

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0244E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PLAN, READY EV, FOR PGORAM YEARS 2024-2026 AND FOR RELATED TARIFF APPROVALS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADDRESSING INTERVENTIONS, EXTENDING
DEADLINE FOR A COMMISSION DECISION,
SCHEDULING PUBLIC COMMENT AND EVIDENTIARY
HEARINGS, AND ESTABLISHING DEADLINES AND
PROCEDURES**

Mailed Date: July 20, 2023

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I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision addresses Interventions; extends the statutory deadline for a final Commission decision to issue; schedules a remote public comment hearing for September 19, 2023; schedules a hybrid evidentiary hearing for October 23 to 25, 2023; and establishes deadlines and procedures relating to that hearing.

B. Procedural History¹

2. On May 15, 2023, Black Hills Colorado Electric, LLC (Black Hills or the Company) filed the above-captioned Application (Application) with testimonial attachments seeking the Commission to approve its 2024-2025 Transportation Electrification Plan (Plan) and related tariffs.

3. On May 17, 2023, the Public Utilities Commission (Commission) provided public notice of the Application and established intervention deadlines.²

4. On May 26, 2023, the Office of the Utility Consumer Advocate (UCA) filed a Notice of Intervention of Right, Request for Hearing and Entry of Appearances requesting a hearing on the Application.

5. On June 6, 2023, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing requesting a hearing on the Application.

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

² “Notice of Application Filed” filed on May 17, 2023.

6. On June 13, 2023, ChargePoint, Inc. (ChargePoint) filed a Motion to Intervene and Entry of Appearance (ChargePoint's Intervention) seeking to permissively intervene in this matter.

7. On June 16, 2023, the Colorado Energy Office (CEO) filed a Notice of Intervention of Right.

9. Also on June 16, 2023, GreenLatinos, Mothers out Front, Vote Solar, and Womxn from the Mountain (collectively the Coalition) filed a Joint Motion to Intervene and Entry of Appearance (Coalition's Intervention) seeking to permissively intervene in this matter.

10. On June 21, 2023, the Public Utilities Commission deemed the Application complete and referred to an Administrative Law Judge (ALJ) by minute entry.

11. No other interested person or entity filed a motion to intervene and the time to file one has expired.

11. To date, Black Hills has not filed a response, objection, or motion to strike any of the Interventions.

12. To move this matter forward without delay, the ALJ informally contacted the parties on June 28, 2023, and asked that they confer on hearing dates; clear hearing dates with the ALJ; confer on a procedural schedule and the manner in which the hearing should be held; and file a proposed consensus procedural schedule in this Proceeding by July 11, 2023.³ The parties did not clear hearing dates with the ALJ or file their proposed procedural schedule as

³ See Email with Parties filed July 12, 2023 (Email with Parties) at 3.

directed, instead responding to the ALJ via email with a proposed procedural schedule on July 11, 2023.⁴ That email exchange has been added to the record.⁵

II. FINDINGS AND CONCLUSIONS

A. Interventions

13. The UCA, Staff, and CEO all intervene as of right.

14. Generally, interventions of right are governed by Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

15. Although Black Hills has had ample time to object to the UCA's, Staff's, and CEO's interventions, it has not done so. The ALJ construes Black Hills's silence as not opposing these Interventions.

16. Based on the information in the UCA's, Staff's, and CEO's Interventions, the ALJ concludes that they have properly intervened as of right, consistent with Rule 1401(b), 4 CCR 723-1, and acknowledges them as parties.

17. ChargePoint generally cites to Rule 1401 as the basis for its Intervention but fails to identify which provision in that Rule under which it seeks to intervene, that is, whether it intervenes of right or seeks to permissively intervene.⁶ Based on the substance of ChargePoint's Intervention, the ALJ construes it as a request to permissively intervene. Under Rule 1401(c), 4 CCR 723-1, responses to a motion to permissively intervene must be filed within seven days. Black Hills filed no such response; the ALJ construes this as not opposing ChargePoint's

⁴ *Id.* at 1-2.

⁵ *Id.* at 1-4.

⁶ ChargePoint's Intervention at 1. In the future, ChargePoint should take care to identify which provision under which it bases its interventions, and to cite legal authority in any motions that it files in this Proceeding.

Intervention.⁷ Given that Black Hills does not oppose ChargePoint's Intervention, and based on the information in ChargePoint's Intervention, the ALJ will grant ChargePoint's Intervention.

18. The Coalition seeks to permissively intervene per Rule 1401(c), 4 CCR 723-1. The Coalition's Intervention provides significant information to support permissive intervention. Black Hills did not file a response to the Coalition's Intervention; the ALJ construes this as not opposing the Coalition's Intervention.⁸ Given that Black Hills does not oppose the Coalition's Intervention, and based on the information in the Coalition's Intervention, the ALJ will grant Coalition's Intervention.

B. Time to Issue a Final Commission Decision

19. Under § 40-6-109.5(1), C.R.S., the Commission must issue a final decision within 120 days after an application filed with testimony is deemed complete. Under the same statute, the Commission may extend that deadline by an additional 130 days if it finds that additional time is necessary.⁹

20. Black Hills filed testimony with its Application and the Commission deemed it complete on June 21, 2023. Based on this, and § 40-6-109.5(1), C.R.S., a final Commission decision is due on October 19, 2023. The ALJ finds that additional time is needed to: allow the parties to conduct discovery; allow for evidentiary disclosures; develop the record; hold an

⁷ See Rule 1401(d), 4 CCR 723-1

⁸ See Rule 1401(d), 4 CCR 723-1

⁹ § 40-6-109.5(1), C.R.S.

evidentiary hearing; issue a recommended decision; allow for exceptions and responses thereto; allow for motions for rehearing, reargument and reconsideration (RRR); and allow for the Commission to issue a final decision in this proceeding. As noted below, the parties inherently agree that more time is needed given the procedural schedule they propose. For all these reasons, the ALJ extends the statutory deadline for a final Commission decision to issue by 130 days, as permitted by § 40-6-109.5(1), C.R.S., to February 26, 2024.

C. Public Comment Hearing, Procedural Schedule, and Evidentiary Hearing

21. The parties propose the following procedural schedule:

Event	Proposed Deadline or Dates
Answer Testimony	August 30, 2023
Rebuttal and Cross-Answer Testimony	September 25, 2023
Corrected Testimony and Final Testimonial Exhibits	October 6, 2023
Settlement Agreement	October 10, 2023
Prehearing Motions / Non-Testimonial Hearing Exhibits	October 10, 2023
Cross-Examination Matrix, Non-Testimonial Hearing Exhibits, Witness and Exhibits Lists	October 13, 2023
Responses to Prehearing Motions	October 16, 2023
Settlement Testimony	October 17, 2023
Evidentiary Hearing	October 23 to 25, 2023
Statements of Position	November 15, 2023 ¹⁰

¹⁰ Email with Parties at 2. Although the parties’ email references Black Hills, the UCA, CEO, and the Coalition, there is no mention of ChargePoint; this raises questions as to whether ChargePoint took a position on the proposed procedural schedule. The ALJ included ChargePoint and its counsel in her initial email, and ChargePoint’s counsel is copied on the email that Black Hills sent to the ALJ with the results of the parties’ conferral. *Id.* at 1 and 3.

22. Black Hills prefers that the hearing be held in-person, but is open to a hybrid hearing to allow out-of-state witnesses to testify remotely.¹¹ The UCA and CEO prefer that the hearing be fully remote, and CEO also prefers that the hearing not be hybrid (either fully in-person or fully remote).¹² Staff takes no position on the manner in which the hearing will be held. The Coalition supports a hybrid or remote hearing, noting that it has a potential out-of-state witness.¹³ Black Hills did not provide ChargePoint's position on the manner in which the hearing should be held.¹⁴

23. CEO also requests that a public comment hearing be scheduled.¹⁵

1. Public Comment Hearing

24. The ALJ finds that a public comment hearing is appropriate and serves the public interest. As such, the ALJ will schedule a fully remote public comment hearing for September 19, 2023 using the web platform Zoom. Holding the public comment hearing remotely is intended to facilitate the public's ability to provide comment given the geographical location of Black Hills' service territory. To ensure a clear record and orderly hearing progression, those interested in providing public comment during the hearing must register for the hearing in advance using a link posted on the Commission's calendar of events for the date and time of the

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

hearing at: <https://puc.colorado.gov/pucalendar>. Registrants will receive an email with the link, meeting ID code, passcode, and call-in information to join the Zoom hearing to provide public comment. If an interested person is unable to obtain the link and register, they can contact the Commission for assistance at (303) 894-2000.

25. The public comment hearing is scheduled to commence at 4:30 p.m., and consistent with Commission practice, will conclude no later than 6:30 p.m., or when all public comments have been received, whichever is earlier. The hearing will not be held open for public comments after all those who have appeared have provided public comment, even if this means concluding the hearing before 6:30 p.m. For example, if all those who appear at the hearing have provided public comment by 5:00 p.m. or sooner, the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after the 4:30 p.m. start time assumes the risk that the hearing will already be concluded.

26. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the hearing and need not join the hearing by telephone or videoconference. To observe the hearing by webcast, enter this link in the web browser at puc.colorado.gov/webcasts and select the audio or video option for assigned hearing room on the date and time of the hearing. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing and may assist in the orderly progression of the hearing.

27. The Commission strives to accommodate all members of the public at its hearings by providing services for foreign language users and persons with disabilities upon receipt of a

reasonable accommodation request. Registrants requesting an interpreter during the public comment hearing should complete the [Language Access Form](#) under the “How to Make Comments” tab at <https://puc.colorado.gov/how-to-participate> at least one week prior to the event. Requests for accommodation can also be made directly by contacting Holly Bise at (303) 894-2024 or holly.bise@state.co.us.

28. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

29. Interested persons are encouraged to submit written comments through either: (a) the Commission’s Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this Proceeding; or (b) the Commission’s website at <https://puc.colorado.gov/> by clicking on the “FILE A COMMENT OR COMPLAINT” link. Anyone using the latter option should ensure that their comments include this Proceeding number.

30. Verbal comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at (303)869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

2. Procedural Schedule and Evidentiary Hearing

31. Except as noted, the ALJ finds the parties’ proposed schedule reasonable; as such, the ALJ will approve the majority of the proposed schedule. The parties request the hearing be held from October 23 to 25, 2023. Due to conflicts with the Commission’s hearing room

schedule on October 25, 2023, the ALJ cannot schedule a hearing for that date.¹⁶ Instead, the ALJ will schedule the hearing for October 23, 24, and 26, 2023.

32. The parties propose two different deadlines to file non-testimonial hearing exhibits, that is, October 10 and October 13, 2023.¹⁷ The ALJ chooses the earlier of the two proposed deadlines to give the parties more time to review each other's exhibits before the hearing.

33. The parties propose that Settlement Testimony be filed on October 17, 2023. This does not allow the ALJ enough time to review Settlement Testimony before the hearing. As such, October 16, 2023 at 12:00 p.m. will be the deadline for Settlement Testimony.

34. In addition, the parties propose that statements of position (SOPs) be filed three weeks after the hearing concludes. The ALJ finds that two weeks after the hearing provides sufficient time for the parties to file SOPs; delaying this deadline further may impede the ALJ's ability to issue a recommended decision with enough time for the Commission to meet the statutory deadline for a final decision to issue. As such, the SOP deadline will be November 9, 2023.

35. Given the potential for out-of-state witnesses needing to testify remotely, the ALJ will schedule the hearing as a hybrid hearing. Hybrid hearings allow witnesses and parties to appear remotely and in person.¹⁸ To ensure an orderly hearing, the ALJ will require that the parties' Joint Witness Examination Matrix identify whether witnesses will appear remotely or in person. For the hearing to remain a hybrid hearing, at least one party must appear in person;

¹⁶ Had the parties contacted the ALJ to clear hearing dates as directed, they would have learned this. See Email with Parties at 3. The Commission's public calendar also shows the conflicts, which the parties could have reviewed before proposing dates.

¹⁷ Email with parties at 2; *infra*, ¶ 21.

¹⁸ The ALJ will appear in person for the hybrid hearing.

otherwise, the hearing will be converted to a fully remote hearing. To this end, the parties are required to confer with each other to determine who will appear for the hearing in person. If this conferral results in the parties concluding that no one plans to appear in person, Black Hills must make a filing on or by October 10, 2023 indicating that no party will appear in person. If this happens, the hearing will be converted to a fully remote hearing.

36. Because the hearing will accommodate remote participation, all documentary evidence will be presented electronically using a spreadsheet with hyperlinks to the parties' exhibits as they appear in the administrative record. That spreadsheet will be distributed to the parties before the hearing so that the parties may review it and confirm that it includes the exhibits they intend to offer into evidence. To ensure that the spreadsheet can be created, distributed, and reviewed before the hearing, the ALJ clarifies that the deadline for non-testimonial hearing exhibits is the final date for exhibits to be included in the spreadsheet, except that if a Settlement Agreement and Settlement Testimony is filed, best efforts will be made to include those documents in the spreadsheet.

37. Attachment A hereto includes important technical information and requirements to facilitate accommodating remote hearing participation. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.¹⁹ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

¹⁹ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

38. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. This has resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors; and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits.

39. The parties, *particularly Black Hills*, must take extra care in reviewing Attachment B alongside their exhibits *before filing them* to ensure that they comply with each and every requirement in Attachment B. It is the parties' responsibility, not Commission support staff's, to ensure that exhibits are correctly formatted, marked, and filed.

40. To minimize the potential that the hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.²⁰ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

41. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

²⁰ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

III. ORDER**A. It Is Ordered That:**

1. Consistent with the above discussion, the Office of the Utility Consumer Advocate (UCA), Trial Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Energy Office (CEO) are acknowledged as parties to this Proceeding. The Motions seeking to permissively intervene filed by GreenLatinos, Mothers Out Front, Vote Solar, and Womxn from the Mountain (collectively the Coalition) and ChargePoint, Inc. (ChargePoint) are granted. Based on the foregoing, in addition to Black Hills Colorado Electric, LLC (Black Hills), the parties to this Proceeding are the UCA, Staff, CEO, ChargePoint and the Coalition.

2. A public comment hearing on the above-captioned Application is scheduled as follows:

DATES: September 19, 2023

TIMES: 4:30 p.m., continuing until concluded, but no later than 6:00 p.m.

PLACE: By video conference or telephone using the Zoom web conferencing platform at a link emailed to all those who register to participate in the public comment hearing.

3. All those who wish to provide comments in the public comment hearing must register for the public comment hearing to receive the Zoom information to join the hearing. Interested persons must register to participate in the public comment hearing by clicking on a link available on the Commission's calendar of events on its website for the date and time(s) of the hearing at puc.colorado.gov/puccalendar and following the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

4. Those wishing to observe but not participate in the above public comment hearing may do so by observing the Commission’s webcast for the assigned hearing room at: puc.colorado.gov/webcasts.

5. Members of the public who wish to provide written comments may do so by following the instructions in this Decision.

6. A hybrid evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: October 23, 24, and 26, 2023

TIMES: 9:00 a.m. each day

PLACE: In-person: Commission Hearing Room, Suite 250, 1560 Broadway, Denver, Colorado

By video-conference using Zoom.

7. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing remotely. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

8. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

9. Non-participants in the evidentiary hearing may observe the hearing live through the Commission’s webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

10. **Answer Testimony Deadline.** Interveners’ answer testimony must be filed and served by August 30, 2023.

11. **Rebuttal and Cross-Answer Testimony Deadline.** Black Hills' rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by September 25, 2023.

12. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. To allow enough time for staff to create and circulate the hyperlinked spreadsheet that will be used during the hearing to present exhibits, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments) by October 6, 2023. It is the parties' responsibility to review the hyperlinked spreadsheet that will be used during the hearing to present exhibits to ensure that it correctly includes all the exhibits that the parties intend to offer into evidence during the hearing.

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

13. **Deadline for Non-Testimonial Hearing Exhibits.** By October 10, 2023, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*, exhibits not already filed per other deadlines). The parties are not required to

pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately. October 10, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. Such filings must comply with the specific requirements in Attachment B.

14. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by October 10, 2023; responses to prehearing motions must be filed by October 16, 2023.

15. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by October 10, 2023.

16. **Deadline to Report if No Party Will Appear in Person.** The parties must confer with each other to determine who will appear for the hearing in person. If parties conclude that none of them will appear in person, Black Hills must make a filing on or by October 10, 2023 indicating that no party will appear in person.

17. **Deadline for Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix.** By October 13, 2023, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit). Also, by October 13, 2023, the parties must file a joint witness examination matrix

listing all the witnesses the parties anticipate will testify at the hearing, whether the witness will testify in person or remotely, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

18. **Deadline for Settlement Testimony.** By 12:00 p.m. (noon) on October 16, 2023, the parties must file and serve testimony in support of or in response to any settlement agreement that is filed. Filing testimony by 5:00 p.m. on October 16, 2023 *does not* meet this deadline.

19. **Deadline for Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file their statement of position by November 9, 2023.

20. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with the directions in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Black Hills	100 to 299
The UCA	300 to 399
Staff	400 to 499
CEO	500 to 599
ChargePoint	600 to 699
The Coalition	700 to 899

21. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Black Hills will use hearing exhibit numbers 1100-1299; the UCA will use hearing exhibit numbers

1300-1399, *etc.*). Hearing Exhibit 900 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

22. This Decision is effective immediately.

(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