

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0628E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF COST ASSIGNMENT AND ALLOCATION MANUAL AND FULLY DISTRIBUTED COST.

**RECOMMENDED DECISION
ACCEPTING SETTLEMENT AND VACATING HEARING**

Issued Date: July 11, 2024

I. STATEMENT

1. On December 29, 2023, Black Hills Colorado Electric (“Black Hills” or “the Company”) filed its Verified Application (“Application”) seeking approval of a Cost Assignment and Allocation Manual (“CAAM”) and Fully Distributed Cost Study (“FDC”). With the Application, Black Hills filed a notarized Verification (“Verification”) and four Attachments.¹

2. On December 29, 2023, the Commission issued a notice of the Application.

3. On January 30, 2024, Staff of the Commission (“Staff”) timely noticed its Intervention of right.

4. On February 7, 2024, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (“ALJ”) by minute entry.

5. On February 22, 2024, an Unopposed Motion for Late-Filed Intervention of Right, and Entry of Appearances and Request for Waiver of Response Time by the Office of Utility

¹ See Verification and Attachments A-D, filed December 29, 2023.

Consumer Advocate (“the Unopposed Motion”) was filed by Office of Utility Consumer Advocate.

6. On March 12, 2024., by Decision No. R24-0160-I, the Unopposed Motion was granted, a procedural schedule was adopted, and the matter was set for hearing to commence on July 22, 2024.

7. On May 31, 2024, Staff filed Notice of Unanimous and Unopposed Settlement.

8. On June 28, 2024, the Parties filed their Unanimous Settlement Agreement and Motion to Approve Settlement Agreement.

II. DISCUSSION

A. Settlement Agreement

9. The Settling Parties agree that Black Hills CAAM and fully distributed cost study should be approved along with additional protections. The Settling Parties believe that the fully distributed cost study along with additional protections will achieve the statutory goal of preventing the subsidization of unregulated activities by ratepayer funds set forth in § C.R.S. 40-3- 114.

10. Black Hills agrees to continue to adhere to the following additional requirements which were conditions of its acquisition of the Aquila Inc. as approved by the Commission in Proceeding No. 07A-108EG:

- a) Black Hills will be a separate operating utility subsidiary, which is a wholly owned subsidiary of the holding company Black Hills Utility Holdings, Inc.
- b) Black Hills will own its own utility assets and will maintain its own separate books and records.
- c) Black Hills will assign and allocate costs in accordance with a Commission-approved CAAM.

- d) Neither Black Hills Utility Holdings Inc. nor either of the Colorado regulated utilities will "provide financing for, extend credit to, issue long-term debt or pledge their utility assets in support of non-utility subsidiaries."
- e) Each Colorado utility will maintain its own books and records, systems of accounts, financial statements, and bank accounts except for the utility money pool.
- f) Each Colorado utility will keep its financial books and records in the corporate offices, or in the state operations office, and will make them available for Commission review upon request.
- g) If Black Hills issues debt that is subject to the jurisdiction of the Commission, and unless authorized by the Commission, Black Hills will not make any dividend payments to Black Hills Corporation or to Black Hills Utility Holdings, Inc. if the payment of such dividends would reduce Black Hills standalone equity below 40 percent of its total long-term capitalization.
- h) To protect against the comingling of assets, Black Hills Utility Holdings, Inc. and Black Hills will each hold their respective assets in their own names and will maintain adequate capital and number of employees in light of their business purposes.
- i) All Black Hills non-utility operations will remain in a subsidiary, or subsidiaries, separate from the regulated utilities' subsidiary or subsidiaries;
- j) Black Hills will maintain separate money pools for utility/non-utility entities;
- k) Black Hills will maintain separate books and records, systems of accounts, financial statements, and bank accounts, except for the utility money pool;
- l) Black Hills will not enter into, or be a party to, any transaction with any of its affiliates, except: (A) in the ordinary course of business, (B) pursuant to the reasonable requirements and purposes of its business, and (C) upon fair and reasonable terms that are consistent with market terms of any such transaction entered into by unaffiliated parties;
- m) Black Hills will not hold out its credit as being available to satisfy the obligations of others nor pledge its assets for the benefit of any other person or entity.

11. The Parties agree that the Commission should approve the following additional protections to prevent subsidization of unregulated activities using ratepayer dollars.

- a) Black Hills should maintain records related to the CAAM required by 4 CCR 723-3-3503 until the next CAAM is approved.
- b) Black Hills agrees to file in this proceeding a copy of inter-affiliate agreements, for informational purposes into the Commission's e-filing system if the agreement is not subject to the CAAM and has not been otherwise provided to the Commission or Staff.
- c) The Company reaffirms its obligation to abide by the language of Commission rule 3505, which details the customer disclosure requirements of utilities regarding non-regulated goods and services.
- d) The Company reaffirms its obligation to abide by the language of Commission Rule 4 CCR 723-3-3104, which details the requirements for utility transfer of assets subject to the jurisdiction of the Commission outside the normal course of business.
- e) Black Hills agrees to maintain data and information, and to provide it in response to audit by Staff pursuant to C.R.S. 40-6-106, with regard to all inter-affiliate transactions to which Black Hills is a party, since the last CAAM was approved.
- f) The Company reaffirms its obligation to abide by the language of Commission rule 3105 and Section 40-4-104, which detail the requirements for utility issuance or assumption of securities with a maturity of 12 months or more or to create a lien.

B. Conclusion

12. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable. In reviewing the terms of the Settlement Agreement, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G on March 20, 2006.

13. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Pub. Utils Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

14. The undersigned ALJ has reviewed the Direct Testimony filed by Black Hills. The ALJ has duly considered the positions of all parties in this matter.

15. The ALJ has also considered the recitations of the Settling Parties made in the Unanimous Settlement Agreement and Motion to Approve Settlement Agreement.

16. Based on the entire record, the ALJ finds that approval of the Application, as modified by the terms of the Settlement Agreement, is in the public interest.

17. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission.

III. ORDER

A. It Is Ordered That:

1. The Motion to Approve Settlement Agreement filed on June 28, 2024, is granted and the Settlement Agreement is approved.

2. The Verified Application filed by on December 23, 2023, seeking Commission approval of Cost Assignment and Allocation Manual and Fully Distributed Cost Study, as amended by the Settlement Agreement, is granted.

3. The evidentiary hearing in the above captioned proceeding, scheduled for July 22 and July 23, 2024, is vacated.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

6. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

7. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

8. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

10. This decision shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

Rebecca E. White,
Director

