

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0230E

IN THE MATTER 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.

**INTERIM DECISION GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Mailed Date: August 24, 2022

Adopted Date: August 24, 2022

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Motion for Extraordinary Protection (Motion), filed May 27, 2022, by Black Hills Colorado Electric, LLC (Black Hills or the Company). The Motion seeks extraordinary protection of claimed highly confidential competitive and commercially sensitive resource planning information contained in the Company's testimony and workpapers and information the Company expects to be produced through discovery.

B. Procedural History

2. On May 27, 2022, Black Hills initiated this matter by filing the above-captioned Application seeking a Commission order approving Phase I of the Company's 2022 Electric Resource Plan and Clean Energy Plan (2022 ERP and CEP) and the Company's 2023-2026 Renewable Energy Standard Compliance Plan (2023-2026 RES Plan). The parties to this Proceeding are: Black Hills, the Board of County Commissioners of Pueblo County, Cañon City, City of Pueblo, Colorado Energy Office, Colorado Independent Energy Association, Colorado

Office of the Utility Consumer Advocate, Energy Outreach Colorado, Interwest Energy Alliance, Staff of the Colorado Public Utilities Commission, Walmart, Inc., and Western Resource Advocates.¹ No party filed a response to Black Hills' Motion.

C. Motion

3. The Motion requests the Commission enter an order granting extraordinary protection of highly confidential information in or related to Black Hills' 2022 ERP and CEP and 2023-2026 RES Plan. Black Hills states the covered information fall within eight categories of competitive and commercially sensitive resource planning information that is contained in its Direct Case or supporting workpapers, or information it expects to be produced through discovery. Black Hills requests extraordinary protection of the claimed highly confidential information in accordance with Rules 3603(b) and 3614 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, and Rule 1100 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

4. Black Hills seeks highly confidential treatment of the following eight categories of information: (1) Unit Level Fuel Costs; (2) Hourly Market Price Data; (3) Unit Level Heat Rate and Heat Rate Curves; (4) Unit Detailed Maintenance Schedules; (5) Bid Information of any sort (from the Company and any other entities); (6) Pricing and any other commercially sensitive information regarding a PPA; (7) Propriety software (such as Resolve and PLEXOS) Modeling Files; and (8) Forecasted unit level data included in Clean Energy Plan Guidance Verification Workbooks (completed by the Company with Company-specific data and created by the Air Pollution Control Division at CDPHE).

¹ See Decision No. C22-0449-I, issued August 1, 2022 (addressing interventions and establishing parties). The Colorado Department of Public Health and Environment (CDPHE) is also a limited participant.

5. Black Hills requests parties' access to this information be limited as follows:

6. For **categories one through five, seven, and eight**, Black Hills requests denying access to intervenors that are developers of energy resources, competitive power producers, existing or potential wholesale customers of developers of energy resources, and parties that are or may become bidders responding to ongoing or future Black Hills solicitations. For all other parties, Black Hills requests access be limited to a "reasonable number of attorneys" and a "reasonable number of subject matter experts" representing the party.

7. For **category six**, Black Hills requests access be limited to the Commission,² Commission Staff of the Colorado Public Utilities Commission, Colorado Office of the Utility Consumer Advocate, and the Independent Evaluator in this Proceeding. Black Hills states it is contractually committed to keep certain PPA terms and conditions confidential and is bound to maintain such confidentiality, absent an order from the Commission to the contrary.

8. For **category seven**, Black Hills requests an order confirming Black Hills cannot and need not provide this information to anyone who does not hold licenses for that software. Black Hills states, access to this proprietary software information is subject to and limited by the relevant proprietary software license terms, which do not allow for disclosure to persons without a current license.

9. Black Hills additionally requests the Commission direct that intervenors that are organizations or trade associations be prohibited from sharing the claimed highly confidential information with third parties, including any of their members that are or may become developers

² Black Hills specifies that by "Commission" it intends to include Commissioners, Commission Administrative Law Judges, and Commission Advisory Staff and Advisory Counsel. The Company acknowledges that the Commission and Commission Trial Staff and counsel for Trial Staff need not provide separate non-disclosure agreements to receive Highly Confidential Information.

of energy resources, competitive power producers, existing or potential wholesale customers of developers of energy resources, and parties that are or may become bidders responding to ongoing or future competitive Black Hills solicitations in Colorado, consistent with Rules 3614(b)(I) and (II), 4 CCR 723-3.

10. Black Hills states this information is competitively sensitive and should not be provided to individuals or entities who could use it for competitive purposes. The Company states a successful competitive solicitation process is based in large part on the creativity of the participants' proposals and the pricing within those proposals. The Company states the willingness of bidders to offer their best prices comes from a lack of knowledge as to what the other bidders are offering. The Company states disclosure of this information could cause irreparable harm to its trading operations, commercial negotiations, and ability to solicit and obtain cost-effective resources. Black Hills states extraordinary protection is consistent with past Commission practice. Black Hills states this information must remain protected as highly confidential indefinitely.

D. Findings and Conclusions

11. The Commission finds Black Hills has met the requirements under Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, for extraordinary protection. We find the reasoning and the arguments in the Motion set forth good cause to grant the requested relief. We further find the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules of Practice and Procedure. Based on the foregoing, we grant the Motion. We also see good cause to grant Black Hills request and will direct that intervenor organizations or trade associations are prohibited from sharing the highly confidential information with third parties, consistent with Black Hills' request.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extraordinary Protection, filed by Black Hills Colorado Electric, LLC May 27, 2022, is granted, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 24, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners