

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the Matter of the Application of Black Hills)
Kansas Gas Utility Company, LLC d/b/a Black) Docket No. 21-BHCG-370-ACA
Hills Energy, for a Waiver of Tariff)

ORDER APPROVING TEMPORARY WAIVER

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

Background

1. On March 23, 2021, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (“Black Hills” or “Applicant”) submitted an *Application for Waiver* (“Application”) seeking to waive certain provisions of its Commission approved tariff in order to address the extreme February weather event (“Cold Weather Event”).

2. Pursuant to Black Hills’ Tariff, Index No. 37, paragraph 2, Black Hills’ transportation customers are charged a Daily Out-of-Balance charge if they are served by a pipeline that adopts daily scheduling charges and they have an Out-of-Balance Condition that exceeds their Daily Scheduling Tolerance. The charge is based on the Federal Energy Regulatory Commission (FERC) approved penalty charge for the applicable upstream pipeline. Pursuant to Index No. 37, Black Hills’ Transportation customers are also charged an Unauthorized Delivery Charge. According to Black Hills’ Tariff, these charges are accumulated and assessed monthly.

3. Black Hills explains in its Application that it is in the process of evaluating both the penalties assessed to it by the FERC pipelines and the charges applicable under Black Hills' Commission approved tariff. However, several of the FERC pipelines are seeking to delay or waive altogether the penalties that would ordinarily apply.

4. Therefore, Black Hills is requesting a temporary waiver of its tariff to allow it to not charge customers the Daily-Out-of-Balance Charge and to not charge the Unauthorized Delivery Charge until it is determined what penalties will be assessed by the FERC pipelines. Black Hills anticipates that it will be able to appropriately bill its customers in the April invoices.

Staff's Report and Recommendation

5. Staff submitted a Report and Recommendation (R&R) dated April 16, 2021, attached hereto as Exhibit A and made a part hereof by reference.

6. Staff agreed that it is in the Transportation customers' best interest not to be charged the daily penalties based on OFO days or System Overrun or Critical Days and Unauthorized Delivery Charges until a determination is made as to what penalties will be assessed by the FERC-regulated interstate gas pipelines. Staff noted that it generally supports a Local Distribution Company (LDC) using the penalty provisions in its Tariff to bill Transportation customers for the costs of FERC-regulated penalties or gas costs that the LDC incurs on behalf of the Transportation customers. These penalty provisions should be used to recoup the cost of these penalties or gas costs, so that the LDC Sales customers are not harmed. However, if interstate gas pipeline penalties will be waived, Black Hills' penalties may need to be waived as well because these penalties were never meant to be a profit center or produce an unreasonable windfall for Sales customers.

7. Staff recommended approval of Black Hills' request.

Findings and Conclusions

8. The Commission finds Staff's findings and recommendations to be reasonable, and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. Black Hills' Application for a temporary waiver is approved.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 04/22/2021 _____



Lynn M. Retz
Executive Director

MRN

¹K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairperson Andrew J. French
Commissioner Dwight D. Keen
Commissioner Susan K. Duffy

FROM: Brad Hutton, Auditor
Chad Unrein, Senior Managing Auditor/FERC Affairs Specialist
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance
Jeff McClanahan, Director of Utilities

DATE: April 16, 2021

SUBJECT: Docket No. 21-BHCG-370-MIS – In the Matter of the Application of Black Hills
Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, for a Waiver of
Tariff

EXECUTIVE SUMMARY:

On March 23, 2021, Black Hills Kansas Gas Utility Company, LLC's (Black Hills) filed a request with the Kansas Corporation Commission (KCC or Commission) for a temporary waiver of its Index 37 Tariff to not allow it to charge its Transportation customers the Daily Out-Of-Balance Charges or Unauthorized Delivery Charges that were based on Operational Flow Order (OFO) days or System Overrun or Critical Days until it is determined what penalties will be assessed by the Federal Energy Regulatory Commission (FERC)-regulated interstate gas pipelines.

Because the Daily Out of Balance Charges in Black Hills KCC-approved Tariff are based on FERC-approved penalty charges for the applicable upstream pipeline, and because several of these pipelines have requested to waive the penalties or to delay the assessment of the penalties, Black Hills states that it is in Transportation customers' interests for Black Hills to delay billing these penalties until certainty can be reached about the status of the FERC penalties. Black Hills is in the process of evaluating both the penalties assessed to it by interstate gas pipelines and the charges applicable under Black Hills' KCC-approved Tariff. Black Hills anticipates that it will be able to appropriately bill its customers in the April invoices. Staff recommends the Commission approve this waiver request as it is in the public interest for Black Hills to delay billing the penalties allowed under its Tariff until it is determined what level of penalties Black Hills will be assessed by FERC-regulated interstate gas pipelines.

BACKGROUND:

During the Cold Weather Event of February 2021, there were unseasonably cold temperatures resulting in record demand for natural gas. During this time, suppliers of natural gas experienced freezing of lines and pipes. The record demand and reduced supplies led to unprecedented high natural gas prices. FERC-regulated interstate gas pipelines provided notice of OFOs or otherwise limited a shipper's tolerance levels between scheduled and actual volumes. These OFOs included daily penalties of multiples of the pipeline's gas indexes. Several interstate pipelines have filed with FERC for authority to waive the penalties or for authority to delay assessment of penalties.

ANALYSIS:

Pursuant to Black Hills' Tariff, Index No. 37, paragraph 2, Black Hills' transportation customers that are served through a pipeline with daily balancing charges are charged a Daily Out-Of-Balance Charge. The daily charge is the FERC-approved penalty charge of the applicable upstream pipeline. Pursuant to Index No. 37, Black Hills' transportation customers are also charged an Unauthorized Delivery Charge.

Black Hills is in the process of evaluating both the penalties assessed to it by the FERC-regulated interstate gas pipelines and the charges applicable under Black Hills' Commission-approved Tariff. Staff agrees that it is in Transportation customers' best interests not to be charged the daily penalties based on OFO days or System Overrun or Critical Days and Unauthorized Delivery Charges until a determination is made as to what penalties will be assessed by the FERC-regulated interstate gas pipelines. Staff generally supports a Local Distribution Company (LDC) using the penalty provisions in its Tariff to bill Transportation customers for the costs of FERC-regulated penalties or gas costs that the LDC incurred on behalf of the Transportation customer. These penalty provisions should be used to recoup the cost of these penalties or gas costs, so that the LDC Sales customers are not harmed. However, if interstate gas pipeline penalties will be waived, Black Hills' penalties may need to be waived as well because these penalties were never meant to be a profit center or to produce an unreasonable windfall for Sales customers. Accordingly, Staff supports Black Hills' waiver because it avoids billing a penalty amount to Transportation customers that might not be tied to a FERC-regulated interstate gas pipeline penalty.

RECOMMENDATION:

Staff recommends the Commission issue an Order approving Black Hills' request for the temporary waiver of its Tariff as explained above, without prejudice, so that Black Hills may instead bill the charges at a later date once FERC has ruled on the issue of interstate gas pipeline penalties.

CERTIFICATE OF SERVICE

21-BHCG-370-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 04/22/2021.

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/S/ DeeAnn Shupe

DeeAnn Shupe