

Decision No. C21-0143-I

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 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.

INTERIM COMMISSION DECISION SETTING HEARING

Mailed Date: March 11, 2021
Adopted Date: March 10, 2021

I. BY THE COMMISSION

A. Statement

1. By Decision Nos. C21-0104 in Proceeding No. 19AL-0075G and C21-0103 in Proceeding No. 20AL-0380G, the Commission requested responses to Black Hills' Application for Rehearing, Reargument or Reconsideration (RRR) from the parties to those proceedings. Those decisions stated that upon review of the responses, the Commission would set a date shortly thereafter for a hearing in order to determine the best method to go forward by either denying Black Hills' proposal, or go forward with 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 the matters.

2. Commission Trial Staff (Staff), Energy Outreach Colorado (EOC), the Office of Consumer Counsel (OCC), and AM Gas Transfer (AMGAS) filed responses. Each party's response is summarized below.

1. Commission Staff

3. Staff proposes that if the Commission chooses to adopt Black Hills' suggestion to reinstate the Phase I case in Proceeding No. 20AL-0380G, it should add the additional 130 days to the proceeding so that rates do not inadvertently go into effect as of February 9, 2021. Upon extending the suspension period an additional 130 days to June 19, 2021, Staff then proposes an extremely expedited procedural schedule as follows:

Answer Testimony Due	Week of April 12
Rebuttal/Cross Answer Testimony Due	Week of April 19
Dispositive Motions/Settlements Due	Week of April 16
Evidentiary Hearing <i>en banc</i>	Week of May 3
Closing Statements of Position Due	Week of May 17
Deliberations	Week of May 31
Commission Decision	Week of June 14

4. In order to meet the constricted deadlines, Staff proposes requiring all parties to respond to discovery within three calendar days and order Black Hills to immediately update and respond to all discovery pending on December 16, 2021, the date of the weekly meeting at which it was decided to reject the Phase I gas rate case.

5. Regarding the Phase II filing, Staff urges the Commission order Black Hills to file a Phase II rate review as quickly as possible. Staff asserts this would allow the Commission to hold its hearing on the responses to Black Hills' RRR after the parties have had an opportunity for a high-level review of the Company's Phase II rate filings. Staff concludes if the Commission proceeds in this fashion, it stands to receive much better feedback from all the parties during its hearing on the various RRR responses being filed today.

6. Staff goes on to state the Commission should not, at this time, consider whether it should combine a Phase I and Phase II gas proceeding. Staff points out Black Hills still has not given the Commission the necessary information to make a fully informed decision. Staff argues no party except Black Hills knows what the Phase II case will propose because the Company has yet to initiate it. Even after Black Hills files its Phase II, Staff urges the Commission to refrain from considering Phase I and II consolidation until after interested parties have had an opportunity to intervene in the Phase II. Staff asserts at that point, if parties wish to seek a combination of the two rate cases, they can file a motion for consolidation under Commission Rule 1402. Only then, Staff maintains, will the Commission both possess sufficient information to decide whether to combine Phase I and II (by knowing what Black Hills proposes in its Phase II case) and all parties who wish to participate in the Phase II have intervened. Staff advocates for now though, the Commission need only insist that Black Hills file a Phase II case as soon as possible in order to move these matters forward in a sensible and rational manner.

2. Energy Outreach Colorado

7. EOC argues that Black Hills' review of Commission precedent of past Phase I and II filings, including use of GRSAs serves to reinforce the need to eliminate or significantly limit the use of GRSAs as the fallback ratemaking tool, and instead to require utilities to file Phase I and II filings in conjunction or, if staggered, in very close proximity to one another. EOC notes Black Hills' review serves to further support the finding in Decision No. C21-0005 that: "[t]he new Phase I filing proposing compounded GRSAs, without a Phase II rate analysis for over ten years, would not allow the Commission to determine whether the resulting rates are just and reasonable as required under § 40-3-101, C.R.S."

8. EOC states that in Black Hills RRR, it presents a “proposal wherein the Commission would reinstate the dismissed Phase I filing in Proceeding No. 20AL-0380G and file a new Phase II case based on the revenue requirement based in that case (a proposed year-end Test Year ending December 31, 2020). EOC does not oppose this proposal but clarifies several aspects.

9. First of all, the staggered Phase II case would be expected to be underway while the Phase I case was proceeding, so that a Phase II decision would be issued within months of a Phase I decision. According to EOC, parties could propound discovery and advocate their positions on the cost allocation modeling and rate design. The Phase II filing would need to be updated with the Phase I results, and parties should be given an opportunity to weigh in on whether just and reasonable rates resulted. If the Phase I decision was not issued until after a hearing, a follow-on technical conference likely would need to be held. EOC requests that an interim GRSA should not be in place for more than six months between the Phase I and Phase II cases, and preferably a much shorter timeframe.

10. Second, EOC advocates for a procedural schedule in Proceeding No, 20AL-0380G which would give parties a reasonable opportunity to get back up to speed in the case. The Company should strive to find a procedural schedule that is acceptable to all parties.

11. Thirdly, EOC stresses the Commission and Black Hills should be mindful of the timing of any approved rate increase, especially in the midst of extremely trying times for so many Coloradoans during this pandemic and economic recession. EOC takes the position that any rate hikes that would take effect mid-heating season should be rejected.

12. If undertaken in this manner, EOC is satisfied the reinstatement of the Phase I, followed closely by a Phase II that analyzes the same test year, is a reasonable outcome. According to EOC, this procedure would ensure the utility has a chance to recover its plant in rate base, that

rates are fairly allocated among and within customer classes rather than rely on a GRSA, and that the most vulnerable customers are not harmed during the height of the heating season.

13. EOC concludes that if Black Hills performs a Phase II review of its last approved revenue requirement, and at the same time proceeds with a new Phase I without an accompanying Phase II of a new revenue requirement, the Commission will no doubt again encounter the split ratemaking which the Commission's prior precedent, cited above, cautions against.

3. Office of Consumer Counsel

14. The OCC's proposed path forward is for the Commission to direct Black Hills to file a combined Phase I and Phase II gas rate case no earlier than 45 days after the Commission issues a Decision following completion of the procedural determination - the filing of Responses and the Hearing. OCC argues the Phase II rate case should be based on updated revenue requirement studies proposed in the Phase I filing portion of the combined Phase I and II filing.

15. The OCC is of the opinion its path forward will eliminate the need for an initial Phase II case to transform the GRSA's from Proceeding No. 19AL-0075G and then a second Phase II case to transform the GRSA's from Proceeding No. 20AL-0380G. The OCC believes its proposal is an efficient use of the parties' time, resources, and money, as well as that of the Commission, to only have one Phase II Proceeding, and such a path forward will effectively roll all GRSA's into base rates.

16. The OCC takes the position that its rate case proposal is supported by numerous factors. First, the OCC's proposal would prevent the use of stale data from a historic test year for the 12-month period ending June 30, 2018 that would occur if the results and revenue requirement from Black Hills' 2019 gas rate case (Proceeding No. 19AL-0075G) is used. As reflected in Paragraph No. 6 of Decision No. C21-0103, "By Decision No. C21-0004, issued January 6, 2021,

the Commission rejected Black Hills' Phase I Gas Rate Case. It was determined that a new Phase I Gas Rate Case proposing compounded GRSAs without a Phase II rate analysis for over ten years would not allow the Commission to determine whether the resulting rates are just and reasonable as required under § 40-3-101, C.R.S." The OCC believes its combined rate case proposal will further eliminate the use of compounded GRSAs, the use of data that is roughly three years old for Phase II cost allocation purposes, and the likelihood of pancaking rate cases, such as the Phase II case required by 19AL-0075G, the current Phase I represented by the current 20AL-0380G, subsequently followed by another Phase II case to design rates following the 20AL-0380G case, since the Phase II rate design using 19AL-0075G data will be roughly four years old.

17. The OCC expresses that it is greatly concerned with reinstating Proceeding No. 20AL-0380G, and the resulting issues related to the 250-day statutory time frame for a Commission decision after reinstating this case after it remained dormant for several months due to the Commission's order rejecting Black Hills Phase I filing. In addition to these due process concerns, OCC is concerned Black Hills' proposal to provide updated revenue requirement studies in the reinstated Proceeding No. 20AL-0380G, which the OCC agrees is necessary, creates an unknown amount of additional work and information to digest. The OCC notes updated revenue requirement studies result in a new Phase I rate case and will require new discovery to be served. Assuming such updated revenue requirement studies are provided, the OCC believes the Phase I rate case would need to be re-noticed to reflect likely new bill impacts.

18. The OCC takes the position that the proposal to reinstate the Phase I rate case in Proceeding No. 20AL-0380G and to file a Phase II shortly thereafter does not promote efficiency since it would create double the amount of work for the Commission and the parties. The OCC

also notes that two, and perhaps three, separate rate cases will increase rate case expenses, which are passed on to ratepayers.

19. The OCC argues Black Hills delayed filing a Phase II gas rate case for roughly a decade and a delay in converting the recent GRSAs from Proceeding No. 19AL-0075G to base rates will not harm ratepayers because an overall negative revenue requirement (revenue surplus) was approved by the Commission in Proceeding No. 19AL-0075G and the net GRSAs to the three Black Hills' base rate areas were negative. The OCC maintains this artificially decreased the Service and Facilities charge - the fixed portion of ratepayers' bills.

20. The OCC believes Black Hills' proposal to reinstate the Phase I filing with a subsequently filed and separate Phase II rate case will only perpetuate the "procedural maze" Black Hills has created. The OCC is cognizant that Black Hills' primary goal in its Phase I rate case filing is to include into rate base plant-in-service dating from July 1, 2018 and forward.

21. The Commission directed Black Hills to file a Phase II gas rate case. In this regard, the OCC believes that an updated combined Phase I and II rate case, would assist the Company in achieving that purpose. However, the OCC believes that the Phase I filing should be streamlined to achieve the Company's primary purpose of including new plant-in-service into rate base, so that the confusion from the Company's approach in Proceeding No. 19AL-0075G is avoided. OCC urges extraneous issues from the 2019 rate case such as base rate area consolidation should also be avoided and the Company should be encouraged to file a historic test year based on a calendar year ending December 31, 2020, with actual numbers and no "capital reach forward" adjustments such as were at issue in Proceeding No. 19AL-0075G and as were proposed in this instant case (Proceeding No. 20AL-0380G).

22. OCC also notes that if the Commission reinstates the Phase I case, as proposed by Black Hills, certain procedures should be adopted due to the compressed time frame and to ensure due process for all parties, such as establishing shortened response time for all discovery responses and a requirement that Black Hills update all previous discovery responses in the dismissed proceeding within ten days after an order is issued following the Hearing in the two-step process.

4. AM Gas Transfer

23. AMGAS states it is a gas transportation company that purchases natural gas commodity on behalf of end users on a portion of the Black Hills system. AMGAS acts as an agent on behalf of its customers with Black Hills, and as a transportation customer on the Black Hills system. AMGAS reached a settlement in this proceeding that addressed many of its concerns with the proposed transportation tariffs.

24. Given the settlement of most issues between AMGAS and Black Hills, AMGAS states it is amenable to extending the deadline for the filing of the next Phase II proceeding, as long as it is not put off beyond June 2021. AMGAS argues the Commission should proceed with Black Hills in the manner that is most efficient for stakeholders. Black Hills should be permitted to reinstate its Phase I rate proceeding, and its Phase II case should follow shortly thereafter.

25. AMGAS concludes the parties should not be subjected to a Phase II rate proceeding followed by a Phase I case, followed by yet another Phase II case. Nor should parties be subjected to another combined Phase I and Phase II case. While the case filed by Black Hills in this proceeding contained issues that made it hugely complex, it was in part the complicated nature of combined cases that led to what has become a saga.

II. FINDINGS AND CONCLUSIONS

26. We applaud the parties for their thoughtful and reasonable responses. Each offers a path for consideration in order to move these matters forward effectively and efficiently. We find it appropriate to set a hearing on the proposals to allow Black Hills to respond and to expound on the proposals in order to arrive at a process that will address the interests of the Commission, Black Hills and the parties. This is appropriate under the circumstances and accords with the directives of § 40-6-114, C.R.S.¹

27. Therefore, we establish March 16, 2021 at 10:00 am as the date and time for a hearing in order to consider and discuss the recommendations by the parties in response to Black Hills' RRR and to hear from the Company in order to set a course of action in these Phase I and Phase II gas rate cases.

28. The evidentiary hearing will be held remotely. The Commission will use the web-hosted video conferencing service Zoom to hold the remote evidentiary hearing. This Decision and Attachment A hereto include requirements to facilitate holding the hearing remotely and are intended to ensure that the remote hearing proceeds efficiently without technical problems.

29. 10. Attachment A includes important requirements and technical information on participating in the evidentiary hearing through the Zoom platform. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and in Attachment A. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the Zoom link and meeting ID or access code will be provided to the parties by

¹ See, *Snell v. Public Utilities Commission*, 114 P.2d 563 (1941) (based on the language of the section, in passing upon an application for rehearing, the permissible affirmative action of the Commission does not go further than to grant or deny the application, and when an application for rehearing is granted, "the original order or decision is not to be abrogated, changed or modified until after such rehearing and as a result thereof.")

email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

III. ORDER

A. The Commission Orders That:

1. A hearing in this Proceeding is scheduled as follows:

DATE: March 16, 2021

TIME: 10:00 a.m. to noon

PLACE: By video conference using Zoom at a link provided to parties by email.

2. Electronic procedures are modified to include details discussed above and explained further in Attachment A.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 10, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners