

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0157E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL OF ITS ELECTRIC DEMAND SIDE MANAGEMENT (DSM) AND BENEFICIAL ELECTRIFICATION PLAN FOR PROGRAM YEARS 2025-2027 AND FOR APPROVAL OF CHANGES TO ITS ELECTRIC DSM COST ADJUSTMENT TARIFF.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING INTERVENTIONS, EXTENDING THE TIME
FOR A COMMISSION DECISION AND SETTING
PREHEARING CONFERENCE**

Mailed Date: June 4, 2024

I. STATEMENT

1. On April 1, 2024, Black Hills Colorado Electric, LLC (Black Hills or Company) filed its Verified Application (Application) of the Black Hills Colorado Electric, LLC Demand Side Management and Beneficial Electrification Plan (DSM-BE) for program years 2025 through 2027 and for changes to its DSM cost adjustment tariff. Attached to the Application were the direct testimonies of two witnesses..

2. Black Hills requested that the Commission issue an order: (1) approving the Company's proposed 2025-2027 DSM-BE Plan, including the Company's proposed programs, goals, reporting structure, and 60- and 90-Day Notice process; (2) approving the Company's proposal to recover costs of 2025-2027 DSM-BE Plan through the Demand Side Management Cost Adjustment; (3) approving the Company's proposed BE incentive mechanism; (4) approving any and all other relief set forth in the Company's Direct Case (including any waivers, variances

or other relief necessary to implement the Company’s 2025-27 DSM-BE Plan); and (5) authorizing Black Hills to file the necessary tariffs to implement the approved 2025-2027 DSM-BE Plan through a compliance advice letter filing on not less than two business days’ notice

3. On April 29, 2024, the Utility Consumer Advocate (UCA) filed its Notice of Intervention as a Matter of Right, request for hearing and Entry of Appearance. UCA listed several issues that they believe require review.

4. On May 9, 2024, the Colorado Energy Office (CEO) filed its intervention by right and entry of appearance. CEO listed several issues that they believe require review.

5. On May 9, 2024, Southwest Energy Efficiency Project (SWEEP) filed its Motion to Intervene and Entry of Appearance. SWEEP is a regional public interest non-profit organization whose mission is to advance energy efficiency and clean transportation, and to expand the economic and environmental benefits that energy efficiency and electric vehicles provide.

6. On May 9, 2024, Energy Outreach Colorado (EOC) filed its Motion to Intervene and Entry of Appearance. EOC is a Colorado nonprofit corporation in good standing whose mission is to ensure that income-qualified (IQ) Colorado households can meet their home energy needs.

7. On May 15, 2024, Trial Staff of the Public Utility Commission (Trial Staff) filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to rule 1007(a) and Rule 1401, and Request for Hearing.

8. On May 17, 2024, Black Hills filed its Amendment to Verified Application of the Black Hills Colorado Electric, LLC Demand Side Management and Beneficial Electrification Plan.

II. PARTIES TO THE PROCEEDING

A. Interventions of Right

9. Staff, CEO and the UCA filed timely notices of intervention by. In their filings, they outline several issues they plan to address in this Proceeding and request a hearing.

10. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. The notices of intervention of right are acknowledged. Staff, CEO and the UCA are parties to this Proceeding.

B. Permissive Interventions

11. The following entities filed timely requests for permissive intervention: SWEEP and EOC.

12. SWEEP states it is focused on technical and policy issues related to energy efficiency, demand response, beneficial electrification, and transportation electrification, and it has unique expertise on these issues. SWEEP believes it has a tangible interest in ensuring that Black Hills maximizes its investments in energy efficiency, demand response and beneficial electrification programs and that these investments, in turn, maximize energy and demand savings and benefits to Black Hills' customers.

13. EOC states it has a vested interest in ensuring that the interests of IQ customers and disproportionately-impacted communities of Colorado utilities are recognized in Commission proceedings. EOC believes it has a tangible and pecuniary interest in ensuring that its services are not required for a growing number of Colorado citizens.

14. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties

with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

15. In addition, per Rule 1401(e), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.¹

16. As relevant here, to permissively intervene, the party's intervention must:

. . . state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. . . . demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.²

17. The person or entity seeking to intervene bears the burden of proof that it has met the intervention standards and should be permitted to intervene.³

18. If a party does not file a response to a motion within the time prescribed for a response, the Commission may deem that failure as confessing the motion.⁴

19. Black Hills has not filed a response or objection to any of the requests to intervene. As such, the ALJ construes the remaining Interventions as unopposed. Based on this, the information provided in their collective requests to intervene, and the relevant legal standards, the ALJ grants the remaining Interventions

¹ Rule 1401(b), 4 CCR 723-1.

² Rule 1401(c), 4 CCR 723-1.

³ Rule 1500, 4 CCR 723-1.

⁴ Rule 1400(b), (d) and (c), 4 CCR 723-1.

III. TIME TO ISSUE A FINAL COMMISSION DECISION

20. Under § 40-6-109.5(1), C.R.S., when a party files testimony with an application, the Commission must issue a final decision within 120 days after the application is deemed complete, unless the Commission finds that additional time is necessary, in which case, this deadline may be extended by an additional 130-days.⁵ If the Commission does not make a determination that an application is complete within 15 days of expiration of the application's notice period, and does not find that the application is not complete or that more information is necessary, the application is automatically deemed complete.⁶

21. The Commission did not deem the Application complete or determine that the Application is not complete or that more information is necessary. The Application was automatically deemed complete on May 15, 2024. Because the Company filed testimony with its Application, the Commission must issue a final decision within 120 days of May 15, 2024, unless the Commission finds that additional time is necessary. To meet the statutory deadline a final Commission decision must issue by September 12, 2024.

22. This does not allow enough time for the parties to develop the record and to conduct discovery; to hold an evidentiary hearing; for a recommended decision to issue; for the parties to file exceptions; and for the Commission to address exceptions and issue a final decision. For these reasons, the ALJ finds that additional time is necessary, and therefore extends the statutory deadline for a final Commission decision by 130 days, as allowed by § 40-6-109.5(1), C.R.S. The resulting deadline for a final Commission decision to issue is January 20, 2025.

⁵ § 40-6-109.5(1), C.R.S.

⁶ Rule 1303(c)(IV), 4 CCR 723-1.

IV. REMOTE PREHEARING CONFERENCE

23. It is necessary to schedule a hearing to establish a procedural schedule, and to discuss discovery and other matters. A remote prehearing conference will be held on June 27, 2024.

24. Participants will appear at the prehearing conference from remote locations by videoconference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

25. The undersigned ALJ expects the Parties to come to the prehearing conference with proposed dates for disclosures, including hearing dates for the procedural schedule. The Parties must confer prior to the prehearing conference with respect to the listed matters and are encouraged to present, if possible, a procedural schedule and hearing dates that are acceptable to all Parties.

26. If the Parties reach agreement on a procedural schedule, they may file the proposed procedural schedule and a motion to vacate the prehearing conference.

V. ORDER**A. It is Ordered That:**

1. Consistent with the above discussion, the deadline for a final Commission decision to issue in this Proceeding is extended by 130 days to January 20, 2025, per § 40-6-109.5(1), C.R.S.

2. The Colorado Public Utilities Commission Trial Staff (Staff), the Colorado Energy Office (CEO), and the Colorado Office of the Utility Consumer Advocate (UCA) are acknowledged as parties as of right in this Proceeding. Consistent with the above discussion, the

Motions seeking to permissively intervene filed by the Southwest Energy Efficiency Projects (SWEEP); and Energy Outreach Colorado (EOC) are granted.

3. A remote prehearing conference on the above-captioned Application is scheduled as follows:

DATE: June 27, 2024

TIME: 10:00 a.m.

PLACE: By video conference using Zoom.

4. All parties must comply with the requirements in Attachments A to this Decision, which are incorporated as if fully set forth.

5. The Parties shall be held to the advisements in this Decision.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director