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May 19, 2023

Ret. Colonel Thomas Golden
Executive Director
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508

Re: *Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy's
Comments on the Second Half of the Commission's Chapter 9 Proposed Rules*

Dear Ret. Col. Golden:

Black Hills Energy hereby transmits its Comments on the Second Half of the Commission's Chapter 9 Proposed Rules, *291 Neb. Admin. Chapter 9, Rules 010 through 022*.

Please contact me at (402) 221-2635 if you have any questions or need additional information.

Respectfully submitted,

Douglas J. Law

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Associate General Counsel

DJL:ce
Attachment
cc: Service List
Johanna Benson
Giao Nguyen
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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE COMMISSION,) APPLICATION NO. NG-118
ON ITS OWN MOTION, SEEKING TO)
OPEN A DOCKET TO REVIEW)
PROPOSED CLEANUP AND UPDATES TO)
TITLE 291, CHAPTER 9, NATURAL GAS)
AND OIL PIPELINE RULES AND)
REGULATIONS

**COMMENTS OF BLACK HILLS NEBRASKA GAS, LLC ,
D/B/A BLACK HILLS ENERGY ON THE SECOND HALF OF THE
COMMISSION’S CHAPTER 9 PROPOSED RULES**

I. INTRODUCTION

On November 29, 2022, the Nebraska Public Service Commission (“Commission”), on its own motion, issued an order opening an investigation in the above-captioned docket for the purpose of reviewing proposed cleanup and updates to the Nebraska Administrative Procedures Act, Title 291, Chapter 9, Natural Gas and Oil Pipeline Rules and Regulations. The Commission seeks to modernize and update procedures, correct typographical errors, clarify, and reorganize various sections, and conduct an overall cleanup of Section 001 through Section 022 of its Rules. The Commission initiated this proceeding pursuant to *Neb. Rev. Stats. §§ 66-1804 and 66-1805*.

Pursuant to the Commission’s Order, the Commission solicited written comments on its proposed changes to the rules. The Commission held a workshop on Wednesday, February 8, 2023, from 1:30 p.m. to 4:00 p.m. to discuss the Commission’s first half of the rules. Pursuant to the Commission’s Order, Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy (“BH Nebraska Gas”) submitted comments in response to the Commission’s Part 1 rulemaking proceeding.

On March 28, 2023, the Commission issued an order scheduling a second workshop to be held on Wednesday, May 24, 2023, to discuss the second half of the rules (Sections 10-22). 291 *Neb Admin. Ch. 9, Rules 010 -022*. 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 to the Commission’s second half of its Chapter 9 proposed rules set forth below.

II. SCOPE OF COMMENTS

Black Hills Energy appreciates the Commission’s action in this proceeding to review and update the Chapter 9 - Natural Gas and Oil Pipeline Rules and Regulations. Upon initial review of the Commission’s proposed changes to the rules in the second half of the Commission’s Chapter 9 Rules and Regulations, Black Hills Energy agrees that the Commission’s proposed changes are appropriate. Most of the proposed rule changes do not raise any concern for Black Hills Energy.

However, after thorough review, analysis and discussion with subject matter experts within the Black Hills organization, BH Nebraska Gas has identified a couple of rules in the second half of Chapter 9 Rules and Regulations for which BH Nebraska Gas (a) seeks clarification or (b) opposes the proposed change. The specific rules raising concern for BH Nebraska Gas are identified in the comments below. BH Nebraska Gas reserves the right to supplement its written comments or to reevaluate its submitted comments upon further review and discussion of the proposed rule changes throughout this proceeding.

Rule 013.05 – Residential Winter Disconnection

BH Nebraska Gas opposes the Commission’s proposed change in the Residential Winter Disconnection period from November to October, and requests that the Commission reject that proposed change throughout Commission Rule 013.05 of Chapter 9.

The Commission’s stated basis for extending the winter disconnection period from November 1st to October 1st is because “... winter weather, on average, begins in October in Nebraska.”

BH Nebraska Gas opposes this proposed date change for the following reasons:

1. October weather is generally not below 30 degrees Fahrenheit.
2. Historically, there have been a minimal number of customers that get disconnected in October. The Commission’s proposed change to state the Winter disconnection period on October 1st could have the unintended consequence of customers getting further behind on gas bills prior to the actual winter heating season.
3. This proposed October start date is unique compared to all other service areas for which Black Hills Energy provides natural gas service.
4. A change from November 1st to October 1st will have impacts on financial operations, customer communication notifications timing, and operation service disruptions on BH Nebraska Gas.
5. The interstate natural gas pipelines serving Black Hills Energy have a FERC - approved Winter period commencing on November 1st.

1. Weather in October.

Although BH Nebraska Gas agrees that weather in October may be colder than other Summer-period months, a review of October weather over the past few years does not support a conclusion that October weather has numerous days below 30 degrees Fahrenheit.

For example, BH Nebraska Gas reviewed historical October daily weather data available from the National Oceanic and Atmospheric Administration’s National Weather Service for the geographic area around Lincoln, Nebraska for the past ten years (2013 -2022).¹

The results of that data review demonstrates that for six (6) of those years, there were only four (4) days or less in October where the minimum temperature for that day was below thirty (30) degrees Fahrenheit.² Even during the four (4) other years in that ten-year period, two (2) of the years had only seven (7) days where the minimum daily October temperature dropped below 30 degrees.³ One year had only eight (8) of the thirty-one (31) days of October where the minimum temperature was below 30 degrees.⁴ The coldest year during that period was in 2019, wherein only ten (10) days of the month were colder than thirty (30) degrees Fahrenheit. See [Climate \(weather.gov\)](https://climate.weather.gov). The table below summarizes the number of days in October for each year over the past ten (10) years where the minimum daily temperature dropped below thirty degrees Fahrenheit.

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	10-Yr. Average
# Days < 30° F.	7	2	2	1	4	3	10	8	2	7	4

Based on a review of the historic October weather, Black Hills Energy would respectfully disagree with the Commission conclusion that winter is starting earlier in Nebraska than other states. Moreover, even if weather is getting colder earlier, those few days below thirty 30 degrees

¹ [Climate \(weather.gov\)](https://climate.weather.gov)

² The years 2014, 2015, 2016, 2017, 2018, and 2021 had minimal days below 30 degrees. [Climate \(weather.gov\)](https://climate.weather.gov)

³ The years 2013 and 2022 each had seven (7) days where the minimum temperature was below 30 degrees.

⁴ The year 2020 had eight (8) days where the minimum temperature was below 30 degrees Fahrenheit.

usually occur in the last week of October. Thus, to move the winter disconnection period to October 1st ignores the majority of October over the last ten-years has been 30 degrees or above. That fact weighs in favor of retaining November 1st as the start of the Winter disconnection prohibition.

2 . October Customer Disconnections

In addition to reviewing historic weather data in October over the past ten years and finding that the daily minimum temperature is generally above 30 degrees Fahrenheit, BH Nebraska Gas also reviewed its customer disconnection rate for the past couple of years. To that end, BH Nebraska Gas determined that for the past few years, BH Nebraska Gas has averaged about 380 Cut for Non-Payment (“CNP”) notices in October for its Nebraska customers. This number drops significantly to about twenty (20) CNPs issued to Nebraska Customers in November. Out of the 380 CNPs issued, most CNPs do not result in an actual customer disconnection. Instead, the CNPs have traditionally had the desired effect of resulting in continued natural gas service for the impacted customer under either (a) a payment arrangement between the Customer and BH Nebraska Gas, or (b) a customer seeking additional financial assistance from other resources, including, in some cases, the Salvation Army or other support organizations. BH Nebraska is concerned that there would be unintended consequences of customers getting further behind on gas bills prior to the actual winter heating season when they currently seek a remedy to unpaid bills.

The point of this comment is that BH Nebraska Gas does not believe that the small number of customers out of approximately 300,000 customers billed each month who are actually impacted by a potential disconnection in the month of October warrants a change in the Commission’s rule to move the Winter period from November 1st to October 1st.

3. Most States Follow November 1 for CWR Start Date

Moving the prohibition to disconnect customers for non-payment from November 1st to October 1st would differentiate customers located in the State of Nebraska from customers in other states in which affiliates of BH Nebraska Gas operate.

As you can see in the table below, all other states have established November 1st as the start of Winter.

State	CWR Disconnection Rules	Additional info
Arkansas	Nov 1 – Mar 31	
Colorado	None	BHE follows a temperature based disconnection process
Iowa	Nov 1 – Apr 1	LIHEAP certified customers have complete protection from non-pay disconnection between Nov 1 – Apr 1
Kansas	Nov 1 – Mar 31	
Montana	Nov 1 – Apr 1	
Nebraska	Nov 1 – Mar 31	Low-income customers have complete protection with proof of energy assistance eligibility
South Dakota	Nov 1 – Mar 31	Requires an additional 30 days' notice before non-pay disconnection during CWR
Wyoming	Nov 1 – Apr 1	

For consistency, efficient operations coordination between state operations, customer service teams, communications teams, and ongoing business operations, BH Nebraska Gas believes that November 1st should be retained as the start date for Winter. Moving the date to

October 1st may help some customers from disconnection, but also may increase the cost of service to all other customers by accelerating the start of the Winter period.

4. Impact of Change on BH Nebraska Gas and BHSC

BH Nebraska Gas believes that moving the Winter start date from November 1st to October 1st could result in unintended consequences, incremental expense, greater inefficiencies, and financial impact. For example, each year before winter, Black Hills Service Company's ("Company") Operations, Communications, and Pipeline Safety teams meet to review required or other communication notifications or messages that the regulated natural gas Black Hills Corporation subsidiaries send to customers prior to winter. Those communications can be related to safety, rising gas costs, energy efficiency or other messages to prepare customers for Winter.

As all other states in which affiliates of BH Nebraska Gas Operate start Winter on November 1st, there is some efficiency and knowledge gained by having a common message, collaboration, and review by representatives on the Company teams discussing the customer safety or gas cost awareness communication messages.

If the Nebraska Commission changes its regulations to start Winter on October 1st, then that requirement will either (a) accelerate the group discussion or (b) separate the Nebraska representatives from the normally occurring team discussions. BH Nebraska Gas has not undertaken a specific study to determine all of the impacts of moving the Winter period start date from November 1st to October 1st and cannot provide quantitative impacts at this time. However, the collective belief within our Company is that overall negative impact to BH Nebraska Gas and its Customers will outweigh the perceived benefits of moving the Winter start date to October 1st from November 1st.

Obviously, if the Commission moves the Winter start date to October 1st, BH Nebraska Gas and the Company will make any necessary changes to comply with this change. However, as shown above, the number of customers potentially benefiting from this move may be at the collective expense of the hundreds of thousands of other customers.

5. Interstate Natural Gas Pipelines Use November 1st for Winter Period

BH Nebraska Gas acknowledges that the start of the Winter period for prohibiting disconnections established by the Commission and the start date for Winter established by Northern Natural Gas Company, Natural Gas Pipeline Company of America, or Tallgrass Interstate Gas Transmission as approved by the Federal Energy Regulatory Commission are not directly connected to each other.

However, November 1st is the date that Winter-period interstate pipeline gas transportation capacity and storage capacity is available and commences for BH Nebraska Gas. In addition, November 1st is the date wherein interstate pipeline capacity is effective for capacity releases to Marketers under the BH Nebraska Gas Energy Options commercial transportation program. The point that BH Nebraska Gas is attempting to draw between this relationship is that a change in the Winter-period start date from November 1st to October 1st would also be different than how interstate pipelines view Winter in Nebraska. Those interstate natural gas pipelines also serve states north of Nebraska where the weather is colder, and colder sooner than it is in Nebraska.

Rule 017.09 – Billing Adjustments

The Commission has proposed to reorganize Rule 017.09 to separate billing adjustments made for Slow and Fast meter errors. BH Nebraska Gas supports the Commission's effort to reorganize the language within its existing rule, but does believe that a couple of additional changes

to the language should be added to reflect the rights and limitations under other controlling Nebraska laws.

For example, the existing language in Commission Rule 017.09A, should be clarified to limit the time period for refunds for a malfunctioning fast meter.

Current Proposed Rule 017.09A:

Rule 017.09A Adjustments to Bills for Slow or Fast Meter Error: Whenever any meter tested by a Utility is found to have an error of two percent (2%) fast or more, it must refund or credit to the customer the overcharge. The refund for a fast meter will result in a credit for the entire time period that the meter was malfunctioning.

BH Nebraska contends that the current language must be modified to recognize the applicable statute of limitations established for contractual service obligations or other legal actions. To that end, BH Nebraska proposes to add clarifying language to limit the statutory time period for meter errors.⁵

BH Nebraska Proposed Change to Commission Proposed Rule 017.09A :

Rule 017.09A Adjustments to Bills for Slow or Fast Meter Error: Whenever any meter tested by a Utility is found to have an error of two percent (2%) fast or more, it must refund or credit to the customer the overcharge. The refund for a fast meter will result in a credit for the **earlier of** the entire time period that the meter was malfunctioning, **or the applicable statutory limit established under Nebraska Law.**

As written, the Commission's rule could be interpreted by a customer to require a refund period greater than is permitted under the laws for Nebraska for oral or written contractual obligations.⁶

⁵ See, e.g., *Neb. Rev. Stats. §§ 25-205 and 25-206.*

⁶ *Id.*

Accordingly, BH Nebraska Gas recommends adding the proposed additional clarifying language set forth above or something similar thereto.

Commission Proposed Rule 017.09C

Another change to Rule 017.09 should occur in Rule 017.09C Adjustment to Bills for Meters Failing to Register. Currently Rule 017.09C includes conflicting language with the text of the rule. On one hand the rule references that a Utility may charge for the estimated amount of natural gas, **as limited by statutory limits**. However, the rule does not stop there, and then continues to establish a limit of six (6) months for charging a customer for estimated gas usage.

BH Nebraska Gas believes that the Commission should either (a) strike the six-month limitation entirely so that it is consistent with applicable statutes of limitation or (b) extend the estimated gas charge time period from six (6) months to twelve (12) months.

The argument supporting striking the six-month limit is that the statute of limitations already provides for the time periods for contractual or negligence claims. The Commission's six-month limit could arguably be beyond the enabling language included in the State Natural Gas Regulations Act. While BH Nebraska Gas recognizes the broad powers of the Commission, one could question whether the Commission may override the other statutory rights afforded under other statutes of limitations.

The arguments supporting moving the six-month limit to twelve months is that meter reading and testing is not done every six months; meter reading is now more automated, and the intermittent or failing meter is not necessarily as obvious to spot with automation as it may have been by manual meter reading. In addition, moving six months to twelve months would also be consistent with the time period allowed by the Commission in Rule 017.09D for Adjustments to

Bills for Meter and Billing Errors. Under that rule, BH Nebraska Gas is permitted to go back twelve months to charge a customer for a billing or other meter error.

Current Proposed Rule 017.09C

Rule 017.09 C Adjustments to Bills for Meters Failing to Register: If a meter is found not to register or to register intermittently for any period, subject to statutory limits, the Utility may charge for an estimated amount of natural gas used, but not to exceed six (6) months. Bills estimated under this section must be based upon prior usage, adjusted for weather conditions, number of days in the applicable billing cycle, and other known and reasonable factors. (Emphasis added)

BH Nebraska Proposed Change to Commission Proposed Rule 017.09C

017.09 C Adjustments to Bills for Meters Failing to Register: If a meter is found not to register or to register intermittently for any period, subject to statutory limits, the Utility may charge for an estimated amount of natural gas used, ~~but not to exceed six (6) months~~. Bills estimated under this section must be based upon prior usage, adjusted for weather conditions, number of days in the applicable billing cycle, and other known and reasonable factors. (Emphasis added)

Or

017.09C Adjustments to Bills for Meters Failing to Register: If a meter is found not to register or to register intermittently for any period, subject to statutory limits, the Utility may charge for an estimated amount of natural gas used, but not to exceed twelve (12) months. Bills estimated under this section must be based upon prior usage, adjusted for weather conditions, number of days in the applicable billing cycle, and other known and reasonable factors. (Emphasis added)

Rule 017.09D

Similar to the statute of limitation clarification required for Rule 017.09A, BH Nebraska Gas also proposes clarifying language to Proposed Commission Rule 017.09D. Here again, the language in the rule stating that any refund or credit shall cover the entire period that the account was over-charged should be clarified that such charges are limited by applicable statutory limits.

The arguments presented above for including the statutory limits are referenced in support of this requested change and will not be repeated here.

Current Proposed Rule 017.09 D

017.09 D Adjustments to Bills for Other Meter and Billing Errors: If a customer has been overcharged or undercharged as a result of an error, including but not limited to, incorrect reading of the meter, incorrect application of a utility tariff, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reason, the overcharge must be credited or refunded to the customer or the undercharge may be billed to the customer. Any refund or credit shall cover the entire period that the account was over-charged. Any charge billed shall not be for service exceeding twelve (12) months. If the period for the underbilling described herein exceeds twelve (12) months and can be fixed with reasonable certainty, any uncollected charges may be included in the Utility's next General Rate Filing, or in a gas cost adjustment filing where uncollectible gas costs are permitted by the Commission to be recovered, as a bad debt expense. Such recovery shall be subject to a rebuttable presumption that said expense was Prudently incurred in the provision of natural gas service.

BH Nebraska Proposed Change to Commission Proposed Rule 017.09D

017.09 D Adjustments to Bills for Other Meter and Billing Errors: If a customer has been overcharged or undercharged as a result of an error, including but not limited to, incorrect reading of the meter, incorrect application of a utility tariff, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reason, the overcharge, **subject to statutory limitations**, must be credited or refunded to the customer or the undercharge may be billed to the customer. Any refund or credit shall cover the **earlier of the** entire period that the account was over-charged **or the applicable statutory limit established under Nebraska Law**. Any charge billed shall not be for service exceeding twelve (12) months. If the period for the underbilling described herein exceeds twelve (12) months and can be fixed with reasonable certainty, any uncollected charges may be included in the Utility's next General Rate Filing, or in a gas cost adjustment filing where uncollectible gas costs are permitted by the Commission to be recovered, as a bad debt expense. Such recovery shall be subject to a rebuttable presumption that said expense was Prudently incurred in the provision of natural gas service.

BH Nebraska Gas supports the other changes that the Commission has undertaken to organize and revise its other Chapter 9 Rules and Regulations. We do not have any significant issues or opposition to the other changes in the second half of the Commission's proposed rules and regulations.

BH Nebraska Gas is willing to discuss any questions or concerns that the Commission or the Public Advocate may have with the changes to proposed by BH Nebraska Gas.

III. CONCLUSION

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

Respectfully,

By: /s/ Douglas J. Law

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