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By Deena Ackerman at 2:40 pm, Sep 03, 2020

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE HEARTLAND)
NATURAL GAS, LLC, v. BLACK HILLS)
NEBRASKA GAS, LLC.)
)
)
)

Application No. **FC-1369**

FORMAL COMPLAINT

Heartland Natural Gas, LLC (“Heartland” or “Complainant”), by its attorneys, Rembolt Ludtke LLP, pursuant to NEB. ADMIN. CODE, tit. 291, ch.1, § 004.03, and NEB. REV. STAT. §§ 66-1811 and 66-1849(2), files this *Formal Complaint* against Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, a/k/a Black Hills Nebraska Gas, LLC, d/b/a Black Hills Energy, Rapid City, South Dakota (“Black Hills” or “Respondent”). In support of this Formal Complaint, Heartland alleges and states as follows:

1. The names of the Complainant and Respondent are set forth above.
2. Complainant is a limited liability organization, organized in the state of Nebraska with its headquarters in Lincoln, Nebraska. Heartland is a competitive natural gas provider duly certified by order of the Public Service Commission (“Commission”) entered pursuant to NEB. REV. STAT. §§ 66-1849(1) on April 17, 2012, in NG-0070 (*see attached Exhibit A*).
3. Respondent is a jurisdictional utility subject to the authority of the Commission pursuant to the State Natural Gas Regulation Act, NEB. REV. STAT. § 66-1801 *et seq.*
4. As a competitive natural gas provider, Heartland participates in the Energy Options (“Options”) program administered by Black Hills pursuant to a confidential Marketer Non-Telemetered Aggregation Agreement (“Agreement”). While the relationship of the parties arises from the Agreement, this dispute arises from practices Black Hills utilizes to allocate costs for the capacity of natural gas released to Heartland for its Options

customers. Those practices, which are not specified or otherwise addressed in the Agreement, are subject to the authority of the Commission by reason of their effect on ratepayers, as further alleged below.

5. The practices Black Hills utilizes to allocate the costs for the capacity of natural gas released to Heartland under the Options program have the effect of:
 - a. Rendering rates charged to customers under the Options program unjust, unreasonable, unreasonably preferential, and discriminatory, all in violation of NEB. REV. STAT. §§ 66-1825(1);
 - b. Creating unreasonable preference and advantage to non-Options ratepayers and subjecting Options program ratepayers to an unreasonable prejudice and disadvantage, all in violation of NEB. REV. STAT. §§ 66-1825(2); and
 - c. Causing subsidization in violation of NEB. REV. STAT. §§ 66-1825(1).

FOR THE ABOVE REASONS, Heartland respectfully requests the Commission:

1. Order Respondent to adjust its practices utilized under the Options program so that they no longer have the effect of violating Nebraska statutes, as alleged above;
2. Order Respondent to refund to Options ratepayers all past payments to the extent they violated Nebraska statutes, as alleged above; and
3. Order any other remedies and relief as may be in the public interest and necessary to ensure that the administration of the Options program does not violate any Nebraska statute, Commission rule and regulation, or other policy or order of the Commission.

DATED: September 1, 2020.

HEARTLAND NATURAL GAS, Complainant

By: REMBOLT LUDTKE LLP
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Lincoln, NE 68508
(402) 475-5100
apollock@remboltlawfirm.com

By: 
Andrew S. Pollock (#19872)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing *Formal Complaint* to be served on September 1, 2020, on the following:

By Certified Mail:
Black Hills Nebraska Gas, LLC
d/b/a Black Hills Energy
c/o CSC – Lawyers Incorporating Service Co.
233 S. 13th Street
Suite 1900
Lincoln NE 68508-0000

By Mail and Email:
Douglas J. Law
Black Hills Energy
1731 Windhoek Ave.
Lincoln NE 68501
douglas.law@blackhillscorp.com

By Mail:
Black Hills Energy
1102 East 1st Street
Papillion NE 68046

By Mail and Email:
Nebraska Public Service Commission
1200 N Street, Ste. 300
Lincoln, NE 68508
psc.naturalgas@nebraska.gov


Andrew S. Pollock (#19872)

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Heartland Natural Gas, LLC, Lincoln, Nebraska, seeking authority for a Competitive Natural Gas Provider Certificate in the State of Nebraska.) Application No. NG-0070)) AUTHORITY GRANTED)) Entered: April 17, 2012

BY THE COMMISSION:

By application filed March 5, 2012, Heartland Natural Gas, LLC (Heartland), Lincoln, Nebraska, seeks authority as a competitive natural gas provider (CNGP) in the State of Nebraska. Notice of the application was published in the *Daily Record*, Omaha, Nebraska, on March 8, 2012.

The deadline for filing a protest or petition for intervention was April 9, 2012. Because no protests or petitions for intervention are pending, the Commission may process this application by modified procedure, pursuant to the Commission Rules of Procedure, 291 Neb. Admin. Code, Ch. 1, Rule 018.03.

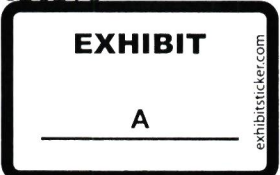
O P I N I O N A N D F I N D I N G S

The Commission finds that it has jurisdiction pursuant to *Neb. Rev. Stat.* §§ 66-1848 to 66-1849. Section 66-1849 provides in part:

The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. In an application for certification, a competitive natural gas provider or aggregator shall reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The commission may establish reasonable conditions or restrictions on the certificate at the time of issuance.

In addition, Commission rules and regulations specify requirements for an application for authority as a CNGP. See, 291 Neb. Admin. Code, Ch. 9, Rule 011.

Heartland is a privately owned Nebraska limited liability company, with its principal office in Lincoln, Nebraska. In support of its application, Heartland filed its balance sheet, bank account statements, and other financial statements. Heartland also provided a copy of its Certificate of Authority to Transact Business in Nebraska. There have not been any legal actions or formal complaints pertaining to the provision of competitive natural gas services filed against Heartland within the twelve months prior to filing this application, nor has Heartland had a license or certificate to supply competitive natural gas service revoked, denied or withdrawn.



In addition, Heartland submitted the biographies of the members of its management team, including Managing Partner/Founder Tyler J. Rohach and Vice President of Sales Keith Christian DeMara. The biographies detailed the educational and professional background of each individual.

Commission Staff Accountant Steve Stovall submitted a Report on Regulatory Compliance indicating that the financial statements submitted provide evidence of adequate financial resources necessary to obtain and deliver the services that Heartland proposes to offer.

Based upon the information provided in the application and verified by affidavit, the Commission finds that the provisions of Neb. Rev. Stat. §§ 66-1848, 66-1849 and applicable Commission rules and regulations are met. Heartland's application for authority should be granted, and Heartland should be issued a certificate of authority as a competitive natural gas provider consistent with the conditions set forth in this order.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. NG-0070 be, and it is hereby, granted and Heartland Natural Gas, LLC is authorized to operate as a competitive natural gas provider within the State of Nebraska.

IT IS FURTHER ORDERED that this order be, and it is hereby made the Commission's official certificate of authority to furnish the service authorized herein as competitive natural gas provider.

MADE AND ENTERED at Lincoln, Nebraska, this 17th day of April, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

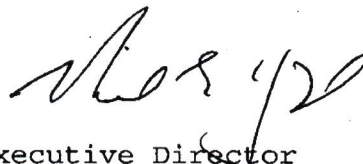


Chairman



ATTEST:

//s// Rod Johnson
//s// Frank Landis



Executive Director