

NEBRASKA

PUBLIC SERVICE COMMISSION



COMMISSIONERS:
ROD JOHNSON
CRYSTAL RHOADES
MARY RIDDER
TIM SCHRAM
DAN WATERMEIER

September 1, 2020

CERTIFICATION

To Whom It May Concern:

I, Michael G. Hybl, Executive Director of the Nebraska Public Service Commission, hereby certify that the enclosed is a true and correct copy of the original order made and entered in the proceeding docketed NG-107 on the 25th day of August 2020, and ratified on the 1st day of September, 2020. The original order is filed and recorded in the official records of the Commission.

Please direct any questions concerning this order to Sallie Dietrich, Legal Counsel, at 402-471-3101.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 1st day of September 2020.

Sincerely,

A handwritten signature in black ink that reads "Michael G. Hybl".

Michael G. Hybl
Executive Director



MGH:da

Enclosure

cc: Robert J. Amdor, Director of Regulatory & Finance, Black Hills Energy, 1731 Windhoek Avenue
Lincoln, NE 68501, robert.amdor@blackhillscorp.com
Douglas J. Law, Associate General Counsel, Black Hills Energy, 1731 Windhoek Avenue,
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cc: via email - Jason Bennett- jason.bennett@blackhillscorp.com; Tyler Frost-
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Michael G. Hybl, Executive Director
Public Service Commission

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SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. NG-107
of Black Hills Nebraska Gas, LLC)
d/b/a Black Hills Energy for a)
deferred accounting order to) ORDER GRANTING APPLICATION,
record and preserve costs) IN PART
related to the Covid-19)
pandemic.)
) Entered: August 25, 2020

BY THE COMMISSION:

On April 22, 2020, Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy ("Black Hills" or "Applicant") filed an application with the Nebraska Public Service Commission ("Commission") seeking authorization for Black Hills to establish a regulatory asset to record and preserve costs related to the Covid-19 pandemic. Black Hills also seeks in this application a waiver of certain provisions of the Company's tariffs, Operation & Maintenance standards, and Commission rules and regulations to protect the health and safety of its employees and customers. A petition for Formal Intervention was filed by the Nebraska Public Advocate ("PA") on April 30, 2020, and his intervention was approved by the Commission on May 5, 2020. A procedural schedule in this matter was set by Hearing Officer order on June 3, 2020.

EVIDENCE

A hearing in this matter was held on July 21, 2020, with persons participating both in the Commission Hearing Room and via Zoom webconference. Douglas Law appeared on behalf of Black Hills. William Austin appeared on behalf of the Public Advocate. Sallie Dietrich and Nichole Mulcahy appeared on behalf of the Natural Gas Department of the Commission. Exhibits numbered 1 - 9 were offered and accepted, including the Application (Ex. 6), the pre-filed testimony of Black Hills' witnesses (Exs. 7 and 8), the Public Advocate's report (Ex. 9), and Black Hills' responses to Commission Staff's Data Requests (Ex. 5).

Black Hills presented the oral testimony of Jason Bennett, Regulatory and Financial Manager for Black Hills. Mr. Bennett testified that in this application, Black Hills seeks a deferred accounting order to record and preserve costs related to the Covid-19 pandemic.¹ Mr. Bennett testified that these costs are

¹ Transcript, p. 14.

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extraordinary in nature and have the potential to be detrimental to the financial health of Black Hills.² Mr. Bennett testified that establishing the regulatory asset would allow Black Hills to record costs quickly, without a guarantee of recovery.³

Mr. Bennett testified that Black Hills is in agreement with the report of the Public Advocate submitted in this docket, with two exceptions. Mr. Bennett noted that the Public Advocate's Recommendation No. 5 was for Black Hills to submit monthly reports; Mr. Bennett stated that quarterly filings are more appropriate based on similar filings Black Hills is making in other jurisdictions.⁴ Mr. Bennett also noted that while the Public Advocate suggested that the Commission should consider requiring Black Hills to bear some of the costs related to the pandemic, Black Hills disagrees with this position as it is a regulated business.⁵

Mr. Bennett further testified that Black Hills has not applied for local or federal pandemic relief funds, and that it does not anticipate making such applications at this time.⁶ Mr. Bennett agreed that should Black Hills receive such funding, it should be included in the reporting submitted in this docket.⁷ Mr. Bennett also testified on cross-examination that Black Hills recommends comparing its costs to the average costs dating back three years, rather than the budgeted expenses for 2020.⁸ Mr. Bennett testified that on request, Black Hills could provide cost comparisons to the three-year average, the 2019 expenses, and the 2020 budget.⁹

Mr. Bennett further testified that future costs related to the Covid-19 pandemic are not known and measurable at this time.¹⁰ Mr. Bennett stated that tracking of costs in the regulatory asset would depend upon the Governor's emergency declaration, and that it was Black Hills' intent to track costs in the account for 12 months following the lifting of that declaration.¹¹ Mr. Bennett testified that costs to date have been measured at approximately \$300,000 in lost revenue and almost \$400,000 in uncollectible

² *Id.* at 14-15.

³ *Id.* at 23.

⁴ *Id.* at 15.

⁵ *Id.* at 16.

⁶ *Id.* at 17-18.

⁷ *Id.* at 18.

⁸ *Id.* at 19-20.

⁹ *Id.* at 21.

¹⁰ *Id.* at 26.

¹¹ *Id.*

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accounts,¹² as well as various other less significant expenses.¹³ Mr. Bennett testified that recovery of the regulatory asset would be pursued in a separate proceeding.¹⁴

Mr. Bennett stated that Black Hills has seen cost savings as a result of Covid-19 in the areas of employee travel and IT expenses, and that these cost savings would be included in its quarterly reporting on the regulatory asset.¹⁵ Mr. Bennett also stated that Black Hills is seeking a waiver of Tariff Sheet No. 62, requiring Black Hills to perform meter testing upon a customer's request as soon as reasonably possible.¹⁶ Mr. Bennett stated that the language of the tariff requiring Black Hills to enter customer premises "as soon as reasonably possible" was not sufficient and that a waiver of that provision would be needed as long as the Governor's emergency declaration is in place.¹⁷

Following the conclusion of Mr. Bennett's testimony, Kevin Jarosz, Vice President of Operations for Black Hills, testified. Mr. Jarosz described various measures Black Hills has taken for the safety of its staff.¹⁸ Mr. Jarosz stated that Black Hills is not seeking waivers of any tariff or regulatory provisions other than that identified by Mr. Bennett.¹⁹ Mr. Jarosz testified that waivers of Operation & Maintenance provisions are not within the jurisdiction of the Commission and that Black Hills has discussed certain waivers of Operation and Maintenance provisions with the Nebraska Fire Marshal's office.²⁰

The Public Advocate then offered the testimony of Donna Mullinax, a consultant to the Public Advocate at Blue Ridge Consulting. Ms. Mullinax described the regulatory requirements for the establishment of a regulatory asset, noting that the requirements are found in the Financial Accounting Standards Board's Accounting Standards Codification 980-340-25-1.²¹ Ms. Mullinax testified that the creation of a regulatory asset requires that recovery of the asset is probable.²² Ms. Mullinax also stated

¹² *Id.* at 30.

¹³ *Id.* at 31-35.

¹⁴ *Id.* at 49.

¹⁵ *Id.* at 36.

¹⁶ *Id.* at 39. See also Tariff Sheet No. 62, "Meter Testing," and 291 Neb. Admin. Code § 9-017.07A.

¹⁷ Transcript at 39-40.

¹⁸ *Id.* at 52-54.

¹⁹ *Id.* at 64-65.

²⁰ *Id.* at 64.

²¹ *Id.* at 70.

²² *Id.* at 71.

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that the accounting of the costs to be recorded in the regulatory asset would need to be specific enough to allow for a review of their prudence at a later date.²³ Ms. Mullinax also testified that reporting on the asset could continue for twelve months following the Governor's lifting of the state of emergency.²⁴

F I N D I N G S

Pursuant to the State Natural Gas Regulation Act, Neb. Rev. Stat. § 66-1801 et seq., the Commission has "full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction." Neb. Rev. Stat. § 66-1804(1). The Act further provides that these powers are to be "liberally construed." Neb. Rev. Stat. § 66-1804(2). The Commission's powers, authority, and jurisdiction, including with regard to general rate filings and rate principles, are further outlined in state regulations at 291 Neb. Admin. Code, Chapter 9, Sections 4 and 5.

The Commission has reviewed the evidence presented in this matter and finds that the parties are in agreement that Black Hills' application for the creation of a regulatory asset to capture costs related to the Covid-19 pandemic should be approved. The Commission further finds that Black Hills has provided sufficient evidence to support the creation of a regulatory asset account on its books and records, comprised of expenses directly caused by and attributable to the Covid-19 pandemic.

The Commission wishes to emphasize that the creation of this account is not a guarantee of future recovery of any of the costs included in the account. The Commission reserves the ability to reverse its approval of regulatory asset treatment of these expenses in the future. In the event the Commission reverses its approval of regulatory asset treatment, the costs associated with the Covid-19 pandemic will then be recorded as an expense on Applicant's books and records, in accordance with Commission precedent.²⁵

²³ *Id.* at 72-73.

²⁴ *Id.* at 77.

²⁵ See generally Commission Docket No. NG-93, Order Approving Proposal, entered March 20, 2018.

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Expenses allocated to the regulatory asset account should be recorded in sufficient detail for the Commission to complete a prudence review. Expenses included in the asset must be directly caused by and attributable to the Covid-19 pandemic. In calculating expenses, Black Hills is instructed to record each of the following for each category of expense: 1) the actual dollar amount contained in the category; 2) the budgeted amount or typical year-to-date expense for that category for 2020; 3) the dollar amounts previously recorded for that category in 2019; and 4) the average dollar amount contained for that category in the three-year period preceding the expense.

Black Hills may continue to include expenses in the asset until the state of emergency in Nebraska is lifted. Should Black Hills wish to continue to add expenses to the asset after the date of the lifting of the state of emergency, Black Hills must file an additional request within this docket at that time, seeking further approval to include expenses beyond that date.

Black Hills must continue to maintain prudent cost controls related to Covid-19 expenses, including but not limited to applying for additional state and federal aid available as a result of the Covid-19 pandemic. With regard to recordkeeping and reporting, Black Hills is instructed to comply with all applicable regulatory and advisory provisions, including those set out by the Financial Accounting Standards Board.

In order to ensure that costs are being recorded in an accurate and complete manner, Black Hills shall submit quarterly reports detailing expenses that are included in the regulatory asset account. The reports shall include, at a minimum, the following information:

1. A listing of all individual expenses entered into the account each quarter, categorized by type of expense as follows:
 - a. Field Staff and Vehicle Costs
 - b. Protective Equipment and Materials
 - c. Technological Expenses
 - d. Sequestered & Relocated Employees
 - e. Employee Support Expenses
 - f. Outside Support Expenses

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- g. Bad Debt Expense
 - h. Lost Revenue
 - i. Other Costs
2. A listing of all cost savings and Covid-19 related funding realized by Black Hills each quarter;
 3. The total dollar amount entered into the account that quarter;
 4. The total dollar amount currently held in the account;
 5. A narrative explanation describing the quarterly expenses, as well as a statement of all cost savings, grants, and other funding attempted or realized by Black Hills each quarter.

These reports shall be submitted to the Commission at psc.naturalgas@nebraska.gov no later than 5:00 p.m. Central Time on the first day of the second month following the end of the preceding quarter, or the first business day thereafter.²⁶ These reports shall be submitted as part of Docket No. NG-107 and shall not be combined with reports due from Commission Docket No. NG-101 or any other Commission docket. Black Hills is instructed to coordinate with Department staff and with the Public Advocate to ensure that the information reported is sufficient and formatted appropriately. If Black Hills identifies another frequently occurring expense category, that category should be added to the list provided above in paragraph (1).

With regard to Black Hills' request for waivers of tariff provisions, regulations, and O&M procedures, the Commission finds that Black Hills has not demonstrated a need for such waivers. The only tariff provision identified by Black Hills was Tariff Sheet No. 62, which provides that "Upon request by a Customer, the Company shall test the Customer's natural gas meter as soon as reasonably possible after receipt of the request."²⁷ The Commission finds that this provision and the corresponding regulatory provision found in 291 Neb. Admin. Code § 9-017.07A are sufficiently broad, as both provisions allow the company to

²⁶ For example, the report showing expenses incurred in the 3rd quarter of a year will be due to the Commission on the 1st day of November in that year, or the first business day thereafter. In this case, the third quarter report will be due on Monday, November 2, 2020.

²⁷ Exhibit 5, Response to PSC Request No. 7; Tariff Sheet No. 62. See also Transcript at 39-40.

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complete a meter test requested by a customer within a reasonable timeframe. Neither provision sets forth an inflexible period of time in which a meter test must be completed. The phrase "as soon as reasonably possible" allows for full consideration of the circumstances, including the fact that Nebraska remains in a state of emergency.

Should the company wish to renew its application for waivers of tariff and/or regulatory provisions, the company is instructed to provide 1) citations to the specific provisions it requests to be waived; 2) a demonstration of the need for each waiver; and 3) a statement of the length of time each waiver is needed.

O R D E R

IT IS THEREFORE ORDERED that the application of Black Hills Nebraska Gas to establish a regulatory asset to record and preserve costs related to the Covid-19 pandemic should be approved with the conditions described above.

IT IS FURTHER ORDERED that Black Hills Nebraska Gas shall submit its first report on the regulatory asset to the Commission no later than Monday, November 2, at 5:00 p.m. Central Time, and that Black Hills shall continue to submit quarterly reports to the Commission as described above until further order of the Commission.

IT IS FINALLY ORDERED that the request of Black Hills Nebraska Gas for waivers of regulations, tariff provisions, and Operation & Maintenance standards is denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 25th day of August, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Swader
Tim Schram
Dee Watson

Mary Keddin
Chair

ATTEST:

Michael S. Hyl
Executive Director