

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0547G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. D/B/A BLACK HILLS ENERGY, FOR AN ORDER APPROVING A 2023 – 2024 GAS HEDGING PROGRAM TO BE INCLUDED IN THE GAS COST ADJUSTMENT TO BE EFFECTIVE JULY 1, 2023.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ACCEPTING AMENDMENT OF APPLICATION,
ACKNOWLEDGING WITHDRAWALS OF
INTERVENTION, VACATING REMOTE HEARING,
GRANTING APPLICATION AS AMENDED, AND CLOSING
PROCEEDING**

Mailed Date: May 22, 2023

I. STATEMENT

A. Background

1. On December 12, 2022, Black Hills Colorado Gas, Inc. (Black Hills) filed a Verified Application (Application) seeking approval of its proposed gas hedging program for its system gas supply for the period from July 1, 2023, to June 30, 2024. With its Application, Black Hills filed the direct testimony of Jodi L. Culp.

2. On December 13, 2022, the Commission issued a notice of the Application.

3. On January 6 and 19, 2023, the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff) filed Notices of Intervention by Right, respectively.

4. On January 25, 2023, 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.

5. On February 8, 2023, the ALJ issued Decision No. R23-0085-I that scheduled a remote prehearing conference for February 23, 2023, and required the parties to confer about a procedural schedule and Black Hills to file a report of the conferral by February 17, 2023.

6. On February 14, 2023, 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	April 6, 2023
Rebuttal/Cross-Answer Testimony	May 4, 2023
Prehearing Motions	May 15, 2023
Stipulation(s) and Settlement Agreement(s) Hearing Witness Matrix Corrections to Pre-Filed Testimony	May 19, 2023
Hearing	May 25, 2023
Statements of Position	June 8, 2023

Black Hills also reported that the parties agreed that: (a) Commission Rule 1405 will govern discovery; and (b) the hearing should be conducted remotely.

7. On February 23, 2023, the ALJ issued Decision No. R23-0138-I that established the procedural schedule consistent with the Consensus Schedule, with a remote hearing scheduled for May 25, 2023, and extended the statutory deadline.

8. On April 4, 2023, Black Hills filed a Notice of Filing Amended Testimony and Amended Hedging Plan (Notice) and revised testimony of Ms. Culp. In the Notice, Black Hills stated:

Pursuant to discussions with Staff and the Colorado Utility Consumer Advocate, the Company agreed to file amended testimony that (1) modifies the gas volumes the Company proposes to hedge; (2) modifies the proposed annual budget; and (3) streamlines the strategies the Company will implement in its Gas Hedging Plan. The amended filings are intended to resolve all issues that were raised by the intervenors in the instant proceeding and the original Direct Testimony and 2023-2024 Hedging Plan should be replaced in their entirety with the amended blue/red-lined versions filed simultaneously herewith.

9. On April 4 and 5, 2023, UCA and Staff withdrew their interventions, respectively.

B. Analysis

10. Rule 1309(a) of the Commission's Rules of Practice and Procedure require Black Hills to seek leave of the Commission to amend its Application.¹ Black Hills has not expressly done so, but the ALJ will construe its Notice as requesting leave. So construed, the ALJ finds and concludes that the amendments to the Application proposed by Black Hills do not broaden the Application's scope or purpose. Instead, they fall within the scope of the Application and the notice issued by the Commission on December 13, 2022. Accordingly, the amendments proposed by the parties are not required to be re-noticed by the Commission and will be accepted.²

11. Accepting the amendments has two relevant results. First, the Application will be amended to conform to the amendments proposed by the parties. Second, because the interventions of UCA and Staff have been withdrawn, the Application, as revised by the amendments, is unopposed and, pursuant to § 40-6-109(5), C.R.S. and Commission Rule 1403,³ will be considered under the modified procedure, without a formal hearing.

¹ 4 *Code of Colorado Regulations* (CCR) 723-1.

² Rule 1206(d) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

³ 4 CCR 723-1.

12. Black Hills' witness, Ms. Culp, stated in her revised testimony:

Energy prices are generally more volatile than other commodities and are impacted by many factors both domestically and globally, as well as fundamentally and technically. The goal of a hedge program should not be to beat the market, but rather to provide protection against price spikes by narrowing the band of price volatility. Because of the volatile nature of natural gas prices and the various factors that influence price movement, the Company's hedging philosophy is not to speculate and seek the absolute lowest natural gas price possible. Rather, the hedging philosophy is meant to provide some price stability, limit price volatility on a portion of total gas purchase requirements, and to partially protect customers against extreme peaks in natural gas prices that can occur in the natural gas market.⁴

The ALJ finds and concludes that Black Hills' approach to hedging is reasonable and that the proposed amended hedging program described in Ms. Culp's revised testimony is consistent with that approach. The ALJ further finds and concludes that the amended hedging program serves Black Hills' reasonable goal of "provid[ing] some price stability, limit[ing] price volatility on a portion of total gas purchase requirements, and...partially protect[ing] customers against extreme peaks in natural gas prices that can occur in the natural gas market."⁵ Accordingly, the ALJ finds and concludes that the Application, as amended, is reasonable and in the public interest.

⁴ Hearing Exhibit 101, Rev. 1 at 7:3-12 (Direct Testimony of Ms. Culp).

⁵ *Id.* at 7:9-12.

13. Therefore, in accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The Notice of Filing Amended Testimony and Amended Hedging Plan (Notice) filed by Black Hills Colorado Gas, Inc. (Black Hills) on April 4, 2023, is construed as a Motion to Amend the Application and, so construed, is granted. The amendments to the Application proposed by Black Hills in the Notice are approved.

2. The withdrawals of the interventions by Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff) are acknowledged.

3. UCA and Staff are dismissed from this proceeding.

4. The Application is amended as set forth in the Notice and the supporting revised testimony of Jodi L. Culp.

5. The Application, as amended, is granted.

6. The remote hearing scheduled for May 25, 2023, is vacated.

7. Proceeding No. 22A-0547G is closed.

8. 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.

- 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, 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.

9. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

Rebecca E. White,
Director