

Decision No. C21-0104

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0075G

IN THE MATTER OF ADVICE LETTER NO 1 FILED BY BLACK HILLS COLORADO GAS, INC. TO PLACE IN EFFECT ITS NEW P.U.C. VOLUME NO. 1 TARIFF ESTABLISHING NEW RATE SCHEDULES AND BASE RATES FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES, INCREASING JURISDICTIONAL BASE RATE REVENUES, COMBINING EXISTING GAS COST ADJUSTMENT (“GCA”) AREAS INTO NEW GCA REGIONS, IMPLEMENTING A DISTRIBUTION SYSTEM INTEGRITY RIDER, REVISING THE CONSTRUCTION ALLOWANCE CALCULATION METHOD, AND OTHER PROPOSED TARIFF CHANGES TO REPLACE AND SUPERSEDE ITS P.U.C. VOLUME NO. 3 TARIFF (FORMERLY BLACK HILLS/COLORADO GAS UTILITY COMPANY, INC.) AND P.U.C. VOLUME NO. 7 TARIFF (FORMERLY BLACK HILLS GAS DISTRIBUTION, LLC) IN THEIR ENTIRETY, TO BE EFFECTIVE ON MARCH 4, 2019.

**COMMISSION DECISION GRANTING APPLICATION
FOR REHEARING, REARGUMENT OR
RECONSIDERATION
IN PART AND REQUESTING RESPONSES FROM
PARTIES**

Mailed Date: February 25, 2021

Adopted Date: February 17, 2021

I. BY THE COMMISSION

A. Statement

1. By this Decision, we grant Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or Company) Application for Rehearing, Reargument or Reconsideration (RRR) of Commission Decision No. C21-0005, issued January 6, 2021, in part. In conjunction with Proceeding No. 20AL-0380G, Black Hills’ recently filed Phase I Gas Rate Case, we set a seven day period from the date of this Decision for parties to both proceedings to respond to the issues and proposals raised by Black Hills in its RRR. Upon review of any responses to Black Hills we will set a date for a hearing *en banc* requiring the attendance of

Black Hills and parties to the proceedings to determine a sequence amenable to the Company, the parties and the Commission in order to move these matters forward in an efficient and effective manner.

B. Background

2. On November 6, 2020, Black Hills Colorado Gas, Inc., doing business as, Black Hills Energy (Black Hills or Company) filed a Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review and Request for Shortened Response Time (Motion). According to Black Hills, it seeks a partial, one-time variance from the Commission's directive in Decision No. C20-0372 that Black Hills file an advice letter and accompanying tariff sheets to initiate a Phase II rate proceeding within six months of the date of that decision or by November 19, 2020. Instead, Black Hills seeks an extension to make such filing no later than six months from the date new rates go into effect in its recently filed Phase I rate review in Proceeding No., 20AL-0380G.

3. Black Hills' previous Phase I Rate Case was completed on May 19, 2020 when the Commission issued its decision on exceptions to Recommended Decision No. R19-1033. In Decision No. C20-0372, the Commission, among other things, ordered Black Hills to file an advice letter and proposed tariff sheet initiating a Phase II rate review within six months of the date of Decision No. C20-0372 or by November 19, 2020. The Commission also ordered Black Hills to file a revised Distribution and Safety Integrity Rider (DSIR) within six months of the decision, as well as file new construction allowances within nine months of the decision.

4. On September 11, 2020, Black Hills filed Advice Letter No. 3 and accompanying direct testimony proposing to implement General Rate Schedule Adjustment (GRSA) riders that would increase base rates for all Black Hills natural gas customers in Colorado – a new Phase I Rate Case.

5. According to the Company, this 2020 Phase I Rate Case is intended to recover “substantial increase in costs associated with rate base investments made by the Company since July 1, 2018 that have not yet been included in the development of rates.”¹ Additionally, Black Hills filed an application in Proceeding No. 20A-S0379G requesting authorization to implement a new System Safety and Integrity Rider (SSIR) as part of its Colorado PUC gas tariff and to implement under the SSIR, an “At-Risk Meter Relocation and Customer-Owned Yard Line Replacement Program (ARMR/COYL).

6. Black Hills maintained that the result of the last Phase I rate case caused it to file the new 2020 Phase I rate review and SSIR application. Black Hills claims it made these filings to limit the complexity of the filings to address the concerns raised in the previous Phase I proceeding. Black Hills goes on to argue that the revenue deficiency in the present Phase I is driven in large part by the Company’s inability to recover in its rates \$35.3 million in capital additions placed in service from July 1, 2018 through December 31, 2018 and to implement its proposed DSIR.

7. On November 20, 2020 Energy Outreach Colorado (EOC) filed its opposition to Black Motion for Variance. EOC expressed its concern over Black Hills’ proposal to file GRSAs on top of existing GRSAs with no intervening Phase II rate allocation analysis. According to EOC, the layering of GRSAs without proper cost allocation is unfair and unreasonable rate making.

8. In Decision No. C21-0005, issued January 6, 2021, we agreed with EOC that Black Hills would not be allowed to further delay filing its long overdue Phase II rate review. We noted the Company could have easily filed its Motion for Variance well in advance of the

¹ Black Hills’ Motion at pp. 3-4.

deadline to file its Phase II rate case but chose to wait until the last minute to do so. As a result, we denied Black Hills' Motion for Variance and ordered the Company to file a Phase II rate case within 60 days of the effective date of Decision No. C21-0005.

9. On January 26, 2021, Black Hills filed its RRR. Without requesting leave to combine filings, the Company nonetheless filed RRRs in Proceeding No. 19AL-0075G and 20AL-0380G in a single pleading. Black Hills' RRR essentially blends arguments on Decision No. C21-0004 in Proceeding No. 20AL-0380G with Decision No. C21-0005 in this Proceeding in a single filing with no delineation of separate arguments. Nonetheless, we determine which arguments are applicable to which Proceeding and address them accordingly. In this Decision, we discuss Decision No. C21-0005.

10. Black Hills argues that the Phase II filing directive pursuant to Decision No. C20-0372 was not supported by Commission policy or precedent since it was ordered after the Commission's rejection of all Phase II issues in this Proceeding. The Company points out it proposed a Phase II rate case in its original advice letter filing on February 1, 2019 and filed a "multitude of updated Phase II rate analyses" in this Proceeding through nine separate Class Cost of Service Studies and related bill impact calculations. In Black Hills' view, the Commission therefore had the opportunity to establish Phase II rates but instead rejected all Phase II issues in that case. The Company concludes that the Commission's Decision was inconsistent with historical practice.

11. Black Hills requests the Commission clarify it would accept as compliance with Black Hills required Phase II filing directive, the Company's filing of a Phase II rate case within 60 days of Decision No. C21-0005 that proposes revised rates for each base rate area

incorporating the results of the revenue requirement studies proposed in Black Hills' Phase I rate filing in Proceeding No. 20AL-0380G.

C. Findings and Conclusions

12. Notwithstanding Black Hills' revisionist history as to the actual reasons the Commission rejected its original Phase II filing and required a separate filing, we note the Company was ordered to file a separate Phase II rate case by Decision No. C20-0372 within six months of the effective date of that decision or no later than November 19, 2020. Instead, just prior to the due date of its Commission-ordered Phase II Gas Rate Case, Black Hills filed its Motion for Variance subsequent to its recent Phase I Gas Rate Case filing. Neither of those filings offered a substantive or procedural explanation for its approach.

13. We are not particularly persuaded by Black Hills reasoning. It appears the Company engages in much blame shifting and revision of the history as to how we arrived at this situation. However, we find it incumbent upon us to move these matters forward in a sensible and rational manner. Consequently, we find it most appropriate to grant Black Hills' RRR in part through a two-step process.

14. First, we request that parties to the proceeding file responses to Black Hills' RRR in this proceeding. We set a period of no more than seven days from the effective date of this Decision for those responses to be filed. Commission Rule 4 *Code of Colorado Regulations* 723-1-1506(b) allows responses to RRR only upon motion for leave to file a response. For the purposes of this Decision only, we waive that requirement.

15. Upon review of responses to the Company's RRR, we intend to set a date shortly thereafter for a hearing in order to determine the best method to go forward by denying Black Hills' proposals, or go forward with either a combined Phase I/Phase II Gas Rate Case or

separate Phase I and Phase II proceedings, or any other processes that will reasonably settle these matters.

II. ORDER

A. It Is Ordered That:

1. The application for Rehearing, Reargument, or Reconsideration (RRR) filed by Black Hills Colorado Gas, Inc., doing business as, Black Hills Energy (Black Hills) is granted in part consistent with the discussion above.

2. Responses to Black Hills' RRR filing are requested of the parties to this proceeding no later than seven days from the effective date of this Decision or by close of business on March 4, 2021.

3. The requirement of 4 Code of Colorado Regulations 723-1-1506(b) that a party requesting to respond to a RRR file a motion for leave to respond is waived for the limited purposes of this Proceeding.

4. A hearing on the proposals submitted by Black Hills in its RRR filing will be set as soon as responses as indicated above are received.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 17, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners