

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0407E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP. FOR APPROVAL OF WIND SOLICITATION

**THE COLORADO OFFICE OF CONSUMER COUNSEL'S
CORRECTED COMMENTS ON THE FINAL REPORT
OF THE INDEPENDENT EVALUATOR
(Public Version)**

Pursuant to Decision No. R13-0830-I, the Colorado Office of Consumer Counsel (“OCC”) submits its comments on the Final Report of the Independent Evaluator (“IE’s Report”).

The Commission and the parties selected Accion Group, Inc. to serve as the Independent Evaluator (“IE”) for the Black Hills/Colorado Electric Utility Company, LP (“Black Hills”) 2013 Request for Proposals (“RFP”) for 30 MW of wind power. The IE submitted its Report on August 13, 2013. The OCC’s comments regarding the report are provided below. The OCC also provided testimony in this proceeding on August 16, 2013, which also addresses some aspects of the IE’s Report.

The OCC cited many problems with the Black Hills solicitation in its testimony. These include the small 30 MW size of the bid, the initial \$10,000 bid fee, and the stated preference for an existing LGIA. Black Hills also failed to initially explain their net economic benefits charge, proposed to use a 10-year evaluation period, and then ignored this when the bid from the Black Hills affiliate didn’t meet the requirement. The OCC appreciates the IE’s efforts to survey potential bidders who decided not to submit a bid on why they did not submit a bid. The result

was that some bidders believed that the RFP was rigged to be won by a Black Hills affiliate. The IE acknowledged this on page 29, “There exists a perception on the part of some that the result of the RFP was predetermined, and the Affiliate would be deemed the winner.” The result was a low response – initially only two bidders submitted, but on the second round a total of three bidders participated.

It is therefore surprising that the IE gave the Black Hills RFP a glowing recommendation. The IE report on p. 28 states, “We believe the Company conducted the RFP fairly and without bias towards or against any Bidder or type of generation acceptable under the terms of the 2013 Wind RFP. We are satisfied that Black Hills adhered to the established RFP protocols and consistently demonstrated its commitment to a fair and objective process.” There is not even a hint of qualification in the IE overall conclusion. This is surprising given that the IE report provides three pages of reported problems with the RFP. Our only explanation is that the problems started prior to the IE’s entry into the process.

That is, it appears that Black Hills decided on the 30 MW size, the \$10,000 bid fee, the LGIA preference, and the net economic benefits test prior to IE’s involvement. The IE appears to be saying that once all those bad decisions had been made, that Black Hills RFP was run fairly. The IE hints at the same frustration that everyone has: that Black Hills limited the RFP to 30 MW instead of taking the maximum amount of capacity that it could in order to take advantage of the Production Tax Credit (PTC) before it expires at the end of 2013 and before the 1.25 times multiplier for Renewable Energy Credits (RECs) for wind expires on January 1, 2015 pursuant to Senate Bill 252. The IE’s evaluation appears to be focused on modeling and analysis of the bids and not of the issues that lead to the perception of a rigged bid, the poor response, the high costs of bids and the low number of RECs obtained.

Black Hills Shortage of RECs and Another Potential 30 MW Solicitation

The IE makes an insightful comment, but it provides only a hint of what might be forthcoming. Page 16 of the IE's Report states, "Given Black Hill's projected shortage of RECs, it is expected that additional renewable procurement will need to take place in the near future. With the expiration of the Federal PTC program, future bids may be substantially higher than bids that reflect the receipt of the PTC." It appears that Black Hills current 30 MW RFP will provide only sufficient RECs to meet Black Hills RES requirement through 2015 with banking and the 1.25 multiplier. As the IE hints, Black Hills will likely not meet their 2016 RES requirement. Thus, Black Hills may be setting themselves up for another 30 MW solicitation in a couple of years. If Black Hills does issue another 30 MW solicitation, it is likely to have a similar response and problems as this RFP.

Regulation Charges

The IE addresses regulation charges starting on page 23 of the IE's report. It appears that the IE worked with Black Hills to develop the regulation charges. These regulation charges appear to be developed by reading the tariffs. The IE's Report states on page 24, "Whenever regulation services are provided by an outside entity, there must also be in place a transmission service contract with that entity." This interpretation appears to be the crux of the issue.

First, the IE should have required Black Hills to provide the imputed transmission and regulation charges (or schedules) to potential bidders before the bids were due. This would have allowed potential bidders to have known in advance what regulation charges Black Hills would add onto their bid. Potential bidders should also have known in advance what regulation charges were going to be assessed to their key competitor, Black Hills IPP, which is directly connected to

the Black Hills transmission system. This would have provided potential bidders with more information with which to make the best bid that they could.

If the IE had required Black Hills to spell out regulation charges in advance, not only would bidders have been better able to address them, but parties such as the OCC and Staff could have provided early feedback as well. Instead, this was an issue that came up at the last minute when there was not time to resolve it. This issue didn't come up until the release of Black Hills bid evaluation report on August 2, 2013. There was time for only one discovery request to address this prior to the time when testimony was due. This issue should have been resolved long before the bids were submitted. Instead OCC was scrambling to gain an understanding of this complex issue.

The table below summarizes the transmission charges and the regulation charges assessed on the bids that were received.¹

	Transmission from Developer	Black Hills Regulation Adder (with PSCo Transmission)
Bidder A	\$13.29	\$8.88
Black Hills IPP	\$0.00	\$12.92
Bidder C	\$12.07	\$9.37

The fact that the regulation charges that Black Hills assigned to Bidders A and C are nearly the same magnitude as their transmission charge should have thrown up red flags for everybody, particularly the IE. A cursory review of the transmission and regulation tariffs shows that regulation should cost only a small fraction of transmission costs.

¹ Regulation charges are from Appendix 3 of the IE's Report. Both transmission and regulation charges are shown in Table 4 of the Black Hills 2013 Wind Bid RFP Wind Evaluation Report, August 2, 2013.

This is a complex issue. But, the IE appears to have tried to interpret this only by reading the tariffs and business practices. The IE's report does not provide any indication that they independently contacted anybody at Public Service or Western Area Power Authority (Western) in order to understand the regulation charges.

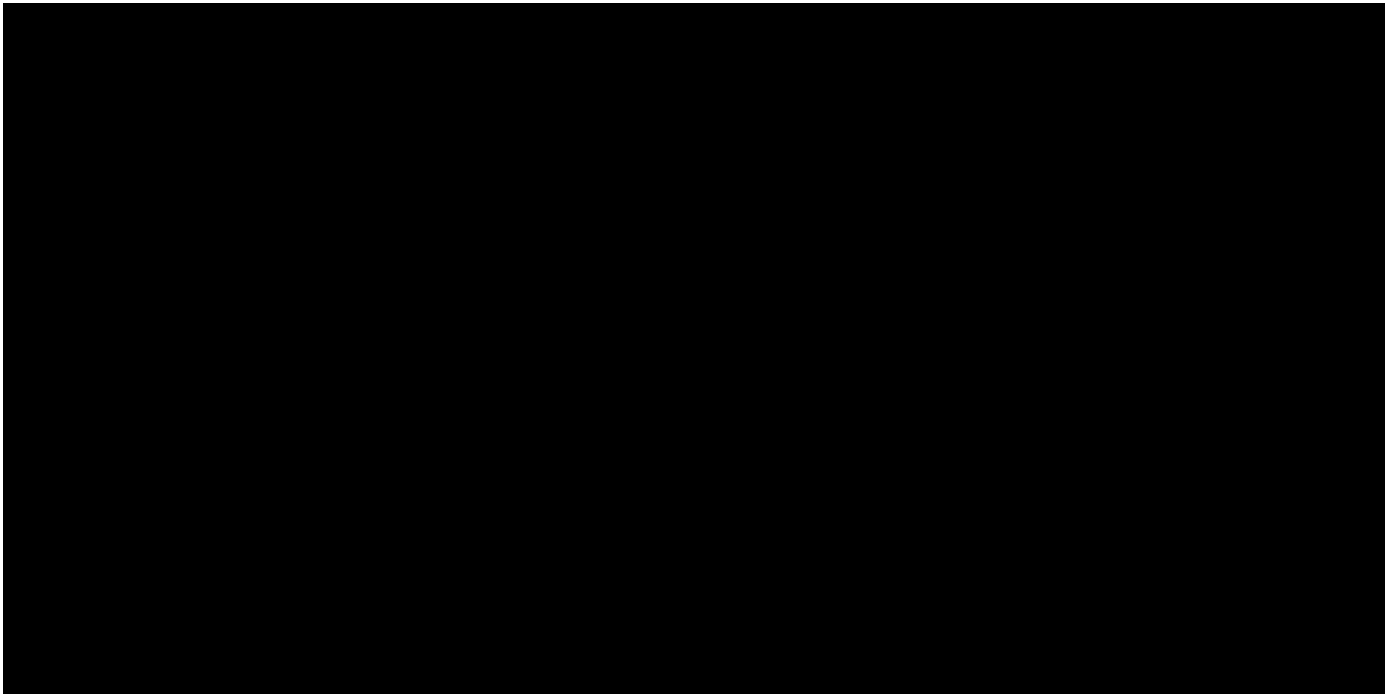
OCC attempted to investigate this issue with Public Service before filing its Answer Testimony. OCC received a call back from Robert (Bob) ~~Stanton Staton~~, PSCo's control center manager, on Friday morning, August 16 with testimony due at noon. He said that OCC was correct that if wind originates in Western's balancing area, then Western needs to provide regulation. Western is generally Tri-State's balancing authority and provides regulation when Tri-State provides transmission. He said that the other option is BASOT which will be discussed below.

OCC also received a call back from Gerry Stellern, Public Service transmission planning manager, on Tuesday, August 20th. Mr. Stellern stated that regulation can ~~certainly~~ be provided without transmission. He said that Black Hills is ~~the best an~~ example because Public Service provides regulation service to Black Hills but does not charge them for transmission. BASOT is one term used for this, but Balancing Authority Ancillary Services is the term used in the Public Service transmission tariffs. ~~This is ancillary services provided to entities who are in Public Service's balancing authority but who do not take transmission service from them, like Black Hills.~~

Balancing Authority Ancillary Services are discussed in Section IV starting on page 86 of Public Service's Open Access Transmission Tariffs available at <http://www.xcelenergy.com/staticfiles/xcel/Corporate/OATT%5b1%5d.pdf>. Page 101 of this tariff states:

“Service by Public Service Company of Colorado: The Transmission Customer *or* [Balancing Authority] Ancillary Service Customer shall purchase Regulation and Frequency Response Service in the following amounts:” (Emphasis added).

And then it lists the prices for regulation service. The “or” in the above statement indicates that services are indeed provided to those who do not take transmission service from Public Service, such as Black Hills or the wind bidders.



There has not been time for the OCC to fully resolve this complex issue of regulation charges. But, it appears that the approach used by Black Hills and the IE of charging twice for transmission is not correct.

Access to the IE

Due to Commission Rule 3612(d), the OCC had essentially no access to IE. The Rule states that “[a]ll parties to the resource plan other than the utility are restricted from initiating contacts with the independent evaluator. Therefore the OCC was not allowed to email or phone the IE to raise and discuss problems and concerns or to suggest that the IE investigate certain

aspects of the RFP. On the two occasions that the OCC met with the IE in person (meetings were initiated by the IE), the IE appeared to welcome comments from the OCC. But once the IE left the room, the OCC was not allowed to email or phone the IE with comments. The OCC would have more confidence in the IE's independence, analysis and conclusions if the OCC had been able to work with the IE throughout the bid evaluation. To the contrary, Black Hill was not restricted from initiating contact with the IE and therefore the IE was only able to get the perspective of the utility. The OCC recommends that in the future, the OCC have full access to the IE.

Comments by Chris Neil, Rate/Financial Analyst for the OCC.

Respectfully submitted this 6th day of September 2013.

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CERTIFICATE OF SERVICE
13A-0407E

This is to certify that on this 6th day of September 2013, I have filed **THE COLORADO OFFICE OF CONSUMER COUNSEL'S CORRECTED COMMENTS ON THE FINAL REPORT OF THE INDEPENDENT EVALUATOR (Public Version)** via e-mail to the following:

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