

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08A-346E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY, LP FOR APPROVAL OF ITS 2008 COLORADO RESOURCE PLAN AND PETITION FOR WAIVERS OF PORTIONS OF THE RESOURCE PLANNING RULES.

ORDER GRANTING, IN PART, APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION AND MODIFYING PHASE I DECISION

Mailed Date: March 31, 2009
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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (RRR) to Decision No. C09-0184 (Phase I Decision) filed on March 19, 2009 by Black Hills/Colorado Electric Utility Company (BH/CO or Company), the Colorado Office of Consumer Counsel (OCC), Staff of the Colorado Public Utilities Commission (Staff), Colorado Independent Energy Association (CIEA); Environmental and Community Intervenors (ECI) (consisting of Better Pueblo, Smart Growth Advocates, Sierra Club, and Western Resource Advocates); and Cripple Creek & Victor Gold Mining Company (CC&V). In addition, BH/CO and Public Service Company of Colorado (Public Service) filed a Joint Notice of Updated Load Forecast (Joint Notice). The Joint Notice stated, *inter alia*, that Public Service may be willing to discuss a partial bridge power purchase agreement (PPA) with BH/CO for up to 200 MW of capacity through May 2013.

2. We held a Commissioners’ Deliberation Meeting on March 25, 2009 to rule on the RRRs and a Status Conference to discuss potential implications of the Joint Notice. We will address the issues presented in turn. Being fully advised in these matters and consistent with the discussion below, we grant RRR, in part, and deny, in part. We clarify what entities are eligible to bid into the 194 MW set aside; whether and under what circumstances an Independent Power Producer (IPP) could bid capacity beyond 100 MW; and how renewable and Section 123

resources will be considered. We also clarify several issues related to the bid evaluation process, duties and responsibilities of the Independent Evaluator (IE), and the contract negotiation process raised by CIEA and Staff.

B. Balancing Plan

3. BH/CO requests that the Commission reconsider the date by which the Company must file its updated plan to address the regulation and balancing of its system. BH/CO contends that it is appropriate to change that date from June 8, 2009 to a later date so that the Company can consider appropriate regulation and balance service options after it knows what resources will be in its supply portfolio, where the resources will be interconnected, and what third party transmission services will be required. BH/CO suggests that the date by which it must file its updated plan be changed to October 8, 2010.

4. We agree with BH/CO that information on the type of resources that will be in its supply portfolio and resulting interconnection points are important in determining an appropriate regulation and balance service option. We grant BH/CO's RRR on this issue, in part, and modify the Phase I Decision to require that the Company provide its balancing plan update on July 20, 2009, as part of its RFP Summary Report. Further, we clarify that we are not expecting BH/CO to file a finalized balancing plan at that time. Rather, the purpose of this filing will be to verify that the Company is moving forward with its efforts to acquire or develop balancing resources.

C. Date to Issue RFPs for Various Studies

5. BH/CO requests that the Commission reconsider the date by which the Company must issue Requests for Proposals (RFPs) for wind integration, reserve margin, intermittent solar capacity, and intermittent solar integration studies. The Phase I Decision provides that these RFPs must be issued no later than 60 days after a final Commission decision on the certificates

of public convenience and necessity (CPCNs) for the two LMS-100 turbines is issued. The Company states that it will likely not know its resource mix at that time and requests that this date be changed to 60 days after October 8, 2009, the date in the Phase I Decision for execution of PPAs.

6. We agree with the Company that the scope of wind integration, reserve margin, intermittent solar capacity, and intermittent solar integration studies may be contingent on the type of resources that are selected. On the other hand, it is important to coordinate the issuance of the final reports on these studies with other related dockets so that the results can be incorporated in a timely manner into these dockets. The Stipulation between BH/CO and Staff requires that wind integration, reserve margin, intermittent solar capacity, and intermittent solar integration studies are due no later than one year after the issuance of RFPs. We believe that final reports on these studies are relevant to BH/CO's 2011 Renewable Compliance Plan. We therefore grant BH/CO's RRR on this issue and change the date to issue RFPs on these studies to December 7, 2009. We also request that BH/CO consider future dockets that may benefit from the studies as it prepares its final reports. Finally, we require the Company to issue final reports no later than one year after it issues RFPs on the studies.

D. Eligible Bidders

7. BH/CO requests that the Commission confirm that eligible bidders include not only IPPs, but also entities such the Town of Fowler, Public Service, and affiliates of BH/CO that are wholesale sellers (such as Black Hills Power). The Company also notes that Public Service may have power available in 2012 due to changing load forecast resulting from the ongoing economic recession and encourages a bid from Public Service. BH/CO further mentions pursuing opportunities under the American Recovery and Reinvestment Act of 2009.

8. For its part, CIEA also requests a clarification on what entities are qualified to bid into the 194 MW set aside. CIEA inquires whether Public Service may bid and, if so, whether it can submit a rate based proposal. CIEA further argues that BH/CO affiliates should not be able to bid into the 194 MW set aside.

9. In the Phase I Decision, our main concern was the difficulty in comparing utility rate-based proposals with PPAs. Because this comparison is typically performed in the Phase II process (which will not be conducted in this case as explained in the Phase I Decision), we have excluded utility rate based proposals from the 194 MW set aside. We clarify that this restriction does not intend to exclude any party that proposes to supply power through a PPA. We find that wholesale providers like Public Service, communities like the Town of Fowler, or BH/CO affiliates may compete in the bidding section if they comport with the firm-priced bidding requirements. We direct BH/CO and the IE to evaluate proposals from non-IPP entities similarly to how they would consider any proposals from IPPs. We recognize that these entities may have unique considerations that would require flexibility in the specific model contract terms and conditions and we direct the IE and BH/CO to use their judgment to evaluate bids, terms, and conditions in a manner that is consistent with the intent of the RFP and Model Contracts.

10. We disagree with CIEA that affiliates of BH/CO should not be allowed to bid. The affiliate, however, must bid in the same manner as any other IPP. The IE must verify that such a bid is treated in a fair and reasonable manner and not provided any preferences or benefits not available to other bidders, as discussed below.

E. 100 MW Shaft Risk Limitation

11. CIEA requests that the Commission clarify whether and under what circumstances an IPP bidder could demonstrate that it has sufficient reserves or shaft-sharing or back-up power

arrangements from another generation source to justify exceeding the 100 MW limit. CIEA argues that it is important to clearly spell this out in order to avoid an immediate up-front disqualification of any bidder.

12. In the Phase I Decision, we found that shaft sharing agreements may be an effective way to address shaft risk concerns.¹ We clarify that, if an IPP were to submit a bid exceeding 100 MW, the excess amount would not be considered for capacity purposes unless it was fully backed up by a spinning resource that could be brought online quickly, similar to a “slice of system” power from Public Service.

13. The ability to rely on the Rocky Mountain Reserve Group (RMRG) was raised in this docket as well. The membership in the RMRG may allow a power supplier up to two hours to bring an alternate resource online. However, that this resource is the result of an agreement between BH/CO and other RMRG members and therefore BH/CO bears the benefits and the consequences of this agreement. While the RMRG will provide back-up to any resource on the BH/CO system, an IPP may not count on or call on this resource unless BH/CO approves such an arrangement.

F. 152 MW Self-Build Carve-Out

14. CIEA requests that the Commission reconsider the utility carve out for two LMS-100 units for the following reasons: (1) it rewards BH/CO for delaying competitive bidding and complying with Commission Rules; and (2) it precludes Public Service from making arrangements to secure sufficient additional capacity to extend its expiring wholesale power contract for one or more additional years beyond January 1, 2012. This in turn would allow for a

¹ See Phase I Decision, at ¶91.

more robust process in the future. CIEA recommends deferring the ruling on the utility ownership set-aside until after all bids are made and all alternatives known.

15. The first argument made by CIEA—that allowing BH/CO to self-build generation does not recognize that the Company could have done more to avoid this situation—is not new and is fully addressed in the Phase I Decision. Regardless of the extent to which BH/CO may be responsible for any delays, we must now meet the upcoming needs of the ratepayers in the best possible manner under the circumstances. We believe that the Phase I Decision balances the risks associated with the various options, including benefits of utility ownership and minimizing the risk of a significant future capacity shortfall.

16. The second argument was also thoroughly addressed in the Phase I Decision. In fact, Staff put forth a detailed schedule that would allow for a full Phase II process so the Commission could compare utility rate-based proposals with IPP bids. In weighing the risks and benefits of the various options, we ultimately determined that it would be better to allow additional time to build the resources than to spend it in a Phase II proceeding. We also disagree that the 152 MW self-build carve-out precludes Public Service from making arrangements to secure sufficient additional capacity to extend its expiring wholesale power contract to serve BH/CO.

17. Based on the record and the comments made during the Status Conference, we deny CIEA's RRR on this issue. We order BH/CO to conduct the bidding process, consistent with the discussion below.

G. Four-Month Negotiation Period

18. CIEA requests reconsideration of the fixed date for executing PPAs. CIEA argues that establishing a “drop-dead” date does not provide BH/CO with incentives to resolve

outstanding issues and that BH/CO may drag its feet in hopes of executing its contingency plan. CIEA argues that the Commission should establish a flexible negotiation deadline instead.

19. CIEA also points out that the time to evaluate bids will shorten negotiation time and suggests that additional time be allowed to finalize bids, which would be equal to any time used to evaluate bids. In addition, CIEA asks how any extra time needed to resolve disputes will impact the signing deadline.

20. We agree with CIEA that the Phase I Decision does not establish a date by which negotiations must begin. Instead, the Phase I Decision requires bids on June 8, 2009 and requires contracts to be signed by October 8, 2009. We agree that without a date by which commencement of contract negotiations must begin, extension of the evaluation period could make it more likely that a contingency plan would be required. We therefore modify the dates in the Phase I Decision as follows:

Activity	Due Date
Phase I Decision	2/24/2009
RRR Due	3/16/2009
Issue All-Source RFP	3/25/2009
RRR Decision	3/31/2009
Bid Meeting	4/1/2009
IE Proposal	4/15/2009
Bids Due	6/8/2009
CPCN for BH Resources	6/8/2009
RFP Summary Report (highly confidential) and Submit Revised Contingency Plan	7/1/2009
Balancing Plan	7/20/2009
Short List due date - Begin Negotiations	8/8/2009
Renewable Studies RFP	12/7/2009
PPA Contracts Signed	12/8/2009

21. We also agree with CIEA that the “PPA Contract Signed” date should be flexible, and should not rigidly be used as a reason to invoke a contingency plan. We clarify that ultimately it is up to an IPP to establish its construction timing requirements.

H. Responsibility and Authority of the IE

22. In its RRR, Staff supports our decision requiring an IE in this case, but requests that we clarify the responsibilities and the authority that the IE will have. Staff requests that we specifically order that the IE must be included in the bid evaluation process and contract negotiations, be apprised of significant issues, and determine the level of oversight necessary. Staff states that the IE must work with BH/CO to establish processes for performing its duties without performing additional modeling or analysis. Further, Staff recommends that the IE be required to maintain a log of meetings, contacts, and issues to be filed with its bi-weekly report.

23. Staff states that BH/CO has an inherent conflict of interest in negotiating PPAs. If the negotiations with IPPs are unsuccessful, the Company may be able to self-build the required resources by invoking a contingency plan. Staff also argues that BH/CO may unconsciously favor bids offered by its affiliate.

24. CIEA inquires whether the IE will have any authority to resolve disputes between BH/CO and a bidder. CIEA also inquires about the role, if any, that the Commission would play in such a situation and what process is contemplated if the IE believes the bid selection process is not fair and reasonable.

25. We agree with Staff that the role of the IE is essential in this process. We order that the IE shall be included in the bid evaluation process as well as significant aspects of contract negotiations such as, but not limited to, alterations in price, term, or modification of security requirements. Further, we agree with Staff that the IE must maintain a log of meetings, contacts, and issues to be filed with its bi-weekly report.

26. We clarify that the IE does not have authority to resolve conflicts. The IE is not an arbitrator, but instead its purpose is to oversee the proceedings to verify that they are carried

out in a fair and reasonable manner. In the event the IE encounters concerns or problems, we direct the IE to first raise these concerns with the utility and affected bidder, and to document such in its reports to the Commission. If these persist, we direct the IE to raise them with the Commission.

27. Based on the discussion above, we order Staff, the OCC, and BH/CO to include a proposed scope of work for the IE as part of their IE proposal due April 15, 2009.

I. Bid Evaluation Process

28. Staff recognizes that Rule 3500 of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3 addresses unregulated goods and services, the allocation of costs between regulated utilities, and how the value of transactions between the utility and its non-regulated activities should be determined. However, Rule 3500 provides no guidance on the proper way to determine if an IPP appropriately determined its bid price.

29. Other Commission Rules provide some guidance, including Rule 3001(a), which defines an affiliate; Rule 3005(c), which requires utilities and their affiliates to maintain separate books; Rule 3100(b)(V), which pertains to statement requirements for affiliate relationships; and Rule 3655(1), which defines bidding requirements to accept and evaluate bids from affiliates for eligible energy resources. Rule 3655(1) also states that the auditor cannot participate in the bid evaluation process. In its RRR, Staff requests that the Commission consider the above rules in its guidance of how the IE is to determine whether the bidding process is conducted fairly.

30. Staff believes that as part of the bid development and evaluation process, the IE must be able to scrutinize individual costs underlying the bid price provided by the affiliate IPP bidder to ensure that the bid evaluation process is conducted fairly. Staff specifically requests that the Commission clarify how the IE is to ensure the bid evaluation process is conducted fairly

if an affiliate of BH/CO submits a bid. Staff makes the following recommendations to accomplish these objectives:

- The IE may request and shall receive any information, documentation, or other data from BH/CO, and its affiliate IPP bidder as necessary for the IE to be able to make a determination pursuant to Commission Rules. Due to the expedited nature of the docket, such information should be provided within five days of a request.
- The IE should be directed to consider affiliate transaction rules promulgated by the Federal Energy Regulatory Commission (FERC), including but not limited to FERC Order 707, and Rules 3500 and 3655(1) as guidelines in making a request for information.
- The IE shall include a summary of the status of bid and contract negotiations in its bi-weekly reports which should be provided to the OCC and Staff as well.
- The IE shall also be allowed to comment on the RFP Summary Report before PPA execution.
- All bidders must comply with requests for information by the IE, so that no party would be subject to unfair scrutiny.

31. CIEA argues that it is unclear exactly how and by whom the winning IPP bids will be selected and what role will be performed by the IE and the Commission. CIEA also requests a clarification on what criteria will be used for selecting the winning bids. CIEA inquires whether the Commission contemplates a hearing on this issue.

32. We agree with Staff that we need to clarify the duties that the IE will have. We order that the IE must be included in the bid evaluation process and contract negotiations, that it must be appraised of significant issues, and that it use its judgment and discretion to determine the level of oversight necessary. The IE must also work with BH/CO to establish the processes for performing these duties without performing additional modeling or analysis. We also agree with Staff that the IE should be required to maintain a log of meetings, contacts, and issues to be filed with its bi-weekly report.

33. We also agree with Staff that the IE is essential in ensuring that treatment of bids filed by BH/CO affiliates is fair. However, rather than adopting Staff's lengthy list as indicated above, we state that the IE should use FERC Order 707 as guidance if an affiliate of BH/CO puts forth a competitive bid. We rule that, due to the competitive bidding process that will be held in this docket, costing and pricing aspects of the Commission Rules on affiliate transactions do not apply and we waive portions of these rules to the extent necessary.

34. With respect to CIEA's request for clarification of the bid criteria, the issues related to Section 123 resources, Section 124 renewable resources, and comparisons between utility rate-based proposals and fixed price IPP bids have been addressed elsewhere. BH/CO, with the oversight of the IE, will model all bids to determine the net present value of revenue requirements for each resource, and generally make a selection based on least-cost. No further hearings before the Commission are contemplated.

J. RFP Summary Report Requirements

35. Staff requests a clarification of whether the RFP Summary Report will be similar to what is required by Rule 3610(h), except that only BH/CO will file the report and no separate report is required from the IE. Staff also requests a clarification of what the report will contain, how highly confidential portions will be handled, whether the OCC and Staff will receive it, and whether they will be allowed to comment. Staff believes that the report should be a compilation of the results of the bidding process in rank order based on cost effectiveness. If comments are allowed, Staff argues that they be due on June 29, 2009, which would not affect the established procedural schedule.

36. We agree with Staff that additional clarification is needed with respect to the RFP Summary Report. However, we disagree with Staff's understanding that the report will be

similar to what is required by Rule 3610(h). Because we eliminated the Phase II process, in this case, we do not intend for the RFP Summary Report to be used in a post-bid proceeding before the Commission. Instead, we expect that the utility, with oversight of the IE, will model and negotiate resources consistent with the Phase I Decision—without the Commission making a final resource determination directly. The purpose of the RFP Summary Report is to summarize the bids that were received. We agree with Staff that the report must provide details of the results of the bid process and must include the bid prices and other relevant terms. However, because the report will be filed only two weeks after bids are received we do not expect it to contain the details outlined in Rule 3610(h). Further, we find that it is not appropriate to solicit comments on this report. We clarify that only BH/CO, not the IE, must file this report. Since this report will contain highly sensitive bid information at the time when bid negotiations are occurring, and since the Commission will not make any rulings based on the report, we find that it is appropriate to limit access to the highly confidential versions of this report to the Commissioners, Trial and Advisory Staff, and the OCC. We agree with Staff that BH/CO should provide copies of the bi-weekly reports to Staff and the OCC.

K. Contract Negotiation Process

37. CIEA requests that the Commission clarify the process that it envisions will occur after issuance of the RFP Summary Report on June 22, 2009 and before the execution of the PPAs on October 8, 2009. Staff inquires whether the Commission intends for the parties and/or the IE to comment on the contract negotiations prior to the execution of the PPAs. If so, Staff suggests that the parties file written comments ten days after the last bi-weekly report by the IE and that the Commission hold a hearing the first full week of October where the IE would be available for cross-examination. This would assure that a complete evidentiary record exists

upon which the Commission can make a determination of whether the contract negotiation process proceeded in a fair and equitable manner.

38. Contract negotiations encompass many contentious issues that impact the overall costs and benefits of the competitive bid process. The success or failure of contract negotiations may have an impact on the viability of competitive resource acquisitions in the future. Therefore, we find that it is appropriate for the IE to monitor contract negotiations.

39. On the other hand, we understand that including the IE in all contract negotiations may be rather expensive. We therefore direct the IE to use its judgment and discretion and involve themselves in negotiations only when it believes there is a potential for conflict. We direct the IE to keep itself apprised of significant issues, as it deems appropriate. We finally direct the IE and BH/CO to establish a contract negotiation oversight process for the IE.

40. The purpose of the IE oversight is to monitor the negotiations and to ensure that the contract negotiations process is fair and reasonable, and consistent with the Phase I Decision. The IE must maintain a log of meetings, contacts, and issues addressed and it must file a progress report every two weeks with the Commission during the contract negotiations phase. If the IE has any concerns about the fairness or reasonableness of the negotiations process, it first must discuss its concerns with BH/CO and the affected bidder. The IE shall include any such concerns in its report to the Commission, along with any proposed resolutions.

L. Consideration of Renewable and Section 123 Resources

41. In its RRR, ECI argues that the Commission excluded renewable resources from consideration in the bid process by accepting the Stipulation between Staff and BH/CO and therefore postponing the studies related to incorporation of renewable resources. ECI is also concerned that the Commission missed an opportunity to promote clean energy resources and

recommends that the Commission order BH/CO to explicitly review in good faith bids for renewable resources and to use a capacity credit for solar thermal technology higher than zero percent.

42. ECI also disagrees with the finding that new generation resources are likely to be gas fired turbines. ECI requests that the Commission order BH/CO to consider possible Section 123 resources, including a portion of Public Service's 200 MW central solar facility. ECI further states that Demand Side Management (DSM) should be allowed to bid along with supply-side resources. Lastly, ECI argues that BH/CO should be required to file a much more integrated and balanced proposal for renewable energy resources in its next resource plan, which should include rate design reforms to promote conservation.

43. The primary focus of this resource plan has been BH/CO's upcoming need for 75 percent of base load generation. This is fundamentally different from a typical resource plan that primarily addresses incremental need due to load growth. This is not to say that BH/CO should not consider solar technology as part of its resource mix; on the contrary, it must do so to meet the Renewable Energy Standard (RES) requirements. However, this issue is best addressed in the applicable RES docket.

44. ECI is concerned that the Commission has restricted the resource selection in this case to gas-fired combustion turbines only. We clarify that this is not the case. Specifically the RFP should allow all resources that are capable of providing the dispatchable power that BH/CO will need in 2012. This includes, but is not limited to, natural gas, demand response, and dispatchable renewable technologies such as bio gas. Further, we encourage BH/CO to solicit Section 123 proposals and bring them before the Commission in a separate proceeding if the

Company finds merit in such proposals. Finally, we clarify that any renewable resource may be brought before the Commission under Rule 3655(c) for an expedited 60-day approval.

45. We find that DSM resources involve different criteria and incentives, which will be fully litigated in Docket No. 08A-518E. While DSM is not precluded from bidding into the RFP, we find that demand response programs are more likely to satisfy BH/CO's needs in this proceeding. We also agree with ECI that BH/CO should consider renewable resources in its future resource filings. Finally, we deny ECI's request to require BH/CO to propose alternative rate designs in a future ERP proceeding; rate design is an issue more applicable to a Phase II rate case or a similar docket.

46. In the Phase I Decision, we noted that the capacity factor for solar technology will be updated in the future. However, we agree with ECI that this does not give the appropriate credit to solar resources in the meantime.² We would expect that any solar thermal resource bid would be offered with a specific capacity factor, depending on the particular technology bid and the amount of storage capability. We note that BH/CO estimated capacity factor for wind to 10 percent without an extensive study. We direct BH/CO to use a value for solar resources similar to that used by Public Service for modeling until a study can be completed.

M. Short-term Contracts

47. ECI argues that the Commission did not go far enough in requiring consideration and acceptance of short-term bids and that it fails to avoid long-term "lock-in" of gas generation resources after 2012. ECI maintains that instead of encouraging short-term contracts we should require them unless it is impossible.

² ECI specifically mentions solar thermal as opposed to photovoltaic solar.

48. We reiterate that the final cost borne by the ratepayers is our primary concern and should be the main factor in determining a resource portfolio. However, we do not believe that short term PPAs necessarily translate into higher costs and lead to savings in the long term. Such factors should be taken into account in the evaluation of similar priced portfolios. We continue to find that it would not be appropriate to *require* short term contracts. We therefore deny ECI's RRR on this ground.

N. Maintaining a Contingency Plan

49. CC&V is concerned about the potential delay or default of an IPP contract, which would result in a significant capacity shortfall. In the Phase I Decision, we do not require BH/CO to maintain a contingency plan beyond the signing of a PPA.

50. CC&V states that the damages provisions set forth in a PPA are not sufficient to protect ratepayers and will not keep the lights on. CC&V argues that BH/CO should maintain a contingency plan for serving its load until the contracted resources are installed.

51. We disagree with CC&V that BH/CO should maintain a contingency plan until the contracted resources are installed. We find that constructing a duplicate set of resources would be wasteful and would result in significant costs.

52. We found in the Phase I Decision that it is unlikely that the resource shortfall could not be met by the market and therefore the likely consequences will not be black outs, but rather having to buy replacement power at a market price. We therefore reiterate that financial provisions are sufficient to protect ratepayers. We deny CC&V's RRR on this ground.

O. Security Requirements

53. CC&V requests that the Commission revise the Phase I Decision and allow BH/CO to demand more stringent security and performance provisions from bidders. In the

Phase I Decision, we established the approved contract terms used by Public Service as the floor to such conditions and asked that bidders consider offering provisions to back up their proposals. CC&V contends that this hampers BH/CO's ability to demand more stringent security requirements which are needed to protect ratepayers.

54. We find that there could be an inherent conflict of interest for BH/CO to negotiate with IPPs. If any IPP bid fails, the Company may have an opportunity to build the generation itself or to award a contract to its affiliate. We decline to grant CC&V's request for reconsideration.

P. Utility Ownership

55. The OCC continues to argue that it would be in the best interest of the ratepayers if the Company were to construct and own all five combustion turbines. This argument is based on the concern about minimizing the costs borne by ratepayers. The OCC opines that in the long term ratepayers may have to pay for the same generation resource multiple times if PPA contracts are signed.

56. The OCC asserts that utility rate-based projects offer the most benefit and request that we reconsider our decision disallowing rate-based bids for the 194 MW portion. In support of this argument, the OCC points to costs that BH/CO would incur by maintaining a contingency plan and the urgent need to have resources in place by 2012 to ensure system reliability. In the alternative, the OCC proposes to allow BH/CO to build three LMS-100 turbines, instead of the two we set in the Phase I Decision.

57. We fully considered the OCC's argument for utility ownership in the Phase I Decision. We thoroughly addressed the risks associated with the various forms of resource ownership and we concluded that ratepayers will benefit the most from a mix of utility and IPP

owned resources. We also found that a carve-out of two LMS-100 turbines achieves the best balance when weighing all of the risks and benefits present in this case. The OCC has not brought forth any new information or argument in its RRR. We therefore deny its RRR on this issue.

58. In the Phase I Decision, we found that a full Phase II proceeding would be required to compare utility rate-based proposals with IPP bids and that it is preferable to allow more time to build resources by eliminating the Phase II proceeding in this case. The proposal to allow rate-based bids into the 194 MW bid portion would require a Phase II proceeding and therefore would reduce the time available to actually build resources. We deny the OCC's RRR on this issue as well.

Q. Joint Notice of Updated Load Forecast

59. During the Status Conference, BH/CO noted that the Joint Notice did not include any request for a Commission action and that Public Service has not extended an offer to BH/CO at this time. The Company further described how it may consider a potential bridge contract with Public Service in one of the following ways: (1) BH/CO may extend its existing contract, if this would be cost effective, before the bids are due; (2) BH/CO may invite Public Service to bid any bridge contract into the RFP; and (3) BH/CO may evaluate a bridge contract along with the bids. The Company also stated that, if it chose to pursue the first option before the bids are due, it will bring the extension contract before the Commission. BH/CO finally discussed how the current situation leads to an uncertainty when resources will be needed. The Company stated that it will keep bidders informed and would accept multiple in-service dates without requiring multiple bid fees.

60. CIEA was mainly concerned with the near-term uncertainty that results from the possibility of a bridge contract between BH/CO and Public Service, but stated that this situation could result in additional flexibility and make resources available that otherwise would not have been. CIEA opined that it may be necessary to extend the bid date due to the added uncertainty.

61. The Board of Waterworks of Pueblo and the Fountain Valley Authority stated that other bidders should be able to offer short term contracts alongside with Public Service.

62. We appreciate the above comments and the efforts by BH/CO and Public Service to keep us advised. We find that the possibility of a bridge contract between the two companies is uncertain at this time. We further find that this circumstance could result in additional flexibility and additional resources. Therefore, on our own motion, we direct BH/CO to modify the RFP for 2012 resources to indicate the possibility of a bridge contract with Public Service, which in turn may extend the in-service date of resources to be bid until June 2013. Section 40-6-112(1), C.R.S., states that the Commission may, at any time, rescind, alter, or amend any decision made by it following notice to the parties and an opportunity to be heard. We find that the parties have been provided with notice and an opportunity to be heard during the Status Conference and we find good cause to amend the Phase I Decision. We instruct BH/CO to proceed with the bidding process and to give bidders an opportunity to offer multiple in-service dates under a single bid fee. Finally, any extension of the existing contract between BH/CO and Public Service proposed before the conclusion of the bid process shall be filed with the Commission and BH/CO shall promptly notify bidders.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration (RRR) to Decision No. C09-0184 (Phase I Decision) filed by Black Hills/Colorado Electric Utility Company (BH/CO) is granted, in part, consistent with the discussion above.

2. The RRR filed by the Colorado Independent Energy Association (CIEA) is denied, consistent with the discussion above.

3. The RRR filed by Staff of the Colorado Public Utilities Commission is granted, in part, consistent with the discussion above.

4. The RRR filed by the Environmental and Community Intervenors (ECI) is granted, in part, consistent with the discussion above.

5. The RRR filed by the Cripple Creek & Victor Gold Mining Company is denied, consistent with the discussion above.

6. The RRR filed by the Colorado Office of Consumer Counsel is denied, consistent with the discussion above.

7. We clarify the issues raised by CIEA, ECI related to the bid evaluation process, duties and responsibilities of the Independent Evaluator (IE), the contract negotiation process, eligible bidders, shaft risk, and how renewable and Section 123 resources will be considered.

8. We direct BH/CO to modify its Request for Proposals (RFP) and to proceed with the bidding process, consistent with the discussion above. We find good cause to amend the Phase I Decision pursuant to § 40-6-112(1), C.R.S.

9. A new procedural schedule is as follows:

Activity	Due Date
Phase I Decision	2/24/2009
RRR Due	3/16/2009
Issue All-Source RFP	3/25/2009
RRR Decision	3/31/2009
Bid Meeting	4/1/2009
IE Proposal	4/15/2009
Bids Due	6/8/2009
CPCN for BH Resources	6/8/2009
RFP Summary Report (highly confidential) and Submit Revised Contingency Plan Balancing Plan	7/1/2009 7/20/2009
Short List due date - Begin Negotiations	8/8/2009
Renewable Studies RFP	12/7/2009
PPA Contracts Signed	12/8/2009

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
March 25, 2009.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

