

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 14A-0535E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR APPROVAL OF ITS 2015-2017 RENEWABLE ENERGY STANDARD (RES) COMPLIANCE PLAN.

SETTLEMENT AGREEMENT

Pursuant to Rule 1408, Black Hills/Colorado Electric Utility Company, LP (“Black Hills” or the “Company”), Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), the Colorado Energy Office (“CEO”), the Colorado Independent Energy Association (“CIEA”), and Western Resource Advocates (“WRA”) (collectively, “Settling Parties”), by their undersigned counsel, and for good and valuable consideration, enter into this Settlement Agreement (“Settlement Agreement”) to resolve all disputes that have arisen between them related to the Company’s Verified Application filed in Proceeding No. 14A-0535E. The Settling Parties specifically request that the Commission approve this Settlement Agreement as consistent with the public interest.

CERTIFICATE OF CONFERRAL

The undersigned counsel certifies that counsel for Black Hills has conferred with counsel for all parties to this proceeding about this Settlement Agreement and is authorized to state that all parties to this proceeding (Black Hills, Staff, OCC, CEO, CIEA and WRA) join in this Settlement Agreement.

I. PROCEDURAL HISTORY

1. On May 23, 2014, Black Hills filed its Application for Approval of Black Hills’ 2015-2017 Renewable Energy Standard Compliance Plan, which became Proceeding No. 14A-

0535E, and a separate Application for Approval of Black Hills' 2014 ECA-RESA Adjustments and ECA Tariff Revision, which became Proceeding No. 14A-0534E.

2. The Company also filed a motion to consolidate along with each application and supporting testimony and attachments. These motions outlined the interrelated issues in the two applications, and the motion to consolidate filed in Proceeding No. 14A-0534E stated in pertinent part:

This proceeding and the 2015-2017 RES Plan proceeding are interrelated because the outcome of the Commission's decision in this proceeding impacts Black Hills' 2015-2017 RES Plan. If the Company's proposal in this proceeding is accepted, Black Hills' reported RESA deferred account deficit would be reduced by approximately \$4 million. This correction would allow the RESA account to become positive approximately six months earlier than previously modeled. This, in turn, could affect the Commission's decisions in the 2015-2017 RES Plan proceeding. Because of the important interrelationships of the RES Plan and ECA-RESA Adjustment Proceeding, Black Hills is requesting that these proceedings be consolidated for hearing and decision.

The reduced RESA deficit due to the ECA and RESA adjustments proposed in Proceeding No. 14A-0534E is the starting point for determining key issues in the 2015-2017 RES Compliance Plan proceeding.

3. The Commission granted the motions to consolidate by Decision No. C14-0831-I and consolidated the proceedings. By Decision No. C14-0831-I, the Commission also granted the interventions of Staff, OCC, CEO, CIEA and WRA.

4. The Administrative Law Judge ("ALJ") convened a prehearing conference on August 12, 2014, and all parties appeared and offered positions on specific issues identified by Decision No. R14-0863-I. By Decision No. R14-0989-I, issued August 14, 2014, the ALJ set the matter for hearing and required that testimony and exhibits be filed in two parts. The ALJ ordered the parties to submit a proposed order setting forth the scope of Part I and Part II. In

addition, the ALJ set forth a procedural schedule for the Part I and Part II processes, and set the matter for hearing on April 21, 22 and 23, 2015.

5. On August 28, 2014, the Company coordinated the filing of the proposed order regarding the scope of Part I and Part II.

6. By Decision No. R14-1091-I, issued September 8, 2014, the ALJ accepted the division of the disclosure of evidence as set forth by the parties with certain modifications.

7. On October 16, 2014, Staff and OCC filed answer testimony. The answer testimony of Staff witness Mr. Dalton was the only testimony addressing any issues in Proceeding No. 14A-0534E, as well as select other Part I issues. The answer testimony of OCC witness Mr. Neil, on the other hand, addressed Part II issues and did not raise any issues with regard to the Company's proposed ECA and RESA adjustments or proposed revisions to the ECA tariff set forth in Proceeding No. 14A-0534E.

8. On December 4, 2014, Black Hills filed rebuttal testimony and attachments rebutting the answer testimony filed by Staff.

9. Because Staff was the only party that filed testimony related to the ECA and RESA adjustment issues and ECA tariff revisions proposed in Proceeding No. 14A-0534E, Black Hills and Staff commenced settlement negotiations. Staff and Black Hills reached a settlement of all issues in Proceeding No. 14A-0534E ("ECA/RESA Settlement Agreement").

10. No other party opposed the ECA/RESA Settlement Agreement between Staff and Black Hills, and on February 3, 2015, Staff and the Company filed the ECA/RESA Settlement Agreement along with a joint motion to approve the ECA/RESA Settlement Agreement and sever Proceeding No. 14A-0534E from this consolidated proceeding.

11. The Commission informed the Company that it would deliberate on the ECA/RESA Settlement Agreement on March 11, 2015. Because the procedural schedule approved by Decision No. R14-0989-I required the Company to file its supplemental direct testimony and exhibits regarding Part II issues on March 10, 2015, prior to the Commission's scheduled deliberation on the ECA/RESA Settlement Agreement, the Company filed an unopposed motion seeking to modify the procedural schedule on March 4, 2015.

12. By Decision No. R15-0212-I, the ALJ vacated the Part II procedural deadlines. However, the ALJ did not set new deadlines and instead ordered the parties to file a proposed procedural schedule following the Commission's decision on the Settlement Agreement. The ALJ specifically did not vacate the hearing dates or the prehearing conference. However, the ALJ found that "if the timing of the Commission's decision on the [ECA/RESA Settlement Agreement] is too close to the hearing dates to allow for the disclosure of testimony and exhibits, the hearing dates will be modified."

13. On March 11, 2015, the Commission deliberated on the Settlement Agreement and, by Decision No. C15-0235-I, requested the filing of supplemental information. On March 18, 2015, the Commission held further deliberations and approved the ECA/RESA Settlement Agreement.

14. On April 9, 2015, the Commission issued Decision No. C15-0317 approving the Settlement Agreement and severing Proceeding No. 14A-0534E from Proceeding No. 14A-0535E. The Commission also stated that "[a]n ALJ shall hear the matters in Proceeding No. 14A-0535E for an Initial Commission Decision under § 40-6-109(6), C.R.S. The ALJ shall reestablish hearing dates and other procedures, including the filing of corrected testimony

consistent with the severing of the consolidated proceedings, as necessary, by a separate decision.”

15. By Decision No. R15-0388-I, the ALJ set a prehearing conference for May 11, 2015 to discuss and set new procedural dates. At the prehearing conference on May 11, 2015, the parties agreed on a procedural schedule, which was adopted by the ALJ by Decision No. R15-0459-I. This procedural schedule included an evidentiary hearing set for September 9-10, 2015, with Statements of Position due September 25, 2015.

16. On June 5, 2015, the Company filed its supplemental direct testimony and Updated 2015-2017 RES Compliance Plan (“Updated RES Plan”) as required by Decision No. R15-0459-I. On July 14, 2015, Staff, OCC and WRA filed supplemental answer testimony. Finally, on August 14, 2015, Black Hills filed its supplemental rebuttal testimony and WRA filed supplemental cross-answer testimony.

17. The Settling Parties commenced settlement negotiations and reached an agreement in principle on August 26, 2015.

18. On August 27, 2015, the Settling Parties attended a status conference with the ALJ and informed the ALJ about the agreement in principle. As a result, the ALJ agreed to extend the deadline to file stipulations/settlement agreements from August 31, 2015 to September 3, 2015.

19. This Settlement Agreement memorializes the negotiated settlement among and between the Settling Parties on all the issues raised in Proceeding No. 14A-0535E. As a result of these negotiations and this Settlement Agreement, the Settling Parties agree as set forth herein that the issues in dispute between them in this proceeding related to Black Hills’ Updated RES Plan have been resolved to the satisfaction of the Settling Parties. The Settling Parties agree that

this Settlement Agreement is a fair, just, and reasonable resolution of these issues. The Settlement Agreement is in the public interest.

20. The Settling Parties agree that the Commission should grant Black Hills' Verified Application filed in Proceeding No. 14A-0535E consistent with this Settlement Agreement.

21. The Settling Parties stipulate that all supplemental testimonies and attachments filed by Black Hills and the other parties in Proceeding No. 14A-0535E as identified in Paragraph 16 should be admitted into evidence and made part of the record in this proceeding. The Settling Parties agree to support and defend the terms and principles of the Settlement Agreement before the Commission.

II. SETTLEMENT AGREEMENT

This section sets forth the negotiated resolution of the issues between the Settling Parties.

A. Approval of Scenario 2 in the Updated RES Plan with certain modifications

22. The Settling Parties acknowledge and agree that the Commission should approve Scenario 2 as set forth in the Updated RES Plan and subject to the modifications below. In the Updated RES Plan, Scenario 2 is described as follows:

Under Scenario 2, the Company will continue to fund and support the on-site solar program through 2017 at the levels approved for the 2015 interim on-site solar program (1,150 kW/year). This scenario also supports the addition of CSGs beginning in 2017. Finally, beginning in 2015, this scenario relies on acquisition of standalone [renewable energy credits] RECs for compliance with the percentage requirements of the RES. In order to minimize rate impacts, this scenario, as modeled, provides for a reduction (from 2% to 1.52%) in the RESA surcharge beginning in 2017. Scenario 2 represents the Company's preferred compliance scenario.¹

There are substantial modifications to Scenario 2 as described in this Settlement Agreement, but the Settling Parties agree that this scenario should be approved consistent with this Settlement Agreement.

¹ Attachment No. FCS-3, at 15 (filed June 5, 2015).

B. Approval of the purchase of standalone RECs in 2015, 2016 and 2017 with conditional approval for 2017 contingent on the outcome of Proceeding No. 15A-0502E

23. Black Hills will purchase standalone RECs to meet the Electric resource standards of the RES in 2015 and 2016. The Electric resource standards compliance approach in 2017 is contingent upon the outcome of consolidated Proceeding No. 15A-0502E. Proceeding No. 15A-0502E is consolidated with Proceeding No. 13A-0445E (addressing the Company's 2013 Electric Resource Plan ("2013 ERP")), and in that consolidated proceeding Black Hills has filed an application for a Certificate of Public Convenience and Necessity to own as utility rate-based property a proposed 60 MW wind electric generating plant and the associated balance of plant, located in Huerfano County and Las Animas County, Colorado ("Peak View Wind Project").²

24. The Peak View Wind Project's targeted commercial operation date is November 15, 2016.³ The Commission expects to issue a final decision on the Peak View Wind Project by November 6, 2015.⁴ If approved, the Peak View Wind Project may begin generating RECs that can be used by the Company to meet the Electric resource standards in late 2016 (and will certainly, if approved, begin generating RECs for compliance at the beginning of 2017).⁵ The Settling Parties negotiated a compromise to ensure that the Company meets the Electric resource standards in 2017 under either potential outcome of Proceeding No. 15A-0502E (*i.e.*, the CPCN is granted or the CPCN is denied). Accordingly, in 2017, Black Hills will meet the applicable Electric resource standard (20% of retail electricity sales, with distributed generation equaling at

² Verified Application of Black Hills/Colorado Electric Utility Company, LP for a Certificate of Public Convenience and Necessity to Purchase and Own a 60 Megawatt Wind Electric Generating Plant Pursuant to Decision No. C15-0373, at ¶ 1, Consolidated Proceeding No. 15A-0502E (filed June 23, 2015).

³ *Id.* at p. 1.

⁴ Decision No. C15-0767-I, at ¶ 9, Consolidated Proceeding No. 15A-0502E (mailed July 30, 2015).

⁵ In other words, the Peak View Wind Project may have a small contribution toward compliance with the Electric resource standards in 2016.

least 2% of retail electricity sales)⁶ through either: (1) the purchase of all standalone RECs needed for compliance if the Peak View Wind Project is not acquired by Black Hills, or (2) if the Peak View Wind Project is acquired by Black Hills, the purchase of standalone RECs to fill any remaining Electric resource standards compliance need. This approach allows for compliance with the RES from a REC accounting perspective under either set of circumstances.

25. The Settling Parties acknowledge and agree that Black Hills shall purchase standalone RECs to meet the Electric resource standards in 2015 and 2016, and the Settling Parties further seek approval of either compliance pathway outlined above for 2017 contingent on the outcome of Proceeding No. 15A-0502E. The REC competitive solicitation through requests for proposals (“REC RFP”) and contracting process for 2015, 2016 and 2017 (as necessary) are discussed in the following section.

C. Approval of REC RFPs and REC contract process

26. As described in the supplemental rebuttal testimony of Black Hills witness Ms. Seaman, the Company conducted two standalone REC RFPs because of the interdependence between this proceeding and the Company’s 2013 ERP Proceeding (Proceeding No. 13A-0445E).⁷ These RFP processes were conducted pursuant to the settlement agreement reached in Proceeding No. 13A-0445E and approved by the Commission by Decision No. C14-0007.⁸

⁶ C.R.S. § 40-2-124(1)(c)(I)(D). Black Hills forecasts compliance with the retail distributed generation requirement in 2015, 2016 and 2017 without the purchase of standalone RECs.

⁷ Supplemental Rebuttal Testimony of Lisa Seaman, at 2:9-11 (filed Aug. 14, 2015).

⁸ See Decision No. C14-0007, at ¶ 52, Consolidated Proceeding No. 13A-0445E (mailed Jan. 6, 2015) (“With respect to alternative RES compliance strategies, the Settling Parties agree that Black Hills will consider the purchase of standalone RECs in blocks of 50,000 RECs per year in its 2015-2017 RES Compliance Plan as a tool to meet the Company’s RES obligations. We find merit in exploring specifically whether an RFP for RECs will permit Black Hills to achieve compliance with the RES while remaining under the retail rate impact cap. In addition, a RFP for RECs may also help establish a competitive market price for eligible energy resources generally. Therefore, we direct Black Hills to address the issuance of an RFP for RECs in blocks of 50,000 RECs in its 2015-2017 RES Compliance Plan.”)

27. The REC RFP processes conducted in April 2014 (“2014 REC RFP”) and March 2015 (“2015 REC RFP”) provided indicative pricing for consideration by the parties to this proceeding. The 2015 REC RFP identified the price of RECs for 2015 through 2024. The 2015 REC RFP requested that bidders provide proposals for the supply of standalone RECs (with no energy or capacity) in blocks of 50,000 RECs in annual amounts as shown in the table below, which reproduces Table 4-4 in Attachment No. FCS-3.

Year	Number of Annual RECs Requested
2015	250,000
2016	250,000
2017	250,000
2018	250,000
2019	250,000
2020	250,000
2021	400,000
2022	400,000
2023	450,000
2024	450,000

28. These REC RFPs provided the Settling Parties with pricing information and allowed for development of consensus that the purchase of standalone RECs is a cost-effective means of complying with the Electric resource standards of the RES over the 2015-2017 compliance period.⁹ The Company did not acquire any standalone RECs pursuant to either RFP because Black Hills did not have Commission approval to move forward and purchase RECs.¹⁰

⁹ See Highly Confidential Attachment No. LS-1 (filed June 5, 2015).

¹⁰ Supplemental Rebuttal Testimony of Fredric C. Stoffel, at 11:1-10 (filed Aug. 14, 2015) (“The REC RFP process was not perfect. However, the major deficiency of the program was structural as opposed to procedural. Bidders were fundamentally being asked to hold firm their bids for an indeterminate time until the outcome of this proceeding. The bids were competitive and, if allowed, the Company would enter into purchase agreements to buy RECs from various marketers. The Company was constrained by its inability to move forward. That is why Black

Accordingly, the Settling Parties acknowledge and agree that the Company should undertake REC solicitation(s) for 2015, 2016 and 2017 to acquire standalone RECs in the amounts necessary to meet the Electric resource standards in those years. The Settling Parties acknowledge this agreement does not request approval for REC purchases beyond 2017.

29. The Settling Parties acknowledge and agree that the Company will move forward with REC RFP(s) for these years (2015, 2016 and 2017) using the REC RFP attached to this Settlement Agreement as Attachment 1.

30. Following the REC RFP process, the Settling Parties acknowledge and agree that Black Hills shall provide Staff and OCC with executed REC purchase contracts following the completion of the REC RFP(s). However, with regard to 2017, Black Hills will not enter into REC purchase contracts with REC RFP bidders until a final decision is entered by the Commission in Proceeding No. 15A-0502E.

31. The REC RFP process and related contract filing process set forth in this section are consistent with the Commission directive in Decision No. C14-0007 that the Company “address the issuance of an RFP for RECs in blocks of 50,000 RECs in its 2015-2017 RES Compliance Plan.”¹¹

D. Approval of the On-Site Solar Program

32. The on-site solar program proposed in the initial 2015-2017 RES Compliance Plan and the Updated RES Plan, like the REC RFP solicitation and contracting process discussed above, stems from a Commission directive in Decision No. C14-0007 approving the settlement

Hills is seeking authorization to have the on-going ability to conduct solicitations for RECs and complete agreements for their purchase. Commission preapproval of this process would permit the Company to use standalone RECs as a ready means for compliance with the RES and allow the Company to act quickly and decisively when favorable prices are available.”)

¹¹ Decision No. C14-0007, at ¶ 52.

agreement in Proceeding No. 13A-0445E.¹² The Commission ordered Black Hills to (1) address new on-site solar acquisitions in its 2015-2017 RES Compliance Plan and (2) bring forward an interim on-site solar plan for Commission approval if the broader 2015-2017 RES Compliance Plan was not approved by the end of 2014.

33. In the initial 2015-2017 RES Compliance Plan, the Company proposed the following on-site solar program for the 2015-2017 compliance period (Table 3-3 from Exhibit No. FCS-1 filed in this proceeding):

Proposed 2015 - 2017 Solar Program - On-Site Solar

System Category	Annual Solar Program maximum kW:	2015 - 2017 PBI rate (per kWh production over a 10-year period)
Small: 0.5 kW up to and including 10 kW	460	\$0.05 (capped at 5kW)
Medium Tier 1:: 10.001 kW up to and including 30 kW	345	\$0.05
Medium Tier 2: 30.001 kW up to and including 60 kW	245	\$0.075
Medium Tier 3: 60.001 kW up to and including 100 kW	100	\$0.075

34. Consistent with Decision No. C14-0007, the Company also initiated a separate proceeding (Proceeding No. 14A-0923E) to obtain approval of an interim solar program given that a decision in this proceeding appeared unlikely by the end of 2014. This program¹³ mirrored the proposal above.

¹² Decision No. C14-0007, at ¶ 49 (“We direct Black Hills to address additional on-site solar acquisitions in its 2015-2017 RES Compliance Plan. In addition, due to the possibility that the Commission may not enter a final decision on that compliance plan before the end of 2014, the Company is directed to include a proposal for the continuation of its on-site solar program into early 2015 until such time that a final decision is issued and can be implemented by the Company.”)

¹³ See, e.g., Supplemental Direct Testimony of Kevin Pratt, at 5:3 (filed June 5, 2015).

System Category	Annual 2015 Interim On-Site Solar Program Maximum kW
Small: 0.5 kW up to and including 10 kW	460
Medium Tier 1: 10.001 kW up to and including 30 kW	345
Medium Tier 2: 30.001 kW up to and including 60 kW	245
Medium Tier 3: 60.001 kW up to and including 100 kW	100
Authorized Total kW - 2015 Interim On-Site Solar Program:	1,150

35. The Commission approved the interim on-site solar program by Decision No. C14-1383.¹⁴

36. In Scenario 2 in the Updated RES Plan, the Company proposed to continue the on-site solar program through 2017 at the same size level, and tier allocations, approved for the 2015 interim on-site solar program (1,150 kW/year). This includes the use of the same Production Based Incentive (“PBI”) levels currently in place for the 2015 interim on-site solar program.¹⁵

37. The incentives proposed, while the same as originally proposed in the initial 2015-2017 RES Compliance Plan and the interim on-site solar program approved by the Commission, still reflect a significant decrease in incentive levels while providing program continuity.¹⁶

¹⁴ Decision No. C14-1383, Proceeding No. 14A-0923E (mailed Nov. 18, 2014).

¹⁵ Supplemental Direct Testimony of Kevin Pratt, at 6:6-9.

¹⁶ Supplemental Rebuttal Testimony of Kevin Pratt, at 7:9.

System Category	Black Hills 2014 On-Site Solar Program Incentives (per kWh production over a 10-year period)	Black Hills Proposed On-Site Solar Program Incentives (per kWh production over a 10- year period)	
Small: 0.5 kW up to and including 10 kW	\$0.1267 (capped at 5 kW)	\$0.05	61% Reduction
Medium Tier 1: 10.001 kW up to and including 30 kW	\$0.16	\$0.05	69% Reduction
Medium Tier 2: 30.001 kW up to and including 60 kW	\$0.16	\$0.075	53% Reduction
Medium Tier 3: 60.001 kW up to and including 100 kW	\$0.16	\$0.075	53% Reduction

38. The Settling Parties acknowledge and agree that the on-site solar program set forth by the Company in the Updated RES Plan as part of Scenario 2 should be approved by the Commission. However, the Settling Parties acknowledge and agree that the Company will remove the 5 kW cap on PBIs for systems up to 10 kW. Further, the Settling Parties acknowledge and agree that additional reductions in the PBIs over the course of the compliance period (*e.g.*, reducing incentive levels in 2016 and 2017) is not appropriate at this time because the Company's on-site solar program is adjusting to the significant incentive reductions illustrated above. Finally, consistent with previous Commission decisions, the Settling Parties acknowledge and agree that Black Hills shall have the ability to reallocate available capacity from tiers with lower demand to tiers with higher demand.¹⁷

¹⁷ See, *e.g.*, Decision No. C14-0527, Proceeding No. 14A-0365E (mailed May 16, 2014) (approving the Company's request to "re-allocate some capacity still available to be acquired from customer-sited solar facilities in certain system size categories to other categories"); Decision No. C14-1383, Proceeding No. 14A-0923E (mailed Nov. 18, 2014) (approving the Company's interim solar program as set forth in its Verified Application, which incorporated the ability to re-allocate approved capacity, when appropriate, into categories where customer demand is the greatest in order to maximize the use of allocated funds).

39. This on-site solar program provides stability for the program in the Black Hills' service territory while also using appropriate incentive levels that have a manageable RESA impact (\$103,500 per year for three years, or \$310,500 over the compliance period).¹⁸ Therefore, the on-site solar program agreed upon by the Settling Parties satisfies the Commission directive in Decision No. C14-0007 in a responsible manner.

E. Approval of a Retail Distributed Generation stakeholder process

40. Staff witness Mr. Dalton's supplemental answer testimony raised the notion of a retail distributed generation ("RDG") stakeholder process, which would look beyond just the on-site solar program and consider other RDG programs as well.¹⁹ This stakeholder process would inform future RES Compliance Plans filed by the Company.²⁰ In its supplemental rebuttal testimony, Black Hills witness Mr. Stoffel stated that the Company previously held these types of meetings for solar contractors on a regular basis, but discontinued the meetings due to diminished interest.²¹ In response to Mr. Dalton's suggestion, the Company offered to begin holding these meetings once again on a biannual basis.²²

41. The Settling Parties believe it is appropriate to reinstitute these stakeholder meetings on a biannual basis. However, these meetings should (1) be conducted with the assistance of a third-party facilitator to be retained by Black Hills,²³ and (2) address all RDG

¹⁸ Direct Testimony of Kevin Pratt, at 4:12-22 (filed May 23, 2014) ("Black Hills proposes to annually acquire up to 1,150 kW of additional on-site solar. This proposal includes 460 kW for the small category, 345 kW for the first tier in the medium category, 245 kW for the second tier in the medium category, and 100 kW for the third tier in the medium category. Although the Company is in compliance, from a REC perspective, with the Small distributed generation ("DG") category, Black Hills believes there is merit in continuing to support additional distributed resources in Black Hills' service territory in southeastern Colorado. The cost of the proposed annual level of small solar resource additions, if fully subscribed at the proposed level of incentive payments, is approximately \$103,500. Thus, if fully subscribed, the annual cost of the small solar program after 3 years is approximately \$310,500.")

¹⁹ Corrected Highly Confidential Supplemental Answer Testimony of William J. Dalton, at 3:1-3 (filed July 16, 2015).

²⁰ Corrected Highly Confidential Supplemental Answer Testimony of William J. Dalton, at 3:4-5.

²¹ Supplement Rebuttal Testimony of Fredric C. Stoffel, at 13:8-10.

²² Supplement Rebuttal Testimony of Fredric C. Stoffel, at 14:2-3.

²³ These administrative expenses would be charged against the RESA.

programs as opposed to just the existing on-site solar program. The goals of the stakeholder process will include, among other things, potential revisions to increase accessibility to and participation in existing RDG programs. An additional goal is identification of potential additional RDG offerings that are appropriate and cost-effective in the Black Hills service territory. Finally, as stated by Mr. Dalton in his supplemental answer testimony, “the stakeholder process should help improve dialogue and collaboration between the Company, local ratepayers, small solar developers, and other local advocates of clean, affordable eligible energy programs.”²⁴

42. The Settling Parties therefore acknowledge and agree that the stakeholder process is a valuable and appropriate means to identify localized RDG solutions, opportunities and process improvements for Black Hills’ programs.

F. Approval of an expanded Community Solar Gardens program

43. The Company proposed a Community Solar Gardens (“CSG”) program in Scenario 2 as set forth in the Updated RES Plan. The CSG program agreed upon by the Settling Parties and explained in this section has three components: (1) the offerings in each compliance year, (2) structural issues with the CSG program, and (3) the CSG RFP and contracting processes.

1. CSG Offerings

44. Pursuant to Rule 3665(d)(1), Black Hills proposed the following minimum and maximum purchases of renewable energy and RECs from new CSGs in the Updated RES Plan²⁵:

²⁴ Corrected Highly Confidential Supplemental Answer Testimony of William J. Dalton, at 19:5-8.

²⁵ Attachment FCS-3, at 17-18 (excerpting Table 4-2).

Compliance Year	Minimum Purchase	Maximum Purchase
2015	0 kW	0 kW
2016	0 kW	0 kW
2017	300 kW	600 kW

45. Black Hills further explained that “[t]he cost of the proposed level of the CSG program, if fully subscribed at 300 kW, is approximately \$61,689 annually. If fully subscribed at 600 kW, the cost is approximately \$123,377 annually.”²⁶ In supplemental rebuttal testimony, and in response to supplemental answer testimony from Staff and WRA, the Company proposed to expand this program further and hold solicitations in both 2016 and 2017 for a minimum acquisition of 300 kW and a maximum acquisition of 1 MW. Company witness Mr. Pratt included the following table²⁷ in his supplemental rebuttal testimony:

Compliance Year	Minimum Purchase	Maximum Purchase
2015	0 kW	0 kW
2016 (Solicitation)	300 kW	1 MW
2017 (Solicitation)	300 kW	1 MW

46. The Settling Parties have discussed and agreed upon an expanded CSG program as compared to the proposed programs set forth in the Updated RES Plan and supplemental rebuttal testimony. The Commission,²⁸ as well as Black Hills²⁹ and other Settling Parties, is

²⁶ Attachment FCS-3, at 18.

²⁷ Supplemental Rebuttal Testimony of Kevin Pratt, at 12:6.

²⁸ See, e.g., Decision No. C15-0373, at ¶ 31, Consolidated Proceeding No. 13A-0445E (mailed Apr. 24, 2015) (“In deciding whether a new electric resource is cost-effective, the Commission evaluates: the likely costs and rate impacts associated with the proposed resource in the context of the expected benefits of that resource (e.g., whether it satisfies the utility’s identified resource need or helps it meet the requirements of the RES under § 40-2-124,

concerned with rate impacts to the Company's customers. At the same time, the Commission has recently expressed a desire to see more expansive CSG offerings (as well as other RDG offerings) by investor-owned utilities in Colorado.³⁰ Moreover, the General Assembly has declared that "[i]t is in the public interest that broader participation in solar electric generation by Colorado residents and commercial entities be encouraged by the development and deployment of distributed solar electric generating facilities known as community solar gardens"³¹ The Settling Parties have designed a CSG program that balances these interests, directives and concerns in a manner that is consistent with Colorado law.

47. The Settling Parties acknowledge and agree that the CSG program will have two components: (1) a standard offer program ("Standard Offer CSG") and (2) capacity reserved for competitive solicitations ("RFP CSG"). In 2016 and 2017, the Standard Offer CSG and RFP CSG shall offer 2.5 MW of CSG capacity, in aggregate, in each year. This CSG capacity, if subscribed, will be in addition to the 120 kW CSG that the Company expects to be in-service in the near future.

48. The Standard Offer CSG will make 500 kW available in both 2016 and 2017. Rule 3665(d)(I) provides that "[f]or compliance years 2014 and thereafter, the Commission shall determine the minimum and maximum purchases of renewable energy and RECs from new CSGs"³² Accordingly, the Settling Parties acknowledge and agree that these minimum and

C.R.S.); the costs and rate impacts associated with other new utility resources acquired under the plan (*i.e.*, the LM6000 addressed in Phase I of this proceeding); and the costs and rate impacts associated with the continued operation of the utility's existing resources and the acquisition of other resources to be acquired in the future (as represented in the 25-year NPVRR values presented in the Company's 120-Day Report).")

²⁹ Supplemental Rebuttal Testimony of Fredric C. Stoffel, at 3:3 – 4:2 (addressing the Company's proposed reduction to the RESA surcharge addressed later in this Settlement Agreement).

³⁰ A recent example is the Commission discussion at the Commissioners Weekly Meeting on April 26, 2015 with regard to its RDG and net metering miscellaneous proceeding, Proceeding No. 14M-0235E.

³¹ C.R.S. § 40-2-127(b).

³² Rule 3665(d)(I).

maximum amounts shall be acquired pursuant to the RFP CSG processes, which are discussed in more detail below. The minimum and maximum amounts for the RFP CSG are as follows:

Compliance Year	Minimum Purchase	Maximum Purchase
2015	0 kW	0 kW
2016 (Solicitation)	0 kW	2 MW
2017 (Solicitation)	0 kW	2 MW

49. The RFP CSG program agreed upon by the Settling Parties increases the maximum CSG purchases while decreasing the minimum purchases. The purpose of this approach is to ensure that CSG acquisitions are as cost-effective as possible, while also accommodating broad accessibility to CSG subscriptions. The Company has flexibility to acquire up to 4 total MW of CSGs through solicitations in 2016 and 2017. If and when Black Hills receives favorable CSG bids, Black Hills customers will have ample opportunity to subscribe to CSGs. Alternatively, if bids do not meet the solicitation criteria or the interest from developers of CSGs anticipated by the Settling Parties does not materialize, the Company is not bound to acquire additional CSGs in 2016 and 2017, beyond the Standard Offer minimum.

50. The cumulative CSG programs agreed upon by the Settling Parties are set forth below. The minimum and maximum capacity shown indicate the offerings that will occur in the cited year. CSG capacity reserved through the Standard Offer or RFP may come online in a subsequent year.

Compliance Year	Standard Offer CSG	RFP CSG Minimum	RFP CSG Maximum
2015	0 kW	0 kW	0 kW
2016	500 kW	0 kW	2 MW
2017	500 kW	0 kW	2 MW

2. *CSG Structural Issues*

51. The Company's proposals with regard to CSG offerings throughout this proceeding have been premised upon the following general payment structure³³:

Transaction	Payment Amount	Contract Citation
Subscribed Energy	Credit paid to CSG subscribers pursuant to Community Solar Garden Service Tariff (currently Tariff Sheets 94A to 94I)	Section 2.1
Subscribed RECs	CSG producer is paid the price of \$ ____ [up to the avoided cost amount in effect at the time the solicitation for this CSG is opened, as reflected in the Company's Tariff No. 8 at Sheet No. R36] per MWh* for RECs	Section 2.2
Unsubscribed Energy and RECs	CSG producer is paid at a rate equal to the Company's average hourly incremental cost of electricity supply over the immediately preceding calendar year pursuant to Rule 3665(c)(V)	Section 2.3

*Note: This is a REC price cap (currently \$39.19/MWh) and CSG producers can propose less than this amount to make an application submitted during the solicitation process more competitive.

52. The Settling Parties acknowledge and agree that the pricing structure set forth above for subscribed energy, subscribed RECs and unsubscribed energy and RECs provides

³³ See, e.g., Attachment FCS-3, at 19.

parameters for the 500 kW Standard Offer CSGs for 2016 and 2017. For Standard Offer CSGs, the payment structure is as follows:

Standard Offer CSG Payment Structure

Transaction	Payment Amount
Subscribed Energy	Credit paid to CSG subscribers pursuant to Community Solar Garden Service Tariff
Subscribed RECs	CSG producer is paid the price of \$ [the avoided cost amount in effect at the time the standard offer for the CSG is opened,] per MWh for RECs
Unsubscribed Energy and RECs	CSG producer is paid at a rate equal to the Company's average hourly incremental cost of electricity supply over the immediately preceding calendar year pursuant to Rule 3665(c)(V)

53. For CSGs acquired through a RFP solicitation, the price cap for subscribed RECs remains at the avoided cost as proposed in the Company's application;³⁴ however, as discussed below in the next section, the Company will accept bids in the RFP CSG process that have an *average* aggregate price for subscribed RECs that is at or below the avoided cost amount in effect at the time the RFP CSG is opened. Therefore, the payment structure for bids received and ultimately accepted pursuant to any RFP CSG process is as follows:

³⁴ See Attachment FCS-3, at 19.

RFP CSG Payment Structure (if bid accepted)

Transaction	Payment Amount
Subscribed Energy	Credit paid to CSG subscribers pursuant to Community Solar Garden Service Tariff
Subscribed RECs	CSG producer is paid the price of \$ ____ [up to the avoided cost amount in effect at the time the RFP CSG is opened, as reflected in the Company's Tariff No. 8 at Sheet No. R36] per MWh* for RECs**
Unsubscribed Energy and RECs	CSG producer is paid at a rate equal to the Company's average hourly incremental cost of electricity supply over the immediately preceding calendar year pursuant to Rule 3665(c)(V)

*Note: This is a cap (currently \$39.19/MWh) and CSG producers can propose less than this amount to make an application submitted during the solicitation process more competitive.

**Note: As described below, the Company may accept project bids with differing prices based on whether the subscribed REC involves a low-income subscriber or not, so long as the average aggregate REC price for the project bid is at or below the avoided cost amount in effect at the time the RFP CSG is opened. Black Hills will accept REC prices anywhere from zero dollars up to the avoided cost cap.

3. RFP CSG and Contracting Processes

54. Black Hills has previously conducted one request for applications for CSGs, which resulted in the 120 kW CSG expected to be in service in the near term.³⁵

55. The Settling Parties acknowledge and agree that Black Hills should consider the proposed level of low-income subscribers as one of the criteria to be used in evaluating bids received pursuant to the RFP CSG process. Rule 3665(d)(V) provides that “[i]n each plan to acquire renewable energy and RECs from CSGs, the investor owned QRU shall reserve, to the extent there is demand for such ownership, at least five percent of its renewable energy purchases from new CSGs for eligible low-income CSG subscribers.”³⁶ Pursuant to this Settlement Agreement, the Company will design an acquisition process that gives weight in the

³⁵ Supplemental Direct Testimony of Kevin Pratt, at 7:10-12.

³⁶ Rule 3665(d)(V).

evaluation process to bids that propose to exceed the low-income set aside in Rule 3665(d)(V). Low-income subscription levels of bid proposals will be considered along with other relevant factors, including the subscribed REC price.

56. The Company will allow bidders to structure proposals so that CSG producers may propose higher subscribed REC prices for low-income subscribers and lower subscribed REC prices for other subscribers, so long as the average aggregate of all subscribed REC prices for the project meets the avoided cost cap for subscribed REC prices indicated in the RFP solicitation.

57. The Settling Parties acknowledge and agree that this approach with regard to both expressly considering the number of low-income subscribers in the evaluation process and allowing different subscribed REC pricing for low-income and other subscribers is consistent with Colorado law. Specifically, a provision of the codified legislative declaration in the Colorado law authorizing CSGs states that one of the purposes of CSGs is to “allow renters, low-income utility customers, and agricultural producers to own interests on solar generation facilities”³⁷ Additionally, under § 40-3-106(1)(d), C.R.S. utilities are permitted to give preference to low income customers and the Commission shall implement policies that encourage low-income participation.³⁸ The approach agreed upon by the Settling Parties is consistent with these general legislative mandates. Confidential Attachment 2 shows the projected costs of the CSG program in 2016 and 2017 assuming all programs are fully subscribed.³⁹

³⁷ C.R.S. § 40-2-127(1)(b)(II).

³⁸ See also § 40-8.7-101, *et. seq.*, C.R.S. (Low-income Energy Act) and specifically, § 40-8.7-102, C.R.S., Legislative declaration.

³⁹ The Settling Parties are also filing a public version of Attachment 2.

58. These changes to the evaluation process and pricing will also require changes to the previous CSG contracts included for approval in the Updated RES Plan as Appendices F through I. Furthermore, the changes require development of CSG RFP materials. Therefore, the Company shall file its revised CSG contracts and CSG RFP and Standard Offer materials with the Commission as a compliance filing within 60 days of a final decision in this proceeding. In the interim 60-day period, the Company shall collaborate with Staff, OCC, CEO, and WRA to effectuate the agreements contemplated in this section.⁴⁰

G. RESA impacts of the Settlement Agreement

59. The Company has modeled Scenario 2 in two different ways. Both are predicated on the assumption that:

- Scenario 2 as modified in this Settlement Agreement is approved, and
- The on-site solar and CSG programs are fully subscribed (with the CSG program subscribed at the full avoided cost price cap for subscribed RECs).⁴¹

One model includes the Peak View Wind Project and the other model does not. These models are included with this Settlement Agreement as Highly Confidential Attachment 3, which show that the approval of this Settlement Agreement will modestly extend the RESA deficit, but will not require advancement of shareholder funds under either scenario.

60. The impact of the Settlement Agreement is that the RESA surcharge will remain at the maximum 2% for 2015, 2016, 2017, which is discussed in further detail in Section H below.

⁴⁰ One of these changes will be to revise the CSG contracts to reflect the changes in HB 15-1284. Subscribers may reside in the same county or an adjacent county to the CSG location. Black Hills will adopt a revision to the Community Solar Garden Agreement similar to that as proposed by WRA in Ms. Farnsworth's supplemental cross-answer testimony.

⁴¹ The in-service and subscription rate assumptions are very optimistic. The modeling reflected in Highly Confidential Attachment 3, therefore, shows the maximum impact associated with acquisition costs of the on-site solar and CSG programs on the RESA.

61. The Settlement Agreement will not require the Company to advance funds to the RESA to acquire the Peak View Wind Project (if the project is approved by the Commission in Proceeding No. 15A-0502E). The Settling Parties acknowledge and agree that this Settlement Agreement does not affect the Company's proposed Peak View Wind Project in Proceeding No. 15A-0502E. This Settlement Agreement should not affect the determination of whether the Peak View Wind Project should be approved.

H. Approval of a proposed partial waiver of Rule 3660(e)

62. In the Updated RES Plan, the Company projected that Scenario 2 (if the Peak View Wind Project is not approved) would cause the Company to begin accruing a positive RESA balance in 2017.⁴² Black Hills therefore proposed a reduction in its RESA surcharge from 2% to 1.52%. This approach minimized rate impacts and also avoided a situation where the Company was paying interest on the positive balance at its most recent authorized after-tax weighted average cost of capital ("WACC") pursuant to Rule 3660(e).⁴³

63. Several of the Settling Parties expressed concern in supplemental answer testimony that a reduction in the RESA surcharge at this time was premature and would limit the Company's ability to acquire eligible energy resources and associated RECs, as opposed to standalone RECs, in the future.⁴⁴ Following discussions among the Settling Parties, the Settling Parties reached an agreement premised upon the grant of a partial waiver of Rule 3660(e).

⁴² See Attachment FCS-3, at 15.

⁴³ Rule 3660(e) ("Interest shall accrue on the deferred balance (positive or negative) of the RESA account at the investor owned QRU's most recent authorized after-tax weighted average cost of capital, so long as the RESA does not exceed two percent of the total annual electric bill for each customer.")

⁴⁴ Corrected Highly Confidential Supplemental Answer Testimony of William J. Dalton, at 7:17 – 8:2 ("I don't believe [the Company] should [reduce the RESA surcharge]. RESA funding should be available for numerous programs, including RDG, CSGs, and utility scale eligible energy resources (including utility-owned resources and power purchase agreements)"; Supplemental Answer Supplemental Answer Testimony of Gwendolyn Farnsworth, at 2:5-7 (filed July 14, 2015) ("I am concerned that Black Hills Energy ("Black Hills" or "the Company") is prematurely proposing to reduce RESA collections, asking the Commission to approve a reduction in RESA collections in 2017 and beyond.")).

Specifically, the parties seek limited partial waiver of the requirement that the Company pay interest at its most recently authorized WACC. Instead, Black Hills would pay interest on a positive RESA balance at the Commission-approved customer deposit rate.⁴⁵

64. This partial waiver would be necessary if the Peak View Wind Project is not approved. If the Peak View Wind Project is approved, then the Company will not begin accruing a positive RESA balance in 2017. However, to accommodate a positive RESA balance at some time in the future, the Settling Parties acknowledge and agree that it is appropriate for Black Hills to obtain the partial waiver in this Settlement Agreement in case it is needed during the 2015-2017 RES compliance period. This partial waiver would be in effect until the approval of the Company's 2018-2021 RES Compliance Plan.

65. The Settling Parties acknowledge and agree that a partial waiver of this rule is legally permissible. C.R.S. § 40-2-124(1)(g)(I)(B), which provides the statutory basis for Rule 3660(c), states as follows:

If the retail rate impact does not exceed the maximum impact permitted by this paragraph (g), the qualifying utility may acquire more than the minimum amount of eligible energy resources and renewable energy credits required by this section. At the request of the qualifying retail utility and upon the commission's approval, *the qualifying retail utility may advance funds from year to year to augment the amounts collected from retail customers under this paragraph (g) for the acquisition of more eligible energy resources.* Such funds shall be repaid from future retail rate collections, *with interest calculated at the qualifying retail utility's after-tax weighted average cost of capital*, so long as the retail rate impact does not exceed two percent of the total annual electric bill for each customer.⁴⁶

In other words, the statute specifies that the WACC applies to *negative* RESA balances. The statute is silent as to the interest treatment of *positive* RESA balances. This statutory provision provides the statutory basis for both Rule 3660(c) (which allows investor-owned utilities to bank or advance RESA funds) and Rule 3660(e) (which states that interest on positive or negative

⁴⁵ The customer deposit rate for 2015 approved by the Commission is 0.34%.

⁴⁶ C.R.S. § 40-2-124(1)(g)(I)(B) (emphasis added).

balances should be paid at the most recently-approved WACC). Though not mandated by the statutory language, Rules 3660(c) and Rule 3660(e) construct a symmetrical interest scheme such that funds may be advanced or banked with the same interest rate applicable in both instances. The interest rate applicable to advanced funds cannot be waived, because the Commission does not have the power to waive a statute.⁴⁷ In contrast, the interest rate on banked funds is not a creature of statute and therefore may be waived by the Commission pursuant to Rule 1003.⁴⁸ Accordingly, the Commission may legally grant a partial waiver of the Rule to reduce the interest rate on banked funds from the most recently-approved WACC to the Commission-approved customer deposit rate.

66. This partial waiver would be limited in use because it may not be necessary depending upon the outcome of Proceeding No. 15A-0502E. However, in recognition that there is uncertainty with respect to the timing of the filing of the Company's 2018-2021 RES Compliance Plan and its subsequent approval, the Parties agree the requested waiver should remain in effect at least until a final decision issues in that proceeding.

67. Finally, Rule 1003 further provides that "[i]n making its determination [whether to grant a waiver] the Commission may take into account, but is not limited to, considerations of ... more effective implementation of overall policy on an individual basis."⁴⁹ Public policy considerations, as expressed by Staff and WRA in this proceeding, counsel in favor of the grant of a partial waiver of Rule 3660(e). Requiring the Company to pay the WACC rate on positive RESA balances effectively dissuades the Company from "saving up" money in the RESA to use for future renewable resource acquisitions. The lumpy nature of these investments practically

⁴⁷ See, e.g., Decision No. C12-1223, at ¶ 31, Proceeding No. 12A-851E (mailed Oct. 25, 2012) ("The Commission can grant a waiver of a rule, but it cannot waive a statute.")

⁴⁸ Rule 1003 (stating in part that "[t]he Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions.")

⁴⁹ Rule 1003.

requires the Company to lend money to the RESA in order to acquire a large eligible energy resource. Lending money to the RESA, and incurring interest at the WACC essentially increases the costs associated with eligible energy acquisitions. This outcome discourages investment in renewable energy.

68. Further, granting the partial waiver on the limited basis proposed here is appropriate because it allows Black Hills to proactively manage its RESA account to plan for future acquisitions of eligible energy resources (as it has for several years now⁵⁰) without incurring a penalty in the form of a high interest rate.⁵¹

69. For the legal and policy reasons set forth above, the Settling Parties acknowledge and agree that a partial waiver of Rule 3660(e) is appropriate to reduce the interest rate applicable to any positive RESA balance, if one occurs, from the most recently-authorized WACC to the Commission-approved customer deposit rate.

I. Summary of approvals

70. The Company filed its Verified Application in this proceeding on May 23, 2014, which included several explicit requests for approval in any Commission decision approving the Verified Application. Many of these requests for approval are addressed in the requests above seeking approval of Scenario 2 as modified in this Settlement Agreement. The Settling Parties acknowledge and agree that the following requests for approval set forth in the Company's Verified Application (modified to reflect the course of the proceedings) should also be granted:

- Approval of the Updated RES Plan as modified by this Settlement Agreement;

⁵⁰ See, e.g., Corrected Highly Confidential Supplemental Testimony of William J. Dalton, at 4:3-9 ("The Company is forecasting a RESA deficit for year end 2015 of \$4,140,058 under Scenario 2. The RESA deficit was \$15.9 million in May of 2011. This reduction in the deficit has been achieved through lower retail distributed generation program expenditures since 2011 and by the March 2015 ECA/RESA adjustment credit of \$3,842,768 that resulted from the Commission's final order approving the settlement agreement between Black Hills and Staff in Proceeding No. 14A-0534E.")

⁵¹ See Supplemental Rebuttal Testimony of Fredric C. Stoffel at 5:19-7:9.

- Approval of the REC RFP included as Attachment 1 and approval to move forward with REC RFP(s) for 2015, 2016 and 2017. The solicitation for 2017 is contingent upon the outcome of Proceeding No. 15A-0502E. The Company will provide Staff and OCC with executed REC purchase contracts;
- Approval of Black Hills' proposed on-site solar program for the years 2015, 2016, and 2017, including allowing Black Hills to file any necessary compliance tariffs on this issue thirty days after a final Commission decision in this proceeding;
- Approval of the requested modifications to the on-site solar contracts attached to the Updated RES Plan (Attachment FCS-3) as Appendices B through E;
- Approval of the RDG stakeholder process as set forth in this Settlement Agreement;
- Approval of the CSG program as set forth in this Settlement Agreement and allowing the Company 60 days after a final decision in this proceeding to: (1) file revised CSG contracts as a compliance filing, (2) file its RFP CSG and Standard Offer materials for use in 2016 and 2017 as a compliance filing, and (3) file compliance tariffs making necessary changes to allow for the CSG program as described within this Settlement Agreement;⁵² and
- Approval of Black Hills' motion for waivers and any other waivers necessary to implement Black Hills' Updated RES Plan (including the partial waiver of Rule 3660(e) discussed above).

71. As discussed earlier in this Settlement Agreement, any issue not directly addressed herein should be determined consistent with the Verified Application and the

⁵² Black Hills will file these documents after reviewing them with Staff, OCC, CEO and WRA.

Company's Updated RES Plan as modified by Black Hills' supplemental direct and rebuttal testimonies and this Settlement Agreement.⁵³

III. GENERAL TERMS AND CONDITIONS

72. Through active prehearing investigation and negotiations, the Settling Parties have negotiated agreements set forth in this Settlement Agreement, resolving the enumerated contested and disputed issues in this proceeding in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Settlement Agreement reflects the compromise and settlement of those issues between the Settling Parties in this proceeding. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through litigation, is encouraged by Rule 1408 and is in the public interest.

73. The Settling Parties agree to present, to support, and to defend this Settlement Agreement before the Commission and in the courts. They further agree to present testimony and exhibits in any hearing set, in whole or in part, for the purpose of obtaining the Commission's approval of this Settlement Agreement. This Settlement Agreement shall not become effective until the issuance of a final Commission decision approving the Settlement Agreement which Commission decision does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any of the Settling Parties, that Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this proceeding. The withdrawing Party shall notify the Commission and the other Party to the Settlement Agreement by e-filing within three business days of the Commission-ordered modification that the Party is withdrawing

⁵³ This includes approval of the adjustment to the avoided costs that were included in the Company's 2013-2014 RES Compliance Plan and approved in Decision No. C14-0007 in Proceeding No. 13A-0445E. This is explained in detail in the Updated RES Plan. See Attachment No. FCS-3, at 12-14.

from the Settlement Agreement and that the Party is ready to proceed to hearing; the e-filing shall designate the precise issue or issues upon which the Party desires to proceed to hearing.

74. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of the disputed issues resolved herein.

75. The Settling Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement that is in the public interest with respect to the various matters and issues enumerated herein. The Settling Parties shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Settlement Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the methods or principles herein contained shall be deemed by the Settling Parties to constitute a settled practice or precedent in any future proceeding.

76. This Settlement Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. The parties are not relying on any statement or representation not contained herein.

77. This Settlement Agreement may be executed in counterparts and by facsimile or electronic copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the matters addressed herein.

IV. CONCLUSION

78. For the reasons stated above, the Settling Parties respectfully request that the Commission enter a decision approving this Settlement Agreement, with the finding that the

Commission's approval of this Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this proceeding as to those issues.

Date: September 3, 2015

Approved as to form:

BLACK HILLS/COLORADO
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LP:

Agreed on behalf of:

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2015 the foregoing document was served on those parties shown on the Commission's Certificate of Service accompanying such filing.

By: /s/ Margo A. Parker