

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Black) Application No. NG-0093
Hills/Nebraska Gas Utility,)
LLC, d/b/a Black Hills Energy,)
Papillion, seeking an) ORDER APPROVING PROPOSAL
accounting order to defer)
extraordinary gas line location)
costs.) Entered: March 20, 2018

BY THE COMMISSION:

On September 21, 2017, Black Hills/Nebraska Gas Utility, LLC, d/b/a Black Hills Energy ("Black Hills" or "Applicant"), of Papillion, Nebraska, filed an application with the Nebraska Public Service Commission ("Commission") seeking approval of the creation of a regulatory asset on the Applicant's books and records. Notice of the Application was published in The Daily Record of Omaha, Nebraska, on September 25, 2017. The Public Advocate ("PA") submitted a Petition for Formal Intervention in this docket, which was granted on November 1, 2017.

In its proposal, the Applicant seeks the Commission's approval of the creation of a regulatory asset on the Applicant's books and records. This regulatory asset would be an accounting tool which would capture gas line location costs incurred by the Applicant as a result of the installation of fiber optic cable by ALLO Communications within the City of Lincoln ("the ALLO Project") during 2017 and 2018. In other words, the creation of a regulatory asset would allow the Applicant to track costs related to line locates performed by the Applicant in relation to the ALLO Project. The Applicant is not seeking immediate recovery of the ALLO Project costs, but instead seeks to capture the costs until the Applicant's next general rate application.¹

EVIDENCE

All parties had an opportunity to review the application and conduct discovery. The Applicant filed the written direct testimony of Jeff Sylvester. The PA filed the written direct testimony and exhibits of Donna Mullinax, consultant to the PA. The Applicant and the PA jointly moved for a continuance of the hearing originally set for January 17, 2018, which was granted by the Hearing Officer.

¹ Exhibit 6, Application for Approval of Accounting and Regulatory Treatment, p. 4.

On January 30, 2018, the parties filed Joint Stipulations, Agreements, and Recommendations.² In this filing, the parties stipulated and agreed that Black Hills is obligated to perform line locates in relation to the ALLO Project under Nebraska's One-Call Notification System Act, NEB. REV. STAT. §§ 76-2301 - 76-2311. The parties agreed that Applicant has estimated the cost of performing these line locates for the years of 2017 and 2018 will reach \$1.526 million,³ and that these costs were not reasonably known and measurable at the time Applicant was preparing to file its last rate case.⁴ The parties further agreed that Applicant has been unsuccessful in obtaining reimbursement of these costs from ALLO, and that the approval of the Commission is necessary in order for Applicant to create a regulatory asset.

The parties agreed that generally accepted accounting principles list two requirements which must be met in order for the Applicant to create a regulatory asset. First, it must be probable that the costs will be considered allowable for ratemaking purposes in the future. Second, future revenue must be sufficient to permit recovery of the previously incurred cost.⁵

The parties agreed that the creation of a regulatory asset implies that the burden of the costs associated with line locates for the ALLO Project may be shifted to ratepayers in a future proceeding.⁶ Applicant does not intend to earn interest on the deferred costs in the regulatory asset.⁷ The PA emphasized that although the creation of a regulatory asset implies transferring the burden of the costs to ratepayers in a future rate proceeding, there may be other options for future cost recovery to be pursued before the next rate proceeding.⁸ The parties agreed that if the application is approved by the Commission, Applicant will mitigate costs related to the ALLO project and will evaluate other alternatives for reimbursement.⁹

The parties jointly recommended that the Commission enter an order permitting Applicant to establish a regulatory asset for

² Exhibit 9, Joint Stipulations, Agreements, and Recommendations.

³ Exhibit 9 at 6.

⁴ Exhibit 9 at 7; see also Public Service Commission Docket No. NG-0061 (Application for Rate Increase filed by Black Hills Energy in 2009).

⁵ Exhibit 7, Testimony of Donna H. Mullinax on Behalf of the Nebraska Public Advocate, at 15; Exhibit 7, Attachment 15, Request No. PA-15; Transcript at 39:7-22.

⁶ Transcript at 42:17 - 43:19.

⁷ Exhibit 9 at 7; Exhibit 7 at 17.

⁸ Exhibit 7 at 20.

⁹ Exhibit 9 at 10.

its ALLO Project costs for 2017 and 2018, under certain enumerated conditions. Specifically, the parties stipulated that Applicant must manage costs related to the ALLO Project, evaluate alternatives to shifting the burden onto ratepayers in a future proceeding, and must communicate and cooperate with the PA and the Commission on alternatives. The parties further stipulated that a favorable decision in this docket would not guarantee recovery of the costs in a future proceeding.¹⁰

A hearing was held on February 28, 2018. Douglas J. Law and Adam Buhrman appeared on behalf of the Applicant. William Austin appeared on behalf of the Public Advocate. Sallie Dietrich and Nichole Mulcahy appeared on behalf of Commission staff. Exhibits 1-10 were offered and accepted. Applicant presented the oral testimony of Jeff Sylvester. The PA presented the oral testimony of Donna Mullinax. Each party was offered cross-examination, and Commission staff questioned each witness.

FINDINGS AND OPINION

Pursuant to the State Natural Gas Regulation Act, NEB. REV. STAT. § 66-1804(1), the Commission has "full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction." The Act further provides that these powers are to be "liberally construed." NEB. REV. STAT. § 66-1804(2). The Commission's powers, authority, and jurisdiction, including with regard to general rate filings and rate principles, are further outlined in state regulations at 291 Neb. Admin. Code, Chapter 9, Sections 4 and 5.

The Commission hereby finds that the parties are in agreement on the facts of this matter, including the extraordinary and unforeseen nature of the costs incurred by the Applicant as a result of a high volume of line locate requests incurred by the ALLO Project.

The Commission finds that the Applicant is incurring significant costs in order to perform gas line locates which are required by Nebraska's One-Call Notification System Act, and which are necessary to prevent gas lines from being damaged by excavators.¹¹ The Commission finds that Nebraska law currently does not allow Applicant to recover the costs of performing these line locates directly from ALLO.

¹⁰ Exhibit 9 at 9-10.

¹¹ Exhibit 6, Testimony of Jeff Sylvester, at 7.

Based upon the PA's review and report, and upon the parties' stipulated agreement, the Commission finds that it is appropriate for Black Hills to create a regulatory asset on its books and records, comprised of the 2017-2018 gas line location costs that Applicant has incurred and will incur in order to accommodate the ALLO Project, up to a total of \$1.526 million.

The Commission emphasizes that the creation of a regulatory asset is not a guarantee that the Commission will allow Applicant to recover costs associated with the ALLO Project in a future rate proceeding. The Commission reserves the ability to reverse its approval of regulatory asset treatment of these expenses in the future. In the event the Commission reverses its approval of regulatory asset treatment, the costs associated with the ALLO Project will then be recorded as an expense on Applicant's books and records, and the Applicant would be in much the same position as prior to any decision by the Commission.¹²

The Commission further finds that in conjunction with the creation of the regulatory asset, Applicant must continue to maintain prudent cost controls related to the ALLO Project, and must continue to evaluate all reasonable alternatives for reimbursement of the costs related to the ALLO Project. Applicant must continue to communicate and cooperate with the Public Advocate and the Commission to minimize costs associated with the ALLO Project and to explore alternatives to recovery of ALLO Project costs.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Joint Stipulations, Agreements, and Recommendations be approved and the application be granted consistent with the terms of parties' filed agreement.

¹² See Exhibit 7 at 14:14-18, 20:10-15.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 20th day of March, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schan
Crystal Goodles

Mary Ridder
Chair

ATTEST:

Frank E. Landis
//s//Frank E. Landis
//s//Mary Ridder

Miller KJE
Executive Director