

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY	DOCKET NO. RPU-2010-0002
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ORDER ADDRESSING APPLICATION FOR CLARIFICATION

(Issued May 6, 2011)

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 (Consumer Advocate), and Constellation NewEnergy Gas Division, LLC, on January 11, 2011. In the February 10, 2011, order, the Board also approved the rate design agreed to in the settlement, including the weather normalization methodology used in designing permanent rates.

On March 2, 2011, Black Hills Energy filed an application for clarification of statements made by the Board in the February 10, 2011, order that Black Hills Energy characterizes as conclusions of law.¹ Specifically, Black Hills Energy

¹ Even though Black Hills Energy refers to Board rule 199 IAC 7.27 in its application for clarification, the Board does not consider this application for clarification to fall within the timelines for an application for rehearing pursuant to that rule or Iowa Code § 476.12.

requests clarification of the following two conclusions of law from pages 9 and 10 of the February 10, 2011, order:

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 on February 25, 2011, the Board 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. In re: Interstate Power and Light Company, Docket No. RPU-2010-0001, "Order on Rehearing" (issued 2/25/11) (Rehearing Order). Black Hills Energy quotes the following language is from the Rehearing Order:

[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 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 these revisions in order to render the order consistent with the clarified conclusions of law.

Consideration of the request for clarification must begin with the statutory language that established the right of a rate-regulated public utility to implement temporary rates during the pendency of a general rate case proceeding. Iowa Code § 476.6(10)(a) establishes the requirements that apply if a utility chooses to have the Board set the utility's temporary rates. Iowa Code § 476.6(10)(b) authorizes a utility

to implement temporary rates without Board approval ten days after filing a general rate increase application. In this docket, Black Hills Energy filed temporary rates pursuant to Iowa Code § 476.6(10)(b).

In addition to authorizing the implementation of temporary rates ten days after filing a general rate case application, Iowa Code § 476.6(10)(b) provides that if the utility chooses to place the temporary rates 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 of amounts collected in excess of amounts which would have been collected under rates that are finally approved by the Board. This section also provides if the Board determines, at the conclusion of the proceeding, that the temporary rates placed in effect 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.

The Board addressed the latter statutory provision in its Rehearing Order in Docket No. RPU-2010-0001 based upon the issue before it concerning temporary rates in that docket. The Rehearing Order 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 because 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.

In the Rehearing Order, the Board summarizes the position of Consumer Advocate that the rate treatment adopted by the Board reduced IPL's revenue requirement and increased IPL's refund liability. Consumer Advocate argued that IPL's position was inconsistent with Iowa Code § 476.6(10). Consumer Advocate pointed 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." Consumer Advocate argued that a refund was required in that case 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 IPL is still subject to the same refund requirement, even though it selected the option in Iowa Code § 476.6(10)(b), rather than having the Board set temporary rates under Iowa Code § 476.6(10)(a). Those requirements are to refund the amount 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 for determining the amount of a refund is whether the final rates are below temporary rates.

The Board went on to state that the issue of established regulatory principles was 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 that case.

In the February 10, 2011, order issued in this docket, the Board addressed the weather normalization method used by Black Hills Energy in its 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 indicated that it did 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 applies only to temporary rates implemented 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 for temporary rates implemented pursuant to Iowa Code § 476.6(10)(b). 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 this paragraph were not based upon previously-established regulatory principles. This language 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.

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. As described above, 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. 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 approved by the Board are more than the temporary rates implemented.

The Board's statement in the February 10, 2011, order 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 methodology for weather normalization is not used in developing temporary rates implemented pursuant to Iowa Code § 476.6(10)(b). Based upon the above discussion, the Board does not consider a clarification of the February 10, 2011, order as requested by Black Hills Energy to be warranted.

IT IS THEREFORE ORDERED:

The application for clarification filed by Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, on March 2, 2011, is denied.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Darrell Hanson

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Robert B. Berntsen

Dated at Des Moines, Iowa, this 6th day of May 2011.