

Decision No. R24-0685-I

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 DECISION GRANTING REMAINING
REQUESTS FOR EXTRAORDINARY PROTECTION**

Issued Date: September 24, 2024

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants the remaining requests for extraordinary protection of highly confidential information in the Motion for Protective Order Affording Extraordinary Protection and Request for Temporary Waiver of Rule 1101(b)(VII) to Provide Public Versions of Certain Workpaper Attachments (“First Motion”) that Black Hills Colorado Electric, LLC doing business as Black Hills Energy (“Black Hills” or the “Company”) filed on June 14, 2024 and grants the relief requested in the Unopposed Amendment to Motion for Protective Order Affording Extraordinary Protection and Request for Temporary Waiver of Rule 1101(b)(VII) to Provide Public Versions of Certain Workpaper Attachments and Request for Waiver of Response Time filed September 19, 2024 (“Amendment to First Motion” or “Amendment”).

B. Procedural History¹

2. On June 14, 2024, Black Hills filed Advice Letter No. 871 with tariff sheets to revise base rate revenue for all electric service in the Company's Colorado PUC No. 11 Tariff.

3. Also on June 14, 2024, the Company filed its First Motion.

4. On August 13, 2024, the Commission referred discovery disputes and motions seeking extraordinary protection of highly confidential information to an Administrative Law Judge ("ALJ").²

5. In addition to Black Hills, the following entities are parties to this Proceeding: Staff of the Colorado Public Utilities Commission ("Staff"); the Colorado Office of the Utility Consumer Advocate ("UCA"); Energy Outreach Colorado; City of Pueblo; County of Pueblo; Pueblo Economic Development Corporation; Laborers International Union of North America, Local 720; Colorado Solar and Storage Association ("COSSA"); the Solar Energy Industries Association ("SEIA"); Board of Water Works of Pueblo; the Fountain Valley Authority; Colorado Springs Utilities/Southern Delivery System; City of Canon City; City of Florence; Electrify America, LLC; Western Resource Advocates ("WRA"); the Sierra Club; and Holcim (U.S.) Inc.³

6. No party filed a response to the Company's First Motion.

7. By Decision No. R24-0619-I, on August 27, 2024, the ALJ partially granted the First Motion, and required that by September 12, 2024, the Company make a filing clarifying its requested relief as to Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC and Hearing Exhibit 111, Executable Attachments EJF-6, 7HC (both filed on June 14, 2024) (collectively, "Exhibit Attachments").⁴

¹ Only the procedural history necessary to understand this Decision is included.

² Decision no. C24-0580-I at 13 (issued August 13, 2024).

³ *Id.* at 11-12.

⁴ Decision No. R24-0619-I (issued August 27, 2024) at 13-14.

8. On September 12, 2024, Black Hills filed its Response to Decision No. R24-0619-I (“Response”).

9. On September 19, 2024, Black Hills filed the Amendment to First Motion.

II. FINDINGS AND CONCLUSIONS

10. The Response states that the Company seeks extraordinary protection for highly confidential information found in pages 10 to 53 and 61 of Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC and that the remainder of the document is not confidential.⁵ The Response identifies how the highly confidential pages of the exhibit are marked and page numbered (if at all).⁶ The Company states that it filed PDF, non-confidential versions of the following portions of Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC, marked and filed as:

- Hearing Exhibit 113, Attachment DSA-3 - Bill Impacts
- Hearing Exhibit 110, Attachment DNH-9 - Revenue Mitigation
- Hearing Exhibit 110, Attachment DNH-10 - Current and Proposed Rates
- Hearing Exhibit 111, Attachment EJF-9 - Revenues Under Proposed Rates
- Hearing Exhibit 111, Attachment EJF-9HC - Revenues Under Proposed Rates.⁷

11. Because it is unable to provide public executable versions of highly confidential workpapers within Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC, the Company requests that the entire Excel file (*i.e.*, the executable version) be treated as highly confidential.⁸

⁵ See Response at 2.

⁶ See *id.*

⁷ *Id.*

⁸ *Id.*

12. As to Hearing Exhibit 111, Executable Attachments EJV-6, 7HC, the Company states that it seeks extraordinary protection for highly confidential information found in pages 2 to 21, 24 to 32, 38, 40 and 42 and that the remainder of the document is not confidential.⁹ The Response identifies how the highly confidential pages of the exhibit are marked.¹⁰ The Company states that it filed PDF, non-confidential versions of the following portions of Hearing Exhibit 111, Executable Attachments EJV-6, 7HC, marked and filed as:

- Hearing Exhibit 111, Attachment EJV-4 - Customer Growth Adjustment
- Hearing Exhibit 111, Attachment EJV-5 - Irrigation Adjustment
- Hearing Exhibit 111, Attachment EJV-6- Revenue Synchronization
- Hearing Exhibit 111, Attachment EJV-7HC - Adjusted Billing Determinants and Revenue Under Current Rates
- Hearing Exhibit 111, Attachment EJV-7 - Adjusted Billing Determinants and Revenue Under Current Rates.¹¹

13. Because it is unable to provide public executable versions of highly confidential workpapers within Hearing Exhibit 111, Executable Attachments EJV-6, 7HC, the Company requests that the entire Excel file (*i.e.*, the executable version) be treated as highly confidential.¹²

14. As an initial matter, given that Black Hills filed the Response to comply with Decision No. R24-0619-I, responses to the same are unnecessary. As such, to extent necessary, the ALJ waives the response time to the Response.¹³

15. The ALJ finds that the Response complies with Decision No. R24-0619-I. For the reasons discussed in Decision No. R24-0619-I, the ALJ grants extraordinary protection for

⁹ *See id.* at 3-4.

¹⁰ *See id.* at 4.

¹¹ *Id.*

¹² *See id.*

¹³ Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1.

Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC and Hearing Exhibit 111, Executable Attachments EJF-6, 7HC. To be clear, the entire executable versions of these documents will receive extraordinary protection, even though some portions are not confidential. The ALJ agrees that this is appropriate given that the Company cannot create public executable versions of these documents. What is more, the Company has publicly filed at least some portions of the non-confidential pages of these executable documents as PDFs. It is unclear whether all non-confidential portions of these executable documents have been filed as public PDFs, but this is not a matter within the scope of the ALJ's authority under the Commission's referral.

16. That said, the Company is *again* encouraged to review its filings to ensure that they comply with Commission directives in Decision No. C24-0608-I (issued August 21, 2024) and Attachment B thereto as to marking and filing exhibits and attachments (including directives as to marking and filing highly confidential exhibits and attachments). It is particularly confusing for the record that the Company chose to mark pages within the Exhibit Attachments with exhibit and attachment numbers different from the individual Exhibit Attachments, and that it filed portions of the individual Exhibit Attachments as public PDFs, marked again with different exhibit and attachment numbers than the Exhibit Attachments. This approach makes it incredibly difficult to determine the portions of the Exhibit Attachments that have been publicly filed and those that have not.

17. The Amendment to First Motion states that it is unopposed, and therefore, requests that the response time to it be waived.¹⁴ The Amendment explains that Decision No. R24-0619-I partially granted the protective order requested in the First Motion, thereby limiting access to the

¹⁴ Amendment to First Motion at 1.

highly confidential information at issue to the Commission, ALJs, Staff, the UCA and their respective attorneys.¹⁵ The Amendment asks that COSSA, SEIA, WRA, and the Sierra Club be given access to the highly confidential information at issue in the First Motion, subject to executing a non-disclosure agreement.¹⁶ Black Hills explains that WRA and the Sierra Club issued discovery requests seeking documents containing highly confidential information, and that COSSA and SEIA seek access to the Company's responses to these discovery requests.¹⁷ The Company entrusts these organization to abide by the highly confidential non-disclosure agreement, which will protect the information from unauthorized disclosure.¹⁸

18. Because the Amendment to First Motion is unopposed, the ALJ finds good cause to waive the response time to it and does so.¹⁹ For the reasons stated in the Amendment, the ALJ grants the relief requested in the Amendment to First Motion. COSSA, SEIA, WRA, and the Sierra Club are granted access to the highly confidential information at issue in the First Motion, subject to executing the form non-disclosure agreement the Company filed with the First Motion. This includes access to the additional information and documents to which this Decision affords extraordinary protection, consistent with the First Motion's requests.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See* Rule 1400(b), 4 CCR 723-1.

III. ORDER**A. It Is Ordered That:**

1. The remaining requests for extraordinary protection of highly confidential information in the Motion for Protective Order Affording Extraordinary Protection and Request for Temporary Waiver of Rule 1101(b)(VII) to Provide Public Versions of Certain Workpaper Attachments filed June 14, 2024, are granted, consistent with the above discussion. Hearing Exhibit 111, Executable Attachments DSA-3, DNH-9, DNH-10, EJF-9HC and Hearing Exhibit 111, Executable Attachments EJF-6, 7HC, (filed June 14, 2024) are granted extraordinary protection.

2. The response time to the Unopposed Amendment to Motion for Protective Order Affording Extraordinary Protection and Request for Temporary Waiver of Rule 1101(b)(VII) to Provide Public Versions of Certain Workpaper Attachments and Request for Waiver of Response Time filed September 19, 2024 (“Amendment to First Motion”) is waived.

3. The relief requested in the Amendment to First Motion is granted, consistent with the above discussion. The Colorado Solar and Storage Association, the Solar Energy Industries Association, Western Resource Advocates, and the Sierra Club are granted access to the relevant highly confidential information and documents, consistent with the above discussion.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director