

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0195E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PLAN, READY EV, FOR PROGRAM YEARS 2021-2023 AND FOR RELATED TARIFF APPROVALS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING WALMART'S UNOPPOSED
MOTIONS AND MODIFYING HEARING SCHEDULE**

Mailed Date: April 13, 2021

I. STATEMENT, BACKGROUND, FINDINGS AND CONCLUSIONS

A. Summary.

1. This Decision grants Walmart Inc.'s (Walmart) Motion to Be Excused from the Hearing (Motion to Be Excused) and Motion to Excuse Witness from Appearing at Hearing (Motion to Excuse Witness) filed on April 12, 2021. This Decision also vacates the first day of hearing April 19, 2021, thereby modifying the hearing schedule, per the parties' suggestion in Black Hills Colorado Electric, LLC's (Black Hills) Notice of Required Filings (Notice, filed on April 12, 2021).

B. Background, Findings, and Conclusions.

2. On May 8, 2020, Black Hills Colorado Electric LLC (Black Hills) filed an Application for Approval of its Transportation Electrification Plan, Ready EV, for Program Years 2021 through 2023 and for Related Tariff Approvals.

3. The Commission accepted Walmart's intervention, and made it a party to this case on September 16, 2020. Decision No. C20-0670-I.

4. During its February 10, 2021 Weekly Meeting, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. Before referring this matter, the Commission established procedural deadlines and scheduled a remote evidentiary hearing for April 19 through 23, 2021. Decision No. C20-0737-I adopted October 14, 2020.

5. Walmart filed its Motion to Excuse Witness and Motion to Be Excused on April 12, 2021. Later that day, Black Hills filed its Notice, which states that Black Hills is contemporaneously filing a hearing exhibit list, a witness examination matrix showing the proposed order of witnesses and each party's estimated examination time for each witness, and two potential cross-examination exhibits, as required by Decision Nos. R21-0089-I and R21-0096-I. Notice at 1. The Notice also states that based upon the parties' estimated time for examining witnesses, that the parties "are agreeable to shortening the hearing" by starting the first day of hearing on April 20, 2021 instead of April 19, 2021. *Id.*

6. In addition, the witness examination matrix contemporaneously filed with the Notice (as Attachment A) indicates that the parties require 12.77 hours to examine all witnesses, and that Walmart does not intend to call any witnesses or cross-examine any other party's witnesses. *See* Attachment A, witness examination matrix filed April 12, 2021.

7. Walmart seeks to be excused from appearing at the hearing because it does not plan to present evidence at the hearing, either through its own witnesses or by cross-examining other parties' witnesses. Motion to Be Excused at 1. Walmart plans to monitor the proceeding but does not plan to actively participate if its Motion to Be Excused is granted. *Id.* In addition, Walmart conferred with the parties to this proceeding about the Motion to Be Excused; no one objected. *Id.*

8. As to its request to excuse witness Lisa V. Perry, Walmart reiterates that it does not intend to present additional evidence or cross-examine any witnesses. Motion to Excuse Witness at ¶¶ 2-3. Walmart also states that no party had indicated that it wishes to cross-examine Ms. Perry as of the time the Motion to Excuse Witness was filed, and that no party objects to the Motion. *Id.* at ¶¶ 5-6.

9. Given that both of Walmart's Motions are unopposed, and the closely approaching hearing date, the ALJ finds good cause to waive the response time to the Motions and does so. *See* Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. For the reasons that Walmart identifies, as explained above, and because no party objects, the ALJ grants both Motions.

10. In addition, given the parties' estimated time to examine witnesses, the ALJ finds that it is unnecessary to keep the matter scheduled for a five-day hearing. Accordingly, the ALJ accepts the parties' proposal to start the first day of hearing on April 20, 2021 and modifies the hearing schedule accordingly.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Walmart Inc.'s Motion to Be Excused from the Hearing and Motion to Excuse Witness from Appearing at Hearing filed on April 12, 2021 are granted.

2. The April 19, 2021 hearing date scheduled in this matter is vacated. The first day of the evidentiary hearing on the above-captioned Application hearing will now be on April 20, 2021, commencing at 9:00 a.m. This change does not impact or otherwise modify any other aspects of the hearing.

3. This Decision is effective immediately.

(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 "Doug Dean".

Doug Dean,
Director