

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 DECISION
EXTENDING STATUTORY DEADLINE FOR A
COMMISSION DECISION, ESTABLISHING
PROCEDURES, SCHEDULING EVIDENTIARY HEARING,
PROVIDING INSTRUCTIONS CONCERNING EXHIBITS
AND PARTICIPATING IN HYBRID EVIDENTIARY
HEARING, AND GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Issued Date: September 9, 2025

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I. STATEMENT**A. Procedural Background**

1. On June 12, 2025, Black Hills Colorado Electric, LLC (“Black Hills” or “Applicant”) filed its Verified Application of Black Hills Colorado Electric, LLC For a Certificate of Public Convenience and Necessity to Construct a 50 Mw Battery Storage and Other Facilities and Request for Expedited Decision (“Application”), with supporting written testimony and exhibits¹ and the Motion of Black Hills Colorado Electric, LLC for Protective Order Affording Extraordinary Protection (the “MEP”). These filings commenced this Proceeding.

2. On June 16, 2025, the Colorado Public Utilities Commission (the “Commission”) noticed the Application and set a 30-day intervention period.²

3. On July 3, 2025, the Notice of Intervention as a Matter of Right of the Office of the Utility Consumer Advocate (“UCA’s Intervention”) was filed by the Colorado Office of the Utility Consumer Advocate (“UCA”).

4. On July 18, 2025, the Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (“Staff’s Intervention”).

5. By Decision No. C25-0583-I, issued August 7, 2025, the Commission, among other things, deemed the Application complete and referred this matter to an Administrative Law Judge (“ALJ”).

¹ See Hearing Exhibits 100-102 and corresponding attachments filed with the Application on June 12, 2025.

² See Notice of Application Filed, filed June 16, 2025.

6. By Decision No. C25-0620-I, the Commission, among other things, granted Black Hills' Motion³ and Modified Decision No. C25-0583-I by striking ¶¶ 19-21 of Decision No. C25-0583-I.

7. In informal email correspondence with the undersigned ALJ, the parties agreed to a 10-calendar-day response time for discovery. The correspondence further reflected that Staff and UCA prefer a remote two-day hearing, while Black Hills prefers an in-person two-day hearing. All parties agreed to the following procedural schedule through November 21, 2025 ("Proposed Procedural Schedule"):

<u>Procedural Event</u>	<u>Proposed Deadline</u>
Answer Testimony	October 3, 2025
Rebuttal / Cross Answer	October 27, 2025
Prehearing Disposition, Corrections, Settlement Agreement	October 30, 2025
Settlement Testimony	October 31, 2025
Cross-examination Matrix	October 31, 2025
Two-Day Evidentiary Hearing	November 4-5, 2025
Statements of Position	November 21, 2025

B. Interventions

8. UCA's Intervention and Staff's Intervention are acknowledged.

C. Extension of Deadline for a Commission Decision

9. As stated in the Notice, because Black Hills filed testimony with the Application, the Commission is required by § 40-6-109.5(1), C.R.S., to issue its decision within 120 days of

³ See the Motion of Black Hills Colorado Electric, LLC for the Commission to Modify or Clarify Interim Decision No. C25-0583-I and for Shortened Response Time, filed by Black Hills on August 11, 2025.

the Application being deemed complete by the Commission. Thus, the Commission's decision in this proceeding must be issued by December 13, 2025.

10. If the Commission finds that additional time is required, the period within which a commission decision is to be issued may be extended an additional 130 days.⁴

11. Consistent with the statutory requirements of § 40-6-109.5(1), C.R.S., and in light of the parties' agreement to the procedural schedule adopted herein, the deadline for the Commission's decision is extended to April 7, 2026, as ordered below.

D. Procedural Schedule and Hybrid Evidentiary Hearing, and Unified Numbering System for Hearing Exhibits

12. Although truncated, the Proposed Procedural Schedule, which is agreeable to all parties, is reasonable and will be adopted, as ordered below.

13. Given the parties' conflicting requests for a remote or in-person evidentiary hearing, the evidentiary hearing in this matter will be held in hybrid format, as ordered below. A hybrid hearing allows the ALJ and at least one party and/or witness to participate from one of the Commission's hearing rooms in Denver, with the remaining parties and witnesses participating remotely through the Zoom web-conferencing platform. This Decision and Attachments A and B provide critical information and instructions for facilitating the video conference portion of the hearing, which all parties must follow.

14. To minimize the potential that the video conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

⁴ Section 40-6-109(1), C.R.S.

15. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hybrid hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the hybrid hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

16. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Black Hills is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299; and
- UCA is assigned hearing exhibit numbers 300 to 399.

E. Additional Procedural Notices

17. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

18. Additional and/or different procedural requirements may be addressed in future Interim Decisions.

F. The MEP

19. No response to the MEP was filed by any party.

20. The MEP requests “extraordinary protection for various documents and categories of information described herein, collectively referred to as the ‘Highly Confidential Information’”⁵ for documents and information:

⁵ MEP at p. 2.

generally categorized as: (1) negotiated commercial contract terms and conditions that are highly sensitive to the Company and the vendors the Company is transacting with in order to develop the Pueblo Battery Resource; (2) pricing information associated with those commercial contracts or other information that could be used to derive cost figures; (3) any information that is considered highly confidential information pursuant to a protective order in related Proceeding No. 22A- 0230E, the Company's 2022 ERP & CEP proceeding;... and (4) other disclosures of the same categories of information, in whatever form or variation the information may be produced in this proceeding...⁶

21. More specifically, Black Hills describes the documents and information for which it seeks extraordinary protection as:

- Executed commercial contracts and project agreements the Company entered into with development partners and/or vendors to support the Pueblo Battery Resource (*e.g.*, Build-Transfer Agreement"); material supply agreements; and service, maintenance, and warranty agreements) and the negotiated terms and conditions contained therein. It would cause all parties significant competitive harm if the terms and conditions of these agreements became known to competitors, potential counterparties, or potential future customers for both the Company and these vendors. Importantly, these terms and conditions were negotiated with the expectation of confidentiality. If future potential bidders had access to the highly confidential terms and conditions in these contracts, it would disadvantage the Company's and the counterparties' negotiating position for future deals and it would jeopardize the Company's relationship with these counterparties and vendors, and therefore the Company's ability to obtain favorable contract terms for the Company's customers.
- Any actual or estimated cost information (including indicative pricing estimates) derived from commercial contracts and project agreements that the Company has entered into with development partners and vendors or other information that could be used to derive cost figures in those documents, to the extent incorporated in any other documents, including testimony and attachments submitted with the Application. It would cause all parties significant competitive harm if the terms of these agreements became known to competitors, potential counterparties, or potential future customers for both the Company and these vendors. Importantly, if future potential bidders had access to the highly confidential pricing information and cost estimates, it would

⁶ *Id.* at pp. 1-2. The terms "ERP" refers to the Company's Electric Resource Plan and the term "CEP" refers to the Company's Clean Energy Plan.

disadvantage the Company's and the counterparties' negotiating position for future deals and it would jeopardize the Company's relationship with these counterparties and vendors, and therefore the Company's ability to obtain favorable prices for the Company's customers.

- Any information that is considered highly confidential pursuant to a protective order in related Proceeding No. 22A-0230E (the Company's 2022 ERP & CEP proceeding). This will ensure that information designated as highly confidential in one proceeding does not and cannot become public in a related proceeding.
- Any discovery responses or documents otherwise filed or served in this Proceeding that contain any of this Highly Confidential Information.⁷

22. In Support of its request for relief in the MEP, Black Hills states that:

If any of the Highly Confidential Information was disclosed to developers of energy resources, competitive power suppliers, competitive suppliers or vendors, or existing or potential wholesale customers of developers of energy resources, it would negatively impact the Company's ability to solicit resources, negotiate beneficial terms, and obtain the best possible prices to acquire resources in the future. It could also negatively impact other vendors that are engaged for work related to the PBR by disclosing the terms and conditions of contracts deemed confidential and proprietary. Access to sensitive strategic information amongst the litigants to this proceeding should therefore be limited as requested above, in order to prevent disclosure in a manner that could cause great harm to the Company, to BHCOE's customers, and to each individual vendor and their respective businesses.⁸

23. Black Hill further states that

[t]his sensitivity is particularly acute given that other power supply developers who stand to intervene in this proceeding could be customers of these same vendors. This could in turn harm any of these vendors if the pricing information became public or otherwise accessible to such developers. It would also serve as a deterrent to offering their best pricing for components and products to BHCOE given the information would ultimately be widely disclosed through the regulatory process.⁹

⁷ *Id.* at pp. 4-5.

⁸ *Id.* at p. 6.

⁹ *Id.*

24. Black Hills prepared and attached to the MEP as Attachments A and B, respectively, non-disclosure agreements for subject-matter experts and counsel seeking access to the highly confidential information for which extraordinary protection is sought.

25. Black Hills also attached to the MEP, as Attachment C, an affidavit identifying the persons who have had access to the highly confidential information for which extraordinary protection is sought.

26. Lastly, Black Hills request that “the Commission and parties provided access destroy this information by shredding upon the conclusion of this proceeding.”¹⁰

27. No party filed a response in opposition to the MEP.

28. Rule 1101(b), 4 *Code of Colorado Regulations* (“CCR”), 723-1 requires that a party seeking extraordinary protection must: (a) include a description of the information for which highly confidential protection is sought; (b) state the specific relief requested and the grounds for seeking relief; (c) advise all other parties of the request and the subject matter of the information; (d) make a showing that the information is highly confidential and that the ordinary protections afforded by the Commission’s confidentiality rules are insufficient; (e) provide a proposed nondisclosure agreement; and (f) submit an affidavit identifying the individuals who have had access to the information and the anticipated duration of protection.

29. Black Hills seeks extraordinary protection for competitively sensitive categories of information relating to its Pueblo Battery Resource project, including: (1) executed commercial contracts and project agreements, such as the Build-Transfer Agreement, material supply agreements, and warranty and service agreements; (2) cost and pricing information derived from such contracts or agreements; (3) information designated as highly confidential in

¹⁰ *Id.* at p. 8.

related Proceeding No. 22A-0230E (the Company's 2022 ERP & CEP); and (4) any discovery responses or other documents in this proceeding containing the foregoing categories.

30. Black Hills asserts, and the ALJ finds, that disclosure of this information to competitors, counterparties, or potential customers could cause substantial harm by impairing Black Hills' and its vendors' negotiating positions in future transactions, deterring vendors from offering favorable terms, and undermining the Company's ability to obtain competitive pricing on behalf of its customers.

31. Black Hills further asserts, and the ALJ agrees, that the sensitivity of this information is heightened by the likelihood that other developers or suppliers may intervene in this proceeding, and that those entities could use such information to their competitive advantage. Commission precedent recognizes the propriety of affording extraordinary protection to competitively sensitive commercial and pricing information in these circumstances.

32. To implement the requested protections, Black Hills has provided nondisclosure agreements for subject-matter experts and counsel,¹¹ as required by Rule 1101(b)(V), and has filed an affidavit¹² identifying the individuals who have had access to the highly confidential information.

33. Black Hills also requests that, upon the conclusion of this Proceeding, the Commission and parties granted access destroy the highly confidential information by shredding, consistent with the document-retention provisions of Rule 1101(l), 4 CCR 723-1.

34. The ALJ finds and concludes that Black Hills has met its burden under Rule 1101(b) 4 CCR 723-1 to demonstrate that the identified information is highly confidential,

¹¹ Attachments A and B to the MEP.

¹² Attachments C to the MEP.

that ordinary confidentiality protections are insufficient, and that the extraordinary protections proposed will afford sufficient safeguards.

35. Accordingly, the MEP will be granted. Access to the highly confidential information, as described in the MEP and herein, will be limited to the Commission, its Advisory Staff, Administrative Law Judges, Trial Staff, the Office of the Utility Consumer Advocate, and, subject to execution of the nondisclosure agreement, intervenors' counsel and subject-matter experts who execute nondisclosure agreements in the form attached to the MEP. Intervenors that are developers of energy resources, competitive suppliers or vendors, potential wholesale customers, or prospective bidders in future Black Hills solicitations will be denied access.¹³

G. Scope of Proceeding

36. In Proceeding No. 22A-0230E, the Commission determined that a cost-to-construct performance incentive mechanism ("PIM") applies to the Pueblo Battery Resource. The manner in which that PIM should account for potential changes in federal law, tariff obligations, or force majeure events remains to be developed in this evidentiary proceeding. Likewise, the appropriateness of operational or emissions PIMs, and the Company's request for Construction Work in Progress recovery, will be determined on the basis of the record established herein.

37. Consistent with Decision No. C25-0620-I, the Commission has stricken paragraphs 19 through 21 of Decision No. C25-0583-I. Accordingly, no findings or conclusions have been made on the merits of Black Hills' requests, and the ALJ shall resolve all substantive issues arising from the Application on the basis of the evidentiary record.

¹³ The ALJ notes that the intervention period in this Proceeding has expired and that no developers of energy resources, competitive suppliers or vendors, potential wholesale customers, or prospective bidders in future Black Hills solicitations have intervened. Nevertheless, this Decision is intended to govern any such parties if they were to seek and be granted intervention in the future.

II. ORDER**A. It Is Ordered That:**

1. The deadline for a Commission decision in this Proceeding is extended through April 7, 2026.

2. The following procedural schedule is adopted to govern this proceeding:

<u>Procedural Event</u>	<u>Deadline</u>
Answer Testimony	October 3, 2025
Rebuttal / Cross Answer	October 27, 2025
Prehearing Disposition, Corrections, Settlement Agreement	October 30, 2025
Settlement Testimony	October 31, 2025
Cross-examination Matrix	October 31, 2025
Two-Day Evidentiary Hearing	November 4-5, 2025
Statements of Position	November 21, 2025

3. The parties shall be held to, and shall comply with, the requirements in this Decision. In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 (*e.g.*, Rule 1202 regarding pre-filed testimony and Rule 1405 regarding discovery procedures), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision, including Attachment B hereto.

4. A hybrid evidentiary hearing in this matter shall be conducted at the following dates, time, and place:

DATE: November 4-5, 2025

TIME: 9:00 a.m., daily

PLACE: In-person: Commission Hearing Room A (on November 4, 2025 and Hearing Room B (on November 5, 2025), 1560 Broadway, Suite 250, Denver, Colorado 80202

By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.¹⁴

5. Consistent with the discussion above, the Motion of Black Hills Colorado Electric, LLC for Protective Order Affording Extraordinary Protection (the “MEP”), filed June 12, 2025, is granted.

¹⁴ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

6. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge