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CASE NUMBER: SN-2025-CV-000748
PII COMPLIANT



Court: Shawnee County District Court
Case Number: SN-2025-CV-000748
Case Title: State of Kansas ex rel vs. Black Hills/Kansas
Gas Utility Company LLC, et al
Type: ORD: Order (Generic) Consent Judgment

SO ORDERED,

A handwritten signature in blue ink, appearing to read 'Jay Befort', is positioned above a horizontal line.

/s/ Honorable Jay Befort, District Court
Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

**STATE OF KANSAS, *ex rel.*
KRIS W. KOBACH, Attorney General,**

Plaintiff,

v.

**BLACK HILLS/KANSAS GAS UTILITY
COMPANY, LLC,
BLACK HILLS UTILITY HOLDINGS, INC.,
BLACK HILLS SERVICE COMPANY, LLC,
and
BLACK HILLS CORPORATION,**

Defendants.

Case No. _____

(Pursuant to K.S.A. Chapter 60)

CONSENT JUDGMENT

Plaintiff State of Kansas, *ex rel.* Kris W. Kobach, Attorney General, (the “State”) and Defendants Black Hills/Kansas Gas Utility Company, LLC, Black Hills Utility Holdings, Inc., Black Hills Service Company, LLC, and Black Hills Corporation (the “Defendants”) come before the Court with the filing of this proposed and stipulated Consent Judgment, pursuant to K.S.A. 50-632(b) of the Kansas Consumer Protection Act, and request this Court approve and enter an Order of Journal Entry of Consent Judgment.

Entry of this Consent Judgment is in the public interest and reflects a negotiated agreement amongst the Parties. By entering into this Consent Judgment, the Parties have agreed to resolve the matters, as provided herein. The State and Defendants (collectively, the “Parties”) appear by and through undersigned counsel.

WHEREUPON, the Parties advise the Court that the Parties have stipulated and agreed to be bound by the following:

I. PARTIES

1. Kris W. Kobach is the duly elected, qualified, and acting Attorney General for the State of Kansas. The Attorney General's authority to bring this action is derived from the statutory and common law of Kansas, including but not limited to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

2. Black Hills/Kansas Gas Utility Company, LLC, is a domestic limited liability company with a principal place of business at 7001 Mount Rushmore Road, Rapid City, South Dakota 57702, and a registered office address at 1100 SW Wanamaker Road, Suite 103, Topeka, Kansas 66604. It is a wholly owned subsidiary of Black Hills Utility Holdings, Inc.

3. Black Hills Utility Holdings, Inc. is a foreign for-profit corporation with a principal place of business at 7001 Mount Rushmore Road, Rapid City, South Dakota 57702, and a registered office address at 1100 SW Wanamaker Road, Suite 103, Topeka, Kansas 66604. It is a wholly owned subsidiary of Black Hills Corporation.

4. Black Hills Service Company, LLC is a domestic limited liability company with a principal place of business at 7001 Mount Rushmore Road, Rapid City, South Dakota 57702, and a registered office address at 1100 SW Wanamaker Road, Suite 103, Topeka, Kansas 66604. It is a wholly owned subsidiary of Black Hills Utility Holdings, Inc.

5. Black Hills Corporation is a South Dakota corporation with a principal place of business at 7001 Mount Rushmore Road, Rapid City, South Dakota 57702.

6. All references to the Defendants herein shall include the acts of the principles, officers, directors, managers, employees, agents, representatives, affiliates, assignees, and successors of the Defendants.

II. JURISDICTION AND VENUE

7. The Parties stipulate that this Court has personal and subject matter jurisdiction over this controversy. K.S.A. 50-638(a), 60-308(b).

8. The Parties stipulate that venue is proper in the Third Juridical District of Shawnee County, Kansas. K.S.A. 50-638(b).

III. DEFINITIONS

9. As used herein, each in the singular and plural form, the following terms shall mean:

a. “**Consumer**” shall take the meaning of the same term as defined by K.S.A. 50-624(b), as amended, which is incorporated by reference.

b. “**Consumer Consent**” shall mean a clear, affirmative, and voluntary act demonstrating a Consumer’s assent to the terms and conditions of an agreement, or as otherwise required by law.

c. “**Consumer Data**” shall mean any information recorded in any medium relating to or in connection with an identifiable Consumer, in whole or in any combination, and shall not include aggregate, anonymized, or publicly available information. Examples of Consumer Data include a Consumer’s name, social security number, financial account numbers, utility account number, unique identification numbers, account statement information, and utility usage information.

d. “**Consumer Transaction**” shall take the meaning of the same term as defined by K.S.A. 50-624(c), as amended, which is incorporated by reference.

e. **“Disclose” or “Disclosure”** shall mean to make an affirmative, expressed, clear, and conspicuous statement or representation of material information in relation to a consumer transaction.

f. **“Non-Regulated Activity”** shall take the meaning of the term “Nonregulated private enterprise,” as defined by K.S.A. 66-129a(a)(3), as amended, which is incorporated by reference.

g. **“Prospective Consumer”** shall mean a specific or identifiable Consumer or group of Consumers, such as a specified market segment or consumer type, to whom a Solicitation is made for the specific purpose of causing or inducing a new, future, or anticipated consumer transaction. Defendants’ employees, representatives, or agents are expressly excluded. Telephone Consumers are also expressly excluded.

h. **“Service”** shall take the meaning of the same term as defined by K.S.A. 50-624(k), as amended, which is incorporated by reference.

i. **“Solicitation”** shall mean an offer, attempt, request, representation, or statement made by a supplier or supplier’s agent to a Consumer for the purpose of causing, inducing, continuing, or in furtherance of a consumer transaction.

j. **“Supplier”** shall take the meaning of the same term as defined by K.S.A. 50-624(l), as amended, which is incorporated by reference.

k. **“Telephone Consumer”** shall mean a Consumer to whom a Solicitation is made verbally through a telecommunication device.

l. **“Third-Party”** shall mean an unrelated or separate corporation or entity of different ownership or control from Defendants.

m. “Utility” shall take the meaning of “Gas or electric public utility,” as that term is defined by K.S.A. 66-129a(a)(2), as amended, which is incorporated by reference.

IV. ALLEGATIONS

10. At all times relevant, Defendants acted as suppliers engaged in consumer transactions for services with consumers in Kansas, as those terms are defined by K.S.A. 50-624.

11. The State makes the following allegations of fact:

a. Defendants provide regulated natural gas utility residential services to approximately 105,000 Kansas consumers. Defendants’ regulated activities are governed by their tariff, which forms the terms and conditions of the utility-consumer relationship.

b. In addition to its regulated activities, Defendants are permitted to and do in fact engage in non-regulated private enterprises, such as offering and selling gas or electric appliance installation services, repair services, and service contracts to consumers. *See* K.S.A. 66-129a.

c. During the period of these allegation, Defendants’ tariff was silent on the Defendants’ treatment of consumers’ data, as such relates to its non-regulated private enterprise activities or in connection with joint marketing agreements with third parties.

d. From its regulated activities, Defendants generate, acquire, possess, and maintain non-public consumer data that is personally identifiable, unique, sensitive, and of a financial nature.

e. In 2021, Defendants entered into a marketing agreement with a third-party, HomeServe USA Repair Management Corp., to advertise and sell gas line warranty service contracts to Defendants' customers, which is a non-regulated private enterprise activity. Under the marketing agreement, Defendants engaged another third-party, Vya, Inc., d/b/a Direct Options, a consumer-data processor, to facilitate and disseminate mail solicitations for gas line warranty service contracts to Kansas consumers at Defendants' direction and approval. Defendants shared and transmitted sensitive consumer data to the third-parties as required by the marketing agreement, including sensitive consumer data Defendants generated, acquired, or possessed from its regulated activities.

f. Defendants host a Privacy Policy on their website. Defendants caused and encouraged consumers in Kansas to rely on the Privacy Policy's representations, including through mail solicitations sent to consumers under the marketing agreement.

g. The Privacy Policy states Defendants use consumers' data to enhance consumers' website experience, respond to consumers' inquiries, and for joint marketing agreements with third-parties. By its terms, the Privacy Policy only relates and applies to non-public, personal information consumers voluntarily generate or provide to Defendants when using their website. Defendants' Privacy Policy purports to bind consumers whenever consumers continue to use the Defendants' website.

h. As part of its non-regulated private enterprise activities, Defendants shared non-public and sensitive consumer data with third-parties that

(i) Defendants did not receive voluntarily from consumers through the Defendants' website, (ii) materially exceeded the representations and scope of the Defendants' Privacy Policy, and (iii) lacked consumers' consent.

12. The State makes the following legal allegations:

a. Defendants knowingly, or with reason to know, misrepresented its services as having a sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities the Defendants' services did not have, in violation of K.S.A. 50-626(b)(1)(A).

b. Defendants knowingly, or with reason to know, materially misrepresented its services as having a particular standard, quality, grade, style, or model, in violation of K.S.A. 50-626(b)(1)(D).

c. Defendants willfully used an oral or written representation of exaggeration, falsehood, innuendo, or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2).

d. Defendants willfully failed to state a material fact, or willfully concealed, suppressed, or omitted a material fact, in violation of K.S.A. 50-626(b)(3).

13. Pursuant to K.S.A. 50-632(b), this Consent Judgment shall not be deemed as an admission to any violation of the Kansas Consumer Protection Act. Defendants deny all allegations and deny any wrongdoing. Nothing in this Consent Judgment shall be construed as an admission, concession, or evidence of liability, fault, or wrongdoing by the Defendants.

14. Defendants enter into this Consent Judgment solely for the purpose of settlement of the State's allegations without trial or adjudication of any contested issue of fact or law,

without findings of fact or law, and without admission of wrongdoing or liability of any kind whatsoever.

15. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense whatsoever otherwise available to the Defendants in any other non-party action. Defendants shall have the right to defend itself from or make any arguments in any other non-party private, individual, derivative, regulatory, governmental, or class claims or suits relating to the subject matter or contents of this Consent Judgment.

V. COMPLIANCE PROVISIONS

INJUNCTIVE RELIEF

16. Defendants shall comply with all laws, statutes, rules, regulations, and terms and conditions of its tariff, insofar as each relate to Consumer Transactions or Consumer Data in Kansas, including but not limited to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

17. Defendants shall not cause, encourage, knowingly permit, or willfully ignore any Third-Party, agent, or affiliate to engage in acts or practices prohibited by this Consent Judgment.

18. Defendants agree all injunctive terms shall apply to the corporate Defendants, their principles, officers, directors, managers, employees, agents, representatives, affiliates, assignees, and successors, when acting on behalf of Defendants independently, in any combination, or as a whole.

19. Defendants agree to be permanently enjoined and restrained from engaging in any deceptive and unconscionable act or practice in connection with a Consumer Transaction in Kansas, including but not limited to the State's allegations described herein.

20. Defendants shall not share, transfer, provide, release, or transmit Consumer Data to any Third-Party, except as required by law or regulation or as provided for by tariff.

21. Defendants have submitted for approval to its regulatory authority, and have received approval from its regulatory authority, a tariff provision that has been added to Defendants' general terms and conditions that substantively imposes an obligation on Defendants to treat Consumer Data with confidentiality, especially in relation to Third-Parties, except and unless required by law or regulation, with Consumer Consent, or in reasonable emergency situations.

22. Defendants shall accurately Disclose its practice of sharing, transferring, providing, releasing, or transmitting Consumer Data with Third-Parties in the Defendants' privacy policy.

23. Defendants shall obtain Consumer Consent prior to sharing, transferring, providing, releasing, or transmitting Consumer Data with any Third-Party for any Non-Regulated Activities, except as required by law or regulation or as provided for by tariff.

24. Defendants shall obligate or require Third-Parties with whom Defendants enter agreements relating to its Non-Regulated Activities obtain publicly or commercially available data or information on Consumers to facilitate any Solicitation sent to Consumers.

25. For any Solicitation relating to Defendants' Non-Regulated Activities involving a Third-Party that is generally viewable by any Consumer regardless of form, context, or target audience, Defendants shall make the following Disclosures on the Solicitation, unless a more specific provision herein applies:

- a. A Disclosure that the Service is optional;

- b. A Disclosure that the Service is not regulated as a utility service or as a regulated activity by the state's regulatory body;
- c. A Disclosure that the Service does not affect a Consumer's regulated utility services;
- d. A Disclosure that the Service is not guaranteed by the Defendants, if true;
- e. A Disclosure that the Service is provided by a Third-Party and not the Defendants; and
- f. A Disclosure that completely identifies the Third-Party legal entity that provides the Service.

26. For any Solicitation relating to Defendants' Non-Regulated Activities involving a Third-Party that is targeted to or aimed at Prospective Consumers, Defendants shall make the following Disclosures on the Solicitation, unless a more specific provision herein applies:

- a. All Disclosures stated in Paragraph 25;
- b. A Disclosure that Defendants receive compensation from the Third-Party for making the Solicitation for Services;
- c. A Disclosure that Defendants does or does not share Consumer Data with the Third-Party, whichever is true;
- d. A Disclosure that a Consumer may terminate their Services with the Third-Party without cause and without impacting the Consumer's Utility services;

e. A Disclosure describing and identifying the steps a Consumer must take to terminate the Third-Party's Services or identifying methods through which a Consumer may obtain additional information of the same;

f. A Disclosure that the Service's complete terms and conditions, including all exclusions, shall be delivered to the Consumer upon any reasonable request and a website address identifying where the same are publicly accessible;

g. A Disclosure that a Consumer may request and receive information from the Third-Party to inform a Consumer about the Third-Party's percentage of claims accepted or paid by the Third-Party for the Services, or alternatively, a Disclosure providing a publicly accessible website address to the same information;

h. A Disclosure that Consumers who rent their residence are not eligible for all or certain Services from the Third-Party because their landlord may be responsible for repairing items covered by the Services;

i. A Disclosure that a Consumer's existing insurance policies may provide coverage for the Third-Party's Services; and

j. A Disclosure that provides the statutory notice requirements of K.S.A. 50-626(b)(11)(A), as amended.

27. For any Solicitation relating to Defendants' Non-Regulated Activities involving a Third-Party that is made to a Telephone Consumer, Defendants shall make the following Disclosures on the Solicitation, unless a more specific provision herein applies:

a. All Disclosures stated in Paragraph 25; and

b. A Disclosure that the Consumer will receive a paper or hard copy of the terms and conditions relating to the Third-Party's Services, if the Consumer enters into the Consumer Transaction.

28. Defendants shall be construed as substantially complying with the foregoing Disclosure requirements by making each Disclosure individually or in any combination, so long as such Disclosures are substantively, clearly, and conspicuously made to Consumers in Solicitations. Nothing in this Consent Judgment shall be construed as prohibiting Defendants from making additional Disclosures to Consumers in Solicitations.

29. Defendants shall retain the right to enter into agreements and engage in Non-Regulated Activities with any Third-Party at Defendants' sole discretion, subject to applicable law, regulation, tariff provision, and this Consent Judgment.

30. All foregoing injunctive terms shall become effective upon the date and time of the Court's entry of an Order on this Consent Judgment and, upon taking effect, shall permanently enjoin and restrain Defendants.

MONETARY RELIEF

31. Defendants shall make a monetary payment of \$325,000.00 to the Office of Attorney General for consumer protection enforcement, trainings, investigations, and consumer education, and as a reimbursement for reasonable expenses, costs, and investigative fees, as determined by the Attorney General in his sole discretion.

32. Payment shall be in the form of a cashier's check, money order, wire transfer, or other certified funds made payable to the Office of Attorney General and marked for CP-23-003560. Defendants shall remit payment within thirty (30) days of the Court's entry of an Order on this Consent Judgment, pursuant to instructions provided by the State.

VI. GENERAL PROVISIONS

33. Effective upon the Court's entry of an Order on this Consent Judgment, the State shall release and forever discharge Defendants from all claims based on or arising out of the acts and practices described in the State's allegations, provided that such acts or practices are known to the State at the time of signing this Consent Judgment.

34. Defendants' compliance with this Consent Judgment does not relieve the Defendants of any obligation imposed by an applicable federal, state, or local law, regulation, rule, or tariff.

35. The State, including through the Attorney General, shall not be precluded from initiating or participating in any state or federal legal action to enforce civil or criminal statutes, subject only to the release and discharge of claims against Defendants described herein.

36. The Parties agree that if any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, such shall be severed from this Consent Judgment and shall not affect the validity or enforceability of the remaining portions, provisions, or parts.

37. This Consent Judgment shall not be construed as the State's or the Attorney General's approval, sanction, or endorsement of the Defendants or their business practices. Defendants shall not represent this Consent Judgment as constituting such approval, sanction, or endorsement. Further, the Defendants shall not represent the State's or Attorney General's discretion to forego any action, or the omission of any information or allegation relating to Defendants' acts or practices described herein, as the State's or Attorney General's approval or endorsement of the same.

38. This Consent Judgment shall not be construed as a grant or limitation of the rights of any private person to pursue any legal remedies to which such person may be entitled to assert against the Defendants. Likewise, this Consent Judgment shall not be construed as creating or conferring a non-party or private cause of action.

39. The Parties agree this Court retains jurisdiction over this matter, under K.S.A. 50-632(b), relating to any violation, breach, or enforcement of any terms or conditions set forth herein. The Parties agree any breach of the terms or conditions set forth herein shall constitute a violation of the Court's order and shall subject the breaching party to sanctions or additional penalties available under the law, or both.

40. The Parties agree this Court retains jurisdiction over this matter for the purpose of enabling any party to this Consent Judgment to apply to this Court at any time for such further and additional orders and relief as may be necessary or appropriate for the modification of any provisions contained herein.

41. The Parties represent this Consent Judgment was jointly prepared and drafted and constitutes the entire agreement between the Parties. The Parties agree there are no implied or expressed representations, agreements, arrangements, or understandings, written or oral, between the Parties relating to the subject matter of this Consent Judgment that is not fully expressed herein or attached hereto.

42. The Parties represent each had an adequate opportunity to fully review all terms and conditions herein and to obtain the advice of legal counsel prior to entering into and executing this Consent Judgment.

43. By signing and executing this Consent Judgment, the Parties and their undersigned representatives agree and warrant they have been duly authorized to execute this

Consent Judgment on behalf of the respective party, and thereby, binding the Parties to the terms and conditions of this Consent Judgment.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

AGREED TO BY AND RESPECTFULLY SUBMITTED:

On behalf of the State:

KRIS W. KOBACH
Attorney General



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On behalf of the Defendants:

James Flaherty

James Flaherty (Sep 25, 2025 09:53:34 CDT)

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Consent Judgment_State v. Black Hills Energy

Final Audit Report

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