

¹Docket No. 97-UTCG-716-TAR, Order dated March 12, 1998; Transportation Services Definitions, Index Number 30 (definition of Aggregation Pool; definition of End-User) Transportation Services Terms and Conditions, Index Number 39 (paragraph 15, Notification for Enrollment and Changes to Transport). There is a distinction between suppliers, marketers and brokers who aggregate End-Users and those that supply gas to "stand-alone" End-Users. Suppliers, marketers and brokers who aggregate End-users are required by tariff to execute a Marketer Agreement. Those that supply to a stand-alone End-User are not required to execute a Marketer Agreement. Black Hills Energy currently

These persons, etc., are referred to as End Users.²

4. Black Hills Energy's transportation tariff contains specific requirements and qualifications that must be met before a supplier, marketer or broker can sell gas to End-Users. The purpose for these requirements and qualifications is to protect Black Hills Energy's sales customers from incurring cost in the event the supplier, marketer or broker does not perform for whatever reason under its agreement with the End-Users. For example, the tariff requires that if a supplier, marketer or broker plans to combine the nominations and balancing of gas delivered to more than one End-User, which is referred to as aggregation, then those End-Users either must be served by a common pipeline and be situated behind the same town border station, or the supplier, marketer, or broker must subscribe to Black Hills Energy's Optional Aggregation Service.³ Another example, is that the tariff requires that "any supplier, marketer or broker that serves more than one End-User(s)...will be required to execute a Marketer Agreement."⁴ Paragraph 20 of the Marketer Agreement requires that the supplier, marketer or broker provide security in the amount of \$250,000.00.⁵ If the supplier, marketer, or broker fails to deliver and/or pay for gas or the transportation of that gas it has promised to End-Users and those End-Users end up receiving gas by default, which Black Hills Energy has purchased for its sales customers, or using transportation capacity, which Black Hills Energy has secured for its sales customers, then the security required under the Marketer Agreement can be used to pay for that gas and any imbalance fees and penalties

has seven marketers who have Marketer Agreements due to them aggregating End-Users and 22 total suppliers, marketers and brokers delivering gas to End-Users in Kansas.

²*Id.* Transportation Services Definitions, Index Number 30 (definition of End-User).

³*Id.* Transportation Services Definitions, Index Number 30 (definition of Aggregation).

⁴*See*, Footnote 1.

⁵Form Marketer Agreement, page 5, paragraphs 19-20 (Exhibit A to this Answer and Motion to Dismiss).

charged by the upstream pipeline incurred by Black Hills Energy due to the supplier, marketer, or broker defaulting on its agreement with the End-Users. New suppliers, marketers or brokers present an even greater credit risk. A copy of the form Marketer Agreement used by Black Hills Energy is attached to this Answer as Exhibit A and is incorporated herein by reference.

5. Currently, seven suppliers, marketers, or brokers are eligible to sell gas on an aggregation basis to End-Users on Black Hills Energy's Kansas distribution system. Each of those suppliers, marketers, or brokers has executed the same Marketer Agreement with Black Hills Energy as required under the Company's transportation tariff. With the exception of the recent complaint by OKES, none of the suppliers, marketers or brokers have complained about the security provision in the Marketer Agreement.

6. Kansas Gas Service requires suppliers, marketers or brokers to enter into similar agreements, which require the supplier, marketer or broker to undergo a credit check and to provide the utility with a performance bond or security that can be used in the event the supplier, marketer or broker defaults on its agreement with the end-users and those customers end up using gas supplied by the utility.⁶

7. When considering just the current cost of gas of \$3.00 per Dth, and assuming the supplier, marketer or broker is selling in the aggregate approximately 3,000 Dth per day, the total cost of that gas can exceed the \$250,000 security amount in about one billing cycle. As mentioned above, if a marketer defaults and there is no security to cover the cost of gas and transportation of that gas, then those costs are included in Black Hills Energy's purchased gas adjustment ("PGA") clause. Having the security available to apply to any default by the marketer therefore protects Black Hills Energy's sales customers. If the cost of transporting the gas is added to the cost of gas, then the total

⁶Kansas Gas Service's Transportation Tariff, Schedule GTC 10, Section 10.03.01.

cost is even greater. In Iowa and Nebraska, Black Hills Energy has increased the security level to \$500,000.00.

III. APPLICABLE TARIFFS

8. Black Hills Energy provides transportation services to End Users pursuant to its Transportation Services tariff on file and approved by the Commission.⁷ The definition section and notification for enrollment and changes to transport section of the Transportation Services tariff include the following language:

Any Supplier, Marketer or Broker that serves more than one End-User(s) that are eligible to be pooled for the purpose of forming an Aggregation Pool will be deemed an Aggregator, and will be required to execute a Marketer Agreement.⁸

Paragraph 19 of Exhibit A, the form Marketer Agreement, states the following:

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.⁹

Paragraph 20 of the Marketer Agreement provides for the Marketer to provide performance security in an amount of \$250,000.00:

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 the 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.¹⁰

⁷See, Footnote 1.

⁸*Id.*

⁹See, Footnote 5.

¹⁰See, Footnote 5.

9. The tariff language requiring a supplier, marketer or broker to execute a Marketer Agreement was first approved by the Commission in 1998 in Docket No. 97-UTCG-716-TAR ("716 Docket").¹¹ In the nearly 20 years since the tariff language was first approved in the 716 Docket requiring suppliers, marketers or brokers to execute a Marketing Agreement, Black Hills Energy's transportation tariff has been subject to review and changes by the Staff, CURB and several marketing companies in four rate cases.¹² In none of those cases has any party raised an issue with the security provision contained in the Marketer Agreement.

IV. ANSWER TO COMPLAINT

10. Except as admitted or agreed herein, Black Hills Energy denies each and every allegation and statement in the Complaint.

11. Company Background Paragraph. Black Hills Energy is without knowledge regarding the allegations contained in "Company Background" paragraph contained in the Complaint and therefore denies the same. OKES is not currently authorized to do business in Kansas. To Black Hills Energy's knowledge, OKES is not currently supplying, marketing or brokering gas to End-Users on Black Hills Energy's Kansas distribution system.

12. Black Hills Energy Credit Requirements Paragraph. Black Hills Energy admits it had several discussions with OKES in the spring of 2017 regarding the credit requirements contained in the Marketer Agreement and OKES's objection to the \$250,000.00 security requirement. Black Hills Energy is without knowledge regarding whether OKES has waited for three years or more to see some movement in the Black Hills Energy credit requirements, and therefore, denies the same. Black Hills

¹¹See, Footnote 1.

¹²Docket No. 00-UTCG-336-RTS; Docket No. 05-AQLG-367-RTS; Docket No. 07-AQLG-431-RTS; and Docket No. 14-BHCG-502-RTS.

Energy admits that Black Hills Energy told OKES that Black Hills Energy might be willing to consider reviewing internally whether a change in the credit requirements was warranted. Black Hills Energy stated to OKES that the credit requirement had been in place for many years and that before any change could be made with respect to that security provision such would have to be discussed internally within Black Hills Energy and would need to be approved by the Commission. Black Hills Energy admits that it told OKES that if it intended to supply, market, or broker gas to End Users on Black Hills Energy's Kansas distribution system that it would be required to comply with the security requirement contained in the Marketer Agreement.

13. Informal Complaint Filed by OKES Paragraph. Black Hills Energy admits that OKES has filed the Complaint with the Commission. Black Hills Energy admits that it talked to Steve Boyd with the Commission about OKES's Complaint. Black Hills Energy explained that Black Hills Energy's transportation tariff requires gas suppliers, marketers, or brokers to execute a Marketer Agreement and that the Marketer Agreement contains a credit requirement. Black Hills Energy explained to Mr. Boyd how the credit requirement protects Black Hills Energy's sales customers in the event a supplier, marketer or broker defaults in supplying gas to its customers. Black Hills Energy explained how it has a higher credit requirement (\$500,000.00) in Nebraska and Iowa. Finally, Black Hills Energy told Mr. Boyd that there was a sound basis for the credit requirement and it should not be reduced or eliminated as suggested by OKES. Black Hills Energy is without knowledge as to whether Mr. Boyd or the Commission "agreed with the accuracy of OKES facts," and therefore, denies the same. Black Hills Energy admits that it was unwilling to reduce or eliminate the credit requirement contained in the Marketer Agreement.

14. Black Hills Energy denies that there is no place in Black Hills Energy's tariff that states credit requirements will be required for suppliers, marketers or brokers to sell gas to End-Users. As

mentioned above, since 1998, Black Hills Energy's transportation tariff requires all suppliers, marketers or brokers to execute a Marketer Agreement with Black Hills Energy. That Marketer Agreement requires a \$250,000.00 performance bond or line of credit and has been applied to all suppliers, marketers or brokers since 1998.

15. Black Hills Energy admits that the credit requirement is \$250,000.00. Black Hills Energy admits OKES told Black Hills Energy of its possible customers. Black Hills Energy denies that its \$250,000.00 credit requirement is unreasonable. Black Hills Energy denies that the requirement is unacceptable because it is not included in the transportation tariff. The transportation tariff specifically requires all suppliers, marketers or brokers to execute a Marketer Agreement and that Marketer Agreement requires the \$250,000.00 security. Black Hills Energy denies that its risk is limited to transportation and balancing fees. If a supplier, marketer or broker fails to perform under its agreement with End-Users, then those End-Users end up using gas and transportation supplied by Black Hills Energy. If the supplier, marketer or broker does not have the financial resources to cover the cost of the gas and transportation, then Black Hills Energy's sales customers are ultimately placed at the risk of increased gas supply and transportation cost caused by the non-performance by the supplier, marketer or broker.

16. Black Hills Energy denies that its credit requirement only allows the largest suppliers, marketers or brokers to sell gas to End-Users and results in less competition among those types of companies to sell gas. Black Hills Energy currently has seven suppliers, marketers or brokers eligible to sell gas on an aggregation basis to End-Users on its Kansas distribution system. All of them have provided at least the minimum security amount of \$250,000.00.

17. Black Hills Energy denies OKES's claim that Black Hills Energy benefits from having fewer companies that can meet the credit requirements contained in the Marketer Agreement.

18. Black Hills Energy denies OKES's claim that there is very limited credit risk if a supplier, marketer or broker fails to perform under its agreement with End-Users.

19. Black Hills Energy is without knowledge as to whether OKES has been eliminated from several competitive bidding situations when customers have multiple locations behind Black Hills Energy, Kansas Gas Service and Atmos Energy, and therefore, denies the same. All suppliers, marketers or brokers selling gas to End-Users on Black Hills Energy's distribution system are required to put in place the \$250,000.00 security, and therefore, that particular provision in and of itself, would not have placed OKES at a competitive disadvantage with the other suppliers, marketers or brokers. Black Hills Energy is without knowledge as to whether OKES has "a few customers" who are on Black Hills Energy's distribution system, and therefore, denies the same.

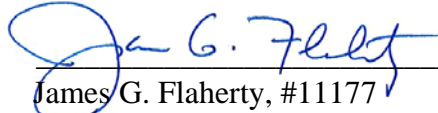
20. Black Hills Energy denies that OKES is entitled to the relief requested. Black Hills Energy requests the Commission find that the security requirement contained in the Marketer Agreement is reasonable.

21. At the end of its Complaint, OKES has listed 10 questions. For purposes of this proceeding, Black Hills Energy will treat those questions as data requests.

V. MOTION TO DISMISS COMPLAINT

22. According to the records on file with the Oklahoma Secretary of State's Office, OKES is an Oklahoma limited liability company. According to the records on file with the Kansas Secretary of State's Office, OKES is not registered and is not authorized to do business in the State of Kansas. K.S.A. 17-7307 prevents an out of state company, which has failed to register to do business in the State of Kansas, from maintaining a cause of action in Kansas. *Douglas Landscaping and Design, LLC v. Miles*, 51 Kan.App.2d 779, Syl. 1, 355 P.3d 200 (2015). Therefore, Black Hills Energy moves to dismiss the formal complaint filed by OKES in this docket.

WHEREFORE, Black Hills Energy submits for the Commission's consideration this Answer to the Complaint. Black Hills Energy also moves to dismiss the Complaint for the reasons set forth herein. Finally, Black Hills Energy seeks any such further relief the Commission deems appropriate.



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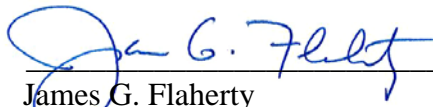
Attorneys for Black Hills/Kansas Gas Utility Company,
LLC, d/b/a Black Hills Energy

VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy, named in the foregoing Answer and Motion to Dismiss, and is duly authorized to make this affidavit; that he has read the foregoing Answer and Motion to Dismiss, and knows the contents thereof; and that the facts set forth therein are true and correct.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 11th day of December, 2017.





Notary Public

Appointment/Commission Expires:

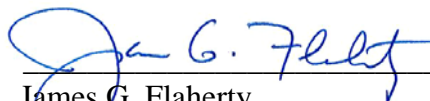
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 11th day of December, 2017, addressed to:

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James G. Flaherty