

Decision No. R25-0677-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0255E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A 50 MW BATTERY STORAGE AND OTHER FACILITIES PURSUANT TO COMMISSION DECISION NOS. C24-0634 AND C24-0837.

**INTERIM DECISION
WAIVING RESPONSE TIME, DENYING REQUEST TO
CLARIFY PROCEDURAL SCHEDULE, AND AMENDING
PROCEDURAL SCHEDULE**

Issued Date: September 22, 2025

I. STATEMENT

A. Procedural Background

1. On June 12, 2025, Black Hills Colorado Electric, LLC (“Black Hills” or “Applicant”) filed its Verified Application of Black Hills Colorado Electric, LLC For a Certificate of Public Convenience and Necessity to Construct a 50 Mw Battery Storage and Other Facilities and Request for Expedited Decision (“Application”).

2. By Decision No. C25-0583-I, issued August 7, 2025, the Commission, among other things, deemed the Application complete and referred this matter to an Administrative Law Judge (“ALJ”).

3. By Decision No. C25-0620-I, issued August 26, 2025, the Commission, among other things, granted Black Hills' Motion¹ and Modified Decision No. C25-0583-I by striking ¶¶ 19-21 of Decision No. C25-0583-I.

4. In informal email correspondence with the undersigned ALJ, Applicant's counsel communicated to the undersigned ALJ that the parties agreed to a procedural schedule that would govern this Proceeding, as well as a deadline by which a recommended decision in this matter will be issued.

5. By Decision No. R25-0655-I, issued September 9, 2025, the undersigned ALJ, among other things, adopted the procedural schedule proposed by the parties was silent on the requested deadline for the issuance of a recommended decision in this matter.

6. On September 11, 2025, the Unopposed Motion of Black Hills Colorado Electric, LLC to Clarify Procedural Schedule and for Waiver of Response Time ("Motion") was filed by Black Hills.

B. Motion

1. Request to Waive Response Time

7. The Motion is unopposed, and the waiver of response time will not harm any party herein. Therefore, consistent with Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1, Black Hills request for waiver of response time to the Motion will be granted, as ordered below.

¹ See the Motion of Black Hills Colorado Electric, LLC for the Commission to Modify or Clarify Interim Decision No. C25-0583-I and for Shortened Response Time, filed by Black Hills on August 11, 2025.

2. Request to Clarify Procedural Schedule

8. In Decision No. C25-0583-I, the Commission stated:

Finally, Black Hills requests that an expedited decision be made on the Application such that an “initial decision” is issued by December 15, 2025. Black Hills explains that in the BTA contract, the developer has required a final Commission decision by February 15, 2026. The proposed December 15, 2025 deadline is thus intended to accommodate exceptions to a Recommended Decision or an application for rehearing, reargument, or reconsideration of a final Commission decision.

Based on those decisions and the record in Proceeding No. 22A-0230E, we agree with Black Hills regarding the need for a timely decision in this Proceeding and ask the ALJ to develop a procedural schedule that meets the Company’s requested deadlines. As noted in Trial Staff’s intervention, recent federal actions may have substantial impacts on the cost of the PBR and there is a real cost risk associated with delay.²

9. In the Motion, Black Hills states that:

BHCOE’s Application in this matter requests an expedited timeline because the contract with the project developer for the 50 MW battery storage project that is the subject of this CPCN proceeding requires a final Commission decision by February 15, 2026. Accordingly, BHCOE requested an ALJ decision be issued no later than December 15, 2025.³

The Motion further states that:

Black Hills has no objection to the application of § 40-6-109.5(1), C.R.S., to extend the original December 13, 2025, deadline for a final Commission decision. However, the proposed procedural schedule submitted by BHCOE included a suggested ALJ decision date no later than December 15, 2025. This date was not included in the Procedural Schedule Order, which instead states that the Commission may issue a decision as late as April 7, 2026.⁴

² Decision No. C25-0583-I at pp. 4, 5.

³ Motion at p. 1.

⁴ *Id.* at p.2, emphasis in the original.

On this basis, Black Hills “requests clarification that an ALJ decision will be issued by December 15, 2025...”⁵

10. Section 40-6-109.5(1), C.R.S., prescribes a 120-day deadline for Commission action on applications deemed complete, with a single permissible extension of up to 130 days if the Commission determines additional time is required. The statute does not authorize alternative deadlines at the request of a party.

11. As stated in Decision No. R25-0655-I, the deadline for a Commission Decision in this Proceeding was extended to accommodate the parties’ proposed procedural schedule.

12. The issuance date of a recommended decision is not an element of the procedural schedule subject to negotiation among the parties. It is a matter reserved to the presiding ALJ’s judgment, consistent with statutory deadlines and Commission practice.

13. Notwithstanding the foregoing, the undersigned ALJ recognizes the contractual considerations cited by Black Hills and the resulting practical time constraints, and will endeavor to issue a recommended decision as expeditiously as practicable.

14. For the same reasons, after reconsidering the procedural schedule proposed by the parties, and consistent with the Commission’s instruction in Decision No. C25-0583-I, the undersigned ALJ finds and concludes that the deadline for statements of positions, as ordered in Decision No. R25-0655-I should be shortened by one week from November 21, 2025 to November 14, 2025. This would provide the Commission one additional week for deliberations. Therefore, the procedural schedule adopted by Decision No. R25-0655-I will be amended to reflect the shortening of the deadline for the submission of statements of position to November 14, 2025, as ordered below.

⁵ Motion at p. 3.

15. Finally, the parties are reminded that the most expeditious path to a timely Commission decision is the filing of an unopposed comprehensive settlement agreement before the settlement deadline.

II. ORDER

A. It Is Ordered That:

1. Response time to the Unopposed Motion of Black Hills Colorado Electric, LLC to Clarify Procedural Schedule and for Waiver of Response Time (“Motion”) that was filed by Black Hills Colorado Electric, LLC (“Black Hills”) on September 11, 2025 is waived.

2. Black Hills’ request, set forth in the Motion, to clarify that a recommended decision will be issued by December 15, 2025, is denied.

3. The procedural schedule adopted by Decision No. R25-0655-I, issued September 9, 2025 is amended to reflect the shortening of the deadline for the submission of statements of position to November 14, 2025.

4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge