

Decision No. R24-0341

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0631G

IN THE MATTER OF ADVICE LETTER NO. 40 FILED BY BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY TO ELIMINATE THE CONSTRUCTION ALLOWANCES CURRENTLY INCLUDED IN COLORADO P.U.C. NO. 1, TO BECOME EFFECTIVE JANUARY 29, 2024.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ACCEPTING AMENDED ADVICE LETTER AND FORM
OF THE AMENDED TARIFF SHEET,
ACKNOWLEDGING WITHDRAWAL OF
INTERVENTIONS, AND
LIFTING SUSPENSION**

Mailed Date: May 21, 2024

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I. STATEMENT**A. Summary**

1. By this Recommended Decision, the undersigned Administrative Law Judge (ALJ) accepts the form of Tariff Sheet No. R41 submitted by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or the Company) with its Amended Advice Letter No. 40 on April 5, 2024; acknowledges the withdrawal of interventions by Trial Staff (Staff) of the Colorado Public Utilities Commission (the Commission or PUC) and the Office of the Utility Consumer Advocate (UCA); and lifts the suspension of the effective date of the modified Tariff Sheet No. R41 by the Commission in Decision No. C24-0060, issued January 26, 2024. As explained below, Black Hills shall file a second amended Advice Letter No. 40 to align the effective date of the modified Tariff Sheet No. R41 with the date when this Decision becomes the decision of the Commission pursuant to § 40-6-109, C.R.S.

B. Procedural Background

2. In May 2023, the Colorado General Assembly passed Senate Bill (SB) 23-291, which includes provisions requiring each of Colorado’s four investor-owned gas utilities to file with the Commission, no later than December 31, 2023, an updated tariff to reflect the removal of any incentives for establishing gas service.¹ In addition, the legislature incorporated § 40-3.2-104.3, C.R.S., into the statutory scheme, which expressly prohibits gas utilities from providing “a person that requests natural gas service and that owns the real property requiring the service”² an “incentive, including a line extension allowance, to establish gas service to a property.”³ The statute defines a “line extension allowance” as “a bundle of costs that includes

¹ § 40-3.2-104.3(2)(c), C.R.S.

² § 40-3.2-104.3(1)(a), C.R.S.

³ § 40-3.2-104.3(2)(a), C.R.S.

construction allowances for new service lines, meters, and other infrastructure associated with the addition of a new customer to a gas utility's distribution system.”⁴ SB 23-291 went into effect August 7, 2023.

3. In 2021, the Commission likewise examined gas utility line extension policies in a comprehensive rulemaking: Proceeding No. 21R-0449G.

4. By Decision Nos. C22-0760, issued on December 1, 2022, and Decision No. C23-0117, issued on February 24, 2023, in Proceeding No. 21R-0449G, the Commission modified its Rules Regulating Gas Utilities (Gas Rules), 4 *Code of Colorado Regulations* (CCR) 723-4, by adding two new paragraphs under Rule 4210 Line Extensions. Paragraph 4210(c) states: “Line extension policies, procedures, and conditions shall be based on the principle that the connecting customer pays its share of the estimated full incremental cost of growth, including any costs associated with increases in design day peak demand.” Paragraph 4210(d) states:

Line extension allowances shall be updated pursuant to paragraph 4210(c) in a base rate proceeding, or in a separately filed application, as required, but should be implemented no later than December 31, 2024. If a utility utilizes standardized costs in calculating one or more portions of its line extension policies, the standardized costs must be updated in a base rate proceeding, utilizing the average actual cost across the applicable customer class and line extension type for the most recent consecutive 12-month period for which compiled cost data is available. Exemptions from updated line extension allowances and standardized costs shall not extend to applications for line extensions submitted after May 1, 2023.

5. With respect to the new provision in paragraph 4210(c), the Commission explained that its intent was to ensure that when it reviews a utility's tariffs for their line extension policies, procedures, and conditions — most likely in a base rate proceeding — it will base its review, in part, on the principle that new customers will be responsible for covering their contribution toward

⁴ § 40-3.2-104.3(1)(d), C.R.S.

the cost of growth in a way that also incorporates the additional net revenues associated with new customer growth with appropriate consideration of the impacts of policy and efficiency on those projections.⁵

6. With respect to the new provision in paragraph 4210(d), the Commission concluded that, as a general matter, each gas utility must update its line extension policies in accordance with all of the provisions in Rule 4210 through a tariff filing submitted for effect no later than January 1, 2025. The Commission further concluded that standardized costs used in a line extension policy also must be updated in each base rate proceeding and should be calculated using the most recent consecutive 12 months of data that is available to the utility at the time of the calculation.⁶

7. On December 29, 2023, Black Hills initiated this Proceeding by filing Advice Letter No. 40 with proposed modifications to Tariff Sheet No. R41 addressing the Line Extension provisions within its Rules and Regulations Applicable to All Gas Services and with an effective of January 29, 2024. The proposed changes to the tariff sheet include: (1) the introduction of a definition of a “meter set” and a set of fees that new customers must pay to Black Hills as reimbursement for the meter set; (2) the elimination of the construction allowance generally; and (3) new provisions for the “grandfathering” of the construction allowance, making the construction allowance available only to new customers whose line extensions were installed prior to August 7, 2023 (the effective date of SB 23-291) or to new customers who submitted an application for service that was approved or pending as of August 7, 2023, and who submitted a permit application to the local government with permitting authority either approved or pending as of August 7, 2023.

⁵ Decision No. C22-0760, issued December 1, 2022, ¶¶ 110-112, pp. 50-51.

⁶ Decision No. C22-0760, issued December 1, 2022, ¶¶ 120-121, pp. 53-54.

8. Black Hills filed no Direct Testimony in support of the proposed tariff changes.

9. By Decision No. C24-0060, mailed January 26, 2024, the Commission set for hearing the tariff sheet filed under Advice Letter No. 40 and suspended the effective date of the modified Tariff Sheet No. R41 for 120 days, or up to and including **May 28, 2024**. The Commission also, on its own motion, waived the December 31, 2024, deadline in paragraph 4210(d) of the Gas Rules that requires utilities to update their line extension allowances by that date.

10. Decision No. C24-0060 also set a deadline of February 23, 2024, by which interested persons or entities wishing to participate in this Proceeding were to intervene, and referred this Proceeding to an ALJ for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

11. UCA filed its Intervention as a Matter of Right, and Entry of Appearance on February 2, 2024. Staff intervened on February 23, 2024, by filing its Notice of Intervention as of Right, Entry of Appearance, and Notice Pursuant to Rule 1007(a) and Rule 1401.

12. No other intervention pleadings were filed.

13. On March 25, 2024, the undersigned ALJ contacted the parties informally by email inquiring about their preferred hearing format, a proposed procedural schedule, and dates for an evidentiary hearing.

14. Counsel for Black Hills, Emmanuel Cocian, responded informally by email on April 5, 2024, advising the undersigned ALJ that the parties had resolved any remaining disputes regarding Black Hills' Advice Letter No. 40 filing.

15. Black Hills filed an Amended Advice Letter No. 40 along with Amended Fourth Revised Tariff Sheet No. R41 on April 5, 2024. The Company revised Tariff Sheet No. R41 after

discovering that “only the meter costs for Rate Area 3 were included. . . . The Company amends Tariff Sheet No. R41 for Rate Area 3 to include the costs for both meters and regulators.”⁷

16. Later, on April 5, 2024, UCA and Staff independently withdrew their interventions to this Proceeding.⁸

II. AMENDMENTS TO ADVICE LETTER AND TARIFF SHEET

17. Black Hills’ December 29, 2023 Advice Letter No. 40 stated: “the purpose . . . of this filing is to update language in the Company’s Line Extension Tariffs to reflect the elimination of the construction allowance for an applicant to establish new gas service to a property except for the limited exemptions outlined in . . . § 40-3.2-104.3(2)(d), C.R.S.”

18. In the proposed redline changes to Tariff Sheet No. R41, which accompanied the Advice Letter Black Hills filed on December 29, 2024, Black Hills generally eliminates construction allowances for new customers and incorporates a new definition of a “meter set” and adds a new set of fees that new customers must pay to Black Hills as reimbursement for a meter set. The new definition meter set includes a “gas meter, metering piping, meter regulatory and materials necessary to facilitate the installation of gas meter from the end of a service latter extension to Customer owned equipment as determined by the Company.”⁹

19. Black Hills further adds to Tariff Sheet No. R41 a set of provisions that provide construction allowances to customers who meet certain eligibility requirements and are “grandfathered” into the previously-permitted allowances. Under its “grandfathered” provision, the construction allowance would be available to customers whose line extensions were installed prior to August 7, 2023, or to new customers who submitted an application for service that was

⁷ Amended Advice Letter No. 40, Apr. 5, 2024.

⁸ See Trial Staff’s Notice of Withdrawal of Intervention by Right, filed Apr. 5, 2024; Conditional Withdrawal of Intervention of the Office of the Utility Consumer Advocate, filed Apr. 5, 2024.

⁹ Fourth Revised Tariff Sheet, p. 1, filed Dec. 29, 2023.

approved or pending as of August 7, 2023, and who submitted a permit application to the local government with permitting authority either approved or pending as of August 7, 2023.¹⁰ For properties that fall under the “grandfathered” provision, the Fourth Revised Tariff Sheet provides that the Company “shall, at its expense, install meters and meter connections” at its customers’ properties.¹¹

20. Black Hills’ Amended Advice Letter No. 40, issued April 5, 2024, states that the only further amendment made to Tariff Sheet No. R41 is “to include the costs for both meters and regulators” for customers in its Rate Area 3. The Fourth Revised Tariff Sheet inadvertently omitted the cost of regulators for customers in this area. The Amended Fourth Revised Tariff Sheet corrects this error by incorporating new, larger figures which calculate the cost of both meters and regulators.¹²

III. LIFTING OF SUSPENSION

21. By Decision No. C24-0060, the Commission suspended the proposed effective date of Tariff Sheet No. R41 filed with Advice Letter No. 40 up to and including May 28, 2024. Subsequently, by Decision No. R24-0339-I, issued May 17, 2024, the undersigned ALJ extended the suspension pursuant to § 40-6-111(1), C.R.S., to ensure that the Commission had sufficient time to issue a final Decision in this Proceeding before the expiration of the suspension. The proposed effective date of Tariff Sheet No. R41 is thus currently suspended.

22. UCA and Staff withdrew their respective Interventions on the same date that Black Hills filed its Amended Advice Letter No. 40.

¹⁰ *Id.*

¹¹ *Id.* at p. 2.

¹² Amended Advice Letter No. 40, p. 1.

23. The parties to this Proceeding resolved any outstanding issues pertaining to the Black Hills' Amended Advice Letter No. 40 and the modifications to Tariff Sheet No. R41 and there appears to be no need for hearing at this time. Accordingly, it appears that the suspension may be lifted, and the proposed tariff sheet may be allowed to go into effect by operation of law.

24. Like its original Advice Letter No. 40, Black Hills' Amended Advice Letter No. 40 proposes an effective date of the modified Tariff Sheet No. R41 of January 29, 2024. As now amended, the proposed tariff pages could go into effect potentially imposing retroactive rates for meters and regulators.

25. In order to ensure the prospective application and imposition of Black Hills' rates for new customers receiving meters and regulators, Black Hills must further amend the effective date of Tariff Sheet No. R41 through a second amendment to Advice Letter No. 40 to incorporate an effective date not sooner than the date this Recommended Decision becomes a decision of the Commission.

26. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Notice of Withdrawal of Intervention by Right filed by Trial Staff of the of the Colorado Public Utilities Commission on April 5, 2024, is acknowledged.

2. The Conditional Withdrawal of Intervention of the Office of the Utility Consumer Advocate on April 5, 2024, is likewise acknowledged.

3. Before this Recommended Decision becomes a decision of the Commission, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy shall file a Second Amended

Advice Letter No. 40 and Second Amended Fourth Revised Sheet No. R41 incorporating an effective date that is not sooner than the date this Recommended Decision becomes a decision of the Commission (i.e., at least 20 days following issuance, in absence of any exception).

4. Consistent with the above discussion, suspension of the proposed effective date of the tariff sheet by Decision No. C24-0060, is lifted.

5. 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.

6. 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 20 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.

7. 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

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

Rebecca E. White,
Director