

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

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

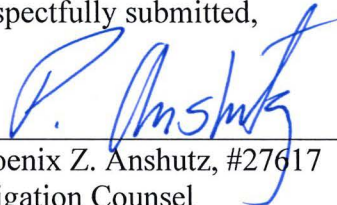
NOTICE OF FILING OF STAFF'S LEGAL MEMORANDUM

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and for its Notice of Filing of Staff's Legal Memorandum state as follows:

1. Staff hereby files the attached Legal Memorandum dated July 26, 2018. Staff's Legal Memorandum recommends the above noted docket be closed.

WHEREFORE, Staff requests the Commission consider its Legal Memorandum, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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For Commission Staff

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GOVERNOR JEFF COLYER, M.D.
SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

MEMORANDUM LEGAL DIVISION

TO: Shari Feist Albrecht Scott, Chair
Commissioner Jay Emler
Commissioner Dwight D. Keen

FROM: Phoenix Anshutz, Litigation Counsel

DATE: July 26, 2018

SUBJECT: Docket No. 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. 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. Legal Staff recommended the Commission accept OKES's Complaint and serve the Complaint on Black Hills for an Answer.

On September 21, 2017, Commission Staff (Staff) filed its Legal Memorandum in this docket. Staff recommended the Commission find the Complaint satisfied the procedural requirements for formal complaints found in K.A.R. 82-1-220 and established a prima facie case for action by the Commission, and further recommended the Complaint be served upon Black Hills for an answer. On December 07, 2017, the Commission issued an Order Accepting Formal Complaint and Adopting Staff's Memorandum.

On December 11, 2017, Black Hills filed an Answer and Motion to Dismiss. Black Hills alleged that its Transportation Services tariff (TS tariff) requires suppliers to execute a Marketer Agreement which contains the credit requirement. Black Hills alleged that the TS tariff, including the reference to the Marketer Agreement, was approved by the Commission in 1998 and has been subject to review in four rate cases. Black Hills denied that the credit requirement creates any disadvantage. Black Hills

moved to dismiss the Complaint because the Complainant is an out-of-state company not registered to do business in Kansas and is therefore barred from bringing the current action.

On December 22, 2018, Staff filed a Response to Black Hills Energy's Motion to Dismiss. Staff stated that out-of-state companies were generally allowed to cure non-registration after filing a suit in Kansas and that the Complainant had registered with the Kansas Secretary of State's office after Black Hills' motion. Staff added that after conversation with Black Hills' Counsel on the subject that Black Hills agreed to continue with discovery.

On May 17, 2018, the Commission issued an Order Denying Motion to Dismiss; Designating a Prehearing Officer; Protective and Discovery Order; and Setting a Prehearing Conference for Tuesday, June 5, 2018, at 9:00 a.m. Additionally, on Wednesday, May 23, 2018, Greg Hathaway, Managing Member for Oklahoma Energy Source, LLC, contacted legal staff inquiring about the contents of the Order Setting Prehearing Conference. Mr. Hathaway was emailed another copy of the Commission's Order, along with instructions on how to join the prehearing conference.

On June 5, 2018, the Prehearing Officer convened the Prehearing Conference. Both Black Hills Energy and Commission Staff were present; however, the Complainant failed to appear. At that time, Black Hills verbally moved for default.

On June 12, 2018, the Commission issued a Proposed Default Order, which set forth, pursuant to K.S.A. 77-520(b), that any party may file a written motion requesting the Default Order be vacated within seven (7) calendar days after service of the Order. Should no written motion be filed, the Default Order shall become effective. On June 18, 2018, Mr. Hathaway, on behalf of Oklahoma Energy Source, emailed the parties stating that he had reviewed the Default Order and understood the timeline for a response. However, at no point did Mr. Hathaway or Oklahoma Energy Source file a written Motion to Vacate the Commission's Default Order.

RECOMMENDATION:

Because the Complainant failed to appear at the scheduled Prehearing Conference, and because the statutorily established time to respond to the Default Order has passed, Staff no longer believes a reason exists for this docket to proceed. Therefore, Staff recommends the docket be closed.

CERTIFICATE OF SERVICE

18-BHCG-103-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Legal Memorandum was served via electronic service this 26th day of July, 2018, to the following:

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