

# BIG PIVOTS

Energy and water transitions in Colorado and beyond

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## Colorado's steel city calculates risks and rewards of ousting its electrical utility

by Allen Best

Pueblo voters on May 5 will decide whether to stick with their existing electrical utility, Black Hills Energy, or municipalize operations.

Proponents and opponents frame their arguments in terms of opportunity and risk. The fulcrum for the debate is the high cost of electricity in Pueblo, which is among the highest in Colorado and some say the nation.

The most immediate comparison is to Colorado Springs, which has a municipal utility, similar to what is proposed for Pueblo. Residential rates in Pueblo are 36% higher, 33% higher for large commercial customers, and 41% higher for small commercial.

In metropolitan Denver, rates charged by Xcel Energy are also substantially lower. In fact, nearly all of Colorado's several dozen utilities charge less than those charged by

Black Hills, according to rate surveys conducted by the Colorado Association of Municipal Utilities. Steve Andrews, a proponent of municipalization, says those who get their power from public-power sources across Colorado similar to what he supports in Pueblo paid \$82 per 700 kilowatt-hours of electricity compared to \$112 for Pueblo.

Could Pueblo residents and businesses do better if the city—through its parallel agency, the Pueblo Board of Water Works—took over operations? That's what voters must decide.

How much it would cost to take over Black Hills operations depends upon what portion of the service territory is included. A [study completed last October by EES Consulting](#) calculated the debt service for Black Hills operations only within Pueblo at \$348 million over a 30-year period.

There are also provisions for creating a regional utility to deliver electricity to all of the current Black Hills electrical customers in Colorado, if they want to join Pueblo. All of

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Pueblo County, including Pueblo, would be \$461 million. The estimated cost was \$848 million for acquisition of the full Black Hills service territory in Colorado, which stretches from Cripple Creek and Westcliffe on the west to Rocky Ford and beyond to the east.

These figures include Black Hills' generating assets, but whether they would be acquired would depend upon negotiations.

The Board of Water Works would be responsible for negotiating with Black Hills or, if necessary, for condemning the assets in legal proceedings. The board would also be responsible for financing the acquisition costs and court costs. The board members would continue to be elected by city voters.

The Water Board pointed to relatively simple arithmetic. The city had commissioned two studies. [The first one](#) established that a public power utility would reduce rates and costs over time. The [Phase 2 study](#) delivered in October offered more specifics. It said Black Hills generates between \$250 million and \$260 million in revenues, and after expenses, enough

revenue would be left to cover bonds of \$900 million to \$1 billion. It also concluded that a community-owned electric utility could deliver current customer savings of 10% to 14%.

Electrical utilities are wonky things, so a brief primer might be useful. First, Colorado has two investor-owned utilities that deliver electricity: Black Hills and Xcel Energy. The latter serves metropolitan Denver and some other areas in Colorado. The remainder of Coloradans get their electricity from electrical co-ops or municipal providers.

Black Hills, which is based in Rapid City, S.D., in 2008 purchased Aquila, the previous utility serving Pueblo, for \$282 million, according to a filing on the Federal Energy Regulatory Commission website. It soon got out of coal, replacing that with a gas-fired power plant east of Interstate 25 near the airport and industrial park. Pueblo's franchise agreement with Black Hills continues to 2030.

**O**pponents of municipalization have a sturdy voice in the Pueblo

Chieftain. Its just-vote-no [editorial on April 10](#) reminded readers of instructions issued by judges in criminal cases: “Don’t vote to convict unless the prosecutors have proven their case beyond a reasonable doubt.” Proponents had failed that test, it said. Most of the information came from a single consultant’s report – and one tainted in the Chieftain’s telling by the guidance of the city officials who “were very transparent about their interest in hearing the virtues of municipal electric services,” the newspaper said.

“Relying so heavily on one source of information on a subject this complicated is a bit like reading the CliffsNotes on “Moby Dick” and then claiming to be an expert on whale hunting,” the newspaper said. “Proponents say a municipal electric company would save money, but it’s not clear how.”

Risks outweigh potential rewards, in the newspaper’s view. “It seems extremely unwise to put the city’s future at risk based on some vague hopes that it would all work out well in the end.”

The city council also adopted a resolution, on a 4-3 vote, opposing municipalization. Among those in the majority was Dennis Flores, the city council president.



**Nick Gradisar**

“Do not be fooled. This is not the panacea the other side would have you believe,” [he wrote in the Chieftain](#).

The most prominent supporter of municipalization is Nick Gradisar, the mayor. He took office in January 2019, winning 57% of votes.

“Black Hills is an investor-owned utility and, as such, its primary allegiance and legal duty is to its shareholders to generate profits,” he wrote in a [Jan. 28 op-ed](#) published in the Chieftain. “A public electric company would have no shareholders,

would not have to generate profits, and its primary legal duty would be to its customers and ratepayers.” But he warns against expecting lower rates immediately.

“Based on its current rates, over the remaining 10 years of the franchise agreement, Black Hills would take out of this community \$130 million in profits. This is one of the reasons that we have the highest electric bills on the Front Range.”

The business community in Pueblo mostly seems to favor municipalization. The Pueblo Chamber of Commerce [points to](#) the consultant’s study—the same one seen by the Chieftain as wanting in depth and honesty—as showing transition to a community owned electric works would achieve “significant rate savings over a 20-year period.”

“When it comes to attracting new businesses to Pueblo, these rates can be a deal breaker,” says Andrew Lang, chief operating officer of TR Toppers, a Pueblo-based food processing and distribution company, in an [op/ed in the Chieftain](#).

**F**rances Koncilja offers the most interesting—and certainly combative—voice. A native of Pueblo with continued strong ties to the community, she served on the Colorado Public Utilities Commission four years until being replaced in March. When on the PUC commission, she was barred by a Denver district court judge in 2018 from further review of rates by Black Hills because, the judge concluded, she had shown she could not be impartial.

The Pueblo Chieftain [in that story](#) described her comments as “often scorching.” She sees Black Hills as taking actions that are scorching.

“The company is unstoppable—scorched earth litigation at the PUC, high-priced lobbyists, access to the governor,” she wrote in an April 10 op/ed, [“End Black Hills’ predatory business practices.”](#)

That strong language is tame in comparison with her remarks in an interview

conducted by municipalization proponents on a Facebooks stream last Friday night. There she accused Black Hills of chicanery at every turn, describing the company as an “energizer vampire.” (See a partial abridged transcript on page 5.)

Much has been made by opponents of municipalization about Boulder’s much longer attempt to break away from Xcel Energy and form its own municipal utility. “Our neighbors in Boulder have spent a decade and millions of dollars in an attempt to municipalize their electric service, without an end in sight,” points out the Chieftain. Opponents also point out that many efforts to municipalize around the country have come to nothing.

But proponents say that Boulder went about things differently, and Pueblo has a better approach and has learned from Boulder’s mistakes. Too, Pueblo’s later start works in favor of Pueblo, while creating a drag on Boulder’s efforts. Prices of renewable energy have plunged in the last decade, allowing Pueblo more options and undermining the reason why Boulder sought independence: To more rapidly green up its power supply. Xcel Energy, its supplier, is now rapidly doing so—ironically by closing two of the three coal plants that are the city’s backdrop.

**B**oulder’s attempted break a decade ago was precipitated by a desire to accelerate the transition to emissions-free energy. In Pueblo, the municipalization effort has been almost purely about rates. That’s ironic, given that Pueblo was the first municipality in Colorado to formally embrace a 100% renewable energy goal. That was in 2016.

Larry Atencio, a city council member who initially was the public face of the 100% renewable goal, getting national attention, opposes municipalization but instead points to the work of Black Hills. It’s building a 200-megawatt renewable energy system, probably solar, that will result in a 5%

decrease in rates. Proponents, however, question whether the solar farm will ever get built, given how much generation Black Hills already owns. As for the 100% renewable goal adopted by Pueblo, Gradisar, the mayor, says that municipalization should allow Pueblo to hit that target by 2035.

A poll conducted by the city in early March, part of a broader survey about municipal issues, found 70% favoring a new public-power utility. But that was before a public relations campaign was launched by a new group called Pueblo CARES with a barrage of TV and radio advertisements challenging municipalization. The [Chieftain on April 16 reported](#) that the group had received over \$1.5 million in contributions from Dec. 19 through April 13. Several council members and others had contributed \$250 or less to the group, and Black Hills Energy said it has contributed, but not exactly how much.

The proponent group, Bring Power Home 2020, a campaign-issue committee that grew out of the all-volunteer Pueblo’s Energy Future, reported \$21,000 in contributions for the same period. That mismatch in the campaign war chest is one reason that Andrews, of Bring Power Home 2020, describes his group’s efforts as one of David vs. Goliath. See page 9.

Still, municipal proponents mostly express optimism they will prevail. “I think we’re still in the running,” says David Cockrell, a former city planner and college administrator and a key figure for several years in the municipalization effort. “We are not convinced we’re going to lose. It’s still possible we may win substantially.”

And if David should win the vote next Tuesday? Koncilja, the former PUC commissioner, says it will be national news. It will also be the big pivot that will allow Pueblo, which even now remains best known in Colorado for its steel mill, to more fully participate in the great energy transition.

# Frances Koncilja: Why Black Hills Energy cannot be trusted

## Ex-PUC commissioner throws sharp elbows in Pueblo interview

Even when she was on the Colorado Public Utilities Commission, Frances Koncilja had a reputation for speaking her mind. Now off the commission, she loosened her tongue even more last Friday in an interview with proponents of replacing Black Hills Energy with a municipal electrical utility.

Most of her comments were directed at Black Hills, whom she described as devious. “You just can’t trust them,” she said, describing her four years as a regulator of Black Hills while on the PUC. Black Hills, she said, is “an energizer vampire,” sweet and cuddly during the day, that at night tries to “figure out every blood-sucking way they can take a dime out of the community.”

But she also threw verbal lances at a fellow PUC commissioner who had been legal counsel to Black Hills Energy prior to joining the PUC and also unspecified lawyers, in Pueblo and elsewhere, whom she accused of selling out in violation of their principles. “Ask them if their Judas silver was



Frances Koncilja

worth the price of selling out their principles,” she urges listeners.

Occasionally salty, she is always brash. “I had no idea that oil-and-gas roughnecks would be such snowflakes,” she said at one point. It was part of her explanation about why Black Hills sued to disqualify her “because I used the word ‘turd’ in a public hearing.” That is in a section of the following interview that has been abridged to minimize length.

Koncilja is a Pueblo native from a prominent family with continued commercial interests in the city’s downtown area. She has practiced law in the Denver area and was president of the Colorado Bar Association.

She was interviewed in a Facebook livestream by David Cockrell from Bring Power Home 2020, a campaign issues committee formed to support municipalization. [The video can be found here.](#)

## David Cockrell: Why are Black Hills’s electric rates in Pueblo so high?

Frances Koncilja: You have to go back to 2007 when Black Hills [first acquired Aquila](#), the previous electrical supplier. That was a bad deal from day one. Pueblo opposed the transaction and the Office of Consumer Counsel opposed the transaction, and the (PUC’s) trial staff opposed it and told the commissioners to oppose it, but if you grant it, put these guardrails on. They put guard rails on, but not as many as they should have.

Everyone knew at the time that the power-purchase agreement would expire, and commission (PUC) did tell them to come up with a plan to replace it.

They did what they have always done, they gamed the system. They delayed, they delayed, they delayed—because they didn’t want another power purchase agreement. They wanted to own generation, because the way you make your money and deliver profit to your shareholders is if you own

generation. So finally the commission let them build a new (gas-fired) plant.

Then Clean Air, Clean Jobs came in (2010), and by god they used that with a vengeance. They replaced the coal plants with new gas plants. Unfortunately, that statute let them do that without competitive bidding. So once again they owned it.

Where I do fault the commission is that at some point they should have figured out what was going on. It's not much more complicated than a numerator and a denominator. As long as you keep letting them build more stuff and getting a rate of return on the number, and the denominator stays the same, which is the usage and number of customers, the unit cost goes up.

That is why (electric costs in Pueblo have) gone up. It became a vicious cycle. You can't get any economic development, because people will go to Colorado Springs, not Pueblo.

**Between 2008 and 2012, it felt like the PUC was not protecting the public. It felt like there was capitulation to the companies. Can you explain the balancing act that the commission has to undertake and how you feel it has played out in the case of Black Hills?**

Regulation of utilities is very complicated and challenging, and I think 10 years ago there was an attitude that you leave the utilities on their own to run things and you don't get too involved and you trust them. Unfortunately, that didn't work with Black Hills. Black Hills is the only utility I think that the PUC has admonished their chief regulatory officer twice in the last four years for lying to us.

When you have a rogue utility that is willing to lie to the commission you get bad results. I think it took the commission awhile to understand that you just couldn't trust them because, in my opinion, they are the energizer vampire. You can't beat them down, they are always out there moving

around. During the day they look sweet and cuddly. Something happens at night when they go back to their office and they figure out every blood-sucking way they can take a dime out of the community.

What is offensive to me is they do it to smaller communities, rural communities, that don't have as much money.

The other thing that goes on at the commission is that they have limited staff. There are three commissioners, there's a huge amount of work, and not all commissioners in the past quite frankly have been diligent and/or knowledgeable, and it's challenging if you want to do it right. You have to work hard and you have to read a lot. And I think in the past not all commissioners were like that, some had political agendas, others worked hard.

And the commission has a small staff, 98 people to help the commission make decisions in the areas of transportation, telecom, railroad, electric and gas utilities. So if you have a rogue utility, it is very hard to keep track of them.

And quite frankly, the attention is always going to go to Public Service, because they have 1.5 million ratepayers.

**So Black Hills is not just behaving the same way that all investor-owned utilities behave.**

Sweet Jesus, no. I have been stunned at the shenanigans they have pulled just in the four years I was on the commission. I wrote in the Chieftain about the cost of debt. Everyone knows that interest rates have been low. Colorado ratepayers, especially Pueblo ratepayers in the Black Hills service territory, have not benefitted from those rates.

Cost of gas has been next to nothing. Pueblo has not benefitted from that. And the way they calculate the cost of debt is they do it at the corporate level and they decide who will bear the costs. I can't tell you what the numbers are because it's

confidential. Fascinating. The lowest cost debt goes to their unregulated entities, which is ridiculous because unregulated utilities are riskier than utilities. Black Hills does things no other utility has done.

During my four years on the commission, I saw (Xcel Energy subsidiary in Colorado) Public Service Co. pull back from taking every dollar for themselves. For example, on the Colorado Energy Plan, which is Public Service's plan to close the Comanche 1 and 2 coal plants. When the commission said you have to go to competitive bids for replacement generation, and the third parties bid much lower than Public Service on a lot of things.

Public Service did not fight the commission. They awarded the bids to the lowest cost.

Black Hills would never have done that. We would have litigated with them for years. The other thing that Pueblo people don't understand is what Public Service did to keep (steel mill operator) Evraz in your community, my community.

Some of the things they (Black Hills) do is stunning. It's just hard to keep track of them. They wear you out—which is why Pueblo should create its own utility. You don't have to keep track of them, you don't have to hire lawyers to track them down and see what they're taking, and you don't have their own sitting on the commission.

**Energizer vampire. Great tagline. Do you think that Pueblo Board of Water Works is really capable of setting up and managing a professional and reliable electric utility?**

Yes absolutely, no question. What annoys, me, what quite frankly pisses me off, is the implication that Pueblo is a group of rubes and can't run an electric utility. I have seen (the Black Hill) ads. They create this false impression that going with the Board of Water Works is risky. It's not risky. Staying with Black Hills is risky.

The other thing they do is, oh my god, Boulder has had a hard time. It's 10 years and if Boulder can't do it, Pueblo can't do it. Because, you know, everybody in Boulder is much smarter. That's not true. Boulder made numerous decisions that were not supported by the law. They took on fights they didn't need to. And they lost them in Boulder District Court and the Court of Appeals. That's what cost them years and hundreds of thousands of dollars. I think the Board of Water Works is smarter than the folks in Boulder, and I think they will learn from (Boulder's) mistakes.

As for Black Hills, I don't think they are a particularly competent public utility, and I could share some other stories. But what they are expert in is creating value for stockholders. Since they have been in Pueblo, their stock prices have almost doubled. They have brought back substantial rewards for their shareholders every quarter for the last 12 years.

And they have done that on the backs of poor people. Keep in mind that Pueblo has a high poverty rate. The statewide poverty rate is 10.3% and in Pueblo it's 18.2%. At the same time, Pueblo residents use less electricity. 619 kilowatt hours on average per month. That is really low electric use. It puts Pueblo on par with those who have less than \$20,000 of annual income.

Pueblo residents are poorer than average, poorer than the rest of the state, they use less electricity, yet they are paying higher rates, 30% more than Colorado Springs. Why does this make sense? Why would you stay with Black Hills?

I have no idea why the majority of the city council is backing these energizer vampires. And quite frankly what annoys me is that none of them called to ask my opinion. I have been on the front lines for four years. I know where the bodies are buried, I have scars to show for it.

And the fact is, I left the commission on March 13, and I didn't get one phone call,

asking, “Commissioner Koncilja, what do you think?” Because I would have told them.

The other people I am real disappointed in are the high-priced law offices, some in Pueblo, some outside Pueblo. Some I would count as my friends. But you should ask how many pieces of silver they got for turning their back on poor people. The Pueblo I grew up in, when they saw these wealthy lobbyists, they would have chased them down the street with pitchforks. I don’t expect people of Pueblo to do that now. I think you’ve become a little more civilized.

The next time you see these lobbyists, ask them what their hourly rate was, ask how much money they made, and tell them how bitterly disappointed you are. And ask them if their Judas silver was worth the price of selling out their principles. I didn’t sell mine out. My brothers didn’t sell theirs out.

### **What do you think the day after the election looks like for Pueblo if we do vote in favor of 2A public power?**

Here again I fault the city council, all they are doing is focusing on the problems and some of the false problems. If Pueblo votes on May 5 in favor of municipalization that day will put Pueblo on the map nationally. That’s going to be a game changer for Pueblo.

That’s going to be the day that Pueblo ceases to be just being a steel-production city, but for wind, solar, batteries, storage—and taking control of its own destiny without having to worry about the political agenda of the Denver commissioners, and what the agenda of the governor will be, who he wants to be friends with and who he wants to off. Pueblo will be able to attract businesses because this will be a game changer.

You can create courses at the university and the community college to talk about an efficient grid, the resilience of grid with renewable energies and all these things.

The city council should be getting behind this, coming up with a new name, a new logo and a new name for Pueblo. Do you want to be called Super Charge? Sun City? You will be able to do something big and important in my home town as opposed to begging Black Hills to do the right things, as opposed to bringing in call center jobs at minimum wages. This is Pueblo’s opportunity at greatness.

**Editor’s note:** What you missed in this abridgement were sharp barbs where she alleges conflicts of interest by a former PUC commissioner, Wendy Moser. Previous to her time on the PUC, Moser had been the general counsel of Black Hills, and Koncilja said in that capacity she had threatened to sue the PUC if it did not allow Black Hills to build new generation.

She also discussed an attempt by Black Hills in 2018-2019 to use a new rate incentive provision approved by Colorado legislators to promote economic development. Black Hills wanted an expedited review for what it said would be a \$100 million economic development via a new data center to be located along I-25. The data center proponent was living in what Koncilja said was a rented house in Denver’s Stapleton neighborhood.

For a brief writeup from June 2019 of that affair, [see my story in Energy News Network](#). One of the PUC commissioners in that case faulted my story, pointing out that the decision adopted by the commissioners included provisions that protected existing ratepayers, and those provisions were not captured in my story.

Koncilja dissented in that decision but in her interview last Friday credited her fellow commissioners, Jeff Ackermann and John Gavan, with adding provisions to protect ratepayers. The data center proposal retreated from its September completion and then quietly died late last year.



# Colorado articulates goal of emissions-free transportation. But how to get there?

In a few years, as more coal plants get retired, transportation will become the No. 1 source of greenhouse gas emissions in Colorado. To achieve the reductions identified by legislators in a 2019 law, Colorado will have to electrify transportation.

Will Toor, director of the Colorado Energy Office, laid out some of the aspirational goals about how Colorado can decarbonize its transportation. This builds on a plan issued by the state in January 2018, in the final year of the administration of John Hickenlooper.

That plan called for 940,000 EVs on Colorado highways by 2030. Even today, just 30,000 of the state's 5 million registered vehicles are electrified. Achieving that goal will require increasing sales by 50% each year. Because cars typically turn over every 12 to 15 years, it's important to think in terms of that lifecycle when setting carbon reduction goals, he said.

Before the covid-19 pandemic, Colorado was on target to achieve its June 2020 target, reported Toor.

The new Colorado Electric Vehicle Plan sets the bar even higher than did the 2018 plan by calling for electrification of all kinds of vehicles, not just passenger cars.

The broadened focus also includes medium- and heavy-duty trucks and transit buses. It sets a goal of having 1,000 electric transit buses in Colorado by 2030. Several times in his presentation Toor talked about "putting stakes in the ground," and sometimes the stakes are big.

Travis Madsen, transportation program director for the Southwest Energy Efficiency

Program, points out that even last summer state officials weren't willing to call for 100% electric and/or zero-emission transportation.

He also notes that the state is evaluating whether to adopt two rules, one for clean trucks and the other for clean transit, which would require manufacturers to deploy electric or fuel-cell trucks and buses in increasing numbers.

In a posting on the SWEEP website, Madsen also pointed out that the state with its new plan aims to quantify the charging needs across Colorado by undertaking an EV charging infrastructure gap analysis. The state will also continue to support the build-out of community and highway charging stations by facilitating new partnerships, developing installation guidelines and resources, and expanding funding through the Charge Ahead Colorado Grant Program.

Toor said the Colorado Energy Office sees a potential role for hydrogen in Colorado's future energy mix. "There are multiple technological pathways that might make sense, including potentially renewable natural gas," he said. "We know there is a lot of interest among Colorado utilities for the potential production of green hydrogen."

The latter is a reference to how the hydrogen is produced, as hydrogen is agnostic about the base fuel used to create it. In other words, it can be created using renewable energy or fossil fuels.

But how will Colorado advance its transportation goals? There never was a silver bullet, an easy answer. And the plan described by Toor leaves ample room for future strategies. In other words, many concrete steps must still be identified.

Madsen points out that the next big step will be in May, when Xcel Energy and Black Hills Energy, the state's two investor-owned utilities, will submit plans about how they plan to invest in transportation electrification.

Tri-State Generation and Transmission will do the same later this year.



## How Colorado silver mine and sugar beet factory figured into major water ruling

A Supreme Court case from Hawaii decision [described by CNBC](#) as the most high-profile environmental case of the court's current term has two cases from Colorado deep in the citations. One is about pollution from a silver mine near Ouray and the other is about a sugar beet factory at Fort Morgan.

In Hawaii, a wastewater reclamation facility that treats millions of gallons of sewage each day was injecting the treated waste into wells deep underground. A study by the EPA showed that nearly all of the treated wastewater ends up in the Pacific Ocean.

Did this require a permit from the Environmental Protection Agency? Yes, said the Sierra Club and other environmental

groups, citing requirements of the Clean Water Act. Two levels of federal courts agreed with the environmentalists, the higher level saying that such permits were required when pollutants are "fairly traceable" from the pipe to navigable waters, which includes the Pacific Ocean, via groundwater.

The U.S. Supreme Court, in a 6-3 decision, mostly agreed with the environmentalists but adopted a somewhat narrower requirement. Some news sources called it a compromise.

"We conclude that the statutory provision at issue requires a permit if the addition of the pollutants through groundwater is the functional equivalent of a direct discharge from the point source into the navigable waters," said Justice Breyer, author of the majority opinion.

In coming to this conclusion, the justices relied in part upon citations to an [amicus brief](#) filed on behalf of Maryland, New Mexico, and 12 other states.

That brief points out that the Trump Administration's interpretation of the Clean Water Act would allow a polluter to evade the Clean Water Act treatment

requirements by moving its discharge pipe into immediately adjacent groundwater.

“This sort of gamesmanship is by no means fanciful,” says the brief in describing one of the two Colorado cases.

- The Ouray Silver Mine is located along the Yankee Boy Basin road on the way to the Blue Lakes Trailhead for Mt. Sneffels.

The mine violated terms of the permits issued by the state of Colorado, which was premised on enforcement of the Clean Water Act. Mine operators tried to move the discharge a few feet away from Sneffels Creek to avoid the violation while also avoiding the cost of treating the wastewater. The state said no, and the mine then complied.

- The case involving the Great Western Sugar factory in Fort Morgan was more complicated. Lime is used to extract sugar from the pulp of sugar beets. Also, fecal coliform poses a challenge, as beets are commonly grown in fields fertilized with manure. The “mud” washed off the beets contains that fecal coliform.

Western Sugar Cooperative—previously known as Great Western, with offices in downtown Denver—has struggled to meet the effluent limitation guidelines for decades. In 2012, the state health department took a closer look at the hydrology before issuing a new permit. This time it found more actions outside the law. The case was settled in 2018 with Western Sugar paying a \$2 million fine for multiple offenses involving water, air quality, and other regulations.

Ellen Howard Kutzer, formerly the permits-section manager at the Colorado Department of Public Health and Environment, says the Supreme Court affirmed Colorado’s interpretation of the Clean Water Act.

“In both these situations, the permittee was having compliance issues, so they tried moving their discharge a few feet away to get out of more stringent requirements.

CDPH&E said no – it just took awhile longer in the case of Western Sugar.”

National media have also pointed to potential implications for cleanup of coal ash. “It makes it clear to utilities that they cannot continue to have leaking unlimited local ash lagoons that are polluting the adjacent lakes, rivers, and streams in violation of their permits,” Frank Holleman, senior attorney with the Southern Environmental Law Center, told E&E, the news service.

Davini Pjaria says the ruling has implications for any sort of surface impoundment, including coal ash ponds. But what constitutes leakage given the somewhat narrow definition of the Supreme Court interpretation will likely result in countervailing testimony by experts.

#### **Footnotes to this story:**

- This writer worked at the sugar beet factory in Fort Morgan, leaving employment in January 1974, the same month that the EPA issued guidance for wastewater discharge.

- Thomas Hornsby Ferril, now long gone, may remain Colorado’s best-known poet. You can see his lines ‘mid the murals in the rotunda in the State Capitol. Carl Sandburg called him the poet of the Rockies. He made his living, though, singing the praises of sugar beets as director of public relations for Great Western Sugar.

I inquired of Greg Hobbs, a former Colorado Supreme Court justice who had himself served time in the interest of sugar-beet producers as counsel for the Northern Colorado Water Conservancy District. Had Hornsby Ferril ever written a poem about sugar beets? I wondered. Greg thumbed through four books of the late poet’s poems, but found not one about sugar beets.

Greg did share a poem of his own from 2005 about a journey to Bent’s Old Fort along the Arkansas River with his son, Dan. Thanks!

# David vs. Goliath in Pueblo

by Steve Andrews

## Bring Power Home 2020

In the battle by proponents in Pueblo to break away from the high rates of electricity supplier Black Hills, a perfect analogy is David vs. Goliath. Will David prevail this time?

Proponents of the break-away have long-standing public opinion on their side. Community outrage with Black Hills' high rates hit a fever pitch during August 2016. More than 500 people jammed a hearing by the Colorado Public Utilities Commission in Pueblo's convention center. Fifty testified before the PUC, 47 strongly against Black Hills.

Professional public opinion surveys taken during 2017 and 2019 confirmed that Black Hills was an enormously unpopular electricity supplier. "In nearly 30 years of polling for embattled electric utilities around the country on hostile takeovers, territorial fights, rate changes, transmission line siting, renewables issues and other controversies, we have never seen a utility as strongly disliked as is Black Hills Energy in Pueblo," said the Ma6 2017 executive survey. Double-ouch!



Steve Andrews

Black Hills earned an 83% negative rating on working to keep rates low—more than double the normal score—plus a 75% negative rating on providing fair value for the dollar.

In September 2017, after Black Hills appeared to double-cross the City by first encouraging Council to upgrade street lighting efficiency and then changing the economics of the deal, City Council voted 7-0 to create an Electric Utility Commission to hire consultants to study the feasibility of leaving Black Hills.

Beginning in March 2018, Black Hills responded with a charm offensive. It increased community donations 40%, to \$393,000 in 2018. The advertising budget ballooned from \$14,000 during 2017 to \$455,000 during 2018.

Two opinion surveys during the summer of 2019 revealed minor inroads by Black Hills. Those surveyed said Black Hills was a bad electric utility partner by a margin of just over 2-to-1, down from 3-to-1 two years earlier.

Black Hills cranked up its offensive last fall and early winter. It commissioned its own feasibility study that, no surprise, contradicted the energy-savings projected by the City's consultant. Black Hills offered the City a suite of promises—more renewable energy, more investment in the community, etc.—that it asserted was worth hundreds of millions. But the promises would only be redeemed if the City shunned the breakaway proponents.

By early January, community leadership appeared split on the issue. The mayor, a strong proponent of public power, teamed up with Pueblo's Board of Water Works (BOWW) to propose a change to the city charter. While the city council voted 7-0 to send the proposed amendment to the voters, the council voted 4-3 against supporting the amendment.

The last public survey showed that public power advocates maintained a still-

shrinking lead, by just under a 2-to-1 margin. But a notable fissure had appeared: voters under age 45 favored leaving by a 4-to-1 ratio, while those over age 65—and most likely to vote—favored staying with Black Hills by a 58%-to-42% margin.

A real game-changer hit in January when a new lobbying outfit called Pueblo CARES (Clean Affordable Reliable Energy Solutions) started spending what is now \$1.5 million to fight 2A. Pueblo CARES's ads started appearing on the Internet in February, then got onto prime-time TV during March. Full-page ads in the newspaper, at \$5,000 a pop, showed up regularly. By early April the onslaught included full-color 4-page mailers.

Their narrative revolved around scare tactics: it's a risky government takeover, the buyout will cost over \$1 billion, taxes will increase, electric bills will jump, reliability will decline, etc. Such tactics range from mostly misleading to definitely false (e.g., no taxes involved).

Everyone assumes the Pueblo CARES war chest came from Black Hills, though through artful design of organization structures, that assumption can't be proven; no disclosure of the funding source is required...at least during the current coronavirus-induced shutdown of local courts which might rule otherwise. Historically, investor-owned utilities outspend efforts to form breakaway public power utilities by a 10-to-1 margin. In Pueblo, supporters could only dream of such a competitive scenario.

**T**he funding to fight 2A dwarfed funds available to the citizen activist group, Bring Power Home 2020 Campaign. Supporters amassed a kitty of around \$12,000 when Pueblo CARES got its first \$750,000. Cash-strapped, they had money only to place 525 yard and street signs, to boost video and written messaging on social media platforms and to write op-eds and letters-to-the-editor in the Pueblo Chieftain.

Coronavirus has worked against the breakaway. Volunteers had eagerly signed up to participate in several public debate forums, only to see most of them canceled by the pandemic. Proponents' main strength—numbers of volunteers to canvass neighborhoods, talk to homeowners, distribute door hangers and stand on busy street corners with signs—was eviscerated by community lock-down rules.

Proponents for public power received a late surge when several manufacturers quietly made donations, growing BPH2020's total to \$30,000 plus, and several business leaders spoke out strongly for the breakaway. Pueblo's Chamber of Commerce also supported 2A. A list of who's who of current and former elected officials signed on. The most notable voice to join the fray was former PUC Commissioner Frances Koncilja (see 5).

That said, the community's current leaders remain split. Two current council members co-chaired the Pueblo CARES campaign, while two others sided publicly with the mayor. In a city that switched from a city council/city manager to a strong-mayor form of government in 2019, six of the loudest voices against the mayor's breakaway plan ran against him during November 2018 and lost. Unshaken, the Mayor continues to assert that this is likely the most important financial decision that Pueblo will have made in its history. He's probably right.

So, the day of reckoning is almost here. Will Goliath, with its \$1.5 million campaign succeed in scaring the locals to remain with the highest electric rates along the Front Range? Will David, outgunned financially by 50-to-1, prevail? In this case, Goliath looks tough to bet against. My bet is.....

*Steve Andrews is a retired energy consultant and Black Hills customer living in Florence.*

## What YOU said

### Remembering Ed Marston

Nice article about Ed Marston (the writer's late father; See "Upheaval and Tension," in the April 23 issue of Big Pivots). I appreciate that you gave him recognition for his work on Delta-Montrose Electric Association. He's missing out on all the glory—the demand and success of Elevate, which was John Gavan's idea, but Ed listened and championed it. As well as the separation from Tri-State.

He'd loathed the profligate spending and mismanagement of (the wholesale suppliers) since Colorado Ute. Not so secretly predicting that it would eventually groan and die.

I'm sad to be here, in this city that I love. It will be a long road back. How do you recover with no testing, let alone no vaccine? We're so used to being in elevators, busses and subways where we stand 1 foot apart.

So I'm leaving for Colorado a week from Saturday. The final straw is now that it's getting warm, I go outside with my daughter and the open spaces are packed with people.

Anyway, moving on. You've hit a sweet spot with your latest creation. Well done. Keep up the good work.

David Marston  
New York City

### Why FERC will best adjudicate interests of Tri-State members

*Big Pivots reached out to Tri-State Generation and Transmission for clarification on the two stories in the April 23 issue, asking in part what was the hurry about seeking FERC jurisdiction before Colorado regulators review the question of what constitutes fair and reasonable exit prices for United Power and La Plata Electric.*

*The response was from Mark Stutz, a Tri-State spokesman. It arrived a day after that issue of Big Pivots was distributed. But here it is now.*

Sorry this took a bit of time to track down. Our position on the jurisdictional issues are as publicly stated and filed; there is not a great deal to add.

There is no issue of expediency here, other than to bring resolution in a timely fashion as to the question of appropriate jurisdictional authority.

Tri-State has been Federal Energy Regulatory Commission (FERC) jurisdictional since Sept. 3, 2019, and as we are an interstate wholesale power supplier, FERC is the entity that would best adjudicate the interests of all of our cooperative members and public power districts across all four states where we serve (as opposed to one state utility regulatory commission).

It might be instructive for you to know exactly what FERC regulates. At its core, the answer is the rates and services for electric transmission in interstate commerce, and electric wholesale power sales in interstate commerce, principally under Parts II and III of the Federal Power Act. Further detail and specific references are here:

- o Transmission of electric energy in interstate commerce by public utilities, i.e., the rates, terms and conditions of interstate electric transmission by public utilities - FPA 201, 205, 206 (16 USC 824, 824d, 824e);
  - o "Traveling electrons" -which cross state lines;
  - o "Commingled electrons" -which join the stream of commerce; Sales of electric energy at wholesale in interstate commerce by public utilities, i.e., the rates, terms & conditions of wholesale electric sales by public utilities - FPA 201, 205, 206 (16 USC 824, 824d, 824e);
  - o Includes a sale to "any person . . . for resale"; and
  - o FERC has exclusive jurisdiction over the "transmission of electric energy in

interstate commerce,” and over the "sale of electric energy at wholesale in interstate commerce,” and over "all facilities for such transmission or sale of electric energy.” FPA 201(b) (16 USC 824(b);

o Federal authority “trumps” contrary state authority.

It is our members themselves that make these key decisions about their cooperative. As a cooperative, all of our members worked together to develop our approach for partial requirements contracts to provide more flexibility, as well as the contract termination payment methodology. Both of these committee recommendations were then approved by our board of directors, also with representatives from each member system. The process was inclusive and democratic, and included an extensive review process with our membership’s Contract Committee. All points of view were expressed, listened to and considered. We had indicated last year that we would complete this process by April 2020, and that is what we did.

Our proposed contract termination payment methodology has been filed with the FERC, and is very similar to a previously FERC-approved tariff for the Wabash Valley Power Alliance. FERC will review our filing to determine whether it is just and reasonable as it relates to Tri-State, and other parties will be part of the review process at FERC.

Tri-State opposed this legislation you mentioned (a new state law adopted in March). We understand the intent of the new Colorado law, but we also believe that contract termination payment methodology ultimately is a FERC jurisdictional issue. FERC regulates our wholesale rates, or tariffs, and issues related to those tariffs, including ultimately contract termination payment methodology.

## **Want to be on the mailing list for Big Pivots?**

Send me your e-mail address.

It’s as simple as that.

Write to me at:  
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