

Decision No. R20-0545-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 20A-0190G

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IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT PLAN FOR CALENDAR YEARS 2021, 2022 AND 2023.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ROBERT I. GARVEY  
ADOPTING PROCEDURAL SCHEDULE  
AND VACATING PREHEARING CONFERENCE**

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Mailed Date: July 29, 2020

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**I. STATEMENT**

1. On May 1, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) filed a Verified Application (Application) for approval of a natural gas demand side management (DSM) plan for calendar years 2021, 2022, and 2023.

2. On May 19, 2020, Colorado Public Utilities Commission Trial Staff filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a), and Request for Hearing.

3. On June 2, 2020, the Colorado Office of Consumer Counsel filed an Intervention and Request for a Hearing.

4. On June 3, 2020, the Colorado Energy Office filed its Notice of Intervention by Right.

5. On June 3, 2020, Energy Outreach Colorado (EOC) filed its Motion to Intervene and Entry of Appearance. EOC states that it has a tangible and pecuniary interest in ensuring that it may efficiently and effectively administer its low-income DSM services.

6. During its weekly meeting on June 17, 2020, the Commission referred this matter to an Administrative Law Judge (ALJ).

7. On July 8, 2020, by Decision No. R20-0494-I, a prehearing conference was scheduled for July 28, 2020.

8. On July 24, 2020, the Parties filed their Joint Motion to Vacate Prehearing Conference, for Approval of Proposed Procedural Schedule, Discovery Procedures, Confidentiality Procedures and for Wavier of Response Time (Joint Motion).

**II. PROCEDURAL SCHEDULE**

9. In their Joint Motion, the Parties state they have agreed to the following procedural schedule:

Answer Testimony	August 14, 2020
Rebuttal/Cross Answer Testimony	September 11, 2020
Prehearing and Dispositive Motions	September 21, 2020
Corrected Testimony/Exhibits	September 21, 2020

Stipulations/Settlement	September 24, 2020
Matrix of Witnesses & Cross-Exam Times	September 24, 2020
Evidentiary Hearing	October 1 & 2, 2020
Statements of Position	October 16, 2020

10. The Parties also propose that a Public Comment Hearing be held by video conference on September 22, 2020.

11. The undersigned finds the proposed procedural schedule acceptable and it shall be adopted with the exception of the Public Comment Hearing being held on September 23, 2020.

**III. DISCOVERY**

12. The Parties propose the following procedures concerning discovery:

- a) As a general matter, discovery will be controlled by Rule 1405, [4 *Code of Colorado Regulations*] 723-1, as effective May 1, 2020, the date [Black Hills] filed the Application. Discovery procedures apply equally to discovery requests, Staff audit requests, and all other “data” requests (“discovery requests”). The Joint Movants agree that work papers will be provided on the next business day after the filing of Answer, Cross-Answer, and Rebuttal testimony and attachments.
- b) Discovery requests that do not include confidential information may be served electronically by email. Discovery responses that do not include confidential information may be served electronically by email and/or on other electronic media. Confidential discovery responses are to be served pursuant to the Commission’s confidentiality rules.
- c) Discovery responses, excepting attachments, shall be served in a single document (e.g., .doc, .docx, or .pdf) unless otherwise agreed to by the requesting and responding parties. Discovery responses shall be served on all parties, subject to any applicable confidentiality provisions.
- d) The cut-off date for serving all discovery requests related to Direct Testimony shall be no later than the due date for filing Answer Testimony. The cut-off date for serving all discovery requests relating to Answer Testimony shall be no later than the due date for filing Rebuttal and Cross-Answer Testimony. The cut-off date for serving all discovery requests related to Rebuttal and Cross-Answer Testimony shall be no later than 8 calendar days before the first day of hearing. For example, if the first day of the hearing is October 1, 2020, the cut-off for discovery requests on Rebuttal and Cross-Answer Testimony would be Wednesday, September 23, 2020 at 5:00 p.m. MST, which enables

the responding party to serve its discovery responses by Wednesday, September 30, 2020.

- e) Discovery requests can be served by email up to 5:00 p.m. Mountain Standard Time (MST) Monday through Thursday and up to 3:00 p.m. MST on Fridays. If discovery requests are served at or after 5:00 p.m. MST on Monday through Thursday or at or after 3:00 p.m. MST on Fridays by any party, the next business day is the first day of counting the due date for responses. Parties will serve discovery requests and responses to all other parties.
- f) Neither discovery requests nor responses to discovery are to be provided to the Commissioners or to Commission advisors, except as necessary to support a motion or as an exhibit to be used at hearing.
- g) Response time to discovery requests shall be ten (10) calendar days for all discovery requests related to Direct Testimony and Answer Testimony, and seven (7) calendar days for all discovery or audit requests related to Cross-Answer and Rebuttal Testimony.
- h) In the event of a discovery dispute, the parties shall first attempt to resolve their dispute. If unsuccessful, the party seeking discovery may move to compel in writing, attaching a copy of the discovery request at issue. A response to the motion to compel shall be filed within five (5) calendar days. Any motion or response shall be served electronically by email. A hearing on the motion shall be coordinated by telephone and heard by telephone as soon as practical.<sup>1</sup>

13. The Commission's Confidentiality Rules will apply without modification.

14. Access to highly confidential information and documents will be governed by any Highly Confidential Protective Orders entered by the Commission in this proceeding.

15. The undersigned finds the proposed discovery procedures acceptable and they shall be adopted.

#### **IV. PUBLIC COMMENT HEARING**

16. The ALJ finds that, given the uncertainty which the novel coronavirus (COVID-19) pandemic creates on future public gatherings, it is in the best interests of the parties and Commission personnel to hold the public comment hearing remotely and that doing so is

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<sup>1</sup> See Joint Motion at pp. 3 and 4.

consistent with emergency declarations and public health advisories to prevent the spread of COVID-19. Therefore, the ALJ will order that the public comment hearing be held remotely by video conference.

17. The Commission prefers written comments over oral comments. As a result, interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Both oral and written comments will be given the same weight in this proceeding.

18. For those individuals who want to provide oral comments, the Commission will use the web-hosted video conferencing service, GoToMeeting, to hold video conferences, and in this case, a remote public comment hearing. Video-conference participation allows for oral comments to be presented in a manner most similar to that which occurs during in-person hearings. Individuals who wish to provide oral comments during the public comment hearing can participate and provide their comments either by telephone or computer. Attachment A to this Decision sets forth general instructions and requirements for how to participate by telephone or by computer. These requirements are intended to ensure that the remote hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the hearing through GoToMeeting. Hence, it is vitally important that Participants and counsel carefully review and follow all requirements in this Decision and Attachment A.

19. **To Participate by Telephone.** Any member of the public or party who wishes to provide comments by telephone during the remote public comment hearing must

call +1 872-240-3311 when the hearing takes place. When prompted, input the pin 874-177-429. You will then be placed into the public comment hearing. Please note that your session and participation will be controlled by the ALJ/Commission Staff. When you are not speaking, please mute your telephone.

20. **To Participate by Computer.** Any member of the public or Participant who wishes to participate in the public comment hearing by computer must use a computer that is connected to the internet and has a microphone and a speaker. At the time of the hearing, please go to <https://global.gotomeeting.com/join/874177429>. When you are not speaking, please mute your microphone. Attachment A contains detailed instructions for participating in the hearing using GoToMeeting.

21. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice. This means that those persons wishing to observe the hearing may do so without needing to join the hearing online. Please use the audio or video connection for Hearing Room A found at <https://puc.colorado.gov/webcasts>.

## V. **ORDER**

### A. **It Is Ordered That:**

1. The Joint Motion to Vacate Prehearing Conference, for Approval of Proposed Procedural Schedule, Discovery Procedures, Confidentiality Procedures and for Wavier of Response Time filed on July 24, 2020, is granted and response time is waived.

2. The prehearing conference scheduled for July 28, 2020, is vacated.

3. An evidentiary hearing in this matter is scheduled for the following date, at the following time, and in the following location:

DATES: October 1 and 2, 2020  
TIME: 9:00 a.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

4. A remote public comment hearing is scheduled for September 23, 2020. It shall take place from 4:00 p.m. until it is concluded. Members of the public who wish to participate in and/or to provide oral comments at the remote public comment hearing, must follow the instructions stated above in this Interim Decision and in Attachment A.

5. The procedural schedule as stated above in paragraph 9 shall be adopted.
6. The Parties shall be held to the advisements in this Decision.
7. Attachment A is incorporated into this Decision.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director