

Decision No. R23-0567-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0357E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS DISTRIBUTION SYSTEM PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
ADDRESSING INTERVENTIONS, ESTABLISHING
DEADLINE TO RESPOND TO PENDING MOTIONS,
SCHEDULING REMOTE PREHEARING CONFERENCE,
REQUIRING PARTIES TO CONFER AND REQUIRING
THE FILING OF A CONFERRAL REPORT**

Mailed Date: August 23, 2023

I. BY THE COMMISSION

A. Background

1. On June 30, 2023, Black Hills Colorado Electric, LLC (Black Hills or Applicant) filed its Application for Approval of its Distribution System Plan (Application) and Motion for Waivers from Commission Rules Associated with its Distribution System Plan. These filings commenced this Proceeding.

2. On July 7, 2023, the Commission noticed the Application and set a 30-day intervention period.

3. On July 31, 2023, Pivot Energy's Motion for Permissive Intervention (Pivot's Motion to Intervene) was filed by Pivot Energy, Inc. (Pivot).

4. On August 11, 2023, UCA's Motion for Late Intervention (UCA's Motion to Intervene) was filed by the Office of Utility Consumer Advocate (UCA).

5. On August 14, 2023, the Trial Staff of the commission (Staff) filed its 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.

6. By Decision No. C23-0541-I, issued August 15, 2023, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ).

B. Interventions

7. Pivot's Motion to Intervene states that, as a developer of distributed solar and energy storage projects, Pivot has a significant interest in Black Hills' distribution system.¹ Pivot further states that: the Application will directly impact Pivot's interests; Pivot seeks to provide input on several issues referenced in the Application, including assessment of Black Hills' existing distribution system, the amount and location of distributed generation on Black Hills' system, and the amount and locations of distributed storage installed; Pivot is well-positioned to represent its interests and will not unduly broaden the issues in this Proceeding; this Proceeding may be able to guide the development of solar and storage projects to locations within Black Hills' service territory where interconnection is more cost-effective and viable, which could have a substantial pecuniary impact on Pivot' business; and no other party or intervenor to this proceeding represent Pivot's unique interests due to our specific business and development activities in Black Hills' service territory.²

¹ Pivot's Motion to Intervene at 2.

² *Id.* at 2-3.

8. UCA's Motion to Intervene states that, due to a clerical error³, UCA did not become aware of this Proceeding until August 9, 2023, two days after the expiration of the intervention deadline in this Proceeding. UCA further states that it is requesting a formal evidentiary hearing to be held in this proceeding "to determine if approval of the Application is just, reasonable and in the public interest"⁴ and plans to address whether Black Hills' plan:

conforms with the requirements of the Commission and the State, maintains system reliability and efficiency, properly addresses customer costs and savings issues, and delivers customer benefits associated with energy transition; and whether Black Hills properly approaches its proposed projects within the plan.⁵

9. Pivot and UCA state good cause for their respective requested reliefs. As such, Pivot's Motion to Intervene and UCA's Motion to Intervene will be granted, as ordered below.

C. Deadline for Pending Motions

10. Given the acknowledgment and granting of the interventions herein, the ALJ will set a deadline for the parties to respond to any currently-pending motions, as ordered below.

D. Remote Prehearing Conference and the Parties' Conferral

11. In anticipation of an evidentiary hearing, the undersigned ALJ will set a prehearing conference in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. Accordingly, a remote prehearing conference will be scheduled, as ordered below, and will be conducted using the Zoom videoconferencing platform.

³ This error is described in detail in ¶ 6 of UCA's Motion to Intervene.

⁴ UCA's Motion to Intervene at 4.

⁵ *Id.*

The ALJ, or a member of Commission Staff, will email the parties the log-in information in advance of the hearing.

12. The parties are advised that failure to attend or to participate in the remote prehearing conference may be construed as a waiver of any objection to the rulings made, the procedural schedule established, or the hearing date scheduled, during the remote prehearing conference.

13. Black Hills, UCA, and Pivot shall confer in advance of the remote prehearing conference regarding a procedural schedule for this Proceeding. Black Hills shall file a report of the results of the conferral. If there is agreement on a procedural schedule, the report shall state as much and detail the stipulated procedural schedule and associated discovery procedures. If an agreement is not achieved, the report shall state as much and identify the competing schedules and discovery procedures. For purposes of developing a schedule, the latest date on which the hearing must conclude is January 10, 2024, which is based on the assumption that the proceeding will be decided within the 250-day deadline, as provided by § 40-6-109.5(1), C.R.S. The deadline to file the conferral report shall be Wednesday September 6, 2023.

14. The parties are advised that their failure to attend or to participate in the remote prehearing conference may be deemed a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

II. ORDER

A. It Is Ordered That:

1. The intervention noticed on August 14, 2023 by the Trial Staff of the Commission (Staff) is acknowledged.

2. Pivot Energy's Motion for Permissive Intervention, filed by Pivot Energy, Inc. (Pivot) on July 31, 2023, is granted.

3. UCA's Motion for Late Intervention, filed by the Office of Utility Consumer Advocate (UCA) on July August 11, 2023, is granted.

4. The deadline for the parties to respond to any currently-pending motions is September 1, 2023.

5. A remote prehearing conference in this proceeding is scheduled as follows:

DATE: September 6, 2023

TIME: 3:00 p.m.

PLACE: Join by video conference at the link to be provided by an email from the Administrative Law Judge⁶

6. Black Hills, Pivot, and UCA shall confer regarding the procedural schedule for this Proceeding, and Black Hills shall file a report with the results of the conferral on or before September 1, 2023.

⁶ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. The parties are strongly encouraged to participate in a test meeting prior to the scheduled prehearing conference. See <https://zoom.us/test>.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director