

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 BECOME EFFECTIVE ON MARCH 4, 2019.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Mailed Date: July 15, 2019

I. BY THE COMMISSION

A. Statement

1. A more comprehensive summary of the background of this proceeding is included in Decision Nos. R19-0351-I and R19-0374-I that were issued in this proceeding on April 19, 2019, and April 26, 2019, respectively. The facts relevant to this Decision are stated below.

2. On February 1, 2019, Black Hills Colorado Gas, Inc. (Black Hills) filed Advice Letter No. 1 with supporting attachments and pre-filed testimony. The proposed effective date of the tariffs filed with Advice Letter No. 1 was March 4, 2019.

3. By Decision No. C19-0194 issued February 22, 2019, the Commission, among other things, referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

4. By Decision No. R19-0351-I issued April 19, 2019, the ALJ, among other things, granted the First and Second Motions for Extraordinary Protection filed by Black Hills on February 12, 2019, and February 28, 2019, respectively.

5. On June 26, 2019, Black Hills filed its Third Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information (Third Motion for Extraordinary Protection).

6. The Third Motion for Extraordinary Protection is unopposed.

B. Motion for Extraordinary Protection

7. In its Third Motion for Extraordinary Protection, Black Hills seeks highly confidential protection for certain commercially sensitive forecasted gas purchase and price hedging information contained in the following discovery materials and workpapers of Eric J. Gillen: “Response to CPUC 2-11,” “Attachment CPUC 2-11,” “Attachment CPUC 10-7 EJG-6 BHCG Total Bill Impacts,” “Attachment OCC 3-3(a)(1),” “Attachment OCC 3-3(a)(2),” “Attachment EJG-6 BHCG Total Bill Impacts 10-1-2019,” “BHCG GCA 2019-02-01 GCA impact only - Table EJG-5,” “BHCOG and BHGD-CO GCA EJG Tables,” “BHCOG GCA 11-01-2018 no deferred,” and “BHGD-CO GCA 2018-11-01 no deferred.”¹ Black Hills further seeks extraordinary protection for “any use of the detailed forecasted information related to the Company’s purchase of natural gas, purchase and use of upstream pipeline services, and gas

¹ Third Motion for Extraordinary Protection, pp. 1-2.

hedging activities contained in those workpapers and discovery materials in any form as may arise in this proceeding.”²

8. Black Hills states that the highly confidential information identified above is “commercially and market sensitive and, if publicly disclosed, could potentially be used to compromise [Black Hills’] future contract negotiations or otherwise influence the behavior of buyers and sellers in the gas marketplace to the detriment of [Black Hills’] customers.”³ Black Hills further states that despite the mislabeling error referenced in its Third Motion for Extraordinary Protection, there has been no public disclosure of the highly confidential information for which extraordinary protection is sought.

9. Black Hills asserts that the Commission’s rule governing confidentiality will not provide sufficient protection for the subject information and that extraordinary protection has been granted routinely by the Commission for information regarding projected fuel price and hedging strategy for gas and electric service within its jurisdiction.

10. Black Hills requests that access to the highly confidential information at issue be limited to the Commissioners, the Administrative Law Judge, the Commission’s Advisory staff and advisory attorneys, the Commission’s Trial Staff and attorneys for Trial Staff, as well as the Office of Consumer Counsel and attorneys for the Office of Consumer Counsel.

11. Under Rule 1100(n) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the information referenced above is presumed to be a public record. Rule 1101 provides the procedure and requirements for filing and seeking a document to be designated as highly confidential. Rule 1101(c) governs records that are

² *Id.* at p. 8.

³ *Id.* at p. 2.

presumed to be public under Rule 1100(n) 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 treatment:

- (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;
- (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.⁴

13. Here, as summarized above, Black Hills provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly

⁴ 4 CCR 723-1.

confidential protection. The Third Motion for Extraordinary Protection also includes a proposed form of nondisclosure agreement, an affidavit identifying the individuals that have access to the information and stating that extraordinary protection sought for the information must remain in place “indefinitely,” and both a public version of the subject information with the allegedly highly confidential information redacted, and an unredacted highly confidential version of those documents. Finally, no party opposes the Third Motion for Extraordinary Protection.

14. Black Hills has satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, Black Hills’ Third Motion for Extraordinary Protection shall be granted.

II. ORDER

A. It Is Ordered That:

1. The Third Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed by Black Hills Colorado Gas, Inc. on June 26, 2019, is granted consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director