

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Investigation into)
Evergy Kansas Metro and Evergy)
Kansas Central Regarding the February) Docket No. 21-EKME-329-GIE
2021 Winter Weather Events, as)
Contemplated by Docket No.)
21-GIMX-303-MIS)

**MOTION OF EVERGY KANSAS CENTRAL, INC., EVERGY KANSAS SOUTH,
INC. AND EVERGY METRO, INC., FOR AMENDMENT OF PROTECTIVE
ORDER**

COME NOW Evergy Kansas Central, Inc., Evergy Kansas South, Inc. (together as “Evergy Kansas Central”), and Evergy Metro, Inc. (collectively “Evergy”) and for their Motion for Amendment of Protective Order, state:

1. On February 15, 2021, as a result of the severe winter weather event occurring in Kansas and surrounding States and pursuant to K.S.A. 77-536(a), the State Corporation Commission of the State of Kansas (“Commission”) issued an Emergency Order 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.

2. On March 1, 2021, Commission Staff filed its Report and Recommendation (“R&R”) to open a series of company-specific dockets to allow: (1) the utilities to file financial impact plans and (2) Staff to tailor its investigation to match each utility's unique circumstances. Staff believed creating distinct, company-specific dockets will result in efficiencies because: (1) potential intervenors can participate in only those dockets affecting them and (2) confidential information pertaining to market pricing, purchasing practices, power-marketing strategies and other company-specific information would be protected.

3. On March 1, 2021, the Citizens' Utility Ratepayer Board (“CURB”) filed its Petition to Intervene and Motion for Protective Order and Discovery Order. CURB also sought a protective and discovery order to handle confidential information.

4. On March 9, 2021, the Commission issued its Order adopting Staff’s R&R, to open the company specific dockets (including this docket for the Evergy affiliates, and to issue the Protective and Discovery Order (“Protective Order”).

5. The Protective Order allows parties to designate commercially sensitive materials as confidential and limits access to such materials to individuals who have signed a confidentiality agreement. The Protective Order does not place any restrictions on who can receive confidential materials provided that such individual signs the confidentiality agreement certifying that he/she has read the Protective Order and agrees to abide by its terms and conditions.

6. Starting on March 26, 2021, Staff began issuing Discovery Requests (“DRs”) to Evergy regarding, among other things, the operational and financial impacts to Evergy from the 2021 Winter Weather Event. Naturally, the DRs seek information specific to Evergy’s assets, emergency plans, protective measures, and a multitude of other specifics about Evergy’s operations that are also regulated by the Federal Energy Regulatory Commission (“FERC”), FERC’s authorized reliability entity – the North American Electric Reliability Corporation (“NERC”) – and the Department of Energy (“DOE”).

7. In recent years FERC, NERC, DOE, and the industry in general have developed a heightened awareness regarding the physical and cyber security of the Bulk

Electric System (“BES”) due to foreign and domestic threats to the BES and the utilities operating the system.

8. As a result of the heightened risk and threat to the BES, FERC and NERC have developed categories of highly sensitive information that must be protected not only in who is able to view certain information but also who actually has custody of such information.¹ As a result, utilities such as Evergy have designated certain sensitive information and developed processes with NERC regulators wherein the designated information is only provided in a “view-only” manner through an encrypted system such that Evergy never relinquishes custody of the actual data.

9. Evergy has participated in nationwide industry discussions and development of policy and processes to ensure the custodial protection of sensitive information and means to allow regulators to view necessary information without an actual exchange of custody of the actual data to ensure the location of the sensitive information only resides on Evergy’s protected network or physical files.

10. Two of the sensitive information designations are Critical Energy Infrastructure Information (“CEII”) as defined at 18 C.F.R. §§ 388.113(a), (c) or 10 C.F.R §§1004.13(c)(4), and Bulk Electric System Cyber Security Information (“BCSI”)

¹ While discussions continue amongst the energy industry and its federal regulators, an initial white paper from FERC/NERC Joint Staff indicating the heightened protection of sensitive information can be found at: <https://www.ferc.gov/media/second-joint-staff-white-paper-notices-penalty-pertaining-violations-critical-infrastructure>.

as implemented per NERC regulations². In preliminary discussions with Staff, Evergy has identified areas of the Commission’s inquiry that may likely involve the production of CEII and/or BCSI, such as Evergy’s load shed plan, asset identification and locations, and a multitude of other aspects of Evergy’s operations that could be used by nefarious actors to attack Evergy’s system, disrupt system reliability, cause uncontrolled customer outages, and do other harm.

11. Based on Evergy’s interactions with its federal regulators, Evergy has determined that any information designated as CEII or BCSI must be provided added protection above the level of protection afforded to information designated as confidential under the current Protective Order and Non-Disclosure Agreements. As such, Evergy proposes to modify the Protective Order to include CEII and BCSI and limit the viewing of such information to only Staff and the Commission through an encrypted “view-only” document review system that Evergy uses with its NERC regulators and is also using Missouri Commission Staff in a similar inquiry before the Missouri Public Service Commission.

12. As intervenors may wish to ensure any such designation is appropriate, Evergy proposes that if a party designates material as CEII or BCSI, it will provide to the party requesting the material a summary of the contents of the document and an explanation of why the material qualifies as CEII or BCSI. If necessary, the party may

² Bulk Electric System Cyber Security Information (BCSI): Information about the BES Cyber System that could be used to gain unauthorized access or pose a security threat to the BES Cyber System. BES Cyber System Information does not include individual pieces of information that by themselves do not pose a threat or could not be used to allow unauthorized access to BES Cyber Systems, such as, but not limited to, device names, individual IP addresses without context, ESP names, or policy statements. Examples of BES Cyber System Information may include, but are not limited to, security procedures or security information about BES Cyber Systems, Physical Access Control Systems, and Electronic Access Control or Monitoring Systems that is not publicly available and could be used to allow unauthorized access or unauthorized distribution; collections of network addresses; and network topology of the BES Cyber System.

designate the summary of the contents of the document as confidential per the procedures outlined in this Protective Order. Any challenges to such designations would be heard by the Commission and ruled upon without any loss of legal or procedural rights to any party.

13. Although some information now designated as CEII or BCSI has been shared with other entities in the past, including potential intervenors and Staff, that was done during a period when the industry was not as concerned about threats to the security of the BES as is the case in the current global climate. As such, any CEII or BCSI information that was historically shared with others should be barred from presentation in any form in this docket because any historic documents may be similar or the same as the current version of such information and the risks to the BES would still apply.

14. It is important to note that this is not an attempt to limit transparency with our neighboring utilities or other intervening parties. Evergy shares sensitive information with neighboring system owners/operators as needed for joint planning. The information designated as CEII or BCSI in this docket would be Evergy's internal plans that, by their nature, are not developed in conjunction with neighbors or customers and cannot be shared per federal regulation and developing policy. Allowing only Staff to view the information meets the intent of current BES risk management by limiting the number of entities who can possibly have this information in any manner. It is a matter of custody, not transparency. The intent of this docket is to allow Staff to conduct an investigation, and while Evergy recognizes that other parties may have an interest in the subject matter, allowing Staff access to the CEII/BCSI accomplishes the goal of the docket -- to allow

Staff to investigate the cold weather event – while also maintaining the protection of risk-sensitive information.

WHEREFORE, Evergy requests that the Commission amend the Protective Order to provide that:

- a. Definitions of CEII and BCSI be added to the Protective Order as additional designations that allow for limited viewing by only Staff and the Commission;
- b. any CEII or BCSI produced in this docket shall be made available only to Commission Staff;
- c. the contents of CEII and BCSI or any other form of information that copies or discloses such materials shall not be disclosed to anyone, including other intervenors in the docket, and shall be used only in connection with this specific proceeding;
- d. when Staff views CEII and BCSI information in this docket, it will do so as view-only through Evergy's encrypted document review system;
- e. if Staff needs to reference its review of CEII or BCSI in its report and recommendation filed in the docket, it will reference the material by name only in the written filing and provide any necessary description of the details of the CEII or BCSI verbally to the Commission in a closed session;
- f. Staff will not include any details regarding CEII or BCSI in writing in any filing made in the docket; and

g. any information that Evergy or its predecessors historically shared with others shall be barred from presentation in any form in this docket by any party;

and for such other and further relief as may be appropriate. A copy of the proposed amended Protective Order is attached hereto as **Exhibit A**.

Respectfully submitted,
EVERGY KANSAS CENTRAL, INC.,
EVERGY KANSAS SOUTH, INC. and
EVERGY METRO, INC.



Cathryn J. Dinges, #20848
Corporate Counsel
818 South Kansas Avenue
Topeka, Kansas 66612
(785) 575-1986; Telephone
(785) 575-8136; Fax

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

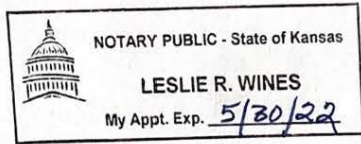
Cathryn J. Dinges, being duly sworn upon his oath deposes and says that she is one of the attorneys for Evergy Kansas Central, Inc., and Evergy Metro, Inc.; that she is familiar with the foregoing **Motion of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. for Amendment of Protective Order**; and that the statements therein are true and correct to the best of her knowledge and belief.

Cathryn Dinges
Cathryn J. Dinges

SUBSCRIBED AND SWORN to before me this 1st day of April, 2021.

Leslie R. Wines
Notary Public

My Appointment Expires:
May 30, 2022



CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2021, the foregoing **Motion** was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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

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

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
D.NICKEL@CURB.KANSAS.GOV

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

CATHRYN J. DINGES, CORPORATE
COUNSEL
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Cathy.Dinges@evergy.com

LARRY WILKUS, DIRECTOR, RETAIL
RATES
EVERGY KANSAS CENTRAL, INC
FLOOR #10
818 S KANSAS AVE

TOPEKA, KS 66601-0889
larry.wilkus@evergy.com

ROBERT J. HACK, LEAD REGULATORY
COUNSEL
EVERGY METRO, INC D/B/A EVERGY
KANSAS METRO
One Kansas City Place
1200 Main St., 19th Floor
Kansas City, MO 64105
Rob.Hack@evergy.com

COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.bailey@kcc.ks.gov

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
b.fedotin@kcc.ks.gov

LAUREN LAUSHMAN, OFFICE OF
GENERAL COUNSEL ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
l.laushman@kcc.ks.gov

TERRI PEMBERTON, CHIEF LITIGATION
COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.pemberton@KCC.KS.GOV

/s/ Cathryn J. Dinges

Cathryn J. Dinges

4. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.¹ The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will be kept from disclosure after review by the Commission.²

4.5. A party may designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c) or 10 C.F.R §§1004.13(c)(4). A party may designate as BCSI any material that meets the definition represented in the NERC Glossary of Terms and particularized below. If a party designates material as CEII or BCSI, it will provide to the party requesting the material a summary of the contents of the document and an explanation of why the material qualifies as CEII or BCSI. If necessary, the party may designate the summary of the contents of the document as confidential per the procedures outlined in this Protective Order.

5.6. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Commission Staff (Staff), except that Staff is not required to sign nondisclosure certificates or view voluminous materials on site and is not required to return or destroy confidential information upon request at the conclusion of a proceeding. Outside experts and consultants used by Staff shall have access to information and voluminous materials on the same basis as Staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign nondisclosure

¹ K.A.R. 82-1-221a(a)(5).

² See K.S.A. 66-1220a.

certificates as contained in Appendix A. Parties who do not sign a nondisclosure certificate will not be granted access to confidential information filed in this docket.

6.7. The following definitions shall apply:

Bulk Electric System Cyber Security Information (BCSI) (from the enforceable NERC Glossary of Terms): Information about the BES Cyber System that could be used to gain unauthorized access or pose a security threat to the BES Cyber System. BES Cyber System Information does not include individual pieces of information that by themselves do not pose a threat or could not be used to allow unauthorized access to BES Cyber Systems, such as, but not limited to, device names, individual IP addresses without context, ESP names, or policy statements. Examples of BES Cyber System Information may include, but are not limited to, security procedures or security information about BES Cyber Systems, Physical Access Control Systems, and Electronic Access Control or Monitoring Systems that is not publicly available and could be used to allow unauthorized access or unauthorized distribution; collections of network addresses; and network topology of the BES Cyber System.

Information: “Information” refers to all documents, data, including electronic data, studies and other materials furnished pursuant to requests for information or other modes of discovery, or any other information or documents that are otherwise a part of the Commission record.

Critical Energy/Electric Infrastructure Information (CEII): is as defined at 18 C.F.R. §§ 388.113(a), (c) or 10 C.F.R §§1004.13(c)(4).

Confidential Information: “Confidential information” refers to 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. “Confidential information” may include, but is not limited to: (1) material or

documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

7.8. A party designating information as confidential shall make the confidential information available to parties seeking access or discovery under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. Disclosure of confidential information shall be made to attorneys of record and to authorized representatives, including outside experts, who are consulting with parties or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking access to confidential information shall first read this Protective Order and sign a nondisclosure certificate as provided in Appendix A. In cases in which a utility's rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign nondisclosure certificates in order to receive copies of documents containing the utility's own confidential information. The nondisclosure certificate shall contain the signatory's name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The nondisclosure certificate shall be filed in the docket. The party claiming confidentiality shall provide legible copies of the confidential information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the confidential information and make it available to its authorized representatives who have signed and filed nondisclosure certificates. If a response to a discovery

request requires the duplication of voluminous material, or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be viewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at the expense of the requesting party. Voluminous material shall include documents or materials comprised of 200 pages or more.

8.9. A party may designate pre-filed testimony and exhibits as confidential pursuant to this Protective Order. The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in pre-filed or oral testimony provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

9.10. If information to be disclosed in response to a data request contains confidential information designated by another party in this docket, the furnishing party shall maintain the confidential status by marking the information as confidential and only provide response to parties that have signed nondisclosure certificates. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

10.11. When pleadings, pre-filed testimony, or exhibits include confidential information, the parties are to follow these procedures:

a. File seven³ copies of the complete document, including all confidential information. The cover is to clearly state “CONFIDENTIAL VERSION.” Confidential pages shall be stamped “CONFIDENTIAL,” and the specific confidential information shall be identified by being underlined.

b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state “PUBLIC VERSION.”

c. File one copy of the pages that contain confidential information in a separate envelope marked “CONFIDENTIAL.” This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document that is stamped “CONFIDENTIAL.”

11.12. Confidential testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept under seal and copies provided only to persons entitled to access to confidential information. Neither the parties nor their attorneys shall disclose or

³ Only one copy must be submitted when a party utilizes electronic filing.

provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

~~12.13.~~ 13. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff should also be prepared to challenge a confidential designation when Staff believes the information does not meet the definition of confidential information. When a dispute concerning confidentiality is brought before the Commission, the Commission will review the matter to determine (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

14. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its

destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

15. Any CEII or BCSI produced in this docket shall be made available only to Commission Staff. The contents of CEII and BCSI or any other form of information that copies or discloses such materials shall not be disclosed to anyone, including other intervenors in the docket, and shall be used only in connection with this specific proceeding.

13.16. When Staff views CEII and BCSI information in this docket, it will do so as view-only through Evergy's encrypted document review system. If Staff needs to reference its review of CEII or BCSI in its report and recommendation filed in the docket, it will reference the material by name only in the written filing and provide any necessary description of the details of the CEII or BCSI verbally to the Commission in a closed session. Staff will not include any details regarding CEII or BCSI in writing in any filing made in the docket.

II. Discovery Order

14.17. The Commission finds that formalizing discovery procedures and clarifying the obligations of the parties will help ensure a full and efficient investigation of the issues in this docket. This Discovery Order will govern the conduct of discovery until further order of the Commission. Parties may request modified or additional discovery procedures or may request that the Commission schedule a discovery pre-hearing conference.

15.18. General procedures. Discovery in Commission proceedings is limited to matters that are "clearly relevant."⁴ After a docket is opened, any party may serve upon any other party written discovery or data requests. These data requests shall identify with reasonable particularity the information or documents sought. Data requests must be designed to elicit material facts within the knowledge of the parties. Data requests that require conclusions of law

⁴ K.A.R. 82-1-234a(a).

or answers to hypothetical questions are generally not permitted. Cross-examination through the use of data requests is not appropriate. Copies of data requests shall be served upon all other parties to the proceeding, unless a party requests otherwise. Data requests and responses may be served by facsimile transmittal or electronic mail if agreed to by the parties. Data requests that are sent by a party after 5:00 p.m. shall be deemed to have been received the following business day.⁵

16.19. Data Request Responses. Responses to Staff data requests are due within seven days.⁶ Responses to all other data requests are due within 10 days. In computing the period of time for responding, the day on which the data request was issued is not counted. Furthermore, for purposes of calculating all discovery-related deadlines, intermediate Saturdays, Sundays, and legal holidays shall be excluded.⁷ Parties may agree to extensions or reductions of time in which to respond or object to a data request. Responses to data requests shall be verified and shall identify the person(s) who actually prepared the response and can answer additional questions relating to the response. Each data request shall be answered separately and preceded by the request to which the answer pertains. Responses shall be clearly identified and, if consisting of several pages, shall be labeled and organized in a manner that makes review of the pages convenient. Parties are under a continuing duty to supplement their discovery responses upon learning that the information disclosed is incomplete or incorrect in any material respect. If a response to a data request requires the duplication of voluminous material or of material that is not easily copied because of its binding or size, a party may require that any party other than

⁵ See K.A.R. 82-1-205 (providing Commission Office Hours).

⁶ Per K.A.R. 82-1-217, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.”

⁷ This constitutes an explicit limited waiver of K.A.R. 82-1-217(a). This waiver is consistent with the Commission’s precedential *Order Granting Petition for Reconsideration of Discovery Order*, issued November 10, 2016, in Docket No. 17-KPPE-092-COM.

Commission Staff review the voluminous material on its own premises. If duplication of voluminous material can be accomplished without undue burden, the voluminous material may be copied at the expense of the requesting party. Voluminous material is defined as documents comprised of 200 pages or more.

~~17.20.~~ Objections to Data Requests. If the parties have agreed to electronic service, and a party objects to answering a particular data request, the party shall object in writing to the party which issued the data request within five days of the data request.⁸ If the parties have not agreed to electronic service, and a party objects to answering a particular data request, the objecting party shall object in writing to the issuing party within five days after service, plus three days if service is by mail. The written objection shall specifically explain all grounds relied upon for objecting to each data request. Any objections not provided at this time will be considered to be waived. If an objection pertains only to part of a question, that part shall be clearly identified and the responding party shall provide any non-objectionable information covered by the remainder of the data request. Parties shall negotiate in good faith to resolve discovery disputes. If resolution is not possible, the party seeking discovery may file a motion to compel with the Commission. Motions to compel must have the data request and response at issue attached. Motions to compel are required to be served by hand delivery, electronic mail, facsimile, or next-day delivery service. Responses to motions to compel are to be filed within three days after the motion is received.⁹ The Commission may act immediately on motions to compel if necessitated by time constraints or the procedural schedule in the docket.

~~18.21.~~ Limitations on Discovery. The Commission may limit discovery to protect a party against unreasonable, cumulative, or duplicative discovery requests; to prevent undue delay in

⁸ As noted above, intermediate Saturdays, Sundays, and legal holidays shall be excluded when calculating discovery-related deadlines, which constitutes a limited waiver of K.A.R. 82-1-217(a).

⁹ See fn. 8 above.

the proceeding; to avoid unnecessary burden, expense, or harassment; or to otherwise maintain the orderly and efficient progress of the proceeding. Upon finding that a party has abused the discovery process, the Commission may deny the right to continue discovery.

19.22. Sanctions. A motion for sanctions for discovery violations may be filed at any time during the proceeding or may be initiated by the Commission. A motion is to contain sufficient factual allegations to detail the violation and must specify the relief requested. Motions for sanctions are required to be served by hand delivery, electronic mail, facsimile, or next-day delivery service. Responses to motions for sanctions are to be filed within 10 days.¹⁰

a. The Commission will consider any relevant factors when reviewing a motion for sanctions, including whether discovery has been conducted in bad faith or for an improper purpose such as causing unnecessary delay or needless increase in the cost of the proceeding; whether the discovery process has been abused in seeking or resisting discovery; and whether parties have failed to obey Commission Orders.

b. Sanctions imposed by the Commission may include limiting or disallowing further discovery; holding that designated facts be deemed admitted for purposes of the proceeding; refusing to allow a party to support or oppose a claim or defense or prohibiting the party from introducing designated matters in evidence; disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests; striking pleadings or testimony; staying further proceedings until an order is obeyed; disallowing a party's right to participate in the proceeding; dismissing the application or filing with or without prejudice; requiring the offending party to pay the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and imposing any other sanction or remedy available to the Commission by law.

¹⁰ See fn. 8 above.

APPENDIX A

Docket No. 21-[insert docket No]
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS
NONDISCLOSURE CERTIFICATE

I, _____, have been presented a copy of the Protective Order issued in Docket No. 21-[insert docket no] on the ____ day of _____, 2021.

I have requested review of confidential information produced in the above-mentioned docket on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 2021.

Printed name and title

Signature

Party/Employer

Address (City, State and ZIP)

Telephone

Email