

Decision No. R24-0763

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.

**RECOMMENDED DECISION ACKNOWLEDGING
APPLICATION WITHDRAWAL, DISMISSING
APPLICATION, AND CLOSING PROCEEDING**

Issued Date: October 23, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision acknowledges that Black Hills Colorado Gas, Inc. (“Black Hills” or “the Company”) withdraws its above-captioned Application (“Application”), and for that reason, dismisses the Application and closes this Proceeding.

B. Procedural History¹

2. On February 14, 2024, Black Hills initiated this matter by filing the 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 administrative law judge (“ALJ”) for disposition.

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

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

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 a Third Unopposed Motion to Hold Proceeding in Abeyance and Request for Waiver of Response Time (“Third Motion”). The Third Motion sought an order to hold this matter in abeyance until September 30, 2024, at which time Black Hills planned to submit a proposed consensus procedural schedule to move this matter forward.⁷

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.

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

⁷ Third Motion at 3.

10. On September 19, 2024, the ALJ denied the Third Motion, finding it was unnecessary to hold the matter in abeyance for the short period of time requested.⁸ At the same time, the ALJ required the parties to confer on hearing dates and clear those dates with the ALJ, and ordered Black Hills to confer with the parties and file a proposed consensus procedural schedule by October 18, 2024.⁹ Consistent with these requirements, the parties cleared hearing dates with the ALJ for February 11 and 13, 2025.

11. On October 14, 2024, Black Hills filed a Notice of Withdrawal of Application (“Withdrawal”).

II. FINDINGS AND CONCLUSIONS

12. The Withdrawal states that parties developed a procedural schedule (with the above hearing dates), but that upon further information and discussion, Black Hills decided to withdraw its Application.¹⁰ The Company informed the parties of its decision to withdraw the Application. Black Hills submits that because a hearing has not been scheduled, that it may withdraw the Application by providing notice that it is doing so, per Rule 1309(d) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1.¹¹ Black Hills submits that its Withdrawal accomplishes this.¹²

13. As relevant here, Rule 1309(d), allows a party to withdraw an application upon notice to the Commission and all parties “prior to 45 days before the first day of hearing.”¹³ Thereafter, a party has to file a motion seeking leave to withdraw an application; in ruling on such

⁸ Decision No. R24-0674-I at 3 (issued September 19, 2024).

⁹ *Id.* at 5.

¹⁰ Withdrawal at 3.

¹¹ *Id.*

¹² *See id.*

¹³ Rule 1309(d), 4 CCR 723-1.

a motion, the Commission must consider whether good cause exists to withdraw the application and whether other parties would be prejudiced.¹⁴

14. As an initial matter, because no hearing has been scheduled, the ALJ finds that per Rule 1309(d), 4 CCR 723-1, Black Hills may withdraw the Application by filing a notice of the same, and that no motion is necessary. Given this, the ALJ treats the Withdrawal as a notice per Rule 1309(d), 4 CCR 723-1.¹⁵

15. Since Black Hills has properly followed the notice procedures in Rule 1309(d), it is not required to show good cause for its Withdrawal or establish that withdrawing the Application does not prejudice the Interveners.¹⁶ Black Hills acts within its rights to withdraw the Application. For the reasons and authorities discussed, the ALJ acknowledges that Black Hills has withdrawn its Application, and for that reasons, dismisses the Application without prejudice.

16. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

¹⁴ *Id.*

¹⁵ As such, responses to the Withdrawal are not contemplated under Commission Rules. That said, in an abundance of caution, the ALJ finds good cause to waive the response time to the Withdrawal because the Withdrawal resolves the Interventions. *See* Rule 1400(b), 4 CCR 723-1.

¹⁶ *See id.*

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, Black Hills Colorado Gas, Inc.'s ("Black Hills") withdrawal of its above-captioned Application 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 ("Application"), per its Notice of Withdrawal of Application filed October 14, 2024, is acknowledged.

2. Black Hills' Application in this Proceeding is dismissed without prejudice.

3. Proceeding No. 24A-0079G is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

6. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless this Recommended Decision is stayed by the Commission upon its own motion, this Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

7. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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