

Decision No. R24-0674-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0079G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE NATURAL GAS SERVICE IN THE AMARA PROPOSED TERRITORY AND FLYING HORSE EAST PROPOSED TERRITORY WITHIN EL PASO COUNTY, COLORADO.

**INTERIM DECISION DENYING
THIRD UNOPPOSED MOTION
TO HOLD PROCEEDING IN ABEYANCE AND
REQUIRING BLACK HILLS TO FILE
PROPOSED CONSENSUS SCHEDULE**

Issued Date: September 19, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision denies the Third Unopposed Motion to Hold to Hold Proceeding in Abeyance and Request for Waiver of Response Time filed on September 16, 2024 (“Third Motion”); requires the parties to contact the Administrative Law Judge (“ALJ”) with proposed hearing dates no later than 12:00 p.m. on September 24, 2024; and requires Black Hills Colorado Gas, Inc. (“Black Hills” or “the Company”) to confer with the parties and file a proposed consensus procedural schedule by October 18, 2024.

B. Procedural History¹

2. On February 14, 2024, Black Hills initiated this matter by filing the above-captioned Application seeking a Certificate of Public Convenience and Necessity (“CPCN”) to serve certain areas in El Paso County, State of Colorado.

3. On April 10, 2024, the Commission referred this matter by minute entry to an ALJ for disposition.

4. In addition to Black Hills, the following entities are parties to this Proceeding: La Plata Cruz Holdings, LLC (“La Plata”) and Tee Cross Ranches, LLC (“Tee Cross”) (collectively, “the Developers”), Colorado Springs Utilities (“Springs Utilities”), and Colorado Public Utilities Trial Staff (“Staff”).²

5. On May 3, 2024, Black Hills filed an Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time (“First Motion”). The First Motion asked for an order holding this Proceeding in abeyance until July 15, 2024.³

6. On May 22, 2024, the ALJ acknowledged Black Hills’ waiver of the statutory deadline for a final Commission decision to issue (in its First Motion); granted the First Motion; held this matter in abeyance until July 15, 2024; and required Black Hills to file a status report by July 15, 2024.⁴

7. On June 26, 2024, Black Hills filed a Second Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time (“Second Motion”). The Second Motion asked for an order holding this Proceeding in abeyance until September 16, 2024.⁵

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

² Decision No. R24-0346-I at 5 (issued May 22, 2024).

³ First Motion at 1.

⁴ Decision No. R24-0346-I at 5-6.

⁵ Second Motion at 1.

8. On July 9, 2024, the ALJ granted the Second Motion; held this matter in abeyance until September 16, 2024; and required Black Hills to file a status report by September 16, 2024.⁶

9. On September 16, 2024, Black Hills filed the Third Motion.

II. FINDINGS AND CONCLUSIONS

10. The Third Motion states that Staff, Springs Utilities, and the Developers do not oppose the relief requested therein.⁷ Given that the Third Motion is unopposed, the Company requests that the response time to it be waived.⁸

11. The Third Motion explains that the City of Colorado Springs (“Colorado Springs”) voted not to annex one of the areas that Black Hills seeks to serve through its request for a CPCN here.⁹ The Company believes this matter is ready to move forward but that additional time is necessary for the parties to develop a consensus procedural schedule.¹⁰ As a result, the Third Motion asks that the matter be held in abeyance until September 30, 2024, at which time the Company will submit a proposed consensus procedural schedule.¹¹

12. As the Third Motion is unopposed, the ALJ finds good cause to waive the remaining response time to it and does so.¹²

13. For the reasons discussed below, the Third Motion is denied. First, it is unnecessary to hold this matter in abeyance for the short period of time requested. Instead, this Decision establishes deadlines to move this matter forward and allows the parties ample time to confer and

⁶ Decision No. R24-0492-I at 3 (issued July 9, 2024).

⁷ Third Motion at 1.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Rule 1400(b) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

propose a procedural schedule. The Company must confer with the parties on the matters discussed below and submit a proposed consensus procedural schedule that addresses all such items.

14. In the proposed schedule, the Company must state the parties' preference as to whether the hearing should be held fully in person at the Commission's office in Denver; remotely with all participants appearing by videoconference from remote locations; or a combination of the two (hybrid) where at least one party appears in person at the Commission's office in Denver and others may appear from remote locations. It has been the ALJ's experience that many parties choosing the hybrid option later change their minds and decide that no party will appear in person. As such, if the parties request a hybrid hearing, the Company will be required to make a filing at least two weeks before the hearing if no party plans to appear in person indicating this. In this circumstance, the hearing will be converted to a fully remote hearing.

15. The proposed schedule must include a hearing date and deadlines for the following items **that comply with the below timing directives:**

- Direct, Answer, Rebuttal, and Cross-Answer Testimonies;
- Non-Testimonial Exhibits (must be at least five business days before the hearing);
- Corrected Testimonial Exhibits (must be at least five business days before the hearing, before the prehearing motions deadline, and either before or at the same time as the deadline for non-testimonial exhibits);
- Settlement Agreements and Stipulations;
- Settlement Testimony;
- Exhibit and Witness Lists;
- Prehearing Motions;
- Responses to Prehearing Motions (if the deadline for prehearing motions is less than 20 days before the hearing);
- Joint Witness Examination Matrix;
- Statements of Position; and

- Any other filing the parties identify as necessary or appropriate.

16. The proposed schedule may also include agreements as to discovery if the parties wish to deviate from the Commission's discovery rules.

17. The parties must informally contact the ALJ via email to clear potential hearing dates as soon as possible, but no later than 12:00 p.m. on September 25, 2024.¹³ The ALJ will be out of the country shortly after this date and will be unable to access email for an extended time. For the same reason, the ALJ will allow the parties more time than requested to submit a proposed procedural schedule.¹⁴

III. ORDER

A. It Is Ordered That:

1. The remaining response time to Black Hills Colorado Gas Inc.'s ("Black Hills") Third Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time filed September 16, 2024 ("Third Motion"), is waived. The Third Motion is denied consistent with the above discussion. This Proceeding is no longer held in abeyance.

2. By 12:00 p.m. on September 25, 2024, the parties must contact the Administrative Law Judge to clear potential hearing dates.

3. Black Hills must confer with the parties consistent with the above discussion and file a proposed consensus procedural schedule including the above items on or by October 18, 2024.

¹³ This will allow the ALJ to approve proposed hearing dates, and if not, to work the parties to identify other dates, and reserve the agreed-upon dates on the Commission's hearing schedule so that no conflicts arise between the time the proposed schedule is filed and when ALJ issues a decision setting the hearing.

¹⁴ The ALJ will be unable to rule on a proposed schedule until the week of October 21, 2024. As such, there is no reason to set an earlier deadline.

4. 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