

Decision No. R23-0162-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0580G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT STRATEGIC ISSUES PLAN FOR CALENDAR YEAR 2023.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADDRESSING INTERVENTIONS, EXTENDING
DEADLINE FOR FINAL DECISION,
AND REQUIRING PARTIES TO CONFER AND
PROPOSE A PROCEDURAL SCHEDULE**

Mailed Date: March 6, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision acknowledges the interventions of right filed in this Proceeding; extends the statutory deadline by which the Public Utilities Commission (Commission) must issue a final decision in this matter; requires the parties to confer on a procedural schedule; provides information relevant to that conferral; and orders Black Hills Colorado Gas, Inc. (Black Hills or the Company) to file a proposed consensus procedural schedule on behalf of the parties by March 14, 2023.

B. Procedural History¹

2. On December 30, 2022, Black Hills filed the above-captioned Application (Application) with attachments.

3. On January 3, 2023, the Commission provided public notice of the Application, which also established intervention deadlines.²

4. On January 9, 2023, Trial Staff of the Public Utilities Commission (Staff) filed a Deficiency Letter asserting that the Application is deficient for failing to include written testimony or requesting potentially necessary rule waivers, and should be deemed incomplete.³

5. Black Hills responded to the Deficiency Letter on January 19, 2023, disputing Staff's allegations.⁴

6. On January 20, 2023, the Colorado Energy Office (CEO) filed a Notice of Intervention by Right of the Colorado Energy Office (CEO's Intervention).

7. On January 31, 2023, the Office of the Utility Consumer Advocate (the UCA) filed a Notice of Intervention of Right, Request for Hearing, and Entry of Appearance of the Office of the Utility Consumer Advocate (the UCA's Intervention).

8. On February 6, 2023, 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 (Staff's Intervention).

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

² See Notice of Application Filed, filed on January 3, 2023.

³ Deficiency Letter filed January 9, 2023 at 1-2.

⁴ Response to Notification of Deficiencies filed on January 19, 2023.

9. During the weekly meeting held on February 15, 2023, the Commission rejected Staff's assertion that the Application is incomplete; deemed the Application complete;⁵ and referred this matter to an administrative law judge (ALJ) for disposition.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Interventions

10. The UCA, Staff, and CEO all timely intervene of right. Black Hills has not filed a motion to strike any of the Interventions and has not otherwise objected to the Interventions.⁶

11. The ALJ finds that the Interventions meet the relevant requirements under Rule 1401, 4 CCR 723-1, to intervene of right. As such, Staff, the UCA, and CEO are acknowledged as parties to this Proceeding, having properly intervened of right.

B. Deadline for Final Commission Decision

12. Because the Application was deemed complete on February 15, 2023, and the Company filed exhibits (though non-testimonial) with the Application, a final Commission decision must issue by June 15, 2023, per § 40-6-109.5(1), C.R.S., (2022).

13. Section 40-6-109.5(1), C.R.S. allows the Commission to extend the time to issue a final decision by an additional 130 days if it finds additional time is necessary. The ALJ finds that additional time is needed to: develop the record; hold an evidentiary hearing; issue a recommended decision; allow for exceptions and responses thereto; allow for motions for rehearing, reargument

⁵ In a footnote, the Commission's written Decision states that the Application was automatically deemed complete on February 17, 2023, but the Decision also plainly states that the Decision (and therefore, its findings and conclusions) were "adopted" during the Commission's February 15, 2023, weekly meeting. Decision No. C23-0147 at 3 (fn. 1) and 4 (mailed March 1, 2023). Given this possible conflict and in an abundance of caution, the ALJ construes Decision No. C23-0147 as deeming the Application complete on the date of the weekly meeting, that is, February 15, 2023.

⁶ See Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (a party may object to an intervention of right by filing a motion to strike).

and reconsideration (RRR); and allow for the Commission to issue a final decision in this proceeding. Before a hearing may be held on the Application, the ALJ anticipates establishing deadlines for the parties to file answer, rebuttal, and cross-answer testimony; settlement agreements and testimony in support of the same; prehearing motions; and post-hearing statements of position. What is more, this Application is the first of its kind that Black Hills has filed, which means that the all parties will face a learning curve as to how proceeding such as these should be managed. All of this makes it impracticable for the Commission to issue a final decision by June 19, 2023. For the foregoing reasons and authorities, the ALJ finds that additional time is necessary for the Commission to issue a final decision in this Proceeding, and the ALJ extends the deadline by an additional 130 days as permitted by § 40-6-109.5(1), C.R.S.

C. Procedural Schedule and Hearing Dates

14. In anticipation of an evidentiary hearing on the Application, the ALJ directs the parties to confer and submit a proposed consensus procedural schedule. The below information provides important instruction on the matters the parties must consider as they confer and submit a proposed procedural schedule.

15. First, in proposing a hearing date, the parties should ensure that they allot an appropriate amount of time to conclude the hearing (*e.g.*, one full day versus two or more days). In doing so, the parties should assume that the ALJ will use some time to examine witnesses during the evidentiary hearing.

16. Second, proposed hearing date(s) must accommodate the hearing being complete by June 19, 2023. Unless Black Hills waives the statutory deadline for a final Commission decision to issue, there is no room to push out a hearing beyond this date. Indeed, this matter involves issues that the Commission has not yet addressed, making it even more vital to ensure there is enough

time to issue a thoughtful and thorough recommended decision, and to allow for exceptions and RRR on the same. The parties should consult the Commission's public calendar to find available hearing dates. The ALJ is currently available for a hearing on the following dates: May 31 to June 2, June 5 to 8, and 12 to 16, 2023. The ALJ's schedule is quickly becoming filled, which may impact the ALJ's availability on these dates. As such, the parties are encouraged to identify hearing dates as soon as possible, and to communicate proposed dates informally to the ALJ via email copied to all parties. Establishing hearing dates first is also necessary because all the other procedural deadlines must accommodate the hearing date(s).

17. Third, the parties' proposed procedural schedule must include deadlines to file the following items: direct, answer, rebuttal, and cross-answer testimony (testimonial exhibits); nontestimonial exhibits⁷ (exhibits not already filed as testimony or attachments thereto); corrections to exhibits; final exhibits; witness and exhibit lists; a joint witness examination matrix; settlement agreements; testimony in support of settlements; stipulations; pre-hearing motions; statements of position; and any other legal briefing the parties wish to submit. If possible, the parties' proposed schedule should ensure that the deadlines for corrected exhibits, nontestimonial exhibits, and final exhibits are before the deadline to file prehearing motions so that parties may challenge exhibits via prehearing motion, should they wish to do so. To avoid confusion, the deadline to file nontestimonial exhibits should be before or at the same time as the deadline to file final exhibits.

18. Fourth, the proposed procedural schedule must also address the parties' preference on the manner in which the hearing will be held. The parties may choose from the following

⁷ The ALJ does not require parties to pre-file exhibits that will be used solely for impeachment, to refresh recollection, or that may be raised in rebuttal. But the parties are expected to prefile any exhibit they intend to offer into evidence during the evidentiary hearing.

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.⁸

The parties must include a statement in their proposed procedural schedule indicating whether they wish to hold the hearing fully in-person, hybrid, or fully remote.

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

20. As indicated below, Black Hills is responsible for submitting the parties' proposed consensus procedural schedule.

21. *The parties are advised and on notice* that any 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 filed by the below parties are acknowledged: the Colorado Energy Office (CEO); the Office of the Utility Consumer

⁸ The ALJ may convert an in-person or hybrid hearing to a remote if the circumstances existing at or near the time of the hearing warrant this (*e.g.*, a significant increase in the spread of COVID-19 or other similar illnesses that may threaten the health, welfare and safety of the parties and Commission staff).

Advocate (the UCA); and Trial Staff of the Public Utilities Commission (Staff). As such, in addition to Black Hills Colorado Gas, Inc., CEO, the UCA and Staff are parties to this Proceeding.

2. The deadline for a final Commission decision to issue in this proceeding is extended by an additional 130 days to October 23, 2023, as permitted by § 40-6-109.5(1), C.R.S.

3. The parties must confer on a procedural schedule that addresses all the items discussed in ¶¶ 15 through 18 above, including the manner in which the evidentiary hearing should be held (fully in-person, hybrid, or fully remote).

4. On or by the close of business on March 14, 2023, Black Hills must file a proposed procedural schedule on behalf of all parties addressing all the items discussed in ¶¶ 15 through 18 above, including the manner in which the hearing should be held (fully in-person, hybrid, or fully remote).

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, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director