

Decision No. R23-0532-I

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
APPROVING PROVISIONAL RATES, REQUIRING
COMPLIANCE FILINGS, SCHEDULING PUBLIC
COMMENT AND EVIDENTIARY HEARINGS, AND
ESTABLISHING DEADLINES AND PROCEDURES**

Mailed Date: August 10, 2023

TABLE OF CONTENTS

I. STATEMENT AND BACKGROUND	2
A. Summary.....	2
B. Procedural History	2
II. FINDINGS AND Conclusions	3
A. Motion	3
B. Findings and Conclusions.....	10
C. Public Comment Hearing	16
III. ORDER.....	19
A. It Is Ordered That:.....	19

I. STATEMENT AND BACKGROUND

A. Summary

1. This Decision addresses the Unopposed Joint Motion for Adoption of Procedural Schedule and For Approval of Provisional Rates with Conditions (Motion); approves provisional rates as set forth in the Motion; requires Black Hills to make compliance filings related to the provisional rates; requires Black Hills to file an amended Advice Letter No. 32 with an effective date for the related tariff sheets that is no earlier than September 6, 2023 within three business days of this Decision; adopts the majority of the proposed procedural schedule in the Motion; schedules public comment and evidentiary hearings; and establishes procedures for the same.

B. Procedural History

2. On May 8, 2023, Black Hills Colorado Gas, Inc. (Black Hills or the Company) filed Advice Letter No. 32 (Advice Letter) with tariff sheets to commence a combined Phase I and II rate case. Black Hills filed 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. On June 7, 2023, the Commission suspended the effective date of the tariff sheets filed with the Advice Letter to October 6, 2023, and set the Advice Letter for a hearing per § 40-6-111(1), C.R.S.²

4. On July 12, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry.³

¹ See Advice Letter No. 32 filed May 8, 2023 (Advice letter) at 5.

² Decision No. C23-0379 at 4 (mailed June 7, 2023).

³ July 12, 2023 Minute Entry.

5. In addition to Black Hills, the parties to this Proceeding are the Office of the Utility Consumer Advocate (the UCA); Trial Staff of the Colorado Public Utilities Commission (Staff); Walmart Inc. (Walmart); and A M Gas Transfer Corp (A M Gas).⁴

6. On July 26, 2023, the ALJ ordered the parties to confer on a procedural schedule; ordered Black Hills to file the parties' proposed consensus schedule by August 1, 2023; and advised that the schedule must accommodate an evidentiary hearing in September 2023 and that if the parties wished for the hearing to be held later, that Black Hills would need to file an amended Advice Letter with a later effective date for the tariff sheets.⁵

7. On July 31, 2023, the ALJ scheduled a remote prehearing conference for August 3, 2023 at 4:00 p.m. to address the parties' anticipated proposed procedural schedule and to move this matter forward.⁶

8. The ALJ held the prehearing conference as noticed. All parties appeared.

II. FINDINGS AND CONCLUSIONS

A. **Motion**

9. Black Hills, Staff, A M Gas, and Walmart (Joint Movants) join the Motion. The UCA supports the procedural schedule proposed in the Motion but does not take a position on the request to approve provisional rates.⁷

⁴ Decision No. R23-0485-I at 20 (mailed July 26, 2023)

⁵ *Id.* at 16-21.

⁶ Decision No. R23-0504-I (mailed July 31, 2023).

⁷ Motion at 1.

10. The Motion requests that the Commission adopt the below procedural schedule:

Procedural Schedule	Date
Answer Testimony	10/3/2023
Rebuttal/Cross Answer Testimony	10/30/2023
Corrected Testimony and Exhibits	11/13/2023
Prehearing Motions	11/14/2023
Public Comment Hearing	11/14/2023
Stipulation(s) or Settlement Agreement(s)	11/20/2023
Witness Order and Cross Examination Matrix	11/21/2023
Hybrid Evidentiary Hearing	November 28, 29, 30 and December 1, 2023
Statements of Position	12/21/2023
Technical Conference	1/4/2024
Expiration of Suspension Period	4/12/2024 ⁸

11. As to discovery, the parties agree that discovery responses as to answer, rebuttal and cross-answer testimony, (including objections thereto) will be served within seven calendar days of a request.⁹

12. The Motion states that based on the proposed procedural schedule, a final Commission decision will likely not be issued until after the maximum 250-day suspension period for the tariff sheets has expired.¹⁰ The Motion states that assuming the tariff sheets are suspended for the maximum period, if a final decision is not issued before the end of that suspension period (February 12, 2024), the tariff sheets will become effective on February 13, 2024.¹¹ To allow for a final Commission decision to issue after February 12, 2024, Black Hills agrees to amend the

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.*

Advice Letter to change the tariff sheets' effective date to August 7, 2023, such that the revised 250-day maximum suspension period would expire on April 12, 2024.¹² In exchange for this, and to keep Black Hills and its customers whole as to any revenue deficiencies or over-collections during the 60-day extension period from February 13, 2024 through April 12, 2024 (60-Day Extension Period), the Joint Movants agree that Black Hills will implement provisional rates, (explained below), subject to a true-up adjustment to reflect the revenues that would have been collected had final Commission-approved rates been in effect during the entire 60-Day Extension Period.¹³

13. Without waiving any arguments, the Joint Movants agree that Black Hills will place into effect a General Rate Schedule Adjustment (GRSA) rider for each of its three Base Rate Areas reflecting a percentage revenue increase to be applied to its then effective base rates, as follows: 14.51 percent for Base Rate Area 1 GRSA; 30.58 percent for Base Rate Area 2 GRSA; and 27.82 percent for Base Rate Area 3 GRSA (provisional rates).¹⁴

14. The Joint Movants agree that the GRSA rate riders will be effective February 13, 2024, the date by which Black Hills' proposed rates under the tariff sheets would otherwise have gone into effect.¹⁵ They agree that these rates will remain effective until the earlier of: (i) the effective date of revised base rates approved by the Commission in its final decision; or (ii) April 13, 2024.¹⁶ The Joint Movants explain that the above GRSA rate riders were calculated by applying 70 percent to the revenue requirement increase reflected in the Company's revenue

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ *Id.*

requirement studies, (Hearing Exhibit 103, Attachments SKJ-1, SKJ-2, and SKJ-3), for each base rate area and deducting the annual revenue requirement currently being collected through the System Safety and Integrity Rider (SSIR).¹⁷

15. The Motion states that for any Base Rate Area for which the Commission's final decision establishes rates that would have generated less revenues than the provisional rates during the 60-Day Extension Period, Black Hills will return to customers on their utility bills through a negative GRSA rate rider (true-up GRSA) the difference between the total amount that would have been collected under the final approved rates and the amount collected during the 60-Day Extension Period under the provisional rates, plus interest calculated at the Company's final authorized weighted average cost of capital (WACC) in this Proceeding.¹⁸ As to any Base Rate Area for which the Commission's final decision establishes rates that would have generated revenues greater than the provisional rates, Black Hills will surcharge customers through a positive GRSA rate rider the difference between the total amount that would have been collected under the final approved rates and the amount collected during the 60-Day Extension Period under the provisional rates, plus interest calculated at the Company's final authorized WACC in this Proceeding.¹⁹ Such positive or negative true-up GRSA rate rider will be in effect from July 1, 2024 to December 31, 2024. The Company agrees to make a filing setting forth its proposal to address any needed variances by March 1, 2025.

16. The Motion states that within 60 days of a final Commission decision in this Proceeding, Black Hills will make a compliance advice letter filing to place the true-up GRSA rate

¹⁷ *Id.*

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 5.

riders into effect, and will include information documenting the amount of under- or over-collections from customers in each Base Rate Area during the 60-Day Extension Period; the amount to be refunded or surcharged to customers, including interest; and the calculation of the true-up GRSA rate riders that will go into effect to accomplish any necessary true-up.²⁰ The Joint Movants agree that within 60 days of the date the true-up GRSA rate riders expire, Black Hills will make a compliance filing setting forth its proposed resolution of any remaining variance between the amounts collected and the amounts that should have been collected and will include information documenting the amounts refunded to or surcharged customers through the true-up GRSA rate riders, and the Company's calculation of any remaining variance.²¹

17. Within three business days of a decision granting the Motion, Black Hills will file a compliance advice letter to place into effect on 30-days' notice a revised tariff sheet, Sheet No. 59, to become part of Black Hills' Colorado PUC No. 1 gas tariff, reflecting the above provisional rates and true-up mechanisms.²² The Joint Movants agree that because the increase resulting from the provisional rates will be implemented in accordance with the procedures adopted for this Proceeding, no additional notice to customers will be required. Once the revised tariff sheet has become an effective part of Black Hills' Colorado PUC No. 1 gas tariff, Black Hills will promptly file an Amended Advice Letter (No. 32) changing the tariff sheets' effective date to allow for a 60-day extension of the maximum 250-day suspension period.²³

18. The Motion asserts that the proposed provisional rates and true-up mechanisms are in the public interest because they allow Intervenors who represent Colorado ratepayers more time

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 5-6.

²³ *Id.* at 6.

to vet the Company's rate filing and partially address uncertainties created for the Company's investors.²⁴ In support, the Motion explains that the Company does not believe that its currently effective rates generate sufficient revenues to cover its cost of providing service, and that the revenue deficiency translates into an average of more than \$73,000 per day and approximately \$4.4 million over a 60-day period.²⁵ In filing a rate case, Black Hills sets an expectation for its investors that by the time the 250-day statutory deadline expires, Black Hills will have a final resolution regarding its proposed rate increase.²⁶ The Motion submits that in the absence of a final resolution, by statute Black Hills can implement its filed rates on February 13, 2024, not subject to refund.²⁷ The Motion states that Black Hills agrees to forego a final decision by the statutory deadline and implementing rates on February 13, 2024 that are not subject to refund.²⁸ The Motion asserts that these concessions cause additional uncertainty for investors on whom the Company depends for financing its long-term capital projects and that implementing the proposed provisional rates does not mitigate this prolonged uncertainty.²⁹

19. The Motion explains that a number of Interveners representing the interests of Colorado ratepayers, such as Staff, UCA, A M Gas and Walmart, review and analyze the Company's rate case and propose adjustments, thereby serving an important function on behalf of Colorado ratepayers.³⁰ This is a time-consuming function which typically requires the all of the 250 days allowed by statute.³¹ The Motion alleges that there was a five-week delay in establishing

²⁴ *Id.* at 8.

²⁵ *Id.* at 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ *Id.*

a procedural schedule since the matter was not referred to an ALJ until July 12, 2023 (five weeks after the Commission suspended the tariff sheets).³² The Motion submits that this delay, alongside numerous other Commission proceedings in which the parties have substantial commitments and the year-end holidays, places considerable additional pressure on the parties to conduct the necessary discovery and prepare their respective positions for purposes of answer testimony, cross-answer testimony and rebuttal testimony, and for a hearing.³³ The Joint Movants state that the opportunity to develop a comprehensive and fulsome record, and to enter into meaningful settlement negotiations before the hearing would be severely compromised if they were required to comply with the ALJ's requirement in Interim Decision No. R23-0485-I that the evidentiary hearing be held in September 2023 absent Black Hills' agreement to amend the Advice Letter to allow for an extension of the tariff sheets' effective date.³⁴

20. The Joint Movants state that the Motion's proposal allows the Commission adequate time within which to issue its final decision; allows the parties to develop a more robust and fulsome record upon which the Commission will determine Black Hills' revenue requirements and resolve Phase II issues; affords protection to the Company and its customers in the event the final Commission-approved base rates are higher or lower than the provisional rates; and puts provisional rates in effect for a short duration, thereby minimizing the amount of any over-or under collections that will need to be trued up.³⁵

21. For all these reasons, the Motion states the agreements therein are in the public

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 8.

interest and just and reasonable.³⁶

B. Findings and Conclusions

22. During the prehearing conference, the ALJ discussed the Motion with the parties. The ALJ noted that she anticipates that this Proceeding will present a high volume of complex legal and policy issues and related evidence that must be considered, evaluated, and decided in order for her to reach a recommended decision. While the Motion's proposed timeline may be sufficient (though challenging) for the ALJ to issue a timely recommended decision, the timeline leaves little room for the Commission to evaluate the recommended decision, decide any exceptions that may be filed, and issue a final decision. The ALJ also raised concerns that the proposed true-up mechanism would allow Black Hills to collect interest from customers for any under-collected amounts during the period of time in which provisional rates are in effect. With all of this in mind, the ALJ informed the parties that she would be willing to approve the proposed true-up mechanisms only if Black Hills agrees to amend the Advice Letter to effectuate a 90-day extension (rather than the proposed 60-day extension) of the tariff sheets' effective date. The ALJ noted that this would balance Black Hills' interests with the need to ensure that the Commission is able to determine just and reasonable final rates.

23. Black Hills agreed to the ALJ's proposal. To effectuate a 90-day extension of the suspension period of the tariff sheets, Black Hills agreed that the new effective date for the Advice Letter's tariff sheets will be September 6, 2023, which will be suspended for 250 days.³⁷ Black Hills agreed that dates relevant to the effective date in the Motion would reflect this additional 30-day period. For example, all agreement terms in the Motion relating to the "60-Day Extension

³⁶ *Id.*

³⁷ May 13, 2024 is exactly 250 days after September 6, 2023.

Period” or the like would be to a 90-Day Extension Period, and the provisional rates would continue to be in effect until the earlier of the effective date of final Commission-approved rates or the day after the new suspension period expires. No party objected any of this.

24. The ALJ agrees with the parties that it would be difficult for Interveners to review voluminous testimony and documentary evidence, conduct discovery on it, and draft and file adequate answer testimony and supporting documents sufficiently in advance of the hearing date required by the maximum 250-day suspension period contemplated in § 40-6-111, C.R.S. under the existing tariff sheets’ effective date. Absent an agreement for Black Hills to file an amended Advice Letter with a much later effective date for the accompanying tariff sheets, the end result would likely be an inadequate record that would hamper the Commission’s ability to render a fully informed decision that serves the public interest. The provisional rates will be in effect for a relatively short period, and any under- or over- collection will be addressed within 6 months, thereby minimizing any negative impact on customers, and generational issues. For these reasons, and those in the Motion, the ALJ finds that is in the public interest to approve the Motion’s stipulations, as modified during the prehearing conference, requiring Black Hills to amend the Advice Letter to effectuate a 90-day extension of the suspension period of the tariff sheets’ effective date to September 6, 2023 and the Motion’s proposed provisional rates and true-up mechanisms.

25. During the prehearing conference, Black Hills expressed concern that the Commission may not approve the provisional rates and true-up mechanisms, despite the ALJ’s ruling approving the same. The ALJ noted that she would consider how to best address those concerns and would do so in this written Decision. The ALJ finds that the manner in which the Motion proposes to effectuate the provisional rates, true-up mechanisms, and the amended Advice

Letter increases the risks of a Commission decision rejecting the provisional rates and true-up mechanisms. Unlike other proceedings in which the Commission has approved provisional rates in similar circumstances, the Motion proposes to first put the provisional rates and true-up mechanisms in effect by filing a compliance advice letter within three business days of this Decision.³⁸ And, only after that becomes “an effective part” of the relevant tariff will Black Hills file an amended Advice Letter to effectuate the tariff sheets’ 90-day extension.³⁹ This approach puts the cart before the horse by allowing the provisional rates and true-up mechanisms to become an effective part of the Company’s tariff *before* it fulfills an essential aspect of this Decision’s approval of the provisional rates and true-mechanisms. Specifically, as discussed during the prehearing conference, the ALJ’s approval of the proposed provisional rates and true-up mechanisms is contingent upon Black Hills amending the Advice Letter to effectuate the agreed-upon 90-day extension. Failing to meet that prerequisite negates or undermines the basis for approving the provisional rates and true-up mechanisms, thereby increasing the risk of a negative Commission decision. What is more, the proposed approach creates unnecessary confusion and uncertainty as to the reliability of the agreed-upon procedural schedule in this Proceeding and is inconsistent with the manner in which provisional rates have been implemented in similar circumstances.⁴⁰

26. For all these reasons, the ALJ rejects the Motion’s proposals to implement the approved provisional rates, true-up mechanisms, and the agreed-upon amended Advice Letter. Instead, the ALJ will order Black Hills to file an amended Advice Letter with an effective date for

³⁸ Motion at 5-6. *See e.g.*, Decision No. R17-0723-I at 26 (mailed September 1, 2017) in Proceeding No. 17AL-0363; Decision No. R15-0512-I at 4, 50-51 (mailed June 1, 2015) in Proceeding No. 15A1-0135G.

³⁹ *Id.* at 6.

⁴⁰ *See e.g.*, Decision No. R17-0723-I at 26 (mailed September 1, 2017) in Proceeding No. 17AL-0363; Decision No. R15-0512-I at 4, 50-51 (mailed June 1, 2015) in Proceeding No. 15A1-0135G.

the relevant tariff sheets that is no earlier than September 6, 2023 in this Proceeding within three business days of this Decision's mail date.

27. The ALJ will also order Black Hills to file a compliance advice letter and revised Tariff Sheet No. 59 on February 8, 2024 in a new advice letter proceeding⁴¹ on not less than two business days' notice to put into effect the approved provisional rates and true-up mechanisms on February 13, 2024, terminating on the earlier of the Commission's final decision in this Proceeding or the day after the new suspension period expires (for the Advice Letter and tariff sheets in this Proceeding). Given that this is approved as a part of the procedures adopted in this rate case Proceeding, the ALJ agrees with the parties that no additional notice is necessary. The compliance advice letter and revised Tariff Sheet No. 59 must cite to this Decision number as grounds and authority for the same. This will cue the Commission that the provisional rates and true-up mechanisms have been carefully considered and approved as a part of this Proceeding, and that no additional notice is required.

28. In addition, Black Hills must provide the parties the proposed compliance advice letter and revised Tariff Sheet No. 59 and confer with the parties on the same to confirm that it conforms to this Decision. Conferring with the parties prior to making these compliance filings avoids the potential that a party may object to the filings as inconsistent with this Decision, which further mitigates Black Hills' concerns about the Commission's approval of the provisional rates and true-up mechanisms.

29. The ALJ finds and concludes that the above approach addresses Black Hills' concerns about future Commission action on the approved provisional rates and true-up

⁴¹ Filing this in a new advice letter proceeding will allow the provisional rates to go into effect while this Proceeding is pending.

mechanisms; is consistent with the manner in which the Commission has approved provisional rates in similar circumstances; and complies with this Decision's conditional approval of the provisional rates and true-up mechanisms. For the same reasons, the ALJ finds that this approach serves the public interest.

30. During the prehearing conference, the ALJ reviewed the proposed procedural schedule with the parties, and with a few minor modifications that the parties agreed to, approved the schedule. Modifications include clarifying that corrected testimony, final exhibits, and non-testimonial exhibits are due on November 13, 2023; modifying the deadline for stipulations and settlement agreements to November 17, 2023; adding a November 20, 2023 deadline for Settlement Testimony; and adding a November 21, 2023 deadline for responses to prehearing motions and to file exhibit and witness lists. The ALJ also declined to schedule a technical conference at this time but noted that one may be scheduled by separate order.

31. The ALJ approves the parties' agreements concerning discovery as reasonable and appropriate in the circumstances. Likewise, the ALJ approves the parties' request that the evidentiary hearing be held as a hybrid hearing, which allows parties and witnesses to appear in person or remotely.

32. 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; 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 November 21, 2023 indicating that no party will appear in person. If this happens, the hearing will

be converted to a fully remote hearing. No such filing is necessary as long as at least one party still plans to appear in person at the evidentiary hearing.

33. 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; the parties are responsible for reviewing it and confirming that it includes the exhibits they intend to offer into evidence during the hearing.

34. 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.⁴² This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

35. 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 creates unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties

⁴² 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."

incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits.

36. 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 (particularly as to confidential and highly confidential exhibits). It is the parties' responsibility, not Commission support staff's, to ensure that exhibits are correctly formatted, marked, and filed.

37. 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.⁴³ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

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

C. Public Comment Hearing

39. Consistent with the parties' Motion, the ALJ will schedule a fully remote public comment hearing for November 14, 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

⁴³ 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.

and time of the hearing at: <https://puc.colorado.gov/puccalendar>. 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.

40. In addition, to accommodate varying schedules of the public, the ALJ will hold two public comment hearing sessions on November 14, 2023, with the first beginning at 9:00 a.m., and continuing until 1:30 p.m. or when all public comments have been received, whichever is earlier; and the second beginning at 3:00 p.m., and continuing until 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 the scheduled end-times (1:30 p.m. and 6:30 p.m.). For example, if all those who appear at the morning session have provided public comment by 9:30 a.m. or sooner, the hearing will be adjourned, and for the afternoon session, if all those who appear have provided public comment by 3:30 p.m., the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after each session's scheduled start time assumes the risk that the hearing will already be concluded.

41. 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 <https://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.

42. 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.

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

44. 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.

45. 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.

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

1. The Unopposed Joint Motion for Adoption of Procedural Schedule and For Approval of Provisional Rates with Conditions (Motion) is granted with modifications, consistent with the above discussion.

2. Within three business days of this Decision's mail date, Black Hills Colorado Gas, Inc. (Black Hills or the Company) must file in this Proceeding an amended Advice Letter No. 32 (Amended Advice Letter) with an effective date for the related tariff sheets that is no earlier than September 6, 2023.

3. On February 8, 2024, Black Hills must file a compliance advice letter and revised Tariff Sheet No. 59 in a new advice letter proceeding on not less than two business days' notice to put into effect the provisional rates and true-up mechanisms approved by this Decision on February 13, 2024, terminating on the earlier of the Commission's final decision in this Proceeding or the day after the Amended Advice Letter's tariff sheets' suspension period expires. The compliance advice letter must cite to this Decision number as grounds and authority for the same, including that no additional notice is required. Prior to making these filings, Black Hills must confer with the parties on these compliance filings consistent with the above discussion.

4. A remote public comment hearing is scheduled as follows:

DATES: November 14, 2023

TIMES: 9:00 a.m., continuing until concluded but no later than 1:30 p.m.;
and 3:00 p.m., continuing until concluded but no later than 6:30 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.

5. 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. To register, interested persons must select a link available on the Commission's calendar of events on its website for the date and time(s) of the hearing at <https://puc.colorado.gov/pucalendar>. Participants in the public comment hearing must follow the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

6. Those wishing to observe but not participate in the public comment hearing may do so by observing the Commission's webcast for the assigned hearing room at: <https://puc.colorado.gov/webcasts>.

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

8. A hybrid evidentiary hearing is scheduled as follows:

DATES: November 28, 29, 30, 2023 and December 1, 2023

TIMES: 9:00 a.m. each day

PLACE: In-person: Commission Hearing Room at 1560 Broadway, Suite 250
Denver, Colorado, or
By video-conference using Zoom.

9. 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.

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

11. 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: <https://puc.colorado.gov/webcasts>.

12. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by October 3, 2023.

13. **Rebuttal and Cross-Answer Testimony Deadline.** Black Hills' rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by October 30, 2023.

14. **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), except for Settlement Testimony, by November 13, 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 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.

15. **Deadline for Non-Testimonial Hearing Exhibits.** By November 13, 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. November 13, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto, except for Settlement Testimony. Such filings must comply with the specific requirements in Attachment B.

16. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by November 14, 2023; responses to prehearing motions must be filed by November 21, 2023.

17. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by November 17, 2023.

18. **Deadline for Settlement Testimony.** The parties must file and serve testimony in support of or in response to any settlement agreement by November 20, 2023.

19. **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. Only if parties conclude that none of them will appear in person, Black Hills must make a filing on or by November 21, 2023 indicating that no party will appear in person.

20. **Deadline for Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix.** By November 21, 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 November 21, 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 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.

21. **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 December 21, 2023.

22. **Hearing Exhibit Number Block Assignments.** To efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering

system for all 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 399
Walmart Inc.	400 to 499
The Office of the Utility Consumer Advocate	500 to 599
Trial Staff of the Public Utilities Commission	600 to 699
A M Gas Transfer Corporation	700 to 799

23. 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 1100-1399; Walmart Inc. will use hearing exhibit numbers 1400-1499, etc.). Hearing Exhibit 800 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

24. 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

Rebecca E. White,
Director