

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0197E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL TO RECOVER GAS COSTS ASSOCIATED WITH THE FEBRUARY EXTREME COLD WEATHER EVENT.

COMPREHENSIVE SETTLEMENT AGREEMENT

This Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (“Black Hills” or the “Company”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”), the Colorado Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”) (collectively, the “Settling Parties”) pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.¹ This Settlement Agreement is intended to resolve all issues which were or could have been raised in this proceeding with respect to the Company’s Verified Application (“Application”) for recovery of extraordinary gas costs (“EGC”) incurred during the February 2021 extreme weather event known as Winter Storm Uri (the “Extreme Weather Event”).²

PROCEDURAL BACKGROUND

1. On May 18, 2021, Black Hills initiated this proceeding by filing its Application to recover the EGC incurred to meet customer demands during the Extreme Weather Event. Staff,

¹ Holcim USA (“Holcim”) is not a party to this Settlement Agreement.

² In its testimonies in this proceeding, the Company has commonly defined the Extreme Weather Event as the “February Event,” occurring during the days of February 13-17, 2021. For purposes of this Settlement Agreement, the term of the “Extreme Weather Event” is used in place of the “February Event.”

the UCA, CEO, and Holcim subsequently intervened and are the only other parties to this proceeding.

2. On September 1, 2021, the Presiding Administrative Law Judge (“ALJ”) issued Decision No. R21-0531-I, extending the time for a Commission decision regarding the Company’s Application by 130 days. In this decision, the ALJ also adopted the procedural schedule proposed by the parties and scheduled a public comment hearing regarding the Company’s Application.

3. Pursuant to the procedural schedule, Staff, the UCA, CEO, and Holcim filed answer testimony on September 24, 2021. The UCA filed revised answer testimony on October 5, 2021.

4. On October 25, 2021, the Company filed rebuttal testimony and Holcim filed cross-answer testimony.

5. After the filing of the rebuttal testimony, the parties began settlement discussions to attempt to resolve the disputed issues regarding the Company’s Application. Those discussions were productive, and the Settling Parties reached an agreement in principle to resolve this proceeding. On November 12, 2021, Black Hills filed a Motion, providing notice to the ALJ of the settlement in principle and requesting the establishment of new dates for the filing of a formal written Settlement Agreement, a Motion to Approve Settlement Agreement, and settlement testimony by the Company. In Decision No. R21-0732-I, ALJ Farley granted the November 12 Motion and modified and amended the procedural schedule by setting dates of November 17, 2021, for filing the Settlement Agreement, November 19 for filing testimony on support of the Settlement Agreement, and retaining the previously scheduled hearing dates of November 29 and 30, 2021.

6. The Settlement Agreement filed here represents the comprehensive agreements of the Settling Parties to resolve the issues in this proceeding that were raised or could have been raised by the Settling Parties.

SETTLEMENT TERMS

The Settling Parties agree that the Commission should approve the Company's Application for recovery of the EGC, subject to the following modifications and conditions:

I. Definition of Extraordinary Gas Costs ("EGC")

7. The EGC associated with the Extreme Weather Event include the Company's fuel costs incurred for the five-day period from February 13-17, 2021. This cost is \$23,188,089. The Settling Parties agree that the EGC are recoverable consistent with the modifications set forth in this Settlement Agreement.

II. EGC Disallowances

8. Staff, the UCA, and CEO will no longer support or pursue cost disallowances regarding the EGC.

III. Carrying Cost

9. No carrying cost or interest will be applied to the EGC.

IV. Offsets

A. Regulatory Liabilities

10. Black Hills agrees to deduct from the EGC an offset of \$859,044 tied to the regulatory liabilities associated with deferred maintenance for the Company's diesel generating units. This regulatory liability will also be extinguished from the Company's books and records.

B. Customer Impact Mitigation Offset

11. The Company agrees to provide and donate a \$450,000 customer impact mitigation offset. This Company provided offset is not recoverable from customers. Of the \$450,000 offset, the Company will incur half of the donation in year 2021, with the remainder incurred in year

2022. The Settling Parties agree the Company's provided offset will help mitigate the impact of the Extreme Weather Event on Black Hills' customers.

V. Low-Income Customers

12. The Company agrees to make all of its residential customers aware through email and bill messaging that they may qualify for Percentage of Income Payment Programs ("PIPP"), also known as Black Hills Energy Assistance Program ("BHEAP"), before commencement of cost recovery relating to the Extreme Weather Event. In addition, the Settling Parties agree that the Company proactively increase BHEAP credits in order to offset the impact of the Extraordinary Gas Cost Recovery Rider ("EGCRR") for income-qualified customers. In calculating the PIPP credits, the standard credit amount will be increased to reflect the prevailing EGCRR. This adjustment will be performed for the first 12 months that the EGCRR is in place. After the first 12 months, the adjustment would be discontinued because the impact of the EGCRR would be embedded in the customer's previous bills and the standard PIPP credit calculation would take into account those higher charges that included the EGCRR.

13. The Company also agrees to credit \$200,000 from the Customer Impact Mitigation Offset described in Section IV(B) (*i.e.*, the \$450,000 donation) into its BHEAP funding. This will provide more funding for BHEAP and ensure that customers on BHEAP are not harmed by the inclusion of the EGCRR on their utility bills. The Company will provide resources, such as payment plans, for customers who express hardship by the inclusion of the EGCRR.

VI. Extraordinary Gas Cost Recovery Rider

14. The Settling Parties agree that the EGC will be recovered through a separate EGCRR on utility bills to provide transparency to customers. After application of offsets, the Settling Parties agree that the EGCRR will recover from customers an amount of \$22,079,045.

The EGCRR will be charged on a volumetric basis just as the Company’s Electric Commodity Adjustment (“ECA”) is charged on a volumetric basis, which is the same as the EGC associated with the Extreme Weather Event would have been cost-recovered but for the Commission’s previous direction to set aside the EGC for scrutiny in a separate application, i.e., the instant proceeding. In the calculation of customer bills, the EGCRR will be applied last, including after application of the Demand Side Management Cost Adjustment (“DSMCA”) and the Renewable Energy Standard Adjustment (“RESA”).

VII. Amortization Period

15. The Settling Parties agree to a two-year amortization period applied to the EGCRR. The EGCRR will not be effective until April 2022. Any under or over recovery of the EGC through the EGCRR at the end of the two-year amortization period will be credited or debited in the Company’s ECA. The Settling Parties agree that there may be annual adjustments to the EGCRR if the Company’s over or under recovery balance is significant. At the end of the two-year amortization period, the EGCRR will terminate and will be removed from customers’ monthly bills. The resulting customer bill impact for terms of this Settlement is shown as follows for the residential and small commercial class customers:

Residential Amount	\$3.47
Residential Percentage Increase	3.5%
Small Commercial Amount	\$13.32
Small Commercial Percentage Increase	4.1%

VIII. Annual Prudence Reviews

16. The Company agrees to annually file a cost prudence review application in August. This application will address the Company's prior calendar year's actual cost that were included in the ECA and Purchased Capacity Cost Adjustment ("PCCA").

IX. Customer Communications

17. Black Hills will schedule a meeting with Settling Parties to discuss near-term and long-term conservation messaging ("Conservation Messaging Meeting") within 30 days of the Settlement Agreement being executed by all Settling Parties.

18. On an interim basis, Black Hills will implement conservation messaging to customers where forecasted load is within 95 percent of the historical, seasonal peak load subject to the following conditions:

- The contents of the conservation messaging will be discussed during the Conservation Messaging Meeting;
- The conservation messaging will be delivered to customers via multiple sources, including email, social media posts, the Black Hills Energy website, and media outlets, consistent with input received during the Conservation Messaging Meeting;
- The messaging will be delivered to customers as soon as reasonably practicable but no later than 12 hours after the Company becomes aware of the trigger addressed above;
- Messaging will continue no less than daily until the trigger is no longer met; and
- Black Hills will track the difference between forecasted and actual demand on a daily basis during the 2021-2022 heating season. It will also track the days when conservation messaging is delivered during the 2021-2022 heating season.

19. Following the end of the 2021-2022 heating season, the Company will file a publicly available report to the Commission no later than May 2, 2022, in which it will present the specific details and results of its conservation messaging, including estimated impacts and efficacy, as well as potential methods to improve results.

20. The Settling Parties agree to meet twice a year to review the impact and efficacy of conservation messaging that took place during the previous winter and summer seasons.

21. The Company's interim conservation messaging will continue through the 2023-2024 winter heating season, or until one of the two below-described processes concludes, whichever occurs earlier.

22. First, the Company will monitor the results of any Public Service Company of Colorado's ("PSCo") consultant-driven process to identify tools and tariff options to drive economic-based conservation messaging, resulting from PSCo's February 2021 Extreme Weather Event case in Proceeding No. 21A-0192EG. Following PSCo's implementation of these tools and tariff options, the Company will work with interested stakeholders to discuss the applicability of the options to Black Hills. The discussion with interested stakeholders shall address the appropriate venue for the Company's filing of proposal(s) to the Commission to implement the tools and tariff options.

23. Second, and as a result of the information, data and stakeholder process discussions referenced in paragraph 17-22, above, the Company will include future conservation messaging plans in an amended Demand Side Management ("DSM") filing or a stand-alone DSM filing made on or before April 30, 2024.

X. Interruptible Tariffs

24. The Settling Parties agree that the Company's interruptible tariffs are currently at issue in the ongoing Demand Side Management Proceeding No. 21A-0166E, and that following final Commission approval in that proceeding, the Settling Parties will reassess all of Black Hills' interruptible tariff offerings both in conversations between the Settling Parties and in the Demand Side Management stakeholder engagement process. Black Hills will bring forward any resulting changes to its interruptible tariff offerings through the Demand Side Management 60-day notice process. The Settling Parties agree that the Company does not need to wait until its next three-year Demand Side Management plan to implement any interruptible tariff changes in accordance with a decision in Proceeding No. 21A-0166E.

XI. Case Expenses

25. Company agrees not to include any "case expenses" for this proceeding, such as for outside attorney or consultant expenses, in a future Phase I rate case for cost recovery. Black Hills will provide the final amount of such case expenses to the Settling Parties within 60 days after a final Commission decision is issued in this Proceeding.

GENERAL PROVISIONS

26. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology

contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned Proceeding, except as expressly set forth herein.

27. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

28. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

29. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

30. The Settling Parties agree to use good faith efforts to support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

31. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for

a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

32. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

33. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

34. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

35. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

36. This Settlement Agreement may be executed in one or more counterparts and each counterpart will have the same force and effect as an original document and as if all the Settling Parties had signed the same document. Any signature page of this Settlement Agreement may be detached from any counterpart of this Settlement Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of the Settlement Agreement identical in form hereto but having attached to it one or more signature page(s). The Settling Parties agree that “pdf” signature pages exchanged by e-mail and electronic signatures will satisfy the requirements for execution.

Dated this 17th day of November, 2021.

Agreed on behalf of:

Black Hills Colorado Electric, LLC

By: /s/Michael J. Harrington
Michael J. Harrington
Black Hills Colorado Electric, LLC

Approved as to form:

By: /s/ Tyler E. Mansholt
Tyler E. Mansholt, #51979
Associate General Counsel
Black Hills Corporation 1515
Arapahoe Street Tower 1 – Suite 1200
Denver, CO 80202
Telephone: (303) 566-3455
E-mail: tyler.mansholt@blackhillscorp.com

AGREED ON BEHALF OF:

COLORADO OFFICE OF UTILITY CONSUMER ADVOCATE

s/ Cory Skluzak
Cory Skluzak
Rate Analyst
Colorado Office of Consumer Counsel
1560 Broadway, Suite 200
Denver Colorado 80202
303-894-2118
cory.skluzak@state.co.us

APPROVED AS TO FORM:

OFFICE OF THE ATTORNEY GENERAL

s/ Gregory E. Bunker
Gregory E. Bunker, Reg. No. 24111
Senior Assistant Attorney General
s/Jennifer-Grace Ewa
Jennifer-Grace Ewa, Reg. No. 49798
Assistant Attorney General
Office of the Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
720-508-6212 /gregory.bunker@coag.gov
720-508-6241/jennifer.ewa@coag.gov

Attorneys for the Colorado Office
Of Utility Consumer Advocate

COLORADO ENERGY OFFICE

/s/ Keith Hay

KEITH HAY

Director of Policy

Colorado Energy Office

1600 Broadway, Suite 1960

Denver, CO 80202

Telephone: 303-866-2100

Email: keith.m.hay@state.co.us

PHILIP J. WEISER

Attorney General

/s/ Jessica L. Lowrey

JESSICA L. LOWREY, 45158

Senior Assistant Attorney General

Natural Resources and Environment Section

1300 Broadway, 7th Floor

Denver, CO 80203

Telephone: 720.508.6167

Email: jessica.lowrey@coag.gov

Counsel to the Colorado Energy Office

FOR STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

APPROVED AS TO FORM

PHILIP J. WEISER
Attorney General

By: /s/ Nardos Ghebregziabher

Nardos Ghebregziabher, Senior Economist

Economics & Financial Analysis Section

Colorado Public Utilities Commission

1560 Broadway, Suite 250

Denver, Colorado 80202

Email: nardos.ghebregziabher@state.co.us

By: /s/ Lauren E. S. Caliendo

Lauren. E. S. Caliendo, 50144*

Bryan D. Kreykes, 50608*

D. Ross Smith, 54217*

Assistant Attorneys General

Revenue and Utilities Section

Attorneys for Trial Staff of the
Public Utilities Commission

1300 Broadway, 8th Floor

Denver, Colorado 80203

Telephone: (720) 508-6753 (Caliendo)

Telephone: (720) 508-6762 (Kreykes)

Telephone: (720) 508-6370 (Smith)

Fax: (720) 508-6038

Email: lauren.caliendo@coag.gov

Email: bryan.kreykes@coag.gov

Email: ross.smith@coag.gov

*Counsel of Record