

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

**PROCEEDING NO. 22AL-0347E**

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**IN THE MATTER OF THE ADVICE LETTER NO. 831 OF BLACK HILLS COLORADO ELECTRIC, LLC TO RECOVER COSTS ASSOCIATED WITH JOINING THE SOUTHWEST POWER POOL WESTERN ENERGY IMBALANCE SERVICE MARKET THROUGH THE ELECTRIC COMMODITY ADJUSTMENT.**

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**UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT  
ATTACHMENT A**

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**I. INTRODUCTION AND IDENTIFICATION OF PARTIES**

This Unanimous 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 of the Commission (“Staff”), the Colorado Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”) (collectively, the “Settling Parties”). This Settlement Agreement is intended to resolve all issues raised in this proceeding with respect to the Company’s Advice Letter No. 831-Electric within its Colo. P.U.C. No. 11-Electric (“Advice Letter”), seeking to modify its electric commodity adjustment (“ECA”) tariff to allow recovery of Southwest Power Pool (“SPP”) Western Electric Imbalance Services (“WEIS”) market administration fees (“SPP WEIS”); to credit SPP WEIS market sales revenues to customers; and to allow for recovery of the SPP WEIS entry fee through the ECA.

**II. BACKGROUND**

On August 2, 2022, the Company filed Advice Letter No. 831-Electric to amend tariff provisions for the Energy Cost Adjustment (“ECA”) within its Colo. P.U.C. No. 11-Electric (“Advice Letter”).

On August 22, 2022, the Commission suspended the effective date of the Tariff Sheets submitted with the Advice Letter by 120 days through December 31, 2022, and referred this matter to the ALJ.

On September 21, 2022, the ALJ assigned to this Proceeding mailed Interim Decision No. R22-0557-I. In that decision, the ALJ found that further suspension of the Tariff Sheets' effective date was warranted and suspended the Tariff Sheets' period of suspension for an additional 130 days to May 10, 2023. The ALJ indicated that the proposed hearing dates must accommodate the hearing being complete by January 20, 2023.

By Decision No. R22-0611-I (issued on October 10, 2022), ALJ Mirbaba adopted a procedural schedule to govern this Proceeding. Under the procedural schedule approved by Decision No. C22-0611-I, Answer Testimony was due November 16, 2022; Rebuttal Testimony and Cross-answer Testimony are due December 12, 2022; Non-testimonial Hearing Exhibits are due December 28, 2022; Prehearing Motions are due December 30, 2022; responses to Prehearing Motions are due January 5, 2023; Witness and Exhibit Lists and the Witness and Cross-examination Matrix are due January 5, 2023; and an evidentiary hearing was scheduled for January 12 and 13, 2023.

The Parties commenced settlement negotiations on November 11, 2022. The parties exchanged and refined several versions of settlement proposals. On November 16, 2022, the Parties reached agreement on a settlement in principle resolving all issues in this Proceeding.

### **III. SETTLEMENT TERMS**

The following terms comprise the Settlement Agreement reached by the Settling Parties:

#### **1. General Findings Regarding Black Hills' Participation in the SPP WEIS**

The Settling Parties agree that Black Hills will join the SPP WEIS consistent with the terms and cost structure set forth in the Third Amended Western Joint Dispatch Agreement ("Third WJDA,"

provided as Attachment MJH-1 to the Direct Testimony of Michael J. Harrington).<sup>1</sup> The Settling Parties anticipate that joining the SPP WEIS market will enable an improved dispatch optimization (both economically and operationally), will provide a more sophisticated and independently administered energy imbalance market than currently available through the Joint Dispatch Agreement (“JDA”), and rely on the Company’s expectation of bringing production cost savings to customers. The Settling Parties further understand that because Public Service Company of Colorado (“Public Service”), the JDA administrator, has elected to join the WEIS, the JDA will no longer provide a vehicle for real-time energy transactions within the Public Service Balancing Authority footprint.

The Settling Parties also recognize that Public Service is the Balancing Authority (“BA”) for Black Hills and, as such, Public Service is responsible for maintaining load and generation balance within its BA footprint. Further, BA customers of Public Service must either take Energy Imbalance Service from Public Service, seek alternative methods, or self-supply those services. In addition, if Black Hills did not separately join the WEIS but rather remained only an “imbalance customer” of Public Service and a partially participating resource under Public Service, the Company’s generation resources would not be dispatched by the WEIS market, and the Company could not bid its generation and load into the WEIS market. This arrangement would limit any customer benefit.

For all of the foregoing reasons, at the present time and based on currently available information, the Settling Parties do not dispute that the costs associated with Black Hills joining and participating in the SPP WEIS market, which are proposed to be recovered through the ECA, are reasonable. The Settling Parties 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. Any future ECA prudence review should be conducted under the view that the JDA

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<sup>1</sup> The Company notes that a Fourth Amended and Restated Western Joint Dispatch Agreement Between Southwest Power Pool, Inc. and Black Hills was executed on September 26, 2022, but the terms and cost structure applicable to Black Hills remain unchanged.

was no longer a viable option for Black Hills.

In light of all the circumstances outlined above, the Settling Parties agree that Black Hills' decision to join WEIS is reasonable. The Settling Parties also agree this Settlement Agreement is in the public interest.

## **2. Cost Recovery**

### **2.1. Software/Information Technology Costs and One-Time Entry Fee**

The Settling Parties agree that the Company's cost recovery proposal as set forth in the Direct Testimony of Michael J. Harrington<sup>2</sup> should be modified to:

- 2.1.1. include the costs associated with software and information technology ("IT") upgrades necessary to enable market participation (estimated at \$188,000 and referred to herein as "Integration Costs") in the Company's next Phase I electric rate case. The Settling Parties agree that the Company may treat Integration Costs as a regulatory asset (with no carrying cost) for recovery in the Company's next Phase I electric rate case, but do not take a position in this Settlement Agreement as to the prudence of these costs; and
- 2.1.2. recover the approximate \$25,000 one-time SPP WEIS entry fee through the Electric Commodity Adjustment ("ECA") over the first year of SPP WEIS participation. The one-time entry fee will be subject to the annual ECA prudence review process.

### **2.2. Annual Administration Fee and Market Transactions**

The Settling Parties further agree that subject to the annual ECA prudence review process:

- 2.2.1 the ECA tariff will be revised (as shown in Attachment MJH-2 to the Direct Testimony of Michael J. Harrington) to recover the SPP annual administration fee through the ECA; and
- 2.2.2 SPP WEIS market transactions (energy purchases and sales) will be recovered through the ECA, consistent with the Direct Testimony of Michael J. Harrington.<sup>3</sup>

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<sup>2</sup> Direct Testimony of Michael J. Harrington, Hearing Exhibit 100 pp. 22-25.

<sup>3</sup> Hearing Exhibit 100, p. 25 lines 1-4.

### **3. Reporting**

#### **3.1. Annual ECA Prudence Review Reporting and Review.**

The Settling Parties agree that the Company will provide reporting on its SPP WEIS participation in ECA annual prudence reviews beginning with the 2023 ECA prudence review filed in 2024 and continuing for the duration of Black Hills' participation in the SPP WEIS market. The Company will provide in its annual reports the following data:

- 3.1.1. To the extent reasonably available, the status of integration of variable resources and storage in the most recently passed calendar year, its production costs compared to the last reporting year, and any impact on system reliability; and, to the extent reasonably available from SPP, information relating to quantity of renewables serving load and/or being dispatched in the WEIS footprint and renewable curtailment rates. Black Hills will work with the Settling Parties to further develop information as it becomes available.
- 3.1.2. An assessment of the costs, benefits, and net economic benefits to customers of SPP WEIS participation including supporting data, documentation, and methodologies providing:
  - 3.1.2.1. Detailed monthly accounting of each cost category billed by SPP.
  - 3.1.2.2. Detailed monthly accounting of the allocation of each SPP cost category into the Company's FERC accounting.
  - 3.1.2.3. Explanation of any significant "miscellaneous adjustment" in the SPP account.
  - 3.1.2.4. Net economic gain or loss to the Company due to WEIS energy transfers on a monthly basis and the net impact to customers from those gains or losses. All customer classes receive fuel savings benefits through the ECA proportionately based on customer class usage.
  - 3.1.2.5. Net energy purchases and sales settled through the WEIS by the Company on a monthly basis.
  - 3.1.2.6. An identification of the instances when Black Hills failed a supply adequacy analysis conducted by SPP during the relevant reporting period. If the Settling Parties seek more data regarding supply adequacy analysis results from such an SPP process, Black Hills will work cooperatively with the Settling Parties to provide more granular data to the extent such data is available.
  - 3.1.2.7. The estimated cost savings associated with WEIS participation, including:

- 3.1.2.7.1. Quantification of the reduction of capacity costs to customers (Settling Parties acknowledge the high likelihood that the reduction of capacity costs to customers may be zero, based on the functions of the energy only SPP WEIS market).
- 3.1.2.7.2. Quantification of settled prices associated with wholesale energy purchases from participation in the WEIS by providing the monthly average pricing at the Black Hills' load settlement location(s).
- 3.1.3. Any additional tests or reviews conducted by SPP or the SPP Market Monitoring Unit on the Company's performance in WEIS in the event such Company-specific performance tests or reviews are performed by SPP or the SPP Market Monitoring Unit.

### 3.2. Quarterly ECA Reporting.

The Settling Parties agree the Company will work with Staff to develop informational quarterly reporting of WEIS market activity in the ECA. The Company agrees to provide informational reporting of:

- 3.2.1. Starting with the first quarter for which forecast information is available, forecasted WEIS market energy and costs included in quarterly ECA rate calculation;
- 3.2.2. Actual WEIS market energy and costs for the previous quarter;
- 3.2.3. A list of SPP WEIS initiatives affecting Black Hills for the previous quarter and a link to any Black Hills' comments filed in these initiatives on the SPP website, if any; and
- 3.2.4. A list, with title and docket number, of any FERC dockets affecting Black Hills' participation in the SPP WEIS where Black Hills has filed comments for the previous quarter, if any.

### 3.3. Additions to ERP Annual Update Reporting (Rule 3681(a))

- 3.3.1. **Market Participation and Performance in the WEIS.** The Company agrees to include information contained in Sections 3.1.1 and 3.1.2.
- 3.3.2. **Carbon Dioxide Emissions.** The Settling Parties agree that the Company will also include an estimate of the emissions impact of SPP WEIS market participation based on best WEIS Market CO<sub>2</sub> data available. If WEIS-specific CO<sub>2</sub> information is not available, Black Hills shall use CO<sub>2</sub> intensity factors for market purchases assigned through the Western Electricity Coordinating Council or use the best available data. The Settling Parties further agree that the Company will work with the Settling Parties in determining the parameters of best available data if WEIS-specific CO<sub>2</sub> information is not available.

#### 4. **Termination Notification**

- 4.1. Pursuant to section 16.3.1 of the WJDA, if Black Hills notifies SPP that it intends to withdraw from the WEIS, Black Hills shall provide the Commission with formal written notification within five business days of notifying SPP. Black Hills' notice will include a description of the reason for withdrawing.
- 4.2. Pursuant to section 16.3.4 of the WJDA, if SPP notifies Black Hills that it is unwilling to continue administering the WEIS, Black Hills shall provide the Commission with formal written notification within five business days of SPP notifying Black Hills, including copy of the notification.

#### 5. **Additional Documentation**

The Settling Parties agree the Company will provide as documentation attached to Settlement Testimony, the following additional support and documentation:

- 5.1. Based on the best available information, a detailed analysis of the estimated costs and benefits for joining the SPP WEIS market. The Settling Parties agree this information may include an explanation of historical JDA benefits which, after Public Service Company of Colorado joins the WEIS, will no longer be a viable vehicle for real-time energy transactions. The Parties agree that Black Hills may request that the Commission take administrative notice of evidence presented in Proceeding No. 22AL-0270E<sup>4</sup> for support and documentation of this information.
- 5.2. How Black Hills will participate in the governance at the WEIS.

### IV. **GENERAL PROVISIONS**

1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or to 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

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<sup>4</sup> *In the Matter of Advice Letter No. 1889 – Electric Filed By Public Service Company of Colorado to Revise Its Colorado P.U.C. No. 8-Electric 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 Commodity Adjustment Tariff, to Become Effective July 15, 2022.*

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 No. 22AL-0347E, except as expressly set forth herein.

2. 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.

3. 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.

4. 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.

5. 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.

6. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement, but they 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.

7. 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.

8. 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 modifying 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.

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

10. 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 electronic or 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.

Dated this 1st day of December 2022.

Agreed on behalf of:

**BLACK HILLS COLORADO ELECTRIC, LLC**

By: /s/ Michael Harrington

Michael Harrington  
Director Regulatory and Finance  
Black Hills Corporation

Approved as to form:

**BLACK HILLS COLORADO ELECTRIC, LLC**

/s/ Greg Sopkin

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