

Decision No. R22-0744-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0347E

IN THE MATTER OF ADVICE LETTER NO. 831 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL TO RECOVER COSTS ASSOCIATED WITH JOINING THE WESTERN ENERGY IMBALANCE SERVICES MARKET OPERATED BY THE SOUTHWEST POWER POOL AND TO CREDIT SPP WEIS MARKET SALE REVENUES TO CUSTOMERS THROUGH THE ELECTRIC COST ADJUSTMENT TARIFF, TO BECOME EFFECTIVE SEPTEMBER 2, 2022.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PARTIALLY GRANTING MOTION**

Mailed Date: November 18, 2022

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision partially grants the relief requested in Black Hills Colorado Electric LLC's, doing business as Black Hills Energy, (Black Hills or the Company) Notice of Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Motion) filed on November 16, 2022. Specifically, this Decision vacates or modifies the majority of deadlines established by Decision No. R22-0611-I (mailed October 10, 2022), vacates the January 13, 2023 hearing date, and establishes January 12, 2023 as the hearing date on the parties' anticipated settlement agreement.

B. Procedural History¹

2. On August 2, 2022, Black Hills filed the above-captioned Advice Letter with tariff sheets and written testimony in support thereof.

3. On August 22, 2022, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.²

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (the UCA), Colorado Public Utilities Commission Trial (Staff), and the Colorado Energy Office (CEO).³

5. With the parties' input, on October 10, 2022, the ALJ scheduled a two-day evidentiary hearing starting on January 12, 2023 and established procedural deadlines to accommodate the evidentiary hearing dates.⁴

6. On November 17, 2022, Black Hills filed the Motion.

II. FINDINGS AND CONCLUSIONS

7. Black Hills states that the Motion is unopposed.⁵ For that reason, and because the deadlines the Motion seeks to vacate or modify are closely approaching, the Company asks that the response time to the Motion be waived. For the reasons the Company provides, the ALJ finds good cause to waive the response time to the Motion and does so.⁶

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

² Decision Nos. C22-0492-I at 3 (mailed August 22, 2022) and C22-0492-E (mailed August 23, 2022).

³ Decision No. R22-0611-I at 7 (mailed October 10, 2022).

⁴ *Id.* at 7-10.

⁵ Motion at 2.

⁶ See Rules 1308(c) and 1400(b) of the Commission's Rules of Practice and Procedure, *Code of Colorado Regulations* (CCR) 723-1.

8. In support of the Motion, the Company explains that the parties began settlement negotiations on November 11, 2022; have exchanged several settlement proposals; and reached a settlement in principle resolving all the issues in this Proceeding on November 16, 2022.⁷

9. Based on their settlement in principle, and their ongoing negotiations, the Company asks that the ALJ vacate the November 16, 2022 deadline to file answer testimony and the December 12, 2022 deadline to file rebuttal and cross-answer testimony.⁸ Black Hills also asks that the deadline to file a settlement agreement be modified from December 21, 2022 to December 1, 2022 and that the deadline to file testimony in support of the settlement agreement be modified from December 21, 2022 to December 12, 2022.⁹ The Company also asks that the ALJ establish January 12, 2023 as the hearing date on the settlement agreement, if the ALJ deems one is needed, and vacate all other dates in the procedural schedule established by Decision No. R22-0611-I.

10. The Company submits that vacating the deadlines will allow the parties to focus their efforts on finalizing and preparing their settlement agreement; will promote administrative efficiency by reducing the time and burden needed for the ALJ, counsel and the parties to prepare for and litigate a settlement hearing rather than a fully litigated adversarial hearing; and is consistent with Rule 1408, 4 CCR 723-1, which states the Commission's policy to encourage settlement of contested proceedings.¹⁰

⁷ Motion at 3.

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

11. For the reasons stated in the Company's Motion, the ALJ finds good cause to vacate or modify the referenced deadlines, to vacate the January 13, 2023 hearing date, and establish January 12, 2023 as the hearing date on the anticipated settlement agreement. The ALJ will notify the parties if she determines that a hearing on the settlement agreement is unnecessary by written decision.¹¹

12. To preserve the potential for an evidentiary hearing on the anticipated settlement agreement, the ALJ will modify (not vacate) the deadlines for the parties to file exhibits, exhibit and witness lists, and a joint witness examination matrix, as set forth below. The parties are only required to file exhibits they intend to offer into evidence that have not already been filed. For the same reason discussed above, the ALJ will maintain the January 31, 2023 deadline to file statements of position. These deadlines will be vacated should the ALJ decide that an evidentiary hearing on the anticipated settlement agreement is not necessary.

III. ORDER

A. It Is Ordered That:

1. The response time to Black Hills Colorado Electric, LLC's, doing business as Black Hills Energy, Notice of Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Motion) filed on November 16, 2022 is waived, and the Motion is partially granted, consistent with the above discussion.

¹¹ Depending on the timing of the ALJ's decision, as a courtesy, the ALJ may also notify the parties informally by email if she has decided that a hearing on the settlement agreement is unnecessary.

2. The deadlines established by Decision No. R22-0611-I to make the following filings are modified as follows: settlement agreements must be filed on or by December 1, 2022; testimony in support of settlement agreements must be filed on or by December 12, 2022; and exhibits the parties intend to offer into evidence, exhibit and witness lists, and a joint witness examination matrix must be filed on or by January 9, 2023. The parties are only required to file exhibits they intend to offer into evidence that have not already been filed.

3. The in-person evidentiary hearing scheduled for January 12, 2023 will be on whether the parties' anticipated settlement agreement should be approved.

4. The January 13, 2023 hearing date is vacated.

5. Except for the January 31, 2023 deadline to file statements of position, all other deadlines established by Decision No. R22-0611-I are vacated.

6. Unless modified or vacated by this Decision, all other aspects of Decision No. R22-0611-I remain in full force and effect.

7. 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 "Doug Dean".

Doug Dean,
Director