

Decision No. C23-0807

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 DECISION GRANTING THE UNOPPOSED
MOTION FOR PARTIAL WAIVER OF RULES 3613(A) AND
3613(D)-(H) TO PROVIDE AN EXTENSION OF TIME TO
NOTIFY BIDDERS OF BIDS ADVANCED TO
COMPUTER-BASED MODELING, AND FILE ITS 120-DAY
REPORT AND MOTION FOR WAIVER OF RESPONSE
TIME**

Mailed Date: December 5, 2023
Adopted Date: November 29, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants the Unopposed Motion for Partial Waiver of Rules 3613(a) and 3613(d)-(h) to Provide an Extension of Time to Notify Bidders of Bids Advanced to Computer-Based Modeling and File its 120-Day Report (Unopposed Motion) that Black Hills Colorado Electric, LLC (Black Hills or Company) filed on November 20, 2023.

A. Discussion

2. On March 22, 2023, the Commission issued Decision No. C22-0193 (Phase I Decision) approving, with modifications, the Unanimous Comprehensive Settlement Agreement regarding Black Hills' 2022 Electric Resource Plan (ERP) and Clean Energy Plan (CEP). Among

other things, the Phase I Decision directed Black Hills to issue Requests for Proposals (RFPs) for an all-source, competitive bidding process to meet its resource need.

3. On July 31, 2023, Black Hills issued its 2023 All-Source RFPs, including a Company Ownership RFP, a Dispatchable Resources RFP, and a Renewable Resources RFP. Bids were due by October 20, 2023.¹ Black Hills notes that it received approximately 115 potential bids—the largest number of bids the Company has ever received in response to any solicitation.

4. Per Rule 3613 of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, the receipt of the bids sets the timeline for several Phase II events, including when the Company must notify bidders of whether their bids were advanced to computer-based modeling (45 days after receipt of bids, or December 4, 2023)² and the filing of the 120-Day Report (120 days after the receipt of bids, or February 17, 2024).³

5. In the Unopposed Motion, the Company states that it is working diligently to review all bids. Due to the volume of bids and scope of review, however, the Company requests an additional 15 days to conduct eligibility reviews, due diligence, and economic screening, and then notify bidders of advancement to computer-based modeling. This would move Rule 3613(a)’s deadline to notify bidders of whether their bids were advanced to computer-based modeling from December 4, 2023, to December 19, 2023.

6. Similarly, Black Hills argues that because of the robust response to the competitive solicitation, there is insufficient time to review all bids received, perform the necessary due diligence, and develop the portfolios and other information required by the Phase I Decision for

¹ Unopposed Motion, p. 4.

² Rule 3613(a).

³ Rule 3613(d).

the 120-Day Report. The Company states that the number of bids in this Proceeding greatly exceeds the response to the last Phase II competitive solicitation.⁴ Accordingly, the Company requests an additional 60 days to file the 120-Day Report. This would move Rule 3613(d)'s deadline from February 17, 2024, to April 17, 2024. Black Hills asserts that the requested extension would still allow a Commission Decision on Phase II by the end of July 2024.

7. In addition to the requested partial waivers of Rule 3613(a) (to notify bidders) and Rule 3613(d) (to file the 120-Day Report), Black Hills also requests partial waivers of Rules 3613(e)-(h).⁵ The Company notes that the deadlines in these Rules are keyed off the filing date of the 120-Day Report. These Rules are summarized below:

- Rule 3613(e): The Independent Evaluator (IE) files its report regarding, among other things, whether the Company conducted a fair bid solicitation and evaluation process 30 days after the 120-Day Report.
- Rule 3613(f): Intervenors file comments within 45 days of the 120-Day Report.
- Rule 3613(g): The Company files responsive comments 60 days after the 120-Day Report.
- Rule 3613(h): The Commission's Phase II Decision is due within 90 days after the 120-Day Report.

8. More generally, Black Hills seems to request that all subsequent deadlines that flow from the filing of the 120-Day Report be adjusted accordingly.⁶

9. Black Hills argues that no party will be unfairly prejudiced by delaying the timeline pursuant to the Unopposed Motion because all parties will maintain the same amount of time to comment and respond to the 120-Day Report as provided under the Rules. The Company asserts that its request simply shifts the timeline for the Phase II process with this limited extension request.

⁴ Unopposed Motion, p. 5.

⁵ *Id.* at ¶ 23.

⁶ *Id.* at ¶ 28.

10. Black Hills states that, if requested, the Company will grant project developers an extension of as-bid commercial operation dates (CODs) commensurate with the 60-day delay in the Phase II process, provided that the extension shall not cause a project COD to move later than June 15 of the applicable capacity year and that the capacity years applicable to such a potential request be 2024, 2025, 2026, or 2027. The Company clarifies that a request for a project with an expected COD at the end of year 2027 could be extended as far as 60 days into calendar year 2028.⁷

11. Finally, Black Hills asks that the Commission waive response time to the Unopposed Motion. Black Hills states that it conferred with all parties to this Proceeding, and that no party opposes the Company's requests.⁸ Likewise, the Company states that it conferred with the IE, and the IE supports the extension to allow sufficient time for bid evaluation and portfolio development.⁹

B. Findings and Conclusions

12. The Commission grants the Unopposed Motion. Given the robust response to the Company's RFPs and the numerous requirements of Phase II, the Company has established good cause for a 15-day extension to notify bidders of bid advancement per of Rule 3613(a) and a 60-day extension to file the 120-Day Report per Rule 3613(d). While we agree that there is good cause for the extensions requested in the Unopposed Motion, the Commission would be concerned if there are any further requests for extensions.

13. In accordance with the extension of the deadlines set forth in Rule 3613(a) and Rule 3613(d), we grant Black Hills' related request for partial waivers of Rules 3613(e)-(h) as well as the Company's more general request for extensions of all deadlines that flow from the filing of the

⁷ *Id.* at 6.

⁸ *Id.* at 2, 9.

⁹ *Id.* at 6.

120-Day Report. For clarity, any deadline that flows from the bidder notification per Rule 3613(a) or the 120-Day Report per Rule 3613(d) shall be adjusted pursuant to the extensions granted in this Decision. This includes those deadlines that are not set forth in the Commission's Rules. For example, the deadline for the Phase II emission verification report from the Colorado Department of Public Health and Environment (CDPHE) and the deadline for the Company to initiate the Performance Incentive Mechanism (PIM) stakeholder process shall be adjusted pursuant to the extensions granted in this Decision.¹⁰

14. Finally, pursuant to Rule 1308(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission grants the Company's request to waive response time to the Unopposed Motion.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Partial Waiver of Rules 3613(a) and 3613(d)-(h) to Provide an Extension of Time to Notify Bidders of Bids Advanced to Computer-Based Modeling and File its 120-Day Report and Motion for Waiver of Response Time (Unopposed Motion) filed by Black Hills Colorado Electric, LLC on November 20, 2023, is granted, consistent with the discussion above.

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

¹⁰ CDPHE files its Phase II emissions verification report 30 days after the 120-Day Report. (See Phase I Decision, ¶ 87). The Company initiates the PIM stakeholder process 15 days after the filing of the 120-Day Report and will file the PIM proposals 60 days after the 120-Day Report. (Phase I Decision, ¶ 58).

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 29, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners