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June 15, 2023

Ret. Colonel Thomas Golden  
Executive Director  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508

Re: *Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy*  
*2023 Nebraska Choice Gas Comments*  
*Docket NG-102/PI-225*

Dear Ret. Col. Golden:

Black Hills Energy hereby transmits its 2023 Nebraska Choice Gas Comments under Docket NG-102.

Please contact me at (402) 221-2635 if you have any questions or need additional information.

Respectfully submitted,

*Douglas J. Law*

Douglas J. Law #19436  
Associate General Counsel

DJL:ce

Attachment

cc: Shelly Reichert  
Johanna Benson  
Service List  
Nicole Mulcahy

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF THE )  
COMMISSION, ON ITS OWN MOTION, )  
SEEKING TO REVIEW POLICIES AND )  
PRACTICES RELATING TO THE )  
ADMINISTRATION OF CUSTOMER )  
CHOICE PROGRAMS FOR NATURAL )  
GAS SERVICE OFFERED WITHIN )  
THE STATE OF NEBRASKA )**

**Application No. NG-102/PI-225**

**2023 COMMENTS OF  
BLACK HILLS NEBRASKA GAS, LLC  
D/B/A BLACK HILLS ENERGY  
(Choice Gas Administrator)**

## I. INTRODUCTION

On August 6, 2019, the Nebraska Public Service Commission (“Commission”), on its own motion, issued an order (“2019 Choice Gas Order”) opening an investigation in the above-captioned docket for the purpose of gathering information regarding, and reviewing the policies and practices related to, Black Hills Nebraska Gas, LLC’s (“BH Nebraska Gas”) administration of customer choice programs for natural gas service offered within the State of Nebraska (“Choice Gas Program”). The Commission initiated its investigation in this proceeding pursuant to *Neb. Rev. Stats. §§ 66-1848, 66-1849, and 66-1855*.

Pursuant to the Commission’s 2019 Choice Gas Order, the Commission solicited written comments on a range of topics primarily related to residential customers within the Choice Gas Program administered by BH Nebraska Gas. Thereafter, the Commission held a workshop to discuss those topics. Following that workshop, in Progression Order No. 1, entered in this proceeding on October 29, 2019, the Commission set forth a series of recommendations and expectations for the Choice Gas Program. The Commission stated that the proceeding would remain open for the purpose of continuing to gather information regarding the Choice Gas Program and reviewing its administration.

On March 10, 2020, the Commission issued its Progression Order #2, “Request For Comments, and Notice of Workshop (“2020 Choice Gas Order”). Pursuant to the 2020 Choice Gas Order, the Commission requested written comments and evidence in advance of its 2020 Commission Choice Gas Programs Workshop held on Wednesday, June 17, 2020. The Commission’s 2020 Choice Gas Order set forth eight different topics wherein the Commission sought comment regarding the Choice Gas Program.

On July 14, 2020, the Commission issued its Progression Order #3. That Commission Order provided various statements of recommendations and expectations of the Commission regarding the comments on issues discussed and considered at the Commission's June 17, 2020, Workshop. The Commission further ordered that this docket shall remain open for the purpose of gathering information and reviewing the administration of the Choice Gas Program offered within the State of Nebraska.

On March 30, 2021, the Commission issued its Progression Order #4 ("2021 Choice Gas Order"). Pursuant to the 2022 Choice Gas Order, the Commission did not solicit written comments; however, parties wishing to submit comments were permitted to do so at least one week prior to the workshop held June 15, 2021. The Commission further ordered that this docket shall remain open for the purpose of gathering information and reviewing the administration of the Choice Gas Program offered within the State of Nebraska.

On April 26, 2022, the Commission issued its Progression Order #5 ("2022 Choice Gas Order"). Pursuant to the 2022 Choice Gas Order, the Commission did not solicit written comments; however, parties wishing to submit comments are permitted to do so at least one week prior to the workshop to be held June 28, 2022. The Commission's Progression Order #5 requires written comments and supporting documentation regarding the 2022 Selection Period will be due to the Commission on or before June 21, 2022, at 5:00 p.m. Central Time in order to be considered as part of the June 28, 2022, workshop.

On April 25, 2023, the Commission issued its Progression Order #6 ("2023 Choice Gas Order"). Pursuant to the 2023 Choice Gas Order, the Commission did not solicit written comments; however, parties wishing to submit comments are permitted to do so at least one week prior to the workshop to be held June 21, 2023. The Commission's Progression Order #6 requires

written comments and supporting documentation regarding the 2023 Selection Period due to the Commission on or before June 21, 2022, at 5:00 p.m. Central Time in order to be considered as part of the June 21, 2023, workshop.

Pursuant to the Commission’s 2023 Choice Gas Order, BH Nebraska Gas hereby submits comments and evidence in response to the Commission’s Choice Gas investigation in this proceeding.

## **II. SCOPE OF COMMENTS**

The comments provided herein focus on the existing Choice Gas Program offered by BH Nebraska Gas within the State of Nebraska. BH Nebraska Gas is not proposing any significant structural or territory changes to the existing Choice Gas Program as part of this Nebraska proceeding. Any proposal by BH Nebraska Gas to significantly alter the existing BH Nebraska Gas Choice Gas Program or any transportation program offered by BH Nebraska Gas will be presented, if at all, in the future. Accordingly, the soonest any significant structural or territorial changes to the BH Nebraska Gas Choice Gas Program or to the transportation programs of BH Nebraska Gas would be presented for discussion and further consideration, if at all, is no earlier than 2026 or thereafter.

**BH Nebraska Gas emphasizes that no expansion or other significant structural change to the Choice Gas Program of BH Nebraska Gas is currently contemplated by BH Nebraska Gas for Nebraska.** As the Nebraska Commission may be aware, the Choice Gas Program expansion filing before the Wyoming Public Service Commission (“Wyoming PSC”) in the State of Wyoming was dismissed at the request of Black Hills Wyoming Gas (“BH Wyoming

Gas”) to allow the parties in that proceeding to engage in workshop sessions to address the existing Choice Gas Program issues identified in the Wyoming PSC docket.<sup>1</sup>

The overarching strategy in Wyoming is for Black Hills Wyoming Gas to first address existing BH Wyoming Gas Choice Gas issues, and then consider whether expansion of that revised program should be expanded to other service areas of BH Wyoming Gas (e.g., Cheyenne and Cody). To that end, the participants in the Wyoming Choice Gas Program have held several workshops addressing numerous issues arising under the Choice Gas Program. The presentation for the most recent Workshop held on June 14, 2023 at the Wyoming Public Service Commission is attached as Exhibit A.

BH Nebraska Gas managers will continue to monitor the Wyoming Choice Gas Program workshops as they progress and then consider whether any of the Choice Gas Program changes adopted and approved by the Wyoming PSC would be prudent to propose for discussion and consideration for the BH Nebraska Gas Choice Gas Program. BH Nebraska Gas has provide the Nebraska Commission with status updates regarding the progress of the BH Wyoming Gas Choice Gas proceeding at its quarterly Commission Application NG-101.1 meetings or as requested. BH Nebraska Gas fully understands that any tariff changes to the BH Nebraska Gas Choice Gas Program would be subject to prior discussion, review, and approval by the Nebraska Commission.

BH Nebraska Gas’s remaining comments herein present a report on the 2023-2024 enrollment period for the BH Nebraska Gas Choice Gas Program. See Exhibit B.

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<sup>1</sup> *In re Application of Black Hills Wyoming Gas, LLC d/b/a Black Hills Energy for Authority to Revise Certain Tariff Provisions Related to the Choice Gas Program and Expand the Choice Gas Program to All Customers Effective June 2023, Wyoming PSC Docket No. 30026-46-GA-21 (Record No. 15803).*

### **III. CHOICE GAS PROGRAM COMMENTS**

BH Nebraska Gas provides its comments related to the current BH Nebraska Gas 2022-2023 Choice Gas Program years. These comments are limited to the Residential and Commercial Choice Gas Program offered by BH Nebraska Gas in Rate Area Five.

The Choice Gas Program issues commented on by BH Nebraska Gas are as follows:

#### **2023-2024 Selection Period**

**Did the 2023-2024 selection period run smoothly? What went well? Were any issues encountered that should be addressed in coming years?**

BH Nebraska Gas reports that the enrollment period for the 2023-2024 Choice Gas Program year proceeded without significant issues. The Black Hills Energy call center received approximately the same number or fewer customer calls as last year's Choice Gas Program enrollment periods. Overall, the customer enrollment process only experienced a minimal number of customer questions/concerns, which were resolved immediately upon BH Nebraska Gas' awareness of an issue. The Choice Gas Suppliers have also been cooperative and responsive in resolving any customer issues.

Customers were directed to the [www.Choicegas.com](http://www.Choicegas.com) website where enrollment information was available. The minor changes made by BH Nebraska Gas to the Choice Gas Program marketing, mailing, and enrollment materials were provided to eligible customers. BH Nebraska Gas did not encounter any significant customer confusion experienced in prior years related to when the selection period started.

In addition to providing copies of the customer enrollment package to the Nebraska Commission, BH Nebraska Gas also forwards the Marketing and Mailing materials of the participating Choice Gas Program Suppliers to the Commission for its information and review.

#### IV. CONCLUSION

**WHEREFORE**, for the reasons stated above, BH Nebraska Gas respectfully submits the comments provided herein.

Respectfully,

Dated: June 15, 2023

By: */s/ Douglas J. Law*

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Attorney  
Black Hills Nebraska Gas, LLC

EXHIBIT A

# Q2 WY Choice Gas Workshop

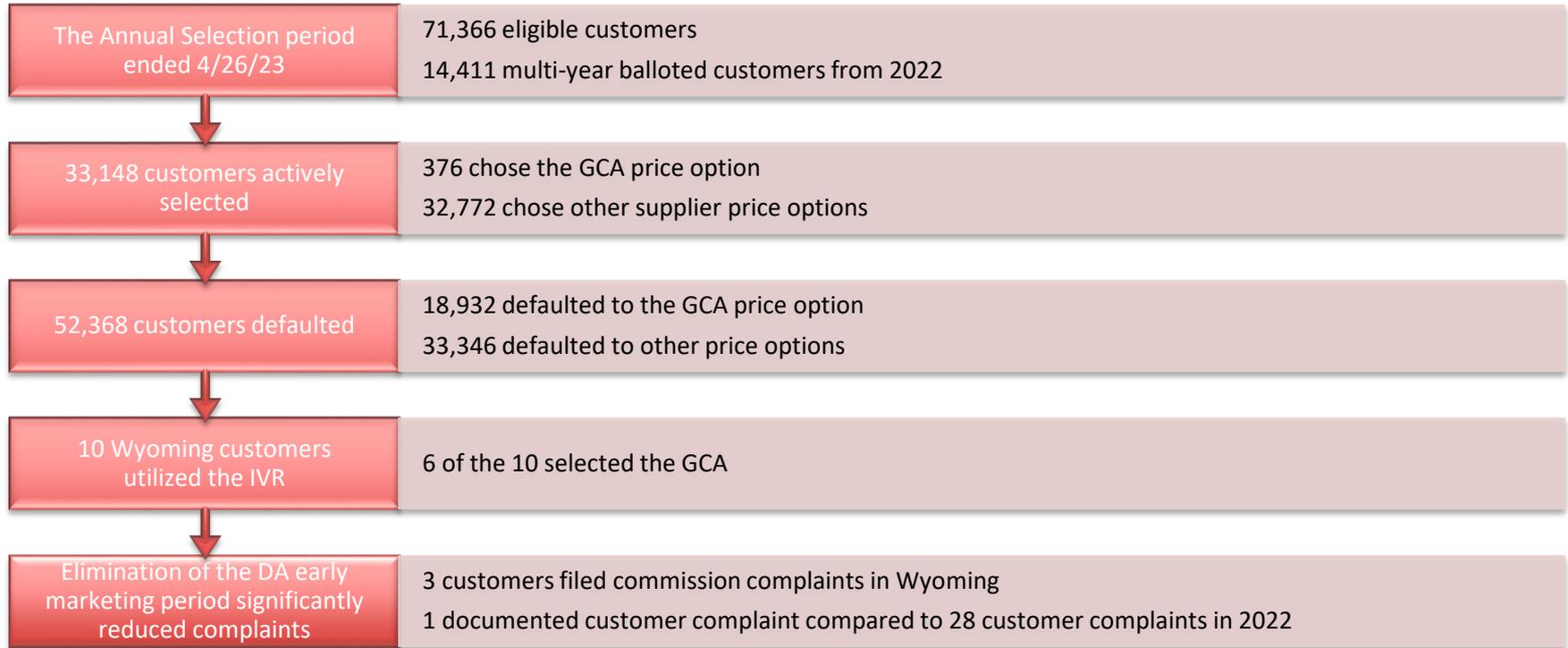
June 14, 2023



NPSC Received 06/16/2023

# 2023 Selection Period Overview

## Some Selection Period Results for 2023



NPSC Received 06/16/2023

# Review of Outstanding Q1 Issues



2023 Choice Gas Survey update



Remaining post expansion docket Choice Gas issues



Suppliers want to communicate with existing customers outside of selection period



Separation of customer charge and Choice fee on bills

# Choice Gas Survey

## Objectives:

- Obtain insight into program value proposition and perceived customer benefits and/or challenges
- Obtain insights for continued enhancement of the program

Timing: July 2023

Method: Email to all customers with address on file

Follow-up Actions: Results will be shared with workshop parties in Q3

# Post Expansion Docket

## Issues Summary



Program Administration: 15 of 24 Resolved.



Operation Improvements: 5 Outstanding.



Customer Confusion: 10 of 17 Resolved.

**Total Docket Issues: Approx. 25 of 46 Resolved**

# RESOLVED CHOICE GAS ISSUES

## Administration of the Program

- ✓ Program materials should contain same information
- ✓ Firm date to suppliers for packet material data changes
- ✓ Immediate confirmation of selection
- ✓ Stronger Administration of the program
- ✓ Suppliers record all calls
- ✓ Prohibit suppliers from marketing safety & reliability
- ✓ No Delegation Agreements for residential
- ✓ Four-week marketing and enrollment period
- ✓ Year-end bill should include what price would have been on the GCA
- ✓ Marketing period should remain eleven weeks & not coincide w/selection period
- ✓ GCA customers should not pay for CG administration
- ✓ Expanding selection period to 4 weeks
- ✓ Delegation Agreement use for commercial customers with more than one account
- ✓ Proposal to have customer's year end bill include comparison of what the customer would have paid on the GCA
- ✓ More robust surveys
- ✓ Removal of supplier is too harsh of a term

## Customer Confusion

- ✓ Suppliers offering market index commodity price options should have an explanation on website
- ✓ Proposal to eliminate balloted customer numbers from the choice gas website and replace with ratings instead
- ✓ Separate line on customer bill for choice fee
- ✓ GCA is regulated by WYPSC
- ✓ Clearly describe supplier is providing gas & utility provides additional services
- ✓ Make it clear customers do not have to participate
- ✓ Rights customers have related to marketing, reporting complaints, opting out
- ✓ Selection packet improvement-GCA not explained sufficiently
- ✓ GCA should be given equal footing as suppliers
- ✓ GCA is not for profit and regulated by commission; suppliers are for profit and are unregulated
- ✓ BHES clearly delineated from the Utility

## Supplier should be able to contact existing customer base outside of the selection period

At the March 2023 workshop the subject of Suppliers contacting their own customer base throughout the year was discussed. Suppliers believe it important to allow them to:

- Conduct their own customer surveys
- Inform customers of community benefits in their area
- Provide energy efficiency tips/education

### Position:

Black Hills Wyoming Gas, LLC as the administrator of the CG Program is open to establishing a review process for Supplier driven communications to their own current customer base.

### Proposed Process:

1. Suppliers provide high-level communications plan for the upcoming year to include:
  - Timing of communications
  - Subject of communications
  - Method of communications (email, direct mail, etc.)
2. CG Admin reviews and approves all communications

### CG Admin Concerns and Questions:

- No call to action, marketing or promotions in communications plan or content.
- Opt out provisions could cause issues for selection period.
- How will Suppliers handle scenarios where customer asks about upcoming year pricing?
- Can Suppliers accommodate any additional potential customer contact driven by these communications?

NPSC Received 06/16/2023

# Q2 2023 Discussion Topics

1. Fines for violation of Mailing List & Marketing Agreement
  - Guidelines and fines for disputes in the code of conduct
2. Cap/ceiling on prices perhaps at the GCA rate
3. Fixed Monthly Bills
  - Separate line item for the FEW charge
4. Historical supplier pricing comparison availability

# Fines for violation of Mailing List & Marketing Agreement

The subject of imposing fines or penalties has been raised periodically; however, the specifics of designing and administrating fines or penalties are difficult to resolve.

## Mailing List & Marketing Agreement Violations

### **Determining factors:**

- **Jurisdiction** – who should investigate, adjudicate, consider appeals?
- **Process** – what due process is afforded participants?
- **Necessity** – are there significant or repeated violations that need to be addressed?
- **Types and Regularity of violations** – what are repeated violations that need to be addressed?
- **Financial impact** – what level of fine or penalty should be implemented?
- **Customer impact** – how does the process of assessing penalties impact customers?
- **Enforcement** – who has authority to enforce disputes and collect fines and penalties?
- **Proceeds** – where do the fines and penalties go?

Due to the variety of potential violations, creating a viable structured penalty matrix is challenging.

# Fines for Code of Conduct violations

## One violation of Code of Conduct on record:

A Code of Conduct violation recorded March 4, 2021 in which the complaining Supplier following the Supplier Code of Conduct Guidelines notified Company and the offending Supplier of the perceived violation. The offending Supplier responded same day & took swift action to resolve the issue, with no further actions necessary from any party.

## Determining factors:

**Governance:** first opportunity of resolution is provided to all parties with final controlling authority resting with the Wyoming Public Service Commission.

**Necessity:** while violations of this magnitude are rare the guidelines provide means for resolution among the affected parties

## Type of violations:

**Financial impact:** to be determined at time violation is reported

**Customer impact:** to be determined at time violation is reported

**Regularity of violations:** rare

# Cap/ceiling on prices perhaps at the GCA Rate

Black Hills Wyoming Gas, as the Choice Gas Program Administrator, does not have authority to impose pricing restrictions on non-regulated Suppliers.

Pricing is not the only representation of a Choice Gas Supplier's value proposition to customers.

## Fixed Monthly Bill (FMB) customers - separate FEW charge line item

- With the anticipated August 2024 conclusion of the FEW charge, Suppliers will not include the FEW charge in their FMB quotes for 2023.
- Customers with FMB will have an independent line item for the FEW charge effective June 1, 2023.
- FEW will not be charged to FMB customers once it expires.

# Historical Supplier Pricing Availability

An inquiry from a Black Hills Energy customer in Laramie, WY requesting a report on the historical consumer cost trends for the various Choice Gas offerings to Wyoming ratepayers was received by Choice Gas Administration from the OCA.

Black Hills Wyoming Gas' responsibility as it relates to pricing, is to bill customers prices as provided by the Suppliers.

The Wyoming Annual report is filed after the annual selection period is over. Suppliers are required to provide their high/low fixed rate per therm prices quoted during the annual selection period for each Wyoming division.

Attachment 2.2 of the Wyoming Annual Report includes the average price of each price option offered by Suppliers during the annual selection period by division.

## Proposal:

Suppliers posting the same information provided in the Wyoming Annual Report on their websites for customers to view.

# Next Steps

CG Admin Team Review Q2 Action Items / Follow-ups for Q3

Q3 Workshop Date confirmation: Tues., August 29, 2023

Q4 Workshop Date confirmation: Wed., October 25, 2023 or back-up date of Wed., November 8, 2023?



**Johanna Benson**  
Manager of Regulatory & Finance  
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P: 605-800-1799

June 5, 2023

Col. Thomas Golden (Ret.)  
Executive Director  
Nebraska Public Service Commission  
1200 N Street, Suite 300  
Lincoln, NE 68508

Re: Black Hills Nebraska Gas, LLC, d/b/a Black Hills Energy  
**Supplemental** – 2023 Residential and Commercial Annual Report  
Choice Gas Program Supplier Selections

Dear Mr. Golden:

On May 26, 2023, Black Hills Energy timely filed the 2023 Residential and Commercial Annual Report related to the Choice Gas Supplier Selections. The attached report supplements that initial report by adding additional information regarding the number of residential and commercial customers enrolled by each Choice Gas Program Supplier. The supplemental Supplier enrollment information is provided as part of Attachment A.

In accordance with Rule 018.03 of the Commission's Natural Gas and Pipeline Rules and Regulations, published at Nebraska Administrative Code, Title 291, Chapter 9, Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy hereby transmits for filing with the Commission an original and one copy of its Residential and Commercial Annual Report detailing

- a) a list of the suppliers participating in the Residential and Commercial Choice Gas Program for the 2023-2024 program year; and
- b) the total number of customers that selected each listed supplier for the program year.

The customer selection numbers include customers that defaulted to each supplier pursuant to the terms of the referenced Choice Gas Program rate schedule. This information is reported in Attachment A to this transmittal letter.

In addition, pursuant to the Commission's Progression Order #1 in Commission Application No. NG-102/PI-225 (Entered October 29, 2019) at page 5, the Commission also ordered Black Hills Nebraska Gas to provide the following information as part of its Residential and Commercial Annual Selection Report:

1. the number of customers eligible to make a choice during the selection period broken down by residential and commercial class;
2. the percentage of customers making an active selection in each class; and
3. the number of customers who changed suppliers.

This information is reported in Attachment B to this transmittal letter.

Please contact me at (605) 800-1799 if you have any questions or need additional information.

Sincerely,

Black Hills Nebraska Gas, LLC  
d/b/a Black Hills Energy

/s/ Johanna Benson  
Johanna Benson  
Manager of Regulatory & Finance  
(605) 800-1799

And

/s/ Douglas J. Law  
Douglas J. Law, NE Bar #19436  
Associate General Counsel  
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(402) 221-2635

Enclosures

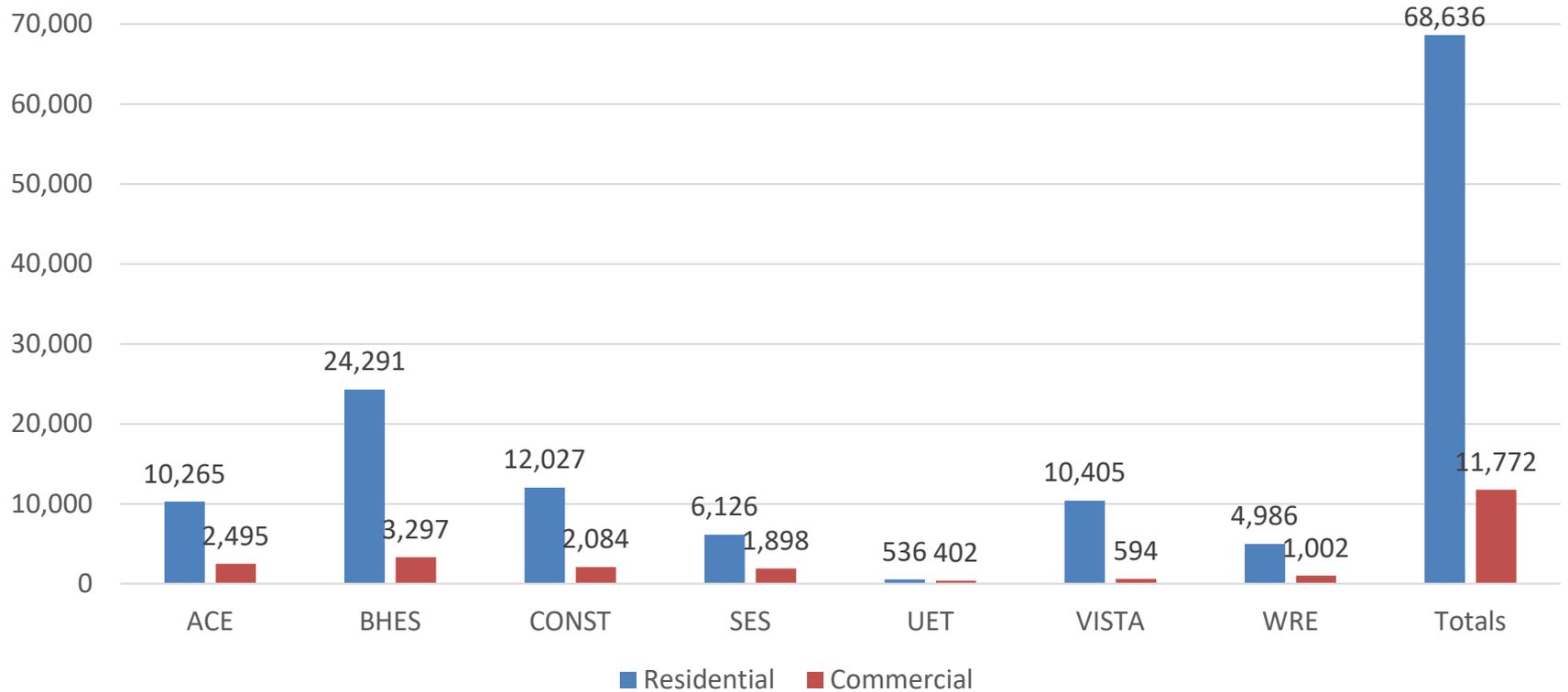
cc: Nichole Mulcahy, Director of Natural Gas Department, NPSC  
William Austin, Esq., Nebraska Public Advocate

Attachment A  
 2023 Residential & Commercial Annual Report  
 Choice Gas Program Supplier Selections

<b>Suppliers Participating in the Choice Gas Program</b>	<b>2023 Number of Customers*</b>	<b>2022 Number of Customers*</b>
Vista Energy Marketing	10,999	10,962
Constellation Energy	14,111	13,802
Black Hills Energy Services	27,588	27,675
Symmetry Energy	8,024	9,130
WoodRiver Energy, LLC	5,988	4,820
ACE	12,760	12,652
Uncle Frank Energy Marketing	938	1,337

\* For purposes of this report, the number of customers is based on the number of premises that either selected, or defaulted to, the respective Choice Gas Program Supplier.

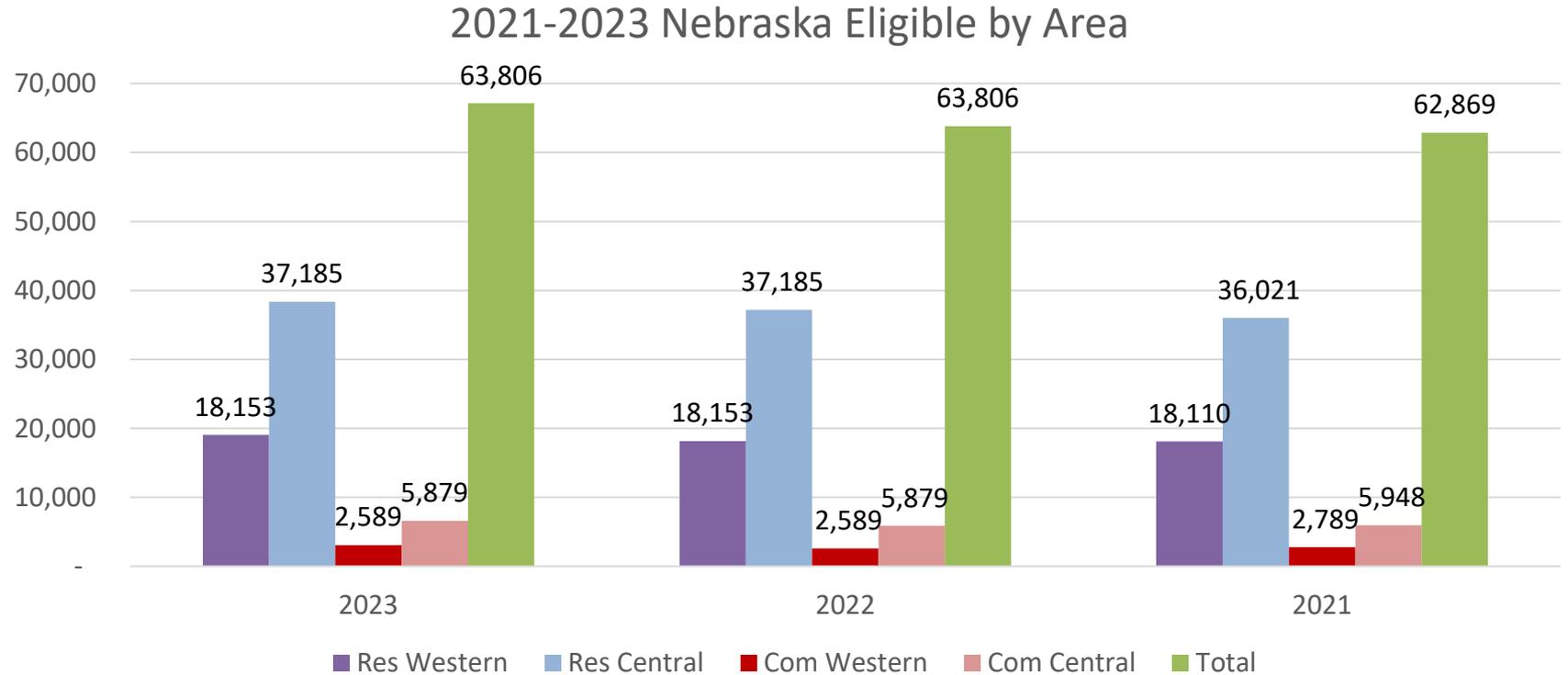
# Balloted Numbers by Supplier & Customer Class



NPSC Received 06/16/2023

Black Hills Nebraska Gas, LLC  
d/b/a Black Hills Energy  
2023 Residential and Commercial Annual Report  
Choice Gas Program Supplier Selections  
Attachment B

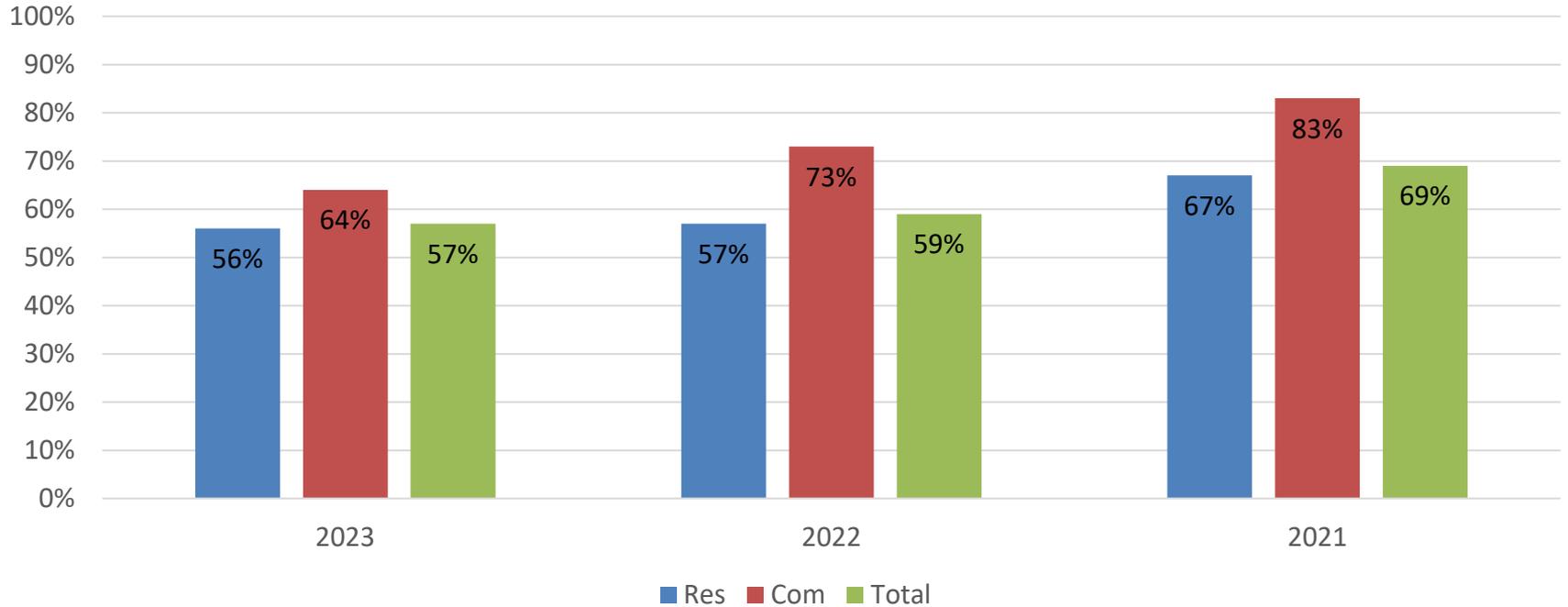
**QUESTION 1: The number of customers eligible to make a choice during the selection period broken down by residential and commercial class**



NPSC Received 06/16/2023

## QUESTION 2: The percentage of customers making an active selection in each class

### 2021-2023 Nebraska Active Ballots by Class



## QUESTION 3: The number of customers who changed suppliers

2021-2023 Comparison of Selections for Same Supplier vs Changing Suppliers

