

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0394E

IN THE MATTER OF ADVICE LETTER NO. 789 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO APPROVE A BILL CREDIT FOR THE RETURN OF THE NON-PROTECTED EXCESS DEFERRED INCOME TAX REGULATORY LIABILITY STEMMING FROM THE TAX CUT AND JOBS ACT.

PROCEEDING NO. 20AL-0395E

IN THE MATTER OF ADVICE LETTER NO. 790 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO RETURN THE AMORTIZATION OF THE PROTECTED EXCESS DEFERRED FEDERAL INCOME TAXES REGULATORY LIABILITY AS A BILL CREDIT IN DECEMBER 2020 TO BECOME EFFECTIVE OCTOBER 25, 2020.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
CONSOLIDATING PROCEEDINGS, APPROVING
SETTLEMENT AGREEMENT, AND
WAIVING RESPONSE TIME**

Mailed Date: December 30, 2020

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I. STATEMENT

1. On September 24, 2020, Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (Black Hills or the Company), filed tariff sheets with Advice Letter No. 789 to Approve a Bill Credit for the Return of Non-Protected Excess Deferred Income Tax (EDFIT) Regulatory Liability Stemming from the Tax Cuts and Jobs Act (TCJA). This filing commenced Proceeding No. 20AL-0394E.

2. On September 24, 2020, Black Hills filed tariff sheets with Advice Letter No. 790 to Approve a Bill Credit for the Return of Protected EDFIT Regulatory Liability Stemming from the TCJA. This filing commenced Proceeding No. 20AL-0395E.

3. The procedural backgrounds for Proceeding Nos. 20AL-0394E and 20AL-0395E are detailed in Decision Nos. C20-0818 and C20-0819, respectively. Paragraphs 3 through 13 of Decision No. C20-0818 and paragraphs 3 through 15 of Decision No. C20-0819 are incorporated here through reference.

4. Black Hills, Trial Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Office of Consumer Counsel (OCC) are the only parties to each of the above-captioned proceedings.

5. On December 8, 2020, Black Hills, Staff, and the OCC (collectively, the Settling Parties) filed an Unopposed Comprehensive Settlement Agreement (Settlement Agreement), resolving all contested issues in Proceeding Nos. 20AL-0394E and 20AL-0395E, and a Joint Motion to Approve Settlement Agreement, Consolidate Proceedings, and for Waiver of Response Time.

6. On December 18, 2020, the Settlement Testimony of Michael J. Harrington was filed on behalf of the Company in support of the Settlement Agreement.

II. CONSOLIDATION OF PROCEEDING NOS. 20AL-0394E AND 20AL-0395E

7. The Settling Parties state and agree that the issues raised in both Proceeding Nos. 20AL-0394E and 20AL-0395E are substantially similar and that no party will be prejudiced from consolidation. The Settling Parties seek consolidation of the two proceedings at issue and comprehensive resolution through approval of the Settlement Agreement.

8. Rule 1402 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, provides that “[e]ither on its own motion or on the motion of a party, the Commission may consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced.”

9. Based upon good cause shown for the unopposed request, response time will be waived. The Administrative Law Judge (ALJ) finds that the issues in the proceedings are substantially similar. The ALJ further finds that consolidation of those matters that are the subjects of Proceeding Nos. 20AL-0394E and 20AL-0395E will promote administrative efficiency. No party will be prejudiced by consolidation. Proceeding Nos. 20AL-0394E and 20AL-0395E will be consolidated.

III. DISCUSSION OF SETTLEMENT

A. Testimony and Terms of Settlement Agreement

10. The Settlement Agreement, attached to this Recommended Decision as Appendix A, explains that the Settling Parties negotiated a resolution of all disputed issues in the consolidated proceeding. The Settling Parties assert that the Advice Letters, as modified by the terms of the Settlement Agreement, are in the public interest and supported by the testimonies of Black Hills, Staff, and the OCC.

B. Non-Protected EDFIT Bill Credits

11. The Settlement Agreement approves a one-time bill credit to provide the Company's electric customers the benefits of non-protected EDFIT associated with the TCJA, rather than a four-year amortization of the non-protected EDFIT as the Company originally proposed in its TCJA Plan. The Settling Parties agree that the calculation of the non-protected EDFIT liability results in a total liability of \$7,283,320, and that this total liability should be provided to the Company's electric customers as a one-time bill credit. The Settling Parties agree to allocate the one-time bill credit based on the percentages of customers in its various customer classes from the Company's last Phase 2 electric rate case proceeding, and that the Company will true-up any remaining amounts following the implementation of the bill credit.

C. Non-Protected EDFIT Interest Amounts

12. The Settlement Agreement requires the Company to make donations to local non-profit organizations for direct energy assistance purposes. The sum of the donations is based on an interest calculation that reflects a term of 12 months and an interest percentage that reflects the Company's authorized Weighted Average Cost of Capital (WACC) of 7.43%, applied to 25% of the one-time bill credit of \$7,283,320. The interest calculation with respect to the Non-Protected

EDFIT amount results in a total interest amount of \$146,562 to be donated to non-profit organizations in the manner specified in the Settlement Agreement.

D. Protected EDFIT Bill Credits

13. The Settling Parties agree that the calculation of the protected EDFIT liability results in a total liability of \$44,908,303. They also agree that it is appropriate to provide customers the protected EDFIT liability according to the Average Rate Assumption Method (ARAM) for amortizing excess tax reserves. Applying ARAM, the Settlement Agreement requires the Company to provide to its electric customers one-time bill credits for 2018 and 2019 of \$1,046,822 and \$994,583, respectively. The bill credits will be allocated to the Company's customers in its various customer classes based on the percentages from the Company's last Phase 2 electric rate case proceeding. The Settling Parties agree to the Company's proposal to true-up any remaining amounts following application of the bill credits.

14. The Settlement Agreement requires the Company to provide annual bill credits to its electric customers until the protected EDFIT balance is fully amortized. The Company must file annual advice letters such that every April, starting with April 2021, electric customers will receive the annual bill credit for the portion of the outstanding protected EDFIT balance that was amortized in the previous calendar year, unless or until the Company files a rate review and receives a Commission determination of a final annual protected EDFIT amortization amount that is incorporated in base rates.

E. Protected EDFIT Interest Amounts

15. The Settlement Agreement also requires the Company to make a donation based on an interest calculation for the 2018 and 2019 protected EDFIT amortizations to local non-profit organizations for direct energy assistance purposes.

16. The interest calculation for the 2018 amortization reflects a term of 21 months and an interest percentage that reflects the Company's authorized WACC of 7.43%, applied to 100% of the one-time bill credit of \$1,046,822. The interest calculation for the 2018 amortization results in a total interest amount of \$136,113.

17. The interest calculation for the 2019 amortization reflects a term of nine months, and an interest percentage that reflects the Company's authorized WACC of 7.43%, applied to 100% of the one-time bill credit of \$994,583. The interest calculation for the 2019 amortization results in a total interest amount of \$55,423.

18. In aggregate, the Settlement Agreement requires the Company to provide for protected EDFIT an interest donation amount of \$191,536 to local non-profit organizations for direct energy assistance in the manner specified in the Settlement Agreement.

F. Reporting Requirement

19. The Settlement Agreement requires Black Hills to file a report in this proceeding regarding the donations of the interest amounts made to local non-profit organizations, including on the specific organizations receiving the donations, the amounts of the donations, and the dates upon which the donations were made.

G. Staff's Request Show Cause Order

20. The Settlement Agreement provides that Staff agrees to not pursue against Black Hills future requests for assessment of civil penalties concerning the issues raised in the Request for Show Cause Order Against Black Hills Colorado Electric, LLC, Proceeding No. 20C-0408E.

H. Timing of Bill Credits

21. The Settling Parties agree that whenever the Settlement Agreement is approved, Black Hills will act in a timely manner to implement the EDFIT bill credits required by the

Settlement. After approval of the Settlement Agreement, the Company will make a compliance advice letter filing on not less than two business days' notice to effectuate the one-time bill credit for non-protected EDFIT and the 2018 and 2019 bill credits for protected EDFIT and the associated tariff sheets.

I. Testimony in Support of Settlement Agreement

22. In the testimony filed by Black Hills, Mr. Harrington addresses and supports the Settlement Agreement. His testimony establishes that approval of the agreement negotiated is in the public interest and he explains why the Settling Parties support the terms and conditions of the Settlement Agreement.

23. Mr. Harrington explained that the Company will notify customers of the bill credits and will encourage customers to consider donating all or a portion of their bill credit to Energy Outreach Colorado. The Company has also agreed to match dollar-for-dollar, using shareholder funds, any amounts donated by customers.

24. For settlement purposes, and to assist customers during the COVID-19 pandemic, the Company agreed to use the WACC for the calculation of interest. This rate is not normally used in calculation of interest.

25. The Parties agreed in the settlement that interest amounts determined in the Settlement Agreement will be given to local non-profit organizations for direct energy assistance purposes. Mr. Harrington describes the process that will be employed to solicit donations and how amounts will be given to non-profits. If, and to the extent, a non-profit organization listed in the Settlement Agreement should decline the donation or otherwise not be able to receive a donation for the agreed direct energy assistance purposes, then Black Hills will donate such sums to Rocky Mountain Human Services within 45 days of a final Commission decision approving the

Settlement Agreement. The parties' agreement infers this is a reasonable provision to ensure the parties' overall intent is achieved in a timely fashion.

26. In accordance with the Settlement Agreement, the Company will file a full accounting report, with supporting affidavit, of all interest amounts donated, the organizations that received the donations, and the date of the donations.

27. Mr. Harrington supports the negotiated agreement regarding donations to local non-profit organizations as a response of the Company to creatively navigate economic constraints that customers are experiencing and to assist the community in helping customers who need it during the COVID-19 pandemic. *See*, Decision No. R20-0664-I, Proceeding No. 20M-0267EG.

28. In sum, the Company believes the Settlement Agreement provides a just and reasonable resolution of this proceeding, is consistent with Public Utility Law, and is in the public interest. The non-profit provisions specifically will be used to help and support many customers facing financial hardships.

IV. FINDINGS AND CONCLUSIONS

29. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. In reviewing the terms of the Settlement Agreement, the ALJ applied the Commission's direction and policy with respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

30. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

31. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the Advice Letters and supporting direct testimony filed by Black Hills; the settlement

testimony filed by the individual Settling Parties; and the terms and conditions of the Settlement Agreement. The ALJ has duly considered the positions of all parties in this matter and weighed the evidence presented.

32. Based on the entire record, the ALJ finds that approval of the Settlement Agreement without modification is in the public interest. The Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit both Black Hills and its customers.

33. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

V. ORDER

A. It Is Ordered That:

1. The Joint Motion to Approve Settlement Agreement, Consolidate Proceedings, and For Waiver of Response Time filed by Black Hills Colorado Electric, LLC (Black Hills) on December 8, 2020, is granted, consistent with the discussion above. Because the Joint Motion is unanimous and unopposed, response time is waived.

2. Proceeding Nos. 20AL-0394E and 20AL-0395E are consolidated into a single proceeding. Proceeding No. 20AL-0394 is the primary Proceeding.

3. All proceeding numbers and captions in the consolidated proceeding shall be listed on all future filings, as on this Recommended Decision. The primary proceeding number stated in Ordering Paragraph 2 above and its caption shall appear first.

4. The filing requirements of Rule 1204 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, are modified as set forth in this Ordering Paragraph. In this

consolidated proceeding, parties shall file an original and the number of copies of all filings provided for in Commission rules under the primary proceeding, Proceeding No. 20AL-0394; no copies shall be filed in the additional proceedings consolidated.

5. The Settlement Agreement filed by Black Hills on December 8, 2020, and attached to this Recommended Decision as Appendix A, is approved without modification, consistent with the discussion above.

6. The tariffs attached to Black Hills' Advice Letter Nos. 789 and 790, filed by Black Hills on September 24, 2020, are permanently suspended and may not be further amended.

7. Black Hills shall subsequently make a new advice letter and tariff compliance filing on not less than two business days' notice consistent with this Recommended Decision. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Recommended Decision in order to be filed as a compliance filing on shortened notice.

8. Black Hills shall comply with, and make all filings required by, the Settlement Agreement and this Recommended Decision.

9. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the mailed date above.

10. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

11. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own

motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

12. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

13. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director