Decision No. R25-0678

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0283G

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY, FOR APPROVAL OF ITS GAS PERFORMANCE INCENTIVE MECHANISM.

RECOMMENDED DECISION
GRANTING UNOPPOSED APPLICATION

Issued Date: September 22, 2025

I. STATEMENT AND SUMMARY

1. This Decision grants the above-captioned Verified Application filed June 30, 2025 ("Application") and closes this Proceeding.

II. PROCEDURAL HISTORY

2. On June 30, 2025, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy ("Black Hills" or the "Company") filed the Application with supporting testimony and attachments thereto. The Application asks the Commission to approve the Company's initial Gas Performance Incentive Mechanism ("GPIM").

3. On July 1, 2025, the Commission provided public notice of the Application.[1]

4. On August 4, 2025, Commission Trial Staff ("Staff") filed a "Notice of Intervention as of Right . . . Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing" ("Intervention").[2]

[1] Notice of Application filed July 1, 2025.
[2] The Office of the Utility Consumer Advocate filed a Nondisclosure Agreement on July 2, 2025, but did not intervene in this matter.

5. On August 15, 2025, the Application was deemed complete as contemplated by § 40-6-109.5(1), C.R.S., by operation of Rule 1303(c)(IV) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1.

6. On August 20, 2025, the Commission referred this matter by minute entry to an Administrative Law Judge ("ALJ") for disposition.

7. On September 5, 2025, Staff filed a "Notice of Withdrawal of Intervention as of Right . . ." ("Withdrawal"). In its Withdrawal. Staff states that after further review of the Application, Direct Testimony and Attachments, Staff has identified no objections to the Application, and therefore withdraws its Intervention.[3]

III. FINDINGS AND DISCUSSION

A. Relevant Law

8. The Commission has extensive and broad constitutional and statutory authority to regulate public utility rates, services, and facilities.[4] Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.[5] To this end, § 40-3-102.5(2)(a), C.R.S., required the Commission to adopt Rules that establish mechanisms to align a utility's financial incentives with its customers' interests as to incurred fuel costs.[6] Such mechanisms must be designed to protect customers and improve the utility's management of fuel costs, and must be tailored for utilities based on a utility's size or ability to implement the mechanisms.[7]

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[3] Withdrawal at 1.

[4] *Pub. Serv. Co. of Colo. v. Pub. Util. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960). *See* Colo. Const. art. XXV; §§ 40-3-101, 40-3-102, 40-3-111, 40-6-111, C.R.S.

[5] §§ 40-3-101(1) and (2), 40-3-102, C.R.S. *See* §§ 40-3-111, and 40-6-111, C.R.S.

[6] The Commission adopted the required Rules in Proceeding No. 24R-0168EG.

[7] § 40-3-102.5(2)(b), C.R.S.,

9. Rule 4607 requires a utility to implement a GPIM for each gas cost adjustment ("GCA") rate area with more than 50,000 customers.[8] Rule 4607(a) requires a utility with more than 50,000 but less than 500,000 full service customers to file an application to establish a GPIM that complies with Rule 4607(a)(I) to (IV), 4 CCR 723-4. And, Rule 4607(a)(I) to (IV) requires the utility to include a GPIM benchmark for commodity gas purchases; identify the commodity gas volumes included in the GPIM; include a benchmark for upstream supply costs; and establish a methodology for calculating the risk sharing amount to be borne or retained by the Company.[9]

10. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.[10]

11. The proponent of an order has the burden of proof to establish that the relief sought should be granted.[11] Parties must meet their respective burdens of proof by a preponderance of the evidence, which requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.[12] The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.[13] A party has met this burden when the evidence, on the whole, tips in favor of that party.[14]

[8] Rule 4607, of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-4.

[9] Rule 4607(a)(I) to (IV), 4 CCR 723-4.

[10] *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

[11] \ § 24-4-105(7), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

[12] *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). *See also* §§ 24-4-105(7) and 13-25-127(1) C.R.S.

[13] *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm'n*, 949 P.2d 577, 585 (Colo. 1997).

[14] *Schocke v. Dep't of Revenue,* 719 P.2d 361, 363 (Colo. App. 1986).

12. The Commission may decide uncontested matters without a hearing when a hearing is not required or requested; the application is accompanied by a sworn statement verifying sufficient facts; and the record includes sufficient facts and evidence to make a determination on the relief sought.[15]

B. Application

13. Based on the foregoing authorities and the Application, the ALJ finds that the Commission has jurisdiction and authority to decide this matter.

14. Staff's Withdrawal from this Proceeding is acknowledged. Staff is not a party to this Proceeding.

15. Given that Staff withdrew its Intervention, and no other interested person intervened in this matter, the Application is uncontested. Because the Application is uncontested; a hearing is not required or requested; the Application is accompanied by a sworn statement verifying sufficient facts; and the record includes sufficient facts and evidence to make a determination on the relief sought, the ALJ will decide this matter without a hearing based on the record.[16]

16. Black Hills filed its Application as required by Rule 4607(a) 4 CCR 723-4. The Company explains that the GPIM will be calculated for its Eastern and Western GCA regions.[17]

17. Black Hills proposes to establish a GPIM benchmark specific to each GCA region by: a) designating the percentage of gas to be purchased as baseload and as spot for each Black Hills GCA region; b) applying weighted percentages to the applicable monthly index and daily index price locations; and c) applying reasonable adjustments, including a market value adjustment

[15] *See* § 40-6-109(5), C.R.S., and Rule 1403, of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.
[16] *See* § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1.
[17] Hearing Exhibit 102, 6: 12-14.

that accounts for actual premiums charged by suppliers and factoring in price volatility.[18] The Company may also take force majeure into account when calculating the GPIM benchmark, or to adjust to actual purchases.[19]

18. Black Hills' proposed GPIM will include gas purchased to serve forecasted customer load and gas purchases for storage injections, including baseload, spot purchase volumes (priced at published market index locations), and short-term fixed price spot purchases.[20] The GPIM does not include long-term fixed price supply contracts, financial hedging instruments, storage withdrawals, and costs associated with upstream pipeline.[21]

19. When calculating upstream pipeline services, Black Hills will not include pipeline service charges for pipeline reservation rates, commodity rates, or other charges associated with contract utilization.[22]

20. The Company proposes a GPIM risk sharing component with a $0.50 per dekatherm ("Dth") deadband, consistent with Rule 4607(b)(III)(B), 4 CCR 723-4.[23] Under the Company's proposal, if the difference between the actual cost of gas and the GPIM benchmark price is within the deadband, no sharing occurs and if the difference is greater than the deadband, the value will be multiplied by three percent and applied to the purchase volumes.[24] The Company proposes a cap and floor of 30 basis points, to be applied whether the sharing amounts are positive or negative.[25]

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[18] Hearing Exhibit 101, 11: 15-18; 11: 22-23—12: 1-5. To address intramonth price volatility, the Company will incorporate one standard deviation to the mean (or average) of each applicable daily price index location for the month. *Id.* at 12: 5-7.

[19] *Id.* at 12: 12-13.

[20] *Id.* at 13: 20-23—14: 1.

[21] *Id.* at 13: 21-23—14: 1-9.

[22] *Id.* at 14: 17-21.

[23] *See id.* at 16: 6-10.

[24] *Id.* at 16: 10-13.

[25] *Id.* at 16: 8-19.

21. Being fully advised in this matter, the ALJ finds that the proposed GPIM meets applicable requirements; that the Company met is burden of proof; and that approving the Application is consistent with the public interest.

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

IV. ORDER

A. The Commission Orders That:

1. Colorado Public Utilities Commission Trial Staff's ("Staff") "Notice of Withdrawal of Intervention as of Right . . ." filed on August 5, 2025, is acknowledged. Staff is not a party to this Proceeding.

2. The Application for Approval an Initial Gas Performance Incentive Mechanism that Black Hills Colorado Gas, Inc. doing business as Black Hills Energy ("Black Hills") filed on August 4, 2025 is granted.

3. No more than five business days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file a compliance advice letter and tariff sheets in substantially the same form as the Tariff Sheets in Hearing Exhibit 102, Attachment NMH-3, on not less than two business days' notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

4. This Proceeding is closed.

5. 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.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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

b. If a party seeks to amend, modify, annul, or reverse basic findings 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.

7. If exceptions to this Decision are filed, they shall 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

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Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director