

Decision No. C14-1054-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0445E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR (1) APPROVAL OF ITS 2013 ELECTRIC RESOURCE PLAN, AND (2) APPROVAL OF ITS 2013-2014 RES COMPLIANCE PLAN.

PROCEEDING NO. 13A-0446E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A POWER PLANT CONSISTING OF A 40 MW SIMPLE CYCLE COMBUSTION TURBINE AND ASSOCIATED BALANCE OF PLANT PURSUANT TO COMMISSION DECISION NO. C12-1434.

PROCEEDING NO. 13A-0447E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RETIREMENT OF PUEBLO 5 AND 6.

**INTERIM DECISION DENYING MOTION
TO MODIFY PHASE I DECISION**

Mailed Date: September 3, 2014

Adopted Date: August 20, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Motion for Modification of Phase I Decision and Clarification (Motion) filed by the Colorado Independent Energy Association (CIEA) on July 29, 2014.

2. As discussed below, we deny the Motion.

B. Background

3. On November 7, 2013, Black Hills/Colorado Electric Utility Company, LP (Black Hills or the Company), Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Office of Consumer Counsel filed a Stipulation and Settlement Agreement (Settlement) resolving all matters in these consolidated proceedings. The following parties later joined the Settlement: CIEA; Noble Energy, Inc. and EnCana Oil and Gas (USA), Inc.; Rocky Mountain Environmental Labor Coalition; the Colorado Energy Office; and Western Resource Advocates (WRA). Energy Recovery Specialist and Southwest Generation Operating Company, LLC took no position on the Settlement. The Board of Water Works of Pueblo, Colorado and Fountain Valley Authority, jointly; the Southeast Colorado Solar Coalition; and American Iron and Metal, Inc. opposed the Settlement.

4. By Decision No. C14-0007, the Phase I decision, the Commission approved the Settlement; the Company's Electric Resource Plan (ERP), with modifications; and its 2013-2014 Renewable Energy Standard (RES) Compliance Plan, with modifications. Given that Black Hills was projected to have insufficient eligible energy resources to meet the RES beginning in 2015, the Commission approved settlement terms for consideration of bids for up to 60 MW of such resources in 2017 or 2018.¹ (Decision No. C14-0007, issued January 6, 2014, ¶27.)

¹ The Commission clarified this term of the approved Settlement by Decision No. C14-0204. While the Commission authorized Black Hills to evaluate and present bids for eligible energy resources with an in-service date prior to 2017, it also reiterated its "concerns about the rate impacts Black Hills' customers will face from the Company's acquisition of new generation resources, including the LM6000. Rate impacts during the resource acquisition period of the ERP will be an important and necessary consideration as we review the Company's bid evaluation and selection in Phase II." (Decision No. C14-0204, issued February 25, 2014, ¶5.)

5. In addition, the Commission directed Black Hills to present in its 120-Day Report in Phase II, combinations of eligible energy resources that can be acquired within the constraints of the 2 percent cap on the retail rate impact under § 40-2-124(1)(g), C.R.S., and the 60 MW limit under the Settlement. The Commission further directed Black Hills to present, as appropriate, a set of resources that included the maximum 60 MW of eligible energy resources potentially to be acquired under the terms of the Settlement without the constraint of the retail rate impact. (Decision No. C14-0007, issued January 6, 2014, ¶34.)

6. Furthermore, because Black Hills asserted it may not generate or cause to be generated sufficient eligible energy to meet applicable RES standards beginning in 2015 without exceeding the 2 percent cap on retail rates under § 40-2-124(1)(g), C.R.S., the Commission deferred to Black Hills's 2015-2017 RES Compliance Plan proceeding any determination on whether, beginning in 2015, the Company may acquire less eligible energy resources than the amounts listed in § 40-2-124(1)(c)(I), C.R.S., due to the retail rate impact cap. (Decision No. C14-0007, issued January 6, 2014, ¶51.) The Commission further found merit in exploring whether the purchase of Renewable Energy Credits (RECs) would permit Black Hills to achieve compliance with the RES while remaining under the retail rate impact cap. (Decision No. C14-0007, issued January 6, 2014, ¶52.)

C. Motion for Modification of Phase I Decision and Clarification

7. In the Motion, CIEA requests that the Commission modify Decision No. C14-0007 under § 40-6-112(1), C.R.S., so that RES compliance requirements (*i.e.*, the requirements that the Company meet 20 percent of its retail sales using eligible energy resources in each year of 2015 through 2019 and 30 percent of its retail sales using eligible energy resources each year beginning 2020) are considered when determining the amount of eligible

energy resources to acquire in Phase II rather than the terms of the Phase I decision described above.

8. CIEA explains that this proposed modification would allow bids for projects with greater than 60 MW to qualify for evaluation and potential contracting. According to CIEA, the proposed modification may allow Black Hills to comply with the RES while benefiting ratepayers with the economies of scale of larger eligible energy projects.

9. According to CIEA, new information has been presented in Black Hills' 2015-2017 RES Compliance Plan filed in Proceeding No. 14A-0535E where the Company takes the position that its RES compliance relies on the outcome of its Phase II bid solicitation in this proceeding. CIEA further argues that the 60 MW number should not be an arbitrary barrier to cost-effective bids that facilitate compliance with the RES.

10. CIEA states that Black Hills does not oppose the Motion. CIEA further states that Black Hills posted a notice to bidders on its Request for Proposals website that it will accept bids larger than 60 MW and will not reject them from evaluation as non-conforming.

11. CIEA also states that Staff supports the Motion "in light of Black Hills' RES Application" in Proceeding No. 14A-0535E.

12. On August 12, 2014, WRA filed a response to the Motion stating that it supports CIEA's requests.

D. Conclusions and Findings

13. We deny the Motion for several reasons. Black Hills shall honor the specific terms of the Settlement approved by Decision No. C14-0007 and shall evaluate bids no larger

than the 60 MW limit previously agreed to by the settling parties and adopted by the Commission.²

14. First, the 60 MW limit that CIEA now seeks to eliminate was part of an approved settlement. Changes to a settlement approved by the Commission are discouraged. The 60 MW limit was adopted in recognition of potential economies of scale over the 30 MW projects Black Hills initially proposed in this proceeding. The 60 MW limit further reflected the possibility that Black Hills may be willing to advance funds to its Renewable Energy Standard Adjustment deferred account in higher amounts than it otherwise might have in order to acquire additional eligible energy resources under the 2 percent cap on the retail rate impact pursuant to § 40-2-124(1)(g), C.R.S. The 60 MW of eligible energy resources was also combined with a commitment to explore the purchase of RECs as an alternative RES compliance strategy. Various other terms of the approved Settlement also addressed the way intermittent energy from eligible energy resources would be evaluated in Phase II and operationally handled if acquired.

15. Second, we considered whether to order Black Hills to evaluate bids up for eligible energy resources to meet RES requirements as a potential modification to the Settlement and declined to adopt that approach in order to accept the Settlement without substantial modifications. The settling parties presented the Commission with the 60 MW limit in the context of a comprehensive resolution of multiple issues. Contrary to CIEA's characterization, the 60 MW cap is not an arbitrary level adopted without any basis.

² Under the Commission's Electric Resource Planning Rules, Black Hills enjoys a presumption of prudence for actions consistent with Commission findings and approvals. A utility may elect to deviate from ERP directives, and projects that do not meet ERP criteria that are not foreclosed. However, such projects must be evaluated as not consistent with the ERP, and the utility bears a burden to demonstrate that its resource acquisition actions are prudent.

16. Third, the timely implementation of the bid evaluation and resource selection process in Phase II of an ERP depends heavily on the established terms of the Commission's Phase I decision. Modifications to a Phase I decision at any point in Phase II present numerous practical and procedural problems. As a general matter, changes to Phase I directives in Phase II are often viewed as unfair to bidders.

17. Finally, there is no new information that supports reconsideration of the 60 MW limit, contrary to CIEA's position.

II. ORDER

A. It Is Ordered That:

1. The Motion for Modification of Phase I Decision and Clarification filed by the Colorado Independent Energy Association on July 29, 2014, is denied, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 20, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners