

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	Application No. NG-109
of Black Hills Nebraska Gas,	)	
LLC, d/b/a Black Hills Energy,	)	
Rapid City, South Dakota,	)	LIST OF DISPUTED ISSUES
seeking approval of a general	)	
rate increase.	)	
	)	Dated: October 13, 2020

The following list of represents issues identified by Commission staff in the above-captioned docket as in dispute as of the date of this document. The items listed are based upon testimony and exhibits filed to date and do not incorporate any rebuttal testimony, discovery responses other than those referenced in testimony, or any issues upon which settlement may have been reached. Issues are identified by topic, with the Commission staff’s understanding of the position of the Public Advocate (“PA”) demarcated below each issue.<sup>1</sup>

The inclusion of an issue on this list or the description thereof should not be construed to convey a position on the part of the Commission. Issues upon which the parties have indicated agreement have not been included. Parties are encouraged to carefully review the substance of the issues and values assigned and to submit any corrections necessary to [psc.naturalgas@nebraska.gov](mailto:psc.naturalgas@nebraska.gov). Corrections or changes submitted should be substantive in nature and should not merely constitute rephrasing or reframing of the issue.

**Rate Base**

**Issue 1:** Forecasted plant projects. Black Hills proposes to include \$101.8M in forecasted plant for projects the company estimates to be completed by December 31, 2020.

PA’s Position: The PA recommends reducing the plant additions by removing forecasted plant expenditures as they are not known and measurable. The PA accepted the updated

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<sup>1</sup> Acronyms and abbreviations, including “BH” or “Black Hills” to reference Black Hills Nebraska Gas, as well as other terms used throughout the application, prefiled testimony, and discovery may be used throughout this document. Any questions about the meaning of any abbreviations used should be directed to [psc.naturalgas@nebraska.gov](mailto:psc.naturalgas@nebraska.gov).

numbers provided by the company in discovery, which remove \$35.3 million from rate base.

**Issue 2:** Farm Tap Project. BH proposes to include all incurred costs of the Farm Tap Project in rate base, adding \$6.8 million of plant into rate base.

PA's Position: The PA recommends reducing the amount proposed by BH by \$2.8 million, down to the cap of \$4 million that was approved and agreed to in NG-90.

**Issue 3:** Accumulated Deferred Income Tax (ADIT). BH proposes to recover a negative ADIT balance of \$38.2 million, which would increase rate base by that amount.

PA's Position: The PA recommends removing the non-plant related ADIT items, reducing the negative ADIT balance by \$14.1 million, and thereby decreasing rate base by \$14.1 million.

**Issue 4:** Excess Deferred Income Tax (EDIT) and Deferred Deficient Income Tax (DDIT). BH proposes to satisfy the protected property EDIT liability of \$20.76 million by applying the Average Rate Assumption Method (ARAM) to the Protected Net Operating Loss (NOL) DDIT regulatory asset of \$3.72 million over the next 4 years. For the remaining liability, BH proposes to provide a one-time bill credit to customers in the total amount of \$4.5 million when new rates become effective.

PA's Position: The PA recommends instead using the more equivalent offset of the non-protected non-property EDIT liability of \$3.62 million proposed by BH as part of the one-time bill credit, and applying it to the NOL DDIT asset of \$3.72 million. The PA therefore recommends a one-time bill credit to customers of \$2.9 million.

**Issue 5:** Cash Working Capital. BH proposes to include \$2,974,297 of CWC in rate base.

PA's Position: The PA recommends reducing CWC by \$140,261, reflecting adjustments to revenue and expense factors in the lead-lag study. The PA does not make any adjustments to the study. This adjustment would reduce rate base by \$12,403.

### Depreciation

**Issue 6:** Account 380, Services. Black Hills proposes a 40-year projected life and a -40% net salvage within Account 380.

PA's Position: The PA recommends a 44-year projected life and a -20% net salvage within Account 380.

**Issue 7:** Net salvage of Account 376, Mains. Black Hills proposes a -30% net salvage within Account 376.

PA's Position: The PA recommends a -25% net salvage for Account 376.

**Issue 8:** Net salvage of Accounts 383.01 (House Regulators) and 383.71 (Farm Taps). Black Hills proposes a 40-year projected life within these accounts.

PA's Position: The PA recommends a 45-year projected life within these accounts.

### Rate Structure

**Issue 9:** Declining Block Rates. Black Hills proposes to adopt a declining block rate structure statewide, with the residential distribution charge declining after the first 20 therms, and the commercial distribution charge declining after the first 40 therms.

PA's Position: The PA does not object to the declining block rate structure, but recommends adjustments to the distribution rates in each block.

**Issue 10:** One Commercial Class. Black Hills proposes one commercial customer class statewide.

PA's Position: The PA takes no position on the adoption of one commercial class statewide.

**Issue 11:** Customer Charge. Black Hills proposes a residential fixed customer charge of \$15.45 per month, and a commercial fixed customer charge of \$31.10 per month.

PA's Position: The PA proposes a residential fixed customer charge of \$13.50 per month, and a commercial fixed customer charge of \$18.50 per month.

**Issue 12:** Distribution Charge. Black Hills proposes a distribution charge for both residential and commercial customers of \$.59960 per therm for the first 20 therms, and \$.15000 thereafter.

PA's Position: The PA proposes different distribution charges for residential and commercial customers for the initial 20 or 40 therms. The PA proposes that the residential distribution charge be \$.42656 per therm for the first 20 therms, and \$.15750 thereafter. The PA proposes that the commercial distribution charge be \$.47653 for the first 40 therms, and \$.1570 thereafter.

**Issue 13:** Impact of rate design on small volume users. Black Hills proposes a rate design in which all residential and commercial customers pay the same distribution rate statewide.

PA's Position: The PA expresses concern that the rate design as proposed could drive small volume users to convert to electric appliances, potentially causing a loss between \$1.7 million and \$1.9 million in annual fixed charges alone.

**Operating Expense Adjustments**

**Issue 14:** Miscellaneous Revenues. Black Hills proposes various increases and adjustments to its fees and charges, relating to connections, reconnections, non-sufficient funds charge, late payment charge, meter test charge, and diversion fees.

PA's Position: The PA states Black Hills did not include incremental revenue increases and decreases relating to the changes in the fees and charges proposed by the Company. The PA therefore recommends an increase in revenues of \$693,669 and a decrease in revenues related to late fee changes of \$207,515.

**Issue 15:** Open and Pending Positions. Black Hills seeks to include 20 company positions that are open or pending.

PA's Position: The PA recommends disallowing the open or pending 20 positions, increasing the operating income by \$447,307.

**Issue 16:** FICA Tax Calculation. Black Hills included benefits within its base totaling \$2.97 million, to which it applied the FICA tax rate.

PA's Position: The PA disputes the application of the FICA tax rate to these benefits, and recommends removing the \$2.97 million of benefits before applying the FICA tax rate, resulting in an increase of jurisdictional operating income of \$27,805.

**Issue 17:** Charges from Black Hills Service Company (BHSC). Black Hills allocated \$32.9 million for shared services from BHSC, including \$2.4 million for 125 additional personnel, and \$63,707 for 2020 budgeted plant additions.

PA's Position: The PA recommends disallowing the allocated costs for 123 of the 125 positions which have not been filled, resulting in a reduction of allocated BHSC costs of \$2,053,024. The PA also recommends an adjustment equivalent to the cost of three full time employees to reflect cost savings resulting from the Black Hills'

consolidation, resulting in a reduction of service company costs of \$225,000.

**Issue 18:** 2021 Cost Allocation Manual (CAM) adjustments. Black Hills proposes to adjust the 2020 CAM in October for 2021 and increase the allocated costs from BHSC to Nebraska by \$63,707.

**PA's Position:** The PA recommends disallowing the CAM adjustment for 2021 as not known and measurable.

**Issue 19:** Incentive Compensation. Black Hills seeks to include costs related to three incentive compensation plans, Annual Incentive Plan (AIP), Short-Term Incentive Plan (STIP), and Long-Term Incentive Plan (LTIP).

**PA's Position:** The PA recommends that shareholders fund one-third of AIP and STIP expense included in BH's rate request, resulting in a reduction in jurisdictional incentive compensation of \$834,353 for AIP and \$234,357 for STIP. The PA also recommends that LTIP be fully funded by shareholders, resulting in a reduction of \$463,989. The total impact of the PA's adjustments for incentive compensation is an increase in jurisdictional operating income of \$1,175,696.

**Issue 20:** Supplemental Executive Retirement Plan (SERP). Black Hills seeks to include \$401,607 in its rate request for SERP, which provides additional retirement benefits for executive level employees.

**PA's Position:** The PA recommends disallowing all SERP-related expense, increasing jurisdictional operating income by \$254,913.

**Issue 21:** Directors' and Officers' (D&O) Liability Insurance. Black Hills' application includes \$154,779 in allocated premiums for D&O Insurance, which protects the personal assets of officers and directors from the costs of lawsuits.

**PA's Position:** The PA recommends sharing the cost of D&O insurance 50/50 between ratepayers and shareholders, resulting in an increase to jurisdictional operating income to \$49,123.

**Issue 22:** Dues. Black Hills included payments for dues for various associations in its rate request.

PA's Position: The PA states that many of the payments listed in the rate request were duplicative. The PA also removed certain lobbying expenses. The result was an increase to operating income of \$20,004.

**Issue 23:** Line Locate Costs. Black Hills proposes to use Black Hills employees no longer needed for a non-regulated service to conduct line locates outside the Lincoln area instead of using contract labor. Contractors will still be utilized in the Lincoln area.

PA's Position: The PA expressed concerns as using contractors to perform line locates cost less than internal BH employees. The PA does not make a specific recommendation on the issue, but states that this reflects inflated labor costs.

#### **Rate of Return**

**Issue 24:** Return on Equity. Black Hills proposes a return on equity of 10%, with a proposed range of 9.6% to 10.8%.

PA's Position: The PA proposes a return on equity of 8.97%, with a range of 8.2% to 9.6%.

**Issue 25:** Cost of Debt. Black Hills calculates its cost of debt at 4.11%.

PA's Position: The PA calculates the cost of debt at 3.91%.

**Issue 26:** Discounted Cash Flow. Black Hills' witness determines a range for DCF of 9.4% to 10.7%.

PA's Position: The Public Advocate's expert determines that the average DCF cost of equity is 8.86%.

**Issue 27:** Capital Asset Pricing Model. Black Hills calculates CAPM to fall in a range of 9.8% - 10.2%. This estimate includes a size adjustment, as well as an Empirical Capital Asset Pricing Model (ECAPM) adjustment.

PA's Position: The PA states that the size adjustment and ECAPM adjustment are not appropriate for regulated utilities. The PA calculates CAPM at 8.81%.

**Issue 28:** Risk Premium Analysis. Black Hills uses a Utility Risk Premium method to calculate the cost of equity, resulting in an implied cost of equity of 10.27%.

PA's Position: The PA's review of the risk premium analysis results in an estimate of 9.37%.

**Issue 29:** Flotation costs. Black Hills' witness recommended including 8 basis points for flotation costs to fully compensate investors for stock issuance costs.

PA's Position: The PA's witness recommends not allowing flotation cost adjustments as BH does not regularly issue stock. The witness also notes that flotation costs were not approved by the Commission in NG-67.

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**Issue 30:** Overall Cost of Capital. Black Hills proposes an overall cost of capital of 7.06%, as set forth by witness Michael Clevinger:

<b>Table MCC-3 WACC</b>				
Description	Amount	Percent of Total	Cost	Weighted Cost
Long-Term Debt	\$325,000,000	50.00%	4.11%	2.06%
Common Equity	\$325,000,000	50.00%	10.00%	5.00%
	\$650,000,000	100.00%		7.06%

PA's Position: The PA proposes an overall cost of capital of 6.44%, as set forth by witness Keith Berry:

**Table 2: Black Hills Overall Cost of Capital**

Component	Proportion	Cost	Weighted Cost
Common Equity	50%	8.97%	4.49%
Long-Term Debt	50%	3.91%	1.96%
<b>OVERALL COST OF CAPITAL</b>			<b>6.44%</b>

**System Safety and Integrity Rider (SSIR)**

**Issue 31:** Renewal of the SSIR. Black Hills seeks to renew the SSIR.

PA's Position: The PA supports the renewal of the SSIR, but notes that the SSIR revenue requirements should reflect the Cost of Capital and Depreciation accrual rates approved in this proceeding.

**Issue 32:** Extension of the SSIR to Rate Areas 1, 2, and 3. Black Hills proposes to extend the SSIR to cover Rate Areas 1, 2, and 3, in addition to Rate Area 5.

PA's Position: The PA did not object to expanding the SSIR statewide.

**Issue 33:** Filing of the SSIR. Black Hills proposes to file the annual application by September of each year, with the proposed tariff changes being effective January 1 of the following year. Consistent with the current SSIR, the annual application should include a reconciliation of forecast to actual project costs and in-service dates of the prior year's projects, with any variances fully explained. Black Hills would also submit annual reports on the SSIR rather than quarterly surveillance filings. A general rate case application must be filed at least every sixty months.

PA's Position: The PA takes no position on the Company proposal.

**Issue 34:** Creation of a New SSIR Category: DIIP. Black Hills proposes creating a new category of project within the SSIR consisting of Data Improvement Infrastructure Projects (DIIP).

PA's Position: The PA does not oppose the creation of the DIIP category, but recommends that BH include information in its reports regarding how the project impacts the company's risk assessments, portfolio of projects, and program life cycles.

**Issue 35:** Creation of a New SSIR Category: Reliability. Black Hills proposes to create a new project category consisting of projects for the purpose of system reliability.

PA's Position: The PA does not oppose the creation of the Reliability category, but notes the proposal represents a significant broadening of the SSIR program. The PA recommends that the Reliability category include measurable criteria to ensure the category is not too broadly interpreted and used as a catch-all category.

**Issue 36:** Expansion of Existing SSIR Category: Top of Ground (TOG) pipe. Black Hills proposes expanding its existing TOG pipe SSIR category to include shallow and span pipes.

**PA's Position:** The PA does not oppose expanding the TOG pipe category to include shallow and span pipe projects, but recommends that BH provide a firm definition of shallow pipe to determine eligibility of projects.

**Issue 37:** Expansion of Existing SSIR Category: At-Risk Meter Replacement. Black Hills proposes to expand its existing At-Risk Meter Replacement SSIR category to include relocation of outside meters close to customer facilities.

**PA's Position:** The PA does not oppose expanding the At-Risk Meter Relocation project category, but recommends the definition be clarified to include only relocation and replacement of meter projects, not simply relocation projects. The PA recommends the definition be clarified to determine eligibility of proposed projects

**Issue 38:** Expansion of Existing SSIR Category: PVC Pipe. Black Hills proposes to expand its existing PVC Pipe category to include additional obsolete pipe materials of copper, Adyl-A, and Orangeburg pipe.

**PA's Position:** The PA does not oppose expanding the PVC Pipe project category, but notes that obsolete pipe material does not mean the pipe is at-risk and recommends BH provide a defensible analysis of the at-risk nature of the pipe proposed to be replaced with any future applications.

**Issue 39:** 2021 Forecasted SSIR Projects. Black Hills lists in Exhibit JLB-5 its forecasted SSIR projects for 2021, and seeks their approval in the next year's SSIR.

**PA's Position:** The PA recommends rejecting four "Shallow" pipe projects and seven "Reliability" projects as not eligible for inclusion due to ambiguity in the project categories.

**Additional Surcharges**

**Issue 45:** Rate Case Expenses. Black Hills estimates that the rate review will result in expenses of \$750,000 and proposes to recover these costs over 36 months through a surcharge of \$.07 per customer per month.

**PA's Position:** The PA accepts Black Hills' proposed methodology for recovery of rate review expenses, but recommends that the amount recovered should be based on actual costs incurred but limited to the Company's estimated \$750,000.

**Issue 46:** Recovery of ALLO Costs. Black Hills proposes to recover costs associated with ALLO's installation of fiberoptic cable in Lincoln exclusively from 99,000 Lincoln ratepayers through a surcharge of \$.43 per month for three years. In Commission Docket No. NG-93, the Commission approved the creation of a regulatory asset for Black Hills to capture these costs, but did not determine whether the costs would be recoverable, nor how the costs would be recovered.

**PA's Position:** The PA does not comment on this proposal.

**Issue 47:** Expansion of HOT/HEAT Program. Black Hills proposes expanding its HOT and HEAT incentive programs statewide, and to begin collecting the annual costs for the incentive beginning in September 2020.

**PA's Position:** The PA does not object to the expansion of the program, but recommends recovery be limited to Rate Area Five customers, as customers in the other rate areas will not be eligible to utilize the program until 2021. The PA also recommends that the incentive costs be shared equally between BH and its customers, and that the annual \$1 million cap be clearly defined on Tariff Sheet No. 132.