

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 (“GCA”) 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 BECOME EFFECTIVE ON MARCH 4, 2019.

**COMMISSION DECISION DENYING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: July 8, 2020
Adopted Date: July 1, 2020

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission denies the Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0372 (Application for RRR) filed by Black Hills Colorado Gas, Inc. (Black Hills or the Company) on June 8, 2020. In the Application for RRR, Black Hills requests that the Commission reconsider certain rulings set forth in the Commission's Decision No. C20-0372, issued in this Proceeding on May 19, 2020 (Decision on Exceptions). We deny the Company's requests in RRR and uphold the findings and conclusions in the Decision on Exceptions in their entirety.

B. Background

2. Black Hills commenced this rate case proceeding with the filing of Advice Letter No. 1 on February 1, 2019. Through this filing, the Company proposed to consolidate the rates, tariffs, and service offerings of its two predecessor gas utilities: Black Hills/Colorado Gas Utility Company, Inc. (BHGU), the legacy gas utility acquired from Aquila, Inc. in 2008; and Black Hills Gas Distribution, LLC (BHGD), the SourceGas companies acquired in 2016. Black Hills proposed to consolidate the three existing base rate areas of BHGU and BHGD into a single statewide base rate area for purposes of establishing an overall revenue requirement for Black Hills. Black Hills submitted a single revenue requirement study and a single Class Cost of Service Study (CCOSS) in support of this rate case. For purposes of bill mitigation, however, Black Hills proposed to implement two sets of base rates for two newly defined base rate areas. The base rates filed with Advice Letter No. 1 recover a revenue requirement deficiency of approximately \$2.5 million. Black Hills subsequently revised the revenue requirement deficiency to \$3.5 million but did not propose modified base rates in the consolidated rate schedules. In addition to base rate area consolidation, Black Hills proposed to: combine the

seven existing gas cost adjustment (GCA) areas of BHGU and BHGD into three newly defined GCA areas; implement a Distribution System Integrity Rider (DSIR) to allow current recovery of system safety and integrity investments; and modify the construction allowances for new customer connections.

3. Recommended Decision No. R19-1033, issued December 27, 2019, by Administrative Law Judge (ALJ) Conor F. Farley (Recommended Decision), permanently suspended the tariff sheets filed by Black Hills with Advice Letter No. 1 and ordered Black Hills to file modified rates and tariff sheets consistent with the terms of the Recommended Decision. The Recommended Decision concluded the evidentiary record was sufficiently developed to allow the ALJ to decide the Phase I issues raised in Advice Letter No. 1, but not to allow the ALJ to find and conclude that Black Hills' base rate area consolidation proposal and other Phase II issues, the Company's request for a DSIR, and the Company's requested changes to the construction allowances yielded just and reasonable rates and were in the public interest. Because of these flaws and deficiencies, the Recommended Decision decided the Phase I issues but denied Black Hills' remaining requests. The Recommended Decision ordered the Company to implement a General Rate Schedule Adjustment (GRSA) to adjust current rates proportionally for each of the three existing base rate areas. By approving, in part, a Motion to Approve a Partial Stipulation and Settlement, the Recommended Decision granted the formation of three newly defined GCA regions. The Recommended Decision ordered Black Hills to file a new Phase II rate case and new requests to approve its DSIR and construction allowance proposals.

4. Black Hills and other parties to this Proceeding filed exceptions to the Recommended Decision on January 16, 2020, requesting that the Commission reverse or clarify

certain determinations made by the ALJ in the Recommended Decision. Black Hills and other parties filed responses to the exceptions on January 30, 2020.

5. On May 19, 2020, the Commission issued the Decision on Exceptions granting, in part, and denying, in part, Black Hills and the other parties' exceptions. The Commission's Decision on Exceptions permanently suspended the tariff sheets filed under Advice Letter No. 1. The Commission upheld the ALJ's determination to deny the Company's proposed base rate area consolidation and other Phase II issues, the DSIR, and the requested changes to the construction allowances. The Commission ordered Black Hills to file, within six months, for approval of a DSIR and a new Phase II rate case, and no later than 30 days after a final decision in the Phase II rate case, for approval of changes to the construction allowances. The Commission ordered the Company to file modified rates and tariff sheets consistent with the terms of the Decision on Exceptions and the Recommended Decision, as adopted or modified by the Decision on Exceptions. The Commission ordered that the compliance tariff include tariff sheets and rate schedules that continue the implementation of Black Hills' three separate base rate areas and set forth the existing Commission-approved base rates for each of the three base rate areas to be modified by three new separate GRSA, consistent with the Phase I determinations in the Decision on Exceptions and the Recommended Decision, as adopted or modified by the Decision on Exceptions.

6. On June 8, 2020, Black Hills filed its Application for RRR requesting that the Commission reconsider certain rulings set forth in the Decision on Exceptions.

7. On June 11, 2020, Black Hills made a tariff compliance filing in Proceeding No. 20AL-0252G in accordance with the Decision on Exceptions. Black Hills filed the new rates on tariff sheets within the new consolidated Colo. P.U.C. No. 1 tariff. Black Hills explains

in Advice Letter No. 2 that, consistent with the Decision on Exceptions, the base rates for all gas sales and transportation services within the consolidated Colo. P.U.C. No. 1 tariff continue the three separate base rate area schedules previously reflected in the Company's successor tariff books. The new GRSAs are: a negative 6.510 percent for Rate Area 1,¹ a positive 17.022 percent for Rate Area 2,² and a negative 5.621 percent for Rate Area 3.³ The change in rates cause an overall decrease in the Company's annual base rate revenues of approximately \$2.3 million.

C. Findings and Conclusions

1. Denial of Phase II, DSIR, and Construction Allowance Proposals

8. In its Application for RRR, Black Hills asserts that the Commission "was presented with a comprehensive record sufficient to fulfill its statutory mandate to set just and reasonable rates" for the Company's customers and to "effectively replace the existing rates for these customers that were last established in Phase II proceedings in 2008."⁴ Black Hills contends that, in rejecting the Company's proposed base rate area consolidation, the Commission "failed to fully consider the application of cost causation principles in the context of its analysis" and "seems to ignore the fundamental fact that the process of using average costs to allocate and design rates within any geographic area will *always result* in some customers paying more than their true cost of service and others paying less."⁵ Black Hills further contends the Commission "fails to redesign the current geographical base rate areas in a manner that is just and

¹ Rate Area 1 has approximately 75,000 ratepayers (~67,400 residential) in primarily Western Slope communities, such as Montrose, Glenwood Springs, and Aspen, as well as northern Front Range, such as Firestone and Erie.

² Rate Area 2 has approximately 23,000 ratepayers (~19,700 residential) in: (a) North Eastern plains communities, such as Yuma and Wray; (b) Arkansas Valley communities, such as La Junta and Rocky Ford; and (c) a few communities in the Southwest, such as Pagosa Springs.

³ Rate Area 3 has approximately 86,000 ratepayers (~80,000 residential) in primarily Front Range communities, such as Castle Rock, Monument, and Fountain. This rate area also includes some more rural communities on the eastern plains along the I-70 corridor.

⁴ Black Hills Application for RRR p. 1 (June 8, 2020).

reasonable[.]”⁶ Black Hills asserts the current base rate areas were designed based on CCOSs developed in prior settled proceedings and do not reflect “any rational geographical grouping of the Company’s customers.”⁷ Black Hills challenges the Commission’s determination to start with the presumption that the existing base rate areas result in just and reasonable rates. After raising these objections, Black Hills states that it will nonetheless comply with the Commission’s determination that all Phase II, DSIR, and construction allowance issues be considered in new, separate proceedings based on a new record.

9. After careful consideration of each of these objections we affirm our findings and conclusions in the Decision on Exceptions.

10. First, Black Hills’ claim that the Commission was presented with a comprehensive and sufficient record is unsupported by the procedural history of this case and the ALJ’s findings in the Recommended Decision. In its exceptions to the Recommended Decision, Black Hills objected that the Commission had unlawfully denied the Company’s proposals on the Phase II issues, DSIR, and changes to the construction allowances. Black Hills claimed the Commission had “refuse[d] to fashion a just and reasonable resolution based on the expansive evidence in this record.”⁸ In the Decision on Exceptions, the Commission considered and rejected this claim. The Commission instead agreed with the ALJ’s Recommended Decision that “flaws” during the course of the Proceeding led to a record that was “substantially deficient in many areas.”⁹ The Commission agreed with the ALJ that it was predictable the depth and breadth of issues raised by the Company’s advice letter would strain the Commission’s and

⁵ Black Hills Application for RRR p. 1.

⁶ Black Hills Application for RRR p. 2.

⁷ Black Hills Application for RRR p. 2.

⁸ Black Hills Exceptions p. 3 (Jan. 16, 2020).

⁹ Decision on Exceptions ¶ 16 (citing Recommended Decision ¶ 11).

intervenors' resources and "lead to a less than fulsome" record;¹⁰ that Black Hills filed updates and corrections to the revenue requirement study that, coupled with the cap on the revenue requirement at the original amount, meant the base rates in the tariff sheets were not cost-based and caused confusion about whether the parties and the Commission should focus on the original revenue requirement study or the revised version;¹¹ and that Black Hills only filed individual CCOSs for the existing base rate areas late in the Proceeding, with little analysis and leaving intervenors and the ALJ comparatively little time to review the results and develop alternatives to the Company's rates contained in the initial advice letter filing.¹² Black Hills' renewed objection on RRR that the record was sufficient fails to account for these significant flaws. We thus affirm our findings and conclusions in the Decision on Exceptions that Black Hills failed to meet its burden of proof to support its proposals.

11. Next, we find no merit to Black Hills' claim that the Commission, in denying the Company's proposed base rate area consolidation, failed to fully consider cost causation and ignored the fact that using average costs will always result in some customers paying more or less than their cost of service. This claim ignores the Commission's reasoning and explanation in the Decision on Exceptions. The Commission found that Black Hills had "failed to make a persuasive case why spreading costs to customers in other areas to reduce those bill impacts results in just and reasonable rates or is in the public interest."¹³ The Commission agreed with intervenor Staff of the Public Utilities Commission (Staff) that spreading costs among a greater number of customers is not necessarily a benefit to all of those customers. And the Commission concluded that Black Hills had failed to make a sufficient case for why it is just and reasonable

¹⁰ Decision on Exceptions ¶ 16 (citing Recommended Decision ¶ 6).

¹¹ Decision on Exceptions ¶ 16 (citing Recommended Decision ¶ 7).

¹² Decision on Exceptions ¶ 16 (citing Recommended Decision ¶ 8).

¹³ Decision on Exceptions ¶ 45.

and in the public interest for significant costs incurred in one area to be spread to customers in another area, particularly since the Company itself conceded that there exist real differences among the systems serving those customers. Black Hills had opportunity in this Proceeding to make its case for why consolidation of the existing base rate areas was just, reasonable, and in the public interest. The Company failed to put forth sufficient argument and support for why joining these areas for rate purposes made sense in terms of the underlying economics of the resulting rates, the diverse set of customers on a statewide basis, the varying geographic characteristics, and the potentially significant differences in needed infrastructure improvements. The Commission judiciously and reasonably concluded that it would not depart from the accepted ratemaking principle of cost causation and approve the level of subsidization proposed by the Company on the record put forth by the Company in this Proceeding.

12. Finally, we affirm our determination that it was appropriate to start with the presumption that the existing base rate areas result in just and reasonable rates. Contrary to Black Hills' suggestion in RRR that the existing base rate areas are outdated remainders from past settled proceedings and do not reflect any rational geographic grouping, the Commission found in the Decision on Exceptions that there are significant existing rate disparities among these areas, some of which relate directly to geographic and other differences. The Commission cited Black Hills' witness Stoffel's testimony admitting to "difference of the systems."¹⁴ The Commission cited the Company's own admission that substantial mitigation would be needed to implement its consolidated rates and that those mitigated rates would not be cost-based.¹⁵

¹⁴ Decision on Exceptions ¶ 46 (citing August 5, 2019 Hrg Trans (Stoffel) 206:22-207:5) ("If you look at the difference of the systems, and where they are located, and the pit facilities and terrain and extensions, and all of those things ... I think that it shows that, the kind of investments, and the relative number of customers, and, so, that results in these differences.").

¹⁵ Decision on Exceptions ¶ 46. *See also* Recommended Decision ¶ 271 (ALJ stating, "BHCG concedes that 'rates should be fully cost-based' but that the statewide mitigated rates it is proposing are not cost-based and instead result

Company witness Stoffel explained in testimony, “The Company’s proposed new base rates were ‘mitigated,’ in that the underlying costs were not based solely on the class cost of service, but instead incorporated both intraclass and interclass cost shifts that were intended to reduce the impact of moving to full cost-based rates.”¹⁶ Thus the Commission properly recognized and concluded that these base rate areas *continue to* represent rational geographic groupings of customers and declined, on the record put forth by the Company in this Proceeding, to disrupt those historical groupings.

2. Exclusion of Post-Base Period Capital Additions and Adjustments

13. The Recommended Decision disallowed the Company’s proposal to include in rate base an additional \$35.3 million of capital additions and adjustments, representing additional plant placed in service between July 1, 2018 and December 31, 2018. The ALJ concluded these investments were “ordinary-course-of-business investments for ongoing gas operations” that did not merit *pro forma* adjustment to the Company cost of service.¹⁷ The ALJ further found that including these investments would be inconsistent with the matching principle “because, given their magnitude in aggregate, they would undermine the integrity of the interrelationship between revenues, expenses, and investments in the test year.”¹⁸ The ALJ concluded that Black Hills used different methods to calculate the rate base for the test year versus the post-period, which added further complication in terms of matching “because they raise questions concerning the integrity of the interrelationship between revenues, expenses, and investments in the test year.”¹⁹ The ALJ analyzed previous Commission decision regarding significant *pro forma*

in the shifting of costs between and within classes, as revealed by the charts above.”) (citing Hrg Exh 136 (Stoffel CCOSS Direct) at 4:18-21).

¹⁶ Hrg Exh 136 (Stoffel CCOSS Direct) at 4:18-21.

¹⁷ Recommended Decision ¶ 114.

¹⁸ Recommended Decision ¶ 115.

¹⁹ Recommended Decision ¶ 116.

adjustments related to post-test year capital additions and concluded those decisions “do not dictate a different outcome in this proceeding” in relation to the ALJ’s findings and conclusions.²⁰

14. In support of his findings, the ALJ explained the concepts of test year and the matching principle. The ALJ stated:²¹

The rate setting process begins with the selection of a test year that is used to evaluate and to adjust (as necessary) the interrelationships of a utility’s revenue, expense, and capital investment to determine whether the utility has a revenue excess or deficiency. These components should correspond to each other over the same time period or according to the same operating conditions. This is known as the “matching principle” and it is designed to ensure “that the cost of service reflects the operational relationships and interplay between rate base, expenses, and revenues in a manner that is representative of the period when the resulting rates will be in effect.”

15. The ALJ also noted that parties to the Proceeding had disagreed whether the test year in this Proceeding should be the twelve months ending June 30, 2018 with *pro forma* adjustments, the twelve months ending June 30, 2018 without *pro forma* adjustments, or the twelve months ending December 31, 2018.

16. In its exceptions to the Recommended Decision, Black Hills requested that the Commission reverse the ALJ’s disallowance of the post-period capital additions and instead approve the Company’s *pro forma* adjustment. Black Hills stated the disallowed plant comprised nearly 13 percent of the total rate base it requested in this Proceeding. Black Hills argued the regulatory lag in recovering this \$35.3 million investment, which the Company claimed, “has been providing service to customers for *more than a year*,” would be punitive.²²

17. Black Hills further argued in its exceptions that the request to include the post-period capital additions was consistent with other *pro forma* adjustments approved in rate cases

²⁰ Recommended Decision ¶ 122.

²¹ Recommended Decision ¶ 70 (quoting Proceeding No. 11AL-382E, Decision No. C11-1373 ¶ 51 (Dec. 22, 2011)).

²² Black Hills Exceptions p. 37.

over the past ten years that allowed recovery of plant investments placed in service after the end of the Historical Test Year (HTY) adopted in those proceedings. Black Hills pointed to past decisions that it claimed demonstrate changing ratemaking policies on the matching principle and that the Commission has “relaxed its historical restriction including post-HTY plant in rate base.”²³ The Company argued that upholding the Recommended Decision would “signal a major break in the Commission’s application of its ratemaking policy with regard to post-HTY plant.”²⁴ Black Hills claimed the ALJ had misapplied the matching principle in his analysis. Black Hills conceded the matching principle is a general concept that should be applied to ensure the interrelationships among investments, revenues and expenses are maintained but argued that it is “not a hard and fast principle” and is not one that has been used by the Commission to disallow plant in-service of the size in this case.²⁵

18. In response to Black Hills’ exceptions, the OCC supported the disallowance and pointed to the OCC’s testimony and argument opposing the \$35.5 million “capital reach.” The OCC supported the ALJ’s determination that the rate base additions were not extraordinary but instead were made in the ordinary course of business. The OCC reiterated its position that the “capital reach” violated the matching principle. The OCC also restated its assertion that Black Hills could have waited 18 days to file its case in order to use the full calendar year 2018 per-book data as its test year.

19. In the Decision on Exceptions, the Commission analyzed in detail the findings and conclusions of the Recommended Decision addressing the proposed post-period capital additions. The Commission denied Black Hills’ exceptions, explaining many factors are considered when the Commission allows such additions. The Commission concluded the ALJ

²³ Black Hills Exceptions p. 40.

properly rejected in this Proceeding the Company's suggestion that the "significant" size of these post-test year investments, when considered in the aggregate, renders them extraordinary. The Commission found Black Hills' exceptions mischaracterized the ALJ's analysis in asserting the ALJ's disallowance represented a "major break" from "relaxing" the matching principle. The Commission concluded the ALJ's focus was not on strict adherence to matching but on the actual interrelationship between revenues, expenses, and investments in the test year. The Commission found the ALJ's disallowance was based on a finding that the proposed post-test year adjustments do not "sufficiently" adhere to the matching principle and therefore would not result in "just and reasonable" rates.

20. In its RRR, Black Hills argues that the Commission erred by denying the Company's proposed post-period capital additions. Black Hills asserts the Commission should have instead ordered modifications to the revenue requirement that would meet what the Company calls the Commission's "ratemaking standards" defined by the Commission's decisions rendered for Public Service Company of Colorado (Public Service) three months earlier in in Proceeding No. 19AL-0268E. Black Hills alleges the Commission ignored the substantial revenue requirement impact of the post-period capital additions, that a significant portion of the capital additions were integrity-related investments, and that no party challenged the prudence or reasonableness of the investments. Black Hills states the Decision on Exceptions provides no explanation why the Commission declined to direct that the revenue requirement in this Proceeding be modified to reflect a test year that "would have sufficiently cured the technical inconsistencies found to exist by the ALJ in the Company's proposed approach to calculate the revenue requirement impact of the Post-Base Period Additions through a *pro forma*

²⁴ Black Hills Exceptions p. 41.

adjustment.”²⁶ Black Hills stresses that inclusion of the post-period capital additions is warranted “given the significance of this investment in ensuring that the final rates resulting from this proceeding are compensatory.”²⁷

21. Black Hills claims the Commission’s disallowance constituted legal error because it was inconsistent with the Commission’s approach in the recent Public Service case. Black Hills argues the Colorado Supreme Court has recognized that “consistency in administrative rulings is essential, and previous rulings are entitled to great weight in subsequent proceedings.”²⁸ Black Hills argues the Commission “bears the burden of providing a reasoned explanation supported by substantial evidence in the record for any departure from previous practice or policy.”²⁹ Black Hills argues the Commission disregarded the important policy change it had just adopted and the practice it had just followed only several weeks earlier in Public Service’s case without discussion or explanation.

22. The Commission denies Black Hills’ RRR on this issue and upholds the findings and conclusions in the Decision on Exceptions.

23. As an initial matter, we find that Black Hills selectively quotes from case law to support its contentions that “consistency in administrative rulings is essential, and previous rulings are entitled to great weight in subsequent proceedings”³⁰ and that the Commission “bears the burden of providing a reasoned explanation supported by substantial evidence in the record for any departure from previous practice or policy.”³¹ We find the conclusion in the cited cases,

²⁵ Black Hills Exceptions p. 39.

²⁶ Black Hills Application for RRR pp. 4-5.

²⁷ Black Hills Application for RRR p. 7.

²⁸ Black Hills Application for RRR p. 3 (citing *Colorado Ute Electric Ass’n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 295 (1967)).

²⁹ Black Hills Application for RRR p. 3 (citing *B & M Serv.*, 429 P.2d at 295).

³⁰ Black Hills Application for RRR p. 3 (citing *Colorado Ute*, 602 P.2d at 865; *B & M Serv.*, 429 P.2d at 295).

³¹ Black Hills Application for RRR p. 3 (citing *B & M Serv.*, 429 P.2d at 295).

and other relevant case law, is that the Commission acting in its unique legislative rate-making capacity *can change its position* from proceeding to proceeding, based on the evidence of each record before it.³² As the Colorado Supreme Court has stated, “Rate fixing involves more than finding of facts and applying them. It involves also to a considerable extent many questions of judgment or discretion on the part of the PUC ... [T]he PUC must have before it evidence on the subject matter, but the determination as to what is a fair, just and reasonable rate is a matter of judgment or discretion.”³³

24. Contrary to Black Hills’ claim in its RRR that the Commission “summarily dismissed” the Company’s arguments in a single paragraph, the Commission fully considered the Company’s arguments regarding the proposed post-period capital additions. The Decision on Exceptions analyzes in detail the findings and conclusions of the Recommended Decision addressing Black Hills’ proposed capital additions. The Commission explained that many factors are considered when it determines whether to allow such additions. The Commission concluded, in this Proceeding, the ALJ properly rejected the Company’s suggestion that the significant size of these investments renders them extraordinary. The Commission found that Black Hills mischaracterized the ALJ’s analysis when arguing in its exceptions that the ALJ’s rejection of these additions represented a “major break” from “relaxing” the matching principle. The Commission concluded the ALJ’s focus was not on strict adherence to matching but on the actual interrelationship between revenues, expenses, and investments in the test year. The Commission

³² See, e.g., *Glustrom v. PUC*, 280 P.3d 662, 669 (Colo. 2012) (“Indeed, ‘the [PUC] is not bound by a previously utilized methodology when it has a reasonable basis, in the exercise of its legislative function, to adopt a different one.’”) (quoting *CF & I Steel, L.P. v. PUC*, 949 P.2d 577, 584 (Colo. 1997)); *Pub. Serv. Co. of Colorado v. PUC*, 26 P.3d 1198, 1205 (Colo. 2001) (“The Commission’s decision making power is not limited by *stare decisis* when a reasonable basis exists to depart from a previous decision.”); *CF & I Steel*, 949 P.2d at 584 (“The Commission is not bound by a previously utilized methodology when it has a reasonable basis, in the exercise of its legislative function, to adopt a different one.”).

³³ *CF & I Steel*, 949 P.2d at 589 (quoting *Mountain States Tel. & Tel. Co. v. PUC*, 513 P.2d 721, 726 (1973)).

concluded the ALJ's disallowance was based on a finding that the post-test year adjustments do not "sufficiently" adhere to the matching principle and therefore would not result in "just and reasonable" rates in this Proceeding.

25. Black Hills' arguments on RRR presume that this Black Hills case is comparable to the Public Service case, without sufficient argument or support for this comparison. Public Service is a differently situated utility than Black Hills with different revenue requirements, different capital structures, and different management. As Black Hills is well aware, the Commission does not merely overlay a one-size fits all analysis over all filed rate cases, but as per its legislative charge, reviews each unique rate case based on the evidence of record in each proceeding.

26. As a general matter, rate case proceedings filed by other utilities, including Public Service in Proceeding No. 19AL-0268E, are premised on the assumption that the utility is seeking necessary compensation based on accurate measures of its revenue requirement. *Pro forma* adjustments related to post-period capital additions are generally supported by a credible showing that the disallowance of proposed out-of-test year additions to rate base would result in financial harm that should not otherwise be addressed in a separate future rate case based on a later test year to accommodate a fresh application of the matching principle. As the OCC pointed out in this Proceeding, Black Hills could have waited a matter of weeks to file its rate case in order to use the full calendar year 2018 per-book data as its test year. Black Hills also could have chosen a much different path in April 2019, perhaps withdrawing Advice Letter No. 1 and filing a new case that included the capital additions at issue here.

27. It is also notable how different are the two rate cases put forth by Black Hills and Public Service. Black Hills mischaracterizes the Public Service case in describing it as "similar

circumstances” and contending the Commission had “similar opportunity” in both cases.³⁴ In its decision establishing new rates in Proceeding No. 19AL-0268E, the Commission noted that Public Service had stressed in its proceeding that the goal was “to set rates reflective of the costs being incurred by the Company when the new rates become effective.”³⁵ The Commission noted that Public Service had agreed to adoption of a 13-month average valuation of rate base in concert with the 2019 current test year after concluding that use of average rate base “better adheres to the ‘matching principle,’ or the ‘well-recognized principle of regulatory matching between investments, revenues and expenses in a test year’ when rates are in effect.”³⁶ In its Rebuttal Testimony, Public Service explained, although the move to the 13-month average valuation resulted in a \$30 million decrease to its revenue deficiency, it would accept this change, agreeing with Staff that “[t]he matching principle is a core tenet of utility regulation and constructing a just and reasonable revenue requirement[.]”³⁷ In stark contrast here, Black Hills has taken the position that the Commission has in practice strayed from application of the matching principle and contended that the ALJ’s disallowance of the post-period capital additions was based on a “misapplication” of the matching principle.³⁸ Thus not only has Black Hills failed to provide sufficient argument or support for this comparison, the premise that the two concurrent cases are comparable is false.

28. Finally, with respect to the Company’s claim of “compensatory effects,” it is readily apparent that Black Hills itself diminished the weight of such arguments by its own

³⁴ See Black Hills Application for RRR pp. 3 and 4 (describing the two rate cases as “similar circumstances”) and p. 7 (describing the two rate cases as “similar opportunity”).

³⁵ Proceeding No. 19AL-0268E, Decision No. C20-0096 ¶ 54 (Feb. 11, 2020).

³⁶ Proceeding No. 19AL-0268E, Decision No. C20-0096 ¶ 55 (Feb. 11, 2020) (quoting Hrg Exh 103 (Blair Direct) p. 51).

³⁷ Proceeding No. 19AL-0268E, Hrg Exh 102 (Jackson Rebuttal) p. 4.

³⁸ See, e.g., Black Hills Exceptions p. 39 (asserting “‘matching principle’ ... is not a hard and fast principle” and suggesting “the Commission has strayed from strict application of the matching principle where the circumstances warrant”); *id.* (asserting “disallowance of nearly 13% of rate base is a misapplication of the matching principle”).

decisions in April 2019. First, Black Hills elected not to revise the rates set forth in its initial February 1, 2019 advice letter filing to reflect a nearly \$1 million shortfall in revenue requirements as a result of errors in the underlying calculations presented in the Company's Direct Testimony. Second, Black Hills decided more generally not to seek "to increase its requested revenue increase from the [amount] originally proposed in the February 1, 2019 advice letter filing."³⁹ By these actions, Black Hills abandoned fundamental cost of service ratemaking principles at this juncture and pursued a novel case. Unlike the case tried by Public Service in Proceeding No. 19AL-0268E, Black Hills' case was built primarily on comparisons of existing rates to the Company's initially proposed rates and their associated bill impacts and not on a demonstrated need to increase rates from existing levels to cover discrete increments of cost-based revenue requirements. Notwithstanding Black Hills' abandoning cost-of-service ratemaking, the ALJ analyzed previous Commission decisions regarding significant *pro forma* adjustments related to post-test year capital additions and concluded that the investments were ordinary-course-of-business investments for ongoing gas operations that do not merit a *pro forma* adjustment to the Company's cost of service.

3. Disallowance of 20 Percent of Estimated \$950,000 Rate Case Expenses

29. In the Recommended Decision, the ALJ concluded that, after review of the arguments and evidence presented by the parties, it was appropriate to deny 20 percent of the \$950,000 in rate case expenses requested by Black Hills. The ALJ explained the 20 percent disallowance is the amount the ALJ estimated Black Hills' "mistakes and flawed approach" during the course of this Proceeding "contributed to increasing the costs."⁴⁰ The ALJ reasoned

³⁹ Notice of Filing of Updated and Corrected Revenue Requirement Study, filed by Black Hills on April 24, 2019.

⁴⁰ Recommended Decision ¶ 371.

that it would be “unfair to expect the ratepayers to shoulder those costs.”⁴¹ The ALJ denied Black Hills’ request to continue the Proceeding and submit a summary of final rate case expenses updating the estimate of \$950,000 in the Company’s Rebuttal Testimony.⁴²

30. The ALJ noted that Staff had proposed the Commission deny recovery of rate case expenses resulting from Black Hills’ revision of its initial case filed in February 2019 that resulted in the filing of the Revised, Corrected, and Supplemental Direct Testimony, estimated to be approximately \$44,000. The ALJ noted that, although not quantified, Staff also recommended disallowing any expenses incurred as a result of the Supplemental Proceedings. The ALJ further noted the OCC had taken the position that the Commission should deny Black Hills’ recovery of all rate case expenses, reasoning the Company had not supported its rate requests or, at a minimum, the Company should not be allowed additional rate case expenses incurred because of its errors and its April 2019 filing.

31. In its exceptions to the Recommended Decision, Black Hills objected that the Recommended Decision “effectively caps the potential rate case expenses at \$950,000 and disallows 20% of the estimated rate case expense.”⁴³ Black Hills objected that “capping” rate case expense at the \$950,000 estimate prohibited the Company from submitting its final rate case expense at the conclusion of this proceeding and was contrary to “well-established Commission policy to allow utilities to recover their actual rate case expenses.”⁴⁴ Black Hills further argued the 20 percent disallowance was not based on the record but instead reflects a “revisionist history permeating the [Recommended Decision] that assigns blame solely to [Black Hills] for the

⁴¹ Recommended Decision ¶ 371.

⁴² Recommended Decision ¶ 368 (citing Hrg Exh 121 (Stoffel Rebuttal) at 47:4-11) (Company witness Stoffel reporting the Company had accrued \$707,000 in rate case expenses up to the point of preparing rebuttal testimony and expected the final expense amount to be close to \$950,000).

⁴³ Black Hills Exceptions p. 54.

⁴⁴ Black Hills Exceptions p. 54.

‘mistakes and flawed approach to this proceeding.’”⁴⁵ Black Hills stated there is no dispute that rate case expenses are a legitimate cost of utility service, necessitated by the Commission’s regulation, and the Company has a right to recover all reasonable operating expenses, including rate case expenses.

32. In response to Black Hills’ exceptions, both Staff and the OCC urged the Commission to uphold the ALJ’s decision to disallow 20 percent of the \$950,000 of rate case expenses. They argued the 20 percent disallowance was supported by the Company’s mistakes and flaws in presenting and defending its positions in this Proceeding and that the \$950,000 estimate was supported by the record.

33. In its response, Staff pointed to the first paragraphs of the Recommended Decision, which Staff stated “painstakingly and accurately detail the mistakes and flaws committed by [Black Hills] resulting not only in inordinately high rate case expenses, but also, a colossal waste of the Commission’s valuable time.”⁴⁶ Staff concluded the Company’s \$950,000 projection “constitutes a remarkably high amount considering the Company requested an approximately \$3.5 million revenue requirement increase (capped at \$2.5 million)”⁴⁷ and the 20 percent deduction of \$190,000 “is quite generous” such that “[f]rankly, the Company is lucky the deduction wasn’t larger.”⁴⁸

34. In its response, the OCC noted, as one example, that the Company itself provided evidence of an estimated \$44,168 of rate case expenses that were incurred by it as a result of its “error” which necessitated the filing of a revised revenue requirement study in April 2019.⁴⁹ The OCC argued this was in addition to the Company’s refusal to provide additional CCOSs beyond

⁴⁵ Black Hills Exceptions p. 55 (quoting Recommended Decision ¶ 371).

⁴⁶ Staff Response to Exceptions p. 49 (Jan. 30, 2020).

⁴⁷ Staff Response to Exceptions p. 50.

⁴⁸ Staff Response to Exceptions p. 51.

a single statewide CCOSS prior to the first evidentiary hearing. The OCC also argued that Black Hills agreed to the \$950,000 cap on rate case expenses, pointing to Company witness Stoffel's testimony providing that estimate.

35. The Decision on Exceptions upheld the ALJ's findings and conclusions. The Commission found the ALJ's recommendation to disallow recovery of 20 percent of the estimated amount of \$950,000 was reasonable and supported by the record. The Commission agreed with the response of Staff and the OCC that Black Hills' flawed case contributed to higher than necessary expenses and that it was reasonable to disallow recovery of a portion of these additional costs.

36. In its Application for RRR, Black Hills challenges that the 20 percent disallowance is not supported by any evidence and that it is applied to estimated, instead of actual, rate case expenses. Black Hills contends the Recommended Decision, as upheld by the Decision on Exceptions, offers insufficient detail of the evidence relied upon to determine the 20 percent amount. Black Hills asserts the only description of how the 20 percent amount was developed is the explanation by the ALJ that this is the amount the ALJ estimates the Company's mistakes and flawed approach contributed to increasing the costs of the Proceeding.

37. Black Hills argues that the complexities of this rate case and the exhaustive list of rate and tariff changes proposed in the Company's filings is explained by the need to combine two separate utility tariffs comprehensively at one time. Black Hills adds that rate cases are naturally complex proceedings as they involve the comprehensive review of all revenues, investments and expenses. Black Hills claims that its actions in April 2019 "provoked an inordinate amount of unnecessary litigation" and maintains that its decision following the August

⁴⁹ OCC Response to Exceptions p. 26 (Jan. 30, 2020) (citing Black Hills Exceptions pp. 54-55).

2019 hearing “to prepare and submit additional CCOSS models reflecting the flow-through of its stand-alone base rate area revenue requirement studies, to provide supplemental testimony, and to participate in a supplemental hearing” was intended to prevent “a waste of resources” yet eventually caused “the expenditure of additional resources, such as the Company’s rate design consultant ... and outside counsel, with the effect of increasing the Company’s rate case expenses beyond the previously estimated \$950,000.”⁵⁰ Black Hills concludes that it should be allowed to include in its cost of service all of its actually-incurred rate case expenses.

38. Finally, Black Hills contends the Commission offered no explanation for its deviation from established Commission policy and precedent allowing for recovery of actual rate case expenses.

39. The Commission denies Black Hills’ RRR on this issue and upholds the findings and conclusions in the Decision on Exceptions.

40. We find the Commission fully considered Black Hills’ arguments on this matter in the Decision on Exceptions and properly concluded that the ALJ’s recommendation to disallow recovery of 20 percent of the estimated amount of \$950,000 was reasonable and supported by the record. The Commission agreed with the response of Staff and the OCC that Black Hills’ flawed case contributed to higher than necessary expenses and that it was reasonable to disallow recovery of a portion of these additional costs.

41. We find the 20 percent disallowance ordered by the ALJ reasonably approximates the additional legal work resulting from the Company’s blunders and its unorthodox approach to this rate case. The ALJ identified at the beginning of the Recommended Decision, as affirmed by the Commission in the Decision on Exceptions, the series of flaws and deficiencies in the

⁵⁰ Black Hills Application for RRR pp. 14-16.

Company's handling of this case that eventually led to denial of all but the Phase I issues. We find the ALJ reasonably calculated the additional time and resources to address these issues at 20 percent of the total rate case expenses the Company sought to recover in rates. We agree with the ALJ that Black Hills is not entitled to recover from ratepayers these additional expenses that were incurred by the Company's own missteps. We find the 20 percent disallowance reasonably prevents unfair cost shift to ratepayers for these failed proposals while still adequately compensating the Company for the overall litigation costs incurred in bringing this rate case.

42. We agree with the ALJ that it would be unfair to expect ratepayers to shoulder the additional costs incurred by Black Hills' mistakes and flawed approach to this Proceeding. Black Hills took a radical departure from cost of service ratemaking in this Proceeding. Black Hills elected not to propose revisions to its initial February 1, 2019 advice letter filing to reflect a nearly \$1 million shortfall in revenue requirements as a result of errors in the underlying revenue requirement calculations presented in the Company's Direct Testimony. Black Hills decided not to seek to increase its requested revenue increase from the amount originally proposed in the February 1, 2019 advice letter filing. And Black Hills justified its proposed changes in rates using comparisons of existing rates to proposed rates rather demonstrating the need to increase rates from existing levels to cover discrete increments of cost-based revenue requirements. After following this untested strategy despite multiple opportunities to change course, Black Hills failed to carry its burden of proof to support many of its requests for relief but only after incurring rate case expenses apparently now in excess of \$1 million. We find that to be an unreasonable amount of litigation expenses for a \$2.5 million requested increase in base rate revenues that already included \$800,000 of expected rate case expenses.

43. In its RRR, Black Hills still attributes its failure to secure the relief it sought in this case entirely on the parties and the Commission. The persuasive and solid opposition to most of Black Hills' substantive requests for relief in this Proceeding indicates to the Commission that a portion of Black Hills' rate case expenses were not prudently incurred because they are tied to the advancement of unreasonable, unjust, and unsupported positions as ultimately determined by the Commission in its orders. We find it proper to prevent these additional costs from being passed on to ratepayers.

44. From a policy perspective, we find the Commission should not allow utilities to incur unlimited rate case expenses that advance positions contrary both to the public interest and to the tenets of ratemaking in Colorado, which would be the result of accepting Black Hills' position that all of its actual rate case expenses incurred in this proceeding are recoverable. We find the decision to award \$760,000 of the originally estimated \$800,000 of rate case expenses is reasonable in consideration of the ALJ's and Commission's assessment of the merits of Black Hills' positions and its execution of this rate case.

4. Statements Regarding Savings from SourceGas Acquisition

45. In its initial decision referring this Proceeding to the ALJ, the Commission directed the ALJ "to examine whether the consolidation of Black Hills/Colorado Gas Utility Company Inc. and Black Hills Gas Distribution, LLC resulted in efficiencies and cost savings as reflected in the overall annual revenue requirement of \$73.2 million at issue in this Proceeding."⁵¹

46. In the Recommended Decision, the ALJ examined the issues surrounding the cost savings garnered from the acquisition of SourceGas, estimated to be approximately \$36 million

⁵¹ Proceeding No. 19AL-0075G, Decision No. C19-0194 ¶ 18 (Feb. 22, 2019).

at the corporate level.⁵² The ALJ explained that Black Hills contended \$2 million of that total accrues to the Company and was now embedded in the revenue requirement proposed in this Proceeding. The ALJ stated that Black Hills maintained the position throughout this Proceeding that no representation had been made in the SourceGas acquisition proceeding (Proceeding No. 15A-0667G) that the synergies gained from the acquisition would translate into a rate reduction. According to the Company, the synergy savings instead were expected to offset inflationary effects on utility costs and help defer rate filings. The ALJ noted that Black Hills opposed in this Proceeding any imputation of cost savings into its revenue requirement.

47. The ALJ found that, contrary to the Company's position in this Proceeding, Black Hills had stated in the acquisition proceeding that the resulting savings would lead to a rate reduction for customers. To support this finding, the ALJ cited both the settlement approved in Proceeding No. 15A-0667G, which stated the integration of the SourceGas business would entail significant costs that "create long-term efficiencies,"⁵³ and a joint motion for expedited approval of Decision No. R16-0058 issued January 22, 2016, which further stated that "BHUH's integration activities will have benefits for customers, including a rate reduction."⁵⁴ Despite these statements in the acquisition proceeding, the ALJ noted that now a rate increase, including a significant one for significant numbers of ratepayers, was at issue in this Proceeding. The ALJ concluded he was "concerned" by the contents of documents produced by the Company that "describe a strategy of acquisitions followed by delayed rate review proceedings to ensure that shareholders – and not ratepayers – receive the benefits of any cost-savings resulting from the

⁵² See generally, Recommended Decision ¶¶ 76-94.

⁵³ Recommended Decision ¶ 76 (citing Settlement Agreement filed in Proceeding No. 15A-0667G on November 17, 2015 at 6).

⁵⁴ Recommended Decision ¶ 76 (citing Unopposed Joint Motion for Expedited Approval of Recommended Decision filed in Proceeding No. 15A-0667G on January 25, 2016 at 3 (¶ 7)).

acquisitions.”⁵⁵ The ALJ added that, because Black Hills had delayed filing rate cases and because ratepayers have not seen the rate savings promised in the acquisition proceeding, Black Hills’ customers will suffer the consequences.

48. Despite these findings and concerns, in the Recommended Decision the ALJ denied Staff’s proposal that the Commission require in this Proceeding that Black Hills share with ratepayers 90 percent of the anticipated \$24 million in income tax savings resulting from the SourceGas acquisition. The ALJ concluded the record did not support Staff’s request, stating Staff failed to persuasively argue that Black Hills’ ratepayers should receive tax savings accruing to an entity different from Black Hills from which ratepayers receive gas service.

49. In the Decision on Exceptions at ¶¶ 200 and 201, the Commission reviewed the findings of the ALJ. The Commission noted the ALJ contradicts the Company’s witness in this Proceeding by reminding them that Black Hills had presented the SourceGas acquisition as leading to a savings-driven rate reduction for ratepayers. The Commission noted the ALJ identifies Black Hills Corporation’s strategy of acquisitions followed by delayed rate reviews to ensure shareholders, not, ratepayers, receive the benefits of any cost savings. The Commission concluded the ALJ had satisfied the Commission’s directive to examine the financial benefits to ratepayers of the acquisition. The Commission concluded that it appears no rate reduction has materialized for ratepayers due to the acquisition, and instead, the disaggregation of the Company’s overall revenue requirement instead has revealed the possibility that the three-year rate case moratorium advanced in the acquisition proceeding as a benefit to ratepayers may have instead delayed significant rate relief due to most of Black Hills’ customers in adherence of basic cost of service principles.

⁵⁵ Recommended Decision ¶ 85 (referring to the *Beachy Presentation*, the *2018-2023 Strategic Plan*, and the *2018-*

50. In the Decision on Exceptions at ¶¶ 211 and 212, the Commission denied Staff’s exceptions requesting that the Commission reverse the ALJ and adopt Staff’s tax savings sharing proposal. The Commission stated it was cautious that implementation of such a directive in this Proceeding would be an extraordinary extension of ratemaking. The Commission stated it shared the ALJ’s concerns about Black Hills Corporation’s strategy of acquisitions followed by delayed rate reviews but found the ALJ had carefully reviewed the merits of the Company’s requests in this Proceeding without the intent of punishment—and the Commission would do the same. The Commission concluded that it was unnecessary to use the rate setting process in this rate case to correct any revealed shortcomings of the settlement in Proceeding No. 15A-0667G.

51. In its Application for RRR, Black Hills takes issue with ¶¶ 200 and 201 of the Decision on Exceptions and requests the Commission “correct the record” as to “certain erroneous and unsupported statements” in these paragraphs.⁵⁶ Black Hills contends the Commission validates certain observations of the ALJ that were not supported by any competent evidence and are not true. Black Hills reiterates its position on the ALJ’s analysis along the same lines as its objections raised in exceptions to the Recommended Decision. Black Hills states there is no evidence in this Proceeding (or outside of this proceeding) that ratepayers were deprived of the benefit of any cost savings resulting from the SourceGas acquisition. Black Hills asserts the decision whether and when to file a rate case is the exclusive right and prerogative of utility management and the Commission retains the power to investigate and address any over-earnings during voluntary stay-out periods.

52. The Commission denies Black Hills’ RRR on this issue and upholds the findings and conclusions in the Decision on Exceptions. We find unpersuasive the Company’s claims and

2022 Strategic Plan that the ALJ compelled to be produced through Decision No. R19-0655-I, issued August 1, 2019, granting-in-part and denying-in-part Staff’s Motion to Compel).

reasoning urging that the Commission must “correct the record” and modify the discussion in the Decision on Exceptions.

53. As an initial matter, we find no merit to the Company’s claims that the ALJ’s statements were unsupported and untrue. To support the statement regarding an expected rate reduction, the ALJ cited both the settlement approved in Proceeding No. 15A-0667G, which stated the integration of the SourceGas business would entail significant costs that “create long-term efficiencies,”⁵⁷ and a joint motion for expedited approval of Decision No. R16-0058 issued January 22, 2016, which further stated that “BHUH’s integration activities will have benefits for customers, including a rate reduction.”⁵⁸ To support the statement that Black Hills had purposely pursued a strategy of acquisitions followed by delayed rate review proceedings to ensure shareholders, not ratepayers, receive the benefits of any cost-savings, the ALJ cited documents produced by the Company in this Proceeding.⁵⁹ The ALJ concluded these documents “speak for themselves” and “indicat[e] that Black Hills had no intention of filing a rate case within that timeframe [the three years after closing the acquisition] to ensure that shareholders would receive the benefit of the cost savings resulting from the acquisition.”⁶⁰ Finally, the ALJ’s conclusion that no clear rate reduction has materialized in Black Hills’ customer rates is supported by the ALJ’s explanation that a rate increase, including a significant one for significant numbers of ratepayers, is now at issue in this Proceeding.

⁵⁶ Black Hills Application for RRR p. 9.

⁵⁷ Recommended Decision ¶ 76 (citing Settlement Agreement filed in Proceeding No. 15A-0667G on November 17, 2015 at 6).

⁵⁸ Recommended Decision ¶ 76 (citing Unopposed Joint Motion for Expedited Approval of Recommended Decision filed in Proceeding No. 15A-0667G on January 25, 2016 at 3 (¶ 7)).

⁵⁹ Recommended Decision ¶ 85 (referring to the *Beachy Presentation*, the *2018-2023 Strategic Plan*, and the *2018-2022 Strategic Plan* that the ALJ compelled to be produced through Decision No. R19-0655-I, issued August 1, 2019, granting-in-part and denying-in-part Staff’s Motion to Compel). These documents are described in ¶ 40 of the Recommended Decision.

⁶⁰ Recommended Decision ¶ 85.

54. Moreover, we note the Commission and the ALJ considered the merits of the Company's numerous requests for rate relief in this Proceeding without the intent of punishment, as was alleged by Black Hills in its exceptions to the Recommended Decision. The findings and conclusions that Black Hills' disputes in its RRR with respect to the SourceGas acquisition have no effect on the Company's revenue requirement or rates in this Proceeding. To the contrary, the Commission concludes in the Decision on Exceptions that the ALJ was correct *not* to direct Black Hills to pay 90 percent of the income tax savings resulting from the SourceGas acquisition to Black Hills' customers for the reasons set forth in the Recommended Decision. The Commission found it was unnecessary to use the rate setting process in this rate case to correct any revealed shortcomings of the settlement approved in Proceeding No. 15A-0667G or to rebalance the "no net harm" findings the Commission made in the past. We affirm that outcome of this rate case is just and reasonable, both for Black Hills and its ratepayers.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0372 filed by Black Hills Colorado Gas, Inc. on June 8, 2020, is denied.
2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 1, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners