

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0496E

IN THE MATTER OF ADVICE LETTER NO. 878 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO AMEND THE TARIFF APPLICABLE TO COMMUNITY SOLAR GARDENS FIXED BILL CREDITS AND THEIR SUBSCRIBERS, TO BECOME EFFECTIVE JANUARY 1, 2025.

**INTERIM DECISION
GRANTING INTERVENTION, EXTENDING THE TIME
FOR A COMMISSION DECISION, AND ADOPTING
PROCEDURAL SCHEDULE**

Issued Date: February 13, 2025

I. STATEMENT

1. On November 15, 2024, Black Hills Colorado Electric, LLC ("Black Hills" or the "Company") filed Advice Letter No. 878 ("AL 878") with tariff sheets establishing the billing credits paid to subscribers of Community Solar Gardens ("CSGs") effective January 1, 2025.

2. House Bill ("HB") 23-1137 amended § 40-2-127, C.R.S., to allow for billing credit amounts paid to subscribers of CSGs to take one of two forms: a bill credit amount that changes annually, or a bill credit amount that remains fixed starting at the time the subscriber organization applies for or bids capacity into a utility CSG program.

3. By Decision No. C24-0447, issued on June 25, 2024, in Proceeding No. 24R-0133E, the Commission adopted rules to implement these provisions from HB 23-1137.

4. Rule 3881(b) within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, codified the practice by which annual tariff filings are used to establish CSG bill credits for each utility. When adopting modifications to Rule 3881(b), the

Commission clarified that each year, the utility's November 15 tariff filing will set forth the CSG billing credits applicable in the following year. The bill credits that change annually will be updated based on estimated values of the total aggregate retail rates to be in effect in the coming year and the prevailing costs to the utility to deliver, integrate, and administer the CSGs. In addition to the annual bill credits, a fresh vintage of fixed bill credits to be made available in the following calendar year will also be set forth on the filed tariff sheets. The Commission explained that such utility tariff filings will be the primary way the utilities and the Commission will "consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms." The Commission also stated that if there is a controversy the Commission must resolve, a hearing can support the establishment of just and reasonable rates.

5. In accordance with Rule 3881(b), Black Hills filed AL 878 on November 15, 2024, to establish CSG billing credits for effect January 1, 2025. Because AL 878 is Black Hills' first advice letter solar garden billing credits since the Commission adopted new rules pursuant to HB 23-1137, the tariff sheets filed with AL 878 include nearly all CSG billing credit-related sheets in the Company's Colorado P.U.C. No. 11 Electric Tariff ("*i.e.*, Sheet Nos. 94A through 94I").

6. Black Hills filed the tariff sheets without supporting Direct Testimony.

7. On December 10, 2024, the Colorado Solar and Storage Association ("COSSA"), the Solar Energy Industries Association ("SEIA"), and the Coalition for Community Solar Access ("CCSA"), collectively the "Solar Parties," jointly filed a protest to AL 878.

8. Because the Solar Parties alleged that AL 878 is inconsistent with HB 23-1137 and the Commission's rules, they requested that the Commission suspend the effective date of the filed tariff sheets and hold a hearing.

9. On December 31, 2024, by Decision No. C24-0952, the Commission suspended the effective date of the tariff sheets filed with Advice Letter No. 878 until May 1, 2025, allowed interventions to be filed until January 31, 2025, and referred the matter to an Administrative Law Judge (“ALJ”).

10. On January 28, 2025, the Solar Parties filed their Motion to Permissively Intervene. COSSA is a 501(c)(6) nonprofit trade organization established in 1989. COSSA serves energy professionals, solar companies, energy storage providers, and renewable energy users in Colorado. SEIA is the national trade association for the U.S. solar energy industry, which employs more than 279,000 Americans. SEIA represents all organizations that promote, manufacture, install, and support the development of solar energy. CCSA is a 501(c)(6) nonprofit trade organization focused on supporting the community solar industry through legislative and regulatory efforts.

11. On January 31, 2025, Trial Staff of the Public Utility Commission (“Trial Staff”) filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to rule 1007(a) and Rule 1401, and Request for Hearing

II. PARTIES TO THE PROCEEDING

A. Intervention by Right

12. Staff filed a timely notice of intervention. In their filings, they outline several issues they plan to address in this Proceeding and request a hearing.

13. Pursuant to Rule 4 *Code of Colorado Regulations* (“CCR”) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. The notices of intervention of right are acknowledged. Staff is a party to this Proceeding.

B. Permissive Interventions

14. The Solar Parties filed a timely request for permissive intervention.

15. The Solar Parties state that AL 878 will have a direct impact on the business interests of the trade associations' member companies. The Solar Parties have a direct interest in ensuring the fixed CSG bill credit adjustment mechanism set forth in the AL 878 tariff sheets is just and reasonable and consistent with applicable law and sound regulatory policy. The Solar Parties also list issues that they will examine in the above captioned proceeding.

16. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

17. In addition, per Rule 1401(e), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.

18. As relevant here, to permissively intervene, the party's intervention must:

. . . state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. . . demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

19. The person or entity seeking to intervene bears the burden of proof that it has met the intervention standards and should be permitted to intervene.

20. If a party does not file a response to a motion within the time prescribed for a response, the Commission may deem that failure as confessing the motion.

21. Black Hills has not filed a response or objection to any of the requests to intervene. As such, the ALJ construes the Intervention as unopposed. Based on this, the information provided in their collective requests to intervene, and the relevant legal standards, the ALJ grants the Interventions of the Solar Parties.

III. TIME TO ISSUE A FINAL COMMISSION DECISION

22. Under § 40-6-111, C.R.S., when a party files an advice letter, the Commission may suspend the effective date of the tariff for 120 days after the application is deemed complete.

23. On December 31, 2024, by Decision No. C24-0952, the effective date of the tariff was suspended until May 1, 2025. If the Commission finds that additional time is necessary, in which case, this deadline may be extended by an additional 130-days.

24. The ALJ finds that additional time is necessary, and therefore extends the statutory deadline for a final Commission decision by 130 days, as allowed by § 40-6-111(1), C.R.S. The resulting deadline for a final Commission decision to issue is September 8, 2025.

IV. PROCEDURAL SCHEDULE FOR REMOTE HEARING

25. Through informal communications the Parties proposed the following procedural schedule:

Direct Testimony	March 14, 2025
Answer Testimony	April 11, 2025
Rebuttal/Cross Answer Testimony	May 2, 2025
Corrected Testimony/Exhibits	May 7, 2025
Stipulations/Settlement Agreement	May 9, 2025
Witness Matrix	May 12, 2025
Hearing	May 15 & 16, 2025
Statements of Position	To be determined after hearing

26. The proposed procedural schedule and discovery procedures are acceptable and shall be adopted.

27. The discovery procedures contained in Commission Rule 1405 shall govern this proceeding.

28. The hearing shall be held remotely.

V. REMOTE EVIDENTIARY HEARING

29. A hearing in the above captioned proceeding shall be scheduled for May 15 & 16, 2025, at 9:00 a.m. as a remote hearing. At the remote hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case.

30. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the remote hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

31. To minimize the potential that the video-conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

A. Unified Numbering System for Hearing Exhibits

32. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of hybrid evidentiary hearing.

33. As such, it is essential that the parties ensure they are able to access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

34. Each party must (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as page 1, regardless of content, before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to the presenting them during the hearing.

35. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

36. To efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Black Hills is assigned hearing exhibit numbers 100 to 299;
- The Solar Parties are assigned hearing exhibit numbers 300 to 399;
- Staff is assigned hearing exhibit numbers 400 to 499.

VI. ORDER

It is Ordered That:

1. Consistent with the above discussion, the deadline for a final Commission decision to issue in this Proceeding is extended by 130 days to September 8, 2025, per § 40-6-111, C.R.S.

2. The Colorado Public Utilities Commission Trial Staff is acknowledged as a party as of right in this Proceeding.

3. Consistent with the above discussion, the Motion to Permissively Intervene filed by the Colorado Solar and Storage Association, the Solar Energy Industries Association, and the Coalition for Community Solar (“Solar Parties”) on January 28, 2025, is granted.

4. The procedural schedule as stated in the Unopposed Motion and contained above is adopted.

5. A remote hearing is scheduled as follows:

DATE: May 15 & 16, 2025

TIME: 9:00 a.m.

PLACE: By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.

6. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

7. All participants in the hearing must comply with the requirements in Attachments A and B to this Decision, which are incorporated herein and, in the discussion above.

8. All evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

9. The Parties shall be held to the advisements in this Decision.

10. 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 "Rebecca E. White".

Rebecca E. White,
Director