

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0347E

IN THE MATTER OF ADVICE LETTER NO. 831 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL TO RECOVER COSTS ASSOCIATED WITH JOINING THE WESTERN ENERGY IMBALANCE SERVICES MARKET OPERATED BY THE SOUTHWEST POWER POOL AND TO CREDIT SPP WEIS MARKET SALE REVENUES TO CUSTOMERS THROUGH THE ELECTRIC COST ADJUSTMENT TARIFF, TO BECOME EFFECTIVE SEPTEMBER 2, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING UNANIMOUS COMPREHENSIVE
SETTLEMENT AGREEMENT, PERMANENTLY
SUSPENDING TARIFF SHEETS AND REQUIRING
COMPLIANCE FILINGS**

Mailed Date: February 15, 2023

TABLE OF CONTENTS

I.	STATEMENT, SUMMARY, AND PROCEDURAL HISTORY	2
A.	Statement and Summary.....	2
B.	Procedural History	3
II.	FACTUAL FINDINGS.....	5
A.	Background.....	5
B.	Settlement Agreement and Relevant Evidence.....	13
1.	General Terms.....	13
2.	Cost Recovery Terms	15
3.	Reporting Requirements.....	19
a.	Annual ECA Prudence Review Reporting	19
b.	ECA Quarterly Reporting Requirements.....	20

c. ERP Annual Reporting Requirements.....21

4. Requirements if Black Hills or SPP WEIS Terminates the Company’s Participation21

5. Additional Documentation the Company Must Include with Settlement Testimony21

6. Other General Terms23

III. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS.....24

A. Relevant Law24

B. Findings, Analysis, and Conclusions25

IV. ORDER.....30

A. The Commission Orders That:.....30

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision approves the Unanimous Comprehensive Settlement Agreement (Settlement Agreement or Agreement) filed on December 1, 2022, as modified by the parties during the evidentiary hearing in this matter, consistent with the below discussion.¹ This Decision does not modify the Settlement Agreement other than to approve the changes the parties made during the hearing.

¹ In reaching this Decision, the Administrative Law Judge (ALJ) has considered and weighed all aspects of the Settlement Agreement, including aspects that are not discussed, and all evidence and arguments presented, including those discussed briefly or not at all.

B. Procedural History²

2. On August 2, 2022, Black Hills Colorado Electric LLC, doing business as Black Hills Energy, (Black Hills or the Company) filed Advice Letter No. 831- Electric (Advice letter) with proposed Tariff Sheet P.U.C. No. 11- Electric Tariff Sheet No. 63 (Tariff Sheets) that includes a September 2, 2022 effective date, with written testimony with attachments.

3. On August 22, 2022, the Commission suspended the Tariff Sheets' effective date through December 31, 2022, and referred this matter to an Administrative Law Judge (ALJ) for disposition.³ On September 21, 2022, the ALJ further suspended the Tariff Sheets' effective date by an additional 130 days to May 10, 2023, per § 40-6-111(1)(b), C.R.S.⁴

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate, Colorado Public Utilities Commission Trial Staff (Staff), and the Colorado Energy Office (CEO).⁵

5. With the parties' input, the ALJ scheduled a two-day evidentiary hearing starting on January 12, 2023, and established numerous procedural deadlines to accommodate that hearing.⁶

6. On December 1, 2022, Black Hills filed an Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and Request for Waiver of Response Time and Expedited Decision, with the Settlement Agreement (Hearing Exhibit 102).

² Only the procedural history necessary to understand this Decision is included.

³ Decision No. C22-0492-I at 3 (mailed August 22, 2022); Decision No. C22-0492-E (mailed August 23, 2022).

⁴ Decision No. R22-0557-I at 8 (mailed September 21, 2022).

⁵ Decision No. R22-0611-I at 7 (mailed October 10, 2022).

⁶ *Id.* at 7-10.

7. Based on the parties' joint requests,⁷ the ALJ modified the hearing schedule and procedural deadlines to accommodate changes resulting from the parties Settlement Agreement.⁸ Specifically, the ALJ vacated the January 13, 2023 hearing date and established January 12, 2023 as the date for a hearing on whether the parties' Settlement Agreement should be approved.⁹ Except for the January 31, 2023 deadline to file statements of position (SOPs), the ALJ vacated or modified all other deadlines, including deadlines to file answer, rebuttal and cross-answer testimony.¹⁰

8. On December 12, 2022, Black Hills and Staff filed Settlement Testimony and attachments.

9. On January 12, 2023, the ALJ held the evidentiary hearing on whether the Settlement Agreement should be approved. All parties appeared.¹¹ During the hearing, Black Hills witness Mr. Michael T. Harrington testified. The following Hearing Exhibits and their associated attachments were admitted into evidence during the hearing: 100-105 and 400.¹²

⁷ See Notice of Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision filed November 17, 2022.

⁸ Decision No. R22-0744-I (mailed November 18, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ At the beginning of the hearing, the ALJ granted CEO's Unopposed Motion to Be Excused from the January 12, 2023 Hearing (filed on January 3, 2023). January 12, 2023 Hearing Transcript (1/12/23 Tr.) 10: 25—11: 1-17. Nonetheless, CEO's counsel attended the entire hearing and participated in the hearing as needed.

¹² Hearing Exhibit 600 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing; that list includes information necessary to identify the specific document to be offered, (such as the exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence electronically using the excel version of Hearing Exhibit 600 with live links to the parties' pre-filed exhibits as they appear in the administrative record in this Proceeding. The exhibits listed in Hearing Exhibit 600 were admitted by administrative notice; this means that the pre-filed exhibit identified by file date and filer in Hearing Exhibit 600 (as they appear in the administrative record) were taken into evidence in lieu of receiving an identical copy during the hearing. In addition, Hearing Exhibits 104 and 105 (not listed in Hearing Exhibit 600) were admitted and electronically received into evidence through the parties' box.com folders. Administrative support staff added the exhibits that were received into evidence via the parties' box.com folders to the administrative record on January 12, 2023.

10. On January 31, 2023, Black Hills filed a Joint Post-Hearing Statement of Position of Black Hills Colorado Electric, LLC, Trial Staff of the Public Utilities Commission, the Office of the Utility Consumer Advocate, and the Colorado Energy Office.

II. FACTUAL FINDINGS

A. Background

11. Based on the Colorado Transmission Coordination Act of 2019, §§ 40-2.3-101 and 102, C.R.S., (2019), the Commission investigated the costs and benefits resulting from electric utility participation in energy imbalance markets, (among others), and concluded that such participation is generally in the public interest.¹³ The Commission found that participation in an energy imbalance market has “the potential to provide benefits that are still significant,” but that this finding does not extend to specific market participation, which has to be analyzed through separate proceedings looking at the specific costs, benefits, and the public interest associated with the market at issue.¹⁴ The Commission recognized that Colorado utilities were already joining energy imbalance markets, (among others), and noted that as utilities move toward greater regional integration, regulatory filings will be necessary.¹⁵

¹³ Decision No. C21-0755, ¶¶ 1 and 4 (mailed December 1, 2021) in Proceeding No. 19M-0495E (Decision No. C21-0755). See Hearing Exhibit 105 at 5.

¹⁴ Decision No. C21-0755 at 1; 3; 22. See Hearing Exhibit 105 at 5-6.

¹⁵ Decision No. C21-0755 at 22. See Hearing Exhibit 105 at 6. The Commission also opened a rulemaking proceeding, (Proceeding No.22R-0249E), to establish guidance on how to address concerns with participating in an organized wholesale market that were identified that Proceeding. Decision No. C21-0755 at 22; See Hearing Exhibit 105, fn. 14.

12. The Company initiated this matter to seek tariff revisions associated with its decision to join an energy imbalance market,¹⁶ the Southwest Power Pool, Inc.'s (SPP) Western Electric Imbalance Service (WEIS) market (SPP WEIS, the WEIS or the Market).¹⁷ The Advice Letter seeks to modify the Company's electric commodity adjustment (ECA) tariff to allow the Company to recover the following costs associated with its participation in the Market through the ECA: a \$25,254 one-time entry-fee (recovered and amortized over two years); SPP WEIS annual administrative fees (WEIS Annual Fee) (first year estimated at \$177,827); approximately \$178,000 in costs for software and information technology (IT) upgrades associated with joining the SPP WEIS (Integration Costs); and Market energy purchase costs (when its WEIS energy sales revenue is less than its WEIS energy purchase costs).¹⁸ The Advice Letter seeks to pass through any revenue to customers through a credit to the ECA if the Company's WEIS revenue is greater than the costs of its WEIS purchases.¹⁹

13. The Company proposes that the WEIS Annual Fee be recorded in Federal Energy Regulatory Commission (FERC) Account 575, and that Market transactions be recorded in FERC Account 555 and 447²⁰ (which are already included in the ECA tariff).²¹ The Company must

¹⁶ An energy imbalance market (such as the WEIS) is a real-time bulk power trading market that allows participants (power providers or purchasers) to buy, sell and dispatch unscheduled energy at the lowest possible cost to reliably serve the combined customer demand in the relevant region. Hearing Exhibit 105 at 7. See Hearing Exhibit 100, 12: 17-23—13: 1-7. This enables market participants with more expensive generation to benefit from purchasing lower-cost energy from other participants and for those with excess or lower-cost energy to potentially receive additional revenues from sales to market participants. Hearing Exhibit 105 at 7.

¹⁷ See Hearing Exhibit 100, 10: 8-23—11: 1-2.

¹⁸ *Id.* at 10: 8-16; 22: 8-14; 23: 1-18—24: 1-7. See Hearing Exhibit 100, Attachment MJH-2.

¹⁹ Hearing Exhibit 100, 22: 8-15.

²⁰ During the hearing, the Company corrected written testimony original references to "FERC Account 457" to "FERC Account 447" in Hearing Exhibit 100, page 23, line 18, and Hearing Exhibit 103, page 17, line 8 and in Hearing Exhibit 102. 1/12/23 Tr., 51: 22-25; 52: 7-25—53: 1-4. As such, this Decision refers to FERC Account 447.

²¹ Hearing Exhibit 100, 23: 13-18.

modify the ECA workbook calculation model so that net revenues can be tracked as power sales and net costs are tracked as power purchases.²²

14. The Company does not seek Commission approval or authorization to join the SPP WEIS and believes that whether to join the Market is solely within its discretion.²³

15. The Market provides service consistent with the WEIS Tariff, which FERC reviews and approves.²⁴ The SPP administers the WEIS. The WEIS optimizes generation dispatch every five minutes and includes nodal pricing for energy that is also determined on a five-minute interval.²⁵ The WEIS will have little or no impact on the Company's transmission service or traditional transmission planning functions.²⁶

16. Black Hills is located within Public Service Company of Colorado's (Public Service) Balancing Authority Area (BAA), which makes Public Service the Company's Balancing Authority (BA).²⁷ A BA is a North American Electric Reliability Corporation registered function with the responsibility to ensure that the electrical grid within its geographic area is appropriately balanced as to load and supply.²⁸ Given this responsibility, Public Service provides energy imbalance services to those within its BAA, including Black Hills.²⁹ Those within Public Service's BAA must either take energy imbalance service from Public Service, seek alternative methods, or self-supply those services.³⁰ The Company has opted to address these needs by taking service from

²² *Id.* at 23: 18—24: 1-2.

²³ *Id.* at 10: 17-22.

²⁴ Hearing Exhibit 100, Attachment MJH-4 at 1-2.

²⁵ Hearing Exhibit 100, 13: 7-9.

²⁶ *See id.* at 11: 18-21.

²⁷ Hearing Exhibit 101. 10: 9-11; Hearing Exhibit 105 at 10-11.

²⁸ Hearing Exhibit 100, 15: 3-7.

²⁹ *See id.* at 15: 8-11.

³⁰ *Id.* at 15: 11-12.

Public Service,³¹ which has resulted in the Company essentially operating in a smaller-scale imbalance market since 2016.³² Specifically, the Company is a founding participant of the Joint Dispatch Service Agreement (JDA) administered by Public Service that includes the Platte River Power Authority (PRPA) and used to include Colorado Springs Utilities (CSU) as participants (JDA Partners).³³

17. The JDA enables generation sharing among JDA Partners within Public Service's BAA.³⁴ JDA Partners have been able to coordinate operations, capture intra-hour dispatch efficiencies, and achieve energy cost efficiencies by dispatching least-cost energy among JDA Partners based on an hour system-marginal price.³⁵ This can result in energy transactions between the JDA Partners that are lower cost than producing the energy themselves or transacting bilaterally.³⁶ As a result of its participation in the JDA, Blacks Hills' customers have benefited from JDA savings as follows: \$510,134 in 2018; \$1,597,212 in 2019; \$813,218 in 2020; and \$2,295,563 in 2021, for a total of over \$5.2 million in savings from 2018 to 2021.³⁷

18. The JDA has less sophisticated dispatch tools than the WEIS. Specifically, the JDA dispatches least-cost energy between participants based on an hour and system-marginal price

³¹ *Id.* at 15: 8-11.

³² *See* Hearing Exhibit 101, 11: 21-22—12: 1-2; Hearing Exhibit 105 at 10.

³³ Hearing Exhibit 105 at 10. *See* Hearing Exhibit 100, 13: 10-16. CSU left Public Service's Balancing Authority Area (BAA) to join the WAPA – Colorado Missouri BAA and the SPP WEIS market. Hearing Exhibit 105 at 11.

³⁴ Hearing Exhibit 105 at 10.

³⁵ *Id.* *See* Hearing Exhibit 100, 13: 16-18.

³⁶ Hearing Exhibit 100, 13: 18-20.

³⁷ Hearing Exhibit 101, 12: 2-7. In its Settlement Testimony, the Company lists the amount for 2020 as \$831,218, which is about \$20,000 less than the amount listed in above, sourced from Hearing Exhibit 101. It is unclear which amount is correct. *Compare* Hearing Exhibit 101, 12: 6 to Hearing Exhibit 103, 23: 16-17.

while the WEIS does so at a five-minute nodal price.³⁸ And transmission for JDA transactions is the lowest priority and can only be used on an “as available” basis.³⁹

19. Black Hills, with its JDA Partners, recognized that a more robust organized market that includes access to a larger transmission network, increased load and resource diversity, and centralized energy dispatch using Security Constrained Economic Dispatch (SCED) collectively have the potential to provide more savings to customers than the JDA.⁴⁰ As such, with its JDA Partners, the Company explored joining a more sophisticated energy imbalance market with a broader geographic footprint, including soliciting a study (the Brattle Study) to analyze the costs and benefits arising from participating in another imbalance market and the SPP WEIS as compared to continued membership in the JDA.⁴¹ Ultimately, Public Service decided to join the SPP WEIS.⁴²

20. The SPP WEIS will include several of the other major utilities in the intermountain west, resulting in a broader market footprint than what Black Hills has or could experience under the JDA.⁴³ With a broader market footprint, Black Hills may experience more benefits through lower priced energy due to the diversity of generation assets owned by participants; that larger footprint also well positions the Company to better leverage imbalances and its generation.⁴⁴

21. In the WEIS, Public Service will remain Black Hills’ BA and will use the Market to provide Energy and Generator Imbalance (E&G) service.⁴⁵ When Public Service begins

³⁸ Hearing Exhibit 100, 13: 21-23—14: 1-2.

³⁹ *Id.* at 14: 2-4.

⁴⁰ Hearing Exhibit 101, 12: 8-110.

⁴¹ Hearing Exhibit 103, Attachment MJH-9 at 4. The JDA Partners also looked at joining the California Independent System Operator Western Energy Imbalance Market. Hearing Exhibit 100, 14: 14-18.

⁴² Hearing Exhibit 105 at 6 and 8.

⁴³ *See* Hearing Exhibit 100, 17: 15-18.

⁴⁴ *Id.* at 17: 18—18: 1-2.

⁴⁵ Hearing Exhibit 103, 10: 17-19.

operating in the WEIS, it will terminate the JDA.⁴⁶ This means that the JDA will no longer be option for Black Hills to meet either its energy imbalance or its ancillary service obligations.⁴⁷

22. Once Public Service decided to join the WEIS, Black Hills' options became limited to indirectly participating through Public Service's participation in the WEIS; directly participating in the WEIS on its own; or seeking an alternative method to meet its ancillary service obligations.⁴⁸ Under the first option, Black Hills will pay Public Service for E&G service, which Public Service would provide through its participation in the WEIS.⁴⁹ The Company submits that this would likely result in the Company paying some portion of the administrative cost that Public Service pays to the SPP WEIS, and a portion of Public Service's own administrative costs as a pass-through.⁵⁰ At the same time, the Company would have limited participation in the SPP WEIS's governance, as it would not be a voting member of the Western Markets Executive Committee (WMEC) (WEIS's policy-making body).⁵¹ It would also appreciate fewer Market benefits given that it will be limited to being a price taker for imbalance service with no ability to affect dispatch costs with its load and resources.⁵² More specifically, if the Company does not directly participate in the SPP WEIS, its generation would be considered "partially participating resources," rendering its generation resources unavailable for economic dispatch in the Market so that the Company would not be able to bid its generation and load into the Market.⁵³

⁴⁶ Hearing Exhibit 100, 15: 20-21.

⁴⁷ *Id.* at 15: 19-23.

⁴⁸ *Id.* at 15: 22-23—16: 1-2; Hearing Exhibit 101, 10: 17-22.

⁴⁹ Hearing Exhibit 100, 16: 2-7.

⁵⁰ *Id.* at 16: 1-9.

⁵¹ *See id.* at 16: 9-11; Hearing Exhibit 101, 12-16.

⁵² Hearing Exhibit 101, 11: 10-12.

⁵³ Hearing Exhibit 100, 16: 15-20.

23. By directly joining the SPP WEIS, Black Hills can avoid the potential added costs discussed above and becomes a voting member of the WMEC.⁵⁴ Joining the Market also gives Black Hills the opportunity to include its own load and generation resources as a part of the centralized Market dispatch, which creates more opportunity for customer benefits such as a reduction in production costs associated with the Market optimizing the Company's units together with all other generating resources and participating loads in the Market footprint.⁵⁵

24. Ultimately, Black Hills decided to directly participate in the SPP WEIS. This allows the Company to participate in negotiating key terms under which Black Hills, Public Service and PRPA would join the WEIS.⁵⁶ After some discussions, the SPP, Public Service, Black Hills and PRPA reached mutually agreeable terms that were incorporated into the Third Amended Western Joint Dispatch Agreement (Third WJDA), with an April 1, 2023, effective date.⁵⁷

25. Key terms in the Third WJDA that influenced the Company's decision to join the Market include: a one-time fixed entry fee of \$25,254; a limited two-year initial commitment term (from April 1, 2023 to March 21, 2025);⁵⁸ no exit fee upon withdrawal after the two-year term; limited exposure to embedded implementation costs if a non-Public Service BA exits the WEIS to

⁵⁴ Hearing Exhibit 101, 11: 12-16.

⁵⁵ *Id.* at 11: 7-12.

⁵⁶ *Id.* at 13: 7-12.

⁵⁷ *Id.* at 14: 14-18. FERC accepted the Third WJDA for filing without modifications, effective April 13, 2022, in FERC Docket No. ER22-1022-000. *See* Hearing Exhibit 105 at 8. The Third WJDA is replaced by the Fourth WJDA (executed in September 2022), which adds Black Hills' sister company, Black Hills Power Inc., (also known as Cheyenne Fuel Light and Power Company) as a WEIS participant. Hearing Exhibit 104. *See* 1/12/23 Tr., 17: 9-25—18: 1-8. While the Agreement does not directly state that the Fourth WJDA replaces the Third WJDA for purposes of the Settlement Agreement, the Company testified that this will be the case. 1/12/23 Tr., 17: 9-13. Ultimately, this makes no difference given that the terms in the Third WJDA that are relevant to the Settlement Agreement are unchanged by the Fourth WJDA. *See* 1/12/23 Tr., 17: 14-25—18: 1-8; Hearing Exhibit 102 at 3, fn. 1. *Compare* Hearing Exhibit 104 with Hearing Exhibit 100, Attachment MJH-3. As such, this Decision discusses only the Third WJDA. In addition, as of the January 12, 2023 hearing, FERC had not yet accepted the Fourth WJDA. 1/12/23 Tr., 16: 21-25—17: 1-2.

⁵⁸ Absent withdrawal or contract termination, the Third WJDA will automatically renew for successive one-year terms. Hearing Exhibit 101, Attachment MJH-I at 3.

join the SPP RTO; SPP's obligation to create a multi-market optimization; and reducing the number of votes that the Western Area Power Authority (WAPA) has in the Senate voting structure in the WMEC from three votes to two.⁵⁹

26. Black Hills believes that the WEIS provides an opportunity to achieve immediate savings for customers while gaining experience with optimizing load and resource portfolios in a centrally dispatched market at a low administrative cost without any disruption to reliability or impacting its transmission planning processes.⁶⁰ The limited initial two-year participation term gives Black Hills flexibility to withdraw based on information it gathers while participating in the Market, such as the actual costs and benefits of its Market participation, and other viable options that may be developed during the two-year term.⁶¹

27. The one-time entry fee (\$25,254) is intended to cover SPP's incremental costs associated with integrating Black Hills into the SPP WEIS.⁶² The WEIS Annual Fee, which all Market participants pay, is intended to cover Black Hills' share of SPP's costs to administer the Market and is prorated for the first year to account for the Company's 2023 partial-year participation (estimated to be \$177,827 for year one).⁶³

⁵⁹ Hearing Exhibit 101, 14: 22-23—15: 1-11; 1/12/23 Tr., 45: 11-25—46: 1.

⁶⁰ Hearing Exhibit 101, 15: 21-22—16: 1-3.

⁶¹ Hearing Exhibit 101, Attachment MJH-I at 3. Given the directives in SB 21-072 to join an Organized Wholesale Market by January 1, 2030, the Company continues to consider whether other market structures may be better suited to meet those directives long-term. Hearing Exhibit 101, 16: 3-6.

⁶² Hearing Exhibit 100, 21: 12-15.

⁶³ *Id.* at 22: 1-4.

B. Settlement Agreement⁶⁴ and Relevant Evidence**1. General Terms**

28. The Settlement Agreement is unanimous and is intended to resolve all issues raised or that could have been raised in this Proceeding.⁶⁵ The parties agree that Black Hills will join the SPP WEIS consistent with the terms and cost structure in the Third WJDA.⁶⁶ They anticipate that joining the Market will enable improved dispatch optimization (both economically and operationally); provide a more sophisticated and independently administered energy imbalance market than currently available through the JDA; and rely on the Company's expectation that its participation will bring production cost savings for customers.⁶⁷

29. The parties recognize that Public Service, as Black Hills' BA, is responsible for maintaining load and generation balance within its BAA footprint and that Public Service's BA customers (including Black Hills) must either take energy imbalance service from Public Service, seek alternatives or self-supply those services.⁶⁸ They also agree that if Black Hills does not separately join the WEIS but remained a Public Service imbalance customer (and a partially participating resource under Public Service), that the WEIS would not dispatch Black Hills' generation resources and Black Hills could not bid its generation and load into the Market.⁶⁹ They agree that this would limit customer benefits.⁷⁰

⁶⁴ This Decision summarizes Agreement terms as necessary to understand this Decision and should not be relied upon as a comprehensive accounting of each Agreement term. The Settlement Agreement is included as Appendix A to this Decision (and is Hearing Exhibit 102).

⁶⁵ Hearing Exhibit 102 at 1.

⁶⁶ *Id.* at 2-3.

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

30. For all of these reasons, and based on currently available information, the parties do not dispute that the costs associated with joining and participating in the Market proposed to be recovered through the ECA “are reasonable.”⁷¹ They also understand that the “continued reasonableness of the costs associated with participating in the SPP WEIS market will continue to be reviewed through forthcoming ECA prudence reviews.”⁷² They agree that future ECA prudence reviews should be done under “the view that the JDA was no longer a viable option for Black Hills.”⁷³ With all of this in mind, the parties agree that Black Hills’ decision to join the WEIS is reasonable.⁷⁴ Likewise, the parties agree that the Settlement Agreement is in the public interest.⁷⁵

31. Neither the Agreement nor the parties ask the Commission to approve the Company’s participation in the SPP WEIS.⁷⁶ Given that they do not ask the Commission to approve Black Hills’ participation in the SPP WEIS, the parties implicitly do not ask the Commission to make a determination that the Company’s participation in the Market is in the public interest.⁷⁷

32. Staff views the Agreement as identifying the appropriate mechanisms by which the Company may seek to recover costs associated with Market participation.⁷⁸ Staff also explains that Agreement language acknowledging that JDA is no longer a viable option for Black Hills are intended to reflect the reality that Black Hills, as a relatively small utility within Public Service’s BAA, has few options for purchasing balancing services.⁷⁹ Thus, in future prudence review

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 3-4.

⁷⁴ *Id.* at 4.

⁷⁵ *Id.*

⁷⁶ 1/12/23 Tr., 16: 1-5.

⁷⁷ *See id.* at 16: 1-5.

⁷⁸ Hearing Exhibit 400, 7: 6-13.

⁷⁹ *Id.* at 8: 1-23.

proceedings, the point of comparison for Black Hills should not be the status quo participation in the JDA since it is not an option.⁸⁰

2. Cost Recovery Terms

33. The Agreement provides that the Company's cost recovery proposal in its direct testimony as to the one-time entry fee and software and IT upgrade costs should be modified as set forth in paragraph 2.1 of the Agreement, but does not explicitly state that the parties agree that the modified proposed cost recovery should be approved.⁸¹ During the hearing, the Company clarified that the parties agree that its cost recovery proposal, as modified in the Agreement, should be approved.⁸² No party disputed this. As such, the ALJ construes Settlement Agreement paragraph 2.1 as agreements that the cost recovery proposals therein should be approved.

34. The parties agree that the Company's Integration Costs (costs associated with software and IT upgrades necessary for the Company's Market participation), approximately \$188,000, may be proposed for recovery in the Company's next Phase I electric rate case; the parties do not take a position on the prudence of these costs.⁸³ This reflects a change from the Company's initial request to recover these costs through the ECA.⁸⁴ The parties also agree that the Company may treat these Integration Costs as a regulatory asset with no carrying costs.⁸⁵

⁸⁰ *Id.* at 8: 24-26—9: 1-2.

⁸¹ Hearing Exhibit 102 at 4.

⁸² 1/12/23 Tr., 19: 4-22. Paragraph 2.1 of the Agreement also includes a footnote citation to specific written testimony that is being modified; this reference is intended to provide context, not to incorporate the cited testimony. Hearing Exhibit 102 at 2, fn. 2. *See* 1/12/23 Tr., 20: 1-24.

⁸³ Hearing Exhibit 102 at 4.

⁸⁴ Hearing Exhibit 100, 10: 10-16.

⁸⁵ Hearing Exhibit 102 at 4.

35. The Agreement provides that the Company may recover the approximate \$25,000 one-time SPP WEIS entry fee through the ECA over the first year that the Company participates in the SPP WEIS, and that the fee “will be subject to the annual ECA prudence review process.”⁸⁶

36. The parties agree that “subject to the annual ECA prudence review process” that the Company may recover the Market transactions (both purchases and sales) through the ECA, consistent with Mr. Michael Harrington’s Direct Testimony, Hearing Exhibit 100 page 25, lines 1-4; and that the ECA tariff will be revised as shown in Hearing Exhibit 100, Attachment MJH-2 to recover the SPP annual administration fee through the ECA.⁸⁷ During the hearing, aspects these Agreement terms were corrected, amended, or clarified.

37. Starting with recovery of purchases and sales, during the hearing, the parties stipulated that the Agreement incorporates Mr. Harrington’s Direct Testimony, Hearing Exhibit 100, page 25, lines 1 through 4 in error, and that in its place, the Agreement now incorporates Mr. Harrington’s Settlement Testimony, Hearing Exhibit 103, page 16, line 20 through page 17, line 10.⁸⁸ With this change, the parties agree that Market transactions, both purchases and sales, will be passed through the ECA.⁸⁹ If revenue from Market energy sales are greater than the cost of the Company’s Market energy purchases, the Company will receive a credit from SPP for that period and will then credit the ECA.⁹⁰ And if sales revenues are less than the Company’s Market purchase

⁸⁶ *Id.*

⁸⁷ *Id.* See 1/12/23 Tr., 25: 4-15.

⁸⁸ 1/12/23 Tr., 54: 6-25—55: 1-13. As noted earlier, during the hearing, the Company also corrected references to “FERC Account 457” to “FERC Account 447” in a portion of the testimony now incorporated in the Settlement Agreement (that is, Hearing Exhibit 103, page 17, line 8). *Id.* at 52: 7-25—53: 1-9. The ALJ accepted these changes as stipulated facts without requiring the parties to file an amended Settlement Agreement. *Id.* at 53: 10-25—55: 1-14.

⁸⁹ Hearing Exhibit 103, 16: 20-23.

⁹⁰ *Id.* at 17: 1-4.

costs, the Company will receive a bill from SPP and will pass the cost associated with its net power purchases through the ECA.⁹¹ Market transactions will be recorded in FERC Accounts 555 and 447, accounts already included in the ECA tariff, and the Company will modify its ECA workbook calculation model so that net revenues can be tracked as power sales and net power purchases can be recorded as costs.⁹²

38. The Company explained during the hearing that for the most part, it does not anticipate selling energy in the market above the costs to generate the energy.⁹³ But, where the Company sees revenues on sales of energy produced above what it cost to produce the energy, all the amounts received above the costs to produce the energy will be passed through to customers.⁹⁴ In the example of excess wind energy, if the Company is unable to sell that energy, it would be curtailed, and customers would be left with a production cost without an associated revenue.⁹⁵ Market participation allows the Company to avoid this scenario by selling excess wind (or solar) energy in the Market; in that scenario, the Company will pass through to customers 100 percent of the revenues on such sales.⁹⁶ Customers will also benefit from Market energy purchases below what it would have cost the Company to generate the energy itself through decreased production costs (*i.e.*, production cost savings).⁹⁷

⁹¹ *Id.* at 17: 4-7.

⁹² *See* Hearing Exhibit 103, 17: 7-10; 1/12/23 Tr., 52: 7-25—53: 1-4.

⁹³ *See* 1/12/23 Tr., 33: 15-18 and 35: 1-15. As the Company put it, when it sells energy on the market, it does not anticipate adding amounts above what it cost to produce such energy, which means there would be no profit, and thus, no profit-sharing or “no margin-sharing to customers.” *Id.* at 33: 5-14. However, if this proves incorrect in practice, the Company will share those revenues with customers. *See id.* at 32: 21-25—33: 1-4. This will most likely happen when the Company sells wind or solar energy in the market, except that customers will receive 100% of the revenues for such Market sales. *Id.* at 35: 1-10.

⁹⁴ 1/12/23 Tr., 35: 1-15.

⁹⁵ *Id.* at 35: 2-25—36: 1-2.

⁹⁶ *Id.* at 35: 2-10.

⁹⁷ *Id.* at 34: 3-23.

39. Turning to the ECA tariff revisions Agreement term, during the hearing, the Company clarified that the ECA tariff should be revised as shown in Hearing Exhibit 103, Attachment MJH-5 (rather than Hearing Exhibit 100, Attachment MJH-2).⁹⁸

40. Staff explains that the Agreement preserves the parties' ability to review and potentially challenge the costs associated with Market participation in future prudence proceedings, and that while the Agreement establishes the mechanism for recovery, it does not approve specific dollar amounts.⁹⁹ Staff highlights the fact that the Agreement allows the Company to establish a regulatory asset to track the Integration Costs associated with its participation; propose that these costs be recovered in a Phase I rate case; and that the parties can still review and challenge recover of these costs if they believe they were not prudently incurred.¹⁰⁰

41. Staff submits that it is appropriate for the Company to establish a regulatory asset to track costs for several reasons. For one, it is appropriate because the Company anticipates that Market participation will provide production cost savings to customers.¹⁰¹ Staff also relies on the Company's commitments to provide additional information consistent with other Agreement terms, and notes that the Company cannot operate under the status quo because its BA is joining a different Market and effectively dissolving the JDA.¹⁰² Staff also notes that it could be some time before the Company files its next Phase I electric case, but in the meantime, the Company will incur costs to participate in the Market when it had limited control over the decision to join.¹⁰³ Joining the Market is expected to have a net benefit to customers as compared to no Market

⁹⁸ *Id.* at 24: 18-23. *See id.* at 23: 5-25—24: 1-4.

⁹⁹ Hearing Exhibit 400, 9: 7-11.

¹⁰⁰ *Id.* at 9: 11-16.

¹⁰¹ *Id.* at 10: 18-21—10: 1.

¹⁰² *Id.* at 10: 1-5.

¹⁰³ *See id.* at 10: 6-8.

participation at all.¹⁰⁴ With this in mind, Staff believes it is reasonable for the Company to track the Integration Costs through a regulatory asset for review and potential recovery in the future.¹⁰⁵

42. The Company submits that the Agreement's cost recovery provisions give the Company regulatory certainty as to the costs of joining and participating in the WEIS while preserving the parties' interest in reviewing the ongoing prudence of these costs either through ECA prudence reviews, or in the case of the Integration Costs, through the Company's next Phase I electric rate case.¹⁰⁶ Black Hills also notes that the Agreement ensures that customers will receive the benefits from Market transactions through the ECA.¹⁰⁷ All of these provisions, the Company submits, strike an appropriate balance to ensure that customers receive Market benefits and the Company can recover the costs associated with securing those benefits, and support a finding that the Agreement is just, reasonable, and in the public interest.¹⁰⁸

3. Reporting Requirements

a. Annual ECA Prudence Review Reporting

43. Under the Settlement Agreement, Black Hills' annual ECA prudence review filings serve as the forum within which the Company will primarily produce and file the contemplated reports on its participation in the SPP WEIS.¹⁰⁹ Starting with the 2023 ECA prudence review annual report filed in 2024, and continuing as long as the Company participates in the SPP WEIS, the Company will include significant additional data and analyses associated with its participation

¹⁰⁴ *Id.* at 10: 7-10/

¹⁰⁵ *Id.* at 10: 10-12.

¹⁰⁶ Hearing Exhibit 103, 17: 11-18.

¹⁰⁷ *Id.* at 17: 18-19.

¹⁰⁸ *See id.* at 17: 11-21.

¹⁰⁹ Hearing Exhibit 102 at 5-6.

in the Market.¹¹⁰ Those data and analyses include but are not limited to: an assessment of the costs and benefits of the Company's participation (with documentation, methodologies, and monthly accounting); reporting on cost savings and net economic gains and losses; reporting on supply adequacy analysis results; and SPP or SPP Market Monitoring Unit's tests or reviews on the Company's performance in the Market.¹¹¹ The Company's annual ECA reporting will also require it to quantify numerous items such as the reduction of capacity costs to customers and settled prices associated with purchases.¹¹² Its annual ECA reporting will also include, as reasonably available: the status of variable resource integration in the most recent calendar year, its production costs compared to the last reporting year, and any impact on system reliability; and information relating to quantity of renewable resources serving load and being dispatched in the WEIS footprint and renewable curtailment rates.¹¹³

b. ECA Quarterly Reporting Requirements

44. The Agreement requires the Company to work with Staff to develop informational quarterly reporting of Market activity in the ECA.¹¹⁴ In addition, the Company will report quarterly on: "forecasted WEIS market energy and costs included in quarterly ECA rate calculation;" actual Market energy costs for the previous quarter; and lists of SPP WEIS initiatives impacting the Company from the previous quarter, and any FERC dockets impacting the Company's participation in the SPP WEIS where the Company has filed comments for the previous quarter.¹¹⁵

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 6.

¹¹³ *Id.* at 5.

¹¹⁴ *Id.* at 6.

¹¹⁵ *Id.*

c. ERP Annual Reporting Requirements

45. The Agreement requires the Company to include in its ERP Annual Report the majority of the information that the Agreement requires it to report in its Annual ECA Prudence Review Reporting.¹¹⁶ In addition, the Company will include an estimated emissions impact of its SPP WEIS participation based on “best WEIS Market CO₂ data available,” and that if WEIS-specific CO₂ information is not available, the Company will use the carbon intensity factors for Market purchases assigned through the Western Electricity Coordinating Council or “the best available data.”¹¹⁷ The parties agree to work together to identify the parameters of best available data if WEIS-specific CO₂ information is unavailable.¹¹⁸

4. Requirements if Black Hills’ Market Participation Is Terminated

46. The Agreement provides that the Company must give the Commission formal written notice within five business days of notifying the SPP that it is withdrawing from the WEIS with a description of the reasons it is withdrawing.¹¹⁹ Similarly, the Company must also provide the Commission formal written notice within five business days of SPP’s written notice that it is unwilling to continue administering the WEIS, with a copy of SPP’s notice.¹²⁰

5. Additional Documentation the Company Must Provide

47. The Agreement includes certain terms that Black Hills was required to fulfill through its written Settlement Testimony or attachments thereto. Specifically, the Agreement requires the Company to include a detailed analysis of the cost and benefits of joining the SPP

¹¹⁶ *Id.* (¶ 3.3.1, requiring the Company to include the information contained in ¶¶ 3.1.1. and 3.1.2.).

¹¹⁷ Hearing Exhibit 102 at 6.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 7.

¹²⁰ *Id.*

WEIS, which may include an explanation of historic JDA benefits which will no longer be available after Public Service joins the SPP WEIS.¹²¹ The parties also agree that Black Hills may request that the Commission take administrative notice of evidence presented in Proceeding No. 22A-0270E for support and documentation of this information.¹²² The parties agree that Black Hills will include in its Settlement Testimony information explaining how it will participate in the Market's governance.¹²³

48. At the onset of the evidentiary hearing, the parties stipulated that the Company's Settlement Testimony (Hearing Exhibit 103) and supporting attachments comply with these Settlement Agreement terms.¹²⁴ For example, in its Settlement Testimony, the Company explains that will participate in WEIS governance through the Western Markets Working Group (Working Group) and the WMEC.¹²⁵ The Working Group organizationally sits under the WMEC, and provides WEIS participants and stakeholders an avenue to stay informed of and participate in Market development and evaluation of proposed changes to the overall Market structure.¹²⁶ The WMEC develops and recommends policies, procedures, and system enhancements related to WEIS administration, and has a house and senate style voting structure with house voting weighted based on each entity's respective NEL; entities each have one vote in the senate (subject to affiliate limits).¹²⁷ In addition, the Company summarized the anticipated costs to participate and reiterated the historical JDA benefits that its customers have experienced from 2018 to 2021, which total

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ 1/12/23 Tr., 10: 3-23.

¹²⁵ Hearing Exhibit 103, 25: 3-6.

¹²⁶ *Id.* at 25: 6-9.

¹²⁷ *Id.* at 25: 12-16.

\$5,234,127.¹²⁸ Black Hills cannot “affirmatively” state that WEIS benefits will be the same as those received under the JDA, only that the JDA will no longer be an option once Public Service terminates it.¹²⁹ In addition, Black Hills relies on filings in Proceeding No. 22AL-0270E, the Proceeding in which Public Service sought to amend its ECA tariff to include costs associated with its WEIS participation.¹³⁰ Those filings provide additional information about analyses that Public Service performed in determine whether to join to the WEIS, including costs and benefits.

6. Other General Terms

49. The Agreement includes numerous general terms, including: limiting the impact of the Settlement Agreement to this Proceeding only; that the Agreement is not a waiver as to any matter not specifically addressed therein; that the parties do not believe that a waiver or variance of any Commission rules is necessary to effectuate the Agreement, but agree to jointly apply for any waivers that are necessary; that the Agreement will not become effective until the Commission issues a final decision addressing it; and that any party may withdraw from the Agreement if the Commission modifies the Agreement in an unacceptable manner.¹³¹

50. Notably, the parties agree that the Settlement Agreement is just, reasonable, and consistent with and not contrary to the public interest and should be approved by the Commission.¹³²

¹²⁸ *Id.* at 23: 6-9 (Table MJH-2); 23: 13-17 (Table MJH-3).

¹²⁹ *Id.* at 24: 1-4.

¹³⁰ *Id.* at 24: 8-21—25: 1-2 (referring to filings in Proceeding No. 22AL-0270E, included Attachments MJH-7, 8, 9, 10, 10C to Hearing Exhibit 103). *See generally*, Hearing Exhibit 105.

¹³¹ Hearing Exhibit 102 at 8-10.

¹³² *Id.* at 8.

III. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

51. Article XXV of the Colorado Constitution gives the Commission authority to regulate Public Service's electric utility rates, services, and facilities, including those at issue here. Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.¹³³ The issues here directly fall under this broad authority. For these reasons and based on the record, the ALJ concludes that the Commission has authority over this Proceeding.

52. In considering whether to approve the Settlement Agreement, the Commission must meet its obligation to independently consider and determine matters affecting the public interest.¹³⁴

53. As the proponents of an order, the parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.¹³⁵ The preponderance of the evidence standard requires "substantial evidence," which is defined as "such relevant evidence as a reasonable [person's] mind might accept as adequate to support a conclusion . . . it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."¹³⁶ This standard requires the fact

¹³³ §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S., (2022).

¹³⁴ See e.g., Decision No. C12-1107 at 9 (mailed September 24, 2012) in Proceeding No. 11A-833E citing *Caldwell v. Pub. Utilis. Comm'n.*, 692 P.2d 1085, 1089 (Colo. 1984).

¹³⁵ § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

¹³⁶ See, e.g., *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000) quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm'n.*, 949 P.2d 577, 585 (Colo. 1997).

finder to determine whether the existence of a contested fact is more probable than its non-existence for a party to carry its burden.¹³⁷

54. The Commission encourages settlement of contested proceedings.¹³⁸

55. The ALJ assesses the Settlement Agreement with these principles and legal standards in mind.

B. Findings, Analysis, and Conclusions

56. The Agreement reflects compromises that preserve the Commission’s ability to review costs and benefits to customers resulting from the Company’s participation in the SPP WEIS and make appropriate determinations. Indeed, the parties agree to the ECA as the recovery vehicle for certain categories of costs, and while they “do not dispute that the costs associated with Black Hills joining and participating in the SPP WEIS market . . . are reasonable” based on current available information, they understand that the “continued reasonableness” of such costs will “continue to be reviewed through ECA prudence reviews.”¹³⁹ To facilitate this, through detailed reporting, the Company will provide significant data on the outcomes associated with its participation in the SPP WEIS, including customer benefits that are supported by factual (and not speculative) quantitative data about the actual outcomes. This has the added benefit of increasing transparency, which encourages accountability in exercising prudent judgment as to whether the Company should continue to participate in the SPP WEIS after the initial two-year term. The

¹³⁷ *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

¹³⁸ Rule 1408(a), of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

¹³⁹ Hearing Exhibit 102 at 3.

Agreement's detailed reporting requirements also well-position the Commission to gain insight (overall) on the impact of participating in such a market.

57. While it is difficult to quantify benefits that customers will experience through the Company's participation in the Market based on current available information,¹⁴⁰ because the JDA will be terminated in the near future, Black Hills has limited available options to provide the required energy imbalance and ancillary services, and it is a given that customers will no longer experience JDA benefits. The fact that the JDA will not be an option as of April 2023 significantly distinguishes Black Hills from Public Service as it relates to joining the Market.

58. The ALJ agrees that as compared to indirectly participating in the Market, directly participating in the Market offers the potential for greater customer benefits because the Company can bid its load and generation resources as a part of the centralized Market dispatch, thereby enabling the potential for greater economic dispatch of its resources, which may facilitate more opportunities for customer benefits such as a reduction in production costs. Direct participation also gives the Company voting rights in the Market, which will ensure that it and its customers (by extension) have a voice in decisions that impact the Market's functioning and operation. What is more, the ALJ sees merit in Black Hills' supposition that if it were to indirectly participate by taking service from Public Service, it may be required to bear some portion of Public Service's costs to join the Market, without realizing the full potential benefits of Market participation. With all this in mind, and especially because the JDA will no longer be an option, the ALJ finds that Black Hills' decision to join the Market is reasonable.

¹⁴⁰ See Hearing Exhibit 105 at 26-27.

59. Although there is little available data to determine whether customers will experience benefits that outweigh the costs of Market participation (a factor in determining whether joining the Market is in the public interest), the preponderance of the evidence establishes numerous potential benefits associated with Market participation. For example, with the larger footprint, more diverse portfolio of assets, existing transmission interconnections, and more sophisticated Market dispatch tools, Black Hills, like Public Service, may have more opportunities than experienced through the JDA to leverage its assets in a manner that will benefit customers.¹⁴¹ This could, for example, allow the Company more opportunities to leverage wind or solar energy through purchases and sales in the Market, which may result in earnings (on sales) and savings on production costs that will be passed onto customers.¹⁴²

60. In addition, Black Hills relies on evidence that Public Service presented in Proceeding No. 22AL-0270E about the potential benefits to participating in the Market.¹⁴³ Specifically, Public Service anticipates that some of the Brattle Study's conclusions as to potential Market participation benefits, including production cost savings, will be mirrored in the SPP WEIS Market.¹⁴⁴ In particular, the Brattle Study found that the Company and its JDA Partners could realize an estimated market participation benefit of \$1.98 million per year (which includes an estimated \$1.24 million in production cost reduction).¹⁴⁵

61. Even if this does not hold true, given that the Market provides a larger footprint, more diverse portfolio of assets, more sophisticated dispatch tools that allow for least-cost dispatch

¹⁴¹ See Hearing Exhibit 105 at 27.

¹⁴² 1/12/23 Tr., 34: 24-25—36: 1-5. See Hearing Exhibit 105 at 27.

¹⁴³ Hearing Exhibit 103, 24: 5-21—25: 1-2.

¹⁴⁴ *Id.* at 24: 18-21, referencing Hearing Exhibit 103, Attachment MJH-9 (the Brattle Study).

¹⁴⁵ Hearing Exhibit 103, Attachment MJH-9 at 6 (Table 1). Though it is not clear, it appears that the Brattle Study's estimated savings figures collectively reflect savings for all JDA Partners (rather than any single Partner). *Id.*

on a five-minute nodal price with SCED, as compared to the JDA, it is difficult to believe that Market benefits will not mirror or exceed those experienced through the JDA. As noted, the Company's savings under the JDA from 2018 to 2021 total more than \$5.2 million.¹⁴⁶ Thus, if SPP WEIS participation benefits equal or exceed historic JDA benefits, Black Hills' customers are likely to come out ahead. But this remains to be seen and cannot be determined here given the lack of available data about the Company's actual participation in the Market. This is among the matters that the Commission and parties can consider and evaluate in future ECA prudence review proceedings.

62. The Agreement also ensures that customers will realize savings achieved through purchases and sales on the Market by passing through those savings through the ECA. Likewise, customers will only pay for purchases when they exceed the Company's Market revenues (from Market sales).

63. Other notable Agreement compromises include the Company essentially withdrawing its request to recover its Integration Costs (software and IT upgrade costs) through the ECA, and instead agreeing to seek recovery of such costs through its next Phase I electric rate case. Tracking those costs as regulatory assets without a carrying cost will enable the Commission and parties to evaluate the prudence of such costs when the Company seeks to recover them.

64. The evidence reveals little about the potential impact of the Company's participation in the Market on its carbon emission reduction obligations, but the Agreement's reporting requirements and other terms will help the Company and the Commission better assess

¹⁴⁶ Hearing Exhibit 103, 23: 16-17. (Table MJH-3).

this issue when actual data become available. In any event, approving the Agreement does not impact any of the Company's obligations as it relates to carbon emissions.

65. The short two-year initial participation in the SPP WEIS provides the Company's customers added protection should the Company's participation in the Market not meet expectations or a better option becomes available.

66. Given the parties' factual stipulation, and the Company's Settlement Testimony and Attachments thereto (detailed above), the ALJ finds that the Company complied with Settlement Agreement terms requiring it to provide additional information and documentation with its Settlement Testimony.¹⁴⁷

67. For the reasons and authorities discussed, the ALJ concludes that the preponderance of the evidence establishes that the Settlement Agreement is just, reasonable, consistent with the public interest, and should be approved. This does not amount to a finding that the Company's participation in the SPP WEIS is in the public interest, or that the costs to participate in the Market are or will be prudently incurred. Nor does this Decision explicitly or implicitly authorize or approve the Company's participation in the Market. Neither the Company nor the Settlement Agreement seek such authorization or approval.¹⁴⁸ And, as noted, the Company unambiguously contends that whether to join the Market is solely within its discretion; the other parties did not directly or indirectly contest this.¹⁴⁹

68. Because the Company's original Tariff Sheets are inconsistent with the Settlement Agreement, they cannot be approved; as such, the ALJ will permanently suspend the Tariff Sheets

¹⁴⁷ 1/12/23 Tr., 10: 3-23. See Hearing Exhibit 103 and Attachments thereto.

¹⁴⁸ 1/12/23 Tr., 15: 20-25—16: 1-5.

¹⁴⁹ Hearing Exhibit 100, 10: 17-22.

filed on August 2, 2022. Except for the January 1, 2023, proposed effective date, the substance of the Tariff Sheets in Hearing Exhibit 103, Attachment MJH-6 is approved, as consistent with the Settlement Agreement.

69. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written recommended decision and recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Unanimous Comprehensive Settlement Agreement (Settlement Agreement) (attached as Appendix A) filed on December 1, 2022, is approved with the parties' modifications, consistent with the above discussion.

2. The effective date of Black Hills Colorado Electric LLC's, doing business as Black Hills Energy, (Black Hills) Tariff Sheet P.U.C. No. 11- Electric filed on August 2, 2022, with Advice Letter No. 831 – Electric is permanently suspended and may not be further amended.

3. Consistent with the above discussion, except for the proposed effective date, the substance of Black Hills' Tariff Sheet P.U.C. No. 11- Electric in Hearing Exhibit 103, Attachment MJH-6 (filed December 12, 2022) is approved.

4. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file compliance advice letter and tariff sheets that are identical to the Tariff Sheet P.U.C. No. 11- Electric in Hearing Exhibit 103, Attachment MJH-6 (filed December 12, 2022), but that include a later effective date, on not less than two business

days' notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

5. Proceeding No. 22AL-0347E is closed.

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

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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

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

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director