

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0275E

IN THE MATTER OF ADVICE LETTER NO. 871 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO INCREASE BASE RATES FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMER CLASSES, TO BECOME EFFECTIVE JULY 15, 2024.

INTERIM COMMISSION DECISION GRANTING REQUESTS FOR INTERVENTION, ESTABLISHING THE PARTIES, GRANTING REQUESTS FOR *PRO HAC VICE* APPEARANCE, SCHEDULING A PREHEARING CONFERENCE, ADDRESSING THE DEVELOPMENT OF A PROCEDURAL SCHEDULE, REFERRING CERTAIN ITEMS TO AN ADMINISTRATIVE LAW JUDGE, EXTENDING THE SUSPENSION DATE PURSUANT TO § 40-6-111(1)(B), C.R.S.; AND REQUIRING THE FILING OF SUPPLEMENTAL DIRECT TESTIMONY

Issued Date: August 13, 2024

Adopted Date: August 7, 2024

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I. BY THE COMMISSION

A. Statement

1. On June 14, 2024, Black Hills Colorado Electric, LLC doing business as Black Hills Energy (“BHCOE” or the “Company”) filed Advice Letter No. 871 (“AL 871”) with tariff sheets to revise base rate revenue for all electric service in the Company’s Colorado PUC No. 11 Tariff, along with certain other changes to its tariff.

2. By Decision No. C24-0489, issued on July 9, 2024, the Commission suspended the effective date of the tariff sheets filed with Advice Letter No. 871-Electric until November 12, 2024, or until further order of the Commission. The decision also established a notice and intervention period ending on August 2, 2024.

3. This Decision grants the requests for intervention in this matter, establishes the parties in this Proceeding, and grants requests for *pro hac vice* appearance. We schedule a prehearing conference on August 22, 2024, and direct BHCOE to confer with the intervening parties to develop and file a proposed procedural schedule by August 16, 2024, consistent with guidelines for the evidentiary hearing set forth below. We also extend the suspension date an additional 130 days to March 22, 2025, pursuant to § 40-6-111(1)(b), C.R.S. We further direct BHCOE to file Supplemental Direct Testimony providing additional information on a historic test year and forecast of rates through 2040 incorporating the information included in the Company’s recent presentations to investors as discussed further below.

B. Interventions and Parties to Proceeding

4. Trial Staff of the Commission (“Staff”) and the Colorado Office of the Utility Consumer Advocates (“UCA”) filed timely notices of intervention by right. The UCA represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. Staff and the UCA detail several issues they plan to address, and both Staff and UCA request a hearing.

5. Pursuant to Rule 4 CCR 723-1-1401(b) no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and the UCA and Staff are parties to this Proceeding.

6. The following parties filed timely requests for permissive intervention: the City of Pueblo, County of Pueblo, and Pueblo Economic Development Corporation (collectively “Pueblo”); Energy Outreach Colorado (“EOC”); Laborers International Union Of North America, Local 720 (“Local 720”); Colorado Solar and Storage Association (“COSSA”) and the Solar Energy Industries Association (“SEIA”, jointly “COSSA/SEIA”); Board of Water Works of Pueblo, The Fountain Valley Authority, and Colorado Springs Utilities/Southern Delivery System (collectively “Public Utility Intervenors”); Western Resource Advocates/Sierra Club (jointly “WRA/Sierra Club”); City of Canon City and City of Florence (jointly “Canon City/Florence”); Holcim (U.S.), Inc. (“Holcim”); and Electrify America, LLC (“Electrify America”).

7. The Pueblo Intervenors move for permissive intervention and argue that each has an individual right to intervene, but participating as one group with one attorney will add efficiency to this Proceeding. The County of Pueblo and the City of Pueblo each have citizens that are electric customers of BHCOE. The Economic Development Board uses money collected through sales tax revenue to support economic development incentives, funding capital projects, and equipment

purchases for new and expanding businesses. Pueblo argues its interests are unique and distinct from the interests of other parties who might seek to intervene in because Pueblo residents and businesses live every day with the effect of the current high electric rates at issue here.

8. EOC collects and disburses low-income energy assistance funds and claims an interest in representing the interests of income-qualified customers of Colorado utilities, and in ensuring that rates are just and reasonable such that the organization is not burdened by having to increase assistance payments. EOC intends to ensure that the Company's proposal does not result in rates that unjustly, unreasonably, and/or disproportionately burden income-qualified customers and EOC's services. EOC is specifically planning to address the Company's proposed revenue mitigation strategy, the elimination of the inclining block rate tier structure, and the new RS-TOU optional rate schedule. EOC notes that no other organization can adequately represent its position.

9. Electrify America owns the largest open DCFC charger network in the United States, including 39 locations in Colorado. Electrify America argues that it has a direct and substantial interest in this proceeding because it has existing and potential customers within BHCOE's service territory.

10. Local 720 is a labor organization with workers employed by utility contractors to build and maintain gas and electric infrastructure. They state that the Commission's decision in this case could influence BHCOE's investment in infrastructure projects, which could have broader implications on employment opportunities for the local construction workforce.

11. COSSA/SEIA is a non-profit trade association that represents solar and storage related businesses, including many contractors who operate in BHCOE's service territory. COSSA/SEIA asserts they have an interest in this Proceeding because of the expected significant

discussion of net metering and seeks to address BHCOE's rate design proposals, including meter requirements and cost recovery, all of which will affect its members.

12. The Board of Water Works is an independent municipal governmental entity that provides raw and potable water service to customers in the city of Pueblo; it receives its electric service from BHCOE. The Fountain Valley Authority is an intergovernmental authority that operates water pipelines, pumping stations, and a water treatment plant that delivers water to the communities of Security, Stratmoor Hills, Widefield, Fountain, and Colorado Springs. Fountain Valley Authority purchases electrical power from BHCOE to operate two of its pump stations. CSU/SDS operates a water system that is used to deliver water from the Pueblo Reservoir to customers; it receives electric service from BHCOE at one pump station. Together these entities seek to intervene to address the proposed rate increase which provide them a direct and tangible interest.

13. Both Canon City and Florence are cities in BHCOE's service territory for electric sales and have residents who are BHCOE customers. They seek to jointly intervene for administrative efficiency.

14. Holcim operates a cement manufacturing facility in Florence and receives electrical service from BHCOE. It asserts that as a large transmission level customer with significant monthly usage, that it has a direct and substantial interest in BHCOE's electricity rates.

15. WRA and Sierra Club are both environmental nonprofit organizations and seek to intervene jointly. They seek to intervene because they claim reasonable electric rates are critical to reducing greenhouse gas emissions. WRA/Sierra Club seek to address BHCOE's proposal to develop a voluntary rate for "energy supplied to residential customers who utilize a heat pump as their primary heating source that satisfies the requirements of 40-3.2-110(2), C.R.S."

16. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

17. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a "residential consumer, agricultural consumer, or small business consumer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interest of residential ratepayers.

18. We find that each entity seeking permissive intervention has sufficiently demonstrated that this proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Therefore, we grant the requests for permissive intervention.

19. In addition to BHCOE, the parties in this Proceeding include: Staff; UCA; Pueblo; EOC; Local 720; COSSA/SEIA; Public Utility Intervenors; WRA/Sierra Club; Canon City/Florence; Holcim; and Electrify America.

C. Requests for *Pro Hac Vice* Appearance

20. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in a Commission proceeding. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1, governs the

admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (“CRCP”) 205.4, which itself expressly incorporates CRCP 205.3. As pertinent here, CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- (a) File a verified motion with the administrative agency requesting permission to appear;
- (b) Designate an associated attorney who is admitted and licensed to practice law in Colorado;
- (c) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Regulation at the same time the verified motion is filed with the administrative agency;
- (d) Pay the required fee to the Clerk of Supreme Court collected by the Office of Attorney Regulation; and
- (e) Obtain permission from the administrative agency for such appearance.

21. On June 27, 2024, as amended July 16, 2024, Ms. Catherine M. Sabers, Mr. Todd L. Brink, and Mr. Douglas J. Law each filed a motion to appear *pro hac vice* on behalf of BHCOE. Mr. Zomer states that he is a licensed attorney in good standing in Minnesota, and that he has participated in one previous Commission proceeding. Ms. Anne Zellner Sherwood, a member of the Colorado Bar, signed the motion and was designated as the associate attorney for Mr. Zomer. On July 17, 2024, the Colorado Office of Attorney Registration filed a notification in this Proceeding stating that each Ms. Sabers, Mr. Brink, and Mr. Law have filed a copy of their respective verified motion for *pro hac vice* appearance and paid the required fee.

22. Ms. Sabers, Mr. Brink, and Mr. Law have each satisfied the requirements of CRCP 205.4. Therefore, we grant Ms. Sabers, Mr. Brink, and Mr. Law’s requests to appear *pro hac vice*.

D. Extension of Tariff Suspension Date

23. By Decision No. C24-0489, issued on July 9, 2024, the Commission initially extended the suspension date of the tariffs filed with Advice Letter-871 for 120 days to November 12, 2024. In order to accommodate the procedural schedule necessary to adjudicate this Proceeding, we extend the suspension date an additional 130 days to March 22, 2025, pursuant to § 40-6-111(b), C.R.S.

E. Prehearing Conference and Procedural Schedule

24. We schedule a remote prehearing conference on August 22, 2024, for the purpose of establishing a procedural schedule and establishing discovery procedures, as necessary.

25. We direct BHCOE to confer with the parties to develop and propose a consensus procedural schedule including discovery procedures. BHCOE shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than August 16, 2024. Parties should consider and include a deadline for filing of supplemental direct testimony. Consistent with the request in Pueblo's Motion for Intervention, we direct BHCOE and the parties to also propose a date for a public comment hearing to be held in Pueblo, Colorado. We direct BHCOE and the parties to set the deadline for filing any settlement agreement to ensure that the Commission receives the terms of the settlement agreement and any supporting testimony no less than two weeks prior to the start of the evidentiary hearing.

26. The procedural schedule proposed by the parties should include an evidentiary hearing before the Commission *en banc* that concludes no later than December 6, 2024. Statements of position shall be filed by the first week of January 2025. These deadlines are intended to ensure

we are afforded the time required to render a final written decision establishing rates at the conclusion of the proceeding.

27. Hearings that conclude by early December 2024 will enable us to engage in deliberations January 2025 after the evidentiary hearing has concluded. The first step of our deliberations may entail the adoption of an interim decision after the filing of the parties' post-hearing statements of position. The purpose of the interim decision would be: (1) to require BHCOE to file specific information and cost of service modeling results the Commission determines necessary for the purpose of establishing final rates; and (2) to schedule a technical conference at which the Company would present and explain such information to advisors and the parties. We may then conclude our deliberations upon consideration of the information provided in response to the interim decision to establish the final rates to be set forth on the Company's tariff sheets.

F. Referrals to an Administrative Law Judge

28. For procedural efficiency, we refer discovery disputes and motions, if any, for extraordinary protection of information claimed to be highly confidential to an Administrative Law Judge for resolution.¹

G. Supplemental Direct Testimony

a. UCA Request for a Historic Test Year

29. In its Protest, UCA requests the Commission order BHCOE to produce an historical test year ("HTY") for the 12 months ending December 31, 2023. We grant UCA's request and require the Parties to include the filing date for the HTY in their proposed procedural schedule.

¹ This referral includes the Motion for Extraordinary Protection filed by BHCOE concurrent with its Advice Letter Filing.

Specifically, BHCOE should draw on the information provided in Hearing Exhibit 103, Attachment SKJ-1 to produce the HTY.

b. Future Rate Forecast

30. In order to understand the rate trend for BHCOE, we direct the Company to provide a rate forecast through 2040 that incorporates the information provided by the Company in its most recent investor presentation for Colorado. This shall include a projection of base rate revenue requirements and total revenue requirements (broken out by costs and offsetting revenues) and the associated projected overall average rates and residential rates. The forecast shall be filed in the form of an executable MS Excel spreadsheet that allows the user to apply different input assumptions (*e.g.*, sales, rate base growth, weighted average depreciation life, authorized return on equity, debt and equity ratios, and expense growth) in a manner that calculates the cumulative impact of the input changes on revenue requirement and average rates over the 15-year horizon. The Company shall include a full description of the underlying assumptions of the forecast, incorporating information from the Company's most recent investor presentation for Colorado.

c. WRA/Sierra Club Request for a Voluntary Heat Pump Rate Proposal

31. In WRA/Sierra Club's motion for permissive intervention, they request that the Commission order BHCOE to file supplemental direct testimony regarding a voluntary heat pump rate designed to lower customers' average monthly energy bills within a general rate case on or before August 1, 2027, consistent with § 40-3.2-110(2), C.R.S. WRA/Sierra Club believe it is "very likely" this is the only electric general rate case that will be filed before August 1, 2027 in light of the Company's timing pattern of filing electric rate cases and therefore agree this Proceeding is an appropriate forum for the Company to propose a voluntary heat pump rate

32. We decline to order BHCOE to include a proposal for a voluntary heat pump rate as requested by WRA/Sierra Club. While we are cognizant of BHCOE's historical rate case filing cadence, the Company is aware of the statutory requirement must comply by the statutory deadline either within this Proceeding or in a future proceeding. However, we do not see the need or the desirability of requiring BHCOE to put together a proposal on such a short timeframe through supplemental direct and after this Proceeding has already been noticed to the public without indication that this issue would be considered here.

II. ORDER

A. It Is Ordered That:

1. The Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission filed by Black Hills Colorado Electric, LLC doing business as Black Hills Energy ("BHCOE") for Ms. Catherine M. Sabers on June 27, 2024, and amended on July 16, 2024, is granted.

2. The Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission filed by BHCOE for Mr. Todd L. Brink on June 27, 2024, and amended on July 16, 2024, is granted.

3. The Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission filed by BHCOE for Mr. Douglas J. Law on June 27, 2024, and amended on July 16, 2024, is granted.

4. The Motion to Intervene filed by the City of Pueblo, County of Pueblo, and Pueblo Economic Development Corporation (collectively ("Pueblo")) on July 12, 2024, is granted.

5. The Motion to Intervene filed by Energy Outreach Colorado ("EOC"), on August 1, 2024, is granted.

6. The Motion for Permissive Intervention filed by Laborers International Union Of North America, Local 720 (“Local 720”) on August 2, 2024, is granted.

7. The Motion for Permissive Intervention filed by Colorado Solar and Storage Association (“COSSA”) and the Solar Energy Industries Association (“SEIA”, jointly “COSSA/SEIA”) on August 2, 2024, is granted.

8. The Motion for Permissive Intervention filed by Board of Water Works of Pueblo, The Fountain Valley Authority, and Colorado Springs Utilities/Southern Delivery System (collectively “Public Utility Intervenors”) on August 2, 2024, is granted.

9. The Motion for Permissive Intervention filed by City of Canon City and City of Florence (jointly “Canon City/Florence”) on August 2, 2024, is granted.

10. The Motion for Permissive Intervention filed by Electrify America, LLC (“Electrify America”) on August 1, 2024, is granted.

11. The Motion for Permissive Intervention filed by Western Resource Advocates/Sierra Club (jointly “WRA/Sierra Club”) on August 2, 2024, is granted.

12. The Motion for Permissive Intervention filed by Holcim (U.S.), Inc. (“Holcim”) on August 2, 2024, is granted.

13. The parties in this Proceeding include: BHCOE; Staff of the Colorado Public Utilities Commission; the Colorado Office of the Utility Consumer Advocate; Pueblo; EOC; Local 720; COSSA/SEIA; Public Utility Intervenors; WRA/Sierra Club; Canon City/Florence; Holcim; and Electrify America.

14. BHCOE is directed to confer with the parties to develop a proposed procedural schedule, consistent with the discussion above. BHCOE shall file a report addressing its conferral

with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than August 16, 2024.

15. A remote prehearing conference is scheduled as follows:

DATE: August 22, 2024

TIME: 10:00 a.m.

PLACE: By video conference using Zoom at a link to be provided to parties by email and webcast to the public through <https://www.youtube.com/@COPublicUtilitiesCommission>.

16. Discovery disputes and future motions seeking extraordinary protection of information claimed to be highly confidential are referred to an Administrative Law Judge, consistent with the discussion above.

17. BHCOE shall file Supplemental Direct Testimony consistent with the discussion above.

18. This Decision is effective immediately on its Issue Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 7, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners