

Decision No. R22-0799-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22AL-0426G

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IN THE MATTER OF ADVICE LETTER NO. 126 FILED BY ROCKY MOUNTAIN  
NATURAL GAS LLC D/B/A BLACK HILLS ENERGY TO INCREASE ITS BASE RATES  
FOR ALL NATURAL GAS SERVICES.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN,  
GRANTING HIGHLY CONFIDENTIAL PROTECTIONS**

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Mailed Date: December 13, 2022

**I. STATEMENT**

**A. Procedural Background**

1. On October 7, 2022, Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy (RMNG), commenced this Proceeding by filing Advice Letter No. 126 with the Public Utilities Commission (PUC or Commission). The Advice Letter seeks approval of a rate increase of 39.1%. RMNG indicated in its Advice Letter that the “primary drivers” of the proposed increase to its base rate revenues are: (1) significant capital investments it has made since 2017; (2) increases in operating expenses since its last rate review; and (3) increased financing costs incurred because of “changes in the cost of long-term debt.”<sup>1</sup>

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<sup>1</sup>, Advice Letter No. 126, issued by Rocky Mountain Natural Gas LLC, d/b/a Black Hills Energy, filed October 7, 2022.

2. The Colorado Office of the Utility Consumer Advocate (UCA) filed a Protest to RMNG's Advice Letter on October 17, 2022. UCA enumerated nineteen "specific issues" that concerned it about RMNG's Advice Letter.<sup>2</sup>

3. On November 2, 2022, the Commission adopted an order suspending the effective date of RMNG's Advice Letter for 120 days, or up to and including March 7, 2023. The order, Decision No. C22-0684 mailed on November 3, 2022, also established a 30-day time period expiring December 3, 2022, within which interested parties could intervene in the Proceeding. Finally, the Commission referred the matter to an Administrative Law Judge (ALJ) for disposition.

4. UCA filed its Notice of Intervention as a Matter of Right on November 16, 2022. Commission Staff filed a Notice of Intervention of Right on November 21, 2022. Last, on November 28, 2022, AM Gas Transfer Corporation filed a Motion to Intervene seeking permissive intervention in the Proceeding. No other interventions have been received.

**B. RMNG's Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information**

5. Contemporaneously with its Advice Letter, on October 7, 2022, RMNG filed its Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information relevant to this Proceeding. In the Motion, RMNG asks for protection of the following information:

- (1) Hearing Exhibit 105, Attachment JWK-6HC – Highly Confidential RRS Stmt G Sched G-1 Support [which] contains projected, non-public information regarding [Black Hills Corporation's] future financial condition, as well as other

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<sup>2</sup> Utility Consumer Advocate's Protest, ¶ 6(a)-(s), filed October 17, 2022.

material, non-public financial information that has not been previously disclosed to the investment community;<sup>3</sup> and,

(2) Any similar forward-looking financial information that may be produced in this proceeding in similar form or any other variation in form as may arise in this proceeding.<sup>4</sup>

6. RMNG characterizes the above-described information as “extremely sensitive” and closely held within the company. RMNG notes that the information it seeks to have designated as highly confidential “includes material financial ‘insider information’ that has the potential to affect [Black Hills Corporation’s] stock price.”<sup>5</sup>

7. RMNG seeks an order imposing highly confidential protections for the above-listed categories of Highly Confidential Information. Based upon extraordinary circumstances, RMNG requests that access be restricted to the Commission, any ALJs, Trial Staff, UCA, and attorneys representing these entities. In accordance with Rule 1101(b)(V), 4 CCR 723-1, the motion was accompanied by a specific form of nondisclosure agreement it requests be used in this Proceeding.

8. No objections to the Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information have been filed.

9. To the contrary, on October 17, 2022, UCA filed its non-disclosure agreement contemporaneously with its Protest, “agree[ing] to be bound by the terms of those protective provisions with respect to all evidence and information produced or arising in the course of this Proceeding No. 22AL-0426G.”<sup>6</sup> The non-disclosure agreement was executed by UCA’s

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<sup>3</sup> RMNG’s Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information, ¶ 4, pp. 2-3, filed October 7, 2022.

<sup>4</sup> *Id.* at ¶ 5, p. 3.

<sup>5</sup> *Id.* at ¶ 4, p. 3.

<sup>6</sup> UCA Non-Disclosure Agreements, filed October 17, 2022.

Director, Deputy Director, numerous staff, and employees, including its economist, as well as legal counsel representing UCA.<sup>7</sup>

10. RMNG notes that highly confidential protections have been afforded similar documents that were found to be highly confidential in prior Commission proceedings involving RMNG. *See, e.g.*, Decision No. R18-0038-I; *see also* Decision No. R19-0351-I; and Decision No. C16-0717-I.

11. Under Rule 1100(b) CCR 723-1, information filed with the Commission is presumed to be a public record, including (I) annual reports; (II) rates, terms, and conditions for regulated services; and (III) tariffs and price lists. Rule 1101 provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

12. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;

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<sup>7</sup> *Id.*

- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

13. RMNG provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Motion for Protective Order Affording Extraordinary Protection includes a proposed form of nondisclosure agreement to be signed by individuals who may encounter the information during this Proceeding and by legal counsel. It has also provided the affidavit of Michael J. Harrington, Director -- Regulatory and Finance for Black Hills, identifying the individuals and departments within RMNG that have access to the information it describes as highly confidential. A public version of the subject information with the allegedly highly confidential information redacted, and an unredacted highly confidential version of those documents were filed contemporaneously with RMNG's Motion for Protective Order Affording Extraordinary Protection, as Hearing Exhibit 105, Attachment JWK-6HC – Highly Confidential RRS Stmt G Support, and Hearing Exhibit 105, Attachment JWK-6 – Highly Confidential RRS Stmt G Support (Public Version).

14. RMNG has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, RMNG’s Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information will be granted.

**II. ORDER**

**A. It Is Ordered That:**

1. The Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed by Rocky Mountain Natural Gas LLC, d/b/a Black Hills Energy, on October 7, 2022, is granted.
2. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director