

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY</p>	<p>DOCKET NOS. RPU-2010-0002, TF-2011-0024, TF-2011-0076</p>
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**ORDER APPROVING MODIFIED SETTLEMENT  
AND TARIFFS IMPLEMENTING MODIFIED SETTLEMENT**

(Issued February 10, 2011)

**PROCEDURAL BACKGROUND**

On June 8, 2010, Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills Energy), filed with the Utilities Board (Board) proposed gas tariffs identified as TF-2010-0075 and TF-2010-0076. In TF-2010-0076, Black Hills Energy proposed to increase Iowa gas rates to produce a permanent annual jurisdictional revenue increase of approximately \$4,684,141. In TF-2010-0075, Black Hills Energy filed proposed gas tariffs designed to produce annual revenue of approximately \$2,577,989 on a temporary basis. The temporary gas tariffs became effective on June 18, 2010, pursuant to Iowa Code § 476.6(10).

On July 7, 2010, the Board issued an order docketing the application filed by Black Hills Energy for a general rate increase. In the docketing order, the Board established a procedural schedule and scheduled a hearing for December 13, 2010. On August 20, 2010, Black Hills Energy, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), and Constellation NewEnergy Gas

Division, LLC (Constellation), (collectively Parties) filed a joint motion and unanimous settlement agreement (Initial Settlement) on all issues.

On September 16, 2010, the Board issued an order scheduling a hearing to allow the Board to ask questions about the Initial Settlement. In the order, the Board also requested additional information from Black Hills Energy. On September 29, 2010, Black Hills Energy filed the additional information requested and on October 8, 2010, Black Hills Energy filed corrections to the information filed on September 16, 2010.

The hearing was held as scheduled on October 12, 2010. At the hearing, the information filed by Black Hills Energy on September 16, 2010, was admitted into the record as Exhibit 1. The corrected information was admitted into the record as Exhibit 2. At the hearing, the Board directed Black Hills Energy to file certain late-filed exhibits.

On October 18, 2010, the Board issued an order granting a motion by Black Hills Energy to file a post-hearing brief. On October 26, 2010, Black Hills Energy filed late-filed exhibits as directed and filed a post-hearing brief. On November 23, 2010, the Board issued an order canceling the hearing set for December 13, 2010, and stated that it would hold a decision meeting to address the Initial Settlement. The late-filed exhibit was marked as Exhibit 3 and admitted into the record.

The Board held a decision meeting on January 7, 2011. At the decision meeting the Board indicated that it considered the revenue requirement agreed to in the Initial Settlement of \$3.4 million to be reasonable. The Board indicated that the

rate design and billing determinants appeared reasonable based upon the record. The Board stated that it did not consider the Investment Recovery Mechanism (IRM) agreed to by the Parties to be reasonable. The Board directed preparation of a proposed written order reflecting its discussion.

The IRM proposed by Black Hills Energy and agreed to in the Initial Settlement would have allowed the annual recovery of certain capital infrastructure investments through an automatic adjustment mechanism. The total capital investments that could be recovered under the IRM were capped at \$8 million and eligible capital investments were limited to non-growth investments that were used and useful. The rate of return in the IRM would have been set at Black Hills Energy's filed cost of debt. The Initial Settlement stated that the IRM agreed to by the Parties would be considered a pilot project subject to continuation, revision, or termination in Black Hills Energy's next general rate increase case. The settlement provided that Black Hills Energy would not file a rate case before April 1, 2013.

At the decision meeting, the Board considered the IRM based upon the three criteria used historically to determine whether an automatic adjustment mechanism is reasonable. The three criteria are: (1) the costs are beyond the control of management; (2) the costs are subject to sudden changes in level; and (3) the costs are an important factor in determining the total cost to provide service.

Based upon the record, the Board pointed out that not all of the costs that Black Hills Energy had proposed to include in the IRM were beyond management control. The Board recognized that there could be capital infrastructure investments

that were outside of management control because the investments were mandated by local, state, or federal government action, but the IRM encompassed more than that. The Board also noted that some of the infrastructure investments could be subject to sudden change because of safety requirements or government action, but many of the investments proposed for inclusion in the IRM did not meet this requirement. Finally, the Board stated that the capital infrastructure investments that meet the first two criteria might not rise to the level to meet the third criteria, that is, the remaining IRM costs might not be an important factor in the total cost of providing service.

Based upon the above analysis, the Board found that the IRM as agreed to by the Parties did not meet the criteria for an automatic adjustment mechanism and was not reasonable. However, the Board recognized that natural gas utilities are faced with uncertainty about the level of costs associated with capital investments caused by government action and the Board decided that it would commence a rule making to consider an automatic adjustment mechanism that would address this issue, along with any others that might be appropriate.

The Board is preparing an order commencing the rule making that will propose to allow annual recovery of certain capital infrastructure investments through an automatic adjustment mechanism. The rule making will allow for comments from interested persons and an oral presentation to allow the Board to ask questions regarding the comments. The Board intends to have the proposed rule published either in late February or early March.

On January 11, 2011, the Parties filed a "Modified Joint Motion and Unanimous Settlement Agreement on All Issues" (Modified Settlement). The Modified Settlement recited the history of this docket, including the Board's decisions discussed at the decision meeting.

On February 3, 2011, Black Hills Energy filed proposed tariffs identified as Docket No. TF-2011-0024, that include the \$3.4 million revenue increase in the Modified Settlement and the rate case expense from this proceeding. On February 4, 2011, Black Hills Energy filed revised proposed tariffs in Docket No. TF-2011-0024.

### **MODIFIED SETTLEMENT**

The Modified Settlement proposes that Black Hills Energy be granted an increase in Iowa jurisdictional revenues of \$3.4 million. This amount is to be adjusted upward to reflect the unamortized balance of prior rate case expenses and the actual amount of rate case expense for this proceeding amortized over a three-year period. Black Hills Energy filed proposed tariff sheets as an attachment to the Modified Settlement that reflect the \$3.4 million revenue increase. These proposed tariff sheets attached to the Modified Settlement do not reflect the unamortized balance of rate case expense from this docket. On February 3, 2011, Black Hills Energy filed proposed tariff sheets that include the rate case expense in this docket in Docket No. TF-2011-0024. On February 4, 2011, Black Hills Energy filed revisions to the proposed tariffs.

The Modified Settlement provides that customer charges will be set as follows:

General Service Residential Rate Code 001	\$18.25
General Service Commercial/Industrial Rate Codes 050/051	\$29.00
Small Volume	\$75.00
Large Volume	\$200.00

The Modified Settlement states that, based upon the agreement to allow for an increase in revenues of \$3.4 million, no refund with interest shall be due to any of Black Hills Energy's customers pursuant to the corporate undertaking filed with the Board. The Modified Settlement states that the IRM and moratorium have been removed from the proposed settlement. The Modified Settlement uses the same supporting data in Exhibit 1, Attachment F, as was used to support the Initial Settlement. The Parties request that the tariffs implementing the Modified Settlement be approved effective no later than February 10, 2011.

### **BOARD DECISION**

Rule 199 IAC 7.18 provides that the Board may approve a unanimous settlement presented by the parties in a contested case proceeding if the settlement is found to be reasonable in light of the whole record, consistent with law, and in the public interest. The rule provides that Board adoption of a settlement constitutes the final decision of the Board on issues addressed in the settlement.

At the decision meeting held January 7, 2011, the Board discussed the components of the Initial Settlement. During that discussion, the Board stated that it considered the \$3.4 million revenue increase agreed to by the parties to be reasonable. In the Modified Settlement, the \$3.4 million revenue increase was again

presented to the Board for consideration and is still reasonable based upon the record. The \$3.4 million has been agreed to by the Parties and is a compromise from the original increase requested by Black Hills Energy of \$4,684,141.

The Initial Settlement did not contain a specified return on equity and the Modified Settlement does not contain a specified return on equity. Without a specified return on equity, the Board does not have the opportunity to determine if the return on equity agreed to by the parties, if there was an agreement, is reasonable. The absence of a specific return on equity makes the Board's consideration of the Modified Settlement more difficult; however, the absence of a specific return on equity in this case does not make the Modified Settlement unreasonable.

At the decision meeting, the Board discussed the rate design that was proposed by the parties in the Initial Settlement. The same rate design proposal agreed to in the Initial Settlement is agreed to by the parties in the Modified Settlement. As discussed at the decision meeting, unless offset with reductions elsewhere, the customer charge increases agreed to in the Modified Settlement would produce additional revenue that exceeds the overall \$3.4 million revenue increase found to be reasonable. In the Modified Settlement, the Parties state that the supporting data for the tariff sheets, including billing determinants, were previously filed with the Board. The billing determinants and other supporting data are part of the record in Exhibit 1 and Exhibit 2.

Exhibit 1, Attachment F, which now supports the Modified Settlement, includes all rates and billing determinants to be used in verifying the \$3.4 million revenue increase. Attachment F applies the same test year billing determinants used in support of the original rate increase application and these billing determinants show that Black Hills Energy's per-therm volumetric rates, except for Small Volume rates, will be reduced as a result of the Modified Settlement in order to produce an overall revenue increase of \$3.4 million. The changes in per-therm volumetric rates based upon the Modified Settlement will be as follows:

	<u>Pre-Case</u>	<u>Settlement</u>
General Service Residential:	\$0.12782	\$0.11635
General Service Commercial/Industrial:	\$0.12782	\$0.11635
Small Volume:	\$0.04200	\$0.05237
Large Volume:	\$0.02418	\$0.02364

Black Hills Energy did not revise its class cost-of-service (CCS) study as part of the Modified Settlement. Even without revisions, the CCS study provides a basis for confirming the general reasonableness of the Modified Settlement customer charges. Assuming the entire reduction to Black Hills Energy's original proposed increase of \$4,684,141 is proportionately subtracted from class customer costs in the CCS study, the Modified Settlement customer charges still will not exceed the adjusted class customer costs on an average per-customer basis.

The Board finds that the rate design with the customer charges described above and the reduced per-therm volumetric charges described above are reasonable. The per-therm volumetric charges approved are those included in the

proposed tariffs filed by Black Hills Energy on February 3, 2011, as revised on February 3, 2011, in Docket No. TF-2011-0024.

At the decision meeting, the Board discussed the weather normalization methodology used by Black Hills Energy in its temporary rate filing and permanent rate application. The Board considers the overall rate design, including the weather normalization calculations, agreed to by the Parties to be reasonable for purposes of approving the Modified Settlement. The Board also understands 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.

Board rules require Black Hills Energy, and the other natural gas utilities, to file purchased gas adjustment (PGA) filings based upon the same weather normalization methodology previously approved by the Board. 199 IAC 19.10(1)"a." This same requirement applies to temporary rates, which are to be filed based upon previously-established regulatory principles. Iowa Code § 476.6(10)(b). Previously established weather normalization regulatory principles are those approved by the Board in prior proceedings involving the utility.

In Docket No. WRU-99-32-225, the Board approved a request by a predecessor of Black Hills Energy to change its weather normalization methodology to the uniform methodology using 30-year heating degree days used by other natural

gas utilities. The weather normalization methodology approved in Docket No. WRU-99-32-225 is the last approved methodology for Black Hills Energy since all of the rate cases filed since that time have been settled. Settlements are not precedent for any of the components agreed to in the settlement which means that the last approved weather normalization methodology for Black Hills Energy is the 30-year heating degree days methodology used in the PGA filings. In future rate cases, Black Hills Energy should file temporary rates based upon the 30-year heating degree days methodology approved by the Board.

Based upon the Board's discussion at the decision meeting, a review of the Modified Settlement discussed above, and the removal of the IRM from the settlement of the issues in this case, the Board finds that the Modified Settlement is reasonable in light of the whole record, is consistent with law, and is in the public interest. The Board will approve the Modified Settlement and the proposed tariffs filed on February 3, 2011, as revised on February 4, 2011, for service on and after February 10, 2011. The Board finds that approval of the proposed tariffs implementing the Modified Settlement in less than 30 days is reasonable as part of the settlement agreement. The Board also finds that, as agreed to in the Modified Settlement, no refund associated with temporary rates is required.

#### **ORDERING CLAUSES**

##### **IT IS THEREFORE ORDERED:**

1. The Modified Settlement filed by Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, the Consumer Advocate Division of the Department of

Justice, and Constellation NewEnergy Gas Division, LLC, on January 11, 2011 is approved.

2. The proposed tariffs filed by Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, on June 8, 2010, identified as TF-2010-0076, and made subject to investigation in this proceeding, are rejected as unjust, unreasonable, and unlawful.

3. The proposed tariffs, identified as TF-2011-0024, filed by Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, on February 3, 2011, as revised on February 4, 2011, are approved effective February 10, 2011.

4. Exhibit 3 is admitted into the record.

5. This order constitutes the final decision of the Board in Docket No. RPU-2010-0002.

**UTILITIES BOARD**

/s/ Robert B. Berntsen

/s/ Krista K. Tanner

ATTEST:

/s/ Joan Conrad  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 10<sup>th</sup> day of February 2011.