

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0633G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**COMMISSION DECISION ADDRESSING APPLICATION
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C25-0091 AND
DENYING MOTION FOR LEAVE TO RESPOND**

Issued Date: April 8, 2025
Adopted Date: March 26, 2025 & April 2, 2025

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of the Application seeking Rehearing, Reargument, or Reconsideration (“RRR Application”) of Decision No. C25-0091, which the Commission issued on February 12, 2025. The RRR Application was filed on March 4, 2025, by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (“Black Hills” or the “Company”).

2. By this Decision, we grant in part, and deny in part, the RRR Application and acknowledge Black Hills’ notice of withdrawal from the Settlement Agreement. The Commission also denies the Motion for Leave to Respond (“Motion for Leave to Respond”) filed by SWEEP on March 17, 2025.

3. We also schedule a prehearing conference for the rehearing process on April 10, 2025, at 3 p.m.

B. Background

4. Black Hills filed its inaugural Clean Heat Plan application pursuant to § 40-3.2-108, C.R.S. (the “Clean Heat Statute”) and Rules 4725 to 4733 of the Commission’s Rules Regulating Gas Utilities, 4 *Colorado Code of Regulations* (“CCR”) 723-4 on December 29, 2023. In its Application, Black Hills requested that the Commission approve: a) Black Hills’ inaugural Clean Heat Plan for 2024-2028; b) Black Hills’ preferred Clean Heat Plan scenario; c) Black Hills’ proposed budgets within the preferred scenario and the proposed budget flexibility; d) Black Hills’ proposed cost recovery mechanisms including the creation of a new surcharge called the Clean Heat Plan Rider (“CHPR”); e) Black Hills’ proposal to track and defer costs incurred in association with preparing and litigating this proceeding into a non-interest

bearing regulatory asset that will be recovered through the CHPR; and f) any waivers or variances the Commission deems necessary for approval and implementation of its proposed clean heat plan.

5. On March 7, 2024, the Commission referred the Proceeding to an Administrative Law Judge (“ALJ”) through Decision No. C24-0148-I, and the following entities became parties: the Colorado Public Utilities Commission Trial Staff (“Staff”), the Colorado Energy Office (“CEO”), SWEEP, and the Colorado Utility Advocate (“UCA”).

6. On August 16, 2024, Black Hills filed a Motion to Approve the Settlement Agreement. Along with Black Hills, Staff, UCA, and CEO (collectively the “Settling Parties”) joined the Settlement Agreement. SWEEP did not join the Settlement.

7. The ALJ held an evidentiary hearing on August 29, 2024. On September 20, 2024, each UCA, Staff, SWEEP, CEO, and Black Hills filed Statements of Position (“SOP”).

8. On October 29, 2024, the ALJ issued Decision No. R24-0784 (the “Recommended Decision”). The Recommended Decision approves the Settlement Agreement in full.

9. On November 18, 2024, SWEEP filed exceptions to the Recommended Decision. On November 26, 2024, the Commission granted a motion filed by CEO to extend the response deadline to SWEEP’s exceptions in Decision No. C24-0873. On December 5, 2024, Black Hills and CEO each filed a response to SWEEP’s Exceptions. The Commission addressed SWEEP’s Exceptions through Decision No. C25-0091, issued on February 12, 2025 (“Exceptions Decision”).

10. On March 4, 2025, Black Hills filed its RRR Application of Decision No. C25-0091.

11. On March 17, 2025, SWEEP filed its Motion for Leave to Respond.

12. On March 25, 2025, Black Hills filed a response in opposition to SWEEP’s Motion (“Black Hills SWEEP Response”).

13. By Decision No. C25-0248, issued on April 2, 2025, the Commission granted the RRR Application for the sole purpose of tolling the statutory deadline.

14. The Commission deliberated on the merits of the RRR applications at the March 26, 2025, and April 2, 2025 Commissioners' Weekly Meetings (“CWM”).

C. Discussion

1. RRR Application

15. Black Hills filed its RRR pursuant to § 40-6-114, C.R.S., and Rule 1506, 4 CCR 723-1. In its RRR Application, Black Hills requests that the Commission reconsider its modifications to the Settlement Agreement made in the Exceptions Decision and requests the Commission reconsider its decision and approve the Settlement without modification. If the Commission does not reconsider its Exceptions Decision, then Black Hills requests it “should provide for additional process in this proceeding to evaluate other modifications to the Settlement to fairly rebalance the outcome given the changes to the CHP. Black Hills no longer supports the overall elements of the Settlement and reverts its support back to the Company’s rebuttal position.”¹ Overall, the Company argues the Settlement is in the public interest and should be restored.

16. In the Exceptions Decision, the Commission also noted it cannot ascertain, based on the evidentiary record available, how much money was available under the cost cap for beneficial electrification (“BE”) implementation but that limiting demand side management (“DSM”) to weatherization and envelope-related measures “frees up” some funds allocable to BE.

¹ Black Hills RRR, pp. 25-26.

In its RRR, the Company indicated that only \$1.55 million of the clean heat DSM funds would likely be utilized for weatherization and envelop measures, thus placing \$11.6 million into this newly created BE program. According to the Company's calculations, the funding switch results in 34 percent less emission reduction and a less cost-effective portfolio.² Black Hills asserts that the modifications to the Settlement Agreement actually run contrary to the purpose of the Clean Heat Statute because they would reduce the emission reduction achieved by the Company's clean heat plan per modeling performed by the Company.³

17. Black Hills' RRR espouses two primary objections to the Exceptions Decision. First, that gas DSM expenditures should not be limited to building shell and weatherization efforts, and second, the Commission should reconsider requiring the Company, a gas-only utility, to include "substantial electrification" in its Clean Heat Plan.

18. Regarding the Company's first objection, the Company requests the Commission reconsider its directive to exclude all gas DSM programs from the approved clean heat plan. In the Exceptions Decision, the Commission found it appropriate to restrict the expanded DSM funding approved in this CHP to weatherization- and envelope-related initiatives only⁴ because it raised concerns that DSM expenditures may be used to replace gas furnaces and other appliances without a demonstrated emission reduction improvement.⁵ Black Hills argues in its RRR that the Clean Heat Statute defines "Clean Heat Resources" to include "gas demand-side management programs,"⁶ and thus the Exceptions Decision is contrary to the plain language of the Clean Heat Statute. Black Hills argues that when construing a statute, the Commission must apply the statute

² Black Hills RRR, pp. 1-2.

³ *Id.* at pp. 19-20.

⁴ Exceptions Decision at ¶ 37.

⁵ *Id.*

⁶ § 40-3.2-108(2)(c)(I), C.R.S., cites to the definition of "demand-side management programs" found in § 40-1-102(6) (emphasis added).

as written if its language is clear and unambiguous, and here the language is clear and unambiguous that “gas DSM” is a clean heat resource. Black Hills further argues that this modification to the Settlement Agreement to limit which DSM measures are available for CHP funding is even contradictory to the Exceptions Decision itself which states “a variety of [Clean Heat] resources is appropriate.”⁷ Finally, the Company argues that the Commission’s Decision would actually increase emissions based on the Company’s preliminary modeling and that the Commission’s concerns with “like for like” replacements could be remedied by gathering specific information on the equipment being replaced to demonstrate that it is not a common occurrence.⁸

19. Black Hills also opposes the Commission’s decision to expand the Company’s beneficial electrification program from the small community of Rocky Ford to its entire service territory. First, Black Hills argues that “mandating electrification” for a gas-only utility is not supported by statute because BE is not an “available tool” to gas-only utilities.⁹ Black Hills points to the canon of statutory construction that courts and agencies should “presume that the legislature passed a statute with deliberation and with full knowledge of all existing law applicable to the same subject.” Here, the Company argues that it is relevant that the 2021 legislative session produced three related statutes: the Clean Heat Statute, House Bill (“HB”) 21-1238,¹⁰ and Senate Bill (“SB”) 21-246.¹¹ According to the Company, HB 21-1238 is focused on *gas* utilities while SB 21-246 focused on *electric* utilities. According to Black Hills, SB 21-246 requires the Commission to allow electric utilities, not gas only utilities, to offer incentives to their customers

⁷ Black Hills RRR, pp. 4-5, citing Exceptions Decision at ¶30.

⁸ Black Hills RRR, pp. 4-5.

⁹ Black Hills RRR, p. 7.

¹⁰ *Public Utilities Commission Modernize Gas Utility Demand-side Management Standards* codified at § 40-3.2-103(3.5)(a), C.R.S., states “The Commission shall not require the removal of gas-fueled appliances or equipment from an existing structure nor ban the installation of gas service lines to any new structure.”

¹¹ *Electric Utility Promote Beneficial Electrification*, Section 1 “Legislative Declaration,” effective September 7, 2021.

to replace gas appliances with high-efficiency electric appliances. Black Hills contends the Commission must presume that the legislature passed all three statutes with deliberate and full knowledge of existing law applicable to the same subject. It claims that if the legislature intended to mandate gas-only utilities to implement electrification it would have done so in SB 21-246. Further, Black Hills argues that the Clean Heat Statute lists eight resources that qualify within the definition of “clean heat resource” and allows a utility to incorporate “any one or a combination of” those eight resources.¹²

20. Second, the Company argues that the Commission’s Exceptions Decision which requires Black Hills to offer BE rebates to all customers constitutes “forced electrification” because it mandates the Company provide a service it does not provide.¹³ The Company asserts that “forcing gas customers to pay a rate that is intended to electrify other customers does not accurately reflect the cost of service rendered and it reduces the Company’s opportunity to recover its fixed cost and earn a reasonable return” and thus is a violation of both cost causation principles and the right of the public utility company and its investors to have an opportunity to earn a return reasonably sufficient to maintain the utility’s financial integrity.¹⁴

21. Third, Black Hills questions the record support for the Commission’s Exceptions Decision. According to Black Hills, the Exceptions Decision “relied on biased modeling” provided by SWEEP and is based, in part, on errors in the Commission Decision. Black Hills asserts the Commission’s Exceptions Decision inappropriately took the Company’s concerns over the ability to scale up DSM programs out of context, and incorrectly cites Black Hills testimony which does not provide support for the Commission’s assertion that customers will remain dual fuel users.¹⁵

¹² Black Hills RRR, pp. 8-9.

¹³ *Id.* at 9.

¹⁴ *Id.*

¹⁵ Black Hills RRR, pp. 11-13; 16-18.

22. Black Hills also suggests the Commission’s Exceptions Decision fails to address important policy considerations including: (1) how to coordinate and align efforts amongst the 23 different electric service providers in the Company’s service territory, as well as the Commission’s lack of jurisdiction over these providers; (2) lack of evidentiary record that electrification in this instance would reduce net greenhouse gas emissions over the lifetime of the conversion and reduce societal cost or provides for more efficient utilization of grid resources; (3) questions related to the burden electrification could put on small electric utilities, and who should pay for electrification efforts.¹⁶ Finally, Black Hills warns that the Commission’s “unilateral and significant modifications to the Settlement will have a chilling effect on all future settlement discussions.”¹⁷ Black Hills requests the Commission reconsider its Exceptions Decision and approve the Settlement without modification, or otherwise provide for additional process to evaluate other modifications to the Settlement to fairly rebalance the outcome given the changes to the clean heat plan.

2. SWEEP Motion for Leave to Respond

23. SWEEP filed a Motion for Leave to Respond and its response to Black Hills’ RRR. SWEEP moves pursuant to Rule 1506(b) of the Commission’s Rules of Practice and Procedure, under which the Commission may grant leave to file a response if the RRR application includes “an attempt to introduce facts not in evidence,” or if there are “newly discovered facts or issues” that the moving party “could not, with reasonable diligence, have discovered prior” to the RRR application. SWEEP contends its Motion meets this standard, because it claims the Company’s

¹⁶ Black Hills RRR, pp. 15-16.

¹⁷ *Id.* at p. 26.

RRR introduces several new facts, and thus a response is warranted here. Black Hills opposes SWEEP's Motion and filed a response on March 25, 2025 ("Black Hills SWEEP Response").

24. SWEEP suggests Black Hills offers new and unreliable modeling results and a response is warranted because Black Hills has presented new facts that "underestimate the greenhouse gas reductions and overstate the costs of [BE]."¹⁸ According to SWEEP, its modeling shows cumulative emissions reductions of approximately 11,700 MT of CO₂e in 2027 for the electrification measures implemented in 2025–2027. This evaluation indicates "approximately ten times more emissions reductions from beneficial electrification than the modeling results Black Hills presented in its RRR application. Moreover, the emissions reductions resulting from the heat pumps installed during the 2025–2027 timeframe of this Clean Heat Plan will continue to accrue after 2027, as the heat pumps will reduce emissions over their fifteen-year life."¹⁹

25. SWEEP also argues Black Hills has presented new facts that likely underestimate the greenhouse gas reductions of the remaining gas DSM under the Commission's Exceptions Decision. SWEEP points to several statements in Black Hills' RRR Application that purport to calculate the emission reductions of the Exceptions Decision that SWEEP contends are "likely underestimate" the emission reductions of the Decision.²⁰

26. SWEEP also suggests that, in denying Black Hills' RRR Application, the Commission could also clarify and address what DSM measures should count towards clean heat compliance in its RRR decision. Specifically, the Commission could explain that in addition to weatherization and envelope measures, Black Hills can also spend Clean Heat DSM funds on other DSM measures that do not involve directly funding new gas equipment. This could include

¹⁸ SWEEP Motion, p. 3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

measures such as pipe insulation, smart thermostats, advanced controls, faucet aerators and other water saving measures, and waste heat recovery.

a. Black Hills Response to SWEEP Motion

27. Black Hills filed a response in opposition to SWEEP's Motion in which it argues SWEEP has not met the standard of Commission Rule 1506(b). In its Response, Black Hills argues that any new facts in its RRR filing were in response to the Commission's directive to "to file an updated version of its 2024-2028 clean heat plan to reflect all terms and conditions that are approved as a result of this proceeding."²¹ The Company argues that SWEEP's Motion "grossly mischaracterizes the preliminary modeling provided by the Company."²² Black Hills also argues that the Motion's proposal to require the Company to work with stakeholders to develop the list of DSM measures that are eligible for Clean Heat DSM funding is wholly inappropriate at this stage of the Proceeding.²³

3. Findings and Conclusions

a. SWEEP Motion for Leave to Respond

28. We deny SWEEP's Motion for Leave to Respond to Black Hills' Application for RRR. Pursuant to the Commission's Rules of Practice and Procedure, 4 CCR 723-1506, replies to applications for RRR are not generally allowed; however, the Commission also has discretion on whether to accept replies to such pleadings upon consideration of a proper motion for leave to reply. Here we find that SWEEP has not met the standard set forth in the Commission's Rules. SWEEP's request to "clarify" which measures should receive DSM rebates through further stakeholder process is not a proposal properly included in a response for RRR pursuant to the

²¹ Exceptions Decision at ¶ 54.

²² Black Hills Response to SWEEP's Motion, p. 2.

²³ *Id.* at 3.

Commission's Rules. To the extent that there are new factual assertions found in the Company's Application, we agree with Black Hills that such information is responsive to the Commission's Exceptions Decision and not grounds for a response to its RRR Application.²⁴

b. Black Hills RRR Application

29. Overall, we find that the Settlement approved in Decision No. R24-0784 is not in the public interest and thus cannot be implemented as presented. We are primarily concerned that the Settlement does not put Black Hills on a meaningful path towards compliance or progress towards the statutory clean heat requirements and allocates ratepayer dollars through the clean heat program that do not advance the objectives of the clean heat statute. Further, we are concerned that the Settlement does not address critical legal and technical issues associated with Clean Heat planning as it relates to gas only utilities such as Black Hills, nor does it offer a pathway to clearly remedy this concern in the future. We see little value in a short-term solution that leaves so many unanswered questions to a future date regarding how Black Hills will comply with the directives of SB 21-264.²⁵ Because we find the unmodified Settlement not in the public interest, we cannot grant Black Hills' RRR Application that requests us to approve the entirety of the Settlement.

30. Our Exceptions Decision attempted to find a path forward for resolution of Black Hills' CHP Application that would leave as much of the Settlement in place as possible while resolving issues the Commission found worked against the public interest. However, the

²⁴ Regardless, the information provided by Black Hills in response to the Commission's directive to update its clean heat plan does not serve as the basis for the Commission's decision herein.

²⁵ While Chair Blank does not object to additional process ordered here, he disagrees with this portion of the rationale and believes that there may be significant value in waiting to better understand how other utilities both within and outside of Colorado begin to implement beneficial electrification. More specifically, Chair Blank is concerned that substantial regulatory resources may be spent in an uphill and challenging effort to develop a Black Hills' CHP program that the majority deems meaningful given the early stage of beneficial electrification implementation nationally, the comparatively small size of this utility, and the perverse financial incentives that appear to be driving Black Hills' approach to beneficial electrification,

Exceptions Decision, which relied on modifications to the Settlement and did not adjudicate each issue previously resolved by the Settlement, cannot stand in light of Black Hills' stated intentions to leave the Settlement Agreement. The Exceptions Decision is mooted by Black Hills' decision to leave the Settlement Agreement as indicated in its RRR Application. Because Black Hills, the proponent of the Application has withdrawn from the Settlement Agreement, it is appropriate to adjudicate the original positions of the parties as they existed upon the filing of the Company's rebuttal testimony.

31. We also acknowledge that Black Hills' RRR Application raises certain evidentiary concerns that would be better addressed through additional process rather than through adjudications of further rounds of RRR filings. Black Hills has notified the Commission in its RRR Application that it will withdraw from the Settlement and requests the Commission to reconsider all contested issues as identified in the Company's Rebuttal Testimony.²⁶ Pursuant to § 40-6-114(3), C.R.S., if "it appears that the original decision [of the Commission] is in any respect unjust or unwarranted, the commission may reverse, change, or modify" its decision. However, the underlying decision here can no longer stand as a final determination of this Proceeding without the Settlement in place. Thus, additional process within this Proceeding as requested by Black Hills is appropriate. We agree that additional process in this Proceeding, and taking the Proceeding as it was before the filing of the Settlement, is the best course of action. Additional process will allow us to reach a solution in this Proceeding that is in the public interest, and will allow us to further review the positions of the parties without considering the terms of the Settlement Agreement. We anticipate accepting additional evidence through an abbreviated procedural schedule and issuing a new decision on the merits of this CHP Application.

²⁶ Black Hills RRR Application, p. 2.

32. To that end, we schedule a pre-hearing conference so that we can address the remainder of the procedural schedule with the parties to this Proceeding. The Commission schedules a pre-hearing conference for April 10, 2025, at 3 p.m. for the purpose of discussing the future process with the parties.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0091 filed on March 4, 2025, by Black Hills Colorado Gas, Inc. (“Black Hills”), is granted, in part, and denied, in part, consistent with the discussion above.

2. The withdrawal of Black Hills from the Settlement Agreement filed on August 16, 2024, is acknowledged.

3. The Motion for Leave to Respond, and Response, to Black Hills’ Application for Rehearing, Reargument, or Reconsideration filed on March 17, 2025, by SWEEP is denied, consistent with the discussion above.

4. A remote pre-hearing conference scheduled in this Proceeding as follows:

DATE: April 10, 2025

TIME: 3:00 p.m.

PLACE: Join by videoconference using Zoom at the link to be provided to parties by e-mail from commission staff.

5. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 26, 2025 & April 2, 2025.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners