Decision No. C25-0589-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0255E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A 50 MW BATTERY STORAGE AND OTHER FACILITIES PURSUANT TO COMMISSION DECISION NOS. C24-0634 AND C24-0837.

INTERIM COMMISSION DECISION SETTING RESPONSE TIME TO MOTION

Issued Date: August 13, 2025
Adopted Date: August 13, 2025

I. BY THE COMMISSION

A. Statement

1. On June 12, 2025, Black Hills Colorado Electric, LLC ("Black Hills" or the "Company") filed an Application for a Certificate of Public Convenience and Necessity ("CPCN") to Construct a 50 MW Battery Storage and Other Facilities Pursuant to Commission Decision Nos. C24-0634 and C24-0837 ("Application").

2. By Decision No. C25-0583-I ("Referral Decision"), the Commission referred the matter to an Administrative Law Judge ("ALJ"). The Referral Decision also includes certain statements as guidance to the ALJ and the parties to this Proceeding.

3. On August 11, 2025, Black Hills filed a Motion for Clarification or Modification ("Motion") addressing the Referral Decision.

4. By this Decision, we set shortened response time to the Motion. Responses to the Motion shall be filed no later than August 15, 2025.

B. Discussion, Findings, and Conclusions

5. Through the Application, Black Hills seeks to own and operate the Pueblo Battery Resource ("PBR") to be located at the Company's Pueblo Airport Generating Station. The Company will acquire the facility pursuant to a Build-Transfer Agreement ("BTA") between Black Hills and a third-party developer. Black Hills states that the project is one of the three new utility resources in the portfolio the Commission approved for the Company's recent Electric Resource Plan in Proceeding No. 22A-0230E. Black Hills claims that the Company's proposed ownership of the PBR is pursuant to the standards set forth by the Commission in Decision Nos. C24-0634 and C24-0837 from that earlier proceeding.

6. Black Hills specifically asks for: (1) a CPCN to own and operate the PBR; (2) a presumption of prudence finding for the acquisition cost of the PBR; (3) approval to avoid Allowance for Funds Used During Construction payments by modifying cost recovery to allow recovery of Construction Work In Progress; (4) approval to increase, up to a cap, the baseline for the associated Cost-to-Construct Performance Incentive Mechanism ("PIM"), consistent with the terms the Company and the developer agreed to in the BTA due to changes in federal law that could impact the final purchase price; (5) a finding that no operational PIM and no emissions PIM is necessary or appropriate for the PBR; and (6) approval of the proposed cost recovery mechanism for the annual revenue requirement for the project.

7. In the Motion, Black Hills takes issue with certain aspects of the guidance put forward in the Referral Decision. Black Hills explains that it has not had a chance to present evidence and argument to the ALJ as to how its requests in the Application are just and reasonable

and should be approved. According to Black Hills, both the ALJ and the Commission should decide these issues after full consideration of the record. Black Hills also disagrees with certain characterizations made by the Commission in its guidance. Generally, Black Hills argues that for the Commission to pre-decide certain issues before the evidence has been admitted and before any hearing has taken place results in the practical denial of Black Hill's substantive or procedural rights to fully be heard by presenting its case to the ALJ and participating in a hearing.

8. In the conferral statement within the Motion, Black Hills states that the only two intervenors in the proceeding are the Trial Staff of the Colorado Public Utilities Commission ("Trial Staff") and the Colorado Office of the Utility Consumer Advocate ("UCA"). Black Hills states that UCA takes no position on the Motion and that Trial Staff does not oppose the Motion. Nevertheless, Black Hills states that Trial Staff and UCA also do not oppose the request for shortened response time to the Motion. Therefore, Black Hills asks the Commission to set a deadline for responses to the Motion to August 15, 2025.

9. We find good cause to set shortened response time to the Motion. Responses to the Motion shall be filed no later than August 15, 2025.

II. ORDER

A. It Is Ordered That:

1. Responses to the Motion for Clarification or Modification filed by Black Hills Colorado Electric, LLC on August 11, 2025, shall be filed no later than August 15, 2025.

2. This Decision is effective immediately upon its Issued Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 13, 2025.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners