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July 9, 2020

VIA ELECTRONIC DELIVERY

Mr. Michael Hybl
Executive Director
Nebraska Public Service Commission
300 The Atrium, 1200 "N" Street
P.O. Box 94927
Lincoln, NE 68509-4927

Re: Application No. NG-109 – Motion to Reject or to Modify Petition
of Formal Intervention

In The Matter of the Application of Black Hills Nebraska Gas, LLC
d/b/a Black Hills Energy, Rapid City, South Dakota Seeking Approval of
a General Rate Increase

Dear Mr. Hybl:

Pursuant to the above-referenced matter, enclosed please find for filing a Motion to Reject or to Modify Petition of Formal Intervention filed on behalf of Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy regarding the intervention filed by Mr. Steven Jones.

Respectfully,

Douglas J. Law

Douglas J. Law
Associate General Counsel
Bar # 19436

DJL/ce
Enclosure

cc: Service List

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF BLACK HILLS NEBRASKA GAS,)
LLC, D/B/A BLACK HILLS ENERGY, RAPID) APPLICATION NO. NG-109
CITY, SOUTH DAKOTA, SEEKING)
APPROVAL OF A GENERAL RATE)
INCREASE)**

MOTION TO REJECT OR TO MODIFY PETITION OF FORMAL INTERVENTION

On June 1, 2020, Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy (“BH Nebraska Gas”) filed its Rate Review Application Seeking Approval of a General Rate Increase (“Rate Review Application”). The Nebraska Public Service Commission (“Commission”) accepted the Rate Review Application under Commission Application No. NG-109, issued public notice, and established July 6, 2020 as the deadline for Intervenors to file Petitions to Intervene in the proceeding.

On July 3, 2020, Steven Jones filed a Petition For Formal Intervention on behalf of the International Brotherhood of Electrical Workers (A.F. Of L.C.I.O.), IBEW Local 244 (“IBEW Petition”) with the Commission to allow IBEW Local 244 to formally intervene in Commission Application No. NG-109.

BH Nebraska Gas has reviewed the IBEW Petition filed on behalf of the IBEW Local 244 by Mr. Steven Jones, and hereby submits this Motion to Reject or to Modify the IBEW Petition.

In support of its Motion to Reject or To Modify the IBEW Petition, BH Nebraska Gas states as follows.

1. BH Nebraska Gas is not opposed to the IBEW Local 244 designating a qualified representative and participating in this proceeding if the IBEW Local 244 elects to pursue such

action in compliance with the Commission's Rules and Regulations. However, the Petition for Formal Intervention filed on behalf of the IBEW Local 244 by Mr. Steven Jones does not comply with the requirements of the Commission's regulations for Formal Intervention. For example, Mr. Jones is not a licensed member of the Nebraska State Bar Association as required by the Commission's Administrative Rules and Regulations, and the Nebraska Supreme Court. *291 Neb. Admin. Code. Ch. 1, § 002.01B.*¹ Furthermore, the IBEW Petition does not comply with Commission Rule 002.12A1, which requires such petitions to be served on every party in the proceeding.²

2. In addition, BH Nebraska Gas records reflect that Mr. Jones is retired from the Company and is not a current employee of BH Nebraska Gas. Thus, the scope of his authority to represent IBEW Local 244 is not clear from the filed IBEW Petition.

3. The IBEW Petition also appears to lack some of the requirements of Commission Rule 002.12A2, which states as follows:

002.12A2 The petition must state the petitioner's name and address; facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as a formal intervenor under any provision of law;

4. BH Nebraska Gas acknowledges that the IBEW Petition provides the following statement: "... IBEW Local 244 represents the bargaining unit employees who perform work in over sixty four Nebraska communities in which Black Hills/Nebraska Gas owns and operates said

¹ *291 Neb. Admin Code, Ch. 1, § 002.04B.* On Behalf of Another: An individual may appear on behalf of another person and elicit testimony from witnesses if such individual is admitted to practice law before the Nebraska Supreme Court or is admitted to practice law before the Supreme Court of any other state and has been admitted to practice before the Commission in a proceeding upon a motion by a person admitted to practice before the Nebraska Supreme Court.

² The IBEW Petition does not appear to have been served on the Public Advocate of Nebraska. BH Nebraska Gas assumes that the failure of service is due to administrative oversight and not an intentional omission of a necessary party to this proceeding. *291 Neb. Admin. Code Ch. 1, § 002.12A.*

properties. As such, this rate change will directly affect the employees of Black Hills.” However, BH Nebraska Gas contends that the IBEW Petition does not adequately articulate how that fact alone qualifies the IBEW to be admitted as a Formal Intervenor as defined under the Commission’s Rules.³ The IBEW Local 244 Collective Bargaining Agreement is not at issue within this Rate Review Application. BH Nebraska Gas is not seeking changes to the IBEW Local 244 Agreement. Moreover, the IBEW Petition does not describe how the Rate Review Application will adversely affect the employees of BH Nebraska Gas. Nor does the IBEW Petition state how those interests are not otherwise addressed, protected, and advanced by either BH Nebraska Gas or the Public Advocate of Nebraska.

5. BH Nebraska Gas views its relationship with members of the IBEW Local 244 in a positive light. Our Company values the contribution of each of its employees. BH Nebraska Gas wants and needs those employees to be safe, treated with great respect, and heard on issues of concern to them.

6. BH Nebraska Gas believes that the Company and the IBEW Local 244 members should be aligned on their support for approval of the BH Nebraska Gas Rate Review Application. The primary drivers in the Rate Review Application will be a benefit to the IBEW Local 244 members by authorizing continued investment in capital infrastructure projects. The Rate Review Application proceeding is not the time or place to address any issues between the IBEW Local 244 and BH Nebraska Gas under the Collective Bargaining Agreement. If the IBEW Local 244 or its members have any concerns or issues with the BH Nebraska Gas Rate Review Application, then BH Nebraska Gas has offered and continues to offer to meet with such representatives to discuss those issues or concerns.

³ 291 Neb. Admin. Code, Ch. 1 § 001.13. Formal Intervenor(s) means an intervenor who files a Petition for Formal Intervention seeking to become a party to a Commission proceeding.

7. Accordingly, for the reasons set forth above, BH Nebraska Gas requests that the Hearing Officer reject the filed IBEW Petition.

8. If the IBEW Local 244 desires to continue as an Informal Intervenor consistent and in compliance with Commission Rules 001.15⁴ and 002.12B1 of the Commission's Rules of Practice and Procedure, then BH Nebraska Gas would not oppose such action.⁵ BH Nebraska Gas takes no position on whether the Hearing Officer should modify the IBEW Petition *sua sponte* or require the IBEW Local 244 to file a separate Petition for Informal Intervention in full compliance with all of the Commission's Rules and Regulations.

WHEREFORE, for the reasons set forth above, BH Nebraska Gas respectfully requests that the Commission consider this motion and associated relevant matters.

BH Nebraska Gas objects to the IBEW Petition as presented for the reasons stated, and requests that the Commission reject the IBEW Petition as noncompliant with the Commission's Rules of Practice and Procedure.

In the alternative, BH Nebraska Gas would not oppose Commission action, *sua sponte*, to permit the IBEW Local 244 to participate as an Informal Intervenor, if the IBEW Local 244 so elects to continue in this proceeding.

Similarly, BH Nebraska Gas would not oppose a new IBEW Local 244 Petition for Informal Intervention so long as that Petition is in full compliance with the Commission's rules and regulations.

⁴ 291 Neb. Admin. Code. Ch.1, § 001.15. Informal Intervenor(s) means an intervenor who does not satisfy the requirements of formal intervention or files a satisfactory petition requesting informal intervention status. Informal intervenors are not made parties to the proceeding and their participation is limited.

⁵ See also, 291 Neb. Admin. Code. Ch.1, § 002.04C. On Behalf of Another by Limited Appearance: An individual who is neither admitted to practice law before the Nebraska Supreme Court nor the Supreme Court of any other state may appear for a governmental subdivision, corporation, association or partnership for the sole purpose of making a statement on behalf of such person, but may not elicit testimony from any other person.

Dated: July 09, 2020

/s/ Douglas J. Law

Douglas J. Law, #19436

Associate General Counsel

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Attorney for Black Hills Nebraska Gas, LLC

d/b/a Black Hills Energy

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2020, the foregoing **MOTION TO REJECT OR TO MODIFY PETITION OF FORMAL INTERVENTION** by Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy was served electronically on the following at the email address shown below:

| | |
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