

SEP 13 2019

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION **Nebraska  
Public Service Commission**

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

**COPY** COMMENTS

Heartland Natural Gas, LLC (“HNG”), by and through its attorneys of record, Rembolt Ludtke LLP, hereby respectfully submits these comments to the Nebraska Public Service Commission (“Commission”) in response to the Commission’s August 6, 2019, *Order Opening Docket Requesting Written Comments and Notice of Assessment* (“Order”). Specifically, HNG’s comments fall within the purview of Category 7 (“Other Information”). See *Order*, p. 3.

**Commission Jurisdiction**

The Commission has jurisdiction over the relationship between jurisdictional utilities and competitive natural gas providers (“CNGPs”) to the extent necessary to resolve disputes. Neb. Rev. Stat. § 66-1849(2). Section 66-1804 of the State Natural Gas Regulation Act delineates the Commission’s powers with respect to natural gas utilities:

- (1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction . . . such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act.
- (2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted and conferred upon the commission.

The State Natural Gas Regulation Act further authorizes the Commission to initiate investigations into violations of the State Natural Gas Regulation Act. Neb. Rev. Stat. § 66-

1809. Subsidization of one class of customers by another violates the State Natural Gas Regulation Act. Neb. Rev. Stat. § 66-1825(10).

When questions of subsidization arise in the context of the relationship between jurisdictional utilities and CNGPs, the Commission clearly has jurisdiction. HNG is concerned that its customers are subsidizing Black Hills Energy's ("BHE") customers. HNG raised these concerns with both BHE and the Commission in the past but has not formally asked the Commission to address those concerns. HNG's concerns with respect to subsidization are explained below:

### **Subsidization**

When a customer leaves BHE and opts into a choice program, such as Energy Options, the customer's benefits and rates change. HNG is concerned that its Energy Options' customers are subsidizing BHE's general sales customers. HNG believes this is happening in three ways: (1) HNG is paying BHE for the highest priced capacity rate on Northern Natural Gas capacity; (2) HNG is only being given primary access to the more expensive receipt point cash market; (3) the amount of capacity HNG receives is not the pro-rata amount purchased on behalf of the customer. All three components relate to the upstream costs associated with the interstate transportation of natural gas from the whole sale markets to Nebraska ("Capacity").

### ***Capacity Rates***

Northern Natural Gas is the primary capacity provider of concern in Nebraska. BHE is the backup supplier. In order to ensure supply and its role as backup supplier, BHE elects, each year, to purchase capacity on behalf of all customers, including Energy Options' customers. Prior to each winter, BHE releases capacity to each Energy Options' Marketer, including HNG, based on the customers in that particular pool. By using a larger pool of customers, including Energy Options customers, BHE is able to negotiate better prices for

capacities from upstream pipeline companies. HNG is concerned that BHE is not passing on these cost-saving benefits in a pro-rata fashion to Energy Options' customers. Failure to pass on benefits in a pro-rata fashion results in subsidization of BHE customers by Energy Options' customers.

### *Receipt Points*

Additionally, Energy Options' customers do not receive the benefits of receipt points with primary access to less expensive and less volatile cash markets. Receipt Points often indicate a physical cash marketplace along the pipeline where gas is bought and/or sold. Capacity contracts specify the CNGP's primary receipt point—the primary place from which the CNGP can purchase gas. The only primary receipt point released to Energy Options' customers is the most expensive and volatile. The other less volatile and expensive receipt points are reserved for BHE's general sales customers. The cost of the expensive and volatile primary receipt point is borne by Energy Options' customers.

### *Volume of Capacity Released*

HNG, over the years and despite multiple requests to BHE, has never been able to verify that the amount of capacity released per customer is the same amount originally purchased for that year by BHE. If Energy Options' customers are receiving and paying for more than their fair share of capacity, then BHE's general sales customers are being subsidized.

HNG believes that customers who stay in BHE's traditional sales class receive the full benefits of negotiated capacity rates, receipt points, and volumes. If the customer opts to

move into the Energy Options class, however, the customer loses all of its benefits. A pro-rata approach to capacity with respect to price, receipt point, and volume, to the extent it is not already being used, would help ensure subsidization is not taking place.

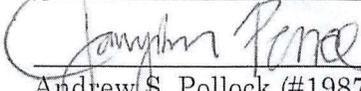
### Conclusion

In conclusion, HNG respectfully requests the Commission open an investigation into the issue of subsidization. HNG further requests the Commission give other natural gas consumers and suppliers the opportunity to submit comments.

Dated: September 13, 2019

### HEARTLAND NATURAL GAS, LLC,

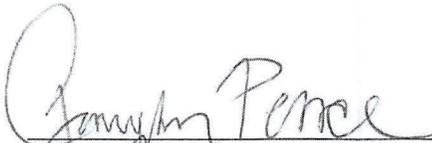
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### Certificate of Service

I hereby certify that a true and accurate copy of the foregoing *Comments* was served upon the following by electronic mail on September 13, 2019, addressed to:

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