

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0496E

IN THE MATTER OF ADVICE LETTER NO. 878 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO AMEND THE TARIFF APPLICABLE TO COMMUNITY SOLAR GARDENS FIXED BILL CREDITS AND THEIR SUBSCRIBERS, TO BECOME EFFECTIVE JANUARY 1, 2025.

**COMMISSION DECISION
DENYING EXCEPTIONS TO DECISION NO. R25-0500**

Issued Date: August 26, 2025

Adopted Date: August 13, 2025

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I. BY THE COMMISSION

A. Statement

1. On November 15, 2024, Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”) filed Advice Letter No. 878 (“AL 878”) with tariff sheets establishing the billing credits paid to subscribers of Community Solar Gardens (“CSGs”) effective January 1, 2025.

2. Through Decision No. R25-0500 (“Recommended Decision”), issued on July 7, 2025, Administrative Law Judge (“ALJ”) Robert I. Garvey determined that the tariff sheets filed with AL 878 properly implement billing credits for CSGs for 2025 and authorized Black Hills to file a compliance advice letter tariff filing to put into place the billing credits for prospective implementation.

3. On July 28, 2025, the Colorado Solar and Storage Association, the Solar Energy Industries Association, and the Coalition for Community Solar Access (collectively the “Solar Parties”) timely filed exceptions to the Recommended Decision.

4. This Decision denies the Solar Parties’ exceptions and upholds the Recommended Decision without modification.

B. Background

5. Black Hills filed AL 878 in accordance with Rule 3881(b) of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-3. Because AL 878 is Black Hills’ first advice letter with solar garden billing credits since the Commission adopted new rules pursuant to House Bill (“HB”) 23-1137, the tariff sheets filed with AL 878 include nearly all CSG billing credit-related sheets in the Company’s Colorado PUC No. 11 Electric Tariff (*i.e.*, Sheet Nos. 94A through 94I).

6. On December 31, 2025, by Decision No. C24-0952, the Commission suspended the effective date of the tariff sheets filed with AL 878, allowed interventions to be filed until January 31, 2025, and referred the matter to an ALJ.

7. On May 16, 2025, the ALJ conducted a hearing on AL 878. The parties to the proceeding include Black Hills, the Solar Parties, and the Trial Staff of the Colorado Public Utilities Commission (“Staff”).

C. Decision No. R25-0500

8. The Recommended Decision concludes that the intervening parties do not take issue with the underlying methodology used by Black Hills to determine the CSG billing credits. Instead, the ALJ identifies two issues in this case, both relating to aspects that Black Hills determined were not required under HB 23-1137: (1) whether the tariff sheets filed with AL 878 should include vintages of fixed CSG billing credits prior to 2025, and (2) whether this tariff filing should include an adjustment mechanism for the CSG billing credits.

9. The Recommended Decision rejects the Solar Parties' request that the Commission order Black Hills to establish pre-2025 vintages of bill credits. The ALJ concludes that the Solar Parties failed to offer any evidence that the Colorado General Assembly intended HB 23-1137 to apply retroactively, stating that without such evidence of legislative intent, the Solar Parties must instead rely on Decision No. C24-0447 from the Commission's rulemaking to implement HB 23-1137 in Proceeding No. 24R-0133E to argue that the fixed bill credit should apply to the prior vintage years of 2018, 2019, and 2022. The ALJ goes on to find that the Solar Parties do not point to any language in Decision No. C24-0447 that suggests a legislative intent for HB 23-1137 to be applied retroactively. The ALJ further concludes that the Solar Parties have identified no other argument to support the retroactive application of the statute and have provided no evidence to overcome the presumption that statutes apply prospectively.

10. With respect to the adjustment mechanism sought by the Solar Parties to increase Black Hills' fixed CSG bill credits over time, the Recommended Decision concludes that neither § 40-2-127, C.R.S., Rule 3881, nor Decision No. C24-0447 suggest that a fixed bill credit adjustment methodology be adopted for 2025 or for any subsequent year per Black Hills' annual advice letter filings. The ALJ therefore declines to impose such a requirement where none exists.

The ALJ further concludes that the Solar Parties fail to establish in this Proceeding that their proposed an adjustment methodology linked to the Consumer Price Index (“CPI”) would be just and reasonable.

D. Exceptions to Decision No. R25-0500

11. In their exceptions to the Recommended Decision, the Solar Parties argue that Black Hills is required to include prior year vintages of fixed bill credits for all calendar years that have CSG projects that have not yet reached their commercial operation date. The Solar Parties also argue that the Commission has an obligation to apply an adjustment mechanism to Black Hills’ fixed CSG bill credits and the most straight-forward fixed bill credit adjustment methodology is to apply a CPI adjustment to the value of the bill credits over time.

12. The exceptions largely reiterate the Solar Parties’ positions as summarized in their closing Statement of Position (“SOP”) filed on June 10, 2025. For instance, Joint Solar Parties request that the Commission direct Black Hills to adopt fixed bill credits for vintage years. However, in these exceptions, the specific years they seek vintage CSG credits are 2023, 2024, and 2025 for any project that has not yet met commercial operation. The Solar Parties admit that this is a change in their position from their SOP, which advocated for fixed bill credits to be adopted for all vintage years for which CSG capacity has been awarded, but a project has not yet reached commercial operation. They state in their exceptions that these specific years would be consistent with the Recommended Decision in Proceeding No. 24AL-0497E, which disallows pre-2023 credit vintages, but accepts vintages for 2023 through 2025 as proposed by Public Service Company of Colorado (“Public Service”) for its CSG subscribers. The Solar Parties argue that the application of HB 23-1137 should be consistent across both utility cases, and

therefore the Recommended Decision should be amended to be consistent with Decision No. R25-0501 issued in Proceeding No. 24AL-0497E.

13. Turning to their CPI-based adjustment mechanism rejected by the ALJ, they argue that a CPI adjustment mechanism remains the most straightforward bill credit adjustment mechanism that has been proposed on the record in this Proceeding. They contend that their proposed CPI adjustment mechanism is consistent with HB 23-1137 and that a CPI mechanism best accounts for the potential change in value that a CSG subscriber electing a fixed bill credit will experience as the price of other consumer goods changes over time. They specifically argue that § 40-2-127(5)(b)(II)(E), C.R.S., requires the Commission to consider the change in value to CSG subscribers of the fixed bill credit over time through rate adjustments or other mechanisms. They go on to state that in Proceeding No. 24R-0133E implementing HB 23-1137, the Commission determined this instant Proceeding is the appropriate venue to implement the requirements of § 40-2-127(5)(b)(II)(E), C.R.S. They conclude that if a fixed bill credit adjustment mechanism is not adopted in this case, then the appropriate venue for addressing the statutory directive in § 40-2-127(5)(b)(II)(E), C.R.S., for vintage year 2025 and prior years bill credits remains unclear, leaving interested parties without any clear forum in which to adjudicate a CSG fixed bill credit adjustment mechanism as required by HB 23-1137.

14. Finally, the Solar Parties ask the Commission to adopt an alternative bill credit adjustment mechanism that is consistent with § 40-2-127(5)(b), C.R.S., to avoid future litigation of this issue if their CPI adjustment mechanism is not adopted by the Commission's decision addressing their exceptions.

E. Response to Exceptions

15. In its response to the exceptions to the Recommended Decision, filed on August 4, 2025, Black Hills argues that the Solar Parties misinterpret statute and Commission rules, whereas the ALJ correctly concludes that neither statute nor rules require a CSG fixed bill credit adjustment methodology be adopted. Black Hills also argues that the Commission fulfilled its statutory obligation to “consider the change of value to CSG customers of the fixed bill credit over time through rate adjustments or other mechanisms” in Proceeding No. 24R-0133E, concluding that an annual tariff filing requirement is the way to pursue any appropriate change in applicable CSG bill credits. Citing Decision No. C24-0447, Black Hills further notes that the Commission expects a “fresh vintage of fixed bill credits to be made available in the following calendar year” to be established in the annual tariff sheet updates.

16. Black Hills states that the ALJ is correct that the Solar Parties failed to establish that their CPI-based adjustment to CSG fixed bill credits is just and reasonable. Black Hills states that this Proceeding correctly addresses the costs that are passed on to its customers for CSG fixed bill credits and that the Commission should therefore be interested “in keeping CSG bill credit costs to the lowest amount consistent with actual cost[s].” Black Hills also explains that the purpose of the CSG bill credit is to account for costs a CSG subscriber “should not have to pay for.” Black Hills further points to Staff’s testimony in its proceeding that notes the CPI does not reflect the costs incurred or avoided by Black Hills and does not take into account any specific factors that impact the value of CSGs on Black Hills’ system.

17. Black Hills also asks the Commission to disregard “new evidence” put forward by the Solar Parties in their exceptions. Black Hills states that because the ALJ correctly concludes that HB 23-1137 cannot be applied retroactively to the years 2018, 2021, and 2022—the specific

vintage years discussed by the Solar Parties—the Joint Parties are now seeking to introduce new evidence into the record about 2023 through 2025 CSG projects through their exceptions pleading. Black Hills states that while it understands the Public Service proceeding was on a similar track in terms of timing, Black Hills was not a party to the other case and is not aware of the issues raised or the evidence presented in that other proceeding. In the context of older vintage billing credits, Black Hills further asserts that, contrary to the Solar Parties’ interpretation of statutes, the “change in value to customers” is not the same as “the change in value to a CSG facility over time.”

18. Black Hills’ response to the Solar Parties’ exceptions also raises in several instances the costs of the CSG billing credits paid by its customers. For example, Black Hills points to evidence that CSGs are “by far the most expensive resource” on its system, “exceeding \$100/MWh.” Black Hills states: “The Commission should not layer on an even higher burden to customers by adopting a non-cost-based, bloated CPI-U adjustment mechanism.”

F. Findings and Conclusions

19. We deny the Solar Parties’ exceptions to the Recommended Decision. The Recommended Decision correctly implements the Commission’s rules governing CSG billing credits in accordance with HB 23-1137. The ALJ fully supports his legal and factual findings and conclusions in the Recommended Decision, and we agree with the criticisms raised by Black Hills to the Solar Parties’ exceptions. We therefore adopt the Recommended Decision without modification.

20. This case has been effective and productive. The Solar Parties’ proposed CPI-based adjustment mechanism has now been fully reviewed and litigated. The annual filing approach for CSG billing credits has been tested and clarified for Black Hills. Moreover, the underlying calculation methodologies for CSG billing credits have been reaffirmed after the enactment of

HB 23-1137. Consistent with Decision No. C24-0447, the Commission’s review of CSG billing credits is a ratemaking exercise to ensure just and reasonable results based on Black Hills’ cost of service and the associated impacts on ratepayers at large. Black Hills’ AL 878 was designed to put in place an initial vintage of fixed CSG bill credits to be made available in 2025. “Fresh” vintages of fixed CSG billing credits will be established in Black Hills’ advice letter tariff filing to be made no later than November 15, 2025 for the CSG billing credits applicable in 2026. Black Hills’ CSG tariff sheets will therefore record the levels of fixed billing credit amounts established for CSGs over time.¹

21. To ensure the prospective application and imposition of the CSG billing credits, Black Hills shall file, no later than five business days after the Issued Date of this Decision, an advice letter compliance tariff filing with tariff sheets identical to the tariff sheets filed with AL 878 except for effect on not less than two business days’ notice.

II. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R25-0500 filed jointly by the Colorado Solar and Storage Association, the Solar Energy Industries Association, and the Coalition for Community Solar Access on July 28, 2025, are denied, consistent with the discussion above.

2. The tariff sheets filed by Black Hills Colorado Electric, LLC’s (“Black Hills”) with Advice Letter No. 878 on November 15, 2024, are permanently suspended and shall not be further amended.

3. Black Hills shall file an advice letter compliance filing consistent with the findings, conclusions, and directives in this Recommended Decision. Black Hills shall file the compliance

¹ Decision No. C24-0447, issued June 25, 2024, Proceeding No. 24R-0133E, ¶¶ 18-22, pp. 6-7.

tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective immediately on its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS
August 13, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners