

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0631G

IN THE MATTER OF ADVICE LETTER NO. 40 FILED BY BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY TO ELIMINATE THE CONSTRUCTION ALLOWANCES CURRENTLY INCLUDED IN COLORADO P.U.C. NO. 1, TO BECOME EFFECTIVE JANUARY 29, 2024.

**COMMISSION DECISION SUSPENDING EFFECTIVE
DATE OF TARIFF SHEETS, WAIVING DEADLINE IN
COMMISSION’S GAS RULES, ESTABLISHING NOTICE
AND INTERVENTION PERIOD, AND REFERRING
MATTER TO AN ADMINISTRATIVE LAW JUDGE**

Mailed Date: January 26, 2024

Adopted Date: January 24, 2024

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 23AL-0579G. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. Senate Bill (SB) 23-291 includes provisions that require each of Colorado’s four investor-owned gas utilities to file with the Commission, no later than December 31, 2023, an updated tariff to reflect the removal of any incentives for establishing gas service. Specifically, § 40-3.2-104.3, C.R.S., states that a gas utility shall not provide “a person that

requests natural gas service and that owns the real property requiring the service” an incentive, including a line extension allowance, to establish gas service to a property. SB 23-291 further defines a line extension allowance to mean: “a bundle of costs that includes construction allowances for new service lines, meters, and other infrastructure associated with the addition of a new customer to a gas utility's distribution system.”

2. On December 29, 2023, Black Hills Colorado Gas, Inc. (Black Hills or Company) filed Advice Letter No. 40 with modified tariff sheets addressing the Line Extension provisions within its Rules and Regulations Applicable to All Gas Services with an effective of January 29, 2024. The proposed changes to the tariff sheets include: (1) the introduction of a definition of a “meter set” and a set of fees that new customers must pay to Black Hills as reimbursement for the meter set; (2) the elimination of the construction allowance generally; and (3) new provisions for the “grandfathering” of the construction allowance, such that the construction allowance would be available only to new customers whose line extensions were installed prior to August 7, 2023 (the effective date of SB 23-291) or to new customers who submitted an application for service that was approved or pending as of August 7, 2023, and who submitted a permit application to the local government with permitting authority either approved or pending as of August 7, 2023. Black Hills’ Advice Letter No. 40 is brief, and the filing includes no Direct Testimony in support of the proposed tariff changes.

3. This Decision sets for hearing the tariff sheets filed under Advice Letter No. 40 and suspends their effective date to **May 28, 2024**.

4. This Decision further waives, on the Commission’s own motion, the December 31, 2024 deadline in paragraph 4210(d) of the Commission’s Rules Regulating Gas

Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4 (Gas Rules), consistent with the discussion below.

5. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than **February 23, 2024**.

6. This matter is referred to an Administrative Law Judge (ALJ) for a recommended decision pursuant to § 40-6-109(2), C.R.S.

B. Discussion

1. Black Hills' Advice Letter No. 40

7. Black Hills' Advice Letter No. 40 states: "the purpose is of this filing is to update language in the Company's Line Extension Tariffs to reflect the elimination of the construction allowance for an applicant to establish new gas service to a property except for the limited exemptions outlined in § 40-3.2-104.3(2)(d), C.R.S.

8. In the proposed redline changes to its the Line Extension provisions within its Rules and Regulations Applicable to All Gas Services (Line Extension Policy), Black Hills introduces of a definition of a "meter set" and also adds to the tariff a new set of fees that new customers must pay to Black Hills as reimbursement for a meter set. A meter set includes a "gas meter, metering piping, meter regulatory and materials necessary to facilitate the installation of gas meter from the end of a service latter extension to Customer owned equipment as determined by the Company."

9. Throughout the Line Extension Policy, Black Hills redlines the tariff sheets to generally eliminate construction allowances for new customers. However, Black Hills adds to the Line Extension Policy a set of provisions that provide construction allowances to customers who meet certain eligibility requirements. For example, the construction allowance set forth in the Line

Extension Policy would be available to certain new customers whose line extensions were installed prior to August 7, 2023, or to new customers who submitted an application for service that was approved or pending as of August 7, 2023, and who submitted a permit application to the local government with permitting authority either approved or pending as of August 7, 2023.

10. No protest has been filed to Advice Letter No. 40.

2. Commission Rules Addressing Line Extension Policies

11. The Commission recently examined gas utility line extension policies in its comprehensive rulemaking in Proceeding No. 21R-0449G.

12. By Decision Nos. C22-0760, issued on December 1, 2022, and Decision No. C23-0117, issued on February 24, 2023, the Commission modified its Gas Rules by adding two new paragraphs under Rule 4210 Line Extensions. Paragraph 4210(c) states: “Line extension policies, procedures, and conditions shall be based on the principle that the connecting customer pays its share of the estimated full incremental cost of growth, including any costs associated with increases in design day peak demand.” Paragraph 4210(d) states: “Line extension allowances shall be updated pursuant to paragraph 4210(c) in a base rate proceeding, or in a separately filed application, as required, but should be implemented no later than December 31, 2024. If a utility utilizes standardized costs in calculating one or more portions of its line extension policies, the standardized costs must be updated in a base rate proceeding, utilizing the average actual cost across the applicable customer class and line extension type for the most recent consecutive 12-month period for which compiled cost data is available. Exemptions from updated line extension allowances and standardized costs shall not extend to applications for line extensions submitted after May 1, 2023.”

13. The Commission explained that these new rules were not intended to result in the immediate elimination of construction allowances for line extensions or for the imposition of any barriers to the installation of gas service lines to any new structure. The Commission further stated that a utility's line extension policies, procedures, and conditions would continue to be administered through tariff filings and that such tariff filings will now be considered as Colorado progresses towards meeting its greenhouse gas reduction goals.¹

14. With respect to the new provision in paragraph 4210(c), the Commission explained that the intent was to ensure that when the Commission reviews for approval the utility's tariffs for their line extension policies, procedures, and conditions—most likely in a base rate proceedings—the Commission will base its review, in part, on the principle that new customers will be responsible for covering their contribution towards the cost of growth and in a way that also incorporates the additional net revenues associated with new customer growth with appropriate consideration of the impacts of policy and efficiency on those projections. The Commission further explained that when line extension policies are examined in a rate proceeding, the presentation of incremental costs of growth will include the additional net revenues as well as all the costs of new services, meters, and certain other distribution system costs. The Commission concluded that limiting the scope of costs to only the most locationally or temporally adjacent infrastructure upgrades likely obscures the total costs of growth, which cumulatively lead to system capacity expansions and drive investments that may not have previously been included in the calculations but should rightfully be considered.²

¹ Decision No. C22-0760, issued December 1, 2022, ¶ 101, p. 45.

² Decision No. C22-0760, issued December 1, 2022, ¶¶ 110-112, pp. 50-51.

15. With respect to the new provision in paragraph 4210(d), the Commission concluded that, as a general matter, each gas utility must update its line extension policies in accordance with all of the provisions in Rule 4210 through a tariff filing submitted for effect no later than January 1, 2025. The Commission further concluded that standardized costs used in a line extension policy also must be updated in each base rate proceeding and should be calculated using the most recent consecutive 12 months of data that is available to the utility at the time of the calculation.³

C. Conclusions and Findings

16. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. We find good cause to suspend the tariff sheets submitted with Advice Letter No. 40 for 120 days through **May 28, 2024**, and set the matter for hearing. The principal purpose of the suspension is so that the Commission has sufficient time to review the advice letter filing further to ensure that the tariffs fully implement the statutory requirement that new gas utility customers no longer receive an “incentive” as specifically defined by the term “line extension allowance” in SB 23-291.

17. Due to the passage and enactment of SB 23-291 following the promulgation of the new provisions governing line extensions in the Gas Rules, we also find good cause to waive the December 1, 2024 deadline in 4 CCR 723-4-4210(d) pursuant to Commission Rule 4 CCR 723-4-1003(a). The statutory requirement for gas utilities to eliminate incentives for establishing gas service is a continual process best examined in base rate proceedings, and certain provisions related to new gas services in SB 23-291 do not neatly match the December 31, 2024 deadline contemplated in paragraph 4210(d) of the Commission’s Gas Rules. The Commission therefore

³ Decision No. C22-0760, issued December 1, 2022, ¶¶ 120-121, pp. 53-54.

finds good cause to waive the December 1, 2024 deadline because it will allow for more effective implementation of the policies found in Rule 4 CCR 723-4-4210(d) and in SB 23-291.

18. We clarify, however, that the waiver of the December 31, 2024 deadline does not affect the purpose of or other requirements in paragraphs 4210(c) and (d) such that a complete review Black Hills' Line Extension Policy remains a requirement in any base rate proceeding in accordance with both the Gas Rules and the requirements in SB 23-291.

19. We refer this matter to an ALJ for a recommended decision pursuant to § 40-6-109(2), C.R.S. We encourage the assigned ALJ to adopt procedures that support the issuance of a recommended decision that addresses whether the Advice Letter No. 40 filing fully implements the statutory requirement that new gas utility customers no longer receive an incentive relative to the costs of new service lines, meters, and other infrastructure when establishing gas service pursuant to the Company's Line Extension Policy. Except for the "grandfathering" provisions in § 40-3.2-104.3(2)(d), C.R.S., the December 31, 2023 filing deadline in SB 23-291 reflects an expectation that incentives that offset the costs of new service lines, meters, and other infrastructure are removed from Black Hills' Line Extension Policy as promptly as possible.

20. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

II. ORDER

A. The Commission Orders That:

1. The proposed January 29, 2024 effective date of the tariff sheet filed with Advice Letter No. 40 filed by Black Hills Colorado Gas, Inc. (Black Hills) on December 29, 2023, is suspended until **May 28, 2024**, or until further order of the Commission.

2. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than **February 23, 2024**, and shall serve a copy of the notice or motion on Black Hills' Attorney of Record.

3. Consistent with the discussion above, the December 1, 2024 deadline in 4 *Code of Colorado Regulations* 723-4-4210(d) is waived with respect to Black Hills.

4. This matter is referred to an Administrative Law Judge, consistent with the discussion above.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 24, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners