Decision No. C19-0590

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0676E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, INC. DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL OF ITS RESIDENTIAL TIME-OF-DAY RATE PILOT PROGRAM.

COMMISSION DECISION: (1) SETTING ASIDE DECISION NO. R19-0341; (2) DENYING APPLICATION; (3) DENYING EXCEPTIONS AS MOOT; AND (4) REQUIRING COMPLIANCE FILING

Mailed Date: July 15, 2019
Adopted Date: June 6, 2019

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission sets aside Decision No. R19-0341, issued April 18, 2019, by the Administrative Law Judge (ALJ) assigned to this proceeding (Recommended Decision). The Commission enters its own decision, denying the Application filed by Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (Black Hills), seeking approval of a residential time-of-day rate pilot program (RTOD Pilot or Pilot).

2. Because we set aside the Recommended Decision, we deny as moot the parties' exceptions to the Recommended Decision.

3. Finally, by this Decision, we require Black Hills to file a notice in this Proceeding six months prior to filing its next electric rate case.

B. Procedural History

4. On October 1, 2018, Black Hills filed an Application seeking Commission approval of its proposed RTOD Pilot. On October 2, 2018, Black Hills filed a Corrected Verified Application, modifying the implementation date of the RTOD Pilot to June 1, 2019.

5. On November 7, 2018, the Commission deemed the Application complete and referred the matter to an ALJ.

6. The Board of County Commissioners of the County of Pueblo, Colorado (Pueblo County); Energy Outreach Colorado (EOC); and Western Resource Advocates (WRA) requested intervenor status. By Decision No. R18-1015-I, issued November 14, 2018, the ALJ granted these requests. In addition, the Colorado Office of Consumer Counsel (OCC); Staff of the Colorado Public Utilities Commission (Staff); and the Colorado Energy Office (CEO) filed notices of intervention by right.

7. On November 29, 2018, by Decision No. R18-1064-I, the ALJ scheduled an evidentiary hearing for March 13 and 14, 2019. Due to inclement weather on March 13, 2019, a one-day hearing was held and concluded on March 14, 2019.

8. The ALJ issued his Recommended Decision on April 18, 2019, granting the Application, in part, and with modification.

9. On May 8, 2019, Black Hills, CEO, EOC, OCC, Pueblo County, Staff, and WRA filed exceptions to the Recommended Decision.

10. On May 15, 2019, Black Hills, OCC, and Staff and CEO (jointly), filed responses to the exceptions.

11. On June 6, 2019, the Commission deliberated on the parties' exceptions and responses at its Commissioners' Weekly Meeting.

C. Proposed RTOD Pilot

12. Black Hills submitted its proposed RTOD Pilot on October 2, 2018. In its Application, Black Hills stated it had hosted several meetings with stakeholders to develop the proposed Pilot. Black Hills stated that it developed the Pilot based on four goals: 1) to promote

energy awareness through various customer education strategies and measure the customer experience; 2) to ensure practical attributes of simplicity, convenience, and customer acceptability; 3) to measure the impacts on energy usage and potential demand reduction; and 4) to ensure revenue stability.

13. The Pilot is designed to run from June 1, 2019, through September 30, 2020. From June 1 through October 1 2019, Black Hills would conduct customer education. The Pilot rates would then go into effect for all participants the first billing cycle of October 2019.

14. The proposed rate structure for the Pilot includes two time-of-day pricing periods: on-peak, from 3:00 to 7:00 p.m., Monday through Friday, excluding holidays, and off-peak all other hours. Rates are structured at a 3:1 ratio between on-peak and off-peak periods in summer months and a 2:1 ratio between on-peak and off-peak periods in non-summer months. Black Hills states these rates are not cost-based but are set to achieve the policy goals of the Pilot.

15. Black Hills proposes to randomly select participants, including a segment of regular residential customers, low-income customers,[1] and net metered customers. Black Hills proposes a hold-harmless provision through which low-income customers would be made whole if the customer's bill on the Pilot rate is higher than what it would have been at the tariffed RS-1 rate.

16. Black Hills estimates the total cost of the Pilot to be $801,000. Black Hills proposes that these costs be recovered through the Purchased Capacity Cost Adjustment (PCCA).

[1] The low-income customers would be those who qualify for Black Hills Energy Assistance Program (BHEAP) but who are not currently enrolled in that program.

17. Black Hills proposes to submit a report to the Commission after the Pilot ends, evaluating its customer education plan as well as participants' electricity usage and resulting load shifts between on- and off-peak periods. That report would be filed on January 29, 2021.

D. Recommended Decision

18. The Recommended Decision grants the Application, in part, with modification.

19. The Recommended Decision modifies the Pilot by: removing the low-income customer segment from the sample of participants; requiring cost recovery through a separate RTOD Pilot rider rather than the PCCA; and requiring net-metered customers to cash out prior to and during the Pilot at RS-1 rates.

20. The Recommended Decision rejects the intervenors' recommendations to: restrict the opt-out period to non-summer months to ensure the Pilot will gather data on how the rate structure impacts customers during the summer; allow customers to elect to stay on RTOD rates after the Pilot ends; require Black Hills to file an advice letter proposing to implement time-of-day rates after the Pilot ends; and include an inverted block rate (IBR) design in the Pilot rates.

E. Exceptions

21. On May 8, 2019, Black Hills, CEO, EOC, OCC, Pueblo County, Staff, and WRA filed exceptions to the Recommended Decision.

1. Black Hills

22. Black Hills objects to the modification that Pilot costs be recovered through a separate rider rather than through the PCCA. Black Hills requests clarification affirming that low-income customers should be removed as a distinct segment of the Pilot's randomly-selected participants. Black Hills requests clarification affirming that rollover net-metered customers'

excess energy credits shall be monetized at the RS-1 Tier 1 rate. Black Hills also requests clarification of the modification requiring that cash-out net metered customers selected to participate be given the opportunity to convert to rollover status or be excluded from the Pilot.

2. CEO

23. CEO objects to the modification removing the low-income customer segment from the sample of participants. CEO argues that low-income customers should be included in the Pilot, subject to a hold-harmless provision. CEO argues that participating customers should be allowed to remain on the Pilot rate for four months after the Pilot ends. In addition, CEO urges the Commission to require Black Hills to file an advice letter after the Pilot ends proposing to implement permanent time-of-day rates.

3. EOC

24. EOC does not challenge the modification excluding low-income customers from the sample of participants, but requests that the Commission require Black Hills to request income information from Pilot participants on an optional basis.

4. OCC

25. OCC requests clarification of the treatment of cash-out net metered customers. OCC notes that, as the monetization of a rollover customer's energy bank does not require payment to the customer, there is nothing to fund through the Renewable Energy Standard Adjustment (RESA).

5. Pueblo County

26. Pueblo County advocates including an IBR component in the Pilot rate and objects to the ALJ's finding that including a time-of-day and IBR group in the Pilot would add unnecessary complexity. Pueblo County also states that the Recommended Decision did not

address its request that Black Hills be required to demonstrate that it is not over-earning in order to collect any lost revenues resulting from the Pilot.

6. Staff

27. Staff takes exception to a number of findings of the Recommended Decision including that: 1) Pilot rates should not continue after the Pilot ends; 2) an advice letter should not be filed when the Pilot ends; 3) cost recovery should be made through a specific RTOD Pilot rider rather than through the PCCA; 4) participants should be able to opt-out at any time; 5) participants should have 12 months of prior billing data; and 6) the sample size is a compromise between Black Hills' proposal and Staff's proposal. Staff also faults the Recommended Decision for not addressing stakeholder engagement throughout the RTOD Pilot. Finally, Staff requests clarification of how cash-out net metered customers will be treated in the Pilot and the rate to be used to monetize the existing bank for rollover net metered customers.

7. WRA

28. WRA asserts that the Commission should modify the Recommended Decision to allow Pilot rates to continue after the Pilot ends. WRA requests clarification of the treatment of cash-out and rollover net metered customers. WRA also requests that the Commission order Black Hills to investigate potential updates to its billing system that would accommodate cash-out net metered customers in the event time-of-day rates are implemented for all customers. Additionally, WRA states that pursuant to 4 *Code of Colorado Regulations* 723-3-3661(c) of the Commission's Rules Regulating Electric Utilities, RESA funds should not be used to offset lost revenue associated with net metering bill credits.

F. Responses to Exceptions

29. On May 15, 2019, Black Hills, OCC, and CEO and Staff (jointly) filed responses to the exceptions.

1. Black Hills

30. Black Hills objects to EOC's proposal that Black Hills collect income information from participants. Black Hills also objects to the parties' suggestion that Pilot rates be allowed to continue after the Pilot ends. Black Hills contends the ALJ correctly found an advice letter filing at the conclusion of the Pilot would be premature. In response to Pueblo County's exceptions, Black Hills objects to including an IBR component in the Pilot rate and states that demonstrating that it is not over earning should not be necessary for Pilot cost recovery. With regard to Staff's exceptions, Black Hills supports the ALJ's rejection of suggestions to restrict the opt-out period and states that the imposition of additional stakeholder engagement would result in unnecessary disputes and timing burdens and that Black Hills needs to be in control of Pilot implementation.

2. OCC

31. OCC states that no party advocating continuing Pilot rates after the Pilot ends has identified any flaw in the ALJ's reasoning for concluding that Pilot rates should not be allowed to continue. OCC also objects to arguments that a separate rate rider for cost recovery would incur additional costs.

3. CEO and Staff (jointly filed)

32. CEO and Staff object to EOC's suggestion that Black Hills should request income information from Pilot participants.

G. Findings and Conclusions

33. Pursuant to § 40-6-109(2), C.R.S., the Commission may adopt, reject, or modify the findings of fact and conclusions of the ALJ or, after examination of the record, enter its own decision and order therein without regard to the findings of fact of the ALJ. Based on our review of the record, including Black Hills' Application, the parties' testimony, the ALJ's Recommended Decision, and the parties' many exceptions and responses, we find grounds to set aside the Recommended Decision in its entirety and enter our own order denying the Application.

34. Black Hills filed its Application pursuant to our Decision No. C18-0637, issued August 6, 2018, in Proceeding No. 17AL-0477E, which was Black Hills' last Phase II electric rate case. We envisioned that Black Hills could implement a pilot program that would use its existing advanced metering infrastructure (AMI) meters so that customers could control their bills and shift consumption, ultimately reducing future generation needs. We ordered Black Hills to work with stakeholders to create a residential time-of-day rate pilot program that could be implemented within a year.

35. In light of the now-robust record in this Proceeding, we find our Decision requiring Black Hills to develop a residential time-of-day rate pilot program did not lay out sufficient clear objectives and expectations to guide Black Hills and stakeholders in developing a successful proposal. We find the proposed Pilot does not comport with our objectives and expectations. Consequently, we set aside the Recommended Decision not because the ALJ erred, but rather because Black Hills and stakeholders need more clarity from the Commission of the objectives of a residential time-of-day rate pilot program and what considerations must go into its development.

36. In addition, this lengthy litigated proceeding, with robust participation from intervenors and expert witnesses, has helped identify the many particular challenges and issues that would need to be overcome and resolved before proceeding to implement residential time-of-day rates in Pueblo.

37. In particular, we find compelling the expert testimony on the impact of time-of-day rates on Black Hills' low-income customers. Pueblo County expert witness, Mr. Baatz, estimated 69.2 percent of Black Hills' residential customers would experience a bill increase.[2] Mr. Baatz found the bill impact "more pronounced" for low-income customers, primarily since they (at least BHEAP customers) use less energy than the rest of the customer class.[3] Mr. Baatz estimated 73.4 percent of BHEAP customers would face higher bills.[4] This data provides further grounds to not move forward at this time. We see little utility in moving forward, at a cost of over $800,000 to Black Hills' ratepayers, to test a rate design that may prove unworkable for a significant segment of Black Hills' customer base.

38. We emphasize that we appreciate the efforts of Black Hills and the intervenors to fully litigate this Proceeding and help develop the framework to test residential time-of-day rates.

39. For purposes of any future efforts to move forward to test residential time-of-day rates in Black Hills' service territory, we provide additional clarity of our expectations. Any such pilot program must address the rate impact on all customers and must provide details of how AMI meters and other technologies[5] can be used effectively by customers to control their bills. We also clarify that customer education is a key component. Black Hills should use all resources

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[2] Pueblo County Answer Testimony and Attachments of Brendon J. Baatz at pp. 11-12 (January 22, 2019).

[3] *Id*. at p. 12.

[4] *Id*. at p. 13.

[5] Such technologies include, but are not limited to, applications such as Smart Hub.

available to it, including community outreach, to help customers understand the goals of time-of-day rates and how customers can best manage their household energy use under such rates.

40. As a next step in addressing whether and how to move forward with any efforts to implement residential time-of-day rates in Black Hills' service territory, we require Black Hills to file a notice in this Proceeding six months prior to the filing of its next electric rate case. That notice will provide opportunity for further consideration of these issues.

II. ORDER

A. The Commission Orders That:

1. Decision No. R19-0341, issued April 18, 2019, in Proceeding No. 18A-0676E, is set aside in its entirety and shall not become a decision of the Commission, as set forth in § 40-6-109(2), C.R.S.

2. The Corrected Verified Application filed by Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (Black Hills), on October 2, 2018, is denied.

3. The Exceptions to the Recommended Decision, filed on May 8, 2019, by Black Hills; Colorado Energy Office; Energy Outreach Colorado; Office of Consumer Counsel; Pueblo County; Staff of the Colorado Public Utilities Commission; and Western Resource Advocates, are denied as moot, consistent with the discussion above.

4. Black Hills is required to file a notice in this Proceeding six months prior to filing its next electric rate case.

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING June 6, 2019.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

CHAIRMAN JEFFREY P. ACKERMANN
SPECIALLY CONCURRING.

COMMISSIONER FRANCES A. KONCILJA
SPECIALLY CONCURING.

COMMISSIONER JOHN GAVAN SPECIALLY
CONCURRING.

III. CHAIRMAN JEFFREY P. ACKERMANN SPECIALLY CONCURRING

1. Elaborating upon the statements in paragraph 35 of this Decision, it is evident now, based upon the record of this proceeding that the concept of a Time-of-Use (TOU) rate for Black Hills Colorado Electric, Inc., doing business as Black Hills' (Black Hills) customers as set forth in our Decision No. C18-0637 lacked both sufficient specificity and appreciation of the surrounding circumstances. This does not undercut the potential benefits of a TOU rate; rather, it calls for a more thoughtful approach in the future.

2. As a prerequisite, it is important to clarify the objectives that a TOU rate strives to achieve, and by extension, what not to expect from a TOU rate. Working from the often-cited

Bonbright principles for rate design,[6] at least three principles are addressed through a properly implemented TOU rate:

a. Fairness: by pricing electricity at its time-of-use, the associated costs are allocated more equitably;

b. Dynamic Efficiency: TOU rates, and the periodic adjustment of the time increments, yield a system more responsive to demand-supply patterns and promote innovation; and

c. Understandability: the concept of the cost of utility service varying with the time of day, due to variations in demand upon the system, can be grasped and responded to by average end-use customers. The experience of long-distance land-line telephone rates in the 1970s and 1980s affirms such.

3. It is important to also recognize the limitations of a TOU rate, and associated AMI technology, in assisting "…customers to control their bills" as discussed in paragraph 39 of this Decision. TOU is a means for using price signals to influence customer consumption behavior. A premise underlying a customer's ability to control his/her bill is the customer's elasticity of demand, that is, the customer's ability to shift or avoid consumption in response to an increase in price. Particularly in the case of relatively low-use customers, most usage is more subject to the technology of the end uses (such as the inability to control when a refrigerator defrosts), or the external constraints upon the household (such as the practical inability to shift one's dinner preparation schedule to later in the evening). If a primary objective is to better empower customers to control their bills, other strategies such as Demand Side Management are more likely to achieve the desired results.[7]

[6] Principles of Public Utility Rates; James Cummings Bonbright.

[7] TOU in concert with targeted DSM strategies may yield customers taking more control over their bills. That merits further exploration.

4. Black Hills has had the benefit of advanced metering infrastructure (AMI) meters in use for a decade, thanks to the federal financial assistance provided to select utilities through the American Recovery and Reinvestment Act of 2009.

5. While Black Hills has initiated at least one study/pilot utilizing the increased customer data available from these meters, this asset has not been utilized to its full potential. As has been shown by other electric utilities across the country, AMI meters provide a platform for better engaging customers regarding their usage decisions and thereby improving the operational efficiency and effectiveness of the utility's overall system.

6. What is evident from Black Hills' earlier AMI-based pilot as well as the data brought into the record of this proceeding by County of Pueblo and Energy Outreach Colorado (EOC), is that the demographic composition of Black Hills' residential market must be more fully taken into consideration when designing any tariff, charge, program, or service. It is an understatement that Black Hills has a particularly challenging market within which to innovate. The relatively high incidence of households in the Black Hills service territory that qualify for low-income assistance, and the relatively modest incomes of the remaining households, are factors that restrict the viability of many options available to utilities serving larger and/or more economically diverse markets.

7. Senate Bill 07-022, codified as § 40-3-106(1)(d)(I), C.R.S., authorizes the Commission to approve a rate, charge, or service that "…grants a reasonable preference or advantage to low-income customers." Further, when granting such "…the commission shall take into account the potential impact on, and cost-shifting to, utility customers other than

low-income utility customers." These are the parameters within which this Commission can consider addressing the special needs of low-income utility customers.[8]

8. Working with the demographic conditions of the Black Hills market and the statutory parameters of § 40-3-106 C.R.S., each small step forward in providing rate relief to low-income customers yields a commensurate additional burden upon the remaining customers, many of whom are near-low-income. This should not be perceived as an insurmountable impediment, but as a significant challenge to which greater effort and creativity needs to be applied. For example, what is a reasonable cost-shifting away from low-income customers and on to other customers, particularly including the commercial and industrial classes? And when will such cost shifts undercut other public interest objectives, such as attracting new businesses onto the Black Hills system? And what is the role of outside agencies and resources, such as the Low-Income Energy Assistance Program and EOC, in applying their resources differently to this situation, as well as addressing this situation as a public policy matter versus purely regulatory challenge?

9. In conclusion, while I reluctantly decided to deny this application, I am heartened that the process and record has yielded new insights. Specifically, a more comprehensive approach is needed to improve the operational effectiveness of the Black Hills system, of which a TOU rate may be a part. Further, there is an equally critical need to factor into that more

[8] This is not meant to imply that future TOU rates must have specific low-income provisions. I am not putting forth through this Concurrence TOU as a low-income assistance strategy. Addressing the unique needs of this sub-class of customers merits its own comprehensive strategy.

comprehensive approach the unique and challenging demographics of the Black Hills residential market.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN
____
Chairman

IV. COMMISSIONER FRANCES A. KONCILJA SPECIALLY CONCURRING

1. I write this special concurrence in order to acknowledge the hard work that the parties and the Administrative Law Judge (ALJ) put forth in this proceeding. The evidence and analysis have persuaded me that a time-of-use (TOU)[9] rate design for customers in southern Colorado will cause a huge amount of pain and suffering and that we should abandon this approach.[10] The ALJ reminded us that "each one of the 'data' points on the diagram will be making difficult decisions and sacrifices that will impact their standard of living."[11] It is easy to lose sight of the fact that the "data points" are real people who cannot reduce their use of electricity and thus will face electric bills they cannot afford.

2. The ALJ reminded us that he has conducted public hearings in southern Colorado in the past:

> The history of Black Hills and its customer base is filled with stories of despair and distrust. The undersigned has presided over public hearings listening to the stories and the hardships of these low-income customers. Most times, the issues or the law prevent the Commission from issuing a decision which can affect them personally. The exclusion of low-income customers, as defined by the parties in

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[9] Black Hills referred to this pilot as a TOD—Time of Day. I use TOD and TOU to refer to the same pilot.

[10] I also want to thank Commissioner Gavan for taking the lead on articulating his concerns about the effect of this program on the low- income population and recommending that we reject this approach.

[11] See paragraph 44 of Recommended Decision No. R19-0341 (Recommended Decision).

this proceeding, is one thing that the Commission can do to hear their requests to not increase the cost of electricity. [12]

3. The ALJ reminded us that a TOU will also negatively impact those just above the poverty level:

> The exclusion of these low-income customers, however, is not enough to ensure that the compulsory placement of Black Hills customers in this program has enough guardrails to prevent unnecessary harm. The parties included a hold harmless provision for the group they defined as low-income, **yet there are no safeguards for those slightly above low-income or currently delinquent in their payments**." [13](Emphasis Added.)

4. The ALJ went on to remind us of the realities of how these types of programs can work:

> With an opt-out program, no matter how effective the education, there are going to be customers who will not be aware that they are on the new rates. This inevitability combined with EOC's analysis of household income in Black Hills' territory shows **the potential for disaster.** EOC's analysis indicates that some 18 percent of households in Pueblo County meet federal poverty guidelines, as do nearly a quarter of households in the City of Pueblo. Additionally, the median household income in Pueblo County is $42,386, only $962 above the BHEAP-qualification income of $41,424.[14] (Emphasis Added)

5. The testimony of the County of Pueblo's (Pueblo County) expert witness Brendon Baatz is referenced at paragraph 37 of this Decision. That testimony merits additional comment. Mr. Baatz analyzed consumption data for over 988,500 bills[15] [16] Mr. Baatz's analysis concluded

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[12] See paragraph 45 of the Recommended Decision.

[13] See paragraph 46 of the Recommended Decision.

[14] See paragraph 47 of the Recommended Decision referring to EOC expert witness Bennet, Hearing Exhibit 16.

[15] See page 10 of Baatz testimony, Exhibit 18.

[16] I know that participation in proceedings and retention of expert witnesses is expensive. I want participants to understand how important robust expert testimony, such as Mr. Baatz's testimony, can be to the Commission and commend Pueblo County for going the extra mile in presenting this testimony, which was likely expensive.

that 73.4 percent of the Black Hills Energy Assistance Program customers would face higher bills if the proposed time-of-day rate was approved.[17]

6. The testimony of Mr. Bennet on behalf of Energy Outreach Colorado (EOC) was helpful and persuasive. Mr. Bennet provided information about the high level of low-income families in southern Colorado.[18] He also pointed out some troubling changes in data presented by Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (Black Hills) which EOC was unable to verify. Further, he was not able to verify if the errors have been corrected.[19] Mr. Bennet stated that he believes that many low-income customers are already using the lowest feasible amount of electricity, at on-peak as well as off-peak periods.[20]

7. Dr. England presented expert testimony on behalf of the Office of Consumer Counsel (OCC). Dr. England pointed out that Black Hills does not have a projected need for capacity until 2029 and that its peaker, the LM 6000 was only used on eight system peak days from October 2016 through September 2018.[21] [22]

8. Dr. England[23] on behalf of the OCC, Mr. Baatz on behalf of Pueblo County, and others made numerous suggestions that should be considered in future TOU proceedings including:

1. Longer time periods than 12 months for a pilot;
2. Include only summer months;

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[17] See page 13 of Baatz testimony, Hearing Exhibit 18.

[18] See page 9 of Bennet testimony, Hearing Exhibit 16.

[19] See page 12 of Bennet testimony, Hearing Exhibit 16, Attachment AB-5.

[20] *Ibid* page 15.

[21] See page 6 of Dr. England testimony, Hearing Exhibit 14.

[22] The avoided cost calculation by Black Hills, of $.02082 per KWh and the useage information referenced in Appendix C and page 15 of Dr. England's testimony is very interesting and merits further study.

[23] See pages 21 and 22 of Dr. England testimony, Hearing Exhibit 14.

3. Combine the Inverted Block Rates with a TOU, similar to Fort Collins' TOU;[24]

4. Consider Demand Side Management (DSM) such as smart thermostats (It appears the investment in AMI years ago do not provide timely customer feedback); and[25]

5. Refunds for reducing useage in peak periods.

9. My goal in ordering this TOU pilot, as stated in the original Decision, was to allow customers in southern Colorado to control and reduce their bills as well as to avoid the need for future generation build or replacement. That goal is not included in any of the four goals set forth by Black Hills in its application. The ALJ pointed out that one of the goals of the Decision was to "control electric bills", but there was "not one witness who stated that the implementation of this program will lead to overall lower bills for the low-income customers." [26]

10. Instead, Black Hills included "revenue stability" as a goal. Revenue stability also referred to as making the utility whole, is a concept that is periodically discussed in our proceedings. I do not think the Commission has ever made a finding that revenue neutrality or "making a utility whole" is required or in the public interest. As we proceed to implement the 2019 legislation requiring reduced emissions and/or increased renewables, we should be cautious about using the term "revenue neutrality" or "making the utility whole" without a full analysis of the effect on the public interest. I am not prejudging as to whether or not a utility should receive the same amount of revenue with or without conservation. The Commission, however, retains

[24] See pages 16 and 18 of testimony of Mr. Baatz, Hearing Exhibit 18.

[25] *Ibid.* see page 5.

[26] See Recommended Decision, paragraph 42.

the right to determine how the costs and benefits of conservation and reductions in energy consumption should be allocated between the utility and the ratepayers. [27]

11. In sum, I am persuaded by the evidence and the analysis that a TOU will harm customers in southern Colorado and that there is no discernible benefit at this time.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA
____
Commissioner

V. <u>COMMISSIONER JOHN GAVAN SPECIALLY CONCURRING</u>

1. Though I came into this proceeding at its very conclusion, in reading the record, I became alarmed at the lack of consideration given to the potential impact of this time-of-use (TOU) rate pilot on low-income customers. In reviewing the proposed pilot, I could not see how this rate structure WOULD NOT DETRIMENTALLY IMPACT LOW INCOME CUSTOMERS.

2. As I digested the record, some things jumped out at me. These are:

1) It seemed that this was a situation where we had a "technology looking for a solution". With its deployment of advanced metering infrastructure (AMI), I was left with the impression that Black Hills was desperately looking for a use for this technology. It was also interesting to note that after the initial deployment of the AMI solution, no follow-on effort was made to extend the reporting that AMI offers to customers. Providing a usage monitoring capability to customers would have been a logical and

[27] Some commenters publicly state that the Commission "guarantees" a monopoly utility a rate of return and then go onto criticize the utilities as well as the Commission for this "guarantee." The Commission does not guarantee a rate of return. The Commission allows the utility the opportunity to earn up to the rate of return that the Commission determines is appropriate in light of the challenges in the debt and equity markets. When a utility makes the argument that it has the right to be "made whole" or that a conservation effort must be "revenue neutral", the utility gives credence to the accusation that a utility has a "guarantee" with no risk.

non-intrusive first step in encouraging usage management behavior at the customer level.

2) I was also surprised to see that our advocate community largely ignored the issue of negative impacts to the low-income customer segment. As an example, intervenors were more concerned about impacts to net-metered rooftop solar customers. I call on those in our advocate community to do some serious soul searching about this oversight. We must be mindful to carefully consider the public interest of all consumer groups, especially including the low to moderate-income segment where a monthly electric bill can be a significant portion of a customer's monthly discretionary spending.

3) As I pointed out in the weekly meeting, low-income customers predominantly live in substandard housing stock that is often heated with baseboard electric heat in the winter, and air-conditioned in the summer. Deferring heating and cooling tasks to off-peak periods is simply not an option. Load shifting is in most cases not possible for this demographic.

4) In his concurrence, Chairman Ackermann indicated that this is a challenge particular to the Pueblo community. While this is true, it is important to keep in mind that half of Colorado's 64 counties have per capita incomes of less than $ 25k/year. Low-Income customers are present in high numbers all across this state, in both rural and urban areas. We need to not lose sight of this fact.

5) I believe that we must be very prudent in considering TOU rates in the future as the issue of burdensome impacts to low-income customers is going to be a recurring challenge. More investigation and thought needs to go into this subject before we bring it back and unleash it on our citizens.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN GAVAN

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Commissioner