**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

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IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, INC. FOR APPROVAL OF ITS ELECTRIC DEMAND SIDE MANAGEMENT (DSM) PLAN FOR PROGRAM YEARS 2019 – 2021 AND FOR APPROVAL OF CHANGES TO ITS ELECTRIC DSM COST ADJUSTMENT TARIFF.	)))))))))	**PROCEEDING NO. 18A-0279E**

UNANIMOUS COMPREHENSIVE AMENDED SETTLEMENT AGREEMENT

I. INTRODUCTION & IDENTIFICATION OF PARTIES

1. This Unanimous Comprehensive Amended Settlement Agreement ("Settlement Agreement" or "Black Hills DSM Settlement Agreement") is a full and complete resolution of all issues raised in Proceeding No. 18A-0279E, Black Hills Colorado Electric, Inc.'s ("Black Hills" or the "Company") Verified Application for Approval of its Electric Demand Side Management ("DSM") Plan for Program Years 2019 – 2021 and for Approval of Changes to its Electric DSM Cost Adjustment Tariff. This Settlement Agreement is unanimous. The parties to the Settlement Agreement include: Black Hills; Trial Staff of the Commission ("Staff"); the Office of Consumer Counsel ("OCC"); the Colorado Energy Office ("CEO"); Energy Outreach Colorado ("EOC"); Cripple Creek & Victor Gold Mining Company LLC ("CC&V"); the City of Pueblo ("City of Pueblo" or "City"), Colorado and the Fountain Valley Authority (together, "Public Intervenors"); the Board of County Commissioners of the County of Pueblo, Colorado ("Pueblo County"); and Southwest Energy Efficiency Project ("SWEEP") (collectively, the "Parties").

II. BACKGROUND

2. On May 4, 2018, Black Hills submitted its DSM Plan Application, seeking Commission approval of several items related to energy efficiency and demand response requirements under § 40-3.2-104, C.R.S., and Commission Rule 3002(b), 4 *Code of Colorado Regulations* 723-3 of the Rules Regulating Electric Utilities. The Application was accompanied by pre-filed Direct Testimony and Attachments of Michael J. Harrington, James Dillon, and Andrew W. Cottrell.

3. In its Application, Black Hills sought an order approving, *inter alia*, the following:

- The Company's 2019-2021 Energy Efficiency Plan ("DSM Plan" or "Plan"), including but not limited to the following:
  - Proposed DSM Programs;
  - Energy and Demand Savings Goals;
  - Participation Goals;
  - Budgets;
  - Cost-effectiveness; and
  - The proposed Evaluation, Measurement and Verification ("EM&V") reporting schedule, budget flexibility parameters, notice of changes process, and annual meeting requirements;
- The avoided capacity costs and avoided energy costs used in the Potential Study (defined below) and Plan development;
- Revisions to the Financial Disincentive Offset ("FDO"), the Performance Incentive calculation to reflect taxes, and the Combined FDO and Performance Incentive Cap ("Combined Cap"); and
- Revisions to the Demand Side Management Cost Adjustment ("DSMCA") Tariff sheets.

4. The Commission deemed the Application complete by Decision No. C18-0473-I mailed on June 18, 2018, and referred the proceeding to an administrative law judge ("ALJ"). ALJ

Robert I. Garvey acknowledged or granted the interventions of the Parties, as appropriate, by Decision No. R18-0513-I mailed on June 25, 2018. Intervenors CEO, EOC, OCC, Pueblo County, the City, Staff, and SWEEP submitted Answer Testimony on August 24, 2018, and intervenors EOC, OCC, Pueblo County, and SWEEP filed Cross-Answer Testimony on September 14, 2018. In their Answer and Cross-Answer Testimony, intervenors responded to the Company's proposals and proposals made by other intervenors, with some offering their own proposals.

5. The Company submitted the Rebuttal Testimony of Mr. Harrington, Mr. Dillon, and Mr. Cottrell on September 14, 2018.

6. Following the submission of Answer Testimony, the Company commenced settlement negotiations with the Parties. On September 28, 2018, Black Hills notified the ALJ that a settlement in principle had been reached by the Parties, and requested that the evidentiary hearing scheduled to commence October 3, 2018 be vacated. The ALJ granted this request by Decision No. C18-0879-I, mailed on October 1, 2018. Through the course of numerous discussions and meetings, the Parties agreed upon the terms of this Settlement Agreement.

III. SETTLEMENT TERMS

The Parties hereby stipulate and agree as follows:

A. Settlement Introduction

7. This Settlement Agreement reflects the input and careful consideration of all issues by the Parties. The Parties believe that Black Hills' 2019-2021 DSM Plan, as modified by the terms of this Settlement Agreement, is in the public interest and should be approved. The Parties agree that the savings goals required by this Settlement Agreement are appropriate. The Settlement Agreement memorializes the negotiated settlement among and between the Parties on all the issues raised in this proceeding. As a result of these negotiations and this Settlement Agreement, the

Parties agree as set forth herein that the issues in dispute between them in this proceeding related to Black Hills' 2019-2021 DSM Plan have been resolved to the satisfaction of the Parties. The Parties affirmatively support the Settlement and request the Commission's approval of the Application and the 2019-2021 DSM Plan, subject to the modifications set forth below in this Settlement Agreement.

B. <u>DSM Plan Energy Savings Goals</u>

8. Black Hills' DSM Application originally proposed an energy (kWh) savings goal of approximately 17.9 GWh (at the meter) on average per Plan Year. The Parties' Answer Testimonies generally advocated that DSM savings should be higher.

9. The Parties agree to an energy savings goal of roughly 24 GWh (at the meter) for each year of the Plan, as shown more specifically in the Savings/Budget Settlement Table below.

10. CEO witness Luke Ilderton raised concerns in his Answer Testimony that the energy savings goals proposed for the Low-Income Program were too aggressive, and recommended reducing the Low-Income Program energy savings goals based on program design changes and assumptions about Black Hills' service territory he deemed more realistic in EOC's experience. The Savings/Budget Settlement Table below represents low-income savings goals of approximately 2.1 GWh per year, as recommended by EOC witness Mr. Ilderton, which is approximately double Black Hills' low-income energy savings goal for 2018.[1]

11. Further, the savings and budget listed in the Savings/Budget Settlement Table reflect Black Hills' agreement to develop at least 50% of the increased savings compared to its original filing from DSM programs other than home energy reports.

12. OCC witness Chris Neil questioned in his Answer Testimony the continued use of

[1] The exact amount is 2,095,850 kWh at the meter (2019-2020), and 2,045,810 kWh at the meter (2021).

the 90% net-to-gross lighting factor in Black Hills' DSM Plan.[2] To address this concern, a third-party EM&V study commissioned by Black Hills will be completed and filed at the end of the first quarter of 2019. Part of the EM&V study will be the determination of the net-to-gross factor for lighting measures in its Residential Retail Lighting Program based on the most recent available data (the current net-to-gross lighting factor used in Black Hills' filed DSM Plan is 90%). The Parties agree that the net-to-gross lighting factor determined in the third-party EM&V study will be applied to the savings achieved in all three plan years, 2019 (retroactive to January 1, 2019) through 2021. The Company and the selected EM&V contractor will consult with OCC in the development of an EM&V study to evaluate the net-to-gross factor for lighting. The OCC will be able to review and comment on the proposed net-to-gross factor addressed in the EM&V study before the study is filed with the Commission.

13. The figures in the Savings/Budget Settlement Table below represent the terms of the Settlement Agreement.

Savings/Budget Settlement Table

Sector	mTRC	Budget	kW Goal @ Meter	kWh Goal @ Meter	kW Goal @ Generator	kWh Goal @ Generator
2019						
Residential	2.56	$1,188,213	1,361	11,103,945	1,468	11,980,951
C&I	3.01	$2,641,690	1,594	8,661,365	1,720	9,345,452
Special	1.58	$1,794,062	1,184	4,249,081	1,278	4,584,679
Software/Tracking		$150,000				
Cross Program Expenses		$375,000				

[2] *See* Chris Neil Answer Testimony at pp. 23-24.

Marketing/Education/ Training		$125,000				
Evaluation		$251,044				
Total	**2.21**	**$6,525,010**	**4,139**	**24,014,391**	**4,466**	**25,911,082**
2020						
Residential	2.59	$1,103,549	1,029	10,857,109	1,111	11,714,619
C&I	3.13	$2,729,265	1,631	8,980,378	1,759	9,689,661
Special	1.64	$1,794,062	1,179	4,249,081	1,272	4,584,679
Software/Tracking		$150,000				
Cross Program Expenses		$375,000				
Marketing/Education/ Training		$125,000				
Evaluation		$251,175				
Total	**2.29**	**$6,528,050**	**3,839**	**24,086,568**	**4,142**	**25,988,960**
2021						
Residential	2.00	$700,582	973	7,404,534	1,050	7,989,355
C&I	3.08	$2,887,208	1,724	11,295,874	1,860	12,188,038
Special	1.99	$2,018,762	2,108	5,304,366	2,274	5,723,312
Software/Tracking		$150,000				
Cross Program Expenses		$375,000				
Marketing/Education/ Training		$125,000				
Evaluation		$250,261				
Total	**2.32**	**$6,506,812**	**4,804**	**24,004,774**	**5,184**	**25,900,706**
Total (2019-2021)						
Residential	2.45	$2,992,343	3,363	29,365,589	3,629	31,684,925

C&I	3.07	$8,258,163	4,948	28,937,617	5,339	31,223,151
Special	1.74	$5,606,885	4,471	13,802,528	4,824	14,892,671
Software/Tracking		$450,000				
Cross Program Expenses		$1,125,000				
Marketing/Education/ Training		$375,000				
Evaluation		$752,481				
Total	**2.27**	**$19,559,872**	**12,782**	**72,105,733**	**13,792**	**77,800,748**

C. DSM Plan Demand Savings Goal

14. Section 40-3.2-104(2)(a) C.R.S. requires the Commission to "establish energy savings and peak demand reduction goals." Black Hills can achieve "peak demand reduction goals" through demand response programs or energy efficiency programs. Through this Settlement Agreement, the Parties are agreeing to Black Hills' plan to achieve peak demand reduction goals (*i.e.*, demand savings goals) mainly through its energy efficiency programs. Black Hills' DSM Application originally proposed a demand (kW) savings goal of approximately 3,454 kW (at the meter) on average per Plan Year. Black Hills' DSM Application did not propose to include in its Plan portfolio any demand response program, which generally refer to programs that seek to reduce or shift electricity usage during periods in response to forms of financial incentives.

15. Parties in this proceeding did not recommend specific revised demand savings goals for Black Hills. However, as discussed above, the Parties generally advocated for higher energy savings goals. Increased energy savings goals directly influence demand savings goals through increased participation rates assumed in DSM programs that are designed to achieve the energy savings goals. Because of this relationship, the recommendations made by the Parties for higher

energy savings goals results in corresponding increases in demand savings goals.

16. The Parties agree on the following increased demand savings goals during the Plan (as measured at the meter), as compared to Black Hills' original Application:

	2019	2020	2021	Total
Application	**3,632 kW**	**3,377 kW**	**3,353 kW**	**10,362 kW**
Settlement Agreement	**4,139 kW**	**3,839 kW**	**4,804 kW**	**12,782 kW**

17. The demand savings goals agreed to as part of this Settlement Agreement have increased as compared to the Company's Application because the increased energy savings goals raise the participation rates assumed in Black Hills' DSM programs. For example, the anticipated participation in the Home Energy Comparison Report program increased from 26,000 participants in the Application to 37,000 participants due to the terms of the Settlement Agreement. The increased participation rates for this program resulted in an increase in energy savings goals of 2,725,000 kWh and an increase in demand savings goals of 214 kW. This example illustrates how the increased savings goals result in correspondingly increased demand savings goals.

D. <u>DSM Budget, Staffing, and Marketing</u>

18. Certain Parties requested an increase to the approximately $5.2 million average annual DSM budget proposed in Black Hills' DSM Application. For example, Pueblo County witness Jim Grevatt requested in his Answer Testimony that the DSM budget should be increased to an average of approximately $7.2 million per year. CEO witness Lindsey Stegall recommended an increase of the budget to $7 million per year. SWEEP witness Justin Brant recommended an increase of the budget to an average of approximately $6.67 million per year. Parties recommended a multitude of DSM Plan changes associated with their recommended budgets. Among these changes were recommendations to increase Black Hills' DSM-related staffing levels

and to improve its local marketing and outreach efforts.

19. The Parties agree to an annual electric energy efficiency programs budget of approximately $6.5 million, with a presumption of prudence afforded up to 115% of this budget to enable the Company adequate flexibility to achieve its energy savings goals.

20. The $6.5 million budget amount includes an additional $200,000 annually for Black Hills' DSM-related staffing. Black Hills agrees to increase its staffing at its local office in Pueblo. Black Hills agrees to engage in authentic outreach that involves significant face-to-face interaction with all types of customers regarding its DSM Plan and available programs that can benefit individual customers to facilitate participation in Black Hills' DSM programs. Black Hills has Spanish speaking capability in its office available to assist with DSM when needed.

21. The $6.5 million budget amount also includes an additional $50,000/year to Black Hills' DSM-related marketing budget to assist Black Hills in improving its local marketing and outreach efforts.

E. <u>DSM Financial Mechanisms</u>

22. The Parties agree to two DSM financial mechanisms, a Performance Incentive and a Financial Disincentive Offset.

i. Performance Incentive

23. Under the currently-effective DSMCA Tariff, Black Hills' Performance Incentive calculation is as follows:

- For each one percent of DSM Energy Savings Goal attainment beyond eighty percent, the Company shall earn two tenths of one percent of the net economic benefits achieved, up to a level of ten percent at one-hundred thirty percent of goal attainment.
- For each one percent of DSM Energy Savings Goal attainment beyond one hundred thirty percent, the Company shall earn one tenth of one percent of the net economic

benefits achieved, up to a level of twelve percent at one-hundred fifty percent of goal attainment.

24. The Parties agree that Black Hills will be eligible to earn a performance incentive equal to a percentage of the net economic benefits achieved for the DSM measures installed during that year.

25. The percentage of net economic benefits retained by the Company as a performance incentive will be based on incremental steps of 0.2 percent per one percent of GWh savings goal achieved. The Company will not be eligible to earn a performance incentive for achievements below 80% of its annual energy savings goal (*i.e.*, approximately 19.2 GWh). At achievement of 80% of goal, the Company will be awarded a performance incentive equal to 1% of the total net economic benefits achieved. For each 1% of savings beyond the 80% level achieved, Black Hills will be able to retain an additional 0.2% of net economic benefits. This performance incentive mechanism equates to 5% retention of the total net economic benefits achieved at 100% of goal attainment. The Company will not be awarded any additional performance incentive for achievements above 150% of goal (*i.e.*, approximately 36 GWh).

26. The following table summarizes the performance incentive incremental steps (without including every 0.2% incremental additional share of net benefits):

Increment of Achieved Energy Savings*	**% Goal Achievement**	**Company's % Share of Actual Net Benefits**
Below 19.2 GWh	<80%	0%
19.2 GWh	80%	1%
19.44 GWh	81%	1.2%
21.6 GWh	90%	3%
24 GWh	100%	5%
26.4 GWh	110%	7%
28.8 GWh	120%	9%
31.2 GWh	130%	11%
33.6 GWh	140%	13%
36 GWh	150%	15%
Over 36 GWh	>150%	No additional incentive above that achieved at 150%

*Approximate amounts at the meter

27. The net economic benefits attributable to each increment of energy savings in the above schedule will be based on a proration of the net economic benefits attributable to the entire portfolio of energy efficiency measures. The Performance Incentive outlined above is based on the Company's achievement of net economic benefits. In this proceeding the Company's net economic benefits for achieved savings of 100 percent of the energy savings goal (24 GWh) is projected to be approximately $9,600,000. Nonetheless, Parties recognize that net economic benefits can vary over time with changes to the measures installed, fuel prices and other avoided costs. The Performance Incentive amount will also be subject to the Total Incentive Cap provided below.

28. The Performance Incentive amount will not be grossed-up for taxes.

ii. Financial Disincentive Offset

29. The Parties agree that Black Hills will have the opportunity to earn an annual Financial Disincentive Offset of $294,660 (which represents $222,000 grossed-up for taxes), half of which is earned once the Company achieves 80% of the energy savings goal, and the other half once it achieves 100% of the energy savings goal. This means that the Company will receive a Financial Disincentive Offset of $147,330 at achievements of 80% of energy savings goal, and an additional $147,330 once the Company achieves 100% energy savings goal, on an annual basis.

iii. Total Incentive Cap – Combined Cap

30. The Parties agree that it is reasonable and in the public interest to cap the Company's total financial incentives (the sum of the Performance Incentive and Financial Disincentive Offset) at $1.4 million annually.

F. mTRC and Avoided Cost

31. Black Hills used mTRC as the primary method of assessing the cost-effectiveness of energy efficiency measures and programs. To perform the mTRC, a Non-Energy Benefits ("NEBs") adder is applied to the avoided supply costs, thereby impacting the net benefits of an energy efficiency measure. For purposes of determining cost-effectiveness, the Parties agree that the Company will continue to use the current mTRC methodology.

32. The Company provided Applied Energy Group, Inc. ("AEG"), who conducted the DSM Baseline and Potential Study, with the avoided energy cost from its most recent Electric Resource Plan ("ERP"), Proceeding No. 16A-0436E. The avoided generation capacity, or the avoided capacity cost, is the cost associated with adding the next peaking capacity resource. The estimated cost of the Company's recently-added 40 MW peaking unit was used to calculate the

avoided generation capacity cost in the 2016-2018 DSM plan. For purposes of this 2019-2021 DSM Plan, the Parties agree to the Company's use of the actual installed cost of the 40 MW natural gas peaking unit as the basis for the avoided capacity costs.

G. Non-Energy Benefits

33. The Parties agree that for purposes of evaluating cost-effectiveness, Black Hills shall apply a 50% non-energy benefits "adder" to low-income measures and products and a 20% adder to all other measures and products. However, these NEBs adders will only apply for screening purposes; these NEBs adders will be excluded from the calculation of the net economic benefits used to derive the Company's financial incentives.

H. Low-Income DSM Programs

34. EOC witness Mr. Ilderton raised in his Answer Testimony a number of issues related to Black Hills' Low-Income DSM program, including budgeting, savings, subprograms, application of the mTRC, and contribution caps. In the interest of supporting low-income customers, Black Hills and EOC, as well as the Parties, came to agreement on all of these issues.

35. Black Hills will offer three subprograms within the Low-Income Program: Single Family Weatherization;[3] Multi-family Weatherization; and Non-Profit Energy Efficiency Program.

36. The Parties agree to the annual budget for the Low-Income Program as shown in the table below:

	2019	2020	2021
Total	$1,419,562	$1,419,562	$1,419,562

[3] Products and services included in the former Direct Install subprogram will be offered as part of the Single Family Weatherization subprogram.

37. The Parties agree to the annual savings goals for the Low-Income Program as shown in the tables below (first table is savings at the meter; second table is savings at the generator):

	Annual Net Energy Savings Goals (kWh) @ Meter			Annual Net Demand Savings Goals (kW) @ Meter		
	2019	2020	2021	2019	2020	2021
TOTAL	2,095,850	2,095,850	2,045,810	404	398	398
	Annual Net Energy Savings Goals (kWh) @ Generator			Annual Net Demand Savings Goals (kW) @ Generator		
TOTAL	2,261,383	2,261,383	2,207,391	435	430	430

38. The Parties agree that Black Hills will, during each Plan year, have the flexibility to move budget dollars between subprograms and customer segments within the Low-Income Program without further Commission authorization and approval, so long as the Company does not incur costs in excess of 115% of the overall annual budget amount. This flexibility allows Black Hills to focus on achieving energy savings targets across the entire portfolio.

39. The Parties agree that the mTRC for individual measures may be less than 1 for low-income targeted DSM subprograms.

40. The former $1,500 contribution cap for the Single-Family Weatherization Subprogram and Direct Install Subprogram (which will now be merged into the Single-Family Weatherization Subprogram), and Multi-Family Weatherization Subprogram is eliminated for purposes of the 2019-2021 DSM Plan.

I. <u>New Programs, Pilot Programs, and Financing</u>

41. CEO recommended in Mr. Lewis' Answer Testimony that Black Hills implement

changes to its on-site Energy Evaluation Program, including incentives, such that it is rebranded as a Whole-Home Program. Mr. Lewis also recommended that Black Hills undertake several DSM pilot programs. Pueblo County requested in Mr. Grevatt's Answer Testimony that Black Hills implement certain processes to consider new DSM programs or pilot DSM programs, including for demand response, and cross-promote financing programs, to benefit customers. SWEEP requested in Mr. Brant's Answer Testimony that Black Hills increase its DSM stakeholder meeting frequency to two meetings per year.

42. Black Hills agrees that it will market its on-site Energy Evaluation program as a Whole-Home Program, emphasizing the importance of a holistic approach to home energy efficiency improvements to customers. Further, the Company will incorporate an increased incentive for installing multiple or "bundled" measures.

43. Black Hills agrees to conduct bi-annual stakeholder meetings in Pueblo, with more meetings to be held in Pueblo or a different location if requested by stakeholders. The majority of meetings will be held in Pueblo.

44. Black Hills commits to work collaboratively with all interested stakeholders to establish the parameters and scope of feasibility studies to assess the feasibility of undertaking pilot program recommendations, including a demand response program advocated by Pueblo County and new DSM programs advocated by CEO.

45. Black Hills agrees to host a kick-off meeting to discuss and establish the scope and parameters of each of the feasibility studies, taking input from participants. Following this initial meeting, Black Hills will hold monthly calls during the study process to provide updates on the study and take input from interested parties. At the conclusion of the studies, Black Hills will present the results of its analyses during a stakeholder meeting before the end of 2019, permitting

stakeholders to assist in driving a final decision of whether to implement any such pilot programs. Any materials (including slides) will be provided 48 hours in advance of all meetings and calls to facilitate productive dialogue and give parties an opportunity to discuss positions and formulate positions ahead of time. Most stakeholder meetings will be held in Pueblo to allow local interests to easily participate.

46. Thirty days after the final stakeholder meeting on the results of the feasibility studies, Black Hills will file a report with the Commission in this proceeding to explain recommendations on undertaking the studied pilots. The report will explain whether any proposed pilots can be undertaken within the approved 2019-2021 DSM budgets (including 15% flexibility) or whether a budget modification is necessary. Parties will have thirty days to file reply comments on the report and seek a Commission determination approving, modifying, or rejecting any pilots. In the event a budget modification is necessary, Black Hills shall comply with the DSM Plan Budget Flexibility process described in currently-effective Sheet Nos. 70A-70B of its Tariff, which is excerpted hereto as Attachment 1.

47. Black Hills agrees to the cross-promotion of Colorado Commercial Property Assessed Clean Energy ("C-PACE") and other commercial and residential financing programs as part of its DSM-related communications to customers, and will educate Company staff regarding these financing programs.

J. <u>Program Procurement Transparency</u>

48. In CEO witness Ms. Stegall's Answer Testimony, CEO recommended the company conduct competitive solicitation processes for all of its DSM program-related third party contractors that will need to be contracted with for the 2019-2021 DSM Plan. To address this recommendation, Black Hills agrees to provide increased transparency regarding the procurement of third parties to

implement and administer DSM programs. Black Hills will include following information in its DSM annual reports:

- Identify whether each program is implemented/administered by Company or requires a third party contractor;
- Identify the type of procurement used for existing contracts for each third party (i.e., competitively bid or sole sourced);
- If a contract is sole sourced, provide justification;
- List the last year in which a competitive solicitation was conducted for each program; and
- For each program where there is competitive bidding, disclose the specific criteria by which bids were evaluated and the associated weighting.

49. Similarly, in Black Hills' next DSM Plan, the Company will:

- Identify whether each program is implemented/administered by the Company or requires a third party contractor;
- Identify the type of procurement used for existing contracts for each third party (i.e., competitively bid or sole sourced);
- If a contract is sole-sourced, provide justification;
- List the last year in which a competitive solicitation was conducted for each program;
- For each program where there is competitive bidding, disclose the specific criteria by which bids were evaluated and the associated weighting.
- Note which of the third party implemented or administered programs will have new contracts bid or be sole-sourced during the new DSM plan.

K. City of Pueblo

50. The City of Pueblo requested in Answer Testimony that Black Hills establish an affirmative marketing outreach program to identify valuable DSM opportunities, and identify a person with DSM expertise to be a liaison with the City.[4] Black Hills will appoint a DSM liaison coordinator to work directly, albeit not exclusively, with the City of Pueblo. The Black Hills DSM coordinator will assist the City's DSM Project Manager in order to promote, identify and implement demand side management and demand response opportunities. Upon request, the Black Hills DSM coordinator will also conduct DSM educational programs for representatives of the

[4] *See* John Vigil Answer Testimony at p. 3.

City responsible for various services and facilities that consume electric energy supplied by the Company. Working with the City's DSM Project Manager, the Black Hills DSM coordinator will prepare a ranking of the top ten City loads that could benefit from a DSM plan measure. After developing this ranking, the Black Hills DSM coordinator will work with the City's DSM Project Manager to update the ranking on an annual basis.

L. Customer Impact

51. The Parties estimate the impact to residential and small business customers of approval of the Settlement Agreement to be as follows:

	Monthly Bill at Current Rates (Including pending July 2018 DSMCA)	Estimated Monthly Bill (Including Estimated Jan. 2019 DSMCA)	Estimated Monthly Bill (Including Estimated Jan. 2020 DSMCA)	Estimated Monthly Bill (Including Estimated Jan. 2021 DSMCA)
Residential Monthly Bill	$97.85	$98.31	$98.31	$98.37
$$ Increase (decrease)		$0.47	$0.47	$0.52
% Increase (decrease)		0.48%	0.48%	0.53%
Small Commercial Monthly Bill	$379.32	$381.12	$381.12	$381.34
$$ Increase (decrease)		$1.80	$1.80	$2.03
% Increase (decrease)		0.48%	0.48%	0.53%

M. Tariff, Compliance, and Other Filings

52. The Parties do not and will not oppose the Company seeking Commission authorization for the Company to file a compliance advice letter within 90 days of the effective date of its final order, but on not less than two days' notice, with revised DSMCA tariff sheets reflecting all changes to the Company's DSMCA tariff that are approved as a result of this filing.

IV. GENERAL PROVISIONS

53. Each Party understands and agrees that this Settlement Agreement represents a negotiated resolution of all issues the Party either raised or could have raised in this proceeding. Each Party understands that the Commission's approval of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of these issues. Accordingly, the Parties believe that resolving these issues in this proceeding through this negotiated Settlement Agreement is consistent with Commission Rule 1408 encouraging settlement, in the public interest, and that the results of the compromises and agreements reflected in the Settlement Agreement are just, reasonable, and in the public interest.

54. Each Party has the discretion to sponsor a witness at any proceeding the ALJ or Commission holds to address the Settlement Agreement. In the event that a Party sponsors a witness, its witness will testify only in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement.

55. The Parties agree that all pre-filed testimony and exhibits in the proceeding submitted prior to the filing of this Settlement Agreement by any Party shall be admitted into evidence.

56. Except as expressly stated herein, nothing in this Settlement Agreement shall resolve any principle. Nothing in this Settlement Agreement shall establish any precedent or settled practice. Moreover, nothing in this Settlement Agreement shall constitute an admission by any Party of the correctness or general applicability of any principle, or any claim, defense, rule, or interpretation of law, allegation of fact, regulatory policy, or other principle underlying or thought to underlie this Settlement Agreement or any of its provisions in this or any other

proceeding. As a consequence, no Party in any future negotiations or proceedings (other than any proceeding involving the honoring, enforcing, or construing of this Settlement Agreement in those proceedings specified in this Settlement Agreement, and only to the extent, so specified) shall be bound or prejudiced by any provision of this Settlement Agreement.

57. The discussions among the Parties that produced this Settlement Agreement have been conducted pursuant to CRE Rule 408, and all offers of settlement are without prejudice to the position of any of the Parties and restricted and protected as established by CRE Rule 408.

58. Commission Rule 1408 encourages settlement in contested proceedings. It is within this spirit that the Parties engaged in numerous hours of extensive discussion to reach a comprehensive settlement. That effort produced this Agreement which is now offered to the Commission for approval. Due diligence, however, dictates that the Parties arrive at a procedural solution if this Agreement is not accepted in its entirety by the presiding Administrative Law Judge ("ALJ") or the Commission. This procedural solution is as follows:

(i) If the ALJ recommends modifying the Settlement Agreement in a manner that is unacceptable to any Party, the Parties agree to (1) defend the Settlement Agreement by filing Exceptions to the Recommended Decision of the ALJ, or (2) not oppose such Exceptions. If the ALJ's modifications to the Settlement Agreement are found unanimously acceptable, the Parties may agree to not file Exceptions. If Exceptions are filed, they may either be individually filed or jointly filed by the Parties, but all Parties agree to support the Settlement Agreement in their Exceptions, or by not opposing the Exceptions filed.

(ii) In the further event the Commission adopts the Recommended Decision of the ALJ or modifies the Settlement Agreement in any other respect, the following provisions shall apply notwithstanding any inconsistency with established Commission procedure:

(a) Any Party considering withdrawing from the Settlement Agreement ("Dissatisfied Party") shall notify the other Parties by a writing within three (3) days of the date of the Commission Order that it is considering withdrawing, and specifically identifying the grounds upon which such withdrawal is contemplated. The Parties shall engage in good faith discussion to determine whether a resolution may be reached to avoid the Dissatisfied Party(s) from withdrawing from the Settlement Agreement. The Parties will attempt in good faith to reach a resolution within ten (10) days of the Commission Order. The resolution may be a proposed change to the Settlement Agreement or other resolution agreed upon by the Parties, as well as a recommended procedural course, which shall take the form of an Application for Rehearing, Reargument, or Reconsideration ("ARRR") filed in accord with the Commission's rules.

(b) If the Parties cannot reach a resolution, a Dissatisfied Party may withdraw from the Settlement Agreement by notifying the Commission and the Parties by a writing filed within fifteen (15) days of the date of the Commission Order that it has withdrawn and the Parties wish to proceed to a hearing on the merits. In such event, the Settlement Agreement shall be shall be null and void and of no effect in this or any other proceeding. After such notification, Black Hills shall, after conferring with the other Parties, recommend a new procedural schedule. If a new procedural schedule unavoidably exceeds the 210-day statutory time period for issuing a decision, Black Hills shall agree to waive the 210-day provision. Unless the Parties unanimously agree and present to the Commission as part of the recommended procedural schedule, no additional evidence shall be permitted in the subsequent hearing on the merits other than through cross-examination and the Parties shall limit the scope of the hearing to the written testimony and exhibits previously filed in this proceeding up through and including Direct, Answer, Rebuttal and Cross-Answer Testimony. Nothing precludes, however, the filing of another settlement agreement within the newly-established procedural schedule.

59. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of the disputed issues resolved herein.

60. All Parties have had the opportunity to participate in the drafting of this Settlement Agreement. There shall be no legal presumption that any specific Party was the drafter of this Settlement Agreement.

61. The terms of this Settlement Agreement shall apply to Black Hills' 2019-2021 DSM Plan, except for the term requiring specific information in Black Hills' next DSM Plan on third party procurement transparency.

62. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Agreement.

Dated this 6th day of November, 2018.

Approved as to form:	Agreed on behalf of:
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Agreed on behalf of:

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Attorney for Southwest Energy Efficiency Project

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HOLLAND & HART LLP Michelle Brandt King, # 35048 Austin Rueschhoff, #48278 6380 S. Fiddlers Green Circle, Suite 500 Greenwood Village, CO 80111 Telephone: (303) 290-1600 mbking@hollandhart.com darueschhoff@hollandhart.com **ATTORNEYS FOR CRIPPLE CREEK & VICTOR GOLD MINING COMPANY, LLC**	

Attachment 1 to Amended Settlement Agreement
Current Tariff Provisions on DSM Plan Budget Flexibility

DSM Plan
Budget
Flexibility:

Pursuant to Commission decisions on the Company's DSM Plan, the Company is authorized to have budget flexibility during each year of the Plan, so long as the Company does not incur costs in excess of 115% of the applicable annual Plan budget amount. If the Company exceeds the annual Plan budget in any given Plan year by more than 115 percent, the Company will have the burden of proof going forward with respect to the reasonableness and prudence of any expenditures exceeding the 115 percent cap.

In the event the Company exceeds the 115 percent cap on its budget flexibility, the following four-step process applies:

Step 1: if the Company exceeds 115 percent of the established annual DSM budget, the Company will inform the Commission and interested persons by making – in the applicable Plan proceeding -- one of two filings (hereinafter referred to as "DSM Budget Notice"):

(a) if it elects to do so, the Company will file a motion that identifies, and seeks to establish the prudence of, the costs in excess of 115 percent of the established annual budget for a particular year and will file this motion *at any time* after Black Hills establishes that the 115 percent budget cap has been exceeded, *but in no event later* than April 1 of the year following the year in which the 115 percent budget cap was exceeded; or

(b) if it elects not to file the motion described in (a), the Company will include, in the Annual Report, a notice that the 115 percent budget cap was exceeded in the calendar year for which the Annual Report is filed and will include a motion seeking to establish the prudence of those costs. The April 1 filing date for the Annual Report provides the backstop for the filing of DSM Budget Notice of, and supporting information regarding the prudence of, costs in excess of the 115 percent budget figure. The Company has the option to make a separate filing earlier than April 1 if it seeks to have the Commission determine the prudence of these costs on a more expedited basis.

The DSM Budget Notice filed in this Step 1 must include any evidence and supporting information regarding the prudence of the costs in excess of 115 percent of the established annual budget.

Step 2: Following the filing of a DSM Budget Notice, interested persons will have the opportunity to file a response to that Notice (including the supporting information) and may request a hearing on the DSM Budget Notice. An interested person's response to the DSM Budget Notice must be filed in in the applicable Plan proceeding within 21 days of the filing of that Notice.

Step 3: The Company will have the opportunity to file a reply to any responses filed by interested persons. The Company's reply to a response must be filed in the applicable Plan proceeding within seven days of the filing of the response.

Step 4: As it deems necessary, the Commission will enter a Decision addressing the DSM Budget Notice, including the prudence of any excess costs. As it deems necessary, the Commission may hold a hearing on, or may require additional information with respect to, the DSM Budget Notice.

Costs identified in a DSM Budget Notice are not approved and, thus, do not carry a presumption of prudence or a finding of prudence absent a Commission Decision that addresses the excess DSM Program costs identified in the DSM Budget Notice and their prudence.