

Docket 08A-436E
List of Pending RRR Issues¹

For the full text of the electronically filed Requests for Rehearing, Reargument or Reconsideration, go to:

<http://www.dora.state.co.us/PUC/DocketsDecisions/HighprofileDockets/08A-346E.htm>

Note: The Commission will deliberate on the requests for rehearing, reargument or reconsideration on March 25, 2009, at 1:30 p.m. A written decision on RRR is expected to be issued by March 31, 2009, and will be posted on the above website and on the Black Hills Corporation RFP website at <http://www.blackhillscorp.com/BHERfp.htm>.

Black Hills/Colorado Electric Utility Company, LP

BH/CO Electric asks the Commission to:

- 1) Change the date by which an update of the Company's balancing plans must be filed to a later date. The Company suggests October 8, 2010 (one year after the deadline for execution of PPA contracts per the Decision), so that the Company will have the necessary information and time to perform an evaluation as to which provider can provide regulation and imbalance services most cost effectively.
- 2) The Company suggests that the reference date for issuance of RFPs for a wind integration study, reserve margin study, intermittent solar capacity study, and intermittent solar integration study be modified to 60 days after October 8, 2009, the deadline in the Decision for execution of PPA contracts.
- 3) Ordering Paragraph II.A.4 states that, "BH/CO shall issue a request for proposal (RFP) for the remaining resource need. *Only independent power producers (IPPs) will be permitted to bid.*" [Emphasis added.] It further states that the independent, *unregulated* affiliates of Black Hills Corporation may submit a bid under the same conditions as unaffiliated bidders. These two statements would exclude some potential bidders including, but not limited to, the Town of Fowler and other public entities, PSCo and any other wholesale sellers of capacity and energy, and affiliates of BH/CO that are wholesale sellers and not IPPs (such as Black Hills Power, Inc.). The Company requests that the Commission confirm that, in the competitive acquisition process, only the Company is prohibited from submitting a bid to supply the remaining resource need.

¹ Paragraph 81 of the Phase I Decision provides: "To provide the bidders with as much time as possible, we require BH/CO to issue RFPs after the applications for rehearing, reargument, or reconsideration (RRR) of this Phase I decision are due, but before the Commission's decision on RRR is due. Therefore, we require BH/CO to state in the RFPs that some terms may change as a result of RRR. We also require the Company to list the pending RRR issues.

CIEA

Colorado Independent Energy Association asks the Commission to issue an order:

- 1) Clarifying the process for selection of winning IPP resources, and the respective roles of the IE and the Commission in that process,
- 2) Clarifying the role, if any, the IE or the Commission are expected to play in the PPA negotiation process between IPPs and Black Hills,
- 3) Clarifying the precise circumstances under which bidders may exceed the 100MW bid limit otherwise imposed due to shaft risk,
- 4) Deferring a final ruling on the 152MW self-build carve-out for Black Hills until after bids are received,
- 5) Excluding Black Hills' affiliates to bid on the 194MW set-aside for IPPs, and
- 6) Creating some greater flexibility in the 4-month time period allowed to negotiate and finalize a PPA

CC&V

Cripple Creek & Victor Gold Mining Company asks the Commission to:

- 1) Require BH to maintain a contingency plan until the contracted resources need to serve the load as of January 1, 2012 are firmly in place, and
- 2) Allow BH greater flexibility in demanding more stringent security and performance requirements in their PPAs with winning IPPs.

ECI

Environmental & Community Intervenors ask the Commission to:

- 1) Clarify that renewable resources may be bid and accepted, and
- 2) Require bidding of short-term resources to allow for more clean energy options after 2012

OCC

The Office of Consumer Counsel asks the Commission to:

- 1) Reconsider its Decision and approve Black Hills' 2008 Colorado resource plan proposal allowing Black Hills to construct and own all five turbines,

- 2) If, however, the Commission determines that it desires to have some of the capacity obtained through a competitive bidding process, the OCC requests that the Commission reconsider its Decision and:
 - a) allow ALL parties (including Black Hills as a utility) and not just the IPPs, to bid, and
 - b) allow Black Hills to construct all three LMS100 or comparable natural gas combustion turbines rather than only the two authorized by the Decision.

Trial Staff

Trial Staff requests that the Commission

- 1) Make an express finding concerning the responsibilities and authority of the Independent Evaluator in both the bid evaluation and contract negotiation processes to include using an informal discovery process suggest by Staff;
- 2) Make an express finding that the Independent Evaluator is required to provide an evaluation of the implementation of the Commission's third party affiliate rules by Black Hills as well as its affiliated IPP based on express written guidance as suggested by Staff that considers other Commission rules and FERC Order 707, as well as an express finding that the IE be required to include in its on going reports to the Commission information concerning whether those rules have been implemented in a way that does not unduly prejudice any party in the bidding process;
- 3) Make an express finding as to the extent of the waivers of 3610(h) and (i) in order to:
 - a) Expressly state who is to prepare and provide the RFP Summary Report and what the summary RFP report is to contain in addition to the results of the bidding process in order of cost effectiveness;
 - b) Expressly set forth what information the Commission requires in the RFP summary report as well as directions on what additional information the Commission might find helpful;
 - c) Expressly order that copies of this RFP summary report be provided to Staff, to the OCC, and the other Parties in either non-confidential or highly confidential form;
 - d) Expressly order Staff, the OCC, the IE and other parties to comment on the RFP Summary report no later than Staff's suggested date of June 29, 2009;
 - e) Expressly order that Staff, and the OCC receive copies of the bi-weekly reports of the IE from inception through the PPA signature date of October 8, 2008; and

- 4) Make an express finding as to what other procedural processes the Commission intends to implement as a part of the Phase I ordered in Docket 08A-346E after its receipt of the RFP Summary report. Staff suggests that this procedural process could include additional written comments by Staff, the OCC and the Parties, and/or testimony by the Independent Evaluator which could be completed before the final PPA execution date of October 22, 2009. Staff believes that its suggestions will provide a full evidentiary record for a determination by the Commission that the bidding evaluation and contract negotiation process occurred fairly and resulted in the most cost effective resource plan for Black Hills. Staff believes that if the Commission considers this request, that the parties could comment after the last bi-weekly IE report to the Commission, and that the Commission could hold a hearing if necessary during the first full week in October.