

Decision No. R24-0346-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0079G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE NATURAL GAS SERVICE IN THE AMARA PROPOSED TERRITORY AND FLYING HORSE EAST PROPOSED TERRITORY WITHIN EL PASO COUNTY, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING UNOPPOSED MOTION TO HOLD
PROCEEDING IN ABEYANCE AND
ADDRESSING OTHER OUTSTANDING MOTIONS**

Mailed Date: May 22, 2024

I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants the Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time filed May 3, 2024 (Unopposed Motion), addresses the Unopposed Motion to Extend Deadline to File Direct Testimony and Request for Waiver of Response Time filed April 15, 2024 (Motion to Extend), and the Interventions filed in this Proceeding.

B. Procedural History

2. On February 14, 2024, Black Hills Colorado Gas, Inc. (Black Hills or the Company) initiated this matter by filing the above-captioned Application with attachments (but no testimony).

3. On February 16, 2024, the Commission provided public notice of the Application.¹ As a part of this Notice, the Commission established an April 15, 2024 deadline for the Company to file direct testimony.²

4. On March 18, 2024, La Plata Cruz Holdings, LLC (La Plata) and Tee Cross Ranches, LLC (Tee Cross) filed a joint Motion to Permissively Intervene and Request for Hearing.

5. Also on March 18, 2024, Colorado Springs Utilities (Springs Utilities) filed a Motion to Intervene.

6. On March 25, 2024, Colorado Public Utilities Trial Staff (Staff) filed a “Notice of Intervention as of Right [...] Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.”

7. On April 10, 2024, the Commission referred this matter by minute entry to an Administrative Law Judge (ALJ) for disposition.

8. On April 15, 2024, Black Hills filed its Motion to Extend seeking to extend the April 15, 2024 deadline to file direct testimony to May 13, 2024.

9. On April 29, 2024, the undersigned ALJ informally directed the parties to confer on a procedural schedule and Black Hills to file a proposed procedural schedule.

10. On May 3, 2024, Black Hills filed the Unopposed Motion.

II. FINDINGS AND CONCLUSIONS

A. Interventions

11. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties

¹ Notice of Application filed February 16, 2024 (Notice).

² *Id.*

with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).³

12. In addition, Staff may intervene of right in any Commission proceeding.⁴ Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.⁵

13. As relevant here, to permissively intervene, the party's intervention must:
. . . 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. . . 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.⁶

14. The person or entity seeking to intervene bears the burden of proof that it has met the intervention standards and should be permitted to intervene.⁷

15. If a party does not file a response to a motion within the time prescribed for a response, the Commission may deem that failure as confessing the motion.⁸

16. Based on Rule 1401(e), 4 CCR 723-1 and Staff's Intervention, the ALJ acknowledges Staff as a party to this Proceeding.

17. Black Hills has not filed a response or objection to any of the other requests to intervene. As such, the ALJ construes the remaining Interventions as unopposed. Based on this,

³ See Rule 1401(b) and (c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁴ Rule 1401(e), 4 CCR 723-1.

⁵ Rule 1401(b), 4 CCR 723-1.

⁶ Rule 1401(c), 4 CCR 723-1.

⁷ Rule 1500, 4 CCR 723-1.

⁸ Rule 1400(b), (d) and (c), 4 CCR 723-1.

the information provided in their collective requests to intervene, and the relevant legal standards, the ALJ grants the remaining Interventions.

18. As a result, in addition to Black Hills, Staff, La Plata, Tee Cross and Springs Utilities are parties to this Proceeding.

B. Remaining Motions

19. The Unopposed Motion states that the City of Colorado Springs (Colorado Springs) is expected to address whether to annex one of the areas that Black Hills seeks a Certificate of Public Convenience and Necessity (CPCN) to serve.⁹ The Company asserts that this may result in limiting the issues in this Proceeding, and potentially, the parties to this Proceeding.¹⁰ As such, the Company requests that this Proceeding be held in abeyance until July 15, 2024.¹¹ The Company plans to provide an update on or before July 15, 2024.¹²

20. To accommodate its request to hold this matter in abeyance, the Black Hills expressly waives the statutory deadline for a final Commission decision to issue, per 40-6-109.5(3), C.R.S.¹³

21. The Unopposed Motion states that it is unopposed, and requests the Commission waive the response time to it.¹⁴

22. The ALJ finds that the Unopposed Motion establishes good cause to hold this Proceeding in abeyance, and as such, grants the Unopposed Motion. In so doing, the ALJ acknowledges that Black Hills has waived the statutory deadline for a final Commission decision to issue per 40-6-109.5(3), C.R.S. The ALJ will require Black Hills to file a status report on

⁹ Unopposed Motion at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

July 15, 2024 that provides an update on Colorado Springs' relevant annexation efforts and whether this Proceeding should continue to be held in abeyance or whether the ALJ should enter appropriate orders to move this Proceeding forward. If by July 15, 2024, the Company believes that the matter is ready to move forward, Black Hills must confer with the parties on procedural deadlines and a hearing schedule and include a proposed procedural schedule in its status report.

23. Because the ALJ grants the Unopposed Motion (thereby placing this matter in abeyance until at least July 15, 2024), Black Hills' Motion to Extend is moot. As such, the Motion to Extend is denied as moot. As appropriate, the ALJ will establish a deadline to file direct testimony (among others) once this matter is ready to move forward.

III. ORDER

A. It is Ordered That:

1. The joint Motion to Permissively Intervene and Request for Hearing filed on March 18, 2024 by La Plata Cruz Holdings, LLC (La Plata) and Tee Cross Ranches, LLC (Tee Cross) is granted consistent with the above discussion.

2. Colorado Springs Utilities' (Springs Utilities) Motion to Intervene filed on March 18, 2024 is granted.

3. Colorado Public Utilities Trial Staff is acknowledged as a party to this Proceeding.

4. Based on the foregoing, in addition to Black Hills Colorado Gas Inc. (Black Hills), the following entities are parties to this Proceeding: Staff, Springs Utilities, La Plata and Tee Cross.

5. Consistent with the above discussion, the Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time filed May 3, 2024 is granted. This Proceeding is held in abeyance.

6. Black Hills must file a status report consistent with the above discussion on or by July 15, 2024.

7. Black Hills' waiver of the statutory deadline under § 40-6-109.5, C.R.S. is acknowledged.

8. The Unopposed Motion to Extend Deadline to File Direct Testimony and Request for Waiver of Response Time filed April 15, 2024 is denied as moot.

9. This Decision is effective immediately on its mailed date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director