

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19V-0463E

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IN THE MATTER OF THE PETITION OF BLACK HILLS COLORADO ELECTRIC, LLC, D/B/A BLACK HILLS ENERGY, FOR APPROVAL OF WAIVERS AND VARIANCES TO DELAY THE FILINGS OF ITS NEXT ELECTRIC RESOURCE PLAN AND RENEWABLE ENERGY STANDARD.

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**COMMISSION DECISION GRANTING PETITION TO  
WAIVE REQUIREMENTS TO FILE ELECTRIC  
RESOURCE PLAN AND RENEWABLE ENERGY  
STANDARD PLAN BY OCTOBER 31, 2019**

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Mailed Date: October 30, 2019

Adopted Date: October 16, 2019

**I. BY THE COMMISSION**

**A. Statement**

1. By this Decision, we grant the Petition of Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills or Company) for waiver of Rules 4 *Code of Colorado Regulations* (CCR) 723-3-3603(a) and 3657(a) of the Commission's Rules Regulating Electric Utilities (Petition). Those rules require Black Hills to file an Electric Resource Plan (ERP) and Renewable Energy Standard (RES) Compliance Plan on or before October 31, 2019. In keeping with previous Commission Decisions on similar petitions filed by Public Service Company of Colorado (Public Service) and Tri-State Generation and Transmission Association, Inc. (Tri-State), we find that the deadline for Black Hills' next ERP and RES Compliance Plan should be determined in the ongoing ERP rulemaking in Proceeding No. 19R-0096E.

2. On August 26, 2019, Black Hills filed pursuant to 4 CCR 723-1-1003 and 1304(h) of the Commission's Rules of Practice and Procedure, the Petition to grant the Company waivers

and variances from the requirement to file an ERP and RES Plan by October 31, 2019. Black Hills requests a delay in the filing of its next ERP and RES Plan of up to one year to October 30, 2020.<sup>1</sup>

3. According to the Petition, Black Hills recognizes that the Commission has proposed moving the next ERP filing deadline for Black Hills from October 31, 2019, to February 1, 2020, which would be accomplished by a change in the ERP Rules and RES Rules. Nonetheless, Black Hills takes the position that it requires additional time beyond February 1, 2020, which is the potential new date for the next ERP filing proposed in the Notice of Proposed Rulemaking in Proceeding No. 19R-0096E, to comply with new and not-yet-finalized rules governing the substance of ERPs and RES Compliance Plans.

4. Black Hills provides three reasons why it requires additional time to file its next ERP and RES Plan. First, it is not yet known what rules will be promulgated (by the Air Quality Control Commission (AQCC)) pursuant to House Bill (HB) 19-1261 to achieve new statewide greenhouse gas pollution reduction targets. Further, the Company is unsure how those AQCC rules will impact it, and whether Black Hills' ERP and RES Plan will need to model and reflect those greenhouse gas pollution reduction requirements. Black Hills states that there is no indication that the AQCC's rules will be implemented any time in the near future and that it will require sufficient time to consider and potentially reflect any eventually adopted rules. Moreover, Black Hills believes that it requires additional time to consider its options to file a Clean Energy Plan pursuant to Senate Bill (SB) 19-236.

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<sup>1</sup> Black Hills includes the caveat that it could file its next ERP and RES Plan before October 30, 2020 if certain matters it raises in its Petition are timely resolved.

5. Finally, Black Hills determines that it has no immediate need for new capacity additions “justifying a hastily drafted ERP and RES Plan.”<sup>2</sup> Black Hills states that it does not anticipate a need for new capacity resources through year 2022.

6. On September 5, 2019, Staff of the Public Utilities Commission (Staff) filed a Notice of Intervention of Right and Request for Hearing in this Proceeding. According to Staff, it sought to examine whether Black Hills’ request to delay its next ERP and RES Compliance Plan filings raised potential issues with regard to compliance with the RES. Specifically, Staff wished to determine whether Black Hills will require additional renewables to meet the RES. Staff cited the potential status of providing retail electric service to AX2 Data Centers (AX2) under an Economic Development Rate addressed in Proceeding Nos. 18A-0791E and 19A-0055E.

7. However, on September 20, 2019, Staff withdrew its intervention and request for hearing. Staff explained that it issued audit questions to investigate the issues raised in its intervention filing. As a result, it learned from the Company that Black Hills was unsure of the service start date for the AX2 and the expected energy requirements. According to Staff, Black Hills represented in its audit response that:

[The] AX2 Data Centers has not made the required non-refundable security deposit pursuant to the Service Agreement. In addition, Black Hills is aware that AX2 Data Centers has failed to perform according to its obligations with the Pueblo Economic Development Corp (“PEDCO”). Black Hills is partnering with PEDCO to address this matter. Black Hills is pursuing all available remedies to demand AX2 Data Centers to comply with its contractual obligations.<sup>3</sup>

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<sup>2</sup> Application at ¶ 8.

<sup>3</sup> Withdrawal at p. 2.

8. Staff also explained that Black Hills provided forecasts of RES compliance for a future without any sales to AX2 as well as a future with AX2 sales.<sup>4</sup> As a result, Staff expressed its satisfaction that Black Hills will be compliant with the RES regardless of whether the AX2 sales come to fruition.<sup>5</sup>

9. Since no other requests for intervention have been filed in this Proceeding, Black Hills' Petition is uncontested and unopposed.

### **B. Discussion and Findings**

10. Rule 3603(a) requires Black Hills to file a resource plan pursuant to the ERP Rules currently in effect on October 31, 2019.

11. Rule 3657(a) in the currently effective RES Rules requires Black Hills to file a RES compliance plan on October 31, 2019 detailing how it intends to comply with the RES during the resource acquisition period addressed in the ERP filed pursuant to Rule 3603(a).

12. We find good cause to grant Black Hills' request for a waiver from the October 31, 2019 filing deadline for its next ERP and RES Compliance Plan. We find approving the waiver is consistent with our plans to delay the next ERP and RES Compliance Plan filings until after promulgating updated ERP and RES Rules in Proceeding No. 19R-0096E.

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<sup>4</sup> To the Commission's knowledge, as of the date of this Decision, Black Hills has not made any filings in Proceeding Nos. 18A-0791E and 19A-0055E regarding the status of providing service to AX2. Nor are we aware that Black Hills has filed any compliance tariff sheets to implement an Economic Development Rate applicable to AX2 or tariff sheets to implement revisions to its Energy Cost Adjustment to address the "Customer Credit" associated with positive net income from service to AX2.

<sup>5</sup> Staff submitted copies of the responses to its audit requests with its notice of withdrawal.

13. We further find it appropriate that we not set a new filing deadline for Black Hills at this time. Consistent with our findings regarding similar requests by Public Service and Tri-State, we find that the filing deadlines should be set by rule in Proceeding No. 19R-0096E.<sup>6</sup>

## II. ORDER

### A. The Commission Orders That:

1. The Petition filed by Black Hills Colorado Electric, LLC, doing business as, Black Hills Energy (Black Hills), for Approval of Waivers and Variances to Delay the Filings of its Next Electric Resource Plan (ERP) and Renewable Energy Standard (RES) Plan is granted consistent with the discussion above.

2. The date by which Black Hills will be required to file its ERP and RES Compliance Plan will be determined in Proceeding No. 19R-0096E.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

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<sup>6</sup> With respect to carbon emission reductions and the related statutes enacted from the 2019 General Assembly, we recently issued Decision No. C19-0822-I in Proceeding No. 19R-0096E on October 7, 2019, to obtain additional information directly from the AQCC regarding its promulgation of rules and regulations necessary to ensure progress toward a 26 percent reduction in statewide greenhouse gas pollution by 2025; a 50 percent reduction by 2030; and a 90 percent reduction by 2050, relative to 2005 statewide levels, pursuant to HB 19-1261. We concluded that information from the AQCC about its anticipated timelines for the implementation of HB 19-1261 is critical to determine when Public Service, Black Hills, and Tri-State will be in a position to file ERPs responsive to the carbon reduction goals established pursuant to HB 19-1261, or that are otherwise consistent with the requirements of a Clean Energy Plan. We also noted that because the scope of ERP proceedings for Tri-State are greatly expanded pursuant to SB 19-236, it is necessary for us to examine the potential for staggering ERP filing deadlines for the three utilities to ensure the efficient use of Commission resources and preserve the opportunities for stakeholders to participate in complicated and often lengthy ERP proceedings.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 16, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners