

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0393E

IN THE MATTER OF ADVICE LETTER NO. 680 FILED BY BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP TO REVISE ITS COLORADO PUC NO. 9 ELECTRIC TARIFF TO IMPLEMENT A GENERAL RATE SCHEDULE ADJUSTMENT TO INCREASE RATES, A NEW RIDER PURSUANT TO THE CLEAN AIR-CLEAN JOBS ACT, AND OTHER CHANGES, PROPOSED TO BE EFFECTIVE ON MAY 31, 2014.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION FOR PROTECTIVE
ORDER AFFORDING EXTRAORDINARY
PROTECTION TO HIGHLY CONFIDENTIAL
CONTRACTUAL PRICING INFORMATION**

Mailed Date: August 4, 2014

I. STATEMENT

1. On April 30, 2014, Black Hills/Colorado Electric Utility Company, LP (Black Hills or Company) filed Advice Letter No. 680. Black Hills Energy submitted Advice Letter No. 680 with supporting testimony and exhibits.

2. By Decision No. C14-0522, issued May 16, 2014, the effective date of the Advice letter was suspended until September 28, 2014. The matter was also referred to an administrative law judge (ALJ) for disposition.

3. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision in context.

4. On July 10, 2014, Black Hills filed its Motion for a Protective Order Affording Extraordinary Protection to Highly Confidential Contractual Pricing Information (Motion).

5. In the Motion Black Hills states that on June 25, 2014, the Office of Consumer Counsel (OCC) served Black Hills with its Sixth Set of Discovery Requests. That set included Discovery Request OCC 6-14(d) (Discovery Request), which asks Black Hills to “provide the contracted price for the Busch Ranch wind farm for each year for the next four years.” The Busch Ranch Wind Project is a wind generation facility that is 50 percent owned by Black Hills and 50 percent owned by AltaGas Ltd. (AltaGas). Black Hills purchases all of the renewable energy production attributable to AltaGas’ ownership interest pursuant to a 25-year Renewable Energy Purchase Agreement (REPA) between Black Hills and AltaGas. The pricing terms of the REPA provide for Black Hills to pay AltaGas a set price for such production that escalates annually at a contractually determined rate.

6. Black Hills argues that this Discovery Request requires the disclosure of highly confidential contractual payment calculations and pricing information, which: (1) would harm Black Hills’ negotiating power in future competitive bidding scenarios; and (2) is derived from pricing terms that the Commission previously determined were highly confidential¹.

7. Black Hills seeks to limit disclosure of the information to Commissioners, the administrative law judge presiding over this matter, the Commission’s advisory staff and advisory attorneys, the Commission’s Trial Staff and attorneys for Trial Staff, and counsel for intervenors and those subject-matter experts participating in this proceeding on behalf of the intervenors. Black Hills has included its own non-disclosure agreement for attorneys and subject matter experts with its Motion.

¹ In Decision No.R-11-0409-I, issued on April 19, 2011 in Proceeding 10A-930E.

8. Black Hills represents that the extraordinary protection sought strikes the appropriate balance between the need for disclosure so that the parties to this proceeding can protect their interests, and the need to protect the interests of Black Hills and preserve the integrity of the highly confidential information.

9. On July 24, 2014, Western Resource Advocates (WRA) filed its Response to Motion of Black Hills/Colorado Electric Utility Company for Protective Order (Response).

10. WRA is the only Intervenor in the above captioned proceeding to file a Response to the Motion.

11. WRA argues that due to a rulemaking, in Proceeding No. 11R-416E, Rule 3613(k) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. was adopted which calls for a policy of bid transparency after the competitive solicitation and acquisition process is concluded. The adoption of this rule makes Black Hills' Motion contrary to this new policy.

12. On July 29, 2014, Black Hills filed its Motion for Leave to File a Reply and Reply to Response of Western Resource Advocates to Motion for Protective Order.

13. The nature of the information sought to be protected is consistent with prior Commission practices and the protection of the material is not contrary to Commission rules.

14. Based upon good cause shown, the request for extraordinary protection will be granted.

15. The information deemed as highly confidential contained in Attachment OCC 6-14e will be available to, Commissioners, the administrative law judge presiding over this matter, the Commission's advisory staff and advisory attorneys, the

Commission's Trial Staff and attorneys for Trial Staff, and counsel for intervenors and those subject-matter experts participating in this proceeding on behalf of the intervenors. Each of the parties with the exception of the ALJ and the Commissioners, shall contact Black Hills as to the method the Company chooses to dispose of the information upon the conclusion of this proceeding as provided under Rule 1100(l)(I)

16. Because Commission Trial Staff and Advisory Staff, the ALJ, and Commissioners must have already signed and have on file with the Commission a current annual non-disclosure agreement they will not be required to execute Black Hills' non-disclosure agreement prior to gaining access to the highly confidential information as indicated under Rule 1100(h) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

17. In order to have access to the highly confidential information, OCC employees, OCC attorneys, Commission attorneys assigned to this matter, and those subject-matter experts participating in this proceeding on behalf of the intervenors must have signed, served, and filed the Non-disclosure Agreement provided by Black Hills prior to gaining access to the highly confidential information.

II. ORDER

A. **It Is Ordered That:**

1. Black Hills/Colorado Electric Utility Company, LP's (Black Hills) Motion for a Protective Order Affording Extraordinary Protection to Highly Confidential Contractual Pricing Information is granted consistent with the discussion above.

2. Access to the Highly Confidential Information as described above is limited consistent with the discussion above.

3. In order to have access to the highly confidential information, the Office of Consumer Counsel (OCC), OCC attorneys, Commission attorneys, and those subject-matter experts participating in this proceeding on behalf of the intervenors must have signed, served, and filed the Non-disclosure Agreement provided by Black Hills.

4. Members of the Commission Trial and Advisory Staff and the Attorneys General representing Trial Staff and Advisory Staff assigned to this proceeding must have signed and have on file with the Commission a current annual non-disclosure agreement in accordance with Commission Rule 4 *Code of Colorado Regulations* 723-1-1100(h) prior to gaining access to the Highly Confidential Information.

5. All provisions enumerated above are now in effect regarding the Highly Confidential Information.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director