

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

PROCEEDING NO. 19A-0660E

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF AN AMENDMENT TO ITS 2016 ELECTRIC RESOURCE PLAN CONCERNING A COMPETITIVE SOLICITATION FOR UP TO 200 MW OF RENEWABLE ENERGY AND ENERGY STORAGE.

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**INTERIM DECISION REFERRING MATTER  
TO AN ADMINISTRATIVE LAW JUDGE**

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Mailed Date: January 29, 2020  
Adopted Date: January 15, 2020

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**I. BY THE COMMISSION**

**A. Statement**

1. On November 22, 2019, Black Hills Colorado Electric, LLC (Black Hills or the Company) filed an Application for Approval of an Amendment to Its 2016 Electric Resource Plan Concerning a Competitive Solicitation for Up to 200 MW of Renewable Energy and Energy

Storage (Application). Black Hills filed the Application with an initial procedural motion (Omnibus Motion) requesting that the Commission: (1) agree to hear this Proceeding *en banc*; (2) adopt the procedural schedule proposed within the motion; (3) grant all necessary waivers and variances from the Commission's Rules as set forth in the motion or as otherwise deemed necessary by the Commission; and (4) grant extraordinary protection for certain information the Company claims to be highly confidential.

2. This Decision denies the Company's request for an *en banc* hearing and instead refers the matter to an Administrative Law Judge (ALJ) for a recommended decision pursuant to § 40-6-109, C.R.S.

**B. Application and Omnibus Motion**

3. By the Application, Black Hills seeks to amend its previously approved 2016 Electric Resource Plan (ERP)<sup>1</sup> by conducting a new competitive solicitation for renewable energy and storage of up to 200 MW to determine whether new resources can be added to the Company's system and result in annual customer savings. Black Hills states that, unlike the typical ERP process, the Company is proposing "Renewable Advantage" to take place on an expedited basis. Within a year, the Company would issue a request for proposals, evaluate the bids, make acquisition recommendations to the Commission, and then—if the Commission approves procurement—facilitate the entering of an energy purchase agreement. In the event that Renewable Advantage results in bids that require bill increases, Black Hills states that the Company will recommend to the Commission that no procurement take place and that the Commission delay procurement decisions until Black Hills' next ERP filing.

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<sup>1</sup> Decision Nos. R17-0039, issued January 17, 2017, and C18-0462, issued June 14, 2018, Proceeding No. 16A-0436E.

4. Black Hills explains in the Application that, following the Company's 2016 ERP, Public Service Company of Colorado conducted a competitive solicitation in 2019 for solar and storage resources and received very low median prices for new solar resources. Black Hills also notes that existing tax credits for wind and solar generation resources are expiring and phasing-out after year 2019.

5. Black Hills supports the Application with testimony claiming that customer savings would occur by displacing higher-cost power supplies with lower cost renewable energy supplies. Black Hills' customers would receive the benefits of these savings through the Company's Energy Cost Adjustment. The Company's testimony also states that Renewable Advantage has the potential to increase the Company's retail load served by renewable energy resources to approximately 55 to 65 percent.

6. The Application requests that the Commission:

- Approve of the amendment to the 2016 ERP to conduct Renewable Advantage;
- Approve of the Company's request to establish a regulatory asset account to record the third-party costs associated with Renewable Advantage for prudence review and recovery in the Company's next rate case;
- Grant a presumption of prudence provided pursuant to Rule 3617(d) of the Commission's ERP Rules, 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, to the Company's acquisition of any bids approved by the Commission in this Proceeding;
- Grant the Omnibus Motion; and
- Approve an Independent Evaluator (IE) as proposed in a separate motion filed on November 22, 2019.

7. In addition to the request for an *en banc* proceeding, the Omnibus Motion asks the Commission to adopt a procedural schedule, modeled after the Commission's ERP process, with the following components: "Phase I" Answer Testimony filed on February 7, 2020; "Phase I"

Rebuttal Testimony filed on February 21, 2020; a two-day hearing during the week of March 2, 2020; a “Phase I” decision issued by April 10, 2020; a “120-day report” filed in “Phase II” on June 22, 2020; the IE’s report filed on July 13, 2020; party comments filed on July 27, 2020; Black Hills’ final comments filed on August 10, 2020; and a final “Phase II” decision issuing by September 9, 2020.

8. As stated above. Black Hills further asks the Commission to grant all necessary waivers and variances from the Commission’s Rules and to grant extraordinary protection for certain information the Company claims to be highly confidential.

**C. Interventions and Responses to the Omnibus Motion**

9. On December 6, 2016, by Decision No. C19-0981-I, the Commission rejected the Company’s request for a shortened notice and intervention period as set forth in the Omnibus Motion and instead, following its regular business meeting on December 4, 2019, issued a standard Notice of Application Filed establishing a notice and intervention period ending January 3, 2020. The Commission further set a deadline of January 3, 2020 for responses to the remaining components of the Omnibus Motion.

10. The Colorado Office of Consumer Counsel (OCC) timely filed a notice of intervention of right and request for hearing on December 20, 2019. The OCC states that it may address the following issues: (1) the Phase I process; (2) the natural gas price forecast and its impact on the potential savings; (3) the solicitation process, particularly to ensure the solicitation is conducted fairly and without bias; (4) the expected annual savings, if any, for ratepayers and the amount of the expected savings that will be passed on to ratepayers; (5) the expected costs to be passed onto ratepayers for this Proceeding; (6) the impact of the amended ERP on the Company’s next ERP; (7) the proper resources to analyze for Renewable Advantage; (8) the

proper size of resources to analyze for Renewable Advantage; (9) the expected utilization of and impact on the Company's existing generating resources if Renewable Advantage projects are placed in service; (10) the reliability concerns of a large amount of renewable resources on the Black Hills system and the possible reliance on other utilities to ensure reliability; and (11) the impact of the Application on the State of Colorado's clean energy goals.

11. Staff of the Colorado Public Utilities Commission (Staff) filed a notice of intervention of right and request for hearing on December 30, 2019. Staff seeks to examine: (1) whether the Company's proposed bid evaluation criteria are appropriate; (2) whether the Company's proposed separation policy between the evaluation team and any Black Hills or affiliate company employees is adequate to ensure fairness to all bidders; and (3) whether the Company's request to defer evaluation expenses in excess for bidder fees is appropriate in all circumstances.

12. On January 3, 2020, Staff and the OCC each separately filed a response to Black Hills' Omnibus Motion.

13. The Colorado Energy Office filed a notice of intervention of right on January 3, 2020. Requests for intervention were also timely filed by the Colorado Independent Energy Association, City of Pueblo, County of Pueblo, LarFargeHolcim (US) Inc., Board of Water Works of Pueblo Colorado, and Western Resource Advocates (WRA). WRA includes in its intervention pleading, a response to Black Hills' Omnibus Motion.

14. On January 10, 2020, Black Hills filed an unopposed motion for leave to reply to the responses to the Company's Omnibus Motion.

**D. Conclusions and Findings**

15. The Application was deemed complete for purposes of § 40-6-109.5, C.R.S., on January 21, 2020 by operation of Rule 1303(c)(III) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

16. We find good cause to set the Application for hearing.

17. We refer the matter to an ALJ for a recommended decision. The ALJ's order shall address Black Hills' requests, as set forth in the Application or in the Omnibus Motion, as follows: (1) approval of the ERP amendment to conduct Renewable Advantage; (2) a regulatory asset account to record the third-party costs associated with Renewable Advantage for prudency review and recovery in the Company's next rate case; (3) a presumption of prudence to the Company's acquisition of any bids approved by the Commission in this proceeding; and (4) any necessary waivers from the Commission's rules.

18. Black Hills' request for an *en banc* proceeding as set forth in the Omnibus Motion is thus denied.

19. The ALJ shall rule on the requests for intervention and establish the parties in this Proceeding.

20. The ALJ shall rule on Black Hills' motion to reply to the responses to the Omnibus Motion.

21. The ALJ shall establish a procedural schedule by a separate decision.

22. The ALJ also shall rule on the Motion for Approval of Independent Evaluator Designation filed by Black Hills on November 22, 2019.

23. The ALJ further shall rule on the motion for extraordinary protection of information claimed to be highly confidential as set forth in the Omnibus Motion.

## II. ORDER

### A. It Is Ordered That:

1. The request of Black Hills Colorado Electric, LLC (Black Hills) for an *en banc* hearing on its Application for Approval of an Amendment to Its 2016 Electric Resource Plan Concerning a Competitive Solicitation for Up to 200 MW of Renewable Energy and Energy Storage filed on November 22, 2019, is denied.

2. The Application was deemed complete for purposes of § 40-6-109.5, C.R.S. on January 21, 2020 by operation of Rule 1303(c)(III), 4 *Code of Colorado Regulations* 723-1.

3. This matter is referred to an Administrative Law Judge (ALJ), consistent with the discussion above.

4. The ALJ shall rule on the requests for intervention, establish the parties to this proceeding, and set a procedural schedule to culminate in a recommended decision pursuant to § 40-6-109, C.R.S., consistent with the discussion above.

5. The ALJ shall rule on Black Hills' request for extraordinary treatment of information claimed to be highly confidential as set forth in its Omnibus Motion filed on November 22, 2019.

6. The ALJ shall rule on the Motion for Approval of Independent Evaluator Designation filed by Black Hills on November 22, 2019.

7. The ALJ shall rule on Black Hills' motion for leave to reply to the responses to the Omnibus Motion filed on January 10, 2020.

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 15, 2020.**

( S E A L )



ATTEST: A TRUE COPY



Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners