

Defendant

(3) BP Energy Company ("BP") is a for profit corporation organized under the laws of the State of Delaware, with its primary place of business located at 501 Westlake Park Boulevard, Houston, Texas 77079. BP may be served with process through its Resident Agent, The Corporation Company, at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

(4) BP is a Supplier of natural gas to the City of Mulberry and sells natural gas to the City pursuant to the Base Contract for Sale and Purchase of Natural Gas and the attached Special Provision, dated January 1, 2020, between the parties.¹

Background

(5) The City of Mulberry utilizes a third-party agent – Utility Gas Management – to assist in procuring contracts for needed natural gas supplies to acquire and distribute natural gas to residences, facilities and businesses located within the City.

(6) These natural gas contracts are subject to the terms therein, but also are subject to the provisions of the Kansas Consumer Protection Act. (K.S.A. 50-623 *et seq.*). The Kansas Consumer Protection Act is to be construed liberally to protect consumers from suppliers who commit unconscionable practices. (K.S.A. 50-623(b)).

(7) As explained more fully hereinafter, during the time of disaster experienced by the City in February 2021, as proclaimed by Governor Kelly and defined in K.S.A. 50-6,106(b)(2), Defendant Supplier BP charged an unconscionable price to the City within the meaning of K.S.A. 50-627 and K.S.A. 50-6,106(b)(1), by charging the City a price for natural gas that was grossly excessive for a necessary property or service, i.e. home or facility heating fuel.

¹ This contract is marked confidential by the parties but will be filed under seal upon the request of the Court.

JURISDICTION AND VENUE

(8) This Court has jurisdiction over the cause of action pursuant to K.S.A. 60-308(b)(A) & (E) and K.S.A. 50-638(a), because BP entered contracts and transacted business to sell natural gas to the Plaintiff for use and consumption within the state of Kansas.

(9) Venue is proper in this Court pursuant to K.S.A. 60-604(2) & (3) and K.S.A. 50-638(b), because Plaintiff's cause of action arose from the business Defendant was transacting within this County.

FACTS

(10) The City of Mulberry acquires needed natural gas supplies from suppliers to serve the home heating fuel needs of its residents, and the heating needs for non-residential businesses of various types. Daily prices of natural gas vary in small ranges, oftentimes dependent on weather conditions. On or about February 3, 2021, Kansas regional weather reports began predicting colder weather for the forthcoming period through February 20, 2021, and daily natural gas prices began to have moderate increases in the period February 3 through February 5, 2021.

(11) During the period of February 1 through February 9, 2021, the price of natural gas was as follows for a unit of natural gas (MMBtu), provided on the main transmission system (Southern Star) that transported natural gas to the City:

- February 1, 2021 through February 9, 2021 - \$2.54 - \$2.98 / MMBtu

(12) During the period of February 10 through February 28, 2021, the prices for natural gas that will be billed to the City are as follows:

- February 10, 2021 - \$4.05 / MMBtu; Volume: 30 MMBtu
- February 11, 2021 - \$9.64 / MMBtu; Volume: 30 MMBtu
- February 12, 2021 - \$44.80 / MMBtu; Volume: 30 MMBtu
- February 13, 2021 - \$329.615 / MMBtu; Volume: 30 MMBtu
- February 14, 2021 - \$329.615 / MMBtu; Volume: 30 MMBtu
- February 15, 2021 - \$329.615 / MMBtu; Volume: 30 MMBtu

- February 16, 2021 - \$329.615 / MMBtu; Volume: 30 MMBtu
- February 19, 2021 - \$8.75 / MMBtu; Volume: 700 MMBtu
- February 20, 2021 - \$4.50 / MMBtu; Volume: 250 MMBtu
- February 21, 2021 - \$4.50 / MMBtu; Volume: 250 MMBtu
- February 22, 2021 - \$4.50 / MMBtu; Volume: 250 MMBtu
- February 23, 2021 - \$2.71 / MMBtu; Volume: 30 MMBtu
- February 24, 2021 - \$2.72 / MMBtu; Volume: 80 MMBtu
- February 25, 2021 - \$2.685 / MMBtu; Volume: 80 MMBtu
- February 26, 2021 - \$2.485 / MMBtu; Volume: 80 MMBtu
- February 27, 2021 - \$2.485 / MMBtu; Volume: 80 MMBtu
- February 28, 2021 - \$2.485 / MMBtu; Volume: 80 MMBtu

(13) The price of natural gas to be paid to BP by the City’s for the period February 10 – February 22, 2021 ranged from \$4.05 to \$329.615 / MMBtu – prices that exceeded 125% of the price paid for the same goods on February 9, 2021, increasing by as much as 110 times the prices paid for natural gas on the business day preceding the disaster.

(14) On February 14, 2021, Governor Kelly issued a State of Disaster Emergency Proclamation, stating: “Low temperatures with sub-zero wind chills over the past several days accompanied by snow, sleet, and freezing rain across the state have caused stress on energy infrastructure.” (State of Disaster Emergency Proclamation, (Feb. 15, 2021) (Attached as Exhibit 1)).

(15) Pursuant to K.S.A. 50-6,106(b)(4), the event described in Governor Kelly's Proclamation of Disaster commenced on February 10, 2021, and Plaintiff specifically requests that declaration of onset by the Court pursuant to K.S.A. 50-6,106(3).

Claim

(16) The City of Mulberry alleges that the prices charged for natural gas from February 10, 2021 through the duration of the Declared Emergency constitute unlawful prices and the Supplier BP engaged in unlawful practices as described in the Kansas Consumer Protection Act. (K.S.A. 50-627; 50-6,106).

(17) Specifically, the City of Mulberry alleges the Supplier BP engaged in unconscionable acts and practices and profited from a disaster. (K.S.A. 50-627; 50-6,106).

(18) Pursuant to K.S.A. 50-6,106(b)(1)(A), “whether the price charged by the supplier during the time of disaster grossly exceeded the price charged by the supplier for similar property or services on the business day before the disaster, and an increase of more than 25% shall be *prima facie* evidence of gross excess.”

(19) During the time in which the weather causing the disaster was present in the State of Kansas, gas prices which the City of Mulberry paid to BP surged to nearly 110 times those prices paid on February 9, 2021. Thus, the prices charged by Supplier BP far exceeded 25% of the prices charged on the day prior to the disaster and remained in excess throughout the disaster. Those prices, therefore, constitute *prima facie* evidence of profiteering pursuant to K.S.A. 50-6,106(b)(1)(A).

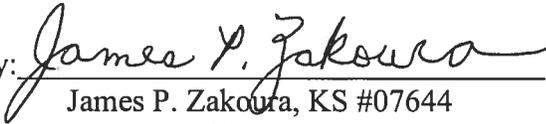
PRAYER

WHEREFORE, the Defendant Supplier, BP, during the time of the Disaster, profited from the Disaster by unjustifiably increasing the price at which a necessary property or service (home heating fuel) was sold to the City of Mulberry through its agent. (K.S.A. 50-6,106). The City of Mulberry prays the Court for the following relief herein:

- A Declaratory Judgment pursuant to K.S.A. 50-634(1) and K.S.A. 60-1701, that the price charged the City (all prices exceeding 125% of the \$2.98 charged on the day before the disaster) constitutes unconscionable profiteering under the Kansas Consumer Protection Act and that, pursuant to K.S.A. 50-6,106(b), BP may not charge or collect more than 125% of the average price per MMBtu charged on the last business day preceding the disaster.

- The City is entitled to money damages for all amounts paid or payable that are in excess of the \$3.725 per MMBtu, which is 125% of the price of natural gas charged to the City of Mulberry by BP (\$2.98) on the business day preceding the disaster. That amount is approximately \$40,459.48.
- An award of reasonable attorney fees pursuant to K.S.A. 50-634(e).

SMITHYMAN & ZAKOURA, CHARTERED

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ATTORNEYS FOR PLAINTIFF

EXHIBIT 1

STATE OF DISASTER EMERGENCY PROCLAMATION

Executive Department
State of Kansas
Topeka, Kansas

By the Governor

By virtue of the authority vested in me by the Kansas Emergency Management Act, Chapter 48, Article 9, of the Kansas Statutes Annotated, to meet the inherent dangers of disasters to which the State and its citizens have been exposed, and upon advice of the State Adjutant General as the Director of the Division of Emergency Management, I hereby proclaim a State of Disaster Emergency as follows:

NATURE OF THE DISASTER:

Low temperatures with sub-zero wind chills over the past several days accompanied by snow, sleet, and freezing rain across the state have caused stress on the energy infrastructure. Power outages and critical energy supply shortages are anticipated over the next few days. Communities are feeling the impacts with water main breaks, the need for warming stations, and seeing an increase in the demand for natural gas and electricity.

DATE THAT DISASTER AFFECTED THE AREA:

February 14, 2021 and continuing

AREA AFFECTED BY THE DISASTER:

All Kansas counties and Federally Recognized Indian Tribes in Kansas

I hereby proclaim, direct, and order the Adjutant General of the State of Kansas to activate the disaster response and recovery portions of the Kansas Response Plan and to utilize all available resources of the state to cope with the disaster as necessary. The Adjutant General shall coordinate local and inter-jurisdictional disaster plans applicable to the political subdivisions of areas affected by this Proclamation.

Any or all of the powers conferred upon the Governor by the Kansas Emergency Management Act may be delegated to the Adjutant General as deemed appropriate during this period of proclaimed State of Disaster Emergency. This may be delegated by written orders or oral orders subsequently reduced to writing with reference to this Proclamation.

I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the order or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statutes, order or rule and regulation would prevent, hinder, or delay in any way necessary action in coping with the disaster as set forth in KSA 48-925(c)(1).

I hereby direct state agencies to implement necessary continuity activities to ensure the delivery of essential functions that include continuity of operations (COOP) planning with pandemic considerations applied.

This Proclamation shall be filed promptly with the Division of Emergency Management, the Office of the Secretary of State and each city clerk or county clerk, as appropriate, in the area to which this Proclamation applies. Further dissemination of this Proclamation shall occur by means calculated to bring its contents to the attention of the general public.

DONE At the Capitol in Topeka
Under the Great Seal of the State
this 14th, day of February
A.D., 2021

FILED
FEB 15 2021
SCOTT SCHWAB
SECRETARY OF STATE

BY THE GOVERNOR




Secretary of State


Assistant Secretary of State