



## EXHIBIT A

to Answer and Motion to Dismiss

### **MARKETER AGREEMENT**

THIS MARKETER AGREEMENT (“Agreement”) is made and entered into this **1<sup>st</sup> day of MONTH and YEAR** (“Effective Date”) by and between Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (“Company”), and **MARKETER, Inc.** (“Marketer” or “Customer”).

WHEREAS, Company’s Tariff (the “Tariff”) on file with the Kansas Corporation Commission (the “KCC”) allows qualified End Users to secure gas supplies directly from third parties and transport such supplies on Company’s local gas distribution system;

WHEREAS, the Tariff also allows Aggregators (as defined in the Tariff) under Company’s Small Commercial Transportation Service Rate Schedule (“SCTS-A”), under Company’s Small Volume Transportation Service Aggregated Rate Schedule (“SVTS-A”), under Company’s Large Volume Transportation Service Aggregated Rate schedule (“LVTS-A”), under Company’s Irrigation Transportation Service - Aggregated Rate Schedule (“ITS-A”) and under Company’s Optional Large Volume Transportation Service – Aggregated Rate Schedule (“OLVTS-A”), respectively, to combine nominations and balancing of gas receipts and deliveries for End Users served off the same interstate pipeline(s) or other Company approved Receipt Points that are also served by Company’s local gas distribution system;

WHEREAS, Marketer will provide natural gas to certain End Users pursuant to agreement(s) between such End Users and Marketer, and Marketer desires to transport such gas on Company’s local gas distribution system; and

WHEREAS, Company will transport gas supplies sold by Marketer to End Users over Company’s local distribution system to such End Users’ delivery points, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, Marketer and Company hereby agree as follows:

1. **End User Agreement.** Marketer has entered into, or will enter into as soon as practicable, one or more agreements with various End Users pursuant to which Marketer will sell and End Users will purchase natural gas (“End User Agreement”). The sale of such gas will be subject to the terms and conditions contained in the End User Agreement.

2. **End User Authorization and Verification.** Marketer will obtain from End User a signed End User/Customer Transport Authorization Form in the form of Exhibit "A", attached hereto. Marketer shall forward the End User Authorization as indicated on the form. A fee of \$5.00 for each year, and for each meter for which usage information is requested, will be charged to Marketer on its monthly invoice. **Marketer shall forward the End User Authorization to: Black Hills Energy, Gas Supply Services, Attn: Transportation Analyst, 1102 East 1<sup>st</sup> Street, Papillion, NE 68046 or fax to 402-829-2662.** Marketer must submit the foregoing documents to Company at the address according to terms and conditions identified in Company's Tariff Index No. 39, Sec 15. For Large Volume Customers, if such documents are not provided within said time frame, then service under this Agreement shall not begin until the first day of Company's billing cycle for such End User, which begins at least thirty (30) days after receipt of such documents by Company.

3. **Capacity Assignment/Release.** As a condition of Marketer being able to subscribe to Company's Transportation Rate Schedules, Marketer agrees to accept an assignment/capacity release of a portion of Company's pipeline capacity based on the firm peak day requirements for Marketer's aggregated End Users. The pipeline capacity assigned/released to Marketer will be assigned/released in accordance with the pipeline's applicable tariff and Federal Energy Regulatory Commission regulations at the pipeline's maximum tariff rate, will be recallable and be subject to other terms and conditions imposed by Company. The quantity of pipeline capacity assigned/released may be updated monthly to reflect any changes in Marketer's aggregated End User's peak day requirements. Capacity assigned to Marketer is deemed to belong to the End User so long as such update is done in accordance with all applicable federal and state rules and regulations. The assignment/release of capacity hereunder shall be further subject to the provisions of Company's Tariff, including specifically Schedule TTC, Index No. 39, Paragraph 23 thereof.

4. **Termination of Participation in Aggregation Transportation Program.** Marketer shall notify Company whenever an End User ceases to be a participating End User under Marketer's aggregation program. Such notice shall be forwarded to Company at the address provided in paragraph 2 above. Termination of participation in a Marketer's program by an End User, whether by choice of Marketer or End User, will necessitate a determination by Company of the amount of capacity needed to serve the End User. Capacity determined necessary to serve End User will be recalled by Company and released to an approved Marketer of the End User's choice. In order for termination of an End User's participation to be effective on the first day of Company's next billing cycle for such End User, Marketer must furnish Company with written notice of such termination not less than thirty (30) days prior to the nomination deadline for the billing cycle for such End User. If such notification is not provided within said time frame, then service under this Agreement shall not terminate until the first day of the Company billing cycle for such End User which begins at least thirty (30) days after receipt of such notification by Company.

5. **Billing and Payment.** Company shall read End Users' meters at intervals of approximately thirty (30) days or, when appropriate, Company may estimate End Users' usage, provided that estimated usage will be converted to actual usage on subsequent billings as provided in the Tariff. Company shall provide the results of such meter readings to Marketer. As

set forth in the End User Authorization Form, Company will bill End Users directly for, and End Users shall pay, the Facility Charge and Delivery Charge described in Company's Rate Schedule Small Commercial Transportation Service – End User ("SCTS-A") or Small Volume Transportation Service - End User ("SVTS-A") or Irrigation Transportation Service - End User ("ITS-A") or Large Volume Transportation Service – End User ("LVTS-A") or Optional Large Volume Transportation Service – End User ("OLVT-S") as applicable. Company will bill Marketer directly for, and Marketer shall pay, without delegation, all other charges applicable to Marketer under Rate Schedules SCTS-A, SVTS-A, LVTS-A, ITS-A or OLVT-S, as applicable. Aggregation Charge - the Marketer shall pay to Company a one-time aggregation charge for each pool of End-Users formed by Marketer for the purpose of nominating and balancing transportation deliveries, as set forth in Schedule OTC, Index No. 37, of Company's Tariff, which is currently \$100 for each pool of such End-Users.

6. **Cashout Procedures.** In the event that Customer delivers or consumes more or less gas than was nominated, then any excess or deficiency will be settled by means of the following described cashout procedure. An overage condition for the month occurs where Customer consumes less gas than was nominated for delivery in such month. An underage condition for the month occurs where Customer consumes more gas than was nominated for delivery in such month. If an overage or underage condition exists, Company will cash out the imbalance volume of gas under Company's Transportation Tariff, Index No. 37, Paragraph 5A, 5B and 5C.

7. **Non-Telemetered Daily Balancing Service Charge:** All non-telemetered aggregation pools on Northern Natural Gas, Southern Star, and any other pipeline that subsequently adopts daily scheduling charges shall subscribe to this balancing service. The charge shall be as set forth in Index No. 37, Paragraph 3 of the Company's Tariff, which is currently **\$0.090 per MMBtu** per month for Company's Transportation Rate Schedules **SCTS-A, SVTS-A, ITS-A, and LVTS-A**. Customers shall be exempt from Daily Out of Balance Charges, except during a critical day or when an operational flow order is imposed.

8. **Default in Payment.** In the event End User fails to pay Company's undisputed charges as billed by Company, Company shall notify Marketer in writing of such failure and, at Company's option, may discontinue service in accordance with the applicable section(s) and procedures of the Tariff. If Marketer fails to pay any undisputed amounts to Company when due, Company may take such actions as are available to Company, including termination of this Agreement and discontinuance of service, in accordance with the Tariff.

9. **Term.** Unless terminated earlier by Company in accordance with the Tariff, the term of this Agreement will extend for **one (1) year** from the date this Agreement was entered into by both parties. The Agreement will continue on a month-to-month basis thereafter until canceled by either party upon thirty (30) days' prior written notice.

10. **Compliance With Laws.** Marketer will be responsible for complying with all applicable laws, rules or regulations including the collection and remittance of any taxes payable by End User relating to the sale and purchase of gas.

11. **Curtailment.** End Users shall be subject to Company's gas curtailment policies set forth in the Tariff. Marketer acknowledges that it is also subject to Company's curtailment policies when it provides gas to End Users. Such policies are set forth in detail in Company's Tariff.

12. **Indemnification.** Marketer shall indemnify and hold Company harmless from and against all costs, damages, claims and expenses including but not limited to attorneys' fees, pipeline charges or penalties assessed to Company, or taxes or other charges incurred as a result of Marketer's actions, omissions, or nonperformance of this Agreement or the End User Agreement. Company shall indemnify and hold Marketer harmless from and against all costs, damages, claims and expenses including, but not limited to, attorneys' fees, pipeline charges or penalties assessed to Marketer, incurred as a result of Company's actions or inactions.

13. **Nominations.** Marketer shall be solely responsible for all nominations to Company, in accordance with the applicable terms of Company's Tariff, and to applicable interstate pipelines for gas to be transported on behalf of End Users. Marketer shall comply with the nomination guidelines and requirements of all transporting pipelines. If operating conditions do not allow nominated volumes to flow on Company's system, Company shall adjust the nominations in accordance with the curtailment provisions of the Tariff and notify Marketer in writing of its adjusted nomination. A nomination charge shall apply to Marketer whose nomination to the Company's internet-enabled electronic bulletin board (EBB), known as Gas Track Online (GTO) is incorrect. The charge shall be per Company's Tariff, which is currently \$25.00 per occurrence per Company's Tariff Index No. 37, Sec 7.

14. **Confidentiality.** Each party shall keep the terms of this Agreement confidential except to the extent such terms must be disclosed to regulatory or other authorities with jurisdiction over the matters herein. Neither party will use or disclose to third parties any End User names or information received from the other party or from End Users pertaining to service under this Agreement without the express written consent of the End User, except where such disclosure is necessary to deliver supplies to End Users or to comply with applicable laws, rules or regulations.

15. **Notices.** Notices required or otherwise given under this Agreement, except notices specifically allowed to be provided by facsimile, shall be given in writing and mailed by first class mail to the other party at the addresses specifically provided in this Agreement or, if not so provided, to the addresses provided below:

**Company:**

**Name:** Black Hills Energy  
**Attention:** Business Development  
**Address:** 2330 North Hoover  
**City, State, Zip:** Wichita, KS 67205  
**Telephone:** (316) 941.1634

**Marketer:**

**Name:** MARKETER, Inc.  
**Attention:**  
**Address:**  
**City, State, Zip:**  
**Telephone:**

16. **Assignment.** This Agreement may not be assigned by Marketer without the prior written consent of Company, which consent will not be unreasonably withheld. Company may assign this Agreement without consent of Marketer.

17. **Governing Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, without regard to principles of conflicts of law. This Agreement is further subject to orders, rules and regulations which may be issued by the KCC or by state and federal authorities having jurisdiction over Company or the services provided in this Agreement. **In the event of any conflict between this Agreement and Company's Tariff, as Company's Tariff may be revised, amended or superseded from time to time, the Tariff shall control.**

18. **No Waiver.** Any failure or delay by either party to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

19. **Creditworthiness.** Prior to commencement of service, and periodically thereafter as warranted, Marketer shall provide Company with such financial information as may reasonably be requested by Company in order to evaluate Marketer's creditworthiness.

20. **Security Requirement.** Marketer shall provide Company with a performance bond, escrow account accessible by Company, or letter of credit provided by Company approved financial institution in the amount of \$250,000.00, prior to commencement of service hereunder. Company reserves the right to periodically review the sufficiency of said performance bond, escrow account or letter of credit and, if deemed necessary in Company's sole, reasonable opinion, to require an increase in such amount.

21. **Entire Agreement.** As of the Effective Date, this Agreement and Company's Tariff constitute the entire agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all other prior or contemporaneous agreements between the parties regarding such subject matter, including (a) the Marketer Agreement between .....

IN WITNESS WHEREOF, Company and Marketer have executed this Agreement as of the Effective Date.

**Black Hills/Kansas Gas Utility Company,  
LLC d/b/a Black Hills Energy**

**MARKETER, Inc.**

By:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_