

Decision No. R23-0659-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
GRANTING, IN PART, MOTION FOR
WAIVERS FROM COMMISSION RULES**

Mailed Date: October 3, 2023

I. STATEMENT

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 (Motion for Waivers). These filings commenced this Proceeding.

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

3. On July 31, 2023, Pivot Energy's Motion for Permissive Intervention (Pivot's Motion to Intervene) was filed by Pivot Energy, Inc. (Pivot). In Pivot's Motion to Intervene Pivot states that it seeks to address, among other issues, the "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.”¹

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). In UCA’s Motion to Intervene, UCA states that it intends to inquire, among other things, into whether the Application conforms to the Commission’s and the state’s requirements.²

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 (Staff’s Notice Intervention). In Staff’s Notice of Intervention, Staff states that it intends to address whether Black Hills requests for waivers of Commission Rules 3529(a)(X), 3530, 3531(a)(II)(A-F), 3533(a), 3534, 3535, 3537 and 3541 are appropriate.³

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).

7. By Decision No. R23-0567-I, the undersigned ALJ, among other things, acknowledged Staff’s intervention, granted Pivot’s and UCA’s interventions, and established a deadline for parties to respond to any pending motions. As pertinent herein, Decision No. R23-0567-I states: “The deadline for the parties to respond to any currently-pending motions is September 1, 2023.”⁴

¹ Pivot’s Motion to Intervene at 3.

² UCA’s Motion to Intervene at 4.

³ Staff’s Notice of Intervention at 2.

⁴ Decision No. R23-0567-I at 5.

8. By Decision No. R23-0659-I, issued September 5, 2023, the ALJ, among other things, established procedures and scheduled an evidentiary hearing in this matter.

B. Motion for Waivers

9. According to Rule 1003 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission may grant waivers from Commission rules, and in doing so may consider hardship, equity, or more effective implementation of overall policy on an individual basis.

10. According to Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1, “[t]he burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision ...”

11. According to Rule 1308(f) of the Rules of Practice and Procedure, 4 CCR 723-1, if a party fails to file timely a responsive pleading, the Commission may deem the party to have admitted the allegations in the pleading.

12. In the Motion for Waivers, Black Hills argues that the Commission should waive Rules 3529(a)(X), 3530, 3531(a)(II)(A-F), 3533(a), 3534, 3535, 3536(c), 3537 and 3541 of the Rules Regulating Electric Utilities, 4 CCR 723-3. As to its waiver request from Rule 3529(a)(X), Black Hills states that the requirement to include proposed documents and model contracts in its Distribution System Plan (DSP) is unnecessary because Black Hills’ proposed DSP is not seeking a non-wire alternatives (NWA) solicitation.⁵ As to its waiver request from Rule 3530, Black Hills states that to the extent the load forecast and assumptions and methodologies used to develop the load forecast used by Black Hills in Proceeding No. 22A-

⁵ Motion for Waivers at 2-3.

0230E do not include all the measures listed in Rule 3530, a waiver from the same is requested.⁶ As to its waiver request from Rule 3531(a)(II)(A-F), Black Hills states that Black Hill's estimated costs of complying with Rule 3531(a)(II)(A-F) are between \$620,000 and \$725,000, which Black Hills believes are excessive and would burden its customers.⁷ As to its waiver request from Rule 3533(a), Black Hills states that while it has opted to forgo proposing any pilots or programs at this time, it is seeking waiver from Commission Rule 3533(a) "out of caution."⁸ As to its waiver request from Rule 3534, Black Hills states that a waiver is appropriate in this instance because NWA cannot reasonably result in an alternative to traditional utility infrastructure.⁹ As to its waiver request from Rule 3535, Black Hills states that to the extent Black Hills' request for Commission approval to not be required to screen any Major Distribution Projects for NWA pursuant to Rule 3537 could be viewed as the Company not meeting the requirements of Rule 3535, Black Hills requests a waiver from any part of Rule 3535 for which Black Hills has not met the requirements.¹⁰ As to its waiver request from Rule 3536(c), Black Hills states that since it is requesting a waiver of any Phase II-related requirements pursuant to Rule 3537, Rule 3536(c) is inapplicable; but, to the extent necessary, Black Hills is requesting a waiver from Rule 3536(c).¹¹ As to its waiver request from Rule 3537, Black Hills states that it does not believe any NWA can reasonably result in an alternative to traditional utility infrastructure for the ten projects that meet the definition of a Major Distribution Project and is therefore seeking a waiver from all Phase II-related rule requirements.¹² As to its waiver request

⁶ *Id.* at 3-4.

⁷ *Id.* at 4.

⁸ *Id.* at 4-5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6-7.

¹² *Id.*

from Rule 3541, Black Hills states that estimates that the cost to develop and implement the portal required by Rule 3541 is between \$525,000 and \$785,000, which Black Hills believes are excessive and would be a burden on Black Hills' customers.¹³

13. No response to the Motion for Waivers was filed. As such, pursuant to Rule 1308(f) of the Rules of Practice and Procedure, 4 CCR 723-1, the allegations made in the Motion for Waivers may be deemed admitted.

14. As to Black Hills request for waiver from Rules 3531(a)(II)(A-F) of the Rules Regulating Electric Utilities, 4 CCR 723-3, the ALJ finds that Black Hills stated good cause for the waiver it seeks. As such, the ALJ will grant this waiver request, as ordered below.

15. As to Black Hills request for waiver from Rules 3529(a)(X), 3530, 3533(a), 3534, 3535, 3536(c), 3537 and 3541 of the Rules Regulating Electric Utilities, 4 CCR 723-3, the ALJ finds that further development of the record may be necessary and that the issues involved with the waivers sought by Black Hills may be intertwined with the merits of the Application. As such, these waiver requests will be addressed by (a) separate decision(s).

II. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the discussion above, Black Hills Colorado Electric, LLC's (Black Hills) Motion for Waivers from Commission Rules Associated with its Distribution System Plan, filed June 30, 2023, is granted, in part, as to Black Hills' request for waiver from Rule 3531(a)(II)(A-F) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3.

¹³ *Id.* at 7.

2. 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