

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

Before Commissioners: Shari Feist Albrecht, Chairman
 Jay Scott Emler
 Dwight D. Keen

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

PROPOSED DEFAULT ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

1. K.S.A. 77-520 provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. The party has seven days to file a written motion to vacate, which shall state the grounds relied upon.

II. FINDINGS OF FACT

2. On August 31, 2017, Oklahoma Energy Source, LLC (Complainant) filed a Formal Complaint (Complaint) against Black Hills Energy, LLC (Black Hills). The Complainant alleged that Black Hills' credit requirements for third party shippers limits the Complainant's ability to compete for bids and the requirement is not included in Black Hills' tariff.¹

3. 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

¹ Formal Complaint at Att. (Aug. 31, 2017).

for action by the Commission, and further recommended the Complaint be served upon Black Hills for an answer.² On December 07, 2017, the Commission issued an Order Accepting Formal Complaint and Adopting Staff's Memorandum.

4. 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.³ 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.⁴ Black Hills denied that the credit requirement creates any disadvantage.⁵ 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.⁶

5. 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.⁷ Staff added that after conversation with Black Hills' Counsel on the subject that Black Hills agreed to continue with discovery.⁸

6. On May 17, 2018, the Commission issued an Order Denying Motion to Dismiss; Designating a Prehearing Officer; Protective and Discovery Orders; and Setting a Prehearing Conference for June 5, 2018 at 9:00 a.m. by telephone.⁹

² Memorandum at 2-3 (Sep. 21, 2017).

³ Black Hills Energy's Answer and Motion to Dismiss at 4 (Dec. 11, 2018).

⁴ *Id.* at 5.

⁵ *Id.* at 7-8.

⁶ *Id.* at 8.

⁷ Staff's Response to Black Hills Energy's Motion to Dismiss at 2 (Dec. 21, 2017).

⁸ *Id.*

⁹ Order Denying Motion to Dismiss; Designating Prehearing Officer; Protective and Discovery Orders, and Setting Prehearing Conference at 11 (May 17, 2018).

7. On June 5, 2018, the Prehearing Officer convened the Prehearing Conference. The Complainant failed to attend and Black Hills verbally moved for default.

III. CONCLUSIONS OF LAW

8. Pursuant to K.S.A. 77-520(a), the Commission finds the Complainant's failure to attend the Prehearing Conference constitutes default.

THEREFORE, THE COMMISSION ORDERS:

A. The Complainant, Oklahoma Energy Source, is found to be in default.

B. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting that this Default Order be vacated and stating the grounds relied upon, within seven calendar days after service of this Order, with three additional days added to account for service by mail. If no request to vacate is received the Default Order shall become effective.

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 06/12/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 06/13/2018

DLK/sc

CERTIFICATE OF SERVICE

18-BHCG-103-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 06/12/2018.

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