

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

PROCEEDING NO. 21M-0061E

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IN THE MATTER OF ESTABLISHING FILING DATES AND OTHER GUIDELINES FOR  
CLEAN ENERGY PLANS SUBMITTED PURSUANT TO SECTION 40-2-125.5, C.R.S.

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**COMMISSION DECISION OPENING PROCEEDING**

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Mailed Date: February 2, 2021  
Adopted Date: January 27, 2021

**I. BY THE COMMISSION**

**A. Statement**

1. Legislation enacted from the 2019 General Assembly requires substantial reductions in greenhouse gas pollution in Colorado. Pursuant to House Bill (HB) 19-1261, as codified at §§ 25-7-102, 25-7-103, and 25-7-105, C.R.S., the Colorado Air Quality Control Commission (AQCC) within the Colorado Department of Public Health and Environment (CDPHE) must promulgate 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. Complementary provisions in Senate Bill (SB) 19-236, codified at § 40-2-125.5, C.R.S., address Clean Energy Plans (CEP) that require emissions caused by Colorado retail electricity sales to decrease 80 percent by 2030 relative to 2005 levels.

2. Notably, § 25-7-105(1)(e)(VIII)(C), C.R.S., prohibits the AQCC from mandating greenhouse gas emission reductions by 2030 more than is required under a Commission-approved CEP. Section 25-7-105(1)(e)(VIII)(A), C.R.S., further requires the AQCC to consult with the Commission in carrying out its responsibilities including the promulgation of the greenhouse gas

emission reduction rules on the cost of electricity, the reliability of electric service, technology developments in electricity production, and beneficial electrification.

3. Given this potential, we find it appropriate to enable further consultation with state agencies prior to the filing of the CEPs, as discussed below. We therefore open this proceeding to engage in at least one workshop discussion with other state agencies regarding their collective statutory obligations for achieving the statewide reductions in greenhouse gas pollution. This consultation will enable public discourse on the coordinated efforts of these state agencies and provide useful guidance regarding the significant filings anticipated before this Commission in order to satisfy statutory requirements of HB 19-1261 and SB 19-236.

4. We also find it appropriate to clarify that the Commission will permit filings for CEPs by the two Colorado investor-owned electric utilities, Public Service Company of Colorado (Public Service) and Black Hills Colorado Electric, LLC (Black Hills).<sup>1</sup> In order to allow time for at least one workshop scheduled in this Proceeding, Public Service is notified that it shall not file its CEP until after the conclusion of this Proceeding, and in any event, no earlier than March 31, 2021.

## **B. Discussion**

5. The Commission's rules governing Electric Resource Planning (ERP Rules) are set forth in the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) at 4 CCR 723-3-3600, *et seq.*

6. On February 27, 2019, the Commission issued a Notice of Proposed Rulemaking (NOPR) by Decision No. C19-0197 in Proceeding No. 19R-0096E to amend the ERP Rules as

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<sup>1</sup> In prior order, the Commission waived filing date requirements for electric resource plan filings from both Black Hills and Public Service, but declined to set a date for future filings given ongoing rulemaking in Proceeding No. 19R-0096E. *See, e.g.*, Decision No. C19-0510, issued June 14, 2019, Proceeding No. 19V-0234E.

well as other provisions in the Electric Rules, including: the Renewable Energy Standard Rules (RES Rules) at 4 CCR 723-3-3650, *et seq.*; (3) the Net Metering Rules at 4 CCR 723-3-3664; (4) the rules governing Community Solar Gardens (CSG Rules) at 4 CCR 723-3-3665; (5) the provisions for utility purchases from Qualifying Facilities at 4 CCR 723-3-3900, *et seq.*; and (6) the Interconnection Procedures and Standards at 4 CCR 723-3-3667.<sup>2</sup>

7. Public Service must file a CEP as its next Electric Resource Plan (ERP) pursuant to SB 19-236.<sup>3</sup> Public Service informed the Commission in Proceeding No. 19V-0234E that it will be prepared to file its CEP at the end of March 2021.<sup>4</sup> In Proceeding No. 19R-0096E, Public Service suggested that it was unnecessary for the Commission to develop a standalone set of ERP Rules that will specifically govern its CEP filing.<sup>5</sup>

8. By Decision No. C19-0510, issued on June 14, 2019 in Proceeding No. 19V-0234E, the Commission waived the October 31, 2019 filing deadline for Public Service's next ERP pursuant to the ERP Rules currently in effect. However, the Commission denied Public Service's request to set the next ERP filing deadline of March 31, 2021. The Commission concluded that it was necessary to determine in the rulemaking in Proceeding No. 19R-0096E when Public

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<sup>2</sup> Through subsequent orders, the Commission severed the CSG Rules, the Interconnection Procedures and Standards, and the Net Metering Rules and RES Rules into separate rulemaking proceedings. Modified CSG Rules were promulgated in 2020 in Proceeding No. 19R-0608E. Modified Interconnection Procedures and Standards remain under Commission review in Proceeding No. 19R-0654E. By Decision No. C20-0661-I, issued on September 15, 2020 in Proceeding No. 19R-0096E, the Commission further severed the RES Rules and Net Metering Rules from that proceeding. The Commission later directed Staff of the Colorado Public Utilities Commission to hold one or more workshops to inform the development of a Notice of Proposed Rulemaking for that new rulemaking. Decision No. C20-0816, issued November 19, 2020, Proceeding No. 20AL-0191E.

<sup>3</sup> Section 40-2-125.5(4)(a), C.R.S., states: "The first electric resource plan that a qualifying retail utility files with the commission after January 1, 2020, must include a clean energy plan that will achieve the clean energy target set forth in subsection (3)(a)(I) of this section..." In accordance with § 40-2-125.5(2)(c)(I), C.R.S., defines a qualifying retail utility as a retail utility serving more than 500,000 customers or "any other electric utility that opts in pursuant to subsection (3)(b)," which simply requires notification to the Commission.

<sup>4</sup> Public Service Petition for Approval of a Variance to Extend the Filing of its Next Electric Resource Plan, filed May 7, 2019, Proceeding No. 19V-0234E.

<sup>5</sup> Public Service Post-Hearing Comments, pp. 6-7, Proceeding No. 19R-0096E.

Service's next ERP should be filed for approval by the Commission pursuant to the any modified ERP Rules.

9. Black Hills Colorado Electric, LLC (Black Hills) may file, but is not required to file, a CEP as its next ERP pursuant to SB 19-236.<sup>6</sup> However, Black Hills raised questions about the timing of AQCC's promulgation of rules to achieve new statewide greenhouse gas pollution reduction targets and the additional time Black Hills will need to understand its alternative options under SB 19-236 in Proceeding No. 19V-0463E.<sup>7</sup> By Decision No. C19-0884, issued on October 30, 2019 in Proceeding No. 19V-0463E, the Commission waived the requirement for Black Hills to file an ERP in October 2019.

10. By Decision No. R20-0647, issued September 3, 2020 in Proceeding No. 19A-0660E, Black Hills secured Commission approval to acquire a 200 MW solar project. According to Black Hills, construction of the project would begin in 2021 with the project coming online in 2023. Black Hills expects approximately 51 percent of its customers' energy mix to be generated by renewable energy by 2024 with a 71 percent reduction in carbon emissions.<sup>8</sup>

11. On January 7, 2021, Governor Polis and Black Hills announced that Black Hills will file a CEP as part of its upcoming ERP.<sup>9</sup>

12. Section 40-2-125.5(5)(g)(I), C.R.S., deems approved by the Commission a CEP voluntarily filed by a municipal utility or a cooperative electric association that has voted to exempt

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<sup>6</sup> Black Hills serves less than 500,000 customers. Section 40-2-125.5(2)(C)(I), C.R.S.

<sup>7</sup> Black Hills' Petition for Waivers and Variances to Delay the Filings of Its Next Electric Resource Plan and Renewable Energy Standard Plan filed on August 26, 2019 in Proceeding No. 19V-0463E.

<sup>8</sup><https://www.blackhillsenergy.com/community/our-footprint/committed-serving-southern-colorado/renewable-advantage>

<sup>9</sup> Press Release, "Governor Polis Celebrates A Major Step Closer to Achieving 100% Renewable Energy," issued January 7, 2021, <https://www.colorado.gov/governor/news/3921-governor-polis-celebrates-major-step-closer-achieving-100-renewable-energy>.

itself from regulation by the Commission<sup>10</sup> if: (1) the ACQQ verifies the plan demonstrates an 80 percent reduction in greenhouse gas emissions caused by the entity's Colorado electricity sales relative to 2005 level by 2030, and (2) the CEP has previously been approved by a vote of the utility's governing body.

13. On January 14, 2021, Governor Polis released Colorado's Greenhouse Gas Pollution Reduction Roadmap to ensure progress toward the targets for reductions in statewide greenhouse gas pollution set forth in SB 19-1261.<sup>11</sup>

14. Concurrent with these events, the Air Pollution Control Division of CDPHE (Division) has worked towards approving its Clean Energy Plan Guidance that outlines its plan for conducting the required verification of reductions in greenhouse gas pollution, specifically the verification of the carbon dioxide emissions reductions projected by a CEP in 2030 when compared to the 2005 baseline. The guidance explains that HB 19-1261 created a mechanism by which utilities with a Commission-approved CEP can attain regulatory certainty with the AQCC through 2030 as a safe harbor provision and thus the verification process set forth in the guidance considers together the provisions in both SB 19-236 and HB 19-1261.<sup>12</sup>

### **C. Findings and Conclusions**

15. In light of the release of Colorado's Greenhouse Gas Pollution Reduction Roadmap on January 14, 2021 and the approval of the Clean Energy Plan Guidance, we conclude that further

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<sup>10</sup> Tri-State Generation and Transmission Association, Inc. (Tri-State) is a wholesale electric cooperative. Pursuant to § 40-2-134, C.R.S., enacted by the signing of SB 19-236, the Commission promulgated ERP Rules applicable to Tri-State in Proceeding No. 19R-0408E. Tri-State filed its first ERP in accordance with § 40-2-134, C.R.S., and 4 CCR 723-3-3605 on December 1, 2020 in Proceeding No. 20A-0528E.

<sup>11</sup> Press Release, "Gov. Polis Releases Colorado's Greenhouse Gas Pollution Reduction Roadmap," January 14, 2021, <https://www.colorado.gov/governor/news/3986-gov-polis-releases-colorados-greenhouse-gas-pollution-reduction-roadmap>.

<sup>12</sup> The AQCC consulted with the Division on the Clean Energy Plan Guidance document and associated emission verification workbook, of which a draft was provided publicly through the Division's website on September 25, 2020, with public comments received through October 16, 2020. On January 22, 2020, AQCC provided resolutions, including in support of the Clean Energy Plan Guidance document.

consultation with state agencies is necessary before Public Service and Black Hills submit their CEPs. We therefore open this Proceeding for the purpose of providing a forum for public dialogue with these state agencies on the shared directives set forth in HB 19-1261 and SB 19-236 as well as discussion of related issues concerning the upcoming utility CEP filings.

16. Initially we will convene a workshop to discuss the forthcoming CEP filings with representatives of other state agencies charged with responsibilities pursuant to HB 19-1261 and SB 19-236. Our intention is to engage in discussion with representatives of these state agencies as opposed to receiving presentations. We direct members of the Commission's Advisory Staff to make the necessary arrangements for a remote workshop by video conference due to the COVID-19 pandemic. The workshop will be webcast to the public.

17. Proceeding No. 19R-0096E is also ongoing and will not result in revised Electric Rules for effect prior to March 31, 2021. We therefore clarify through this proceeding that CEP filings are permitted, but that Public Service's plan shall not be filed until the conclusion of this proceeding, and in any event no earlier than March 31, 2021. This timing permits the workshop discussion in this Proceeding, which we expect will provide useful insight and guide the utility filings in the coming months.

18. This Proceeding shall be closed prior to the first filing date of a CEP. The Commission will establish specific procedures for the review of the CEPs in the proceedings in which they are filed pursuant to SB 19-236 and the Commission's Electric Rules in effect at the time of the filing.

19. The Commission will address any potential changes to the Electric Rules in Proceeding No. 19R-0096E by separate decisions in that rulemaking proceeding.

**II. ORDER**

**A. The Commission Orders That:**

1. This proceeding is opened for the purpose of enabling a public discourse with state agencies concerning the upcoming utility filings of Clean Energy Plans pursuant to House Bill 19-1261, as codified at §§ 25-7-102, 25-7-103, and 25-7-105, C.R.S., and Senate Bill 19-236, codified at § 40-2-125.5, C.R.S., consistent with the discussion above.

2. The date and time of the initial workshop in this matter shall be scheduled by separate decision.

3. Consistent with the discussion above, Clean Energy Plan filings shall be permitted upon conclusion of this Proceeding, but not earlier than March 31, 2021.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 27, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners