

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0477G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. D/B/A BLACK HILLS ENERGY FOR APPROVAL OF A NEW GAS METER SAMPLING PROGRAM AND RELATED TARIFF CHANGES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
APPROVING SETTLEMENT AGREEMENT AND
GRANTING AMENDED APPLICATION**

Mailed Date: April 19, 2021

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I. STATEMENT

1. This Recommended Decision approves the Settlement Agreement filed as Hearing Exhibit 102 on March 15, 2021, by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), Trial Staff of the Commission (Staff), and the Colorado Office of Consumer Counsel (OCC) (collectively, the Settling Parties).

A. Procedural History

2. On November 5, 2020, Black Hills filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for approval of a new Gas Meter Sampling Program (Sampling Program) and related revisions to its Colo. PUC No. 1 Tariff (Tariff). Black Hills also filed the Direct Testimony and Attachments of one witness, Svetlana V. Atoyan.

3. In the Application, Black Hills states that it currently has Commission approved gas meter sampling programs for each legacy local distribution company.¹ Both gas meter sampling programs are similar but contain slight differences. Through this Application and supporting testimony and attachments, Black Hills requests that the Commission approve a consolidated Sampling Program.

4. Black Hills asserts that the proposed Sampling Program satisfies applicable Commission requirements while maintaining accuracy levels at no cost to customers. According to Black Hills, approving the proposed changes does not negatively impact customer rates. The proposed changes align with the other gas jurisdiction's gas meter sampling program thereby simplifying the current requirement to run separate programs. In addition, Black Hills asserts, utilizing the Base Date would extend the life of refurbished meters.²

5. As a result of the proposed Sampling Program changes, Black Hills explains that revisions to the Tariff will be required to comply with Commission Rules. The Tariff, with redlined revisions, was included with the filing as Hearing Exhibit 101, Attachment SVA-3. If

¹ See Proceeding No. 15A-0900G, Decision No. C15-1362 (issued on December 30, 2015) approving gas meter sampling program for Black Hills/Colorado Gas Utility Company, Inc. and Proceeding No. 17A-0379G, Decision No. C17-0716 (issued on August 31, 2017) approving a gas meter sampling program for Black Hills Gas Distribution, LLC.

² Application, at page 2.

the proposed Sampling Program is approved, Black Hills will make a compliance filing of the clean version of the Tariff (Hearing Exhibit 101, Attachment SVA-4) after the Commission issues a final decision approving the Application.³

6. On November 6, 2020, the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were ordered to file motions to intervene within 30 days, or no later than December 7, 2020.⁴ Commission Staff had seven additional days to file a notice of intervention of right. The Notice observed that Black Hills had filed testimony with the Application and was seeking a Commission decision within 120 days.

7. On December 16, 2020, the Commission deemed the Application complete for purposes of § 40-6-109.5, C.R.S. (2019), and referred the Application to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this proceeding.

8. In Decision No. R21-0031-I (issued on January 14, 2021), the ALJ acknowledged the interventions of right of the OCC filed on December 4, 2020, and of Staff filed on December 8, 2020. The only Parties to this proceeding are Black Hills, OCC, and Staff.

9. Pursuant to § 40-6-109.5(1), C.R.S. (2019), Decision No. R21-0031-I also extended the deadline for the Commission's decision on the Application for an additional 130 days, for a maximum period of 250 days or until August 23, 2021. Finally, Decision

³ *Id.*

⁴ Since the 30-day deadline for interventions, pursuant to the Notice and to Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), fell on Sunday December 6, 2020, the deadline was extended by operation of law until the next business day, or until Monday December 7, 2020. Section 40-6-121, C.R.S.

No. R21-0031-I ordered the Parties to confer and to file a status report advising the ALJ of a proposed procedural schedule and other procedural matters by January 22, 2021.

10. In Decision No. R21-0040-I (issued on January 25, 2021), the ALJ adopted the proposed procedural schedule filed by the Parties and scheduled a remote evidentiary hearing for April 27, 2021, at 9:00 a.m.

11. On March 1, 2021, the Parties filed a Notice of Settlement, Unopposed Joint Motion to Modify Procedural Schedule, and Request for Waiver of Response Time (Unopposed Joint Motion).

12. In Decision No. R21-0115-I (issued on March 2, 2021), the ALJ granted the Unopposed Joint Motion filed on March 1, 2021, vacated the remainder of the procedural schedule except for the April 27, 2021 hearing, established March 15, 2021 as the date to file a written Settlement Agreement, and March 22, 2021 as the date to file testimony in support of the Settlement Agreement.

13. On March 15, 2021, the Settling Parties filed an Unopposed Joint Motion for Approval of Settlement Agreement and Request for Waiver of Response Time along with the signed Settlement Agreement (Settlement Agreement). Attachment 1 to the Settlement Agreement is the Amended Gas Meter Sampling Program (Amended Sampling Program).

14. On March 22, 2021, the Settling Parties filed the testimony and attachments of three witnesses in support of approval of the Settlement Agreement.

15. In Decision No. R21-0193-I (issued on March 29, 2021), the ALJ determined that the Settlement Agreement and the testimony in support of thereof are comprehensive, clear, and

understandable. Therefore, Decision No. R21-0193-I vacated the remote hearing on the Settlement Agreement scheduled for April 27, 2021.

B. Terms of the Settlement

16. The Settlement Agreement, attached to this Decision as Appendix A, states that it resolves all issues that were raised, or could have been raised by the Settling Parties in this proceeding. Further, the Settling Parties state that acceptance of this Settlement Agreement is in the public interest.

17. The Settling Parties agree that the Amended Sampling Program, as redlined in Attachment 1 to the Settlement Agreement, reflects the settlement reached. The Settling Parties further agree that the Amended Sampling Program is reasonable and in the public interest.

18. Under the Amended Sampling Program, Black Hills agrees to test its meters as follows:

- a) Black Hills will use a statistical sampling program to test diaphragm meters of up to 1,000 Cubic Feet per Hour (CFH) as follows:
 - i. Domestic diaphragm meters (0-500 CFH): Beginning after 15 years of service based on Homogenous Lot determination; and
 - ii. Intermediate diaphragm meters (501-1,000 CFH): Beginning after 10 years of service based on Homogenous Lot determination.
- b) Black Hills will use the sampling procedures and meter test method described in the Amended Sampling Program.

19. The Settling Parties agree that in meeting the ANSI/ASQ Z1.9 standard established in the Amended Sampling Program, the homogeneity of lots is key.

20. The Settling Parties further agree that to determine the homogeneity of lots, Black Hills will use “Manufactured Year” methodology because it allows for consistency and clarity that leads to statistically sound results. Specifically, homogenous lots will be determined by meter manufacturer, model type, capacity, “Manufactured Year” and/or “Refurbished Year.” The

Settling Parties agree that the “Manufactured Year” may be updated to correspond to the “Refurbished Year,” acknowledging that refurbished meters are fundamentally different from non-refurbished meters.

21. The Settling Parties also agree that the “Manufactured Year” or “Refurbished Year” will be used to start the exemption periods for all non-legacy meters.

22. With respect to the legacy gas meters, the Settling Parties agree that Black Hills may create homogenous lots using meter manufacturer, model type, and capacity, as well as either “Purchase Year” or “Installation Year.”

23. As to the failed lot removal process, the Settling Parties agree as follows:

Sampled meters will undergo normal inspection based on the meter attributes used to create homogenous lots. Once a meter lot fails under normal inspection, the Company will adopt a tightened inspection process based on the meter attributes that were used to create homogeneous lots. The initial tightened inspection should take place no later than one year following the date of the initial failure under normal inspection. If that meter lot (or sub lot if applicable) fails tightened inspection, it will continue to be inspected and will be removed over the next five years.⁵

24. The Settling Parties further agree that if a failed lot passes tightened inspection, it will be returned to service and normal inspection, and that in Colorado all American AC250 meters manufactured in 2004 will be removed in 2021.

25. With respect to testing accuracy, the Settling Parties agree that the Weighted Average Test methodology will continue to be utilized.

26. As to the Acceptable Quality Limit (AQL), the Settling Parties agree that the previously approved AQL of 6.5 is still reasonable, although it may be reviewed in future proceedings.

⁵ Settlement Agreement, page 3. (Footnote 2 omitted.)

27. Additionally, Black Hills agrees to maintain all records concerning vendor test results on new meters installed in Colorado during the entire service lives of these meters. Black Hills further agrees to maintain, for the entire lives of the meters, records of vendor testing of: (a) meters already in service; and (b) purchased meters not yet in service.

28. Finally, the Settling Parties agree that any issue not directly addressed in the Settlement Agreement should be determined consistent with the Application, the testimony and attachments thereto filed in this proceeding, the Settlement Agreement, and the Amended Sampling Program.

II. FINDINGS AND CONCLUSION

29. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable.⁶

30. The ALJ has reviewed all of the terms and conditions contained in the Settlement Agreement, and the Amended Sampling Program attached thereto as Attachment 1, to ensure that they comply to the greatest extent possible with applicable regulatory principles and are just and reasonable, as well as in the public interest.⁷

31. The ALJ finds that the Settling Parties have established by a preponderance of the evidence that the Settlement Agreement is just and reasonable, and it should be approved by the Commission. The ALJ further finds that approval of the Settlement Agreement, and the Amended Sampling Program attached thereto, is just, reasonable, and in the public interest.

⁶ Section 13-25-127(1), C.R.S., and Rule 1500, of the Commission's Rules of Practice and Procedure, establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No 05A-072E (issued on July 3, 2006) at ¶ 40 and n.23 at page 12.

⁷ See Decision No. C06-0259, ¶ I.C.10 at page 4, (mailed on March 20, 2006) in Proceeding No. 05S-264G. See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984), the Commission has an independent duty to determine matters that are within the public interest.

32. The ALJ finds that approval of the Application, as amended by the Settlement Agreement and Amended Sampling Program, is just, reasonable, and in the public interest.

33. Rule 4304(a) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4, requires a utility to test, or arrange for testing, of its service meters in accordance with either Rule 4304 or a sampling program approved by the Commission. Here, Black Hills agrees, pursuant to Rule 4304(a), to test its meters in accordance with the Amended Sampling Program attached to the Settlement Agreement.

34. Finally, Rule 4304(e) of the Rules Regulating Gas Utilities, 4 CCR 723-4, requires that:

- (e) In its tariff, a utility shall describe the utility's practices concerning the following:
 - (I) testing and adjustment of service meters at installation; and
 - (II) periodic testing after installation.

35. Along with its Application, Black Hills filed redlined and clean versions of its Tariff Sheet No. R17, marked for identification as Hearing Exhibit 101, Attachments SVA-3 and SVA-4, respectively. The redlined version of Tariff Sheet No. R17 proposed changing "five" to "seven" under the category of "Testing Frequency" for the "Meter Type" of "Rotary (differential tested) 0-5000 cf/hour." Irrespective of this proposed revision, Tariff Sheet No. R17 appears to be consistent with the Settlement Agreement and the Amended Sampling Program attached thereto. Consistent with Paragraph No. 18, at page 5, of the Settlement Agreement (summarized at Paragraph No. 28 *supra*), the ALJ finds this proposed revision to Tariff Sheet No. R17 will be approved as consistent with the Settlement Agreement and the Amended Sampling Program.

36. In order to implement the Settlement Agreement, Black Hills will be ordered to file, within two business days of the effective date of this Recommended Decision, compliance

tariffs that conform to the terms of the Settlement Agreement and to the terms of the Amended Sampling Program attached thereto as Attachment 1.

37. Black Hills will be ordered to implement the Amended Sampling Program, as articulated in Attachment 1 to the Settlement Agreement, within 30 days of the effective date of this Recommended Decision. Upon an appropriate motion filed by Black Hills, the Commission may extend this deadline by a subsequent decision.

38. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The Settlement Agreement (Settlement Agreement) and the Amended Gas Meter Sampling Program (Amended Sampling Program), attached to and incorporated into this Recommended Decision as Appendix A and Attachment 1, respectively, which were filed by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), Trial Staff of the Commission, and the Colorado Office of Consumer Counsel on March 15, 2021, are approved consistent with the discussion, findings, and conclusions in this Recommended Decision.

2. The Verified Application filed by Black Hills on November 5, 2020, seeking approval of its new Gas Meter Sampling Program, as modified by the terms of the Settlement Agreement and Amended Sampling Program attached thereto, is granted, consistent with the discussion, findings, and conclusions in this Recommended Decision.

3. Within two business days of the effective date of this Recommended Decision, Black Hills shall file compliance tariffs that conform to the terms of the Settlement Agreement and the Amended Sampling Program.

4. The Parties shall comply with all the terms and conditions of the Settlement Agreement and with this Recommended Decision.

5. Within 30 days of the effective date of this Recommended Decision, unless such deadline is extended by a subsequent decision of the Commission, Black Hills shall implement the Amended Sampling Program as set forth in Attachment 1 to the Settlement Agreement, attached hereto as Appendix A.

6. The Commission shall retain jurisdiction over this proceeding to take such action and to enter such orders as may appear necessary to effectuate this Recommended Decision.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within ten calendar days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the

facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director