

Decision No. C24-0553

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

PROCEEDING NO. 22A-0230E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR (1) APPROVAL OF ITS 2022 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN, AND (2) APPROVAL OF ITS 2023-2026 RENEWABLE ENERGY STANDARD COMPLIANCE PLAN.

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**COMMISSION DECISION ADDRESSING SECOND  
MOTION FOR EXTENSION OF TIME TO FILE  
PERFORMANCE INCENTIVE MECHANISM AND  
REQUEST FOR CLARIFICATION**

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Issued Date: July 31, 2024

Adopted Date: July 31, 2024

**I. BY THE COMMISSION**

**A. Statement**

1. Through this Decision, the Commission grants, in part, and defers, in part, the Second Motion for Extension of Time to File a Performance Incentive Mechanism and Request for Clarification (“Second Motion for Extension”), that Black Hills Colorado Electric, LLC doing business as Black Hills Energy (“Black Hills” or the “Company”) filed on July 22, 2024. We vacate the August 1, 2024 deadline for Black Hills to file its stakeholder performance incentive mechanism (“PIM”) proposals but defer establishing new deadlines or providing the requested clarifications.

**B. Procedural Background**

2. On March 22, 2023, the Commission issued Decision No. C23-0193 (“Phase I Decision”) regarding Black Hills’ 2022 Electric Resource Plan (“ERP”) and Clean Energy Plan

(“CEP”) and the 2023-2026 Renewable Energy Standard Compliance Plan. As part of the Phase I Decision, the Commission directed the parties to engage in a stakeholder process for the development and submission of an emissions reduction PIM and a utility-owned generation PIM. The Commission established parameters for these PIMs, including the baselines and what the PIMs were to incentivize and disincentivize.<sup>1</sup> The Commission also established a process “such that the parties can develop PIM proposals contemporaneously with Phase II.”<sup>2</sup> Pursuant to this process, Black Hills was required to file the PIM proposals with the Commission 60 days after the 120-Day Report.<sup>3</sup>

3. Because Black Hills filed its 120-Day Report on April 17, 2024, the Company was initially supposed to file the PIM proposals with the Commission on June 17, 2024. However, Black Hills requested, and the Commission granted, an extension of time such that the stakeholder PIM proposals are currently due on August 1, 2024.<sup>4</sup>

4. On July 16, 2024, the Commission issued Decision No. C24-0509-I requiring Black Hills to provide supplemental information regarding its Phase II filings. Black Hills was given 14 days within which to file this supplemental information.

5. On July 22, 2024, Black Hills filed the Second Motion for Extension. In addition to the requested extension of the stakeholder PIM deadline and additional clarifications (discussed more below), the Company requests the Commission shorten response time to the Second Motion for Extension.

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<sup>1</sup> Phase I Decision, ¶¶ 60-61.

<sup>2</sup> *Id.* at ¶ 58.

<sup>3</sup> *Id.* at ¶ 58.

<sup>4</sup> Decision No. C24-0407, issued June 12, 2024, pp. 2-3.

6. In Decision No. C24-0530-I (issued July 24, 2024), the Commission granted the Company's request in the Second Motion for Extension regarding response time. The Commission shortened the response time to the Second Motion for Extension to July 29, 2024.

7. On July 29, 2024, the Board of County Commissioners of Pueblo County ("Pueblo County") filed a Response to the Second Motion for Extension. In the Response, Pueblo County states it takes no position on the Second Motion for Extension, but is not waiving its rights to dispute the appropriateness of any proposed PIM. Specifically, Pueblo County states it is not waiving its rights to contest whether or not any PIM should be allowed in light of the high cost of Black Hills' preferred portfolio. Pueblo County further asserts it is not waiving its rights to dispute the type and amount of any PIM.<sup>5</sup>

8. On July 30, 2024, Black Hills filed an Amendment to the Second Motion for Extension. In the Amendment to the Second Motion for Extension, the Company asserts that Colorado Independent Energy Association ("CIEA") takes no position on the Second Motion for Extension.

9. On July 30, 2024, Black Hills filed supplemental Phase II information pursuant to Decision No. C24-0509-I.

**C. Second Motion for Extension**

10. In the Second Motion for Extension, Black Hills asks the Commission to grant an additional extension of time of 45 days, or 30 days following the Commission's final Phase II decision (whichever is later) for the Company to file its stakeholder PIM proposals. Black Hills also requests clarification of certain requirements for the emissions reduction PIM and the utility ownership PIM set forth in the Phase I Decision.

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<sup>5</sup> Pueblo County Response, pp. 1-2.

11. As justification for its requested extension, Black Hills explains it is focusing its efforts on supplying the supplemental Phase II information the Commission required via Decision No. C24-0509-I. In addition, the Company argues it “is difficult to design a PIM without knowing the projects approved, the winning bidders, and the [build-transfer agreement (“BTA”)] terms to assess the level of certainty that bid prices will be adhered to.”<sup>6</sup> Based on the Commission’s indications that it is looking to proactively manage down the costs, including by approving portfolios other than the Preferred Portfolio, Black Hills states it is uncertain which projects may ultimately be subject to a PIM and how to design a PIM in accordance with different portfolios.<sup>7</sup> Finally, Black Hills states that extending the PIM deadline might help the parties agree on PIM proposals, avoiding protests or any hearing.<sup>8</sup>

12. As for the requested clarifications, the Company states it would appreciate insight on how an emissions reduction PIM could be designed where the approved portfolio does not include any fossil-fuel resources. Regarding costs, Black Hills states that it is unclear how an emissions PIM could further address the cost of emissions beyond the general measures the Commission is already considering.<sup>9</sup> Black Hills states it has considered whether the emissions PIM could reward earlier in-service dates for renewable projects but argues the Company does not have much control over the ultimate in-service date of BTA projects, which are developed by independent power producers (“IPPs”).<sup>10</sup>

13. As for the utility ownership PIM, Black Hills notes the concerns the Commission raised in the Phase I Decision that the cost of a utility-owned project could significantly increase

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<sup>6</sup> Second Motion for Extension of PIM Deadline, pp. 5-6.

<sup>7</sup> *Id.* at p. 5.

<sup>8</sup> *Id.* at p. 6.

<sup>9</sup> *Id.* at p. 7.

<sup>10</sup> *Id.* at pp. 7-8.

in the subsequent CPCN proceedings. The Company argues these concerns make sense where the project is a self-build project but are less applicable for BTA projects. Black Hills asserts the Company will have little control over the construction cost of a project other than through the BTA contract itself, which will not be finalized with the IPP until after the Phase II Decision.<sup>11</sup> Black Hills argues the same uncertainty exists for the operational cost of the projects. The Company suggests that without having the details of the specific projects that are typically set forth as part of a CPCN application, the design of any PIM must be based more on theory. Black Hills asserts this makes a PIM difficult to design and less likely to properly target incentives that affect costs of project operation.<sup>12</sup>

14. In light of these uncertainties, the Company requests further insight as to how to design the required PIMs. Alternatively, Black Hills requests that the Commission consider deferring the PIM issues to the follow on CPCN proceedings.<sup>13</sup>

#### **D. Findings and Conclusions**

15. The Commission grants, in part, and defers, in part, the Second Motion for Extension. We vacate the August 1, 2024 deadline for Black Hills to file its stakeholder PIM proposal but will defer setting a new deadline for the stakeholder PIM proposal or providing any additional clarifications at this time.

16. Black Hills only recently filed the supplemental Phase II information pursuant to Decision No. C24-0509-I. The Commission is still analyzing Black Hills' response and how this information impacts the direction and timing of Phase II. Given the close link between how Phase II progresses and the timing and substance of both the utility ownership PIM and the

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<sup>11</sup> *Id.* at p. 9.

<sup>12</sup> *Id.* at p. 9.

<sup>13</sup> *Id.* at pp. 8-9.

emissions reduction PIM, we will establish an appropriate path forward regarding the PIMs when we can evaluate these issues more holistically.

17. While we intend to establish the appropriate next steps for the stakeholder PIMs in a future decision, we note our concern over several of the suggestions and arguments Black Hills makes in its Second Motion for Extension. Black Hills states that our concerns regarding cost increases make sense for utility self-build projects but appear to be less applicable in a BTA context where the projects are developed by an IPP. The Company goes on to say that it will have little control over the construction cost of a project other than through the BTA contract itself.<sup>14</sup>

18. These statements are problematic and inconsistent with the findings in our Phase I Decision.<sup>15</sup> In a PPA bid, all of the construction cost and operational risk is placed on the IPP. If Black Hills is arguing that a BTA project is superior to alternative PPA projects on an economic and risk basis, then our Phase I decision contemplates that Black Hills will bear a meaningful portion of the construction and operational risk of the BTA project. Black Hills is seeking our approval to act as a fiscal agent for customers to put BTA projects into rate base given the economic information presented through the Phase II process. As such, utility and customer financial incentives must be aligned now based on the economics as presented.

19. Similarly, we find confusing the Company's statements that it "is difficult to design a PIM without knowing the projects approved...."<sup>16</sup> The Phase I Decision does not contemplate the stakeholder PIMs being designed based on specific approved projects. The stakeholder PIMs

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<sup>14</sup> *Id.* at p. 9.

<sup>15</sup> For example, in the Phase I Decision we require that "[t]he expected costs that were assumed in Phase II shall be compared to the final cost of the project after construction is complete and it begins operating." We also find that "it is necessary for the utility-ownership PIM to be developed and applied in this Proceeding, as opposed a later CPCN proceeding" to ensure the Company is held to its estimated costs in its Phase II bid. (Phase I Decision, ¶¶ 61-62).

<sup>16</sup> Second Motion for Extension of PIM Deadline, pp. 5-6.

are intended to incentivize good performance. This goal does not change based on the particular resources that are included in the approved portfolio.

**II. ORDER**

**A. The Commission Orders That:**

1. The Second Motion for Extension of Time to File a Performance Incentive Mechanism and Request for Clarification that Black Hills Colorado Electric, LLC doing business as Black Hills Energy filed on July 22, 2024, is granted, in part, and deferred, in part, consistent with the above discussion.

2. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 31, 2024.**

(SEAL)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners

Rebecca E. White,  
Director