

BEFORE THE ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION BY BLACK HILLS PLATEAU PRODUCTION LLC FOR A VARIANCE TO PORTIONS OF RULE 1004 FOR THE UTE-610S96W/20SEW OIL AND GAS LOCATION, PLATEAU FIELD, MESA COUNTY, COLORADO) CAUSE NO. 1
)
) DOCKET NO. 240400099
)
) TYPE: VARIANCE
)
) ORDER NO. 1-424

REPORT OF THE COMMISSION

The Commission heard this matter on January 14, 2026, at the Colorado Energy and Carbon Management Commission, 1120 Lincoln St., Suite 801, Denver, Colorado, upon application for an order approving a variance from final reclamation requirements of Rules 1004.a and 1004.d for the Ute-610S96W/20SEW Location (Location ID 391000), located in the below-described lands:

Township 10 South, Range 96 West, 6th P.M.
Section 20: SE $\frac{1}{4}$ NW $\frac{1}{4}$

FINDINGS

The Commission finds as follows:

1. Black Hills Plateau Production LLC (Operator No. 10150) (“Black Hills” or “Applicant”), as applicant herein, is an interested party in the subject matter of the above-referenced proceeding.
2. Due notice of the time, place, and purpose of the proceeding has been given in all respects as required by law.
3. The Commission has jurisdiction over the subject matter embraced in said notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Energy and Carbon Management Act, C.R.S. § 34-60-101 et seq. (“the Act”).
4. Pursuant to C.R.S. § 34-60-106(12), the Commission promulgated its 1000-Series Rules to govern reclamation of the land and soil affected by oil and gas operations. See Commission Rule 1001.a. Generally, the Commission’s reclamation regulations require the surface of land affected by oil and gas operations to be “restored as nearly as practicable to its condition at the commencement of drilling operations.” *Id.*
5. Rule 1004 addresses final reclamation of well sites and associated production facilities. Rule 1004.a provides that “[a]ll access roads to plugged and abandoned wells and associated production facilities shall be closed, graded and recontoured. Culverts and any other obstructions that were part of the access road(s) shall be removed. Well locations, access roads and associated facilities shall be reclaimed.

6. Rule 1004.d provides as follows:

Final reclamation of all disturbed areas shall be considered complete when all activities disturbing the ground have been completed, and all disturbed areas have been either built upon, compacted, covered, paved, or otherwise stabilized in such a way as to minimize erosion, or a uniform vegetative cover has been established that reflects pre-disturbance or reference area forbs, shrubs, and grasses with total percent plant cover of at least eighty percent (80%) of pre-disturbance or reference area levels, excluding noxious weeds, or equivalent permanent, physical erosion reduction methods have been employed. Reseeding alone is not sufficient.

7. Rule 1001.c provides that the Commission “shall not require compliance with” the reclamation requirements of Rule 1004, except Rules 1004.c.(4) and 1004.c.(5),

if the operator can demonstrate to the Director’s or the Commission’s satisfaction both that compliance with such rules is not necessary to protect the public health, safety and welfare, including prevention of significant adverse environmental impacts, and that the operator has entered into an agreement with the surface owner regarding topsoil protection and reclamation of the land.

Prior to final reclamation approval, the operator “shall either comply with the rules or obtain a variance.” Rule 1001.c.

8. Commission Rule 502.a requires requests for variance to any of the Commission’s Rules or orders to be filed with the Commission.

9. Rule 502.c provides that an applicant requesting a variance from the Commission pursuant to Rule 502.a must show:

- a. It has made a good faith effort to comply, or is unable to comply, with the specific requirements contained in the Commission’s Rule or order from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any;
- b. That the requested variance will not violate the basic intent of the Act;
- c. The requested variance is necessary to avoid an undue hardship;
- d. Granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources; and
- e. The requested variance contains reasonable conditions of approval or other mitigation measures to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

10. On April 19, 2024 (amended on December 19, 2025 and December 23, 2025), Black Hills, through counsel, filed an application (“Application”) pursuant to Rule 503.g.(9) for variance from Rules 1004.a and 1004.d for the Ute-610S96W/20SENW Location (Location ID 391000) well site and access road (“Location”).

11. Black Hills submitted with its Application a final reclamation agreement with a surface owner signature, waiving Black Hills's obligations to complete additional reclamation under Rule 1004.a and 1004.d.

12. On May 6, 2024, Colorado Energy and Carbon Management Commission permitting staff provided its review of the Application, stating that staff "has no concerns with this application."

13. On December 23, 2025, the Director issued her recommendation on the Application. The Director recommended approval of the variance. The Director determined that the variance was not "ministerial in nature, in that it results in a potentially permanent impact that will have to be managed by the landowner and local relevant government." Accordingly, Rule 502.b requires a hearing on the Application before the Commission.

14. The Commission has not received any petitions pursuant to Rule 507, and the Application is uncontested.

15. According to the Application, a well abandonment report was approved for the Ute 1-20 Well (API No. 05-077-08119) in January 2007. Black Hills and the surface owner entered into a Final Reclamation Agreement regarding the Location in July 2019, which provided all associated production facilities and trash and debris related to oil and gas operations have been removed from the well site. Pursuant to the agreement, the surface owner agreed the access road and well site area remain undisturbed to allow use of the surface for agricultural support and equipment storage, with the pad area to be graveled to stabilize the surface. Pursuant to the agreement, further reclamation of the Location pursuant to Rules 1004.a and 1004.d was waived at the owner's request.

16. Based on the Application, Final Reclamation Waiver Agreement, and the Director's recommendation, the Commission finds the Application satisfies the requirements of Rule 502.c. because:

- a. Black Hills has made a good faith effort to comply, or is unable to comply, with the specific requirements contained in Rule 1004.a and 1004.d;
- b. The requested variance will not violate the basic intent of the Act, given that relief from the remaining requirements of Rule 1004.a and 1004.d is consistent with the wishes of the surface owner for the use of the property;
- c. The requested variance is necessary to avoid an undue hardship because requiring complete reclamation would deprive the surface owner of the desired use of the property and could result in additional disturbance;
- d. Granting the variance will result in no net adverse impact to public health, safety, welfare, the environment, or wildlife resources given that all equipment and debris have been removed from the Location and the surface owner requests the Location remain in its current condition; and
- e. Given the surface owner's intended use of the property, additional conditions of approval or mitigation measures are not necessary to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

17. Black Hills agrees to be bound by oral order of the Commission.

18. Based on the facts stated in the Application, the Final Reclamation Waiver Agreement, and the Director's recommendation, and having received no Rule 507 petitions, the Commission finds that the Application satisfies Rule 502.c and the requested variance to Rules 1004.a and 1004.d is warranted for the Location.

ORDER

IT IS HEREBY ORDERED:

1. The Application for variance is GRANTED such that Black Hills is granted the requested variance from the remaining requirements of Rules 1004.a and 1004.d at the Ute-610S96W/20SENW Location (Location ID 391000).

2. The provisions contained in this order shall become effective immediately.

3. Within 30 days of the date of this order, Applicant will submit a Form 4, Sundry Notice (Form 4) documenting the variance relief to the Ute-610S96W/20SENW Location (Location ID 391000). The Form 4 will include the order number, all rules from which relief was granted, and a summary of the relief granted.

4. The Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

5. Under the State Administrative Procedure Act, the Commission considers this order to be final agency action for purposes of judicial review within 35 days after the date this order is mailed by the Commission.

6. An application for reconsideration of this order by the Commission is not required prior to the filing for judicial review.

ENTERED this 14th day of January 2026, as of January 14, 2026.

ENERGY AND CARBON MANAGEMENT COMMISSION
OF THE STATE OF COLORADO

By 
Elias J. Thomas, Commission Secretary