

Decision No. C21-0192-E

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0380G

IN THE MATTER OF ADVICE LETTER NO 3 FILED BY BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) THAT WILL INCREASE THE BASE RATES FOR ALL RATE SCHEDULES EFFECTIVE OCTOBER 12, 2020.

**ERRATA NOTICE FOR
COMMISSION DECISION DENYING RRR BY
UPHOLDING DECISION NO. C21-0103**

Errata mailed March 29, 2021

Original Decision No. C21-0192 mailed March 26, 2021

1. Paragraph 59 on page 19 of this Decision reads as:

We find the Company’s position without merit. To adopt Black Hills’ conclusion would lead us to an absurd result.⁹ Interpreting Black Hills’ argument, when an advice letter is filed, the Commission is precluded, except in very limited procedural circumstances, to implementing rates no matter the circumstances.

Several edits have been made to this paragraph. Paragraph 59 is amended to read as follows:

We find the Company’s position without merit. To adopt Black Hills’ conclusion would lead us to an absurd result.⁹ Interpreting Black Hills’ argument, when an advice letter is filed, the Commission is required, except in very limited procedural circumstances, to implement rates no matter the circumstances. We find such a conclusion flawed. This would be akin to a plaintiff ordering a court of general jurisdiction to find for the plaintiff, no matter the arguments to the contrary. To hamstring the Commission in this manner would prevent it from carrying out its constitutional and legislative duty and authority to ensure just and reasonable rates.¹⁰ Consequently, we decline to adopt the Company’s reasoning here.

An additional footnote, footnote 10 was added to this paragraph. Footnote 10 reads as follows:

See, Consolidated Freightways Corp. v. Public Utilities Commission, 406 P.2d 83 (1965) (the Commission has been charged with the duty to carry out its mission in two areas; to wit: To protect the public and to prevent destructive rate-making which could result in nonavailability of the service to the public); *see also, City of Montrose v. Public Utilities Commission*, 629 P.2d 619 (Colo. 1981) (The Commission has a general responsibility to protect the public interest regarding utility rates and practices); *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981) (a primary purpose of utility regulation is to ensure that the rates charged are not excessive or unjustly discriminatory).

2. The second sentence of paragraph 60 on pages 19 and 20 reads as:

Most importantly, Black Hills' interpretation ignores the provision of § 40-3-102, C.R.S., that requires the Commission "to do *all things*, whether specifically designated in articles 1 to 7 of this title, *or in addition thereto*, which are necessary or convenient in the exercise of such power ..." *Id.*

The "*Id.*" at the end of the sentence shall be deleted.

3. The third line of paragraph 61 reads as:

providing it with notice and an opportunity to be heard before taking action in Decision

Replace "it" with "Black Hills."

4. The second sentence of paragraph 63 on page21 reads as:

We allowed responses to its RRR filing; we conducted a hearing to allow the utility and the parties to the proceeding to opine on our decision and offer counter proposals; and finally, we allowed a second round of pleadings to respond to our proposal on how to move these matters forward in a reasonable and efficient manner to not only the Company, but for the parties and the Commission as well.

That sentence shall be amended to read as follows:

We allowed responses to its RRR filing; we conducted a hearing to allow the utility and the parties to the proceeding to opine on our decision and offer counter proposals; and finally, we allowed a second round of pleadings for the Company and parties to respond to our proposal on how to move these matters forward in a reasonable and efficient manner to not only the Company, but for the parties and the Commission as well.

5. Paragraph 65 on page 21 reads as:

Again, we find no merit in this claim. As is well known by all parties that participate in matters before the Commission, the doctrine of *stare decisis* does not apply to administrative decisions, especially in rate case proceedings, which are legislative in nature rather than judicial. The Commission is provided broad authority by the Colorado Legislature to craft decisions in each individual rate case based on the unique circumstances of each case. While Black Hills attempts to compare this matter favorably with other rate cases since concluded, as we noted above, the unique circumstances of this convoluted matter which the Company caused through its machinations required us to dismiss the Phase I case here.

An additional footnote is added to that paragraph. A sentence is also added to the end of the paragraph. Paragraph 65 shall be amended to read as follows:

Again, we find no merit in this claim. As is well known by all parties that participate in matters before the Commission, the doctrine of *stare decisis* does not apply to administrative decisions, especially in rate case proceedings, which are legislative in nature rather than judicial.¹⁵ The Commission is provided broad authority by the legislature to craft decisions in each individual rate case based on the unique circumstances of each case. While Black Hills attempts to compare this matter favorably with other rate cases since concluded, as we noted above, the unique circumstances of this convoluted matter which the Company caused through its machinations required us to dismiss the Phase I case here. It is similar to no other previous rate case filed before this Commission.

Footnote 15 shall read as follows:

See, Public Service Company of Colorado v. Public Utilities Commission, 26 P.3d 1198 (Colo. 2001) (the making of rates to govern public utilities is legislative in nature and not a judicial function); *Colorado Ute Electric Association v. Public Utilities Commission*, 602 P.2d 861 (1979)(due to the legislative character of rate-making, the Commission is not bound by its prior decisions or by any doctrine similar to *stare decisis*).

6. Paragraph 69 on page 23 reads as follows:

Therefore, we deny Black Hills' RRR and uphold our decision dismissing the Phase I Gas Rate Case in this Proceeding. Nonetheless, we offer two solutions to the Company that we find accommodating and reasonable.

Paragraph 69 shall be amended to read as follows:

Based on the proposals and arguments we received, we find it most appropriate and in the public interest to deny Black Hills' RRR and uphold our Decision dismissing the Phase I Gas Rate Case in this Proceeding. Nonetheless, we offer two solutions to the Company to move forward that we find accommodating and reasonable.

7. A footnote and a sentence shall be added at the end of paragraph 70 on page 23.

Paragraph 70 shall be amended to read as follows:

The Company may file a new stand-alone Phase I Gas Rate Case as soon as practicable. However, since Black Hills represented in the hearing on this matter that it was three weeks away from completing a Phase II filing, we urge the Company to file a Phase II rate case combined with its Phase I filing or in a staggered sequence prior to the completion of the new Phase I rate case filing utilizing updated test year numbers from its denied Phase I case. Whether filed concurrently or staggered, the Phase II rate case would complement the new Phase I rate case.¹⁷ We determine that proceeding in this manner will provide the Company with the relief it seeks in the most expedient manner possible.

Footnote 17 shall read as follows:

In a companion decision in Proceeding No. 19AL-0075G, we order Black Hills to file its required Phase II rate case within 60 days of the effective date of that decision. However, if the Company chooses the option to file a concurrent Phase I rate case and Phase II rate case here or a staggered Phase I rate case and Phase II rate case, we would expect Black Hills to file in addition, a request for waiver of the requirement to file a Phase II rate case in Proceeding No. 19AL-0075G.

8. Ordering paragraph 2 on page 23 reads as:

Black Hills may file a new Phase I Gas Rate Case at its earliest convenience using an updated test year number from the denied Phase I Gas Rate Case.

Ordering paragraph 2 shall be amended to read as follows:

Black Hills may file a new Phase I Gas Rate Case at its earliest convenience using updated test year numbers from the denied Phase I Gas Rate Case consistent with the discussion above.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DOUG DEAN

Director

ATTEST: A TRUE COPY

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

Doug Dean,
Director