

Decision No. R23-0584-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0357E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS DISTRIBUTION SYSTEM PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
VACATING PREHEARING CONFERENCE, EXTENDING
STATUTORY DEADLINE FOR A COMMISSION
DECISION, ESTABLISHING PROCEDURES,
SCHEDULING EVIDENTIARY HEARING, AND
PROVIDING INSTRUCTIONS CONCERNING EXHIBITS
AND PARTICIPATING IN HYBRID
EVIDENTIARY HEARING**

Mailed Date: September 5, 2023

I. STATEMENT

A. Background

1. On June 30, 2023, Black Hills Colorado Electric, LLC (Black Hills or Applicant) filed its Application for Approval of its Distribution System Plan (Application) and Motion for Waivers from Commission Rules Associated with its Distribution System Plan. These filings commenced this Proceeding.

2. On July 7, 2023, the Commission issued notice of the Application and set a 30-day intervention period (Notice).

3. On July 31, 2023, Pivot Energy's Motion for Permissive Intervention (Pivot's Motion to Intervene) was filed by Pivot Energy, Inc. (Pivot).

4. On August 11, 2023, UCA's Motion for Late Intervention (UCA's Motion to Intervene) was filed by the Office of Utility Consumer Advocate (UCA).

5. On August 14, 2023, the Trial Staff of the commission (Staff) filed its 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.

6. By Decision No. C23-0541-I, issued August 15, 2023, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ).

7. By Decision No. R23-0567-I, the undersigned ALJ acknowledged Staff's intervention, granted Pivot's and UCA's interventions, scheduled a prehearing conference in this matter for September 6, 2023, and required the parties to confer and for Black Hills to submit a conferral report by December 13, 2023.

8. On September 1, 2023, Black Hills submitted its Notice to ALJ of Conferral with Parties Regarding Procedural Schedule (Conferral Report). In the Conferral Report Black Hills stated that it offered the following schedule for the parties' consideration (Proposed Procedural Schedule):

<u>Event</u>	<u>Proposed Deadline</u>
Answer Testimony	October 19, 2023
Rebuttal Testimony & Cross-Answer Testimony	November 17, 2023
Corrected Testimony and Final testimonial Exhibits	December 8, 2023
Settlement Agreement	December 15, 2023
Pre-hearing Motions / Non-testimonial Hearing Exhibits	December 18, 2023
Cross-Examination Matrix, Non-testimonial exhibits, Witness and Exhibit Lists	January 3, 2024
Response to Prehearing Motions	January 3, 2024
Settlement Testimony	January 3, 2024
Evidentiary Hearing	January 8-10, 2024
Statements of Position	January 31, 2024

9. The Conferral Report further states that the parties agree with Black Hills’ proposed procedural deadlines, except that Staff and UCA: are not available on January 10, 2024 for an evidentiary hearing in this matter, propose that a two-day hearing be held in this Proceeding, propose that the deadline for the parties’ submission of Statements of Position would be February 6, 2024, and propose that the evidentiary hearing be held in a fully-remote format, as opposed to Black Hills’ proposed in-person hearing. The Conferral Report further states that Pivot does not have a strong preference regarding the procedural schedule and is amenable to whatever Black Hills agrees upon with UCA and Staff.

B. Extension of Deadline for a Commission Decision

10. As stated in the Notice, because Black Hills filed testimony with the Application, the Commission is required by § 40-6-109.5(1), C.R.S., to issue its decision within 120 days of

the Application being deemed complete by the Commission. Thus, the Commission's decision in this proceeding must be issued by December 13, 2023.

11. If the Commission finds that additional time is required, the period within which a commission decision is to be issued may be extended an additional 130 days. *See* § 40-6-109(1), C.R.S.

12. To accommodate the proposed deadlines set forth in the Proposed Procedural Schedule, as modified herein, it is necessary to extend the time for issuance of a Commission decision. The deadline for the Commission to issue its decision will be extended up to and including April 22, 2024,¹ as ordered below.

C. Procedural Schedule and Hybrid Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits

13. The deadlines in the Proposed Procedural Schedule which are agreeable by all parties are reasonable and will be adopted, as ordered below.

14. Given the unavailability of Staff on UCA on January 10, 2024, and Staff's and UCA's request for a two-day hearing, the evidentiary hearing in this matter will be scheduled for January 8-9, 2024, as ordered below.

15. Staff's and UCA's request to set the deadline for the submission of Statements of Position four weeks after the evidentiary hearing will be accommodated, as ordered below.

16. Given the parties' conflicting requests for a remote/in person evidentiary hearing, the evidentiary hearing in this matter will be held in hybrid format, as ordered below. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the

¹ Pursuant to Rule 1203(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the deadline for a Commission decision will be extended by an additional day.

Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. This Decision and Attachments A and B provide critical information and instructions to facilitate holding the video-conference part of the hearing, which all parties must follow.

17. To minimize the potential that the video-conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

18. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hybrid hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the hybrid hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

19. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Black Hills is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299;
- UCA is assigned hearing exhibit numbers 300 to 399; and
- Pivot is assigned hearing exhibit numbers 400 to 499.

D. Remote Prehearing Conference

20. The Conferral Report addressed all the issues the ALJ intended to address at the remote prehearing conference. Accordingly, the remote prehearing conference scheduled for September 6, 2023, will be vacated as ordered below.

E. Additional Procedural Notices

21. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

22. Additional and/or different procedural requirements may be addressed in future Interim Decisions.

II. ORDER

A. It Is Ordered That:

1. The deadline for a Commission decision in this Proceeding is extended through April 22, 2024.

2. The following procedural schedule is adopted to govern this proceeding:

<u>Event</u>	<u>Deadline</u>
Answer Testimony	October 19, 2023
Rebuttal Testimony & Cross-Answer Testimony	November 17, 2023
Corrected Testimony and Final testimonial Exhibits	December 8, 2023
Settlement Agreement	December 15, 2023
Pre-hearing Motions / Non-testimonial Hearing Exhibits	December 18, 2023
Cross-Examination Matrix, Non-testimonial exhibits, Witness and Exhibit Lists	January 3, 2024
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Settlement Testimony	January 3, 2024
Evidentiary Hearing	January 8-9, 2024
Statements of Position	February 6, 2024

3. The parties shall be held to, and shall comply with, the requirements in this Decision. In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1 (*e.g.*, Rule 1202 regarding pre-filed testimony and Rule 1405 regarding discovery procedures), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision, including Attachment B hereto.

4. A hearing in this matter shall be conducted at the following dates, time, and place:

DATE: January 8-9, 2024

TIME: 9:00 a.m.

PLACE: In-person: Commission Hearing Room A, 1560 Broadway, Suite 250, Denver, Colorado 80202

By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.²

5. The remote prehearing conference scheduled for September 6, 2023, at 3:00 p.m. is vacated.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

² Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.