
IOWA UTILITIES BOARD
Energy Section

Docket No.: RPU-2010-0002
Utility: Black Hills/Iowa Gas Utility
Company, LLC d/b/a Black Hills
Energy
File Date/Due Date: 3/2/11-N/A
Memo Date: 3/16/11

TO: The Board

FROM: Robert LaRocca
Cecil Wright

SUBJECT: Memorandum Addressing Application for Clarification of Conclusions of Law

I. Background

On February 10, 2011, the Utilities Board (Board) issued an order that approved a \$3.4 million general rate increase for Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills Energy), based upon a unanimous settlement filed by Black Hills Energy, the Consumer Advocate Division of the Department of Justice, and Constellation NewEnergy Gas Division, LLC, (collectively "Parties") on January 11, 2011. In the February 10, 2011, order, the Board also approved the rate design agreed to by the Parties, including the weather normalization methodology used for permanent rates.

On March 2, 2011, Black Hills Energy filed an application for clarification of what Black Hills Energy characterizes as two conclusions of law in the February 10, 2011, order. Specifically, Black Hills Energy requests clarification of the two conclusions of law below:

1. The same [PGA rule weather normalization methodology] requirement applies to temporary rates, which are to be filed based upon previously-established regulatory principles. Iowa Code § 476.6(10)(b).
2. In future rate cases, Black Hills Energy should file temporary rates based upon the 30-year heating degree days methodology approved by the Board.

Black Hills Energy points out that the Board on February 25, 2011, issued an order in Docket No. RPU-2010-0001 which interpreted Iowa Code § 476.6(10) generally and Iowa Code § 476.6(10)(b) specifically. Docket No. RPU-2010-0001,

In re Interstate Power and Light Company, "Order on Rehearing" (issued 2/25/11). Black Hills Energy quotes the February 25, 2011, order as follows:

[Interstate Power and Light Company] selected the new option in § 476.6(10) for temporary rates. Instead of having the Board establish temporary rates applying previously-established regulatory principles (§ 476.6(10)"a"), IPL chose to implement temporary rates on its own, without Board review, within ten days of its initial rate case filing pursuant to § 476.6(10)"b." Pursuant to § 476.6(10)"b," refunds are required if final rates are below temporary rates. * * * Established regulatory principles are inapplicable to the situation here. If the Board sets temporary rates (the option IPL did not select), the Board's decision must be based on established regulatory principles. If the company selects the option of implementing temporary rates within ten days without Board review, the statute is silent on established regulatory principles, with one exception. Section 476.6(10)"b" provides that if, at the conclusion of the proceeding, the Board determines temporary rates were not based on established regulatory principles, it could consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

Based upon the language quoted above from the rehearing order in Docket No. RPU-2010-0001, Black Hills Energy requests that the Board clarify the statements in the February 10, 2011, order as follows:

1. The same requirement applies to temporary rates implemented pursuant to Iowa Code § 476.6(10)(a), which are to be filed based upon previously established regulatory principles. ~~Iowa Code § 476(10)(b)~~. This requirement does not apply, however, to temporary rates implemented pursuant to Iowa Code § 476.6(10)(b), which are not required to be filed based upon previously established regulatory principles.

2. In future cases, if Black Hills Energy chooses to implement temporary rates pursuant to Iowa Code § 476.6(10)(a), ~~Black Hills Energy should file the temporary rates should be~~ based upon the 30-year heating degree days methodology approved by the Board.

Black Hills Energy states that there may be other statements in the February 10, 2011, order that will need to be revised based upon the revisions requested to render the order consistent with the clarified conclusions of law.

III. Legal Standards

Iowa Code § 476.6(10)(a)

This provision provides that a utility may request temporary authority to place into effect rates approved by the Board while the Board considers whether to grant an application for a permanent rate increase. The temporary rates are subject to refund and in determining what temporary rates to place into effect the Board shall apply "previously established regulatory principles. The decision on temporary rates under this paragraph must be issued within 90 days of the date the request is filed.

Iowa Code § 476.6(10)(b)

A public utility may choose to place in effect temporary rates, charges, schedules, or regulations without Board review ten days after the filing under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect without Board review, the utility shall file with the Board a bond or other corporate undertaking approved by the Board conditioned upon the refund in a manner prescribed by the Board of amounts collected in excess of amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the Board. At the conclusion of the proceeding if the Board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the Board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

III. Staff Analysis

Staff has reviewed the rehearing order from Docket No. RPU-2010-0001 and the language used in that order concerning Iowa Code § 476.6(10) and does not believe the language in that order is inconsistent with the language in the February 10, 2011, order in this docket. Staff does not believe that the clarification requested by Black Hills Energy is necessary.

The rehearing order in Docket No. RPU-2010-0001 addresses the issue of the proper calculation of a refund based upon the difference between temporary rates and the final rates approved by the Board. In its request for rehearing, Interstate Power and Light Company (IPL) raised the issue of whether the refund amount was calculated properly since the revenue calculation did not include a rate base offset from the application of regulatory liability account funds. IPL argued that the level of refunds should be reduced because it could not have offset rate base in temporary rates since the offset was not based upon previously-established regulatory principles.

The rehearing order summarizes Consumer Advocate's position that the rate treatment adopted by the Board reduced IPL's revenue requirement and increased IPL's refund liability. The rehearing order states that Consumer Advocate argued that IPL's position was inconsistent with Iowa Code § 476.6(10). The rehearing order states that Consumer Advocate points out Iowa Code § 476.6(10) provides the refund amount is conditioned upon the refund of "amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board." Iowa Code § 476.6(10)(a) and (b). Consumer Advocate argued that a refund is required and the fact that temporary rates were filed in a manner inconsistent with previously-established regulatory principles is irrelevant to the amount of the refund liability.

The Board, in the rehearing order, stated that by selecting the option in Iowa Code § 476.6(10)(b) rather than having the Board set temporary rates under Iowa Code § 476.6(10)(a) IPL is still subject to the same refund requirements. Those requirements are to refund amounts that final rates are below temporary rates and there is no exception for amounts offset by "regulatory liability accounts or anything else." The Board stated that the key determination is whether the final rates are below temporary rates.

The Board went on to state that the issue of established regulatory principles is not applicable to the issue raised by IPL. The Board stated that Iowa Code § 476.6(10)(b) does not mention previously-established regulatory principles except that the Board, at the conclusion of the proceeding, can consider ordering refunds if temporary rates were not based upon previously-established regulatory principles. The Board concluded that this latter portion of Iowa Code § 476.6(10)(b) was not at issue on rehearing.

In the February 10, 2011, order issued in this docket, the Board addressed the weather normalization method used by Black Hills Energy in the temporary and permanent rate filings. The Board stated that it understood "that a utility may file proposed tariffs to support a general rate increase request using a weather normalization methodology other than the Board-approved methodology; however, the Board does not consider it reasonable for Black Hills Energy to file temporary rates based upon a weather normalization methodology that has not previously been approved by the Board."

The Board went on to state that the same provision in paragraph 199 IAC 19.10(1)"a" of the Board's rules that requires use of a previously approved weather normalization methodology for purchased gas adjustment filings applies to temporary rates implemented pursuant to Iowa Code § 476.6(10)(b). The Board pointed out that the last Board-approved weather normalization methodology for Black Hills Energy was approved in Docket No. WRU-99-32-225. In that docket, the Board approved the use of the 30-year heating degree days methodology for Black Hills Energy's predecessor. The Board then stated that in

future rate cases Black Hills Energy should file temporary rates based upon the 30-year heating degree days methodology approved by the Board.

Black Hills Energy proposes the Board change the February 10, 2011, order to state that the requirement that temporary rates be filed based upon previously-established regulatory principles should only apply to temporary rates implemented with Board approval pursuant to Iowa Code § 476.6(10)(a) and that the requirement for basing temporary rates on previously-established regulatory principles should not be required of temporary rates implemented without Board approval pursuant to Iowa Code § 476.6(10)(b). Staff believes that Black Hills Energy's request ignores the language in Iowa Code § 476.6(10)(b) that provides for consideration by the Board of a refund if the temporary rates implemented under that paragraph were not based upon previously-established regulatory principles. This language staff believes puts Black Hills Energy and other rate-regulated utilities on notice that temporary rates implemented pursuant to Iowa Code § 476.6(10)(b) and not based upon previously-established regulatory principles are subject to refund, regardless of whether the final rates approved by the Board are higher or lower than the temporary rates.

Staff believes the Board's statements in the February 10, 2011, order reflect the language in Iowa Code § 476.6(10)(b) that use of a weather normalization methodology other than the one approved by the Board could require a refund. Staff believes this statement is not inconsistent with the discussion of Iowa Code § 476.6(10)(b) in the rehearing order in Docket No. RPU-2010-0001, especially since the Board states in the rehearing order that this issue is not raised on rehearing. The February 10, 2011, order states that Black Hills Energy should base temporary rates on the Board approved weather normalization methodology. Otherwise, Black Hills Energy runs the risk of having to make refunds even if the final rates are more than the temporary rates implemented.

Staff believes that the Board's statement is an accurate statement of the provisions of Iowa Code § 476.6(10)(b). In addition, the February 10, 2011, order is not mandatory since the Board used the term "should" and not "shall." The language in the Board order puts Black Hills Energy on notice that the Board could order refunds if the previously-established regulatory principle for weather normalization is not used in developing temporary rates implemented pursuant to Iowa Code § 476.6(10)(b). Staff does not believe that the language in the two Board orders is inconsistent and staff believes no clarification is warranted.

IV. Recommendation

Direct General Counsel to prepare an order for Board review that denies the application for clarification filed by Black Hills Energy.

RECOMMENDATION APPROVED

IOWA UTILITIES BOARD

/cw

/s/ Robert B. Berntsen 4-19-11
Date

/s/ Krista K. Tanner 4-25-11
Date

/s/ Darrell Hanson 4-26-11
Date