

Decision No. C21-0103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0380G

IN THE MATTER OF ADVICE LETTER NO 3 FILED BY BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) THAT WILL INCREASE THE BASE RATES FOR ALL RATE SCHEDULES EFFECTIVE OCTOBER 12, 2020.

**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. C21-0004, issued January 6, 2021, in part. In conjunction with Proceeding No. 19AL-0075G, Black Hills’ Motion for Variance to file its Phase II Gas Rate Case as ordered by the Commission in Decision No. C20-0372 in Proceeding No. 19AL-0075G, 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 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. According to the Company, its 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.” Additionally, Black Hills filed an application in Proceeding No. 20A-0379G 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.

3. Black Hills maintained that the result of the last Phase I Gas Rate Case caused it to file the new 2020 Phase I rate review and System Safety Integrity Rider (SSIR) application. Black Hills claims it made these individual filings to limit the complexity of the filings and 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 Gas Rate Case 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.

4. Black Hills argued the Commission disallowed its proposed inclusion of those capital additions in the 19AL-0075G proceeding because Black Hills’ *pro forma* capital additions adjustment violated the matching principle, and the Commission ordered the Company to address the deficiencies in its DSIR proposal and refile for approval within six months of Decision No. C20-0372. According to Black Hills, approval of the DSIR in the previous Phase I

rate case would have permitted the Company to begin recovering costs associated with approximately \$36 million of system safety and integrity investments placed in service in 2019 and 2020.

5. Subsequent to the filing of its Phase I Gas Rate Case, Black Hills filed its Motion for Variance (Motion) on November 6, 2020. In that Motion Black Hills sought to file its Commission-ordered Phase II filing in Decision No. C20-0372 in Proceeding No. 19AL-0075G to a date no later than six months from the date new rates go into effect in its recently filed Phase I Gas Rate Case in this Proceeding.

6. 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. We found the best course of action to reject Advice Letter No. 3 and permanently suspend the tariffs attached to that Advice Letter.

7. On January 26, 2021, Black Hills 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 argument on Decision No. C21-0004 in Proceeding No. 20AL-0380G with Decision No. C21-0005 in this Proceeding in its 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. C21-0004.

8. Black Hills states the basis for its RRR is that the Commission exceeded its power under the Public Utilities Law to reject its Phase I gas rate case filing on September 11, 2020.

According to Black Hills, the Commission exceeded the power under § 40-3-104, C.R.S. In addition, the Commission's actions violated procedural due process by depriving Black Hills of its statutory rights without providing it with any advance notice or any opportunity to be heard.

9. Black Hills contends the "file and suspend" regulatory scheme established under the Public Utilities Law provides certain procedural safeguards that protect the utility's right to make rate filings. It is the Company's position the Commission's action rejecting its Phase I rate filing in Decision No. C21-0004 circumvents these safeguards, violates Black Hills' statutory rights, and therefore exceeds the limits of the Commission's authority under the law. To rectify this legal error, Black Hills proposes the Commission rescind Decision No. C21-0004 and reinstate Proceeding No. 20AL-0380G.

10. Black Hills states there is no reason the Company's Phase I rate filing and a new Phase II rate filing cannot coexist. The Company posits the Commission can (and previously has) entertained simultaneous but separate Phase I and Phase II rate cases filed by the same utility. The Phase I rate case in Proceeding No. 20AL-0380G and the new Phase II rate case that will be filed on or before March 8, 2021, are not mutually exclusive proceedings in Black Hills belief, and can go forward at the same time either independently or on a consolidated basis. As to concerns regarding "pancaking" GRSAs, the Company asserts the stacking or "layering" of GRSAs resulting from consecutive Phase I rate decisions is a relatively common occurrence that the Commission has approved in the past. Additionally, the Phase I rate riders ultimately approved in Proceeding No. 20AL-0380G, if reinstated, would only be in effect a few months before being replaced by permanent Phase II rates. Black Hills believes this should adequately address both the Commission's concerns stated in Decision No. C21-0004. Black Hills states it is willing to work with the parties in this Proceeding as well as Proceeding No. 19AL-0075G to

minimize the time between the effective dates of the resulting Phase I riders and final Phase II rates.

11. Citing § 40-6-111(3), C.R.S., it is the Company's contention the Commission's power to reject a rate or other tariff filing is expressly limited to those circumstances in which the utility's filing does not contain the information, or is not published, filed and posted in the form or manner required by the Commission's rules and regulations.

12. According to Black Hills the Commission cannot rely on its conclusion that the Phase I rate filing is contrary to the Commission's Phase II filing directive in Decision No. C20-0372 as a basis to reject the Company's Phase I rate filing because, even if the new Phase I filing were inconsistent with the Phase II filing directive in Decision No. C20-0372, this is not a form requirement prescribed by regulation.

13. Black Hills also argues that the rejection of its Phase I gas rate case filing violated procedural due process by depriving it of its statutory rights without providing it with proper notice and an opportunity to be heard before dismissing the advice letter filing. Black Hills states it was not on notice that the Commission was considering rejecting the Phase I Gas Rate Case and was never provided an opportunity to be heard prior to the Commission's action. In addition, the Company states the Commission's rejection of its Phase I Gas Rate Case filing is not supported by Commission policy or precedent and in fact, the Commission has previously heard separately filed Phase I and Phase II rate cases.

14. Black Hills proposes what it deems a "reasonable resolution" to the procedural maze it has created. It believes it is reasonable for the Commission to rescind Decision No. C21-0004, reinstate Proceeding No. 20AL-0380G and allow Black Hills to file a separate Phase II case based on the revenue requirements proposed in that case. Black Hills states it will file a

new Phase II rate case within 60 days of Decision No. C21-0005 as directed in that decision. Black Hills also requests clarification that its filing of a Phase II rate case based on updated revenue requirement studies proposed in Proceeding No. 20AL-0380G will be accepted as in compliance with the Commission's Phase II filing directive in Proceeding No. 19AL-0075G.

C. Findings and Conclusions

15. We are not persuaded by many of the policy and legal arguments Black Hills raises in its RRR filing. 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.

16. 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.

17. 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

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners