

Decision No. C15-0373

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

PROCEEDING NO. 13A-0445E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR (1) APPROVAL OF ITS 2013 ELECTRIC RESOURCE PLAN, AND (2) APPROVAL OF ITS 2013-2014 RES COMPLIANCE PLAN.

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PROCEEDING NO. 13A-0446E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A POWER PLANT CONSISTING OF A 40 MW SIMPLE CYCLE COMBUSTION TURBINE AND ASSOCIATED BALANCE OF PLANT PURSUANT TO COMMISSION DECISION NO. C12-1434.

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PROCEEDING NO. 13A-0447E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RETIREMENT OF PUEBLO 5 AND 6.

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**DECISION DENYING APPLICATIONS FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION**

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Mailed Date: April 24, 2015

Adopted Date: April 16, 2015

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## I. **BY THE COMMISSION**

### A. **Statement**

1. On February 27, 2015, the Commission issued its Phase II Decision in this Electric Resource Plan (ERP) proceeding.<sup>1</sup> The Commission denied Black Hills/Colorado Electric Company, LP (Black Hills or the Company) a presumption of prudence for the acquisition of any of the new renewable energy resources featured in its 120-Day Report filed under Rule 3613(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The Commission further directed the Company not to acquire any of those resources, including a bid for 60 MW of wind energy (Bid 236-3A).

<sup>1</sup> Decision No. C15-0199 issued February 27, 2015 (Phase II Decision).

The Commission concluded that the cost and rate impacts of the proposed resources to Black Hills's customers were not reasonable.

2. Black Hills<sup>2</sup> and three other parties (Western Resource Advocates (WRA), the Colorado Independent Electric Association (CIEA), and the Southeast Colorado Solar Coalition (SCSC)) each filed applications for Rehearing, Reargument, or Reconsideration (RRR) of the Phase II Decision, asserting that the Commission erred in determining that none of the proposed renewable resources were cost-effective.

3. Consistent with the discussion below, we deny the requests for RRR.

#### **B. Background**

4. On January 6, 2014, the Commission issued its Phase I Decision in this proceeding. The Commission approved a comprehensive Settlement Agreement concerning the Company's 2013 ERP and its 2013-2014 Renewable Energy Standard (RES) Compliance Plan.<sup>3</sup>

5. By approving the Settlement Agreement, the Commission authorized Black Hills to conduct an all-source competitive solicitation to meet its projected resource needs during the Resource Acquisition Period extending from 2013 to 2019. Because Black Hills was projected not to have sufficient eligible energy resources or renewable energy credits (RECs) to meet the 20 percent RES starting in 2015, the Commission permitted the Company to consider the acquisition of up to 60 MW of eligible energy resources as part of the competitive bidding.<sup>4</sup>

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<sup>2</sup> Black Hills states that the Office of Consumer Counsel concurs in the conclusion of Black Hills's RRR.

<sup>3</sup> Decision No. C14-0007 (Phase I Decision).

<sup>4</sup> The Commission denied the Colorado Independent Energy Association's motion to modify the Settlement Agreement that would allow the Company to evaluate bids greater than 60 MW. Decision No. C14-1054-I, issued September 3, 2014.

6. Black Hills received more than 40 bids on July 31, 2014, including bids for firm market purchases, for eligible energy resources, and for a Section 123<sup>5</sup> resource (a waste-to-energy facility).<sup>6</sup> Because of alternative pricing and sizing options, Black Hills evaluated 42 bids for photovoltaic (PV) solar and 7 bids for wind energy.

7. On November 26, 2014, Black Hills filed its 120-Day Report in which it presented three portfolios of new utility generation resources for the Commission's consideration. Black Hills stated that a portfolio combining the acquisition of a 46.4 MW solar PV facility and a 10 MW waste-to energy facility (Bids 191-1 and 253-1) was modeled to have the lowest Net Present Value of Revenue Requirements (NPVRR). The Company also presented a portfolio with a 60 MW PV bid (Bid 207-3), explaining that this larger solar bid had the second lowest NPVRR and that the Company had several concerns with the proposed waste-to-energy facility, including its ability to obtain a state air quality permit. Black Hills also presented an alternative portfolio with a 60 MW wind project (Bid 326-3A). According to the public information in the 120-Day Report, this wind bid would cost \$232.2 million over the expected life of the contract and would require Black Hills to advance approximately \$1.4 million to its Renewable Energy Standard Adjustment (RESA) deferred account in 2016.<sup>7</sup> The wind bid would provide the Company approximately 5 million RECs over the ERP planning period to be used to demonstrate compliance with the RES.

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<sup>5</sup> See § 40-2-123, C.R.S.

<sup>6</sup> Black Hills states that it received one bid for a dispatchable resource, but it did not advance the bid because the bidder did not pay the bid fee.

<sup>7</sup> Phase II Decision, ¶ 31.

8. Staff of the Colorado Public Utilities Commission, the Office of Consumer Counsel, and WRA each filed comments to the 120-Day Report under Rule 3613(f). Black Hills filed a response to the comments under Rule 3613(g).

9. On February 27, 2015, the Commission issued its Phase II Decision.<sup>8</sup> In its Phase II Decision, the Commission denied a presumption of prudence for cost recovery for the new utility resources in the preferred resource plan presented by Black Hills in its 120-Day Report filed on November 26, 2014. Among the utility resources is a 60 MW wind project, identified as Bid 236-3A.

10. On March 19, 2015, Black Hills, WRA, CIEA, and SCSC each filed requests for RRR, asking the Commission to reconsider its Phase II Decision and approve the 60 MW wind bid.

11. On April 10, 2015, the Colorado Energy Office (CEO) filed a motion for leave to reply to the RRR applications and attached its comments to the motion.

12. On April 16, 2015, at its regular weekly meeting, the Commission deliberated on the CEO's motion and decided to grant it.<sup>9</sup> The Commission also considered and took action upon the applications for RRR.

### **C. Commission's Electric Resource Planning Authority**

13. The Commission's authority over electric resource planning stems from Article XXV of the Colorado Constitution which states in relevant part:

... all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado,

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<sup>8</sup> Decision No. C15-0199.

<sup>9</sup> See Decision No. C15-0357-I, issued April 20, 2015.

whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

14. Under § 40-3-102, C.R.S., the General Assembly has vested the authority contained in Article XXV to the Commission. That statute provides, in relevant part, as follows:

The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility in this state ... to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power ...

15. One of the primary purposes of utility regulation is to ensure that the rates charged by utilities are not excessive, unjustly discriminatory, or burdensome. *Cottrell v. City and County of Denver*, 636 P.2d 703, 711 (Colo. 1981). The General Assembly placed the primary duty and responsibility for the determination of just and reasonable utility rates with the Commission. *Pub. Utils. Comm'n v. Northwestern Water Corp.*, 168 Colo. 154, 167, 451 P.2d 266, 273 (1969). As such, the Commission has been charged with the general responsibility to protect the public interest regarding utility rates and practices. *Consolidated Freightways Corp. v. Pub. Utils. Comm'n*, 158 Colo. 239, 249, 406 P.2d 83, 88 (1965). Unquestionably, the Commission is endowed with broad regulatory and ratemaking authority and is authorized to unfailingly discharge those duties when required to do so.

16. A public utility cannot construct or extend the construction of a facility, plant, or system without Commission approval. § 40-4-101(1)(a), C.R.S.; *City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1274 (Colo. 2000). The Commission may grant a certificate of public convenience and necessity (CPCN) if it finds that construction of new electric generation resources is necessary for the utility to provide safe and reliable service and that the cost is

reasonable and prudent, *See* § 40-5-101(1), C.R.S.; *see also Pub. Serv. Co. v. Pub. Utils. Comm’n*, 142 Colo. 135, 146, 350 P.2d 543, 549 (Colo. 1960) (“The legislature has granted to the PUC very extensive and broad regulatory powers including the power to designate location of facilities and also relocation or removal thereof.”). A CPCN grants the utility a presumption of prudence for the estimated cost of the new facility and a presumption that the utility will be able to recover those prudent costs in its rates.

17. The Commission exercises its CPCN authority, in part, by conducting long-term resource planning with each of its regulated electric utilities. *See* Rule 3601, 4 CCR 723-3.<sup>10</sup> During the ERP process, the Commission determines the need for additional generation resources by balancing cost-effectiveness, system reliability, and the policy goal of increasing the use of renewable energy resources.<sup>11</sup> *See* § 40-3.2-104(1), C.R.S. (“It is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements.”); Sec. 1, Legislative Declaration of Intent, § 40-2-124, 2005 Colo. Sess. Laws p. 2336 (“[I]t is in the best interests of the citizens of Colorado to develop and utilize renewable resources to the maximum practicable extent.”). The Commission protects the public interest through the ERP process by evaluating the cost-effectiveness of resource plans. Rule 3613(h) (“[T]he Commission shall issue a written [Phase II] decision approving, conditioning, modifying, or rejecting the utility’s preferred cost-effective resource plan[.] . . .”).

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<sup>10</sup> State commissions retain the right to regulate the facilities responsible for the generation of electric energy. *New England Power Generators Ass’n v. Fed. Energy Regulatory Comm’n*, 757 F.3d 283, 285 (D.C. Cir. 2014) (citing 16 U.S.C. § 824(b)). “[S]tates have broad powers under state law to direct the planning and resource decisions of utilities under their jurisdiction.” *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, at ¶ 62,080 (June 2, 1995).

<sup>11</sup> *See* Decision No. C07-1101, ¶ 5 in Proceeding No. 07R-419E (issued December 27, 2007).

A resource plan is cost-effective when the “resources . . . can be acquired at a reasonable cost and rate impact.” Rule 3602(c).

#### **D. Evidentiary Standard**

18. Commission decisions shall be supported by substantial evidence in the record viewed as a whole. *City of Boulder*, 996 P.2d at 1274 (citing *CF&I Steel v. Public Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)); *Durango Transp., Inc. v. Pub. Utils. Comm’n*, 122 P.3d 244, 250 (Colo. 2005). “Substantial evidence means such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.” *Durango Transp.*, 122 P.3d at 250. (internal quotations omitted)

#### **E. Applications for RRR**

##### **1. Black Hills’s RRR**

19. Black Hills requests reconsideration of the Commission’s Phase II Decision to allow the Company to acquire the 60 MW wind bid featured in its 120-Day Report (Bid 236-31).<sup>12</sup> Black Hills asserts that the Company has proven through sufficient and substantial evidence in the record that the proposed wind bid is in the public interest because it will save customers money in the short- and long-term. Black Hills argues that, although the proposed wind bid will require the Company to advance funds to its RESA deferred account,<sup>13</sup> rates will not increase in the near term. After 2018, according to the Company, the savings from the wind resource are expected to grow to more than \$4 million annually as compared to the

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<sup>12</sup> In its reply comments filed on January 23, 2015, Black Hills states that the wind bid featured in the 120-Day Report was proposed by Invenergy, which would develop the project and sell it to Black Hills upon completion “as a rate base asset.” In the 120-Day Report, the bid is described as “build-transfer project on a 31,157 acre parcel currently leased in Huerfano and Las Animas counties” with a proposed interconnection at the Company’s Rattlesnake Butte substation requiring a nine-mile-long tie line.

<sup>13</sup> Black Hills explains that, in order to achieve the \$113.8 million of savings from the proposed wind bid, the Company would need to advance \$1.4 million to the RESA in 2016.



amounts Black Hills ratepayers otherwise would have to pay in the absence of the wind farm. The Company states that these savings arise from the substitution of wind energy for more expensive natural gas-fired generation. Black Hills argues that, if the Commission uses the same “customer savings analysis” that it used to approve Public Service Company of Colorado’s (Public Service) acquisition of 450 MW of wind in 2013,<sup>14</sup> the Commission should similarly find that the wind bid here is cost-effective.

20. Black Hills also argues that, although the proposed 60 MW facility will not enable the Company to meet the 20 percent RES, *see* § 40-2-124(1)(c)(I)(D), C.R.S., the facility brings it closer to RES compliance in a cost-effective manner. According to Black Hills, the Phase II Decision determined that the Commission will not authorize the acquisition of additional renewable energy resources when its RESA deferred account is in a deficit. Black Hills urges the Commission to consider the chilling effect of its decision on future resource solicitations.

## **2. WRA’s RRR**

21. WRA argues the Commission should reverse its Phase II Decision because there is substantial evidence in the record that the wind project is environmentally beneficial and will result in significant cost savings for Black Hills’s customers. According to WRA, the Commission’s evaluation of cost-effectiveness is inconsistent with statute, rule, and longstanding Commission precedent because it fails to address the cost savings presented by the expiring federal production tax credit and does not effectuate the state policy directing utilities to utilize renewable energy resources to the “maximum practicable extent.” WRA agrees with Black Hills that partial compliance with the RES is better than none.

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<sup>14</sup> Decision No. C13-1267, ¶¶ 16-20, in Proceeding Nos. 11A-869E, 12A-782E, 12A-785E (issued October 9, 2013).

22. WRA argues, in the alternative, that the Commission should “delay a decision on the cost-effectiveness of the wind bid until it can be evaluated against REC purchases” in Black Hills’s 2015-2017 RES Compliance proceeding.<sup>15</sup>

### **3. CIEA’s RRR**

23. CIEA argues the Commission should reverse its Phase II Decision. According to CIEA, there will be no immediate bill impact associated with advancing funds to the RESA deferred account because the surcharge will remain unchanged at 2 percent. CIEA also argues that any renewable resources that Black Hills develops will benefit customers by offsetting costs that ratepayers would otherwise pay for more expensive conventional generation.

24. CIEA argues that, by rejecting all bids to this solicitation, the Commission has failed to uphold the Phase I Settlement Agreement. CIEA also argues that the Commission should apply the same approach used to assess the cost effectiveness of Public Service’s wind proposal. According to CIEA, the Phase II Decision contradicts the Commission’s Decision approving Public Service’s 450 MW wind project because that decision found the wind project to be cost-effective when the modeled costs were lower than the utility’s avoided costs.

25. CIEA also argues that the Phase II Decision sets a market-chilling precedent for independent power producers seeking to develop renewable energy projects in Colorado.

### **4. SCSC’s RRR**

26. SCSC compares the costs of the wind bid with the rate increases necessary to pay for the Company’s new natural gas turbine (LM6000), which will cost an estimated \$70.8 million and will be used less than 1 percent of the time during the first five years of operation.<sup>16</sup>

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<sup>15</sup> See Proceeding No. 14A-0535E.

<sup>16</sup> *Id.*, ¶ 71 of Decision No. C14-0007 issued January 6, 2014.

According to SCSC, wind and solar resources are fundamentally different investments from fossil fuel generation because they are less expensive and more environmentally sound. SCSC argues the Commission should approve the wind and solar bids because the short-term rate increases are relatively small and are outweighed by the long-term benefits to ratepayers.

**F. CEO's Response to RRR**

27. In our April 20, 2015, Interim Decision, we granted the motion filed by the CEO on April 10, 2015 for leave to reply to the RRR applications.

28. CEO first states that if Black Hills's assumption -- that the Phase II Decision restricts Black Hills from advancing monies to the RESA deferred account to acquire additional renewable energy resources -- were true, then that restriction would contravene the CEO's mission to promote renewable energy resources throughout the state. In its response to RRR, the CEO argues that the Commission's decision "short circuits the competitive acquisition process that is fundamental to a fully effective market for renewable energy." According to the CEO, continued low prices for utility-scale renewable resources require a "reasonable expectation that winning bids will be selected."

29. The CEO also describes WRA's suggestion, that the Commission delay its cost-effectiveness decision until it evaluates the cost of acquiring RECs in Black Hills's RES compliance proceeding, as a "brand new approach." In its response, the CEO argues that the Commission's rejection of all of the proposed renewable energy bids will require Black Hills to purchase RECs to comply with the RES statute. The CEO thus supports WRA's suggestion that the Commission wait until it determines the price for RECs before it determines whether the proposed wind project is cost-effective.

**G. Cost-Effectiveness of 60 MW Wind Bid**

30. Under Rule 3613(h), the Commission issued its Phase II Decision upon review of Black Hills's 120-Day Report and the comments filed by the interested parties. The Phase II Decision rejected the proposed resource portfolios featured in the 120-Day Report because they all failed to meet the definition of a cost-effective resource plan, which is a "combination of new resources that the Commission determines can be acquired at a reasonable cost and rate impact." Rule 3602(c).

31. In deciding whether a new electric resource is cost-effective, the Commission evaluates: the likely costs and rate impacts associated with the proposed resource in the context of the expected benefits of that resource (*e.g.*, whether it satisfies the utility's identified resource need or helps it meet the requirements of the RES under § 40-2-124, C.R.S.); the costs and rate impacts associated with other new utility resources acquired under the plan (*i.e.*, the LM6000 addressed in Phase I of this proceeding); and the costs and rate impacts associated with the continued operation of the utility's existing resources and the acquisition of other resources to be acquired in the future (as represented in the 25-year NPVRR values presented in the Company's 120-Day Report).

32. Upon review of the confidential and public information in this record, we determined in our Phase II Decision that the record contains substantial evidence that none of the bid resources is cost-effective. We were prevented in our Phase II Decision from providing a detailed cost and rate analysis, because such a presentation would have required the public disclosure of information that Black Hills marked in the 120-Day Report as confidential. Our efforts to avoid the disclosure of information claimed to be confidential also prevented us from demonstrating that this analysis was entirely consistent with the approach the Commission

has taken in previous resource acquisition proceedings, such as our consideration of wind bids in Public Service's ERP.<sup>17</sup>

33. Black Hills's RRR filing contained no information claimed to be confidential. Yet it included most of the information we used for our cost-effectiveness analysis of the 60 MW wind bid that the Company previously had claimed to be confidential in its 120-Day Report. Attachments A and B to the Company's RRR filing reproduced in a public filing most of the cost information about the 60 MW wind bid contained in Confidential Appendix P to the 120-Day Report.

34. For example, Attachment A details the annual and total costs of the 60 MW wind bid. It shows that, in 2016, Black Hills's customers would be required to pay \$11 million for the wind energy produced that year (or 218,918 MWh as shown in Attachment B). Black Hills likely would seek to collect approximately \$7.4 million of those costs through its Energy Cost Adjustment (ECA), which is used to recover purchased energy expenses.<sup>18</sup> The \$3.5 million balance would be charged to the RESA deferred account and recovered, in part, through collections from rate payers at the maximum 2 percent surcharge and, in part, through borrowed funds from Black Hills (*i.e.*, the \$1.4 million of advanced funds as proposed in the 120-Day Report). Attachment A shows that the total cost of the 60 MW wind bid would be \$246 million and that most of these costs are "back ended," because \$174 million, or 70 percent of the total, would be recovered between 2026 and 2038.

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<sup>17</sup> See Proceeding Nos. 11A-869E, 12A-782E, and 12A-785E.

<sup>18</sup> Specific details of Bid 236-3A were not provided to the Commission. We infer that the costs of the 60 MW wind bid not recovered through the RESA deferred account would be recovered through the ECA through 2025, because the pattern of costs of the bid is declining over that period, which is contrary to base rate cost recovery. Beginning in 2026, however, the pattern of costs of Bid 236-3A appear to be consistent with base rate cost recovery (*e.g.*, through straight line depreciation of investment expenses).

35. Attachment A also explains the Company's derivation of projected savings from the 60 MW wind bid. Black Hills states that the "avoided costs" shown in the table represent the equivalent costs to customers to acquire the same amount of electricity produced by conventional generation as produced by the proposed wind project.<sup>19</sup> When the wind energy is more expensive than the conventionally produced electricity, the difference column shows incremental costs (*e.g.*, the \$3.5 million in 2016). When the wind energy is less expensive than the conventionally produced electricity, the difference column shows savings (*e.g.*, the \$867,030 savings in 2018). Attachment A thus explains how Black Hills derived the total claimed savings from the proposed wind bid of nearly \$114 million over the term of the bid. It also shows that during the period 2016 to 2025, the Company claims savings of \$36.5 million. Approximately \$77.5 million of the savings, or 70 percent, occur over the future years when the Company intends to recover 70 percent of the total costs.

36. Consistent with our stated intentions in previous decisions issued in this proceeding, we examined the costs of the 60 MW wind bid during the years of the Resource Acquisition Period through 2019. Black Hills's RRR filing shows that during this period, Black Hills's customers will face rate increases associated with the LM6000 of approximately \$1.6 million in 2015, \$2.9 million in 2016 (\$4.5 million – \$1.6 million), and \$7.7 in 2017 (\$12.2 million - \$4.5 million).<sup>20</sup> We also considered the projected costs and savings of the 60 MW wind bid during the period 2016 to 2025, because Black Hills stressed in the 120-Day Report that: "It is important that these savings occur early on in the life of the plant, since savings 25 years down the road are difficult to predict based on forecasts."<sup>21</sup>

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<sup>19</sup> Black Hills RRR, p. 6.

<sup>20</sup> Black Hills RRR, at 4.

<sup>21</sup> 120-Day Report, at 47.

37. Black Hills's generation fleet consists primarily of natural-gas fired generation located at the Pueblo Airport Generating Station.<sup>22</sup> Because the actual cost of natural gas fuel is passed through to customers, the projected price of natural gas is the primary factor driving the avoided cost calculations and the estimated incremental costs or savings from the proposed wind bid.

38. Black Hills used a specific natural gas forecast for prices at the Henry Hub to derive the avoided cost calculations in Attachment A. In accordance with our Phase I Decision, the Company filed the confidential forecast—the Ventyx Spring 2014 Reference Case—on June 19, 2014 as a confidential exhibit. The forecast is represented graphically in the 120-Day Report, but without axis labels showing the price per MMBtu.

39. We have examined the confidential natural gas price projections in the Ventyx Spring 2014 Reference Case and conclude that, while the forecast is appropriate for bid evaluation purposes to identify the least expensive bids, it is nonetheless inconsistent with prevailing market prices, which are under \$3.00/MMBtu. The forecast also fails to reflect the gas fuel costs the Company will likely incur in the next few years and therefore cannot be the basis for determining whether a proposed resource, even a least-cost bid, is cost-effective.<sup>23</sup>

### 1. Projected Savings

40. In order to determine whether the 60 MW wind bid would create savings or instead increase costs, we used the information presented in Confidential Attachment P to the 120-Day Report—also provided in public Attachments A and B to Black Hills's RRR filing—in

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<sup>22</sup> *Id.*, Appendix O, Section 2.

<sup>23</sup> We also examined the “Low Gas Forecast” that the Company calibrated based on the Ventyx Spring 2014 Reference Case in accordance with the Phase I Decision. We concluded that this forecast also included projected gas prices that were substantially higher than what Black Hills would likely face in the next several years.

combination with the confidential natural gas price forecast to recalculate avoided costs and savings under alternative gas cost scenarios. Contrary to the assertions raised in the RRR filings, this method is identical to the method for the proposed wind bids in Public Service's ERP Proceeding No. 11A-869E to acquire 550 MW of wind. In that proceeding, certain parties questioned the projected costs and savings of the wind bids due to actual natural gas prices tracking at lower levels than in the forecast used for Phase II bid evaluation purposes. The Commission therefore directed Public Service to provide a detailed discussion about likely gas cost increases or decreases and required an updated assessment of the economics of the recently acquired Limon wind project based on prevailing gas prices.<sup>24</sup>

41. Here, our analysis of the 60 MW wind bid found that, if gas prices remained at \$3.00/MMBtu on average during the period 2016 to 2025, the 60 MW wind bid would produce no savings and would instead result in additional costs to customers not reflected in the Company's bid evaluation. We further found that gas prices would need to rise substantially above \$5.00/MMBtu on average for savings to be in the range reported by Black Hills for the period 2016 to 2025.<sup>25</sup>

42. Our analysis of the public and confidential information in this proceeding therefore revealed that if gas prices in the next several years are similar to today's gas prices, the avoided costs and the projected savings shown in Attachment A are grossly overstated.

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<sup>24</sup> Decision No. C13-0759, ¶ 21, Proceeding Nos. 11A-869E, 12A-782E, and 12A-785E issued June 21, 2013.

<sup>25</sup> Even though the 60 MW wind bid would allow Black Hills to generate 18 percent of its electricity from renewable energy resources, more than 80 percent of the Company's electricity would still come from gas fired generation resources. Thus, rate increases associated with any rise in gas prices, for example from \$3.00/MMBtu to \$5.00/MMBtu, would overwhelm all of the projected savings from the 60 MW wind bid. This result is confirmed by the analysis of changes in total system costs in Confidential Attachment B to the 120-Day Report.



Black Hills's customers thus would face rate increases as a result of the acquisition of the 60 MW wind bid.

## **2. RESA Impacts**

43. We also examined the projected impacts of the 60 MW wind bid on the RESA deferred account given our doubts that the 60 MW wind bid would produce the savings as identified in Attachment A. We concluded that the \$3.5 million charge to the RESA in 2016 was excessive, because it represented over 70 percent of annual RESA collections at the maximum 2 percent surcharge. We also considered the increase in the interest payment obligations imposed on Black Hills's customers as a result of both the \$1.4 million of funds that Black Hills would need to advance to the RESA account and the extension of time over which the RESA balance would be paid down by the 2 percent RESA surcharge.

44. We also contrasted Black Hills's projected \$3.5 million of incremental costs in 2016 and its proposal to advance \$1.4 million to its RESA deferred account to Public Service's acquisition of wind. Public Service projected that its 450 MW of wind required \$2.3 million of incremental costs<sup>26</sup> for 7.5 times the amount of wind capacity of Black Hills's 60 MW wind bid. Public Service also did not expect any need to advance funds to its RESA deferred account to acquire its 450 MW of wind.

## **3. Previous Consideration of Wind Bids**

45. Our assessment of the 60 MW wind project proposed by Black Hills illustrates that we did, in fact, apply the same approach as used in Public Service's most recent ERP. The resulting determination that Black Hills's proposed wind project was not cost effective

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<sup>26</sup> The \$2.3 million of incremental costs for the 450 MW of wind represents approximately 4 percent of Public Service's annual RESA collections from the 2 percent surcharge on customer bills.

also caused us to contrast Public Service's recent wind acquisitions against the present circumstances facing Black Hills and its customers.

46. We are acutely aware of the differences between Black Hills's 60 MW wind project and the 450 MW of wind acquired by Public Service. Black Hills's RRR filing demonstrates that the average cost of production of \$48.47/MWh for Black Hills's 60 MW wind project substantially exceeds the \$29.00/MWh and \$34.30/MWh levelized bid prices of the 450 MW of wind acquired by Public Service.

47. As explained above, the \$3.5 million of incremental costs projected for 2015 for Black Hills's 60 MW wind project is excessive as compared to the \$2.3 million of incremental costs in 2015 for Public Service's 450 MW of wind.

48. Black Hills's disproportionate proposal to advance \$1.4 million to its RESA deferred account follows a base rate increase of \$3.1 million or about 2 percent.<sup>27</sup> That increase was immediately followed by an increase in the Company's Transmission Cost Adjustment revenue requirement of about \$2 million.<sup>28</sup> Another increase in rates followed as a result of a change in accounting between its RESA and ECA deferred accounts, causing \$2.8 million more revenue to be collected from Black Hills's customers through the ECA this year.<sup>29</sup> We placed these rate increases into the context of the higher rates Black Hills customers pay relative to Public Service customers and the difficult economic situation currently existing in the Pueblo, Colorado, area, where Black Hills customers reside.

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<sup>27</sup> Decision No. C14-1504, Proceeding No. 14AL-0393E.

<sup>28</sup> Black Hills Advice Letter No. 694, Proceeding No. 14AL-1214E.

<sup>29</sup> Decision No. C15-0317, Proceeding Nos. 14A-0534E and 15A-0535E.

#### **4. Conclusions and Findings**

49. In sum, our Phase II Decision determined that Black Hills's 60 MW wind project was not cost-effective. The projected \$36.5 million of savings from the 60 MW wind bid during the period 2016 to 2025 as presented in the 120-Day Report were not likely to materialize because they were premised on unrealistic prices for natural gas. Our analysis of the information provided in the 120-Day Report instead leads to our conclusion that the wind energy provided in the 60 MW wind bid was likely to be more expensive than the electricity that the Company could produce using its existing natural-gas fired generation resources. Because the Company's projections for savings from the 60 MW wind bid were improbable, and due to our determination that the proposed wind instead would likely cause Black Hills's customers a rate increase, we further concluded that the \$3.5 million of incremental costs in 2016 and the associated \$1.4 million that needed to be advanced by Black Hills to the RESA deferred account were not reasonable.

50. Our analysis of the projected costs and the RESA impacts of the 60 MW wind bid, as explained above, served as the basis of our Phase II Decision to deny Black Hills a presumption of prudence to acquire the 60 MW wind bid or any of the other resources featured in the Company's 120-Day Report. For the same reasons, we deny the requests in the RRR filings to reconsider our earlier findings.

#### **H. Effect on Competition**

51. The Commission disagrees with the arguments of Black Hills, CIEA, and the CEO that the Phase II Decision will negatively affect competition for renewable resource development in Colorado.

52. The Commission is not obligated to approve the “winning bids” from competitive resource solicitations simply because there were no apparent flaws in the bidding or because the bid evaluation appears to be consistent with the Phase I Decision. The Commission approves only those projects proven to be cost-effective and in the public interest. Rule 3613(h). No legal authority compels the Commission to provide Black Hills a presumption of prudence for a winning bid that the Commission does not find to be in the public interest.

53. The approved Settlement Agreement required the consideration of bids for renewable energy resources in Phase II but not the awarding of contracts. Our standards for consideration of the bids were clear. In the Phase I Decision and subsequent decisions, the Commission adequately informed potential bidders that it would primarily consider near term rate increases when determining whether to approve the acquisition of a renewable resource from the competitive solicitation.<sup>30</sup> This advisement was entirely consistent with the Commission’s recent examination of the wind bids in Public Service’s 2011 ERP resource solicitation, where it balanced the likelihood and magnitude of near-term rate increases with the likelihood and magnitude of savings to customers.

54. Black Hills and CIEA have also exaggerated the degree of participation by the independent power producers in the Company’s solicitation. There were only three wind bidders.

**I. Issues Not Addressed Here**

55. All other requests in the RRR filings to modify the Phase II Decision are denied.

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<sup>30</sup> Decision No. C14-0204, ¶ 5 issued February 25, 2014.

56. We clarify that our evaluation of Black Hills's compliance with the RES in 2015, 2016, and 2017 is the principal issue before us in Proceeding No. 14A-0535E. The Phase II Decision addresses whether the energy resources bid into the Company's competitive solicitation are cost-effective.

**J. Opportunity to Restructure Bids for Contract Approval**

57. There is Commission precedent to allowing a utility to secure new bid pricing and resubmit a bid that it no longer viewed as being cost effective. In consolidated Proceeding Nos. 10A-377E and 10A-905E, Public Service reported that the price of the most competitive wind bids to its 2011 Wind Request for Proposals fell by approximately 45 percent in comparison to its 2009 ERP wind bids. The Commission concluded that allowing Public Service to rebid the proposed wind resources resulted in substantial savings.<sup>31</sup>

58. We recognize that the bids to Black Hills's competitive solicitation take advantage of significant federal tax credits which may not be available in the future. We also acknowledge that the RES requires the Company to generate or cause to be generated 20 percent of its retail sales with electricity from eligible energy resources.

59. Notwithstanding our determination that none of the bids featured in Black Hills's 120-Day Report can be acquired at a reasonable cost and rate impact, we modify the Phase II Decision by removing the prohibition on the Company from pursuing any of the proposed projects. By this Decision, we have described our standards for determining whether a proposed eligible energy resource can be acquired at a reasonable cost and rate impact. We therefore will allow Black Hills, at its discretion, to renegotiate the bids for eligible energy resources up to

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<sup>31</sup> Decision No. C11-0509, ¶ 79, Proceeding Nos. 10A-0377E and 10A-905E.

60 MW and to submit the associated contract or contracts for our approval according to those standards.

60. Based upon updated assumptions for natural gas costs that start at levels commensurate with prevailing New York Mercantile Exchange futures, the Commission will consider a proposed contract (or contracts) that cause no net incremental costs over the period 2016 to 2025 based on an analysis in the same form as Attachment A to Black Hills's RRR filing (*i.e.*, the sum of the "Difference" column for those years shall not exceed \$0). Any proposed contract also shall not require Black Hills to advance funds to the RESA deferred account.

61. Black Hills shall file the proposed contract or contracts in this proceeding no later than 60 days following the effective date of this Decision. Information that has been designated as highly confidential by previous Commission decisions may be filed with restricted access to the Commissioners, Advisory Staff, and Trial Staff.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The request for Rehearing, Reargument, or Reconsideration filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills) on March 19, 2015, is denied, consistent with the discussion above.

2. The request for Rehearing, Reargument, or Reconsideration filed by Western Resource Advocates on March 19, 2015, is denied, consistent with the discussion above.

3. The request for Rehearing, Reargument, or Reconsideration filed by Colorado Independent Energy Association on March 19, 2015, is denied, consistent with the discussion above.

4. The request for Rehearing, Reargument, or Reconsideration filed by Southern Colorado Solar Coalition on March 19, 2015, is denied, consistent with the discussion above.

5. Consistent with the discussion above, Black Hills may renegotiate the bids for eligible energy resources up to 60 MW and submit the associated contract or contracts for approval no later than 60 days following the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
April 16, 2015.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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PAMELA J. PATTON

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GLENN A. VAAD

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Commissioners