

Decision No. R23-0225-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22A-0580G

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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.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
ACKNOWLEDGING INTERVENTION WITHDRAWALS,  
PARTIALLY VACATING PROCEDURAL DEADLINES,  
VACATING HEARING, AND ESTABLISHING NEW  
DEADLINE FOR DIRECT TESTIMONY**

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Mailed Date: March 30, 2023

**I. STATEMENT, SUMMARY, AND BACKGROUND**

**A. Statement and Summary**

1. This Decision acknowledges that the Colorado Energy Office (CEO), the Office of the Utility Consumer Advocate (the UCA), and Trial Staff of the Public Utilities Commission (Staff) have withdrawn their Interventions in this Proceeding. Given this, and for the reasons discussed below, the above-captioned Application is no longer contested and can be decided without an evidentiary hearing. As such, except for the deadline to file Direct Testimony, this Decision vacates the procedural deadlines and the evidentiary hearing in this matter. This Decision also extends the deadline to file Direct Testimony to April 20, 2023, and encourages the Company to ensure that such testimony addresses the requirements in § 40-3.2-103, C.R.S., particularly those

that may not already be directly or clearly addressed in the Application and accompanying exhibits.<sup>1</sup>

**B. Procedural History<sup>2</sup>**

2. On December 30, 2022, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or the Company) filed the above-captioned Application with its 2023 Demand-Side Management (DSM) Strategic Issues Plan (the Plan), and attachments.

3. On January 3, 2023, the Commission provided public notice of the Application and established intervention deadlines.<sup>3</sup>

4. On January 9, 2023, Trial Staff of the Public Utilities Commission (Staff) filed a Deficiency Letter asserting that the Application is deficient and should be deemed incomplete.<sup>4</sup>

5. Black Hills responded to the Deficiency Letter on January 19, 2023, disputing Staff's allegations.<sup>5</sup>

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

7. In addition to Black Hills, the following entities are parties to this Proceeding, having timely filed interventions: CEO, the UCA, and Staff.<sup>6</sup>

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<sup>1</sup> Given the timing of this Decision and the March 30, 2023 Direct Testimony deadline, on March 29, 2023, the Administrative Law Judge notified all parties by email that the Direct Testimony deadline would be extended by written decision to April 20, 2023.

<sup>2</sup> Only the procedural history necessary to understand this Decision is included.

<sup>3</sup> See Notice of Application Filed, filed on January 3, 2023.

<sup>4</sup> Deficiency Letter filed January 9, 2023 at 1-2.

<sup>5</sup> Response to Notification of Deficiencies filed on January 19, 2023.

<sup>6</sup> Decision No. R23-0162-I (mailed March 6, 2023).

8. On March 6, 2023, the ALJ extended the statutory deadline for a Commission decision to issue by an additional 130 days (from the original June 19, 2023 deadline), ordered the parties to confer on a procedural schedule, and Black Hills to make a filing by March 14, 2023, proposing a consensus procedural schedule.<sup>7</sup>

9. On March 14, 2023, Black Hills filed a Notice of Proposed Procedural Schedule.

10. On March 16, 2023, the ALJ largely approved the parties' proposed procedural schedule, establishing numerous deadlines, the first being Direct Testimony due on March 30, 2023, and set a fully remote evidentiary hearing for June 15 and 16, 2023.<sup>8</sup>

11. On March 22, 2023, the UCA filed a Withdrawal of Intervention of Right (the UCA's Withdrawal).

12. On March 23, 2023, Staff filed a Notice of Withdrawal of Intervention and Request for Hearing (Staff's Withdrawal).

13. On March 24, 2023, CEO filed a Notice of Withdrawal of Intervention of Right (CEO's Withdrawal).

## **II. FINDINGS, ANALYSIS, AND CONCLUSIONS**

14. The UCA explains that it is withdrawing its Intervention because fully litigating this Proceeding would likely result in a final Commission decision in late fall 2023, making it difficult for Black Hills to modify its DSM plan for the remainder of 2023.<sup>9</sup> Also, given that Black Hills is required to submit its next combined DSM strategic issues proceeding for the 2024-2025

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<sup>7</sup> *Id.*

<sup>8</sup> Decision No. R23-0182-I at 6-10 (mailed March 16, 2023).

<sup>9</sup> The UCA's Withdrawal at 1.

period before July 1, 2023, the UCA sees “virtually no benefit” to litigating this Proceeding.<sup>10</sup> The UCA plans to address any issues it has with the next DSM strategic issues plan filing in that proceeding.<sup>11</sup> For all these reasons, the UCA withdraws its Intervention.

15. CEO also withdraws its Intervention for the many of the same reasons described above.<sup>12</sup> CEO adds that Black Hills has provided supporting studies and procedural assurances to the parties, which addresses CEO’s concerns at this time.<sup>13</sup> For all these reasons, CEO withdraws its Intervention.

16. Similarly, in its Withdrawal, Staff states that Black Hills has provided supporting studies and procedural assurances to the parties, which addresses its concerns at this time.<sup>14</sup> Staff is also satisfied that it can address any issues in Black Hills’s upcoming combined DSM strategic issues and DSM Plan proceeding, and that judicial economy will be achieved by litigating issues there, rather than in this standalone proceeding.<sup>15</sup> For all these reasons, the Staff withdraws its Intervention.

17. It is within Staff’s, the UCA’s, and CEO’s discretion to withdraw their Interventions. As such, the ALJ acknowledges that they have withdrawn their Interventions, including their objections to the Application and their requests for a hearing on the Application. Given that they have withdrawn their Interventions, Staff, the UCA, and CEO are no longer parties to this Proceeding. And, because Staff, the UCA and CEO have withdrawn from this Proceeding,

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<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.*

<sup>12</sup> CEO’s Intervention at 2.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> Staff’s Withdrawal at 2.

<sup>15</sup> *Id.* at 2.

and there are no other parties to this Proceeding who have objected to the Application and accompanying Plan, the Application and Plan is no longer opposed.

18. Because the Application is uncontested, a hearing is not requested or required by law, and the Application is verified and supported by facts, the Application and related Plan may be considered under a modified procedure, without a hearing.<sup>16</sup>

19. Based on the foregoing, the ALJ will consider the Application and Plan under a modified procedure. At this time, the ALJ finds that a hearing is unnecessary. As such, this Decision vacates the June 15 and 16, 2023 evidentiary hearing. For the same reasons, except for the Company's deadline to file Direct Testimony, this Decision will vacate all other procedural deadlines in this Proceeding.

20. Turning to the deadline to file Direct Testimony, the ALJ finds that such testimony may be helpful allow the Commission to understand the implications of the Application and accompanying Plan, and to determine whether to grant the Application and approve the Plan. To give Black Hills sufficient time to address the issues discussed below, the ALJ will extend the deadline to file Direct Testimony to April 20, 2023.

21. Having reviewed the Application, the Plan, and all attachments thereto, the ALJ has identified several areas for clarification or further discussion in Direct Testimony. The ALJ has been unable to verify through the information in the record that the Plan complies with all mandatory strategic issues plan requirements in § 40-3.2-103, C.R.S. For example, the record is lacking (either through a lack of detail, clarity, or entirely) as to funding and cost-recovery mechanisms; a financial bonus structure; and information as to potential labor costs and

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<sup>16</sup> Rule 1403 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

compliance with applicable labor standards in § 40-3.2-103, C.R.S.<sup>17</sup> These are just a few examples and are not intended to be a full compilation of all the areas where the record may not demonstrate compliance with in § 40-3.2-103, C.R.S.

22. As the record reflects, the ALJ recognizes that this Proceeding presents an unusual circumstance<sup>18</sup> given that the Commission is amending its Rules Regulating Gas Utilities, 4 Code of Colorado Regulations 723-4 (the Rules) (in Proceeding No. 21R-0449G) in a way that clarifies the Company's obligations under § 40-3.2-103, C.R.S. and the anticipated timing of the Company's next strategic issues plan filing. While the Commission has adopted amended Rules, the Rules are not yet effective.<sup>19</sup>

23. Although the new Rules are not effective, the statutory provisions upon which those Rules are based, that is § 40-3.2-103, C.R.S., are effective, and thus, for ALJ to grant the Application and approve the Plan, the Company's Plan should demonstrate compliance with all mandatory plan requirements in § 40-3.2-103, C.R.S.

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<sup>17</sup> See § 40-3.2-103(1), (2)(a), (c)(I)(B), C.R.S. If this information is, in fact, in the record, Black Hills is encouraged to include a citation reference to such information in its Direct Testimony.

<sup>18</sup> Though not directly, the Commission appears to have acknowledged the unusual circumstances at play here given that it has dismissed without prejudice two other similar applications involving different utilities. See Decision No. C23-0115 at 3 (mailed February 21, 2023) in Proceeding No. 22A-0577G and Decision No. C23-0116 at 3 (mailed February 21, 2023) in Proceeding No. 22A-0579G. To the extent necessary, the ALJ takes administrative notice of these Decisions. See Rule 1501(c), 4 CCR 723-1.

<sup>19</sup> The Commission adopted Rules on December 1, 2022 (Decision No. C22-0760 in Proceeding No. 21R-0449G). Since then, the Commission has issued two Decisions granting or addressing numerous Applications for Rehearing, Reargument, or Reconsideration, has adopted revised Rules, and issued errata notices for the last Decision adopting Rules. See Decision Nos. C23-0039 (mailed January 17, 2023), C23-0117 (mailed February 24, 2023), C23-0117-E (mailed March 15, 2023) and C23-0117-EA (mailed March 15, 2023) and C23-0117-EB (mailed March 15, 2023). To the extent necessary, the ALJ takes administrative notice of these Decisions and the status of the newly adopted Rules Regulating Gas Utilities, 4 CCR 723-4, in Proceeding No. 21R-0449G. See Rule 1501(c), 4 CCR 723-1. As noted in Decision No. C23-0117, the newly adopted Rules become effective 20 days after publication in the Colorado Register by the Colorado Secretary of State. Decision No. C23-0117 at 51. The record in Proceeding No. 21R-0449G does not currently reflect that the Rules have been submitted for publication or published in the Colorado Register.

24. Unless the Company files Direct Testimony or otherwise provides information upon which the ALJ may rely to find that the Plan complies with all mandatory requirements in § 40-3.2-103, C.R.S., the ALJ may be unable to grant the Application and approve the Plan, even though it is no longer contested.<sup>20</sup>

25. For all these reasons, the ALJ will allow the Company additional time to file Direct Testimony. The Company is encouraged to include information in its Direct Testimony explaining how its Plan complies with the mandatory statutory requirements in § 40-3.2-103, C.R.S.

26. If the Company does not file Direct Testimony by the newly established deadline, or otherwise supplement the record, the ALJ will construe this to mean that the Company wishes for its Application and Plan to be considered based on the record, without Direct Testimony.

### **III. ORDER**

#### **A. It Is Ordered That:**

1. Consistent with the above discussion, the Withdrawal of Intervention of Right filed by the Office of the Utility Consumer Advocate (the UCA) on March 22, 2023; the Notice of Withdrawal of Intervention and Request for Hearing filed by Trial Staff of the Public Utilities Commission (Staff) on March 23, 2023; and the Notice of Withdrawal of Intervention of Right filed by the Colorado Energy Office (CEO) on March 24, 2023 are acknowledged.

2. Having withdrawn their respective Interventions, the UCA, Staff, and CEO are no longer parties to this Proceeding, and this is no longer a contested Proceeding.

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<sup>20</sup> That said, by filing the Plan on December 30, 2022, the Company has already met its obligation under § 40-3.2-103(1), C.R.S. to file the Plan in 2022.

3. For reasons discussed above, except for the deadline to file Direct Testimony, the procedural deadlines established by Decision No. R23-0182-I (mailed March 16, 2023) are vacated. The deadline to file Direct Testimony is extended to April 20, 2023.

4. The remote evidentiary hearing scheduled for June 15, and 16, 2023 is vacated.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director