

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

**In the Matter of the Application of Black  
Hills/Kansas Gas Utility Company, LLC,  
d/b/a Black Hills Energy, for Approval of  
the Commission to Make Certain Changes  
in its Rates for Natural Gas Service**

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**Docket No. 25-BHCG-298-RTS**

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**REBUTTAL TESTIMONY OF KRIS J. PONTIOUS**

**ON BEHALF OF**

**BLACK HILLS/KANSAS GAS UTILITY  
COMPANY, LLC, d/b/a BLACK HILLS ENERGY**

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**List of Acronyms**

AIP	Annual Incentive Plan
BHC	Black Hills Corporation
Black Hills OR “the Company”	Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy
Commission	Kansas Corporation Commission
CURB	Citizens’ Utility Ratepayer Board
LTIP	Long-Term Incentive Plan
O&M Expenses	Operations & Maintenance Expenses
Staff	Staff of the Kansas Corporation Commission
STIP	Short-Term Incentive Plan
Total Compensation	Fixed Base Salary Plus Variable Incentive Compensation

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Kris J. Pontious, and my business address is 7001 Mount Rushmore Road, P.O.  
4 Box 1400, Rapid City, SD 57702-8752.

5 **Q. ARE YOU THE SAME KRIS J. PONTIOUS WHO FILED DIRECT TESTIMONY**  
6 **IN THIS DOCKET?**

7 A. Yes. I am testifying on behalf of Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black  
8 Hills Energy ("Black Hills" or "Company").

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. The purpose of my Rebuttal testimony is to respond to the adjustments made by Kansas  
11 Corporation Commission Staff ("Staff") and Citizens' Utility Ratepayer Board ("CURB")  
12 regarding incentive compensation paid by Black Hills to its employees. My testimony rebuts  
13 those adjustments because they are contrary to the principles of utility regulation which  
14 require a utility be allowed a reasonable opportunity to recover actual costs prudently  
15 incurred in providing service to its customers. The recommended adjustments of Staff and  
16 CURB related to incentive compensation should be rejected because those employee payroll  
17 costs are legitimate and prudent costs incurred to attract and retain Black Hills employees.

18 **Q. WHICH STAFF AND CURB WITNESS DOES YOUR REBUTTAL TESTIMONY**  
19 **DISCUSS?**

20 A. My Rebuttal testimony addresses and rebuts the adjustment recommendations by Staff  
21 witness Ms. Katie L. Figgs and CURB witness Ms. Audrey Benham to decrease incentive

1 compensation.

2 **Q. WHAT REASONS DO STAFF AND CURB PRESENT AS THE BASIS FOR THEIR**  
3 **RESPECTIVE RECOMMENDED ADJUSTMENTS TO DECREASE INCENTIVE**  
4 **COMPENSATION EXPENSES?**

5 A. Staff witness Ms. Figgs recommends decreasing Black Hills' Short-Term Incentive Plan  
6 ("STIP") paid to officers that is financially performance-based, 50% of officer equity  
7 compensation expense associated with restricted stock units, and 100% of the officer equity  
8 compensation expense associated with performance-based units." Staff's recommendation  
9 for the reduction of STIP is on the basis that it "benefits shareholders more directly than  
10 ratepayers and could even incent behavior that is detrimental or harmful to ratepayers over  
11 time." Staff's adjustment removes officer STIP expenses associated with the attainment of  
12 financial metrics. Staff's recommendation for a 50% reduction of restricted stock awards is  
13 on the basis that both customers and stockholders benefit when the Company maintains its  
14 viability and grows over the long term, and it is reasonable to equally share this portion of  
15 executive compensation since both parties' benefit. Staff's recommendation for 100%  
16 elimination of expenses related to performance share units is on the basis that the criteria  
17 used to establish the payout amount is solely financial in nature.<sup>1</sup>

18 CURB witness Ms. Benham recommends decreasing incentive compensation  
19 expenses by 30% for Black Hills' Annual Incentive Plan ("AIP") and STIP, and 80% of  
20 Black Hills' Long-Term Incentive Plan ("LTIP"). CURB contends that those incentive  
21 compensation expenses are tied to financial metrics and sites previous Commission

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<sup>1</sup> See Direct Testimony of Katie L. Figgs at pages 28 through 34.

precedent regarding incentive compensation.<sup>2</sup>

Neither Staff nor CURB provide credible evidence that the disallowed costs were not prudently incurred.

## **II. RECOVERY FOR VARIABLE COMPENSATION**

**Q. PLEASE EXPLAIN WHY STAFF'S AND CURB'S ADJUSTMENTS DO NOT ALLOW BLACK HILLS A REASONABLE OPPORTUNITY TO RECOVER ACTUAL COSTS PRUDENTLY INCURRED IN CONNECTION WITH PROVIDING UTILITY SERVICE TO ITS CUSTOMERS.**

A. The impact of the adjustments to incentive compensation made by Staff and CURB do not allow Black Hills a reasonable opportunity to recover its prudently incurred employee compensation costs. The additional impact of their recommendations on Black Hills would also have a longer-term impact on Black Hills' ability to continue providing its natural gas services to its customers.

Several reasons supporting why the Commission should reject the Staff and CURB recommendations on incentive compensation and why the Commission should approve Black Hills' rate application are provided below:

- (1) Attracting and retaining a qualified workforce is essential for Black Hills to provide safe, reliable, and efficient service to its customers.
- (2) The cost to fairly and competitively compensate a qualified workforce to Black Hills is a reasonable, prudently incurred, and necessary cost of providing service to customers, and it should be included in the utility's cost of service in setting rates.

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<sup>2</sup> See Direct Testimony of Audrey Benham at pages 8 through 10.

1 (3) Neither Staff nor CURB provide credible evidence that contests the compensation  
2 support provided by Black Hills. My Direct testimony demonstrates that the total  
3 costs incurred by Black Hills to compensate its employees, including incentive  
4 compensation, are similar to the total compensation paid by other companies,  
5 including other utility companies, for similar positions. No evidence was presented  
6 by either Staff or CURB that shows the total compensation paid to employees by  
7 Black Hills is imprudent or unreasonable based upon what the market requires paying  
8 employees for similar positions. Instead of evidence, Staff's witness provides  
9 opinion and cites to the Commission's prior orders regarding incentive compensation  
10 and CURB's witness cites prior Commission orders.

11 (4) Notwithstanding the lack of evidence related to incentive compensation, Staff and  
12 CURB both recommend disallowance of that portion of the total compensation paid  
13 to employees that is tied to financial measures.

14 Accordingly, for all the reasons listed above, the costs incurred by Black Hills to  
15 compensate its employees are reasonable and should be recovered in the cost of service used  
16 to set the utility's rates regardless of whether a portion of the compensation is based upon  
17 company financial metrics.

18 **Q. SHOULD THE COMMISSION RECONSIDER ITS TREATMENT OF INCENTIVE**  
19 **COMPENSATION?**

20 A. Yes. Not only is the incentive compensation a prudently incurred and necessary expense for  
21 Black Hills to remain competitive and retain talent, but incentive compensation with  
22 financially based metrics also directly benefits customers. Achieving healthy financial

1 performance delivers tangible and measurable benefits to customers, not just shareholders.

2 Financial health directly supports the ability to:

- 3 • Invest in infrastructure that enhances safety, reliability, and service quality;
- 4 • Maintain stable rates by avoiding the need for emergency or frequent rate filings;
- 5 • Attract and retain skilled employees, ensuring continuity of service and operational
- 6 excellence;
- 7 • Access capital at favorable rates, which lowers the cost of financing system
- 8 improvements, a savings that ultimately benefits customers; and
- 9 • Drive operational efficiency, which reduces unnecessary costs and improves service
- 10 delivery.

11 Incentive compensation tied to financial performance aligns employee behavior with  
12 these outcomes, encouraging a culture of accountability, cost control, and continuous  
13 improvement. When employees are motivated to meet financial goals, they are also working  
14 to ensure the Company operates efficiently and sustainably, which directly benefits  
15 customers through better service and long-term cost containment.

16 While there are many, one specific example of how financial metrics in incentive  
17 compensation plans directly benefit customers since the Commission issued its precedential  
18 order was the impact of Winter Storm Uri in 2021. Black Hills' financial strength leading  
19 up to Winter Storm Uri allowed it to access and secure necessary financing to ensure  
20 adequate gas supplies for continued and uninterrupted service to customers. Black Hills'  
21 financial strength and solid credit rating, supported by employees achieving financial  
22 metrics, allowed the Company to purchase and provide the natural gas needed during



1 extreme cold temperatures that occurred during unprecedented, extremely high prices.

2 Therefore, the claim that financial-based incentive compensation provides no benefit  
3 to customers is overly narrow and fundamentally flawed. Black Hills respectfully urges the  
4 Commission to recognize that a well-structured incentive program-one that includes  
5 financial metrics-is a prudent and effective tool for delivering value to both customers and  
6 shareholders.

7 **Q. WHY SHOULD THE COMMISSION CONSIDER REVISING ITS POSITION ON**  
8 **INCENTIVE COMPENSATION?**

9 A. Similar to the Commission, Black Hills is balancing the Company's interests with the  
10 customers' interests and employees' expectations. Black Hills asserts that its incentive  
11 compensation plan contains factors which create a natural check and balance system.  
12 Without its financial metrics applied to employees managing budgets, there could be an  
13 incentive for BHC and Black Hills to invest more than is necessary in system reliability or  
14 customer services assets. At the same time, appropriate levels of capital have to be spent to  
15 meet operational objectives. The effective use of capital is a balancing factor for the  
16 reliability and customer metrics.

17 Black Hills' compensation packages split total compensation into fixed and variable  
18 components in a manner designed to create an incentive for employees to achieve goals  
19 important to customers and shareholders. The Commission should revise its compensation  
20 policy and reject the Staff's and CURB's recommendations by permitting Black Hills to  
21 recover the proposed incentive compensation costs (i.e., AIP, STIP, and LTIP) in its cost of  
22 service.

1   **Q.   HOW DOES BLACK HILLS' INCENTIVE COMPENSATION PLAN BENEFIT**  
2       **CUSTOMERS?**

3   A.   Black Hills demonstrated that its incentive compensation plan benefits its customers in a  
4       number of ways. It plays a key role in helping Black Hills be a well-run utility that provides  
5       safe, reliable high-quality services to its customers at reasonable costs. For example, total  
6       compensation paid to employees (fixed base salary plus variable incentive compensation) is  
7       in line with the total compensation that the market pays similar employees. Thus, the total  
8       compensation is reasonable based on that comparison.

9               The fact that the incentive portion of the total compensation is variable, and the  
10       variable element of pay is awarded only when the utility can justify and afford to make such  
11       payments based upon meeting goals and financial performance provides a benefit to our  
12       customers.

13              In addition, the incentive compensation plan assists in Black Hills' ability to recruit  
14       and retain talented employees since incentive compensation is widely prevalent in the labor  
15       markets in which the utility competes for talent. Incentive compensation motivates  
16       employees to achieve a variety of performance goals. Having and retaining talented  
17       employees who are motivated to exceed expectations because a portion of their  
18       compensation is at risk based upon how well they perform their job benefits our customers  
19       because the employees have an additional incentive to do a better job in serving customers.  
20       Those incentives also include service employees who are responsible for raising or managing  
21       the capital needed to run Black Hills. A financial performance metric is a necessary and  
22       customary part of that incentive compensation package.

1           Also, Black Hills' incentive plan encourages employees to work together as a team  
2           to achieve a common purpose. Black Hills' incentive compensation plan motivates  
3           employees to become more engaged in their jobs and provide higher quality service to  
4           customers. That not only benefits customers, but also the communities served by the utility.  
5           It also assists Black Hills in communicating that the success of our Company depends upon  
6           the performance of our employees.

7           As mentioned above, Black Hills being in a strong financial and credit rating position  
8           has previously proven to be a benefit to customers. Being able to access and secure necessary  
9           financing at reasonable rates during Winter Storm Uri, Black Hills was able to continue  
10          uninterrupted service to our customers that would have been more difficult and more  
11          expensive without its strong financial position, which is directly supported by employees  
12          participating in the incentive plan with a financial metric.

13          For these reasons, disallowing the financial performance component of incentive  
14          compensation could have a negative impact on customers.

15   **Q.   DO YOU AGREE WITH MS FIGGS' CONTENTION THAT FINANCIAL**  
16   **METRICS   OF   INCENTIVE   COMPENSATION   PLANS   BENEFIT**  
17   **SHAREHOLDERS AND NOT CUSTOMERS?**

18   A.   No. Black Hills' net income is enhanced by both maximizing revenues and controlling  
19          expenses through higher productivity, more careful management of operations and  
20          maintenance costs, and other customer-oriented goals that improve net income. Incentive  
21          compensation plans provide a benefit not only to shareholders, but to the utility's customers  
22          as well.

1           The financial metrics argument is based on the incorrect theory that the incentive  
2           compensation plan is designed solely to increase profits for shareholders to the exclusion of  
3           more customer-oriented aims such as managing cost, focusing on safety and providing  
4           quality service to our customers. Utility shareholders and employees do not reap all the  
5           financial rewards of higher earnings to the detriment of customers. To the extent BHC  
6           management and employees can provide more efficient service, reduce the number of  
7           accidents and incidents, deliver satisfactory customer service at reasonable expense and  
8           employee levels, and improve performance by increasing productivity, such actions not only  
9           benefit the utility's bottom line but also benefit customers.

10           It is important to point out that most, if not all, operating and maintenance (“O&M”)   
11           expenses incurred by the utility, such as employee compensation expenses, allowed to be  
12           included in the utility's cost of service by the Commission, benefit both the utility's  
13           customers and shareholders. For example, O&M expenses relating to the utility's customer  
14           call centers benefit both customers (who can obtain service, disconnect service, ask  
15           questions about their service), and shareholders (who eventually earn from customers being  
16           able to obtain service from the customer call centers, or earn from the customers being able  
17           to receive answers from the utility so they can pay for their service). Although both the  
18           customers and shareholders benefit from the expenses related to the utility's customer call  
19           centers, there is no suggestion by Staff or CURB that a portion or all of those O&M costs  
20           relating to the call center should be borne by the shareholders and not included in the utility's  
21           cost of service. If requiring shareholders to pay for any utility O&M expenses that benefited  
22           shareholders was a legitimate basis for eliminating a portion of or all O&M expenses from

1 the utility's cost of service used to set rates, then the utility would have no reasonable  
2 opportunity to recover the actual costs incurred to provide service to its customers. Yet,  
3 suggesting that because shareholders benefit from the O&M expenses relating to a portion  
4 of the incentive compensation paid to employees, it is treating those O&M expenses  
5 differently from other O&M expenses by the unsupported and arbitrary reason that such  
6 expenses provide a benefit to shareholders and therefore should be paid solely by the  
7 shareholders. The Commission certainly has the right to disallow any O&M costs that are  
8 demonstrated to be unreasonably or imprudently incurred by the utility. However, if the  
9 O&M costs are reasonable and prudently incurred by the utility to provide service to  
10 customers, the fact that those costs benefit both the customers and the shareholders should  
11 not form the basis for disallowance of those prudently incurred costs. There is simply no  
12 evidence of imprudent decision making and no logic to support such disallowance because  
13 it will result in the utility having no reasonable opportunity to recover prudently incurred  
14 costs to provide service to its customers.

15 **Q. WOULD THE DISALLOWANCE OF INCENTIVE COMPENSATION AS PART OF**  
16 **BLACK HILLS' RATES PLACE IT AT A COMPETITIVE DISADVANTAGE FOR**  
17 **TALENT?**

18 A. Yes. Black Hills faces competition for recruiting and retaining talented employees not only  
19 from other natural gas utilities, but also from other non-regulated industries. Companies that  
20 are not regulated are free to factor the cost of incentive compensation into their services and  
21 products. If Black Hills is unable to do so, then it is placed at a significant competitive  
22 disadvantage in attempting to recruit and retain talented employees.

1   **Q.    IF THE COMMISSION WERE TO DISALLOW ANY OR ALL OF THE VARIABLE**  
2       **INCENTIVE COMPENSATION FROM RECOVERY OF RATES, WOULD THE**  
3       **UTILITY'S EMPLOYEE COMPENSATION REFLECTED IN THE COST OF**  
4       **SERVICE BE BELOW THE AVERAGE MARKET COMPENSATION LEVEL AND**  
5       **RESULT IN COMPENSATION LEVELS THAT ARE NOT REASONABLE WHEN**  
6       **COMPARED TO THE MARKET?**

7   A.   Yes. When Black Hills' employee total compensation levels are compared to other similar  
8       positions, Black Hills considers it to be market-competitive at or near the 50<sup>th</sup> percentile in  
9       the market. This includes both the fixed base salary and the variable incentive pay. The  
10      elimination of the variable incentive compensation as proposed by Staff and CURB  
11      incorrectly assumes that such awards are somehow not part of the total compensation  
12      package and instead are in addition to the total compensation package provided by Black  
13      Hills. To arbitrarily eliminate the variable incentive compensation portion of the total  
14      employee compensation places the compensation levels significantly below the median  
15      market compensation levels resulting in levels included in the cost of service that are not  
16      reasonable when compared to the market.

17           Black Hills considers a portion of the employees' total compensation as variable  
18      rather than fixed in order to provide the employee with an incentive to perform at a high  
19      level. This is the approach used by most natural gas and electric utilities. If Black Hills  
20      shifted total compensation to fixed base pay to obtain full cost recovery in rates, then the  
21      employees would no longer be held to account for the strategic goals, high performance and  
22      sliding scale achievement targets that are inherently part of a variable incentive scorecard

1 program, which would be detrimental to Black Hills' customers.

2 **III. REBUTTAL OF STAFF WITNESS MS. KATIE FIGGS REGARDING**  
3 **INCENTIVE COMPENSATION OF BLACK HILLS**

4 **Q. WHAT ADJUSTMENTS TO INCENTIVE COMPENSATION COSTS ARE**  
5 **RECOMMENDED BY STAFF WITNESS FIGGS?**

6 A. Under Ms. Katie Figgs' incentive compensation adjustment, she recommends removing the  
7 amount of STIP paid to officers that is financially performance based, 50% of officer equity  
8 compensation expense associated with restricted stock units and 100% of the officer equity  
9 compensation expense associated with performance-based units. Ms. Figgs uses her opinion  
10 and further relies upon the Commission's past orders as support for a recommended  
11 disallowance of a portion of incentive compensation<sup>3</sup>. Ms. Figgs' adjustment to payroll  
12 expenses also uses the AIP and STIP incentive amounts paid in 2024 for 2023 performance  
13 when calculating her disallowance.

14 **Q. DOES STAFF'S POSITION AND RATIONAL REGARDING THE**  
15 **DISALLOWANCE OF FINANCIAL METRICS FROM INCENTIVE PLAN COSTS**  
16 **RESULT IN UNREASONABLE AND BELOW MARKET LABOR COSTS**  
17 **INCLUDED IN THE COST OF SERVICE?**

18 A. Yes. In my view, an argument that financial metrics included in the Black Hills incentive  
19 plans attributed to financial metrics will be beneficial solely to shareholders is fallacious. As  
20 described above, financial metrics are directly aligned with and provide a direct benefit to  
21 both customers and shareholders and should be fully included in the cost of service.

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<sup>3</sup> Direct Testimony of Katie L. Figgs at pages 27 through 34.

1           **IV.    REBUTTAL OF CURB WITNESS MS. AUDREY BENHAM REGARDING**  
2                           **INCENTIVE COMPENSATION OF BLACK HILLS**

3   **Q.    WHAT ADJUSTMENTS TO INCENTIVE COMPENSATION COSTS ARE**  
4           **RECOMMENDED IN THE TESTIMONY OF CURB WITNESS MS. BENHAM?**

5   A.    As presented above, Ms. Benham recommends 30% of AIP and STIP as well as 80% of  
6           LTIP should be disallowed. Ms. Benham points to prior Commission precedent in explaining  
7           why such incentive compensation should be disallowed.<sup>4</sup>

8   **Q.    DO YOU AGREE WITH MS. BENHAM?**

9   A.    No. Contrary to the views of CURB, incentive compensation plans are directly aligned with  
10          the interests of customers as well as shareholders and are a common component of total  
11          compensation packages throughout the industry. As noted earlier, the Earnings Per Share  
12          performance criteria is driven by customer-oriented metrics: efficient service, safety and  
13          environmental compliance, customer retention, employee productivity, control of operating  
14          expense levels, and customer-directed benefits. It is unreasonable and illogical to think that  
15          financial performance criteria only benefit Company shareholders.

16                As a publicly traded company, Black Hills Corporation competes in the capital  
17          markets and must have access to new sources of capital at reasonable costs. The long-term  
18          financial strength of the Company is of vital interest to all constituents, including customers,  
19          shareholders, and employees.

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<sup>4</sup> Direct Testimony of Audrey Benham at pages 8 through 10.



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**V. CONCLUSION**

**Q. WHAT IS YOUR OVERALL ASSESSMENT AND CONCLUSION OF THE BLACK HILLS INCENTIVE COMPENSATION FOR EXECUTIVES AND EMPLOYEES?**

A. Black Hills' incentive compensation program is well designed and executed.

- The Black Hills incentive compensation program, as part of Black Hills' total compensation program is based upon competitive standards and benchmarks that are reasonable and fair to all constituencies: customers, shareholders, and employees;
- Black Hills direct compensation program, including base salary and incentive compensation plans, are targeted at the 50th percentile (or mid-point of the range) of the market data;
- Actual direct pay levels, as evidenced by the Company's incentive compensation plans, provide a fair level of compensation comparable to other companies;
- The goals and performance measures included with the incentive plans are balanced and provide direct benefit to customers and shareholders alike; and
- It is essential that Black Hills remains in a strong financial and credit position for it to continue safe and reliable service to customers and an incentive plan with financial metrics achieves this goal.

**Q. WHAT ARE YOUR RECOMMENDATIONS FOR THE COMMISSION?**

A. The Commission should revise its position on incentive compensation cost adjustments that exclude a portion of that employee's compensation based on arguments that such compensation is tied to financial metrics that only benefit shareholders. The Commission should reject the adjustments recommended by Staff and CURB related to incentive

1 compensation and allow full recovery of variable incentive compensation in the cost of  
2 service.

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 A. Yes.

**AFFIDAVIT OF KRIS J. PONTIOUS**

State of South Dakota )  
County of Pennington ) ss

I, KRIS J. PONTIOUS, being first duly sworn on oath, depose and state that I am the same Kris J. Pontious identified in the foregoing Rebuttal Testimony; that I have caused the foregoing Rebuttal Testimony to be prepared and am familiar with the contents thereof; and that the foregoing Rebuttal Testimony is true and correct to the best of my knowledge, information, and belief as of the date of this Affidavit.

  
Kris J. Pontious

Subscribed and sworn to before me,  
A Notary Public, in and for said County  
and State, this 22nd day of May, 2025.

  
Notary Public

My Commission expires: 2/25/31

