

Decision No. C14-0831-I

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

PROCEEDING NO. 14A-0535E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2015-2017 RENEWABLE ENERGY STANDARD (RES) COMPLIANCE PLAN.

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PROCEEDING NO. 14A-0534E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2014 ECA-RESA ADJUSTMENTS AND ECA TARIFF REVISION.

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**INTERIM DECISION DEEMING APPLICATIONS  
COMPLETE, GRANTING INTERVENTIONS,  
CONSOLIDATING PROCEEDINGS,  
AND SETTING THE APPLICATIONS FOR HEARING  
BEFORE AN ADMINISTRATIVE LAW JUDGE  
FOR AN INITIAL COMMISSION DECISION**

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Mailed Date: July 16, 2014

Adopted Date: July 9, 2014

**I. BY THE COMMISSION**

**A. Procedural Background**

1. On May 23, 2014, Black Hills/Colorado Electric Utility Company, LP (Black Hills or Company) filed in Proceeding No. 14A-0535E an application seeking approval of its 2015-2017 Renewable Energy Standard (RES) Compliance Plan (RES Plan Application). Among other things, Black Hills asserts it will not meet the minimum overall generation RES requirement of 20 percent for any year in the period 2015 through 2017. The Company states it is presently charging its customers the full 2 percent for the Renewable Energy Standard Adjustment (RESA). Black Hills argues that, because the 2 percent retail rate impact governs

compliance with the RES, the Company is in compliance with § 40-2-124, C.R.S. Black Hills further explains that it may nevertheless acquire additional eligible energy resources pursuant to its Electric Resource Plan (ERP) in Proceeding No. 13A-0445E. Black Hills thus takes the position that its 2015-2017 RES Compliance Plan is conditioned on the outcome of its ERP.

2. On May 23, 2014, Black Hills also filed in Proceeding No. 14A-0534E an application for approval of various adjustments to its Energy Cost Adjustment (ECA) and its RESA (ECA-RESA Application). For example, Black Hills proposes to reduce charges against the RESA account by approximately \$1.9 million, which reflects the Company's estimate of the avoided costs associated with its solar distributed generation program for years 2012 to 2014, and to recover an equal amount through its ECA. Black Hills further proposes to reduce charges against the RESA account another \$1.65 million and to recover an additional \$3.7 million through its ECA in avoided costs related to the Busch Ranch Wind Project for years 2012 to 2014. Black Hills also proposes to reduce the reported balance of the RESA account for years 2011 to 2014 as a correction of a reporting error in the Company's Monthly Renewables report and to credit customers approximately \$182,426 through the ECA and to charge an equal amount to the RESA for incremental costs from 2013 to 2014 to reflect the Commission decision designating the Vestas wind turbine as a "Section 124 resource." Finally, Black Hills seeks to modify its ECA tariff for effect on January 1, 2015 to clarify the treatment and recovery of incurred eligible energy resource costs and to ensure consistency with the accounting adjustments discussed above.

3. In both application proceedings, the Company filed a motion for consolidation of the proceedings (Motion for Consolidation). Black Hills states that the two proceedings are closely related. According to the Company, the accounting corrections to the RESA sought in

Proceeding No. 14A-0534E would reduce the current RESA deficit and allow the RESA account to become positive earlier than previously expected. Black Hills offers that this change could affect the Commission's decisions regarding the RES Plan Application as more funds may be available to acquire eligible energy resources.

4. The Colorado Office of Consumer Counsel (OCC) and the Staff of the Colorado Public Utilities Commission (Staff) each timely filed a notice of intervention of right in both proceedings. Staff and the OCC also request a hearing on both applications.

5. The Colorado Energy Office (CEO) timely filed a notice of intervention of right in Proceeding No. 13A-0535E.

6. In addition, Western Resource Advocates (WRA) and the Colorado Independent Energy Association (CIEA) timely filed requests for permissive intervention in Proceeding No. 13A-0535E.

**B. Discussion and Findings**

7. For purposes of § 40-6-109.5, C.R.S., we deem both applications complete as of the effective date of this Decision. Staff did not file a deficiency letter regarding either application and they contain all of the information required by applicable Commission Rules.

8. We find good cause to set the applications for hearing. Based on the notices of intervention by right and the requests for intervention, the applications are contested.

9. We further find good cause to grant the Motion for Consolidation. We agree with Black Hills that the proceedings raise substantially similar issues and are integrally related. We find that no party will be prejudiced by the consolidation and note that the motion is unopposed.

10. We find good cause to grant the requests for interventions of WRA and CIEA. The parties in the consolidated proceedings shall therefore include: Black Hills, Staff, the OCC, CEO, WRA, and CIEA.

11. Finally, we note that Black Hills is presently conducting a competitive solicitation for new utility resources as part of its ongoing ERP and may evaluate bids and proposals for the acquisition of up to 60 MW of eligible energy resources.<sup>1</sup> We further agree with the Company that resources acquired as part of the ERP and their associated costs may influence our decisions regarding the RES Plan Application. We further anticipate that Black Hills will file its 120-Day report in “Phase II” of the ERP in late November 2014. In accordance with the deadlines set forth in Rule 3611 of the Commission’s ERP Rules, 4 *Code of Colorado Regulations* 723-3-3600, *et seq.*, we also expect to issue a Phase II decision on resource selection in the first quarter of 2015.

12. For the above reasons, we find that the rendering of a decision in this proceeding should be timed and coordinated with our deliberations in Phase II of Black Hills’ ongoing ERP. Therefore, due and timely execution of Commission functions imperatively and unavoidably requires us to omit the recommended decision of the Administrative Law Judge (ALJ) and to refer this consolidated proceeding to an ALJ for an Initial Commission decision under § 40-6-109(6), C.R.S.

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<sup>1</sup> Decision No. C14-0007, issued on January 6, 2014 in Proceeding No. 13A-0445E.

**II. ORDER**

**A. The Commission Orders That:**

1. The Application for Approval of 2015-2017 Renewable Energy Standard Compliance Plan filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills) in Proceeding No. 14A-0535E is deemed complete.

2. The Application for Approval ECA-RESA Adjustments and ECA Tariff Revision filed by Black Hills in Proceeding No. 14A-0534E is deemed complete.

3. The Petition for Leave to Intervene filed by Western Resource Advocates on June 27, 2014 in Proceeding No. 14A-0535E is granted.

4. The Motion to Intervene of the Colorado Independent Energy Association filed on June 27, 2014 in Proceeding No. 14A-0535E is granted.

5. The Motion for Consolidation of Proceedings filed by Black Hills on May 23, 2014 in Proceeding Nos. 14A-0534E and 14A-0535E is granted. Proceeding Nos. 14A-0534E and 14A-0535E are consolidated, and Proceeding No. 14A-0535E is the primary proceeding.

6. Consistent with the discussion above, the applications filed in these consolidated proceedings are set for hearing before an Administrative Law Judge (ALJ) for an Initial Commission Decision pursuant to § 40-6-109(6), C.R.S. The ALJ shall set a hearing date and establish other procedures by a separate decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 9, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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PAMELA J. PATTON

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GLENN A. VAAD

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Commissioners