**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**

**Joint Motion to Approve
Nonunanimous Settlement Agreement**

Kansas Gas Service, a Division of ONE Gas, Inc. ("KGS") the Staff of the State Corporation Commission of the State of Kansas ("Staff"), the Citizens' Utility Ratepayer Board ("CURB"), BlueMark Energy, LLC ("BlueMark"), WoodRiver Energy, LLC ("WoodRiver"), Constellation NewEnergy-Gas Division, LLC ("Constellation"), and Atmos Energy Corporation ("Atmos") (collectively "Joint Movants"), request that the State Corporation Commission of the State of Kansas ("Commission") issue an order approving the Joint Nonunanimous Settlement Agreement ("Settlement Agreement" or "Agreement"), which was agreed to by the Joint Movants and submitted with this Motion.[1] In support of its Motion, Joint Movants state the following:

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 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

[1] Freedom Pipeline, LLC ("Freedom") is not included among the Joint Movants but does not oppose these filings.

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 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."[2] 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]

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.[4]

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[2] *Emergency Order*, ¶ 3.
[3] *Id*. at ¶ 4.
[4] *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*, ¶7 (Docket No. 21-GIMX-303-MIS issued on March 9, 2021).

4. CURB, BlueMark, WoodRiver, Bonavia Properties, LLC, Constellation, Atmos, Freedom, the Kansas Attorney General's Office, TempleLive Wichita, Catholic Diocese of Wichita, Natural Gas Transportation Customer Coalition, and Symmetry Energy Solutions, LLC, filed for, and were granted, intervention in the docket (inclusive of KGS and Staff hereinafter "Parties").

5. 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.

6. In the absence of this waiver, Section 11.06 of the Tariff, when triggered, 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 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 authorized usage (plus any applicable tolerance) would be charged the Southern Star Gas Daily Index price multiplied by the unauthorized natural gas volumes.

7. On June 4, 2021, CURB filed its Objection to Motion for Limited Waiver, explaining KGS did not provide an evidentiary basis showing the actual additional cost of gas it procured for transportation customers who did not comply with either the OFO and/or the POC. On June 9, 2021,

Bonavia filed its Objection and Response to KGS's Motion for Limited Waiver, largely agreeing with CURB's objection. On June 7, 2021, BlueMark and WoodRiver filed their Answer to Motion for Limited Waiver, both requesting to eliminate or reduce the KGS penalties for Winter Storm Uri beyond what was requested by KGS, or in the alternative, approve KGS's Motion for a Limited Waiver. KGS filed responses to the objections filed by each of these Parties, and the Commission addressed the Parties' concerns in an *Order Denying Motion to Amend Protective Order; Order Directing the Parties to Submit a Proposed Procedural Schedule* issued on July 20, 2021. Essentially, the Commission adopted Staff's recommendation to direct the Parties to collaborate on a procedural schedule to address KGS's waiver request and directed the Parties to jointly submit a proposed procedural schedule by August 2, 2021, to address KGS's waiver request. Subsequent to the Commission's *Order Denying Motion to Amend Protective Order; Order Directing the Parties To Submit A Proposed Procedural Schedule*, the Commission issued an *Order Adopting Proposed Interim Procedural Schedule* on August 12, 2021 and the on September 2, 2021 *Order Granting KGS' Motion for Proposed Interim Procedural Schedule on KGS' Motion for Waiver.*

8. Pursuant to both the Commission's August 12 and September 2 orders, the Parties to this proceeding met and conducted settlement discussions on August 18, September 23 and 24.

9. As a result of the settlement discussions, Joint Movants reached an agreement on all issues involved in the KGS Motion for Waiver, which have been reduced to writing, attached to this Joint Motion as **Attachment A**, and incorporated herein by reference. This Agreement provides for approval of the penalty multiplier waiver, as well as a negotiated gas cost penalty ("Negotiated Gas Cost Penalty"), which represents only the cost of gas procured by KGS, on a customer specific basis. All other issues relating to Staff's investigation of Winter Storm Uri, prospective potential tariff revisions, and KGS' financial plan will be discussed during subsequent stages of this proceeding.

10. Joint Movants recognize that the law generally favors the good faith settlement of disputed issues.[5]

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

12. Joint Movants represent that the Agreement satisfies the five factors that the Commission considers when reviewing a proposed settlement agreement. Those five factors are:

a. There was an opportunity for the opposing party to be heard regarding their opposition to the Settlement Agreement;

b. The Settlement Agreement is supported by substantial competent evidence;

c. The Settlement Agreement conforms with applicable law;

d. The Settlement Agreement results in a just, reasonable, and necessary outcome; [6] and

e. The results of the Settlement Agreement are in the public interest.[7]

[5] *Krants v. University of Kansas*, 271 Kan. 234, 241–42 (2001).

[6] The five factors are derived from Docket No. 08-AMTG-280-RTS, *Order Approving Contested Settlement Agreement*, ¶ 11 (May 12, 2012). That Order concerned rates. To properly tailor those factors to a Tariff penalty/charge case, the Joint Movants have substituted the "just and reasonable" standard pursuant to K.S.A. 66-1,204 under factor four with the just, reasonable, and necessary standard pursuant to K.S.A. 66-1,206. This approach is consistent with the Commission's inherent powers as set forth in K.S.A. 66-1,201 and 66-1,207.

[7] Docket No. 08-AMTG-280-RTS, *Order Approving Contested Settlement Agreement*, ¶ 11 (May 12, 2012).

II. ARGUMENT

A. <u>There Was an Opportunity for the Opposing Parties to Be Heard Regarding their Opposition to the Settlement Agreement.</u>

13. There was ample opportunity for extensive vetting of all issues in this matter through data requests and information sharing. KGS responded to more than 100 data requests from the Parties in the case.

14. Representatives from all Parties participated in technical and settlement conferences in this docket on August 18, September 23 and September 24, 2021. During these settlement conferences, all Parties were afforded an opportunity to raise issues, ask questions, exchange information, and engage in negotiations. Many significant concessions and compromises were made by all participants on numerous difficult issues throughout these negotiations.

15. On September 24, 2021, a settlement of all issues related to the Motion for Waiver was reached by the Joint Movants resulting in the Agreement included as Attachment A, which is being filed with this Motion.

16. All Parties have had an opportunity to be heard with respect to their support or opposition to the terms of the Agreement. In addition, in accordance with the Procedural Schedule established in this proceeding, all Parties will be afforded an opportunity to provide testimony in support or in opposition to this Agreement on October 22, 2021, to participate in a hearing on November 17 and 18, 2021, and to file a post hearing brief on November 30, 2021.

B. <u>The Agreement Is Supported by Substantial Competent Evidence.</u>

17. KGS's May 28 Motion for Waiver provided a detailed explanation of the events leading up to Winter Storm Uri and the resulting implications of the KGS Tariff. Since the issuance of the Commission's March 9 Protective Order, KGS has responded to more than 100 data requests

involving multiple subparts and follow up requests. In addition, throughout the settlement process, various KGS representatives engaged in presentations and discussions involving KGS's distribution system, the natural gas purchasing practices of the Company, and the resulting cost implications resulting from Winter Storm Uri.

18. Moreover, the Joint Movants to this docket plan to file testimony in support of the Settlement Agreement on October 22, 2021. As will be explained in testimonial evidence to be submitted on October 22, 2021, which will be subject to a Commission Hearing on November 17 and 18, 2021, this Agreement is supported by substantial competent evidence.

19. The evidence will show that Winter Storm Uri wrought severe and unprecedented weather conditions across the United States. The storm imposed substantial hardship on the lives of millions of Americans, causing extensive blackouts and myriad safety, health, and infrastructure challenges. The destructive effects of the storm resulted in major disruptions across all sectors of the natural gas industry, including communications outages, energy outages, and natural gas supply shortages, all of which acted together to cause widespread chaos and unpredictability across multiple interstate pipelines. These obstacles made it extremely challenging for utilities, marketers and Individually Balanced Transportation Customers alike to accurately predict natural gas supply, demand, and transportation needs, not to mention to secure access to the needed natural gas supplies. At the same time, the economic principles of supply and demand caused natural gas prices to skyrocket, adding another layer of burden on interstate pipelines, utilities, marketers, and Individually Balanced Transportation Customers.

20. Under the Commission-approved cost of gas formula contained in the KGS Tariff (*e.g.*, multiplying the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipelines (Oklahoma) by the unauthorized MMBtu level), KGS incurred $117,224,479 to maintain

the operational integrity of the system when marketer and/or Individually Balanced Transportation Customer gas use during Winter Storm Uri exceeded their respective authorized usage. Of critical importance is the fact that Section 11.06 of the Tariff also imposes additional penalties, beyond the cost of gas, for transportation customers whose usage of gas exceeds its confirmed nominations during OFO and POC conditions. The purpose of this provision is to incent behavior on the part of the marketers and Individually Balanced Transportation Customers that allows KGS to maintain the integrity of its system. Stated another way, during normal winter pricing conditions, the penalty amount (*e.g.*, multiplier effect) that is over and above the actual cost of gas is designed to ensure that marketers and Individually Balanced Transportation Customers provide sufficient gas to KGS for balancing purposes.

21. KGS's decision to file a Motion to waive both the OFO multiplier and POC multiplier was rooted in the recognition that under the operation of the Tariff penalties provisions, the $117,224,479 in penalties was subject to being exponentially increased by a factor of between 2.5 times and 10 times that amount. Moreover, in discussions with Staff and CURB, two additional issues became clear. First, KGS's sales customers needed to be insulated from the costs incurred by KGS to provide natural gas that was sufficient to cover the marketer and Individually Balanced Transportation Customers supply shortages during Winter Storm Uri. And second, the exorbitant financial obligations imposed on marketers and Individually Balanced Transportation Customers under the Tariff application of the OFO and POC multipliers presented the serious risk of adversely impacting both the viability of some of these entities and, ultimately, the Kansas economy.

22. With these considerations in mind, during the technical and settlement discussions it was determined that, rather than relying exclusively on the Tariff and the elimination of the OFO multiplier and POC multiplier, alternative methods for calculating cost responsibility surrounding

this extraordinary event should be explored. The objective of these methodologies was to, as accurately as possible, allow KGS to recover the gas costs KGS incurred on behalf of marketers and Individually Balanced Transportation Customer during Winter Storm Uri. Based on these negotiations, the agreed to Negotiated Gas Cost Penalty amounts contained in the Settlement reflect: 1) the elimination of the OFO multiplier and the POC multiplier; 2) a deviation from the Tariff imposed use of the Southern Star Gas Daily Index price for the calculation of gas costs; and 3) the use of a system-wide average gas cost for calculating cost responsibility of the marketers and Individually Balanced Transportation Customers that is designed to more closely align with the actual costs the Company incurred to procure such natural gas supplies. The Negotiated Gas Cost Penalty amounts were negotiated as a means to provide some recognition of the extremely volatile market activity that occurred during Winter Storm Uri and the resulting events that were beyond the control of Parties in this proceeding.

23. For the aforementioned reasons, the Negotiated Gas Cost Penalty amounts listed in the confidential Exhibit A, which more closely reflect the actual cost incurred for marketers and Individually Balanced Transportation Customers gas usage during Winter Storm Uri, is a fair resolution that produces a settlement outcome that is just, reasonable, and necessary.

C. The Agreement Conforms with Applicable Law.

24. Kansas law recognizes a strong policy favoring and encouraging settlements.[8] The Agreement was fully and fairly negotiated and represents a reasonable compromise based on all Parties' positions and will further the public interest.[9]

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[8] *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

[9] The standards under which the Commission conducts a public interest analysis differ depending on the type of issue before it. For example, on certificates for public convenience, the Commission analyzes a series of factors to determine whether a certificate should be granted. See, *In the Matter*

25. Kan. Stat. Ann. § 66-1,207 provides that all grants of power, authority and jurisdiction made to the Commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the Commission. Under Kansas statutes the Commission has ample authority to set the charges whereby KGS will be able to recover the extraordinary gas costs incurred for the gas usage of marketers and Individually Based Transportation Customers during Winter Storm Uri.

26. Moreover, under Kan. Stat. Ann. § 66-115, "all orders, regulations, practices, services, rates, fares, charges, classifications, tolls, and joint rates fixed by the commission […] shall be *prima facie* reasonable unless, or until, changed or modified by the commission or in pursuance of proceedings instituted in court as provided in this act." The Commission has already approved the Tariff that is applicable in this matter; therefore, the higher penalty charges that result from the operation of the Tariff are *prima facie* reasonable. However, for purposes of settlement, and in recognition of the extraordinary conditions existing during the relevant period, Joint Movants agreed to remove the OFO and POC multipliers (which would otherwise exact a penalty significantly in excess of the Negotiated Gas Cost Penalty agreed to by the Joint Movants) and to use a Negotiated Gas Cost Penalty that results in the amounts to be recovered from the marketers and Individually

of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas, Docket No. 11-GBEE-624-COC, Order, issued December 7, 2011. In matters involving mergers and acquisition, the Commission has set forth a prescribed list of factors it analyzes in determining whether the merger or acquisition will promote the public interest. *See*, *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated.* Docket No. 16-KCPE-593-ACQ, Order on Merger Standards, issued Aug. 9, 2016).

Balanced Transportation Customers under this Agreement that more closely aligns with the actual costs incurred in procuring natural gas supplies for these transportation customers.

27. In addition, the settlement negotiations (and the discovery process) in this proceeding were thorough and comprehensive, and afforded all interested Parties an opportunity to evaluate relevant usage and cost information and to negotiate to the satisfaction of each Joint Movant a balanced compromise of competing interests. This was done, in part, by agreeing to remove the OFO and POC multipliers and to utilize an agreed upon methodology for determining the actual cost of gas, even though the Tariff otherwise required it.

D. The Settlement Results in a Just, Reasonable, and Necessary Outcome.

28. Here, the Joint Movants are not dealing with rates but rather with charges that result from a Commission-approved Tariff provision dealing with penalties. None of the Joint Movants dispute the legality of the Tariff. Rather, all recognize that due to the confluence of unique events that caused the commodity price of natural gas to skyrocket, there is a need to balance the extreme consequences associated with a strict application of the Tariff penalty calculation with the need to ensure that the parties that caused KGS to incur the natural gas costs properly bear such cost responsibility. Clearly, if no penalty provision is triggered, KGS's sales customers, including residential customers, will bear the costs associated with KGS's procurement of gas that was ultimately consumed by Transportation Customers as a whole. Such a result is inequitable. Conversely, applying the Tariff directed OFO multiplier and the POC multiplier to the Southern Star Gas Index, which was exceptionally high during Winter Storm Uri, would impose extreme financial burdens in the form of penalties on marketers and Individually Balanced Transportation

Customers.[10] As such, Joint Movants agreed to a Negotiated Gas Cost Penalty that excludes the Tariff's multiplier and imputes the KGS systemwide weighted average cost of gas on a daily basis (including carrying charges) as the appropriate natural gas costs incurred by KGS to serve the transportation customers. This approach, which properly balances and apportions KGS's gas costs between its sales customers and the transportation customers as a group, results in a just, reasonable, and necessary outcome that is consistent with Kansas law.[11]

E. The Agreement Is in the Public Interest.

29. Each Joint Movant has a duty to protect the interest of the party it represents. KGS has a duty to its customers, employees and shareholders. The Staff and the Commission are in the unique position of being required to weigh and balance the interests of the company, the customers, and the public generally. CURB represents the interests of residential and small commercial customers. Each Joint Movant carefully considered the issues before the Commission and used their best judgment and knowledge of Commission precedent to determine where it might be successful and where compromise was warranted and appropriate.

30. For all the reasons previously articulated, the Agreement strikes a reasonable balance that protects all Kansas consumers because it: 1) allows the Company to collect the costs it incurred on behalf of transportation customers, 2) insulates sales customers from otherwise bearing the gas costs attributable to transportation customers, and 3) protects marketers and Individually Balanced Transportation Customers from the imposition of significant penalties by

[10] As noted previously, absent KGS' Motion to waive the multiplier portions of its tariff, the calculated $117,244,479 amount applicable to marketers and Individually Balanced Transportation customers would in fact be 2.5 to 10 times greater than this amount.

[11] *See* K.S.A. 66-1,206(a), 66-1,201 and 66-1,207.

recognizing the confluence of extraordinary events that adversely impacted their ability to obtain sufficient natural gas supplies during Winter Storm Uri.

III. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Joint Movants request this Joint Motion be granted and that the Agreement attached hereto be approved.

Respectfully submitted,

Kelly A. Daly
SNELL & WILMER
Washington DC 20006
Phone: 202 725-0605
Email: kdaly@swlaw.com

Charlene B. Wright

Charlene B. Wright (KS Bar No. 22028)
Managing Member
Wright & Associates PLLC
717 Texas Street, Suite 1200
Houston, Texas 77002
Phone: 816-877-6334
Email: cwright@wrightfirm.law

Attorneys for Kansas Gas Service, a Division of ONE Gas, Inc.

VERIFICATION

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

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

Kelly A Daly
____
Affiant

SUBSCRIBED AND SWORN to before me on ___________.

____
Notary public

My Appointment Expires:

____

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2021, a true and correct copy of the above and foregoing was sent electronically to the following:

ALEX GOLDBERG,
Attorney at Law
ALEX GOLDBERG
909 Bannock Street, Ste 1524
Denver, CO 80204
alexantongoldberg@gmail.com

JAMES G. FLAHERTY,
ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S Hickory
PO Box 17
Ottawa, KS 66067
jflaherty@andersonbyrd.com

SHELLY M BASS,
SENIOR ATTORNEY
ATMOS ENERGY
CORPORATION
5430 LBJ Freeway
1800 Three Lincoln Centre
Dallas, TX 75240
shelly.bass@atmosenergy.com

KEVIN C FRANK,
SENIOR ATTORNEY
ATMOS ENERGY
CORPORATION
5430 LBJ Freeway
1800 Three Lincoln Centre
Dallas, TX 75240
kevin.frank@atmosenergy.com

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

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

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

LARRY WEBER
BONAVIA PROPERTIES,
LLC
Garvey Center
250 W. Douglas, Ste 100
Wichita, KS 67202
larry@garveycenter.com

C. EDWARD PETERSON
C. EDWARD PETERSON,
Attorney At Law
5522 Aberdeen
Fairway, KS 66205
ed.peterson2010@gmail.com

BRYAN R. COULTER
CATHOLIC DIOCESE OF
WICHITA
424 N. Broadway
Wichita, KS 67202
bryan.coulter@CatholicDioceseOfWichita.org

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

JOSHUA HARDEN
COLLINS & JONES, P.C.
1010 W. Foxwood Drive
Raymore, MO 64083
jharden@collinsjones.com

KERRY MORGAN
COLLINS & JONES, P.C.
1010 W. Foxwood Drive
Raymore, MO 64083
kmorgan@collinsjones.com

DARCY FABRIZIUS
CONSTELLATION
NEWENERGY-
GAS DIVISON, LLC
1001 Louisiana Street,
Ste 2300
Houston, TX 77002
darcy.fabrizius@constellation.com

LYNDA FOHN
CONSTELLATION
NEWENERGY-
GAS DIVISON, LLC
1001 Louisiana St., Ste 2300
HOUSTON, TX 77002
lynda.fohn@constellation.com

JEREMY L. GRABER
FOULSTON SIEFKIN LLP
822 S Kansas Avenue, Ste 200
Topeka, KS 66612-1203
JGRABER@FOULSTON.COM

JACOB G HOLLY,
ATTORNEY
FOULSTON SIEFKIN LLP
822 S Kansas Avenue, Ste 200
Topeka, KS 66612-1203
jholly@foulston.com

C. EDWARD WATSON,
ATTORNEY
FOULSTON SIEFKIN LLP
1551 N Waterfront Pkwy,
Ste 100
Wichita, KS 67206-4466
cewatson@foulston.com

MONTGOMERY ESCUE,
CONSULTANT
FREEDOM PIPELINE, LLC
PO Box 622377
Oviedo, FL 63762
montgomery@escue.com

KIRK HEGER
FREEDOM PIPELINE, LLC
1901 University Drive
Lawrence, KS 66044
kirkheger@gmail.com

AMY L. BAIRD
JACKSON WALKER L.L.P.
1401 McKinney St., Ste 1900
Houston, TX 77010
abaird@jw.com

JESSE LOTAY
JACKSON WALKER L.L.P.
1401 McKinney St., Ste 1900
Houston, TX 77010
jlotay@jw.com

MELANIE S. JACK,
Assistant Attorney General
KANSAS ATTORNEY
GENERAL
Consumer Protection Division
120 SW 10th Ave., 2nd Flr.
Topeka, KS 66612
Melanie.Jack@ag.ks.gov

KIMBERLEY DAVENPORT
MEGRAIL,
Assistant Attorney General
KANSAS ATTORNEY
GENERAL
Consumer Protection Division
120 SW 10th Ave., 2nd Flr.
Topeka, KS 66612
Kim.Davenport@ag.ks.gov

DEREK SCHMIDT,
Kansas Attorney General
KANSAS ATTORNEY
GENERAL
Consumer Protection Division
120 SW 10th Ave., 4th Flr.
Topeka, KS 66612
Derek.Schmidt@ag.ks.gov

BRIAN G. FEDOTIN,
GENERAL COUNSEL
KANSAS CORPORATION
COMMISSION
1500 SW Arrowhead Rd
Topeka, KS 66604
b.fedotin@kcc.ks.gov

CARLY MASENTHIN,
LITIGATION COUNSEL
KANSAS CORPORATION
COMMISSION
1500 SW Arrowhead Rd
Topeka, KS 66604
c.masenthin@kcc.ks.gov

TERRI PEMBERTON,
CHIEF LITIGATION
COUNSEL
KANSAS CORPORATION
COMMISSION
1500 SW Arrowhead Rd
Topeka, KS 66604
t.pemberton@KCC.KS.GOV

JANET BUCHANAN,
DIRECTOR- REGULATORY
AFFAIRS / OKE 13165
KANSAS GAS SERVICE, A
DIVISION OF ONE GAS,
INC.
7421 W 129th Street
Overland Park, KS 66213-
2713
janet.buchanan@onegas.com

GLENDA CAFER,
ATTORNEY
MORRIS LAING EVANS
BROCK & KENNEDY
800 SW Jackson, Ste 1310
Topeka, KS 66612-1216
GCAFER@MORRISLAING.C
OM

KYLER C. WINEINGER,
ATTORNEY
MORRIS LAING EVANS
BROCK & KENNEDY
800 SW Jackson, Ste 1310
Topeka, KS 66612-1216
kwineinger@morrislaing.com

FRANK A. CARO,
ATTORNEY
POLSINELLI PC
900 W 48th Place, Ste 900
Kansas City, MO 64112
fcaro@polsinelli.com

ANDREW O. SCHULTE,
ATTORNEY
POLSINELLI PC
900 W 48th Place, Ste 900
Kansas City, MO 64112
aschulte@polsinelli.com

RICHARD A. HOWELL,
Attorney at Law
RICHARD A. HOWELL
1401 McKinney Street,
Ste 1900
Houston, TX 77010
Rahowell@jw.com

RICHARD L. HANSON
RICHARD L. HANSON
16171 Road I
Liberal, KS 67901
rlhanson@wbsnet.org

LEE M. SMITHYMAN,
ATTORNEY
SMITHYMAN & ZAKOURA,
CHTD.
7421 West 129th Street
Overland Park, KS 66213-
2634
LEE@SMIZAK-LAW.COM

CONNOR A. THOMPSON
SMITHYMAN & ZAKOURA,
CHTD.
7421 West 129th Street
Overland Park, KS 66213-
2634
connor@smizak-law.com

JAMES P. ZAKOURA,
ATTORNEY
SMITHYMAN & ZAKOURA,
CHTD.
7421 West 129th Street
Overland Park, KS 66213-
2634
jim@smizak-law.com

KELLY A. DALY
SNELL & WILMER, LLP
One Arizona Center
1900 W. Van Buren, Suite
1900
Phoenix, AZ 85004
kdaly@swlaw.com

STACY WILLIAMS,
General Counsel
SYMMETRY ENERGY, LLC
1111 Louisiana St.
Houston, TX 77002
Stacy.williams@symmetryenergy.com

JASON TRENARY
TEMPLELIVE WICHITA LLC
5104 S. Pinnacle Hills Pkwy., Suite 1B
Rogers, AR 72758
jtrenary@beatycap.com

TIMOTHY E. MCKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N Rock Rd, Ste 300
Wichita, KS 67226
TEMCKEE@TWGFIRM.COM

DON KRATTENMAKER,
Vice President
WOODRIVER ENERGY, LLC
633 17th St., Ste. 1410
Denver, CO 80202
don.krattenmaker@woodriverenergy.com

CHARLENE BALLARO WRIGHT
WRIGHT LAW FIRM
717 Texas Street
Suite 1200
Houston, TX 77002
cwright@wrightfirm.law

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**

NONUNANIMOUS SETTLEMENT AGREEMENT

This Nonunanimous 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"), the Citizens' Utility Ratepayer Board ("CURB"), BlueMark Energy, LLC ("BlueMark"), WoodRiver Energy, LLC ("WoodRiver"), Constellation NewEnergy-Gas Division, LLC ("Constellation"), and Atmos Energy Corporation ("Atmos") (individually "Signatory" and collectively, "Signatories").[12] 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 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.

[12] Freedom Pipeline, LLC ("Freedom") is not a Signatory but does not oppose this Agreement.

2. In response to Winter Storm Uri, on February 15, 2021, the Kansas Corporation Commission ("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.[13]

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

[13] *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).

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, BlueMark, WoodRiver, Constellation, Atmos, Freedom, Bonavia Properties, LLC, Natural Gas Transportation Customer Coalition, the Kansas Attorney General's Office, TempleLive Wichita, Catholic Diocese of Wichita, and Symmetry Energy Solutions, LLC, filed for, and were granted, intervention in the docket (inclusive of KGS and Staff hereinafter "Parties").

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 executed and filed this Agreement with the

Commission. Because this Agreement is not agreed to by all Parties to this docket, this Agreement is considered a Nonunanimous settlement agreement under the Commission's regulations (K.A.R. 82-1-230a).

II. SETTLEMENT PROVISIONS

9. The Signatories agree that the Commission should issue an order approving all of the settlement provisions contained herein without modification.

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

11. During the OFO and POC issued in February 2021, all daily unauthorized usage by marketers and Individually Based 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 an agreed-to price to determine the specific marketer and Individually Balanced Transportation Customer financial obligation, inclusive of carrying charges and monthly cashouts, 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 $105,347,666, and the delta between this number and the Motion for Waiver directed $117,244,479 will be waived.

12. The agreed-to prices used to calculate the Negotiated Gas Cost Penalties represent the prices for natural gas that is more reflective of the actual cost of gas incurred by KGS. Specifically, when the volume of gas supplied by marketers and Individually Balanced Transportation Customers, as a whole, was not sufficient to meet the total transportation customers

usage during the OFO and POC periods, KGS used its weighted average cost of spot gas and/or Gas Daily Daily Callable purchases to calculate the penalties. This pricing reflects the fact that KGS was required to rely on the market and/or previously secured Gas Daily Daily Callable volumes to secure sufficient gas for the transportation customers. If the volume of gas supplied by marketers and Individually Balanced Transportation Customers, as a whole, exceeded the amount necessary to meet usage during the OFO and POC periods, the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipeline is used in calculating penalties. On such days, it is assumed that absent the excess gas being available, KGS would have had to purchase gas on the spot market. During Winter Storm Uri, it is highly likely that available gas on the spot market during these periods was priced consistent with the Gas Daily's Index for Southern Star Central Gas Pipeline.

13. 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.

14. 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.

15. The carrying charge approved in the Commission's Emergency Order will be applied to all amounts owed (Negotiated Gas Cost Penalties and cashouts) for the month of February 2021 until such time as the amount are paid in full.

16. Once KGS has collected from transportation customers $82,951,798 in Negotiated Gas Cost Penalties, KGS will credit an amount equal to the dollars KGS receives in excess of $82,951,798, 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.[14] The total amount that may be provided to marketers or Individually Balanced Transportation Customers is $22,395,868 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 12.

17. 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

[14] The $82,951,798 represents the total Negotiated Gas Cost Penalties of $105,347,666 less the value of the gas volumes ($22,395,868) that the marketers and Individually Balanced Transportation Customers were long during Winter Storm Uri.

paid by such marketers and Individually Balanced Transportation Customers.

18. 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 Agreement for so long as the Commission determines appropriate.

19. 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

20. 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

21. All Parties, including Staff, shall have the right to present testimony in support of (or in opposition to) this Agreement. Such testimony shall be filed formally in the docket on or before October 22, 2021 and presented by witnesses at a hearing on this Agreement on November 17 and 18, 2021. Such testimony shall be filed on or before October 22, 2021 and Parties shall have the right to post-hearing briefs on or before November 30, 2021, as required by the procedural schedule filed in this docket.

D. NEGOTIATED SETTLEMENT

22. This Agreement represents a negotiated settlement that, upon approval by the Commission, fully resolves all issues for Signatories 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.

23. 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.

24. 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.

25. 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 payments due under this Agreement.

E. Interdependent Provisions

26. 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.

27. 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.

28. 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.

29. 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

30. 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 this Stipulated

Settlement Agreement, effective as of the October 8, 2021, by subscribing their signatures below.

s/ *Terri J. Pemberton*
Terri J. Pemberton
Chief Litigation Counsel - KCC
Office of Litigation Counsel
(785) 271-3301
t.pemberton@kcc.ks.gov

Attorney for Kansas Corporation Commission

s/ *C. Edward Peterson*
C. Edward Peterson (#11129)
Attorney at Law
(816) 365-8724
ed.peterson2010@gmail.com

Attorney for Atmos Energy Corporation

s/ *Kerry Morgan*
Kerry Morgan (#27077)
Joshua Harden*
COLLINS & JONES, P.C.
kmorgan@collinsjones.com
jharden@collinsiones.com
(806) 318-9966

Attorneys for Intervenor Constellation New Energy-Gas Division, LLC

s/ *David W. Nickel*
David W. Nickel, Consumer Counsel #11170
Todd E. Love, Attorney #13445
Joseph R. Astrab, Attorney #26414
(785) 271-3200
d.nickel@curb.kansas.gov
t.love@curb.kansas. gov
j.astrab@curb.kansas.gov

Attorneys for Citizens' Utility Ratepayer Board

s/ *Jeff Austin*
Jeff Austin KS Sup Ct (# 13575)
AUSTIN LAW PA
jeff@austinlawpa.com
Alex Goldberg*
(918) 625-0047
alexantongoldberg@gmail.com

Attorneys for WoodRiver Energy LLC and BlueMark Energy, LLC

s/ *Charlene B. Wright*
Charlene B. Wright (#22028)
WRIGHT & ASSOCIATES PLLC
cwright@wrightfirm.law
Kelly A. Daly*
SNELL & WILMER
(202) 725-0605
kdaly@swlaw.com

Attorneys for Kansas Gas Service, a Division of ONE Gas, Inc.

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.*

EXHIBIT A

Confidential Exhibit A - Negotiated Gas Cost Penalties - Redacted

											Invoicing Data		
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**
[redacted]	$ 10,748,267	$ 795,730					$ 11,543,997	$ 168,872	$ 168,872	$ 11,375,125	$ 11,543,997	$ -	$ 11,543,997
[redacted]	$ 2,235,099	$ 165,472	$ 116,686	$ -	$ 57,054	$ -	$ 2,343,517	$ 14,115	$ -	$ 2,343,517	$ 2,283,885	$ -	$ 2,283,885
[redacted]	$ 4,266	$ 316			$ 990,010	$ 73,091	$ (1,058,519)	$ -	$ -	$ (1,058,519)	$ 4,582	$ 1,059,353	$ (1,054,771)
[redacted]	$ 1,764	$ 131			$ 84,891	$ 6,285	$ (89,281)	$ 298,895	$ 214,004	$ (303,285)	$ 1,895	$ 91,176	$ (89,281)
[redacted]	$ 183,503	$ 13,585			$ 166,466	$ 12,033	$ 18,589	$ 12,109	$ -	$ 18,589	$ 197,088	$ 172,688	$ 24,400
[redacted]	$ 25,017,930	$ 1,852,160	$ 2,582,110	$ 78,107			$ 26,870,090	$ 571,102	$ 571,102	$ 26,298,988	$ 24,287,981	$ -	$ 24,287,981
[redacted]	$ 4,133	$ 306			$ 70,846	$ 4,923	$ (71,330)	$ 200,771	$ 129,925	$ (201,256)	$ 4,439	$ 67,497	$ (63,058)
[redacted]	$ 325,767	$ 24,118	$ 4,042	$ 296	$ 10,839	$ 845	$ 338,200	$ 3,718	$ -	$ 338,200	$ 349,817	$ 12,509	$ 337,308
[redacted]	$ 1,839,841	$ 136,210			$ 720,361	$ 53,315	$ 1,202,375	$ 2,510,409	$ 1,790,049	$ (587,673)	$ 1,976,051	$ 773,323	$ 1,202,728
[redacted]	$ -	$ -					$ -	$ 2,993,189	$ 2,993,189	$ (2,993,189)	$ -	$ -	$ -
[redacted]	$ 282	$ 21			$ 10,413	$ -	$ (10,110)	$ 346,056	$ 335,643	$ (345,753)	$ 303	$ -	$ 303
[redacted]	$ 3,617	$ 268					$ 3,885	$ 45,870	$ 45,870	$ (41,985)	$ 3,885	$ -	$ 3,885
[redacted]	$ 464,068	$ 34,356			$ 439,127	$ 32,510	$ 26,788	$ 2,750,878	$ 2,311,751	$ (2,284,964)	$ 498,425	$ 471,637	$ 26,788
[redacted]	$ 360,647	$ 26,700	$ 207,433	$ -			$ 387,347	$ -	$ -	$ 387,347	$ 179,914	$ -	$ 179,914
[redacted]	$ 97,562	$ 7,223			$ 297,641	$ 6,023	$ (198,880)	$ 1,738,685	$ 1,441,043	$ (1,639,923)	$ 104,784	$ 11,210	$ 93,575
[redacted]	$ 19,495	$ 1,443					$ 20,938	$ 628,353	$ 628,353	$ (607,415)	$ 20,938	$ -	$ 20,938
[redacted]	$ 110,601	$ 8,188			$ 185,220	$ 9,722	$ (76,152)	$ 12,771	$ -	$ (76,152)	$ 118,790	$ 96,078	$ 22,711
[redacted]	$ 50,333,164	$ 3,726,331	$ 183,377	$ -	$ 8,789	$ 651	$ 54,050,055	$ 6,064,272	$ 6,055,483	$ 47,994,572	$ 53,876,117	$ 9,439	$ 53,866,678
[redacted]	$ 12,305	$ 911			$ 1,686,879	$ 117,336	$ (1,791,000)	$ 6,038,217	$ 4,351,338	$ (6,142,338)	$ 13,216	$ 1,678,647	$ (1,665,432)
[redacted]	$ 247	$ 18					$ 265	$ 67,915	$ 67,915	$ (67,650)	$ 265	$ -	$ 265
[redacted]	$ 177,300	$ 13,126			$ 82,024	$ 5,862	$ 102,540	$ -	$ -	$ 102,540	$ 190,426	$ 83,672	$ 106,754
[redacted]	$ 512,998	$ 37,979	$ 89,588	$ 1,365			$ 550,977	$ 435	$ 435	$ 550,543	$ 461,390	$ -	$ 461,390
[redacted]	$ 10,473,285	$ 775,372	$ 164,897	$ 12,208			$ 11,248,657	$ 235,388	$ 235,388	$ 11,013,268	$ 11,248,657	$ -	$ 11,248,657
[redacted]	$ 20,495	$ 1,517			$ 16,387	$ 180	$ 5,446	$ 227,711	$ 211,324	$ (205,878)	$ 22,013	$ 180	$ 21,833
[redacted]	$ 255,694	$ 18,930	$ 20,092	$ 457	$ 94,154	$ 5,940	$ 174,529	$ 318,474	$ 224,320	$ (49,791)	$ 254,531	$ 80,002	$ 174,529
[redacted]	$ 2,193	$ 162			$ 11,664	$ 864	$ (10,172)	$ 16,496	$ 4,832	$ (15,004)	$ 2,356	$ 12,527	$ (10,172)
[redacted]	$ 28,101	$ 2,080					$ 30,182	$ 117,338	$ 117,338	$ (87,157)	$ 30,182	$ -	$ 30,182
[redacted]	$ 44,864	$ 3,321			$ 725	$ 6	$ 47,455	$ 365	$ -	$ 47,455	$ 48,186	$ 6	$ 48,180
[redacted]	$ 39,484	$ 2,923					$ 42,407	$ 206,714	$ 206,714	$ (164,307)	$ 42,407	$ -	$ 42,407
[redacted]	$ -	$ -			$ 339,866	$ 15,263	$ (355,129)	$ 630,844	$ 290,978	$ (646,107)	$ -	$ 179,726	$ (179,726)
Total	$ 103,316,972	$ 7,648,897	$ 3,368,224	$ 92,433	$ 5,273,355	$ 344,848	$ 105,347,666	$ 26,219,962	$ 22,395,868	$ 82,951,798	$ 107,766,516	$ 4,799,668	$ 102,966,848

*Includes carrying charges through December 2021