

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

PROCEEDING NO. 22A-0304E

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IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS 2023-2025 BENEFICIAL ELECTRIFICATION PLAN.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
APPROVING UNANIMOUS COMPREHENSIVE  
SETTLEMENT AGREEMENT AND  
GRANTING MODIFIED APPLICATION**

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Mailed Date: May 8, 2023

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**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 February 22, 2023, as modified and clarified during the evidentiary hearing in this matter, consistent with the below discussion.<sup>1</sup> This Decision also grants Black Hills Colorado Electric, LLC’s doing business as Black Hills Energy (Black Hills or the Company) above-captioned Application (Application), and associated Beneficial Electrification Plan (Plan), as modified by the Settlement Agreement, consistent with the below discussion.

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

**B. Procedural History<sup>2</sup>**

2. On June 30, 2022, Black Hills filed the Application and the Plan.

3. On August 31, 2022, the Commission referred this Proceeding to an administrative law judge (ALJ) for disposition.

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (the UCA); the Colorado Public Utilities Commission Trial Staff (Staff); Colorado Energy Office (CEO); Energy Outreach Colorado (EOC); and Western Resource Advocates (WRA).<sup>3</sup>

5. With the parties' input, the ALJ scheduled a two-day fully remote evidentiary hearing starting on April 5, 2023, and established numerous procedural deadlines to accommodate that hearing.<sup>4</sup>

6. On December 12, 2022, the UCA, CEO, and Staff all filed timely Answer Testimony.

7. On February 22, 2023, Black Hills filed the Settlement Agreement (as Hearing Exhibit 103) along with an Unopposed Motion to Approve Unopposed Comprehensive Settlement Agreement and to Amend Procedural Schedule and Request for Waiver of Response Time and Expedited Decision (Motion).

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<sup>2</sup> Only the procedural history necessary to understand this Decision is included.

<sup>3</sup> Decision No. R22-0553-I at 11 (mailed September 19, 2022).

<sup>4</sup> Decision No. R22-0582-I (mailed September 28, 2022).

8. On February 23, 2023, the ALJ partially granted the Motion by vacating the April 6, 2023 hearing date; maintaining the April 5, 2023 date for a hearing on the Settlement Agreement; vacating the deadline to file Rebuttal and Cross-Answer Testimony; and modifying the deadline to file Statements of Position (SOPs) to April 14, 2023.<sup>5</sup> The ALJ did not approve the Agreement, finding it premature to do so before the evidentiary hearing and the filing of Settlement Testimony.

9. On March 14, 2023, the ALJ held two public comment hearings on whether the Settlement Agreement should be approved.

10. CEO, Staff, and Black Hills all filed timely Settlement Testimony.

11. On April 5, 2023, the ALJ held the evidentiary hearing on whether the Settlement Agreement should be approved. All parties appeared. Before beginning the evidentiary portion of the hearing, consistent with the parties' request, the ALJ extended the deadline to file SOPs to April 24, 2023. During the hearing, Mr. Daniel S. Ahrens, and Ms. Jocelyn P. Durkay testified in support of the Settlement Agreement. The following Hearing Exhibits and their associated attachments were admitted into evidence during the hearing: 101-105; 300; 500-502; 700-701; and 800.<sup>6</sup>

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<sup>5</sup> Decision No. R22-0134-I (mailed February 23, 2023).

<sup>6</sup> Hearing Exhibit 800 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, 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 800 with live links to the parties' pre-filed exhibits as they appear in the administrative record. The exhibits listed in Hearing Exhibit 800 were admitted by administrative notice; this means that the pre-filed exhibits listed in Hearing Exhibit 800, as they appear in the administrative record, were taken into evidence in lieu of receiving an identical copy during the hearing. As noted, Hearing Exhibit 800 identifies those exhibit as they appear in the administrative record by exhibit number and title, file date, and filing party. In addition, Hearing Exhibits 105, 502 and 800 were admitted and electronically received into evidence; these exhibits were added to the administrative record on April 5, 2023.

12. On April 24, 2023, Black Hills filed a “Joint Post-Hearing Statement of Position of Black Hills Electric, LLC, Trial Staff of the Commission, the Colorado Office of the Utility Consumer Advocate, the Colorado Energy Office and Western Resource Advocates” (Joint SOP).

## II. FACTUAL FINDINGS

### A. The Application and Plan

13. The Application asks that the Commission approve the Company’s first-ever Beneficial Electrification Plan that covers the 2023 to 2025 timeframe.<sup>7</sup> The Application proposes three programs: a Residential Income-Qualified (IQ) Electrification Program (Residential IQ Program); a Residential Electrification Products Program (Residential Products Program); and a Commercial and Industrial (C&I) Electrification Program (C&I Program).<sup>8</sup> The Plan includes a targeted number of installations for each program.<sup>9</sup>

#### 1. Programs Proposed in Plan

14. Through its Residential IQ Program, the Plan puts particular emphasis on targeting low-income households and communities the Company believes will qualify as disproportionately impacted. Indeed, approximately 73 percent of the total Plan budget is dedicated to the Residential IQ Program, which is far more than the 20 percent required by statute.<sup>10</sup> The Company explains that its service territory includes a higher percentage of customers whose median household income is below the State’s median income, as compared to

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<sup>7</sup> Hearing Exhibit 100 at 1.

<sup>8</sup> *Id.* at 3; Hearing Exhibit 101, 14: 12-15. The Company worked with Applied Energy Group, Inc., (AEG) to evaluate potential programs or measures for the Plan. Hearing Exhibit 101, 15: 5-8.

<sup>9</sup> Hearing Exhibit 101, Attachment DSA-1 at 16, 19, and 22. *See* Hearing Exhibit 101, 17: 7-8.

<sup>10</sup> Hearing Exhibit 101, 17: 4-7.

the state’s largest public utility, Public Service Company of Colorado.<sup>11</sup> And, the mean household income in the Company’s service territory reveals a 46 percent difference (lower) than the Colorado mean.<sup>12</sup> In addition, based on the statutory criteria and a preliminary map that the Colorado Department of Public Health and Environment developed, the Company anticipates that a “large swath of its service territory” will qualify as disproportionately impacted communities, but acknowledges that the Commission has not yet adopted rules that formally defines those terms.<sup>13</sup> The Residential IQ Program includes audits and direct installation of heating, ventilation, and air-conditioning (HVAC) equipment, (among other offerings), at no cost to eligible income-qualified customers.<sup>14</sup>

15. The Plan’s other two programs – the Residential Products Program and the C&I Program – offer incentives (*i.e.*, rebates) to customers to purchase and replace existing fossil fuel equipment.<sup>15</sup> For example, the Residential Products Program includes a variety of equipment, including lawn care equipment and electric bicycles (eBikes); and the C&I Program includes a range of commercial and industrial equipment such as HVAC, cooking equipment, forklifts, and power washers.<sup>16</sup>

16. Under its current and approved electric Demand-Side Management (DSM) Plan in Proceeding No. 21A-0166E (current DSM Plan), the Company offers space and water heating beneficial electrification measures for residential customers and incentives for energy efficient

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<sup>11</sup> *Id.* at 11: 8-12.

<sup>12</sup> Hearing Exhibit 101, 11: 12-13—12: 1-4.

<sup>13</sup> *Id.* at 12: 20-23—13: 1-5.

<sup>14</sup> *Id.* at 14: 16-18; Hearing Exhibit 101, Attachment DSA-1 at 3. More details on the Residential IQ Program can be found in Hearing Exhibit 101, Attachment DSA-1, pages 15 to 18.

<sup>15</sup> Hearing Exhibit 100 at 4; Hearing Exhibit 101, 14: 20-22—15: 1-4. More details on the offerings in these Programs can be found in Hearing Exhibit 101, Attachment DSA-1, pages 18 to 23.

<sup>16</sup> Hearing Exhibit 101, 14: 20-22—15: 1-4.

electric appliances in new construction.<sup>17</sup> Given this overlap, the Company plans to leverage its existing DSM personnel to implement the Plan.<sup>18</sup>

## 2. Performance Incentive Mechanism Proposed in Plan

17. In its direct case, the Company proposes that it receive a performance incentive mechanism (PIM) for exceeding the Plan goals so that it may retain half of the economic benefits derived from the aggregate excess benefits.<sup>19</sup> With a Plan goal of achieving 2,653 MWh savings, the Company proposes a PIM equal to 50 percent of the net economic benefits if the 2023-2025 Plan exceeds the stated goals, with a cap at 10 percent of the Plan budget.<sup>20</sup> The Company estimates that if it achieves 125 percent of goals in each of the three Plan years, its total PIM would be \$59,896, or approximately \$20,000 per year.<sup>21</sup> The PIM will be paid through the Company's existing DSM Cost Adjustment rider (DSCMA).<sup>22</sup>

## 3. Budget and Cost Recovery Proposed in Plan

18. Given the socioeconomic makeup of its service territory, the Company is sensitive to the cost impact that the Plan may have on customers.<sup>23</sup> Indeed, the Company explains that cost-effectiveness is a critical consideration for the Plan.<sup>24</sup> The Company estimates that the cost for all three Programs is \$257,616 annually, which it believes is reasonable and appropriate given

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<sup>17</sup> *Id.* at 23: 13-16. *See* Hearing Exhibit 500, 30: 1-3, citing Hearing Exhibit 500, Attachment JPD-7 and JPD-8.

<sup>18</sup> *See* Hearing Exhibit 101, 23: 16-17.

<sup>19</sup> Hearing Exhibit 101, 26: 5-8. *See* Hearing Exhibit 100 at 6.

<sup>20</sup> Hearing Exhibit 101, 26: 11-14.

<sup>21</sup> *Id.* at 27: 1-5 (Table DSA-3).

<sup>22</sup> Hearing Exhibit 101, Attachment DSA-3 at 5.

<sup>23</sup> Hearing Exhibit 101, 13: 9-12—14: 1.

<sup>24</sup> Hearing Exhibit 101, Attachment DSA-1 at 3.

the circumstances.<sup>25</sup> This breaks down to the following annual budget: \$186,865 for the Residential IQ Program; \$21,090 for the Residential Products Program; \$8,022 for the C&I Program; and \$41,639 in other expenses for all three Programs.<sup>26</sup> In addition, the Company seeks to recover one-time expenses relating to expert, consulting, and legal services for this Proceeding, estimated at \$151,000 (\$76,000 for expert/consulting services and \$75,000 for legal expenses).<sup>27</sup> To mitigate the impact of these one-time expenses, the Company seeks to amortize the expenses over the entire Plan period.<sup>28</sup>

19. Thus, in its direct case, the total amount the Company seeks to recover for the entire Plan period is approximately \$923,848, (inclusive of one-time expert, consulting, and legal expenses).<sup>29</sup> The Application seeks to recover these costs through the Company's existing DSMCA.<sup>30</sup> The DSMCA rate will recover Plan costs using the existing DSMCA structure, which charges customers a percentage of their monthly bill and does not distinguish between customer classes.<sup>31</sup> This means that the existing DSMCA will include the Plan's costs, but will not be broken down to show the specific amounts attributable to the Plan. The Company posits that recovering costs through this existing rider is appropriate because the anticipated expenditures

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<sup>25</sup> *Id.* at 11; Hearing Exhibit 100 at 5; Hearing Exhibit 101, 14: 1-4.

<sup>26</sup> Hearing Exhibit 101, Attachment DSA-1 at 11. The \$41,639 expenses referenced above includes: \$18,000 for annual "cross-program expenses," \$15,000 for "marketing/education/training," and \$8,639 for "evaluation." *Id.*

<sup>27</sup> Hearing Exhibit 101, 24: 6-19. The exact amount of attorney fees is unknown given that this Proceeding is pending; as such, the \$75,000 figure is an estimated amount of legal fees.

<sup>28</sup> *Id.* at 24: 19-21.

<sup>29</sup> This amount is calculated by multiplying the annual program costs of \$257,616 by the number of Plan years (3), then adding attorney and expert or consulting fees of \$151,000.

<sup>30</sup> Hearing Exhibit 100 at 6; Hearing Exhibit 101, 6: 20-22.

<sup>31</sup> April 5, 2023 Hearing Transcript (4/5/23 Tr.), 30: 4: 8-15.

are relatively modest, and therefore do not justify the additional costs and inefficiencies to create a new rider.<sup>32</sup>

20. The Company also believes this is appropriate because the Plan closely aligns with the Company's current DSM Plan, including two beneficial electrification-type programs, that is, its Residential Electrification Pilot (aimed at converting natural gas-powered water and space heating to energy efficient electric equipment), and its Ready Home Electrification Program (which provides incentives energy efficient electric appliances in new construction).<sup>33</sup>

21. The Company seeks budget flexibility so that it may move budget dollars between Programs and customer segments within the Plan without Commission approval, with the limit that the Company cannot incur costs over 115 percent of the relevant overall annual budget amount.<sup>34</sup> The Company submits that this flexibility is necessary to allow it to focus on achieving energy savings targets across the entire portfolio.<sup>35</sup>

#### **4. Notice Process, Stakeholder Meetings, and Annual Reporting Proposed in Plan**

22. The Plan proposes a 60- and 90-Day notice process whereby it can propose and implement modifications and refinements to the Plan.<sup>36</sup> The 60-Day notice process would apply to Plan changes that add a new program, change eligibility requirements, add new or eliminate specific measures within a Program, and modify the approved avoided costs or technical assumptions.<sup>37</sup> The 90-Day notice process would apply to Plan changes that discontinue any

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<sup>32</sup> Hearing Exhibit 101, 23: 5-11.

<sup>33</sup> *Id.* at 23: 11-16.

<sup>34</sup> Hearing Exhibit 101, Attachment DSA-1 at 24-25.

<sup>35</sup> *Id.* at 25.

<sup>36</sup> *Id.* at 24.

<sup>37</sup> *Id.* at 25.

Program.<sup>38</sup> Such notices will be filed in this Proceeding; posted on the Company's energy efficiency website; explain the changes being made; and provide direction on how to comment.<sup>39</sup> The Company explains that this process is similar to the one the Commission approved for its DSM Plan in Proceeding No. 15A-0242E.<sup>40</sup>

23. The Company plans to hold-biannual stakeholder meetings to discuss planned or proposed changes to the Programs and related items and will use the meetings and direct outreach to local organizations to seek input on ways to design programs to serve residents in multifamily buildings.<sup>41</sup>

24. The Company will file an annual report summarizing the Plan's results for the previous calendar year.<sup>42</sup> The Company will evaluate, measure, and verify (EM&V) each program to determine the extent to which each Program has achieved its desired goals and file the EM&V report within 30 days after it files its annual report.<sup>43</sup>

##### **5. Cost-Benefit Analysis, Projected Fuel Savings, Projected Emissions Reductions, and Grid Reliability Based on Proposed Plan**

25. The Company used the Modified Total Resource Cost Test (mTRC) methodology to assess the Plan's cost-effectiveness, and asks that the Commission adopt this test.<sup>44</sup> In support, the Company explains that this methodology complies with the relevant statutory requirements in Senate Bill 21-246, and is consistent with how other programs are evaluated for

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Hearing Exhibit 101, 22: 11-15.

<sup>41</sup> Hearing Exhibit 101, Attachment, DSA-1 at 25.

<sup>42</sup> *Id.* at 24.

<sup>43</sup> *Id.*

<sup>44</sup> *See* Hearing Exhibit 102, 7: 14-20.

cost-effectiveness in Colorado (including the Company's DSM programs), and with how other utilities across the country assess beneficial electrification.<sup>45</sup>

26. Each selected Program and the Plan as a whole, have mTRC results over 1.0, rendering them cost-effective.<sup>46</sup> The Company's cost-effectiveness calculation includes the social cost of methane and carbon dioxide emissions; a social discount rate (2.5 percent); net emissions and costs, including the increase in supply and generation capacity costs associated with Program impacts on electric load; non-incentive Program costs paid by the utility; and incremental costs paid by participants.<sup>47</sup> The mTRC calculation also accounts for the non-energy benefits (NEBs) by applying a NEBs adder to the avoided supply costs (which increases the net benefits of a beneficial electrification measure).<sup>48</sup> The Company applied a 25 percent NEB to the Residential IQ Program and a 10 percent adder to all other Programs.<sup>49</sup>

27. The Company estimates that the Plan will reduce carbon dioxide emissions by up to 851 short tons (105 each year for the Residential IQ Program 25 each year for the Residential Products Program, and 153 each year for the C&I Program).<sup>50</sup> Likewise, the Company estimates that the Plan will reduce methane emissions by up to 0.0312 short tons (0.0061 each year for the Residential IQ Program, 0.0010 each year for the Residential Products Program, and 0.0034 each year for the C&I Program).<sup>51</sup>

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<sup>45</sup> *Id.* at 7: 14-21—8: 1-2; 8: 18-23—9: 1.

<sup>46</sup> Hearing Exhibit 101, 15: 5-13; Hearing Exhibit 101, Attachment DSA-1 at 3.

<sup>47</sup> Hearing Exhibit 102, 8: 6-12; 17: 8-10; Hearing Exhibit 101, Attachment DSA-1 at 6. *See* Hearing Exhibit 102, 8: 15-17.

<sup>48</sup> Hearing Exhibit 101, Attachment DSA-1 at 6.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10 (Table 4); Hearing Exhibit 101, Attachment DSA-1 at 3.

<sup>51</sup> Hearing Exhibit 101, Attachment DSA-1 at 10 (Table 5).

28. The Company estimates that the Plan will result in the following annual net savings in kWhe: 199,768 for the Residential IQ Program; 101,804 for the Residential Products Program; and 582,842 for the C&I Program.<sup>52</sup> The Company projects that the Plan will result in a decrease of 28.3 MWh of energy, and a capacity increase of 10kW, which will have a negligible impact on the grid, and will not impact grid reliability.<sup>53</sup>

29. The Company intends to comply with statutory labor standards by posting the certified contractor list on its website and requiring residential customers to verify that they used licensed electricians and plumbers or properly supervised apprentices on all electrical or plumbing work performed by a contractor for residential installations where a rebate is paid to the customer after the installation.<sup>54</sup>

#### **B. Settlement Agreement<sup>55</sup>**

30. Except for EOC, all parties in this Proceeding entered into the Settlement Agreement, which is intended to resolve all issues raised or that could have been raised in this Proceeding.<sup>56</sup> EOC takes no position on the Settlement Agreement, which renders the Agreement unopposed.<sup>57</sup> In addition, Black Hills Colorado Gas, Inc., (Black Hills Gas) agrees to be bound by the terms and conditions in the Agreement that are applicable to it.<sup>58</sup>

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<sup>52</sup> *Id.* at 12. More details on the breakdown of these figures can be found in Hearing Exhibit 101, Attachment DSA-1 pages 17, 20 and 23.

<sup>53</sup> Hearing Exhibit 101, Attachment DSA-1 at 12. *See* Hearing Exhibit 101, 18: 23—19: 1-5.

<sup>54</sup> Hearing Exhibit 101, 19: 6-12.

<sup>55</sup> 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 103).

<sup>56</sup> Hearing Exhibit 103 at 2. References in this Decision to the Settling Parties is to all parties except for EOC.

<sup>57</sup> *Id.*

<sup>58</sup> Hearing Exhibit 105.

31. During the hearing, numerous Agreement terms were clarified through testimony. No party indicated that they disagree or take issue with any of the clarifications to the Agreement that were made during the hearing.<sup>59</sup>

32. Notably, the Settlement Agreement provides that “the Settling Parties agree that the Commission should approve the Company’s Application subject to” the modifications and the conditions in the Settlement Agreement.<sup>60</sup> The Application, in turn, requests that the Commission approve the Plan (submitted with the Application), and all requests made in the Company’s direct case.<sup>61</sup> Thus, unless the Agreement modifies or places conditions on items in the Application, Plan, or in the Company’s direct case (*i.e.*, the Company’s Direct Testimony and attachments thereto), the Agreement asks the Commission to approve the relief requested in such filings.<sup>62</sup> And, as discussed below, the Agreement does not impact or otherwise modify all the requests for relief in those filings, which means that the Settling Parties agree to many of the Company’s direct-case proposals.

## **1. Programs**

### **a. Residential Electrification Programs**

33. The Agreement eliminates the Company’s proposed Residential Products Program from the Plan and asks that the Commission find that the Company’s current DSM Plan meets its

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<sup>59</sup> 4/5/23 Tr., 98: 22-25—99: 1-19. The ALJ made it clear that failure to expressly disagree with clarifications made during the hearing would be construed to mean that the Settling Parties agree with the clarifications or do not otherwise object to them. *Id.* at 98: 22-25—99: 1-9.

<sup>60</sup> Hearing Exhibit 103 at 2.

<sup>61</sup> *See* Hearing Exhibit 100 at 8; Hearing Exhibit 101, Attachment DSA-1.

<sup>62</sup> Hearing Exhibit 103 at 2. This was confirmed during the hearing. *See* 4/5/23 Tr., 18: 17-25—20: 1-19.

Plan obligations for the market rate residential sector.<sup>63</sup> CEO and the Company explain that Black Hills's current DSM Plan offers beneficial electrification measures for the market-rate residential sector, (such as space and water heating measures), and incentives for energy efficient electric appliances in new construction.<sup>64</sup>

34. Rather than eliminate the amount budgeted for the Residential Products Program, the Agreement shifts that budget (\$21,090 annually) to the Residential IQ Program.<sup>65</sup>

35. The Agreement requires Black Hills to update income qualification levels for the Residential IQ Program to align with Rule 3412(c), 4 *Code of Colorado Regulations* 723-3, and places additional eligibility requirements for certain measures.<sup>66</sup> During the hearing, the Company clarified that the Residential IQ Program allows for rebates to be applied to the new construction market.<sup>67</sup>

#### **b. Commercial and Industrial Electrification Program**

36. The Agreement provides that the Company will modify its proposed C&I Program to exclude incentives for electric pressure washers and forklifts and reallocate amounts budgeted for such measures to support C&I measures that incentivize electrifying space and water heating.<sup>68</sup> The Agreement does not otherwise modify the Company's original proposal for the C&I Program.

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<sup>63</sup> Hearing Exhibit 103 at 3. The Agreement also requires the Company to propose incentives for transportation electrification measures, including electric bikes, in its next Transportation Electrification Plan which will be filed in 2023. *Id.*

<sup>64</sup> Hearing Exhibit 500, Attachment JPD-7 and JPD-8; Hearing Exhibit 101, 23: 13-16; Hearing Exhibit 500, 31: 7-9. The Company confirmed this again during the hearing. 4/5/23 Tr., 61: 13-15; 67: 9-14.

<sup>65</sup> Hearing Exhibit 103 at 3-4; Hearing Exhibit 101, Attachment DSA-1 at 11.

<sup>66</sup> Hearing Exhibit 103 at 3.

<sup>67</sup> 4/5/23 Tr., 67: 3-6.

<sup>68</sup> Hearing Exhibit 103 at 4. *See* Hearing Exhibit 104, 10: 7-9.

**c. Whole Home Electrification Pilot**

37. The Agreement creates a new Whole Home Electrification Pilot (Pilot).<sup>69</sup> The Pilot will serve dual fuel IQ and market-rate residential customers of Black Hills and Black Hills Gas, “as proposed in Ms. Durkay’s Answer Testimony (Hearing Exhibit 500).”<sup>70</sup>

38. Consistent with that testimony, the Pilot’s minimum goals are to explore barriers and opportunities for full-home electrification in the Company’s service territory; gain an understanding of engineering, technical and workforce barriers and opportunities for electrification; examine the delivery, grid impacts, and utility bill impacts of multiple distributed energy resources installed jointly in customer homes; and to accurately quantify the true costs of electrifying a home in the Company’s service territory.<sup>71</sup> The Pilot may ultimately include additional goals.<sup>72</sup> The Pilot will include customer recruitment and education, and a range of measures such as heat pumps, heat pump water heaters, electric heat pump clothes dryers, and induction stoves.<sup>73</sup> During the hearing, the Settling Parties agreed to amend the Settlement Agreement to remove distributed generation from the list of possible measures for the Pilot.<sup>74</sup>

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<sup>69</sup> Hearing Exhibit 103 at 4.

<sup>70</sup> *Id.* While the Agreement is not intended to incorporate Ms. Durkay’s Answer Testimony, during the hearing, the Company agreed that the Pilot’s goals described in Ms. Durkay’s Answer Testimony (at Hearing Exhibit 500, 33: 5-13) accurately represents the baseline Pilot goals, per the Agreement. 4/5/23 Tr., 46: 10-23; 47: 12-25—48: 1-6.

<sup>71</sup> Hearing Exhibit 500, 33: 5-13; 4/5/23 Tr., 47: 12-25—48: 1-6.

<sup>72</sup> 4/5/23 Tr., 49: 7-11.

<sup>73</sup> Hearing Exhibit 103 at 6. During the hearing, the parties agreed to amend the Settlement Agreement to remove distributed generation from the list of possible measures included in the Pilot. 4/5/23 Tr., 97: 11-17. Hearing Exhibit 502 confirms this Agreement change, to which all parties agreed during the hearing. *Id.* at 101: 8-19. This modification does not change EOC’s stance in not taking a position on the Agreement. *Id.* at 77: 3-11.

<sup>74</sup> 4/5/23 Tr., 97: 11-17.

Hearing Exhibit 502 confirms this Agreement change, to which all parties agreed during the hearing.<sup>75</sup>

39. To minimize ratepayer impact, the Pilot will use state and federal funding, among other potential funding resources, but it is unknown how much state or federal funding will be available for the Pilot at this time.<sup>76</sup> The Company anticipates that funds available through the Inflation Reduction Act of 2022<sup>77</sup> (IRA) will be used to fund Pilot rebates.<sup>78</sup> The Company will fund up to \$40,000 annually for the Pilot, but the Pilot will be designed to maximize the use of other funding sources before the Company spends this amount.<sup>79</sup>

40. Given the funding uncertainty, the Agreement does not establish specific targets, such as a projected number of installations, and anticipated results, such as energy savings and emissions reductions.<sup>80</sup> But, the Company will work with CEO and other parties to ensure that the final Pilot details align with the Agreement's expectations.<sup>81</sup>

41. The Settling Parties agree that the Pilot will launch within six months of federal or state funding becoming available, (estimated early 2024), either through a 60-Day Notice or in the Company's 2024 combined beneficial electrification and DSM plan filing.<sup>82</sup> Either approach will allow for a comment period.

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<sup>75</sup> *Id.* at 101: 8-19. EOC confirmed that despite this modification, it still does not take a position on the Agreement. *Id.* at 77: 3-11.

<sup>76</sup> *See* Hearing Exhibit 103 at 6; 4/5/23 Tr., 44: 16-25—44: 1-17. Other potential funding sources include program funding from the Residential IQ Program, and incentives approved in other proceedings (such as in Proceeding Nos. 20A-0190G, 22A-0230E, 21A-0166E). Hearing Exhibit 103 at 6.

<sup>77</sup> Pub. Law 117-169 (also cited as 117 Bill Tracking H.R. 5376).

<sup>78</sup> Hearing Exhibit 104, 14: 3-4.

<sup>79</sup> Hearing Exhibit 103 at 5. *See* Hearing Exhibit 104, 14: 4-6.

<sup>80</sup> *See* Hearing Exhibit 103 at 4-7; 4/5/23 Tr., 49: 12-22; 50: 11-15.

<sup>81</sup> 4/5/23 Tr., 50: 16-23.

<sup>82</sup> Hearing Exhibit 103 at 4.

42. The Agreement requires that the Pilot be run for at least 24 months and provides that it may be extended if funds are available.<sup>83</sup> This minimum 24-month term could result in the Pilot lasting longer than the Plan period (which ends on December 31, 2024).<sup>84</sup> If the Plan expires before the minimum 24-month Pilot duration and there are available funds, the Company will seek Commission approval in its next beneficial electrification plan filing to extend the Pilot so that it lasts at least 24 months.<sup>85</sup> In addition, the Agreement provides that CEO and Black Hills will mutually agree to the length of the Pilot should it not directly align with the Company's anticipated Clean Heat Plan.<sup>86</sup>

43. Likewise, the Company will work with CEO to finalize the Pilot design and execution.<sup>87</sup> In doing so, the Company and CEO will prioritize outreach and enrollment in areas where the gas distribution system is constrained, or where future gas distribution system capacity investment may be avoided.<sup>88</sup>

44. The Agreement requires Black Hills Gas to seek Commission approval to recover \$40,000 annually (as a potentially added budget amount for the Pilot) for two consecutive years, through its Clean Heat Plan filing (expected January 1, 2024) to help cover costs on the gas-side of the Pilot.<sup>89</sup> The Agreement does not ask the Commission to approve that amount here.<sup>90</sup> If the Commission does not approve Black Hills Gas's request to recover \$40,000 annually for the

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<sup>83</sup> *Id.* at 4-5.

<sup>84</sup> 4/5/23 Tr., 54: 14-21.

<sup>85</sup> *Id.* at 54: 14-21—25: 55: 1-2.

<sup>86</sup> Hearing Exhibit 103 at 5. *See* 4/5/23 Tr., 55: 3-9.

<sup>87</sup> Hearing Exhibit 103 at 5.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> 4/5/23 Tr., 56: 16-22. *See* Hearing Exhibit 103 at 5.

Pilot, the Pilot will continue, though it will simply have less funds available for education.<sup>91</sup> Other than Black Hills Gas's commitment to seek Commission consent to recover \$40,000 annually from its customers, the Agreement does not otherwise purport to recover Pilot expenses from Black Hills Gas's customers.<sup>92</sup> The Settling Parties also submit that any Black Hills Gas customer receiving benefits from the Pilot would first have to consent to do so, and non-participating Black Hills Gas customers will not pay for costs associated with the Pilot at this time.<sup>93</sup> The Agreement also gives Black Hills Gas credit for any gas DSM and beneficial electrification emission reductions resulting from the Pilot toward its clean heat targets pursuant to all applicable statutory and regulatory limitations, and subject to Commission approval.<sup>94</sup>

45. The Settling Parties argue that because the Agreement does not bind Black Hills Gas to spend and recover the above amounts without future Commission approval through its anticipated Clean Heat Plan application, these Agreement terms do not create any statutory notice issues.<sup>95</sup> Such an application will necessarily come with the requisite public notice and opportunity for impacted stakeholders to object and intervene, which the Settling Parties submit complies with due process requirements.<sup>96</sup>

## 2. Commitments Related to Future Beneficial Electrification Plans

46. The Agreement shortens the Plan's duration to approximately two years, effective for the 2023 and 2024 calendar years.<sup>97</sup> This is one year shorter than the Company proposed in

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<sup>91</sup> 4/5/23 Tr., 56: 23-25—57: 1-11.

<sup>92</sup> *Id.* at 74: 18-25—75: 1.

<sup>93</sup> Joint SOP at 13. Of course, if the Commission approves Black Hills Gas's anticipated request for \$40,000 per year to add to the Pilot budget, Black Hills Gas's customers would pay for that.

<sup>94</sup> Hearing Exhibit 103 at 5.

<sup>95</sup> Joint SOP at 12-14.

<sup>96</sup> *Id.* at 13-14.

<sup>97</sup> Hearing Exhibit 103 at 9; 4/5/23 Tr., 65: 20-23.

its direct-case.<sup>98</sup> In the Agreement, Black Hills commits to filing a combined DSM and beneficial electrification plan in 2024 with a proposed effective date of January 1, 2025, and that going forward, the Company will propose beneficial electrification plans in combination with its electric DSM plans.<sup>99</sup> The Company anticipates that it and the parties will have a better understanding of the IRA by then, and that any presently unknown IRA impacts can be addressed then.<sup>100</sup> Indeed, the Company notes that not all potential IRA impacts may have been fully identified at this time.<sup>101</sup>

47. The Company's future beneficial electrification plans will include outreach plans consistent with § 40-3.2-109(2)(b)(VI), C.R.S., and will demonstrate how the Company will, to the greatest extent practicable, serve incremental load attributable to beneficial electrification with generation that can be reasonably expected to have a carbon intensity no higher than the average carbon intensity for all generation in the utility's portfolio, per § 40-3.2-109(2)(b)(IV), C.R.S.<sup>102</sup>

### 3. Performance Incentive Mechanism

48. The Agreement modifies the Company's direct-case PIM requests. Specifically, it requests that the Commission approve the PIM as recommended in Staff witness Mr. Siena Soufiani's Answer Testimony (Hearing Exhibit 700).<sup>103</sup> To receive a PIM, Black Hills must

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<sup>98</sup> See Hearing Exhibit 100 at 1.

<sup>99</sup> Hearing Exhibit 103 at 9. The Agreement also commits the Company to include an outreach plan that complies with § 40-3.2-109(2)(b)(IV) and demonstrate compliance with § 40-3.2-109(2)(b)(VI), C.R.S., in its future beneficial electrification plans. *Id.* at 9-10.

<sup>100</sup> Hearing Exhibit 104, 14: 12-13. See IRA, Pub. Law 117-169. Indeed, the Company notes that not all potential IRA impacts may have been fully identified at this time. Hearing Exhibit 104, 14: 9.

<sup>101</sup> Hearing Exhibit 104, 14: 9.

<sup>102</sup> Hearing Exhibit 103 at 9-10.

<sup>103</sup> *Id.* at 7.

achieve more than 100 percent of its BE Plan goal for each year.<sup>104</sup> At 101 percent of the goal, the Company will earn one percent of the net economic benefits achieved and for each additional one percent above this, the Company will earn an incremental 0.2 percent of the net economic benefits achieved, up to 150 percent of the annual goal.<sup>105</sup> The Agreement caps the PIM at \$30,000 annually, which is the approximate amount of the annual PIM incentive at 150 percent of the Plan goal.<sup>106</sup> In determining the net economic benefits used in the PIM calculation, the Company will not include the social cost of carbon, the social cost of methane, or other non-energy benefits that do not impact customer bills.<sup>107</sup>

49. The Pilot is not included in the Company's potential PIM, but if the Company asks the Commission to allow a PIM for the Pilot in the future, the total annual PIM is still limited to \$30,000.<sup>108</sup>

#### **4. Revised Budget, Cost Recovery, and Bill Impact**

50. As noted above, the Agreement shifts the original proposed budget for the Residential Products Program to the Residential IQ Program, resulting in an annual Plan budget of \$207,955 for the Residential IQ Program.<sup>109</sup> And, the Agreement adds \$40,000 annually to the Plan budget for the Pilot.<sup>110</sup> But, because the Agreement shortens the Plan period from three to two years, the overall Plan costs are reduced by an entire year (approximately \$257,616), as compared to the Company's original proposed budget.<sup>111</sup> Other than these changes, the

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 7-8.

<sup>106</sup> *Id.* at 8.

<sup>107</sup> *Id.*

<sup>108</sup> 4/5/23 Tr., 58: 23-25—59: 1-7; 59: 19-25—60: 1-2.

<sup>109</sup> Hearing Exhibit 103 at 3-4.

<sup>110</sup> *Id.* at 5.

<sup>111</sup> *Id.* at 9. *See* Hearing Exhibit 100 at 1.

Agreement does not modify the Company's original proposed budget and thus, implicitly asks the Commission to approve the unmodified amounts budgeted in the Plan.<sup>112</sup> Thus, as modified by the Settlement Agreement, the budget for the entire Plan period is approximately \$746,232, with \$595,232 in Program-related costs and \$151,000 for one-time consulting, expert and legal expenses.

51. The Agreement also does not modify the Company's request for budget flexibility to move dollars between Programs and customer segments within the Plan without Commission approval with the limit that it cannot incur costs over 115 percent of the relevant overall annual budget amount.<sup>113</sup> As such, the Agreement implicitly asks for this proposal to be approved.<sup>114</sup>

52. The Agreement does not modify or condition the Company's request to recover Plan costs through the DSMCA, and thus implicitly asks that this request be approved.<sup>115</sup> With its Settlement Testimony, the Company provided a revised proposed DSMCA tariff, but during the hearing, the Company acknowledged that this revised tariff should be modified to collect consulting, expert and legal fees so that it is amortized to be collected over the entire Plan period (consistent with the Company's direct-case requests).<sup>116</sup> The Company will recover the other Plan costs over a 12-month period, but only those incurred for that year.<sup>117</sup>

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<sup>112</sup> See Hearing Exhibit 103 at 2-13; Hearing Exhibit 101, Attachment DSA-1 at 1; 4/5/23 Tr., 18: 17-25—20: 1-19. *Supra*, ¶ 32.

<sup>113</sup> Hearing Exhibit 101, Attachment DSA-1 at 24-25. See Hearing Exhibit 103 at 2-13; 4/5/23 Tr., 18: 17-25—20: 1-19.

<sup>114</sup> See Hearing Exhibit 103 at 2-13; 4/5/23 Tr., 18: 17-25—20: 1-19. *Supra*, ¶ 32.

<sup>115</sup> Hearing Exhibit 101, 6: 20-22. See 4/5/23 Tr., 24: 2-7 24: 15-21; Hearing Exhibit 103 at 2-13; Hearing Exhibit 100 at 6; *supra*, ¶ 32. See also, Hearing Exhibit 104, 12: 2-5.

<sup>116</sup> Hearing Exhibit 104, 5: 9-14; Hearing Exhibit 104, Attachment DSA-7; 4/5/23 Tr., 32: 22-25—33: 1-15. See Hearing Exhibit 101, 24: 8-21.

<sup>117</sup> 4/5/23 Tr., 34: 14-23.

53. In its direct case, the Company estimated that the Plan will increase customer bills by 1/10 of one percent.<sup>118</sup> While the Company did not update this figure to account for the Settlement Agreement's changes, during the hearing, the Company explained that the Agreement will have a negligible impact on this estimate.<sup>119</sup>

## 5. Reporting and Other Filing Requirements

54. The Settling Parties agree that Black Hills will file annual Plan reports by April 1 of each year.<sup>120</sup> This is the same date that the Company files its electric DSM annual reports.<sup>121</sup> In its annual reports, the Company will report on its compliance with labor requirements under § 40-3.2-105.6(4), C.R.S., in connection with this Plan and future beneficial electrification plans, as applicable.<sup>122</sup>

55. The Agreement requires the Company to submit a final "compliance BE Plan" (Compliance Plan) within 30 days of a final Commission decision in this Proceeding.<sup>123</sup> Except as explained below, the Compliance Plan will update goals, savings, and budgets that result from

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<sup>118</sup> See Hearing Exhibit 101, 23: 5-11.

<sup>119</sup> 4/5/23 Tr., 38: 5-22.

<sup>120</sup> Hearing Exhibit 103 at 8.

<sup>121</sup> See Hearing Exhibit 500, 42: 1-2, referring to annual reports filed on April 1 in Proceeding Nos. 18A-0279E and 21A-0166E.

<sup>122</sup> Hearing Exhibit 103 at 8-9.

<sup>123</sup> *Id.* at 8.

the terms of the Agreement.<sup>124</sup> Although the Agreement has a negligible impact on the information and calculations the Company provided in support of its Application per § 40-3.2-109(2)(b), C.R.S.,<sup>125</sup> the Company will update this data with its Compliance Plan filing.<sup>126</sup> Except for the \$40,000 annual Pilot budget, the Company's Compliance Plan will not update this information to include all of the relevant data related to the Pilot because the details of the Pilot will not be confirmed until the total Pilot budget is known (when Pilot receives federal and state funding).<sup>127</sup>

56. Similarly, the Company's conclusions that the Plan is consistent with maintaining grid reliably is not impacted by the Agreement.<sup>128</sup> The Compliance Plan filing will also include the incremental load attributable to beneficial electrification per § 40-3.2-109(2)(b)(IV), C.R.S.<sup>129</sup> Per the Agreement, the Company will work with Interveners to develop an outreach plan for the Residential IQ Program that complies with § 40-3.2-109(2)(b)(VI), C.R.S., and will submit the outreach plan with the Compliance Plan filing.<sup>130</sup> During the hearing, the Company explained that while there already has been some outreach, it has not been organized as it probably should be, and that this Agreement term will ensure that Interveners are comfortable with the Company's outreach approach for this Plan.<sup>131</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> 4/5/23 Tr., 38: 23-25—40: 1-2; 41: 8-22. For example, the Agreement has a negligible impact on the Company's mTRC evaluation (which will still be above one), cost-effectiveness calculations, projected fuel savings, and projected emissions reductions, *Id.* at 38: 23-25—40: 1-2 (fuel savings, cost-effectiveness, emissions reductions). *Id.*

<sup>126</sup> *Id.* at 43: 9-15.

<sup>127</sup> *Id.* at 44: 16-25—44: 1-17.

<sup>128</sup> *Id.* at 41: 3-7.

<sup>129</sup> Hearing Exhibit 103 at 8.

<sup>130</sup> Hearing Exhibit 103 at 9.

<sup>131</sup> *See* 4/5/23 Tr., 69: 6-12.

## 6. Education and Outreach

57. The Agreement states that the Company will endeavor to include education and marketing materials related to beneficial electrification, when possible, in planned outreach for other retail customer programs, such as programs within its electric DSM plan and its transportation electrification plan.<sup>132</sup> The Agreement also provides that the Company will endeavor to include relevant education materials on the IRA when conducting outreach for this Plan.<sup>133</sup>

## 7. Regulatory Compliance

58. The Agreement requests that the Commission authorize the Company to implement any and all tariffs and tariff changes necessitated by the Commission's decision in this Proceeding through one or more compliance advice letter filing(s) on not less than two business days' notice and that the Settling Parties agree not to challenge any such filing(s).<sup>134</sup>

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<sup>132</sup> Hearing Exhibit 103 at 9.

<sup>133</sup> *Id.* at 9. *See* IRA, Pub. Law 117-169.

<sup>134</sup> Hearing Exhibit 103 at 10.

59. The Settling Parties agree that the Commission should grant all other approvals and relief necessary, including any rule waivers or variances, to implement the Company's proposals set forth in its Application, as modified by the Agreement.<sup>135</sup>

## 8. General Provisions

60. The Agreement has numerous general terms, including: limiting the precedential effect of the Settlement Agreement or otherwise binding the Settling Parties with respect to positions they may take in other proceedings; 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; and that any party may withdraw from the Agreement if the Commission modifies the Agreement in an unacceptable manner.<sup>136</sup>

61. 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.<sup>137</sup> In support, Black Hills explains that the Plan ensures statutory compliance; provides a broad range of programming available to all major customer classes; ensures each Program is cost-effective; and ensures that the overall customer cost, particularly non-participants, are reasonable.<sup>138</sup>

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 10-13.

<sup>137</sup> *Id.* at 11.

<sup>138</sup> *See* Hearing Exhibit 104, 14: 16-23—15:1.

## II. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

### A. Relevant Law

#### 1. Commission Jurisdiction and Relevant Statutory Requirements

62. The Commission has broad authority to regulate public utilities and has jurisdiction to enforce statutes affecting public utilities.<sup>139</sup> Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.<sup>140</sup> The Commission has specific jurisdiction over beneficial electrification plans per § 40-3.2-109, C.R.S. The Plan and Agreement directly fall under the Commission's authority to decide and approve beneficial electrification plans. For these reasons and based on the record, the ALJ concludes that the Commission has general and specific jurisdiction over the issues presented in this Proceeding.

63. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.<sup>141</sup>

64. Per § 40-3.2-109(2)(a), C.R.S., the Commission must allow investor-owned electric utilities to implement "cost-effective" beneficial electrification plans that support voluntary customer adoption of beneficial electrification measures.<sup>142</sup> On or by July 1, 2022, and

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<sup>139</sup> Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

<sup>140</sup> §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S., (2022).

<sup>141</sup> § 40-3-101(1), C.R.S.; *Public Serv. Co. of Colo. v. Public Util. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

<sup>142</sup> § 40-3.2-109(2)(a), C.R.S.

thereafter, as directed by the Commission but at least every three years, such utilities must file an application for a beneficial electrification plan with the Commission.<sup>143</sup>

65. Section 40-3.2-109, C.R.S., includes numerous minimum informational and other requirements for such plans.<sup>144</sup> Among those are cost-benefit and cost-effectiveness analyses; projected installations, fuel savings, and emissions reductions; programs with incentives to facilitate beneficial electrification, including those targeted to the new and existing building markets; programs targeted to low-income households or disproportionately impacted communities with at least 20 percent of the budget dedicated to the same; and a showing to the greatest extent possible, that load attributable to beneficial electrification will be served with generation reasonably expected to have a carbon intensity no higher than the average carbon intensity for all generation in the utility's portfolio.<sup>145</sup> In the context of a beneficial electrification program, the terms "cost-effective" means "having a benefit-cost ratio greater than one."<sup>146</sup> And, the cost-benefit analysis for beneficial electrification plans and programs must incorporate numerous factors, such as the social cost of carbon dioxide and methane emissions, and avoided carbon dioxide emissions.<sup>147</sup>

66. Section 40-3.2-109(5)(a), C.R.S., requires the Commission to allow an electric utility to recover its prudently incurred costs to implement approved beneficial electrification programs, "on a current basis." The Commission may allow an electric utility to recover such

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<sup>143</sup> § 40-3.2-109(2)(b), C.R.S.,

<sup>144</sup> See § 40-3.2-109(2)(b)(I) to (VII), and (3) C.R.S.

<sup>145</sup> § 40-3.2-109(2)(b)(II), (III), (IV), (V), and (VI), C.R.S. The above description is not intended to be a full list of all plan requirements in § 40-3.2-109, C.R.S.

<sup>146</sup> § 40-1-102(5)(a), C.R.S.

<sup>147</sup> § 40-3.2-109(3)(a), C.R.S. Sections 40-3.2-109(3)(b), (c), and (d), C.R.S., also include other requirements that tie into the cost-effective analysis, such as including upstream methane leakage in the analysis under certain conditions, and direction on the methodologies for determining the cost of carbon dioxide and methane emissions.

costs through a rider.<sup>148</sup> And § 40-3.2-109(5)(b), C.R.S., authorizes the Commission to give electric utilities the opportunity to earn incentives for exceeding beneficial electrification targets or emission-reduction targets established for beneficial electrification plans, including an incentive for the utility to retain a portion of the net economic benefits of beneficial electrification.<sup>149</sup>

## 2. Burden of Proof and Relevant Commission Rules

67. 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.<sup>150</sup> This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.<sup>151</sup> 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, and 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.<sup>152</sup>

68. The Commission encourages settlement of contested proceedings.<sup>153</sup>

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<sup>148</sup> § 40-3.2-109(5)(b)(IV), C.R.S.

<sup>149</sup> § 40-3.2-109(5)(b)(III), C.R.S.,

<sup>150</sup> § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

<sup>151</sup> *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985).

<sup>152</sup> *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).

<sup>153</sup> Rule 1408(a), of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

**B. Findings, Analysis, and Conclusions<sup>154</sup>**

69. The ALJ assesses the requested relief with the above principles and legal standards in mind. The Agreement reflects numerous compromises resulting in changes as compared to the Company's position in its direct case.<sup>155</sup> Significantly, the Agreement shortens the Plan period from three to two years. To make up for the shortened Plan period, the Agreement requires the Company to file its next beneficial electrification plan in combination with its next DSM plan filing in 2024, with a January 1, 2025 proposed effective date.<sup>156</sup> This approach allows the Company to gain valuable experience and gather data that may be used to refine the Company's next plan within a relatively short timeframe. What is more, as this Proceeding demonstrates, DSM plans may include programs that qualify as beneficial electrification programs, which, as is the case here, can create an overlap in DSM and beneficial electrification programming. Indeed, because the Company's current DSM Plan has beneficial electrification offerings for market-rate residential customers, the Settling Parties agreed to eliminate the Residential Products Program. They also agreed and asked the Commission to find that the Company's current DSM Plan meets the Company's beneficial electrification plan requirements for market-rate residential customers. The ALJ agrees and makes the finding consistent with this Agreement term. What is more, the Company's current DSM Plan offers beneficial electrification measures for the new building markets, consistent with § 40-3.2-109(2)(b)(V), C.R.S.

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<sup>154</sup> The findings, analysis, and conclusions are grounded in and rely upon the facts outlined in the Factual Findings section of this Decision. *Supra*, ¶¶ 13-61. The detailed record citations in the Factual Findings section are not repeated here. *See id.*

<sup>155</sup> While this Decision does not repeat or state all of such changes, some are highlighted.

<sup>156</sup> Section 40-3.2-109(2)(b) requires beneficial electrification plans to be filed "no less frequently than every three years." As such, this statute authorizes the Settling Parties' proposal for the Company to file its next plan less than three years from the Plan filing in this case.

70. All of this demonstrates that filing a combined DSM and beneficial electrification plan, (as provided in the Agreement), will allow the Commission to consider a future beneficial electrification plan in the context of the bigger picture of the Company's DSM plan, which focuses on energy efficiency measures. Given that beneficial electrification measures, by their very nature, can be expected to add demand to the Company's electric load, combining Commission approval of such measures alongside energy efficiency measures may give the Commission and the parties broader opportunities to minimize the potential negative impact to the electric grid that added load may have. Ultimately, this may create efficiencies that could result in cost savings.

71. The Residential IQ Program, as modified by the Agreement, dedicates even more resources to beneficial electrification for income-qualified or disproportionately impacted communities, far exceeding the statutory requirement to dedicate at least 20 percent of the total program funding to such communities.<sup>157</sup> This approach serves the public interest given the estimated income levels in the Company's service territory, and the potential that a large swath of its service territory may qualify as disproportionately impacted. The Agreement's other changes to the Residential IQ Program appropriately modify eligibility requirements.

72. Although the details of the Pilot Program are not yet established, the Agreement, as clarified during the hearing, establishes a general framework for the Pilot. Significantly, the Agreement requires the Company to prioritize outreach and enrollment in areas where the gas distribution system is constrained or where future gas distribution system capacity expansion may be avoided. This proactive approach aligns with the Commission's recent decision encouraging gas utilities to evaluate non-pipeline alternatives to gas expansion projects that can

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<sup>157</sup> § 40-3.2-109(2)(b)(II), C.R.S.

preemptively resolve capacity shortfalls.<sup>158</sup> The Agreement's requirement that the Pilot be offered to dual fuel customers creatively maximizes the potential benefit and reach that the Pilot may have. The ALJ agrees with the Settling Parties that because the Agreement does not bind Black Hills Gas to spend and recover any amounts without future Commission approval through its anticipated Clean Heat Plan application, including Black Hills Gas's customers in the Pilot does not create statutory notice or due process issues.<sup>159</sup> Indeed, stakeholders will receive notice and an opportunity to be heard as a part of Black Hills Gas's Clean Heat Plan application proceeding. And, even if the Commission ultimately does not approve Black Hills Gas's request for approval to recover \$40,000 annually, the Pilot will still move forward without such funding.

73. Given that the Pilot budget includes unknown amounts that will be provided through federal and state funding, the Agreement does not include a total budget. Without a total budget, it is not possible to establish estimated Pilot goals and targets, but this shortcoming is outweighed by the Pilot's potential benefits. For example, the Pilot will minimize customer costs by leveraging existing and anticipated funding sources; recruit and educate customers on beneficial electrification benefits; explore barriers and opportunities for full-home electrification in the Company's service territory; gather information on engineering, technical and workforce barriers and opportunities for electrification; examine the delivery, grid impacts, and utility bill impacts of multiple distributed energy resources installed jointly in customer homes; and may provide valuable information on the total cost for electrifying homes in the Company's service territory.

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<sup>158</sup> See Decision No. C22-0780 at 9 and 20 (mailed December 6, 2022) in Proceeding No. 21A-0472G.

<sup>159</sup> Joint SOP at 12-14.

74. Before the Pilot launches, the ALJ expects the Company to establish the Pilot's goals and targets, including the information required by § 40-3.2-109(2)(b)(III), C.R.S., through the filings required by the Agreement.

75. The C&I Program, though particularly modest, is appropriate given the short Plan period and the fact that this is the Company's first beneficial electrification plan. The Program includes numerous appropriate measures from which eligible C&I customers may choose, and other Program elements contemplated by § 40-3.2-109(2)(b), C.R.S.

76. The proposed budget and resulting bill impact reflects that the Settling Parties were sensitive to the Plan's cost impact; this serves the public interest. Indeed, the Plan, as modified by the Agreement, is expected to result in a modest bill increase, (approximately 1/10 of one percent of customer bills). This also means that the Plan has a relatively modest budget, but this is appropriate in light of the Plan's short two-year period; the estimated income levels of customers in the Company's service territory; and the fact that this is the Company's first beneficial electrification plan.

77. The proposed PIM is authorized by § 40-3.2-109(5)(b)(III), C.R.S. And, as modified by the Agreement, the PIM is consistent with the public interest. Indeed, the Company must achieve more than 100 percent of its Plan goal for each year before it can earn a PIM, and the PIM is capped at \$30,000 annually. Likewise, the request to recover costs through the Company's existing DSMCA is authorized by § 40-3.2-109(5)(a) and (b)(IV), C.R.S. Moreover, recovering through the existing DSMCA will avoid added administrative costs that the Company would otherwise incur if it created a new rider to recover Plan costs, which serves the public interest. That said, given that the proposed revised DSMCA tariff that the Company submitted with its Settlement Testimony fails to reflect that the Company will recover one-time consulting,

expert, and legal expenses amortized over the entire Plan period, that proposed tariff is not approved. The tariff filing discussed in the ordering section below, must ensure that the one-time consulting, expert, and legal expenses are amortized and recovered over the entire Plan period.

78. As explained in this Decision's Factual Findings section, the Company provided detailed information on the Plan, consistent with § 40-3.2-109(2)(b), C.R.S., including cost-effectiveness, a cost-benefit analysis, grid impacts, projected emission reductions, and much more. The Agreement has only a negligible impact on that information, but the Company will update the relevant data in its Compliance Plan. Even so, the evidence establishes that the Plan, as modified by the Agreement is cost-effective, as contemplated by § 40-3.2-109(2)(b)(III), C.R.S.; is consistent with maintaining grid reliability; is likely to result in emissions reductions; and encourages and advances voluntary beneficial electrification, consistent with § 40-3.2-109(2)(a) and (b)(I), C.R.S.

79. While the evidence on whether the Company's Plan, as modified by the Agreement complies with § 40-3.2-109(2)(b)(IV) and (VI), C.R.S.,<sup>160</sup> is weak, the Agreement requires the Company to provide more robust information to demonstrate its compliance with these requirements in its anticipated Compliance Plan.<sup>161</sup>

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<sup>160</sup> Section 40-3.2-109(2)(b)(VI), C.R.S., requires the Plan to include an outreach plan for engagement with customers in low-income households and disproportionately impacted communities to support such customers in every phase of the Company's beneficial electrification programs. And § 40-3.2-109(2)(b)(IV), C.R.S., requires the Company's Plan to demonstrate that it will, to the greatest extent practicable, serve incremental load attributable to beneficial electrification with generation reasonably expected to have a carbon intensity no higher than the average carbon intensity for all generation in its portfolio.

<sup>161</sup> The ALJ approves the Plan as modified by the Agreement despite the weak evidentiary showing that the Company's Plan complies with these two statutory requirements given the Commission's policy to encourage settlement, and the Agreement's requirement that the Company's Compliance Plan include the information required by § 40-3.2-109(2)(b)(IV) and (VI) C.R.S.

80. Along these lines, the Agreement’s Compliance Plan requirements will ensure that the informational and other requirements in § 40-3.2-109(2), C.R.S. are updated to reflect the Agreement’s terms.

81. For the reasons and authorities discussed, and based on the record, the ALJ finds that the Agreement, as modified by the Settling Parties, is consistent with the public interest and should be approved. For the same reasons, the ALJ concludes that the Application and Plan, as modified by the Agreement, meets, or will meet (through the Compliance Plan) the relevant statutory requirements, serves the public interest, and should be approved.

82. 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.

**III. ORDER**

**A. The Commission Orders That:**

1. The Unanimous Comprehensive Settlement Agreement (Settlement Agreement) (attached as Appendix A) filed on February 22, 2023, is approved as clarified and modified during the April 5, 2023, evidentiary hearing, consistent with the above discussion.

2. Black Hills Colorado Electric, LLC’s (Black Hills) above-captioned Application and associated Beneficial Electrification Plan filed on June 30, 2022, is approved as modified by the Settlement Agreement, consistent with the above discussion.

3. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file a compliance beneficial electrification plan in this Proceeding, consistent with the above discussion. Within the same timeframe, Black Hills

must file a compliance advice letter and tariff sheet(s), on not less than two business days' notice that are consistent with the Settlement Agreement and Plan, as modified by the Settlement Agreement. The advice letter and tariff sheet(s) 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.

4. Proceeding No. 22A-0304E is closed.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director