

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0393E

IN THE MATTER OF ADVICE LETTER NO. 680 FILED BY BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP TO REVISE ITS COLORADO PUC NO. 9 ELECTRIC TARIFF TO IMPLEMENT A GENERAL RATE SCHEDULE ADJUSTMENT TO INCREASE RATES, A NEW RIDER PURSUANT TO THE CLEAN AIR-CLEAN JOBS ACT, AND OTHER CHANGES, PROPOSED TO BE EFFECTIVE ON MAY 31, 2014.

**DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R14-1298, PERMANENTLY
SUSPENDING TARIFF SHEETS, AND APPROVING RATES.**

Mailed Date: December 22, 2014
Adopted Date: December 10, 2014

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I. BY THE COMMISSION

A. Statement

1. This Decision addresses exceptions to Decision No. R14-1298 (Recommended Decision) filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills or Company); Staff of the Colorado Public Utilities Commission (Staff); the Colorado Office of Consumer Counsel (OCC); and the Board of Water Works of Pueblo, Colorado and Fountain Valley Authority (collectively the Public Intervenors). As explained in more detail below, we grant, in part, and deny, in part, the exceptions. We approve an increase in Black Hills’ base rate revenue requirements of \$3,074,261 and authorize it to establish a General Rate Schedule Adjustment (GRSA) of 1.965 percent.

B. Discussion

2. On April 30, 2014, Black Hills filed Advice Letter No. 680 with tariff sheets to be effective on May 31, 2014, seeking to implement a revised GRSA of 5.051 percent to be applied to all base rate components under all schedules. The Company further seeks to add a Clean Air Clean Jobs (CACJA) adjustment clause to provide for cost recovery, beginning January 1, 2015, associated with the construction work in progress (CWIP) for its new LM6000 generating unit approved by the Commission by Decision No. C14-0007 in Proceeding No. 13A-0445E issued January 6, 2014. Black Hills submitted the Advice Letter with supporting testimony and exhibits.

3. On May 16, 2014, the Commission suspended the effective date of the Advice Letter until September 28, 2014.¹ The Commission referred the matter to Administrative Law Judge (ALJ) Robert I. Garvey for a recommended decision. ALJ Garvey set a schedule for the proceeding and extended the suspension of the effective date of the Advice Letter until December 27, 2014.²

4. Staff and the OCC intervened as of right. The Public Intervenors, Holcim (U.S.) Inc. (Holcim), and Western Resource Advocates filed petitions to intervene, which ALJ Garvey subsequently granted by Decision No. R14-0723-I issued June 26, 2014.

5. ALJ Garvey held hearings to receive public comments in Pueblo, Colorado, on September 4 and 11, 2014.

6. ALJ Garvey held an evidentiary hearing from September 23 through 25, 2014.

7. Following the hearings, Black Hills, Holcim, the Public Intervenors, the OCC, and Staff filed Statements of Position. The City of Pueblo filed an *Amicus Curiae* brief.

8. The Recommended Decision issued on October 28, 2014. The ALJ established rates based on a 2013 Historic Test Year (HTY) with known and measurable *pro forma* adjustments extending one year. The Recommended Decision approved an authorized return on equity (ROE) of 9.83 percent and a weighted average cost of capital at 7.55 percent. The Recommended Decision also approved the proposed CACJA rider to recover approximately \$1.73 million in 2015 and \$4.78 million in 2016.

¹ Decision No. C14-0522.

² Decision No. R14-0723-I at ¶ 23.

9. As noted above, Black Hills, Staff, the OCC, and the Public Intervenors filed exceptions to the Recommended Decision on November 17, 2014. Black Hills, the OCC, and Staff filed responses to the exceptions.

10. We deliberated on the exceptions at our weekly meeting on December 10, 2014.

11. On December 18, 2014, Black Hills and the intervening parties participated in a technical conference with Commission advisors before ALJ Garvey. The Commission scheduled the technical conference to derive an appropriate increase in base rate revenues and the GRSA consistent with our deliberations on the exceptions to the Recommended Decision.

12. Black Hills reported at the technical conference that the Commission's findings result in an increase in the Company's revenues of approximately \$3,074,261. The resulting GRSA is 1.965 percent.

C. Return on Equity

13. The Recommended Decision established a range for Black Hills's authorized ROE of 9.6 percent to 9.9 percent and set 9.83 percent as the value used to determine base rate revenue requirements and the associated rates. The ALJ explained that 9.83 percent was the mean result of Staff's multi-stage discounted cash flow (DCF) model, which he concluded was a preferred approach for establishing an authorized ROE and, based on the record in this proceeding, best reflected the equity marketplace and resulted in the most just and reasonable rates. The ALJ further found that the CACJA rate adjustment, which he also approved, serves to reduce Black Hills's overall risk profile, thus justifying a reduction in the Company's authorized ROE downward from the current authorized level of 9.9 percent.

14. In its exceptions, Black Hills asserts that an ROE of 9.83 percent is deficient and requests that the Commission maintain the existing 9.9 percent. Black Hills argues that a 9.83 percent ROE does not account for the Company's proposal from the September evidentiary

hearing to decrease the authorized ROE from the 10.3 percent the Company requested in its direct case in order to reduce the associated rate impact on customers. Black Hills also cites a Regulatory Research Associates publication demonstrating that the average of ROEs across the country since 2010 is 10.19 percent³ and argues that the ROEs set by the Commission over the same period range from 9.6 percent to 10.95 percent. Black Hills further claims that the multi-stage DCF analysis is contrary to a Federal Energy Regulatory Commission statement that the midpoint of such analysis would not satisfy the *Hope* and *Bluefield* standards given anomalous capital market conditions.

15. The OCC argues in its exceptions that the recommended ROE of 9.83 percent is too high and requests that the Commission set the Company's ROE in the range of 9.2 percent to 9.48 percent. The OCC points to declining interest rates and the risk-reducing effect of the CACJA rate adjustment. The OCC also suggests that, if Black Hills's proposed size adjustment of 100 basis points is eliminated from a 10.3 percent ROE, the result is 9.3 percent. The OCC further cites two recent Kansas Corporation Commission decisions where that regulatory body authorized ROEs of 9.1 percent and 9.5 percent.

16. Staff also asserts that the 9.83 percent ROE is excessive and requests that the Commission lower the value to 9.48 percent. Staff argues that a 9.48 percent ROE will allow the Company to earn a reasonable return while maintaining the Company's financial viability. Echoing the OCC, Staff claims that the ALJ failed to account for the risk reduction related to the CACJA rate adjustment despite his statement that such riders have a stabilizing effect and result in a reduction to the Company's risk.

³ Hearing Exhibit 45.

17. The Public Intervenors similarly argue for an ROE at or below 9.5 percent. They cite several risk reduction factors that support a lower ROE, including reduced generation risk due to the Company's new fleet of natural gas units; minimal risk to the Company in the recovery of fuel costs to generate energy or its cost for purchasing energy; the effect of the CACJA rate adjustment; and, the stabilizing effect of other rate adjustments that, according to the Public Intervenors, essentially guarantee revenue recovery.

18. We adopt the ALJ's recommendation of a 9.83 percent ROE for the purpose of establishing the Company's revenue requirements and rates in this proceeding. We also approve the same range of reasonableness for the ROE extending from 9.6 percent to 9.9 percent. Contrary to the assertions raised in certain exceptions, the ALJ applied a thorough analysis of the evidence to arrive at an ROE based on the reasonable results of a model that correctly accounts for the stabilizing effect of the CACJA rate mechanism. Black Hills's argument that the Recommended Decision violates the *Hope* and *Bluefield* standards is also unconvincing. We find the ALJ's adopted ROE will maintain the Company's ability to attract capital consistent with the returns of businesses having similar or comparable risks.

19. It would be unreasonable to approve an ROE as low as advocated by Staff and the OCC. The record in this proceeding indicates that ROEs recently awarded to electric utilities average above 10 percent. We also share the ALJ's observation that, on balance, ROEs for electric utilities exceed those awarded to natural gas utilities. In two recent gas rate cases in Colorado, the Commission established an ROE of 9.72 percent.

20. Therefore we deny all exceptions regarding the authorized ROE and uphold the findings in the Recommended Decision.

D. ARRA Grant

21. Black Hills owns 50 percent of the Busch Ranch Wind Facility. Approximately \$8.3 million of the Company's associated investment costs were funded by a federal cash grant awarded under the American Recovery and Reinvestment Act (ARRA).

22. The ALJ recommended approval of the Company's proposal to include the full amount of the grant-funded investment in rate base, which would allow Black Hills to earn a return on that portion of the investment. The ALJ found that Black Hills's decision to accept the cash grant instead of an Investment Tax Credit (ITC) was prudent and provided a benefit to customers.

23. In reaching his decision, the ALJ acknowledged that Black Hills would not include in its cost of service any depreciation expense for the grant-funded portion of the facility. The ALJ also noted the Commission's broad discretion as to the regulatory treatment of the grant and found good cause for affording the grant similar treatment based on prior Commission decisions.⁴ The ALJ further noted that the Commission, in the Company's most recent Phase I electric base rate proceeding, awarded Black Hills an incentive for capturing and applying ARRA funds, as discussed below.

24. The OCC opposes the ALJ's inclusion of the grant-funded investment in rate base. The OCC argues that the \$8.3 million was not a cash outlay by shareholders and therefore was essentially "free money."

25. The Public Intervenors also oppose accounting for the ARRA grant in rate base. Like the OCC, the Public Intervenors argue that Black Hills had no investment in this portion of the capital cost of the project. Assuming a weighted average cost of capital of 7.55 percent, the

⁴ Decision No. C93-1346, Proceeding No. 93S-001EG issued October 27, 1993.

Public Intervenors calculate the first year, pre-tax-adjusted return to Black Hills on the ARRA-funded investment to be approximately \$626,650 and imply that one year's return should be sufficient reward to the Company.⁵

26. Black Hills responds that removing the ARRA-funded investment from rate base would put the Company in a worse economic position than if it had never applied for and received the grant. The Company reiterates that it should be awarded the same treatment that would have been afforded had the federal support been delivered as an ITC. Black Hills also argues the Commission previously rejected similar challenges to its proposed treatment of the non-investor supplied funds.⁶

27. We support the ALJ's reasoning that Colorado utilities have been encouraged to seek federal financial support for renewable energy projects to the benefits of ratepayers. We also note that the Renewable Energy Standard in § 40-2-124(f), C.R.S., contemplates incentives for utility ownership of renewable energy resources.⁷ We therefore deem the ALJ's approval of Black Hills's proposal to include in rate base the ARRA-funded investment at the Busch Ranch Wind Project to be acceptable in its form as an incentive to the Company. However, we are persuaded by the OCC and the Public Intervenors that multiple years of collecting a return on the full \$8.3 million of grant-supported rate base, even if amortized over the life of the facility, is not reasonable. We agree that allowing a return on grant money is an important incentive, but we do not agree that the return, or the amount subject to a return, should be the same as when private shareholders or bondholders invest in the Company.

⁵ Public Intervenors Exceptions, p. 10.

⁶ Decision No. C93-1346, Proceeding No. 93S-001EG, p.72.

⁷ With respect to renewable energy projects, § 40-2-124(f), C.R.S., states in part: "These policies must provide incentives to qualifying retail utilities to invest in eligible energy resources."

We conclude that a more reasonable result is to include 50 percent of the grant-funded investment, or \$4,184,658 in the rate base. Consistent with the ALJ's approved incentive, Black Hills shall not recover a depreciation expense for any of the grant-funded investment.

28. As discussed below, Black Hills is directed to file an electric base rate case in 2016. We will address the continued inclusion of ARRA-funding in the Company's rate base as part of that proceeding.

E. Fuel Stocks

29. Black Hills's cost of service includes its fuel stock inventories in the 2013 HTY rate base. In its case in chief, the OCC argued that these inventories included the coal used in the W.N. Clark coal plant that is being decommissioned pursuant to Black Hills's emission reduction plan approved under the CACJA. The OCC observed that the value of fuel stocks decreased significantly from \$985,800 in December, 2012, to \$513,550 in December, 2013. Upon the OCC's recommendation, the ALJ required the Company to adjust the value of its fuel stock inventories in the cost of service to represent the reduced year-end balance. The ALJ agreed that the end-of-year balance would be more reflective of conditions going forward due to the closure of the coal plant.

30. In its exceptions, Black Hills agrees with the premise that the coal inventory should be removed from the cost of service, because the W.N. Clark plant will no longer be in use. However, the Company seeks to reverse the ALJ's adoption of the OCC's adjustment to the fuel stock inventories, claiming that it was unnecessary because all coal inventories had already been removed from the fuel stock inventories. Black Hills requests that the Commission instead approve a 13-month average of fuel stock inventories to be included in rate base.

31. We agree with the parties that the fuel stock inventories used to establish rates should not include coal. We further acknowledge that the Company sold its coal stockpile

sometime during the 2013 test year. However, neither Black Hills nor the OCC provided evidence, such as specific ledger balances, to prove that coal was completely removed from the monthly fuel stock balances included in the cost of service.

32. Absent certainty regarding the components of the fuel stock inventory figures used in the Company's cost of service, we grant Black Hills's exceptions and direct the Company to calculate a 13-month average of the test year booked balances, if the monthly balances indeed include no coal inventories. We conclude that a 13-month average provides a more reasonable value for fuel stocks to be included in the Company's rate base for the purpose of calculating rates. However, if the fuel stock accounts include any coal costs, we deny Black Hills's exceptions and uphold the ALJ's approval of a year-end balance amount for the reasons set forth in the Recommended Decision.

33. At the December 18, 2014, technical conference, Black Hills explained that the fuel stock accounts used in its cost of service did, in fact, contain coal inventories. Therefore, the revenue requirement shall be based on the ALJ's approved adjustment to fuel stock inventories, consistent with our findings at the December 10, 2014, weekly meeting.

F. Amortization of the W.N. Clark Coal Plant

34. The Recommended Decision determined that, because Black Hills had entered into contracts for the decommissioning and demolition of the W.N. Clark coal plant, with specific payment terms and obligations for both parties, the associated costs should be included as known and measurable adjustments to the cost of service for establishing rates. The ALJ also adopted a four-year amortization period for the recovery of these costs.

35. In its exceptions, the OCC opposes the recovery of the decommissioning costs in this proceeding and reiterates its recommendation that the matter be deferred to the Company's

next rate case. The OCC maintains that the final costs for the demolition and removal process will not be fully known until a future date.

36. We uphold the Recommended Decision and approve the recovery of the decommissioning costs of the W.N. Clark coal plant over a four-year amortization period. We agree with the ALJ that the contracts support known and measurable adjustments to the Company's cost of service.

G. Expenses Attributable to Open Employee Positions

37. The Recommended Decision details the derivation of an approved adjustment to the salaries and wages included in Black Hills's cost of service. The ALJ found that because Black Hills subsequently filled 9 of the 14 open positions during the test year, the Company's adjustment to test year salaries and wages should include the expenses attributable to 9 rather than 14 open positions.

38. In its exceptions, Black Hills calculated a \$173,950 reduction to its revenue requirement to account for the five fewer openings. In its response to exceptions, the OCC contests Black Hills's \$173,950 calculation, because it does not comport with the ALJ's calculated modification to Black Hills's proposed adjustment to salaries and wages.

39. We find the ALJ's adjustment to Black Hills's cost of service to be an accurate accounting of the expenses attributable to the five fewer open positions. We direct the Company to reduce its proposed adjustment that accounts for open positions by \$346,340 as calculated in the Recommended Decision. The adjustment is a known and measurable modification to the test year inputs to Black Hills' cost of service model and correctly reflects the five open positions.

H. Rate Case and Electric Resource Plan Expenses

40. The Recommended Decision approved a two-year amortization period for the recovery of certain costs incurred by Black Hills in its Phase II rate case, Proceeding

No. 12AL-1052E. Likewise, the ALJ approved a two-year amortization period for the recovery of certain costs incurred by the Company in its 2013 Electric Resource Plan (ERP) proceeding, Proceeding No. 13A-0445E. The ALJ found that there should be a reasonable time between when such costs are incurred and when they are recovered from ratepayers.

41. In its exceptions, the OCC renews its request that the recovery of these expenses not be allowed in this case but instead be deferred to a future rate proceeding. The OCC further argues that this amortization period should be longer than the two-years to provide a measure of relief to ratepayers and certainty to the actual amount and prudence of these costs.

42. In response, Black Hills argues that the ALJ's ruling on the time periods for the deferral of cost recovery on the Phase II rate case and 2013 ERP costs is reasonable. The Company argues the OCC disregards the impact the deferral would have on ratepayers in the Company's next rate case.

43. We agree with the ALJ and deny the OCC's exceptions on this point. These expenses are recoverable, and the ALJ's rulings best reconcile the timing of cost recovery with the cost incurred. We further conclude that the Recommended Decision correctly adopts a two-year amortization period for these types of costs given the pattern of the Company's rate case and resource planning filings.

I. Equity Compensation

44. The Recommended Decision presents a detailed analysis of the recurring difference between the amounts Black Hills books for its equity compensation program and amounts actually paid out to employees. The ALJ's analysis supports the allowance of \$408,185 of equity compensation in the Company's revenue requirement as opposed to the \$2,040,928 the Company booked in 2013.

45. The Public Intervenors argue in their exceptions that none of the non-cash expenditures associated with the equity compensation program should be charged to ratepayers. They argue that Black Hills's customers already pay for the fully-loaded wages and salaries of employees, management personnel, and executives and that the expenses associated with equity compensation should be borne by investors and not customers.

46. In contrast, Black Hills requests that the Commission allow for the recovery of the full booked amount for equity compensation, consistent with its decision in the Company's last electric base rate case. Black Hills also argues it was prevented during the course of this proceeding from presenting adequate evidence to substantiate the booked amount, which led to a confusing record. Black Hills also proposes an alternate method for determining the equity compensation expense, in which approximately 91 percent of the booked amount is included based on the percentage Black Hills Corporation, the Company's parent, paid out in equity compensation as compared to its booked amount in 2013.

47. In response, the OCC states that the ALJ's solution is supported by the record and relevant law. The OCC also argues that, because the issue had been considered from early on in the proceeding, Black Hills's procedural concerns are without merit.

48. We agree with the Recommended Decision that Black Hills's equity compensation program benefits both shareholders and ratepayers. We therefore deny the Public Intervenors' exceptions on this point and allow for the recovery of these costs. We also disagree with Black Hills that the ALJ erred in his decision to allow the Company to recover less than the full amount of equity compensation the Company booked under Generally Accepted Accounting Procedures accounting. We find the ALJ's approach for addressing the difference between booked amounts of equity compensation and the costs of actual payments to be reasonable. We therefore deny the Company's exceptions.

J. Factory Group Mutual Insurance

49. The Recommended Decision denied the OCC's proposed adjustment related to prepayment of the premium for the Company's Factory Group Mutual Insurance policy.

50. In its exceptions, the OCC argues that the ALJ overlooked the expense associated with the premium and requests that the Commission direct Black Hills to make an additional adjustment to its cost of service to remove the associated \$218,018. The OCC states that Black Hills's witness admitted at the evidentiary hearing that, if a 2013 HTY were adopted by the Commission, the \$218,018 expense would be a known and measurable adjustment.

51. In response, Black Hills argues that the ALJ denied every argument presented by the OCC regarding treatment of the prepayments and points out that the OCC has failed to support a known and measurable adjustment to the HTY for insurance expense.

52. Given our support for the ALJ's adoption of the 2013 HTY and Black Hills's acknowledgment that a decrease to its cost of service for the associated expense would represent a known and measurable adjustment, we grant the OCC's exceptions on this point. Black Hills shall decrease the expenses included in the cost of service by the \$218,018 related to the Factory Group Mutual Insurance premium.

K. Advanced Metering Infrastructure Incentive

53. Separate from the \$8.3 million of ARRA grant funding Black Hills received for the Busch Ranch Wind Project, the Company received approximately \$3.8 million in ARRA grants to deploy Advanced Metering Infrastructure (AMI). Black Hills requested in its previous rate case a \$400,000 expense item in its cost of service as an incentive for deploying the AMI.⁸

⁸ Decision No. R14-1298 at ¶ 141.

The Commission denied that request, in part, and permitted Black Hills to recover an expense of \$100,000 through base rates.⁹

54. In its exceptions to the Recommended Decision, the OCC contends that Black Hills has over-recovered this AMI incentive, arguing that the Commission authorized the Company to recover a total of \$100,000 and not \$100,000 per year over a three-year period. Alternatively, the OCC requests the Commission to reopen proceedings in the 2011 rate case to address this issue.

55. Black Hills refutes the OCC's allegations of an over-collection. Black Hills asserts that the \$100,000 was not intended to be a cap and that the OCC argument constitutes a collateral attack on a prior Commission decision. However, Black Hills agrees that the Commission did not intend for the expense to become a permanent feature of the Company's base rates.¹⁰

56. We deny OCC's exceptions. The premise of the OCC's over-recovery argument, that the Commission authorized Black Hills to recover no more than \$100,000, is incorrect. In the 2011 rate case, the Commission permitted Black Hills "to recover *through base rates* an incentive in the form of a \$100,000 expense."¹¹ In response to OCC's application for reargument in 2011, the Commission clarified its intention to allow Black Hills to recover the incentive through base rates, and not through a rider that is capable of tracking when Black Hills recovers only \$100,000. The Commission also instructed Black Hills to file a base rate proceeding

⁹ Decision No. C11-1371, Proceeding Nos. 11AL-382E and 11AL-387E issued December 22, 2011 at ¶ 139.

¹⁰ Response to Exceptions of Black Hills, p.19.

¹¹ Decision No. C11-1371 at ¶ 139 (emphasis added).

“within a reasonable timeframe such that the collection of the expense will terminate and the Company will have recovered from ratepayers an appropriate total amount.”¹²

57. With respect to the amount of incentive collected, the Commission established neither a cap on the amount of incentive to be recovered from ratepayers nor did it set a specific timeframe in which recovery was intended to occur. We also agree with the ALJ that there was little to no evidence introduced into the record by the OCC that an inappropriate amount was collected. Therefore we decline to commence an action in this proceeding based on the lack of evidence of wrongdoing on the part of Black Hills and do not find sufficient cause to reopen Proceeding Nos. 11AL-382E and 11AL-387E. However, we find that Decision No. C12-0143 was clear that, upon the filing of an electric base rate proceeding subsequent to Proceeding Nos. 11AL-382E and 11AL-387E the “...collection of the expense will terminate....”¹³ We therefore find good cause to remove the \$100,000 expense from base rates in this proceeding and will require that the expense be eliminated from the calculation of the final GRSA.¹⁴

L. Future Track Expense

58. Black Hills initially proposed to recover from ratepayers the costs associated with Future Track, a program intended to recruit employees and develop necessary skills in response to anticipated retirements. At the September evidentiary hearing, Black Hills modified its request and asked that the Commission instead approve deferred accounting treatment for the program’s costs for recovery in a future rate proceeding.

¹² Decision No. C12-0143 at ¶ 49 (Proceeding Nos. 11AL-382E and 11AL-387E issued February 10, 2012).

¹³ *Id.* ¶49.

¹⁴ At the December 18, 2014, technical conference, Black Hills explained that its cost of service model did not include the \$100,000 expense. Therefore no change was required to the calculated revenue requirement.

59. The Recommended Decision denied Black Hills's request for deferred accounting, finding that the hiring and recruitment issues facing the Company were not so unique and special as to warrant the creation of a regulatory asset for Future Track expenses.

60. In its exceptions, Black Hills requests that the Commission set aside the ALJ's determination. According to the Company, Future Track addresses work shortages in advance and benefits customers in reducing overall labor costs. Black Hills argues the ALJ's denial of the deferred accounting treatment ignores the unrebutted fact that the Company faces an ongoing need for skilled workers. Black Hills also maintains that deferred accounting would not prejudice the prudence of the expenditures.

61. In response, the OCC argues that dollar-for-dollar recovery of Future Track expenses would, in effect, create a new regulatory standard for labor costs, whereas such costs do not deserve to be elevated to any preferred status.

62. We agree with the ALJ's findings regarding Future Track as set forth in the Recommended Decision and deny the Company's exceptions.

M. Test Year Revenue Adjustments

63. With its exceptions, Black Hills submitted a Request for Clarification concerning the proper treatment of certain revenue adjustments in the Company's cost of service model given the Recommended Decision's adoption of the 2013 HTY. Black Hills points out that, in support of its proposed "current test year," or CTY, the Company adjusted the revenues from the R-3 rate class to recognize an anticipated customer load expansion in 2014 not reflected in the 2013 per-book revenues. Likewise, the Company notes that it also proposed an adjustment to its R-4 rate class revenues to reflect an anticipated decrease in street lighting sales in 2014. Black Hills seeks to confirm that upon the rejection of the Company's CTY in favor of the 2013 HTY, those CTY-related revenue adjustments should not be made when establishing

revenue requirements and rates. The Company also admits that the adjustments were not presented as known and measurable changes to the cost of service.

64. In response, the OCC states that the Company's request for clarification should be rejected because no clarification is needed. The OCC argues that the ALJ considered all evidence presented at the hearing and concludes that no modification to the Recommended Decision is required to include the revenue adjustments in the cost of service used to establish rates here.

65. We find merit in the arguments put forward by Black Hills and grant its request for clarification. The cost of service used to establish the revenue requirements and GRSA should not include the R-3 and R-4 rate class revenue adjustments proposed by the Company for its CTY.

N. General Rate Schedule Adjustment

66. In accordance with Decision No. C14-1465-I issued December 10, 2014, Black Hills filed an updated cost of service based upon our decisions in consideration of the exceptions at our December 10, 2014, weekly meeting. Black Hills presented this cost of service at the December 18, 2014, technical conference.

67. Based on our findings set forth above and the Company calculations as reviewed at the technical conference, we approve an increase of base rate revenues for Black Hills of \$3,074,261. Black Hills is authorized to implement a GRSA of 1.965 percent consistent with this approved increase in base rate revenues.

O. CACJA Rate Adjustment

68. The CACJA statute authorizes a utility to earn a return on the amounts expended for CWIP rather than waiting until the facility becomes operational and is used and useful. Section 40-3.2-207(3), C.R.S., states "[c]urrent recovery shall be allowed on construction work

in progress at the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, for expenditures on projects associated with the plan during the construction, startup, and preservice implementation phases of the projects.”

69. Under those statutory provisions, the ALJ approved the Company's proposed interim tracking mechanism to recover CWIP associated with the LM6000 natural gas unit at the Pueblo Airport Generation Station. Recovery of CWIP through the CACJA adjustment would begin on January 1, 2015, and will continue for approximately two years, or until the LM6000 unit begins commercial operation in the early part of 2017. At that time, Black Hills anticipates the associated investments will be included in the Company's rate base and the associated costs will begin to be recovered through base rates.

70. As discussed in the Recommended Decision, three elements comprise a utility's weighted average cost of capital: (1) capital structure, which is the ratio of debt to equity; (2) rate of return on equity; and, (3) cost of long-term debt.

71. The OCC questions in its exceptions whether, for purposes of determining the weighted average cost of capital applicable to the CACJA rider and the return on CWIP, the Commission in a utility's rate case determines each of these three elements of the weighted average cost of capital, or only the return on equity. OCC argues that under § 40-3.2-207(3), C.R.S., the only component of the weighted average cost of capital that is based upon a previous rate case and applied to the CACJA rider is the return on equity.

72. We reject the OCC's interpretation of that provision of the CACJA statute. The OCC's construction of the first clause – “[c]urrent recovery shall be allowed on construction work in progress at the utility's weighted average cost of capital” – is that “current” modifies both “recovery” and “weighted average cost of capital,” and therefore recovery on construction work in progress is calculated according to the “current” weighted average cost of capital,

which may change periodically as the cost of debt or debt/equity ratio changes. The OCC's interpretation is contrary to the plain language of the statute. "Current" modifies only "recovery" and not "weighted average cost of capital."

73. The OCC's interpretation is also inconsistent with the purpose of the statute. Without the incentive under § 40-3.2-207, C.R.S., utilities do not recover CWIP until the projects are completed. The General Assembly passed the CACJA to allow for "current recovery" of the cost of emission-control projects *during* their construction, instead of waiting until the completion of the projects.

74. We also reject the OCC's interpretation of the "including" clause. OCC contends that the "including" clause limits the Commission's authority to set or "lock down" only the ROE for CACJA projects during a rate proceeding. We disagree, as the most reasonable interpretation of the "including" clause is that it is merely an illustration of one of the components of the weighted average cost of capital that the Commission can set during a rate proceeding. The Colorado Supreme Court has held in a similar context that the use of a clause starting with "including" and followed by an example is merely illustrative, and not limiting.¹⁵ The clause "including its most recently authorized rate of return on equity" merely illustrates one of the three components of the weighted average cost of capital that the Commission establishes for application to construction work in progress.

75. The OCC's interpretation of § 40-3.2-207(3), C.R.S., is also impractical. In this proceeding, the Commission determines all three components of the weighted average cost of capital that would apply to the recovery of, among other things, the cost of CACJA-related construction. However, under OCC's interpretation of the CACJA, the Commission would be

¹⁵ *Hoper v. County of Denver*, 173 Colo. 390, 396 (Colo. 1971).

required to adjust the weighted average cost of capital whenever the utility's capitalization percentage or cost of debt changes. Review of such adjustments would result in unnecessary time and expense imposed on ratepayers, particularly because the CACJA rate adjustment would be in place for only two years.

76. We therefore reject the OCC's exceptions concerning § 40-3.2-207(3), C.R.S.

P. Requirement to File Electric Base Rate Proceeding

77. Section 40-3.2-207(5), C.R.S., provides that during the time any special regulatory practice is in effect as it relates to a jurisdictional electric utility's approved emission reduction plan, a utility shall file a new rate case at least every two years or file a base rate recovery plan that spans more than one year.

78. Due to our approval of the CACJA adjustment and other ratemaking provisions afforded to the Company by this Decision, we direct Black Hills to file a Phase I electric base rate proceeding no later than two years from the date the rates established in this proceeding become effective, or December 27, 2016.

Q. Additional Rate Filings Dependent Upon this Decision

79. In Advice Letter No. 680, Black Hills explained that, prior to the effective date of final rates resulting from this proceeding, the Company will make the necessary filings to revise its Transmission Cost Adjustment (TCA) and its Purchased Capacity Cost Adjustment (PCCA) to remove costs from those rate mechanisms because they instead will be recovered through new base rates.¹⁶

80. On October 31, 2014, Black Hills filed a petition in Proceeding No. 14V-1066E seeking an extension to file a new TCA tariff after a final decision issues in this proceeding

¹⁶ Black Hills did not file the TCA and PCCA tariffs for approval in this proceeding. The Company may therefore not submit those tariffs as a compliance advice letter filing on not less than two business days' notice.

instead of filing the tariff on November 1, 2014, to become effective January 1, 2015. Similarly, on November 14, 2014, the Company filed a petition in Proceeding No. 14V-1102E seeking an extension to file a new PCCA tariff after a final decision issues in this proceeding instead of filing the tariff on November 15, 2014, to become effective January 1, 2015. The Commission granted the petitions in both proceedings by Decision Nos. C14-1342 in Proceeding No. 14V-1066E on November 7, 2014 and C14-1404 in Proceeding No. 11V-1102E on November 25, 2014, respectively.

81. Because Black Hills will not file updated tariffs for the TCA and the PCCA until after this Decision issues, the updated TCA and PCCA rates shall take effect after January 1, 2015, in accordance with § 40-6-111(2)(a)(III), C.R.S. Both rate adjustment mechanisms allow for cost and revenue reconciliations, which will accommodate the forthcoming advice letter filings. However, we encourage Black Hills to submit the advice letters as soon as practicable.

82. On December 2, 2014, Black Hills filed an additional petition in Proceeding No. 14V-1154E seeking an extension to file updated bill credit tariffs for subscribers to community solar gardens (CSGs). By Decision No. C14-1478 issued December 15, 2014, the Commission granted the petition to allow the Company to file the new tariff after a final decision issues in this proceeding. There are no installed CSGs on Black Hills's system. Nevertheless, Black Hills shall submit the advice letter for the updated CSG bill credits as soon as practicable in accordance with § 40-6-111(2)(a)(III), C.R.S.

II. ORDER

A. The Commission Orders That

1. The Exceptions to Decision No. R14-1298 filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills) on November 17, 2014 are granted, in part, and denied, in part, consistent with the discussion above.

2. The Exceptions to Decision No. R14-1298 filed by Staff of the Colorado Public Utilities Commission are denied.

3. The Exceptions to Decision No. R14-1298 filed by the Colorado Office of Consumer Counsel are granted, in part, and denied, in part, consistent with the discussion above.

4. The Exceptions to Decision No. R14-1298 filed by the Board of Water Works of Pueblo, Colorado and Fountain Valley Authority are granted, in part, and denied, in part, consistent with the discussion above.

5. All requests set forth in the exceptions to Decision No. R14-1298 or in responses to those exceptions but not addressed in this Decision are denied.

6. The effective date of the tariff sheets filed with Advice Letter No. 680 on April 30, 2014 is permanently suspended and shall not be further amended.

7. Black Hills is authorized to file tariff sheets reflecting a revenue requirement increase of \$3,074,261, consistent with the discussion above.

8. Black Hills shall file an advice letter compliance filing in a separate proceeding on or before December 24, 2014, to implement modified base rates and a new General Rate Schedule Adjustment rate rider of 1.965 percent effective December 27, 2014.

9. Black Hills shall file an advice letter compliance filing in a separate proceeding and on not less than two business days' notice to implement the Clean Air Clean Jobs Adjustment mechanism, consistent with the discussion above.

10. Black Hills shall file a Phase I electric base rate case no later than December 27, 2016, under § 40-3.2-207(5), C.R.S., consistent with the discussion above.

11. 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.

12. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 10, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners