

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 TO INCREASE BASE RATE REVENUES, TO IMPLEMENT REVISED BASE RATES FOR ALL RATE SCHEDULES, AND OTHER TARIFF REVISIONS EFFECTIVE JULY 15, 2024.

**COMMISSION DECISION ADDRESSING JOINT MOTION
PURSUANT TO ELECTRIC RULE 3109(F)(III)(D), AND
REQUEST FOR EXPEDITED RESPONSE TIME OF FIVE
BUSINESS DAYS TO CLOSE OF BUSINESS ON
OCTOBER 25, 2024**

Issued Date: November 12, 2024
Adopted Date: November 6, 2024

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 24AL-0275E. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

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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 with tariff sheets to revise base rate revenue for all electric service in the Company’s Colorado P.U.C. No. 11 Tariff, along with certain other changes to its tariff. Black Hills filed the direct testimony of 13 witnesses in support of its request.

2. Also on June 14, 2024, Black Hills filed as Attachment 2 to Hearing Exhibit 100, a document titled as “BHCOE Customer Notice.” In Advice Letter No. 871, BHCOE states that the filing was noticed pursuant to § 40-3-104(1)(c)(I)(B), C.R.S.

3. By Decision No. C24-0489, issued July 9, 2024, the Commission set for hearing and suspended the effective date of the tariff sheets filed with Advice Letter No. 871 for 120 days, to November 12, 2024, pursuant to § 40-6-111(1), C.R.S., including by mail and email to all customers.

4. By Decision No. C24-0581-I,¹ issued on August 13, 2024, the Commission suspended the effective date of the tariff sheets filed with Advice Letter No. 871 an additional 130 days, to March 22, 2025, pursuant to § 40-6-111(1), C.R.S. By the same decision the Commission established the parties to this Proceeding.²

¹ Decision No. C24-0581-I was initially issued in error as Decision No. C24-0580-I. An errata correcting that error issued on August 20, 2024.

² Parties to this Proceeding are: BHCOE; Staff; UCA; Pueblo; Energy Outreach Colorado (“EOC”); Laborers International Union of North America, Local 720; Colorado Solar and Storage Association and the Solar Energy Industries Association (jointly “COSSA/SEIA”); Board of Water Works of Pueblo, The Fountain Valley Authority, and Colorado Springs Utilities/Southern Delivery System (collectively “Public Utility Intervenors”); City of Canon City and City of Florence (jointly “Canon City/Florence”); Electrify America, LLC; Western Resource Advocates/Sierra Club (jointly “WRA/Sierra Club”); Holcim (U.S.), Inc.

5. On October 18, 2024, Trial Staff of the Colorado Public Utilities Commission (“Staff”), the Office of the Utility Consumer Advocate (“UCA”), the City of Pueblo, County of Pueblo, and Pueblo Economic Development Corporation (“Pueblo Joint Movants”), collectively (“Joint Movants”) filed a “Joint Motion pursuant to Electric Rule 3109(f)(III)(D), and Request for Expedited Response Time of Five Business Days.” (“Notice Motion”) In the Notice Motion, the Joint Movants raise numerous concerns about the Customer Notice issued by Black Hills on June 14, 2024, in conjunction with its advice letter filing in this Proceeding.

6. On October 21, 2024, Black Hills Filed a Corrected Customer Notice. The Company corrects certain mistakes highlighted in the Notice Motion. On October 25, 2024, Black Hills also filed a response to the Notice Motion.

7. Through Decision No. C24-0775, issued on October 24, 2024, the Commission shortened response time to the Notice Motion to close of business on October 25, 2024.

8. On October 25, 2024, the Commission also received a response to the Notice Motion from Canon City and Florence.

9. By this Decision, the Commission denies in part the “Joint Motion pursuant to Electric Rule 3109(f)(III)(D), and Request for Expedited Response Time of Five Business Days” (“Notice Motion”) filed on October 18, 2024 by Staff of the Commission (“Staff”); the Colorado Office of Utility Consumer Advocate (“UCA”); the City of Pueblo, County of Pueblo, and Pueblo Economic Development Corporation (collectively “Pueblo”).

B. Discussion

10. In the Notice Motion, the Joint Movants highlight several “material errors” discovered in the BHCOE Customer Notice. Those errors are described in the Notice Motion as the following:

- a) The Customer Notice and Advice Letter have an incorrect change for small business customer monthly bill percent and dollar change. Both documents list the monthly percent change as 10 percent. Correcting an error in the Extraordinary Gas Cost Recovery Rider (“EGCRR”) results in an actual monthly change of 14 percent. The dollar impact is reported as \$25.06 monthly change when it is actually \$33.85. (The EGCRR was correctly applied for the residential calculation).
- b) The Customer Notice and Advice Letter report different monthly changes (dollars and percent) for Residential customers. Both are wrong. The Customer Notice states that the residential monthly bill will increase by 18 percent. The Advice Letter says the increase is 18.4 percent. The correct calculation is 18.8 percent. The error is a miscalculation of the Renewable Energy Standard Adjudgment (“RESA”).
- c) The Customer Notice provides the wrong information for the current residential customer bill tiered rate energy charge. While the error was not copied over to the calculation of the bill impact, the Customer Notice and Advice Letter report incorrect current residential energy charges of \$0.11904 for the first 500 kWh and \$0.0468 over 500 kWh instead of \$0.09999 for the first 500 kWh and \$0.13004 for over 500 kWh.
- d) There is a deficiency in the Customer Notice regarding Phase II issues. Black Hills provides no detail or information regarding the cost reallocation and other Phase II recommendations under the section "notice of proposed electric rate increase." Under the bill impacts section, it only states, "Black Hills Energy is proposing changes in the relative amount of revenues collected from each customer class."
- e) The Notice states that the requested increase in annualized revenues is approximately \$36 million but the requested annualized revenues are closer to \$37 million than \$36 million.

11. The Joint Movants state that Black Hills’ ratepayers are entitled to accurate and adequate prior notice about an increase in their rates pursuant to Colorado law, including § 40-3-104(1)(c)(II), C.R.S. They also argue that even though the Commission has already certified the tariff filing as complete, Commission Rule 3109(f)(III)(D) allows for an opportunity to cure. Therefore, the Joint Movants recommend the Commission require Black Hills to immediately issue a corrected notice fixing the errors in its Customer Notice recited above. The Joint Movants state that Black Hills had prior notice of the mistakes as early as July (they provide a copy of an email exchange discussing the errors as Attachment 2 to the Notice Motion).

12. The Notice Motion suggests that the Commission has several courses of action to “remedy the harm to the community’s ability to meaningfully participate” through various procedural options. They state that the Commission could insert a delay into the procedural schedule to allow entities and individuals more time to actively participate in the rate case and provide an alternative procedural schedule for Commission consideration. They also suggest that the Commission could consider ordering Black Hills to file an amended advice letter extending the proposed effective date of the base rate tariffs.

13. On October 21, 2024, Black Hills filed a Corrected Customer Notice (“Corrected Notice”) in clean and redlined format with a corresponding notification of the filing. In the notice of filing, BHCOE states that the Corrected Notice was posted on its website and filed with the Commission. The Corrected notice fixes the following: (1) corrects “approximately \$36 million” to “approximately \$37 million;” (2) changes three figures in the Current Residential Customer Bill column, including an updated tiered rate energy charge, and in the Proposed Average Monthly Bill column, changes the average monthly bill figure from \$129.81 to \$130.15, and the monthly charge to \$20.48. The percent Change in the same column has been corrected from 18 percent (original notice) to 18.7 percent; and (3) changes the average monthly bill impact for the Current Small General Service class to \$242.38 by removing the EGCR from the bill impact calculation and updates the percentage increase to 14 percent. BHCOE states that it disagrees with the Notice Motion that the Customer Notice description of the Phase II portion is statutorily deficient and thus makes no corresponding updates in the Corrected Notice.

14. Black Hills followed up the filing of the Corrected Notice with its Response to the Notice Motion on October 25, 2024. In its Response, the Company states that acknowledges that it made certain errors and highlights that it filed a Corrected Notice with the Commission and on

its website. The Company states that it also plans to file an updated customer notice based on its rebuttal case, which it will also post on its website, email to customers, and publish in the Pueblo Chieftain. It requests that the Commission wait to order it to provide additional notice through its website, emailing customers, and publishing the Notice in the Chieftain until after its rebuttal case is filed because its rebuttal case will not exceed any increase in the original notice, and to avoid customer confusion. The Company does not propose mailing the corrected notice, but will do so at its expense if ordered by the Commission, and prefers to do so after rebuttal testimony is filed to avoid customer confusion.

15. Black Hills argues that there is no deficiency in the Customer Notice regarding Phase II issues. The Company states that original customer notice includes that "Black Hills Energy is proposing changes in the relative amount of revenues collected from each customer class." The Company disagrees with the Notice Motion that this description of the Phase II portion of the rate review was statutorily deficient.

16. Black Hills argues that Commission Electric Rule 3109(f)(III)(D) does not work to correct deficiencies in the Customer Notice after the filing is certified as complete, despite the Joint Movant's contentions otherwise. Black Hills argues that Rule 1207 instead applies here, which allows the Commission to order an applicant or a petitioner to provide such additional notice as the Commission deems appropriate as provided pursuant to § 40-3-104, C.R.S. Black Hills argues that its original notice in conjunction with the Corrected Notice issued on October 21, 2024, meet the standard of § 40-3-104, C.R.S.

17. Black Hills contends that nothing in § 40-3-104, C.R.S., or Rule 1207, or due process requirements, require the Commission to delay the proceeding or require an amended advice letter filing because of an inaccurate customer notice. It argues that because this is a rate

case proceeding, the notice requirement is statutory, not constitutional, because the Commission is acting quasi-legislatively. Further, it argues that no additional notice is needed because the levels that will ultimately be approved will not be higher than originally proposed, similar to the situation in Proceeding No. 19AL-0075G. Because Black Hills commits that its rebuttal case will not be seeking rate increases above the stated original Customer Notice, there will be no harm to any party or would-be-intervenor based on errors in the original Customer Notice.

18. Finally, Black Hills argues that the overall scope and volume of involvement in the proceeding so far suggests that adequate notice was provided. It requests that the best course of action is for the Company to provide an updated customer notice at the time it files its rebuttal testimonies through a filing with the Commission, email to customers, and publication in the Pueblo Chieftain.

19. Also on October 25, 2024, the Commission received a response from Canon City and Florence, jointly. In their response, they support the Notice Motion and indicate the purpose of their response is to outline additional concerns related to what they refer to as the insufficient notice provided by Black Hills and to propose remedies that either extend or are in addition to those proposed in the Notice Motion. As to relief, they request that the Commission order Black Hills to file a further revised notice that includes Phase II information such as the proposed change in residential rate design and to allow an additional intervention period if the procedural schedule of the proceeding is delayed.

20. Canon City and Florence state that Black Hills revised notice, filed in response to the Notice Motion, remains insufficient and the Commission should order additional revisions. Specifically, they contend the revised notice still lacks detail on the Phase II changes that impact residential and small commercial customers. They highlight that both notices omit that Black Hills

is proposing a rate design change for residential customers in addition to the proposed rate increase. They request that the Commission order that the Black Hills' (new) notice to customers not only correct the identified errors but also include additional information regarding the proposed change in rate design.

21. Canon City and Florence support Staff's proposal that Black Hills provide the new notice by mail or bill insert. They maintain it is "critically important" that the revised notice be sent via mail or bill insert to all residential and small commercial customers. They explain that many customers, including elderly and low-income customers, may not have or at least regularly check e-mail, or access Black Hills' website. The cities add that, if the Commission's resolution of this issue results in delaying the procedural schedule, then the Commission should order an additional intervention period.

C. Findings and Conclusions

22. Overall, we find that the Company's original Customer Notice was sloppy and contained several regrettable errors. The Company could have avoided these errors with better attention to detail, or at the very least could have addressed the errors more expeditiously after it was alerted to the errors. However, we find that the original Customer Notice contained enough information to allow potentially interested persons to be reasonably informed of the substance of the Proceeding. Pursuant to Commission Rule 1207(e), customer notice shall contain "adequate information" to enable interested persons to be "reasonably informed" of the purposes of the matter noticed. Further, in light of BHCOE's assurance that its revenue requirement request in rebuttal testimony will result in rates lower than what was originally noticed, we see little chance of harm to any potential intervenor that chose to not participate based on the original Customer Notice. While the original Customer Notice was sufficient to meet the statutory standard, we find that best

practice and transparency require the Company to take additional steps to reasonably inform its customers of the changes it has proposed in this Proceeding.

23. The Commission finds that BHCOE's original Customer Notice contained the errors as outlined in paragraph 10 a, b, c, and e above. However, we do not find that the Company's description of the Phase II provisions in the filing were deficient as argued by the Joint Movants. The Company stated plainly that it "is proposing changes in the relative amount of revenues collected from each customer class." While sparse, this is sufficient notice pursuant to Rule 3002(d)(III) which requires a "brief description of the proposal and scope of the proposal, including an explanation of the possible impact upon persons receiving the notice."

24. Regarding the other issues presented in the Notice Motion, we find that those mistakes should be corrected and re-noticed to customers. Pursuant to § 40-3-104(1)(c)(II), C.R.S., customer notice must include "the average monthly increase, by dollar amount or percentage, to customers served under residential and small business tariffs." Inherent in providing this information is a requirement that the information be accurate. Through Commission Rule 1207(e), the Commission may order the utility to provide such additional notice as the Commission "deems appropriate." Here, we find it appropriate to require the Company to provide additional customer notice that reflects accurate information presented elsewhere in the Proceeding. As such, we require Black Hills to provide additional customer notice with the errors corrected through its website and through Commission filing. However, considering the advanced posture of this Proceeding, and the likelihood of customer confusion if three versions of the customer notice are received, we find it reasonable that to grant the Company's request to wait until after its rebuttal filing to send the updated customer notice. The Company shall make such a filing and send the publication request to the Pueblo Chieftain within two business days of the filing of its rebuttal

testimony on November 8, 2024. The Company shall also, at its own expense, mail the corrected notice in the same manner as the original Customer Notice was mailed to customers. BHCOE shall ensure the updated notice is mailed within one week of its rebuttal testimony submission.

25. We are cognizant of the time and resources already expended by intervenors, public commenters, and the Commission on this Proceeding and decline to order an amended advice letter filing for that reason. We find the delay in correcting these mistakes on the part of the Company unacceptable, particularly considering the Joint Movants' evidence that the Company has been aware of certain errors for months. Investment by intervenors in the Proceeding and customer confusion caused by these errors could have been avoided by more proactive and honest behavior by the Company.

26. In this instance, we decline to modify or delay the procedural schedule over the mistakes discovered in the original Customer Notice at this time. While we are frustrated and concerned about the apparent lack of attention to detail in the Company's filings, we do not see a need to delay the procedural schedule unless and until additional requests for intervention are received. Interested parties may always file a motion for late intervention pursuant to Commission Rule 1401(a) if good cause is shown. Here, in light of the confusion caused by the Company, the Commission anticipates it will look favorably upon any potential party seeking late intervention that otherwise meets the Commission's standards for intervention. If any motions for late intervention are granted, the Commission will consider modifications or other reasonable procedural changes in due course. Further, residential and small business ratepayers (already

represented by UCA³ in the instant Proceeding) still have the opportunity to file written comments or attend two additional public comment hearings to provide oral comments in the Proceeding.⁴

27. We also find it reasonable to conform the Commission's captioning of this Proceeding to the caption the Company has been using on its filings.⁵ Utilizing the Company's caption "IN THE MATTER OF ADVICE LETTER NO. 871 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO INCREASE BASE RATE REVENUES, TO IMPLEMENT REVISED BASE RATES FOR ALL RATE SCHEDULES, AND OTHER TARIFF REVISIONS EFFECTIVE JULY 15, 2024" provides assurance that any additional customer confusion can be avoided. If the updated caption affects anyone's desire to participate in this Proceeding, we will also address any motion from a potential party seeking late intervention that otherwise meets the Commission's standards for intervention.⁶

II. ORDER

A. **The Commission Orders That:**

1. The Joint Motion Pursuant to Electric Rule 3109(F)(III)(D), and Request For Expedited Response Time of Five Business Days, filed by Trial Staff of the Colorado Public Utilities Commission, the Office of the Utility Consumer Advocate, the City of Pueblo, County of

³ Pursuant to § 40-6.5-102, C.R.S., UCA represents "the public interest of Colorado utility users, and, specifically, the interests of residential, agricultural, and small business users."

⁴ Pursuant to Commission Decision No. C24-0701-I, the Commission will hold a public comment hearing in Canon City, Colorado on November 19, 2024 and remotely on December 5, 2024. More information on these hearings is available in Decision No. C24-0701-I and on the Commission's website.

⁵ Previous Commission decisions, including C24-0489, C24-0581-I, C24-0608-I, R24-0619-I, C24-0669, R24-0685-I, and C24-0701-I, utilized the following caption assigned my Commission administrative staff: "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."

⁶ Out of an abundance of caution, this Decision will be served upon those who also received Commission Decision No. C24-0489.

Pueblo, and Pueblo Economic Development Corporation, is denied in part, consistent with the discussion above.

2. Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (“BHCOE” or the “Company”) shall file an updated, accurate customer notice containing details of its rebuttal case no later than close of business on November 13, 2024, with the Commission and publish the same on its website. BHCOE shall also mail the updated customer notice in the same manner it originally mailed customer notice no later than November 15, 2024.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 6, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director