

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0580G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT STRATEGIC ISSUES PLAN FOR CALENDAR YEAR 2023.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING AND ESTABLISHING
DEADLINES AND PROCEDURES**

Mailed Date: March 16, 2023

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I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision approves the proposed procedural schedule that Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) filed on behalf of the parties with

minor modifications and additions; schedules a fully remote evidentiary hearing for June 15 and 16, 2023; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History¹

2. On December 30, 2022, Black Hills filed the above-captioned Application (Application) with attachments.

3. On January 3, 2023, the Commission provided public notice of the Application, which also established intervention deadlines.²

4. During the weekly meeting held on February 15, 2023, the Commission rejected Staff's assertion that the Application is incomplete; deemed the Application complete; and referred this matter to an administrative law judge (ALJ) for disposition.

5. In addition to Black Hills, the following entities are parties to this Proceeding: the Colorado Energy Office; the Office of the Utility Consumer Advocate; and Trial Staff of the Public Utilities Commission (Staff).³

6. On March 6, 2023, among other matters, the ALJ ordered Black Hills to confer with the parties on a procedural schedule, provided information related to that conferral, and required Black Hills to make a filing by March 14, 2023 proposing a consensus procedural schedule.⁴

7. On March 14, 2023, Black Hills filed a Notice of Proposed Procedural Schedule (Notice).

¹ Only the procedural history necessary to understand this Decision is included.

² See Notice of Application Filed, filed on January 3, 2023.

³ Decision No. R23-0162-I (mailed March 6, 2023).

⁴ *Id.*

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

8. The Notice states that all parties agree to the matters therein, which renders it unopposed.⁵ Although the Notice is not styled as a motion, in an abundance of caution, the ALJ will waive the response time to it since it is unopposed.⁶

9. In the notice, the parties propose the following schedule:

Event or Activity	Deadline or Proposed Dates
Direct Testimony	March 30, 2023
Answer Testimony	April 27, 2023
Rebuttal and Cross-Answer Testimony	May 25, 2023
Stipulations and Settlement Agreements	May 26, 2023
Last Day to File Hearing Exhibits	June 5, 2023
Corrected Testimony and Exhibits	June 5, 2023
Prehearing Motions	June 5, 2023
Settlement Testimony	June 9, 2023
Witness and Exhibit Lists and Cross Examination Matrix	June 12, 2023
Evidentiary Hearing	June 15-16, 2023
Statements of Position	June 30, 2023 ⁷

10. The parties also agree that the evidentiary hearing should be a fully remote hearing held by Zoom, and that the Commission's rules concerning discovery govern this Proceeding.⁸

⁵ Notice at 1-2.

⁶ See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁷ Notice at 1-2.

⁸ *Id.* at 2.

11. The ALJ finds that the Notice complies with the requirements of Decision No. R23-0162-I, and with a few minor modifications, that the parties' proposed procedural schedule is reasonable and appropriate. Specifically, the ALJ will modify the proposed June 9, 2023 Settlement Testimony deadline to June 5, 2023. This is necessary both to allow the ALJ enough time to review Settlement Testimony before the hearing, and to avoid confusion or a conflict between the proposed June 9, 2023 deadline to file Settlement Testimony (which are exhibits), and the proposed June 5, 2023 deadline to file final exhibits. The ALJ also clarifies that June 5, 2023 is the deadline to file non-testimonial hearing exhibits (rather than characterizing that as the "last day to file hearing exhibits."). Finally, because the parties propose a June 5, 2023 deadline to file prehearing motions and the hearing is scheduled to begin on June 15, 2023, it is necessary to establish a shorter response time than permitted by the Commission's Rules of Practice and Procedure (14 days).⁹ Without a shortened response time, responses to prehearing motions will be due after the hearing has been completed. As such, the ALJ establishes June 9, 2023 as the deadline to file responses to prehearing motions.

12. Since all parties agree that the hearing should be held remotely and that the Commission's rules concerning discovery apply (without modification), the ALJ will approve these agreements.

13. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the

⁹ Rule 1400(b), 4 CCR 723-1.

Zoom hearing.¹⁰ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

14. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. This has resulted in a tremendous waste of resources—by forcing Commission support staff to carefully review each filed exhibit and contact parties to point out errors; and by requiring parties to reformat and refile exhibits, which has occurred on numerous occasions in the middle of evidentiary hearings, thereby wasting all parties and the Commission’s time and resources. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits (a particularly common error).

15. The parties must take extra care in reviewing Attachment B alongside their exhibits *before filing them* to ensure that they comply with each and every requirement in Attachment B. It is the parties’ responsibility, not Commission support staffs’, to ensure that exhibits are correctly formatted, marked, and filed.

16. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to

¹⁰ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room’s webcast. The Commission’s public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the “Calendar of Events.”

the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.¹¹ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

17. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, the response time to the Notice of Proposed Procedural Schedule that Black Hills Colorado Gas, Inc. doing business as Black Hills Energy (Black Hills) filed on March 14, 2023 is waived, and the parties' agreements therein are approved, as set forth below, with minor modifications.

2. A fully remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: June 15 and 16, 2023

TIMES: 9:00 a.m. each day

PLACE: Join by video-conference using Zoom.

3. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

¹¹ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

4. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

5. Non-participants in the evidentiary hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

6. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using Zoom. The parties must ensure that they and their witnesses are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using Zoom.

7. **Direct Testimony Deadline.** Black Hills' direct testimony and attachments thereto must be filed and served on or by March 30, 2023.

8. **Answer Testimony Deadline.** Interveners' answer testimony and attachments thereto must be filed and served by April 27, 2023.

9. **Rebuttal and Cross-Answer Testimony Deadline.** Black Hills' rebuttal testimony and attachments thereto, and Interveners' cross-answer testimony and attachments thereto must be filed and served by May 25, 2023.

10. **Stipulations and Settlement Agreement Deadline.** The parties must file and serve any stipulations and settlement agreements by May 26, 2023.

11. **Non-Testimonial Hearing Exhibit Deadline.** By June 5, 2023, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*, exhibits not already filed as a part of testimonial exhibits). The parties are not required to pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or

for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

12. **Settlement Testimony Deadline.** The parties must file and serve any testimony supporting or responding to any settlement agreements by June 5, 2023.

13. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. On or by June 5, 2023, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments). June 5, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. Such filings must comply with the specific requirements in Attachment B.

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

14. **Prehearing Motions and Responses Deadlines.** The parties must file and serve any prehearing motions by June 5, 2023; responses to prehearing motions must be filed and served by June 9, 2023.

15. Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix Deadline.

a. By June 12, 2023, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit).

b. By June 12, 2023, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

16. Statements of Position Deadline. In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file their statement of position by June 30, 2023.

17. Hearing Exhibit Number Block Assignments. To efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Black Hills	100 to 299
The Colorado Energy Office	300 to 399
The Office of the Utility Consumer Advocate	400 to 499
Trial Staff of the Colorado Public Utilities Commission	500 to 599

18. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Black Hills will use hearing exhibit numbers 1100-1299; the Colorado Energy Office will use hearing exhibit numbers 1300-1399, *etc.*). Hearing Exhibit 600 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

19. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

G. Harris Adams,
Interim Director