22-KGSG-052-COM, Oct. 21, 2021, ¶ 8.
[49] *Id.*, ¶ 8.
[50] Testimony in Support of Stipulated Settlement of Kenneth M. Malter, Dec. 1, 2021, p. 3.

communities KGS serves.[51] She added that penalties incentivize Marketers and Individually Balanced Transportation Customers to comply with tariff provisions that are necessary to maintain system reliability, and if penalties are not assessed to Marketers and Individually Balanced Transportation Customers, the entire cost of gas incurred because of their unauthorized usage will be borne by KGS Gas Sales Customers.[52] Lastly, Buchanan testified the Non-Unanimous Settlement Agreement produces a just and reasonable outcome.[53] Frantz testified the Negotiated Gas Cost Penalties reflects the actual extraordinary cost of gas incurred by KGS to service its transport customers, and protects those customers in case of future financial relief (profit disgorgement, refunds, penalties or other civil suit relief), and therefore produces a just and reasonable outcome.[54] Grady testified using a Negotiated Gas Cost to determine the penalties owed by marketers and Individually Balanced Transportation Customers for their failure to provide sufficient natural gas supplies during February 2021 is in the public interest, as it benefits those entities while protecting KGS' remaining Sales customers. [55] He added the negotiated penalties are superior to the original proposal in KGS' Motion for Limited Waiver, which would have simply removed the multipliers used in the penalty calculations in Section 11.06, and would have resulted in much higher penalties.[56]

17. On December 20, 2021, Justin Clapper and William Casey Lee filed testimony in opposition to the Non-Unanimous Settlement Agreement of behalf of Symmetry. Clapper claims the negotiated penalty waiver is still unreasonable because: (1) it unfairly allocates the full cost

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[51] Testimony of Janet L. Buchanan in Support of the Settlement Agreement, Dec. 1, 2021, p. 16.
[52] *Id.*, p. 17.
[53] *Id.*, p. 31.
[54] Testimony in Support of Amended Nonunanimous Settlement Agreement of Josh Frantz, Dec. 1, 2021, p. 16.
[55] Testimony In Support Of Settlement Agreement (Waiver Motion) Prepared by Justin T. Grady, Dec. 1, 2021, p. 5.
[56] *Id.*, pp. 5-6.

of imprudently purchased spot gas on February 17 to marketers;[57] (2) assigns marketers the costs of the highest price gas, effectively indemnifying KGS and its sales customers;[58] (3) since there is no evidence that Symmetry acted in bad faith, it should not face penalties designed to deter bad conduct;[59] and (4) the settlement should have considered other factors in allocating gas costs.[60] Lee claims Symmetry under-delivered to KGS only because what little gas Symmetry could obtain was needed to serve Atmos' human needs customers, while KGS' system was fully operational and KGS had sufficient gas in storage to serve all customers on its system.[61]

18. On January 20, 2022, Symmetry withdrew its opposition to the Settlement Agreement,[62] converting the settlement into a unanimous settlement. That same day, the Parties filed a Motion to Substitute Unanimous Settlement Agreement and Approve Unanimous Settlement Agreement. Under the terms of the Unanimous Settlement Agreement:

- The OFO multiplier and the POC multiplier for February 2021 is waived for all marketers and Individually Balanced Transportation Customers;[63]
- During the OFO and POC issued in February 2021, all daily unauthorized usage by marketers and Individually Balanced Transportation Customers will reflect the difference between the customer's Section 11.06 Tariff required authorized usage of natural gas (plus any applicable tolerance) and the natural gas volumes delivered by the customer into the KGS system;[64]

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[57] Testimony of Justin Clapper in Opposition of the Nonunanimous Settlement Agreement on the Waiver Proceeding, Dec. 20, 2021, p. 20.
[58] *Id.*
[59] *Id.*, pp. 8-9.
[60] *Id.*, p. 9.
[61] Testimony of William Casey Lee in Opposition of the Nonunanimous Settlement Agreement on the Waiver Proceeding, Dec. 20, 2021, p. 3.
[62] Symmetry Motion to Withdraw Opposition to Nonunanimous Settlement Agreement on the Financial Plan, Jan, 20, 2022.
[63] Unanimous Settlement Agreement, Jan. 20, 2022, ¶ 12.
[64] *Id.*, ¶ 13.

- All marketers and Individually Balanced Transportation Customers are obligated to pay their respective Negotiated Gas Cost Penalties, ($65,444,505 in aggregate), and the delta between this number and the Motion for Waiver directed amount of $117,224,479 will be waived;[65]
- The agreed-to prices used to calculate the Negotiated Gas Cost Penalties represent the weighted average cost of both spot gas and Gas Daily Daily Callable purchases to calculate the penalties;[66]
- With the exception of Symmetry, all Negotiated Gas Cost Penalties are due to KGS within forty-five (45) days of a Commission Order approving this Unanimous Settlement;[67]
- Symmetry's respective Negotiated Gas Cost Penalty is $26 million (plus a 2% per annum carrying charge calculated monthly), calculated as of December 30, 2021.[68] Within forty-five (45) days of a Commission Order approving this Unanimous Settlement, Symmetry shall pay $8 million to KGS, Symmetry will pay an additional $18 million (plus the carrying charges) in monthly installments to KGS, concluding no later than the fourth-year anniversary of the Commission order approving this Unanimous Settlement; and within five (5) business days of a Commission Order approving this Unanimous Settlement, Symmetry will provide KGS a corporate guaranty in an amount of $26 million (plus the carrying charges referenced above) to ensure the timely payment in full of its penalties.[69]

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[65] *Id.*
[66] *Id.*, ¶ 14.
[67] *Id.*, ¶ 15.
[68] *Id.*, ¶ 16.
[69] *Id.*

- The carrying charge owed by marketers and Individually Balanced Transportation Customers will be 2% per year, calculated monthly, beginning the month of February 2021 until such time as the amount are paid in full.[70]
- All penalty payments received by KGS from marketers prior to the filing of the application for a Finance Order will be used by KGS to reduce the Qualified Extraordinary Costs to be recovered using the Securitized Utility Bonds.[71] All penalty amounts received after that filing will be credited to KGS' sales customers through the COGR/ACA on an annual basis;[72]
- KGS will credit the dollars KGS receives in penalties in excess of $52,446,581, on a pro rata basis to all marketers or Individually Balanced Transportation Customers that delivered natural gas during the February 2021 OFO and POC periods in excess of their Tariff required usage;[73]
- If KGS 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 the Winter Event, those payments will be passed on to its customers;[74]
- A marketer that fails to pay in full its obligations under this Settlement will be precluded from providing service in KGS territory, for as long as the Commission determines appropriate;[75] and

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[70] *Id.*, ¶ 19.
[71] *Id.*, ¶ 20.
[72] *Id.*
[73] *Id.*, ¶ 21.
[74] *Id.*, ¶ 22.
[75] *Id.*, ¶ 23.

- Within 30-days of the Settlement being approved, KGS will schedule a workshop to explore revising its tariff in accordance with lessons learned during Winter Storm Uri.[76]

The Unanimous Settlement is attached to this Order as Attachment A. The Office of the Attorney General,[77] CURB, BlueMark, WoodRiver and Freedom Pipeline, LLC[78] are not signatories to the Unanimous Settlement Agreement, but do not oppose it.[79]

19. On January 24, 2022, testimony in support of the Unanimous Settlement Agreement was filed by Justin Grady on behalf of Staff and Janet Buchanan on behalf of KGS. Grady explains: (1) the use of a Negotiated Gas Cost to determine the amount of penalties owed by marketers and Individually Balanced Transportation Customers for failing to provide sufficient natural gas supplies during February 2021 is in the public interest, because it benefits those entities while protecting KGS' remaining Sales customers;[80] (2) the methodology used to determine the Negotiated Penalties is fair to all customers on KGS' system;[81] (3) the Negotiated Gas Cost Penalties are an improvement over what KGS proposed in its May 28, 2021 Motion for Limited Waiver, which simply removed the multipliers;[82] and (4) while Staff would have preferred for Symmetry to pay $32,113,004, the Unanimous Settlement Agreement produces the best achievable result by avoiding potentially greater costs to KGS' Sales customers that could have resulted if Symmetry refused to pay and pursued litigation.[83] Any litigation could have

[76] *Id.*, ¶ 24.
[77] The Office of Attorney General Derek Schmidt was granted intervention on July 27, 2021.
[78] Freedom Pipeline, LLC was granted intervention on August 17, 2021.
[79] *Id.*., n. 1.
[80] Testimony in Support of Unanimous Settlement Agreement (Waiver Motion) Prepared by Justin T. Grady (Grady Testimony), Jan. 24, 2022, p. 5.
[81] *Id.*, pp. 6-7.
[82] *Id.*, pp. 32-33.
[83] *Id.*, pp. 30-31.

been extremely costly to KGS' Sales customers, as Staff calculates a one-year delay would cost KGS Sales customers $6.3 million in additional carrying costs.[84]

20. Buchanan explains that under the Unanimous Settlement Agreement a 2.0% carrying charge applies to the penalties owed by entities, instead of KGS' approved weighted average cost of capital of 8.6012%.[85] The reduced carrying charge was added as a result of extensive negotiations over the Financial Plan Agreement.[86] Out of concerns over potential prolonged litigation and rising interest rates, the Unanimous Settlement Agreement includes $26 million in penalties from Symmetry, with an initial payment of $8 million within 45 days of approval of the Unanimous Settlement Agreement and a corporate guaranty to ensure timely and full payment.[87] Buchanan believes the Unanimous Settlement Agreement appropriately resolves the penalty issue[88] and meets the Commission's standards for approving a settlement.[89]

21. On February 4, 2022, the Commission held a hearing on the Settlement Agreement on the waiver of the penalties under KGS' tariff. KGS; Staff; CURB; Symmetry; NGTCC; Atmos Energy Corporation; the Catholic Diocese of Wichita; Central Christian Church of Wichita, Kansas; Constellation NewEnergy-Gas Division, LLC; Foley Rebuild Center LLC and Foley Equipment Company; TempleLive Wichita; Bonavia Properties LLC; BlueMark Energy, LLC; WoodRiver Energy, LLC; and the Office of Attorney General Derek Schmidt all appeared by counsel. The Commission heard live testimony from two witnesses: Janet

[84] *Id.*, p. 31.
[85] Testimony of Janet L. Buchanan in Support of the Unanimous Settlement Agreement (Buchanan Testimony), Jan. 24, 2022, p. 18.
[86] *Id.*
[87] *Id.*, pp. 20-21.
[88] *Id.*, p. 21.
[89] *Id.*, p. 23.

Buchanan of KGS and Justin Grady of Staff.[90] The Commissioners cross-examined both witnesses, and the sponsoring parties had the opportunity to redirect their own witnesses.

22. The Unanimous Settlement Agreement is a unanimous settlement agreement as defined by K.A.R. 82-1-230a. Therefore, there is no need to fully apply the Commission's five-factor test for evaluation of settlements.[91] Instead, the Commission applies a three-factor test. When approving a unanimous settlement, the Commission must make an independent finding as to 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. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.[92]

23. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.[93] 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."[94]

24. Both Buchanan and Grady testify that there is substantial competent evidence in the record to support the Unanimous Settlement Agreement.[95] The Commission agrees. The Unanimous Settlement Agreement is supported by the testimony of Janet Buchanan and Justin Grady. Grady explained the methodology used to determine the Negotiated Gas Cost Penalties is detailed in a series of highly confidential spreadsheets describing KGS' gas purchases, and

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[90] Transcript of Hearing (Tr.), Dec. 17, 2021, p. 5.
[91] *See Order on KCP&L's Application for Rate Change*, Docket No. 15-KCPE-116-RTS, Sept. 10, 2015. The five factor test was developed for non-unanimous settlements. Because this settlement is unanimous, the commission will only apply the three factor test.
[92] *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).
[93] *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).
[94] *Id.* at 851, 856.
[95] Buchanan Testimony, p. 23; Grady Testimony, p. 22.

including individual marketer and transportation customer specific billing information.[96] Those spreadsheets are part of the evidentiary record and are summarized in Staff's exhibits.[97] Grady added that the carrying charges reflect the cost of KGS' recently issued short-term debt to cover the extraordinary costs until they are either collected from marketers and Individually Balanced Transportation Customers or until KGS can issue ratepayer-backed securitized bonds to finance these costs.[98] The only evidence offered in opposition to the Unanimous Settlement Agreement was subsequently withdrawn. Thus, the Commission finds the Unanimous Settlement Agreement is supported by substantial competent evidence.

25. Buchanan and Grady both testified that the Unanimous Settlement Agreement will establish just and reasonable rates.[99] Buchanan testified that absent the Unanimous Settlement Agreement, the penalties under KGS' tariff could be approximately $888,210,367,[100] sending many of the Marketers and Individually Balanced Transportation Customers into bankruptcy. This would have had a detrimental impact on the Kansas economy.[101] Removing the penalty multiplier, as requested by KGS, would reduce the penalties to $117,224,479.[102] Accordingly, Buchanan testified under the extraordinary circumstances of Winter Storm Uri, the Unanimous Settlement Agreement results in a just, reasonable and necessary outcome that balances the varied interests of the parties.[103] Grady explained the Unanimous Settlement Agreement does not set rates, but indirectly impacts rates.[104] He added that if KGS is unable to collect penalties from marketers and Individually Balanced Transportation Customers, KGS'

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[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] Buchanan Testimony, p. 24; Grady Testimony, p. 25.
[100] Buchanan Testimony, pp. 10, 24.
[101] *Id.*, p. 24.
[102] Transcript of February 4, 2022 Hearing (Tr.), p. 18.
[103] Buchanan Testimony, p. 24.
[104] Grady Testimony, p. 25.

Sales customers (including Residential and Small Commercial customers), would bear the cost of all purchased gas costs used during the OFO/POC days.[105] Grady testified that the Unanimous Settlement Agreement accomplishes the balance that Staff hoped for between preventing a windfall or unjust profit for Sales customers, and making Sales customers whole for gas that transportation customers and marketers used (but did not procure).[106] Accordingly, the Commission finds that approval of the Unanimous Settlement Agreement will result in just and reasonable rates for KGS and its customers. The Commission finds the Unanimous Settlement Agreement fairly represents a balance of the relevant interests and is supported by the evidence.

26. Buchanan and Grady both testified that approving the Unanimous Settlement Agreement is in the public interest.[107] Buchanan noted under the Unanimous Settlement Agreement KGS' Gas Sales Customers will receive the benefit of any penalty amounts that KGS is able to collect.[108] Grady explained the public interest is served when ratepayers are protected from unnecessarily high prices, discriminatory prices and/or unreliable service.[109] Grady believes the Unanimous Settlement Agreement does that by: (1) appropriately reducing the penalties assessed to marketers and Individually Balanced Transportation Customers;[110] (2) allowing KGS to recover its actual costs of gas that marketers and Individually Balanced Transportation Customers failed to deliver during Winter Storm Uri;[111] (3) compensating marketers and Individually Balanced Transportation Customers for long gas they provided during the OFO and POC days;[112] (4) preventing the penalty mechanisms in KGS' tariff from

[105] *Id.*, pp. 25-26.
[106] *Id.*, p. 26.
[107] Buchanan Testimony, p. 25, Grady Testimony, p. 31.
[108] Buchanan Testimony, p. 25.
[109] Grady Testimony, p. 32.
[110] *Id.*, pp. 32-33.
[111] *Id.*, p. 33.
[112] *Id.*

producing a windfall or source of profit to Sales customers;[113] and (5) avoiding potentially costly and prolonged litigation involving both KGS' Financial Plan and its Waiver Motion.[114]

27. Consistent with the parties' positions, the Commission finds that approval of the Unanimous Settlement Agreement is in the public interest. The terms of the Unanimous Settlement Agreement represent an equitable balancing of the interests of all parties, and upholds the public interest by avoiding prolonged litigation that absent the unanimous settlement agreement could delay and increase the costs of issuing securitized bonds.[115] Without the OFO and POC multipliers, KGS' Tariff would result in $117,244,479 in penalties.[116] However, the evidence demonstrates the $65,444,505 in penalties negotiated in the Unanimous Settlement Agreement is more reflective of the actual cost of gas incurred by KGS to ensure continued supply to transportation customers during the Winter Weather Event.[117] By more accurately representing the costs incurred, the Commission believes the $65,444,505 in penalties affords relief to multiple parties for the extraordinary costs resulting from Winter Storm Uri. Specific to KGS and its sales customers, as Grady testified, the Unanimous Settlement Agreement provides strong assurance those customers will recoup $52 million of the roughly $58 million in extraordinary gas costs incurred on behalf of transportation customers.[118]

28. While the penalty provisions date back to the late 1990s, penalties have never been levied.[119] KGS sought a waiver so marketers and individually balanced transportation customers would only being responsible for their volume of unauthorized gas usage multiplied

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[113] *Id.*
[114] *Id.*, pp. 33-34.
[115] *See id.*
[116] *Id.*, p. 17.
[117] *Id.*
[118] *See id.*, p. 30; *See id.,* Exhibit JTG-1.
[119] Tr., p. 68.

by the index price of gas.[120] With one exception, the aggregate penalties represent the total unauthorized gas usage multiplied by a negotiated gas price,[121] thus, the Unanimous Settlement Agreement accomplishes that aim. Symmetry is the exception.[122] Buchanan testified that absent the Unanimous Settlement Agreement, there was no guarantee that Symmetry, the entity subject to the largest penalty, would have paid anything.[123] Grady shared Buchanan's assessment.[124] As part of the Unanimous Settlement,[125] Symmetry agreed to provide a $26 million corporate guaranty (plus carrying charges) to ensure the timely payment of its Negotiated Gas Cost Penalty.[126] Under the settlement agreement, Symmetry's penalty is reduced by approximately $6.1 million, less than the $6.3 million that KGS and its Sales customers would incur in just a single year of a potentially multi-year appellate process.[127] Thus, while reducing Symmetry's penalty may be unpopular, it benefits Sales customers by ensuring Symmetry's ability to pay the penalty, and eliminating potential litigation that would subject sales customers to millions of dollars of additional carrying costs.

29. Transportation customers assumed some risk when they chose to contract with gas marketers to supply their gas, rather than simply purchasing gas directly through KGS. By contracting with gas marketers, Transportation customers have likely benefited from low and stable wholesale natural gas market prices in past years, however, they may bear the risk of much higher prices when gas supplies become limited or prices spike, as they did during Winter Storm Uri. Thus, the Transportation customers incur the consequences of contracting with gas marketers to supply their gas in lieu of purchasing gas directly through KGS.

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[120] *Id.*, p. 17.
[121] *Id.*, p. 18.
[122] *Id.*, pp. 18-19.
[123] Tr., pp. 75, 77.
[124] *Id.*, pp. 92-93.
[125] Unanimous Settlement Agreement, ¶ 16(c).
[126] Tr., pp. 92-93.
[127] Grady Testimony, p. 9.

30. The Commission notes that its decision to waive penalties in this Docket should not be viewed as precedential. Instead, it is a response to a unique and "completely unprecedented situation, not something anybody expected to have to prepare for."[128] While the Commission's investigation into record natural gas prices and potential system reliability issues is ongoing, it appears that many gas marketers may have overextended themselves and taken on too many contractual obligations that they were unable to meet in an extreme event like Winter Storm Uri.[129] Therefore, if confronted with an OFO and high gas prices in the future, it should not be assumed that the Commission will waive penalties again.[130]

31. The Commission finds the attached Unanimous Settlement 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. Thus, the Commission approves the Unanimous Settlement Agreement in its entirety.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion to Approve Unanimous Settlement Agreement is granted. The Unanimous Settlement Agreement on KGS' Penalty Waiver, attached as Attachment A, is approved in its entirety and incorporated by reference.

B. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).[131]

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[128] Tr., p. 97.
[129] *See id.*, p. 98.
[130] *See id.*, p. 103.
[131] K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 03/03/2022

Lynn M. Retz

Lynn M. Retz
Executive Director

BGF

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas Service, a Division of One Gas, Inc. Regarding February 2021 Winter Weather Events, as Contemplated by Docket No. 21-GIMX-303-MIS	)))))	**Docket No. 21-KGSG-332-GIG**

UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement ("Agreement" or "Settlement") is entered into, between, and among Kansas Gas Service, a Division of ONE Gas, Inc. ("KGS"), the Staff of the State Corporation Commission of the State of Kansas ("Staff"), Atmos Energy Corporation ("Atmos"), Bonavia Properties LLC ("Bonavia"), Catholic Diocese of Wichita ("Catholic Diocese"), Central Christian Church of Wichita, Kansas ("Central Christian"), Constellation NewEnergy-Gas Division, LLC ("Constellation"), Foley Rebuild Center LLC and Foley Equipment Company ("Foley"), National Gas Transportation Customer Coalition ("NGTCC"), Symmetry Energy Solutions, LLC ("Symmetry"), and TempleLive Wichita ("TempleLive"), (individually "Signatory" and collectively, "Signatories").

[1] This Agreement is being submitted to the Commission for its approval pursuant to K.A.R. 82-1-230a.

I. BACKGROUND

1. In mid-February 2021, a major snow and ice storm, known as Winter Storm Uri, imposed extreme and unprecedented freezing weather conditions across the United States, Northern Mexico and parts of Canada. The extensive nature of the storm, coupled with the heavy

[1] The Office of the Attorney General, the Citizens' Utility Ratepayer Board ("CURB"), BlueMark Energy, LLC ("BlueMark"), WoodRiver Energy, LLC ("WoodRiver") and Freedom Pipeline, LLC ("Freedom") are not a Signatories but they do not oppose this Agreement.

snow and damaging ice, produced some of the coldest temperatures in decades. Winter Storm Uri prompted health and safety concerns, sudden and sustained natural gas supply disruptions, widespread infrastructure and operational failures and freeze-offs of facilities that were necessary for the delivery of natural gas.

2. In response to Winter Storm Uri, on February 15, 2021, the State Corporation Commission of the State of Kansas ("KCC" or "Commission") issued an Emergency Order in Docket No. 21-GIMX-303-MIS ("Emergency Order") which acknowledged the State of Disaster Emergency Proclamation issued by Governor Kelly, the higher than normal wholesale natural gas prices, and the potential for reliability issues related to the prolonged February 2021 cold weather. The Emergency Order required jurisdictional natural gas and electric utilities to ". . . do everything necessary to ensure natural gas and electricity service continue[d] to be provided to their customers in Kansas." The Commission also authorized jurisdictional natural gas and electric utilities to defer into a regulatory asset any extraordinary costs associated with ensuring that their customers or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission continued to receive utility service during the cold weather event.

3. On March 9, 2021, the Commission issued an 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, in Docket No. 21-GIMX-303-MIS ("21-303 Order"). In its 21-303 Order, the Commission adopted Staff's recommendations 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 Storm Uri and to record the company specific filings of the financial impact

plans contemplated in the Commission's 21-303 Order.[2]

4. On May 28, 2021, KGS filed a Motion for Limited Waiver ("Motion for Waiver") in this docket seeking Commission authorization to deviate from Section 11.06 of the KGS General Terms and Conditions for Gas Service ("Tariff") provisions in order to allow KGS to remove the multipliers from the calculation of penalties incurred by marketers and Individually Balanced Transportation Customers for violations of the Operational Flow Orders ("OFO") and/or Period Curtailment Orders ("POC") issued by KGS during Winter Storm Uri.

5. In the absence of this waiver, Section 11.06 of the Tariff requires KGS to calculate penalties for OFO violations by multiplying 2.5 times ("the OFO multiplier") the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) by the unauthorized MMBtu level. During the more critical POC conditions, the Tariff requires the KGS to calculate the penalties for POC violations by multiplying 10 times ("the POC multiplier") the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) by the unauthorized MMBtu level. By eliminating both the OFO multiplier and the POC multiplier, a marketer or Individually Balanced Transportation Customer whose gas use during Winter Storm Uri exceeded its confirmed nomination would be charged the Gas Index price multiplied by the unauthorized natural gas volumes. Waiving the multipliers results in an aggregate amount owed by marketers and Individually Balanced Transportation Customers of $117,244,479.

6. CURB, Atmos, BlueMark, Bonavia, Constellation, Catholic Diocese, Central Christian, Foley, Freedom, NGTCC, the Kansas Attorney General's Office, TempleLive, Symmetry, and WoodRiver, were granted, intervention in the docket (inclusive of KGS and Staff hereinafter "Parties").

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[2] *Order on Petitions to Intervene of BlueMark Energy, LLC and CURB; Protective and Discovery Order*, ¶7 (Docket No. 21-GIMX-303-MIS issued on March 9, 2021).

7. Pursuant to the Commission's August 12, 2021's *Order Adopting Proposed Interim Procedural Schedule* and the Commission's September 2, 2021 *Order Granting KGS' Motion for Proposed Interim Procedural Schedule on KGS' Motion for Waiver*, the Parties to this proceeding met and conducted settlement discussions on August 18 and September 23 and 24.

8. On October 8, 2021, the Signatories and CURB (except Bonavia, Catholic Diocese, Central Christian, Foley, TempleLive, Symmetry and NGTCC) executed and filed a Nonunanimous Settlement Agreement ("Waiver Settlement") with the Commission. Because the original Waiver Settlement was not agreed to by all Parties to this docket, it was considered a nonunanimous settlement agreement under the Commission's regulations (K.A.R. 82-1-230a).

9. On November 30, 2021, the Signatories (this time including Bonavia, Catholic Diocese, Central Christian, Foley, TempleLive, and NGTCC but excluding Symmetry) executed and filed an Amended Nonunanimous Agreement on the Waiver ("Nonunanimous Settlement") with the Commission. As of that time, the only party opposing the Nonunanimous Settlement was Symmetry.

10. Beginning on January 11, 2022, and continuing through January 18, 2022, the parties engaged in additional negotiations. In consideration of factors including the implications of prolonged litigation, the potential cost implications of rising interest rates on Sales Customers, and a representation by a party relating to the significant adverse financial impact of Winter Storm Uri, *inter alia*, as set forth in testimony in this proceeding, negotiations resulted in the inclusion of revised terms to the Nonunanimous Settlement. With the inclusion of these new terms, all Signatories to this docket, including Symmetry, support substituting the Nonunanimous Settlement with this Unanimous Settlement Agreement. The addition of the revised terms has resulted in: 1) Symmetry's agreement to withdraw its objection and opposition to the Financial Plan ("Financial Plan Settlement"), and to become a Signatory to this Unanimous Settlement Agreement; and 2) all

Signatories to either support or not oppose: the instant Unanimous Settlement Agreement and the pending Financial Plan Settlement.[3]

II. SETTLEMENT PROVISIONS

11. The Signatories agree that the Commission should issue an order approving all of the settlement provisions contained herein, without modification, as well as all of the provisions in the Financial Plan Settlement currently pending before the Commission.

12. For the month of February 2021, the OFO multiplier and the POC multiplier should be waived for all marketers and Individually Balanced Transportation Customers.

13. Subject to the provisions of Paragraph 16 herein, during the OFO and POC issued in February 2021, all daily unauthorized usage by marketers and Individually Balanced Transportation Customers shall be calculated to reflect the difference between the customer's Section 11.06 Tariff required authorized usage of natural gas (plus any applicable tolerance) and the natural gas volumes delivered by the customer into the KGS system. Any resulting shortfall in natural gas volumes will be multiplied by agreed-to prices to determine the specific marketer and Individually Balanced Transportation Customer financial obligation, inclusive of carrying charges and monthly cash outs, as discussed below and as reflected on the Confidential Exhibit A (hereinafter "Negotiated Gas Cost Penalties"). Under this Settlement, all marketers and Individually Balanced Transportation Customers will be obligated to pay their respective Negotiated Gas Cost Penalties, which in the aggregate amounts to $65,444,505,[4] and the delta

[3] Simultaneous to the filing of this Motion, Symmetry is filing a motion to reflect the withdrawal of its opposition to the Financial Plan Settlement. In the event that the Commission does not approve this Unanimous Settlement, Symmetry reserves the right to present all prior arguments raised in the docket in the future Waiver proceeding.

[4] This amount is calculated with interest through 12-31-21 and will be subject to a true-up to conform with actual payment date.

between this number and the Motion for Waiver directed amount of $117,224,479 will be waived. The Negotiated Gas Cost Penalties applicable to each marketer and Individually Balanced Transportation Customer shall reflect each party's final penalty obligation in this Motion for Waiver proceeding, provided however, that in the event any party violates a payment term of this Agreement, it is understood and agreed that KGS retains the right, *inter alia*, to seek to collect the total penalties authorized under the KGS Tariff as of the filing date of this Agreement from the offending party.

14. The agreed-to prices used to calculate the Negotiated Gas Cost Penalties represent the weighted average cost of both spot gas and Gas Daily Daily Callable purchases to calculate the penalties. This pricing reflects the fact that KGS utilized a blend of both spot market purchases and previously secured Gas Daily Daily Callable volumes to secure sufficient incremental gas for the system as a whole during the OFO and POC days. Importantly, this pricing still excludes storage gas and first of month baseload gas purchases.

15. With the exception of Symmetry, whose Negotiated Gas Cost Penalties payment obligations shall be identified in paragraph 16, all Negotiated Gas Cost Penalties shall be due and received by KGS within forty-five (45) days of a Commission Order approving this Unanimous Settlement.[5] In addition to KGS reserving all of its rights and recourse in law and in equity associated with any party's failure to comply with this provision, all marketers acknowledge that any failure to make such payment in full shall subject the marketer to Article 3.2 of the KGS Aggregation Agreement.

16. Notwithstanding the calculation of Symmetry's daily unauthorized usage and resulting shortfall in natural gas volumes multiplied by the agreed-to prices to determine its

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[5] In the event the 45th day falls on a Saturday, Sunday or Federal Holiday, parties shall have until the next business day for payments to be received by KGS.

financial obligation, as discussed in Paragraph 13 herein, Symmetry's respective Negotiated Gas Cost Penalty shall be the amount of $26 million (plus a 2% per annum carrying charge calculated monthly), calculated as of December 30, 2021. Symmetry shall not be entitled to any credits contained in Paragraph 18. The Negotiated Gas Cost Penalty to be paid by Symmetry shall be subject to the following terms:

a. within forty-five (45) days of a Commission Order approving this Unanimous Settlement,[6] Symmetry shall pay $8 million to KGS ("First Negotiated Gas Cost Penalty");

b. Symmetry shall pay an additional amount equal to $18 million (plus the carrying charges referenced above)("Remaining Negotiated Gas Cost Penalty"), paid in monthly installments to KGS on the first day of the first month following the payment of the First Negotiated Gas Cost Penalty and concluding no later than the fourth-year anniversary of the Commission order approving this Unanimous Settlement;

c. within five (5) business days of a Commission Order approving this Unanimous Settlement, Symmetry shall obtain and provide to KGS a corporate guaranty in an amount of $26 million (plus the carrying charges referenced above) to ensure the timely payment in full of Symmetry's First Negotiated Gas Cost Penalty payment and in full of Symmetry's Remaining Negotiated Gas Cost Penalty.

d. in the event Symmetry fails to make a payment due and owed under the terms Paragraph 16, the entirety of any outstanding amount of Symmetry's Negotiated Gas Cost Penalty shall be due and owed.

In addition to KGS reserving all of its rights and recourse in law and in equity associated with any

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[6] *Id.*

failure to comply with this provision, Symmetry acknowledges that any failure to make such payment in full shall subject Symmetry to Article 3.2 of the KGS Aggregation Agreement.

17. All monthly cash out dollars to be paid by marketers or Individually Balanced Transportation Customers to KGS during February 2021 will be netted against the Negotiated Gas Cost Penalties that are owed by such marketers or Individually Balanced Transportation Customers. In other words, the marketer or Individually Balanced Transportation Customer will pay the greater of the Negotiated Gas Cost Penalties or the monthly cash out owed, but not both. If the marketer or Individually Balanced Transportation Customer has already remitted payment for its monthly cash out, the Negotiated Gas Cost Penalties will be reduced by the amount already paid.

18. All monthly cash out dollars to be paid by KGS to marketers or Individually Balanced Transportation Customers during February 2021 will be netted against the Negotiated Gas Cost Penalties that are owed by such marketers or Individually Balanced Transportation Customers. Further, in calculating the credit to marketers or Individually Balanced Transportation Customers that delivered more gas than utilized during the OFO and POC, the amount will be reduced by the amount already credited against the Negotiated Gas Cost Penalties or otherwise paid by KGS.

19. The carrying charge owed by marketers and Individually Balanced Transportation Customers shall be 2% per year, calculated monthly for all amounts owed (Negotiated Gas Cost Penalties and cash outs) beginning the month of February 2021 until such time as the amount are paid in full.

20. All penalty payments received by KGS from marketers as determined by this Unanimous Settlement, that are received prior to the filing of the separate application for a Finance Order will be used by KGS to reduce the Qualified Extraordinary Costs to be recovered using the

Securitized Utility Bonds. Moreover, all penalty amounts received after that filing will be credited by KGS to KGS's sales customers through the COGR/ACA on an annual basis.

21. Once KGS has collected from transportation customers $52,446,581[7] in Negotiated Gas Cost Penalties, KGS will credit an amount equal to the dollars KGS receives in excess of $52,446,581, on a *pro rata* basis to all marketers or Individually Balanced Transportation Customers that delivered natural gas during the February 2021 OFO and POC periods in excess of their Tariff required usage.[8] The total amount that may be provided to marketers or Individually Balanced Transportation Customers is $12,997,924 as shown on Confidential Exhibit A. This amount reflects the value of the gas that various marketers and Individually Balanced Transportation Customers provided to the system that was used by other transportation customers who did not provide adequate supplies during Winter Storm Uri. The gas prices utilized to calculate the credit are described in paragraph 14.

22. In the event a subsequent federal or state court or governmental agency issues a final order of general applicability finding the existence of market manipulation in the establishment of the Gas Daily Index during February 2021 that requires financial relief in the form of profit disgorgement, refunds, penalties or other civil suit relief, KGS will credit, on a *pro rata* basis, to marketers and Individually Balanced Transportation Customers any proceeds that KGS receives as a direct result of such proceeding that relate to Negotiated Gas Cost Penalties paid by such marketers and Individually Balanced Transportation Customers.

23. In the event a marketer fails to pay in full its obligations under this Settlement, that marketer will be precluded from providing service in KGS territory pursuant to the Aggregation

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[7] This amount is calculated with interest through 12-31-21 and will be subject to a true-up to conform with actual payment date.
[8] The $52,446,581 represents the total Negotiated Gas Cost Penalties of $65,444,505 less the value of the gas volumes ($12,997,924) that the marketers and Individually Balanced Transportation Customers were long during Winter Storm Uri.

Agreement for so long as the Commission determines appropriate.

24. Within 30-days of a final Commission Order approving this Settlement, KGS shall schedule a workshop for the purpose of exploring revised tariff provisions consistent with lessons learned during Winter Storm Uri.

III. MISCELLANEOUS PROVISIONS

A. THE COMMISSION'S RIGHTS

25. 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 KGS acted consistent with the Emergency Order and that the resulting Agreement is equitable, in the public interest and the underlying charges are just and reasonable.

B. PARTIES' RIGHTS

26. All Parties, including Staff, shall have the right to present testimony in support of this Agreement. Such supporting testimony presented by witnesses shall be filed formally in the docket and such witnesses shall be presented at a hearing on this Agreement as set forth in a scheduling order by the Commission. Due to the unanimous nature of this settlement, parties have waived the right to post-hearing briefs in this docket.

D. NEGOTIATED SETTLEMENT

27. This Agreement represents a negotiated settlement that, upon approval by the Commission, fully resolves all issues associated with the costs incurred by marketers and Individually Balanced Transportation Customers during Winter Storm Uri based on the unique facts and circumstances leading up to this settlement. The Signatories represent that the terms and commitments of this Agreement constitute a fair and reasonable resolution of the issues addressed

herein. However, in consideration of all elements of this negotiated settlement, it is understood that no provision of this Agreement constitutes precedent, can be used against any Signatory to the Agreement or should be deemed a settled practice in any future proceeding.

28. Except as required for the implementation of this Agreement and as specified herein, the Signatories 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.

29. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Signatories shall be bound by the terms of the Agreement and the Commission's order incorporating such terms as to all issues addressed herein and, in accordance with the terms hereof, will not appeal the Commission's order on these issues.

30. This Settlement shall become effective on the date on which the Commission order approving the Settlement is issued and such issuance shall constitute an amount due for purposes of notice and the calculation of the due date for payments of penalties for Signatories under this Agreement.

E. <u>INTERDEPENDENT PROVISIONS</u>

31. Each of the provisions of this Agreement are interdependent, having resulted from the give and take of negotiations among the Parties, and therefore represent a delicate compromise of numerous, complex, interrelated issues. The resolution of the issues in this Settlement cannot be altered in part without disturbing the balance of interests represented herein. In the event that the Commission does not approve and adopt the terms of this Agreement in total, without modification, the Agreement shall be voidable, no Signatory hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof and this Agreement shall be

considered privileged and not admissible in evidence or made a part of the record in any proceeding.

32. All discovery requests and responses exchanged to facilitate the Settlement negotiations, and all Settlement discussions, shall be treated as privileged and confidential and shall not be (i) utilized as evidence in any other case or proceeding, or (ii) deemed an admission by any Signatory of any principle contained herein.

33. The terms of this Agreement are contractual, not a mere recital, and this Settlement is the result of negotiations between the Parties, each of which has participated in the drafting of this Agreement through its respective attorneys. No Signatory shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against any Signatory as the drafter.

34. Each of the Signatories to this Agreement represents and warrants to the other Signatories that it has the power and authority to enter into and perform its obligations in this Settlement.

F. SUBMISSION OF DOCUMENTS TO THE COMMISSION OR STAFF

35. 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 appropriately marked and identified with the docket number of this proceeding.

IN WITNESS WHEREOF, the Signatories have executed and approved the terms of this Settlement Agreement, effective as of the January 20, 2022, by subscribing their signatures below.

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EXHIBIT A

This Exhibit contains "Confidential Information" which, if disclosed, would likely result in harm to a party's economic or competitive interests or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. As such it is entitled to protective treatment consistent with the Commission's March 9, 2021 *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.*

1	Public													
2												Invoicing Data		
3	Marketer or Individually Balanced Transportation Customer	Penalty Amount with No Multiplier System Wide Weighed Ave GDD Callable and Spot	Carrying Charge on Penalty	Monthly Cash Out Marketer or Individually Balanced Transportation Customer	Carrying Charge on Monthly Cash Out for Marketer or Individually Balanced Transportation Customer	Monthly Cash Out KGS	Carrying Charge on Monthly Cash Out KGS	Negotiated Gas Cost Penalty	Offset for Long Volume System Wide Weighed Ave GDD Callable and Spot	Amount Owed to Marketer or Individually Balanced Transportation Customer for Long Volume	Net Amount Owed to KGS	Amount Owed By Marketer Less Amounts Previously Paid	Amount Owed By KGS Less Amounts Previously Credited	Amount to Invoice
4	[redacted]	$ 18,311	$ 307			$ 16,387	$ 40	$ 2,191	$ 201,407	$ 185,020	$ (182,829)	$ 18,618	$ 40	$ 18,579
5	[redacted]	$ 3,573	$ 60			$ 990,010	$ 16,578	$ (1,002,955)	$ -	$ -	$ (1,002,955)	$ 3,633	$ 1,002,840	$ (999,207)
6	[redacted]	$ 1,501,329	$ 25,211			$ 720,361	$ 12,093	$ 794,086	$ 1,980,954	$ 1,260,593	$ (466,507)	$ 1,526,540	$ 732,101	$ 794,439
7	[redacted]	$ 2,000	$ 34			$ 84,891	$ 1,426	$ (84,283)	$ 242,364	$ 157,473	$ (241,756)	$ 2,033	$ 86,316	$ (84,283)
8	[redacted]	$ 20,891,244	$ 350,810	$ 2,582,110	$ 17,430			$ 21,242,054	$ 540,408	$ 540,408	$ 20,701,646	$ 18,659,945	$ -	$ 18,659,945
9	[redacted]	$ -	$ -					$ -	$ 2,279,794	$ 2,279,794	$ (2,279,794)	$ -	$ -	$ -
10	[redacted]	$ 3,377	$ 57					$ 3,434	$ 33,097	$ 33,097	$ (29,663)	$ 3,434	$ -	$ 3,434
11	[redacted]	$ 417,830	$ 7,016			$ 439,127	$ 7,374	$ (21,655)	$ 2,190,982	$ 1,751,855	$ (1,773,510)	$ 424,846	$ 446,501	$ (21,655)
12	[redacted]	$ 79,712	$ 1,339			$ 297,641	$ 1,343	$ (217,934)	$ 1,571,618	$ 1,273,977	$ (1,491,911)	$ 81,050	$ 6,529	$ 74,521
13	[redacted]	$ 26,237	$ 441					$ 26,678	$ 97,170	$ 97,170	$ (70,492)	$ 26,678	$ -	$ 26,678
14	[redacted]	$ 36,902,939	$ 619,682	$ 183,377	$ -	$ 8,789	$ 148	$ 26,000,000	$ -	$ -	$ 26,000,000	$ 26,000,000	$ -	$ 26,000,000
15	[redacted]	$ 260,034	$ 4,367	$ 4,042	$ 67	$ 10,839	$ 192	$ 253,369	$ 3,754	$ -	$ 253,369	$ 264,332	$ 11,855	$ 252,477
16	[redacted]	$ 314	$ 5			$ 10,413	$ -	$ (10,093)	$ 279,147	$ 268,734	$ (278,827)	$ 319	$ -	$ 319
17	[redacted]	$ 1,830,091	$ 30,731	$ 116,686	$ -	$ 57,054	$ -	$ 1,803,768	$ 13,563	$ -	$ 1,803,768	$ 1,744,196	$ -	$ 1,744,196
18	[redacted]	$ 145,002	$ 2,435			$ 166,466	$ 2,729	$ (21,757)	$ 13,594	$ -	$ (21,757)	$ 147,437	$ 163,383	$ (15,947)
19	[redacted]	$ 429,998	$ 7,221	$ 89,588	$ 303			$ 437,219	$ 485	$ 485	$ 436,734	$ 347,631	$ -	$ 347,631
20	[redacted]	$ 90,714	$ 1,523			$ 185,220	$ 2,195	$ (95,177)	$ 13,045	$ -	$ (95,177)	$ 92,237	$ 88,551	$ 3,686
21	[redacted]	$ 225	$ 4					$ 229	$ 51,483	$ 51,483	$ (51,254)	$ 229	$ -	$ 229
22	[redacted]	$ 147,856	$ 2,483			$ 82,024	$ 1,329	$ 66,985	$ -	$ -	$ 66,985	$ 150,339	$ 79,139	$ 71,200
23	[redacted]	$ -	$ -			$ 339,866	$ 3,450	$ (343,317)	$ 481,151	$ 141,285	$ (484,601)	$ -	$ 167,914	$ (167,914)
24	[redacted]	$ 20,774	$ 349					$ 21,123	$ 566,616	$ 566,616	$ (545,493)	$ 21,123	$ -	$ 21,123
25	[redacted]	$ 8,653	$ 145			$ 1,686,879	$ 26,606	$ (1,704,686)	$ 5,248,834	$ 3,561,955	$ (5,266,641)	$ 8,798	$ 1,587,917	$ (1,579,118)
26	[redacted]	$ 300,701	$ 5,049	$ 207,433	$ -			$ 305,750	$ -	$ -	$ 305,750	$ 98,317	$ -	$ 98,317
27	[redacted]	$ 4,052	$ 68			$ 70,846	$ 1,116	$ (67,841)	$ 165,122	$ 94,277	$ (162,118)	$ 4,120	$ 63,689	$ (59,569)
28	[redacted]	$ 9,401,500	$ 157,872					$ 9,559,372	$ 166,840	$ 166,840	$ 9,392,532	$ 9,559,372	$ -	$ 9,559,372
29	[redacted]	$ 222,380	$ 3,734	$ 20,092	$ 102	$ 94,154	$ 1,345	$ 130,615	$ 246,877	$ 152,723	$ (22,108)	$ 206,022	$ 75,407	$ 130,615
30	[redacted]	$ 36,799	$ 618			$ 725	$ 1	$ 36,690	$ 361	$ -	$ 36,690	$ 37,417	$ 1	$ 37,416
31	[redacted]	$ 1,390	$ 23			$ 11,664	$ 196	$ (10,446)	$ 14,900	$ 3,257	$ (13,682)	$ 1,414	$ 11,860	$ (10,446)
32	[redacted]	$ 40,189	$ 675					$ 40,864	$ 174,998	$ 174,998	$ (134,134)	$ 40,864	$ -	$ 40,864
33	[redacted]	$ 8,163,144	$ 137,077	$ 164,897	$ 2,769			$ 8,300,221	$ 235,906	$ 235,906	$ 8,064,315	$ 8,300,221	$ -	$ 8,300,221
34	Total	$ 80,950,368	$ 1,359,337	$ 3,368,224	$ 20,671	$ 5,273,355	$ 78,160	$ 65,444,505	$ 16,814,469	$ 12,997,924	$ 52,446,581	$ 67,771,107	$ 4,524,044	$ 63,247,063

CERTIFICATE OF SERVICE

21-KGSG-332-GIG

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/03/2022.

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