

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0195E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PLAN, READY EV, FOR PROGRAM YEARS 2021-2023 AND FOR RELATED TARIFF APPROVALS.

INTERIM DECISION ON PROCEDURAL MATTERS

Mailed Date: July 10, 2020

Adopted Date: July 8, 2020

I. BY THE COMMISSION

A. Statement

1. On May 08, 2020, Black Hills Colorado Electric, LLC (Black Hills) filed its Application for Approval of its Transportation Electrification Plan, Ready EV, for Program Years 2021-2023 and for Related Tariff Approvals (Application). Black Hills seeks approval of (1) its Application; (2) the Ready EV Plan, including its programs; (3) the Ready EV Plan budget; (4) the Company's proposal to recover certain prudently-incurred costs associated with the Ready EV Plan through the DSMCA; (5) the proposed new time-of-day rate schedules governing EV charging for the residential class, the small general service class, and the large general service–secondary class; and (6) the tariff sheets.

2. On May 15, 2020, Public Service Company of Colorado (Public Service) filed its Application for Approval of its 2021-2023 Transportation Electrification Plan (TEP). Public Service requests the Commission issue an order approving the proposals contained in its 2021-2023 Transportation Electrification Plan (TEP) application. Public Service states its TEP is

intended to support Colorado's goal of attaining 940,000 EVs on the road by 2030 as well as to help position Colorado as a national leader in vehicle electrification.

3. The applications were filed pursuant to Senate Bill 19-077 which requires each Colorado electric public utility to file with the Commission "an application for a program for regulated activities to support widespread transportation electrification" within their service territories for Commission approval by May 15, 2020.

4. By Interim Decision Nos. C20-0465 and C20-0466 we determined it appropriate to hear both applications *en banc*. In doing so, we found that both proceedings are on a near simultaneous procedural path which present several concerns. We determined hearing similar applications at the same time may cause conflation of the issues and facts of each case resulting in unneeded confusion. We found it appropriate to stagger the proceedings, initiating one application, followed after a period of time by the second application. Initially we planned to hear the Public Service application first followed by Black Hills' application. In order to conduct the proceedings in this manner, you found it necessary for Public Service and Black Hills to waive the statutory timelines for us to issue a decision in each proceeding pursuant to § 40-6-109.5(3), C.R.S.

5. Public Service and Black Hills were to consult on a procedural proposal to hear both applications and file a joint proposal by the close of business on Monday June 29, 2020. The proposal of Black Hills and Public Service was to include discussion of waiver of the statutory deadlines under § 40-6-109.5(3), C.R.S.

6. On June 29, 2020 Public Service and Black Hills filed their Joint Response. Although captioned as a "Joint Response," the parties filed separate statements.

7. The two applicants state that while not specifically directed by the Commission, they conferred with the Colorado Energy Office (CEO) given the particular interest that CEO has

in electric vehicle adoption. CEO authorizes the parties to state that CEO supports finding a solution to the issues raised by the Commission that will not unduly delay either utility's TEP filing. The parties claim TEPs will play an enormous role in supporting the achievement of the state's electric vehicle adoption goals, while providing benefits to drivers, utility customers, the electric grid, and the state as a whole by contributing to greenhouse gas emissions and air pollution reductions.

B. Public Service Response

8. Public Service states that Senate Bill 19-077's deadline for utilities to file TEPs in May of 2020 reflects the Colorado's legislature's determination that timely utility support for this sector is important to meet Colorado's transportation electrification goals.

9. Public Service claims that it is continuing to see high demand for EV infrastructure support from customers and communities in its service territory and claims to be concerned that it will not be positioned in the manner it otherwise would be to support this demand if its TEP is delayed. The Company maintains that for its first round, which closed April 29, 2020, it received 44 applications covering 72 sites and 373 charging ports in 30 cities. Through the second round, which closed on June 25, 2020, Public Service states it received 25 applications covering 53 sites and 687 charging ports in 20 cities.

10. According to Public Service, a significant delay in the implementation of either TEP will delay customer access to rates and programs and will reduce the period of time the TEP is in effect, thereby reducing the overall benefits of the plan. As a result, Public Service has determined it will not voluntarily waive the statutory deadline in which to issue a decision in this matter. Public Service states that should the Commission determine it necessary to invoke §40-6-109.5(4), it requests an extension of no more than 30 days.

C. Black Hills' Response

11. Black Hills recommends a process for its TEP, Ready EV, where the Commission declines to hear the proceeding *en banc*, directs an ALJ to preside over the proceeding, and the Commission does not delay resolution of the proceeding, which Black Hills argues would be counter to the public interest. According to Black Hills' reasoning directing an ALJ to preside over the Black Hills' TEP will alleviate the burden on the Commission associated with processing the case consistent with the May 15, 2020 filing deadline specified in Senate Bill 19-077. With this approach that directs an ALJ to hear the proceeding, Black Hills agrees to waive the statutory deadline pursuant to § 40-6-109.5(3), C.R.S. To the extent the Commission determines it necessary to hold the case in a period of abeyance before the ALJ (so as to begin the Public Service TEP proceeding), Black Hills recommends a period of abeyance not to exceed 90 days. A period greater than 90 days would unduly delay the benefits to Black Hills' customers of Ready EV programs, including new rates for EV charging.

12. According to Black Hills, should it extend the statutory timeframe for a decision, then it is possible that it would be unable to implement its Ready EV programs (including new EV charging rates) until 2022. Under this scenario, Black Hills supposes that Public Service's TEP proceeding could be extended by the Commission under § 40-6-109.5(4), C.R.S., and fail to reach Commission resolution until Spring or Summer 2021. Black Hills' TEP proceeding would then begin, with a possible timeframe for Commission resolution in late Fall 2021. Black Hills claims it would need additional time to revise its programs consistent with the final Commission resolution, pushing out initial implementation of Ready EV programs to the first quarter of 2022. According to Black Hills, such a result would delay the benefits to Black Hills' customers of Ready EV programs on a timeframe of over a year longer than what Black Hills currently proposes. Black

Hills is concerned that waiver of the statutory deadline for the Commission to issue a decision pursuant to § 40-6-109.5(3), C.R.S., will result in this scenario becoming the likely outcome. Such a delay is not in the best interest of Black Hills' customers, and Black Hills respectfully requests the Commission consider this issue associated with the Commission's proposal to stagger the TEP applications.

13. In the alternative, Black Hills agrees with the Commission's proposal to stagger the Public Service and the Black Hills TEP applications through *en banc* proceedings, where the Commission proceeds first with the Public Service TEP application. Black Hills further agrees to waive the statutory deadline for the Commission to issue a decision pursuant to § 40-6-109.5(3), C.R.S. However, Black Hills recommends that the Commission only hold the Ready EV proceeding in abeyance for a period not to exceed 90 days. This period of abeyance will allow the Commission to begin the procedural schedule for the Public Service TEP application, followed by the start of the schedule for the Black Hills proceeding. Black Hills asserts that the limited period of abeyance would address the Commission's resource concerns, but not unduly delay the benefits to customers of Ready EV programs.

14. Black Hills also recommends that the Commission not subject Black Hills to discovery during any period of abeyance. Black Hills claims it has already received discovery requests on its TEP application. Black Hills posits that it is inequitable and against Black Hills' due process rights for its case to be stalled, yet requiring Black Hills to continue to be subject to burdensome discovery requests during that period. If Black Hills is subject to discovery during the abeyance period, it thinks its legal and consulting expenses would increase due to the prolonged discovery period without commensurate benefits associated with the increased costs.

15. Black Hills notes that it may seek to intervene into Public Service's ongoing TEP proceeding. In Public Service's proceeding, the Commission may interpret for the first-time provisions of Senate Bill 19-077. Those interpretations may become binding on Black Hills' TEP application. Black Hills is thus considering whether it necessary for it to seek intervention into Public Service's TEP proceeding to protect its interests. Black Hills will be able to resolve whether it needs to intervene based on how the Commission decides to hear the TEP applications.

D. Findings

16. The concerns raised by the Commission previously centered on hearing both TEP applications simultaneously. The responses by Black Hills and Public Service offer a reasonable alternative path to hear both cases *en banc*.

17. Initially, we state that as we previously noted, it was not our intention to require Public Service to delay its TEP proceeding. As discussed previously, the Public Service case will serve as the policy-setting case as Public Service submitted a more robust and encompassing case that will allow us to determine the policy direction in regard to the EV applications.

18. We also find merit in Black Hills' proposal. Black Hills agrees with the Commission's proposal to stagger the Public Service and the Black Hills TEP applications where the Commission proceeds first with the Public Service TEP application. Black Hills further agrees to waive the statutory deadline for the Commission to issue a decision pursuant to § 40-6-109.5(3), C.R.S.

19. Black Hills recommends that the Commission only hold the Ready EV proceeding in abeyance for a period not to exceed 90 days. This period of abeyance will allow the Commission to begin the procedural schedule for the Public Service TEP application, followed by the start of the schedule for the Black Hills proceeding. Black Hills asserts that the limited period of abeyance

would address the Commission's concerns, but not unduly delay the benefits to customers of Ready EV programs.

20. We will adopt the proposal put forth by Black Hills. This proposal is reasonable under the circumstances. It provides sufficient time to move the Public Service case forward before undertaking the Black Hills case. While there will still be overlap between the two cases, it nonetheless affords the opportunity to begin to set the policy aspects of these EV applications, while not extending Black Hills' proceeding unreasonably as to cause undue delay. Therefore, we will extend the statutory deadline in which to issue a decision in the Black Hills' proceeding an additional 90-days pursuant to § 40-6-109.5(3), C.R.S.

21. Of note, Black Hills also proposes that the matter be referred to an Administrative Law Judge (ALJ) for disposition. However, we fail to see any more efficiencies or opportunity to make the Public Service case the primary proceeding while referring the matter to an ALJ. Therefore, we discount this alternative proposal outright. Rather, we intend to hear both cases *en banc*.

22. We also agree with Black Hills it would be appropriate to hold discovery in Proceeding No. 20A-0195E for a reasonable period of time. Discovery requests in this Proceeding shall be held in abeyance for a period not to exceed 60 days from the effective date of this Decision.

23. We therefore acknowledged Black Hills' waiver of statutory deadline for the Commission to issue a Decision in this proceeding pursuant to § 40-6-109.5(3), C.R.S., and place Proceeding No. 20A-0195E in abeyance for a period not to exceed 90 days from the effective date of this Decision.

II. ORDER

A. It Is Ordered That:

1. The Commission acknowledges Black Hills Colorado Electric, LLC (Black Hills) waiver of the statutory deadline pursuant to § 40-6-109.5(3), C.R.S. for a period of 90 days from the effective date of this Decision.

2. The Commission shall continue to hear this Black Hills application *en banc*.

3. Discovery requests related to Black Hills’ application shall be held in abeyance for a period not to exceed 60 days from the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
July 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners