

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0393E

IN THE MATTER OF ADVICE LETTER NO. 680 FILED BY BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP TO REVISE ITS COLORADO PUC NO. 9 ELECTRIC TARIFF TO IMPLEMENT A GENERAL RATE SCHEDULE ADJUSTMENT TO INCREASE RATES, A NEW RIDER PURSUANT TO THE CLEAN AIR-CLEAN JOBS ACT, AND OTHER CHANGES, PROPOSED TO BE EFFECTIVE ON MAY 31, 2014.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING INTERVENTIONS; SETTING
PROCEDURAL SCHEDULE AND
HEARING; AND SETTING PUBLIC HEARING**

Mailed Date: June 26, 2014

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I. STATEMENT

1. On April 30, 2014, Black Hills/Colorado Electric Utility Company, LP (Black Hills, Applicant, or Company) filed Advice Letter No. 680. Black Hills submitted Advice Letter No. 680 with supporting testimony and exhibits.

2. By Decision No. C14-0522, issued May 16, 2014, the effective date of the Advice letter was suspended until September 28, 2014. The matter was also referred to an administrative law judge (ALJ) for disposition.

3. On May 30, 2014, Staff of the Colorado Public Utilities Commission (Staff) filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. As required by Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a) of the Rules of Practice and Procedure, in that filing Staff identified the Trial Advocacy (litigation) Staff and the Advisory Staff. Staff is an intervenor as of right and a party in this proceeding.

4. On June 6, 2014, Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. OCC is an intervenor as of right and a party in this proceeding.

5. On June 6, 2014, the Board of Waterworks of Pueblo, Colorado and the Fountain Valley Authority (collectively The Board and Authority) timely filed their combined Petition to Intervene. The Board and Authority represent that each purchases substantial amounts of electricity from Black Hills. The Board and Authority state that they have previously been granted interventions in Black Hills' proceedings and wish to actively participate in the instant proceeding. In addition, they list eight specific issues of interest in this proceeding.

6. On June 12, 2014, Holcim (U.S.) Inc. (Holcim) timely filed a Petition to Intervene. Holcim indicates that it receives electric service from Black Hills and is also one of Black Hills' largest customers. Holcim argues that it has pecuniary and tangible interests that may be substantially affected by the outcome of this proceeding which cannot be adequately represented by any other party.

7. On June 13, 2014, the City of Pueblo, Colorado (the City) timely filed a Petition to Intervene. The City states that it is a municipal governmental entity and obtains electricity from Black Hills.

8. On June 13, 2014, Western Resource Advocates (WRA) timely filed its Petition for Leave to Intervene. WRA contends it should be granted an intervention and describes how the subject matter of this proceeding will directly affect the pecuniary or other tangible interests of WRA, and those it represents

9. By Interim Decision No. R14-0549-I issued May 22, 2014, a prehearing conference was scheduled for June 17, 2014. This Decision memorializes agreements made at the prehearing conference and addresses the intervention of WRA which was taken under advisement.

A. Permissive Interventions.

10. At the prehearing conference the Board and Authority were represented by counsel. There was no objection raised by any party to allowing the Board and Authority to intervene. The Board and Authority stated that they intended to actively participate in the proceeding.

11. Good cause is found to allow the Board and Authority to intervene in the proceeding.

12. At the prehearing conference Holcim was represented by counsel. There was no objection raised by any party to allowing Holcim to intervene. Holcim stated that it intended to actively participate in the proceeding.

13. Good cause is found to allow Holcim to intervene in the proceeding.

14. At the prehearing conference WRA was not represented by counsel. An objection to the intervention of WRA was raised by the Board and Authority.

15. WRA is a non-profit regional environmental law and policy center serving states within the Interior West of the United States. WRA has headquarters in Colorado and has members and financial supporters who live in Colorado and are customers of Public Service Company of Colorado. WRA's petition demonstrates a tangible interest in reducing the environmental impact from electricity generation in a cost-effective manner that will not be adequately represented by other parties to the proceeding. Although counsel for WRA failed to appear to provide argument to the objection raised by the Board and Authority, WRA shall be granted intervenor status.

16. The City failed to appear for the prehearing conference.

17. It is unknown if the City still wishes to intervene in the above captioned proceeding.

18. If the City still wishes to intervene in the proceeding, it is ordered to show cause why it failed to appear for the prehearing conference, if it intends to actively participate in the hearing, and why its interests will not be adequately represented by other parties to the proceeding.

19. The City shall have until July 3, 2014 to make this show cause filing if it still wishes to intervene in the above captioned proceeding.

20. The City may avail itself to participate in the proceeding as an *amicus curiae*. Through comment and status as *amicus curiae*, the City will be able to represent its demonstrated

interests in a manner useful to the Commission. If the City wishes to participate in the proceeding as an *amicus curiae*, they shall make a filing requesting this status by July 3, 2014.

21. The timely interventions of right of the OCC and Staff are noted.

B. Further Suspension of Effective Date of Tariff Sheets.

22. The Commission has suspended the effective date of the tariffs that accompanied Advice Letter No. 680 until September 28, 2014. By further order, the Commission may suspend for additional time the effective date of the tariff sheets that accompanied the Advice Letter.

23. By this Decision and pursuant to § 40-6-111(1), C.R.S., and Rules 4 CCR 723-1-1305(c) and 723-1-1305(e), the ALJ will suspend for an additional 90 days (that is until, **December 27, 2013**), the effective date of the tariff sheets that accompanied the Advice Letter. If the Commission does not establish new rates by that date, the tariff sheets filed with the Advice Letter may become effective.

C. Procedural Schedule, Evidentiary Hearing Dates, and Related Matters.

24. By Decision No. R14-0549-I, the ALJ scheduled a June 17, 2014 prehearing conference. The ALJ convened the prehearing conference as scheduled.

25. At the prehearing conference, the ALJ made oral rulings on the procedural schedule, discovery, and treatment of information claimed to be confidential. This Decision memorializes those rulings.

26. The Parties agreed to the following schedule, which the ALJ finds acceptable and which the ALJ will adopt: (a) no later than June 27, 2014, Applicant will file its corrected direct testimony and exhibits; (b) no later than July 28, 2014, each intervenor will file its answer testimony and exhibits; (c) no later than August 25, 2014 Applicant will file its rebuttal testimony

and exhibits; (d) no later than August 25, 2014 each intervenor will file cross-answer testimony and exhibits;¹ (e) no later than September 15, 2014, each party will file its corrected testimony and exhibits; (f) no later than September 2, 2014, each party will file its prehearing motions;² (g) no later than September 15, 2014, the Parties will file any stipulation (*e.g.*, a stipulation as to facts or admissibility of prefiled testimony) and any settlement reached; (h) the evidentiary hearing will be held on September 23 through 26, 2014; and (i) no later than October 10, 2014, each party will file its post-hearing statement of position, to which (absent a further Order) no response will be permitted.

27. **The Parties are advised, and are on notice, that** absent a showing of unusual circumstances, the ALJ will not permit a party to ask its witness, as part of the witness's oral testimony, to make one or more corrections to prefiled testimony or to an exhibit appended to prefiled testimony. The ALJ expects a sponsoring party to assure that, when offered as an exhibit at hearing, its witness's testimony and exhibits are as prefiled, including corrections filed pursuant to the procedural schedule, and that all necessary corrections have been prefiled in accordance with the procedural schedule.

28. *With respect to witness testimony and exhibits that contain highly confidential information³ or confidential information,⁴ or both:* (a) if an entire document is not confidential, each portion that contains confidential information will be clearly marked (*e.g.*, shaded), and each page will state in the heading: "This page contains confidential information as shown";

¹ Cross-answer testimony responds only to the answer testimony of another intervenor. An intervenor may file cross-answer testimony even if that party did not file answer testimony.

² Prehearing motions include dispositive motions and motions to strike testimony and exhibits.

³ As used in this Decision, highly confidential information is information that, in this proceeding, the ALJ has determined is highly confidential and that is subject to an order for extraordinary protection.

⁴ As used in this Decision, confidential information is information that a party claims is confidential and that is filed under seal with the Commission.

(b) any portion of a witness's testimony and exhibits that contains highly confidential information will be clearly marked (*e.g.*, shaded), and each page will state in the heading: "This page contains highly confidential information as shown"; (c) if the same page contains both confidential information *and* highly confidential information, the highly confidential information will be differentiated from the confidential information (*e.g.*, by use of different shading), and each page will state in the heading: "This page contains highly confidential information and confidential information as shown"; and (d) the public version of a document that contains confidential information or highly confidential information, or both, will identify in the heading each page on which that information appears.

29. Rule 4 CCR 723-1-1100(c) requires the cover page of a document to state that the document (in this case, testimony and exhibits) contains confidential information and to identify where in the document the confidential information is found. The same notice requirement applies to a document that contains highly confidential information.

30. For clarity of the evidentiary record and to assist the ALJ and the Parties during the hearing, a sponsoring party will assure, where possible, that the page numbers and the line numbers are the same on the public version of a document, the confidential version of the document, and the highly confidential version of the document.

D. Hearing to Take Public Comment and Procedures for that Hearing.

31. This is a rate case proceeding. In a rate case, the ALJ's practice is to hold a hearing to take public comment.

32. By this Decision, the ALJ will schedule a hearing to take public comment on the issues in this proceeding. The hearing will be held in Pueblo, Colorado on September 4, 2014.

33. The following are the procedures for the hearing to take public comment:

a. An individual who is a party or who is a representative of a party will not be permitted to present comments at the hearing to take public comment. Parties will present their positions and will make their comments through testimony at the evidentiary hearing.

b. The hearing to take public comment will be transcribed.

c. The hearing to take public comment will begin at 4:00 p.m. and will continue until concluded, but in no event later than 7:00 p.m.

d. Individuals who wish to make a comment will sign up to speak and will be heard in the order in which they sign up to speak. Generally, the ALJ will permit each individual to speak for five minutes; but the length of time allotted to each speaker will depend on the number of persons who wish to speak.

e. If they wish to do so, Parties may ask clarifying questions of an individual who makes a comment at the hearing to take public comment.

f. The ALJ may ask clarifying questions of an individual who makes a comment at the hearing to take public comment.

34. It is the Commission's practice to take into consideration the comments -- both written and oral -- made by members of the public. At the evidentiary hearing, Parties will have an opportunity to respond orally to the comments made during the September 4, 2014 hearing to take public comment. **The Parties are advised, and are on notice, that** a party that desires to respond to any such comments must inform the ALJ of that fact prior to the evidentiary hearing.

E. Discovery-related Matters.

35. At the prehearing conference, the Parties proposed discovery-related procedures, which the ALJ will adopt.

36. Unless modified by this Decision, Rule 4 CCR 723-1-1405 will govern discovery in this matter.

37. Notwithstanding Rule 4 CCR 723-1-1405(a)(II) there shall be no limitation on the number of questions asked in a set of discovery requests, but the serving party and the responding party are obligated to work together informally to arrange a new date for responses as needed. Work papers will be simultaneously filed with Answer, Cross-Answer, Rebuttal testimony, and exhibits.

38. Subject to Rule 4 CCR 723-1-1100, discovery requests and discovery responses will be served on all Parties.

39. Discovery requests that do not include confidential information or highly confidential information may be served by electronic mail. Discovery responses that do not include confidential information or highly confidential information may be served by electronic mail.

40. Confidential discovery responses are to be served pursuant to the Commission's confidentiality rules.

41. The ALJ will order these cut-off dates for the service of discovery requests:
(a) for *discovery addressed to direct testimony and exhibits*: the cut-off date is July 28, 2014;
(b) for *discovery addressed to answer testimony and exhibits*: the cut-off date is August 25, 2014; (c) for *discovery addressed to rebuttal/cross-answer testimony and exhibits*: the cut-off date is September 12, 2013.

42. Parties may serve discovery no later than 5:00 p.m. Mountain Time (MT) on Monday through Thursday and may serve discovery no later than 3:00 p.m. MT on Friday. Discovery served later than these stated times will be deemed to be served on the next business day.

43. The ALJ will order the following response times to discovery: (a) for *discovery addressed to direct testimony and exhibits*: response time is ten calendar days; (b) for *discovery addressed to answer testimony and exhibits*: response time is ten calendar days; (c) for *discovery addressed to rebuttal testimony and exhibits*: response time is seven calendar days; (d) for *discovery addressed to cross-answer testimony and exhibits*: response time is seven calendar days.

44. Except as a proposed exhibit or as necessary to support or to respond to a motion, the Parties will not file discovery requests or discovery responses with the Commission.

45. Except as a proposed exhibit or as necessary to support or to respond to a motion, the Parties will not serve discovery requests or discovery responses on the ALJ, on Commission Advisory Staff, or on Commission Advisory Counsel.

46. Motions pertaining to discovery disputes may be filed at any time. The response time to a motion pertaining to a discovery dispute shall be five business days. Any discovery motion or response shall be served electronically by e-mail. If necessary, the ALJ will hold a telephone hearing on a discovery-related motion as soon as practicable after the motion and response are filed.

F. Confidential Information and Highly Confidential Information.

47. In this proceeding, Rule 4 CCR 723-1-1100-1102 will govern the treatment of information claimed to be confidential.

48. **The Parties are advised, and are on notice, that** information in this proceeding will not be highly confidential information *unless* a party has filed in this proceeding, and the ALJ has granted, a motion seeking extraordinary protection for the information that is claimed to be highly confidential.

G. Matters Pertaining to Hearing Exhibits.

49. Each type of a witness's testimony and exhibits (*e.g.*, direct, answer, rebuttal, cross-answer) will be one hearing exhibit.

50. Hearing exhibits will be marked numerically and sequentially, beginning with the number 1, irrespective of the sponsoring party.

51. Prefiled testimonies and exhibits will be the first hearing exhibits⁵ and will be given hearing exhibit numbers such that all the testimonies and exhibits sponsored by one witness are together. As an example, assume that Company witness Smith prefiles direct testimony and rebuttal testimony; the testimonies would be marked as Hearing Exhibits No. 2 (direct) and No. 3 (rebuttal).

52. *With respect to marking hearing exhibits that contain highly confidential information or confidential information, or both:* (a) any portion of a witness's testimony and exhibits that contains *confidential information* will be marked as Confidential Hearing Exhibit No. XXA and, at the hearing, will be in a separate and sealed envelope marked in accordance with Rule 4 CCR 723-1-1100(c)(III); (b) any portion of a witness's testimony and exhibits that contains *highly confidential information* will be Highly Confidential Hearing Exhibit No. XXB and, at the hearing, will be a separate and sealed envelope marked in accordance with

⁵ Prefiled testimony and exhibits will follow the Application, should Applicant decide to offer the Application as a hearing exhibit.

Rule 4 CCR 723-1-1100(c)(III); (c) if a page contains both confidential information and highly confidential information, the highly confidential information will be redacted from the page in the Confidential Hearing Exhibit; and (d) if a page contains both confidential information and highly confidential information, the highly confidential information will be differentiated (*e.g.*, by different shading) from the confidential information in the Highly Confidential Exhibit.

53. As an example of hearing exhibit marking, assume that Company witness Smith files direct testimony and exhibits that contain highly confidential information and files rebuttal testimony and exhibits that contain both confidential information and highly confidential information. His direct testimony and exhibits are given one hearing exhibit number (in the example, Hearing Exhibit No. 2); and the highly confidential information is Hearing Exhibit No. 2B. His rebuttal testimony and exhibits are given one hearing exhibit number (in the example, Hearing Exhibit No. 3); the confidential information is Hearing Exhibit No. 3A; and the highly confidential information is Hearing Exhibit No. 3B.

54. **The Parties are advised, and are on notice, that** it is the responsibility of each party to be sure that it has a sufficient number of copies of each document that it wishes to offer as an exhibit at the evidentiary hearing. *With respect to prefiled testimony and exhibits*, this means that, at the hearing, a party must provide a copy to be marked as an exhibit and retained by the Commission. This is a requirement even though the testimony and exhibit are prefiled. *With respect to documents other than prefiled testimony and exhibits*, this means that, at the hearing, a party must have at least the number of copies sufficient: (a) to have one to be marked and retained by the Commission as the hearing exhibit; (b) to provide a copy to each of the other parties; (c) to provide one to the ALJ; and (d) to retain a copy. **The Commission will *not* make copies of documents that are offered as exhibits.**

II. ORDER

A. It Is Ordered That:

1. The Interventions of The Board of Waterworks of Pueblo, Colorado and the Fountain Valley Authority, Holcim (U.S.) Inc., and Western Resource Advocates, are granted.

2. The City of Pueblo, Colorado shall make a show cause filing consistent with the discussion contained in ¶18 by July 3, 2014, if it still wishes to intervene in the above captioned proceeding.

3. A hearing to take public comment in this matter is scheduled for the following date, at the following time, and in the following location:

DATE: September 4, 2014
TIME: 4:00 p.m. and continuing until concluded,
but in no event later than 7:00 p.m.
PLACE: Pueblo County Commissioners Chambers
Pueblo County Courthouse
215 W. 10th St.
Pueblo, Colorado

4. The procedures for the hearing to take public comment are set out above.

5. The procedural schedule contained in ¶ 26 above is adopted.

6. The evidentiary hearing in this matter is scheduled for the following dates, at the following times, and in the following location:

DATES: September 23 through 26 2014
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

7. Consistent with the discussion above, Parties shall identify, as described above, confidential information and highly confidential information contained in testimony and exhibits and other documents filed in this proceeding.

8. Except as modified by this Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery in this proceeding.

9. The provisions of ¶¶ 35 through 46, above, shall govern discovery in this proceeding.

10. Rules 4 *Code of Colorado Regulations* 723-1-1100-1102 shall govern treatment of information claimed to be confidential in this proceeding.

11. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge