

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0676E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, INC. DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL OF ITS RESIDENTIAL TIME-OF-DAY RATE PILOT PROGRAM.

**COMMISSION DECISION DENYING AS
UNTIMELY APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: August 30, 2019

Adopted Date: August 28, 2019

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission denies the motion of the Board of County Commissioners of the County of Pueblo, Colorado (Pueblo County) to accept its late-filed request for rehearing, reargument, or reconsideration (RRR) of Decision No. C19-0590. Section 40-6-114(1), C.R.S., statutorily precludes the Commission from accepting an application for RRR that is filed out of time. We therefore find we have no choice but to deny Pueblo County's motion to accept its late-filed RRR and to deny the RRR in its entirety as untimely. We do not consider the substance of the RRR.

B. Findings and Conclusions

2. On July 15, 2019, the Commission issued Decision No. C19-0590, denying the Application of Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (Black Hills), seeking approval to implement a residential time-of-day rate pilot program in Black Hills' service territory. This Decision issued July 15, 2019. Therefore, pursuant to § 40-6-114, C.R.S.,

the time period to file RRR expired 20 days later, on August 4, 2019. Pursuant to § 40-6-121, C.R.S., since August 4th was a Sunday, by statute the RRR deadline was continued to 5:00 p.m. on the next business day, August 5, 2019.

3. On August 6, 2019, Pueblo County filed a request for RRR of Decision No. C19-0590. This RRR was filed after the statutory 20-day deadline. On August 9, 2019, Pueblo County filed a motion to accept its RRR as timely filed. According to the motion, in order for Pueblo County's new counsel to file the RRR, authorization had to be given by a member of Pueblo County to the Public Utilities Commission. Pueblo County states that, once that authorization was obtained, it was able to file its RRR and enter the appearance of its new counsel.

4. We find that the Commission has no choice but to deny Pueblo County's motion to accept its late-filed RRR and to deny the RRR in its entirety as untimely. The language of § 40-6-114(1), C.R.S., is clear: "After a decision has been made by the commission ... any party thereto may *within twenty days* thereafter, or within such additional time as the commission may authorize upon request *made within such period*, make application for [RRR]" (emphasis added). Therefore, the time period to file RRR or seek an extension of time to file RRR is statutory. The Commission is not able to waive this deadline as it is contained in a statute, as opposed to a Commission rule.

5. We will therefore deny Pueblo County's motion and will not consider the substance of its RRR.

II. ORDER**A. The Commission Orders That:**

1. The motion filed on August 9, 2019, by the Board of County Commissioners of the County of Pueblo, Colorado (Pueblo County), requesting that the Commission accept Pueblo County's late-filed request for rehearing, reargument, or reconsideration (RRR) of Decision No. C19-0590, is denied consistent with the discussion above.

2. The application filed on August 6, 2019, by Pueblo County, requesting RRR of Decision No. C19-0590, is denied as untimely.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 28, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners