

**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.)

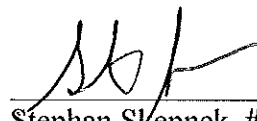
NOTICE OF FILING OF LEGAL MEMORANDUM

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Legal Memorandum and states as follows:

1. Staff hereby files the attached Legal Memorandum. The Memorandum evaluates the Complaint filed by Oklahoma Energy Source, LLC (OKES) on August 31, 2017, against Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) for compliance with the Commission's procedural regulations. As a result of this evaluation, Staff recommends 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.

WHEREFORE Staff submits its Legal Memorandum for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,



Stephan Skepnek, #27337
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Kansas Corporation Commission
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Email: s.skepnek@kcc.ks.gov
Attorney for Commission Staff

**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.

KANSAS CORPORATION COMMISSION
OFFICE OF PUBLIC AFFAIRS & CONSUMER PROTECTION

FORMAL COMPLAINT

Note: Formal Complaints filed with the KCC become a public record and may be posted on the KCC's website. Any information you provide in the complaint or other documents related to the complaint, including, but not limited to, your name, address, city, state, zip code, telephone number, email address, and the facts of your case may be available online for public viewing.

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

IN THE MATTER OF THE COMPLAINT AGAINST

Black Hills Energy
(Respondent, name of utility company)

by

Oklahoma Energy Source, LLC
(Complainant, your name)

For Commission
use only

DOCKET NO.

18-BHCG-103-COM

Please provide complainant (your) contact information:

Full Name(s): Greg Hathaway
Address: 8905 South Yale Ave, Suite 102, Tulsa, OK 74137
Daytime Phone: 918.500.7962
E-mail Address (optional): Greg.Hathaway@OKEnergySource.com

FORMAL COMPLAINT

Oklahoma Energy Source, LLC
(Your name)

states that the above-named respondent is a public utility providing service in Kansas and is subject to the jurisdiction of the State Corporation Commission.

The facts and circumstances surrounding the complaint are set out in detail below:

(Be specific and as brief as possible. If necessary, attach additional sheets.)

- See attached

(Continued on the other side)

Formal Complaint *continued*

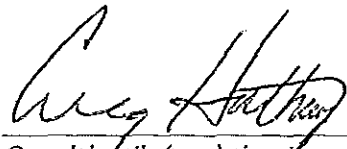
Complainant requests that the respondent utility be required to provide an answer to the complaint and requests the following action be ordered by the Commission. (*State action or result desired.*)

- See attached

and for such further order or orders as the Commission may deem necessary.

VERIFICATION: I do solemnly, sincerely, and truly declare and affirm that the statements made in this complaint form are true and accurate to the best of my knowledge, and I do this under the pains and penalties of perjury.

I understand that Formal Complaints filed with the KCC become a public record and may be posted on the KCC's website. Any information provided in the complaint or other documents related to the complaint, including, but not limited to, my name, address, city, state, zip code, telephone number, email address, and the facts of the case may be available online for public viewing.



Complainant's (your) signature

8/30/17

Date signed

FILING INSTRUCTIONS

This form may be filed in person at the Kansas Corporation Commission's Office or by mail. All formal complaints, whether filed by mail or delivered in person, must be directed to:

Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

For more information about the formal complaint process please refer to the instructions provided with this form or visit the KCC website: <http://kcc.ks.gov/>, Consumer Assistance, Filing a Complaint. You may also contact our Consumer Assistance staff toll-free at 1-800-662-0027 or by e-mail at public.affairs@kcc.ks.gov.

Oklahoma Energy Source Facts around Complaint

COMPANY BACKGROUND

Independently owned and operated since 2005 Oklahoma Energy Source "OKES" has been providing integrated natural gas services from the City Gate to the Burner tip by securing wholesale natural gas on the Interstate and Intrastate pipelines. Greg Hathaway bought OKES in 2012 and has over 25 years of experience in providing natural gas services and solutions to customers. His experience at Vesta Energy, Duke Energy, Oklahoma Gas and Electric, Dominion Energy, Constellation New-Energy and ConAgra Trading. Since the acquisition the company has 25 percent growth in new customers and a high retention level of the existing customer base. Please visit www.OkEnergySource.com for more information.

BLACK HILLS ENERGY CREDIT REQUIREMENTS

OKES has discussed the credit requirements that Black Hills is requiring it third party shippers to provide to sell natural gas behind their city-gate. OKES has waited for three years or more to see some movement in the Black Hills requirements. We have been told over the last three years that they are considering a change, but to give them a chance to review the issue internally. The requirement that Black Hills has set forth is for OKES to provide security of \$250,000 to sell gas to less than five customers behind the Black Hills city-gate.

INFORMAL COMPLAINT FILED BY OKES

After OKES had several conversations with Black Hills and got no place we elected to reach out to the Kansas Corporation Commission "KCC" in July and file an informal complaint. Once the informal complaint was filed with Steve Boyd the KCC called Black Hills to confirm

that the facts that OKES presented (see below) were correct and accurate. After the KCC and Black Hills had their conversations about the informal complaint nothing was done by Black Hills even though the KCC agreed with accuracy of OKES facts. The KCC provided OKES with highlights of the conversation, but found that Black Hills was not going to take any actions. This lead OKES only one option which was to file this formal complaint.

OKES FACTS

- No place in the tariff that states credit requirement will be required to sell gas to end-use customers.
- The amount of collateral requested by Black Hills for years has been \$250,000 which over a 60 day period would require OKES to create daily risk to Black Hills of \$4,166.66 which is $\$250,000 / 60 \text{ days}$. OKES explained to Black Hills that the target customer for our company is someone that burns \$500 to \$5,000 per month. This requirement was not acceptable unless it was written in the tariff and then we would still like to figure out what might be reasonable. The amount of risk associated with selling natural gas to a customer behind the city-gate is reduced to Black Hills if the customer buys the commodity from a third party. If the customer only pays Black Hills for the transportation and balancing fees behind the gate then Black Hills takes less risk.
- This credit requirement only allows the largest companies to provide third party sales behind Black Hills. It is a safe statement to conclude that if only the largest companies can compete for customers behind Black Hills then there will be less competition which does not benefit the customer.
- If there is less competition through a requirement that is not written in the tariff then this also benefits Black Hills since there are fewer companies that meet the credit requirement which they must manage.

- There is very limited credit risk associated with having a third party provider sell natural gas to customers behind any city-gate as long as the end-use customer still is responsible for their transportation fee to the utility.
- This eliminates OKES from several competitive bidding situations when customers have multiple locations behind all the behind many Black Hills, KGS and Atmos. OKES has a few customers who are behind Black Hills, but are now forced to buy more costly gas from the utility.

COMPLAINT REQUESTS

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 behind Black Hills.

OKES requests answer to the following questions:

- What companies currently are approved third parties?
- Why is this requirement not in the tariff?
- Why did they oppose both OKES and the KCC during the informal complaint process?
- How many customers do they have in Kansas that qualify to purchase third party gas?
- How many customers are currently transporting third party natural gas?
- Do they believe that having more competition is good for the customer?
- What is the calculation to come up with the \$250,000 requirement?
- Do all third-party providers have collateral posted?
 - o If not then what is the reasoning behind the request to OKES?
- Does Black Hills have an aggregated pool for third parties to balance?
- Do they agree that by selling less gas to customers they have reduced their risk of payment from the customer?



August 30, 2017

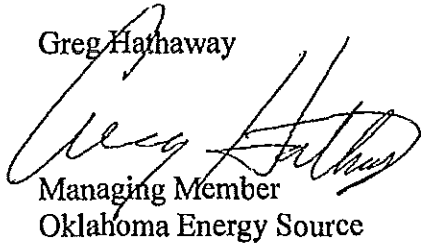
Kansas Corporation Commission
Public Affairs and Consumer Protection Division
Topeka, Kansas 66604.4027
Attn: Acting Executive Secretary

Dear Acting Executive Secretary,

Oklahoma Energy Source, LLC "OKES" has attached a formal complaint around the collateral requirements of Black Hills Energy. This formal complaint could have been avoided if Black Hills would have provide either the KCC or OKES information during the informal complaint process.

Please feel free to contact me with questions any time after 10 am Central Standard at 918.500.7962.

Greg Hathaway



Managing Member
Oklahoma Energy Source

CERTIFICATE OF SERVICE

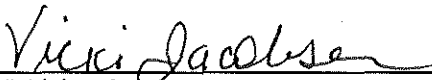
18-BHCG-103-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Legal Memorandum was served via electronic service this 21st day of September, 2017, to the following:

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