

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 UNOPPOSED MOTION FOR MODIFICATION
OF INTERIM DECISION NO. R19-0714-I AND
UNOPPOSED MOTION TO EXTEND ANSWER
TESTIMONY DEADLINE, WAIVING RESPONSE
TIME TO BOTH UNOPPOSED MOTIONS,
AND FURTHER SUSPENDING FOURTH AMENDED
ADVICE LETTER AND TARIFF SHEETS**

Mailed Date: October 9, 2019

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I. STATEMENT**A. Background**

1. A more comprehensive summary of the background of this proceeding is included in Decision No. R19-0714-I that was issued in this proceeding on August 28, 2019. The facts relevant to this Decision are stated below.

2. On February 1, 2019, Black Hills Colorado Gas, Inc. (BHCG) filed Advice Letter No. 1 with supporting attachments and pre-filed direct testimony. Advice Letter No. 1 proposes to effectuate the consolidation of Black Hills/Colorado Gas Utility Company, Inc. (BHGU) and Black Hills Gas Distribution, LLC (BHGD) into BHCG. BHGU held the legacy assets from Aquila, Inc., which BHCG acquired in 2008. BHGD held the legacy assets of SourceGas Distribution, LLC, Rocky Mountain Natural Gas, LLC, SourceGas, LLC, and SourceGas Holdings, LLC, which BHCG acquired in 2016. BHGD has two base rate areas and six gas cost adjustment areas (GCAs). BHGU has one rate area and one GCA. Advice Letter No. 1 proposes to consolidate the cumulative three base rate areas into a single base rate area for the purpose of establishing an overall revenue requirement for BHCG. Through rate design and for purposes of rate impact mitigation, BHCG proposes two new base rate areas. Advice Letter No. 1 further proposes to consolidate seven GCAs of BHGD and BHGU into four GCAs. BHCG filed a single statewide Class Cost of Service Study (CCOSS) in support of its proposal in Advice Letter No. 1.

3. In Decision No. R19-0714-I, the Administrative Law Judge (ALJ) approved a request from the parties to keep the evidentiary record open to allow BHCG to file four

additional CCROSS's (one for each of the existing base rate areas, and one for the combination of the BHGU Rate Area and BHGD Rate Area 2).¹ Decision No. R19-0714-I also approved BHCG's proposal to file a Fourth Amended Advice Letter and Tariff Sheets with a new effective date that would allow sufficient additional time for the development and filing of the new CCROSS's, review and response by the intervening parties, and an additional hearing day addressing the new CCROSS's, and the positions of the parties in light thereof. Specifically, Decision No. R19-0714-I ordered BHCG "to file a fourth amended advice letter and tariff sheets with an effective date of August 3, 2019 that will extend the end of the suspension period (after the 120-day and 90-additional-day suspensions entered in Decision Nos. C19-0194 and R19-0265-I that issued on February 22, 2019 and March 21, 2019, respectively) to February 29, 2020."² Decision No. R19-0714-I also established a procedural schedule that, among other things, set deadlines of September 27, 2019 for BHCG to file the four new CCROSS's and related testimony, and October 15, 2019 for the Intervenor to file revised CCROSS's and related testimony.³

4. On September 27, 2019, BHCG filed its four new CCROSS's and supporting testimony.

5. On October 3, 2019, BHCG filed an Unopposed Motion for Modification of Interim Decision No. R19-0741-I requesting that the requirement for BHCG to file a Fourth Amended Advice Letter and Tariff Sheets with an effective date of August 3, 2019 be modified to have an effective date of June 25, 2019 that would be suspended for the now-maximum statutory period of 250 days pursuant to the recently amended § 40-6-111(1), C.R.S. (Unopposed

¹ Decision No. R19-0741-I at 9 (¶ 20), 10 (¶ 23).

² *Id.* at 11 (¶ 25).

³ *Id.* at 10 (¶ 23).

Motion to Modify). With the 250-day suspension, the effective date of the Fourth Amended Advice Letter and Tariff Sheets would be March 2, 2020.

6. On October 4, 2019, Trial Staff of the Commission (Staff) filed an Unopposed Motion to Extend Answer Testimony Deadline to October 17, 2019 (Unopposed Motion to Extend).

B. Analysis

1. Unopposed Motion to Modify

7. As an initial matter, BHCG states that in filing the Unopposed Motion to Modify it is seeking relief pursuant to Rule 1502(b) of the Commission's Rules of Practice and Procedure. However, Rule 1502(b) applies to motions seeking to modify "interim decision[s] issued by the Commission." Rule 1502(c), on the other hand, applies to motions to modify interim decisions issued by "presiding officer[s]," including ALJs. Accordingly, because Decision No. R19-0714-I is a decision by an ALJ, not the Commission, the ALJ construes the Unopposed Motion to Modify as seeking relief under Rule 1502(c).

8. As noted in Decision No. R19-0741-I, BHCG has agreed to file a Fourth Amended Advice Letter and Tariff Sheets that results in an effective date of March 1, 2020. Towards that end, the ALJ in Decision No. R19-0741-I ordered BHCG to:

file a fourth amended advice letter and tariff sheets with an effective date of August 3, 2019 that will extend the end of the suspension period (after the 120-day and 90-additional-day suspensions entered in Decision Nos. C19-0194

and R19-0265-I that issued on February 22, 2019 and March 21, 2019, respectively) to February 29, 2020.⁴

Section 40-6-111(1), C.R.S., that was effective through May 29, 2019, allowed the Commission to suspend the effective date of tariff pages by 210 days (through separate decisions suspending the effective date for 120 and 90 days).

9. As noted by BHCG, § 40-6-111(1), C.R.S., was amended effective May 30, 2019 to allow the Commission to suspend the effective date of tariff pages for a total of 250 days (through separate decisions suspending the effective date for 120 and 130 days). As justification for its request in the Unopposed Motion to Modify, BHCG states that it wants to eliminate any question about whether the effective date of the Fourth Amended Advice Letter and Tariff Sheets can be suspended beyond March 1, 2020.⁵ For example, BHCG asserts that if the Fourth Amended Advice Letter and Tariff Sheets had an effective date of August 3, 2019 and the Commission suspended the effective date for a total of 250 days pursuant to the newly amended § 40-6-111(1), C.R.S., the suspension period would extend through April 9, 2020.⁶ BHCG states that such a 250-day suspension would be legally permissible because it would not constitute an impermissible retroactive (or retrospective) application of the recently-amended § 40-6-111(1), C.R.S.⁷ In any event, BHCG states that it is waiving any right to later argue that the 210-day suspension period in § 40-6-111(1), C.R.S., that was in effect until May 29, 2019, applies to this proceeding.

10. The Unopposed Motion to Modify states that BHCG has conferred with the other parties and, while Intervenors Staff and Bachelor Gulch Village Association “take no position

⁴ Decision No. R19-0741-I at 11 (¶ 25).

⁵ Unopposed Motion to Modify at 6 (¶ 10).

⁶ *Id.*

⁷ *Id.* at 6-7 (¶ 11).

regarding the contentions, legal analyses, and proposed procedure” in the Unopposed Motion to Modify, “no party objects to an effective date of March 1, 2020 for the tariff sheets filed with [the] Fourth Amended Advice Letter No. 1.”⁸ Based on the lack of opposition, BHCG also requests that response time to the Unopposed Motion to Modify be waived.⁹

11. The ALJ shall grant the Unopposed Motion to Modify without deciding whether the 250-day suspension period in § 40-6-111(1), C.R.S., that went into effect on May 30, 2019, applies to this proceeding. In so doing, the ALJ relies on: (a) the fact that no party opposes the Unopposed Motion to Modify; and (b) BHCG’s waiver of the right to later argue that the 210-day suspension period in § 40-6-111(1), C.R.S., that was in effect until May 29, 2019, applies to this proceeding.¹⁰ This Decision thus will not have any effect – including persuasive – on any future decisions of the Commission.

12. The Fourth Amended Advice Letter and Tariff Sheets have an effective date of June 25, 2019. If suspended for the maximum 250 days, the suspension period would expire on March 1, 2020 and the tariff sheets would go into effect on March 2, 2020. Based on BHCG’s Unopposed Motion to Modify and statements made on the final day of the hearing and at the status conference on August 15, 2019, the ALJ understands that BHCG wants the Fourth Amended Advice Letter and Tariff Sheets to go into effect on March 1, 2019. Accordingly, the Fourth Amended Advice Letter and Tariff Sheets shall be suspended for a total of 249 days such that the suspension period will expire on February 29, 2020 and the tariff sheets will go into effect on March 1, 2020.

⁸ *Id.* at 2 (¶ 1).

⁹ *Id.* at 9.

¹⁰ *See, e.g., In re Marriage of Robbins*, 8 P.3d 625, 630 (Colo. App. 2000) (a party may waive a statutory right).

2. Unopposed Motion to Extend

13. As support for the Unopposed Motion to Extend, Staff states that on October 4, 2019, BHCG provided to the other parties, corrections to the CCOSS's it filed on September 27, 2019. According to Staff, "the purpose of [] extending the answer deadline is to afford the remaining parties additional time to evaluate the corrected models as they prepare their answer testimony while still maintaining the October 24, 2019 hearing date."¹¹ Staff concludes by stating that it conferred with the other parties pursuant to Rule 1400(a) and is authorized to represent that no party opposes the relief sought. Based on the lack of opposition, Staff requests that response time to the Unopposed Motion to Extend be waived.¹²

14. Based on the foregoing, the ALJ finds and concludes that Staff has established good cause to grant the Unopposed Motion to Extend. Accordingly, the Unopposed Motion to Extend is granted and the deadline to file revised CCOSS's and related testimony shall be October 17, 2019.

II. ORDER

A. It Is Ordered That:

1. Response time is waived to: (a) the Unopposed Motion for Modification of Interim Decision No. R19-0741-I filed by Black Hills Colorado Gas, Inc. (BHCG) on October 3, 2019 (Unopposed Motion to Modify); and (b) the Unopposed Motion to Extend Answer Testimony Deadline to October 17, 2019 filed by Trial Staff of the Commission on October 4, 2019 (Unopposed Motion to Extend).

¹¹ Unopposed Motion for Extension at 1.

¹² *Id.* at 2.

2. The Unopposed Motion to Modify is granted consistent with the discussion above.

3. Pursuant to § 40-6-111(1)(b), C.R.S., the proposed effective date of the tariff pages filed by BHCG with Fourth Amended Advice Letter No. 1 is suspended for an additional 39 days for a total of 249 days (including the 120-day suspension entered in Decision No. C19-0194 that issued on February 22, 2019 and the 90-day suspension entered in Decision No. R19-0265-I that issued on March 21, 2019) for the reasons stated above.

4. The Unopposed Motion to Extend is granted consistent with the discussion above. The deadline for the Intervenor in this proceeding to file revised CCOS's and related testimony shall be October 17, 2019.

5. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge