

Decision No. R24-0218-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0633G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO
GAS, INC. FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ACKNOWLEDGING INTERVENTIONS OF RIGHT,
GRANTING PERMISSIVE INTERVENTION,
EXTENDING STATUTORY TIME PERIOD, AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: April 9, 2024

I. STATEMENT

1. This Decision grants the permissive intervention of Southwest Energy Efficiency Project (SWEEP), extends the statutory time period, and schedules a prehearing conference for Tuesday, April 30, 2024, at 10:30 a.m.

A. Procedural History and Background

2. Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (BHCG or the Company), initiated this matter on December 29, 2023, by filing its Verified Application with the Public Utilities Commission of the State of Colorado (PUC or Commission) seeking approval of its 2024-2028 Clean Heat Plan.¹

3. Contemporaneously with its Application, BHCG filed the following documents:

- Hearing Exhibit 101: Direct testimony of Michael J. Harrington, Director, Regulatory & Finance, for Black Hills Services Company,

¹ Verified Application of Black Hills Colorado Gas, Inc., doing business as Black Hills Energy, filed Nov. 21, 2023, p. 1.

LLC (BHSC), a wholly-owned subsidiary of Black Hills Corporation, along with two attached exhibits;

- Hearing Exhibit 102: Direct testimony of Maria K. Garduna, Sustainability and Climate Manager for BHSC, along with five attached exhibits;
- Hearing Exhibit 103: Direct testimony of Christopher L. Downey, General Manager of Colorado Operations for BHCG, along with one attached exhibit;
- Hearing Exhibit 104: Direct testimony of Andrew W. Cottrell, a partner in the Energy practice of ScottMadden, Inc., along with one attached exhibit; and,
- Hearing Exhibit 105: Direct testimony of Matthew J. Christofferson, Manager – Regulatory with BHSC, along with five attached exhibits.

4. On December 29, 2023, the Commission sent out a Notice of Application Filed (Notice) to interested persons. The Notice stated that BHCG “**has** filed testimony and is seeking a Commission decision within 120 days.”² In addition, the Commission ordered that any person or entity seeking to intervene in this Proceeding do so within 30 days of the Notice, and noted that Commission Trial Staff (Staff) file its intervention “within seven (7) days after this Notice expires.”³

5. After the Commission’s issuance of the Notice, the following entities filed Interventions as of right in this Proceeding:

- The Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing and Entry of Appearances on January 16, 2024;
- The Colorado Energy Office (CEO) filed its Notice of Intervention by Right on January 29, 2024; and,
- Staff filed its Notice of Intervention of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing on February 2, 2024.

² Notice of Application Filed, filed Dec. 29, 2023, p. 1.

³ *Id.*

6. In addition, on January 29, 2024, SWEEP filed its Motion to Intervene, Entry of Appearance, and Notice of Financial Disclosure in this Proceeding (Motion to Intervene).

7. By Decision No. C24-0148-I, mailed March 7, 2024, the Commission noted that the Application had been deemed complete on February 13, 2024, in accordance with § 40-6-109.5, C.R.S., and referred the matter to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

8. In addition, Decision No. C24-0148-I ordered BHCG to file supplemental testimony on several topics within 30 days of the mailing of the Decision.⁴ The six topics on which BHCG was to provide supplemental testimony are: (1) forecasting; (2) beneficial electrification; (3) disproportionately impacted communities; (4) workforce development; (5) DSM technologies; and (6) safety, reliability, and resilience. BHCG's supplemental direct testimony was thus due on or before April 8, 2024.

9. And, as required, on April 8, 2024, BHCG filed Hearing Exhibit 106, Harrington's supplemental direct testimony, along with four attached exhibits, as well as Hearing Exhibit 107, Cottrell's supplemental direct testimony.

II. INTERVENTIONS

10. The ALJ acknowledges the interventions of right filed by the UCA under § 40-6.5-104(1), C.R.S.; by CEO under § 40-6-108(2)(b), C.R.S.; and by Staff pursuant to Rule 1401(e) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. UCA, CEO, and Staff are parties to this proceeding.

⁴ Decision No. C24-0148-I, issued Mar. 7, 2024, in Proceeding No. 23A-0633G, p. 7.

11. SWEEP has moved to intervene in this proceeding pursuant to Rule 1401(c), 4 CCR 723-1.

12. SWEEP filed its Motion to Intervene on January 29, 2024. Among other arguments, it contends that its participation in this Proceeding is essential so that it can advocate for the inclusion of beneficial electrification in BHCG's Clean Heat Plan.⁵

13. Although Rule 1400(a), 4 CCR 723-1, mandates that "moving counsel shall make a reasonable good faith effort to confer with all parties about the motion" before filing any motion, SWEEP does not indicate whether it conferred with the other parties to this Proceeding nor does it indicate the other parties' positions with respect to its Motion to Intervene. However, no party has objected to SWEEP's permissive intervention in this Proceeding. Responses and/or objections to a motion for permissive intervention are due "seven days after service of the motion."⁶ Thus, the deadline for any party to respond or object to SWEEP's Motion to Intervene expired February 5, 2024. The ALJ therefore presumes that no party opposes SWEEP's Motion to Intervene.

14. In its Motion to Intervene, SWEEP represents that it was established in 2001 with the mission "to advance energy efficiency, beneficial electrification, and clean transportation, and to expand the economic and environmental benefits that energy efficiency, beneficial electrification, and electric vehicles provide."⁷ Its particular focus is on "technical and policy issues related to energy efficiency, demand response, beneficial electrification, and transportation electrification and it has unique expertise on these issues."⁸

⁵ Southwest Energy Efficiency Project's Motion to Intervene, Entry of Appearance, and Notice of Financial Disclosure (Motion to Intervene), p. 5, ¶ 9, filed Jan. 29, 2024.

⁶ Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regs.* (CCR) 723-1.

⁷ Motion to Intervene, p. 1, ¶ 1.

⁸ *Id.* at p. 2, ¶ 2.

15. It pursues its mission by participating “in utility regulatory proceedings and other public policy forums in Colorado, Arizona, Nevada, New Mexico, Utah, and Wyoming.”⁹ SWEEP notes that, in this vein, it has intervened in and been an active participant in “numerous Commission proceedings involving energy efficiency and beneficial electrification, including Black Hills Colorado Electric’s previous DSM plan proceedings.”¹⁰

16. SWEEP contends any Commission decision in this Proceeding “will directly affect [its] goals and mission,” including the advancement of “energy efficiency, demand response, beneficial electrification, and transportation electrification.”¹¹ It argues that it has a “tangible interest in ensuring that [BHCG] utilizes beneficial electrification and increases energy efficiency to reduce its greenhouse gas emissions during the 2024-2028 timeframe covered by this Clean Heat Plan.”¹² Observing that the next five years will be “crucial . . . for expanding the market for heat pumps in Colorado and securing the benefits and incentives provided by the federal Inflation Reduction Act,” SWEEP argues that it has an interest “in how quickly” BHCG offers beneficial electrification incentives to its customers “and ramps up its energy efficiency efforts.”¹³

17. Further, it notes, it seeks to intervene to ensure that BHCG’s “inaugural Clean Heat Plan meets the Clean Heat statute’s requirements.”¹⁴ SWEEP points out that the Company’s Application asserts “that the Clean Heat statute and the Commission’s Clean Heat rules are overly restrictive” and encourages the Commission to allow BHCG and other utilities “more flexibility in determining its 2015 baseline. . . .”¹⁵ SWEEP argues that by participating in this Proceeding, it can ensure that the Commission approves “a Clean Heat Plan that abides by statutory requirements

⁹ *Id.* at p. 1, ¶ 1.

¹⁰ *Id.* at p. 2, ¶ 2.

¹¹ *Id.* at p. 5, ¶ 8.

¹² *Id.* at p. 5, ¶ 9.

¹³ *Id.* at p. 6, ¶ 10.

¹⁴ *Id.* at p. 7, ¶ 11.

¹⁵ *Id.*

and meets the statutory greenhouse gas emission reduction targets,”¹⁶ in addition to monitoring the “important policy issues for gas decarbonization in Colorado” that will be at issue in this Proceeding.¹⁷

18. Finally, SWEEP argues that because its interests and mission — i.e. as a nonprofit pursuing energy efficiency, demand response, beneficial electrification, and transportation electrification — differ from other parties to this Proceeding, its “separate and distinct” interests cannot be adequately represented by any other party to Proceeding.¹⁸ Its unique perspectives, it contends, “will advance the just resolution of” this Proceeding,¹⁹ but “will not unduly broaden the issues or delay” this Proceeding.²⁰

19. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention).²¹

20. Rule 1401(c), 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented. . . .The Commission will

¹⁶ *Id.*

¹⁷ *Id.* at p. 8, ¶ 13.

¹⁸ *Id.* at pp. 8-12, ¶ 15-21.

¹⁹ *Id.* at p. 12, ¶ 22.

²⁰ *Id.* at p. 13, ¶ 23.

²¹ Rule 1401(b) and (c), 4 CCR 723-1; see also § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm’n*, 702 P.2d 746, 749 (Colo. 1985) (“This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.”).

consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

21. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties.²² This is true even if the party seeking intervention will be bound by the case’s judgment.²³ The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative.²⁴

22. The ALJ finds and concludes that SWEEP has demonstrated both a tangible and a pecuniary interest in this Proceeding and its outcome. The ALJ further finds that no other parties to this proceeding will adequately represent SWEEP’s interests. Moreover, no party has opposed SWEEP’s intervention in this Proceeding.

23. Therefore, the ALJ will grant SWEEP’s Motion to Intervene. SWEEP is thus a party to this Proceeding.

III. TIME FOR A COMMISSION DECISION

24. BHCG’s Verified Application was accompanied by the direct, supporting testimony of five witnesses. As the Commission noted in its Notice of Application, BHCG is therefore

²² See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008).

²³ See *Denver Chapter of the Colo. Motel Ass’n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city).

²⁴ *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

seeking a Commission decision within 120 days of the date on which its Verified Application is deemed complete.

25. Decision No. C24-0148-I noted that BHCG's Verified Application had been deemed complete on February 13, 2024. Pursuant to § 40-6-109.5, C.R.S., a Commission decision is therefore due on or before June 22, 2024.

26. However, if the Commission in its discretion finds that additional time is required for a decision, the time period within which a Commission decision shall issue may be extended an additional 130 days.²⁵

27. For a final Commission decision to issue before expiration of the June 22, 2024, statutory time period, a hearing in this Proceeding would have had to have been held by the end of March 2024. The press of other Commission business made meeting that timeframe impossible.

28. Therefore, to ensure the parties and the undersigned ALJ have sufficient time to consider, address, and hold a hearing about the important issues raised by this Proceeding, it is found necessary to extend the time for issuance of a Commission decision. Pursuant to § 40-6-109.5(1), C.R.S., the applicable statutory period shall be extended by an additional 130 days up to and including October 30, 2024.

IV. PREHEARING CONFERENCE

29. To ensure this matter moves forward, and in anticipation of a hearing on BHCG's Application, the ALJ is scheduling a fully-remote prehearing conference per Rule 1409(a), 4 CCR 723-1, for Tuesday, April 30, 2024, at 10:30 a.m. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted

²⁵ See § 40-6-109.5(1), C.R.S.

service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

30. To minimize the potential that the videoconference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

31. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates scheduling a hybrid evidentiary hearing which accommodates both in person and remote participation in the evidentiary hearing. Alternatively, the parties may choose to hold a hearing fully in person at the Commission's offices in Denver, Colorado, or at another location agreed to by the parties and approved by the ALJ; or a fully remote hearing to be held via Zoom.

32. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

33. A final Commission decision is due within 250 days of BHCG's Verified Application being deemed complete. BHCG's Application was deemed complete February 13, 2024. Therefore, a final Commission decision is due on or before October 30, 2024. To ensure a

final Commission decision can be issued within that timeframe, the ALJ anticipates that an evidentiary hearing in this matter must be held before the end of June 2024. The participants should keep this in mind when preparing for the prehearing conference.

34. Other issues relevant to this proceeding may be raised or addressed at the prehearing conference, including whether the parties have met the requirements of this Decision and relevant Commission rules.

35. All parties are on notice that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

36. In the alternative, if the parties reach a consensus procedural schedule, hearing format, and proposed evidentiary date(s), the parties are encouraged to contact the undersigned ALJ informally by email (alenska.han@state.co.us) with their proposed procedural schedule. If the parties' proposed procedural schedule can be accommodated by the Commission, the undersigned ALJ will vacate the prehearing conference and may adopt the parties' proposed procedural schedule and hearing date(s).

V. ORDER**A. It Is Ordered That:**

1. Pursuant to § 40-6-109.5(1), C.R.S., the applicable period for issuance of a Commission decision is extended by an additional 130 days, up to and including October 30, 2024.

2. The interventions of right filed by Trial Staff of the Public Utilities Commission (Staff), the Office of the Utility Consumer Advocate (UCA), and the Colorado Energy Office (CEO) are acknowledged. Staff, UCA, and CEO are parties to this proceeding.

3. The Motion to Intervene, Entry of Appearance, and Notice of Financial Disclosure of Southwest Energy Efficiency Project (SWEEP), filed on January 29, 2024, is granted. SWEEP is a party to this Proceeding.

4. A fully-remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Tuesday, April 30, 2024

TIME: 10:30 a.m.

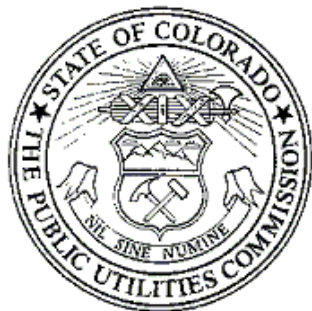
PLACE: Join by video conference using Zoom

5. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

6. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director