

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

PROCEEDING NO. 22A-0545E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR COMMISSION APPROVAL OF A REFUND PLAN FOR UNDERPAYMENT FOR EXCESS ENERGY PRODUCTION BY NET METERED CUSTOMERS.

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**COMMISSION DECISION GRANTING  
THE WAIVER OF RULES 3402(A)(V) AND RULE 3402(C)  
AND APPROVING THE APPLICATION**

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Mailed Date: January 26, 2023  
Adopted Date: January 25, 2023

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an application (Application) filed by Black Hills Colorado Electric (Black Hills or Utility) on December 9, 2022, for approval of a refund plan for underpayment of excess energy production to net metered customers.

2. Black Hills states:

Since 2018, the approved Energy Payment rate varied at a rate that at times was higher than \$0.02496/kWh, and at other times was lower than \$0.02496/kWh.<sup>3</sup> Customers that “cashed-out” their excess energy production when the approved Energy Payment rate was lower than \$0.02496/kWh received a greater payment than they would have under the approved rate. Customers that “cashed-out” their excess energy production when the approved Energy Payment rate was greater than \$0.02496/kWh received a lower payment than they would have under the approved rate.

If the correct Energy Payment rate had been applied to excess energy production cash-outs, 2,316 customers would have been paid an additional \$39,738.53, and 265 customers would have been paid \$1,859.75 less. For the 265

customers that were over-compensated, the Company is not seeking recovery of the over-payment caused by the use of the incorrect Energy Payment rate.<sup>1</sup> [*emphasis added*]

3. 3402(a)(IV), Rules 3402(a)(V) and Rule 3402(c) are applicable to this customer refund plan application.

4. Rule 3402(a)(V) states “[i]n the event of over-billings not provided for in subparagraph (a)(II) of this rule, the utility shall refund for the period during which the over-billing occurred, with such period not to exceed two years.” The Company requests a partial, one-time waiver to Rule 3402(a)(IV) for the four-year period in which the incorrect Energy Payment rate was used to calculate the cash-out payment for excess energy production by net metered customers, instead of the two-year period called for in the over-billing context.

5. Rule 3402(a)(IV) similarly allows for the Company to charge customers for under-billing for a period not to exceed six months.

6. Rule 3402(c) states “In the event of an over-billing, the customer may elect to receive the refund as a credit to the future billings, or as a one-time payment. If the customer elects a one-time payment, the utility shall make the refund within 30 days. Such over-billings shall not be subject to interest.”

7. The Company requests a partial, one-time waiver Rule 3402(a)(IV) for the four-year period in which the incorrect Energy Payment rate was used to calculate the cash-out payment for excess energy production by net metered customers, instead of the two-year period called for in the over-billing context.

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<sup>1</sup> Application at pp. 4-5.

8. Black Hills also requests a partial, one-time waiver from Rule 3402(c), so that it may apply bill credits to the customer's account balance more expeditiously, as well as apply the Company's customer deposit interest rate to the amount due to each affected customer.

9. Black Hills is not seeking to recover the overpayments. As a result, Rule 3402(a)(IV) is not at issue in this Application.

10. No objections, interventions, comments, or other pleadings were filed in response to the Application.

**B. Findings and Conclusions**

11. Black Hills is a public utility as defined in § 40-1-103, C.R.S., and is subject to the jurisdiction of the Commission.

12. Granting of the waivers to Rules 3402(a)(V) and 3402(c) will allow the refund to customers in an expeditious manner.

13. Approving the application is just and reasonable and will correct the errors in for the four-year period in which the incorrect Energy Payment rate was used to calculate the cash-out payment for excess energy production made to net-metered customers for the four-year period.

14. For these reasons, the Commission finds that the waiver should be granted. Notwithstanding this approval, it is the Commission's expectation that this is the last extension to the waver that will be granted.

**II. ORDER**

**A. The Commission Orders That:**

1. The Motion filed on July 25, 2022 for a waiver of the number of meters required to be tested in calendar year 2022 pursuant to the Commission's Rules Regulating Gas Utilities,

4 Code of Colorado Regulations (CCR) 723-4-4304(b) and 4 CCR 723-4-4304(d), and the meter testing plan approved by the Commission in Decision No. R19-0219 is granted.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 25, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,  
Interim Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners