

Decision No. C20-0194-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18M-0074EG

IN THE MATTER OF THE COMMISSION'S CONSIDERATION OF THE IMPACT OF THE FEDERAL TAX CUTS AND JOBS ACT OF 2017 ON THE RATES OF COLORADO INVESTOR-OWNED ELECTRIC AND NATURAL GAS UTILITIES.

**INTERIM DECISION REQUIRING ADDITIONAL
INFORMATION FROM BLACK HILLS COLORADO
ELECTRIC, LLC BEFORE RULING ON ITS
MOTION TO MODIFY TAX CUTS AND JOBS ACT PLAN**

Mailed Date: March 23, 2020

Adopted Date: March 11, 2020

I. BY THE COMMISSION

A. Statement

1. On February 13, 2020, Black Hills Colorado Electric, LLC (Black Hills or Company) filed an unopposed motion requesting approval to change the amortization period for approximately \$7.3 million of non-protected excess deferred federal income taxes (EDFIT) from four years to one month. Black Hills proposes to implement the non-protected EDFIT amortization through one-time credits to customer bills in April 2020.

2. Through this Decision, the Commission requires Black Hills to provide additional information on its proposal to provide the bill credit to its customers before the Commission renders a decision on the merits of the motion. The Commission will issue a separate decision addressing the motion upon consideration of the additional information provided by the Company.

B. Discussion

3. On February 1, 2018, in response to the federal Tax Cut and Jobs Act (TCJA) enacted on December 22, 2017, the Commission issued Decision No. C18-0075 opening this proceeding. The TCJA reduced the corporate income tax rate from 35 percent to 21 percent and required the re-evaluation of federal deferred tax assets and liabilities. Accordingly, Decision No. C18-0075 directed all Colorado investor-owned electric and natural gas utilities to submit a filing that detailed how the utility would track the TCJA-related deferred regulatory liability, refund to customers any over collection resulting from the deferred regulatory liability, and update the utility's revenue requirements and resulting rates reflecting the prospective impacts of the TCJA.

4. On May 11, 2018, the Commission issued Decision No. C18-0326-I, adopting a uniform process for determining whether each utility has properly addressed the TCJA impacts on rates. The Commission directed each utility to implement necessary rate changes through advice letter filings pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1210 of the Commission's Rules of Practice and Procedure and §§ 40-3-104(1)(a) and 40-6-111(2)(a)(III), C.R.S. The Commission also required each utility to file quarterly status reports until the utility is excused from further participation in this proceeding. After the necessary advice letter tariff filings are made to account for TCJA impacts on rates, each utility is allowed to file a motion to be excused from this proceeding. Any such motion is subject to a response period during which any party to this proceeding may challenge the utility's request for relief.

5. The Commission recognized in Decision No. C18-0326-I that a utility may need to modify its plan to address TCJA impacts as circumstances change. The Commission directed

utilities to file modified plans in this proceeding “with proper requests for relief and reasonable opportunities for the intervening parties to respond.”¹

6. In Decision No. C18-0326-I, the Commission further addressed Black Hills’ plan for implementing the impacts of the TCJA on its rates filed in this Proceeding on February 21, 2018. Black Hills stated that its annual revenue requirement was approximately \$6 million less than what it was under the higher federal tax rate. In order to refund this difference to its ratepayers, Black Hills proposed to implement a negative General Rate Schedule Adjustment (GRSA) to remain in effect until the Company’s next rate case. With regard to the deferred income tax impacts of the TCJA, Black Hills calculated an EDFIT regulatory liability to the benefit of customers, with a protected amount of approximately \$38 million and a non-protected amount of approximately \$7.3 million. Black Hills proposed to implement an annual bill credit mechanism to refund amounts to customers according to the ARAM for the protected EDFIT and using a four-year amortization period for the non-protected EDFIT.

7. The Commission stated in Decision No. C18-0326-I that Black Hills may file a motion to be excused from this statewide TCJA proceeding after: (1) base rates take effect from Proceeding No. 17AL-0477E, the utility’s then pending Phase II rate case; (2) a negative GRSA takes effect to address TCJA impacts on base rates going forward; (3) any other riders or rate adjustments incorporate TCJA-impacts have taken effect; (4) the proposed one-time bill credit in 2018 (for impacts back to January 1, 2018) is paid to customers; and (5) the April 2019 annual bill credit is paid to customers. In accordance with the schedule the Commission set forth in Decision No. C18-0326-I, Black Hills’ motion to be excused from this Proceeding was expected to be filed in the second quarter of 2019.

¹ Decision No, C18-0326-I at ¶ 88.

8. On April 2, 2019, Black Hills filed Advice Letter No. 772 in Proceeding No. 19AL-0171E to provide a one-time bill credit related to TCJA impacts. In that advice letter, Black Hills acknowledges that “Ordering paragraph 13 in Decision No. C18-0326-I requires Black Hills to ‘file an advice letter tariff filing to provide its customers with bill credits as described in its plan filed on February 21, 2018.’”² The bill credit at issue in Advice Letter No. 772 reflected a difference between the actual amount credited to customers through the negative GRSA and the total annual reduction. In footnote 1 of the advice letter, Black Hills stated that the Commission did not need to act on the filing “as it is informational and consistent with its approved Plan. The Company is not changing the GRSA tariff with this advice letter. Nevertheless, the Commission ordered the Company to file an advice letter to provide its customers with the onetime bill credits.”

9. In the motion filed on February 13, 2020, Black Hills states that changing the amortization period from four years to one month for the entire amount of non-protected EDFIT (\$7.3 million) results “in a more timely and speedy fashion than Black Hills’ original proposal to provide the same through a four-year amortization period over multiple bill credits.”³ Black Hills further describes its TCJA plan as having two steps. The first step is defined as the implementation of the negative GRSA and the subsequent “one-time true-up” in April 2019 as described above. The second step is described as “working through the precise calculations of the EDFIT.”⁴ Black Hills states that it now has “final amounts for the protected and non-

² Advice Letter No.772 at p. 1.

³ February 13 Motion at pp. 3-4.

⁴ *Id.* at p. 3.

protected EDFIT”⁵ and concludes that it is prepared to implement the second step of its TCJA plan as modified per the motion.

10. Black Hills also states in the motion that, after providing the one-time bill credit in April 2020, it will provide the Commission a final accounting of its actions to implement the cost savings benefits of the TCJA and submit a motion to be excused from this proceeding.

11. Black Hills attached no tariff sheets to the February 13, 2020 motion. The Company states that once it receives Commission approval of the motion, “the Company will perform the necessary steps to complete step 2 of its TCJA plan.”⁶

12. No responses to the motion were filed by parties in this Proceeding.

C. Findings and Conclusions

13. We conclude that additional information is required from Black Hills before rendering a decision on the merits of the motion.

14. First, we direct Black Hills to address the proposed treatment of the protected EDFIT estimated by the Company to be approximately \$38 million. The February 13, 2020 motion appears to address the amortization of only non-protected EDFIT.

15. Second, we direct Black Hills to explain in greater detail how the bill credits proposed to be made in April 2020 will be carried out. Black Hills must address, for example, the steps made to ensure that a customer’s account reflects the credit even in the event that the customer does not receive a bill in April 2020.

⁵ *Id.*

⁶ *Id.* at p. 6.

II. ORDER

A. It Is Ordered That:

1. Black Hills Colorado Electric, LLC (Black Hills) shall provide certain information regarding its proposal to provide bill credits to customers in April 2020 as it relates to its plan to address the impact of the Federal Tax Cuts and Jobs Act of 2017 on rates, consistent with the discussion above.

2. The Commission will take up the merits of the motion requesting approval to change the amortization period for approximately \$7.3 million of non-protected excess deferred federal income taxes from four years to one month filed by Black Hills on February 13, 2020 by a separate decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 11, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

_____ Commissioners

COMMISSIONER FRANCES A. KONCILJA'S
TERM EXPIRED MARCH 13, 2020