

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0157E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR APPROVAL OF ITS ELECTRIC DEMAND SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN FOR PROGRAM YEARS 2025-2027 AND FOR APPROVAL OF CHANGES TO ITS ELECTRIC DSM COST ADJUSTMENT TARIFF.

**RECOMMENDED DECISION
ACCEPTING SETTLEMENT
AND
VACATING HEARING**

Issued Date: October 30, 2024

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I. STATEMENT

1. On April 1, 2024, Black Hills Colorado Electric, LLC (“Black Hills” or “Company”) filed its Verified Application (“Application”) of the Black Hills Colorado Electric, LLC Demand Side Management and Beneficial Electrification Plan (“Plan”) for program years 2025 through 2027 and for changes to its Demand Side Management (“DSM”) cost adjustment tariff. Attached to the Application were the direct testimonies of three witnesses.

2. Black Hills requested that the Commission issue an order: (1) approving the Company’s proposed Plan, including the Company’s proposed programs, goals, reporting structure, and 60- and 90-Day Notice process; (2) approving the Company’s proposal to recover costs of the Plan through the DSM Cost Adjustment; (3) approving the Company’s proposed BE incentive mechanism; (4) approving any and all other relief set forth in the Company’s Direct Case (including any waivers, variances or other relief necessary to implement the Company’s Plan); and (5) authorizing Black Hills to file the necessary tariffs to implement the approved Plan through a compliance advice letter filing on not less than two business days’ notice

3. On April 29, 2024, the Utility Consumer Advocate (“UCA”) filed its Notice of Intervention as a Matter of Right, request for hearing and Entry of Appearance. UCA listed several issues that they believe require review. These issues included whether Black Hills’ Plan (1) is a reasonable, comprehensive, and cost-effective approach; (2) has a reasonable budget; (3) is in the public interest; and (4) complies with relevant Colorado statutes and Commission rules.

4. On May 9, 2024, the Colorado Energy Office (“CEO”) filed its intervention by right and entry of appearance. CEO listed several issues that they contemplated addressing in the proceeding. These issues include the Plan’s proposed (1) energy and demand savings goals, (2) programs and measures; (3) proposed budgets, (4) participation goals, (5) financial incentives for

Black Hills, (6) Whole Home Rocky Ford BE pilot; and (7) any other substantive issue CEO identifies in the proceeding.

5. On May 9, 2024, Southwest Energy Efficiency Project (“SWEEP”) filed its Motion to Intervene and Entry of Appearance. SWEEP is a regional public interest non-profit organization whose mission is to advance energy efficiency and clean transportation, and to expand the economic and environmental benefits that energy efficiency and electric vehicles provide.

6. On May 9, 2024, Energy Outreach Colorado (“EOC”) filed its Motion to Intervene and Entry of Appearance. EOC is a Colorado nonprofit corporation in good standing whose mission is to ensure that income-qualified (“IQ”) Colorado households can meet their home energy needs.

7. On May 15, 2024, Trial Staff of the Public Utility Commission (“Trial Staff”) filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to rule 1007(a) and Rule 1401, and Request for Hearing. Trial Staff listed several issues that they believe require review. These issues included the Plan’s (1) compliance with relevant Colorado statutes and Commission; (2) proposed expenditure levels, goals, programs, and performance incentive; (3) cost-effectiveness; (4) cost recovery; (5) rate and bill impacts; (6) evaluation, measurement, and verification methodology; and (7) any other substantive issue Trial Staff identifies in the proceeding.

8. On May 17, 2024, Black Hills filed its Amendment to Verified Application of the Black Hills Colorado Electric, LLC Demand Side Management and Beneficial Electrification Plan.

9. On June 4, 2024, by Decision No. R24-0386-I a prehearing conference was scheduled for June 27, 2024.

10. On June 24, 2024, Black Hills filed its Unopposed Motion to Approve Procedural Schedule and Vacate Prehearing Conference and Request for Waiver of Response Time.

11. On June 28, 2024, by Decision No. R24-0468-I, a procedural schedule was adopted, and an evidentiary hearing was scheduled for October 1 through October 3, 2024.

12. On September 20, 2024, Black Hills filed its Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and Request for Waiver of Response Time and Settlement Agreement.

13. On September 24, 2024, Black Hills, Staff and CEO filed testimony in support of the Settlement Agreement¹.

II. SETTLEMENT

14. The Parties agree that the Plan as stated in Hearing Exhibit (“HE”) 102, Attachment JJO-1, should be approved with some modification. These modifications include but are not limited to the discussion below.

15. The Parties agree to extend the Plan timeframe one additional year from 2025- 2027 to 2025-2028 to avoid Black Hills filing a DSM/Clean Heat Plan and an Electric DSM/BE Plan in the same year. The Company will file its next plan by April 1, 2028.

16. The Parties agree to the following Plan budget, as proposed by CEO in the Answer Testimony of Jocelyn Durkay (HE 500):

Budget	2025	2026	2027	2028	Total
Residential	\$750,993	\$777,353	\$829,947	\$873,451	\$3,231,744
Business	\$3,268,035	\$3,174,351	\$3,174,137	\$3,146,223	\$12,762,745
Special	\$2,013,003	\$2,089,504	\$2,081,254	\$2,081,254	\$8,265,015
DSM*	\$7,066,443	\$7,052,613	\$7,073,860	\$7,088,304	\$28,281,219
BE*	\$315,324	\$324,836	\$334,015	\$412,177	\$1,386,352
Total	\$7,381,767	\$7,377,449	\$7,407,874	\$7,500,481	\$29,667,571

¹ UCA, SWEEP and EOC did not file testimony in support of the Settlement Agreement.

17. The Parties agree on the following energy savings (kWh) and beneficial electrification (kWh) goals:

kWh/kWh Savings	2025	2026	2027	2028	Total
Residential (“kWh”)	652,756	676,975	725,589	740,945	2,796,265
Commercial (“kWh”)	10,906,699	10,444,695	10,427,041	10,431,135	42,209,570
Special (“kWh”)	3,465,501	3,609,770	3,507,418	3,507,418	14,090,107
Electrification (“kWh”)	61,137	55,223	19,742	49,310	185,412
Modeled DSM kWh Savings	15,088,118	14,788,689	14,681,817	14,730,836	59,289,460
DSM adder (“kWh”)	1,511,882	1,811,311	1,918,183	1,869,164	7,110,540
EE Savings (“kWh”)	16,600,000	16,600,000	16,600,000	16,600,000	66,400,000
BE kWh Savings	310,106	315,527	320,949	348,055	1,294,637
Final Settlement	16,910,106	16,915,527	16,920,949	16,948,055	67,694,637

18. The Parties agree to the following demand reduction (kW) goals:

kW Savings	2025	2026	2027	2028	Total
Residential kW Savings	225	244	268	288	1,025
Commercial kW Savings	2,415	2,279	2,277	2,283	9,255
Special kW Savings	1,256	1,244	1,232	1,232	4,963
Modeled DSM kW Savings	3,896	3,767	3,777	3,803	15,243
DSM Adder (“kW”)	390	461	484	490	1,825
EE kW Savings	4,286	4,227	4,261	4,294	17,068
BE kW Impacts	(6)	(7)	(7)	(12)	(31)
Final Settlement kW	4,280	4,221	4,254	4,282	17,036

19. The Parties agree that the Company should be afforded the same budgetary flexibility that it is permitted currently, which allows the Company to shift funding between programs within a customer sector’s parameters (e.g., moving funding from one residential program to another). The parties also agree that Black Hills has the flexibility to exceed the overall Plan budget by 15 percent according to the Company’s DSMCA (“Demand Side Management Cost Adjustment”) Tariff; anything above this budget flexibility must be approved by the Commission.²

² See Black Hills Colorado Electric, LLC Demand Side Management Cost Adjustment Tariff, Sheets 70A and 70B, at <https://www.blackhillsenergy.com/sites/blackhillsenergy.com/files/coe-tariff.pdf>.

20. The Parties agree that Black Hills will maintain the existing financial disincentive offset (“FDO”) and performance incentive mechanism (“PIM”), with the following exceptions:

- a. Contingent upon the successful execution of Commission approved DSM programs, the Company is authorized to collect a performance incentive. The Company is eligible for the PIM once it has achieved 85% of its energy savings goals. At that time, the Company can be awarded an amount equal to one percent of net economic benefits plus a 0.2 percent of net economic benefits added per each one percent of energy savings achieved. For example, if Black Hills achieved 86% of its energy savings goals it would receive a performance incentive equal to 1.2 percent of net economic benefits. 90% achievement would result in a performance incentive of two percent.
- b. The FDO allows the Company to collect up to \$237,207 in pre-tax revenue through the DSMCA. The Company earns half the FDO when it achieves 60 percent of its energy savings goal, and the remaining half when it achieves 100 percent of its energy savings goal. The structure of the FDO is not changed as a result of this settlement.
- c. The combined FDO PIM will be capped at \$1.6 Million.

21. The Parties agree that the Beneficial Electrification (“BE”) performance incentive does not change because of this settlement.

22. The Parties agree that the Company will use the identical criteria for IQ eligibility as agreed to in the Company’s 2024-2026 Transportation Electrification Plan.

23. The Parties agree to amend the Moderate-Income program consistent with the discussion contained on page eight and nine of the Settlement Agreement.

24. The Parties agree that Black Hills will modify the technical standards that determine eligible heat pump incentives to align with those of existing federal and state incentives, such as the ENERGY STAR 6.1 standards, simplify the incentive structure for residential air source heat pumps, and remove quality installation requirements from the Residential Prescriptive program for heat pumps.³

³ HE 107, Settlement Agreement p. 9

25. In addition to promoting the conversion of natural gas appliances to electric, Black Hills will include propane and heating oil fuel sources for space and water heating as eligible for electrification rebates.

26. The Plan includes two years of \$40,000 in annual funding for administration and marketing costs associated with a Whole Home Electrification Pilot in partnership with CEO in 2025 and 2026. This aligns with when CEO expects federal home energy rebates to be available.

27. Within the Plan Black Hills will:

- Provide BE savings in both net energy savings in kilowatt hours equivalent (“kWh_e”) and energy savings in dekatherms (“Dth”) with incremental electricity use in kilowatt hours (“kWh”) in its annual reports and its compliance DSM Plan as noted in the Reporting section below.
- Modify the technical specifications for residential ASHP rebates to require an “ENERGY STAR certified” standard.

Eliminate proposed incentives for electric lawn equipment and forklifts.

Provide 10 years of BE targets as part of its compliance filing as detailed further in the Reporting section.

Not charge Black Hills’ ratepayers for any costs associated with the AEG 2025-2029 potential study.

Perform a Potential Study that analyzes the technical, economic, and achievable potential of energy efficiency, demand response, and beneficial electrification within the Company’s service territory as part of the next Plan filing and engage parties in this proceeding at least twice in the process of developing the Potential Study.

Use avoided capacity and energy costs consistent with the most recent resource plan. However in the next DSM Plan filing, the Company will provide avoided energy costs on a seasonal basis that include an on/off-peak basis consistent with the Company’s residential time-of-use (“R-TOU”) rate in effect at the time.

Use a 2.5 percent discount rate for the Social Cost of Methane and the Social Cost of Carbon.

28. The Parties agree that the Company will further explore on-bill financing to determine if there is a path that results in an on-bill offering during this Plan period, based on modifications to the proposal presented in CEO's Answer Testimony.

29. The Parties agree that the Company will make a compliance filing 30 days after a final order in this proceeding, which incorporates all changes agreed to in the Settlement Agreement for the full term of the Plan (2025-2028). In the DSM/BE Annual Status Report due April 1 annually, the Company will provide a detailed description of its efforts relating to outreach and engagement for IQ customers and customers in Disproportionately Impacted ("DI") Communities, report participation by measure for all programs that incentivize heating, ventilation, and air conditioning equipment, and report IQ participation in the Residential Electrification program separately from market rate participation as proposed in CEO's Answer Testimony.

III. TESTIMONY IN SUPPORT OF THE SETTLEMENT

A. Testimony of Black Hills

30. Black Hills filed the testimony of Daniel Ahrens in support of the Settlement Agreement.

31. Mr. Ahrens reviews the details of the Settlement Agreement and explains the compromises made by the Parties.

32. Mr. Ahrens concludes by stating that the Settlement Agreement advances the DSM and BE public policy goals of the State of Colorado and the Commission, while keeping the budget at a reasonable impact to the Company's customers.

33. Mr. Ahrens believes that the Settlement Agreement represents a careful balancing of the interests of several parties that represent the Company, its customers, the State of Colorado, and environmental concerns and is within the public interest, and should be approved.

B. Testimony of CEO

34. CEO filed the testimony of Jocelyn Durkay in support of the Settlement Agreement.

35. Ms. Durkay provides an overview of the Settlement Agreement. Ms. Durkay states how some aspects of the Settlement Agreement comport with the Answer Testimony filed by CEO and other aspects differ. Ms. Durkay provides rationale and support for changes from CEO's Answer Testimony.

36. Ms. Durkay recommends the Settlement Agreement be approved in its entirety and without modification. Ms. Durkay concludes her testimony stating the Settlement Agreement advances DSM & BE in Colorado consistent with state policy.

C. Testimony of Staff

37. Staff filed the testimony of Patrick LaMere in support of the Settlement Agreement.

38. Mr. LaMere explains the differences between Staff's Answer testimony and the Settlement Agreement. Mr. LaMere believes the Settlement Agreement provides a compromise between all the individual positions of the Settling Parties

39. Mr. LaMere believes the Settlement Agreement should be approved without modification and it is just, reasonable, and in the public interest.

IV. DISCUSSION

40. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable. In reviewing the terms of the Settlement Agreement, the ALJ

applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G on March 20, 2006.

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

42. The undersigned ALJ has reviewed the testimony filed in this proceeding. The ALJ has duly considered the positions of all parties in this matter.

43. The ALJ has also considered the recitations of the Settling Parties made in the Settlement Agreement, Unopposed Motion to Approve Settlement Agreement and all testimony filed in this proceeding.

V. CONCLUSION

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

VI. ORDER

A. **It is Ordered That:**

1. The Unopposed Motion to Approve Settlement filed on September 20, 2024, is granted.

2. The Verified Application filed by on April 1, 2024, seeking Commission approval of Black Hills Colorado Electric, LLC Demand Side Management and Beneficial Electrification Plan ("Plan") and for changes to its DSM cost adjustment tariff, as amended by the Settlement Agreement, is granted.

3. The Settlement Agreement, attached to and incorporated in this Decision as Attachment A, is approved.

4. The evidentiary hearing in the above captioned proceeding, scheduled for October 1-3, 2024, is vacated.

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

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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 a basic finding 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 Recommended 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director