

Decision No. R24-0426-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
GRANTING MOTION FOR PROTECTIVE ORDER
AFFORDING EXTRAORDINARY PROTECTION**

Mailed Date: June 18, 2024

I. STATEMENT AND PROCEDURAL HISTORY

1. 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

2. Contemporaneously with its Application, BHCG prefiled the direct testimony of five individuals.

3. On December 29, 2023, the Commission sent out a Notice of Application Filed (Notice) to interested persons.

¹ Verified Application of Black Hills Colorado Gas, Inc., doing business as Black Hills Energy, filed Dec. 29, 2023, p. 1.

4. Three entities have intervened as of right in this Proceeding: the Office of the Utility Consumer Advocate (UCA); the Colorado Energy Office (CEO); and Trial Staff of the Commission (Staff).

5. In addition, on January 29, 2024, Southwest Energy Efficiency Project (SWEEP) moved to permissively intervene.

6. On February 23, 2024, BHCG filed an Unopposed Motion for Protective Order Affording Extraordinary Protection (Motion for Protective Order) requesting that certain documents be designated as highly confidential and afforded extraordinary protection pursuant to Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. With the Motion for Protective Order, BHCG filed the Affidavit of Michael J. Harrington, Director, Regulatory for Black Hills, as well as a Non-Disclosure Agreement form to be executed by parties to this Proceeding wishing to examine highly confidential information.

7. On March 7, 2024, the Commission issued Decision No. C24-0148-I, deeming the Application complete as of February 13, 2024, in accordance with § 40-6-109.5, C.R.S., and referring the matter to an Administrative Law Judge (ALJ) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

8. The ALJ granted SWEEP's Motion to Intervene by Decision No. R24-0218-I, issued April 9, 2024.

9. The parties to this Proceeding are thus BHCG, Staff, UCA, CEO, and SWEEP.

10. On April 30, 2024, representatives of the parties appeared for a prehearing conference convened by the ALJ. Following the prehearing conference, on May 13, 2024, the ALJ issued Decision No. R24-0326-I scheduling a hybrid evidentiary hearing to be held August 28-30,

2024, and establishing a procedural schedule to govern this Proceeding. Decision No. R24-0326-I also acknowledged BHCG's waiver of the statutory time period pursuant to § 40-6-109.5(3), C.R.S.

II. UNOPPOSED MOTION FOR PROTECTIVE ORDER AFFORDING EXTRAORDINARY PROTECTION

11. On February 23, 2024, BHCG filed its Motion for Protective Order relevant to this Proceeding. In the Motion, BHCG seeks to protect “highly sensitive pricing information submitted by potential suppliers of recovered methane to a Request for Information (‘RFI’).”² The information BHCG seeks to protect includes the following:

(1) proprietary, non-public, commercially and otherwise highly sensitive information contained in a workpaper titled “wp_Cottrell Highly Confidential 2023 Black Hills COG CHP Cost-Effectiveness.xlsx”[]; and
(2) other disclosures of the same category of information, in whatever form or variation the information may be produced in this proceeding.³

12. BHCG goes on to describe the information in further detail, identifying it as highly sensitive, non-public pricing information relating to the market for recovered methane in Colorado. The pricing data provided by the RFI respondents is proprietary, highly sensitive, and non-public information. It relates to the potential market for recovered methane in the state of Colorado, in which the Company is a potential consumer and buyer, along with other competing gas utilities and other entities.⁴

13. BHCG states that UCA and CEO “have submitted discovery requests asking for the Company’s workpapers.” Because of the nature of the documents involved, BHCG states that it would be “unreasonable and impractical” to create public versions of the documents.⁵

² Unopposed Motion of Black Hills Colorado Gas, Inc. for Protective Order Affording Extraordinary Protections (Motion for Protective Order), p. 1, filed Feb. 23, 2024.

³ *Id.*

⁴ *Id.* at p. 3, ¶ 4.

⁵ *Id.* at p. 3, ¶ 5.

14. Further, BHCG asserts that disclosure into the public sphere of the information it seeks to protect would place the Company “at a disadvantage in the marketplace.” In addition, the respondents to the Company’s RFI provided the information with the expectation and understanding that it would be kept confidential.⁶

15. Based on these representations, BHCG seeks an order imposing highly confidential protections for the above-listed categories of Highly Confidential Information. Based upon extraordinary circumstances, BHCG requests that access be restricted to the Commissioners, any ALJs, the Commission’s advisory staff and advisory counsel; Trial Staff, UCA, CEO, and their respective attorneys representing these entities; and, with respect to permissive intervenors (i.e. SWEEP), “a reasonable number of attorneys and a reasonable number of subject matter experts who do not represent a party.”⁷ In accordance with Rule 1101(b)(V), 4 CCR 723-1, the motion was accompanied by a specific form of nondisclosure agreement BHCG requests be used in this Proceeding.

16. BHCG represents that the Motion for Protective Order is unopposed and, indeed, no objections to the Motion for Protective Order have been filed.

17. To the contrary, CEO submitted its fully-executed Non-Disclosure Agreement identifying those on its staff that would have access to the highly confidential information on February 15, 2025. Shortly thereafter, on February 27, 2024, UCA followed suit, filing its Nondisclosure Agreement identifying those individuals on its Staff who would have access to the highly confidential information. And, recently, on June 3, 2024, SWEEP filed its Nondisclosure Agreement.

⁶ *Id.* at p. 3, ¶ 6.

⁷ *Id.* at p. 5, ¶ 11.

18. BHCG also notes that highly confidential protections have been afforded similar documents that were found to be highly confidential in prior Commission proceedings involving BHCG.⁸

19. Under Rule 1100(b) CCR 723-1, information filed with the Commission is presumed to be a public record, including (I) annual reports; (II) rates, terms and conditions for regulated services; and (III) tariffs and price lists. Rule 1101 provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

20. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:
- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
 - (II) shall state the specific relief requested and the grounds for seeking the relief;
 - (III) shall advise all other parties of the request and the subject matter of the information at issue;
 - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
 - (V) shall be accompanied by a specific form of nondisclosure agreement requested;
 - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the

⁸ See Motion for Protective Order, at p. 5, ¶ 7, citing to Decision No. R23-0857-I, issued Dec. 21, 2023, in Proceeding No. 23A-0392EG.

information must remain subject to highly confidential protection, if known;
and

- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

21. BHCG provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Motion for Protective Order Affording Extraordinary Protection includes a proposed nondisclosure agreement to be signed by individuals or legal counsel who may encounter the information during this Proceeding. Also attached to the Motion for Protective Order is the affidavit of Michael J. Harrington, Director, Regulatory for Black Hills, which identifies the individuals and departments within BHCG that have access to the information it describes as highly confidential.

22. However, BHCG states that it has not filed a public version of the subject information with its Motion for Protective Order due to the extremely sensitive nature of the information it seeks to protect and because the information “would be produced through discovery and therefore is not part of the evidentiary record.” Under Rule 1101(e) such highly confidential information disclosed in response to discovery requests “shall not be filed with the Commission.”⁹

23. BHCG has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, BHCG’s Motion for Protective Order Affording Extraordinary Protection will be granted.

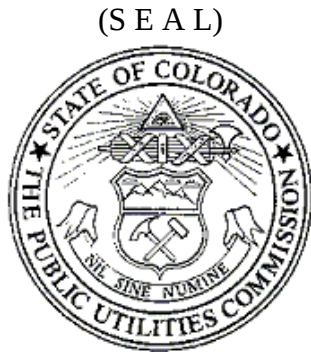
⁹ Rule 1101(e) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

III. ORDER

A. It Is Ordered That:

1. The Unopposed Motion of Black Hills Colorado Gas, Inc., doing business as Black Hills Energy, for Protective Order Affording Extraordinary Protection filed on February 23, 2024, is granted.

2. This Decision is effective immediately.

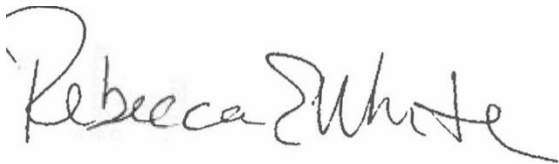


ATTEST: A TRUE COPY

THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge



Rebecca E. White,
Director