

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0496E

IN THE MATTER OF ADVICE LETTER NO. 878 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO AMEND THE TARIFF APPLICABLE TO COMMUNITY SOLAR GARDENS FIXED BILL CREDITS AND THEIR SUBSCRIBERS, TO BECOME EFFECTIVE JANUARY 1, 2025.

**COMMISSION DECISION
SUSPENDING EFFECTIVE DATE OF TARIFF SHEETS,
ESTABLISHING NOTICE AND INTERVENTION PERIOD,
AND REFERRING MATTER TO AN
ADMINISTRATIVE LAW JUDGE**

Issued Date: December 31, 2024

Adopted Date: December 30, 2024

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 24AL-0496E. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. On November 15, 2024, Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”) filed Advice Letter No. 878 (“AL 878”) with tariff sheets establishing the billing credits paid to subscribers of Community Solar Gardens (“CSGs”) effective January 1, 2025.

2. By this Decision, the Commission sets for hearing the tariff sheets filed under AL 878 and suspends their effective date to May 1, 2025.

3. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than January 31, 2025.

4. We refer this matter to an Administrative Law Judge (“ALJ”).

B. Discussion

5. House Bill (“HB”) 23-1137 amended § 40-2-127, C.R.S., to allow for billing credit amounts paid to subscribers of CSGs to take one of two forms: a bill credit amount that changes annually or a bill credit amount that remains fixed starting at the time the subscriber organization applies for or bids capacity into a utility CSG program.

6. By Decision No. C24-0447, issued on June 25, 2024, in Proceeding No. 24R-0133E, the Commission adopted rules to implement these provisions from HB 23-1137.

7. Rule 3881(b) within the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, codified the practice by which annual tariff filings are used to establish CSG bill credits for each utility. When adopting modifications to Rule 3881(b), the Commission clarified that each year, the utility’s November 15 tariff filing will set forth the CSG billing credits applicable in the following year. The bill credits that change annually will be updated based on estimated values of the total aggregate retail rates to be in effect in the coming year and the prevailing costs to the utility to deliver, integrate, and administer the CSGs. In addition to the annual bill credits, a fresh vintage of fixed bill credits to be made available in the following calendar year will also be set forth on the filed tariff sheets. The Commission explained that such utility tariff filings will be the primary way the utilities and the Commission will “consider the

change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms.” The Commission also stated that if there is a controversy the Commission must resolve, a hearing can support the establishment of just and reasonable rates.¹

8. In accordance with Rule 3881(b), Black Hills filed AL 878 on November 15, 2024, to establish CSG billing credits for effect January 1, 2025. Because AL 878 is Black Hills’ first for CSG billing credits since the Commission adopted new rules pursuant to HB 23-1137, the tariff sheets filed with AL 878 include nearly all CSG billing credit-related sheets in the Company’s Colorado P.U.C. No. 11 Electric Tariff (*i.e.*, Sheet Nos. 94A through 94I).

9. Black Hills filed the tariff sheets without supporting Direct Testimony.

10. On December 10, 2024, the Colorado Solar and Storage Association (“COSSA”), the Solar Energy Industries Association (“SEIA”), and the Coalition for Community Solar Access (“CCSA”), collectively the “Solar Parties,” jointly filed a protest to AL 878. They allege that the Company’s tariff sheets filed with AL 878 are deficient because they do not set forth any approach to ensure the Commission is able to “consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms” as required by law. They state that the Commission did not prescribe any specific mechanism by which Black Hills would set the billing credits, instead opting to allow the annual tariff CSG billing credit filings to be “flexible enough to accommodate multiple possible ways to establish the fixed bill credits in accordance with HB 23-1137.” According to the Solar Parties, the Commission rules contemplate the use of an escalation rate applied to each vintage of credits, a full schedule of credit amounts available over the life of a CSG project, or some other “more complex determination” to ensure the value of fixed credits remains constant for CSG subscribers.

¹ Decision No. C24-0447, issued on June 15, 2024, Proceeding No. 24R-0133E, p. 6-7, ¶¶ 19-22.

11. The Solar Parties specifically fault the AL 878 filing for not proposing any adjustment mechanism to ensure that the value of the fixed credit option remains constant over the lifetime of a CSG project. They thus ask that the Commission require Black Hills to further amend the tariff sheets to include an adjustment mechanism and provide the necessary level of certainty for CSG developers to continue building projects.

12. The Solar Parties also fault Black Hills for failing to include in the tariff sheets earlier vintages of billing credits. They explain that the Commission's new CSG rules provide that the fixed bill credit option will remain constant "starting at the time the subscriber organization applies for or bids capacity into a utility CSG program" and that subscriber organizations are authorized to elect the fixed bill credit option up until the commercial operation date of the CSG project. They state that all CSG projects applied for or bid capacity into Black Hills' CSG program prior to 2025, and some have yet to reach commercial operation. According to the Solar Parties, the CSG tariff sheets must include fixed bill credit values for earlier vintages to accommodate projects that applied for or bid capacity prior to 2025 and elect the fixed bill credit option.

13. Because the Solar Parties allege that AL 878 is inconsistent with HB 23-1137 and the Commission's rules, they request that the Commission suspend the effective date of the filed tariff sheets and hold a hearing.

C. Conclusions and Findings

14. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. Based on our review of the filing and the protest submitted by the Solar Parties, we find good cause to suspend the tariff sheets submitted with AL 878 for 120 days through May 1, 2025,

and to set the matter for hearing.² We agree with the Solar Parties that a hearing process is necessary for the Commission to properly review the updated and new forms of credits made available to CSG subscribers pursuant to HB 23-1137 and Rule 3881.

15. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

16. We refer this matter to an ALJ.

II. ORDER

A. The Commission Orders That:

1. The proposed January 1, 2025, effective date of the tariff sheets filed with Advice Letter No. 878, filed by Black Hills Colorado Electric, LLC (“Black Hills”) on November 15, 2024, is suspended until May 1, 2025, or until further order of the Commission.

2. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this Proceeding shall file a motion to intervene with the Commission no later than **January 31, 2025**, and shall serve a copy of the notice or motion on Black Hills’ attorney of record.

3. The matter is referred to an Administrative Law Judge (“ALJ”). The ALJ shall set a hearing date, rule on interventions, and establish other procedures by separate decision(s).

² Under § 40-6-111(1)(b), C.R.S., the Commission may by separate order extend the suspension period for an additional 130 days, for a total of 250 days, through September 8, 2025.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 30, 2024.**

(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