

Decision No. R23-0134-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0304E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS 2023-2025 BENEFICIAL ELECTRIFICATION PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PARTIALLY GRANTING MOTION**

Mailed Date: February 23, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision partially grants the “Unopposed Motion to Approve Unopposed Comprehensive Settlement Agreement and to Amend Procedural Schedule and Request for Waiver of Response Time and Expedited Decision” (Motion) filed on February 22, 2023 by modifying or vacating deadlines and the hearing schedule.

B. Procedural History¹

2. On June 30, 2022, Black Hills Colorado Electric, LLC’s doing business as Black Hills Energy (Black Hills or the Company) filed the above-captioned Application (Application).

¹ Only the procedural history necessary to understand this Decision is included.

3. On August 31, 2022, the Commission referred this Proceeding to an administrative law judge (ALJ) for disposition.

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (the UCA); the Colorado Public Utilities Commission Trial Staff (Staff); Colorado Energy Office (CEO); Energy Outreach Colorado; and Western Resource Advocates.²

5. As relevant here, the ALJ established the following procedural deadlines: Rebuttal and Cross-Answer Testimony due on February 23, 2023; Stipulations and Settlements Agreements due on March 14, 2023; Settlement Testimony due on March 21, 2023; Non-Testimonial Exhibits and Corrections or Modifications³ to Testimonial Exhibits due on March 24, 2023; Prehearing Motions due on March 28, 2023 with responses to the same due on March 30, 2023; Exhibit and Witness Lists and Joint Witness Examination Matrix due on March 31, 2023; and Statements of Position (SOPs) due on May 1, 2023.³ At the same time, the ALJ also scheduled a remote evidentiary hearing on the Application for April 5 and 6, 2023.⁴

6. On December 16, 2022, the ALJ scheduled a remote public comment hearing for March 14, 2023 to take public comment on the Application.⁵

7. On February 22, 2023, Black Hills filed the Motion along with an Unopposed Comprehensive Settlement Agreement (Settlement Agreement or Agreement).

² Decision No. R22-0553-I at 11 (mailed September 19, 2022).

³ Decision No. R22-0582-I at 7-9 (mailed September 28, 2022).

⁴ *Id.* at 7.

⁵ Decision No. R22-0809-I at 7-8 (mailed December 16, 2022). The ALJ scheduled the public comment hearing consistent with CEO's Motion filed October 14, 2022 requesting that a public comment hearing be scheduled.

II. FINDINGS, ANALYSIS AND CONCLUSIONS

8. The Motion requests that the response time to it be waived because the Motion is unopposed.⁶ Given that the Motion is unopposed, the ALJ finds good cause to waive the response time to the Motion and does so.⁷

9. The Motion explains that the parties have reached a Settlement Agreement that resolves all issues in this Proceeding.⁸ Based on this, the Motion asks that the February 23, 2023 deadline to file Rebuttal and Cross-Answer Testimony be vacated as unnecessary; that the April 6, 2023 hearing date be vacated; and that the April 5, 2023 hearing date remain in place, but that it be a hearing on the Settlement Agreement.⁹

10. The Motion also asks that except for the deadline to file SOPs, the remaining procedural deadlines should be maintained.¹⁰ As to the deadline to file SOPs, the Motion suggests that if the ALJ would like SOPs, that the deadline be modified to April 14, 2023, and that the parties submit a joint SOP.¹¹

11. Finally, the Motion asks that the Commission approve the parties' Settlement Agreement as expeditiously as possible and summarizes the Agreement.¹²

12. The ALJ finds that the Motion establishes good cause to modify the procedural schedule as requested. As such, the ALJ will vacate the February 23, 2023 deadline to file Rebuttal and Cross-Answer Testimony, and the April 6, 2023 hearing date. The April 5, 2023

⁶ Motion at 2.

⁷ See Rules 1400(b) and 1308(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁸ Motion at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3-4.

¹² *Id.* at 4-6.

hearing date remains intact, but the hearing will now be on whether the Settlement Agreement should be approved.¹³ In addition, April 14, 2023 will be the deadline for the parties to file a joint SOP.

13. The remote public comment hearing scheduled for March 14, 2023 will proceed as planned, except that it will be to take public comment on the Settlement Agreement (rather than the Application).

14. The ALJ finds that it is premature to approve the Settlement Agreement given that no Settlement Testimony has been filed, and thus defers a determination on whether to approve the Settlement Agreement.

III. ORDER

A. It Is Ordered That:

1. The response time to the Unopposed Motion to Approve Unopposed Comprehensive Settlement Agreement and to Amend Procedural Schedule and Request for Waiver of Response Time and Expedited Decision filed on February 22, 2023 (Motion) is waived.

2. The Motion is partially granted, consistent with the above discussion.

3. The February 23, 2023 deadline to file Rebuttal and Cross-Answer Testimony is vacated.

4. The April 6, 2023 evidentiary hearing date is vacated.

¹³ If the ALJ determines that an evidentiary hearing is unnecessary, she will issue a separate decision vacating the April 5, 2023 hearing.

5. The evidentiary hearing scheduled for April 5, 2023 will be on whether the Unopposed Comprehensive Settlement Agreement (Settlement Agreement) should be approved.
6. The public comment hearing scheduled for March 14, 2023 will be to receive public comment on the Settlement Agreement.
7. The deadline to file Statements of Position is modified to April 14, 2023; the parties may file a Joint Statement of Position on or by that date.
8. Unless specifically modified or vacated by this Decision, all other aspects of Decision Nos. R22-0582-I and R22-0809-I remain in full force and effect.
9. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY



G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge