



**Black Hills Corporation**

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December 21, 2015

**VIA ELECTRONIC DELIVERY**

Jeff Pursley  
Executive Director  
Nebraska Public Service Commission  
300 The Atrium  
1200 "N" Street  
Lincoln, NE 68509-4927

Re: In the Matter of the Joint Application of SourceGas Distribution, LLC, SourceGas Holdings, LLC and Black Hills Utility Holdings, Inc. for all Necessary Authorizations and Approvals for Black Hills Holdings, Inc. to Acquire SourceGas Holdings, LLC

Application No. NG-0084

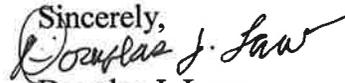
Dear Mr. Pursley:

Enclosed, please find for filing an original and five (5) copies of the following:

- Public Advocate Stipulation and Agreement
- Nebraska ChoiceGas Settlement Agreement

Please file stamp the extra copy and return to my office in the enclosed self-addressed stamped envelope.

If you have any questions or concerns regarding the enclosed filing, please contact me at your earliest convenience.

Sincerely,  
  
Douglas J. Law

DJL/ars  
Enclosures

cc: Nichole Mulcahy  
Rose Price  
Bill Austin  
Service List

BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

IN THE MATTER OF THE JOINT )  
APPLICATION OF SOURCEGAS )  
DISTRIBUTION LLC, SOURCEGAS LLC, )  
SOURCEGAS HOLDINGS LLC, AND ) Application No. NG-0084  
BLACK HILLS UTILITY HOLDINGS, INC. )  
FOR ALL NECESSARY )  
AUTHORIZATIONS AND APPROVALS )  
FOR BLACK HILLS UTILITY HOLDINGS, )  
INC. TO ACQUIRE SOURCEGAS )  
HOLDINGS LLC )

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STIPULATION AND AGREEMENT

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SourceGas Distribution LLC (“SourceGas Distribution”), SourceGas LLC and SourceGas Holdings (collectively “SourceGas”), Black Hills Utility Holdings, Inc. (“BHUH”), hereinafter jointly the “Joint Applicants” and the Public Advocate of Nebraska (“Public Advocate”) (collectively, “Settling Parties”), by and on behalf of their undersigned counsel, and for good and valuable consideration, enter into this Stipulation and Agreement (“Stipulation”) to resolve all issues between them related to the Joint Applicants application filed in Application No. NG-0084. The Settling Parties specifically request that the Public Service Commission of Nebraska (“Commission”) approve this Stipulation as consistent with the public interest.

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. The SourceGas Owners and BHUH have entered into a Purchase and Sale Agreement. In the Agreement, the SourceGas Owners agreed to sell and BHUH agreed to purchase up to 100% of the ownership of SourceGas Holdings. The Agreement provides that, upon closing, BHUH will own 99.5% of SourceGas Holdings, the parent, through SourceGas, of the Nebraska jurisdictional utilities, SourceGas Distribution. There is an option provision (Agreement, Recitals)

and Option Agreement whereby BHUH may acquire the remaining 0.5% interest in SourceGas Holdings. (Collectively, the "Transaction") Whether or not BHUH subsequently acquires this remaining 0.5% interest in SourceGas Holdings, BHUH will become the controlling owner of SourceGas Holdings, and therefore, the controlling owner of the jurisdictional public utility entities, SourceGas Distribution, at closing.

2. On August 10, 2015, the Joint Applicants filed a Joint Application for approval of the Transaction and requested the following relief:

- A. Grant the Joint Application for approval of the indirect change of control of SourceGas Distribution, as contemplated by the Transaction;
- B. Grant approval, to the extent necessary or appropriate, to allow BHUH to acquire the remaining 0.5% interest in Source Gas Holdings under the option provision and Option Agreement, as described in the Joint Application;
- C. Direct the filing of conforming tariffs based on the approval of the Joint Application;
- D. Permit that an appropriate regulatory asset account be established for the tracking of transition costs for potential recovery in a future proceeding for Black Hills Energy – Nebraska (formerly SourceGas Distribution) ("*Black Hills Energy - Nebraska*"); and
- E. Granting such waivers, conditions, approvals or further relief as requested above and as may be deemed necessary and proper in accordance with the Commission's rules.

3. The petitions for Formal Intervention of the Public Advocate, the Nebraska Municipal Power Pool ("NMPP"), the Public Agency for Community Energy ("ACE"), and

Constellation NewEnergy Gas (“Constellation”) were granted by the Commission in this proceeding.

4. The Hearing Officer convened a Planning Conference establishing a procedural schedule and other discovery matters.

5. Each of the Parties to this proceeding conducted discovery and conducted a thorough investigation and review of the Joint Application. The Joint Applicants responded to all of the discovery.

6. The Settling Parties agree that the Public Advocate, NMPP/ACE, and Constellation separately filed answering testimony and exhibits on or before the deadline for filing such testimony and exhibits.

7. BHUH, SourceGas, Public Advocate, NMPP/ACE, and Constellation commenced various separate settlement negotiations. On December 9, 2015, the Joint Applicants, NMPP/ACE and Constellation entered into a Settlement Agreement to resolve all of the issues related to their issues in Application No. NG-0084 (hereafter referred to as the “Choice Gas Settlement Agreement” and attached as Exhibit A to this Stipulation).

8. The Settling Parties to this Stipulation, have also reached a settlement of all issues in Application No. NG-0084. Accordingly, the Settling Parties are jointly requesting the Commission to approve this Stipulation, including the Choice Gas Settlement Agreement.

9. This Stipulation along with the Choice Gas Settlement Agreement, memorializes the negotiated settlement among and between the Settling Parties under both the Stipulation and the Choice Gas Settlement Agreement on all the issues raised in Application No. NG-0084. As a result of these negotiations and the Stipulation and the Choice Gas Settlement Agreement, the Settling Parties agree as set forth herein that any issues in dispute between them in this proceeding

have been resolved to the satisfaction of the Settling Parties. The Settling Parties agree that this Stipulation, including the Choice Gas Settlement Agreement, is a fair, just, and reasonable resolution of these issues.

10. The Settling Parties agree to support and defend the terms and principles of the Stipulation and the Choice Gas Settlement Agreement before the Commission. The Settling Parties agree that the Commission should grant the Joint Application filed in Application No. NG-0084 consistent with this Stipulation and the Choice Gas Settlement Agreement.

## **II. TERMS OF STIPULATION AND AGREEMENT**

This section sets forth the negotiated resolution of the issues between the Settling Parties.

### ***A. Transaction Costs***

11. Consistent with the Joint Application, Black Hills Energy – Nebraska shall not seek or recover transaction costs incurred by BHUH, Black Hills Energy – Nebraska or any Nebraska jurisdictional utility affiliate for the SourceGas Transaction from Nebraska customers. Transaction costs are defined as one-time costs including but not limited to investment banking fees, internal labor and third party consultant costs (both time and expenses) incurred in performing due diligence on the subject transaction including financial and tax consulting work, legal fees for negotiation and close of the Purchase and Sale Agreement, internal labor and third party legal and consultant costs (both time and expenses) incurred in performing legal and regulatory work related to achieving regulatory approval for the Transaction.

### ***B. Rate Moratorium and Acquisition Premium***

12. The Settling Parties agree that Black Hills Energy – Nebraska shall not file an application for a change in base rates that will be effective until three (3) years following the closing of BHUH's purchase of SourceGas Distribution.

- A. The moratorium does not preclude Black Hills Energy – Nebraska from proposing changes to rates under any approved SourceGas Distribution Rider Schedules including, but not limited to, appropriate purchased gas costs, costs pursuant to any applicable investment/integrity capital riders, weather normalization adjustments, billing determinant adjustments, energy efficiency costs, and taxes and fees, or any such riders.
- B. The parties agree Black Hills Energy – Nebraska retains its rights within the System Safety and Integrity Rider (“SSIR”) for eligible system safety and integrity costs, including allowing Black Hills Energy – Nebraska the opportunity to include and collect eligible capital from the Pipeline Integrity Charge into the SSIR in the 2017 SSIR filing.
- C. The moratorium does not preclude Black Hills Energy – Nebraska from requesting base rate adjustments to the extent there are changes in laws or regulations that result in unforeseen investments or expenses impacting its cost of service by more than \$1,000,000, after adjusting for the loss of accumulated deferred income taxes.
- D. The moratorium does not preclude Black Hills Energy – Nebraska from filing a general rate case to the extent there are extraordinary events not covered under the previous subsection that it does not control and which changes or events result in a change of more than \$1 million in Black Hills Energy – Nebraska’s jurisdictional natural gas business revenues, revenue requirements, and/or increased operating costs.
- E. The Settling Parties agree that the Public Advocate will not file a motion to request the Commission initiate a proceeding directing Black Hills Energy –Nebraska be

required to show cause why its rates should not be reduced for a period of five (5) years after the closing of the Transaction. The agreement not to file such a motion shall terminate after the earlier of Black Hills Energy – Nebraska filing a general rate case in Nebraska or five (5) years after the closing of the Transaction. To the extent there are changes in law or the occurrence of other extraordinary events which materially changes Black Hills Energy – Nebraska’s natural gas business revenues, revenue requirement and/or increased operating expenses, the Public Advocate may file a motion to request the Commission initiate a proceeding directing Black Hills Energy – Nebraska be required to show cause why its rates should not be reduced limited to addressing such material adverse changes. If Black Hills Energy - Nebraska files a general rate case to be effective within 5 years of closing, BHUH shall track the costs and benefits to consolidate the corporate facilities and the support will be provided prior to the inclusion of the headquarters in rate base in that general rate case.

- F. In order to show the results of exchanging the rate moratorium for the Company’s opportunity to recover an acquisition premium from customers in rates, Black Hills Energy – Nebraska shall file an annual confidential report for informational purposes with the Commission and the Public Advocate until the earlier of Black Hills Energy – Nebraska filing a general rate case or through calendar year 2020 reflecting its rate of return for the regulated portion of its Nebraska utility operations. Any earnings that might be considered above those typically authorized by the Commission shall be retained by Black Hills Energy – Nebraska in lieu of it foregoing its rights to seek recovery of the acquisition premium from Nebraska customers.

G. An acquisition premium ordinarily represents payment for utility assets in excess of book value. Black Hills, Black Hills Energy – Nebraska and any jurisdictional affiliate of either shall not seek and/or recover any acquisition premium as a rate base item or through amortization of the acquisition premium from Nebraska customers that relate to the acquisition of SourceGas Distribution assets. No recovery of any acquisition premium will be allowed, recovered, or included in rates through allocation or assignment of a corporate overhead allocation.

*C. Transition Costs*

13. BHUH will incur significant costs related to the integration of the SourceGas businesses. The incurrence of these costs will create long-term efficiencies. With respect to transition costs, the Settling Parties agree that:

- A. Black Hills Energy – Nebraska shall not seek and/or recover transition costs. Transition costs are defined as one-time, temporary costs related to the Transaction that create long-term or future benefits to customers.
- B. Black Hills Energy – Nebraska shall not seek and/or recover severance and termination fees/charges with two exceptions: (i) costs related to long-term financing for the Transaction and (ii) severance as addressed in Section 12(C) below.
- C. Black Hills Energy – Nebraska shall establish a regulatory asset (account) to be amortized for determining the revenue requirement in its next general rate case. The regulatory asset value shall be established by the total sum of the Black Hills Energy – Nebraska allocated share of the annual base salary of each employee of Black Hills Service Company (“BHSC”), BHUH and the acquired SourceGas

companies that have been granted a severance payment within the first eighteen months following the closing of the acquisition. The allocation shall be determined as provided for in the Black Hills cost allocation manuals that are effective at the time of the severance. Black Hills Energy – Nebraska shall not earn a return on the value of the regulatory asset. The amortization expense for determining the revenue requirement in Black Hills Energy – Nebraska’s first rate case shall be the value of the regulatory asset amortized over a four (4) year period. The parties agree that Black Hills Energy – Nebraska will be able to include this amortization for a minimum of four (4) years regardless of when a general rate proceeding is implemented. There will be no tracking or true-up associated with this amortization.

***D. Shareholder Litigation***

14. BHUH and Black Hills Energy-Nebraska will not seek recovery of costs associated with any shareholder litigation that arises out of BHUH’s purchase of SourceGas Distribution.

***E. Capital***

15. For any rate case filed subsequent to completion of the sale, the cost of capital for Black Hills Energy - Nebraska shall be set commensurate with the risks of Black Hills Energy-Nebraska. Black Hills Energy-Nebraska will not oppose, in either a regulatory proceeding or an appeal of a decision of the Nebraska Public Service Commission, the application of the principle that the determination of the cost of capital can be based only on the risk attendant to the regulated operations of Black Hills Energy-Nebraska.

*F. Customer Protections*

16. If Black Hills Energy – Nebraska issues debt, and unless authorized otherwise by the Commission, Black Hills Energy – Nebraska will not make any dividend payments to BHUH or Black Hills Corporation if the payment of such dividends would reduce Black Hills Energy – Nebraska’s stand-alone equity level below 40% of its total long-term capitalization.

17. BHUH agrees that BHUH shall not hold out Black Hills Energy – Nebraska credit as being available to satisfy the obligation of others and shall not pledge its assets for any other person or entity.

18. Black Hills Energy-Nebraska shall not provide financing for, extend credit to, issue long-term debt in support of, or pledge utility assets in support of non-utility subsidiaries without prior Commission approval.

19. Except as provided by statute or regulation, BHUH agrees that BHUH shall not grant or permit to exist any lien, encumbrance, claim, security interest, pledge or other right in favor of any person or entity in Black Hills Energy – Nebraska assets, other than immaterial liens or encumbrances in the ordinary course of business.

20. All Black Hills Corporation non-utility operations shall remain in subsidiaries that are separate legal entities from Nebraska regulated utilities unless otherwise approved by the Commission.

21. Separate money pools for Black Hills Corporation utility and non-utility entities will be maintained.

*G. Books and Records*

22. BHUH agrees that the Public Advocate and Commission will have access to the books and records of Black Hills Energy - Nebraska, BHUH, and any of its affiliates having

transactions with Black Hills Energy - Nebraska or assigning, allocating or direct charging Black Hills Energy - Nebraska.

***H. Access to Independent Audits***

23. BHUH agrees that in a general rate case proceeding or in the context of a compliance audit the Nebraska Public Service Commission, Commission Staff and the Public Advocate will have access to the independent auditors' workpapers specific to BHUH, as well as any independent auditor workpapers that are specific to Black Hills Energy – Nebraska charges of any affiliated entities that are allocated, assigned or direct charged to Black Hills Energy– Nebraska during the audit period under audit.

***I. Compliance with the Commission and FERC***

24. BHUH agrees to comply with all applicable Commission rules and will maintain FERC Uniform System of Accounts applicable to investor owned jurisdictional gas public utilities.

***J. Black Hills Energy – Nebraska Assets***

25. Upon closing, Black Hills Energy – Nebraska will conduct business and hold all assets in their own names to the extent that the benefit is specific to Nebraska and not provided through Black Hills Corporation's centralized support system.

***K. Transition Report***

26. Four (4) years after the closing of the Transaction, BHUH will submit a confidential report to the Public Advocate and Commission detailing the costs by providing FERC accounting records showing the costs eliminated as a result of the Transaction. If Black Hills Energy – Nebraska files a general rate case with rates to be effective sooner than four (4) years after closing, Black Hills Energy – Nebraska will file such report as part of the general rate filing. Black Hills

Energy - Nebraska will provide actual costs incurred for the designated time frame as compared to 2015 inflated actual costs incurred (by FERC Account).

*L. Maintaining of Customer Service.*

27. BHUH is committed to maintaining or improving the quality of service for the acquired SourceGas Distribution customers.

*M. Customer Notification.*

28. BHUH will notify all affected Nebraska customers of the change in ownership via, at the minimum, a bill insert and a news release.

*O. New Cost Allocation Manual*

29. Black Hills will file with the Commission the Cost Allocation Manual (CAM) with the new allocation percentage breakdowns then effective to be used to assign costs to Black Hills Energy-Nebraska.

*P. Commission Decision*

30. The Settling Parties shall request as part of the settlement that the Commission issue a final decision by January 15, 2016.

### **III. GENERAL TERMS AND CONDITIONS**

31. Through active investigation and negotiations, the Settling Parties have negotiated the agreements set forth in this Stipulation, resolving the issues in this proceeding in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Stipulation reflects the compromise and settlement of those issues between the Settling Parties in this proceeding. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through litigation, is in the public interest. The Settling Parties agree that all testimonies and attachments filed by any of the individual Settling Parties in Application No. NG-0084 should

be admitted into evidence without objection from the other parties, and made part of the record in this proceeding. Unless required by the Commission, the Settling Parties agree that the witnesses of the Settling Party do not need to personally appear to present their testimony. The Settling Parties further agree to waive any and all cross-examination of all other Settling Party witnesses.

32. The Settling Parties agree to present, to support, and to defend this Stipulation, including the Choice Gas Settlement Agreement, before the Commission and in the courts. If required by the Commission, they further agree to present testimony and exhibits in any hearing set, in whole or in part, for the purpose of obtaining the Commission's approval of the Stipulation and the Choice Gas Settlement Agreement. This Stipulation shall not become effective until the issuance of a final Commission Order approving the Stipulation which Commission Order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Settling Parties. In the event the Commission Order contains modifications of the terms and conditions of this Stipulation in a manner unacceptable to any of the Settling Parties, that Party shall have the right to object to the modified terms and conditions as determined by the Commission and litigate the unacceptable, modified terms. The objecting Party shall notify the Commission and the other parties to the Stipulation by filing within three business days of the Commission-ordered modification that the Party is objecting to the modified terms and must request expedited treatment. The filing shall designate the precise issue or issues upon which the Party desires to litigate.

33. Issuance by the Commission of an Order consistent with this Stipulation, including the Choice Gas Settlement Agreement, shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of the disputed issues resolved herein.

34. The Settling Parties specifically agree and understand that this Stipulation represents a negotiated settlement that is in the public interest with respect to the various matters and issues. The Settling Parties shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Stipulation, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Stipulation, none of the methods or principles herein contained shall be deemed by the Settling Parties to constitute a settled practice or precedent in any future proceeding.

35. The Settling Parties agree that this Stipulation is subject to a successful closing of the Transaction between BHUH and SourceGas.

36. This Stipulation embodies the entire agreement and understanding between the Settling Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. The Settling Parties are not relying on any statement or representation not contained herein.

37. This Stipulation may be executed in counterparts and by facsimile or electronic copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the matters addressed herein.

#### **IV. CONCLUSION**

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving the Transaction consistent with the terms and conditions of this

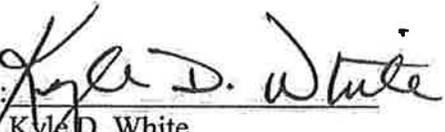
Stipulation, including the Choice Gas Settlement Agreement, with the finding that the Commission's approval of this Stipulation and including the Choice Gas Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this proceeding.

Date: December 21, 2015

Agreed to By:

**BLACK HILLS UTILITY  
HOLDINGS, INC.**

By:



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SOURCEGAS HOLDINGS LLC  
SOURCEGAS LLC  
SOURCEGAS DISTRIBUTION LLC

By: \_\_\_\_\_

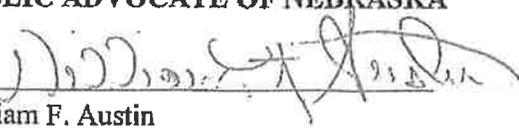
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12/31/15*

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