

Decision No. R22-0582-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0304E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS 2023-2025 BENEFICIAL ELECTRIFICATION PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING AND ESTABLISHING
DEADLINES AND PROCEDURES**

Mailed Date: September 28, 2022

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision approves the proposed procedural schedule that Black Hills Colorado Electric LLC, doing business as Black Hills Energy, (Black Hills) filed on behalf of the parties, schedules a fully remote evidentiary hearing; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History¹

2. On June 30, 2022, Black Hills filed the above-captioned Application (Application) with attachments seeking the Commission to approve its proposed 2023 to 2024 Beneficial Electrification Plan (Plan).

3. On August 31, 2022, the Commission referred this Proceeding to an administrative law judge (ALJ) for disposition.

¹ Only the procedural history necessary to understand this Decision is included.

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (the UCA); the Colorado Public Utilities Commission Trial Staff (Staff); the Colorado Energy Office (CEO); Energy Outreach Colorado (EOC); and Western Resource Advocates (WRA).²

5. On September 19, 2022, the ALJ directed the parties to confer on a procedural schedule, and Black Hills to make a filing by September 27, 2022 with the parties' proposed procedural schedule.³ At the same time, the ALJ provided information relevant to the parties' conferral; extended the statutory deadline for a final Commission decision per § 40-6-109.5(1), C.R.S.; and denied the UCA's Unopposed Motion Requesting the Filing of Supplemental Direct Testimony, with instructions that the parties confer and submit a proposal as to how best to provide an assessment of the impact that the Inflation Reduction Act of 2022, H.R. 5376 (Inflation Reduction Act) may have on the Company's Plan (as proposed in its direct case), consistent with the information identified in paragraph 18 of Decision No. R22-0553-I.⁴

6. On September 27, 2022, Black Hills filed an Unopposed Motion to Approve Procedural Schedule and Request for Waiver of Response Time (Motion). As discussed below, the Motion includes the parties' proposed procedural schedule and addresses the items identified in Decision No. R22-0553-I.

² Decision No. R22-0553-I at 11 (mailed September 19, 2022).

³ *Id.*

⁴ *Id.*

II. FINDINGS AND CONCLUSIONS

7. The Motion states that it is unopposed and that all parties either support the Motion or do not oppose it.⁵ Because the Motion is unopposed, the ALJ finds good cause to waive the response time to it, and does so.⁶

8. In the Motion, Black Hills waives the statutory deadline for a final Commission decision to issue, as permitted by § 40-6-109.5(3), C.R.S.; this accommodates the parties' proposed procedural schedule.⁷ Black Hills also asks that despite this waiver, that the ALJ and the Commission consider its Application as expeditiously as possible so that it may implement the Plan as soon as possible in 2023.⁸

9. The parties propose that the issues related to the Inflation Reduction Act, set forth in ¶ 18 of Decision No. R22-0553-I, be addressed through discovery, Answer Testimony, Cross-Answer Testimony, Rebuttal Testimony, and nontestimonial exhibits, consistent with Decision No. R22-0553-I.⁹

10. As to the manner in which the hearing will be held, Black Hills prefers that the hearing be held fully in person, but several parties have either requested the hearing be held fully remotely or have expressed concerns from a technical perspective with holding a hybrid hearing based on their experience.¹⁰ In light of this, and to achieve consensus, Black Hills agrees to hold the hearing fully remotely.¹¹

⁵ Motion at 1-2.

⁶ See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁷ Motion at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.*

11. Finally, the Motion states that the parties agree that that the discovery rules and procedures in Commission Rule 1405, 4 CCR 723-1 will govern discovery in this Proceeding.¹²

12. The Motion proposes the following procedural schedule:

Activity	Proposed Dates/Deadline
Answer Testimony	December 12, 2022
Rebuttal & Cross-Answer Testimony	February 23, 2023
Stipulations & Settlement Agreements	March 14, 2023
Settlement Testimony	March 21, 2023
Corrections to Pre-Filed Testimony and Exhibits, Final Exhibits, Non-Testimonial Exhibits	March 24, 2023
Prehearing Motions	March 28, 2023
Responses to Prehearing Motions	March 30, 2023
Cross-Examination Matrix, Witness and Exhibit Lists	March 31, 2023
Evidentiary Hearing	April 5-6, 2023
Statements of Position	May 1, 2023 ¹³

13. The ALJ finds that the Motion complies with the requirements of Decision No. R22-0553-I, and given Black Hills’ waiver of the statutory deadline for a final Commission decision, that the parties’ proposed procedural schedule is reasonable and appropriate. The ALJ also finds that the parties’ proposal to address the Inflation Reduction Act’s impacts, as set forth in ¶ 18 of Decision No. R22-0553-I, will offer the parties an appropriate opportunity to explore the issues and present their positions on the same. The ALJ finds the parties’ agreements as to discovery procedures reasonable and appropriate in light of the proposed procedural schedule. For all these reasons, the ALJ grants the Motion and approves: the proposed procedural schedule;

¹² *Id.*

¹³ *Id.* at 3.

the proposed discovery procedures; the proposed manner in which the Inflation Reduction Act's impacts will be addressed; and the parties' request to hold the hearing fully remotely.

14. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.¹⁴ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

15. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. This has resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors; and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits.

16. The parties must take extra care in reviewing Attachment B alongside their exhibits *before filing them* to ensure that they comply with each and every requirement in

¹⁴ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room, and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

Attachment B. It is the parties' responsibility, not Commission support staff's, to ensure that exhibits are correctly formatted, marked, and filed.

17. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.¹⁵ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

18. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, the response time to Black Hills Colorado Electric, LLC's, doing business as Black Hills Energy, (Black Hills) Unopposed Motion Approve Procedural Schedule and Request for Waiver of Response Time filed September 27, 2022 (Motion) is waived, and the proposed procedural schedule and other agreements in the Motion are approved.

2. Black Hills' waiver of the statutory deadline as permitted by § 40-6-109.5(3), C.R.S., for final Commission decision to issue is acknowledged.

¹⁵ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

3. A fully remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: April 5 and 6, 2023

TIMES: 9:00 a.m. each day

PLACE: Join by video-conference using Zoom.

4. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

5. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

6. Non-participants in the evidentiary hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

7. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using Zoom. The parties must ensure that they and their witnesses are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using Zoom.

8. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by December 12, 2022.

9. **Rebuttal and Cross-Answer Testimony Deadline.** Black Hills' rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by February 23, 2023.

10. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by March 14, 2023.

11. **Deadline for Settlement Testimony.** The parties must file and serve any testimony supporting or responding to any settlement agreements by March 21, 2023.

12. **Deadline for Non-Testimonial Hearing Exhibits.** By March 24, 2023, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*, exhibits not already filed per other deadlines). The parties are not required to pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

13. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. On or by March 24, 2023, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments). March 24, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. Such filings must comply with the specific requirements in Attachment B.

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the

filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

14. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by March 28, 2023; responses to prehearing motions must be filed by March 30, 2023.

15. **Deadline for Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix.** By March 31, 2023, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit). Also by March 31, 2023, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

16. **Deadline for Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file their statement of position by May 1, 2023.

17. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified

numbering system for all hearing exhibits, consistent with Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Black Hills	100 to 299
The Office of the Utility Consumer Advocate	300 to 399
Energy Outreach Colorado	400 to 499
The Colorado Energy Office	500 to 599
Western Resource Advocates	600 to 699
Trial Staff of the Colorado Public Utilities Commission	700 to 799

18. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Black Hills will use hearing exhibit numbers 1100-1299; the Office of the Utility Consumer Advocate will use hearing exhibit numbers 1300-1399, *etc.*). Hearing Exhibit 800 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

19. 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