

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0231G

IN THE MATTER OF ADVICE LETTER NO. 32 FILED BY BLACK HILLS COLORADO GAS, INC. TO INCREASE THE BASE RATES CHARGED FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES, TO BECOME EFFECTIVE JUNE 8, 2023.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADDRESSING INTERVENTIONS AND REQUEST FOR
HISTORIC TEST YEAR STUDIES, GRANTING MOTIONS
FOR EXTRAORDINARY PROTECTION, AND
REQUIRING PARTIES TO CONFER ON A PROCEDURAL
SCHEDULE AND BLACK HILLS TO FILE PROPOSED
CONSENSUS PROCEDURAL SCHEDULE**

Mailed Date: July 26, 2023

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I. STATEMENT AND BACKGROUND**A. Summary**

1. This Decision grants pending requests to permissively intervene; acknowledges interventions of right; denies the Office of the Utility Consumer Advocate's (the UCA) request to require Black Hills Colorado Gas, Inc., (Black Hills or the Company) to create and file historic test year (HTY) revenue requirement studies for the 12 months ending December 31, 2022 using the 13-month average, and year-end rate base methodologies; requires the parties to confer with each other on a procedural schedule; and requires Black Hills to file a proposed consensus procedural schedule on or by August 1, 2023.

B. Procedural History

2. On May 8, 2023, Black Hills filed Advice Letter No. 32 (Advice Letter) with tariff sheets to commence a combined Phase I and II rate case. Black Hills filed the direct testimony and attachments of nine witnesses in support of the Advice Letter, and identified June 8, 2023 as the effective date for the tariff sheets filed with the Advice Letter.¹

3. Also on May 8, 2023, the Company filed a Motion of Black Hills Colorado Gas, Inc., for Protective Order Affording Extraordinary Protection (First Motion).

4. On May 18, 2023, the UCA filed a Protest, Request for Hearing, Request for Production of a Historical Test Year, and Entry of Appearances (Protest). In the Protest, the UCA raises concerns with the Advice Letter and requests that the Commission order Black Hills to

¹ See Advice Letter No. 32 filed May 8, 2023 (Advice letter) at 5. On May 10, 2023, Black Hills filed an Amended Advice Letter No. 32 to apparently correct an error in tariff sheet no. 15 to reflect the correct effective date of June 8, 2023.

provide HTY revenue requirement studies for the 12 months ending December 31, 2022, using both the 13-month average and the year-end approaches for valuing rate base.²

5. On June 7, 2023, Walmart Inc. (Walmart) filed a Motion for Intervention (Walmart's Intervention), seeking to intervene in this matter.

6. On June 7, 2023, the Commission suspended the Advice Letter's effective date to October 6, 2023, and set the Advice Letter for a hearing per § 40-6-111(1), C.R.S.; and established June 30, 2023 as the deadline to file a motion to intervene and a response to the UCA's request that Black Hills create and file the above-referenced studies.³

7. On June 9, 2023, the UCA filed a Notice of Intervention as a Matter of Right (the UCA's Intervention), which reiterated its request for Black Hills to perform and provide the studies discussed above.⁴

8. On June 13, 2023, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff's Intervention).

9. On June 16, 2023, Black Hills filed an Affidavit of Additional Notice (Affidavit) indicating that Black Hills posted its Advice Letter and accompanying tariff sheets on its website; caused information explaining the reasons the Company filed this Proceeding and the customer notice to be posted on the Company's website; caused the customer notice to be mailed to all gas

² Protest at 3-6.

³ Decision No. C23-0379 at 4 (mailed June 7, 2023).

⁴ The UCA's Intervention at 4.

customers on May 18, 2023 who do not have an email address attached to their account; and caused an email with a customer notice to be sent to gas customers on May 16 and 23, 2023.⁵

10. On June 22, 2023, A M Gas Transfer Corp., (A M Gas) filed a Motion to Intervene (A M's Intervention), seeking to intervene in this matter.

11. On June 23, 2023, the Company filed a Response of Black Hills Colorado Gas, Inc. in Compliance with Decision No. C23-0379 (Black Hills' Response).

12. On June 30, 2023, Staff filed a Response to Decision No. C23-0379 (Staff's Response).

13. On July 12, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry, including all outstanding motions and requests.⁶

14. On July 19, 2023, Black Hills filed an Unopposed Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information (Second Motion).

15. To date, no responses or objections to any of the Interventions or Black Hills' two Motions seeking extraordinary protection of highly confidential information have been filed.

II. RELEVANT LAW, ANALYSIS, FINDINGS AND CONCLUSIONS

A. Interventions

16. 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

⁵ See Affidavit at 1-2; Attachments 1 and 2 to Affidavit.

⁶ July 12, 2023 Minute Entry.

with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).⁷

17. In addition, per Rule 1401(e), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. 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.⁸

18. 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.⁹

19. 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.¹⁰

20. 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.¹¹

⁷ Rule 1401(b) and (c), 4 CCR 723-1.

⁸ Rule 1401(b), 4 CCR 723-1 (noting that it applies to any party other than Staff who seeks to intervene of right).

⁹ Rule 1401(c), 4 CCR 723-1.

¹⁰ Rule 1500, 4 CCR 723-1.

¹¹ Rule 1400(b) (14-day response time to motions except motions to permissively intervene) and (d) (failure to file a response may be deemed as a confession of the motion), and 1401(c) (seven-day response time to motions to permissively intervene), 4 CCR 723-1.

21. As noted above, no party filed a response to any of the Interventions; the last deadline to respond to an intervention expired on June 29, 2023.¹² As such, the ALJ deems all the motions to intervene confessed, and therefore, unopposed.

22. Starting with Staff's Intervention, given that Staff is permitted by Commission Rule 1401(e) to intervene of right in any Commission proceeding, Staff's Intervention is acknowledged, and Staff is a party to this proceeding.¹³

23. In support of its Intervention (of right), the UCA points to its statutory authority and responsibility to represent the public interest, including the specific interests of residential consumers, agricultural consumers, and small business consumers in matters which have an impact on the charges, provision of services, or the rates to consumers.¹⁴ The UCA identifies numerous issues that it wishes to address by participating in this proceeding consistent with its statutory authority and obligations.¹⁵ The ALJ finds that the UCA has properly intervened of right; for that reason, and because its Intervention is unopposed, the ALJ acknowledges the UCA's Intervention of right. The UCA is a party to this proceeding.

24. The ALJ construes the remaining Interventions – by Walmart and A M Gas – as motions to permissively intervene under Rule 1401(c), 4 CCR 723-1. Both Interventions describe the nature of each party's tangible pecuniary interests in this Proceeding and why they believe their interests would not be adequately represented by any other party.¹⁶ Given this and that these

¹² Specifically, the last intervention was filed on June 22, 2023 (by A M Gas), making the response due on June 29, 2023, per Rule 1401(c), 4 CCR 723-1.

¹³ Rule 1401(e), 4 CCR 723-1.

¹⁴ UCA's Intervention at 4.

¹⁵ *Id.* at 3.

¹⁶ Denver's Intervention at 1-3; Boulder's Intervention at 2-3; Walmart's Intervention at 1-3; COSSA/SEIA's Joint Intervention at 2-5; and WRA's Intervention at 2-6.

Interventions are unopposed, the ALJ grants the remaining Intervenors' requests to permissively intervene. Walmart and A M Gas are parties to this proceeding.

B. Motions for Extraordinary Protection of Highly Confidential Information

25. Rule 1101(b) requires that a motion seeking extraordinary protection of highly confidential information: include a detailed description of the information to be protected; state the specific relief sought and grounds therefore; advise the parties of the request and the subject matter of the information at issue; establish that the information at issue is highly confidential and that highly confidential protection is necessary because rules providing protection for confidential information offer insufficient protection; be accompanied by a proposed nondisclosure agreement and an affidavit with names of all persons who have access to the information and the timeframe for protection; and either file the highly confidential information or establish why doing so would be overly burdensome, impractical or too sensitive for disclosure.¹⁷

26. Because no party has filed a response objecting to the Company's First Motion, the ALJ deems it confessed and unopposed.¹⁸ The First Motion seeks extraordinary protection for forward-looking financial information included in attachments; certain customer information included in identified attachments that support its Class of Cost Services Studies (CCOSS); and other disclosures in the above categories that may be made in the course of this Proceeding.¹⁹ Black Hills filed the relevant highly confidential information, as attachments to written testimony (filed on May 8, 2023). The Company also filed a proposed form nondisclosure agreement as Attachment A and an Affidavit as Attachment B, which identifies those with access to the highly confidential

¹⁷ *Id.* at 4-7; Attachments A, B, and C to the Motion.

¹⁸ *See* Rule 1401(d), 4 CCR 723-1.

¹⁹ First Motion at 1.

information, and requests that the information should be protected as highly confidential indefinitely.

27. Starting with the financial information, the First Motion explains that Black Hills is a wholly-owned subsidiary of Black Hills Corporation (BHC), a publicly traded corporation listed on the New York Stock exchange.²⁰ The Company explains that the information is highly confidential because it contains projected, non-public information regarding BHC's future financial condition, and other material non-public information that has not be previously disclosed to the investment community.²¹ The Company argues that the information is clearly propriety and sensitive financial information with material "insider information" that has the potential to impact BHC's stock price.²² Black Hills submits that the Securities and Exchange Commission's (SEC) regulations require that public disclosure of forward-looking corporate financial information adhere to prescribed standards of communication, and that it is unlawful to trade BHC's stock based on non-public forward-looking financial information.²³ Black Hills explains that BHC has closely protected this extremely sensitive information, including in internal distributions, and that Black Hills is obligated to do so here as well. The Company asserts that disclosure would likely cause serious harm to it and BHC. Finally, the Company submits that the Commission has routinely given extraordinary protection to the type of information at issue in numerous other Commission proceedings.²⁴

²⁰ First Motion at 3.

²¹ *Id.*

²² *Id.* at 3-4.

²³ *Id.* at 4.

²⁴ *Id.* at 4 citing Decision No. R19-0351-I (mailed April 19, 2019) in Proceeding No. 19AL-0075G; Decision No. R18-0038-I (mailed January 11, 2018); Decision No. R17-1044-I (mailed December 15, 2017) in Proceeding No. 17AL-0654G; Decision No. C16-0717-I (mailed August 4, 2016) in Proceeding No. 16AL-0326E.

28. As to the customer information, the Company states that Rules 4027(b) and 4033(b) of the Commission's Rules Regulating Gas Utilities prohibits a utility from disclosing aggregated customer information unless such information contains at least 15 customers.²⁵ The Company has less than 15 customers within the "Irrigation/Seasonal" customer class in certain areas, and the aggregated customer information contains information for volumes, revenues, therms and the average number of irrigation and seasonal customers located in the relevant areas.²⁶ The Company submits that highly confidential treatment for this customer information is consistent with the above-referenced Commission rules that protect certain customer data from disclosure.²⁷

29. Due to highly sensitive nature of the relevant information, the First Motion requests that access to the highly confidential information be limited to Staff, the UCA, the Commission, the ALJ, and their respective attorneys.²⁸

30. The ALJ finds that the First Motion meets the requirements of Rule 1101(b), and as such, concludes that the Black Hills has established that the information for which it seeks extraordinary protection is highly confidential. For the reasons and authorities discussed above, those in the First Motion, and because the First Motion is unopposed, the ALJ grants the First Motion.

31. The Second Motion states that A M Gas, Staff, and the UCA do not object to the relief sought in the Second Motion, that Walmart takes no position, and that the UCA reserves the right to subsequently challenge whether the highly confidential designation is appropriate.²⁹ The

²⁵ *Id.* at 5.

²⁶ *Id.* at 5.

²⁷ *Id.* at 6.

²⁸ *Id.* at 6.

²⁹ Second Motion at 1-2.

Second Motion seeks seeking extraordinary protection of material non-public financial information; individual employee compensation information responsive to Staff's and the UCA's discovery requests; and other disclosures in the above categories that may be made in the course of this Proceeding.³⁰ With the Second Motion, the Company provided a proposed form nondisclosure agreement as Attachment A; an Affidavit as Attachment B identifying those with access to the highly confidential information and requesting that the information be maintained as highly confidential indefinitely; and the highly confidential information as Attachments C, D1, D2, D3, E, and F (highly confidential and public versions of each).

32. Starting with the financial information, the Company argues that the information is highly confidential because it includes protected, non-public information as to the Company's future financial condition; other material and non-public financial information not previously disclosed to the investment community; non-public information about the capital structures of BHC's subsidiaries not previously reported in its financial statements; BHC's non-public and forward-looking information as defined by the SEC; and proprietary and sensitive information that includes material financial "insider information" that may affect BHC's stock price.³¹ Black Hills makes many of the same arguments as in its First Motion about the highly confidential and sensitive nature of this financial information, which are not repeated here.³²

33. Turning to the employee compensation information, Black Hills argues that disclosure would expose to public view personal financial information that contains employee-specific salary or other compensation-related information that is extremely sensitive and

³⁰ Second Motion at 1.

³¹ *Id.* at 3-4.

³² See *id.* at 3-4; *infra*, ¶ 27.

has been closely held and maintained within Black Hills and its affiliates as highly confidential.³³ The Company argues that disclosure would reveal employee identifying information such that specific employee's salaries and compensation would be revealed, and that utility employees have the right to privacy concerning their compensation, which is a personal matter.³⁴ The Company argues that when the right to privacy or confidentiality is invoked, that the Commission must conduct a three-part balancing inquiry requiring it to consider (1) whether the individual has a legitimate expectation of nondisclosure; (2) whether disclosure is nonetheless required to serve a compelling state interest; and (3) where a compelling state interest requires disclosure of otherwise protected information, how disclosure may occur in the least intrusive manner. provides additional legal basis to protect the employee compensation information.³⁵

34. The Company argues that employees have a legitimate privacy interest in preventing their individual income information from being disclosed, meeting the first prong of the above inquiry. As to the remaining prongs, the Company understands that certain salary and other compensation-related information may be relevant to this Proceeding, and as such, does not seek a blanket prohibition on providing the information.³⁶ Instead, to ensure that individual compensation information is not publicly disclosed and is treated as highly confidential, it seeks to limit disclosure to Staff, the UCA, the Commission, the ALJ and their attorneys.³⁷

³³ *Id.* at 4.

³⁴ *Id.* at 5 citing *Corbetta v. Albertson's*, 975 P.2d 720-21 (Colo. 1999); *Martineli v. Dist. Court*, 612 P.2d 1083 (Colo. 1980). The Company notes that the exception to this is the salary and compensation for certain high-level officers and directors, which is routinely made publicly available. *Id.*

³⁵ *Id.*, citing *Corbetta*, 975 P.2d at 720-21.

³⁶ *Id.*

³⁷ *Id.* at 5-6.

35. Finally, the Company argues that the Commission has given extraordinary protection for similar information in other proceedings.³⁸

36. The ALJ finds that the Second Motion meets all the requirements of Rule 1101(b), and as such, concludes that the Black Hills has established that the information for which it seeks extraordinary protection is highly confidential. For the reasons and authorities discussed above, those in the Second Motion, and because the Second Motion is unopposed, the ALJ grants it.

37. Granting the First and Second Motion also means that Walmart and A M Gas, neither of whom objected or otherwise responded to the either Motion, do not have access to the highly confidential information.

38. The ALJ reminds the parties that if they plan to file or offer into evidence the highly confidential information or confidential information in this proceeding, they must take care to follow the Commission's rules concerning filing highly confidential and confidential information. Specifically, Rule 1101(a)(I) includes numerous requirements for filing confidential and highly confidential information, including filing a public version of such documents.

C. The UCA's Request for an Order Requiring Black Hills to Provide HTY Revenue Requirement Studies

39. In its Protest and Intervention, the UCA requests that the Commission order Black Hills to provide HTY revenue requirement studies for the 12 months ending December 31, 2022, using both the 13-month average and the year-end approaches for valuing rate base.³⁹ In support,

³⁸ *Id.* at 6, citing Decision No. R23-0072-I (mailed February 3, 2023) in Proceeding No. 22AL-0426G; Decision No. R21-0459-I (mailed July 27, 2021) in Proceeding No. 21AL-0236G; Decision No. R19-0351-I (mailed April 19, 2019) in Proceeding No. 19AL-0075G; Decision No. R18-0038-I (mailed January 11, 2018); Decision No. R17-0144-I (mailed December 15, 2017) in Proceeding No. 17AL-0654G; Decision No. C16-0717-I (mailed August 4, 2016) in Proceeding No. 16AL-0326E.

³⁹ Protest at 3-6; UCA's Intervention at 4.

the UCA argues that the Commission has required this information to be filed in past rate cases, and that the information to develop these studies is solely in the Company's possession.⁴⁰ The UCA highlights that when the Commission recently required this information in another rate case, the Commissioners noted that the General Assembly recently passed Senate Bill (SB) 23-91, directing the Commission to establish rules requiring utilities to produce information including "a test year based on a recently completed twelve-month period and for which actual costs and investments are analyzed."⁴¹ The UCA concedes that this law was not effective when the Company initiated this Proceeding, and therefore is not legally binding here, but argues that SB 23-91 demonstrates the Governor's and General Assembly's preference that this information be produced to reduce time and costs associated with a lengthy discovery process.⁴²

40. Staff responds that it has served a discovery request on Black Hills asking it to produce a HTY, and that meetings it has had with Black Hills have been productive.⁴³ Based on those productive meetings, Staff believes that it can continue to work with Black Hills to obtain the HTY information that Staff requires.⁴⁴

41. Black Hills states that the revenue requirement studies that it has filed in this Proceeding include all of the per-book accounting information for calendar year 2022 necessary for the parties to make the various adjustments to develop a comprehensive HTY revenue requirement, and that it is committed to working with the parties to assist them in making those adjustments.⁴⁵ Specifically, the Company states that Hearing Exhibit 103, Attachments SKJ-1 to

⁴⁰ UCA's Intervention at 4, citing Proceeding No. 22AL-0530E.

⁴¹ *Id.* quoting SB 23-291, codified at § 40-3-102.5(1)(a)(IV)(C), C.R.S.

⁴² *Id.*

⁴³ Staff's Response at 1-2.

⁴⁴ *Id.* at 2.

⁴⁵ Black Hills's Response at 1 and 3, citing Hearing Exhibit 103, Attachments SKJ-1 to SKJ-4.

SKJ-4 provide the information.⁴⁶ The Company explains that Hearing Exhibit 103, SKJ-1 to SKJ-3 develop the individual revenue requirements for each of Black Hills' three rate base areas, and Attachment SKJ-4 develops the comprehensive statewide revenue requirement for Black Hills "as a whole."⁴⁷ Black Hills also states that its Revenue Requirement Studies (RRS) and supporting workpapers provide all of its relevant per-book accounting and financial data for the historical 12-month period ending December 31, 2022 from which the Company made known and measurable and other *pro forma* adjustments, and that written testimony (Hearing Exhibit 101) explains the process that the Company employed in the RRS to identify the revenue requirement.⁴⁸ The Company explains that it provided Staff and the UCA the RRS workpapers (that support the accounting data) shortly after it filed the Advice Letter and supporting testimony and attachments.⁴⁹

42. Black Hills held meetings with Staff and the UCA in early June 2023 in an effort to better understand which adjustments each party wanted to include or exclude from the models, and agreed to work with Staff and the UCA to help them better understand the Company's RRS models, and to provide a RRS model reflecting specific adjustments that the UCA and Staff requested.⁵⁰ As a result of these meetings, Staff and the UCA issued discovery requests seeking alternative revenue requirement studies different from those the in the Company's RRS models. In fact, the UCA's discovery request seeks "a historical test year ("HTY") using actual data for the period ending December 31, 2022, and using the 13-month average rate base method and using the year-end rate based method. Also please identify and explain any adjustments made to the HTY. Please provide

⁴⁶ *Id.* at 3, fn. 5.

⁴⁷ *Id.*

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ *Id.* at 5.

these in executable form (i.e., MS Excel, format).⁵¹ And, Staff requested more detailed information on the same or similar topic via a discovery request.⁵²

43. The Company developed alternative models and produced the specific revenue requirement models requested in UCA's discovery request on June 22, 2023, and anticipated providing responses to Staff's discovery requests by June 28, 2023.⁵³ Black Hills states that it is ready and willing to continue meeting with the UCA and Staff to provide additional clarifying information.⁵⁴

44. The Company argues that given the information in its RRS models already filed in this Proceeding, and its willingness to work with the UCA and Staff to provide multiple additional HTY models through discovery, that it is unnecessary to require it to file variations of its RRS models.⁵⁵ Black Hills also argues that a better approach is to entertain filing only the specific RRS models that a party advocates be adopted by the Commission for setting rates in this Proceeding, and that doing so will allow such models to be supported through written testimony, thereby providing for a cleaner and less cluttered record.⁵⁶ The Company explains that RRS models are very complex, and unless they are fully and accurately explained, filing them may create unnecessary confusion and could result in "abuse affecting the due process rights of the parties," and that this would prejudice the Company.⁵⁷ Specifically, if it is required to perform a study to develop and prepare a HTY revenue requirement, it would likely also be required to support and

⁵¹ *Id.* at 5 quoting UCA 1-4 (UCA's discovery request).

⁵² *See id.* at 5 quoting CPUC 1-6 (Staff's discovery request).

⁵³ *Id.* at 6.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* at 7-8.

defend that revenue requirement, which are likely to be inconsistent with those in the RRS that the Company offered in support of its Advice Letter.⁵⁸

45. The ALJ finds the Company's arguments persuasive. The ALJ notes that the UCA's most recent response to the Commission's order concerning this issue was filed several weeks before the Company provided responses to the UCA's discovery request seeking the information needed to develop the studies that the UCA seeks. Staff's Response supports the Company's many statements that it has been working with and will continue to work with the parties to provide any other information they need to develop studies of their own. The ALJ also finds merit in the Company's argument that filing studies and resulting revenue requirement unsupported by testimony may not be helpful, and that the better approach is to allow the parties to develop and vet the studies and resulting revenue requirement, determine which ones they support, and submit those with written testimony explaining the studies and resulting revenue requirement and why the party supports them.

46. For all these reasons, the ALJ denies the UCA's request to order Black Hills to provide HTY revenue requirement studies. The ALJ denies this request with the expectation that Black Hills will continue to work with the parties on this issue to ensure they have the information needed to develop the HTY studies.

D. Procedural Schedule and Hearing Dates

47. In anticipation of an evidentiary hearing on the Advice Letter, the ALJ will require the parties to confer with each other on a procedural schedule. Black Hills will be ordered to file the parties' proposed consensus procedural schedule. To this end, the parties' proposed procedural

⁵⁸ *Id.* at 8.

schedule must include proposed hearing date(s); proposed public comment hearing date(s); and deadlines to file answer, rebuttal, and cross answer testimony; non-testimonial exhibits; exhibit and witness lists; corrected/final testimonial exhibits; settlement agreements; settlement testimony; prehearing motions; responses to prehearing motions; a joint witness examination matrix; statements of position; and any other filing the parties identify as necessary or appropriate. The parties' proposed schedule should ensure that the deadlines for final/corrected testimonial exhibits and nontestimonial exhibits, are before the deadline to file prehearing motions so that parties may challenge exhibits via prehearing motion, should they wish to do so. In identifying a deadline for statements of position, the parties should assume that the ALJ will hold a technical conference sometime after the evidentiary hearing, but before issuing a recommended decision.

48. The effective date of the tariff sheets submitted with the Advice Letter is October 6, 2023, but may be suspended by an additional 130 days to February 13, 2024, per § 40-6-111(1)(b), C.R.S.⁵⁹ This would essentially become the new deadline for a final Commission decision to issue. This is a combined Phase I and II Proceeding, which involves complex and voluminous issues that will ultimately result in a decision impacting Black Hills gas sales and transportation customers throughout the state. For the ALJ to hold a technical conference and issue a recommended decision in a timeframe that allows the parties to file exceptions and motions for rehearing, reargument, or reconsideration (RRR), and for the Commission to consider and decide the same, a hearing would need to be completed by October 11, 2023. Unfortunately, the ALJ's schedule is unable to accommodate a hearing during the first two weeks of October. And, for the reasons discussed above, the ALJ will not schedule a hearing after October 11, 2023.

⁵⁹ Decision No. C23-0379 at 4.

49. As such, the parties are left with two options: agree to a hearing sometime in September (dates provided below), or Black Hills may file an amended Advice Letter establishing a later effective date, which the ALJ could then suspend for an additional 130 days, as permitted by § 40-6-111(1)(b), C.R.S.

50. If the parties chose the first option, they may choose from the following currently available hearing dates: September 5 to 7; September 19 (only until 4:00 p.m.); and September 20 to 22, 2023.⁶⁰ The ALJ's schedule and the Commission's hearing room schedule in September has limited availability; this makes it likely that a multi-day hearing on any of these dates will require scheduling hearings in different hearing rooms (regardless of whether the hearing is remote, in-person or hybrid).

51. If Black Hills decides to file an amended Advice Letter, an effective date of December 1, 2023 would expand options for hearing dates significantly. The ALJ could suspend that effective date by 130 days, resulting in an effective date of April 9, 2024. This effective date would require the evidentiary hearing to be held by or before December 4, 2023, and should allow sufficient time for the record to be fully developed; for the ALJ to hold a technical conference after the hearing; for a recommended decision to issue; for the parties to file exceptions and RRR; and for the Commission to consider and decide the same before the anticipated April 8, 2024 effective date.⁶¹ That said, it is entirely up to Black Hills whether to file an amended Advice Letter with a new effective date.⁶² If Black Hills decides to file an amended Advice Letter with a new effective date, it must do so at the same time that it files the parties' proposed procedural schedule.

⁶⁰ The ALJ has two multi-day evidentiary hearings in September 2023, and the Commission's hearing room availability is limited.

⁶¹ This later effective date would also help account for the November, December, and January holidays.

⁶² The ALJ does not suspend the current October 6, 2023 effective date at this time, and instead awaits the parties' proposed consensus procedural schedule before taking such action.

52. Regardless of which option is pursued, given that the ALJ's and the Commission's hearing room schedule is quickly becoming full, the parties must informally contact the ALJ via email copied to all parties before submitting a proposed procedural schedule to confirm that the agreed-upon hearing dates are still available. The parties are encouraged to review the Commission's public calendar for hearing room availability. If the agreed-upon dates are contingent upon Black Hills agreeing to file an amended Advice Letter, the parties must also inform the ALJ of the new effective date that Black Hills anticipates submitting via an amended Advice Letter.

53. In addition to the above matters, the parties must also confer and report in the proposed procedural schedule on the manner in which they prefer the hearing to be held. The parties may choose from the following options: fully in-person, with the ALJ and all parties and witnesses appearing in person; hybrid, with parties and witnesses appearing in person and remotely by Zoom and the ALJ appearing in person; and fully remote, with all parties, witnesses, and the ALJ appearing remotely via Zoom.⁶³

54. Finally, the parties are also encouraged, but not required, to confer on, and submit any agreements they reach concerning discovery if those agreements diverge from the Commission's discovery rules.

55. As indicated below, Black Hills is responsible for submitting the parties' proposed consensus procedural schedule. The ALJ will issue a decision scheduling the evidentiary and

⁶³ The ALJ will only schedule a hybrid hearing if at least one party will appear in person. If the parties chose this option, the ALJ may establish a deadline by which an additional filing must be made in the event that the parties later determine that none of them will appear in person. In such a circumstance, the ALJ will convert the hearing to a fully remote hearing.

public comment hearings and establishing deadlines and procedures as soon as possible after Black Hills submits a proposed consensus procedural schedule.

56. *The parties are advised and on notice* that failure to file the required proposed consensus procedural schedule or agree to a procedural schedule will result in the ALJ selecting hearing dates and other deadlines without further input from the parties. In that event, after scheduling the hearing, the ALJ will not consider future requests to reschedule the hearing or move deadlines, unless the requesting party files a motion demonstrating good cause.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, the Interventions of Right filed by the Office of the Utility Consumer Advocate (the UCA) and the Trial Staff of the Colorado Public Utilities Commission (Staff) are acknowledged and both are parties to this Proceeding. Walmart Inc.'s (Walmart) Motion for Intervention and A M Gas Transfer Corp.'s (A M Gas) Motion to Intervene are granted and they are both parties to this Proceeding. Based on the foregoing, in addition to Black Hills Colorado Gas, Inc. (Black Hills or the Company), the parties to this Proceeding are the UCA, Staff, Walmart and A M Gas.

2. The Motion of Black Hills Colorado Gas, Inc., for Protective Order Affording Extraordinary Protection filed on May 8, 2023 and Unopposed Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed on July 12, 2023 are granted.

3. The UCA's request for an order requiring Black Hills to provide historical test year revenue requirement studies for the 12 months ending December 31, 2022, using both the

13-month average and the year-end approaches for valuing rate base is denied consistent with the above discussion.

4. The parties must confer on a procedural schedule, including evidentiary and public comment hearing dates, deadlines for the items discussed above, and the manner in which the hearing should be held. Black Hills must file the parties' proposed consensus procedural schedule that addresses all the items discussed above on or by August 1, 2023.

5. 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