

Decision No. R24-0002-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0231G

IN THE MATTER OF ADVICE LETTER NO. 32 FILED BY BLACK HILLS COLORADO GAS, INC. TO INCREASE THE BASE RATES CHARGED FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES, TO BECOME EFFECTIVE JUNE 8, 2023.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PARTIALLY GRANTING UNOPPOSED MOTION AND
APPROVING MODIFIED PROVISIONAL RATES**

Mailed Date: January 2, 2024

I. STATEMENT AND BACKGROUND

A. Summary

1. This Decision partially grants the Unopposed Motion for Modification of Decision No. R23-0532-I to Place Provisional Rates into Effect on February 1, 2024 (Second Motion) filed on December 14, 2023; enters orders related to the same; and denies the Unopposed Motion of Black Hills Colorado Gas, Inc., for Modification of Decision No. R23-0532-I filed on August 16, 2023 (First Motion). Procedural History.¹

2. On May 8, 2023, Black Hills Colorado Gas, Inc. (Black Hills or the Company) filed Advice Letter No. 32, with tariff sheets, to commence a combined Phase I and II rate case. The Advice Letter identifies June 8, 2023 as the effective date for the related tariff sheets.²

¹ Only the procedural history necessary to understand this Decision is included.

² See Advice Letter No. 32 filed May 8, 2023 (Advice letter) at 5.

3. On May 10, 2023, the Company filed an Amended Advice Letter, which also places the related tariff sheets into effect on June 8, 2023.

4. On June 7, 2023, the Commission suspended the effective date of the tariff sheets filed with the Amended Advice Letter to October 6, 2023, and set the matter for a hearing per § 40-6-111(1), C.R.S.³

5. On July 12, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry.⁴

6. In addition to Black Hills, the parties to this Proceeding are the Office of the Utility Consumer Advocate (the UCA); Trial Staff of the Colorado Public Utilities Commission (Staff); Walmart Inc., (Walmart); and A M Gas Transfer Corp (A M Gas).⁵

7. On July 26, 2023, the ALJ ordered the parties to confer on a procedural schedule; ordered Black Hills to file the parties' proposed consensus schedule by August 1, 2023; and advised that the schedule must accommodate an evidentiary hearing in September 2023. The ALJ also ordered that if the parties prefer a later hearing date, that Black Hills would need to file another Amended Advice Letter with a later effective date for the tariff sheets.⁶

8. On August 1, 2023, Black Hills filed an Unopposed Joint Motion for Adoption of Procedural Schedule and for Approval of Provisional Rates with Conditions (Provisional Rates Motion).

9. On August 3, 2023, the ALJ held a duly noticed remote prehearing conference to address the Provisional Rates Motion and to move this matter forward.⁷ During the prehearing

³ Decision No. C23-0379 at 4 (mailed June 7, 2023).

⁴ July 12, 2023 Minute Entry.

⁵ Decision No. R23-0485-I at 20 (mailed July 26, 2023)

⁶ *Id.* at 16-21.

⁷ Decision No. R23-0532-I (mailed August 15, 2023); Decision No. R23-0504-I (mailed July 31, 2023).

conference, Black Hills agreed to modifications of the proposed provisional rates in its Provisional Rates Motion. Specifically, Black Hills agreed that to effectuate a 90-day extension of the suspension period of the tariff sheets, it would submit a new advice letter with a September 6, 2023 effective date for the related tariff sheets.

10. On August 10, 2023, the ALJ issued Decision No. R23-0532-I, which memorializes the rulings made during the prehearing conference, including the approved provisional rates. Specifically, the Decision approves the Company placing into effect a General Rate Schedule Adjustment (GRSA) rider for each of its three Base Rate Areas reflecting a percentage revenue increase to be applied to its then effective base rates, as follows: 14.51 percent for Base Rate Area 1 GRSA; 30.58 percent for Base Rate Area 2 GRSA; and 27.82 percent for Base Rate Area 3 GRSA (provisional rates).⁸ The approved provisional rates go into effect on February 13, 2024, the date by which the Company's proposed rates under the Amended Advice Letter and related tariff sheets filed on May 10, 2023 would have otherwise gone into effect.⁹ Such rates remain effective until the earlier of the effective date of revised base rates approved by the Commission in its final decision or the day after the Company's anticipated Second Amended Advice Letter's tariff sheets' suspension period expires.¹⁰ The Decision also approves the parties' proposed true-up mechanisms. The Decision directs Black Hills to file a Second Amended Advice Letter with an effective date for the related tariff sheets that is no earlier than September 6, 2023, and to file a compliance advice letter and revised Tariff Sheet No. 59 in a new advice letter proceeding on

⁸ See Decision No. R23-0532-I at 5, 10-11, 19.

⁹*Id.* at 13. See Advice Letter and Tariff Sheets filed on May 10, 2023; § 40-6-111(1)(b), C.R.S. Specifically, the May 10, 2023 Advice Letter establishes June 8, 2023 as the effective date for the related tariff sheets. Suspending that effective date by 250 days as permitted by § 40-6-111(1)(b), C.R.S., results in a February 13, 2024 effective date.

¹⁰ Decision No. R23-0532-I at 19.

February 8, 2024 (on not less than two business days' notice) to put into effect the provisional rates and true-up mechanisms on February 13, 2024.¹¹

11. Decision No. R23-0532-I also established a procedural schedule and scheduled a hybrid evidentiary hearing for November 28, 29, 30, 2023, and December 1, 2023.

12. On August 15, 2023, Black Hills filed the required Second Amended Advice Letter, changing the effective date of the relevant tariff sheets to September 6, 2023.¹²

13. On August 16, 2023, Black Hills filed the First Motion.

14. On November 17, 2023, Black Hills filed a Settlement Agreement to which it, Staff, the UCA, and Walmart are parties.

15. Based on the Settlement Agreement, the ALJ vacated the first day of the evidentiary hearing (November 28, 2023),¹³ but maintained the other hearing dates. The ALJ held the evidentiary hearing as noticed; all parties appeared. During the hearing, issues surrounding the approved provisional rates arose, and Black Hills agreed to file the Second Motion.

16. On December 14, 2023, Black Hills filed the Second Motion.

II. FINDINGS, ANALYSIS AND CONCLUSIONS

17. The First Motion seeks to modify Decision No. R23-0532-I, so that it may file the compliance advice letter on not less than two days' business notice immediately, rather than wait until February 8, 2024 to do so.¹⁴

18. The Second Motion states that it is unopposed.¹⁵ The Second Motion seeks to modify Decision No. R23-0532-I to replace the provisional rates approved by that Decision with

¹¹ *Id.*

¹² Advice Letter No. 32 (2nd Amended) filed on August 15, 2023 (Second Amended Advice Letter) at 1.

¹³ Decision No. R23-0779-I (mailed November 27, 2023).

¹⁴ First Motion at 1.

¹⁵ Second Motion at 1-2 and 5.

the agreed-upon rates in the Settlement Agreement. The Second Motion acknowledges that it supersedes and renders moot the relief requested in the First Motion, and therefore withdraws it.¹⁶ The Company seeks to put into effect on February 1, 2024 the base rates that would become effective if the Agreement filed on November 17, 2023 were approved by the Commission, subject to the same true-up conditions as previously approved.¹⁷ The Company requests that it be permitted to file a compliance advice letter on January 29, 2024, to place such provisional rates into effect on not less than two business days' notice, on February 1, 2024.¹⁸ In support, the Second Motion states that its proposed approach will eliminate customer confusion associated with potentially instituting numerous rate changes within a short timeframe; reduce the administrative burden associated with same; and avoid interest expense on the approved provisional rates.¹⁹

19. As an initial matter, the ALJ finds that the First Motion is rendered moot by the Second Motion, and therefore denies the First Motion. In addition, for the reasons discussed in Decision No. R23-0532-I, the ALJ suspends the effective date for the tariff sheets associated with the Second Amended Advice Letter by 250 days to May 13, 2024, as permitted by § 40-6-111(1)(b), C.R.S.

20. The ALJ finds that the Second Motion establishes good cause to modify Decision No. R23-0532-I. Indeed, it is unlikely that a final Commission decision will issue before the provisional rates approved by Decision No. R23-0532-I go into effect on February 13, 2024. Those rates are higher than the rates proposed in the Settlement Agreement. As such, if the Commission's final decision approves the rates in the Settlement Agreement, the Company would place at least two different rates into effect within a short period of time and would be subject to

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 1, 4-5.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 4.

true-up mechanisms for over-collecting. This does not serve the public interest. For the reasons discussed, the ALJ finds that the Second Motion's proposed provisional rates and true-up mechanisms should be approved, and result in just and reasonable rates. That said, the Company provides no justification for placing the provisional rates into effect almost two weeks earlier than Decision No. R23-0532-I approved, on February 1, 2024. Decision No. R23-0532-I approves provisional rates going into effect on February 13, 2024, the date by which the Company's proposed rates under the Amended Advice Letter and related tariff sheets filed on May 10, 2023 would have otherwise gone into effect.²⁰ For these reasons, the Company's request to place the approved provisional rates into effect on February 1, 2024 is denied, and the rates will be put into effect on February 13, 2024. Such rates will terminate on the earlier of the Commission's final decision in this Proceeding or the day after the new suspension period expires.

21. The ALJ will order Black Hills to file a compliance advice letter and revised tariff sheets on February 8, 2024 in a new advice letter proceeding²¹ on not less than two business days' notice to put into effect the approved provisional rates and true-up mechanisms on February 13, 2024. Given that this is approved as a part of the procedures adopted in this rate case Proceeding, the ALJ agrees with the parties that no additional notice is necessary. The compliance advice letter and revised tariff sheets must cite to this Decision number as grounds and authority for the same. This will cue the Commission that the provisional rates and true-up mechanisms have been carefully considered and approved as a part of this Proceeding, and that no additional notice is required.

22. In addition, Black Hills must provide the parties the proposed compliance advice

²⁰ *Supra*, ¶ 10.

²¹ Filing this in a new advice letter proceeding will allow the provisional rates to go into effect while this Proceeding is pending.

letter and revised tariff sheets and confer with the parties on the same to confirm that it conforms to this Decision. Conferring with the parties prior to making these compliance filings avoids the potential that a party may object to the filings as inconsistent with this Decision.

III. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Modification of Decision No. R23-0532-I to Place Provisional Rates into Effect on February 1, 2024 (Second Motion) filed on December 14, 2023 is partially granted, consistent with the above discussion.

2. The Unopposed Motion of Black Hills Colorado Gas, Inc., for Modification of Decision No. R23-0532-I filed on August 16, 2023 is denied as moot.

3. The effective date for the tariff sheets associated with Black Hills Colorado Gas, Inc.'s (Black Hills) Second Amended Advice Letter filed on August 15, 2023 is suspended by 250 days to May 13, 2024, as permitted by § 40-6-111(1)(b), C.R.S.

4. On February 8, 2024, Black Hills must file a compliance advice letter and revised tariff sheets in a new advice letter proceeding on not less than two business days' notice to put into effect the provisional rates and true-up mechanisms approved by this Decision on February 13, 2024, terminating on the earlier of the Commission's final decision in this Proceeding or the day after the Second Amended Advice Letter's tariff sheets' suspension period expires. The compliance advice letter must cite to this Decision number as grounds and authority for the same, including that no additional notice is required. Prior to making these filings, Black Hills must confer with the parties on these compliance filings consistent with the above discussion.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director