

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0395E

IN THE MATTER OF ADVICE LETTER NO. 790 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO APPROVE A BILL CREDIT FOR THE RETURN OF THE PROTECTED EXCESS DEFERRED INCOME TAX REGULATORY LIABILITY STEMMING FROM THE TAX CUTS AND JOBS ACT.

DECISION SUSPENDING TARIFF SHEETS

Mailed Date: October 23, 2020
Adopted Date: October 21, 2020

I. BY THE COMMISSION

A. Statement

1. This Decision suspends for 120 days, the tariff sheets filed by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills) with Advice Letter No. 790 on September 24, 2020. We will take up this matter again at the conclusion of Show Cause Proceeding No. 20C-0408E.

B. Discussion

1. Procedural Background

2. On February 1, 2018, by Decision No. C18-0075, the Commission opened Proceeding No. 18M-0074EG to consider the impacts of the 2017 Tax Cuts and Jobs Act (TCJA) on the revenue requirements and rates of all Colorado investor-owned electric and natural gas utilities. Utilities were directed to record and track, as a deferred regulatory liability, the difference in tax liabilities caused by the enactment of the TCJA as compared to the federal tax amounts used to establish rates currently in effect. Utilities were also ordered to file plans for tracking and monitoring of the TCJA-related deferred regulatory liability, implementing refunds

due to customers associated with the deferred regulatory liability, and updating revenue requirements and rates that reflect the prospective impacts of the TCJA.

3. On February 21, 2018, Black Hills filed its Plan to Implement in Rates the Cost Savings Benefits Tax Cut and Jobs Act (TCJA Plan). In that plan, Black Hills stated that the recalculation of its accumulated deferred income taxes resulted in excess deferred federal income tax (EDFIT). Certain deferred tax items, generally property accounts, which were subject to accelerated depreciation are considered “protected” and are subject to U.S. Tax Code rules requiring that the amortization coincide with the remaining regulatory life of the asset. The remaining deferred tax items are “non-protected,” whose amortization method is approved by the Commission.

4. On February 13, 2020, Black Hills filed a motion that would allow the return of non-protected EDFIT in the April 2020 billing cycle. The Commission did not act on the request, instead issuing Decision No. C20-0194-I on March 23, 2020, requesting additional information as to how Black Hills would refund the non-protected EDFIT and requesting information about Black Hills’ protected EDFIT refund. Black Hills did not file a response to Decision No. C20-0194-I.

5. On September 24, 2020, Black Hills filed Advice Letter No. 790, proposing to calculate the 2018 and 2019 protected EDFIT and establish a one-time bill credit for its customers during the December 2020 billing cycle.

6. Black Hills filed the testimony of Michael Harrington, Senior Manager for Regulatory and Finance, in support of Advice Letter No. 790. Mr. Harrington’s testimony also contains responses to the Commission’s requests for additional information in Decision No. C20-0194-I.

7. Black Hills also filed the testimony of Justin Klapperich, Tax Director for Black Hills. Mr. Klapperich addresses Black Hills' protected EDFIT associated with the TCJA.

8. Black Hills requests an October 25, 2020 effective date for the tariff sheets filed with Advice Letter No. 790.

9. On September 24, 2020, Staff of the Public Utilities Commission (Staff) filed a Request for Show Cause Order (Show Cause) in Proceeding No. 20C-0408E, requesting that the Commission find that Black Hills: 1) failed to implement a bill credit to refund protected and non-protected EDFIT as required by its TCJA Plan; 2) failed to provide additional information in response to Decision No. C20-0194-I; and 3) intentionally violated Commission orders.

10. Pursuant to 4 *Code of Colorado Regulations* 723-1-1302(g) of the Commission's Rules of Practice and Procedure, the Show Cause has been set for a hearing before an administrative law judge (ALJ) to be held on October 26, 2020. The ALJ must issue an interim decision within ten days of the hearing either granting the issuance of the order to show cause or dismissing the request for the order to show cause.

11. On October 16, 2020, Staff filed a Protest Letter in Proceeding No. 20AL-0395E, stating that Staff has questions about Advice Letter No. 790, changes to the amortization schedule, and the overall amortization amount. Staff requests that the Commission suspend the effective date of the tariffs associated with Advice Letter No. 790 and set the matter for hearing. Staff also notes the interrelationship of Advice Letter No. 790 and Proceeding No. 20C-0408E.

12. On October 20, 2020 the Office of Consumer Counsel (OCC) filed a Protest Letter, stating that it has concerns that Black Hills has changed the date for the bill credits for issuing the refunds and changed the amortization amount. The OCC requests that the tariff sheets be suspended and set for hearing to determine whether those changes are appropriate and

lawful, whether interest should be included in the bill credits, and whether the amortization amount is accurate.

C. Findings and Conclusions

13. The issues raised by Staff and the OCC with regard to Advice Letter No. 790 are closely related to Advice Letter No. 789, and as such, the resolution of the Show Cause Proceeding could have an impact on this Proceeding No. 20AL-0395E.

14. The ALJ in Proceeding No. 20C-0408E must issue a decision within ten days of the October 26, 2020 hearing.

15. We find it is appropriate to allow Proceeding No. 20C-0408E to conclude before taking up consideration of Advice Letter No. 790.

16. Pursuant to § 40-6-111(1)(b), C.R.S., the Commission may suspend an advice letter with attached tariff for an initial period of 120 days beyond the time when the tariff would go into effect unless the Commission, by separate order, extends the period of suspension for an additional 130 days. The initial suspension period for the tariff pages submitted with Advice Letter No. 790 shall extend through February 21, 2021.

II. ORDER

A. The Commission Orders That:

1. Pursuant to § 40-6-111(1)(b), C.R.S., the proposed effective date, October 25, 2020, of the tariff pages filed by Black Hills Colorado Electric, LLC with Advice Letter No. 790 in Proceeding No. 20AL-0395E is suspended an initial 120 days until February 21, 2021, or until further order of the Commission.

2. The Commission will take up consideration of Advice Letter No. 790 after Proceeding No. 20C-0408E concludes.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 21, 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