

Decision No. R24-0143

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0361G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT PLAN AND STRATEGIC ISSUES FOR CALENDAR YEARS 2024 AND 2025.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING JOINT MOTION TO APPROVE
UNANIMOUS SETTLEMENT, APPROVING
SETTLEMENT, GRANTING APPLICATION,
AND CLOSING PROCEEDING**

Mailed Date: March 7, 2024

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I. STATEMENT AND PROCEDURAL BACKGROUND

1. On July 5, 2023, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills or the Company), commenced this Proceeding by filing a Verified Application to open a demand-side management (DSM) strategic issues proceeding with the Public Utilities Commission of the State of Colorado (Commission or PUC) seeking approval of its DSM plan and strategic issues for calendar years 2024 and 2025.¹ The Company's current DSM Plan, approved by Decision No. R20-0810, issued November 16, 2020, covers 2021-2023.²

2. Attached to Black Hills' Verified Application was the direct testimony of the following three individuals:

- Jessica J. Oliveto, Program Manager, Energy Efficiency for Black Hills;
- Matthew J. Christofferson, Manager, Regulatory for Black Hills; and
- Allie E.R. Marshall, Principal, Cadmus Group.

3. On July 7, 2023, the Commission's Notice of Application Filed was sent to all interested persons and entities. The Notice stated that Black Hills had filed direct testimony with its Application and was seeking a Commission decision within 120 days of the Application being deemed complete.³ In addition, the Notice set a 30-day window within which interested persons could intervene, and a 37-day window within which Commission Staff was to file its Intervention.

4. Subsequently, several entities filed interventions as of right:

- a) The Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances on July 17, 2023;
- b) The Colorado Energy Office (CEO) filed its Intervention by Right on August 7, 2023; and
- c) Commission Trial Staff (Staff) filed a Notice of Intervention as of Right on August 9, 2023.

¹ Black Hills Colorado Gas, Inc.'s Verified Application, July 5, 2023.

² *Id.* at ¶ 4, pp. 2-3.

³ Notice of Application Filed, filed July 7, 2023.

5. In addition, on August 7, 2023, Energy Outreach Colorado (EOC) filed an Unopposed Motion to Intervene and Entry of Appearance.

6. On August 16, 2023, the Commission deemed the application complete by minute entry and referred the matter to an administrative law judge (ALJ) for disposition. . The Proceeding was subsequently assigned to the undersigned ALJ.

7. On September 28, 2023, the ALJ issued Decision No. R23-0648-I which acknowledged the Interventions filed by Staff, UCA, and CEO. Decision No. R23-0648-I also granted EOC's Motion to Intervene. The parties to this Proceeding are therefore the Company, Staff, UCA, CEO, and EOC.

8. Decision No. R23-0648-I set a procedural schedule to govern this Proceeding and scheduled an evidentiary hearing to be held January 25, 26, and 29, 2024.

9. On January 17, 2024, all five parties filed a Joint Motion to Approve the Unanimous Settlement Agreement, to Modify Procedural Schedule and for Waiver of Response Time (Joint Motion to Approve). At the same time, the parties also filed their Unanimous Settlement Agreement (Settlement Agreement) as Hearing Exhibit 106.

10. On January 19, 2024, the ALJ issued Decision No. R24-0042-I, vacating the January 25, 26, and 29, 2024 hearing dates, and setting a deadline of January 22, 2024, for the parties to file settlement testimony in support of their Settlement Agreement.

11. UCA filed the settlement testimony of Dr. Scott England, an Economist with UCA, on January 19, 2024⁴.

12. On January 22, 2024, the remaining parties each filed their respective settlement testimony in support of the Settlement Agreement:

⁴ Hearing Ex. 302, Settlement Testimony of Dr. Scott England, p. 3, lines 2-3.

- a) Black Hills filed the settlement testimony of Matthew J. Christofferson, its Manager – Regulatory⁵, along with Attachment MJC-12 and public and confidential versions of Attachment MJC-11;
- b) Staff filed the settlement testimony of Seina Soufiani, the Chief Engineer/Section Chief of the Commission’s Engineering Section in Fixed Utilities⁶;
- c) CEO filed the settlement testimony of Jocelyn P. Durkay, its Associate Director of Regulatory Policy⁷; and
- d) EOC filed the settlement testimony of Andrew Bennett, its Vice President for Advocacy⁸.

13. The undersigned ALJ now considers the Settling Parties’ proposed Unanimous Settlement Agreement.

II. TERMS OF THE SETTLEMENT

14. The parties to this Proceeding have reached a Unanimous Settlement Agreement. All parties (henceforth referred to as the Settling Parties) have agreed to resolve all disputed issues between them and no outstanding issues requiring Commission resolution remain.

15. Representatives of each of the Settling Parties have expressed the opinion that the Settlement Agreement is reasonable and is in the best interest of parties, the Commission, and the public.⁹

16. The pertinent terms of the Settling Parties’ Settlement Agreement are described below.

B. Budget and Savings Goals

17. The Settling Parties agreed that Black Hills’ Income-Qualified Weatherization Program budget would be increased “by approximately \$423,380 annual average in 2024, and

⁵ Hearing Ex. 107, Settlement Testimony of Matthew J. Christofferson, p. 4, lines 8-9.

⁶ Hearing Ex. 201, Settlement Testimony of Seina Soufiani, p. 3, lines 7-9.

⁷ Hearing Ex. 402, Settlement Testimony of Jocelyn P. Durkay, p. 3, lines 3-4.

⁸ Hearing Ex. 501, Settlement Testimony of Andrew Bennett, p. 3, lines 3-4.

⁹ Hearing Ex. 107, p. 5, lines 8-20; Hearing Ex. 201, p. 4, lines 13-17; Hearing Ex. 302, p. 3, line 15 – p. 4, line 9 and p. 7, lines 12-15; Hearing Ex. 402, p. 9, line 17 – p. 10, line 12; and Hearing Ex. 502, p. 3, lines 11-14.

\$239,622 in 2025.”¹⁰ Further, the Settling Parties agreed “that the increase in budget corresponds with an increase in energy savings and household participants as compared to the Company’s Direct filing for the Income-Qualified Weatherization Program.”¹¹ The increases in the Income-Qualified Weatherization Program are reflected in the increased total budget and energy savings goals. Table 2 of the Settlement Agreement sets forth the following final agreed-upon figures¹²:

Year	Budget	Energy Saving Goals (Dekatherms)
2024	\$5,422,908	99,815
2025	\$5,535,966	98,729
Total	\$10,958,874	198,544

18. These totals represent an increase from the amounts the Company proposed in its direct filing. The Company had initially proposed “an energy savings goal of 195,244” Dekatherms (Dth) and a total “budget of \$10,295,870 for 2024 through 2025.”¹³ The Settling Parties reached a compromise under which Black Hills’ annual budget for its Income-Qualified Weatherization Program would be approximately \$1,000,000 in 2024 and \$850,000 in 2025. Although these amounts are a decrease from that forecast in the Company’s 2021-2023 DMS plan¹⁴, Black Hills maintains that the agreed-upon amounts “are appropriate as they allow income-qualified customers to participate in DSM programs and offerings and contribute to a well-rounded DSM portfolio for which all customers of different circumstances and situation may participate.”¹⁵

19. EOC concurred with Black Hills’ characterization, noting that despite a reduction in the “budgets, savings, and participation goals” for the Income-Qualified Weatherization Program from those proposed in 2021-2023, “the IQ budget remains above 25% of ‘overall

¹⁰ Hearing Ex. 106, Unanimous Settlement Agreement, p. 3 ¶, 9.

¹¹ *Id.*

¹² *Id.* at p. 4, ¶ 11, Table 2.

¹³ Hearing Ex. 107, p. 7, lines 4-5.

¹⁴ *Id.* at p. 7, line 22 – p. 8, line 5.

¹⁵ *Id.* at p. 9, lines 5-7.

residential gas DSM program expenditures,’ as mandated by statute.”¹⁶ Moreover, EOC explained that the “2024 budget will allow [it] to largely maintain its current offerings within the Program.”¹⁷ Notably, EOC’s Vice President of Advocacy, Andrew Bennett, testified that the “Settlement Agreement results in a significant *increase* to the program delivery budget, energy savings goals, and participation goals in 2024 and 2025, when compared to the Company witnesses’ proposals.”¹⁸ (Emphasis added.)

20. The ALJ therefore finds and concludes that the budget and energy savings goals incorporated by the Settlement Agreement into the 2024-2025 DSM Plan are reasonable and should be adopted.

C. DSM Program Offerings

21. The Settling Parties agreed that Black Hills will offer all DSM programs “reflected in its Direct Filing, including Residential New Construction and Non-Residential New Construction Programs.”¹⁹ The budgets and participation for the programs will be consistent with those proposed in Black Hills’ Direct Filing, “with the exception of the Income-Qualified Weatherization Program” for which the budget will be altered as described in Subsection A, above.²⁰

22. This structure represents a continuation of “all programs previously approved in the 2021-2023 DSM Plan, including the: Residential Retrofit Program; Residential New Construction Program; Nonresidential Retrofit Program; Nonresidential New Construction Program; Income-Qualified Weatherization Program; and the School-Based Energy Education Program.”²¹ The

¹⁶ Hearing Ex. 502, p. 5, lines 3-5.

¹⁷ *Id.* at p. 5, lines 5-7.

¹⁸ *Id.* at p. 3, lines 19-21,

¹⁹ Hearing Ex. 106, p. 5, ¶ 12.

²⁰ *Id.* at p. 5, ¶ 13.

²¹ Hearing Ex. 107, p. 10, lines 2-9.

Company indicated that maintaining these programs in its DSM portfolio was in the public interest because it would allow it “to offer a well-rounded DSM portfolio in which customers across different building stock may participate and implement cost-effective DSM measures.”²²

23. Notably, UCA initially objected to the inclusion of Residential New Construction Programs because it would reduce “the overall DSM budget.”²³ However, as part of the settlement, UCA’s economist, Dr. Scott England, testified that UCA was “able to accept their inclusion within the Settlement and therefore the DSM plan as their intent is to provide customers with the ability to offset the cost of higher efficiency appliances and building materials.”²⁴

24. The ALJ therefore finds and concludes that the DSM Program Offering incorporated into Black Hills’ DSM 2024-2025 Plan by the Settlement Agreement is reasonable and should be adopted.

D. Non-Energy Benefits Adder (NEBs)

25. The Settling Parties agreed that for the purposes of evaluating cost-effectiveness, Black Hills would apply “a 25 percent ‘non-energy benefits adder’ to the Income-Qualified Weatherization Program . . . while no other program [will have] a ‘non-energy benefits adder.’”²⁵ The NEB adder “will only apply for screening purposes and will be excluded from the calculation of net benefits used to derive the proposed financial incentives.”²⁶

26. In its Direct Filing, the Company had proposed discontinuing the inclusion of NEB adders.²⁷ Staff had objected to the complete exclusion of NEBs but advocated for the lowering of NEB adders “to reflect the fact that statutes enacted since the approval of [Black Hill’s] current

²² *Id.* at p. 10, lines 17-20.

²³ Hearing Ex. 301, Answer Testimony of Dr. Scott England, p. 20, lines 4-10.

²⁴ Hearing Ex. 302, p. 4, line 20 – p. 5, line 4.

²⁵ Hearing Ex. 106, p. 5, ¶ 14.

²⁶ *Id.*

²⁷ Hearing Ex. 107, p. 11, lines 13-16.

2021-2023 DSM Plan have quantified the social cost of carbon dioxide ('SCC') and social cost of methane ('SCM')."²⁸ Because SCC and SCM have now been legislatively quantified, "the NEB adders do not need to reflect the costs of carbon dioxide and methane emissions and therefore can be reduced."²⁹

27. EOC, in contrast, recommended that the NEB adders "remain at the historical 50% it has been until the issue is resolved in Public Service Company of Colorado's next DSM Plan filing."³⁰

28. Using a 25 percent NEB adder to the Income-Qualified Weatherization Program for screening purposes represents a compromise between the Settling Parties.

29. The ALJ finds and concludes that this compromise pertaining to the NEB adder is reasonable and should be adopted.

E. DMS Bonus Structure

30. The Settling Parties have agreed to "a bonus calculation based on programs with positive net benefits — the School-Based Energy Education and the Non-Residential New Construction Programs."³¹ Any bonus the Company earns "will be recovered only from the respective customer classes of those programs."³²

31. Notably, the Settling Parties expressly agreed "that the Social Cost of Carbon, the Social Cost of Methane, and NEB adders will be excluded from the net benefits for bonus

²⁸ Hearing Ex. 200, Answer Testimony of Aaron Moseley, p. 25, line 2 – p. 26, line 17.

²⁹ *Id.* at p. 26, lines 14-17.

³⁰ Hearing Ex. 107, p. 11, lines 18-21; *see* Hearing Ex. 501, Answer Testimony of Andrew Bennett, p. 23, lines 10-15.

³¹ Hearing Ex. 106, p. 5, ¶ 15.

³² *Id.*

calculation purposes.”³³ Nor will any bonus be “offset for the receipt of any Acknowledgement of Lost Revenues (“ALR”) earned.”³⁴

32. UCA “strongly supports the Settlement Agreement’s resolutions around the bonus,” particularly because the Social Cost of Emissions (SCE) — both SCC and SCM — have been “removed from consideration.”³⁵ As Dr. England explained, including “SCE in the valuation of cost-effectiveness leads to a larger DSM budget and correspondingly a larger possible bonus. Removing these emission valuations from the bonus prevents ratepayers from paying a potentially larger DSM bonus and instead focuses the bonus on the programs that would be cost-effective without the SCE enhancements.”³⁶

33. Rather, the Settling Parties agreed to the following bonus structure:

The bonus begins at 6% of net economic benefits upon attaining 80% of the energy savings goal of the overall DSM plan; scales at 0.4% of net benefits for each 1% increase in goal attainment between 80% to 100% attainment; and 0.24% of net benefits for each 1% increase in goal attainment between 100% and 125% attainment.³⁷

34. In supporting this bonus structure, Staff testified that, although the above agreed-upon calculation will increase the “escalation rate of the PIM [performance incentive mechanism],” Staff nonetheless concluded that this bonus/PIM structure is in the public interest because “the Company’s proposed peak demand savings bonus has been eliminated in the Settlement. Given that the Company has not earned a bonus in several years, the increased escalation rate will front-load the PIM so that the Company is incented early to reach 100 percent of goal, and it will be incented to surpass the goal.”³⁸

³³ *Id.* at p. 5, ¶ 16.

³⁴ Hearing Ex 106, p. 5, ¶ 17.

³⁵ Hearing Ex. 302, p. 4, lines 4-7.

³⁶ *Id.* at p. 5, lines 16-20.

³⁷ *Id.* at p. 6, ¶ 18.

³⁸ Hearing Ex. 201, p. 8, lines 1-15.

35. The ALJ therefore finds and concludes that the DSM bonus structure incorporated into Black Hills' 2024-2025 DSM Plan by the Settlement Agreement is reasonable and should be adopted.

F. Acknowledgement of Lost Revenue (ALR)

36. The Settling Parties agreed that Black Hills "will calculate an ALR for each respective year of its 2024-2025 DSM Plan that represents the savings associated with the first year of measure implementation."³⁹ ALR "will be calculated consistent with that previously permitted by Rule 4754(g)(I)" of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-4.⁴⁰ The ALR "replaces the Company's request to implement a revenue decoupling mechanism,"⁴¹ which Black Hills had requested in its direct filing.⁴²

37. UCA explained that it supports this provision in the Settlement Agreement because it memorializes the Company's acknowledgement that, as used in the DSM Plan, ALR "operate[s] in the same fashion" as "decoupling."⁴³

38. The ALJ finds that incorporating ALR into Black Hills' DSM Plan in this manner is consistent with Black Hills' prior DSM proceedings, is reasonable, and therefore should be adopted.

G. Methane Leakage

39. The Settling Parties agreed that Black Hills' 2024-2025 DSM Plan will include methane leakage factors. The Settlement Agreement includes the following chart setting forth the methane leakage factors⁴⁴:

³⁹ Hearing Ex. 106, p. 6, ¶ 19.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Hearing Ex. 107, p. 15, lines 4-5.

⁴³ Hearing Ex. 302, p. 6, line 14 – p. 7, line 2;

⁴⁴ Hearing Ex. 106, p. 7, ¶ 20, Table 4.

Category	lbs CH ₄ /mscf gas throughput
Distribution Segment	0.1055
Transmission Segment	0.0112
Gathering & Boosting Segment	0.0282
Production & Processing Segment	0.3331
Total Natural Gas Value Chain	0.4780

40. Black Hills’ regulatory manager testified that factoring methane leakage into its DSM Plan “acknowledges that based on the reduced throughput associated with DSM implementation, there is an accompanying reduction in methane leakage throughout the natural gas value chain.”⁴⁵

41. Black Hills has agreed to revisit the agreed-upon methane leakage factors by “provid[ing] methane leakage rate assumptions, evidence of reduced methane leakage in each segment of the gas value chain resulting from gas DSM implementation, and comply[ing] with the requirements of [the] Commission in association with its obligations under” Rule 4753(h)(VIII) and (o)(I), 4 CCR 723-4.⁴⁶

42. In its Settlement Testimony offered in support of the Settlement Agreement, CEO’s Associate Director of Regulatory Policy, Jocelyn Durkay, expressed her support for the inclusion of methane leakage factors and noted that the factors adopted were proposed by Black Hills in its direct filing.⁴⁷ CEO had requested evidence that emissions reduction benefits due to DSM results in a reduction of methane leakage. Ms. Durkay noted that under “the proposed Settlement Agreement, Black Hills will provide such evidence in its next filing.”⁴⁸ Although Black Hills did not provide evidence of a reduction in methane leakage “in the instant proceeding,” Ms. Durkay

⁴⁵ Hearing Ex. 107, p. 16, lines 16-18.

⁴⁶ Hearing Ex. 106, p. 7, ¶ 21.

⁴⁷ Hearing Ex. 402, p. 8, lines 16-17.

⁴⁸ *Id.* at p. 9, lines 11-12.

stated that “for purposes of compromise, CEO is comfortable with Black Hills having additional and adequate time to prepare this evidence for its next DSM proceeding in 2025.”⁴⁹

43. The ALJ finds and concludes that this compromise in the Settlement Agreement by which Black Hills has agreed to include evidence of DSM’s impacts on methane leakage in its next DSM Plan is reasonable and should be adopted.

III. FINDINGS AND CONCLUSIONS

44. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned ALJ applied the Commission’s direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

45. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

46. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct, answer, and rebuttal testimony filed by the Settling Parties; the terms and conditions of the Unanimous Settlement Agreement; and the settlement testimony. Further, the ALJ has duly considered the positions of the Settling Parties in this matter and weighed the evidence presented.

47. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Unanimous Settlement Agreement and is in the public interest. The Unanimous Settlement Agreement proposes a fair and timely

⁴⁹ *Id.* at p. 9, lines 12-15.

resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties and Black Hills' customers.

48. The ALJ further finds that the Settling Parties have established by a preponderance of the evidence that the Unanimous Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

IV. **ORDER**

A. **It Is Ordered That:**

1. The Joint Motion to Approve the Unanimous Settlement Agreement collectively filed by Black Hills Colorado Gas, Inc. (Black Hills or the Company), Staff of the Public Utilities Commission of the State of Colorado (Staff), the Colorado Office of the Utility Consumer Advocate (UCA), Energy Outreach Colorado (EOC), and the Colorado Energy Office (CEO) on January 17, 2024, is granted, consistent with the discussion above.

2. The Verified Application seeking approval of its DSM plan and strategic issues for calendar years 2024 and 2025, filed by Black Hills on July 5, 2023, is granted and approved as amended by the Unanimous Settlement Agreement, consistent with the discussion above.

3. The Unanimous Settlement Agreement filed by the Settling Parties on January 17, 2024, and attached to this Decision as Attachment A, is approved without modification, consistent with the discussion above.

4. 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.

- a. 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.

- b. 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.
- 5. 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.
- 6. Any responses to exceptions shall be filed within seven (7) days of filing of the exceptions.
- 7. Proceeding No. 23A-0361G is closed.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director