

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19AL-0075G

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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 BE EFFECTIVE ON MARCH 4, 2019.

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**COMMISSION DECISION UPHOLDING  
DECISION ON APPLICATION FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION**

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Mailed Date: April 13, 2021  
Adopted Date: March 24, 2021

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**I. BY THE COMMISSION****A. Statement**

1. By this Decision, we uphold Commission Decision No. C21-0005 issued January 6, 2021, denying Black Hills Colorado Gas, Inc., doing business as Black Hills Energy's (Black Hills or Company) Motion for Variance to Extend Filing Date of Gas Phase II Rate Review. We therefore deny Black Hills' Application for Rehearing, Reargument or Reconsideration (RRR) of Decision No. C21-0005.

**B. Background**

2. Black Hills commenced this rate case with the filing of Advice Letter No. 1 on February 1, 2019. Through Advice Letter No. 1, the Company proposes to consolidate the rates, tariffs, and service offerings of its two predecessor gas utilities: Black Hills/Colorado Gas Utility Company, Inc. (BHGU); the legacy gas utility acquired from Aquila, Inc. in 2008; Black Hills Gas Distribution, LLC (BHGD); and the SourceGas companies acquired in 2016. Black Hills proposed to consolidate the three existing base rate areas of BHGU and BHGD into a single statewide base rate area for purposes of establishing an overall revenue requirement for Black Hills. For purposes of bill mitigation, however, Black Hills proposed to implement two sets of base rates for two newly defined base rate areas. The base rates filed with Advice Letter No. 1 were set to recover a revenue requirement deficiency of approximately \$2.5 million. Black Hills subsequently revised the revenue requirement deficiency to \$3.5 million but did not propose modified base rates in the consolidated rate schedules. In addition to base rate area consolidation, through Advice Letter No. 1, Black Hills further proposed to: combine the seven existing gas cost adjustment (GCA) areas of BHGU and BHGD into three newly defined GCA areas; implement a Distribution System Integrity Rider (DSIR) to allow current recovery of system

safety and integrity investments; and modify its construction allowances for new customer connections.

3. In support of its proposals, Black Hills initially submitted a single statewide Revenue Requirement Study (RRS) and a single statewide Class Cost of Service Study (CCOSS). At the end of the evidentiary hearing, after witnesses for Staff of the Commission (Staff) and the Office of Consumer Counsel (OCC) testified that the Commission could not determine whether the Company's proposed consolidated and mitigated rates were reasonable, the parties agreed to keep the record open to allow the Company to file four additional CCOSSs. After supplemental direct and answer testimony from Black Hills and the intervenors, the Administrative Law Judge (ALJ) convened an additional hearing day in October 2019 where the Company provided live rebuttal testimony and parties cross-examined witnesses.

### **1. Recommended Decision**

4. On December 27, 2019, ALJ Conor Farley issued Recommended Decision No. R19-1033, wherein he permanently suspended the tariff sheets filed by Black Hills with Advice Letter No. 1 and ordered Black Hills to file modified rates and tariff sheets consistent with the terms of the Recommended Decision.

5. The opening paragraphs of the Recommended Decision call this rate case "flawed from the beginning" and conclude that the resulting evidentiary record is "substantially deficient in many areas."<sup>1</sup> The Recommended Decision faults the "atypical" breadth of the issues raised in the Company's Advice Letter No. 1 and the "flaws" in the Company's handling of the case

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<sup>1</sup> Recommended Decision of Conor F. Farley Permanently Suspending Tariff Sheets, Addressing Synergies from SourceGas Acquisition, Denying Request for DSIR, Base Rate Area Consolidation, and Revised Construction Allowances, Granting Stipulated GCA Consolidation, Granting Stipulation Addressing Certain Transportation Issues, Requiring Filings, and Shortening Time for Filing Responses to Exceptions, issued December 27, 2019 (Recommended Decision), at pp. 7-8.

including its “updates” and “corrections” to the RRS and the Company’s initial decision to file only a consolidated RRS and CCOS. <sup>2</sup> The Recommended Decision concludes the evidentiary record is sufficiently developed to allow the ALJ to decide the Phase I issues raised in Advice Letter No. 1, but not to allow the ALJ to find and conclude that Black Hills’ proposals on base rate area consolidation and the other Phase II issues, the DSIR, and construction allowances yield just and reasonable rates and are in the public interest. <sup>3</sup>

6. Because of these flaws and deficiencies, the Recommended Decision decides the Phase I issues but denies Black Hills’ remaining requests. The Recommended Decision finds the supplemental RRSs and CCOSs filed after the hearing for each base rate area are “insufficient by themselves” to produce rates that the ALJ can find and conclude are just and reasonable because of the changes made by the Recommended Decision to the inputs to these studies. <sup>4</sup> The Recommended Decision finds the Company “performed little analysis” of the development of cost-based rates generated from the new CCOSs and that intervenors had “comparatively little time” to review. <sup>5</sup> The Recommended Decision therefore orders the Company to implement a General Rate Schedule Adjustment (GRSA) to adjust current rates proportionally for each of the three existing base rate areas. The ALJ finds the rates resulting from application of a GRSA are just and reasonable as they are based on existing rates with a proportional increase or decrease to implement the necessary changes in revenue requirements. <sup>6</sup>

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<sup>2</sup> *Id.* at pp. 11-12.

<sup>3</sup> *Id.* at p. 13.

<sup>4</sup> *Id.* at p.140

<sup>5</sup> *Id.* at p.142.

<sup>6</sup> *Id.* at p.144.

7. Notably, the Recommended Decision orders the Company to file a new Phase II rate case within six months and to provide, at a minimum, a proposal with CCOSs for each existing base rate area and all rates for each base rate area. The Recommended Decision clarifies that the Company may also propose consolidated rates as an alternative. By approving, in part, a Motion to Approve Partial Stipulation and Settlement Agreement Between Black Hills, Staff, and Energy Outreach Colorado (EOC) filed on August 1, 2019, the Recommended Decision grants the formation of three newly defined GCA regions. The Recommended Decision denies Black Hills' request for a DSIR and orders the Company to file a new advice letter and tariff sheets proposing a DSIR within six months addressing the concerns with the Company's proposal identified in the Recommended Decision. Likewise, the Recommended Decision denies Black Hills' construction allowance proposal and orders the Company to file for approval of revised construction allowances within nine months and include in that filing the analysis found lacking in this Proceeding in the Recommended Decision.

## **2. Commission Decision on Exceptions**

8. On May 19, 2020, the Commission issued Decision No. C20-0372 granting in part and denying in part exceptions to Recommended Decision No. R19-1033. The Commission denied Black Hills' exceptions contending the Recommended Decision unlawfully denied the Company's Phase II, DSIR, and construction allowance proposals. The Commission agreed with the opening statement in the Recommended Decision that a series of "flaws" in this Proceeding led to a record that is "substantially deficient in many areas."<sup>7</sup> The Commission further agreed with the Recommended Decision that these flaws included: it was predicable the depth and breadth of issues raised by the Company's advice letter would strain the Commission's and

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<sup>7</sup> *Id.* at p. 13.

intervenors' resources and "lead to a less than fulsome" record;<sup>8</sup> that Black Hills filed updates and corrections to the RRS that, coupled with the cap on the revenue requirement at the original amount, meant the base rates in the tariff sheets were not cost-based and caused confusion about whether the parties and the Commission should focus on the original revenue requirement study or the revised version;<sup>9</sup> and, that Black Hills only filed individual CCOSs for the existing base rate areas late in the Proceeding.<sup>10</sup>

9. The Commission found that by denying these proposals within the Company's Advice Letter No. 1, the Commission did not abdicate its duties or violate the rights of Black Hills. Rather, without Black Hills meeting its evidentiary burden, the Commission lacked the record evidence needed to determine whether the Company's proposed rates were just and reasonable, as required by statute.<sup>11</sup> The Commission upheld the Recommended Decision's conclusion that Black Hills had not met its burden of proof to support its Phase II Rate Case, DSIR, and construction allowance proposals.<sup>12</sup> Due to the many deficiencies in Black Hills' case, the Commission found the Recommended Decision properly declined to approve these proposals within this Proceeding. The Commission was satisfied that by denying the Company's proposals within Advice Letter No. 1, it did not abdicate its duties or violate Black Hills' rights.<sup>13</sup>

10. In Decision No. C20-0372, the Commission approved and denied the various exceptions raised by the parties. Most relevant here, the Commission declined Black Hills'

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<sup>8</sup> *Id.* at p. 11.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at p. 12.

<sup>11</sup> *See* § 40-6-111(2)(a)(I), C.R.S. (Commission shall establish rates and charges that it "finds just and reasonable").

<sup>12</sup> *See*, Recommended Decision at pp.13-14 (finding record not sufficiently developed to allow the Commission to find and conclude the Company's proposals on the Phase II issues, request for DSIR, and requested changes to construction allowances yield just and reasonable rates and are in the public interest).

<sup>13</sup> Commission Decision No. C20-0372, issued May 19, 2020 at p. 13.

exceptions which request approval of the Company's proposed base rate area consolidation, finding Black Hills failed to meet its burden of proof.<sup>14</sup>

11. The Commission also denied Black Hills' exceptions requesting approval of its proposed DSIR. That denial again, was based on the fact that the Company failed to meet its burden of proof that the DSIR was in the public interest.

12. In addition, Black Hills' (as well as EOC's) exceptions requesting approval of the Company's construction allowance proposals were denied. The Commission agreed with Staff and OCC, as well as the Recommended Decision that the Company failed to provide adequate analysis and information to demonstrate that its proposed construction allowances would result in just and reasonable rates, or whether subsidization would occur between existing and new customers.

13. The Commission denied Black Hills' exceptions requesting to include the \$35.3 million of post-period capital additions in the rate base calculation finding the ALJ properly rejected the Company's position that the significant size of the post-test year investments, when considered in the aggregate renders those investments extraordinary.<sup>15</sup> The Commission determined Black Hills mischaracterized the ALJ's analysis which disallowed the capital additions based on a finding that the post-test year adjustments did not sufficiently adhere to the matching principle and therefore would not result in a just and reasonable outcome.<sup>16</sup> The Commission additionally denied OCC's exceptions requiring Black Hills to retain a revenue adjustment equal to \$607,453, which the OCC claimed was an annual normalization unrelated to

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<sup>14</sup> *Id.* at pp 25-30.

<sup>15</sup> *Id.* at pp. 50-51.

<sup>16</sup> *Id.*

the capital additions.<sup>17</sup> The Commission determined OCC failed to make a compelling case to support its position that \$607,453 of the \$708,687 revenue adjustment represented a standard annual normalization of revenues for the test year.<sup>18</sup>

14. Regarding the Return on Equity (ROE), in considering the exceptions of the parties, the Commission agreed support in the record existed to further reduce Black Hills' ROE to an authorized ROE of 9.2 percent. The Commission relied on the advocacy of Staff and OCC to make such a finding.<sup>19</sup>

15. As to the issue of the cost of long-term debt, the Commission denied the exceptions of the parties and upheld the Recommended Decision's determination to set the cost of debt at 4.31 percent to set Black Hills' revenue requirement. In addition, the Commission upheld the requirement in the Recommended Decision for Black Hills to obtain approval of debt assignments made by Black Hills Corporation for the establishment of the Company's long-term debt. The Recommended Decision reasonably concluded Black Hills should obtain approval for the debt assignments to Black Hills from its parent company, Black Hills Corporation, to establish the Company's long-term debt through a separate petition rather within this rate case.<sup>20</sup>

16. As to the other rate case issues the parties sought exceptions to, the Commission granted exceptions in part and denied other exceptions regarding the issues of future wage increases and pensions expenses; pension and retiree expenses; property tax expenses; and rate case expenses.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at pp. 58-60.

<sup>20</sup> *Id.* at p. 65.



17. Most importantly, and most relevant here, Decision No. C20-0372 upheld the Recommended Decision's directive for Black Hills to file a Phase II Rate Case within six months of a final decision in this Proceeding.<sup>21</sup>

### 3. Commission Decision on RRR

18. On July 8, 2020, the Commission issued Decision No. C20-0497 denying Black Hills' RRR. Black Hills claimed the Commission had refused to fashion a just and reasonable resolution based on the "expansive" evidence in the record.<sup>22</sup> In Decision No. C20-0497, the Commission reiterated it considered and rejected this claim in the Decision on Exceptions. The Commission instead agreed with the ALJ's Recommended Decision that flaws during the course of the Proceeding led to a record that was "substantially deficient in many areas."<sup>23</sup> The Commission agreed with the ALJ that it was predictable that the depth and breadth of issues raised by the Company's advice letter would strain the Commission's and intervenors' resources and lead to a less than fulsome record;<sup>24</sup> that Black Hills filed updates and corrections to the revenue requirement study that, coupled with the cap on the revenue requirement at the original amount, meant the base rates in the tariff sheets were not cost-based and caused confusion about whether the parties and the Commission should focus on the original revenue requirement study or the revised version;<sup>25</sup> and that Black Hills only filed individual CCOSs for the existing base rate areas late in the Proceeding, with little analysis and leaving intervenors and the ALJ

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<sup>21</sup> *Id.* at p. 30.

<sup>22</sup> Commission Decision on RRR No. C20-0497, issued July 8, 2020 at p. 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at p. 7.

<sup>25</sup> *Id.*

comparatively little time to review the results and develop alternatives to the Company's rates contained in the initial advice letter filing.<sup>26</sup>

19. The Commission determined Black Hills' renewed objection on RRR that the record was sufficient, fails to account for these significant flaws. The Commission as such, affirmed its findings and conclusions in its Decision on Exceptions that Black Hills failed to meet its burden of proof to support its proposals.<sup>27</sup>

20. The Commission similarly found no merit to Black Hills' claim that the Commission, in denying the Company's proposed base rate area consolidation, failed to fully consider cost causation and ignored the fact that using average costs will always result in some customers paying more or less than their cost of service. The Commission found such a claim ignores the Commission's reasoning and explanation in the Decision on Exceptions where the Commission found that Black Hills had "failed to make a persuasive case why spreading costs to customers in other areas to reduce those bill impacts results in just and reasonable rates or is in the public interest."<sup>28</sup> The Commission agreed with Staff that spreading costs among a greater number of customers is not necessarily a benefit to all of those customers.<sup>29</sup>

21. The Commission concluded Black Hills had ample opportunity in the Proceeding to make its case for why consolidation of the existing base rate areas was just, reasonable, and in the public interest. However, the Commission found the Company failed to put forth sufficient argument and support for why joining these areas for rate purposes made sense in terms of the underlying economics of the resulting rates, the diverse set of customers on a statewide basis, the

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Decision No. C20-0497 at p. 7 citing, Decision on Exceptions at ¶ 45.

<sup>29</sup> *Id.*

varying geographic characteristics, and the potentially significant differences in needed infrastructure improvements.<sup>30</sup>

22. Regarding the Commission's determination that it was appropriate to start with the presumption that the existing base rate areas result in just and reasonable rates, Black Hills argued in RRR that the existing base rate areas are outdated remainders from past settled proceedings and do not reflect any rational geographic grouping.<sup>31</sup> In Decision No. C20-0372, the Commission found that there are significant existing rate disparities among the rate areas, some of which relate directly to geographic and other differences.

23. In addition, the Commission upheld its findings in Decision No. C20-0372 which excluded post-base period capital additions and adjustments, as well as the disallowed 20 percent of the estimated \$950,000 rate case expenses.

24. The Commission also denied Black Hills' RRR that took issue with the language in Decision No. C20-0372 in which the Company claims the Commission validated particular observations of the ALJ that it claims were not supported by competent evidence and were not true. Black Hills claimed no evidence existed that its ratepayers were deprived of the benefit of any cost savings resulting from the acquisition of SourceGas. Black Hills contends the decision on whether and when to file a rate case is the exclusive right and prerogative of utility management and the Commission retains the power to investigate and address any over-earnings during voluntary stay-out periods.<sup>32</sup> In denying the Company's RRR, the Commission stated it

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<sup>30</sup> *Id* at p. 8.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at p. 26.

found Black Hills' claims and rationale urging the Commission to correct the record and modify the discussion in Decision No. C20-0372 unpersuasive.

25. Most importantly and relevant to this matter, Decision No. C20-0497 denying the Company's RRR requests pointed out that despite the objections raised by Black Hills regarding the Commission's determination to start with the presumption that the existing base rate areas result in just and reasonable rates, Black Hills stated that it would nonetheless comply with the Commission's determination that all Phase II, DSIR, and construction allowance issues be considered in new, separate proceedings based on a new record.

26. Rather than comply with Decision No. C20-0372, which required Black Hills to file an advice letter and accompanying tariff sheets to initiate a Phase II rate proceeding within six months of the date of that Decision, or by November 19, 2020, Black Hills instead filed a Phase I Gas Rate Case assigned to Proceeding No. 20AL-0380G. The dismissal of that Phase I Rate Case was the subject of Commission Decision Nos. C21-0004 issued January 6, 2021 Rejecting the Phase I Rate Case; C21-0103 issued February 25, 2021 Granting RRR in Part and Requesting Responses from Parties; C21-0156-I issued March 15, 2021 Setting Hearing; and, C21-0192 issued March 26, 2021 Denying RRR by Upholding Decision No. C21-0103.<sup>33</sup>

27. On November 6, 2020, Black Hills filed its Motion for a Variance to Extend Filing Date of Gas Phase II Rate Review and Request for Shortened Response Time (Motion for Variance). According to Black Hills, it sought a partial, one-time variance from the Commission's directive in Decision No. C20-0372 that Black Hills file an advice letter and accompanying tariff sheets to initiate a Phase II rate proceeding within six months of the date of

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<sup>33</sup> In companion Decision No. C21-0103 in Proceeding No. 20AL-0380G, we provided our analysis and decision denying Black Hills' RRR request regarding the decision to dismiss the Phase I Rate Case filing.

that decision or by November 19, 2020. Instead, Black Hills sought an extension to make such filing no later than six months from the date new rates go into effect in its recently filed Phase I rate review in Proceeding No. 20AL-0380G.

28. As set forth in detail in Decision No. C21-0192, Black Hills' previous Phase I Rate Case was completed on May 19, 2020 when the Commission issued its decision on exceptions to Recommended Decision No. R19-1033. In Decision No. C20-0372 the Commission, among other things, ordered Black Hills to file an advice letter and proposed tariff sheet initiating a Phase II rate review within six months of the date of Decision No. C20-0372 or by November 19, 2020. The Commission also ordered Black Hills to file a revised DSIR within six months of the decision, as well as file new construction allowances within nine months of the decision.

29. On September 11, 2020, Black Hills filed Advice Letter No. 3 and accompanying direct testimony proposing to implement GRSA riders that would increase base rates for all Black Hills natural gas customers in Colorado – a new Phase I Rate Case.

30. According to the Company, the 2020 Phase I Rate Case was intended to recover “substantial increase in costs associated with rate base investments made by the Company since July 1, 2018 that have not yet been included in the development of rates.”<sup>34</sup> Additionally, Black Hills filed an application in Proceeding No. 20A-0379G requesting authorization to implement a new System Safety and Integrity Rider (SSIR) as part of its Colorado PUC gas tariff and to implement under the SSIR, an “At-Risk Meter Relocation and Customer-Owned Yard Line Replacement Program.”

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<sup>34</sup> Black Hills' Motion for Variance at pp. 3-4.

31. Black Hills maintained that the result of the last Phase I rate case caused it to file the new 2020 Phase I rate review and SSIR application. Black Hills claimed it made these filings to limit the complexity of the filings to address the concerns raised in the previous Phase I proceeding. Black Hills goes on to argue that the revenue deficiency in the present Phase I proceeding is driven in large part by the Company's inability to recover in its rates, \$35.3 million in capital additions placed in service from July 1, 2018 through December 31, 2018 and to implement its proposed DSIR.

32. On November 6, 2020, Black Hills filed its Motion for Variance. In its Motion for Variance, Black Hills cites what it characterizes as concerns by the parties to this Proceeding and the Commission regarding the complexity of issues in the Proceeding. Black Hills claims it was these concerns that prompted it to file the new 2020 Phase I rate review and separate SSIR Application. Approximately one month after it filed its 2020 Phase I Gas Rate Case, Black Hills filed this Motion for Variance, seeking a variance from Recommended Decision No. R19-1033 and Decision No. C20-0372 to file a new Phase II rate review by November 19, 2020 and allow the Company's Gas Phase II rate review to be filed no later than six months from when rates go into effect under the 2020 Phase I Gas Rate Case in Proceeding No. 20AL-0380G.

33. On November 20, 2020, EOC filed its opposition to Black Hills' Motion for Variance. EOC expressed its concern over Black Hills' proposal to file GRSAs on top of existing GRSAs with no intervening Phase II rate allocation analysis. According to EOC, the layering of GRSAs without proper cost allocation is unfair and unreasonable rate making.

34. In Decision No. C21-0005, issued January 6, 2021, we agreed with EOC that Black Hills would not be allowed to further delay filing its long overdue Phase II rate review. We noted the Company could have easily filed its Motion for Variance well in advance of the

deadline to file its Phase II rate case but chose to wait until the last minute to do so. As a result, we denied Black Hills' Motion for Variance and ordered the Company to file a Phase II rate case within 60 days of the effective date of Decision No. C21-0005.

35. On January 26, 2021, Black Hills filed its RRR. Without requesting leave to combine filings, the Company nonetheless filed RRRs in Proceeding No. 19AL-0075G and 20AL-0380G in a single pleading. Black Hills' RRR essentially blends arguments on Decision No. C21-0004 in Proceeding No. 20AL-0380G with Decision No. C21-0005 in this Proceeding in a single filing with no delineation of separate arguments. Nonetheless, we determined which arguments are applicable to which Proceeding and addressed them accordingly.

36. Black Hills argued that the Phase II filing directive pursuant to Decision No. C20-0372 was not supported by Commission policy or precedent since it was ordered after the Commission's rejection of all Phase II issues in this Proceeding. The Company pointed out it proposed a Phase II rate case in its original advice letter filing on February 1, 2019 and filed a "multitude of updated Phase II rate analyses" in this Proceeding through nine separate CCOSs and related bill impact calculations. In Black Hills' view, the Commission therefore had the opportunity to establish Phase II rates but instead rejected all Phase II issues in that case. The Company concluded that the Commission's Decision was inconsistent with historical practice.

37. Black Hills requested the Commission clarify it would accept as compliance with Black Hills' required Phase II filing directive, the Company's filing of a Phase II rate case within 60 days of Decision No. C21-0005 that proposes revised rates for each base rate area incorporating the results of the revenue requirement studies proposed in Black Hills' Phase I rate filing in Proceeding No. 20AL-0380G.

38. By Decision No. C21-0104 issued February 25, 2021, we granted Black Hills' RRR in part by setting a two-step process. First, we required parties to the proceeding to file responses to the Company's RRR arguments. Second, we stated that upon review of the responses, the Commission would set a date shortly thereafter for a hearing in order to determine the best method to go forward by either denying Black Hills' proposal or go forward with a combined Phase I/Phase II Gas Rate Case, or separate Phase I and Phase II proceedings, or any other processes that will reasonably settle the matters.

39. In response to a Motion for Clarification filed by Black Hills on February 26, 2021, we issued Interim Decision No. C21-0131-I on March 8, 2021 clarifying that the requirement contained in Decision No. C21-0005 to file a Phase II rate review by March 8, 2021 is stayed pending a hearing in this proceeding as set forth in Decision No. C21-0104.

40. By Decision No. C21-0143-I, issued March 11, 2021, we set a hearing to allow Black Hills to respond to Decision No. C21-0104 as well as the parties' responses to its RRR. The hearing was scheduled for March 16, 2021.

41. The hearing was held at the scheduled date and time. Appearances were entered by Black Hills, Staff, OCC, EOC, AM Gas, and Bachelor Gulch Village Association. Discussion was received by Black Hills regarding the responses to its RRR from the parties. The parties also offered additional argument and response to the proposals each offered in their respective response pleadings.

42. At the Commissioners' Weekly Meeting on March 17, 2021, after reviewing responses to Black Hills' RRR filed by Staff, OCC, EOC and AM Gas, as well as the arguments raised by the parties at the March 16 hearing, we discussed possible options to resolve the complications created by the unexpected filing of a Phase I Gas Rate Case. We also discussed



and narrowed the options in order to move the proceeding forward in an expedited manner, emphasizing our inclination towards the OCC proposal to require the Company to file a combined Phase I and Phase II rate case, or file a Phase I rate case followed closely by a Phase II rate case in order to reduce expenses. We issued a bench order by minute entry setting a deadline of March 19, 2021 for the filing of comments responsive to our discussion.

43. Responsive comments were received in this Proceeding by Black Hills, Staff, AM Gas, and EOC. Responsive comments were filed in Proceeding No. 20AL-0380G by Black Hills, Staff, OCC, and EOC.

44. In its comments, Black Hills states it continues to strongly believe that the most reasonable and efficient resolution to concerns of the OCC is the reinstatement of the Company's Phase I rate case in Proceeding No. 20AL-0380G with a staggered Phase II rate proceeding to be filed within three weeks of a Commission order reinstating the case. Black Hills claims this is the approach requested by Black Hills in its RRR and supported by three of the four parties filing responses to the Company's RRR.

45. Black Hills maintains its proposed approach would be placed into effect on June 19, 2021 by either its originally filed GRSA riders or mutually agreeable provisional rates in lieu thereof, subject to certain refund conditions based on final just and reasonable Phase I rates to be subsequently approved by the Commission in Proceeding No. 20AL-0380G.

46. Black Hills maintains this would allow for a substantial relaxation of the procedural schedule, including the possibility of assigning the matter to an ALJ, while protecting customers in the end from paying rates that have not been determined by a Commission decision to be just and reasonable, while allowing cost recovery in a more timely manner.

47. Black Hills goes on to assert its plan would allow for a Phase II proceeding to be initiated within a short time based on the Company's filed revenue requirements proposed in Proceeding No. 20AL-0380G, which would minimize the period in which GRSA rate riders would be in effect. In the Company's view, this has the practical effect of meeting the OCC's suggested combined Phase I and Phase II approach.

48. Black Hills believes this proposed path forward is also the most administratively efficient process, since it would preserve the analytical work performed by the parties concerning the Company's proposals in Proceeding No. 20AL-0380G, preserve the over 400 discovery requests served on, and responded to, by the Company to date in that proceeding, and not require the parties to start over, as would be necessary if the Company were required to prepare and file an entirely new rate case. Black Hills believes a new Phase I and Phase II filing would restart this process and require parties to begin anew thus eliminating any progress to this point, further increasing costs and reducing efficiency.

49. Staff observes that the Company's most important obligation precluding the Commission from closing Proceeding No. 19AL-0075G is to file a Phase II rate case. Staff believes that barrier alone is cause for an immediate and separate Phase II filing. Nonetheless, in Staff's view, a Commission order directing Black Hills to file a new, combined Phase I and Phase II is a viable solution to the procedural tangle between Proceeding Nos. 20AL-0380G and 19AL-0075G. Staff argues that if the Commission chooses this path, then Black Hills should retain discretion over the choice of test year for its combined Phase I and Phase II filing.

50. Further, rather than endorse whatever test year that Black Hills chooses, Staff is convinced the Commission should wait to determine the test year used for setting rates until after the parties have had a chance to review the Company's actual filing and offer their own analyses

and test-year recommendations. Staff concludes that the Commission should simply issue a new date by which Black Hills must file a Phase II rate case, with or without a Phase I case.

51. Staff also disagrees with implementing interim rates during the pendency of the rate case proceedings. Staff argues Black Hills has not demonstrated a revenue deficiency such that the Company would suffer an adverse effect by waiting for its proposed rate increase to receive Commission approval. In fact, the Commission appears to have no data before it upon which to make the findings required by § 40-6-111(1)(d), C.R.S., to allow interim rates, in Staff's view. Staff states it is aware that Black Hills has described recent safety improvements of approximately \$36 million that are not yet in rate base. However, Staff indicates it has not yet seen the Company's analysis showing or attempting to quantify the adverse effect of merely waiting to implement new rates until after the time period required to hold hearings on the suspended rates.

52. Staff also discusses four additional and distinct reasons it opposes any interim rates for Black Hills. First, Staff asserts Black Hills' Phase I case was dismissed because Black Hills pursued a litigation strategy that delayed its obligated Phase II filing to squeeze in another Phase I case (Proceeding No. 20AL-0380G) in order to add into rate base spending that Black Hills focused on toward the end of 2020. Staff asserts that Black Hills' strategy failed, and to allow interim rates under these circumstances would be an unmerited award.

53. Staff's second reason to oppose interim rates is that there is no equitable basis for interim rates, even though the Commission did not suspend the tariff sheets filed in Proceeding No. 20AL-0380G for more than 120 days from their October 12, 2020 effective date. Staff points out that it is because the proposed tariff sheets filed by Black Hills with Advice Letter No. 3 are permanently suspended by Commission Decision No. C21-0004, and neither the Commission

nor any Colorado district court has ordered a stay or suspension of Commission Decision No. C21-0004, either in part or in its entirety.

54. Thirdly, Staff reasons Black Hills could have cured the alleged harm caused by the Commission dismissing its Phase I rate case by filing a combined Phase I and Phase II case at any time after the order of dismissal. Staff goes on to argue that the Company failed to mitigate its alleged harms by filing a combination Phase I and Phase II rate case on March 8, 2021 when the Phase II filing was originally due. Since it was the Company's choice to "fight every battle" rather than find more cooperative and efficient solutions, Staff asserts it weighs against allowing interim rates as some kind of consideration for the dismissed Phase I case.

55. Staff's fourth and final reason to disallow interim rates is that Black Hills has neither requested interim rates nor presented any facts or arguments in support of interim rates, making it an impossible task for the Commission to determine fair, reasonable interim rates based on the information available. Staff takes the position the Commission should require Black Hills to do both before making any further decisions in favor of interim rates.

56. Staff concludes the public interest is best served by a Commission decision requiring Black Hills to file a Phase II rate case as soon as it has a filing ready to submit. Staff finds no efficiency to be gained by tying Black Hills' dismissed Phase I rate case to the "perennially troubled and procedurally messy" Proceeding No. 19AL-0075G. However, Staff notes it does recognize that a combined Phase I and Phase II case would solve or otherwise make moot the procedural and due process concerns surrounding the dismissed Phase I case and the not-yet-filed Phase II case. Nonetheless, Staff asserts there is no legal basis for granting Black Hills interim rates in exchange for the Company's agreement to give up on its dismissed Phase I case and file a new combined Phase I and Phase II case later.

57. EOC reiterates the basic premise that Phase I and II cases should be filed together, as a combined case, or closely staggered in time such that a decision in the Phase II case follows mere months after a Phase I decision. EOC finds this approach is in line with the norm in jurisdictions throughout the rest of the country, and consistent with its advocacy at the Commission. EOC supports the Commission in considering either a combined Phase I and Phase II, or a closely staggered Phase I and II, as the primary paths forward in this case. EOC finds both options provide the benefit of ensuring the two steps of just and reasonable ratemaking are completed in close succession, and stale rates are eliminated.

58. EOC cautions that a combined Phase I and Phase II rate case does not necessarily promote more efficiency, or result in fewer rate case expenses overall, than a closely staggered approach. EOC posits that while a combined case would lessen the number of filings or possibly even the number of hearing dates, it will all ultimately depend on the case. EOC points to Black Hills' combined Phase I and Phase II case in this proceeding which it notes turned out to be extremely onerous and costly for all parties, as well as the Commission.

59. EOC further notes a staggered approach may reduce the number of active parties in a particular phase of the case. For example, EOC notes its primary focus in the Phase I is the elimination of the GRSA. Although it plans to monitor the Phase I, it does not plan to actively oppose the filing if it goes forward in a closely staggered fashion. Accordingly, EOC concludes its overall litigation costs would likely be reduced with a staggered approach.

60. Consistent with its advocacy in Proceeding No. 19AL-0075G, and to mitigate the significant, cumulative rate impacts on customers in some of the Company's base rate areas (and specifically, the area with lower-than-average household incomes), EOC advocates for a complete or partial consolidation of Black Hills' base rate areas. EOC urges the Commission not

limit the scope of a rate review proceeding so as to exclude consideration of this important ratemaking issue.

61. As indicated above, OCC filed its comments in Proceeding No. 20AL-0380G. We find it nonetheless helpful to include its comments in that proceeding here. The OCC's proposed path forward is for the Commission to direct Black Hills to file a combined Phase I and Phase II Gas Rate Case no earlier than 45 days after the Commission issues a decision following completion of the Commission's two-step process here, including the filing of Responses and the Hearing. The Phase II rate case should be based on updated revenue requirement studies proposed in the Phase I filing portion of the combined Phase I and II filing.

62. The OCC supports a proposed modification to its proposal that would establish that the Commission would hear the Combined Phase I and Phase II case *en banc*. OCC believes this approach would result in a savings of approximately 90 days because it would eliminate the timeframe required for the issuance of a Recommended Decision, as well as the Exceptions and Responses to Exceptions process before a Commission decision. The OCC fully supports this modification because it promotes efficiency and the public interest.

63. The OCC also clarifies that its proposal that Black Hills should be directed to file a combined Phase I and Phase II gas rate case no earlier than 45 days after the Commission issues a decision following completion of the Commission's two-step process was intended to benefit Black Hills. The intent, according to the OCC, was to ensure that the Company was not directed to file the combined case in a timeframe that was unduly burdensome, *e.g.*, the March 8, 2021 Phase II filing deadline, while the Commission's two-step process took place. Consequently, the OCC withdraws its suggestion that Black Hills files its Combined Phase I and

Phase II proceeding no earlier than 45 days and agrees that Black Hills should be permitted to file the Combined Phase I and Phase II proceeding as soon as it can.

64. OCC also proposes to simplify a Combined Phase I and Phase II gas rate case. Under its proposal, parties should not be permitted to introduce new issues or relitigate issues that were fully addressed and determined in Proceeding No. 19AL-0075G. According to OCC, this directive would ensure a swift and clean resolution to the issues before the Commission and would avoid the “quagmire” that has arisen from other recent Black Hills rate filings. In OCC’s view, this directive would avoid the potential for collateral attacks on recent Commission decisions and would ensure just and reasonable rates are enacted and that unnecessary litigation costs are avoided.

### **C. Findings and Conclusions**

65. We had hoped the parties would arrive at a mutually agreeable proposal to move these matters forward. However, while their individual recommendations were similar and close to resolution, the final small step toward resolution could not be achieved. This is unfortunate. Nonetheless, we are prepared to move the matter forward and provide what we determine to be a clear and direct path forward for Black Hills.

66. The Company’s initial rate case in this proceeding resulted in a tumultuous and labyrinthine imbroglio. Whether Black Hills intentionally sought to obfuscate the case is left to speculation. No matter how the disarray in the initial case occurred, we intend to ensure it does not occur again. As we noted in companion Decision No. C21-0192 in Proceeding No. 20AL-0380G, issued March 26, 2021, in order to further prevent such entanglements, we provide a reasonable path forward in which the Company is able to file a new stand-alone Phase I Gas Rate Case as soon as practicable. We further urge Black Hills to file a Phase II along

with the Phase I or to file its Phase II concurrent with the Phase I, or in a staggered fashion shortly after its Phase I filing. The Phase II case would complement the new Phase I filing. Either way, the Company has a clear route in which to file the new Phase I rate case it seeks, while staying somewhat in compliance with Commission directives.

67. Despite offering the Company a reasonable and uncomplicated path forward in Proceeding No. 20AL-0380G, we are nevertheless left with the unresolved Phase II filing here. Black Hills was on notice in Recommended Decision No. R19-1033 it was required to file a Phase II rate case within six months of a final Commission Decision in this Proceeding. The Company was reminded of that Phase II filing requirement in the Commission's Decision on Exceptions, C20-0372, where the Commission upheld the Recommended Decisions order to file a Phase II rate case within six months of a final decision. Yet rather than comply with a clear Commission directive, Black Hills chose to again attempt to entangle the process by filing a new Phase I rate case on September 11, 2020. It then, on November 19, 2020, sought a six-month extension from the date new rates go into effect in the 20AL-0380G Phase I Gas Rate Case in order to file the Phase II rate case intended to accompany the Phase I decision in this Proceeding. This represents further creation of turmoil and in the process extends the time the Company's GRSAs from this Phase I rate case remain in effect.

68. We intend to end this pettifoggery here. It accomplishes nothing more than wasting Commission time and resources, as well as that of the parties in this Proceeding. As applicable to this Proceeding, we uphold our decision to deny the Company's Motion for Variance. Consequently, Black Hills will be required to file its long overdue Phase II rate review no later than 60 days from the effective date of this Decision. The alternative available to the Company here is as discussed above in Paragraph No. 65, to wit, in lieu of filing a Phase II rate



review no later than 60 days from the effective date of this Decision, the Company may file a new stand-alone Phase I Gas Rate Case as soon as practicable. If Black Hills accepts this alternative, it is strongly encouraged to file a Phase II rate review along with the Phase I rate case or file its Phase II rate review in a staggered fashion shortly after its Phase I rate case filing. That Phase II rate review case would complement the new Phase I filing.

69. Therefore, we uphold Commission Decision No. C21-0005, issued January 6, 2021 denying Black Hills' Motion for Variance.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Application for Rehearing, Reargument or Reconsideration of Commission Decision No. C21-0005 filed by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) is denied consistent with the discussion above.

2. As a result, we uphold Commission Decision No. C21-0005 issued January 6, 2021 denying Black Hills' Motion for Variance to Extend Filing Date of Gas Phase II Rate Review.

3. Black Hills shall file its Gas Phase II Rate Review in this Proceeding no later than 60 days from the effective date of this Decision.

4. In the alternative, in lieu of filing a Phase II rate review no later than 60 days from the effective date of this Decision, Black Hills may file a new stand-alone Phase I Gas Rate Case as soon as practicable. If Black Hills accepts this alternative, it is strongly encouraged to file a Phase II rate review concurrent with the Phase I rate case, or file its Phase II rate review in a staggered fashion shortly after its Phase I rate case filing. That Phase II rate review case would complement the new Phase I filing.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
March 24, 2021.**

( S E A L )



ATTEST: A TRUE COPY

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

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners