

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0869SE

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, INC.
FOR APPROVAL TO ASSUME AN ADDITIONAL \$65 MILLION IN LONG-TERM DEBT.

**COMMISSION DECISION GRANTING
STAFF’S EXCEPTIONS IN PART, DENYING
REMAINING STAFF AND OCC EXCEPTIONS
AS MOOT, AND DENYING APPLICATION**

Mailed Date: October 29, 2019

Adopted Date: August 14, 2019

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I. BY THE COMMISSION**A. Background**

1. By this Decision, we grant the exceptions of Trial Staff of the Commission (Staff) that the evidentiary record demonstrates the requested transactions are inconsistent with the public interest. As a result, we deny the remaining exceptions of Staff as moot, as well as the exceptions filed by the Office of Consumer Counsel (OCC). Since we agree with Staff that the record demonstrates that Black Hills Colorado Electric, Inc. (Black Hills or Company) failed to meet its burden of proof under § 40-1-104(3), C.R.S., to show that the application to assume an additional \$65 million in long-term debt is not inconsistent with the public interest, we deny the Application without prejudice.

2. On December 7, 2018, Black Hills filed its Application. The Company proposed to pay off an existing \$150 million intercompany promissory note currently payable to Black Hills Utility Holdings, Inc., and then establish a new intercompany promissory note payable to Black Hills Corporation (BHC) under the same terms and conditions as the original note. Black Hills then proposes to add \$40 million of long-term debt to the \$150 million intercompany promissory note to finance capital projects completed in 2016, including the LM6000 gas-fired combustion turbine generating unit. Finally, Black Hills proposes to add an additional \$25 million of long-term debt to the \$150 million intercompany promissory note for long-lived assets such as transmission and generation, including the Peak View Wind Project placed into service in 2016.¹

3. According to the Application, the \$215 million of debt that Black Hills proposes to assume is funded from a \$525 million ten-year note issued by BHC on November 19, 2013.

¹ See, Recommended Decision No. R19-0363 issued April 25, 2019, pp. 5-6, ¶13.

The \$525 million debt has a combined interest and finance cost of approximately 4.4 percent and a maturity date of November 30, 2023. The \$215 million of debt that Black Hills proposes to assume would have the same combined interest and finance cost (4.4 percent) and maturity date (November 30, 2023) as the underlying \$525 million ten-year note from which it is funded.²

4. In its Application, the Company maintains that these transactions are, in part, a housecleaning effort to simplify its organizational structure. By its Application, Black Hills states that long-term intra-company financing will be directly between BHC and Black Hills, rather than through an intermediary within the corporate structure.

5. In Recommended Decision No. R19-0363 issued April 25, 2019, the Administrative Law Judge (ALJ), in approving the Application, made several findings. Regarding the burden of proof, the ALJ determined that Black Hills was required to prove the following: (a) Black Hills is a public utility as defined in § 40-1-103, C.R.S., that derives more than 5 percent of its consolidated gross revenues in Colorado as a public utility; (b) Black Hills seeks to issue or assume securities with a maturity date of more than 12 months after the date of issuance for one of the enumerated purposes set forth in § 40-1-104, C.R.S.; and, (c) the issuance or assumption of the securities is not inconsistent with the public interest or otherwise inconsistent with the provisions or purpose of § 40-1-104, C.R.S.

6. The ALJ agreed with Black Hills that the Commission had previously approved the inclusion of the \$150 million component in the Company's debt/equity structure and in the calculation of the cost of debt in Black Hills' Phase I Rate Proceedings in 2014³ and 2016⁴ and

² *Id.*, p. 6, ¶14.

³ Decision No. R14-1298 issued October 28, 2014, Proceeding No. 14AL-0393E, pp. 65-66.

⁴ Decision No. C16-1140 issued December 19, 2016, Proceeding No. 16AL-0326E, pp. 24-25.

approved Black Hills' uncontested application to assume that amount as long-term debt in 2015.⁵ The ALJ also agreed with Black Hills that the Commission previously approved the application of the \$40 million component for purposes of creating a separate capital structure and rate of return to recover the costs of construction of the LM6000 generation facility in Black Hills' 2016 Phase I electric rate case.⁶

7. Regarding the interest rate, the ALJ determined that Black Hills had presented evidence that the 4.4 percent interest rate on the long-term debt proposed to be assumed is consistent with the interest rate that the Company would obtain if it issued debt at that time, or had done so in the recent past. Neither Staff nor the OCC offered evidence adequately rebutting Black Hills' evidence on the interest rate issue according to the ALJ.

8. The ALJ found that approving the Application would not have an immediate direct impact on customer rates, since evidence established that the Commission previously approved the 150 million and \$40 million components of the overall \$215 million in proposed debt to be included in base rates and the Clean Air Clean Jobs Act rider.

9. The ALJ addressed the asymmetrical differences in debt assigned by BHC to its regulated and unregulated subsidiaries, which resulted in the Company assigning lower cost short-term and long-term variable rate debt to its unregulated subsidiaries and long-term fixed rate debt to Black Hills, which is regulated. The ALJ found that neither Staff nor the OCC directly countered Black Hills' argument that BHC assigned its short-term and variable rate long-term debt to its unregulated subsidiaries because it is more appropriate for BHC's shareholders, rather than Black Hills' ratepayers to assume the risks associated with that debt. As

⁵ Decision No. C15-0096 issued January 29, 2015, Proceeding No. 15A-0023SE.

⁶ Decision No. C16-1140 at pp. 29-30.

a result, the ALJ concluded that Black Hills' next Phase I electric rate case was the more appropriate forum in which to address the issue. The ALJ made no findings regarding the reasons for or the reasonableness of BHC's debt allocations.

10. Staff maintained that the source of the \$215 million is not the \$525 million debt issued in 2013 and that the Company spent the \$525 million in 2013 for other purposes. However, the ALJ determined that the application seeks permission to assign to Black Hills \$215 million of the \$525 million long-term liability that matures on November 30, 2023, and BHC previously spent the \$525 million, but BHC repaid or replenished some or all of the cash from the 2013 debt issuance.

11. In making his overall determinations, the ALJ looked upon the elements of § 40-1-104, C.R.S., to determine whether Black Hills' had met its burden of proof. Accordingly, the ALJ set the burden of proof that Black Hills must prove the following:

- (a) Black Hills is a public utility as defined in § 40-1-103, C.R.S., that derives more than 5 percent of its consolidated gross revenues in Colorado;
- (b) Black Hills proposes to issue or assume securities with a maturity date of more than 12 months from the date of issuance for one of the specified statutory purposes; and,
- (c) The issuance or assumption of the securities is not inconsistent with the public interest or otherwise with the provisions of § 40-1-104, C.R.S.

12. Notably, the ALJ concluded that there was insufficient evidence in the record in this proceeding to find that the assumption of debt proposed by Black Hills is inconsistent with the public interest or otherwise inconsistent with the provisions or purpose of § 40-1-104, C.R.S. He points out that the Commission previously approved the inclusion of the \$150 million element in Black Hills' debt/equity structure in its Phase I electric rate proceedings in 2014 and 2016, as well as approved Black Hills' application to assume that amount as long-term debt in 2015. Additionally, the Commission set rates to recover the cost of the LM6000 generation

facility using the \$40 million component at 4.4 percent in the Company's 2016 Phase I Rate Proceeding. The ALJ determined there was insufficient evidence to find that the Commission did not act in the public interest in making those previous findings.

13. Nor was there sufficient evidence to find that Black Hills could have obtained a better interest rate on the proposed \$215 million debt if it issued debt today or had done so in the recent past. The ALJ noted that neither Staff nor the OCC offered compelling evidence to establish that the 4.4 percent interest rate on the proposed debt is unreasonable based on current market conditions or conditions in the recent past. The ALJ found Black Hills' evidence regarding the interest rate question "effectively un rebutted" by Staff or OCC.

14. In addition, the ALJ was not able to find that the source of the \$215 million debt issuance requested by Black Hills is not the \$525 million issuance in 2013. Moreover, regarding the disproportionate differences in the costs and type of debt allocated by BHC to its regulated and unregulated subsidiaries, the ALJ concluded that the reasonableness of the asymmetrical allocation that favors shareholders over ratepayers was directly related to the likelihood that interest rates will rise over the short term or before November 30, 2023. According to the ALJ, those management decisions, being based on a considered allocation of risk between shareholders and ratepayers, led him to conclude that the record in this proceeding precluded a finding that BHC's allocation was inconsistent with the public interest or inconsistent with the terms of § 40-1-104, C.R.S.⁷

15. Under the terms of § 40-1-104(3), C.R.S., the Commission is required to approve an application authorizing the proposed securities transactions, unless the Commission finds that

⁷ The ALJ deferred until the next Black Hills' Phase I rate case, whether the current risk allocation between shareholders and ratepayers will benefit ratepayers.

the transactions are inconsistent with the public interest or the purpose of the securities is not permitted or inconsistent with the statutory provision. Consequently, although Black Hills failed to identify any negative consequences resulting from the denial of its Application, the ALJ held that this failure did not establish that Commission approval of the Application would be inconsistent with the public interest. Because the ALJ could not conclude, based on the evidence of record that the Application must be denied, he approved the Application under the terms of § 40-1-104, C.R.S.

B. Exceptions

1. Staff

16. Staff takes issue with the ALJ's findings on several fronts. First, Staff contends that the ALJ erred in his conclusion that there is insufficient evidence in the record to conclude that the assumption of debt proposed in Black Hills' Application is inconsistent with the public interest. Rather, Staff takes the position that the evidentiary record demonstrates that the proposed transactions are in fact inconsistent with the public interest. In Staff's view, Black Hills did not present pertinent facts demonstrating that the source of funding correlates with the proposed debt assignment to Black Hills. According to Staff, the source of funds are different from the requested assignment since BHC cannot use the same dollars for multiple purposes. Further, BHC has undergone multiple long-term debt issuances since the \$525 million issuance in 2013 at lower debt cost.

17. Staff argues that it is not possible to assign \$215 million from the \$525 million in notes because it is impossible for the funds to have come from those notes. Based on U.S. Securities and Exchange Commission (SEC) filings, it is Staff's contention that BHC already spent the proceeds of the \$525 million issuance in 2013. Staff confirmed this by

reviewing BHC's books and records documenting the repayment of debts as reported in 2013 and 2014 SEC filings. In Staff's estimation, it is clear that BHC used the \$525 million debt issuance for other purposes. Consequently, it is Staff's position that assigning the debt proposed by Black Hills will result in a misalignment of funding used to finance operations.

18. According to Staff, the fact that Black Hills asserts that while it did use the proceeds of the \$525 million notes, it nonetheless replenished the cash used in the debt issuance which actually supports Staff's position. Since replenishing the cash requires using a different source of financing (which has a different cost associated with it), it leaves uncertainty as to the true debt cost. Staff concludes that the cost of this different source of financing is a pertinent fact that is missing in Black Hills' Application. While the ALJ noted that BHC spent the \$525 million, but repaid or replenished some or all of the cash from the 2013 debt issuance, it is Staff's contention the ALJ erred in approving the Application. In Staff's view, approving the Application should result in assigning a hypothetical debt cost that is inappropriate for such a proceeding and inconsistent with the public interest.

19. Staff additionally finds the Application inconsistent with the public interest because BHC has provided more favorable debt assignments to its unregulated subsidiaries than Black Hills, which according to Staff raises ratepayer costs.

20. Staff expresses concern that the new debt assignment proposed here does not make sense considering the investment being financed. Staff argues that BHC's debt assignment violates the guiding principles for debt assignment set out by its own witness Christianne Curran in direct testimony. While Black Hills insists that the regulated and unregulated businesses needed financing at different times, Staff contends that timing differences do not explain why BHC is seeking to allocate higher cost debt issued in 2013 to finance investments made in 2016,

particularly when comparatively lower cost debt was issued after 2013. Staff argues that this debt decision is inconsistent with the timing of the investments.

21. The choice of debt is a mismatch with the characteristics of the assets being financed, in Staff's estimation. For example, Staff notes that the life of the LM6000 generation unit is 36 years, and the life of the Peak View Wind Farm is between 25 and 55 years. However, the debt BHC wishes to allocate matures in 2023, far short of the life of the assets.

22. Staff also argues that the ALJ erred by concluding that unregulated entities have a lower cost of debt because shareholders can accept higher risk than ratepayers. Staff points out that generally, interest rates are associated with risk. Lenders typically require a higher interest rate for entities determined to be riskier and less likely to repay the loan. Therefore, Staff contends that it is counterintuitive to conclude that BHC's unregulated entities should be financed at a lower interest rate because they may be perceived as riskier than regulated entities.

23. Staff also takes exception with the Recommended Decision in that it approves a hypothetical capital structure that will directly affect Black Hills' next rate case. Staff additionally argues that the ALJ incorrectly concluded that the 4.4 percent interest rate is consistent with the interest rate Black Hills would obtain if it issued debt today or had done so in the recent past. Rather, Staff views the conclusion that assigning a 2013 security is reasonable based on the ALJ's rationale is merely assigning a hypothetical interest rate.

2. OCC

24. The OCC also opposes the ALJ's finding but reaches different conclusions than those of Staff. The OCC does not object to the allocation of the additional \$65 million in debt,

but takes issue with the 4.4 percent interest rate. The OCC identifies six other options it maintains exist in order to achieve a lower interest rate. Those options are as follows:

- A. All or part of the proposed additional debt of \$65 million could be included in the new 2020 debt issuance, or either the proposed \$40 million tranche or the \$25 million tranche, that comprise the \$65 million could be included in the 2020 debt issuance.
- B. The \$65 million could be assigned to existing but different BHC debt notes with unallocated debt amounts that BHC has not assigned. OCC identified four such BHC long-term debt notes.
- C. Obtain new debt matching the financing terms to the asset lives for long-lived assets such as the LM6000 and the Peak View Wind Farm of approximately 30 to 40 years.
- D. Authorize an interest rate for the \$65 million that is at a rate lower than the cost that BHC assigns to itself or its non-regulated subsidiaries.
- E. Use the average cost of debt for BHC and all of Black Hills' regulated and non-regulated affiliates to set the interest rate for the \$65 million of additional debt.
- F. Fund the \$65 million with short-term working capital using Black Hills' commercial paper rate of 3.06 percent until a long-term debt note is used and approved by the Commission in order to maintain the *status quo*.

25. The OCC disagrees with the ALJ's presumption that utilities should be left to manage their capital financing as this undercuts the Commission's ability to determine what is in the public interest. The OCC emphasizes that this is specific to the rate assigned, and that approval of the new rate now will mean that it will be included as part of the debt cost calculation in the next rate case.

26. Additionally, the OCC accuses Black Hills of violating § 40-1-104, C.R.S., that requires Commission authorization before allocating long-term debt. The OCC maintains that the Company uses short-term intercompany notes to assign or allocate long-term debt at a rate of 4.4 percent, even though short-term debt rates are available that have a lower interest rate. Consequently, by assigning the debt as long-term, Black Hills is violating § 40-1-104, C.R.S.

3. Black Hills' Response

27. Black Hills emphasizes that this proceeding is not a rate proceeding, rather it is for accounting purposes. According to Black Hills, Staff's and OCC's arguments misconstrue applicable legal standards and requirements; misinterpret prior Commission proceedings; fail to reflect that this is an accounting-based proceeding with no impact to ratepayers; and, fail to reflect the evidentiary record, including the reasonableness of the interest rate, comparisons to affiliate companies, the reasonableness of using long-term debt, and the correct source of the underlying \$525 million indenture.

28. Black Hills takes issue with the legal arguments raised by both Staff and the OCC. As applied to § 40-1-104(3), C.R.S., Black Hills argues that the parties are incorrect in their interpretations of § 40-1-104, C.R.S. It is the Company's contention that the ALJ properly found that under the relevant statutory language, that there is a rebuttable presumption that a security application will be granted.

29. Regarding OCC's position that Black Hills violated § 40-1-104(2), C.R.S., the Company argues that OCC failed to demonstrate with any factual evidence that Black Hills assumed any securities with a maturity date of more than 12 months after the date of issuance. Therefore, there is no evidence of violations of that statutory provision.

30. Black Hills takes issue with Staff's argument that § 40-1-104, C.R.S., supports rejection of Black Hills' intercompany assignments of debt because the statute is intended to only "accommodate a circumstance where a utility seeks a prompt issuance or assumption of a security in the market which, at times, can be volatile."⁸ The Company asserts that Staff's only support for this position is that subsection 104(5) requires expedited treatment for securities

⁸ Black Hills' Response at p. 6.

applications. Black Hills maintains that this argument is inconsistent with the plain language of the statute, ignores previous Commission findings, and misinterprets the purpose served by the expedited treatment provision of the statute.

31. Regarding Staff's and OCC's positions that prior Commission decisions did not approve rates for the \$150 million and \$40 million debt tranches, Black Hills contends that those were both approved in Decision No. C15-0096⁹ and Decision No. C16-1140¹⁰ respectively. As well, Black Hills disagrees with OCC's assertion that reflecting the requested 4.4 percent interest rate will impact customer rates. Black Hills points out that both the \$150 million and \$40 million debt tranches are already being collected at the 4.4 percent interest rate.

32. Black Hills also refutes Staff's allegation that the source of funding for the \$215 million does not derive from the underlying \$525 million obtained in 2013. Black Hills counters that Staff failed to offer specific evidence that the funds have a different cost of debt. Rather, Staff merely made an unsupported assertion. Black Hills states that Staff confuses the statement of cash flows (cash and equivalents entering and leaving the Company) with its balance sheet that reports assets, liabilities, and equity at a specific point in time.

C. Discussion and Findings

33. The issue for determination, in its most granular form, is whether the ALJ erred in finding that Black Hills met its burden of proof that the transactions under review were not inconsistent with the public interest.

34. Pursuant to § 40-1-104(3), C.R.S., when a utility seeks Commission approval for the issuance or assumption of securities and the attendant application of the proceeds, the

⁹ Decision No. C15-0096 was issued in Proceeding No. 15A-0023SE on January 29, 2015.

¹⁰ Decision No. C16-1140 was issued in Proceeding No. 16AL-0326E on December 19, 2016.

Commission is to “enter its written order approving the petition and authorizing the proposed securities transactions unless the commission finds that such transactions are inconsistent with the public interest or that the purpose thereof is not permitted or is inconsistent with the provisions of this section.” *Id.*

35. We find that Black Hills failed to meet its burden of proof to show that the transactions it sought approval of are not inconsistent with the public interest. We are persuaded by Staff’s analysis contained in its Exceptions to Recommended Decision No. R19-0363 that the evidentiary record demonstrates that the subject transactions are inconsistent with the public interest.

36. We find Staff’s arguments that the funds requested to finance Black Hills are not from the securities requested for assignment in this Application, and that BHC has given more favorable debt assignments to its unregulated subsidiaries than Black Hills compelling. We agree that the evidence shows that approving the Application would be inconsistent with the public interest.

37. Consequently, we find, based on the record that since the Application is not in the public interest, it will be denied. We note though, that we deny the Application without prejudice, therefore allowing Black Hills to file a new application that aligns more suitably with the public interest.

38. Having granted Staff’s initial arguments in its exceptions, we deny the remainder of its exceptions as moot. Similarly, we deny OCC’s exceptions as moot as well.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R19-0363 filed by Commission Staff (Staff) on May 15, 2019 are granted in part consistent with the discussion above.
2. The remainder of Staff's exceptions are denied as moot.
3. The exceptions filed by the Office of Consumer Counsel on May 15, 2019 are denied as moot.
4. The Application of Black Hills Colorado Electric, Inc. for Approval to Assume an Additional \$65 million in Long-Term Debt is denied without prejudice consistent with the discussion above.
5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision
6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 14, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

Commissioner

COMMISSIONER FRANCES A. KONCILJA
SPECIALLY CONCURRING.

COMMISSIONER JOHN GAVIN SPECIALLY
CONCURRING.

III. COMMISSIONER FRANCES A. KONCILJA SPECIALLY CONCURRING

1. There are at least four reasons to reject the Recommended Decision approving a cost of debt of 4.4 percent and also to order Commission Staff to conduct a management audit of Black Hills Colorado Electric, Inc. (Black Hills) to determine if Black Hills has developed reasonable and just short term and long term plans for financing the debt that ratepayers in southern Colorado have paid and will pay for the hundreds of millions of dollars of expenditures that this Commission has authorized.

2. First, interest rates have been at historic lows for the last ten years. However, the ratepayers in southern Colorado have not benefited from those historic low interest rates. The evidence is uncontroverted that some of Black Hills' regulated utilities in other states are benefiting from those lower rates. The uncontroverted evidence also establishes that the *unregulated* affiliates of Black Hills are benefiting from those lower rates. (The Administrative

Law Judge (ALJ) concluded that the differences were “stark.”) The questions are why? Is this reasonable? Does this allocation of more expensive debt by the Black Hills’ parent to Black Hills in Colorado result in just and reasonable rates for customers here in Colorado? I cannot disclose the actual interest rate paid by the unregulated affiliates of Black Hills, because Black Hills has continued to assert confidentiality over the actual numbers. (*See* footnote 59 on page 16 of the Recommended Decision and Confidential Table 1 on page 6 of Commission Staff’s Exceptions to Recommended Decision for some of the actual interest rates—at least with respect to the other regulated affiliates of Black Hills in other states.)

3. Second, there are balloon payments on this debt in 2020 and 2023 and Black Hills appears to have no reasonable plan of financing the hundreds of millions of dollars of debt that will come due, likely at a time when interest rates are higher than today’s rates and or higher than rates in the last ten years. *See* page 11 of Commission Staff’s Exceptions where they discuss the debt as low as 2.32 percent that Black Hills was able to obtain in 2015 when it doubled its corporate long term debt, but assigned none of that lower priced debt to Black Hills Colorado.

4. Third, Commission Staff has developed information that seems to indicate that the company is providing different information to the Securities and Exchange Commission (SEC) than it is providing to this Commission. *See* pages 4 and 5 of Commission Staff’s Exceptions where it cites to information Black Hills provided to the SEC that Black Hills actually paid off this higher priced debt in 2013. Black Hills now seeks to burden Colorado ratepayers with this debt that has been paid off by stating that it has “replenished” this higher priced debt meaning it has now become “unpaid.” In fact, the Recommended Decision found at paragraph 46 that this higher priced debt had been paid off. It is difficult to understand how debt can be paid off and then replenished and then assigned to ratepayers in southern Colorado.

5. As Commission Staff stated in its Exceptions, this proposed debt transfer filed at the end of 2018 seeks to finance a 2016 investment with debt issued in 2013 (*See* page 2 of Commission Staff Exceptions.). Thus there is a mismatch of obligations with the actual financing instruments.

6. Fourth, information from Commission Staff also appears to establish that the chief regulatory officer of Black Hills, Fred Stoffel, misrepresented material facts to this commission in 2016—asserting that there was a \$60 million prepayment penalty that prevented Black Hills from refinancing some of this higher priced debt, when in fact there was no prepayment penalty. Further an unregulated affiliate was allowed to pay off some of this higher priced debt issue with no prepayment penalty. (*See* pages 18 and 19 of Commission Staff Exceptions.)

7. This is the second time that Mr. Stoffel has misrepresented material facts to this Commission. In Decision No. C19-0798, this Commission, at page 11 of its decision stated that it found alarming Mr. Stoffel's lack of candor and admonished Mr. Stoffel of his duty of candor to this Commission.

8. The ALJ mistakenly concluded that he was powerless to do anything other than recommend approval of the application for two reasons—there was no immediate harm to ratepayers and the Commission had approved this interest rate in 2016—however it appears that decision may have been made on the basis of incorrect information.

9. A back of the envelope calculation of 4.4 percent interest on \$215 million of debt pencils out to be an annual cost of \$9,460,000; 3 percent interest rate is \$6,450,000; and 1.5 percent interest is \$3,225,000. (This calculation is done assuming the repayments are interest only.) Thus ratepayers could be paying millions of dollars more in interest than is reasonable or just. This appears to be a damage to the ratepayers in southern Colorado.

10. Further, this Commission has the authority under § 40-3-111, C.R.S., to review rates at any time in order to determine the reasonableness of rates. While that is normally done through an application by the electric utility for a rate increase and then a hearing, the Commission has the right to order a hearing to review the reasonableness of rates at any time on its own motion.

11. In sum, I concur in rejecting the Recommended Decision, but believe that his Commission should order the management audit referenced above to be concluded within 120 days.¹¹ After the audit, the Commission can determine what, if any steps, should be taken.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

Commissioner

IV. COMMISSIONER JOHN GAVAN SPECIALLY CONCURRING

1. I agree with the Recommended Decision for the following reasons:
 - The testimony of Commission Staff raises troubling questions about the candor and transparency of Black Hills Colorado Electric, Inc. (Black Hills) in its filings. The information presented appears to indicate that Black Hills may have acted to obfuscate the facts surrounding the assignment of the \$ 215 million from the original \$ 525 million notes.
 - The additional comments in Commissioner Koncilja's Concurrence about similar issues of candor, only serve to highlight concern about this issue. Black Hills was expressly warned about "candor to the tribunal" in Decision No. C19-0798 yet we still see evidence that this fundamental requirement is being taken lightly.

¹¹ It was my recollection of the decision meeting that Commissioner Gavan agreed that the Commission should order a management audit, but there was no formal vote taken that day.

- It is also disconcerting that Black Hills has treated the debt assignments to its unregulated subsidiaries more favorably than to its regulated utility as this will cause ratepayer impact at the next rate case.

Based on these issues, I concur that a Management Audit is warranted and needed at this juncture in order to properly uphold the obligations that a regulated utility secures under its chartered monopoly franchise.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN GAVAN

Commissioner