

Decision No. R22-0055-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21A-0196G

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IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO  
GAS, INC. FOR APPROVAL TO RECOVER GAS COSTS ASSOCIATED WITH THE  
FEBRUARY EXTREME COLD WEATHER EVENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
GRANTING UNOPPOSED MOTION TO MODIFY AND AMEND  
PROCEDURAL SCHEDULE**

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Mailed Date: January 20, 2022

**I. STATEMENT**

**A. Background**

1. The procedural background relevant to this Decision is recited below. A more complete procedural background is included in Decision Nos. R21-0752-I and R21-0791-I that issued on November 24, 2021 and December 14, 2021, respectively.

2. On May 18, 2021, Black Hills Colorado Gas, Inc. (Black Hills) filed a Verified Application (Application) seeking approval of cost recovery treatment of the extraordinary natural gas commodity costs incurred as a result of the extreme cold weather event in February 2021. The costs for which Black Hills seeks recovery are \$72,666,626.

3. On September 1, 2021, the ALJ issued Decision No. R21-0529-I that, among other things, approved a schedule for the proceeding, including a remote hearing from December 1-3, 2021.

4. The parties filed answer, cross-answer, and rebuttal testimony by the deadlines specified in the schedule adopted in Decision No. R21-0501-I.

5. On November 8, 2021, Black Hills filed a Motion to Strike Portions of Hearing Exhibit 301, which is the answer testimony of Erin T. O'Neill, the principal witness for Staff (Motion to Strike). The testimony that Black Hills requests to strike supports Staff's request to disallow \$24,427,917 of the costs Black Hills seeks to recover from ratepayers. In addition, Black Hills requests to strike "the conclusions based on the" stricken testimony.<sup>1</sup>

6. On November 22, 2021, Staff filed its response to the Motion to Strike, which was three days after the deadline to file responses to prehearing motions specified in Decision No. R21-0501-I that issued on September 1, 2021.

7. On November 22, 2021, Black Hills filed a Joint Motion to Approve Comprehensive Non-Unanimous Settlement Agreement, Modify the Procedural Schedule, and Request for Shortened Response Time (Joint Motion). Black Hills filed the Joint Motion on behalf of CEO and A M Gas Transfer, who were the other parties to the Non-Unanimous Settlement Agreement. Black Hills also filed the Non-Unanimous Settlement Agreement and testimony in support thereof with the Joint Motion. The Joint Motion and supporting materials were filed ten days after the deadline for filing settlement agreements established in Decision No. R21-0501-I.

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<sup>1</sup> Motion to Strike at 12.

8. On November 23, UCA filed a Response in Opposition to Black Hills' Joint Motion (UCA's Response) in which UCA stated that it opposed the Joint Motion, and requested that: (a) the December 1, 2021, evidentiary hearing date be converted to a prehearing conference to determine whether extraordinary conditions exist to warrant extending the statutory deadline for a final Commission decision by 130 days pursuant to § 40-6-109.5(4), C.R.S.; (b) the current procedural schedule be vacated; and (c) new evidentiary hearing dates and procedural deadlines be established.

9. On November 24, 2021, the ALJ issued Decision No. R21-0752-I that, among other things, converted the December 1, 2021 evidentiary hearing into a prehearing conference, vacated the remaining hearing dates, and stated that the question of whether extraordinary conditions exist to warrant extending the statutory deadline for a final Commission decision by 130 days pursuant to § 40-6-109.5(4), C.R.S. would be addressed at the remote prehearing conference.

10. On December 1, 2021, the prehearing conference took place. The ALJ found and concluded that extraordinary conditions exist warranting the extension of the statutory deadline for a final Commission decision by 130 days pursuant to § 40-6-109.5(4), C.R.S. Other than Black Hills, the parties agreed with the ALJ's findings and conclusion on exceptional conditions.

11. On December 14, 2021, the ALJ issued Decision No. R21-0791-I that memorialized the findings concerning exceptional conditions rendered at the December 1, 2021 remote prehearing conference, scheduled a remote prehearing conference for December 22, 2021, and ordered the parties to confer regarding a supplemental schedule for the remainder of the proceeding and for Black Hills to file a report of the conferral by December 20, 2021.

12. On December 20, 2021, Black Hills filed the report of the conferral of the parties, which resulted in a proposed supplemental schedule agreed to by the parties (Consensus Supplemental Schedule) as follows:

<u>Event</u>	<u>Deadline</u>
Settlement Testimony from CEO and A M Gas Black Hills' Supplemental Rebuttal Testimony to Ms. O'Neill's Answer Testimony Supplemental Gas Storage Testimony – Any Party	January 14, 2022
Responding Testimony to January 14, 2022 Settlement Testimony Supplemental Gas Storage Testimony	January 31, 2022
Stipulations Settlement Agreements Prehearing Motions	February 8, 2022
Corrections to Pre-Filed Testimony Hearing Witness Matrix Responses to Prehearing Motions	February 18, 2022
Hearing	March 1-3, 2022
Statements of Position	March 17, 2022

13. On December 22, 2021, the ALJ issued Decision No. R21-0816-I that vacated the remote prehearing conference scheduled for December 22, 2021, and accepted the Consensus Supplemental Schedule.

14. On January 10, 2022, Black Hills filed an Unopposed Motion to Modify and Amend Procedural Schedule, Request for Waiver of Response Time, and Notice of Settlement in Principle (Unopposed Motion).

15. On January 14, 2022, Black Hills filed the Amended Settlement Agreement and an Unopposed Joint Motion to Approve Amended Settlement Agreement and for Waiver of Response Time.

**B. Unopposed Motion**

16. In the Unopposed Motion, Black Hills states that it has reached a settlement in principle with all of the parties, including Staff and UCA. Black Hills requests that the approved schedule be modified to establish deadlines of January 14, 2022, and January 31, 2022 for the filing of a written Amended Settlement Agreement and an accompanying motion to approve that agreement, and written testimony in support of the settlement agreement, respectively. Black Hills also requests that the remainder of the Consensus Procedural Schedule be vacated except for the March 1 through 3, 2022 hearing dates. While the parties believe that no hearing on the Amended Settlement Agreement will be necessary in light of the settlement testimony that will be filed, they request that that such a hearing be held on March 1 through 3, 2022 if the ALJ disagrees with the parties regarding the necessity of such a hearing. Black Hills states that all of the parties support the Unopposed Motion.

17. Black Hills has stated good cause to grant the Unopposed Motion. The request to establish January 14, 2022 as the deadline to file the written Amended Settlement Agreement and an accompanying motion to approve that agreement will be denied as moot in light of the filing of both on January 14, 2022. Otherwise, the Unopposed Motion will be granted.<sup>2</sup>

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<sup>2</sup> The ALJ informed the parties by email on January 14, 2022 that the Unopposed Motion would be granted. This written decision memorializes that decision.

## II. **ORDER**

### A. **It Is Ordered That:**

1. For the reasons stated above, the Unopposed Motion to Modify and Amend Procedural Schedule, Request for Waiver of Response Time, and Notice of Settlement in Principle filed by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy, on January 10, 2022 (Unopposed Motion) is granted.

2. Response time to the Unopposed Motion is waived.

3. The Consensus Procedural Schedule established in Decision No. R21-0816-I that issued on December 22, 2021, is modified to establish the deadline of January 31, 2022 to file written testimony in support of the settlement agreement. The deadline of February 18, 2022 to file corrections to pre-filed testimony and the deadline of March 17, 2022 for Statements of Position will be maintained. Otherwise, the Consensus Procedural Schedule approved in Decision No. R21-0816-I that issued on December 22, 2021 is vacated. The request to establish January 14, 2022 as the deadline to file the written Amended Settlement Agreement and an accompanying motion to approve that agreement is denied as moot.

4. Each of the parties should be prepared to present testimony at the hearing regarding the Amended Settlement Agreement.

5. This Decision is effective immediately.



*Doug Dean*

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge