

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
DENYING BHCG’S MOTION AS MOOT AND
DENYING STAFF’S MOTION FOR RULE 1108
REMEDIES FOR PROHIBITED COMMUNICATION**

Mailed Date: December 16, 2019

TABLE OF CONTENTS

I.	STATEMENT.....	2
A.	Background.....	2
B.	Analysis	3
1.	BHCG’s Motion	3
2.	Staff’s Rule 1108 Motion.....	3
II.	ORDER.....	4
A.	It Is Ordered That:	4

I. STATEMENT**A. Background**

1. On December 3, 2019, the undersigned Administrative Law Judge (ALJ) issued Decision No. R19-0968-I that scheduled a technical conference for December 18, 2019 and directed Black Hills Colorado Gas, Inc. (BHCG) to file and serve in advance of the technical conference the revenue requirement studies, class cost of service studies, and bill impacts for four scenarios.

2. On December 6, 2019, counsel for BHCG sent an email to the undersigned ALJ requesting clarification of the scenarios and/or proposing a fifth scenario to be modeled (BHCG's Email). BHCG copied counsel for all of the parties to the proceeding except for A M Gas Transfer Co. and The Vail Corporation.

3. Later on December 6, 2019, Trial Staff of the Commission (Staff) filed a Motion for Rule 1108 Remedies for Prohibited Communication (Rule 1108 Motion). In the Rule 1108 Motion, Staff states that BHCG's Email is a prohibited communication under Rule 1106 of the Commission's Rules of Practice and Procedure.¹ Staff filed BHCG's Email as Attachment A to the Rule 1108 Motion.

4. On December 9, 2019, the ALJ issued Decision No. R19-0984-I that: (a) construed BHCG's Email as a Motion (BHCG's Motion) and shortened response time thereto to December 11, 2019; and (b) shortened response time to Staff's Rule 1108 Motion to December 11, 2019.

5. On December 11, 2019, BHCG filed a response to Staff's Rule 1108 Motion and Staff filed a response to BHCG's Motion.

¹ 4 Code of Colorado Regulations (CCR) 723-1.

B. Analysis**1. BHCG's Motion**

6. In its Response to Staff's Rule 1108 Motion, BHCG states that it "withdraws its request set forth in [BHCG's Email] to the extent it has been deemed a motion for clarification."² As noted, in Decision No. R19-0984-I, the ALJ construed BHCG's Email as a motion. Because it has withdrawn the request contained therein, BHCG's Motion shall be denied as moot.

2. Staff's Rule 1108 Motion

7. As noted, BHCG copied counsel for all of the parties to the proceeding except for A M Gas Transfer Co. and The Vail Corporation on BHCG's Email. In its Response to the Rule 1108 Motion, BHCG states that these omissions were "unintentional and resulted from an inadvertent administrative error in copying and pasting e-mail addresses."³ In any event, Staff's Rule 1108 Motion (to which BHCG's Email was attached) and Decision No. R19-0984-I were served on all of the parties and the latter provided a formal opportunity for all of the parties to respond to BHCG's Email. The ALJ did not respond to BHCG's Email, so the email itself contained the extent of the communication, identified the individuals and parties involved, and the date, time, and place of the communication and the circumstances in which it was made. There is no other relevant information concerning BHCG's Email.

8. In its Rule 1108 Motion, Staff did not specify what remedies it seeks under Rule 1108. Instead, Staff stated that it "respectfully moves that the Commission grant relief as permitted under Rule 1108 as it deems appropriate under the circumstances given that the evidentiary record is already closed and the parties are preparing for a Technical Conference

² BHCG's Response to Rule 1108 Motion at 4.

³ *Id.* at 7 n. 8.

already set for December 18th.”⁴ The remedies in Rule 1108 are: “(a) dismissal of the proceeding, in whole or in part; (b) striking evidence or pleadings when the evidence or pleading is tainted by the prohibited communication; (c) a public statement of censure; or (d) such alternative or additional sanctions as may be appropriate under the circumstances.”⁵

9. Here, the ALJ finds and concludes that there is an insufficient basis upon which to base a remedy under Rule 1108. BHCG made no attempt to hide the communication, the parties have been given a formal opportunity to respond, and the request contained in BHCG’s Email has been withdrawn. As a result, the ALJ shall deny Staff’s Rule 1108 Motion.

II. ORDER

A. It Is Ordered That:

1. The email from counsel for Black Hills Colorado Gas, Inc. that Trial Staff of the Commission (Staff) filed on December 6, 2019 as Attachment A to the Motion for Rule 1108 Remedies (Rule 1108 Motion), and that was construed as a motion in Decision No. R19-0984-I, is denied as moot for the reasons stated above.

2. Staff’s Rule 1108 Motion is denied.

⁴ Staff’s Rule 1108 Motion at 3.

⁵ 4 CCR 723-1.

3. This Decision is effective immediately.

(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