

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**PROCEEDING NO. 23V-0396E

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IN THE MATTER OF THE PETITION OF BLACK HILLS COLORADO ELECTRIC, LLC  
D/B/A BLACK HILLS ENERGY, FOR AN ORDER GRANTING A VARIANCE TO  
COMMISSION RULE 723-3-3034(a)(III).

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**COMMISSION DECISION GRANTING VARIANCE**

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Mailed Date: September 11, 2023  
Adopted Date: August 30, 2023

**I. BY THE COMMISSION****A. Statement**

1. This Decision grants Black Hills Colorado Electric, LLC doing business as, Black Hills Energy (Black Hills) Petition for a Variance from Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3034(a)(III) of the Commission's Rules Regulating Electric Utilities (Petition). Black Hills seeks a variance from Rule 3034(a)(III) requiring a property owner to sign a non-disclosure agreement with a utility requiring the property owner to take appropriate steps to safeguard building data from unauthorized use or disclosure, among other things.

**B. Discussion**

2. On August 4, 2023, Black Hills pursuant to Rules 4 CCR 723-1-1003 and 1304(e) of the Commission's Rules of Practice and Procedure filed a petition for a variance from Commission Rule 3034(a)(III).

3. During the 2021 legislative session, the General Assembly passed House Bill 21-1286 (HB21-1286), which among other things, requires Qualifying Utilities, such as Black Hills to provide owners of buildings 50,000 square feet, energy usage for the building.

4. The Commission promulgated rules in conjunction with HB21-1286. In particular and relevant to this Petition, when a property owner or the owner's authorized agent requests whole building energy use data, a Tier I utility such as Black Hills is to provide that information with certain caveats to such disclosure. Rule 3034(a)(III) provides for disclosure of the information only if certain terms are met as follows:

- (A) take appropriate administrative, technical, and physical safeguards to protect the whole building data from any unauthorized use or disclosure to protect the data from unauthorized access, destruction, use, modification, or disclosure;
- (B) only use the whole building energy use data for the purposes of building benchmarking, identifying energy efficiency projects, energy management, and complying with laws or ordinances;
- (C) agree to not attempt to determine an individual utility customer's energy use from the whole building energy use data and not to use the information to contact the subject of the information;
- (D) agree to not use the whole building energy use data for a secondary commercial purpose not related to the authorized purpose without first obtaining the customer's consent as provided for in these rules;
- (E) destroy any whole building energy use data that is no longer necessary for the purpose for which it was transferred;
- (F) agree not to permit access to the whole building data by anyone that has not agreed to abide by the terms pursuant to which the data was provided by the utility. This includes, but is not limited to, all interns, subcontractors, staff, other workforce members, and consultants; and
- (G) agree that any recipient of the whole building data pursuant to this rule does not obtain any right, title or interest in any of the data provided by the utility.

5. Black Hills represents it has developed a web portal where building owners or their agents may make a request for energy usage for a covered building. Black Hills goes on to represent that it specifically designed the web portal to be compliant with HB21-1286.

6. Black Hills seeks a variance from Rule 3034(a)(III) to allow for a non-disclosure agreement to be provided by the building owner or their authorized agent and that the non-disclosure agreement be allowed to be in the form of a “check box) which would require that confirmation of compliance with the non-disclosure requirements be included on Black Hills’ web portal when the building owner or agent request energy usage information from Black Hills.

7. Black Hills states that use of the web portal to facilitate requests for both natural gas and electric energy usage for benchmarking purposes and accept non-disclosure agreements from building owners and their agents will provide administrative efficiencies, rather than having to create two separate web portals.<sup>1</sup>

### **C. Findings and Conclusions**

8. Paragraph 1403(a) of Rule 4 CCR 723-1-1403 of the Commission’s Rules of Practice and Procedure states that the Commission may determine any petition without a hearing and without further notice if the petition is uncontested or unopposed. Black Hills’ request for a variance from Rule 3034(a)(III) is unopposed.

9. We find good cause, pursuant to Rule 1003, to grant Black Hills’ request for a variance from requirements of Rule 3034(a)(III) based on the use of its web portal described in its

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<sup>1</sup> Black Hills represents that the web portal will require building owners or their agents to confirm compliance with the non-disclosure agreement requirements prior to being approved for a request for energy usage for a covered building.

Petition. Black Hills is allowed this variance to allow requests for gas and electric energy usage for benchmarking purposes and with the use of a check box as further described in its Petition.

## II. ORDER

### A. The Commission Orders That:

1. The Unopposed Petition filed by Black Hills Colorado Electric, doing business as, Black Hills Energy (Black Hills) for a Variance from Commission Rule 4 *Code of Colorado Regulations* 723-3-3034(a)(III) on August 4, 2023, is granted consistent with the discussion above.

2. Black Hills is granted a variance to utilize its web portal in providing energy data use to building owners and to allow for a non-disclosure agreement to be provided by Black Hills to building owners or their authorized agent and that the non-disclosure agreement may be in the form of a check box as part of the web portal.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 30, 2023.**

(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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Commissioners