

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08A-346E

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2008 COLORADO
RESOURCE PLAN AND PETITION FOR WAIVERS OF PORTIONS OF THE
RESOURCE PLANNING RULES**

**SECOND MOTION OF BLACK HILLS/COLORADO ELECTRIC UTILITY
COMPANY, LP FOR PROTECTIVE ORDER AFFORDING EXTRAORDINARY
PROTECTION**

**TO COVER HIGHLY CONFIDENTIAL COMMUNICATIONS CONCERNING
ACQUISITION OF TURBINES**

**AND MOTION TO WAIVE RESPONSE TIME OR
SHORTEN RESPONSE TIME TO NOVEMBER 25, 2008, AT NOON**

Black Hills/Colorado Electric Utility Company, LP ("BH/CO Electric"), by and through its undersigned counsel, pursuant to Rule 723-1-1100(a)(III) of the Colorado Public Utilities Commission's ("Commission") Rules of Practice and Procedure relating to Confidentiality, 4 COLO. CODE REGS. 723-1, hereby respectfully requests that the Commission grant extraordinary protection to BH/CO Electric's communications with vendors regarding the acquisition of turbines.

BH/CO Electric requests that access to and review of such highly confidential communications be limited to the Commissioners and the Commission Administrative Law Judges ("ALJs"), as well as to members of the Commission's Staff, employees of the Colorado Office of Consumer Counsel ("OCC"), and their respective attorneys from the Colorado Attorney General's Office, who are assigned to this docket.

As grounds for the relief sought herein, BH/CO Electric states as follows:

1. BH/CO Electric received the following discovery request from trial staff:

DISCOVERY REQUEST NO. CPUC 1-19:

In his Direct Testimony, page 13, Table 9-1, the witness provides milestones for plant completion. The table includes a January 2009 milestone for the payment of a nonrefundable deposit for the turbines to secure turbine production slots. Please provide all correspondence between Black Hills and turbine manufacturers that support the assertion that roughly 36 months are required to secure turbines for summer 2012 commercial operation.

2. Black Hills has provided the answer to this question in its response to CPUC 1-19 which states that “since filing the Resource Plan, Black Hills has had communications with vendors regarding when nonrefundable deposits must be made to secure turbine production slots for delivery of turbines in the last quarter of 2010 and the first quarter of 2011.”¹ This response was sponsored by Black Hills witness Thomas Ohlmacher. Therefore, **all parties have the ready to ship date information without the need to review the underlying correspondence.**

3. However, the question requests copies of the correspondence between Black Hills and turbine manufacturers that support the timeline to secure turbines. Black Hills has had correspondence regarding turbine purchase terms and conditions (the “Highly Confidential Information”). The Highly Confidential Information includes, but is not limited to, ready to ship dates based upon Black Hills’ acceptance of the other contract terms and conditions. Information regarding ready to ship dates in the Highly Confidential Information is so interrelated with the other contract terms and conditions that it is not possible to redact the correspondence and provide only the ready to ship information. Without the context, the ready to ship information would be meaningless.

4. The purpose of this Motion is to seek an order from the Commission affording extraordinary confidential protection to the Highly Confidential Information.

5. Rule 723-1-1100(a)(III) of the Confidentiality Rules provides as follows:

If a party believes that information requires extraordinary protection beyond that provided for in these rules, then the party shall submit a motion seeking such extraordinary protection. The motion shall include a description and/or representative sample of the information for which extraordinary protection is sought, shall state the specific relief requested and the grounds for seeking the relief, and shall advise all other parties of the request and the subject matter of the material at issue. ... The motion shall be accompanied by the specific form of nondisclosure agreement requested by the party. ...

4 COLO. CODE REGS. 723-1-1100(a)(III) (2008); *see also Public Serv. Co. of Colo. v. Trigen-Nations Energy Co., L.L.P.*, 982 P.2d 316 (Colo. 1999) (upholding Colorado Public Utilities Commission decision granting Public Service Company's motion for extraordinary protection).

6. Extraordinary confidential protection is warranted for the Highly Confidential Information because this information includes very specific, highly confidential competitive information regarding the implementation of the Company's proposed plan in the event the Commission grants the Company's Petition for Waivers.

7. Disclosure of the Highly Confidential Information must be afforded extraordinary protection to preserve the integrity of any competitive bidding process required by the Commission if the Petition for Waivers is denied. Disclosure of the Highly Confidential Information would adversely affect any competitive bidding process.

8. The extraordinary protection sought in this Motion should prohibit the production or disclosure of the designated Highly Confidential Information to any Parties or entities other than the Commissioners, Commission ALJs, members of the Commission's Staff, employees of the OCC, and their respective attorneys from the Colorado Attorney General's Office. By signing an appropriate extraordinary confidential non-disclosure agreement, those persons who

¹ Black Hills is filing a correction to this response because the earliest possible ship date is in the last half of 2010,

are entitled by the Commission's protective order would have access to the Highly Confidential Information.

9. In accordance with Rule 723-1-1100(a)(III), the proposed form of appropriate non-disclosure agreement is attached to this Motion as Attachment "B." However, BH/CO Electric proposes that if the persons authorized by a Decision on this Motion to receive the Highly Confidential Information have already executed a nondisclosure agreement as to the Highly Confidential Information that is the subject of Decision No. C08-1200 (pertaining to the highly confidential portions of the contingency plan) a Decision granting this Motion could provide that (i) such persons need not execute additional nondisclosure agreements, and (ii) such existing nondisclosure agreements apply to all highly confidential information subject to Decisions of this Commission in this docket granting extraordinary protection.

10. As part of the protective order, BH/CO Electric additionally seeks the following protections:

- a) That the Staff and the OCC be relieved from having to provide the highly confidential information in response to any discovery conducted by any other intervenors in this docket.
- b) That, in the unlikely event the highly confidential information is provided by BH/CO Electric in electronic format, representatives of the Staff and OCC and their respective attorneys shall be prohibited from transmitting the highly confidential information by any electronic media, including e-mail, nor shall additional electronic copies of the highly confidential information be made by a party other than BH/CO Electric or its attorneys.

not the last quarter of 2010. The latest ship date is the first quarter of 2011.

- c) That the highly confidential information shall not be used except as necessary for the conduct of this proceeding and cannot be used in any other docket.
- d) That all persons who obtain copies of the highly confidential information must return the copies to BH/CO Electric within ten calendar days of the final Commission order in this docket or any docket with which this docket is consolidated.
- e) That any computer files of any parties, other than BH/CO Electric and its attorneys, which store electronic copies of the highly confidential information, must be destroyed within ten calendar days of the final Commission order in this docket or any docket with which this docket is consolidated, and that an affidavit of destruction shall be provided to BH/CO Electric, upon request.

11. The extraordinary confidential protections that BH/CO Electric requests in this Motion strike the appropriate balance between: 1) the need for disclosure and 2) the need to protect the interests of BH/CO Electric and preserve the integrity of the bidding process. The Staff and the OCC are charged by law to assure that BH/CO Electric and other regulated utilities act in the public interest and that the interests of their respective constituent customers are protected. Giving access to members of the Staff, analysts of the OCC, and their respective attorneys would allow these objective parties to provide adequate review and comment to the Commission regarding this Application and Petition for Waivers. Further, as explained in paragraph numbered 2 above, Black Hills has provided the ready to ship dates in its written response to CPUC 1-19 and all parties have the answer to the question without the need to review the underlying correspondence.

12. By the foregoing discussion, BH/CO Electric has established in this Motion that (a) the information in this docket for which extraordinary confidentiality is sought is highly confidential; (b) the protections afforded by the Commission's rule governing ordinary confidentiality provide insufficient protection for the information; and (c) if adopted, the extraordinary protections proposed by BH/CO Electric will afford sufficient protection for the highly confidential information.

13. BH/CO Electric' affidavit required by Rule 723-1-1100(a)(III) is attached to this Motion as Attachment "A".

14. Therefore, BH/CO Electric has demonstrated good cause to grant this Motion for protective order and requests that this Motion be granted.

15. Because answer testimony is due on December 2, 2008, time is of the essence in this docket. Therefore, BH/CO Electric requests further that the Commission waive response time to this Motion or shorten it to Tuesday, November 25, 2008, at noon.

16. BH/CO Electric has served a copy of this Motion, which includes a description of the highly confidential nature of the information, on counsel for the parties in this docket. Hence, the parties have this Motion and notice of the relief requested, as contemplated by Rule 723-1-1100(a)(III).

15. In the interest of time, a proposed form of Decision is being filed with this Motion.

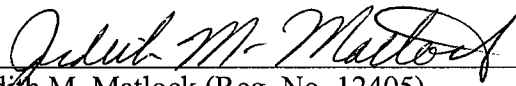
WHEREFORE, BH/CO Electric respectfully requests that the Commission grant this request for extraordinary confidential protection and enter a protective order limiting disclosure of the Highly Confidential Information filed under seal as described in this Motion. Specifically, BH/CO Electric requests a protective order:

(a) limiting disclosure and access to designated highly confidential competitive information to the Commissioners, Commission ALJs, members of the Commission's Staff, employees of the OCC, and their respective attorneys from the Colorado Attorney General's Office and affording such highly confidential competitive information the protections described in paragraph 8 of this Motion , and

(b) providing that nondisclosure agreements signed by such persons shall automatically extend not only to Highly Confidential Information protected by Decision No. C08-1200 but also to the Highly Confidential Information that is the subject of this Motion and to any other Highly Confidential Information that is the subject of subsequent Motions and Decisions in this Docket.

Dated this 24th day of November, 2008.

Respectfully submitted,



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Attorneys for Black Hills/Colorado Electric Utility
Company, LP

ATTACHMENT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08A-346E

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2008 COLORADO
RESOURCE PLAN AND PETITION FOR WAIVERS OF PORTIONS OF THE
RESOURCE PLANNING RULES**

AFFIDAVIT

Black Hills/Colorado Electric Utility Company, LP ("BH/CO Electric"), by and through its undersigned counsel, hereby respectfully submits this Affidavit, pursuant to Rule 723-1-1100(a)(III) of the Colorado Public Utilities Commission's Rules of Practice and Procedure relating to Confidentiality, 4 COLO. CODE REGS. 723-1, in support of its Motion for Protective Order Affording Extraordinary Protection to Highly Confidential Information requested in Trial Staff's discovery request CPUC 1-19 in this docket ("Motion").

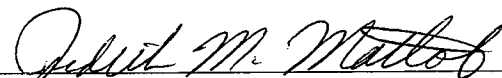
Judith M. Matlock, being of proper age and first duly sworn, herewith deposes and states as follows:

1. I am an attorney in Davis Graham & Stubbs LLP, which is Colorado regulatory counsel for BH/CO Electric, the Petitioner herein.
2. To the best of my knowledge as of the date of this Motion, no persons other than:
 - (i) BH/CO Electric's counsel and senior management of Black Hills Corporation,
 - (ii) the Board of Black Hills Corporation, and

(iii) the following employees of Black Hills corporation subsidiaries: Garner Anderson, Brian Iverson, Rich Kinzley, Perry Krush, Mark Lux, Paul Trygstad, George Tatar, Aaron Carr, Jackie Sargent, and Kyle White, have had, or currently have, access to the highly confidential information, for which extraordinary confidential protection is sought in the foregoing Motion:

3. The highly confidential information subject to this Motion, if granted, should remain undisclosed while the instant docket, and any subsequent judicial review of decisions therein, are pending, and until the docket is closed. The highly confidential information should then be returned to counsel for BH/CO Electric.

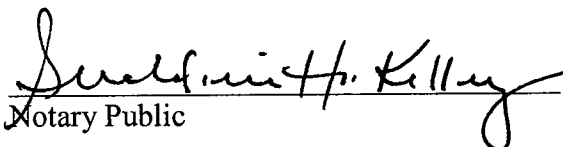
Further Affiant sayeth not.


Judith M. Matlock

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

SUBSCRIBED AND SWORN TO before me this 24th day of November, 2008 by Judith M. Matlock.

WITNESS my hand and official seal.


Notary Public

[SEAL]

My commission expires:

10/25/2012

ATTACHMENT "B"

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08A-346E

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2008 COLORADO
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**NONDISCLOSURE AGREEMENT RELATING TO
HIGHLY CONFIDENTIAL INFORMATION**

I hereby state that I have read the protective provisions relating to confidential information contained in Rule 723-1-1100 and the Commission's Order granting extraordinary confidentiality protection to Highly Confidential Information, and I agree to be bound by the terms of all of those protective provisions with respect to all Confidential and Highly Confidential documents and information produced or arising in the course of this Docket.

Name

Title

Employer or Firm

Business Address

Party in Case

Date

Signature

Signature of Counsel

I attest I delivered to:

a copy of this signed Nondisclosure Agreement Relating to Highly Confidential Information, via First Class Mail and/or email, on _____, 2008.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2008, the original and seven (7) copies of the foregoing **SECOND MOTION OF BLACK HILLS/COLORADO GAS UTILITY COMPANY, LP FOR PROTECTIVE ORDER AFFORDING EXTRAORDINARY PROTECTION TO HIGHLY CONFIDENTIAL INFORMATION and MOTION TO WAIVE RESPONSE TIME OR TO SHORTEN RESPONSE TIME TO NOVEMBER 25, 2008, AT NOON**, were served by hand delivery on:

Doug Dean, Director
Colorado Public Utilities commission
1560 Broadway, Suite 250
Denver, CO 80202

and a copy was served on the following persons by United States mail, first class postage prepaid, and by email addressed to:

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Susan L. Perkins

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08A-346E

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2008 COLORADO
RESOURCE PLAN AND PETITION FOR WAIVERS OF PORTIONS OF THE
RESOURCE PLANNING RULES**

**ORDER GRANTING BLACK HILLS/COLORADO ELECTRIC UTILITY,
LP'S SECOND MOTION FOR PROTECTIVE ORDER AFFORDING
EXTRAORDINARY PROTECTION TO HIGHLY CONFIDENTIAL
CORRESPONDENCE WITH TURBINE MANUFACTURERS**

Mailed Date: _____

I. STATEMENT

1. On November 24, 2008, Black Hills/Colorado Electric Utility Company, LP ("BH/CO Electric") filed a Second Motion for Protective Order Affording Extraordinary Protection to Highly Confidential Information ("Second Motion"). The purpose of the Second Motion is to seek an order from the Commission affording extraordinary confidential protection to BH/CO Electric's communications with vendors regarding the acquisition of turbines. BH/CO Electric further asked the Commission to waive response time or shorten response time to November 25, 2008 at noon.

2. No responses to the motion were received at or before noon on November 25, 2008.

II. ORDER

A. It Is Ordered That:

1. Black Hills' Second Motion for Protective Order Affording Extraordinary Protection to Highly Confidential Information is hereby granted. The production or disclosure of the designated highly confidential information covered by the Second Motion is prohibited as to any parties or entities other than the Commissioners, Commission ALJs, members of the Commission's Staff, employees of the OCC, and their respective attorneys from the Colorado Attorney General's Office. By signing the form of extraordinary confidential non-disclosure agreement attached as Attachment "B" to the Second Motion, those persons who are entitled by this Order will have access to the highly confidential information.

2. If the persons authorized by this Order to receive the Highly Confidential Information have already executed a nondisclosure agreement as to the Highly Confidential Information that is the subject of Decision No. C08-1200 (pertaining to the highly confidential portions of the contingency plan), such persons need not execute additional nondisclosure agreements, and such existing nondisclosure agreements apply to all highly confidential information subject to Decisions of this Commission in this docket granting extraordinary protection.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
