

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

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

**STAFF'S RESPONSE TO BLACK HILLS ENERGY'S MOTION TO DISMISS**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), by and through its counsel, files its Response to Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy's (Black Hills Energy) Motion to Dismiss the Complaint filed by Oklahoma Energy Source, LLC (OKES) against Black Hills Energy in the above-captioned proceeding.

**I. PROCEDURAL BACKGROUND**

1. On August 31, 2017, OKES filed with the Commission a formal complaint against Black Hills Energy (Complaint).

2. On September 21, 2017, Staff filed a Notice of Filing Legal Memorandum recommending the Commission find OKES's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and should be served upon Black Hills for an Answer.

3. On December 7, 2017, the Commission issued an Order Accepting Formal Complaint and Adopting Staff's Memorandum. The Commission ordered Staff to serve a copy of the Complaint on Black Hills Energy.

4. On December 11, 2017, Black Hills Energy filed its Answer and Motion to Dismiss.

## II. BLACK HILL'S MOTION TO DISMISS

5. Black Hills Energy moved this Commission to dismiss OKES's Complaint claiming OKES could not maintain a suit in Kansas because it had not registered and was not authorized to do business in the State of Kansas.

6. In support of its argument, Black Hills Energy cites to K.S.A. 17-7307, which prevents an out of state company, which has failed to register to do business in the State of Kansas, from maintaining a cause of action in Kansas.<sup>1</sup>

7. Black Hills also cites to *Douglas Landscaping and Design, LLC v. Miles*, 51 Kan. App. 2d 779, 355 P.3d 700, which holds that "[t]he closed-door statute prevents an out-of-state company doing business in Kansas without registering from "maintain[ing]" a suit, but it doesn't explicitly bar it from *filing* one. Thus, courts generally provide some time for the company to come into compliance before dismissing a suit, and if the company complies, the suit can still proceed to trial."<sup>2</sup>

8. As of December 11, 2017, the date Black Hills Energy filed its Answer and Motion to Dismiss, OKES had not registered with the Kansas Secretary of State's Office and was not authorized to do business in the State of Kansas.

9. However, that changed on December 20, 2017 when OKES registered as a Limited Liability Company with Kansas Secretary of State's Office thereby curing the defect.<sup>3</sup>

10. Additionally, counsel for Black Hills Energy was informed that OKES has recently registered with the Kansas Secretary of State and does not object to simply proceeding with discovery in the complaint case instead of requiring OKES to refile the complaint.

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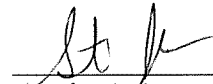
<sup>1</sup> Black Hills Energy's Answer and Motion to Dismiss ¶ 22.

<sup>2</sup> *Douglas Landscape & Design, L.L.C. v. Miles*, 51 Kan. App. 2d 779, 787, 355 P.3d 700, 706 (2015); *E.g., Pedi Bares, Inc. v. P & C Food Markets, Inc.*, 567 F.2d 933, 936 (10th Cir.1977) (applying Kansas law); *Corco, Inc. v. Ledar Transport, Inc.*, 24 Kan. App. 2d 377, Syl. ¶ 2, 946 P.2d 1009 (1997).

<sup>3</sup> See Exhibit A – OKES Foreign Application; and Exhibit B – OKES Annual Report (Attached).

WHEREFORE Staff submits its Response to Black Hills Energy's Motion to Dismiss requesting the Commission DENY the motion and for such other relief as the Commission deems just and proper.

Respectfully submitted,



Stephan Skepnek, #27337

Litigation Counsel

Kansas Corporation Commission

1500 SW Arrowhead Road

Topeka, KS 66604

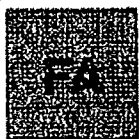
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**Attorney for Commission Staff**

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KANSAS SEC  
Application  
Foreign Co

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Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594



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Return file-stamped document to (name and address):

Oklahoma Energy Source, LLC  
7136 South Yale Ave  
Suite 210  
Tulsa, Oklahoma 74137

All information on the application for registration must be complete and accompanied by the correct filing fee or the document will not be accepted for filing. A certificate of existence or good standing from the home state must accompany the application.

Choose type of covered  
entity:

☐ Corporation for profit  
(fee \$115) 51-03

☐ Series limited liability company  
(fee \$250) 51-33  
(Statement 10a applies)

☐ Corporation not for profit  
(fee \$115) 51-17

☐ Limited partnership  
(fee \$165) 51-06

☒ Limited liability company  
(fee \$165) 51-10

☐ Limited liability partnership  
(fee \$165) 51-18  
(Statement 10b applies)

1. Name of covered entity:  
(17-7931(a))

Oklahoma Energy Source, LLC

2. State or foreign country  
of origin:  
(17-7931(b))

Oklahoma

3. Date of formation in  
home state:  
(17-7931(c))

Month	Day	Year
2	10	2005

4. Include a statement (certificate of good standing/existence\*) issued within 90 days of the application by the proper officer of the jurisdiction where such foreign entity is organized (usually the Secretary of State or comparable agency) that the entity exists in good standing under the laws of the jurisdiction of its organization. (17-7931(d))

\* Click here to see each state/jurisdiction's certificate and issuing agency.

5. Date the covered entity  
began doing business  
in Kansas if different  
than the filing date:  
(17-7931(h))

Month	Day	Year
1	1	2013

See FA-1 #5 for additional filings and fees that may be due.

**6. Name of resident agent and address of registered office in Kansas:**

(17-7931(f))

Must be a Kansas street address. A P.O. Box is unacceptable.

Name Registered Agent Solutions, Inc.		
Street Address 2101 SW 21st Street		
City Topeka	State KS	Zip 66604

**7. Fiscal year end:**

December

**8. Full nature and character of business to be conducted in Kansas:**

(17-7931(g))

Buy Natural Gas in Kansas and Sell Natural Gas to End Use Customer

**9. The foreign covered entity hereby consents, without power of revocation, that actions may be commenced against it in the proper court of any county in the state of Kansas; and the foreign covered entity stipulates and agrees that such service shall be taken and held in all courts to be valid and binding as if due service had been made upon the authorized persons of the foreign covered entity.** (17-7931(h))

**10a. This statement applies to foreign series limited liability companies only, and applies only if the series limited liability company is chosen as type of covered entity.**

The operating agreement for this LLC provides for the establishment of one or more series. When the company has filed a certificate of designation for each series, which is to have limited liability, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of the limited liability company are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such a series. (17-78,143(o))

**10b. This statement applies to foreign limited liability partnerships only, and applies only if the foreign limited liability partnership is chosen as type of covered entity.**

The above-named partnership elects to be a foreign limited liability partnership. (68a-1001(c)(3))

**11. I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct.** (17-1700)

Signature of Authorized Person (17-7931) 	Name of Signer (Printed or Typed) <del>Greg Hathaway</del> Greg Hathaway
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OFFICE OF THE SECRETARY OF STATE



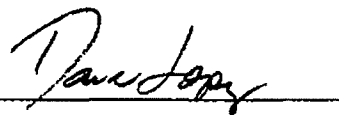
**CERTIFICATE OF GOOD STANDING  
DOMESTIC LIMITED LIABILITY COMPANY**

*I, THE UNDERSIGNED, Secretary of State of the State of Oklahoma, do hereby certify that I am, by the laws of said state, the custodian of the records of the state of Oklahoma relating to the right of certain business entities to transact business in this state and am the proper officer to execute this certificate.*

*I FURTHER CERTIFY that OKLAHOMA ENERGY SOURCE, LLC whose registered agent is GREG HATHAWAY, with its registered office at 8905 S YALE STE 102 TULSA 74137 USA Oklahoma is a Domestic Limited Liability Company duly organized and existing under and by virtue of the laws of the state of Oklahoma and is in good standing according to the records of this office. This certificate is not to be construed as an endorsement, recommendation or notice of approval of the entity's financial condition or business activities and practices. Such information is not available from this office.*



*IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the Great Seal of the State of Oklahoma, done at the City of Oklahoma City, this 11th day of December, 2017.*

  
Secretary Of State



**KANSAS SECRETARY OF STATE**  
**Limited Liability Company**  
**Annual Report**

Memorial Hall, 1st Floor  
 120 S.W. 10th Avenue  
 Topeka, KS 66612-1594

(785) 296-4564  
 kssos@ks.gov  
 www.sos.ks.gov

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1. Business entity ID #	This is not the Federal Employer ID Number (FEIN).			
2. LLC name (17-76,139(a)(1))	Must match name on record with Kansas Secretary of State. <i>OKLAHOMA Energy Service, LLC</i>			
3. Tax closing date	Month <i>12</i>	Year <i>16</i>	4. State of organization <i>OKLAHOMA</i>	
5. Name and address of each member who owns 5% or more of capital (Kansas LLC only)  If additional space is needed, please provide attachment. (17-76,139(a)(2))	Name <i>Greg Hathaway</i>		Address <i>6111 East 10TH Street</i>	
	City <i>TULSA</i>		State <i>OK</i>	Zip <i>74137</i>
	Country <i>USA</i>			
	Name <i>Christy Hathaway</i>		Address <i>6111 East 10TH Street</i>	
	City		State	Zip
	Country			
Name		Address		
City		State	Zip	Country
6. Federal Employer Identification Number (FEIN) (Not required)				
7. I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct. (17-76,139(c))				
Signature of Authorized Person <i>X [Signature]</i>				
Name of Signer (printed or typed) <i>Greg Hathaway</i>				Phone Number (Not required) <i>9185007962</i>

## CERTIFICATE OF SERVICE

18-BHCG-103-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Black Hills Energy's Motion to Dismiss was served by electronic service on this 22nd day of December, 2017, to the following:

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Fax: 785-271-3354  
s.skepnek@kcc.ks.gov

ROBERT J. AMDOR, MANAGER, REGULATORY  
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greg.hathaway@okenergysource.com

  
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Pamela Griffeth  
Administrative Specialist