

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

PROCEEDING NO. 20D-0076E

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IN THE MATTER OF THE PETITION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR A DECLARATORY RULING THAT NO COMMISSION AUTHORIZATION IS REQUIRED UNDER C.R.S. § 40-5-105 TO SELL AND TRANSFER ALL CAPITAL STOCK IN THE CAÑON CITY HYDRAULIC AND IRRIGATING DITCH COMPANY AND DONATE THE FULL NET GAIN TO THE CITY OF CAÑON CITY, OR, IN THE ALTERNATIVE, APPLICATION FOR AUTHORIZATION TO SELL AND TRANSFER ALL CAPITAL STOCK IN THE CAÑON CITY HYDRAULIC AND IRRIGATING DITCH COMPANY AND DONATE THE FULL NET GAIN TO THE CITY OF CAÑON CITY.

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**INTERIM DECISION ACCEPTING PETITION FOR  
DECLARATORY ORDER AND ISSUING NOTICE**

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Mailed Date: March 4, 2020  
Adopted Date: March 4, 2020

**I. BY THE COMMISSION**

**A. Statement**

1. By this Decision the Commission accepts and issues notice of the Petition for Declaratory Order (Petition) filed by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills or Company) on February 28, 2020. The Petition requests the Commission enter an order declaring the Company's proposed sale and transfer of all capital stock in The Cañon City Hydraulic and Irrigating Ditch Company, associated with the demolished W. N. Clark Generating Station in Cañon City, and donation of the full net gain, is in the normal course of business for which no Commission authorization is required under § 40-5-105, C.R.S.

2. This Decision establishes a two-week period for notice, interventions, and any responsive briefs. Interventions and any responsive briefs must be filed by March 18, 2020.

**B. Background**

3. On February 28, 2020, Black Hills filed this Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i) of the Commission's Rules of Practice and Procedure. In the alternative, in the event the Commission determines the sale and transfer not to be in the normal course of business, Black Hills submitted a Verified Application pursuant to Rules 4 CCR 723-3-3002(a)(V) and 3104 of the Commission's Rules Regulating Electric Utilities, requesting an order authorizing the proposed sale and transfer and a waiver of Rule 4 CCR 723-3-3104(c).

4. In support of its filings, Black Hills filed direct testimony of Michael J. Harrington, Sr. Manager of Regulatory and Finance for Black Hills Service Company LLC, along with the following exhibits: an aerial photograph of the mutual ditch where water is diverted from the Arkansas river; the certified appraisal of the water rights; the Purchase and Sale Agreement; and a letter from the City Administrator for Cañon City accepting the donation of the net gains resulting from the sale.

5. Black Hills indicates that both Staff of the Commission and the Office of Consumer Counsel support the Petition and alternative Verified Application.

6. The Petition asks that the Commission enter an order declaring the Company's proposed sale and transfer of all capital stock in The Cañon City Hydraulic and Irrigating Ditch Company, associated with the demolished W. N. Clark Generating Station in Cañon City, and donation of the full net gain, is in the normal course of business for which no Commission authorization is required under § 40-5-105, C.R.S. Black Hills asserts that a declaratory order is necessary to resolve uncertainty of whether the proposed sale and transfer of water rights as set

forth in the Petition would be considered by the Commission to be within the normal course of business.

**C. Findings and Conclusions**

7. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, we may then exercise our discretion to accept or dismiss the petition.

8. We find that evaluating the question presented in the Petition will remove uncertainty of whether the proposed sale and transfer of water rights as set forth in the Petition is in the normal course of business for which no Commission authorization is required under § 40-5-105, C.R.S.

9. The Commission accepts Black Hills' Petition and issues notice of the Petition to interested persons, firms, and corporations by service of this Decision.

10. We find a shortened procedural timeline is appropriate because of the lack of opposition to date from Staff of the Commission and the Office of Consumer Counsel and the risk that the water rights could be deemed abandoned before the sale and transfer is complete. To that end, we establish a two-week period for notice, interventions, and any responsive briefs. Interventions and any responsive briefs must be filed by March 18, 2020.

**II. ORDER**

**A. It Is Ordered That:**

1. The Petition for Declaratory Order (Petition) filed by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy on February 28, 2020, is accepted.

2. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

3. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party on or before March 18, 2020.

4. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments on or before March 18, 2020, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

5. Responsive briefs shall be due from all parties by March 18, 2020.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
March 4, 2020.**

(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

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners