BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

In the Matter of the Commission, on its own motion, seeking to review policies and practices relating to the administration of customer choice programs for natural gas services offered within the State of Nebraska.	))))))	**Application No. NG-102 /PI-225**

COMMENTS OF CONSTELLATION NEWENERGY – GAS DIVISION, LLC

On August 6, 2019 the Nebraska Public Service Commission ("Commission") opened a docket to gather information regarding customer choice programs for natural gas service as well as to review the administration of such programs offered within the State of Nebraska ("Choice programs"). To facilitate its review, the Commission scheduled a workshop and sought comments and evidence in advance of that workshop. In its initiating Order, the Commission identified specific issues it wants to review. Constellation NewEnergy – Gas Division, LLC ("CNEG"), as a certificated competitive natural gas provider ("CNGP") in the Choice program in Nebraska submits the following comments and evidence.

CNEG is a full-service provider of natural gas supply and transportation-related services to retail customers throughout North America. CNEG is one of the top three retail natural gas suppliers in the United States. It is a subsidiary of Exelon Corporation, a Fortune 100 company that works in every stage of the energy business: power generation, competitive energy sales, transmission and delivery. As the nation's leading competitive energy provider, Exelon does business in 48 states, D.C., and Canada and is headquartered in Chicago, Illinois. Exelon's six utilities deliver electricity and natural gas to approximately 10 million customers in Delaware, the District of Columbia, Illinois, Maryland, New Jersey and Pennsylvania through its Atlantic City Electric, BGE, ComEd, Delmarva Power, PECO and Pepco subsidiaries.

CNEG was established in 2002 when its' former parent, Constellation Energy, consolidated the gas industry expertise of three acquired subsidiaries and is headquartered in Louisville, Kentucky. CNEG does not own physical infrastructure, such as pipelines and meters, but does acquire natural gas supply and interstate pipeline capacity. CNEG is certified as a gas marketer to serve customers is Connecticut, Iowa, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and the District of Columbia. The remaining jurisdictions in which CNEG presently provides natural gas services either do not require a gas supplier or marketer to be certified or do not require certification for marketers who provide services only to large commercial and industrial end users.

CNEG and its predecessors have reliably served residential, commercial and agricultural customers in the Nebraska Choice program since 1999. Previously SourceGas and now Black Hills Gas Distribution, LLC d/b/a Black Hills Energy have consistently maintained a good working relationship with CNEG, including regular discussion on how to improve the program and better serve Choice customers. CNEG serves Choice customer throughout the country and it's our experience that the Black Hills Energy ("BHE") program is one of the best Choice programs available. CNEG frequently cites the BHE program as a model of Choice to emulate in other jurisdictions.

CNEG appreciates the opportunity to respond with these comments to the issues identified by the Commission and looks forward to engaging in discussion at the September 25th workshop.

<u>CNEG Comments</u>

1. **Consumer Education.**

   a. **How can utilities, CNGPs, and the Commission better educate customers about the Choice program? What should the goal of customer education be?**

CNEG believes the main goal of customer education should be to ensure that customers understand that the Choice program is their opportunity, through a competitive marketplace, to select the CNGP that offers their preferred pricing option, terms and conditions of service, and level of customer service that together best meets each customer's individual natural gas needs and preferences. Customer education can help consumers understand the different roles and responsibilities of the distribution utility, i.e. BHE, and the CNGP's in the market. It's important that consumers realize that participating in a Choice program is a legitimate option and that by selecting a CNGP a customer will not be subject to penalties or additional fees simply by exercising that option. Further, consumers must recognize that a Choice customer is entitled to receive the same level of reliable distribution service from BHE no matter which CNGP it selects. This is especially critical in the current environment in which one of the CNGPs in the market, Black Hills Energy Services ("BHES") has a nearly identical name and logo to the distribution utility, Black Hills Energy. The similarity creates confusion and a segment of consumers mistakenly believe that when selecting the CNGP with a similar name and logo to Black Hills Energy, they are then getting their commodity from the local utility. This is a common misconception that can unfairly disrupt a competitive market but can also be readily mitigated with accurate disclosure regarding affiliate relationships. CNEG encounters similar situations in other jurisdictions and later in these comments will address recommendations for reducing customer confusion.

CNEG recommends that as the administrator of the Choice program and the entity who issues customer invoices, BHE should, on a regular basis, include a bill insert with information on the Choice program with its invoices. The insert should focus on educating consumers about the Choice program and address common misconceptions to better ensure clear customer understanding of the program. This type of educational insert should regularly be included with utility invoices as ongoing education of consumers about the Choice program and how it works.

Another suggestion it to enhance the current Consumer Choice Program page on the Nebraska Public Service Commission website. As a competitively neutral source of information, it would be beneficial for consumers to access the site to obtain a general description of what the Choice program is, a high-level overview of how it works and perhaps some Q&As of common questions regarding the program. While the current information provided on the site may be helpful for an informed consumer, it lacks a basic overview of the Choice program that could provide necessary background and context for an uninformed consumer.

b. What should the role of each entity be in administering and setting out information regarding the Choice program?

Currently BHE provides: 1) a Nebraska Choice Gas customer letter; 2) a Nebraska Choice Gas guide book; and 3) a page for Nebraska Choice Gas customers on the distribution company website. (https://www.blackhillsenergy.com/services/choice-gas-program/nebraska-choice-gas-customers) CNEG believes these are useful tools for educating consumers and should be continued by BHE. BHE, as the entity through which enrollment and billing occurs, plays an essential role in the success of the Choice program and as such should be a critical and unbiased source of information on the selection process and the names of authorized CNGP. It's beneficial for customers to receive clear explanatory information on how to participate in the Choice program from the entity who processes enrollments and issues invoices for the Choice program.

Since BHE invoices the CNGP charges on its distribution utility invoice, the charges for gas commodity purchased from the CNGP should be clearly identified with the name, and ideally also the logo, of the CNGP. The CNGP name associated monthly with their invoiced Choice program charges continually reinforces with customers who their current CNGP provider is which helps reduce customer confusion.

CNGPs also have an important role in informing Choice program customers. Each CNGP should be responsible for providing clear, complete and accurate information about any offer it makes to a customer including disclosure of the offer price, duration of the offer term, all key terms and conditions ("T&C") such as the price option for the offer, and confirmation of same upon enrollment. Each CNGP participating in the Nebraska Choice program must execute a Choice Gas Transportation Service Supplier Participation Agreement ("Supplier Participation Agreement") with BHE, which also includes an agreement regarding mailing lists and marketing practices designed to ensure that certain communication practices are used by all CNGPs in the Nebraska Choice program.

The Supplier Participation Agreement is another important tool, when consistently enforced, to secure compliant and consistent behavior and practices among all Nebraska CNGPs. In the current Supplier Participation Agreement there is a provision that requires that all CNGP provide advance copies of their customer solicitation materials to BHE prior to use. This safeguard helps prevent any misinformation being provided to customers.

The current Code of Conduct in the tariff, at 38.2 D., states that:

> A Supplier shall not market or advertise its commodity services in any manner that is misleading to the customer, or misrepresents the cost of commodity to the customer. A Supplier shall take such actions, especially in the context of multi-year supply arrangements, to ensure that a current or prospective customer and the Company understands the cost of commodity applicable to any pricing options being considered for selection by the customer.

For the 2019-2020 Choice program year, the original Addendum to the Supplier Participation Agreement, i.e. the Agreement Regarding Mailing List and Marketing Practices, further stated that if a CNGP uses a Delegation Agreement, that prior to the full execution of the Delegation Agreement, within five days following receipt of the Delegation Agreement from the customer, the CNGP must provide confirmation to the customer of the pricing option and term that the customer selected. A record of the confirmation provided must be made available to BHE upon request, and thus is useful for resolving subsequent disputes.[1]

Based on these tariff and Supplier Participation Agreement provisions, CNEG recommends that in the future when a Delegation Agreement is used that a confirmation notice is required that must clearly specify the price of any offer, including fixed rate, market index rate, blended rate or fixed monthly bills, that a customer is accepting as this would better ensure a customer's understanding of the commodity cost, as required by the Code of Conduct.[2] When the same rate is not applicable for multiple months, such as a market index rate, the confirmation should specify what market index value is used and state the price of any adders. The offer price and term of the offer should be provided in a confirmation to a Delegation Agreement so that a customer understands what has been signed up for and agreed to by both parties. This will reduce customer confusion regarding charges that appear on subsequent invoices.

2. Code of Conduct.

[1] Paragraph 6, Subparagraph (e) in the 2019-2020 Mailing List & Marketing Agreement of the Supplier Participation Agreement states "If the Supplier uses a Delegation Agreement via any methods, then the Supplier will subsequently provide the Choice Gas Customer a confirmation of the pricing option and term of the Choice Gas Program Customer's selection. The confirmation must be sent to the Choice Gas Program Customer of record as provided to the Supplier in the eligible customer file, within 5 days of the date that the delegation agreement is received by the Supplier. Such dated confirmation communication will be provided to BHGD upon request" In December 2018 BHE notified suppliers that this provision had been revoked.

[2] CNEG recommends that a mandatory confirmation notice is required only in conjunction with the use of a Delegation Agreement. A separate confirmation notice that is sent by a CNGP should be voluntary for customers who make a selection during the Selection Period or who make no selection and are defaulted.

a. Is the current Code of Conduct set forth in the utility's tariff and in the Commission regulations sufficient to provide a fairly administered program that benefits both customers and marketers?

The current Code of Conduct at 38.1 J. of the tariff states:

> The Company shall clearly inform customers through a disclaimer on a bill insert and on all Choice Gas related advertising that the customers of the Gas Supplier Activities will have no preferential treatment with regard to regulated utility services over the other Suppliers in the Choice Gas Program. The disclaimer shall read "No Customer of any Supplier will receive preferential treatment with regard to utility services regulated by the Nebraska Public Service Commission."

The Code of Conduct defines Gas Supplier Activities as a Company affiliate that is participating as a Supplier under the Choice Program. Provision 38.1 J. in the Code of Conduct clearly requires the utility to refrain from preferential treatment and, via the required disclaimer, duly inform customers. However, there is no corresponding disclaimer requirement for the Gas Supplier Activities, i.e. the affiliated CNGP. CNEG believes there should also be a required disclaimer by the affiliated CNGP since customer confusion likely occurs when evaluating offers and customers may mistakenly believe that the affiliate and the utility are the same. If customers falsely believe there may be preferential treatment given if an affiliated CNGP is selected, the competitive marketplace is harmed and an unlevel playing field is created. The required disclaimer would inform customers that their selection of an affiliate of BHE will not result in preferential treatment by the distribution utility and should be required on all advertising and marketing materials of any BHE affiliate.

While there is no provision in the current Code of Conduct that requires a BHE affiliate to inform customers that it is not the same company as the distribution utility or that a customer purchasing service from an affiliate will not gain preferential treatment from BHE, BHES has voluntarily placed the following disclaimer on its website; whether the same or similar disclaimer is provided on other BHES advertising and marketing materials is unknown to CNEG. Further, while the disclaimer clearly conveys the necessary distinctions between the utility and its affiliate, the disclaimer is provided on a separate page and is not found in the same location, or webpage, as the solicitation and offer messages, so customers may not be aware of the separation between the utility and affiliate when making a purchase decision unless they click to a separate location on the website.

> Black Hills Energy Services ("BHES") is a non-regulated competitive natural gas supplier in the Choice Gas Program provided by Black Hills Gas Distribution, LLC. d/b/a Black Hills Energy in Nebraska and Wyoming. BHES is a non-regulated competitive gas supplier that is completely separate and distinct from the regulated utility, Black Hills Gas Distribution, LLC. (formerly Source Gas Distribution) which is administrating the Choice Gas Program under the business trade name of "Black Hills Energy."
>
> BHES, as a competitive supplier of natural gas is not provided any advantages or preferences due to its corporate affiliation with Black Hills Gas Distribution, LLC.. Although the names of each legal entity are similar, the service provided by Black Hills Energy Services (i.e. non-regulated competitive gas supplier) and Black Hills Energy (i.e. regulated utility service - Choice Gas Administrator) are totally separate.

CNEG has experience in other jurisdictions with the unique concerns associated when a utility affiliate markets to utility customers in a competitive environment. Maryland handles similar circumstances through the following state rules:

Maryland	Non-Discrimination	COMAR 20.40.02.01 COMAR 20.40.02.03	A utility may not give any preference to a core service affiliate, or non-core service affiliate, or a customer of either in providing regulated utility service.
	Marketing	COMAR 20.40.02.01; COMAR 20.40.02.02	A utility may not engage in promotions, marketing, or advertising with a core or non-core service affiliate except that a utility may authorize its affiliate to use advertising, which uses the utility's corporate name, trade names, trademarks, and logos, and may engage in a joint promotion with a core service affiliate if it affords all similarly situated non-affiliated licensed electricity or gas suppliers the opportunity to participate in the promotion. If an affiliate is authorized to use the utility corporate name, trade name, trademark or logo in an advertisement, must include the disclaimer "(affiliate name) is not the same company as (utility name), a regulated utility."

In Maryland marketing materials from affiliates of the distribution utilities carry a disclaimer that includes the following language: "BGE Home Products & Services, LLC is not the same company as BGE, the regulated utility. The prices of [supplier name] are not regulated by any state Public Utility Commission. You do not have to buy [supplier name's] electricity, natural gas or any other products to receive the same quality regulated service from your local utility." This clearly states that the affiliate and the distribution utility are not the same company and that a customer's purchase of service from an affiliate will not result in preferential service from the utility. CNEG recommends the Nebraska Code of Conduct be amended to include similar requirements and disclosure for any affiliates of BHE to avoid reliance on the current voluntary compliance by BHES and to ensure that the disclaimer is consistently included on all advertising and marketing materials.

CNEG does not have further recommendations for changes to the current Code of Conduct in the utility tariff at this time.

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

Yes, consistent with our response in 2.a. above, CNEG recommends the following modification be made to 38.1 J. of the Code of Conduct:

> The Company *and any Gas Supplier Activities* shall clearly inform customers through a disclaimer on a bill insert and on all Choice Gas related advertising *and marketing materials* that the customers of the Gas Supplier Activities will have no preferential treatment with regard to regulated utility services over the other Suppliers in the Choice Gas Program. The *Company* disclaimer shall read "No Customer of any Supplier will receive preferential treatment with regard to utility services regulated by the Nebraska Public Service Commission." *The disclaimer of any affiliated Gas Supplier Activities shall read "[Name of Affiliate] is not the same company as [Name of Company], the regulated utility. No Customer of [Name of Affiliate] will receive preferential treatment with regard to utility service regulated by the Nebraska Public Service Commission."*

3. Annual Reports. Current Commission regulations require both participating suppliers and the jurisdictional utility offering a choice program to file annual reports with the Commission following the close of the annual selection period.

a. Is the information currently provided in annual reports sufficient to provide a fairly administered program that benefits both customers and marketers?

Yes, CNEG believes the information currently provided in the annual reports is sufficient.

b. Should the reports include more information, less information, or more specific information, details, and specifics? Please provide specific suggestions and sample language or edits.

CNEG has no recommendations for modifications to the current annual report at this time.

4. Marketing Period.

a. Is the current length and timing of the residential marketing period appropriate?

Exhibit A Mailing and Marketing Practices Chart of the 2019 Supplier Participation Agreement defined the residential Open Marketing Period for Direct and Indirect Marketing as the five-month period of January 1st through June 1st, with the Eligible Premise file becoming available on February 1st. Within this period is the two-week Selection Period, which for Nebraska in 2019 occurred between April 12th and 25th. In comparison, the residential Selection Period for Wyoming is three weeks also during April.

This allows a CNGP to pre-sign residential customers from January 1st until the Selection Period begins in April through a Delegation Agreement. CNEG believes a January 1st start date extending until the Selection Period is appropriate to pre-sign residential customers via a Delegation Agreement, however, CNEG believes extending the Selection Period by an additional week, to three-weeks similar to Wyoming, would benefit Nebraska customers. (*see* 4. b.)

b. Would customers benefit from having a longer or shorter marketing period? If so, when should the marketing period begin and end?

As noted above, CNEG recommends that the current two-week Selection Period is increased to a three-week period consistent and coincident with the Wyoming Selection Period. It's CNEG's experience that the additional week is helpful for managing the Selection Process and Wyoming customers appreciate the extra time for making their selection. Since Nebraska does not have a utility pass on rate, more Nebraska customers are required to make a selection each year, yet there is a shorter window to accomplish this. It is our belief that the additional week for customers to make a decision would be well-received by Nebraskans.

In addition, CNEG recommends starting the pre-sign period for commercial customers earlier on October 1st. Commercial customers are more sophisticated than residential customers, often have different review and approval processes than residential customers and contacting them earlier/more often is more beneficial. Moving their pre-sign state date would provide commercial customers with greater ability to make a selection when it's convenient for them and also creates a less congested time frame when all commercial and residential marketing is occurring.

5. Delegation Agreements.

a. How do Delegation Agreements benefit customers?

Delegation Agreements benefit customers by providing the customer with greater control over when they make their Choice program selection. The customer is not limited to locking in a gas price only during the Selection Period, but instead has the opportunity to fix its price during a longer time frame. The extended window has the potential to financially benefit the customer especially during periods of greater market volatility. Without the Delegation Agreement process the customer is limited to locking a gas price only at the gas prices that are offered during the two-week Selection Period in April.

It's apparent that the ability to pre-sign via a Delegation Agreement is an attractive option for customers as the number of customers electing this option has continued to increase over time. Customers like the ability to make their selection when it's convenient and beneficial for them to do so and providing the opportunity to execute a Delegation Agreement allows customers greater flexibility in when they make their selection.

b. Are Delegation Agreements appropriate to be used for each class of customer: residential, commercial, and agricultural? If not, why not?

Yes, Delegation Agreements are appropriate for each class of customer. CNEG believes that a pre-sign window with the use of a Delegation Agreement is responsive to customer wishes and can result in higher customer satisfaction with the Choice program overall. However, CNEG also believes there are opportunities to improve the existing Delegation Agreement and associated process to reduce customer confusion and frustration across all segments.

First, the existing Delegation Agreement form is currently confusing as it applies to both Nebraska and Wyoming and covers all segments, i.e. residential, commercial and agricultural. We believe that the language and format of the Delegation Agreement could be improved to clarify it, improve understanding and make it more customer friendly thereby reducing consumer confusion. One ongoing problem with the process is that customers do not always fully understand that the first Delegation Agreement they execute supersedes all subsequent selections. The form needs to make it patently clear that by completing the Delegation Agreement they are making the Choice program election for the year(s), including their CNGP, their pricing option and length of the agreement term, and that any additional Delegation Agreements or selections they make are ignored, i.e. they do not override their initial election. It would be beneficial to make this explanatory disclaimer more prominent on the form. In addition, formatting improvements could be made regarding the selection of the correct program and segment to reduce the number of customer errors when completing the form. CNEG is pleased with BHE's recent decision to permit CNGP logos on the Delectation Agreement as this will help reduce customer confusion.

Also, the process is inconsistent across segments. BHE issues a Control Number which is provided on the selection form that it sends to customers. This Control Number is unique to a customer location and is provided to prevent unauthorized enrollments. A customer provides its Control Number to the CNGP when it selects that supplier's offer for natural gas service during the Selection Period. For a pre-sign, the Delegation Agreement contains a provision that by signing the document, the customer authorizes the CNGP to obtain the customer Control Number from BHE in order to process the customer's selection with that CNGP during the upcoming Selection Period. However, for the April Selection Period, when the customer has received its Control Number directly from BHE with its selection materials, BHE still requires large commercial customers and all agricultural customers to sign a Delegation Agreement for multi-year terms even though the customer is providing the correct Control Number for use during the Selection Period. To make these anomalous situations even more challenging, frequently large commercial customers are incorrectly identified in the BHE system. In contrast, if a residential or a non-large commercial customer has its Control Number for the Selection Period, even when selecting a multi-year term from the CNGP, a signed Delegation Agreement is not also required. CNEG recommends that during the Selection Period, when a customer has a Control Number, that Control Number is sufficient for selecting its preferred CNGP and offer across all customer segments.

While the residential, commercial and agricultural Choice programs all have defined Selection Periods, BHE limits the residential and commercial customer pre-sign period for when it will accept Delegation Agreements from CNGPs. In 2019, Delegation Agreements could not be signed by customers prior to January 1st. Other than specific recommendation in these comments, CNEG believes these defined residential and commercial Selection Periods are working well. In contrast, once the Delegation Agreement for the following year is available for agricultural customers, a CNGP can submit it to BHE at any time. Because of the longer time span that a Delegation Agreement may be submitted for an agricultural customer, there are some unique challenges, however, CNEG offers recommendations in 5. c. and 6. a. and b. below to address them which would not only greatly improve the agricultural program but would, if implemented, also benefit both the residential and commercial programs.

c. **Should suppliers be required to send confirmation letters to any customer that signs a Delegation Agreement? If so, when should that confirmation letter be sent, and what information should it include?**

Yes, CNEG believes that any CNGP that submits a customer's signed Delegation Agreement to BHE, should then provide a confirmation letter to that customer. The confirmation should clearly include the customer's offer price, duration of the offer term and the price option that will be provided by the CNGP. Ideally the confirmation letter should also include any applicable Terms and Conditions. The 2019 Supplier Participation Agreement, before this provision was revoked, stated that when a CNGP uses a Delegation Agreement, it is required to provide confirmation to the customer of the pricing option and term that the customer selected within five days following receipt of the Delegation Agreement from the customer, so the only addition would be to also clearly specify the price of any offer, including fixed rate, market index rate, blended rate or fixed monthly bills. As noted in 1. b.

above, with a market index rate, when the same rate is not applicable for multiple months, the confirmation should then specify what market index value is used and the price of any adders.

The language in the revoked provision specified that within 5 days of the date that the delegation agreement is received from the customer, a confirmation must be sent by the CNGP. CNEG recommends medication of this provision to within 5 days from when BHE confirms to the CNGP that the submitted customer Delegation Agreement has been accepted. While a five-day timeline is acceptable to CNEG, this timeline requires all CNGP's to timely submit Delegation Agreements. This is necessary, for example, to prevent customer confusion associated with CNGP B confirming an offer to its customer, when CNGP A already has a signed Delegation Agreement that predates that of CNGP B's Delegation Agreement, but because CNGP A has held onto tits Delegation Agreement for a period of time longer than five days before submitting it to BHE, CNGP B could then send a confirmation letter to the customer for an offer that will become void when CNGP A finally submits it's earlier dated Delegation Agreement that then supersedes CNGP B's form. The five-day timeline, to most effectively work, further requires BHE to timely notify a CNGP when it already has a prior dated Delegation Agreement from another CNGP in order to circumvent a null confirmation letter being sent from the second CNGP for an offer that is void. CNEG is willing to hear comments from the other entities involved to see whether there is general consensus to continue a five-day timeline for confirmation letters, or if the timeline should be adjusted to accommodate the majority of parties involved in order to make it effective. The timing of BHE notifying all CNGP's when it receives the first Delegation Agreement from a customer also impacts the removal of that customer from further marketing efforts which is more fully addressed in 6. a. below.

6. **Customer Selection.**

   a. **Once a customer makes a selection or signs a Delegation Agreement, are suppliers notified to remove that customer from further marketing? If so, how, and how quickly does this occur? If not, why not?**

During the two-week Selection Period a CNGP receives notice of any and all customer selections that have been made via daily files from BHE, including pre-signs with a Delegation Agreement. This allows a CNGP to remove customers who have exercised their selection from further marketing. However, because the Selection Period is so short, with an imminent selection deadline, there is very limited opportunity to do direct mail campaigns at this point of the program timeline. Consequently, Direct Mail is more effective for CNEG during the pre-sign period when there is less chance that the materials will arrive and be reviewed by the recipient after a key deadline has already passed.

In contrast, during the residential and commercial pre-sign period, which began on January 1^{st} for the 2019 Selection Period, CNGP's do not receive any notification from BHE of customers who have made a selection via a signed Delegation Agreement. In order to remove customers who have signed a Delegation Agreement with a different CNGP from further marketing requires that the remaining CNGP's are timely notified by BHE that a Delegation Agreement has been signed. In the case of the agricultural Choice program, where the timeline of when Delegation Agreements are acceptable is even longer, providing CNGP's with timely, periodic notice of customers who have already made their selection for the upcoming program year, would be even more beneficial for reducing unnecessary marketing activities and subsequent invalid confirmation letters sent to customers. CNEG recommends that CNGPs are provided regular updates of customers who are no longer eligible to make a selection throughout the year for agricultural customers and once the pre-sign period begins for residential and commercial customers. This is an opportunity to improve customer satisfaction, reduce confusion, eliminate marketing and confirmation materials that are irrelevant and ensure good customers service. During the Selection Period daily file updates are provided to CNGP; while daily notice would also be ideal during the pre-sign period when Delegation Agreements are used, even the provision of weekly or bi-weekly notification from BHE would be an impactful improvement over the status quo. While additional updates wouldn't prevent all instances of unnecessary receipt of program materials for a customer who has already made a selection, it would eliminate the vast majority of those situations, would reduce wasted resources and CNGPs costs, which is ultimately more beneficial to customers.

b. Do customers have an expectation that once they make a selection or sign a Delegation Agreement, they will no longer be solicited? Is this currently occurring, and if not, how can it be accomplished?

A key attribute of the Choice program is the first Delegation Agreement or customer selection prevails. This is not per customer request, but by program design. Since any subsequent selections and marketing received once a selection is made are invalid, it's simply good customer service to reduce any further solicitation of that customer. Certainly, some segment of customers have that expectation, but since elimination of unnecessary and potentially confusing or intrusive marketing is something that can be controlled by BHE and CNGPs working together, CNEG believes we should strive to do so in the interest of greater clarity and customer satisfaction.

This can be accomplished by BHE not only providing daily updates during the Selection Periods, but also doing so during any period of time when Delegation Agreements are executable by customers. For good cause, during the pre-sign period parties may determine less frequent updates are warranted but notice of ineligible customers should occur more frequently than current practice when they are provided only once prior to the start of the Selection Period. This program improvement would be also extremely helpful to the agricultural program where via Delegation Agreements customers can commit throughout the year. This improvement could reduce the receipt of unnecessary marketing materials for nearly a one-year period of time for agricultural customers. Imagine the frustration of such customer who signs a

Delegation Agreement at the start of summer and must remember to ignore all subsequent marketing materials received until sometime after New Year's Day.

7. **Other Information. Is there any other information the Commission and other interested parties should consider in their review of the choice program? If so, please provide an explanation and supporting documentation.**

In addition to our comments in response to the specific issues identified by the Commission, CNEG offers the following additional recommendation for a modification to the Supplier Participation Agreement.

Recommendation to modify Section 10 of the Supplier Participation Agreement

CNEG recommends that Section 10: Gas Quality and Tariff Requirements of the Supplier Participation Agreement be amended such that all CNGPs are no longer required to effectively strand 40% of the value of the allocated storage assets. This can be accomplished without adverse impact to the physical deliverability of gas for the Choice program. This is a material value that if optimized by CNGPs would lead to lower supply costs passed on to the Nebraska BHE Choice program customers.

In the current Supplier Participation Agreement, beginning at the bottom of page 2, Section 10 states:

> **Gas Quality and Tariff Requirements:** Supplier agrees to comply with all tariff provisions, rules, regulations, and service agreement provisions regarding gas quality, transportation, delivery, and storage of TIGT or other upstream pipelines delivering gas at any Receipt Point hereunder, including, but not limited to, compliance with the appropriate tariff provisions that will allow Supplier to retain the maximum released No-Notice Contractual Maximum Daily Withdrawal Quantity between November 1 and March 31 of each year. Supplier

> authorizes Black Hills Gas Distribution to obtain no-notice storage balances, at any time, from TIGT or other upstream pipelines and agrees to execute any documents required by TIGT or other upstream pipelines to allow Black Hills Gas Distribution access to such information. All applicable tariff provisions of TIGT or other upstream pipelines, including definitions, are incorporated herein and made a part hereof by reference; provided, however, that the provisions of this Agreement shall govern in the event of any conflict with the tariff provisions of TIGT or other upstream pipelines.

Section 10 references the Tallgrass Interstate Gas Transmission ("TIGT") pipeline tariff. A relevant provision of the TIGT tariff is found at Section 2.15 which states:

> If the Shipper's stored quantity is equal to or less than forty percent (40%) of its MSQ, the Shipper's withdrawal rights will be reduced as follows:

Inventory ≤ 40% but > 20% of MSQ	75% of WQ rights
Inventory ≤ 20% but > 0% of MSQ	50% of WQ rights
Inventory = 0	0 WQ rights

> Any withdrawal quantity in excess of the Shipper's reduced WQ above will incur overrun charges as defined in this Rate Schedule NNS.

By requiring in Section 10 that CNGPs "retain the maximum released No-Notice Contractual Maximum Daily Withdrawal Quantity between November 1 and March 31 of each year," BHE inappropriately translates the above TIGT tariff provision into a limitation on a CNGP that prohibits it from drawing on any of its storage inventory below 40% prior to April 1st of each year. This means that during the winter months, CNGPs are unable to utilize any volume of gas below 40% of its storage capacity and rather than draw upon that available asset, it instead must buy and deliver more expensive spot market gas instead of using any of the less expense gas that sits idle in its storage. Apparently BHE has the very admirable goal of ensuring maximum physical deliverability from TIGT throughout the entire winter period of November 1st through March 31st, however, their limitation on CNGPs is inconsistent with the TIGT tariff which does not prohibit drawing storage below 40% but rather merely increases the cost when doing so to account for decreasing pressurization at lower inventory levels.

The ratchets referenced in the TIGT tariff are not imposed to ensure maximum deliverability on its system during the winter. Rather, these ratchets are due to a physical constraint on the assets dictated by the physical reality that when inventories decrease, pressure decreases and there is a smaller volume of gas that is physically capable of being withdrawn as inventories decrease.

The physical deliverability on TIGT does not change as storage inventories vary. If less gas is available as a withdrawal volume from storage, that does not mean that storage gas is unavailable to flow to Choice customers. Withdrawals from Rate Schedule NNS are automatically linked to each CNGP's load, so barring an OFO from TIGT, as Section 2.15 dictates, physical gas will flow to the Choice customers even when it exceeds the Shipper's, i.e. the CNGP's, Withdrawal Quantity ("WQ"). When this occurs TIGT handles it through overrun charges that are applied to that shipper. TIGT does not pass these overrun charges through to Choice customers but instead they are the full responsibility of the CNGP. This provides a strong financial incentive to CNGPs to maximize and optimize their sources of supply in order to have the maximum physical supply available each day while not incurring punitive overrun charges.

While the current BHE limitation on Choice program storage use below 40% before April 1st may appear reasonable on its face, it is not supported by how gas physically flows on TIGT nor by the pipeline's actual tariff language. CNGPs incur punitive TIGT tariff penalties when not properly optimizing their physical gas flows, but this does not ensure maximum gas flow on TIGT. Rather, the current BHE application of the TIGT tariff on the Choice program perversely punishes the end-use Choice program customers. To illustrate, assume BHE releases 1.875 bcf of NNS each year to CNGPs. Applying a conservative estimate of the lower cost of summer gas over winter gas of only $0.30/dth, BHE's restriction on storage volumes below 40%, cost the Choice program CNGP's and their customers a minimum average of $560,000 per year. CNEG recommends that the BHE 40% limitation on storage access be modified so that it more directly translates to the actual provision in the TIGT tariff which does not prohibit use of storage below 40% throughout the winter.

In all the Choice programs in which CNEG participates where upstream storage assets are either allocated directly to shippers or indirectly through a bundled storage program offered by the utility, the programs are subject to the operating tariff parameters of the upstream storage facilities. All storage facilities have operational ratchets that reduce the amount of daily deliverability as inventory levels reach determined percentages of maximum storage contract quantities. It's an expected industry practice, based on the laws of physics, that there is reduced daily deliverability as storage pressure falls with decreased inventory levels. However, to the best of our knowledge, no other distribution utility in the country understands daily deliverability limitations of applicable upstream pipeline tariffs to preclude the full utilization of working storage. Storage is designed to be utilized during maximum periods of usage to mitigate the dependence on actual production supply.

BHE's additional and unique requirement that its Choice program storage must exceed 40% before April 1st precluded 750K dth of gas from being delivered to the market this past March. This restriction places undue risk on system deliverability for CNGP's who are, during periods when gas supply is needed most, required to rely on producers to cover gas demand which otherwise could be met through planned storage withdrawals. By virtue of the fact that BHE Choice program deliveries are consistently made each March, despite BHE's artificial barrier that prohibits full utilization of storage, is testament to the ample supply that exists in this geographic area of the country.

BHE offers no compelling rationale for superseding a FERC-approved tariff through its Supplier Participation Agreement, thus CNEG recommends removal of the current restriction on a CNGP from drawing its storage inventory below 40% prior to April 1st of each year. Section 10 of the Supplier Participation Agreement should be amended as follows:

> **Gas Quality and Tariff Requirements:** Supplier agrees to comply with all tariff provisions, rules, regulations, and service agreement

> provisions regarding gas quality, transportation, delivery, and storage of TIGT or other upstream pipelines delivering gas at any Receipt Point hereunder. Supplier authorizes Black Hills Gas Distribution to obtain no-notice storage balances, at any time, from TIGT or other upstream pipelines and agrees to execute any documents required by TIGT or other upstream pipelines to allow Black Hills Gas Distribution access to such information. All applicable tariff provisions of TIGT or other upstream pipelines, including definitions, are incorporated herein and made a part hereof by reference.

In conclusion, CNEG believes the BHE Nebraska Choice program is one of the best structured and managed Choice programs in the country. CNEG offers limited recommendations in its comments to make a very good program even better, however, to be clear CNEG strongly supports the continuation of the BHE Choice program. Thank you for the opportunity to comment on the current Choice program and CNEG welcomes the opportunity to participate in the upcoming Choice workshop on September 25th.

Date: September 13, 2019