

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0361G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT PLAN AND STRATEGIC ISSUES FOR CALENDAR YEARS 2024 AND 2025.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING PERMISSIVE INTERVENTION,
EXTENDING TIME FOR A COMMISSION DECISION,
SETTING PROCEDURAL SCHEDULE,
AND SCHEDULING EVIDENTIARY HEARING**

Mailed Date: September 28, 2023

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I. STATEMENT AND PROCEDURAL BACKGROUND

1. On July 5, 2023, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or the Company), commenced this Proceeding by filing a Verified Application to open a demand-side management (DSM) strategic issues proceeding with the

Public Utilities Commission of the State of Colorado (Commission or PUC).¹ The Company's current DSM Plan, approved by Decision No. R20-0810, issued November 16, 2020, covers 2021-2023 and is in its final year.²

2. Attached to Black Hills' Verified Application was the direct testimony of the following three individuals:

- a) Jessica J. Oliveto, Program Manager, Energy Efficiency for Black Hills;
- b) Matthew J. Christofferson, Manager, Regulatory for Black Hills; and
- c) Allie E.R. Marshall, Principal, Cadmus Group.

3. On July 7, 2023, the Commission's Notice of Application Filed was sent to all interested persons and entities. The Notice stated that Black Hills had filed direct testimony with its Application and was seeking a Commission decision within 120 days of the Application being deemed complete.³ In addition, the Notice set a 30-day window within which interested persons could intervene, and a 37-day window within which Commission Staff was to file its Intervention.

4. Subsequently, several entities filed interventions as of right:

- The Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances on July 17, 2023;
- The Colorado Energy Office (CEO) filed its Intervention by Right on August 7, 2023; and
- Commission Trial Staff filed a Notice of Intervention as of Right on August 9, 2023.

5. In addition, on August 7, 2023, Energy Outreach Colorado (EOC) filed an Unopposed Motion to Intervene and Entry of Appearance.

¹ Black Hills Colorado Gas, Inc.'s Verified Application, July 5, 2023.

² *Id.* at ¶ 4, pp. 2-3.

³ Notice of Application Filed, filed July 7, 2023.

6. The Commission automatically deemed the application complete as of August 16, 2023. The Commission referred the matter to an administrative law judge (ALJ) for disposition by minute entry. The Proceeding was subsequently assigned to the undersigned ALJ.

II. INTERVENTIONS

7. The ALJ acknowledges the interventions as of right filed by Commission Staff, UCA, and CEO. Commission Trial Staff, UCA, and CEO are parties to this Proceeding.

8. On August 7, 2023, EOC filed an unopposed motion to intervene. EOC represented that it had conferred with Black Hills, CEO, and UCA, about its motion. According to EOC, both Black Hills and CEO indicated that they take no position regarding EOC's requested intervention, while UCA stated that it does not oppose EOC's intervention.

9. EOC did not note the position of Commission Trial Staff to its Unopposed Motion to Intervene, but the ALJ notes, EOC's Motion was filed two days before Commission Staff entered its appearance and intervened in this Proceeding.

10. Pursuant to Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, responding parties "have 14 days after service of the motion . . . in which to file a response." Since intervening in this Proceeding, Commission Staff has not filed any objection to EOC's Unopposed Motion to Intervene, and the deadline for filing any such opposition expired on August 21, 2023. The ALJ therefore presumes that Commission Staff does not oppose EOC's intervention, either.

11. EOC's Motion addresses the grounds upon which it believes it should be permitted to intervene. It notes that it has a "vested interest in assuring that the interests of [income-qualified (IQ)] customers of Colorado utilities are duly recognized in proceedings before the Commission, and ensuring that rates are just and reasonable such that the organization

is not burdened by having to increase assistance payments and other crisis mitigation disbursements.”⁴ EOC points out that the Company’s Application “proposes to strip the IQ Weatherization program of budget and goals . . . [which, if] approved . . . will negatively impact the customers that EOC directly serves.”⁵

12. With respect to the specific grounds which must be weighed when considering a request to intervene, EOC notes that it has “a specific interest in advocating for IQ customers and their participation in programs that can help reduce their energy bills.”⁶ It therefore seeks to intervene to “ensure that the Company’s proposals in this Proceeding do not result in rate increases, unfair bill credits, and uncertainty in rates that unjustly, unreasonably, and/or disproportionately burden IQ customers and EOC’s services.”⁷ Because the proposed increased cost of Black Hills’ DSM programs could impact EOC’s IQ constituency, EOC argues that it has “a tangible and pecuniary interest in ensuring that its services are not required for a growing number of Colorado citizens.”⁸ Further, EOC contends, because it possesses “specialized knowledge and expertise in coordinating with the Company to deliver effective DSM programs for IQ customers,” EOC’s presence in this Proceeding will ensure its views are considered in any decision.

13. EOC further notes that because it is unique in that it administers statutorily-mandated energy assistance contributions, no other party will be able to adequately

⁴Unopposed Motion to Intervene and Entry of Appearance of Energy Outreach Colorado, ¶ 2, p. 2, filed Aug. 7, 2023.

⁵ *Id.* at ¶¶ 7&9, pp. 2-3.

⁶ *Id.* at ¶ 11, p. 3.

⁷ *Id.*

⁸ EOC’s Unopposed Motion to Intervene, ¶ 9, p. 4.

represent its interests in this Proceeding.⁹ Finally, it notes, its presence in this Proceeding will not “unduly broaden” the issues presented.¹⁰

14. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission’s Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1; see § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm’n*, 702 P.2d 746, 749 (Colo. 1985) (“This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.”).

15. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented. . . . The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

⁹ *Id.*, ¶ 13, p. 4.

¹⁰ *Id.* ¶ 15, p. 4.

16. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

17. The ALJ finds and concludes that EOC has demonstrated that it has tangible and pecuniary interests in this Proceeding and its outcome. The ALJ further finds that no other parties to this Proceeding will adequately represent EOC's interests.

18. Therefore, the ALJ will grant EOC's Unopposed Motion to Intervene. EOC is a party to this Proceeding.

III. TIME FOR A COMMISSION DECISION

19. Black Hills' Verified Application was accompanied by the direct, supporting testimony of two Black Hills' employees, as well as the direct, supporting testimony of an

analyst. As the Commission noted in its Notice of Application¹¹, Black Hills is therefore seeking a Commission decision within 120 days of the date on which its Verified Application is deemed complete.¹²

20. The Commission automatically deemed Black Hills' Verified Application complete on August 16, 2023. Pursuant to § 40-6-109.5, C.R.S., a Commission decision is therefore due on or before December 14, 2023.

21. However, if the Commission in its discretion finds that additional time is required for a decision, the time period within which a Commission decision shall issue may be extended an additional 130 days.¹³

22. In order to facilitate the unopposed procedural schedule to which the parties have agreed, it is found necessary to extend the time for issuance of a Commission decision. The applicable statutory period shall be extended by an additional 130 days up to and including April 22, 2024.

IV. PROCEDURAL SCHEDULE AND EVIDENTIARY HEARING

A. Procedural Schedule

23. On September 5 and September 11, 2023, the parties conferred by email with undersigned ALJ regarding a proposed, unopposed procedural schedule to govern this Proceeding.

24. Black Hills, UCA, CEO, EOC, and Commission Staff unanimously agreed to the following proposed procedural schedule:

¹¹ Notice of Application Filed, p. 1.

¹² See § 40-6-109.5(1), C.R.S.

¹³ *Id.*

Answer Testimony	November 22, 2023
Rebuttal/Cross-Answer Testimony	December 20, 2023
Prehearing Motions	January 10, 2024
Corrected Testimony & Exhibits	January 10, 2024
Stipulation(s) or Settlement Agreement(s)	January 17, 2024
Witness Order & Cross Examination Matrix	January 19, 2024
EVIDENTIARY HEARING	January 25, 26, & 29, 2024
Statements of Position	February 12, 2024

B. Evidentiary Hearing

25. Through Black Hills' counsel, the parties requested a hybrid hearing. The undersigned ALJ will therefore schedule a hybrid hearing commencing at 9:00 a.m. on January 25, 26, and 29, 2024. If at some time in the future the parties desire a different hearing format, they may so request by motion to be determined by the ALJ.

26. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

27. The Parties are further advised and are on notice that this Proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be

familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

28. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

29. The ALJ has reviewed the parties' proposed schedule and finds that it is reasonable. It will be adopted, as order below.

C. Unified Numbering System for Hearing Exhibits

30. In order to efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- a) Black Hills Colorado Gas, Inc.: Hearing Exhibits 101-199
- b) Commission Staff: Hearing Exhibits 201-299
- c) The Office of the Utility Consumer Advocate: Hearing Exhibits 301-399
- d) Colorado Energy Office Hearing Exhibits 401-499
- e) Energy Outreach Colorado: Hearing Exhibits 501-599

31. **Informal Video-Conference Practice Session:** The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

32. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

33. The parties will receive information and a link to participate in the informal practice session by email.

V. ORDER

A. It Is Ordered That:

1. Energy Outreach Colorado's Unopposed Motion to Intervene and Entry of Appearance, filed on August 7, 2023, is granted. Energy Outreach Colorado is a party to this Proceeding.

2. A **hybrid** hearing is scheduled as follows:

Date: **January 25, 26, and 29, 2024**

Time: **9:00 a.m.**

Location: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

METHOD: In person in the Commission Hearing Room and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

All parties and witness must participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.¹⁴

3. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

¹⁴ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

4. The following procedural schedule is adopted:

Answer Testimony	November 22, 2023
Rebuttal/Cross-Answer Testimony	December 20, 2023
Prehearing Motions	January 10, 2024
Corrected Testimony & Exhibits	January 10, 2024
Stipulation(s) or Settlement Agreement(s)	January 17, 2024
Witness Order & Cross Examination Matrix	January 19, 2024
EVIDENTIARY HEARING	January 25, 26, & 29, 2024
Statements of Position	February 12, 2024

5. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses may attend in person or participate in the evidentiary hearing by videoconference using the Zoom platform.

6. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

7. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

8. The parties shall adhere to the following numbering system for their respective exhibits:

- a. Black Hills Colorado Gas, Inc.: Hearing Exhibits 101-199
- b. Commission Staff: Hearing Exhibits 201-299
- c. The Office of the Utility Consumer Advocate: Hearing Exhibits 301-399
- d. Colorado Energy Office Hearing Exhibits 401-499
- e. Energy Outreach Colorado: Hearing Exhibits 501-599

9. **The ALJ will hold an informal Zoom practice session upon request.**

10. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

11. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

12. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director