

Decision No. C22-0831

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0483E

IN THE MATTER OF ADVICE LETTER NO. 834 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO INCREASE THE TRANSMISSION COST ADJUSTMENT RIDER, TO BECOME EFFECTIVE JANUARY 1, 2023.

**COMMISSION DECISION SUSPENDING EFFECTIVE
DATE OF TARIFF SHEETS, REFERRING THE MATTER
TO AN ADMINISTRATIVE LAW JUDGE, AND
ESTABLISHING NOTICE AND INTERVENTION PERIOD**

Mailed Date: December 23, 2022
Adopted Date: December 21, 2022

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 22AL-0483E. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. On November 1, 2022, Black Hills Colorado Electric, LLC (Black Hills or Company) filed Advice Letter No. 834 with tariff sheets for 2023 Transmission Cost Adjustment (TCA).

2. This Decision sets for hearing the tariff sheets filed under Advice Letter No. 834 and suspends their effective date to May 1, 2023.

3. We refer the matter to an Administrative Law Judge (ALJ).

4. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than January 20, 2023.

B. Discussion

5. In Advice Letter No. 834, Black Hills states that its TCA recovers costs for transmission-related costs that are incremental to the transmission-related investments already being recovered in base rates. Because Black Hills has not had an electric rate case in a number of years, the 2023 TCA filing represents the incremental transmission-related cost for the period January 1, 2016 through December 31, 2022. The increase TCA reflects the costs since the Company's 2022 TCA filed in December 2021. In 2022, the Company incurred approximately \$26.2 million of incremental transmission-related investments.

6. Black Hills explains that the increase for the 2023 TCA relates to: (1) increased plant in service primarily four projects, or \$17.8 million of the \$18.5 million increase in transmission plant in service; and (2) an increase in the end-of-year Construction Work in Progress (CWIP) balance of \$7.9 million.

7. The average residential customer monthly bill impact from the proposed TCA is \$0.81 from \$121.58 to \$122.39, or 0.67 percent.

8. Trial Staff of the Colorado Public Utilities Commission (Trial Staff) filed a protest to Black Hills' Advice Letter No. 834 on November 28, 2022. Trial Staff asserts that Black Hills

is requesting recovery of costs associated with transmission projects that are not extension or construction of transmission facilities and, as such, the costs for these transmission projects are not eligible for recovery through the TCA pursuant § 40-5-101(4), C.R.S. Trial Staff requests that the Commission suspend the proposed tariff's effective date and set the matter for hearing.

9. For example, Trial Staff states that Appendix D to Advice Letter No. 834 details nine individual project categories, including: (1) an Overhead Transmission Reliability Blanket, or reserved funds for completing unplanned and emergency work throughout Black Hills' service territory; (2) a Transmission Substation Blanket, or reserved funds for completing planned and unplanned work in transmission substations; and (3) COE LiDAR Remediation, or required maintenance of all 115 kV transmission lines throughout Black Hill's service territory. Trial Staff asserts that the three projects are open-ended and unplanned projects that are not "construction or expansion of transmission facilities," but instead are capital projects associated with ongoing maintenance of the transmission system.

10. Black Hills responded to the protest on December 8, 2022, disagreeing with Trial Staff's interpretation of the statute, which Black Hills argues is also different from what the Commission has allowed for TCA recovery of transmission costs for over a decade. Black Hills argues that the method for determining the TCA was approved by the Commission in Proceeding No. 09A-014E is no different than the methodology proposed in this Proceeding. Black Hills also states that the Commission has repeatedly approved the same TCA cost recovery treatment for net transmission plant investment in the Company's annual TCA filings since the original 2009 filing. The Company further asserts that no changes in law or rules impacting this methodology have occurred since.

11. Black Hills concludes that Trial Staff has provided no legal basis for the Commission to reverse course and disallow recovery of maintenance of transmission facilities in the TCA, which will have the perverse effect of discouraging transmission investment. Black Hills argues that Trial Staff's request that Back Hills TCA advice letter be suspended should be denied as contrary to the Commission's construction of TCA cost recovery allowed by § 40-5-101(4)(b), C.R.S., as well as the Company's Commission-approved TCA tariff. But if a hearing is granted, the Company urges the Commission to not suspend the effective date of the advice letter filing; instead, a true up adjustment can be ordered in the Company's next TCA filing.

C. Conclusions and Findings

12. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. Based on Staff's protest, we find good cause to suspend the tariff sheets submitted with Advice Letter No. 834 for 120 days through May 1, 2023 and set the matter for hearing.

13. We refer this matter to an Administrative Law Judge (ALJ).

14. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

II. ORDER

A. The Commission Orders That:

1. The proposed January 1, 2023 effective date of the tariff sheets filed with Advice Letter No. 834 filed by Black Hills Colorado Electric, LLC (Black Hills) on November 1, 2022, is suspended until May 1, 2023, or until further order of the Commission.

2. The matter is referred to an Administrative Law Judge (ALJ). The ALJ shall set a hearing date, rule on interventions, and establish other procedures by separate decision(s).

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than January 20, 2023 and shall serve a copy of the notice or motion on Black Hills' attorney of record.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners