

Decision No. C20-0818

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0394E

IN THE MATTER OF ADVICE LETTER NO. 789 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO RETURN THE AMORTIZATION OF THE NON-PROTECTED EXCESS DEFERRED FEDERAL INCOME TAXES REGULATORY LIABILITY AS A BILL CREDIT IN DECEMBER 2020 TO BECOME EFFECTIVE OCTOBER 25, 2020.

**DECISION SETTING SHORTENED NOTICE
AND INTERVENTION PERIOD AND REFERRING
MATTER TO AN ADMINISTRATIVE LAW JUDGE**

Mailed Date: November 20, 2020
Adopted Date: November 18, 2020

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TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS,
OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. This Decision establishes a shortened notice and intervention period for Advice Letter No. 789 to Approve a Bill Credit for the Return of Non-Protected Excess Deferred Income Tax Regulatory Liability Stemming from the Tax Cuts and Jobs Act filed by Black Hills Colorado Electric, Inc. (Black Hills) on September 24, 2020.

2. Requests for intervention, including a notice of intervention by right of the Staff of the Colorado Public Utilities Commission (Staff), shall be filed by **November 30, 2020**.

B. Discussion

1. Procedural Background

3. On February 1, 2018, by Decision No. C18-0075, the Commission opened Proceeding No. 18M-0074EG to consider the impacts of the 2017 Tax Cuts and Jobs Act (TCJA) on the revenue requirements and rates of all Colorado investor-owned electric and natural gas utilities. Utilities were directed to record and track as a deferred regulatory liability, the difference in tax liabilities caused by the enactment of the TCJA as compared to the federal tax amounts used to establish rates currently in effect. Utilities were also ordered to file plans for tracking and monitoring of the TCJA-related deferred regulatory liability, implementing refunds due to customers associated with the deferred regulatory liability, and updating revenue requirements and rates that reflect the prospective impacts of the TCJA.

4. On February 21, 2018, Black Hills filed its Plan to Implement in Rates the Cost Savings Benefits Tax Cut and Jobs Act (TCJA Plan). In that plan, Black Hills stated that the

recalculation of its accumulated deferred income taxes resulted in excess deferred federal income tax (EDFIT). Certain deferred tax items, generally property accounts, which were subject to accelerated depreciation are considered “protected” and are subject to U.S. Tax Code rules requiring that the amortization coincide with the remaining regulatory life of the asset. The remaining deferred tax items are “non-protected,” whose amortization method is approved by the Commission.

5. On February 13, 2020, Black Hills filed a motion that would allow the return of non-protected EDFIT in the April 2020 billing cycle. The Commission did not act on the request, instead issuing Decision No. C20-0194-I on March 23, 2020, requesting additional information as to how Black Hills would refund the non-protected EDFIT and requesting information about Black Hills’ protected EDFIT refund. Black Hills did not file a response to Decision No. C20-0194-I.

6. On September 24, 2020, Black Hills filed Advice Letter No. 789, proposing to modify the amortization of the non-protected EDFIT to one month rather than the four years established in the TCJA Plan, and refund \$7,283,320 in a one-time bill credit for its customers during the December 2020 billing cycle.

7. Black Hills filed the testimony of Michael Harrington, Senior Manager for Regulatory and Finance, in support of Advice Letter No. 789. Mr. Harrington’s testimony also contains responses to the Commission’s requests for additional information in Decision No. C20-0194-I.

8. Black Hills requested an October 25, 2020 effective date for the tariff sheets filed with Advice Letter No. 789.

9. On September 24, 2020, Staff filed a Request for Show Cause Order (Show Cause) in Proceeding No. 20C-0408E, requesting that the Commission find that Black Hills: 1) failed to implement a bill credit to refund protected and non-protected EDFIT as required by its TCJA Plan; 2) failed to provide additional information in response to Decision No. C20-0194-I; and 3) intentionally violated Commission orders.

10. Pursuant to 4 *Code of Colorado Regulations* 723-1-1302(g) of the Commission's Rules of Practice and Procedure, the Show Cause was set for a hearing before an Administrative Law Judge (ALJ) on October 26, 2020.

11. By Decision No. C20-0747, issued October 23, 2020, the Commission suspended the tariff sheets filed with AL 789 until February 21, 2021, pending the outcome of the Show Cause Proceeding, No. 20C-0408E.

12. On November 6, 2020, the ALJ assigned to Proceeding No. 20C-0408E issued Recommended Decision No. R20-0780-I dismissing Staff's Request for Show Cause Order.

13. On November 9, 2020, Black Hills filed a Notice of Settlement in Principle, stating that Black Hills, Staff, and the Office of Consumer Counsel (OCC) had reached a settlement in principle on the issues in this Proceeding No. 20AL-0394E. Black Hills acknowledges that because the Commission has not set an intervention period, neither Staff nor OCC are parties to this Proceeding, but states that they had negotiated with Black Hills as non-parties. Black Hills states that when Staff and OCC become parties to this proceeding, Black Hills will file a motion to consolidate Proceeding Nos. 20AL-0394E and 20AL-0395E and to approve a unanimous settlement agreement.

C. Findings and Conclusions

14. With the conclusion of Proceeding No. 20C-0408E, the Commission finds good cause to set for hearing the tariffs submitted with Advice Letter No. 789.

15. We shorten the notice and intervention period; requests for intervention, including a notice of intervention by right of Staff, shall be filed no later than **November 30, 2020**.

16. We refer this matter to an ALJ.

17. The application is available for public inspection by accessing the Commission's E-Filing system at puc.colorado.gov. **This Decision is the notice that Advice Letter No. 789 to Approve a Bill Credit for the Return of Non-Protected Excess Deferred Income Tax Regulatory Liability Stemming from the Tax Cuts and Jobs Act filed by Black Hills has been filed.**

II. ORDER

A. The Commission Orders That:

1. Advice Letter No. 789 to Approve a Bill Credit for the Return of Non-Protected Excess Deferred Income Tax Regulatory Liability Stemming from the Tax Cuts and Jobs Act filed by Black Hills Colorado Electric, Inc. on September 24, 2020 is referred to an Administrative Law Judge.

2. The notice and intervention period shall expire at 5:00 p.m. on **November 30, 2020**.

3. Any person desiring to intervene or participate as a party in this proceeding, including Staff of the Colorado Public Utilities Commission, shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, no later than **November 30, 2020**. Alternatively, persons who do

not wish to intervene or become a party, but desire to file comments, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

4. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission’s Rules of Practice and Procedure and this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
November 18, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners