

Decision No. R22-0650

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0251G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL TO IMPLEMENT A VOLUNTARY RENEWABLE NATURAL GAS AND CARBON OFFSET PROGRAM.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING UNOPPOSED MOTION TO
WITHDRAW APPLICATION WITHOUT PREJUDICE,
VACATING PROCEDURAL SCHEDULE,
AND CLOSING PROCEEDING**

Mailed Date: October 25, 2022

I. STATEMENT

A. Background

1. On June 6, 2022, Black Hills Colorado Gas, Inc. (Black Hills) filed a Verified Application (Application) seeking approval of the voluntary renewable natural gas and carbon offset program described therein. With the Application, Black Hills filed the testimony and attachments of Katie N. Fleming.

2. On June 7, 2022, the Commission issued a notice of the Application.

3. On July 7, 2022, the Colorado Energy Office (CEO) filed a Motion to Participate as *Amicus Curiae*.

4. On July 7, 2022, Western Resource Advocates (WRA) filed a Motion to Permissively Intervene in this proceeding.

5. On July 7 and 8, 2022, the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff) filed Notices of Intervention by Right, respectively.

6. On July 20, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

7. On July 22, 2022, the Commission issued Decision No. C22-0433-I that noted concerns with the Application.

8. On September 13, 2022, the ALJ issued Decision No. R22-0541-I that granted WRA’s Motion to Permissively Intervene and CEO’s Motion to Participate as *Amicus Curiae*, scheduled a remote prehearing conference for September 22, 2022, and required the parties to confer about a procedural schedule and Black Hills to file a report of the conferral by September 20, 2022.

9. On September 20, 2022, Black Hills filed the Conferral Report. In it, Black Hills reported that the parties had agreed to the following procedural schedule (Consensus Schedule):

<u>Event</u>	<u>Deadline</u>
Answer Testimony	October 7, 2022
Rebuttal/Cross-Answer Testimony	October 21, 2022
Settlement Agreements and Supporting Testimony Prehearing Motions Corrections to Pre-Filed Testimony	November 4, 2022
Hearing Witness Matrix	November 7, 2022
Hearing	November 9, 2022
Statements of Position	December 7, 2022

Black Hills also reported that the parties agree that: (a) Commission Rule 1405 will govern discovery except that calendar days will be used to calculate the deadline for discovery deadlines, rather than business days;¹ and (b) the hearing should be conducted remotely.

10. On September 21, 2022, the ALJ issued Decision No. R22-0569-I that extended the statutory deadline, adopted the procedural schedule proposed by the parties, adopted the modification to Commission Rule 1405 proposed by the parties, scheduled a remote hearing for November 9, 2022, and provided instructions regarding exhibits ad for participating in the remote hearing.

11. On October 19, 2022, Black Hills filed an Unopposed Motion to Withdraw Application Without Prejudice, Vacate Procedural Schedule, and Waiver of Response Time (Motion).

B. Analysis

12. Rule 1309(d) states:

A party may withdraw an application or petition upon notification to the Commission and all parties prior to 45 days before the first day of hearing. Thereafter, the party shall file a motion to obtain leave of the Commission to withdraw the application or petition. In ruling on such a motion, the Commission shall consider whether good cause for withdrawal is stated and whether other parties would be prejudiced by the withdrawal.²

Here, Black Hills filed the Motion within 45 days of the hearing. As a result, Black Hills must establish good cause to grant the Motion and that no other party will be prejudiced thereby.

¹ 4 *Code of Colorado Regulations* 723-1.

² 4 CCR 723-1.

13. The ALJ concludes that Black Hills has established good cause to grant the Motion. Black Hills states that the intervenors strongly oppose the Application because they believe that the program proposed in the Application “would be more appropriately offered as an unregulated service” and “might be offered in a future Clean Heat Plan filing.”³ Black Hills also asserts that no party will be prejudiced by the withdrawal of the Application, as evidenced by the CEO’s and the intervenors’ support for the Motion. Accordingly, the ALJ finds and concludes that the Motion should be granted.

C. Recommended Decision

14. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

II. ORDER

A. The Commission Orders That:

1. For the reasons stated above, Unopposed Motion to Withdraw Application Without Prejudice, Vacate Procedural Schedule, and Waiver of Response Time filed by Black Hills Colorado Gas, Inc. on October 19, 2022 is granted.

2. The procedural schedule, including the remote hearing scheduled for November 9, 2022, is vacated.

3. Proceeding No. 22A-0251G is closed.

4. 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.

³ Motion at 2 (¶ 4).

5. 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 within 20 days after service, 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.

6. 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.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director