

Decision No. R14-0989-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 OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
SCHEDULING HEARING AND ESTABLISHING  
DEADLINES AND PROCEDURES**

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Mailed Date: August 14, 2014

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. Only those portions of the procedural history necessary to understand this decision are included.

2. 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).

3. 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 Renewable Energy Standard Adjustment (RESA) (ECA-RESA Application).

4. Also on May 23, 2014, Black Hills filed a Motion for Waivers, in which it seeks variances from certain provisions related to the Standard Rebate Offer as set forth in the Commission's RES Rules, 4 *Code of Colorado Regulations* (CCR) 723-3-3650, *et seq.*

5. In both application proceedings, the Company filed a motion for consolidation of the proceedings.

6. 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.

7. The Colorado Energy Office (CEO) timely filed a notice of intervention of right in Proceeding No. 14A-0535E.

8. In addition, Western Resource Advocates (WRA) and the Colorado Independent Energy Association (CIEA) timely filed requests for permissive intervention in Proceeding No. 14A-0535E.

9. On June 3, 2014, the OCC filed a Motion for Additional Response Time (Motion) to allow additional time to respond to the Company's Motion for Waivers.

10. On June 6, 2014, the Commission granted in part, the OCC's Motion, extending the deadline to respond to the Motion for Waivers, but did not set a deadline for such responses. Decision No. C14-0614-I. The Decision notes that a deadline will be established by a future decision.

11. On July 9, 2014, the Commission consolidated Proceeding Nos. 14A-0535E with 14A-0534E, and designated 14A-0535E as the primary proceeding. Decision No. C14-0831-I.

12. The same Decision deems both applications complete and grants WRA and CIEA's requests to permissively intervene. Decision No. C14-0831-I. Thus, the parties to this consolidated proceeding are Black Hills, the OCC, Staff, CEO, WRA, and CIEA. *Id.*

13. The Commission also concluded that the decision in this proceeding should be timed and coordinated with its deliberations in Phase II of Black Hills' ongoing ERP in Proceeding No. 13A-0445E (Phase II Proceeding). Decision No. C14-0831-I. At the same time, the Commission referred this consolidated proceeding to an Administrative Law Judge (ALJ) to issue an Initial Commission decision under § 40-6-109(6), C.R.S. *Id.*

14. The ALJ scheduled a prehearing conference for August 12, 2014. Decision No. R14-0863-I. At the date, time and location designated, the ALJ convened the prehearing conference. All parties appeared and provided their positions on the issues identified by Decision No. R14-0863-I.

15. At the prehearing conference, Black Hills waived the statutory deadline for a Commission decision to issue pursuant to § 40-6-109.5, C.R.S.

16. The parties agreed that an evidentiary hearing is appropriate to resolve the issues presented in this proceeding.

17. After hearing the parties' positions on the manner in which this consolidated proceeding and the Phase II Proceeding should be coordinated, and their positions on the relationship between this consolidated proceeding and the Phase II Proceeding, the ALJ concluded that the hearing in this proceeding should be held after the anticipated date (late February 2015), for issuance of the Commission's decision in the Phase II proceeding. With that in mind, the parties agreed to, and the ALJ approved hearing dates and a procedural schedule, which is set forth in the ordering paragraphs below.

18. The hearing will be held on April 21, 22 and 23, 2015. The hearing dates allow for approximately two months from the anticipated date of the issuance of the Commission's decision in the Phase II Proceeding. Two months is not a significant amount of time for the parties to prepare and file all of their testimony and exhibits. In order to minimize potential difficulties this may present, testimony and exhibits shall be filed in two parts. The first set of testimony and exhibits (Part I disclosures) shall be filed before the Phase II Commission decision is issued; the second set of testimony and exhibits (Part II disclosures) shall be filed after the Phase II Commission decision is issued. This allows the parties to address Black Hills' direct testimony without delay and to account for any impact the Phase II Commission decision may have on this proceeding. The ALJ will order the parties to submit a proposed order setting forth the scope of the disclosures for Part I and II, which may also be relevant to the scope of discovery for the Part I and Part II disclosures.

19. The ALJ is scheduling a final prehearing conference to take place shortly before the evidentiary hearing. However, if the parties believe the prehearing conference is not necessary, the hearing may be vacated upon the filing of a motion so requesting. In addition, if the parties believe it is necessary to hold a status conference after the Phase II Commission decision is issued, they may informally notify the ALJ of this request (along with proposed dates for a status conference), and the ALJ will promptly schedule one.<sup>1</sup>

20. Black Hills agreed to file its application for expedited approval of its small solar and Community Solar Gardens (CSGs) program on or by August 26, 2014 (two weeks after the prehearing conference). While the ALJ will not order Black Hills to file the application by August 26, 2014, the ALJ strongly encourages Black Hills to abide by its agreement to file the

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<sup>1</sup> The parties may informally notify the ALJ of this request by email to: Melody.Mirbaba@state.co.us.

application by that deadline. It is presently unclear the extent to which (if any) the application may impact this proceeding. It is in the parties' interests to have clarity on that issue as soon as possible.

21. The ALJ also approves modifications to the Commission's discovery rules, as set forth in the ordering paragraphs below.

22. The ALJ has not ruled on whether the hearing should involve the presentation of exhibits electronically. If the ALJ decides that is appropriate, the ALJ will issue a separate decision setting forth the necessary procedural requirements for the presentation of exhibits electronically.

## **II. ORDER**

### **A. It Is Ordered That:**

1. A final prehearing conference is scheduled as follows:

DATE: April 16, 2015

TIME: 10:00 a.m.

PLACE: Commission Hearing Room  
1560 Broadway, 2nd Floor  
Denver, Colorado

2. An evidentiary hearing will be held regarding the merits of both Applications in this consolidated proceeding as follows:

DATES: April 21, 22 and 23, 2015

TIMES: 9:15 a.m. each day, except starting at 10:00 a.m. on  
April 22, 2015

PLACE: Commission Hearing Room  
1560 Broadway, 2nd Floor  
Denver, Colorado

3. Black Hills/Colorado Electric Utility Company, LP's (Black Hills), waiver of the statutory deadline for a Commission decision to issue pursuant to § 40-6-109.5, C.R.S. is acknowledged.

4. Responses to Black Hills's Motion for Waivers shall be filed on or by 5:00 p.m. MST on August 26, 2014.

5. Consistent with the discussion above, the parties shall make disclosures of the testimony and exhibits they intend to offer at the evidentiary hearing in this proceeding in two phases (Part I and Part II).

6. The parties shall file a joint proposed order setting forth in particularity the scope of the testimony and exhibits to be filed in Part I and II on or by 5:00 p.m. MST on September 5, 2014. Black Hills shall coordinate that filing. If the parties cannot agree on a joint proposed order, they may file separate proposed orders, but shall do so by the same deadline. Any proposed order to which a party objects must identify both the objecting parties as well as the language subject to the objection(s).

7. The following deadlines apply to Part I:

- Answer testimony and exhibits shall be filed on or by 5:00 p.m. MST on October 16, 2014.
- Rebuttal and cross-answer testimony and exhibits shall be filed on or by 5:00 p.m. MST on December 4, 2014.
- The cut off for issuing discovery requests relating to Part I is 5:00 p.m. MST on January 9, 2015.
- Corrected testimony and exhibits for the testimony and exhibits filed in Part I shall be filed on or by 5:00 p.m. MST on January 15, 2015.

8. The following deadlines apply to Part II:

- Supplemental direct testimony and exhibits shall be filed on or by 5:00 p.m. MST on March 10, 2015.

- Answer testimony and exhibits shall be filed on or by 5:00 p.m. MST on March 24, 2015.
  - Rebuttal and cross-answer testimony and exhibits shall be filed on or by 5:00 p.m. MST on April 2, 2015.
  - Corrected testimony and exhibits for the testimony and exhibits filed in Part II shall be filed on or by 5:00 p.m. MST on April 13, 2015.
9. Prehearing motions shall be filed on or by 5:00 p.m. MST on April 6, 2015.
  10. Responses to prehearing motions shall be filed on or by 5:00 p.m. MST on April 13, 2015.
  11. Stipulations or settlement agreements shall be filed on or by 5:00 p.m. MST on April 13, 2015.
  12. On or by 5:00 p.m. on April 15, 2015, each party shall deliver to the undersigned ALJ at the Commission's office, a complete set of all final pre-marked exhibits the party intends to introduce at the evidentiary hearing.
  13. Post hearing statements of position shall be filed on or by 5:00 p.m. MST on May 7, 2015.
  14. As agreed during the prehearing conference, discovery requests may be served by email upon all parties by 5:00 p.m. MST on business days.
  15. Discovery responses relating to Part II are due within seven calendar days after the discovery request is served. The ALJ does not modify the Commission's discovery rules pertaining to discovery conducted for Part I.
  16. At the evidentiary hearing, unless otherwise ordered, the parties shall bring enough copies of their exhibits to ensure that: all parties have a copy of each exhibit; the witness has a copy of each exhibit; and there is a copy to be treated as the original of each exhibit.

In the event a party moves to admit an exhibit during the hearing that has not been pre-filed with the Commission (*e.g.*, for impeachment or rebuttal), the party shall bring three additional paper copies of the exhibits (in addition to ensuring the above number of copies are available).

17. The parties shall also bring to the evidentiary hearing a completed exhibit list in the format set forth in Appendix A to this Decision. Appendix A includes examples to illustrate its proper use.

18. Exhibits which are or include spreadsheets or tables should be filed in their underlying executable electronic format.<sup>2</sup>

19. The parties shall use a unified numbering system for all hearing exhibits. Each party is assigned a block of hearing exhibit numbers as follows:

- Black Hills is assigned hearing exhibit numbers 1 to 100.
- The Colorado Office of Consumer Counsel is assigned hearing exhibit numbers 101-200.
- The Colorado Public Utilities Commission Staff is assigned hearing exhibit numbers 201-300.
- The Colorado Energy Office is assigned hearing exhibit numbers 301-400.
- Western Resource Advocates is assigned hearing exhibit numbers 401-500.
- The Colorado Independent Energy Association is assigned hearing exhibit numbers 501-600.

20. If a party does not utilize all of the exhibit numbers assigned, but adds an exhibit at the time of the hearing (*e.g.*, during impeachment or rebuttal), the party shall number such

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<sup>2</sup> All spreadsheets should have the various cell formula or links left intact; *i.e.*, cell formulas should not be converted to values. To the extent that such exhibits cannot be provided in an executable electronic format, the party should provide a list of such exhibits. In order to minimize the size and allow electronic text searches of the PDF files, all PDF files should be generated from the electronic base format where possible, but can be generated as a scanned image if the base document is not available electronically.

exhibit to be the next unused exhibit number in its assigned block sequence; otherwise, the party may use the next unassigned set of exhibit numbers (*e.g.*, exhibit numbers 601-700).

21. Any party that uses all the exhibit numbers assigned to it and requires more exhibit numbers, may use the next unassigned set of exhibit numbers (*e.g.*, exhibit numbers 601-700). In such a circumstance, the party shall inform all parties of its intent to use the next set of unassigned exhibit numbers. This ensures all parties are immediately aware of the next set of unassigned exhibit numbers that are available for use.

22. Exhibits shall be marked to include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing.

23. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number *each page* of the exhibit.

24. All hearing exhibits, including attachments must be titled to start with "Hearing Exhibit [#]." Attachments to hearing exhibits shall be titled as "Attachment [#]" as opposed to "appendix" or "exhibit." The complete title of any attachments to hearing exhibits shall include both "Hearing Exhibit [#]" and identification of the attachment number, (*e.g.*, Hearing Exhibit 3, Attachment 1).

25. Each type of a witness's testimony, including attachments to the testimony, (*e.g.*, direct, answer, rebuttal, and cross-answer) shall be marked as one hearing exhibit. The title of such exhibits should also include the type of testimony and the name of the witness. For example, if Hearing Exhibit 2 is the direct testimony of witness John J. Doe, the following title should be used "Hearing Exhibit 2, Direct Testimony of John J. Doe."

26. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director