

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Complaint Against)
Black Hills Energy by Oklahoma Energy) Docket No. 18-BHCG-103-COM
Source, LLC.)

**ORDER ACCEPTING FORMAL COMPLAINT
AND ADOPTING STAFF'S MEMORANDUM**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Litigation Staff's Memorandum submitted in this matter and being fully advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On August 31, 2017, Oklahoma Energy Source, LLC (Complainant) filed with the Commission a formal complaint (Complaint) against Black Hills Energy (Respondent).¹

2. On September 21, 2017, Litigation Staff (Staff) filed its Legal Memorandum in this docket, analyzing the Complaint for compliance with Commission regulations.²

3. Staff reviewed the Complaint's underlying facts, allegations and legal analysis, and while making no recommendation regarding the validity or truthfulness of the Complainant's claims,³ Staff recommended the Commission find the Complaint has satisfied the procedural requirements for formal complaints found in K.A.R. 82-1-220 and has established a *prima facie*

¹ Complaint Against Black Hills Energy by Oklahoma Energy Source (Aug. 31, 2017).

² Notice of Filing of Legal Memorandum (Sep. 21, 2017).

³ *Id.* at p.3.

case for action by the Commission.⁴ Staff further recommended the Complaint be served upon Black Hills for an Answer.⁵

II. FINDINGS AND CONCLUSIONS

4. The Commission may investigate formal complaints regarding rates, rules, regulations or practices of electric and gas public utilities.⁶ The Commission finds it has jurisdiction to investigate the Complaint in this docket.

5. Staff's Legal Memorandum, dated September 21, 2017, and attached hereto as Attachment "A," is hereby adopted and incorporated by reference.

6. The Commission finds the Complainant has satisfied the procedural requirements for the filing of formal complaints as detailed in K.A.R. 82-1-220 and has established a *prima facie* case to support a Commission investigation.

7. The Commission finds the Complaint shall be served on the Respondent, and the Respondent shall be offered an opportunity to respond to the Complaint pursuant to K.A.R. 82-1-220(c).

THEREFORE, THE COMMISSION ORDERS:

A. The Complaint shall be served on the Respondent, and the Respondent shall have an opportunity to respond to the Complaint pursuant to K.A.R. 82-1-220(c).

⁴ *Id.*

⁵ *Id.*

⁶ Specifically, the Commission is granted broad authority to review formal complaints. See K.S.A. 66-1,205 ("Upon a complaint in writing made against any natural gas public utility governed by this act that any rates or rules and regulations of such natural gas public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any rule and regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such natural gas public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such natural gas public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary. See also K.S.A 66-101d; 66-101g; 66-1,201; 66-1,204; 66-1,207.

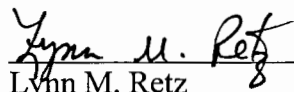
B. The parties have fifteen (15) days, plus three (3) days if mailed service, from the date this Order was served in which to petition for reconsideration.⁷

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: DEC 07 2017


Lynn M. Retz
Secretary to the Commission

SF/sc

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DEC 07 2017

⁷ K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

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Jay Scott Emler, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

MEMORANDUM LEGAL DIVISION

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Stephan Skepnek, Litigation Counsel

DATE: September 21, 2017

SUBJECT: 18-BHCG-103-COM
In the Matter of the Complaint Against Black Hills Energy by Oklahoma Energy Source, LLC.

EXECUTIVE SUMMARY:

On August 31, 2017, Oklahoma Energy Source, LLC, (OKES) filed a Complaint against Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills), pursuant to K.A.R. 82-1-220.¹ In its Complaint, OKES alleges that “the credit requirements that Black Hills is requiring it[s] third party shippers to provide to sell natural gas” is unreasonable, unfair, unjust, unjustly discriminatory, and unduly preferential.² Legal Staff recommends the Commission accept OKES’s Complaint and serve the Complaint on Black Hills for an Answer.

BACKGROUND:

On August 31, 2017, OKES filed a Formal Complaint against Black Hills. In its Complaint, OKES states that it provides “...integrated natural gas services from the City Gate to the Burner tip by securing wholesale natural gas on the Interstate and Intrastate pipelines.”³ OKES alleges that it has “discussed the credit requirements that Black Hills is requiring it[s] third party shippers to provide to sell natural gas...” and has waited “for three years or more to see some movement in the Black Hills requirements”.⁴ Specifically, OKES takes issue with Black Hills’ requirement that OKES “provide security of \$250,000 to sell gas to less than five customers behind the Black Hills city-gate.”⁵

¹ Complaint of Oklahoma Energy Source, LLC, against Black Hills Energy August 31, 2017. (Complaint and exhibits attached)

² Complaint, pp. 3 - 4.

³ Complaint, p. 3.

⁴ *Id.*

⁵ *Id.*

OKES seeks to have Black Hills' collateral requirement eliminated because it is not contained in Black Hills tariff and does not correspond to the amount of risk associated with allowing OKES to provide natural gas to customers.⁶

ANALYSIS:

Upon the filing of a formal complaint, the Commission must determine "whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."⁷ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;
- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and
- (3) state the relief sought by the complainant.

In support of its argument that Black Hills should be ordered to eliminate its collateral requirement, OKES states that the Black Hills Tariff does not contain a credit requirement for parties to sell gas to end-use customers.⁸ Additionally, OKES alleges that the collateral requirement should be eliminated because the amount of collateral required does not correspond to the risk posed to Black Hills by marketers like OKES. Therefore, the Complaint fully and completely advises the respondent and the Commission as to the provisions of law that have been allegedly violated in compliance with procedural requirement (1). OKES's Complaint also plainly and concisely describes the circumstances giving rise to its Complaint.⁹ Therefore, the Complaint complies with procedural requirement (2) above.

Finally, the Complaint seeks specific relief. As noted above, "OKES requests that Black Hills immediately eliminate this collateral requirement in order for all third parties to be on a level playing field and for immediate savings to customers."¹⁰ Therefore, the Complaint states the relief sought in compliance with procedural requirement (3).

⁶ Complaint, p. 4.

⁷ K.A.R. 82-1-220(c).

⁸ Complaint, p. 4.

⁹ Complaint, pp. 3-6.

¹⁰ Complaint, p. 5.

The Commission has been given full power, authority, and jurisdiction to supervise and control the natural gas public utilities doing business in Kansas.¹¹ The Commission is also charged with ensuring utilities establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations.¹² Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited, unlawful and void.¹³ Furthermore, as applied to regulation of natural gas public utilities, the provisions of this act and all grants of power, authority and jurisdiction herein 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.¹⁴

OKES's Complaint implicates numerous provisions of the law including, K.S.A. 66-1,201, K.S.A. 66-1,202, K.S.A. 66-1,203, K.S.A. 66-1,205, and K.S.A. 66-1,208. While the Formal Complaint does not specifically identify the applicable provisions of K.S.A. 66-1,200 *et seq.*, Litigation Staff believes that based on the totality of the complaint, the Formal Complaint provides sufficient detail to notify Black Hills and the Commission that the Complainant is asking the Commission to exercise its authority to make determinations with regard to Black Hills security requirement for Marketers that is not contained in Black Hills' Commission approved and filed tariff.

This memorandum makes no recommendation regarding the validity or truthfulness of the OKES's claims. While the Commission may have *jurisdiction* to grant the relief sought by OKES, this memorandum makes no recommendation on the merits of the Complaint.

RECOMMENDATION:

Legal Staff recommends the Commission find:

- The Formal Complaint substantially complies with the procedural requirements of K.A.R. 82-1-220;
- The Formal Complaint establishes a *prima facie* case for Commission action; and
- Pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served upon Black Hills for an Answer.
- Staff should be directed to investigate this matter and submit a Report and Recommendation to the Commission.

¹¹ K.S.A. 66-1,201.

¹² K.S.A. 66-1,202.

¹³ *Id.*

¹⁴ K.S.A. 66-1,207.

CERTIFICATE OF SERVICE

18-BHCG-103-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on DEC 07 2017.

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/S/ DeeAnn Shupe
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