

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0380G

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

COMMISSION DECISION REJECTING PHASE I FILING

Mailed Date: January 06, 2021

Adopted Date: December 16, 2020

I. BY THE COMMISSION

A. Statement

1. On September 11, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or Company) filed Advice Letter No. 3 and accompanying direct testimony proposing to implement General Rate Schedule Adjustment (GRSA) riders that would increase base rates for all Black Hills natural gas customers in Colorado — a new Phase I Rate Case.

2. We reject this Phase I rate filing as contrary to the Commission's Phase II filing directive in Decision No. C20-0372 in Proceeding No. 19AL-0075G. It has been at least a decade since Black Hills has undergone a Phase II rate review. With such stale Phase II allocations the Commission is unable to ascertain whether rates approved in a Phase I rate review would be just and reasonable.

B. Background

3. On November 6, 2020, Black Hills filed in Proceeding No. 19AL-0075G a Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review and Request for Shortened Response Time (Motion). According to Black Hills, it seeks a partial, one-time variance from the

Commission's directive in Decision No. C20-0372. In that decision, the Commission required that Black Hills file an advice letter and accompanying tariff sheets to initiate a Phase II rate proceeding within six months of the date of that decision or by November 19, 2020. In the Motion, Black Hills requests "an extension to make such filing to no later than six months from the date new rates go into effect in its recently filed Phase I rate review in Proceeding No. 20AL-0380G."¹

4. Black Hills notes in the Motion that the previous Phase I Rate Case in 19AL-0075G was completed on May 19, 2020 when the Commission issued its decision on exceptions to Recommended Decision No. R19-1033.² In Decision No. C20-0372, the Commission decision addressing exceptions in that Proceeding, the Commission, in part, ordered Black Hills to file an advice letter and proposed tariff sheet initiating a Phase II rate review within six months of the date of Decision No. C20-0372 or by November 19, 2020. The Commission also ordered Black Hills to file a revised Distribution and Safety Integrity Rider (DSIR) within six months of that decision, as well as file new construction allowances within nine months of that decision.

5. According to the Company, this 2020 Phase I Rate Case is intended to recover "substantial increase in costs associated with rate base investments made by the Company since July 1, 2018 that have not yet been included in the development of rates."³ Additionally, Black Hills filed an application, Proceeding No. 20A-0379G, requesting authorization to implement a new System Safety and Integrity Rider (SSIR) as part of its Colorado PUC gas tariff and to implement under the SSIR, an At-Risk Meter Relocation and Customer-Owned Yard Line Replacement Program.

¹ Motion at p. 1.

² Decision No. R19-1033 was issued in Proceeding No. 19AL-0075G on December 27, 2019.

³ Motion at pp. 3-4.

6. Black Hills maintains that the result of the last Phase I rate case caused it to file the new 2020 Phase I rate review and SSIR application. Black Hills claims it made these individual filings to limit the complexity of the filings to address the concerns raised in the previous Phase I proceeding. Black Hills goes on to argue that the revenue deficiency in the present Phase I is driven in large part by the Company's inability to recover in its rates \$35.3 million in capital additions placed in service from July 1, 2018 through December 31, 2018 and to implement its proposed DSIR.

7. Black Hills argues the Commission disallowed its proposed inclusion of those capital additions in the 19AL-0075G proceeding because Black Hills' *pro forma* capital additions adjustment violated the matching principle, and the Commission ordered the Company to address the deficiencies in its DSIR proposal and refile for approval within six months of Decision No. C20-0372. According to Black Hills, approval of the DSIR in the previous Phase I rate case would have permitted the Company to begin recovering costs associated with approximately \$36 million of system safety and integrity investments placed in service in 2019 and 2020.

8. On November 20, 2020 EOC filed its response to the Motion. EOC expresses its concern over Black Hills' proposal to file new GRSAs on top of existing GRSAs with no intervening Phase II rate allocation analysis. According to EOC, the layering of GRSAs without proper cost allocation is unfair and unreasonable rate making. EOC explains that the use of a GRSA rate rider after a rate case places an equal amount of the rate increase on the customer charge, and to each customer class, without an analysis of the cost causer or the appropriate rate component. It often results in an unjustified higher fixed charge, and rate increases to the customers who didn't cause the increased revenue requirement. And, EOC asserts that unreasonably high fixed charges disproportionately impact lower income customers and discourage conservation.

9. EOC argues that rather than filing a Phase II case as required by Decision No. C20-0372, the Company proceeded to file a Phase I rate review case, currently pending in Proceeding No. 20AL-0380G. In that case, the Company seeks to increase its annual revenues by almost 19 percent, just over \$13.5 million, and again seeks to utilize GRSAs for each base rate area. EOC argues that given the significant rate increase, the filing will likely be suspended up to the statutory 250-day maximum under C.R.S. § 40-6-111. Accordingly, it is quite possible under the Company's request that a Phase II will not be filed for another year, which in turn would leave in place the GRSAs for almost two more years.

10. EOC states Black Hills Gas Utility (BHGU) filed a Phase I rate case in 2012 (Docket No. 12AL-628G) which resulted in a General Rate Schedule Adjustment (GRSA). Black Hills Gas Distribution's (BHGD) also filed a Phase I rate case in 2010 (Docket No. 10AL-455G) that resulted in a GRSA. Accordingly, a Phase II had not been brought for close to, if not more than, a decade for either utility.⁴

11. EOC requests that the Commission deny Black Hills' Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review and for such other relief the Commission deems just and appropriate.

C. Discussion

12. Black Hills suggests that it needs to file a Phase I rate case because it believes the Administrative Law Judge (ALJ) rejected its previous combined rate case on the grounds that the combined rate case was too complicated. This is not so. Black Hills's previous rate case, in addition to being a combined Phase I and II filing, also included a proposal to consolidate three

⁴ We note that Black Hills' last Phase II rate proceedings were filed in 2008 (Proceeding No. 08S-290G, BHGU's last Phase II proceeding; Proceeding No. 08S-108G, BHGD's last Phase II proceeding). See Decision No. R19-1033, Proceeding No. 19AL-0075G, fn. 382.

base rate areas into one for purposes of the revenue requirement yet maintain two separate rates for two of the three former base rate areas for the purpose of rate impact mitigation, and also sought a new Distribution System Integrity Rider. Even still, the Phase II portion of that rate case could have been completed but for Black Hills' refusal to provide information for anything but its narrow consolidation proposal. A Combined Phase I and II rate case without the rate area consolidation, or a stand-alone Phase II with consolidation, would be reasonable.

13. Black Hills had ample opportunity to meet the Commission's directive to file a Phase II rate case instead of disregarding it and initiating yet another Phase I proceeding. Black Hills could have provided Class Cost of Service Studies for the non-consolidated option as Staff requested in 19AL-0075G, but the Company chose to provide only the information supporting its narrow consolidation proposal, which ultimately resulted in the ALJ rejecting the Phase II component because the Company's consolidation proposal was inadequate. And as EOC mentions, the Company could have filed a combined Phase I/Phase II in Proceeding No. 20AL-0380G, or it could have waited to file a Phase I until a Phase II was completed.

14. In Decision No. C21-0005 in 19A-0075G, we denied the Motion to extend the Phase II filing date. Consistent with the denial of that Motion, we find it necessary to reject Black Hills' Phase I Rate Case filing as contrary to the Commission's Phase II filing directive in Decision No. C20-0372 in Proceeding No. 19AL-0075G. We agree with EOC that Black Hills should not be allowed to avoid a Phase II now simply because of its own decision to pursue a Phase I case instead of adhering to a Commission mandate. Intentionally disregarding the Commission's Phase II directive and proposing to layer on an additional increase of nearly 19 percent through GRSAs, on top of existing GRSAs, is unacceptable. The new Phase I filing proposing compounded GRSAs, without a Phase II rate analysis for over ten years, would not allow the Commission to determine whether the resulting rates are just and reasonable as required under § 40-3-101, C.R.S.

15. For all these reasons we are left with little choice but to reject Advice Letter No. 3 filed September 11, 2020 and permanently suspend the tariffs attached thereto.

II. ORDER

A. It Is Ordered That:

1. Advice Letter No. 3 proposing to implement General Rate Schedule Adjustment (GRSA) riders that would increase base rates for all Black Hills natural gas customers in Colorado, filed on September 11, 2020, by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) is rejected, consistent with the discussion above.

2. The proposed tariff sheets filed by Black Hills with Advice Letter No. 3 are permanently suspended.

3. This Decision is effective upon its Mailed Date.

B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 16, 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