

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 22AL-0026G

IN THE MATTER OF ADVICE LETTER NO. 16 FILED BY BLACK HILLS COLORADO GAS, INC. TO REVISE ITS LINE EXTENSION TARIFFS TO BE EFFECTIVE ON MARCH 7, 2022.

SETTLEMENT AGREEMENT

Pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-1408, Black Hills Colorado Gas, Inc. (“BHCG” or “the Company”), Trial Staff of the Colorado Public Utilities Commission (“Staff”), and the Colorado Office of the Utility Consumer Advocate (“UCA”) (collectively, the “Settling Parties”), by their undersigned counsel, and for good and valuable consideration, enter into this Settlement Agreement (“Settlement Agreement”) to resolve all disputes that have arisen between them related to the instant Proceeding No. 22AL-0026G (the “Proceeding”). This Settlement Agreement is a full and complete resolution of BHCG’s Advice Letter No. 16 tariff filing to update its line extension policy for natural gas service. The Settling Parties are the only parties to this proceeding. As such, this Settlement Agreement is unopposed.

I. BACKGROUND

1. On February 1, 2019, BHCG filed its proposed Colorado PUC No. 1 tariff with Advice Letter No. 1 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 in Proceeding No. 19AL-0075G. This filing was made in Proceeding No. 19AL-0075G, which was a combined Phase I and Phase II rate review and

included the Company's proposal to consolidate the operations, base rates, tariffs, gas cost adjustments, and the extension policies and construction allowances of the two former utilities.

2. On December 27, 2019, the presiding Administrative Law Judge issued Recommended Decision No. R19-1033 ("Recommended Decision") denying the Company's construction allowance proposal and ordering the Company to file, for approval in a new proceeding, revised construction allowance rates, terms and conditions within nine months of a final decision in Proceeding No. 19AL-0075G.

3. In Decision No. C20-0372, mailed on May 19, 2020, the Commission granted in part and denied in part exceptions to the Recommended Decision, ordered the Company to file an advice letter and proposed tariff sheets initiating a Phase II rate case, and extended the construction allowance filing date to 30 days after a final Commission decision in the Company's next Phase II rate review.

4. On June 1, 2021, the Company filed Advice Letter No. 9, a combined Phase I (revenue requirement) and Phase II (cost allocation and rate design) rate review, in Proceeding No. 21AL-0236G. On October 5, 2021, the parties filed a Settlement Agreement resolving all issues which were or could have been contested by the parties in that proceeding, which was approved by Decision No. R21-0748 issued on November 23, 2021.

5. On October 1, 2021, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in Proceeding No. 21R-0449G (the "2021 Gas Rulemaking") to amend the Commission's Rules Regulating Gas Utilities. As detailed in the NOPR, this rulemaking would add to and revise existing provisions of the Commission's Gas Rules that are applicable to all jurisdictional gas utilities, including adding to and revising line extension provisions contained in Rule 4210.

6. On November 8, 2021, BHCG petitioned the Commission for a temporary variance of the requirement that BHCG file to modify its construction allowances until the conclusion of the 2021 Gas Rulemaking. Decision No. C21-0826 issued on December 28, 2021, in Proceeding No. 21V-0528G denied BHCG's petition finding that a decision in the 2021 Gas Rulemaking is not expected until December 2022, which would mean that BHCG's outdated allowances would remain in force for another year.¹

7. On January 12, 2022, BHCG filed Advice Letter No. 16 to update its line extension policy in the instant proceeding.

8. The Settling Parties recognize that the 2021 Gas Rulemaking specifically addresses line extensions and the outcome of that rulemaking is still pending. The Settling Parties further recognize that as a regulated public utility, BHCG will necessarily comply with the final rules resulting from that rulemaking. As a result, the Settling Parties understand that this Settlement Agreement may be an interim resolution of this Proceeding until the 2021 Gas Rulemaking concludes. This Settlement Agreement does not change or modify any stated arguments or positions taken by any of the Settling Parties in the 2021 Gas Rulemaking. This Settlement Agreement represents the comprehensive agreement of all Settling Parties to resolve the issues in this Proceeding No. 22AL-0026G that were raised, or could have been raised, by the Settling Parties. The Settling Parties agree that the Settlement Agreement is in the public interest and should be approved without modification.

¹ Decision No. C21-0826 at ¶ 5.

II. SETTLEMENT TERMS

9. This Settlement Agreement reflects the input and careful consideration of all issues by the Settling Parties. As memorialized in this Settlement Agreement, the Settling Parties have agreed to a resolution of all issues that were or could have been raised in this proceeding and the issues in dispute between them in this proceeding have been resolved to the satisfaction of the Settling Parties. To the extent that an issue has not been addressed specifically herein, the Settling Parties agree that the principles underlying the Company's original proposals as set forth in its Direct Testimony and Attachments shall govern until the Company's next rate review filing.

10. In resolution of the issues raised or which could have been raised by the parties to this proceeding, the Settling Parties hereby stipulate and agree as follows:

A. Construction Allowance Amounts

11. **Background.** In its direct case, BHCG proposed to implement modified construction allowances as reflected in the corrected Attachments to Hearing Exhibit 100 and Attachment ERH-5 to Hearing Exhibit 400. In its answer testimony, Staff recommended that the Commission not eliminate construction allowances entirely. In its answer testimony, the UCA recommended that the Commission set the construction allowances at zero dollars for both mains and service lines. As an alternative, the UCA recommended the Commission approve the Company's line extension proposal as an interim measure until official rules from Proceeding No. 21R-0449G are finalized and in effect.

12. **Resolution.** The Settling Parties agree that BHCG will implement the following construction allowance amounts, which were reflected in Staff's answer testimony, on an interim basis as recommended in the UCA's answer testimony:

	<u>Residential</u>	<u>Small Commercial</u>	<u>Large Commercial</u>	<u>Seasonal/Irrigation</u>
Service Line	Fixed	Fixed	Fixed	Fixed
RA1	\$306	\$337	\$1,224	\$1,300
RA2	\$365	\$402	\$1,096	\$1,108
RA3	\$167	\$200	\$834	\$835
Distribution				
Main	Fixed	Fixed	Per Dth	Per Dth
RA1	\$822	\$1,600	\$6.21	\$2.80
RA2	\$989	\$2,094	\$8.08	\$3.87
RA3	\$493	\$691	\$2.73	\$1.63

B. Meters and Regulators

13. **Background.** In its direct case, BHCG proposed to implement construction allowances that did not include meters and regulators. In its answer testimony, Staff suggested an additional option that the Commission could require new customers to bear the upfront costs of meters and regulators.

14. **Resolution.** The Settling Parties agree that BHCG will implement the construction allowance amounts reflected above, which do not include the costs of meters and regulators. For further clarity, Customers will not be required to reimburse the Company for the cost of meters and regulators.

C. Refundable Period

15. **Background.** In its direct case, BHCG proposed to implement a single period of five years for an applicant to receive refund payments upon future connections. In its answer testimony, Staff recommended using a refundable period of five years, or three years as an alternative.

16. **Resolution.** The Settling Parties agree BHCG will use a refundable period of five years for all Colorado base rate areas.

D. Lump Sum Payment Penalty

17. **Background.** In its direct case, BHCG proposed to implement a single Customer Contribution Payment Option but removed certain language from its tariffs that the Company believed was more appropriately reflected in Customer Contribution Payment Contracts. In its answer testimony, Staff recommended that the Customer Contribution Payment Option tariffs retain language allowing customers to make a lump sum payoff at any time during the financing period with no penalty.

18. **Resolution.** The Settling Parties agree that the Company's tariffs will include a single Customer Contribution Payment Option and retain the specific language allowing customers to make a lump sum payoff at any time during the financing period with no penalty.

E. BHCG Tariff Changes

19. The Settling Parties agree to the tariff sheets in substantially the same form as the *pro forma* tariff sheets as forth in Appendix 1 ("*Pro Forma* Tariff Sheets"). The Settling Parties agree that the *Pro Forma* Tariff Sheets incorporate the changes contemplated by this Settlement Agreement. Appendix 2 contains tariff sheets in legislative format reflecting the changes being implemented as compared to the currently effective BHCG tariff sheets.

20. Upon the issuance of a Commission decision approving this Settlement Agreement in all material respects, BHCG shall file with the Commission a compliance advice letter to place into effect revised tariff sheets in substantially the same form as the *pro forma* tariff sheets contained in Appendix 1 hereto to become effective on not less than two business days' notice.

III. GENERAL TERMS AND CONDITIONS

21. Through active prehearing investigation and negotiations, the Settling Parties have negotiated agreements set forth in this Settlement Agreement, resolving the contested and disputed

issues in this proceeding in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Settlement Agreement reflects the compromise and settlement of those issues between and among the Settling Parties in this proceeding. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through the formal adversarial litigation process, is encouraged by Rule 1408 and is in the public interest.

22. This Settlement Agreement shall not become effective until the issuance of a final Commission decision approving the Settlement Agreement that does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any of the Settling Parties, that Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this proceeding.

23. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of the disputed issues resolved herein.

24. The Settling Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement that is in the public interest with respect to the various matters and issues enumerated herein. The Settling Parties shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Settlement Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the methods or principles herein contained shall be deemed by the

Settling Parties to constitute a settled practice or precedent in any future proceeding, or in the ongoing 2021 Gas Rulemaking.

25. The Settling Parties agree to join in a motion that requests that the Commission approve this Settlement Agreement, and to support the Settlement Agreement in any subsequent pleadings or filings. Each Settling Party further agrees that in the event that it sponsors a witness to address the Settlement Agreement at any hearing that the Commission may hold to address it, the Settling Party's witness will testify in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement.

26. The Settling Parties agree that all their pre-filed testimony and exhibits shall be admitted into evidence in this proceeding without cross examination by the Settling Parties.

27. The discussions among the Settling Parties that have produced this Settlement Agreement have been conducted with the understanding, pursuant to Colorado law, that all offers of settlement, and discussions relating thereto, are and shall be privileged and shall be without prejudice to the position of any of the Settling Parties and are not to be used in any manner in connection with this or any other proceeding.

28. All Settling Parties have had the opportunity to participate in the drafting of this Settlement Agreement and the term sheet upon which it was based. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

29. This Settlement Agreement embodies the entire agreement and understanding between the Settling Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. The parties are not relying on any statement or representation not contained herein.

30. This Settlement Agreement may be executed in counterparts and by electronic copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the matters addressed herein.

IV. CONCLUSION

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving the Amended Gas Meter Sampling Program consistent with this Settlement Agreement, with the finding that the Commission's approval of this Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this Proceeding as to those issues.

Date: July 29, 2022.

**BLACK HILLS COLORADO GAS, INC.
D/B/A BLACK HILLS ENERGY**

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