

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0230E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR (1) APPROVAL OF ITS 2022 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN, AND (2) APPROVAL OF ITS 2023-2026 RENEWABLE ENERGY STANDARD COMPLIANCE PLAN.

COMMISSION INTERIM DECISION: (1) GRANTING, IN PART, AND DEFERRING, IN PART, THE UNOPPOSED MOTION TO APPROVE THE UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT, AND AMEND PROCEDURAL SCHEDULE AND REQUEST FOR WAIVER OF RESPONSE TIME; AND (2) GRANTING THE MOTION FOR EXTENSION AND VARIANCE FROM DECISION NO. C22-0558-I TO FILE SCOPE OF WORK CONTRACT, AND REQUEST FOR WAIVER OF RESPONSE TIME

Mailed Date: January 26, 2023

Adopted Date: January 25, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, we address the procedural aspects of the Unopposed Motion to Approve the Unanimous Comprehensive Settlement Agreement and Amend Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion) that Black Hills Colorado Electric, LLC (Black Hills or the Company) filed on January 13, 2023. We grant the request to partially vacate the evidentiary hearing currently set for January 30, 2023 through February 3, 2023. We also vacate the January 23, 24, and 25, 2023 filing deadlines for Prehearing Motions, Response to Prehearing Motions, and the Cross-Examination Matrix, and waive response

time to the Unopposed Motion. We defer ruling on the Unopposed Motion's request to approve the Settlement Agreement.

2. In addition, through this Decision we grant the Motion for Extension and Variance from Decision No. C22-0558-I to File Scope of Work Contract and Request for Waiver of Response Time (Motion for Extension) that Black Hills filed on January 17, 2023.

B. Unopposed Motion

3. On May 27, 2022, Black Hills filed an Application for approval of (1) its 2022 Electric Resource Plan (ERP) and Clean Energy Plan (CEP) and (2) its 2023-2026 Renewable Energy Standard Compliance Plan (the Application). Several parties intervened in the Proceeding,¹ and the Commission scheduled a five-day *en banc* evidentiary hearing beginning on January 30, 2023.

4. On January 13, 2023, Black Hills, on behalf of all parties, filed the Unopposed Motion requesting that the Commission approve without modification the unanimous, comprehensive Settlement Agreement. The Unopposed Motion states that the Settlement Agreement resolves all issues between the parties in this Proceeding and that all parties have agreed to waive cross-examination.² Because of this, the parties agree that the five-day evidentiary hearing that the Commission initially scheduled is unnecessary.

5. Accordingly, the parties request that the Commission "[v]acate the January 30 to February 1, 2023 hearing dates, and schedule a settlement hearing on Thursday,

¹ Along with Black Hills, the following are parties to this Proceeding: Staff of the Public Utilities Commission, the Office of Utility Consumer Advocate, and Colorado Energy Office, Walmart Inc., Energy Outreach Colorado, Western Resource Advocates, Cañon City, the Board of County Commissioners of Pueblo County, City of Pueblo, Colorado Independent Energy Association, and Interwest Energy Alliance. (Decision No. C22-0499-I (issued August 1, 2022), pp. 18-19).

² Unopposed Motion, pp. 4, 7.

February 2, 2023.”³ The parties also suggest that the Commission reserve Friday, February 3, 2023, as an additional hearing day, if needed. Regarding the procedural deadlines, parties request that the Commission “[v]acate the January 23, 24, and 25 filing deadlines for Prehearing Motions, Responses to Pre-Hearing Motions, and the Cross-Examination Matrix.”⁴ The Unopposed Motion states that the parties are not requesting any other modifications to the procedural dates but recommend that the Commission revisit at the conclusion of the hearing whether statements of position are appropriate.

6. In addition, because the Unopposed Motion is not contested, the parties request that the Commission waive response time to the Motion pursuant to Rule 1308(c).⁵

7. The Commission grants the request in the Unopposed Motion to vacate the January 30, 2023 to February 1, 2023, hearing dates. Moreover, we see no need at this time to reserve February 3, 2023 as an additional hearing day, and we also vacate the February 3, 2023 hearing date. Accordingly, the evidentiary hearing in this Proceeding is set for Thursday, February 2, 2023.

8. We also grant the other procedural requests in the Unopposed Motion. Specifically, we vacate the January 23, 24, and 25, 2023 filing deadlines for Prehearing Motions, Responses to Pre-Hearing Motions, and the Cross-Examination Matrix. The other remaining deadlines, such as the deadline to file corrections to pre-filed testimony and exhibits, remain in effect, and we reserve the right to require the parties to file statements of position. If the Commission decides that statements of position are necessary, we will set the deadline at the conclusion of the hearing.

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.*

9. Finally, the Commission will grant the request to waive response time to the Unopposed Motion.

C. Motion for Extension

10. In the Motion for Extension, Black Hills notes that it filed a Motion for Independent Evaluator (IE) Approval on May 27, 2022, contemporaneously with its Application. However, in Decision No. C22-0588-I (issued September 21, 2022) the Commission deferred ruling on Black Hills' Motion for IE Approval because Black Hills had not yet negotiated a scope of work with Accion Group, LLC, its proposed IE. The Commission directed Black Hills to file a scope of work contract pursuant to Rule 3612(b) by January 16, 2023—two weeks before the scheduled start of the evidentiary hearing.⁶ In Decision No. C22-0588-I, the Commission stated that this January 16, 2023 deadline allows the parties and the Commission to address any issues with the proposed IE and scope of work during the hearing.⁷

11. In the Motion for Extension, Black Hills states that it has developed a scope of work with Accion, which the company circulated to Staff of the Public Utilities Commission (Staff) and the Office of Utility Consumer Advocate (UCA). The Company states it has been working with Staff and UCA to reach agreement on the scope of work, but due to the settlement discussions and the Martin Luther King Jr. holiday, it needs additional time. Black Hills specifies that there are two discrete issues with the scope of work—both of which relate to the Settlement Agreement—that Black Hills, Staff, and UCA are still working to finalize. Black Hills requests a two-day extension and variance from Decision No. C22-0588-I so that the Company can file the scope of work

⁶ Motion for Extension, p. 2.

⁷ Decision No. C22-0588-I, p. 13.

contract on January 19, 2023. Black Hills notes that neither Staff nor UCA opposes the Motion for Extension or the requested two-day extension.⁸

12. Finally, because Staff and UCA do not oppose the Motion for Extension, Black Hills additionally requests that response time be waived.⁹

13. The Commission grants the Motion for Extension. The two-day extension of time to file the scope of work will still permit sufficient time for the Commission and parties to evaluate the scope of work prior to the hearing and the Commission's Phase I deliberations. In addition, given the holiday on January 16, 2023 and the settlement discussions that led to the unopposed, comprehensive Settlement Agreement, Black Hills has established good cause for the extension. Also, because Staff and UCA do not oppose the Motion for Extension, the requested waiver of response time is appropriate.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion to Approve the Unanimous Comprehensive Settlement Agreement and Amend Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion) that Black Hills Colorado Electric, LLC (Black Hills) filed on January 13, 2023, is granted, in part, and deferred, in part, consistent with the discussion above.

2. The request to waive response time to the Unopposed Motion is granted.

⁸ Motion for Extension, pp. 2-4.

⁹ Motion for Extension, p. 4.

3. Consistent with the above discussion, the five-day evidentiary hearing scheduled for January 30, 2023 to February 3, 2023, is partially vacated. The resulting evidentiary hearing is scheduled as follows:

DATE: February 2, 2023

TIMES: 9:00 a.m., until concluded but no later than 5:00 p.m.

METHOD: By video conference using the Zoom link provided to the parties via email.

4. The January 23, 24, and 25, 2023 filing deadlines for Prehearing Motions, Responses to Pre-Hearing Motions, and the Cross-Examination Matrix are vacated.

5. The Motion for Extension and Variance from Decision No. C22-0558-I to File Scope of Work Contract and Request for Waiver of Response Time (Motion for Extension) that Black Hills filed on January 17, 2023, is granted.

6. The request to waive response time to the Motion for Extension is granted.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 25, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners