

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE) Application No. NG-102/PI-225
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)

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 BH Nebraska Gas of customer choice programs for natural gas service offered within the State of Nebraska (“Choice Gas programs”). 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 program administered by Black Hills Nebraska Gas, LLC (“BH Nebraska Gas”).¹ 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 BHNG’s Choice program (“Choice program”). The stated that the proceeding would remain open for the purpose of continuing to gather information regarding the Choice 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 seeks written comments and evidence in advance of its 2020 Commission Choice Gas Programs Workshop scheduled for Wednesday, June 17, 2020. The

¹ Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy is the surviving legal entity after the merger and consolidation of Black Hills Gas Distribution, LLC and Black Hills/Nebraska Gas Utility Company, LLC.

Commission’s 2020 Choice Gas Order sets forth eight different topics wherein the Commission seeks comments regarding the Choice Gas programs.

The Choice Gas program issues listed in the 2020 Choice Gas Order are as follows:

- 1. 2020 Selection Period;**
- 2. Customer Education;**
- 3. Delegation Agreements;**
- 4. Selection Period**
- 5. Dispute Resolutions;**
- 6. Default Pricing;**
- 7. Energy Options; and**
- 8. Other Information.**

Pursuant to the Commission’s 2020 Choice Gas Order, Black Hills Nebraska Gas, LLC (“BH Nebraska Gas”) hereby submit comments and evidence in response to the Commission’s Choice Gas investigation in this proceeding.

BH Nebraska Gas operates within the State of Nebraska as a Jurisdictional Utility pursuant to the State Natural Gas Regulation Act. (“Act”) *Neb. Rev. Stats. §§ 66-1801, et. seq.* BH Nebraska Gas conducts business in Nebraska as “Black Hills Energy.”

BH Nebraska Gas provides the comments and evidence set forth below.

II. SCOPE OF COMMENTS

The comments provided herein focus directly and primarily on the existing Choice Gas Programs 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 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.

In addition, BH Nebraska Gas does not plan on making any significant changes in the BH Nebraska Gas Choice Gas Program within the general rate review application to be filed on June 1, 2020 by Black Hills Nebraska Gas, LLC in Commission Application No. NG-109.

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, if at all, is no earlier than the year 2021 or thereafter. BH Nebraska Gas emphasizes that no expansion or other significant structural change to the Choice Gas Programs of BH Nebraska Gas or to the transportation programs of BH Nebraska Gas is currently contemplated by BH Nebraska Gas for Nebraska.

BH Nebraska Gas's comments herein present a few possible BH Nebraska Gas Choice Gas Program changes that should be discussed and advanced with Suppliers participating in the BH Nebraska Gas Choice Gas Program ("Choice Gas Program Suppliers"). For example, possible changes to the Marketing and Mailing Agreement provisions, and to the Delegation Agreement process should be discussed as part of the comments and evidence provided within this proceeding.

III. BACKGROUND

A. BH Nebraska Gas Choice Gas Program

The BH Nebraska Gas Choice Gas Program was first commenced in or around 1998 under the Municipal Natural Gas Regulation Act. *Neb. Rev. Stats. §§ 19-4601, et. seq. (Repealed)*. BH Nebraska Gas, and its predecessors-in-interest (i.e. KN Energy, then Kinder Morgan, SourceGas Distribution, and Black Hills Gas Distribution) have provided a Residential/Commercial Choice Gas Program along with a separate Agricultural Choice Gas Program to Customers annually since it commenced the Choice Gas Programs.

The Commission assumed jurisdiction over the BH Nebraska Gas Choice Gas Program in 2003 pursuant to authority granted to the Commission under the State Natural Gas Regulation Act. Pursuant to the Act, the Commission adopted a Code of Conduct, Supplier /Aggregator Code of Conduct, Affiliate, and other rules applicable to the Choice Gas Program. *Neb. Rev. Stat. § 66-1805 (2003)*. See, also, *291 Neb. Admin. Chapter 9, Rules 018 and 019*.

Currently, BH Nebraska Gas offers Choice Gas Programs in the states of Nebraska and Wyoming. More information about the Black Hills Gas Distribution Choice Gas Program can be found on the Company's Choice Gas Program website located at www.choicegas.com.

1. Nebraska Res/Com Choice Gas Program

The Commission has approved tariffs for BH Nebraska Gas, or its predecessors-in-interest that provide for Residential and Commercial customer classes in Nebraska (“Res/Com Choice Gas Program”). Pursuant to those Commission-approved tariffs, BH Nebraska Gas provides an annual Res/Com Choice Gas Program that includes the option for each Residential or Commercial customer (hereafter Residential and Commercial customers are collectively referred to as a “Res/Com Customer”) to select a natural gas commodity Supplier.

Specifically, under the BH Nebraska Gas Res/Com Choice Gas Program, a Res/Com Customer selects a Certified Natural Gas Provider (“CNGP” or “Supplier”)² as the Res/Com Customer’s natural gas commodity Supplier. BH Nebraska Gas is the Administrator of the Choice Gas Program in Nebraska, however unlike the Choice Gas Program provided by Black Hills Wyoming Gas, LLC, formerly BH Nebraska Gas, within the State of Wyoming, BH Nebraska Gas

² The Commission certifies Competitive Natural Gas Providers pursuant to Neb. Rev. Stat. § 66-1848 and 66-1849.

does not participate as a competitive Supplier within BH Nebraska Gas's Nebraska Choice Gas Program.

As the Res/Com Choice Program is designed in Nebraska, Suppliers possessing a CNGP approved by the Commission are permitted to market and thereafter provide natural gas commodity to BH Nebraska Gas Res/Com Customers. The natural gas commodity service is provided to Res/Com Customers pursuant to a terms and conditions of various Choice Gas Res/Com Agreements entered into between the Commission-approved CNGP and BH Nebraska Gas. The Choice Gas Program Supplier does not enter into a separate formal gas purchase and sale agreement with Res/Com Customers in order to provide natural gas to Res/Com Customers under the Choice Gas Program.

The Choice Gas Program Supplier agreements between BH Nebraska Gas and the Suppliers consist of the following agreements: a) Supplier Participation Agreement, including the allocation and release of interstate pipeline capacity, b) Marketing and Mailing Agreement, and c) Parent Guaranty Agreement.

There are currently seven Choice Gas Program Suppliers providing natural gas commodity to BH Nebraska Gas customers in Nebraska. Those qualified Choice Gas Program Suppliers are as follows: ACE (Public Alliance for Community Energy), Vista Energy Marketing, Constellation Energy, an Exelon Company, Black Hills Energy Services Company³, CenterPoint Energy Services, Inc., WoodRiver Energy, LLC., and Uncle Frank Energy Services.

³ Black Hills Energy Service Company ("BHES") is a separate non-regulated natural gas supply marketing affiliate of BH Nebraska Gas. In compliance with the Codes of Conduct adopted by the Commission and included in the tariff of BH Nebraska Gas, BHES currently participates in the Choice Gas Program offered in the States of Nebraska and Wyoming.

Under the Res/Com Choice Gas Program, the Supplier selection enrollment period may differ slightly each year. However, generally, the official Supplier selection established by BH Nebraska Gas is a two-week period in April preceding the commencement of the next Annual Choice Gas Program year. The Choice Gas Program year for Res/Com Customers commences on June 1st of each year and concludes on May 31st of the following year.

While the Choice Gas Program marketing period permitting Suppliers to present gas supply price offers to Customers each year may differ, no Res/Com Choice Gas Customer is officially enrolled in the Choice Gas Program until the official enrollment period is opened by BH Nebraska Gas.

The experience of BH Nebraska Gas is that some Choice Gas Program Suppliers prefer a longer marketing period and others prefer a shorter official enrollment period. Suppliers can only contact Res/Com Customers as permitted under a Mailing and Marketing Agreement. However, Suppliers may obtain a Customer's authority to enroll that customer in the Choice Gas Program once the Official Enrollment period is opened by BH Nebraska Gas. The Supplier obtains the Customer's commitment to act on the Customer's behalf under a Delegation Agreement entered into between the individual Res/Com Customer and the Supplier.

As the Choice Gas Program Administrator, BH Nebraska Gas provides various administrative services under the Supplier Participation Agreement required as part of its Choice Gas Program. For example, BH Nebraska Gas will provide Customer billing, collection, and bad debt services for Suppliers participating in the Choice Gas Program. BH Nebraska Gas collaborates with the Choice Gas Program Suppliers at various times throughout the year, either individually or collectively in an effort to improve the Choice Gas Program. Traditionally, BH Nebraska Gas holds an annual meeting with Choice Gas Program Suppliers in November of each

year to present any changes to the Choice Gas Program. BH Nebraska Gas also seeks feedback from the Choice Gas Program Suppliers regarding the upcoming Choice Gas Program year.

Before any significant change to the Choice Gas Program is made, BH Nebraska Gas communicates those proposed changes to the Choice Gas Program Suppliers. The changes, if any, are implemented within the boundaries of the three pillars adopted by BH Nebraska Gas for the Choice Gas Program. The three pillars of the Choice Gas Program are designed to (1) focus on the Choice Gas Program Customer experience, (2) provide for economical and efficient administration of the Choice Gas Program by BH Nebraska Gas, and (3) allow opportunities for Choice Gas Program Suppliers to provide competitive gas supply pricing options to Choice Gas Program customers.

2. AG Choice Gas Program

In addition, to Res/Com Customer Choice Gas Program, BH Nebraska Gas also provides its Agricultural customers the option to purchase natural gas commodity under the Company's Agricultural Choice Program. The BH Nebraska Gas Agricultural Choice Gas Program is similar to the BH Nebraska Gas Res/Com Choice Gas Program with some additional distinctions. For example, the Agricultural Choice Program commences on April 1st and ends on March 31st of the following year. In addition, there is currently no restriction to the marketing period under the Agricultural Choice Gas Program. Finally, there is not a separate allocation of interstate natural gas pipeline capacity as occurs under the Res/Com Choice Gas Program. Many other characteristics, structure, and tariff terms and conditions of the Res/Com Choice Gas Program are common to BH Nebraska Gas of the BH Nebraska Gas Agricultural Choice Gas Program.

Currently, six Suppliers participate in the Agricultural Choice Gas Program. Those Suppliers are as follows: Constellation Energy, an Exelon Company, CenterPoint Energy

Services, Inc., Black Hills Energy Services, Vista Energy Marketing, WoodRiver Energy and Uncle Frank Energy Services.

B. BH Nebraska Gas

1. Annual Price Option

BH Nebraska Gas does not currently offer a residential choice gas program to customers located within BH Nebraska Gas Rate Areas One, Two and Three (i.e., former Black Hills/Nebraska Gas Utility Company, LLC) that provides those residential customers the option to select a CNGP to provide residential customers with natural gas commodity. However, BH Nebraska Gas does permit its Rate Area One, Rate Area Two, and Rate Area Three residential customers to establish a fixed price for its natural gas commodity purchased from the Company under BH Nebraska Gas's Annual Price Option ("APO").

2. Energy Options Program

Under BH Nebraska Gas's "Energy Options" program provided in Rate Areas One, Two, and Three Commercial customers of BH Nebraska Gas may purchase natural gas commodity from CNGPs. The Energy Options transportation program offered in Rate Areas One, Two, and Three by BH Nebraska Gas is similar to the Choice Gas Program offered by BH Nebraska Gas for Rate Area Five (i.e., former Black Hills Gas Distribution") Choice Gas Program Commercial Customers. However, unlike the Choice Gas Program, the Energy Options transportation program does not have a defined enrollment period. Moreover, BH Nebraska Gas does not provide customer billing, collection, or bad debt services for Marketer/Aggregators selling natural gas to Energy Options customers. Nevertheless, other aspects of commercial transportation, including the release of upstream interstate capacity, are similar between the two different transportation programs.

3. Interruptible and Agricultural Transportation

BH Nebraska Gas also provides customer natural gas supply procurement and transportation options for its non-jurisdictional Interruptible and Agricultural customers as those customers are defined under *Neb. Rev. Stat. §§ 66-1802 (01)* and *Neb. Rev. Stat. § 66-1810(2)*. Agricultural and Interruptible customers in Rate Areas One, Two, and Three may purchase natural gas supply from a CNGP and transport that gas across the distribution system of BH Nebraska Gas. These comments do not focus or otherwise provide comments on Rate Area One, Two, and Three BH Nebraska Gas's Agricultural or Interruptible transportation program.

C. High Volume Users Sales and Transportation

BH Nebraska Gas provides non-jurisdictional transportation services to High Volume Users as those customers are defined under *Neb. Rev. Stat. §§ 66-1802 (09) and 66-1810 (1)*. High Volume Customers in Nebraska may purchase natural gas supply from a CNGP and transport that gas across the distribution systems of BH Nebraska Gas. These comments do not focus or otherwise provide comments on the High Volume Customer transportation programs of either BH Nebraska Gas.

IV. CHOICE GAS PROGRAM COMMENTS

In its 2020 Choice Gas Order, the Commission set forth several issues seeking comment and evidence. The Commission noted that the comments and evidence sought in this proceeding is for the purpose of facilitating discussion regarding the Commission's review of Choice Gas Program. BH Nebraska Gas provides its comments and evidence related to the Res/Com and Agricultural Choice Gas Programs of BH Nebraska Gas by addressing each of the issues set forth in the Commission's 2020 Choice Gas Order below. As noted previously, these comments and

evidence do not address the Rate Areas One, Two and Three Agricultural, Interruptible, or High Volume transportation programs offered by BH Nebraska Gas.

1. 2020 Selection Period

a. Did the 2020 selection period run smoothly? What went well? Were any issues encountered that should be address in coming years.

The 2020-2021 Choice Gas Program enrollment period was met with concerns from both BH Nebraska Gas and the Choice Gas Program Suppliers due to the Covid-19 Pandemic, and contingency plans needed to be in place. BH Nebraska Gas believes that no significant level of issues occurred during the enrollment period. The Black Hills Energy call center received 4,144 number of calls, with a service level of 92.86% during the enrollment period in April. During the early marketing period in January, February and March, 1821 calls were received. Customer active participation in the Choice Gas Program did decrease by 1% in 2020, with active participation by 46% of the eligible customers.

During the enrollment period, BH Nebraska Gas did field customer and Supplier complaints and those concerns were addressed expeditious and steps taken to have them corrected or resolved. BH Nebraska Gas did follow up with Suppliers once the situations had been researched and corrected.

BH Nebraska Gas did enter and provide error reports to Suppliers as it processed 18,552 Delegation Agreements for this enrollment period.⁴ For example, of the 18,552 Delegation Agreements process, 1,105 were invalid, and thereby cause additional time and effort to correct.⁵ Due to limited resources and to ensure that the Choice Gas Program files would not be affected during the Covid-19 Pandemic, BH Nebraska Gas employed a temporary worker to assist with the processing of these Delegation Agreements. The process and administration of Delegation Agreements continues to be a time-consuming effort even with an automated process.

⁴ The total number of Delegation Agreements processed by BH Nebraska Gas for the Choice Gas Program in Wyoming (13,411) and Nebraska (18,552) is 31,963.

⁵ The total number of errant Delegation Agreements addressed by BH Nebraska Gas for the Choice Gas Program in Wyoming (1,018) and Nebraska (1,105) was 2,123.

Although BH Nebraska Gas experienced a slight decrease from 2019 to 2020 of 368 Delegation Agreements from Suppliers, BH Nebraska Gas still firmly believes that this level of Delegation Agreement processing is an unnecessary customer and administrative burden that will be limited or eliminated altogether.

The original intent and purpose of the Delegation Agreement was not to extend the defined enrollment period. Nor is it an ongoing goal of the Choice Gas Program for the messaging to the Choice Gas Program customers from Suppliers during the early marketing period to create a false sense of urgency to decide on which Supplier to select for the upcoming Choice Gas Program year. In the opinion of BH Nebraska Gas, this type of marketing can be misleading and confusing to customers since Choice Gas enrollment information is not current, and the Choice Gas Program official enrollments are not accepted by BH Nebraska Gas until the April timeframe. During the early marketing period, the customer has not received a Choice Gas Program packet with information related to the Choice Gas Program. Accordingly, the customer is not fully prepared to make an educated Supplier choice for the upcoming year. At times, a few different customers have reported to BH Nebraska Gas that they believe that the marketing tactic is deceitful. Finally, extended solicitation by Suppliers causes BH Nebraska Gas to divert its focus on processing enrollments, and to allocate valuable time and resources investigating Customer or Supplier complaints. In some cases, BH Nebraska Gas is obligated to reverse or revise Supplier selections, which is time consuming to BH Nebraska Gas and an unnecessary process.⁶

b. Was anything different in the 2020 selection period, as compared to past years?

BH Nebraska Gas did not experience anything significantly different than prior years. There were no significant changes made to the program for the 2020-2021 enrollment period. However, BH Nebraska

⁶ In accordance with the terms and conditions of the Choice Gas Program, Delegation Agreements executed outside of the marketing period are considered invalid. In addition, some Customers (i.e., perhaps encouraged by Suppliers) appear to be taking advantage of their ability to be released from Delegation Agreements if they recognize that they are not binding, and this activity also increases confusion and burdens on the Choice Gas Program.

Gas did eliminate the 16-page Guidebook from the customer enrollment packets. Instead, customers were directed to the www.Choicegas.com website where this information was available.

2. Customer Education

How has your entity increased its customer outreach and education regarding the Choice program? If so, what was done and what the customer result.

a. Yes. Customer education related to the BH Nebraska Gas Res/Com and Agricultural Choice Gas Programs is an expensive, time consuming, and ongoing process. BH Nebraska Gas serves approximately 88,000 natural gas customers located in about 200 communities spread throughout its Rate Area Five (former Black Hills Gas Distribution, LLC). In addition to geography issues involved in providing customers with information related to the Res/Com or Agricultural Choice Gas Programs, the preferred mode of communication (e.g., in person presentations, mail, website, videos, or call center instruction) may differ among the BH Nebraska Gas customers.

Therefore, creating and maintaining a cost-effective Choice Gas Program education plan and program beneficial to customers presents BH Nebraska Gas with many potential obstacles to overcome. In addition, providing consistent and understandable Choice Gas Program messages and instructions for BH Nebraska Gas Customers creates numerous administrative burdens for BH Nebraska Gas to manage.

Thankfully, the BH Nebraska Gas Choice Gas Programs have been in existence for approximately twenty years. Accordingly, the Customers of BH Nebraska Gas have that past experience and previous education about the Choice Gas Programs to rely upon.

As the Administrator of the Choice Gas Programs, BH Nebraska Gas is at the center of educating its Choice Gas Program customers on issues related to the Choice Gas Program. In

addition to providing documents explaining the Supplier selection process that occurs annually, BH Nebraska Gas is required to address a variety of Customer concerns resulting from a lack of understanding or miscommunication regarding how the Choice Gas Program operates.

For example, BH Nebraska Gas educates and resolves Customer confusion and frustration related to the Choice Gas Program enrollment process. BH Nebraska Gas educates and resolves Supplier confusion or frustration related to the Choice Gas enrollment, customer solicitation, Supplier disputes, and Commission Complaints. BH Nebraska Gas educates and resolves Commission complaints lodged by either Choice Gas Customers or Suppliers. To date the number of questions, comments, concerns, frustrations, and Commission complaints (informal and formal) have been manageable.

Like all Choice Gas Program stakeholders, BH Nebraska Gas is willing to consider and to implement additional cost-effective Choice Gas Program education efforts that are designed to provide Choice Gas Programs Customers with a better understanding of the Choice Gas Program.

A primary tool of Customer education regarding the Choice Gas Program is located on the Company's website. BH Nebraska Gas has created and maintains a Choice Gas Program website at www.choicegas.com designed to provide information about the Company's Choice Gas Program.

One possible strategy designed to better educate BH Nebraska Gas customers about either the Res/Com or the Agricultural Choice Gas Program is to review the content currently included on the Choice Gas Program website of BH Nebraska Gas or those websites maintained by each of the Choice Gas Program Suppliers to determine if additional information can be made available to the customers regarding the Choice Gas Program.

On the point of the current Choice Gas Program Supplier selection enrollment packets, BH Nebraska Gas would like to transition away from a paper based selection opportunity, and move over to an electronic enrollment process in the future. The use of paper ballots is becoming more expensive and less effective as technology improves. However, among other changes, to move to an electronic balloting system would require customers to provide an email address or otherwise obtain an online electronic account with BH Nebraska Gas. In addition, an electronic balloting process would provide more security of enrollment for the customer, and allow the customer to retrieve their control number electronically. That electronic contact data is not currently required to receive service under the BH Nebraska Gas Choice Gas Programs.

In addition to the education efforts of BH Nebraska Gas, each of the Choice Gas Program Suppliers provide information about their individual companies, and the services provided by that Choice Gas Program Supplier on their own Supplier websites.

A possible change to advance Customer education could be to require Suppliers to post on its own Choice Gas website the pricing of each Supplier in advance of the Supplier selection enrollment period, and perhaps after the enrollment period has been completed.

BH Nebraska Gas believes that another strategy to better educate customers about Choice Gas Programs is to design and produce a series of user-friendly cost-effective communication for radio, television, or internet videos, and/or a Choice Gas phone or laptop device application that simultaneously motivate Customer interest in and provide Customer-education about the Choice Gas Program. Suppliers have the same opportunity to develop their own videos or device applications to provide Customer education regarding their own gas commodity pricing options. Customers are an essential component to the success of a Choice Gas Program. Thus, without effective education, the program is less efficient and less effective.

As technology develops and becomes more cost-effective, the ability for BH Nebraska Gas to educate its customers and to manage its gas distribution system (i.e., more real time gas measurement, customer information, customer education, customer surveys, customer satisfaction, customer enrollment automation, Supplier designation, customer billing, Supplier gas cost automation, collections, etc.) should be somewhat easier for BH Nebraska Gas than current and past administration of those programs.

For the 2020-2021 marketing and enrollment period, BH Nebraska Gas mailed two postcards to eligible customers notifying them of the upcoming Choice Gas program and the enrollment dates. The second postcard was sent out to customers who had not yet made a choice the second week of April. The objective was to remind customers of the closing of the enrollment period and to encourage them to participate in the program. It is difficult to provide proof that confirms that this effort made a difference.

In an effort to understand the customer experience with the program BH Nebraska Gas will send a survey to eligible customers requesting feedback with the program. This is scheduled to go out to customers by June 1, 2020. The desired outcome is to receive feedback that will allow for improved processes and a positive customer experience with the program. BH Nebraska Gas has attached a copy of this survey as Exhibit No. 1 to these comments.

b. The commission increased the amount of customer education materials available on its website. Is what is currently available sufficient, or should it be added to or otherwise improved?

The Commission website is good and provides the basics of the program for the customer to gather reliable information concerning the program. Although the information to an extent may seem redundant customers receive this information from a reliable source. BH Nebraska Gas would suggest partnering with BH Nebraska Gas to ensure that the information on the commission

website and the Choicegas.com website do not conflict on an annual basis. As the utility BH Nebraska Gas did not receive any customer feedback concerning this information on the Commission website.

BH Distribution is discussing the additional information to be included on its website. For example, including a Glossary of Terms and Rules of Engagement with Suppliers could assist customers during the enrollment period.

c. What can individual Suppliers do to increase the level of customer education regarding the Choice program?

During the marketing and enrollment period, the Choice Gas Program Suppliers must have websites and call centers that can address questions regarding that Supplier's available natural gas products. After a Customer elects a Supplier and the agreed upon supply package, at a minimum, a Supplier should provide accurate confirmation information to its Customers about the term and price of the Supplier's natural gas. The Suppliers should be transparent concerning their terms and conditions and any additional fees or potential changes to their pricing. These terms and conditions should be available for the customer to review with any price offering from the Suppliers.

The goal of customer education must be to provide BH Nebraska Gas Customers with the necessary information in a user-friendly format to make informed decisions regarding their selection of both a Choice Gas Program Supplier and the price of the Customer's Gas Supply price.

3. Delegation Agreements

- a. **During the previous workshop in this docket, BHNG indicated it did not intend to continue using Delegation Agreements, (DA's) for residential customers after the 2020 selection period. Does BHNG still plan to eliminate the use of DA's for residential customers moving forward? If not, what has changed?**

Yes. BH Nebraska Gas is intending to discontinue the use of Delegation Agreements. Those agreements are currently being used as Supplier selection outside of the official enrollment period. In addition, the Delegation Agreement is disguised as part of a Supplier's marketing program, but actually considered as a legally binding agreement with customers by Suppliers to lock in the commitment outside of the enrollment period. Accordingly, BH Nebraska Gas will eliminate the use of Delegation Agreements for Residential customers and for the small Commercial customers for the 2021-2022 Choice Gas program year

The use of Delegation Agreements outside of the annual selection period was a process that existed prior to Black Hills Corporation's acquisition of SourceGas Distribution. However, during the past few years of Choice Gas Program administration by BH Nebraska Gas, the use of Delegation Agreements has increased significantly. Suppliers are not simply using the Delegation Agreement to evidence its authority to act on behalf of the Customer during the Choice Gas enrollment period. Instead, several Suppliers are using the Delegation Agreement as a primary marketing tool and enrollment form. There are no formal contracts between the Company and the Customer for the Choice Gas Program. Except for the Delegation Agreement, there are no formal gas supply contracts between the Choice Gas Program Suppliers and the Customers. Thus, several Choice Gas Program Suppliers use the Delegation Agreement in lieu of a gas supply contract or other contractual document.⁷

⁷ Historically, it was contended that the selection form was considered a one year contract.

The use of a Delegation Agreement in recent years has increased dramatically. For example, BH Nebraska Gas received over 18,552 Delegation Agreements from Choice Gas Program Suppliers for the 2019-2020 Choice Gas Program year. This quantity of Delegation Agreements is up from 17,000 for the 2018-2019 Choice Gas Program year. Each of the Delegation Agreements must be entered into the information system of BH Nebraska Gas.⁸

This volume of Delegation Agreements is not a sustainable practice or acceptable business process model for BH Nebraska Gas for future Choice Gas Program years. The use of the Delegation Agreement has not proven to increase the number of customers participating in the program which BH Nebraska Gas concludes that the customers signing a Delegation Agreement would have likely utilized the selection form mailed to them by BH Nebraska Gas or Choice Gas website selection methods.

The intent was not to use the DA as an enrollment form or to extend the enrollment period. The increased use of the form for these purposes has created an administrative burden and customer confusion concerning the process and the timing for choosing their Supplier.

b. Should DAs be available for commercial customers? If so, should small commercial customers be treated differently than large commercial customers?

For the reasons provided above, BH Nebraska Gas does not believe that the use of Delegation Agreements is appropriate for Residential or Commercial Customers. The Delegation Agreement was not intended to be used as a marketing tool for the Residential class customer and has proven to diminish rather than enhance the customer experience related to making a Supplier selection by adding an additional step to the process for all Choice Gas Program participants.⁹

⁸ BH Nebraska Gas also attempts to check completeness of the form as well as valid signatures. For example, an electronic dot, blank field, or line is not representative of a customer signature and therefore not considered valid.

⁹ Historically, Delegation Agreements were only required for large commercial customers, of which there are currently 905 large commercial customers out of 8,291 total commercial customers.

Accordingly, BH Nebraska Gas will eliminate the use of Delegation Agreements for the 2021-2022 Choice Gas Program year

4. Selection Period.

a. For Administrator Only

i. After the discussion about the length of the selection period at the last workshop, does BHNG intend to change the length of the selection period in Nebraska in the coming years? Is BHNG open to lengthening the selection period in Nebraska if DA's are no longer used for residential customers?

Yes. However, BH Nebraska Gas believes that the marketing period for Residential Customers is still too long, and that a shorter marketing period should be considered. The original design of the program was to provide customers with a standardized enrollment period in which they would receive marketing materials, perform their research and make the best choice for their business or home for the next Choice Gas Program year (June 1 through May 31 of the following calendar year). April was chosen for the enrollment period as this month is considered a “shoulder” month for gas prices, and price offerings could truly be competitive for Suppliers and to the benefit of Customers. All Suppliers would be on the same playing field. In more recent years, some Suppliers have extended the marketing period through various mailings, website promotions, media campaigns, and use of Delegation Agreements. BH Nebraska Gas did not expressly prohibit the extended marketing activity as that activity was still within a manageable range for BH Nebraska Gas.

When Black Hills Corporation acquired SourceGas Distribution and the Choice Gas Program, the marketing period Commercial Customers had expanded to several months prior to the official Choice Gas Program enrollment period in April of each year. Some Suppliers have explained to

BH Nebraska Gas that a longer marketing period permits the Supplier to capture and to pass on lower natural gas prices to Customers.

Other Suppliers state that they prefer the longer marketing period in order to help them solicit and thereafter process gas supply offers to Customers, including their own customer base.¹⁰ Those Suppliers explain that squeezing the marketing period will cause more pressure to be placed on the Choice Gas Program enrollment period, increase administration, and require Customers to make Supplier selection and gas supply pricing decisions too quickly.

On the other hand, some Choice Gas Program Suppliers have advocated for a much shorter marketing period. Those Suppliers explain that the Customers will not face extended periods of Supplier marketing solicitations. The Suppliers also state that a shorter marketing period could actually reduce costs of administration since all the marketing efforts would be completed within a shorter period of time.

As BH Nebraska Gas understands the position of its Suppliers, most Suppliers would be willing to shorten the marketing period for Residential customers. However, several Suppliers state that Commercial Customers should have a longer marketing period. The difference is that a Commercial business organization is generally able to evaluate and respond to competitor solicitations whereas most Residential Customers generally avoid extended solicitation – especially from call centers. In addition, the Commercial customer class is a much smaller number of customers than is the Residential class of customers

¹⁰ See Exhibit No. 2 which reflects the increase in Delegation Agreements over the past several years with little or no substantial increase in enrollments.

On the other hand, the Choice Gas Program has operated as a joint program for Residential and Commercial customers. Thus, there is some question as to whether Delegation Agreements and extended marketing periods should be different for the Res/Com Choice Gas Program. Another issue arises because BH Nebraska Gas must administrate the “eligible premise files.” This file updates which customer has committed to a multi-year period, and which Supplier that the customer has selected. However, if there is a split marketing period for Residential and Commercial customers, then BH Nebraska Gas may have to incur additional costs and administration to maintain accurate enrollment.

In addition, there are small commercial customer who sign multiple Delegation Agreements so there is some confusion that exists in the marketplace. In some cases, Suppliers use outdated premise files to market to customers.¹¹ BH Nebraska Gas can’t provide real time information, and the Choice Gas Program is not structured to permit extended enrollment or extended marketing periods. DAs can add to customer confusion as to the term of the Choice Gas Program.

For the 2019-2020 Choice Gas Program year, BH Nebraska Gas established the marketing period from January 15, 2019 through the end of the Choice Gas Program enrollment deadline. The Suppliers are prohibited from engaging in active solicitation during the period after enrollment until the next designated marketing period. Allowing the program to run as it was designed allows for many of the issues related to customer confusion and administrative burden to be eliminated. For example, once a customer selects a Supplier, they would be eliminated from the marketing list

¹¹ Under Choice Gas Program terms and conditions, Marketers cannot market to customers until Suppliers have a new eligible premise file. BH Nebraska Gas cannot produce that file until the enrollment period. Otherwise, the Supplier is working off of inaccurate customer data.

and enrolled in the chosen price option and price and no processing of a Delegation Agreement or confusion related to signing multiple agreements with multiple Suppliers.

BH Nebraska Gas, as the administrator of the Choice Gas Program believes that the current marketing length of time for Residential Customers is too long. That open period coupled with an overuse of Delegation Agreements as a marketing tool has overwhelmed the orderly administration of the Choice Gas program. In order to eliminate the customer confusion, managing two separate sets of marketing rules, and extensive marketing, BH Nebraska Gas is proposing to implement an extended enrollment period that coincides with the marketing period for the 2020-2021 Choice Gas Program year. This change to connect the marketing period with the extended enrollment period allows for the Choice Gas Program to run as it was designed.

BH Nebraska Gas will change the marketing period by establishing a marketing period to coincide with the enrollment period. Marketing to these customers then would only be allowed only during the designated enrollment period. The marketing and enrollment will commence in mid-March and run through the end of the enrollment at the end of April of each Choice Gas Year. This change, will essentially return the Choice Gas Program marketing period as the program was designed two decades ago.¹²

ii. If the selection period is extended, would the administrative burden of confirming customer selection be lessened?

- **Residential and Small Commercial Customer Marketing Period**

Yes. As stated above, BH Nebraska Gas's belief is that Residential Customers would benefit from a shorter marketing period to begin in Mid-March to coincide with the enrollment

¹² See Exhibit No. 3 which shows the rules that would apply to Marketing and Mailing.

packet mailings and end on the last day of the annual selection period of the Customer's eligibility. Exhibit No. 3 is the proposal presented to Suppliers during the Annual Supplier meeting held in November 2019.

- **Agricultural Customer Marketing Period**

Similarly, Agricultural Choice Gas Program Customers normally consume gas during the summer months or into early fall. Like Commercial Customers, the Agricultural Customers are generally more accustomed to receiving and evaluating gas supply options during a longer marketing period. Like Commercial Customers, Agricultural Customers are operating a business. Thus, those customers are often more aware of the natural gas market as it relates to their gas individual consumption. In addition, because there are not as many Agricultural Choice Gas Program customers as there are Residential or Commercial customers, BH Nebraska Gas believes the marketing period to Agricultural Choice Program customers can remain open throughout the year. The reality is that most Agricultural Choice customers will select a Supplier during the winter or early spring prior to the planting season.

- **High Volume Customer Marketing Period**

High Volume customers are non-regulated transportation customers and generally possess more ability or financial resources than Residential Customers thereby enabling those High Volume Users to evaluate gas supply price packages from Suppliers. Accordingly, BH Nebraska Gas believes that Suppliers should be permitted a longer marketing period to compete to provide services to those non-regulated High Volume customers. The only limitation on the supply competition is the term of an existing valid supply contract.

- b. If any supplier has changed its opinion of the length of the selection period since the previous workshop, how do you now see it and what made you change your view?**

No change of position for BH Nebraska Gas except as set forth above.

5. Dispute Resolutions

- i. What remedies and sanctions are currently available if it is determined that Supplier has violated the code of conduct?**

The remedies and sanctions available to either BH Nebraska Gas or the Commission do not presently cover some of the issues confronted by BH Nebraska Gas or its customers under the Choice Gas Program. BH Nebraska Gas does investigate each dispute with the information provided by a variety of sources. In addition, it consults with different subject matter experts as appropriate or necessary to properly address the dispute. For example, BH Nebraska Gas requires a review of the Supplier's Call Center script for approval as well as their marketing materials. A review is to provide feedback that may cause confusion for the customer as well as to ensure compliance with the program rules and the Commission's code of conduct rules and regulations.

If a potential violation is reported either by a customer or another Supplier, the normal course of action is to request a copy of the recorded call with the customer or the call log that would indicate the frequency of the customer contacts. BH Nebraska Gas will then provide guidance and feedback to the Supplier to correct the situation or in some cases report back that a violation was not made. The first report allows the Supplier to get back into compliance with the code of conduct, tariffs or the rules related to the program. However, if there are repeat offenses similar in nature, BH Nebraska Gas has in the past, suspended marketing for Suppliers until they can provide data that supports that the issue has been addressed and resolved.

BH Nebraska Gas did add to the process this past enrollment period to close the loop with the reporting Supplier that the investigation has been completed.

The existing remedies of Supplier cooperation, suspension of marketing rights, breach of contract, violation of tariff regulations, or termination from the proceeding may not fit. For example, can BH Nebraska Gas really terminate a Supplier's right to do business under the Choice Gas Program if it is noncompliant? That seems to be somewhat extreme, and there are not clear guidelines or rules on when such action is warranted.

ii. Do you have a standard policy and remedies and sanctions for response to violations of the Code of Conduct? If so, does the policy include increased penalties for repeat offenders and/or severe offense?

No. The remedies applied are set forth above. As explained below, they work most of the time, but in some cases are inadequate.

b. Is a standard policy of sanctions and remedies for violations of the Code of Conduct desirable? Who or Why not?

Yes. BH Nebraska Gas is open to and would appreciate collaborative discussion regarding development of more remedies to apply in situations where a dispute or violation is present. However, BH Nebraska Gas believes that each situation is somewhat unique. Accordingly, a standard policy of sanctions and remedies for violations of the Code of Conduct, although desirable, may prove difficult to apply. In addition, a standard policy of sanctions and remedies may be too excessive in some situations where the customer is not harmed in the end. Accordingly, BH Nebraska Gas would want the ability to waive or to apply a Commission-approved sanction or remedy that is appropriate for the situation.

- c. During the September 25 workshop, BHNG stated it would follow up with a CNGP who submitted a complaint after the complaint was resolved. Is that currently being done? If so, is it helpful? If it sufficient? In not, how can it be improved?**

Yes. The follow up with the complaining Supplier appears to be sufficient. BH Nebraska Gas recognizes that there is always room for improvement.

- d. Are the sanctions or remedies currently available effective? Are there other sanctions or remedies that should be available when violations occur?**

Most times -Yes. Sometimes - No. One of the roles of BH Nebraska Gas, as Choice Gas Program Administrator, is to provide feedback to Suppliers concerning complaints and to generally monitor the Choice Gas Program and its participant's compliance with the tariffs, the code of conduct, as well performing under the agreements each Supplier executes at the beginning of each Choice Gas Program year.

Compliance with Commission and Choice Gas Program tariff and contract rules should be the utmost priority whether the Suppliers are training their call centers, providing call center scripts, developing marketing materials or automating a process with customers. BH Nebraska Gas cannot and does not want to monitor each Supplier's interactions with customers or other Suppliers under the Choice Gas Program. However, when BH Nebraska Gas does learn of a complaint or violation, then BH Nebraska Gas provides that Supplier with information related to infractions and the opportunity to correct the infraction. However, after such time, there should not be any further infractions similar in nature. BH Nebraska Gas expects the Supplier to take corrective action in response to the reported infraction as soon as possible or the Supplier's marketing privileges can and will be suspended.

BH Distribution believes that this process provides opportunity for the Supplier to correct an issue, with minimal impact to the customer.

If one looks at the number of informal and formal complaints of Customers arising under Choice Gas Program it is apparent that BH Nebraska Gas, the Choice Gas Program Suppliers, the Commission and our Customers have created a comprehensive Choice Gas Program that is working well.

Given that approximately 88,000 customers located within Nebraska have an opportunity each year to enroll in the Choice Gas Program, and that a limited number of complaints, along with several other inquiries, are received by the Commission annually demonstrates that competition appears to be working with only limited Commission oversight. During the shorter period of time in which Black Hills Gas Distribution has been administrating the Res/Com and Agricultural Choice Gas Programs, the quantity of formal customer complaints has been reduced each year and the percentage of Customers active enrollment in selecting a Supplier has increased. BH Nebraska Gas understands that each Customer concern or complaint – whether to the Company, a Supplier, or the Commission - should be used as an opportunity to improve the Choice Gas Program to better serve all Choice Gas customers.

BH Nebraska Gas and the Suppliers understand that if the Customer is not satisfied with the treatment or the supply pricing options, the Commission will certainly commence an investigation and take any appropriate or necessary action, including but not limited to a change in its current rules and regulations.

On that point, BH Nebraska Gas commends the Suppliers for working with BH Nebraska Gas, and for cooperating with other Suppliers and with the Customers to ensure that the Customer experience is rewarded through the competition for providing Customers with gas supply pricing options. BH Nebraska Gas is aware of several instances wherein a Customer has entered into more than one Delegation Agreement, or mistakenly signed a Delegation Agreement with a Supplier

that the Customer later realizes is not the Supplier selection that it prefers. When those situations present themselves, often times, the Suppliers will work with the Customer, BH Nebraska Gas, and then with other Suppliers to resolve the matter in favor of the Customer's preferences. A few times, the Commission may receive a Customer complaint related to that misunderstanding.

As for creating other sanctions or remedies, BH Nebraska Gas would appreciate the opportunity to discuss what types of additional sanctions or remedies could be applied. Such items could be fines, disgorgement of profits gained, or other recognized remedies.

6. Default Pricing

Should there be a limit on what customers who do not make a selection can be charged? If so, what types of limits would you suggest? If not, why not?

The answer to this question is more appropriate for Suppliers than BH Nebraska Gas as the Administrator of the Choice Gas Program. BH Nebraska Gas is not selling gas in the Choice Gas Program. Thus, it has little control over whether a default price is appropriate or not for any customer. Exhibit No. 4 shows the that default versus actively participate. This is a decision for the Commission to determine as it goes to prescribing competition.

BH Nebraska Gas would comment that with over two-thirds of the customers defaulting each year, perhaps it would be prudent for the Commission to require a default price be something other than other the Supplier's highest price.

In addition, since BH Nebraska Gas does not manage Supplier pricing, then a logical question to ask is who is going to track Supplier pricing? BH Nebraska Gas is not governor of price options by suppliers. To inject too much regulation will only stifle competition.

At a minimum, BH Nebraska Gas believes that it would be appropriate to require the Suppliers to inform customers how their Default gas price compares to that Supplier's other price options for that Choice Gas Program year.

7. **Energy Options.**

a. How are transportation and capacity related to costs currently allocated between customers?

BH Nebraska Gas administers an "Energy Options" transportation program under its tariffs approved by the Nebraska Public Service Commission.¹³ An Energy Options customer must sign a contract with a Certified Natural Gas Provider ("CNGP" or "Marketer") *Neb. Rev. Stats. § 66-1849.*

The Energy Options Customer's Marketer must enter into a "Marketer Agreement" with BH Nebraska Gas. The Marketer Agreement sets forth non-discriminatory operating conditions and related requirements, rights, obligations and agreements, applied by the Company without preference to any Marketer or Company affiliate. *BH Nebraska Gas Tariff at Original Sheet Nos. 83 and 84 (Effective Jan. 1, 2020).*¹⁴ The Marketer Agreement provides detailed terms and conditions regarding the Business Energy Options transportation services provided pursuant to the Act and the BH Nebraska Gas tariff.

The BH Nebraska Gas Energy Options tariffs are approved pursuant to the State Natural Gas Regulation Act of Nebraska. *Neb. Rev. Stats. §§ 66-1801 et seq.* Under the Act, BH Nebraska Gas is required to provide its rates, terms, and conditions of service pursuant to "... just and

¹³ An Energy Options Customer is a non-residential customer in Rate Areas One, Two, or Three who: (a) purchases natural gas supply from a CNGP; (b) transports less than five hundred (500) Therms per day as determined by average daily consumption; (c) entered into an Energy Options Contract with Company; and (d) complies with the requirements set forth in Company's Energy Options Tariff requirements. *BH Nebraska Gas Original Tariff Sheet No. 11.*

¹⁴ A copy of the Marketer Aggregation Agreement for Telemetered and Non-Telemetered Customers is attached as Exhibit 4.

reasonable” rates. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of ratepayers. Neb. Rev. Stat. § 66-1825(1).

The Act also provides that “[N]o jurisdictional utility shall, as to rates or terms and conditions of service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.” *Neb. Rev. Stat. § 66-1825(2)*.

In addition to unreasonable preferences or unreasonable discrimination, the Act prohibits subsidization. Subsidization is defined within the Act as follows:

“... subsidization means the establishment of rates to be collected from a ratepayer or class of ratepayers of a jurisdictional utility that (a) include costs that properly are includable in rates charged to other ratepayers or classes of ratepayers of the utility, or other persons, firms, companies, or corporations doing business with the jurisdictional utility, (b) exclude costs that properly are includable in rates charged to such ratepayers or classes of ratepayers, or (c) include costs that properly are chargeable or allocable to a nonregulated private enterprise engaged in by such jurisdictional utility.” *Neb. Rev. Stat. § 66-1825(10)*

Marketer Agreement: Sections 7 and 8 of the Marketer Non-Telemetered Aggregation Agreement govern the Nomination and Interstate Pipeline Capacity Assignment for Joint/Firm Customers.

There is nothing in the Marketer Agreement that prescribes a specific type, receipt point, or delivery point for interstate pipeline capacity that must be allocated and assigned to the Marketer. The Marketer Agreement does set forth a formula to determine the Peak Day capacity to be assigned. In addition, the Marketer Agreement also states that pipeline capacity for Northern and Natural Gas Pipeline Company of America (“NGPL”) is for the five months of November through March. Interstate pipeline capacity on KMIGT (Now Tallgrass Interstate Gas Transmission) is released for a 12-month period.

The Marketer Agreement and the method of allocating capacity under the Marketer Agreements have been in place since the inception of the program. The Energy Options program or its predecessor transportation programs have been in place since 1998.

The methods used by BH Nebraska Gas and its predecessor, to allocate capacity and costs for the past twenty-two years is fair to both sales and transportation customers. In fact, over that twenty-two year period only one marketer has raised an issue of whether the allocation method is appropriate. BH Nebraska Gas has conducted some internal analysis and determined that the costs and capacity allocations are just and reasonable. There is no undue subsidization, no undue preferential treatment, or discrimination under the Energy Options program.

Is this allocation method appropriate?

Yes. The current administration of the Energy Options tariff, Marketer Aggregation Agreement, and allocation of interstate capacity between sales and transportation customers by BH Nebraska Gas does not violate any of the above-referenced governing documents.

A variety of consideration, analysis, and discussion led to the adoption of the Marketer Agreement and the provisions contained therein. The fundamental thing to remember is that the Commercial firm transportation customer is opting out of purchasing natural gas from BH Nebraska Gas and then selecting a Marketer. There is no telemetry on many of the small commercial customers, therefore, BH Nebraska Gas can not determine the exact amount of natural gas that is being consumed on a real time basis.

Interstate natural gas capacity is allocated for each pipeline that serves Energy Options customers within a BH Nebraska Gas community. Thus, whether capacity is

released from (a) Northern Natural Gas Company (“Northern”), (b) Natural Gas Company of America (“NGPL”), or (c) Tallgrass Interstate Gas Transmission (“TIGT”), an Energy Options customer is assigned the level of capacity needed to serve that customer during peak periods.

Two separate issues that only one Marketer has raised is whether BH Nebraska Gas should be allocated interstate capacity at various receipt points.¹⁵

First, the Marketer requested whether capacity from more points should be the allocation method used for releasing Northern capacity. BH Nebraska conducted an analysis and determined that to do so would be inefficient and burdensome to do. For example, if additional points were released, it would require all Energy Options Marketers to take their pro rata share of capacity from all points used under the transportation agreement between Northern and BH Nebraska Gas.¹⁶ The cost of additional administration and monitoring is difficult even if permitted by Northern. Thus, this suggestion was rejected as a viable solution by BH Nebraska Gas. BH Nebraska Gas assigns capacity on Northern at Ventura as it is a liquid point on Northern.

A second issue raised by the same and only Energy Options Marketer is whether costs under various interstate pipeline agreements are fair. On that point, BH Nebraska Gas conducted analysis and determined that its sales customers are shouldering costs that are higher than those assigned to Energy Options customers. For example, BH Nebraska Gas sales customers obtain storage that is used to balance the system during cold periods. Energy Options Marketers are not allocated storage costs. BH Nebraska Gas only assigns Northern capacity for the 5-month winter period. Whereas, sales customers must have both

¹⁵ For example, the Energy Options Marketers receive gas at Northern Natural Gas Company’s Ventura, Iowa point.

¹⁶ Such points include Northern delivery points at Carlton, Demarc, Panhandle, and others.

5-month and 12-month firm capacity available for their gas load. When compared to each other, one could argue that Energy Options customers are being benefited by general system sales customers. However, the costs difference do not appear to violate the subsidization statute under the Act.¹⁷

b. What are the benefits and detriments to a pro rata allocation of transportation costs?

Due the confidentiality, BH Nebraska Gas cannot disclose its internal analysis related to weighing costs and benefit of pro rate transportation costs. However, as a general matter, BH Nebraska Gas can provide the following benefits and detriments:

Benefits

- All classes receive same types of costs;
- Diversion of gas supply, billing, regulatory, and legal resources can be preserved by eliminating complaints about subsidization – currently lodged by only one Marketer in at least twenty-two years of operation of this transportation program;
- The allocation of costs between sales and transportation tariffs has been through review in at least three rate cases and one GCA review by the Nebraska Public Service Commission. At no point in any of those cases has a violation of subsidization been found or a change in practice ordered;
- The same type of allocation is present in commercial transportation programs of BH Nebraska Gas in Iowa and Kansas. (Minnesota prior to the sale of that business unit by Aquila).

Detriments

- Different programs (i.e., sales vs. transportation) require different assets so allocating common assets can be difficult to manage and quantify;
- No telemetry to determine consumption of transport customers on real time basis;
- Hard to divide or release points with less liquidity;

¹⁷ Under established regulatory law, there is always some subsidization between customers or customer classes. However, overall the assignment of costs between the customer classes has to result in just and reasonable rates.

- Arguments over allocation of costs can cost as much as the difference in costs;
- Interstate Pipelines may not want assignment of all points to multiple Marketers – especially small marketers;
- BH Nebraska Gas information and Gas Load monitoring is not designed for monitoring and accounting for allocation of capacity;
- Energy Options would be required to take Summer interstate capacity and storage and other assets costs that are currently borne by sales customers;
- All Marketers will be impacted when only one Marketer is mistakenly arguing for an alternate allocation;
- Sales customer costs will increase more if more benefits are allocated to Energy Options customers without corresponding allocation of other costs.

Bottom Line: The allocation is fair. The allocation does not violate the Act. The Commission should dismiss any complaint related to this issue forthwith!

8. **Further Information.**

Are there any additional documents, articles, and/or materials related to the topics outlined above that the Commission and other interested parties should consider in their review of the issues discussed above? If so, please provide an explanation and supporting documentation.

Should any modifications be made to the tariff and/or regulations? If so, please provide proposed language.

Yes. There are a few possible tariff changes that should be discussed. However, any significant modification to the Choice Gas Program beyond those identified in these comments should be deferred to 2021 after the BH Nebraska Rate Review application in Commission Application No. NG-109 is complete. In addition, a similar review of the Choice Gas Program will occur before the Wyoming Public Service Commission. Accordingly, any significant changes to the Nebraska Choice Gas Program should be coordinated and consistent with changes adopted for the Wyoming Choice Gas Program.

The tariff changes to be considered are as follows:

- **Delegation Agreements:** On BH Nebraska Gas Tariff Sheet No. 116 (Sheet No. 100 in the Tariff proposed in Commission No. NG-109) BH Nebraska Gas will seek Commission approval to delete the sentence from Supplier Election, Paragraph B: Selection forms submitted by the Supplier must be accompanied by a delegation agreement or other form as the Company may use from time to time, signed by the Customer.”
- **Supplier Leaving Program:** If a Supplier leaves the Choice Gas Program, the process is not established in the Nebraska tariff. BH Wyoming Gas, LLC has language stating that the customers of the departing customer will be served by under the “Pass on rate.” BH Nebraska Gas does not provide a traditional GCA in Rate Area Five. Thus, a process of redirecting customer should be considered and approved.
- **New Marketer Issues.** There are several potential tariff revisions related to a new Choice Gas Program Marketer. For example, the Commission should consider the following items:

 - Number of Suppliers allowed into the program. Is there a limit on Suppliers?
 - Are the Commission’s CNGP requirement adequate?
 - What if a Supplier doesn’t meet minimum requirements to qualify as a Supplier?

- Should the Commission permit BH Nebraska Gas to offer a Gas Cost Adjustment rate in Nebraska, just as the Wyoming Public Service Commission authorized BH Wyoming Gas to provides a “Pass On Rate?”
- What should happen if a new Marketer violates rules repeatedly?
- Should a new Marketer be required to undergo any additional qualification process with BH Nebraska Gas prior to being permitted to participate in the Choice Gas Program

V. CONCLUSION

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

Respectfully,

By: /s/ Douglas J. Law

Douglas J. Law, #19436
Associate General Counsel
1102 E. 1st Street
Papillion, NE 68046
Tel: (402) 221-2635
douglas.law@blackhillscorp.com

Attorney for Black Hills Gas Distribution, LLC,
Black Hills/Nebraska Gas Utility Company, LLC, and
Black Hills Nebraska Gas, Inc.

Dated: Friday, May 29, 2020

BH NEBRASKA GAS COMMENT EXHIBITS

- Exhibit No. 1 – 2020 Choice Gas Program Customer Survey
- Exhibit No. 2 – Delegation Agreement Analysis
- Exhibit No. 3 – Supplier Selection Analysis
- Exhibit No. 4 – Non-Telemetered Marketer Agreement (“Energy Options”)

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the foregoing this 29th day of May, 2020 in accordance with the procedures established for this proceeding.

/s/ Douglas J. Law

Douglas J. Law, #19436
Associate General Counsel
1102 E. 1st Street
Papillion, NE 68046
Tel: (402) 221-2635
douglas.law@blackhillscorp.com

Attorney for Black Hills Gas Distribution,
LLC, Black Hills/Nebraska Gas Utility
Company, LLC, and Black Hills Nebraska
Gas, Inc.

Choice Gas Survey Questions and Answers

Q1-How likely are you to recommend Choice Gas to a friend, relative or colleague?

- 0-10 scoring

Q2- Did you actively choose your Choice Gas supplier?

- Yes
- No

Q2.5- [comment box]-dependent on selection above

- Yes selected- Please share the reason why you chose to participate.
- No selected- Please share the reason why you chose not to participate.

Q3- What resource(s) did you use when making a supplier selection? (this question will only show if Yes is selected for Q2)

- Choice Gas website
- Supplier website
- Packet materials
- Media
- Black Hills Energy contact center
- Public Utility Commission website
- None
- Other- [text box]
- Please share why you chose this rating.

Q4- Do you feel you had enough information to choose a supplier?

- Yes
- No

Q4.5- [comment box] dependent on selection above

- Yes selected- What information was most valuable?
- No selected- What information was missing?

Q5- When selecting your Choice Gas supplier, what was the biggest factor in making your decision?

- Previously enrolled with supplier
- Price
- Billing option
- Supplier reputation
- Marketing materials
- Social responsibility of supplier
- Other [text box]

Q6- How easy was it for you to understand the Choice Gas program?

- 0-10 scoring

Q6.5- [comment box]

- Please share why you chose this rating.

Q7- Overall, how would you rate the Choice Gas program?

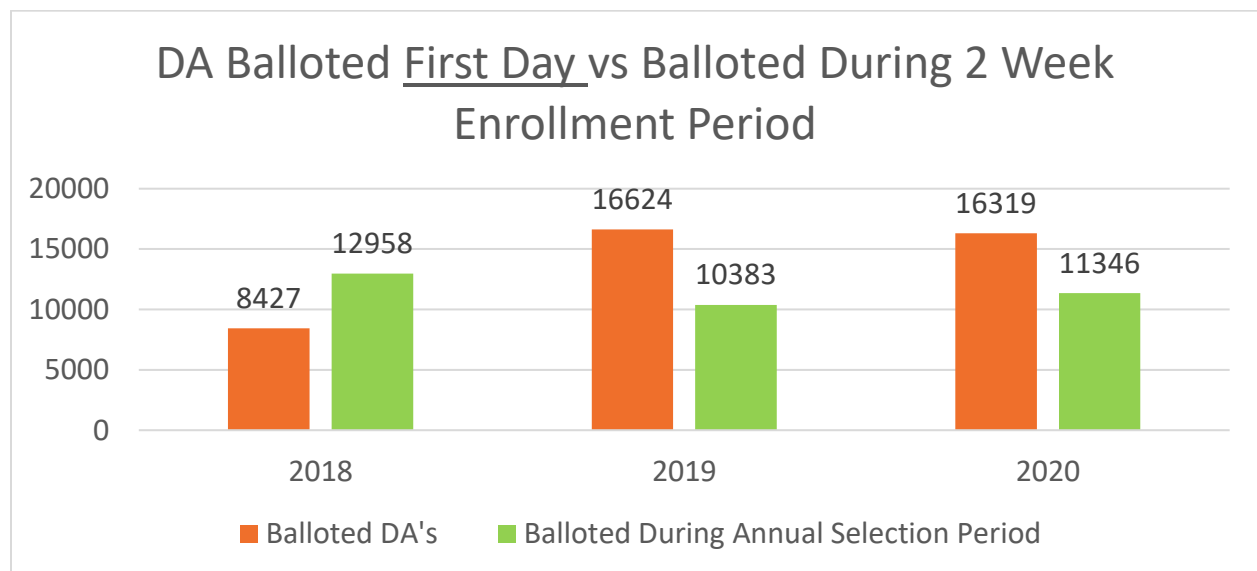
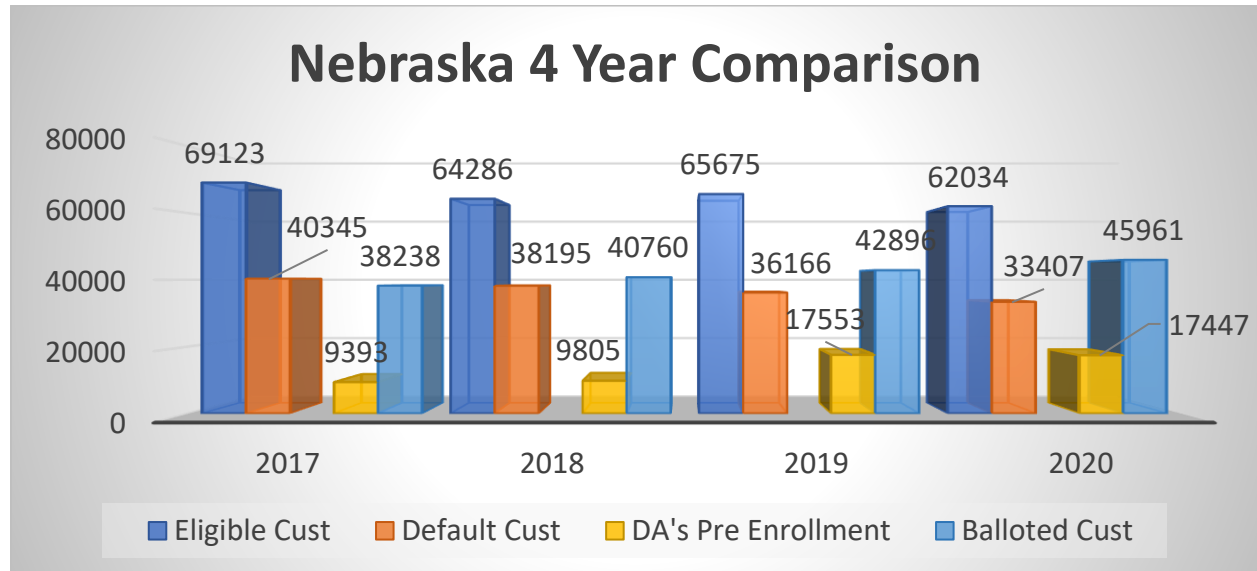
- 0-10 scoring

Q7.5- [comment box]

- Please share why you chose this rating.

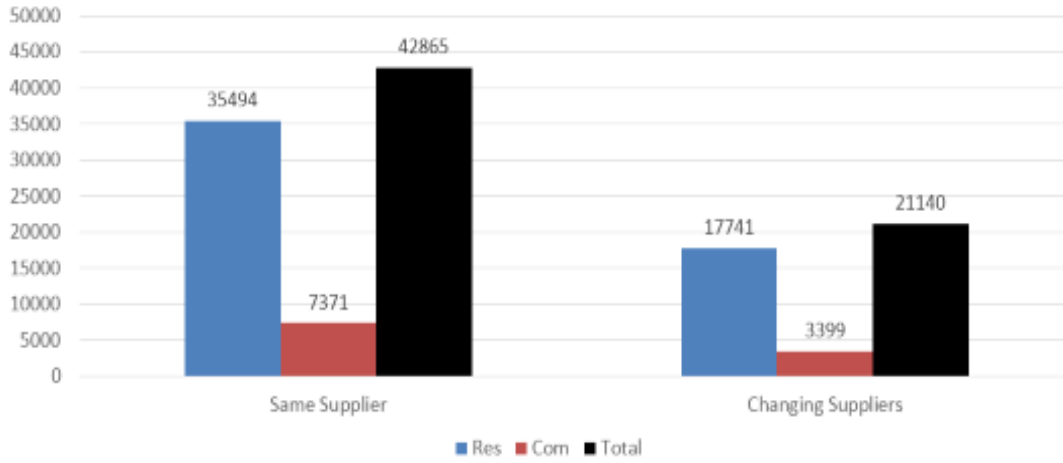
Q8- In the space below, please share any feedback on how the Choice Gas program could be improved.

Comparing the eligible customers, delegation agreements received outside of the enrollment period, default customers and customers balloted, shows that the increased use of delegation agreements outside of the enrollment period, has no affect on the number of customers participating in the program. We conclude that this activity of signing up customers early is not impacting overall customer participation in the program, and is significantly diluting the designated annual selection period.



SAME SUPPLIER VS CHANGING SUPPLIERS

Comparison of Selections for Same Supplier vs Changing Suppliers



**BLACK HILLS ENERGY
STATE OF NEBRASKA
MARKETER NON-TELEMETERED AGGREGATION AGREEMENT**

THIS NEBRASKA MARKETER NON-TELEMETERED AGGREGATION AGREEMENT ("Agreement") is made and entered into this ___ day of ___, 20___, by and between Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, ("Company"), and _____ ("Marketer").

WHEREAS, Company offers non-telemetered aggregation services to Certificated Natural Gas Providers (CNGP), that are s certified by the Nebraska Public Service Commission pursuant to the State Natural Gas Regulation Act under Neb. Rev. Stat. § 66-1849) and

WHEREAS, Marketer has provided Company with proof of its CNGP certification;

WHEREAS, Company and Marketer desire to enter into this Non-Telemetered Aggregation Agreement to set forth the terms and conditions relating to the aggregation by Marketer of Marketer's Customers.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, Marketer and Company hereby agree as follows:

1. Applicability. Marketer and Company acknowledge and agree that aggregation service is available to commercial and small industrial non-telemetered transportation customers in Nebraska for the delivery of gas owned by such customers from Company's City Gate(s) to a meter location on each customer's premises, subject to Company's operational considerations. No entity with authority over the rates, terms or conditions relating to Company's utility operations is allowed to participate as a marketer/aggregator. Marketer is restricted to one aggregation pool per pipeline. The applicable pipelines in Company's Nebraska service territory are Northern Natural Gas (NNG), Natural Gas Pipeline Company of America (NGPL) and Kinder Morgan Interstate Gas Transmission (KMIGT).

2. Term. The term of this Agreement is as follows:

a. The primary term of this Agreement is three (3) years beginning on _____, 20___ and will continue month to month thereafter unless otherwise canceled by either party upon sixty (60) days prior written notice.

b. The parties recognize that the accounts of Marketer's Customers are on certain specified billing "cycles" that may not necessarily begin and end on a calendar month basis. Accordingly, this Agreement will commence, with the understanding that certain accounts of Marketer's Customers may not be eligible for Company's transportation service until the first day of the applicable billing cycle following the thirty (30) day notice required by Section 5 below.

c. In no event will termination of this Agreement relieve Company and Marketer's Customers of the obligation to correct any volume imbalances or to pay money due to Company. If any of Marketer's Customers intend to return to Company's sales service upon expiration of the term of this Agreement, or if one or more of Marketer's Customers ceases to be served by Marketer, then Marketer shall provide Company written notice of same no less than sixty (60) days prior to the expiration of the term or the effective date that such Marketer's Customer ceases to be served by Marketer, as applicable.

3. Minimum Number of Customers Aggregated. Within twelve (12) months following the commencement date of this Agreement, Marketer must have aggregated a minimum of two (2) non-telemetered transportation customers for purposes of supplying gas to such customers under this Agreement, in order for Marketer to maintain eligibility under this Agreement. Company reserves the right,

in its sole discretion, to terminate this Agreement at any time, upon sixty (60) days prior written notice to Marketer, in the event Marketer fails to aggregate and maintain the minimum number of customers after the initial twelve (12) month period has elapsed.

4. End User Form. In connection with this Agreement, Marketer shall obtain from each of Marketer's Customers a signed form set forth in Exhibit "A" attached hereto ("End User Form") that sets forth, among other things and to the extent not addressed herein, the individual accounts of each such Customer that are being aggregated by Marketer hereunder, charges to be paid by each such Customer, and designation of Marketer as Customer's natural gas supplier. In addition, Marketer may request Customer's consumption history for a fee of \$10.00 per customer per year using the End User Form. Marketer shall only provide interruptible transportation service where an account is currently receiving interruptible sales service. Company shall confirm to Marketer the eligibility of Marketer's Customers and corresponding enrollment in Marketer's non-telemetered aggregation pool via Internet email to Marketer.

5. Administrative Procedures. This Agreement must be fully executed and information submitted to Company at least thirty (30) days prior to the first day of the month of each account of Marketer's Customers in order for Company to enroll the Customer in Marketer's aggregation pool. Where applicable, Customer must have a valid transportation agreement on file with Company in order to participate and to enroll in Marketer's non-telemetered aggregation pool. The individual accounts identified in the submitted End User Forms will then be aggregated with the next billing cycle after the 30-day administrative period referred to in Section 2(b) above, with pools of Marketer's Customers formed by Company according to the interstate pipeline serving the Customer as assigned by Company. Company will provide Marketer with a list of the Customers comprising each pool, as said pools are revised or updated from time to time. Marketer acknowledges and agrees that Customers can be added or deleted from said pools during any month. Marketer must comply with the following administrative requirements:

- a. Marketer must have Internet access and an Internet email account, which allows Marketer to receive email messages and attachments.
- b. Marketers will be assigned a unique Gas Track Online (GTO) user code and password by Company upon execution of this Agreement by Company.
- c. Marketer must maintain and provide to Company, upon request, a copy of the original End User Form as executed by Marketer's Customers.
- d. If Marketer fails to provide Company with the requested executed End User Form, then Marketer shall pay to Company an administrative charge equal to \$100 for each End User Form that is required by but not provided to Company. In addition, if Customer was included in Marketer's non-telemetered aggregation pool, then Marketer will not be entitled to continue to include any customer who's End User Form was not provided to Company, in the Marketer's aggregation pool. If Marketer is improperly enrolling Customer's in its non-telemetered aggregation pool without the proper consent of the Customer, then Company, at its sole determination, may limit or terminate this Agreement.

Marketer must submit all required enrollment/verification information for each of Marketer's Customers according to the provisions of Section 4 above, to Company within 10 business days after each of Marketer's Customer's signs the End User Form. Failure of Marketer to comply with this provision may disqualify those Customers from participation in Marketer's non-telemetered aggregation pool. In the event a customer executes an enrollment/verification form with more than one marketer, the earliest dated valid enrollment/verification information received by Company will prevail until the Customer validates its designated Marketer.

6. Receipt and Redelivery of Gas. Subject to Section 7, natural gas delivered by Marketer to Company for transportation to Marketer's Customers will be received by Company at the interconnection designated by the applicable pipeline Point of Intersection (PIN) number between interstate pipeline and

Company's system (the "Receipt Point"). Company will redeliver the gas to Marketer's Customers in accordance with the valid End User Forms.

7. Nominations. Marketer will be responsible for all nominations, transportation costs, risk of loss, and other obligations of delivery to the Receipt Point on Company's distribution system.

Marketer must provide nomination information, specific for each pool established by Company under this Agreement to Company no later than 11:30 a.m. Central Time one day before gas flows. Intraday nominations for the 1st through the end of the month will be accepted, on a best efforts basis, if they have been confirmed by the pipeline.

In any event, the scheduled quantities as reported on the pipeline statements will be deemed to be final nomination for each day. If variances between GTO nominations and pipeline scheduled quantities cause Company to incur additional expenses, Company may, in its sole judgment, seek appropriate remedies that are consistent with any harm that may have been done to Company.

When limited by the applicable pipeline, Company will not allow any increase to a nomination during any period.

Company will provide notice of interruption of service to the Marketer only. The Marketer is solely responsible for and shall take appropriate action to notify its Customers of any interruption of service.

The maximum daily quantity ("MDQ") of firm gas that Company will be obligated to receive from Marketer at the Receipt Points as directed by Company and that Marketer will be obligated to deliver to Company at the Receipt Points for transportation hereunder will be as set forth in Company issued "Customers Behind the Pool Report".

The MDQ will be determined by dividing (i) the historical Ccf peak usage by (ii) the number of days in the month divided by 15. On certain days determined by Company, Marketer shall deliver its MDQ to the Receipt Point as specified in Section 12 of this Agreement.

In addition to the Firm MDQ established in this Section 7 for Marketer's firm customers, Company shall estimate a peak day volume for each of Marketer's interruptible Customers (the "Interruptible MDQ"), which Marketer must deliver to Company at the Receipt Point on the specific days determined by Company as specified in Section 12 of this Agreement. The Interruptible MDQ is set forth in Company issued "Customers Behind the Pool Report".

Marketer acknowledges and agrees that the Firm MDQ and Interruptible MDQ may change from time to time as customers are added or dropped from Marketer's Customers. Marketer further acknowledges and agrees that any time the applicable pipeline calls a "Pipeline Restriction" which includes but is not limited to a calling of a critical day or operational flow order (OFO), Marketer shall deliver its Firm MDQ and Interruptible MDQ to Company at the Receipt Point on that day. Company shall have no obligation to notify Marketer that the applicable pipeline has called a Pipeline Restriction. With respect to the Interruptible MDQ only, Marketer may, in lieu of delivering the Interruptible MDQ to the Receipt Point, curtail its interruptible customers.

8. Interstate Pipeline Capacity Assignment for Joint/Firm Customers. Marketer shall only utilize firm pipeline transportation capacity, with primary receipt point, that is released by Company to Marketer, to deliver Marketer's firm customers' gas supplies to the Receipt Point. Marketer shall execute the appropriate temporary capacity release agreements with the applicable pipeline in order to facilitate the release. Marketer will not enter into any release to a replacement shipper that shall impair Marketer's ability to meet its obligation to provide firm supply. Marketer represents and warrants that it has or will have interstate capacity to serve its firm Customers for any months that capacity is not released. Marketer, for itself and on behalf of Marketer's Customers, acknowledges and agrees that certain transition costs

identified in Section 9 herein will be assessed in addition to requiring Marketer to take assignment of interstate capacity.

Interstate pipeline capacity released on NNG and NGPL is for the 5 month period November 1 through March 31. Interstate pipeline capacity released on KMIGT is for 12 months.

9. Transition Costs. With respect to Marketer's Customers converting from existing sales or other rate schedules, Marketer will be responsible for a proportionate share of any interstate pipeline transition charges assigned to Company. Transition costs include, but are not limited to, reverse auction costs, assigned Canadian supply agreement costs, Gas Supply Realignment costs, stranded capacity charges, GTI, and other charges incurred on behalf of Marketer's Customers. Marketer shall pay said transition charges (when applicable) on a monthly basis, in a specified amount per MMBtu multiplied by Marketer's MDQ as determined pursuant to Section 7 above. This amount will change in November of each year. Marketer will be responsible for the transition costs set forth in this Section 9, as the same shall be amended from time to time to reflect changes in the composition of Marketer's Customers and pipeline and/or Company tariffs.

10. Daily Balancing Fee. Marketer shall pay Company a daily balancing fee of \$0.075 for each MMBtu consumed by Marketer's Customers each month pursuant to the End User Form executed by Marketer's Customers. Provided that Marketer pays Company the daily balancing fee referenced herein, Company will waive its daily imbalance penalties for Marketer, except for the conditions set forth in Section 12.

11. Commodity and Upstream Services Billing Company and Marketer agree that Marketer will directly bill to its Customers all upstream (from Company's City Gate) commodity and related services charges. Furthermore, Marketer will not include Company's transportation rate and customer charge in its pricing to its customers without acknowledging that Company's transportation rate may change from time to time due to a Commission approved rate increase for Company.

12. Critical Days; Operational Flow Orders; Penalties. Under certain circumstances described in this Section 12, Company may, at its option and in its sole discretion, require Marketer to deliver its MDQ and/or Interruptible MDQ to the Receipt Point up to a cumulative 20 days each during the months of November through March.

The twenty (20) day limitation is inapplicable where the pipeline is restricting receipts and/or deliveries.

In the event that Company calls a Critical Day (as defined below) or issues an Operational Flow Order (as defined below), Company will notify Marketer that Marketer must deliver its MDQ and Interruptible MDQ to the Receipt Point. If possible, Company will provide Marketer with at least 25 hours notice prior to the start of the gas day for which a Critical Day or Operational Flow Order applies.

If Marketer fails to deliver its MDQ and Interruptible MDQ as required and Company has called a Critical Day, then Company in its sole discretion, may assess a penalty to Marketer for each MMBtu that Marketer failed to deliver in an amount up to the highest daily penalty applicable to a Critical Day as defined by the applicable pipeline in its tariff.

If Company has not called a Critical Day but has issued an Operational Flow Order and Marketer fails to deliver its MDQ and Interruptible MDQ, then, in addition to any pipeline charges or penalties, Company in its sole discretion, may assess a penalty to Marketer in an amount equal to \$30.00 for each MMBtu that Marketer failed to deliver or for each MMBtu that Marketer delivered in excess of its MDQ and Interruptible MDQ, as applicable.

For purposes of this Section 12, a "Critical Day" called by Company is defined as any day during which, in the sole judgment of Company, service is limited. Service limitations include, but are not limited to,

curtailment or interruption. A Critical Day may be declared with respect to any one or more delivery and/or receipt points.

An "Operational Flow Order" is defined as notice issued by Company to Marketer requiring the delivery of specified quantities of gas to Company for the account of Marketer at times deemed necessary by Company to maintain system integrity and to assure continued service.

Marketer's obligations to deliver its MDQ and Interruptible MDQ to the Receipt Point pursuant to this Section 12 are in addition to, and not limited by, the obligations of Marketer to deliver its MDQ and Interruptible MDQ any time the pipeline calls a Critical Day, as addressed in Section 7.

Notwithstanding anything in this Section 12 to the contrary, with respect to the Interruptible MDQ only, Marketer may, in lieu of delivering the Interruptible MDQ to the Receipt Point, curtail its interruptible customers; provided, however, that Marketer shall not be relieved of any applicable penalties if Marketer's interruptible customers fail to comply with any curtailment order from Marketer.

13. Monthly Cash-Out Procedure. The parties acknowledge and agree that nominated volumes and actual consumption must balance each month. If, at the end of any month, there is an imbalance between the amount Marketer delivered to Company at the Receipt Point and the amount taken by the Marketer's Customers at the Delivery Point, the imbalance will be resolved as set forth in the applicable pipeline's tariff as amended from time to time.

14. Billing and Payment. Company shall read each of Marketer's Customers' meters at intervals of approximately thirty (30) days. When appropriate, Company may estimate usage, provided that the estimated usage will be converted to actual usage on subsequent billings. Company shall provide the results of such meter readings to Marketer.

a. Company will bill Marketer directly for, and Marketer shall pay to Company, without delegation, the following charges when and as applicable:

- I. Penalties assessed by Company or Company's pipeline supplier, if applicable;
- II. Monthly cashout charges;
- III. Monthly pooling fee will be as follows: All volumes will be invoiced at \$XXX/MMBtu.
- IV. Daily balancing fee of \$0.075 per MMBtu per month as amended from time to time;
- V. Any transition costs required by Section 9.

b. Company will not bill Marketer for any charges that Marketer's Customers have agreed to pay to Company pursuant to their respective End User Forms. In no event may Company recover more than once for any costs, charges, and penalties or other amounts due from Marketer or Marketer's Customers to Company under this Agreement or the End User Forms, respectively.

Payments are due to Company within twenty (20) days after the date of billing. A late payment charge equal to the lesser of 1% per month or the maximum lawful amount, shall be added to the unpaid balance after twenty (20) days.

15. Credit; Credit Support and Credit Worthiness. The following subsections shall apply:

a. **Credit.** When reasonable grounds for insecurity of payment arise, and at its sole reasonable discretion, Company may demand adequate assurance of performance by Marketer. Adequate assurance shall mean sufficient security from Marketer or its parent corporation, in the form and for the term specified by Company

including, but not limited to, a standby irrevocable letter of credit, a prepayment, or a performance bond or guarantee by a creditworthy entity.

This assurance amount shall be \$500,000, and provided no later than ten (10) days after the request, or ten (10) days prior to the date gas first flows to one or more of Marketer's in the non-telemetered aggregation pools

Company reserves the right to periodically review the sufficiency of said security and, if deemed appropriate in Company's sole, reasonable opinion, to adjust the level of security required. In the event the Marketer (i) defaults in the payment or performance of its obligations hereunder and such default is not cured within 5 business days of a demand from Company for curative action;

(ii) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it;

(iii) otherwise becomes bankrupt or insolvent (however evidenced);

(iv) makes an assignment or any general arrangement for the benefit of creditors;

(v) is unable to pay its debts as they fall due;

(vi) is dissolved or has a resolution passed for its winding up or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger);

(vii) transfers all or substantially all of its assets or merges into or consolidates with any entity (a) where the creditworthiness of the resulting entity is materially weaker than that of Marketer immediately before such transfer, merger or consolidation, or (b) where Marketer's obligations hereunder are not assumed by operation of law or by written instrument;

(viii) terminates, revokes or otherwise fails to maintain the security required under Section 15;

(ix) is proved to have made a materially incorrect or misleading representation or warranty under this Agreement when made or deemed to be made or repeated;

or (x) Company may, in its reasonable discretion, terminate this agreement upon 30 days written notice without recourse to Marketer, if it determines that Marketer is engaging in conduct which unjustly causes Company damage to its reputation;

(xi) fails to demonstrate credit worthiness as reasonably determined by company then, upon the occurrence and continuance of any such event (each an "Event of Default"), Company may, at its election, withhold, suspend or terminate this Agreement, in addition to any rights or remedies available to Company hereunder or at law or equity.

In the event Marketer commits an Event of Default, Company shall have a general right of set-off with respect to all amounts owed by, or due from, Marketer to Company, whether or not then due and payable. Except as specifically provided in this Agreement, no other termination by the parties hereto is allowed.

b. Credit Support. (Not Applicable) shall provide guaranty on behalf of (Not Applicable) for the term of this agreement in a form and substance acceptable to Company.

c. Creditworthiness. Prior to commencement of service, and periodically thereafter as determined by Company in its sole discretion, Marketer shall provide Company with such financial information as may reasonably be requested by Company in order to evaluate Marketer's credit worthiness.

16. Compliance with Laws; Regulatory Jurisdiction. Marketer will be responsible for complying with all applicable laws, rules or regulations relating to the collection and remittance of taxes, if any, payable by Marketer relating to the sale and purchase of gas. In the event that this Agreement is required to be presented to any governmental agency or body for approval prior to implementation, Marketer agrees to cooperate and assist Company with such presentation, and will support Company in obtaining any necessary approvals of this Agreement in the form as signed by the parties. In the event that any government entity asserts jurisdiction over the rates, services, or terms and conditions provided hereunder and requires any changes to such rates or services that, in Company's sole discretion, are not acceptable to Company, then Company may terminate this Agreement upon 30 days written notice to Marketer and Marketer's Customers.

17. Indemnification. Marketer shall indemnify and hold Company harmless from and against all costs, damages, claims and expenses including but not limited to attorneys' fees, pipeline charges or penalties assessed to Company, or taxes or other charges incurred as a result of Marketer's actions, omissions, or nonperformance of this Agreement or any agreements between Marketer and Marketer's Customers.

18. Confidentiality. Each party shall keep the terms of this Agreement strictly confidential except to the extent such terms must be disclosed to regulatory or other authorities with jurisdiction over the matters herein or as required by law. Each party agrees not to use or disclose any information disclosed by any other party pertaining to service under this Agreement without the express written consent of the disclosing party, except where such disclosure is necessary to deliver supplies to Marketer's Customers or to Company or to comply with applicable laws, rules or regulations. The parties agree to seek protection of the confidentiality of the agreement from any regulatory or other authority requiring disclosure of this agreement. Such protection may include seeking a protective order, filing the agreements under seal, hold in camera review, executive sessions or other appropriate actions reasonably intended to preserve the confidentiality hereunder.

19. Notices. Notices required or otherwise given pursuant to this Agreement shall be transmitted by facsimile or given in writing and mailed by first class mail to the receiving party at the addresses and fax numbers specifically provided below:

If to Company: Notices:
Black Hills/Nebraska Gas Utility Company, LLC
601 W. 6th St.
Papillion, NE 68046
Attn: Steve McLaughlin

If to Marketer: Notices:
Contact Name
Company
Mailing Address
City, State Zip

20. Force Majeure. Except with regard to Marketer's obligation to make payments when due, if either Marketer or Company is rendered unable wholly or in part by Force Majeure to carry out its obligations, and such party gives notice and full particulars of such Force Majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are prevented by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period; provided, however, that the affected party shall promptly and diligently take such action as may be necessary and practicable under the then-existing circumstances to remove the cause of failure and resume the delivery or receipt of gas, as the case may be. If Marketer is rendered unable wholly or in part by Force Majeure to deliver gas to Company as scheduled, then Marketer shall also furnish a statement in writing to Company as to where the equivalent reduction in deliveries to Marketer or for Marketer's account or for Marketer's Customers, will take place

and to make such reduction in deliveries. The term "Force Majeure," as used herein, shall mean: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in the evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption of firm transportation and/or storage by transporters; (iv) acts of others such as strikes, riots, sabotage, insurrections or wars; (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Notwithstanding anything in this Agreement to the contrary, in the event Company is assessed any penalty by the applicable pipeline during a Force Majeure event affecting Marketer relating to gas not delivered by Marketer, then Company shall pass through to Marketer and Marketer shall pay to Company its allocable share of such penalty.

The term "Force Majeure" as used herein specifically excludes the following occurrences or events: the loss, interruption, or curtailment of interruptible transportation on any transporter necessary to make or accept delivery of gas hereunder, unless and to the extent the same event also curtails primary, in path firm transportation at the same point; increases or decreases in gas supply due to allocation or reallocation of production by well operators, or producers; loss of markets; failure of gas supply due to price considerations; and failure of specific, individual wells or appurtenant facilities in the absence of a Force Majeure event broadly affecting other wells in the same geographic area.

21. Miscellaneous

- a. Assignment. This Agreement may not be assigned by Marketer without the prior written consent of Company, such consent not to be unreasonably withheld.
- b. Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the state of Nebraska, without regard to principles of conflicts of law.
- c. No Waiver. Any failure or delay by either party to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.
- d. Measurement. Measurement of all gas received by Company and delivered to Marketer's Customers will be in accordance with the standard operating procedures of Company and the interstate pipeline delivering gas to the Receipt Point.

22. Amendments and Waivers. Except as otherwise set forth in this agreement, no waivers or amendments to any term, condition, or provision of this Agreement will be valid unless agreed to in writing by the consenting party.

IN WITNESS WHEREOF, Company and Marketer have executed this Agreement as of the date first written above.

Black Hills/Nebraska Gas Utility Company, LLC

By: _____

Title: _____

Witness: _____

Marketer

By: _____

Title: _____

Witness: _____

EXHIBIT A
NEBRASKA

End User/Customer Transport Authorization Form

The undersigned End User/Customer hereby notifies Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy (Company") that the marketer named below is authorized as agent to receive information for each of the account numbers listed. End User authorizes marketer to execute any additional agreements with Company as required in accordance with the Company's current transportation requirements or tariff to facilitate delivery of gas to End User's facility. End User acknowledges that transportation service is subject to Company's General Rules and Regulations and Company's Transportation Services Terms and Conditions. End User shall remain primarily and ultimately responsible to Company for the charges applicable to transportation service regardless of whether End User designates a third party as End User's Pay Agent for receiving and paying the invoices. Company will adhere to this End User marketer selection until another End User marketer selection is submitted to Company or End User requests to go back to the sales rate.

Customer Information

Legal Name: _____
Mailing Address: _____
Contact Name: _____
Phone Number: _____ Fax Number: _____ Email : _____
Account Number / Service Address Account Number / Service Address
1 _____ 6 _____
2 _____ 7 _____
3 _____ 8 _____
4 _____ 9 _____
5 _____ 10 _____

DUE TO PRIVACY REQUIREMENTS, SEPARATE CUSTOMER CONSENT SIGNATURE REQUIRED: _____

Consumption History - \$10.00 charged to Marketer per Account per year.

End User authorizes Marketer to perform the items checked below for the accounts referenced above.

Transportation Service – Marketer will supply End User's Gas Cost and bill directly to End User(Firm or Interruptible status is unchanged)

Company Invoice Options for Transportation Service (*must choose one)

*End User Acts as Pay Agent – End User will receive their Invoice(s) and submit payment to Company

*Marketer Acts as Pay Agent – Marketer will receive End User's Invoice(s) and submit payment to Company

Marketer Name: _____
Marketer Billing Address: _____

Marketer Authorized Signature: _____

*Other Entity Acts as Pay Agent – Other Entity will receive End User's Invoice(s) and submit payment to Company

Other Entity Name: _____
Other Entity Billing Address: _____

Other Entity Authorized Signature: _____

End User Receives Duplicate Bill

End User Invoice paid via EFT

Customer Authorization Signature: _____ Date: ____ / ____ / ____

Printed Authorization Name: _____

Marketer Information

Legal Name: _____ Effective Bill/Nom Mo/Yr: ____ / ____ / ____
Mailing Address: _____
Contact Name: _____
Phone Number: _____ Fax Number: _____ Email : _____
Marketer Authorization Signature: _____ Date: ____ / ____ / ____
Printed Authorization Name: _____

By execution hereof, Pay Agent/Marketer confirms that it accepts its designation and appointment for customer and agrees to act as Pay Agent/Marketer in accordance with the terms hereof and the transportation service agreement(s) that Customer has executed.

Please fax the completed form to Company's Transportation Analyst at 402-829-2662