

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0477G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO
GAS, INC. D/B/A BLACK HILLS ENERGY FOR APPROVAL OF A NEW GAS METER
SAMPLING PROGRAM AND RELATED TARIFF CHANGES.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
REQUIRING CONFERRAL, REQUIRING
FILING OF A STATUS REPORT,
AND GIVING ADVISEMENTS**

Mailed Date: January 14, 2021

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I. STATEMENT

A. Procedural History.

1. On November 5, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), filed with the Colorado Public Utilities Commission (Commission), a

Verified Application (Application) for approval of a new Gas Meter Sampling Program (Sampling Program) and related revisions to its Colo. PUC No. 1 Tariff (Tariff). Black Hills also filed the Direct Testimony and Attachments of one witness, Svetlana V. Atoyan.

2. In the Application, Black Hills states that it currently has Commission approved gas meter sampling programs for each legacy local distribution company.¹ Both gas meter sampling programs are similar, but contain slight differences. Through this Application and supporting testimony and attachments, Black Hills requests that the Commission approve a consolidated Sampling Program.

3. Black Hills asserts that the proposed Sampling Program satisfies applicable Commission requirements while maintaining accuracy levels at no cost to customers. According to Black Hills, approving the proposed changes does not negatively impact customer rates. The proposed changes align with the other gas jurisdiction's gas meter sampling program thereby simplifying the current requirement to run separate programs. In addition, Black Hills asserts, utilizing Base Date extends the life of refurbished meters.²

4. As a result of the proposed Sampling Program changes, Black Hills explains that revisions to the Tariff will be required to comply with Commission Rules. The Tariff, with redlined revisions, was included with the filing as Hearing Exhibit 101, Attachment SVA-3. If the proposed Sampling Program is approved, Black Hills will make a compliance filing of the clean version of the Tariff (Hearing Exhibit 101, Attachment SVA-4) after the Commission issues a final decision approving the Application.³

¹ See Proceeding No. 15A-0900G, Decision No. C15-1362 approving gas meter sampling program for Black Hills/Colorado Gas Utility Company, Inc. (BHCOG) and Proceeding No. 17A-0379G, Decision No. C17-0716 approving gas meter sampling program for Black Hills Gas Distribution, LLC (BHGD).

² Application, at page 2.

³ *Id.*

5. On November 6, 2020, the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were ordered to file motions to intervene within 30 days, or no later than December 7, 2020.⁴ Commission Staff had seven additional days to file a notice of intervention of right. The Notice observed that Black Hills had filed testimony with the Application and was seeking a Commission decision within 120 days.

6. During the Commission's weekly meeting held on December 16, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred to an Administrative Law Judge (ALJ) for disposition. Subsequently the undersigned ALJ was assigned to preside over this Proceeding.

II. FINDINGS AND CONCLUSIONS

A. Further Extension of the Decision Deadline.

7. As noted above, Black Hills filed supporting direct testimony and attachments with its Application. Pursuant to § 40-6-109.5(1), C.R.S. (2019), when supporting testimony is filed with an application, the Commission's initial decision is due within 120 days after the application is deemed complete, or no later than April 15, 2021 in this Proceeding. Moreover, § 40-6-109.5(1), C.R.S. (2019), provides further that: "If the commission finds that additional time is required, it may, by separate order, extend the time for decision by an additional period not to exceed *one hundred thirty days*." (Emphasis added.)

⁴ Since the 30-day deadline for interventions, pursuant to the Notice and to Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), fell on Sunday December 6, 2020, the deadline was extended by operation of law until the next business day, or until Monday December 7, 2020. Section 40-6-121, C.R.S.

8. A procedural schedule has not yet been proposed or adopted in this Proceeding. In order to allow the full litigation of the Application before the Commission, the following must occur: the ALJ must conduct a hearing on this Application, review statements of position, and issue a recommended decision; the exceptions process must proceed, if any are filed; and the Commission must have adequate time to deliberate and decide the exceptions. Considering the time available under the 120-day timeline, it is not feasible for the Commission to issue a final decision on the Application by April 15, 2021. Therefore, pursuant to § 40-6-109.5(1), C.R.S. (2019), the ALJ will exercise his discretion to extend the decision deadline by this separate order for an additional 130 days, that is for a maximum period of 250 days, or until August 23, 2021.

B. Interventions.

9. No motions for permissive intervention, pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, were filed by the December 7, 2020 deadline.

10. Rule 1401(b) of the Rules of Practice and Procedure, 4 CCR 723-1, governs interventions as of right and states in pertinent part: “A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding.”

11. On December 4, 2020, the Colorado Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right, Request for Hearing and Entry of Appearance (OCC’s Intervention). OCC intervenes in this Proceeding to determine if the Application is just,

reasonable, and in the public interest. OCC's Intervention is of right and identifies six issues it may address regarding the Application.⁵

12. OCC's Intervention as of right is acknowledged.

13. On December 4, 2020, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff's Intervention). Staff's Intervention is of right and identifies five specific issues it will raise and address in this Proceeding.⁶

14. Staff's intervention as of right is acknowledged.

15. Both OCC and Staff request an evidentiary hearing on the Application.

16. The Parties to this Proceeding are Black Hills, OCC, and Staff.

C. Procedural Schedule and Hearing Dates.

17. Instead of scheduling a prehearing conference, the ALJ will direct the Parties to confer with respect to acceptable hearing dates and the procedural matters addressed in the following paragraphs and to attempt to negotiate agreements on the same. The ALJ will order Black Hills to coordinate these discussions. The Parties will be directed to file a Status Report in this Proceeding **no later than January 22, 2021**, advising the ALJ of the results of their discussions. If the Parties are able to agree to a consensus procedural schedule and acceptable hearing date(s), there will be no need to schedule a prehearing conference. If no such agreements

⁵ OCC's Intervention, ¶ 5 at pages 2 and 3. According to OCC, one issue is whether this Proceeding should be consolidated with Proceeding No. 20AL-0380G, a Black Hills Phase I gas rate case. By Decision No. C21-0004 (issued on January 6, 2021), the Commission rejected the Advice Letter and tariffs filed in Proceeding No. 20AL-0380G and permanently suspended the tariffs. Therefore, the consolidation issue is moot.

⁶ Staff's Intervention, ¶ 2 at pages 1 and 2. Staff also raised the issue of whether this Proceeding should be consolidated with the Black Hills Phase I gas rate case. As a result of Decision No. C21-0004 in Proceeding No. 20AL-0380G, the consolidation issue is moot.

can be reached by that date, the ALJ will schedule a prehearing conference to address those procedural matters.

18. *The Parties must discuss and, if possible, reach agreement on the following procedural matters:* (a) the date by which each intervenor will file answer testimony and attachments; (b) the date by which Black Hills will file rebuttal testimony and attachments; (c) the date by which each intervenor may file cross-answer testimony and attachments;⁷ (d) the date by which each Party will file corrected testimony and attachments;⁸ (e) the date by which each Party will file prehearing motions, other than motions relating to discovery, but including any dispositive motions, motions *in limine*, or motions to strike;⁹ (f) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (g) the date by which the Parties will file any stipulations or a settlement agreement;¹⁰ (h) the date(s) for the evidentiary hearing, including a statement of how many days the Parties will need to try this case; and (i) the date by which each Party will file its post-hearing statement of position (statements of position will be simultaneous and no responses will be permitted).¹¹

19. Absent a waiver of the decision deadline pursuant to § 40-6-109.5(3), C.R.S. (2019), or a further extension of the deadline pursuant to § 40-6-109.5(4), C.R.S. (2019), the Commission decision in this Proceeding must issue on or before **August 23, 2021**. To allow time for filing statements of position, issuing the recommended decision, filing exceptions, filing

⁷ Cross-answer testimony shall respond only to the answer testimony of another intervenor.

⁸ Filing of corrections is limited to correcting errors (*e.g.*, mathematical errors, typographical errors) in the testimonies or attachments as filed. Without a finding of good cause and leave of the ALJ, corrections may not be used for any other purpose (*e.g.*, to make material or substantive changes to prefiled testimony or attachments).

⁹ This date shall be at least 21 calendar days before the first day of the hearing.

¹⁰ This date shall be at least ten calendar days before the first day of hearing.

¹¹ Post-hearing statements of position should be filed no later than 14 calendar days from the conclusion of the evidentiary hearing.

responses to exceptions, and issuance of the Commission's decision on exceptions, the **evidentiary hearing in this matter must be *concluded* no later than April 30, 2021.**¹²

20. In their conferral, the Parties should also discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 1405 of the Rules of Practice and Procedure, 4 CCR 723-1, are not sufficient.

21. In their conferral, the Parties should also discuss the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 1100 and 1101 of the Rules of Practice and Procedure, 4 CCR 723-1, are not adequate. This discussion should include the treatment of additional information for which extraordinary protection may be sought, assuming that there may be such additional information.

22. In their Status Report, the Parties may call the ALJ's attention to any additional issues relevant to this Proceeding.

D. Other Advisements.

23. The following page limits on statements of position will be imposed: The statement of position to be filed by Black Hills may not exceed 50 pages in length, exclusive of a table of contents and appendices; the statement of position to be filed by each intervenor may not exceed 30 pages in length, exclusive of a table of contents and appendices. If the intervenors file a joint statement of position, the foregoing 30-page limit will apply to the joint statement of position.

24. **The Parties are advised, and are on notice, that** they must be familiar with, and strictly abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc and in hard copy format from the Commission.

¹² The ALJ advises counsel and the Parties that he has a two week hearing set from May 3 through 14, 2021 in Proceeding No. 20AL-0432E, a Public Service Company of Colorado Phase II electric rate case.

25. At this point in the Proceeding, all Parties are represented by counsel. The ALJ calls counsels' attention to the requirement of Rule 1202(d), 4 CCR 723-1, that, "Every pleading of a party represented by an attorney shall be signed by the attorney, and shall state the attorney's address, telephone number, e-mail address, and attorney registration number." **The Parties are advised, and are on notice, that** filings must comply with this requirement and with the other requirements found in the Rules of Practice and Procedure pertaining to filings made with the Commission.¹³

26. **The Parties are advised, and are on notice, that** timely filing with the Commission means that the Commission *receives* the filing by the due date. Thus, if a document is placed in the mail on the date by which the document is to be filed, then the document is *not* filed timely with the Commission. Pleadings and other documents are filed with the Commission either by using the E-filings System, or by filing the original of a paper document along with three copies. Emailing pleadings and other documents to the ALJ, the Commissioners, the Director of the Commission, or other employees of the Commission **does not** constitute a proper filing under Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

27. **Each Party is specifically advised** that all filings with the Commission must also be served upon counsel for all other Parties, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

28. **Each Party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, responding Parties (*i.e.*, the Parties that did not file a motion)

¹³ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of his rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks of pleadings for the appropriate e-mail addresses. If any counsel's email address changes during the pendency of this Proceeding, please promptly update it with the Commission.

have the procedural right to file a written response to non-intervention motions within 14 days after service of the motion, unless that time is shortened by the ALJ or the Commission.

29. Other advisements may be provided in subsequent Interim Decisions.

III. ORDER

A. It Is Ordered That:

1. Pursuant to § 40-6-109.5(1), C.R.S. (2019), the time for issuance of the Commission's decision in this Proceeding shall be extended by an additional period of 130 days, or to and including August 23, 2021.

2. The Notice of Intervention of Right, filed by the Colorado Office of Consumer Counsel (OCC) on December 4, 2020, is acknowledged.

3. The Notice of Intervention as of Right, filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on December 8, 2020, is acknowledged.

4. Consistent with the findings and conclusions above, counsel for Black Hills Company of Colorado (Black Hills) shall discuss with counsel for OCC and Staff the procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision and shall attempt to negotiate agreement on the same.

5. The Parties shall file a Status Report **no later than January 22, 2021**, advising the Administrative Law Judge (ALJ) of the results of their discussions. If the Parties are able to agree to a consensus procedural schedule and acceptable hearing date(s), no prehearing conference will be scheduled. If no such agreements can be reached by that date, the ALJ will by separate decision schedule a prehearing conference to address those procedural matters.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director