

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0477G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. D/B/A BLACK HILLS ENERGY FOR APPROVAL OF A NEW GAS METER SAMPLING PROGRAM AND RELATED TARIFF CHANGES.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ADOPTING CONSENSUS
PROCEDURAL SCHEDULE
AND SETTING REMOTE HEARING**

Mailed Date: January 25, 2021

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I. STATEMENT

A. Procedural History.

1. On November 5, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), filed with the Colorado Public Utilities Commission (Commission), a

Verified Application (Application) for approval of a new Gas Meter Sampling Program (Sampling Program) and related revisions to its Colo. PUC No. 1 Tariff (Tariff). Black Hills also filed the Direct Testimony and Attachments of one witness, Svetlana V. Atoyán. Through this Application and supporting testimony and attachments, Black Hills requests that the Commission approve consolidation of previously approved gas meter sampling programs for its two legacy local distribution companies.¹

2. A more complete summary of the procedural history of this proceeding is included in Decision No. R21-0031-I (issued on January 14, 2021). The background relevant to this decision is included below.

3. On November 6, 2020, the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were ordered to file motions to intervene within 30 days, or no later than December 7, 2020.² Commission Staff had seven additional days to file a notice of intervention of right. The Notice observed that Black Hills had filed testimony with the Application and was seeking a Commission decision within 120 days.

4. During the Commission's weekly meeting held on December 16, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred

¹ Application, at pages 1-2. *See* Proceeding No. 15A-0900G, Decision No. C15-1362 approving gas meter sampling program for Black Hills/Colorado Gas Utility Company, Inc. (BHCOG) and Proceeding No. 17A-0379G, Decision No. C17-0716 approving gas meter sampling program for Black Hills Gas Distribution, LLC (BHGD).

² Since the 30-day deadline for interventions, pursuant to the Notice and to Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), fell on Sunday December 6, 2020, the deadline was extended by operation of law until the next business day, or until Monday December 7, 2020. Section 40-6-121, C.R.S.

to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this proceeding.

5. Decision No. R21-0031-I acknowledged the interventions of right of the Colorado Office of Consumer Counsel (OCC), filed on December 4, 2020, and of Trial Staff of the Colorado Public Utilities Commission (Staff), filed on December 8, 2020.

6. The Parties to this proceeding are Black Hills, OCC, and Staff.

7. Pursuant to § 40-6-109.5(1), C.R.S. (2019), Decision No. R21-0031-I extended the deadline for the Commission's decision on the Application for an additional 130 days, for a maximum period of 250 days or until August 23, 2021.

8. Decision No. R21-0031-I also directed Black Hills and the Parties to confer, and attempt to negotiate agreements, with respect to acceptable hearing dates and the procedural matters addressed in the decision. The Parties were directed to file a Status Report no later than January 22, 2021, advising the ALJ of the results of their discussions.

II. FINDINGS AND CONCLUSIONS

A. Proposed Procedural Schedule.

9. On January 22, 2021, Black Hills filed the Joint Status Report of Proposed Procedural Schedule, Discovery Procedures, [and] Confidentiality Procedures (Joint Status Report), proposing a Procedural Schedule and hearing date to which the Parties have agreed. The Joint Status Report also proposed procedures related to discovery and confidentiality.³

³ Joint Status Report, at pages 2-4.

10. The ALJ has reviewed the Joint Status Report and the proposed Procedural Schedule. In this Decision, the ALJ will approve the proposed Procedural Schedule, as well as the other procedures to which the Parties have agreed.

11. The ALJ will adopt the following Procedural Schedule:

Procedural Activity	Due Date(s)
Answer Testimony & Attachments	March 2, 2021
Rebuttal & Cross-answer Testimony & Attachments	March 30, 2021
Prehearing & Dispositive Motions	April 5, 2021
Corrected Testimony & Attachments	April 5, 2021
Stipulations & Settlement Agreement	April 16, 2021
Matrix of Order of Witnesses, Order of Cross-Examination, & Cross- Examination Times	April 20, 2021
Evidentiary Hearing	April 27, 2021
Statements of Position (Filed Simultaneously)	May 11, 2021
Statutory Deadline for Commission Decision	August 23, 2021

12. The Parties agree that scheduling a prehearing conference is not necessary.

13. The Parties are willing and able to participate in the evidentiary hearing by video conference. Attachment A to this Decision sets forth information regarding participation in the evidentiary hearing remotely by video conference.

14. The presentation of evidence at the hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits used for impeachment or any other exhibits admitted into evidence for the first time during the hearing. The ALJ will issue a separate interim decision regarding the details of presentation of evidence at the hearing through

electronic exhibits. In the meantime, the ALJ will assign blocks of hearing exhibit numbers to the parties. Black Hills shall be assigned hearing exhibit numbers 101 to 200.⁴ OCC shall be assigned hearing exhibit numbers from 201 to 300. Staff shall be assigned hearing exhibit numbers from 301 to 400.

15. The Parties proposed that the Commission schedule a remote Public Comment Hearing on April 8, 2021, to allow customers of Black Hills to provide comment. The proposed Sampling Program, like other meter sampling programs, is technical and the Application does not propose an increase in customer rates. Under these circumstances, the ALJ will not schedule a public comment hearing on the Application. In the alternative, the ALJ will set a deadline of April 8, 2021, for current natural gas customers of Black Hills to file written public comments. The ALJ will also ask the Commission's Chief of External Affairs to issue a press release advising Black Hills customers of the deadline to file public comments.

1. Discovery-related Matters.

16. Rule 1405(b) and Rule 1405(d) of the Rules of Practice and Procedure, 4 CCR 723-1, will control discovery, and the following shall also apply to this proceeding:

(a) Discovery procedures apply equally to discovery requests, Staff audit requests, and all other "data" requests (discovery requests). Work papers shall be provided on the next business day after the filing of Answer, Cross-Answer, and Rebuttal testimony and attachments.

(b) Discovery requests that do not include confidential information may be served electronically by email. Discovery responses that do not include confidential information may be served electronically by email and/or on other electronic media. Confidential discovery responses are to be served pursuant to the Commission's confidentiality rules.

(c) Discovery responses, excepting attachments, shall be served in a single document (e.g., .doc, .docx, or .pdf) unless otherwise agreed to by the requesting and responding parties. Discovery responses shall be served on all parties, subject to any applicable confidentiality provisions.

⁴ Black Hills has already filed its Direct Testimony and Attachments as Hearing Exhibit 101.

(d) The cut-off date for serving all discovery requests will follow Rule 1405, except that the cut-off date for serving all discovery requests related to Rebuttal and Cross-Answer Testimony shall be no later than seven business days before the first day of hearing. For example, since the first day of the hearing is April 27, 2021, the cut-off for discovery requests on Rebuttal and Cross-Answer Testimony would be Friday, April 16, 2021, which enables the responding party to serve its discovery responses by Monday, April 26, 2021.

(e) Neither discovery requests nor responses to discovery shall be provided to the ALJ, the Commissioners, or to Commission advisors and counsel, except as necessary to support a motion or as an exhibit to be used at the hearing.

(f) Response times to discovery requests shall pursuant to Rule 1405.

(g) In the event of a discovery dispute, the parties shall first attempt to resolve their dispute informally. If unsuccessful, the party seeking discovery may file a written motion to compel, attaching a copy of the discovery request and response at issue. A response to the motion to compel shall be filed within seven (7) calendar days. All discovery motions and responses shall be filed through the Commission's E-filings System and then served by e-mail on the parties. If necessary, the ALJ will hold a telephone hearing on a discovery-related motion, with notice to counsel for all parties, as soon as practicable after the motion and response have been filed.

2. Confidentiality Procedures.

17. Rule 1100 through 1102 of the Rules of Practice and Procedure, 4 CCR 723-1, will control procedures relating to confidential documents and information.

18. Any Highly Confidential Protective Orders entered by the ALJ or the Commission will govern access to highly confidential documents and information in this proceeding.

19. Other procedural matters may be addressed in subsequent interim decisions.

III. ORDER

A. It Is Ordered That:

1. A remote evidentiary hearing in this proceeding is scheduled as follows:

DATE: April 27, 2021

TIME: 9:00 a.m.

WEBCAST: Commission Hearing Room A

METHOD: By video conference using GoToMeetings at the link to be provided to counsel and the parties by email prior to the hearing

2. The parties, counsel, witnesses, and members of the public shall not attend the hearing in-person at the Commission's hearing room, unless directed to do so by a future decision.

3. The procedural schedule and procedural rulings set forth in Paragraph Nos. 10 through 18 at pages 4 through 6 are hereby adopted.

4. The parties shall be held to and shall comply with the requirements and procedural rulings memorialized in this Decision.

5. No later than 5:00 p.m. on April 8, 2021, any current natural gas customer of Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), may file written public comments with the Commission, regarding this Verified Application for approval of a new Gas Meter Sampling Program and related proposed revisions to Black Hills' Colo. PUC No. 1 Tariff.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director