Decision No. C21-0005

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 BE EFFECTIVE ON MARCH 4, 2019.

COMMISSION DECISION DENYING IN PART MOTION FOR VARIANCE TO EXTEND FILING DATE

Mailed Date: January 06, 2021
Adopted Date: December 16, 2020

I. BY THE COMMISSION

A. Statement

1. On November 6, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or Company) filed 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[1] 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, and

[1] Decision No. C20-0372 was issued in this proceeding on May 19, 2020.

grant Black Hills 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.

2. We deny in part the Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review and require Black Hills to file the required Phase II rate review on or before 60 days after the effective date of this decision.

B. Background

3. Black Hills notes that the previous Phase I Rate Case was completed on May 19, 2020 when the Commission issued its decision on exceptions to Recommended Decision No. R19-1033.[2] Commission Decision No. C20-0372 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 that decision 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 the decision, and to file new construction allowances within nine months of the decision.

4. On September 11, 2020, Black Hills 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.[3]

5. According to the Company, its 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."[4] Additionally, Black

[2] Decision No. R19-1033 was issued in this proceeding on December 27, 2019.

[3] *See* Proceeding No. 20AL-0380G.

[4] Black Hills' Motion at pp. 3-4.

Hills filed an application in 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.

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 and 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. Black Hills also requested a shortened response time to this Motion of seven days. However, Energy Outreach Colorado (EOC) filed its opposition to Black Hills' request for shortened response time, arguing that the Commission would benefit from a complete and well-reasoned response to the Motion for variance. The Commission denied the request for shortened response time, stating "We agree with EOC that the tight timeframe is of Black Hills' own doing.

It could have easily filed its Motion for Variance well in advance of the deadline to file its Phase II rate case but chose to wait until the last minute to do so."[5] By Decision No. C20-0808-I the Commission allowed the full 14-day response time to run up to and including November 20, 2020.

9. 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 as well as rate increases to the customers who did not cause the increased revenue requirement. And, EOC asserts that unreasonably high fixed charges disproportionately impact lower income customers and discourage conservation.

10. EOC argues that rather than filing a Phase II rate review 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 that if the Company's variance request is granted a Phase II case will not be filed for another year, which in turn would leave in place the GRSAs for almost two more years.

[5] Decision No. C20-0808 at ¶11.

11. 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.[6]

12. 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

13. We agree with EOC that Black Hills should not be allowed to further delay filing its long overdue Phase II rate review. Intentionally disregarding the Commission's directive to file a Phase II review 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.

14. Black Hills had ample opportunity to complete a Phase II rate case instead of disregarding the Commission's directive and filing yet another Phase I rate case. 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 the inadequate approach of providing only the information supporting its narrow consolidation proposal, which ultimately resulted in the Administrative Law

[6] 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.

Judge (ALJ) rejecting the Phase II component. As EOC mentions, the Company could have filed a combined Phase I/Phase II rate review, or it could have waited to initiate a Phase I review until after Phase II was completed. It did neither.

15. Further, we disagree with Black Hills' argument that it needed to file its newest rate case as a simple Phase I rate case. Black Hills contends this is so because its previous combined rate case was denied largely because the ALJ found it to be too complicated. However, Black Hills' previous rate case faltered because in addition to being a combined Phase I and II filing, the Company proposed to consolidate three 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. A Combined Phase I and II rate case without the rate area consolidation, or a stand-alone Phase II with consolidation would be far more reasonable. And, as discussed above, even the Phase II portion of the highly complex rate case in 19AL-0075G could have been completed but for Black Hills choosing a legal strategy where it refused to provide information for anything but its narrow consolidation proposal.

16. We therefore deny in part the motion to extend the Phase II filing date.[7] We require Black Hills to file a Phase II rate case within 60 days of the effective date of this decision.

[7] As discussed in Decision No. C21-0004, we also reject the Phase I rate case in 20AL-0380G.

II. ORDER

A. It Is Ordered That:

1. The Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review filed by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) on November 6, 2020 is denied in part.

2. Black Hills shall file the required Phase II rate review on or before 60 days after the effective date of this decision.

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