

Decision No. R14-1356-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  
GRANTING MOTION FOR  
EXTRAORDINARY PROTECTION OF  
HIGHLY CONFIDENTIAL INFORMATION**

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Mailed Date: November 12, 2014

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

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

2. The Commission has referred this consolidated proceeding to an Administrative Law Judge (ALJ) for issuance of an Initial Commission decision under § 40-6-109(6), C.R.S. *Id.* Decision No. C14-0831-I issued July 16, 2014.

3. The Commission consolidated Black Hills/Colorado Electric Utility Company, LP's (Black Hills or the Company) application seeking approval of its 2015-2017 Renewable Energy Standard (RES) Compliance Plan (RES Plan Application) in Proceeding No. 14A-0535E, with its application for approval of various adjustments to its Energy Cost Adjustment (ECA) and its Renewable Energy Standard Adjustment (RESA) (ECA-RESA Application) in Proceeding No. 14A-0534E into this single proceeding. Decision No. C14-0831-I.

4. The parties to this consolidated proceeding are: Colorado Office of Consumer Counsel, the Staff of the Colorado Public Utilities Commission (Staff), the Colorado Energy Office, Western Resource Advocates, and the Colorado Independent Energy Association.<sup>1</sup>

5. On October 27, 2014, Black Hills filed a Motion for Protective Order (Motion). Black Hills seeks extraordinary protection for information it claims to be highly confidential or proprietary Customer Contractual information.

6. The time to respond to the Motion has expired. *See* Rule 1400(b), 4 *Code of Colorado Regulations* (CCR) 723-1. No party filed a response or objection to the Motion.

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<sup>1</sup> As referenced in this Decision, including the Ordering Paragraphs, reference to "the parties" is to the named parties above.

The ALJ deems the parties' failure to respond to the Motion as a confession of the Motion. Rule 1400(d), 4 CCR 723-1.

**A. The Company's Arguments.**

7. The Motion states that Staff propounded discovery requests upon Black Hills seeking the signed contract between Black Hills and Vestas Tower A/S for the purchase of all of the Renewable Energy Credits (RECs) generated by a Vestas facility (REC purchase contract). In addition, Western Resource Advocates served a discovery request upon Black Hills seeking annual REC payments (REC payment terms) associated with a certain large class (100kW to 2MW) on-site solar installation. Black Hills argues that these requests seek disclosure of highly confidential customer contractual information.

**1. Staff's Discovery Request.**

8. Black Hills states that the REC purchase contract was granted extraordinary protection by the Commission in Decision No. C13-0762-I, in consolidated Proceeding No. 13A-0445E on June 21, 2013. Black Hills argues that because the REC purchase contract has been granted extraordinary protection by the Commission, that protection extends to this proceeding under Rule 1100(f), 4 CCR 723-1.

9. Black Hills also argues that disclosure of the REC purchase contract may cause irreparable harm to its trading operations, to the Company's ability to solicit cost-effective resources, and ultimately, to the Company's customers. Under the terms of the REC purchase contract, Black Hills is required to file the contract under seal with the Commission, and use its best efforts to obtain an order affording the contract extraordinary protection under the Commission's rules.

**2. Western Resources Advocates' Discovery Request.**

10. The Motion states that the contract containing the REC payment terms (On-Site Solar REC Contract) was granted extraordinary protection by Decision No. R08-0671 in Proceeding No. 08A-0166E on July 1, 2008, and that, as a result, the REC payment terms are highly confidential and are covered by Decision No. R08-0671. For this reason, Black Hills argues that under Rule 1100(f), 4 CCR 723-1, the REC payment terms are covered by Decision No. R08-0671 and are entitled to highly confidential designation and extraordinary protection in this proceeding.

11. In addition, Black Hills argues that public disclosure of the REC payment terms would hinder the Company's ability to obtain competitive pricing on similar contracts in the future, and that, as a result, customers will be harmed if the information is not granted extraordinary protection. Black Hills also argues that the other parties to the relevant contracts would suffer harm from disclosure of the contract.

**B. Applicable Legal Standards.**

12. Under Rule 1101, 4 CCR 723-1, a party seeking extraordinary protection must file a motion requesting highly confidential protection, which must include information enumerated in that rule.

13. The party seeking highly confidential protection bears the burden of proof to establish the need for such protection. Rule 1101(d), 4 CCR 723-1.

14. Rule 1100(f), 4 CCR 723-1, provides that until otherwise ordered by the Commission or unless the information subsequently becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which confidentiality or highly confidential protection was asserted.

**C. Findings and Discussion.**

15. The ALJ finds that Black Hills has met the requirements of Rule 1101(b), 4 CCR 723-1, for extraordinary protection of highly confidential information, and has shown good cause for the granting of such protection. As the Motion is unopposed, and Black Hills has met the requirements of Rule 1101(b), 4 CCR 723-1, and shown good cause for extraordinary protection, the ALJ will grant the Motion.

16. In any event, because the Commission has already granted extraordinary protection for the information at issue here, that protection continues in this proceeding. Rule 1101(f), 4 CCR 723-1.

17. Access to the highly confidential information is limited to the Commissioners, the Commission's Administrative Law Judges, the Commission's Advisory Staff and counsel, the Commission's Trial Staff and counsel, counsel for all interveners in this proceeding, and the subject-matter experts participating in this proceeding on behalf of the parties, conditioned on the signing of a non-disclosure agreement in the same or similar form as identified in Exhibit D to the Motion.<sup>2</sup>

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<sup>2</sup> Employees of the Commission sign and keep on file a non-disclosure agreement pursuant to Rule 1100(h), 4 CCR 723-1, and thus are not required to sign the non-disclosure agreement attached to the Motion.

**II. ORDER**

**A. It Is Ordered That:**

1. The Motion for Protective Order (Motion) filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills) on October 27, 2014 is granted, consistent with the discussion above.

2. The contract between Black Hills and Vestas Tower A/S for the purchase of Renewable Energy Credits (RECs) and the information contained therein are granted extraordinary protection and are deemed highly confidential. The customer contractual information for annual REC payments associated with a certain on-site solar installation is also granted extraordinary protection and is deemed highly confidential.

3. With the exception of the Commissioners, the Commission's Administrative Law Judges, the Commission's Advisory Staff, and the Commission's Trial Staff, access to and disclosure of the highly confidential information identified in Ordering Paragraph 2 is limited to counsel and subject-matter experts who have signed a non-disclosure agreement in the same or similar form as identified in Exhibit D to the Motion.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director