

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of	)	Application No. NG-0058/
Black Hills/Nebraska Gas Utility	)	DR-0003
Company, LLC d/b/a Black Hills	)	
Energy (Black Hills Energy), Omaha,	)	ORDER FINDING QUESTION OF
seeking Declaratory Ruling on	)	STATEWIDE CONCERN
Decoupling Application Procedural	)	
Filing Requirements.	)	Entered: April 14, 2009

BY THE COMMISSION:

On March 27, 2009, Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, Omaha (Black Hills Energy), filed a petition seeking a declaratory ruling on decoupling application procedural filing requirements.

O P I N I O N   A N D   F I N D I N G S

The conduct of declaratory ruling proceedings is governed by the Administrative Procedures Act<sup>1</sup> and applicable Commission rules and regulations<sup>2</sup>.

Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under circumstances would be contrary to a rule or regulation adopted in accordance with subsection (2) of this section...<sup>3</sup>

Each agency is required to issue rules and regulations that "describe the classes of circumstances in which the agency will not issue a declaratory order and be consistent with the public interest and with the general policy of the Administrative Procedure Act to facilitate and encourage agency issuance of reliable advice."<sup>4</sup>

Pursuant to Commission rules and regulations regarding the issuance of declaratory rulings, "If a petition of declaratory ruling presents a question of statewide commercial importance or such is noted during or after hearing on the petition, the Commission shall not issue a declaratory ruling but will resolve such question in an investigative proceeding."<sup>5</sup>

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<sup>1</sup> Neb. Rev. Stat. § 84-901, et seq. (Reissue 2008).

<sup>2</sup> Neb. Admin. Code, Title 291, Ch. 1 (1992).

<sup>3</sup> § 84-912.01(1).

<sup>4</sup> § 84-912.01(2).

<sup>5</sup> Neb. Admin. Code, Title 291, Ch. 1 § 019.05 (1992).

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Black Hills' Petition seeks a determination as to whether a Jurisdictional Utility can file for approval of a revenue decoupling mechanism that is not intended to request a change in overall revenue requirement for the Jurisdictional Utility under Neb. Rev. Stat. § 66-1808 and related Commission Rules and Regulations without triggering the "General Rate filing" requirements imposed under Neb. Rev. Stat. §§ 66-1802(6) and 66-1838 and the Commission's Rules and Regulations related to those general rate filing statutes.

Such a determination, on its face, affects all jurisdictional utilities within the state. As such, the Commission finds that it presents a question of statewide commercial concern. Therefore, the Commission may not issue a declaratory ruling but must resolve the question presented through an investigative proceeding.

The Commission will open an investigatory proceeding concurrent with the entry of this order to address the questions raised by the Petition.

O R D E R



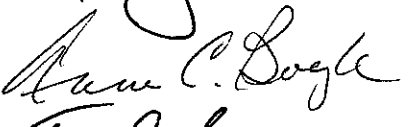

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission finds that the petition for declaratory ruling on its face presents questions of statewide commercial importance.

IT IS FURTHER ORDERED that the questions presented by the petition for declaratory ruling shall be addressed in an investigative proceeding and no declaratory ruling shall be issued.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of April, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chairman

ATTEST:

  
Executive Director

//s// Frank E. Landis