

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21I-0076EG

IN THE MATTER OF THE INVESTIGATION INTO THE EXTREME WEATHER EVENT OF
FEBRUARY 13-16, 2021 AND THE PLANNING ACTIVITIES ASSOCIATED WITH THE
EVENT.

**COMMISSION DECISION DIRECTING
THE FILING OF ADDITIONAL INFORMATION
AND GRANTING MOTIONS FOR
EXTRAORDINARY PROTECTION**

Mailed Date: March 12, 2021
Adopted Date: March 10, 2021

I. BY THE COMMISSION

A. Statement

1. The State of Colorado, as well as much of the central United States, experienced extremely cold weather beginning February 13, 2021. This event resulted in unprecedented natural gas prices that were on the order of \$190 per MMBtu at the Rocky Mountain - Cheyenne Hub and \$150 per MMBtu at the West Texas Permian Basin – Waha Hub.

2. On February 17, the Commission issued Decision No. C21-0087 opening this Proceeding and directing Atmos Energy Corporation (Atmos Energy), Black Hills Colorado Gas, LLC and Black Hills Colorado Electric, Inc. (together, Black Hills), Colorado Natural Gas, Inc. (CNG) and Public Service Company of Colorado (Public Service) to file, on or before February 24, 2021, “Situation Reports.”

3. In Decision No. C21-0101 the Commission directed utilities to report specific information in addition to the questions initially proposed in Decision No. C21-0087, directed Public Service to include information for its steam business, and sought voluntary reporting from

non-regulated utilities providing gas or electric service in Colorado regarding impacts of the extreme weather event, actions taken.

4. The Commission seeks certain additional information as a follow-up to the Situation Reports provided by the utilities on March 5, 2021. Specifically, the Commission requests that certain questions from Decision No. C21-0101 be updated to include the period from February 17 to 19. In addition, the Commission clarifies that the response to question M should indicate the total dollar cost estimated to be attributable to the average residential and commercial customer. The questions to be supplemented include items C, E, G, J, and M are reproduced here:

- C) Supplemental: Details of the purchases of natural gas executed by the utility to serve projected loads for the period February 13-16, 2021 and the period February 17-19, 2021;
- E) Supplemental: A discussion of the level or amount of hedged gas that was budgeted to serve customers over the period February 13-16, 2021 and February 17-19, 2021 and the actual amount of hedged gas that was used to serve customers over the same period;
- G) Supplemental: Details regarding the amount of natural gas the utility had contracted prior to February 8, 2021, to serve load over the period February 13-16, 2021 and February 17-19, 2021;
- J) Supplemental: Details regarding time of purchase, counter-party, amount, delivery point, delivery timeframe and cost for each purchase of incremental natural gas executed the week of February 8-12, 2021 and February 17-19, 2021;
- M) Supplemental: Estimates of the total cost of the incremental purchases and the impact of the event to the average residential and the average small commercial customer for the entire period from February 13 to 19, 2021 in terms of the total cost per customer.

5. In addition to the supplemental responses discussed above, the Commission directs the utilities to address the following additional question:

V) Identify all load response tariffs, including interruptible, curtailable load, and non-firm service, that the Company offers. Include how many customers are on each tariff and the approximate amount of demand represented by these customers.

W) Please detail all communications with load response customers and resulting interruptions or curtailments for the period of February 8-19, 2021. Include an estimate of the total amount of load reduced by tariff for each day of the period.

6. The Commission also encourages utilities to provide in this proceeding, any updated information on the questions posed in Decision No. C21-010,¹ as new or revised information is available.

B. Motions for Protective Order

1. Public Service Motion

7. On March 5, 2021, Public Service filed its Motion for Extraordinary Protection and Request for Waiver of Response Time (Motion). Public Service requests the Commission issue a protective order restricting access to Highly Confidential information contained in the attachment to its Motion to the Commission, its Staff, Administrative Law Judges (ALJs), employees of the Office of Consumer Counsel (OCC) and Assistant Attorneys General (AAGs) representing the Commission and its Staff. Public Service also requests waiver of response time to its Motion.

8. According to Public Service, Highly Confidential Attachment 1 to its Report sets forth Public Service's specific transactions during the period February 8-16, 2021. Public Service represents this information is extremely competitively sensitive and highly confidential. Public Service contends that if the information were to be disclosed to other parties participating in the trading market, the Company's ability to pay reasonable prices for its natural gas supply would be seriously jeopardized and cause serious harm to its customers. Public Service represents the

Highly Confidential information could provide sellers of fuel to Public Service with critically important information about the Company's operations and forecasts that would allow sellers to alter their prices upward. As such, access to this information should be limited to Commission Staff and the OCC.

9. Public Service also attached as Exhibit A to its Motion its nondisclosure agreement it proposes to be used by members of Commission Staff, the OCC and their AAGs pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1101(b)(V). Exhibit B attached to the Motion is the affidavit of Mr. Jeffrey D. Ishee, Manager of Gas Supply for Xcel Energy Service, Inc. providing the departments within Xcel Energy with access to the Highly Confidential information and the period of time for which the Company requests that the information remain subject to Highly Confidential protection.

10. Public Service represents that Highly Confidential Attachment 1 to the Report has been filed contemporaneously in this proceeding in a form that comports with Rule 4 CCR 723-1-1101(a) as required by Rule 1101(b)(VII).

11. Public Service also requests response time to the Motion be waived.

2. Black Hills Motion for Protective Order

12. On March 8, 2021, Black Hills filed its motion requesting the Commission grant extraordinary protection for commercially sensitive forecasted gas purchase and price hedging information contained in the following appendices to Black Hills' Response to Decision Nos. C21-0087 and C21-0101:

Highly Confidential Appendix 2 - BHCOE

Highly Confidential Appendix A – BHCG Forecasted Load

Highly Confidential Appendix C – Base-Spot-Storage Supply by GCA

Highly Confidential Appendix G – BHCG Contract Supply

Highly Confidential Appendix H – BHCG Storage

Highly Confidential Appendix J – BHCG Feb 8-12th Gas Purchases

13. According to Black Hills, the Highly Confidential Information that is the subject of this Motion for Extraordinary Protection contains Black Hills' forecast of quantities and costs for future natural gas purchases and upstream pipeline services, by location, and related gas hedging activities. The forecasted gas purchase information is proprietary, commercially and market sensitive, constitutes trade-secrets, and deserves extraordinary confidentiality protection.

14. Black Hills represents that the detailed information setting forth by location the quantities and costs of the Company's planned future gas purchases and upstream pipeline services, as well as its projected gas hedging activities, is commercially valuable information that may potentially be used by counterparties to disadvantage the Company in its negotiations regarding future transactions. In addition, Black Hills is concerned such detailed forecasted gas purchase information could be used by other participants in the natural gas marketplace to influence the market price of these gas purchases or upstream pipeline services in a manner that would increase costs to Black Hills and, ultimately, to Black Hills' customers. Disclosure of the Highly Confidential Information in Black Hills' view would expose to public view market-sensitive and commercially sensitive forecasted gas purchase information that could result in increased current and future costs that will subsequently be borne by customers.

15. Black Hills has prepared a non-disclosure agreement for counsel and subject-matter experts in accordance with Rule 1101(b)(V), which is attached to its Motion as Attachment A. Black Hills requests that the Commission limit access to this information to appropriate personnel of the Commission, the Commission Staff, Commission Staff Counsel and the OCC that have signed a nondisclosure agreement in the form attached or are subject to on-going non-disclosure agreements signed on an annual basis and on file with the Commission, as well as staff and legal

counsel of the OCC that have signed a nondisclosure agreement in the form attached or are subject to on-going non-disclosure agreements signed on an annual basis and on file with the Commission.

C. Findings on Motions for Extraordinary Protection

16. Public Service and Black Hills each state good cause to grant each parties' Motion for extraordinary protection to the Highly Confidential Information each has filed in this proceeding. The parties have fully complied with the requirements of Commission Rule 4 CCR 723-1-1101 in seeking a protective order for extraordinary protection. Therefore, we find good cause to grant Public Service's Motion and Black Hills' Motion.

17. We do note that Public Service indicates the specific form of nondisclosure agreement (NDA) that it proposes be used by members of the Commission Staff, the OCC and their legal counsel pursuant to the protective order requested in this Motion, is required by Rule 1101(b)(V). However, we observe Commission Staff is not required to execute such an NDA. Rather, pursuant to Rule 1100(i), Commission Staff is permitted to have access to all information filed under the Confidentiality Rules by virtue of the annual nondisclosure agreement executed annually by Staff and Commission counsel. As a result, it is not necessary for Staff to execute the NDA provided by Public Service. Only the OCC is required to execute the NDAs.

18. Therefore, Commissioners, Commission Staff and Advisory Staff and their respective AAGs shall have access to the Public Service and Black Hills' information that has been deemed Highly Confidential and subject to Extraordinary Protection by this Decision.

19. Staff of the Office of Consumer and its AAGs shall have access to the Public Service and Black Hills information upon execution of the NDAs provided by each utility.

20. We further note it is the responsibility of Public Service and Black Hills to ensure compliance with the NDAs.

II. ORDER

A. The Commission Orders That:

1. Each of the aforementioned utilities are directed to prepare and file, on or before March 19, 2021, supplemental responses in this Proceeding consistent with the discussion above.
2. The Motion of Public Service of Colorado for Extraordinary Protection and Request for Waiver of Response Time filed on March 5, 2021 is granted consistent with the discussion above.
3. The Motion of Black Hills Colorado Gas, Inc. and Black Hills Colorado Electric, LLC for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed on March 8, 2021 is granted consistent with the discussion above.
4. Response time to the Motion of Public Service of Colorado and to the Motion of Black Hills Colorado Gas, Inc. and Black Hills Colorado Electric, LLC is waived.
5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 10, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners