

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

PROCEEDING NO. 23AL-0231G

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IN THE MATTER OF ADVICE LETTER NO. 32 FILED BY BLACK HILLS COLORADO GAS, INC. TO INCREASE THE BASE RATES CHARGED FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES, TO BECOME EFFECTIVE JUNE 8, 2023.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
PERMANENTLY SUSPENDING TARIFF SHEETS AND  
PARTIALLY APPROVING SETTLEMENT AGREEMENT**

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Mailed Date: March 4, 2024

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**I. STATEMENT AND SUMMARY**

1. This Decision permanently suspends the effective date of the tariff sheets associated with Advice Letter No. 32; partially grants the Motion to Approve Settlement Agreement filed on November 17, 2023, and approves the Settlement Agreement filed November 17, 2023 (Settlement Agreement or Agreement), as revised, except for the Agreement provision requesting that agreed-upon permanent rates go into effect on February 1, 2024.<sup>1</sup>

2. This is a combined Phase I and II rate Proceeding involving voluminous substantive issues. The majority of the parties to this Proceeding reached a comprehensive Settlement Agreement resolving these issues. Without a doubt, the Agreement represents significant compromises, and ultimately results in customer savings associated with reduced litigation costs. Notably, the agreed-upon revenue requirement is approximately \$6.5 million less than the increase that Black Hills Colorado Gas, Inc. (Black Hills or the Company) initially sought. Nevertheless, the necessary increase in revenue requirements is expected to increase residential bills in each of the Company's Rate Areas (RAs). Specifically, on average, RA 1 will see a 2.5 percent increase for residential customers in the Western Slope without Storage Gas Commodity Adjustment (GCA) Region, and a 2.4 percent average increase for residential customers in the Western Slope with Storage GCA Region and the North/Southwest GCA Region. On average, RA 2 will see a 16 percent increase for residential customers in the Central GCA Region and a 13.1 percent average

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<sup>1</sup> In reaching this Decision, the Administrative Law Judge (ALJ) has carefully reviewed and considered all arguments and admitted evidence, including those discussed briefly or not at all. Although this Decision does not include significant discussion of Settlement Agreement terms to which no party objects, the ALJ has fully considered all relevant issues, including the impact on the public interest. Any requested relief not specifically granted is denied. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits. See *Durango Transportation, Inc. v. Pub. Utilis. Comm'n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Pub. Utilis. Comm'n.*, 702 P.2d 746, 750 (Colo. 1985).

increase for residential customers in the North/Southwest GCA Region. And, on average, residential customers in RA 3, will see a 10.6 percent average increase (Central GCA Region).<sup>2</sup>

3. The Administrative Law Judge (ALJ) recognizes that public comments reflect that many of the Company's customers already struggle with existing rates. The ALJ has carefully considered these comments and the public interest. The ALJ has endeavored to balance the utility's and customers' interests. The prevailing law and the evidence carve a path to one outcome: an increase in the Company's revenue requirement that will increase customer rates. While the ALJ does not minimize the potential impact on customers who already struggle to pay their bills, the rate increase approved in this Proceeding ultimately serves customers by ensuring that Black Hills continues to be a viable utility that can provide safe and reliable gas service.

## **II. PROCEDURAL HISTORY, BACKGROUND AND PUBLIC COMMENTS**<sup>3</sup>

4. On May 8, 2023, Black Hills filed Advice Letter No. 32, with tariff sheets, to commence a combined Phase I and II rate case. The Advice Letter identifies June 8, 2023 as the effective date for the related tariff sheets.<sup>4</sup>

5. On May 10, 2023, the Company filed an Amended Advice Letter, which also places the related tariff sheets into effect on June 8, 2023.

6. On June 7, 2023, the Commission suspended the effective date of the tariff sheets filed with the Amended Advice Letter to October 6, 2023, and set the matter for a hearing per § 40-6-111(1), C.R.S.<sup>5</sup>

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<sup>2</sup> Hearing Exhibit 117 at 28.

<sup>3</sup> Only the procedural history necessary to understand this Decision is included.

<sup>4</sup> See Advice Letter No. 32 filed May 8, 2023 (Advice letter) at 5.

<sup>5</sup> Decision No. C23-0379 at 4 (mailed June 7, 2023).

7. On July 12, 2023, the Commission referred this matter to an ALJ for disposition by minute entry.

8. In addition to Black Hills, the parties to this Proceeding are the Colorado Office of the Utility Consumer Advocate (the UCA); Colorado Public Utilities Commission Trial Staff (Staff); Walmart Inc., (Walmart); and AM Gas Transfer Corp (AM Gas).<sup>6</sup>

9. On July 26, 2023, the ALJ ordered the parties to confer on a procedural schedule; ordered Black Hills to file the parties' proposed consensus schedule by August 1, 2023; and advised that the schedule must accommodate an evidentiary hearing in September 2023. The ALJ also ordered that if the parties prefer a later hearing date, that Black Hills would need to file another Amended Advice Letter with a later effective date for the tariff sheets.<sup>7</sup>

10. On August 1, 2023, Black Hills filed an Unopposed Joint Motion for Adoption of Procedural Schedule and for Approval of Provisional Rates with Conditions (Provisional Rates Motion).

11. On August 3, 2023, the ALJ held a duly-noticed remote prehearing conference to address the Provisional Rates Motion and to establish a procedural schedule to move this matter forward.<sup>8</sup> During the prehearing conference, Black Hills agreed to modifications of the provisional rates proposed in its Provisional Rates Motion, which were approved during the prehearing conference.<sup>9</sup> Specifically, Black Hills agreed that to effectuate a 90-day extension of the suspension period of the tariff sheets, it would submit a new advice letter with a September 6, 2023 effective date for the related tariff sheets.

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<sup>6</sup> Decision No. R23-0485-I at 20 (mailed July 26, 2023)

<sup>7</sup> *Id.* at 16-21

<sup>8</sup> Decision No. R23-0532-I (mailed August 10, 2023); Decision No. R23-0504-I (mailed July 31, 2023).

<sup>9</sup> *See* Decision No. R23-0532-I at 19.

12. On August 10, 2023, the ALJ issued Decision No. R23-0532-I, which memorializes the rulings made during the prehearing conference, including the approved provisional rates. Those rates were to go into effect on February 13, 2024, the date by which the Company's proposed rates under the Amended Advice Letter and related tariff sheets filed on May 10, 2023 would have otherwise gone into effect unless a final Commission decision permanently suspended the effective date of those tariff sheets before then.<sup>10</sup> The Decision directs Black Hills to file a Second Amended Advice Letter with an effective date for the related tariff sheets that is no earlier than September 6, 2023, and to file a compliance advice letter and revised Tariff Sheet No. 59 in a new advice letter proceeding on February 8, 2024 to put into effect the provisional rates and approved true-up mechanisms into effect on not less than two business days' notice on February 13, 2024.<sup>11</sup>

13. Decision No. R23-0532-I also established a procedural schedule and scheduled a hybrid evidentiary hearing for November 28, 29, 30, 2023, and December 1, 2023.

14. On August 15, 2023, Black Hills filed the required Second Amended Advice Letter, changing the effective date of the relevant tariff sheets to September 6, 2023.<sup>12</sup>

15. On August 16, 2023, Black Hills filed an Unopposed Motion of Black Hills Colorado Gas, Inc., for Modification of Decision No. R23-0532-I (First Motion to Modify).

16. On November 17, 2023, Black Hills filed the Settlement Agreement and Motion to Approve Settlement Agreement.

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<sup>10</sup> Decision No. R23-0532-I at 13. *See* Advice Letter and Tariff Sheets filed on May 10, 2023; § 40-6-111(1)(b), C.R.S. Specifically, the May 10, 2023 Advice Letter establishes June 8, 2023 as the effective date for the related tariff sheets. Suspending that effective date by 250 days as permitted by § 40-6-111(1)(b), C.R.S., results in a February 13, 2024 effective date.

<sup>11</sup> Decision No. R23-0532-I at 19.

<sup>12</sup> Advice Letter No. 32 (2<sup>nd</sup> Amended) filed on August 15, 2023 (Second Amended Advice Letter) at 1.

17. Based on the Settlement Agreement, the ALJ vacated the first day of the evidentiary hearing (November 28, 2023) but maintained the other hearing dates (November 29 to December 1, 2023).<sup>13</sup>

18. The ALJ held the evidentiary hearing as noticed; all parties appeared. The following witnesses testified during the hearing: Messrs. Michael Harrington, Matthew Christofferson, and Barton Levin; and Ms. Erin O'Neill. Although testimony concluded on the first day of hearing (November 29, 2023), due to voluminous errors with marking and formatting Staff's hearing exhibits, (ranging from marking different exhibits with the same exhibit number to failing to file confidential or highly confidential versions of redacted exhibits, to failing to correctly mark confidential or highly confidential exhibits), the ALJ convened a second day of hearing on December 1, 2023 to address many of Staff's exhibits, and vacated the November 30, 2023 hearing date.

19. The following hearing exhibits and associated attachments or appendices (including confidential, highly confidential and executable attachments) were admitted into evidence during the hearing: Hearing Exhibit 100; Hearing Exhibit 101, Rev. 1 (Hearing Exhibit 101); Hearing Exhibit 102; Hearing Exhibit 103, Rev. 1 (Hearing Exhibit 103); Hearing Exhibits 104-105; Hearing Exhibit 106, Rev. 1 (Hearing Exhibit 106); Hearing Exhibit 107-108; Hearing Exhibit 109, Rev. 1 (Hearing Exhibit 109); Hearing Exhibits 110-111; Hearing Exhibit 112, Rev. 1 (Hearing Exhibit 112); Hearing Exhibits 113-117; Hearing Exhibit 117, Rev. 1; Hearing Exhibits 118-121; Hearing Exhibits 400-401; Hearing Exhibit 500, Rev. 1 (Hearing Exhibit 500); Hearing Exhibits 501 and 501C; Hearing Exhibit 502; Hearing Exhibit 600, Rev. 1 (Hearing Exhibit 600); Hearing Exhibit 600HC, Rev. 1 (Hearing Exhibit 600HC); Hearing Exhibit 600C, Rev. 1 (Hearing

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<sup>13</sup> Decision No. R23-0779-I (mailed November 27, 2023).

Exhibit 600C); Hearing Exhibits 601-604; Hearing Exhibits 605 and 605C; Hearing Exhibits 606-608; Hearing Exhibits 700-701; and Hearing Exhibit 800.<sup>14</sup>

20. During the hearing, issues surrounding the provisional rates approved by Decision No. R23-0532-I arose. Black Hills agreed to file a motion relating to those issues.

21. On December 14, 2023, Black Hills filed an Unopposed Motion for Modification of Decision No. R23-0532-I to Place Provisional Rates into Effect on February 1, 2024 (Second Motion to Modify).

22. On December 18, 2023, Black Hills filed a Joint Post-Hearing Statement of Position of Black Hills Colorado Gas, Inc., Staff of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate, and Walmart Inc. in Support of Motion to Approve Settlement Agreement (Joint SOP).

23. On December 21, 2023, AM Gas filed its Statement of Position (AM Gas' SOP).

24. On January 3, 2024, by Decision No. R24-0002-I, the ALJ denied the First Motion to Modify as moot, and partially granted the Second Motion to Modify.<sup>15</sup> That Decision also suspends the effective date for the tariff sheets associated with Black Hills' Second Amended

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<sup>14</sup> Hearing Exhibit 800 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing which lists information necessary to identify the specific document being offered, (including exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence by administrative notice using the Excel version of Hearing Exhibit 800 with live links to each of the parties' pre-filed exhibits, as they appear in the administrative record in this Proceeding. This means that the pre-filed exhibit and attachment identified by file date and filer 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. Numerous exhibits or attachments thereto listed in Hearing Exhibit 800 were not admitted by administrative notice but were electronically received into evidence through the parties' box.com folders during the hearing. This is due in large part to Staff's numerous errors in marking exhibits. Administrative support staff added these exhibits and others received in evidence via the parties' box.com folders to the record on December 1, 2023. Those are: Hearing Exhibit 117, Rev. 1; Hearing Exhibits 120-121; Hearing Exhibits 600, 600C and 600HC; Hearing Exhibit 600, Attachments FDS-5, 13, 13HC, 14, 17, 17C, and Executable 17C; Hearing Exhibit 601, Attachments NTG-6 to 10, 14, 14C, and 18; Hearing Exhibit 604; Hearing Exhibit 604, Attachments AOA-1, 1C, Executable 1C, 2, 2C, 3, 3C, 4, 4C, 5, 5C, 6 and 6C; Hearing Exhibits 605 and 605C; and Hearing Exhibit 800.

<sup>15</sup> Decision No. R24-0002-I (mailed January 3, 2024). An errata to Decision No. R24-0002-I was also issued on January 3, 2024, to correct the Decision's mail date to January 3, 2024. Decision No. R24-0002-I-E (mailed January 3, 2024).

Advice Letter (filed on August 15, 2023) to May 13, 2024, as permitted by § 40-6-111(1)(b), C.R.S., and allows Black Hills to put provisional rates into effect equal to the amounts proposed in the Settlement Agreement on February 13, 2024, terminating on the earlier of the Commission's final decision in this Proceeding or the day after the Second Amended Advice Letter's tariff sheets' suspension period expires.<sup>16</sup>

25. On January 16, 2024, Black Hills filed an Unopposed Motion for Modification of Decision No. R24-0002-I to Place Provisional Rates into Effect on February 1, 2024 (Motion to Modify).

26. On February 8, 2024, Black Hills filed Compliance Advice Letter No. 42 with associated tariff sheets in compliance with Decision No. R24-0002-I, which allowed provisional rates to go into effect on February 13, 2024.

27. On February 9, 2024, the Company filed a Notice of Compliance Filing explaining that its February 8, 2024 Compliance Advice Letter No. 42 and tariff sheet filings were made in compliance with Decision No. R24-0002-I, and that the Compliance Advice Letter was assigned Proceeding No. 24AL-0067G.

28. Throughout the course of this Proceeding, members of the public have submitted public comments on the proposed rate increase. Comments have the same primary theme: that rates are already too high; that another increase may force some customers to choose between heating their homes and feeding their families; and that Black Hills should "tighten its belt" rather than increase rates, by, for example, paying their executives and employees less.

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<sup>16</sup> Decision No. R24-0002-I at 7.

### III. DISCUSSION AND FINDINGS

#### A. Relevant Law

29. The Commission has broad constitutional and statutory authority to regulate public utility rates, services, and facilities.<sup>17</sup> Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.<sup>18</sup> The Commission must adopt rates and rate structures that are fair and reasonable.<sup>19</sup> The Commission exercises a delegated legislative function when it establishes a public utility's rates.<sup>20</sup> Setting rates "is not an exact science but a legislative function involving many questions of judgment and discretion."<sup>21</sup> Ratemaking decisions involve the exercise of sound judgment in the balancing of these respective interests, rather than applying a mathematical or legal formula.<sup>22</sup>

30. In ratemaking, it is the result reached, not the method employed, which determines whether a rate is just and reasonable.<sup>23</sup> The Commission "may set rates based on the evidence as a whole" and "need not base its decision on specific empirical support in the form of a study or data."<sup>24</sup> In setting rates, the Commission must balance "the investor's interest in avoiding confiscation and the consumer's interest in prevention of exorbitant rates."<sup>25</sup> The Commission must set rates that protect both the public utility's and its investors' right to earn a return reasonably sufficient to maintain the utility's financial integrity, which is in the interests of both the utility and

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<sup>17</sup> Colo. Const. art. XXV; §§ 40-3-101, 40-3-102, 40-6-111, and 40-3-111, C.R.S.

<sup>18</sup> §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

<sup>19</sup> *Integrated Network Services, Inc. v. Pub. Utilis. Comm'n*, 875 P.2d 1373, 1381 (Colo. 1994).

<sup>20</sup> *City and County of Denver v. People ex rel. Pub. Utilis. Comm'n*, 266 P.2d 1105, 1106 (Colo. 1954).

<sup>21</sup> *Id. See Pub. Utilis. Comm'n v. Northwest Water Corporation*, 451 P.2d 266, 275-76 (Colo. 1969).

<sup>22</sup> *Northwest Water Corp.*, 451 P.2d at 275-76.

<sup>23</sup> *Glustrom v. Pub. Utilis. Comm'n*, 280 P.3d 662, 669 (Colo. 2012), quoting *Colo. Ute Electric Ass'n, Inc., v. Pub. Utilis. Comm'n*, 602 P.2d 861, 864 (Colo. 1979), citing *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

<sup>24</sup> *Colorado Office of Consumer Counsel v. Pub. Utilis. Comm'n*, 275 P.3d 656, 660 (Colo. 2012).

<sup>25</sup> *Colorado Municipal League v. Pub. Utilis. Comm'n*, 687 P.2d 416, 418 (Colo. 1984).

consumers; and consumers' right to pay a rate which accurately reflects the cost of service rendered.<sup>26</sup>

31. Due to the legislative nature of ratemaking, the Commission is not bound by its prior decisions or any doctrine of *stare decisis*.<sup>27</sup> The Commission's decision in each new proceeding must be based upon substantial evidence in the record of the new case.<sup>28</sup> Consistent with this principle, the Colorado Supreme Court has noted that since rate setting is a legislative function which involves many questions of judgment and discretion, courts will not set aside the Commission's chosen rate methodologies unless they are inherently unsound, and that the Commission is not bound by a previously used methodology when it has a reasonable basis, in the exercise of its legislative function, to adopt a different one.<sup>29</sup>

32. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration, and must ensure that public utility rates are just and reasonable.<sup>30</sup>

33. 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>31</sup> This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.<sup>32</sup> The preponderance of the evidence standard requires substantial

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<sup>26</sup> *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 644 P.2d 933, 939 (Colo. 1982); *Pub. Utilis. Comm'n, v. District Court*, 527 P.2d 233, 235 (Colo. 1974); *Northwest Water Corp.*, 451 P.2d at 275-76.

<sup>27</sup> *Colo. Ute*, 602 P.2d at 865; *B&M Services, Inc. v. Pub. Utilis. Comm'n*, 429 P.2d 293, 295 (Colo. 1967).

<sup>28</sup> *See Colo. Ute*, 602 P.2d at 865. *See also Colo. Office of Consumer Counsel v. Pub. Serv. Co. of Colo.*, 877 P.2d 867, 876 (Colo. 1994).

<sup>29</sup> *Glustrom*, 280 P.3d at 669, quoting *CF&I Steel, L.P. v. Pub. Utils. Comm'n.*, 949 P.2d 577, 584 (Colo. 1997).

<sup>30</sup> § 40-3-101(1), C.R.S.; *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

<sup>31</sup> § 24-4-105(7) C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>32</sup> *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.<sup>33</sup>

34. The Commission encourages settlement of contested proceedings.<sup>34</sup>

35. The ALJ assesses the Settlement Agreement and issues in this Proceeding with these principles and legal standards in mind.

### **B. Commission Jurisdiction and Authority**

36. This is an advice letter Proceeding in which the Company, a public utility, seeks to increase its rates or charges to customers. Based on the record and the authorities discussed above, the ALJ concludes that this Proceeding squarely falls under the Commission's broad jurisdiction to regulate Black Hills' rates. As such, the Commission has jurisdiction and authority over this Proceeding, including over whether to approve the Settlement Agreement.

### **C. Unopposed Settlement Agreement Terms**

37. For the most part, the Settlement Agreement is unopposed. Black Hills, Staff, the UCA, and Walmart (the Settling Parties) are signatories to the Agreement.<sup>35</sup> AM Gas is the only party who did not join the Agreement.<sup>36</sup> AM Gas opposes the GCA Consolidation provisions in Section III.B.5 of the Agreement but does not oppose the remaining Agreement provisions.<sup>37</sup> To simplify matters, the unopposed and opposed Agreement provisions are discussed under separate headers.

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<sup>33</sup> *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P.*, 949 P.2d at 585.

<sup>34</sup> Rule 1408(a), 4 CCR 723-1.

<sup>35</sup> Hearing Exhibit 117 at 4.

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

<sup>37</sup> AM Gas' SOP at 1; November 29, 2023 Hearing Transcript (11/29/23 Tr.,) 129: 3-25—132: 1-3.

38. The Settlement Agreement is intended to resolve all of the issues that have been or could have been raised in this Proceeding.<sup>38</sup> It is also intended to be a full and complete resolution of Black Hills' Advice Letter No. 32 tariff filing to place into effect new base rates for all gas sales and transportation service customers. The Settling Parties worked hard to reach an Agreement, meeting numerous times and went through multiple rounds of negotiations to reach the Agreement.<sup>39</sup>

39. During the hearing, Black Hills explained several corrections to the Settlement Agreement, which were memorialized in writing, and admitted as Hearing Exhibit 117, Rev. 1.<sup>40</sup> That document includes replacement pages (pages 11, 20, and 23) for portions of the Settlement Agreement that were clarified or modified. This Decision addresses these replacement pages in lieu of the original pages filed with the Settlement Agreement (and cites to the replacement pages as Hearing Exhibit 117, Rev. 1). In addition, the Settlement Agreement, as revised, is attached as Appendix A to this Decision.<sup>41</sup>

40. Unless necessary to understand the Agreement, this Decision does not outline general Agreement terms or background information in the Agreement.<sup>42</sup>

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<sup>38</sup> Hearing Exhibit 117 at 4.

<sup>39</sup> 11/29/23 Tr., 34: 7-10.

<sup>40</sup> *Id.* at 30: 9-25—33: 1. Black Hills worked with the Settling Parties to make these corrections. *Id.* at 30: 13-14. During the hearing, the ALJ informed the parties that Hearing Exhibit 117, Rev. 1 will replace the same pages in Hearing Exhibit 117 (pages 11, 20, and 23). *Id.* at 33: 7-16. To avoid confusion in the record, this Decision cites those replacement pages as Hearing Exhibit 117, Rev. 1.

<sup>41</sup> Appendix A to this Decision replaces pages 11, 20, and 23 of the Settlement Agreement filed on November 17, 2023 and admitted into evidence as Hearing Exhibit 117 with the replacement pages admitted into evidence as Hearing Exhibit 117, Rev. 1. Appendix A to this Decision includes all the Agreement's Appendices and the revised Agreement as a single document.

<sup>42</sup> Nonetheless, the ALJ commends the Settling Parties for including background information in the Agreement. This was very helpful.

## 1. Settled Revenue Requirements

41. The Settling Parties agree that the Commission should approve the Settled Revenue Requirements, as summarized in Appendix 1 to the Settlement Agreement.<sup>43</sup> The Settled Revenue Requirements were developed using the revenue requirement models originally filed as part of the Company's Rebuttal Testimony and Attachments (Rebuttal RRS models).<sup>44</sup> The Agreement provides that for purposes of developing the Settled Revenue Requirements, the Company's Rebuttal RRS models were modified consistent with Section III.A of the Agreement. The Settling Parties acknowledge and agree that modifications and clarifications in the Agreement have been incorporated into the Settled Revenue Requirement Studies used to calculate the agreed-upon \$20,170,934 base rate revenue increase.<sup>45</sup>

### a. Test Year

42. The Settling Parties agree that the Settled Revenue Requirements were developed starting with the Company's per-book accounting and financial information for the 12-month period ending December 31, 2022, with plant in-service and other plant-related balances updated to reflect actuals through June 30, 2023, and apply known and measurable and other adjustments to revenues, expenses and rate base items as modified and clarified in the Agreement.<sup>46</sup> The Settling parties refer to this as the "Settlement Test Year."<sup>47</sup> To the extent not otherwise addressed in the Agreement, the Settling Parties agree to the adjustments applied in the developing the RRS models reflected in the Company's Direct Testimony and Attachments.<sup>48</sup>

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<sup>43</sup> Hearing Exhibit 117 at 7.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 9.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

**b. Methodology to Calculate Rate Base**

43. The Agreement requires that the Settled Revenue Requirements be developed using the 13-month average method of calculating all rate base components, including the UCA-contested issue of materials and supplies,<sup>49</sup> using actual plant in-service and plant-related balances for the period July 1, 2022 through June 30, 2023.<sup>50</sup>

**c. Gas Plant Investments to Replace Customer-Owned Yard Lines**

44. Through the Agreement, Black Hills withdraws its original request to include investments to replace customer-owned yard lines (COYLS) and the associated depreciation expense in the cost of service for purposes of the revenue requirements in this rate review Proceeding, without prejudice to Black Hills, including investments for recovery in future rate review proceedings.<sup>51</sup> The Settling Parties reserve their right to challenge or defend the prudence of these investments in any future proceeding and agree not to contest the assertion of each other's rights to do so.<sup>52</sup> The Settling Parties agree that nothing in the Agreement shall be interpreted as changing the applicable prudence review standard as to these investments.<sup>53</sup> The Agreement states that the standard of review to be used in assessing the utility's action or lack thereof is whether the utility's action or lack thereof was reasonable in light of the information known or which should have been known at the time of the action or lack thereof.<sup>54</sup>

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<sup>49</sup> In its direct case, in developing its Current Test Year (CTY), the Company proposed to set the working capital account for materials and supplies equal to the actual December 31, 2022 balance. *Id.* The UCA opposed this. *Id.* at 10.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

**d. SSIR Investment Roll-In**

45. The Settling Parties agree that the 2022 System Safety and Integrity Rider (SSIR) investments, placed into service as of December 31, 2022, will be rolled into base rates, but not the 2023 SSIR investments.<sup>55</sup> The Agreement provides that the Company will continue to recover its 2023 SSIR investments through the SSIR mechanism without prejudice to the Company proposing to roll-in such investments in a future proceeding.<sup>56</sup> The SSIR 2023 revenue adjustment that the Company originally proposed will be removed to correspond with removing the 2023 SSIR investments from the rate base.<sup>57</sup> To coordinate the 2022 SSIR investments roll-in, the Company will make a compliance advice letter filing on two business days' notice to implement an interim SSIR rate change terminating recovery of the 2022 SSIR investments, excluding any remaining true-up, on the same day final rates become effective in this Proceeding.<sup>58</sup>

**e. Capital Structure**

46. The Agreement provides that the Settled Revenue Requirements will use the Company's per-book capital structure as of September 30, 2023, that is, 50.87 percent equity and 49.13 percent long-term debt.<sup>59</sup>

**f. Cost of Long-Term Debt**

47. The Settling Parties agree that the Settled Revenue Requirements will reflect the Company's actual historical cost of long-term debt as of September 30, 2023 of 4.41 percent.<sup>60</sup>

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<sup>55</sup> Hearing Exhibit 117, Rev. 1 at 1 (Agreement replacement page 11).

<sup>56</sup> *Id.*

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

<sup>58</sup> *Id.*

<sup>59</sup> Hearing Exhibit 117 at 12.

<sup>60</sup> *Id.*

**g. Authorized Return on Equity**

48. The Agreement provides that the Settled Revenue Requirements will be based on an authorized return on equity (ROE) of 9.30 percent and that flotation costs will be excluded.<sup>61</sup>

**h. Weighted Average Cost of Capital**

49. The Settling Parties acknowledge and agree that when applying the various principles outlined in the Agreement for the ROE, including cost of debt and capital structure, the resulting weighted average cost of capital (WACC) is 6.90 percent, as reflected in Table 1 of the Agreement (reproduced below).<sup>62</sup> The Agreement provides that this is the return on rate base applied for purposes of the Settled Revenue Requirements.<sup>63</sup>

**Agreement Table 1**

<b>Description</b>	<b>Ratio</b>	<b>Average Cost Rate</b>	<b>Overall Cost of Capital</b>
Long Term Debt Capital	49.13%	4.41%	2.17%
Equity Capital	50.98%	9.30%	4.73%
Total Capital	100%		6.90% <sup>64</sup>

**i. Depreciation Rates for Gas Plant Accounts**

50. The Agreement provides that the depreciation rates reflected in the Company's depreciation study, as shown on pages VI-5, VI-6, and VI-7 of Attachment JJS-2 to Mr. Spanos's Direct Testimony (Hearing Exhibit 106, Rev. 1), will be used for all gas plant accounts.<sup>65</sup> These rates are based on the Average Service Life (ASL) method. The Settling Parties believe that this is not the optimal time for a change in depreciation methods from the ASL method to the Equal Life Group (ELG) method, as this would result in a further significant rate increase of approximately \$2.5 million, in addition to the base rate increase in the Settlement Agreement.<sup>66</sup> That said, the

<sup>61</sup> *Id.* at 13. In its direct case, the Company requested a 10.49 percent ROE, and Staff and the UCA recommended a 9.2 percent ROE. *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 14.

<sup>66</sup> *Id.*

Agreement requires the Company to provide information on the ELG method in its next rate case similar to that provided in this Proceeding.<sup>67</sup> The Settling Parties agree to the Company's proposed five-year amortization period for the unrecovered reserve adjustment for certain general plant assets under amortization accounting, as reflected in the revised depreciation study the Company presented in its direct case.<sup>68</sup>

**j. Annual Depreciation Expense**

51. The Agreement provides that for purposes of the Settled Revenue Requirements, annual depreciation expense will be calculated by applying the settled depreciation rates to the 13-month average plant-in service balances for the period July 1, 2022 through June 30, 2023.<sup>69</sup>

**k. Inflation Adjustment for Non-Labor Operation and Maintenance Expenses**

52. The Company initially proposed an inflation adjustment of five percent for non-labor operation and maintenance (O&M) expenses.<sup>70</sup> The Agreement provides that there will be no inflation adjustment, consistent with the Company's position in its rebuttal case.<sup>71</sup>

**l. Expenses Disallowed per Senate Bill 23-291**

53. The Agreement explains that the Company's direct case was filed before Senate Bill (SB) 23-291 was passed, which disallows certain itemized administrative and general expenses traditionally recovered by Colorado public utilities.<sup>72</sup> The Agreement provides that expenses in the amount of \$342,045 will be removed, consistent with the Company's position in its rebuttal case, as a result of SB 23-291 disallowances.<sup>73</sup> That amount breaks down as follows:

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 14-15. Gannett Fleming Valuation and Rate Consultants, LLC prepared this revised depreciation study; its President, Mr. John J. Spanos sponsored the study. The study is Hearing Exhibit 106, Attachment JJS-2.

<sup>69</sup> Hearing Exhibit 117 at 15.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 16.

\$19,738 for investor-related expenses; \$35,199 for organizational or membership dues to entities that engage in lobbying; \$17,065 for travel, lodging, and similar expenses for the Company's Board of Directors and officers; \$155,846 for entertainment or gift expenses; \$13,399 for expenses relating to owned, leased or chartered aircraft for the Company's Board of Directors and officers; and \$100,798, which is 50 percent of the Company's Board of Directors' annual total compensation.<sup>74</sup>

**m. Employee Compensation Costs Associated with Equity  
Compensation and Geographic Pay Differentials**

54. As background, the Agreement explains that in their Answer Testimonies, Staff and the UCA raised various issues concerning the costs included in the Company's Test Year revenue requirements as to employee compensation, including the recoverable amount of equity compensation under the Long-Term Incentive Program (LTIP); limitations on the amount of Annual Incentive Plan (AIP) and Short-Term Incentive Plan (STIP); the Company's adjustment for vacant positions used to determine labor expenses; and geographic differential pay.<sup>75</sup> The Agreement states that while the Settling Parties were able to resolve their differences as to the appropriate adjustment for vacant positions and limitations regarding AIP and STIP, (in Sections III.A.14 and III.A.15 of the Agreement), the remaining issues concerning equity compensation and geographic pay were settled together by the Company agreeing to a final \$250,000 expense reduction, as explained below.<sup>76</sup>

55. Specifically, the Settling Parties agree that the Settled Revenue Requirements will reflect a reduction of \$123,793 from the 50 percent of the per-book equity compensation for LTIP included in the Company's rebuttal case, and a reduction of \$126,207 (50 percent of the costs

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 16-17.

<sup>76</sup> *Id.* at 17.

associated with geographic differentials paid to employees), totaling the \$250,000 reduction referenced above.<sup>77</sup>

**n. Annual Incentive Plan and Short-Term Incentive Plan**

56. The Agreement provides that that AIP and STIP incentive compensation is limited to 15 percent of base salary applied on a per-employee basis as reflected in the Company's rebuttal case.<sup>78</sup>

**o. Vacant Positions**

57. The Settling Parties agree the Settled Revenue Requirements will reflect a \$122,643 reduction to remove vacant positions consistent with the concession made in the Company's rebuttal case.<sup>79</sup>

**p. Trackers for Property Taxes, Pension Expenses, and Retiree Healthcare Expenses**

58. As background, the Agreement explains that the Company proposed to continue the accounting tracking mechanisms previously approved by the Commission in Proceeding Nos. 19AL-0075G and 21AL-0236G related to property taxes, pension expense and retiree healthcare expenses.<sup>80</sup> The Settling Parties agree that the currently authorized trackers for property tax expense, pension expense and retiree healthcare expense will continue, and that the base annual level for each of these expenses will be based on the representative expense amounts for 2023 that the Company proposed in its direct case.<sup>81</sup> The Agreement provides that the projected balances in each of these trackers as of December 31, 2023 will be amortized over a two-year period and an

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<sup>77</sup> *Id.* at 17-18.

<sup>78</sup> *Id.* at 18.

<sup>79</sup> *Id.* at 19. The Agreement explains that in its rebuttal case, the Company indicated that all but one of the vacant positions (nine total) referenced in the Company's direct case were filled; the Company agreed to remove the costs associated with the one vacant position that remained. *Id.* at 18.

<sup>80</sup> *Id.* at 19.

<sup>81</sup> *Id.*

annual amortization amount equal to one-half of each such balance will be included in the Settled Revenue Requirements.<sup>82</sup> The Company is not required to separately track amounts for each base rate area.<sup>83</sup> Table 3 of the Agreement (reproduced below) summarizes the amounts included in the Settled Revenue Requirements for the referenced trackers:

**Agreement Table 3**

	Property Tax	Pension Expense	Retiree Healthcare Expense
2023 Annual Expense	\$4,403,174	\$158,442	\$331,826
Tracker Balance Amortization	(\$338,757)	\$35,201	(\$17,265)
Total annual amount	\$4,064,417	\$193,643	\$314,561 <sup>84</sup>

**q. Legacy Pension Regulatory Asset Amortization Tracker**

59. The Agreement provides that the currently authorized tracker for the legacy pension regulatory asset amortization will continue until July 1, 2025, at which time it will be terminated, and any remaining tracker balance will be rolled into the ongoing pension tracker as either: (i) an additional amount to be amortized in the event the legacy regulatory asset tracker balance reflects an under-recovery; or (ii) a reduction to the amount to be amortized in the event the balance reflects an over-recovery.<sup>85</sup> The Settling Parties agree that to provide for the Company’s recovery of the remaining legacy pension regulatory asset by July 1, 2025, and to fully amortize the tracker balance as of December 31, 2023, the Settled Revenue Requirements will include an annual allowance of \$74,505.<sup>86</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* The Agreement explains that in Answer Testimony, Staff expressed concerns about allocation among base rate areas and recommended that separate trackers be established for each base rate area. *Id.*

<sup>84</sup> Hearing Exhibit 117, Rev. 1 at 2 (Agreement replacement page 20).

<sup>85</sup> Hearing Exhibit 117, Rev. 1 at 2 (Agreement replacement page 20).

<sup>86</sup> *Id.*; Hearing Exhibit 117 at 21.

**r. Commission Regulatory Fees Tracker**

60. As background, the Agreement explains that in its direct case, Black Hills proposed to establish a deferred accounting mechanism to track and recover the annual Commission fees it pays to the Colorado Department of Revenue consistent with statutory changes enacted in SB 21-272.<sup>87</sup> The Agreement explains that under this tracking mechanism, the Company proposed to establish a base level of expense to include in its revenue requirement and to defer into a regulatory asset account any subsequent incremental changes to the fees it incurred for purposes of adjusting its recovery of Commission fees to ensure dollar-for-dollar recovery in future rate cases.<sup>88</sup> The Company's Current Test Year (CTY) revenue requirement study (RRS) models included a base level amount which was equal to the actual amount it incurred for Commission fees during the per-book base period (the 12 months ending December 31, 2022) and an adjustment of \$72,662 to capture the incremental expense increase.<sup>89</sup> The Agreement requires the Company to establish a tracking mechanism for Commission regulatory fees and create a regulatory asset to track incremental Commission fees incurred by the Company as proposed.<sup>90</sup> The Settled Revenue Requirements will include \$504,634 as the annual base amount for Commission fees incurred by the Company.<sup>91</sup>

**s. Rate Case Expenses**

61. The Agreement provides that the Company is entitled to recover actual incurred rate case expenses in connection with this rate review Proceeding, not to exceed a cap of \$650,000, plus the unamortized balance of rate case expenses approved for recovery in the last rate review

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<sup>87</sup> Hearing Exhibit 117 at 21.

<sup>88</sup> *Id.*, citing Hearing Exhibit 109, Rev. 1, 69: 12-22—70: 1-18.

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

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

(Proceeding No. 21AL-0236G) of \$292,967, using a two-year amortization period.<sup>92</sup> The Settling Parties agree that for this rate review, only the Company's updated estimate of rate case expenses of \$350,000 (or \$175,000 per year amortized over two years) will be included for purposes of the Settled Revenue Requirements, subject to adjustment and true-up to actual incurred rate case expenses as provided for in paragraphs 57 and 58 of the Agreement (as explained below).<sup>93</sup> The Agreement states that "in sum" the annual amount of rate case expenses to be included in the Settled Revenue Requirements will be \$321,484, based on total rate case expenses of \$642,967 and a two-year amortization period.<sup>94</sup> The Settling Parties also agree that rate case expenses will be allocated among base rate areas as proposed by Staff in its Answer Testimony.<sup>95</sup> Specifically, the estimated rate case expenses will be allocated among the Company's three rate base areas so that 29.71 percent is allocated to RA 1; 23.65 percent is allocated to RA 2; and 46.64 percent is allocated to RA 3 (as Staff proposed).<sup>96</sup>

62. Paragraph 57 of the Agreement provides that if the two-year amortization period is longer than the period of time between the effective date of rates from this case, and the effective date of rates in the Company's next rate case, the unamortized balance of deferred rate case expenses remaining from this rate case will be recoverable and included for recovery through an amortization in the Company's next rate case.<sup>97</sup> If the amortization period is shorter than the period between the effective date of rates in this case and the Company's next rate case, the Company will track the potential over-collection in a regulatory liability that will be used to offset the rate case expenses in the Company's next rate review proceeding.<sup>98</sup>

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<sup>92</sup> *Id.* at 22.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* See 11/29/23 Tr., 44:22-25—45: 1-14.

<sup>97</sup> Hearing Exhibit 117 at 22; Hearing Exhibit 117, Rev. 1 at 3 (Agreement replacement page 23).

<sup>98</sup> Hearing Exhibit 117, Rev. 1 at 3.

63. Paragraph 58 of the Agreement requires Black Hills to provide Staff and the UCA a schedule of its total actual rate case expenses, disaggregated by category of expense and vendor, within 90 days following a final Commission decision in this Proceeding.<sup>99</sup> Within 15 days thereafter, the Agreement requires Black Hills to confer with Staff and the UCA to resolve any issues as to errors or inconsistencies in such expenses and to provide any invoices or other information in support of such expenses upon request.<sup>100</sup>

**t. Summary of Revenue Requirement Adjustments**

64. The Agreement states that the Settled Revenue Requirements, as summarized in Appendix 1 thereto, results in an increase of \$20,170,934 to the Company’s annual base rate revenues.<sup>101</sup> The Agreement explains that this increase is based on the Settled Revenue Requirements of \$100,048,490 on test year revenues of \$79,877,556, as compared to the Company’s original requested increase of \$26,688,607 based on an overall revenue requirement of \$107,608,937 on test year revenues of \$80,920,331.<sup>102</sup> The resulting Settled Base Rates for service under the Company’s gas sales and transportation rate schedules, as compared to currently effective rates, are reflected in Appendix 2 to the Agreement.<sup>103</sup>

65. Table 4 of the Agreement (reproduced below) provides the Settled Revenue Requirements and revenue increase for each Base Rate Area.<sup>104</sup>

**Agreement Table 4**

<b>Base Rate Area</b>	<b>Settled Revenue Requirements</b>	<b>Revenue Increase</b>	<b>Percent Increase Over Annual Revenues</b>
1	\$44,043,611	\$5,258,760	11.94%
2	\$17,136,718	\$4,851,884	28.31%

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

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

<sup>104</sup> *Id.*; Hearing Exhibit 117 at 24.

3	\$38,864,803	\$10,054,271	25.87%
<b>Total</b>	<b>\$100,048,490</b>	<b>\$20,170,934</b>	<b>20.16%</b> <sup>105</sup>

66. In Table 5 of the Agreement, the Settling Parties outline the impact of each of the Agreement’s adjustments to the Company’s proposed revenue requirements.<sup>106</sup>

**2. Settled Class Cost of Service and Rate Design**

67. The Agreement provides that the Settled Revenue Requirements, as modified by the Agreement (Section III.A), will be incorporated into the Company’s proposed class cost of service studies (CCOSSs) consistent with the cost allocation and rate design principles in the Agreement.<sup>107</sup> The Agreement states that the results are the Settled Base Rates reflected in Appendix 2 thereto.<sup>108</sup> The Settling Parties agree that the Commission should approve the Settled Base Rates.<sup>109</sup>

**a. Base Rate Area Consolidation**

68. For purposes of this Proceeding, the Settling Parties agree that the Company’s three existing base rate areas will be maintained and not consolidated.<sup>110</sup>

**b. Class Cost of Service Study Functionalization, Classification, and Allocation of Costs**

69. The Agreement provides that the Company’s CCOSSs will be used as the basis to calculate settlement rates.<sup>111</sup>

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<sup>105</sup> Hearing Exhibit 117 at 24.

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

<sup>107</sup> *Id.* at 25.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

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

<sup>111</sup> *Id.*

**c. Customer Charge**

70. The Settling Parties agree that the Company will maintain the currently effective residential customer charge of \$12.00 and small commercial customer charge of \$22.00 per month in each base rate area.<sup>112</sup>

**d. Rate Area Mitigation**

71. In its direct case, the Company proposed to mitigate rate impacts to RA 2 by allocating a portion of the cost-based revenue increases from RA 2 to RA 1 and 3.<sup>113</sup> The UCA and Staff opposed this. The Agreement provides that the cost-based rates reflected in the CCOSs, after the modification to reflect the agreed-upon residential and small commercial customer charges, will be adopted without mitigating the impacts to RA 2 customers.<sup>114</sup> The UCA, Staff, and the Company agree to work collaboratively to maximize Percentage of Income Payment Plan (PIPP) subscriptions in all three base rate areas, with a particular focus on RA 2.<sup>115</sup> During the hearing, the UCA explained that it anticipates focusing on RA 2 because there is a high number of income-qualified consumers, and that efforts may include customer education and outreach.<sup>116</sup> Staff added that it anticipates looking at the Company's existing touch points for other programs (such as its Demand-Side Management program) with customers to leverage actions the Company is already taking.<sup>117</sup>

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<sup>112</sup> *Id.* at 26.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* Customers also have the option to get on the Company's budget billing program, which establishes a flat bill amount throughout the year based on prior usage so customers can avoid substantial swings in their bills. 11/29/23 Tr., 50: 8-25—51: 1-16.

<sup>116</sup> *Id.* at 77: 20-25.

<sup>117</sup> *Id.* at 82: 6-10; 82: 24-25—83: 1-4.

**e. Summary of Bill Impact on Black Hills’ Customers**

72. The Agreement explains that the bill impacts resulting from the Settled Base Rates for all customer classes and all rate schedules are outlined in Appendix 2 thereto.<sup>118</sup> Tables 6 (reproduced here) of the Agreement summarizes the average bill impacts for residential and small commercial customers resulting from the Settled Base Rates.<sup>119</sup>

**Agreement Tables 6<sup>120</sup>**

**Average Residential Customer Monthly Bill Impact**

<b>Base Rate Area</b>	<b>GCA Region</b>	<b>Current Average Monthly Bill</b>	<b>Settlement Average Monthly Bill</b>	<b>Monthly Change</b>	<b>Percent Change</b>
1	Western Slope Without Storage GCA Region	\$108.75	\$111.51	\$2.76	2.5%
1	Western Slope With Storage GCA Region	\$112.89	\$115.65	\$2.76	2.4%
1	North/Southwest GCA Region	\$115.62	\$118.38	\$2.76	2.4%
2	Central GCA Region	\$81.17	\$94.18	\$13.01	16.0%
2	North/Southwest GCA Region	\$99.21	\$112.22	\$13.01	13.1%
3	Central GCA Region	\$76.15	\$84.22	\$8.07	10.6%

**Average Small Commercial Customer Monthly Bill Impact**

<b>Base Rate Area</b>	<b>GCA Region</b>	<b>Current Average Monthly Bill</b>	<b>Settlement Average Monthly Bill</b>	<b>Monthly Change</b>	<b>Percent Change</b>
1	Western Slope Without Storage	\$235.14	\$248.67	\$13.53	5.8%

<sup>118</sup> Hearing Exhibit 117 at 27.

<sup>119</sup> *Id.* at 27-28.

<sup>120</sup> The two tables above are “Table 6” in the Agreement. *Id.* at 28.

	GCA Region				
1	Western Slope With Storage GCA Region	\$244.54	\$258.07	\$13.53	5.5%
1	North/Southwest GCA Region	\$250.77	\$264.30	\$13.53	5.4%
2	Central GCA Region	\$177.30	\$200.16	\$22.86	12.9%
2	North/Southwest GCA Region	\$220.48	\$243.34	\$22.86	10.4%
3	Central GCA Region	\$136.08	\$146.85	\$10.77	7.9% <sup>121</sup>

**f. Settled Base Rates’ Effective Date, Implementation and Tariff Changes**

73. The Settling Parties agree that it is in the public interest to have the Settled Base Rates become effective as of February 1, 2024, which avoids the potential customer confusion of provisional rates going into effect on February 13, 2024.<sup>122</sup> The Settling Parties request that the Commission issue a final decision approving the Agreement without modification such that the Company may make its compliance tariff filing on or before January 29, 2024 (on at least two business days’ notice).<sup>123</sup>

74. Likewise, the Settling Parties agree that the rate and tariff changes resulting from the Settlement Agreement should be approved by the Commission to become effective February 1, 2024.<sup>124</sup> The Agreement provides that upon the issuance of a Commission decision approving the Agreement in all material respects, the Company will file a compliance advice letter to place into effect revised tariff sheets in substantially the same form as the *Pro Forma* Tariff Sheets in Appendix 3 to the Agreement (*Pro Forma* Tariff Sheets), to become effective on not less than two business days’ notice, but no later than February 1, 2024.<sup>125</sup>

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

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

<sup>124</sup> *Id.* at 31.

<sup>125</sup> *Id.*

75. Similarly, the Settling Parties agree to the Settled Base Rates and tariff sheets in substantially the same form as the *Pro Forma* Tariff Sheets.<sup>126</sup> They agree that the *Pro Forma* Tariff Sheets incorporate the Agreement's changes.<sup>127</sup> The Settling Parties also agree that the Commission should approve the tariff language changes reflected in the *Pro Forma* Tariff Sheets, including:

- Modifications to Tariff Sheet No. 57 to reflect that Black Hills' April 1 Report filing will initiate a prudency review and that SSIR rates resulting from the over/under-collection of the projected SSIR revenue requirement compared to the actual amounts collected for the prior calendar year will be modified through a separate advice letter filed concurrently with the April 1 Report;
- Modifications to the GCA tariff to provide for GCA structure changes consistent with Section III.B.5 of the Agreement, including: consolidating the Western Slope GCA area and Western Slope with Storage GCA areas into a single Western Slope GCA area effective in the first GCA filing following a final Commission decision in this Proceeding; and the future Western/Eastern GCA structure effective April 1, 2025;
- The change in the return component in the calculation of the GSIC component of the GCA, consistent with Section III.D.2 of this Agreement; and
- Additional textual changes of a conforming and clarifying nature.<sup>128</sup>

### 3. Cost Allocation Manual

76. The Settling Parties agree that the Company's Cost Allocation Manual (Manual), as supplemented through rebuttal testimony, is reasonable.<sup>129</sup> The Company agrees to provide the Manual and the executable Black Hills Service Company Allocation Master Design, including necessary supporting workpapers, in future rate review proceedings.<sup>130</sup>

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<sup>126</sup> *Id.* at 30. See Appendix 3 to Hearing Exhibit 117.

<sup>127</sup> Hearing Exhibit 117 at 30. Appendix 4 to the Agreement contains tariff sheets in legislative format reflecting the changes as compared to the currently effective tariff sheets. *Id.*; Appendix 4 to Hearing Exhibit 117.

<sup>128</sup> Hearing Exhibit 117 at 30-31.

<sup>129</sup> *Id.* at 29.

<sup>130</sup> *Id.*

#### 4. Gas Storage Inventory Cost

77. The Agreement provides that the return or cost recovery component for the Company's gas storage inventory cost (GSIC) will be equal to the Company's actual cost of short-term debt, currently 6.44 percent.<sup>131</sup> The Agreement provides that the short-term debt rate in each GCA filing will be based on an average daily rate for the previous quarter.<sup>132</sup>

#### 5. The Company's Quality of Service Plan

78. The Agreement provides that within 90 days of a final Commission Decision in this Proceeding, the Company and Staff will work together to revise the Company's existing Quality of Service Plan (QSP) with new or updated performance metrics, goals, and penalties that promote continuous improvement in the areas of operational safety, reliability "and/or" service adequacy.<sup>133</sup> The Company will file its revised QSP and any associated tariff language revisions for Commission approval by December 31, 2024, or as part of its next general rate case, whichever is first.<sup>134</sup> The Agreement also requires the Company to provide the UCA documents for this QSP process.<sup>135</sup> During the hearing, the Company explained that its current QSP expires at the end of 2024, and that the Company anticipates that it will provide the UCA documents relating to metrics and savings goals.<sup>136</sup>

#### 6. Findings, Analysis and Conclusions

79. The ALJ finds that the Settlement Agreement reflects a just and reasonable compromise between the Settling Parties to resolve all issues that have been or could have been raised here. Given the substantial volume of issues in this Proceeding, and the complex and

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 30.

<sup>134</sup> *Id.*

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

<sup>136</sup> 11/29/23 Tr., 56: 15-17; 57: 12-15.

significant nature of such issues, this is no small feat.<sup>137</sup> Except as discussed below, the ALJ finds that the above Agreement terms are in the public interest, just and reasonable, and not discriminatory. The resulting rates, terms, and conditions in the Settlement Agreement (as revised) will result in just and reasonable rates, conditions, and terms of service for the Company's customers. The ALJ recognizes that public comments reflect that many of the Company's customers already struggle with existing rates and urge the Commission to reject any rate increase. The ALJ has considered these comments, but the ALJ's authority is limited. The prevailing legal authority requires that the Commission establish rates that allow the utility to maintain its financial integrity and that ensure that customers pay a rate which reflects the cost of service.<sup>138</sup> The rates established by the Agreement ensure that Black Hills' revenues cover operating expenses and the capital costs of doing business and are sufficient to assure confidence in its financial integrity so as to maintain its creditworthiness and attract capital.<sup>139</sup> This serves both the utility and consumers by ensuring that the utility is able to continue to provide safe and reliable service (and maintain creditworthiness and attract capital as needed for investments necessary to do so). That said, the ALJ has carefully scrutinized the evidence in this Proceeding, including the evidence supporting the need to increase the Company's revenue requirements (and rates). The evidence supports the agreed-upon increases. Costs have risen since the Company's last rate case; this is significant driver for a rate increase. Except as noted below, for the reasons and authorities discussed and

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<sup>137</sup> While the ALJ is concerned that the Agreement contains no provision to mitigate the rate impact on residential customers (including those in RA2), given the lack of party support to craft a just and reasonable approach to mitigate residential customer rate impact, the Settling Parties' numerous compromises in the Agreement, and the Commission's policy to encourage settlement of contested Proceedings, the ALJ does not modify the Agreement to include rate impact mitigation.

<sup>138</sup> *Pub. Utilis. Comm'n*, 644 P.2d at 939; *Northwest Water Corp.*, 451 P.2d at 275-276.

<sup>139</sup> *See Pub. Utilis. Comm'n*, 644 P.2d at 939; *District Court*, 527 P.2d at 235; *Northwest Water Corp.*, 451 P.2d at 275-76.

based on the record as a whole, the ALJ approves the above Agreement terms. In doing so, the ALJ balances customers' and the utility's respective interests.

80. That said, the ALJ does not approve the Agreement term to put permanent rates into effect on February 1, 2024.<sup>140</sup> The ALJ understands that it was part of the Settling Parties' compromises and may have been important to Black Hills that new permanent rates be effective on February 1, 2024. But this Agreement term was unrealistic from the start. For new permanent rates to be effective on February 1, 2024, the ALJ would have had to issue this Decision by late November 2023 to allow time for exceptions and for the Commission to issue its final decision. The evidentiary hearing was held on November 29 and December 1, 2023. Thus, even when the Settling Parties entered into the Agreement, it was not possible for a final Commission decision to issue within a timeframe that would allow Black Hills to file its advice letter and tariff sheets on January 29, 2024 to put new permanent rates into effect by February 1, 2024.<sup>141</sup> In any event, given the timing of this Decision, this Agreement provision is moot. For the reasons discussed, the ALJ rejects the Agreement's provision requiring rates to go into effect on February 1, 2024. The ALJ approves the remaining terms in ¶ 82 of the Agreement, as just, reasonable, and in the public interest. Specifically, upon the issuance of a final Commission decision approving the Settlement Agreement in all material respects, the Company must file a compliance advice letter to place into effect revised tariff sheets in substantially the same form as the *Pro Forma* Tariff Sheets contained in Appendix 3 to the Agreement to become effective on not less than two business days' notice.<sup>142</sup>

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<sup>140</sup> Hearing Exhibit 117 at 31 (¶ 82).

<sup>141</sup> The ALJ approved Black Hills' request to put provisional rates into effect consistent with the Agreement's rates before the Commission issues its final Decision. Decision No. R24-0002-I at 5-6. Such rates were approved to go into effect on February 13, 2024, the date by which the Company's Amended Advice Letter and tariff sheets' suspension period would have otherwise expired. *Id.*

<sup>142</sup> Hearing Exhibit 117 at 31 (¶ 82). To the extent that the *Pro Forma* Tariff Sheets identify a February 1, 2024 effective date, that should be revised, consistent with the above conclusion to reject that Agreement term.

**D. Opposed Settlement Agreement Provision****1. Gas Cost Adjustment Consolidation**

81. As background, the Agreement explains that in its direct case, the Company described an alternative GCA structure that would collapse the current four GCA areas into two regions, the Western and Eastern regions (Western/Eastern GCA structure).<sup>143</sup> This would divide the Company's service territories east and west of the Continental Divide.<sup>144</sup> Implicit in this alternative is that the Western Slope with Storage GCA area and the Western Slope without Storage GCA area would be consolidated.<sup>145</sup>

82. The Agreement requires the Company to implement the above Western/Eastern GCA structure with the first GCA filing following conclusion of the Extraordinary Gas Cost Recovery Rider (EGCRR) (related to the 2021 Storm Uri) in April 2025.<sup>146</sup> The Agreement requires the Company to present the Western and Eastern GCA rates on an informational basis for comparison purposes in each quarterly GCA filing until the effective date of the new Western/Eastern GCA structure.<sup>147</sup> Similarly, the Agreement requires the Company to consolidate the Western Slope with Storage GCA and Western Slope (without storage) GCA areas effective with the first GCA filing following a final Commission decision in this Proceeding.<sup>148</sup> This will result in eliminating Rate Schedules "1S," which references the RA 1 Storage rate class, throughout the Company's tariffs.

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<sup>143</sup> *Id.* at 26.

<sup>144</sup> Joint SOP at 14.

<sup>145</sup> Hearing Exhibit 117 at 26.

<sup>146</sup> *Id.* at 27.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

## 2. Arguments

83. As noted, AM Gas objects to the above Agreement provisions. Among other reasons, AM Gas opposes the proposed GCA area consolidation because this will impact its ability to compete with Black Hills.<sup>149</sup> AM Gas competes with Black Hills by procuring gas that it sells to end-use customers; it transports such gas to customers over the Company's pipelines.<sup>150</sup> Those customers are the Company's gas *transportation* customers and AM Gas' gas commodity sales customers. The unregulated rate that AM Gas charges for gas must be sufficient for it to earn a profit, but low enough to attract customers (ideally).<sup>151</sup> AM Gas has participated in many Commission proceedings to protect its ability to provide gas commodity at lower cost; it argues that no party suggests that AM Gas lacks standing to protect its competitive position.<sup>152</sup> AM Gas asserts that the proposed GCA consolidation "unfairly upsets" its ability to provide service more cheaply than Black Hills because it artificially lowers customer costs.<sup>153</sup> AM Gas argues that it should not be forced to compete with subsidized costs of natural gas.<sup>154</sup>

84. In addition, AM Gas argues that the proposed GCA consolidation is not in its customer's interests or the larger public interest.<sup>155</sup> AM Gas asserts that the Commission rejected the type of consolidation proposed here in Proceeding No. 19AL-0075G.<sup>156</sup> In that Proceeding, the Commission rejected the Company's proposal to consolidate its three base rate areas into one area

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<sup>149</sup> AM Gas' SOP at 1-2; 4-5.

<sup>150</sup> *Id.* at 4; 11/29/23 Tr., 91: 12-16; 92: 19-25. *See* Hearing Exhibit 700, 2: 15-16.

<sup>151</sup> AM Gas' SOP at 4.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 1-2.

<sup>155</sup> *Id.* at 1. AM Gas describes itself as an agent for many of the Company's gas transportation customers. Hearing Exhibit 700, 2: 15-16. AM Gas failed to establish that it may represent the Company's gas transportation customers. Regardless, AM Gas' arguments make it clear that it opposes consolidation primarily to protect its interests, not customers'. Indeed, AM Gas seeks to maintain the existing GCA structure so that its competitive position for gas sales customers is not negatively impacted by what it describes as subsidized costs of natural gas, or artificially lower customer costs. AM Gas's SOP at 1-2 and 5.

<sup>156</sup> *Id.* at 1-2 citing Decision No. R19-1033 at 118-119 in Proceeding No. 19AL-0075G (hereinafter Decision No. R19-1033).

and seven GCA areas into three GCA areas, finding that Black Hills failed to meet several criteria considered in rate area consolidation.<sup>157</sup> AM Gas argues that the Company failed to meet the same criteria here, that is: establishing the absence of a substantial rate disparity between the base rate areas; and providing evidence of present or future physical connection between systems serving each base rate area and potential future operational efficiencies from consolidation yielding cost savings.<sup>158</sup> AM Gas asserts that the proposed consolidation “goes too far because of the same concerns” in Proceeding No. 19AL-0075G, because there “is too much subsidization, and not just among customer classes, but among rate areas with significantly different costs of service.”<sup>159</sup> It argues that consolidation is contrary to the Commission’s policy of passing through gas costs at an at-cost basis and cost of service rates and that certain areas will see significant decreases in GCA rates while others will see increases.<sup>160</sup> AM Gas asserts that benefits from consolidation are on paper only; that the systems are not connected; that the Company has not indicated the systems will be connected in the future; and that there are no cost savings associated with consolidation.<sup>161</sup>

85. It also argues that the proposed consolidation will increase market volatility because the costs to serve different areas vary, with the most marked differences between the Western and Central GCA areas, and that the Commission should reject attempts to join GCA areas with significantly different service costs.<sup>162</sup> AM Gas also contests the consolidation because it upsets a decade-long settlement in Consolidated Proceeding Nos. 13A-0046G, 13AL-0067G and 13AL-0143G, and because it is fundamentally unfair to take the facility paid for by the customers who benefit from it for the use of customers who do not “truly” benefit from it.<sup>163</sup>

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 2, citing Decision No. R19-1033 at 137.

<sup>159</sup> *Id.* at 3.

<sup>160</sup> *Id.* at 3-4 and 6, citing Hearing Exhibit 119, 17: 1-2 (Table MJC-S2).

<sup>161</sup> *Id.* at 9-10.

<sup>162</sup> *Id.* at 6-7.

<sup>163</sup> *Id.* at 10-11.

86. The Settling Parties respond that the Western/Eastern GCA structure in the Agreement will stabilize gas price volatility with minimal rate impacts; simplify the existing GCA structure; improve administrative efficiencies; and provide customers access to the benefits of storage services where they presently have none.<sup>164</sup> The Settling Parties explain that customers will benefit from more stabilized GCA rates by unlocking the geographic diversity associated with the Company's gas portfolio across the western and eastern parts of the state, and from spreading the Company's average cost of purchasing gas supplies and upstream pipeline services over a greater number of customers in the served regions.<sup>165</sup> They argue that the Western/Eastern GCA structure better aligns the underlying cost of procuring and delivering gas to customers and is consistent with cost-causation principles and sending customers accurate price signals.<sup>166</sup>

87. The Settling Parties assert that AM Gas misconstrues or misapplies cost causation principles to the relevant upstream storage costs.<sup>167</sup> They explain that there are two aspects to the use of the Rocky Mountain Natural Gas' Wolf Creek Storage Facility (Wolf Creek). The first is the operational requirement to ensure sufficient gas supply for reliable service; and the second is the pricing benefits resulting from injecting natural gas into storage during non-winter months when gas prices are generally lower, and withdrawing gas from storage during winter months when gas prices are generally higher.<sup>168</sup> As to the first element, the Settling Parties explain that the Company's gas purchasing practices and obligation to have adequate gas supply and upstream contracts are independent of and will not change as a result of the GCA consolidation.<sup>169</sup> Even so, from an operational perspective, gas from Wolf Creek can be delivered to other communities in

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<sup>164</sup> Joint SOP at 14-15.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 15, citing Hearing Exhibit 608, 11: 3-18.

<sup>167</sup> *Id.* at 22.

<sup>168</sup> *Id.* at 22-23.

<sup>169</sup> *Id.* at 23, citing Hearing Exhibit 109, 60: 7-11.

addition to those in the Western Slope with Storage GCA area.<sup>170</sup> As such, the GCA consolidation will provide access to storage services to customers who currently have no such access due to the current GCA structure.<sup>171</sup>

88. As to the second element, while the pricing benefits of gas storage and gas commodity costs are currently shared among all Western Slope GCA customers, only customers in the Western Slope with Storage GCA area have paid for the upstream storage costs.<sup>172</sup> Put differently, although customers in the Western Slope with Storage GCA area have paid 100 percent of the upstream storage costs, they have not been exclusively receiving the benefits of the lower gas commodity prices via the weighted-average cost of gas, but have shared those benefits with customers who do not pay the storage costs.<sup>173</sup> GCA consolidation will correct this inequity. Indeed, the proposed GCA consolidation will ensure that the upstream storage costs are borne by all customers who benefit from such storage, consistent with cost causation principles.<sup>174</sup> This will result in a structure similar to how the costs and benefits of upstream pipeline services are treated in the Company's other GCA areas, and by other Colorado gas utilities' GCA structures.<sup>175</sup> Indeed, the Company explains that no other public utilities carve out storage costs in the manner that AM Gas suggests.<sup>176</sup> For example, the largest Colorado natural gas utility, Public Service Company of Colorado, has a single, statewide GCA in which all commodity supply and upstream costs are spread to all of its gas sales customers in the state.<sup>177</sup>

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<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 15.

<sup>172</sup> *Id.* at 23-24.

<sup>173</sup> *Id.* at 24.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 16-17, citing Hearing Exhibit 116, 18: 5-15; 24: 15-23—25: 1-15;

<sup>176</sup> Hearing Exhibit 116, 25: 4-5.

<sup>177</sup> Joint SOP at 17, citing Hearing Exhibit 116, 20: 1-8 and Hearing Exhibit 116, Attachment MJC-9.

89. Staff supports consolidating the two Western Slope GCA areas because “[h]istorically, there is very little rate disparity between the two areas, they are in close physical proximity, and they are served by similar sources of supply.”<sup>178</sup>

90. The Settling Parties argue that in *Board of Public Utility Comm’rs v. New York Telephone*, the United States Supreme Court found that customers pay for service, not the property used to provide service, and that by paying bills for service, they do not acquire any interest, legal or equitable, in the property used for their convenience.<sup>179</sup> As such, they argue that the Commission should reject AM Gas’ argument that customers in the Western Slope with Storage GCA area have a claim for “compensation” for amounts they paid for past gas storage.<sup>180</sup> They explain that ratemaking is forward-looking; that new rates have only a prospective effect; and that it is not the function of ratemaking to compensate former customers for service that they previously received.<sup>181</sup> The Settling Parties argue that AM Gas has enjoyed the benefits of the Settlement Agreement that created the current GCA structure in Consolidated Proceeding Nos. 13A-0046G, 13AL-0067G and 13AL-0143G for long enough, and that this prior Agreement does not bind parties here or the Commission from taking a different position in the future, or from adopting a different resolution in establishing just and reasonable rates.<sup>182</sup>

91. The Company argues that the Commission should reject AM Gas’s argument as self-serving, and contrary to customers’ interests.<sup>183</sup> The Settling Parties assert that because AM Gas is not a Black Hills customer, and does not pay the Company’s base rates or the GCA rates impacted by the Agreement, AM Gas lacks standing to object to the proposed GCA

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<sup>178</sup> *Id.* at 15-16, quoting Hearing Exhibit 605, 27: 2-5 and Hearing Exhibit 608, 12: 5-11.

<sup>179</sup> *Id.* at 24-25, citing *Board of Public Utility Comm’rs v. New York*, 271 U.S. 23, 31 (1926).

<sup>180</sup> *Id.* at 25.

<sup>181</sup> *Id.*, citing Hearing Exhibit 118, 35: 18-23—36: 1-6.

<sup>182</sup> *Id.* at 27-28.

<sup>183</sup> Hearing Exhibit 116, 25: 5-6.

consolidation.<sup>184</sup> They explain that AM Gas' only interest in the outcome of this Proceeding is that of a Black Hills direct competitor for retail gas sales services provided to end-use consumers.<sup>185</sup> The Company asserts that AM Gas' agency agreements with end-use customers does not give it the authority to act on such customers' behalf or to otherwise represent their interests in Company regulatory proceedings, and that its authority is limited as set forth in the Company's tariff.<sup>186</sup> While the Company acknowledges that AM Gas has a valid interest in ensuring a level playing field to allow the Company's sales customers to have reasonable access to convert from sales service to transportation service, AM Gas does not raise issues relating to the rates, terms, and conditions of gas transportation service that could impose unreasonable restrictions on sales customers desiring to purchase gas from alternative sources.<sup>187</sup> Rather, in objecting to the GCA consolidation provisions, AM Gas seeks to preserve its competitive position, which is not a valid and recognized interest as to the Company's rates for gas sales service.

92. The Settling Parties argue that in its role to ensure just and reasonable rates, the Commission cannot concern itself with how those rates impact the competitiveness or profitability of businesses who are not utility customers, who participate in open and competitive markets, and who are not within the Commission's regulatory oversight.<sup>188</sup> They assert that in determining just and reasonable rates, the Commission must balance the utility's and its customers' interests, which leaves no room for considering the potential impact of rates on non-utility customers.<sup>189</sup> The Settling Parties submit that AM Gas has presented no evidence demonstrating that any customer

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<sup>184</sup> Joint SOP at 18.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 19, citing Hearing Exhibit 120 at 205-206.

<sup>187</sup> *Id.* at 20.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 20-21, citing Hearing Exhibit 118, 33: 4-6.

would be harmed by the proposed consolidation, or how such consolidation is otherwise unjust or unreasonable.<sup>190</sup>

### 3. Findings, Analysis, and Conclusions

93. As an initial matter, the ALJ notes that while the Settling Parties raise seemingly persuasive arguments that AM Gas lacks standing to object to the proposed GCA consolidation, the ALJ considers AM Gas' arguments. To find that AM Gas lacks standing to raise arguments about these Agreement terms would be the equivalent of parsing out specific legal issues that a duly authorized party may make in a Commission proceeding, which creates its own issues.<sup>191</sup> What is more, even if AM Gas lacks standing, it raises issues that speak to whether the proposed GCA consolidation is in the public interest. As such, the ALJ considers AM Gas' arguments, and, for the reasons discussed below, finds that the proposed GCA consolidation serves the public interest and results in just and reasonable rates.

94. The ALJ agrees that the proposed consolidation is consistent with cost-causation principles and will correct an inequity that has existed since the current GCA structure was put in place. As the Settling Parties explained, while the pricing benefits of gas storage and gas commodity costs are currently shared among all Western Slope GCA customers, only customers in the Western Slope with Storage GCA area have paid for the upstream storage costs. This means that customers who have not paid for upstream storage costs have benefited from such storage, regardless of whether the stored gas was delivered to them. Indeed, while the stored gas may not have been delivered to such customers, they have nonetheless benefited from lower commodity

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<sup>190</sup> *Id.* at 16.

<sup>191</sup> The ALJ is unaware of Commission precedent doing this. What is more, this would be difficult, if not impossible to do given the myriad of legal issues that can arise in a Commission proceeding, particularly a Phase I and II ratemaking Proceeding such as this one.

costs that result from such storage.<sup>192</sup> This is not a “paper only” financial benefit, contrary to AM Gas’ suggestion. The proposed GCA consolidation will ensure that the upstream storage costs are borne by all customers who benefit from such storage, consistent with cost-causation principles, and results in a GCA structure that is fair and reasonable.<sup>193</sup> What is more, for the reasons the Settling Parties provide, the ALJ finds that the proposed consolidation will mitigate or stabilize gas commodity price volatility with minimal rate impacts; simplify the existing GCA structure; improve administrative efficiency; provide customers access to the benefits of storage services where they presently have none; better align the underlying cost of procuring and delivering gas to customers; and is consistent with cost-causation principles and sending customers accurate price signals.

95. While AM Gas’ desire to maintain its profitability and competitive position is understandable, the ALJ agrees with the Settling Parties that the Commission’s role to ensure just and reasonable rates does not require it to consider how those rates impact the *profitability* of businesses who are not utility customers, who participate in open and competitive markets, and who are not within the Commission’s regulatory oversight. Indeed, to the extent that AM Gas objects to the GCA consolidation because it fears that this will lower rates that Black Hills would charge for the gas commodity to AM Gas’s sales customers, this further supports the ALJ’s conclusion that consolidation is in the public interest. The ALJ agrees with the Settling Parties that AM Gas’ arguments do not raise issues relating to the rates, terms, and conditions of gas transportation service that would pose unreasonable restrictions on sales customers desiring to purchase gas from alternative sources. Put differently, AM Gas’ arguments do not establish or raise

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<sup>192</sup> As explained, this comes from commodity cost savings from injecting natural gas into storage during non-winter months when gas prices are generally lower, and withdrawing gas from storage during winter months when gas prices are generally higher (rather than buying higher priced gas).

<sup>193</sup> See *Integrated Network Services, Inc. v. Pub. Utilis. Comm’n*, 875 P.2d 1373, 1381 (Colo. 1994).

a genuine issue as to whether the relevant Agreement terms create an uneven playing field that result in the Company's sales customers not having reasonable access to convert from sales service to transportation service.

96. In deciding whether to approve the above Agreement terms, the ALJ has considered principles of cost causation and the circumstances of costs and benefits accrued over time; whether there is a substantial rate disparity between the GCA areas; evidence of present or future physical connection between systems serving each GCA area; and potential future operational efficiencies from consolidation yielding cost savings.

97. For the reasons discussed and many of the reasons the Settling Parties present, the ALJ finds that the above Agreement terms are in the public interest, just and reasonable, and not discriminatory. The resulting rates, terms, and conditions in the Settlement Agreement (as revised) will result in just, reasonable and nondiscriminatory rates, conditions, and terms of service. As such, the ALJ approves the relevant Agreement terms without modification.

#### **E. Other Issues**

98. Black Hills' Motion to Modify attempts to address its prior failure (in its Second Motion to Modify) to provide good cause for proposed provisional rates to go into effect on February 1, 2024 rather than February 13, 2024 (as approved by Decision No. R24-0002-I). Given the timing in which this Decision is issued, Black Hills' Motion to Modify is moot. Indeed, as its Notice of Compliance Filings confirms, Black Hills has already made the necessary filings to put the approved provisional rates into effect on February 13, 2024.<sup>194</sup>

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<sup>194</sup> Notice of Compliance Filing; Decision No. R24-0002-I at 7 (requiring Black Hills to make a compliance advice letter filing on February 8, 2024). Had Black Hills provided good cause in its Second Motion to Modify, the outcome may have been different. Black Hills could have anticipated the need to provide good cause to put provisional rates into effect on February 1, 2024 given that its Second Motion to Modify sought to modify Decision No. R23-0532-I, which approved provisional rates to go into effect on February 13, 2024. Motion to Modify at 1, and 4-5; Decision No. R23-0532-I at 19.

#### IV. CONCLUSIONS

99. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that the Settlement Agreement (as revised) reflects a just and reasonable compromise between the Settling Parties to resolve all issues that have been or could have been raised here; is in the public interest; and is just and reasonable and not discriminatory. The ALJ concludes that the Agreement's resulting rates, terms, and conditions will result in nondiscriminatory just and reasonable rates, conditions, and terms of service for the Company's customers. Except as noted, the ALJ approves the Settlement Agreement.

100. 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.

#### V. ORDER

##### A. The Commission Orders that:

1. The Motion to Approve Settlement Agreement filed on November 17, 2023 is partially granted. Except as noted, the Settlement Agreement (Settlement Agreement) or Agreement filed on November 17, 2023, and as revised through Hearing Exhibit 117, Rev. 1 is partially approved, consistent with the above discussion. The updated and partially approved Settlement Agreement is attached as Appendix A.

2. The effective date of Black Hills Colorado Gas, Inc.'s (Black Hills or the Company) Tariff Sheets filed with its Advice Letter No. 32 on August 15, 2023 is permanently suspended and may not be further amended.

3. Black Hills' Unopposed Motion for Modification of Decision No. R24-0002-I to Place Provisional Rates into Effect on February 1, 2024 filed on January 16, 2024 is denied as moot.

4. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file compliance advice letter and tariff sheets that comport with the Settlement Agreement, in substantially the same form as the *Pro Forma* Tariff Sheets in Appendix 3 to the Agreement (included with Appendix A to this Decision), on not less than two business days' notice, consistent with the Agreement terms that this Decision approves. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

5. Proceeding No. 23AL-0231G is closed.

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

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

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

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

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,  
Director