

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15A-0424E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC
UTILITY COMPANY, LP, FOR APPROVAL OF ITS ELECTRIC DEMAND SIDE
MANAGEMENT (DSM) PLAN FOR PROGRAM YEARS 2016-2018 AND FOR
APPROVAL OF REVISIONS TO ITS ELECTRIC DSM COST ADJUSTMENT TARIFF.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED JOINT MOTION;
MODIFYING, AND APPROVING AS MODIFIED,
THE SETTLEMENT AGREEMENT, SUBJECT
TO CONDITIONS; GRANTING THE APPLICATION,
SUBJECT TO CONDITIONS; ORDERING
COMPLIANCE FILING; AND DENYING
MOTION FOR WAIVER OF RESPONSE TIME**

Mailed Date: December 8, 2015

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I. STATEMENT

1. On May 29, 2015, Black Hills/Colorado Electric Utility Company, LP (Black Hills, Company, or Applicant), filed a Verified Application¹ (Application) in which the Company seeks Commission approval of its electric Demand Side Management (DSM) Plan for program years 2016, 2017, and 2018 (2016-2018 DMS Plan) and Commission approval of revisions to the Company's electric DSM Cost Adjustment (DSMCA) Tariff. That filing commenced this Proceeding.

¹ The Verified Application is Hearing Exhibit No. 6.

2. On May 29, 2015, Black Hills also filed direct testimony and attachments in support of the Application.

3. On June 3, 2015, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period and contained a procedural schedule. On July 21, 2015, Decision No. R15-0740-I vacated that procedural schedule.

4. On June 11, 2015, Black Hills filed an Affidavit of Publication of Additional Notice. On June 22 and 25, 2015, the Company filed proofs of publication.

5. The following intervened as of right or were granted permission to intervene: Board of Water Works of Pueblo, Colorado (Board); Colorado Energy Office (CEO); Colorado Office of Consumer Counsel (OCC); Energy Efficiency and Business Coalition (EEBC); Fountain Valley Authority (FVA); Southwest Energy Efficiency Project (SWEEP); and Trial Staff of the Commission (Staff). In addition, Energy Outreach Colorado (EOC) was granted permission to participate as *amicus curiae*.

6. The Board, CEO, EEBC, FVA,² OCC, Staff, and SWEEP, collectively, are the Intervenors; each individually is an Intervenor. Applicant and Intervenors, collectively, are the Parties; each individually is a Party. Each Party and the *amicus curiae* are represented by legal counsel in this Proceeding.

7. On July 16, 2015, by Minute Order, the Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S. Pursuant to § 40-6-109.5(1), C.R.S., Decision No. R15-0740-I extended the time for Commission decision in this matter. The Commission should issue its decision in this matter not later than February 11, 2016.

² Unless the context indicates otherwise, in this Decision the Board and FVA, collectively, are the Public Intervenors.

8. On July 16, 2015, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

9. On August 11, 2015, by Decision No. R15-0852-I, the ALJ established the procedural schedule for this Proceeding and scheduled the matter for evidentiary hearing on October 15 and 16, 2015.

10. On August 24, 2015, the Company filed Corrected Direct Testimony and Attachments of Steven M. Jurek;³ Corrected Attachment MED-1; and Corrected Appendix A to Corrected Attachment MED-1.

11. Black Hills, CEO, EEBC, OCC, Public Intervenors, Staff, and SWEEP (collectively, Settling Parties) engaged in comprehensive settlement discussions and reached an agreement in principle on all matters raised in the Application.

12. On September 3, 2015, the Settling Parties filed a Motion to Vacate and Reset the Procedural Schedule. On September 9, 2015, by Decision No. R15-0967-I, the ALJ granted the motion; set a date for filing supplemental direct testimony and stipulations or settlement agreements; and scheduled an evidentiary hearing on the settlement for September 25, 2015. On motion of the Settling Parties, the ALJ modified the filing date.

13. On September 18, 2015, the Settling Parties filed (in one document) an Unopposed Joint Motion to Approve Settlement Agreement [Motion] and Request for Waiver of Response Time.⁴ The Settlement Agreement (including five Attachments) accompanied the Motion.⁵

³ When it filed the Application, the Company filed the Direct Testimony and Attachments of Matthew E. Daunis; the Attachments were MED-1 and MED-2. Mr. Jurek subsequently adopted that testimony as his direct testimony and did not change the Attachments' designations.

⁴ Due to the passage of time, the ALJ will deny as moot the Motion for Waiver of Response Time.

⁵ The Settlement Agreement and its attachments are Hearing Exhibit No. 1.

14. On September 18, 2015, Black Hills filed the Supplemental Direct Testimony of Steven M. Jurek and Attachment, in which Black Hills witness Jurek provided further factual support for Black Hills's request to maintain its current DSMCA incentive structure. Also, on September 18, 2015, Eric Spain of FVA filed testimony in support of the Settlement Agreement.

15. The Company filed two errata following the filing of the Settlement Agreement and associated documents. The first erratum corrected a mistake regarding the notice procedures in Attachments 2 and 3 to the Settlement Agreement. The second erratum corrected the reporting of historical information on page 9 of the Settlement Agreement and did not affect any of the discussion in the Settlement Agreement comparing the 2016-2018 DSM Plan with the Company's performance under previous DSM plans. The Settlement Agreement, as corrected by the two errata, and its attachments (Settlement Agreement) are attached to this Decision as Appendix A.

16. The Commission received no written public comments in this Proceeding.

17. On September 25, 2015, the evidentiary hearing on the Settlement Agreement was held as scheduled in this Proceeding.⁶ No public comments were provided at the evidentiary hearing. At the conclusion of the hearing, the ALJ closed the evidentiary record and took this matter under advisement.

18. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

⁶ The transcript of the evidentiary hearing was filed in this Proceeding. In this Decision, the transcript is cited as Tr., and the page and line are cited as page:line. Thus, citation to the transcript at page 40, lines 1 through 10 is: Tr. at 40:1-10.

II. FINDINGS AND DISCUSSION

19. In the Application filed pursuant to § 40-3.2-104, C.R.S., Black Hills sought approval of its 2016-2018 DSM Plan and approval of revisions to its electric DSMCA tariff. As a result of the Settlement Agreement, Black Hills modified its proposed 2016-2018 DSM Plan.

20. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction in this Proceeding.

21. The record establishes, and the ALJ finds, that the Commission has personal jurisdiction over the Applicant and the Intervenors in this Proceeding.

22. As a result of the Settlement Agreement, the facts are not disputed. Additional facts are found throughout this Recommended Decision.

A. **Parties.**

23. Applicant Black Hills is a public utility subject to the jurisdiction of the Commission pursuant to § 40-1-103, C.R.S., *et seq.* Black Hills has implemented two three-year electric DSM plans covering calendar years 2009 through 2015.⁷

24. Intervenor Board is an independent municipal governmental entity created by virtue of the Home Rule Charter of the City of Pueblo, Colorado.

25. Intervenor CEO is the Colorado Energy Office. Its charge is set out in § 24-38.5-102, C.R.S.

26. Intervenor EEBC is a Colorado non-profit corporation in good standing and is a trade association created to advocate for policies, programs, and business practices that will

⁷ The more recent DSM Plan is for the period 2012-2015. Commission approved the Black Hills 2012-2015 DSM Plan in Decision No. R12-0900, issued on August 3, 2012 in Proceeding No. 12A-100E, *In the Matter of the Application of Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy[,] for Approval of Its Electric Demand Side Management (DSM) Plan for Program Years 2012-2013, 2014, and 2015; for Approval of a Pre-Pay Metering Pilot Program; and for Approval of Updates to Its Electric DSM Cost Adjustment Clause Tariffs and an Increase in the Electric DSM Cost Adjustment Rider*. The Commission denied exceptions to Decision No. R12-0900 in Decision No. C12-1122, issued on September 26, 2012 in that Proceeding.

benefit and promote the market for energy efficiency technologies, products, and services in Colorado.

27. Intervenor FVA is an intergovernmental authority formed under Colorado law to operate a water pipeline, pumping stations, and a water treatment plant to deliver potable water to the communities of Security, Stratmoor Hills, Widefield, Fountain, and Colorado Springs.

28. Intervenor OCC is a Colorado state agency established pursuant to § 40-6.5-102, C.R.S. Its charge is set out in § 40-6.5-104, C.R.S.

29. Intervenor Staff is Litigation Staff of the Commission as identified in the Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a)⁸ notice filed in this Proceeding.

30. Intervenor SWEEP is a regional non-profit public interest group working to advance energy efficiency, and the economic and environmental benefits those resources provide, in the public policy and utility regulatory arenas in Colorado and nearby states.

31. *Amicus curiae* EOC is a Colorado non-profit corporation established by the Colorado legislative commission on low-income energy assistance, a body appointed by the Governor of Colorado pursuant to § 40-8.5-103.5(1), C.R.S., to collect and to disburse low-income energy assistance funds.

B. Witnesses and Exhibits.

32. At the evidentiary hearing, the ALJ heard the testimony of five witnesses in support of the Settlement Agreement: (a) Steven M. Jurek, who testified on behalf of the

⁸ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

Applicant;⁹ (b) Andrew W. Cottrell, who testified on behalf of the Applicant;¹⁰ (c) Lisa Seaman, who testified on behalf of the Applicant;¹¹ (d) Paul Caldara, who testified on behalf of Staff;¹² and (e) Howard Geller, who testified on behalf of SWEEP.¹³ In addition, FVA presented the Testimony in Support of Settlement Agreement Submitted by Eric Spain.¹⁴

33. Hearing Exhibits No. 1 through No. 6 were marked, offered, and admitted. There is no confidential information in the evidentiary record of this Proceeding.

C. Relevant Colorado Law.

34. The ALJ used DSM-related specific statutory provisions and general legal principles in her consideration of the Black Hills 2016-2018 DSM Plan, as contained in the Application and the Settlement Agreement.

1. DSM-Related Provisions.

35. House Bill (HB) 07-1037, entitled *Concerning Measures to Promote Energy Efficiency, and Making an Appropriation Therefore*, was signed into law in 2007 and is codified in relevant part at §§ 40-1-102(5), 40-1-102(6), 40-1-102(7), 40-3.2-101, and 40-3.2-104, C.R.S.

36. In passing HB 07-1037, the General Assembly determined that

cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment.

⁹ Mr. Jurek is employed by Black Hills Utility Holdings, Inc., as Director Energy Efficiency. His Corrected Direct Testimony and Attachments are Hearing Exhibit No. 2, and his Supplemental Direct Testimony and Attachments are Hearing Exhibit No. 3. Mr. Jurek's oral testimony is found in Tr. at 11-87.

¹⁰ Mr. Cottrell is employed by Applied Energy Group, Inc., as Principal Consultant in the Energy Analysis and Planning team. His Direct Testimony and Attachments are Hearing Exhibit No. 4. Mr. Cottrell's oral testimony is found in Tr. at 87-95.

¹¹ Ms. Seaman is employed by Black Hills Utility Holdings, Inc., as Manager of Resource Planning. She did not file written testimony. Ms. Seaman's oral testimony is found in Tr. at 96-102.

¹² Mr. Caldara is employed by the Commission as a Professional Engineer. He did not file written testimony. Mr. Caldara's oral testimony is found at Tr. at 103-13.

¹³ Dr. Geller is employed by SWEEP as its Executive Director. He did not file written testimony. Dr. Geller's oral testimony is found at Tr. at 114-22.

¹⁴ Mr. Spain is employed by FVA as Superintendent; in that capacity, he is FVA's Chief Operating Officer. His testimony is Hearing Exhibit No. 5. Mr. Spain did not present oral testimony at the hearing.

The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

Section 40-3.2-101, C.R.S.

37. Section 40-1-102(6), C.R.S., defines demand-side management programs and DSM programs as: "energy efficiency, conservation, load management, and demand response programs or any combination of these programs."

38. Section 40-1-102(7), C.R.S., defines an education program as:

a program, including, but not limited to, an energy audit, that contributes indirectly to a cost-effective demand-side management program. Education programs shall not be subject to independent cost-effectiveness requirements.

39. In pertinent part, § 40-1-102(5), C.R.S., provides:

(a) "Cost-effective", with reference to ... [an] electric demand-side management program or related measure, means having a benefit-cost ratio greater than one.

(b) In calculating the benefit-cost ratio, the benefits shall include, but are not limited to, the following, as applicable:

(I) The utility's avoided generation, transmission, distribution, capacity, and energy costs;

(II) The valuation of avoided emissions; and

(III) Nonenergy benefits as determined by the commission.

(c) In calculating the benefit-cost ratio, the costs shall include, but are not limited to, utility and participant expenditures for the following, as applicable:

(I) Program design, administration, evaluation, advertising, and promotion;

(II) Customer education;

(III) Incentives and discounts;

- (IV) Capital costs; and
- (V) Operation and maintenance expenses.

40. Section 40-3.2-104(2), C.R.S., applies to electric DSM programs and directs the Commission to establish both energy savings¹⁵ goals and peak demand reduction¹⁶ goals

to be achieved by an investor-owned electric utility [IOU], taking into account the utility's cost-effective DSM potential, the need for electricity resources, the benefits of DSM investments, and other factors as determined by the

Commission. That statute also provides that, by 2018, Colorado IOUs must achieve peak demand reduction goals of at least 5 percent of the utility's retail system peak demand (measured in MW) in the base year of 2006 and energy savings goals of at least 5 percent of the utility's retail energy sales (measured in MWh) in the base year of 2006.

41. To date, Black Hills has met the § 40-3.2-104(2), C.R.S., requirements as its peak demand reduction is at least 5 percent of its retail system peak demand (measured in MW) in the base year of 2006 and its energy savings are at least 5 percent of its retail energy sales (measured in MWh) in the base year of 2006.¹⁷

42. Section 40-3.2-104, C.R.S., also contains these DSM program-related requirements:

The Commission must permit an IOU "to implement cost-effective electricity DSM programs to reduce the need for additional resources that would otherwise be met through a competitive acquisition process" (§ 40-3.2-104(3), C.R.S.);

The Commission must ensure that all classes of a utility's customers are given an opportunity to participate in electric DSM programs and must "give due consideration to the impact of DSM programs on nonparticipants and on low-income customers" (§ 40-3.2-104(4), C.R.S.);

¹⁵ Energy and energy savings are stated in gigawatt-hours (GWh), in megawatt-hours (MWh), or in kilowatt-hours (kWh).

¹⁶ Demand and demand reduction are stated megawatts (MW) or in kilowatts (kW).

¹⁷ Tr. at 15:18-24.

The Commission must “allow an opportunity for a utility’s investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives” (§ 40-3.2-104(5), C.R.S.);

Each DSM incentive mechanism must “take into consideration the performance of the DSM program” (§ 40-3.2-104(5), C.R.S.); and

An IOU must “submit an annual report to the commission [that describes] the DSM programs implemented by the electric utility in the previous year” and that documents six specified items (§ 40-3.2-104(6), C.R.S.).

43. In reaching her decision in this Proceeding, the ALJ applies these statutory requirements and principles.

2. General Principles.

44. As the party that seeks Commission approval of its 2016-2018 DSM Plan, Black Hills bears the burden of proof with respect to the relief sought; and the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. “The evidence underlying the agency’s decision must be adequate to support a reasonable conclusion.” *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). In this case, the evidence consists of the testimony given and the exhibits admitted during the evidentiary hearing on the Settlement Agreement.

45. In addition, the Black Hills DSM programs, the impact of the DSM programs on Black Hills’s ratepayers, and related issues are matters of public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Parties’ proposals, including the Settlement Agreement. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, and is

in the public interest *provided* the record supports the result *and provided* the reasons for the choices made are stated.

46. In reaching her decision in this matter, the ALJ is mindful of these general principles and of the Commission's duty.

D. Terms of the Settlement Agreement.

1. General Comparisons.

47. Proposed 2016-2018 DSM Plan. Compared to the 2016-2018 DSM proposed in the Application, as corrected, the 2016-2018 DSM Plan contained in the Settlement Agreement represents: (a) a 10 percent increase in energy savings; (b) an increase in the cost-effectiveness of the Plan, as measured by the modified Total Resource Cost Test; and (c) an increase in the energy savings per dollar spent.

48. In addition, the projected cumulative energy savings under the 2016-2018 DSM Plan contained in the Settlement Agreement are at the high end of the GWh savings range in the Demand-Side Management Potential Study filed by the Company in this Proceeding.¹⁸

49. Results realized in DSM plan year 2014. Black Hills's most recent fully-completed DSM plan year is calendar year 2014. In that year, Black Hills achieved peak demand savings of 4.26 MW and energy savings of 17.8 GWh (at the generator) and 16.7 GWh (at the customer meter).¹⁹

50. Under the Settlement Agreement, the projected peak demand savings in the 2016-2018 DSM Plan are: (a) 5.23 MW (2016); (b) 5.60 MW (2017); and (c) 5.82 MW (2018).²⁰

¹⁸ Hearing Exhibit No. 4 at Attachment AWC-1; Hearing Exhibit No. 1 at ¶ 19.

¹⁹ Hearing Exhibit No. 1 at ¶¶ 16 and 18. The 1.1 GWh difference represents line losses.

²⁰ Hearing Exhibit No. 1 at ¶ 16. *See also id.* at ¶ 43 (peak demand savings at customer meter).

In each year of the Company's 2016-2018 DSM Plan, the projected peak demand savings are greater than the peak demand savings realized in 2014.

51. Under the Settlement Agreement, the projected energy savings in the 2016-2018 DSM Plan are (calculated at the generator): (a) 18 GWh (2016); (b) 19.8 GWh (2017); and (c) 20.6 GWh (2018).²¹ Under the Settlement Agreement, the projected energy savings in the 2016-2018 DSM Plan are (measured at the customer meter): (a) 16.9 GWh (2016); (b) 18.6 GWh (2017); and (c) 19.4 GWh (2018).²² In each year of the Company's 2016-2018 DSM Plan, the projected energy savings (calculated at the generator and measured at the customer meter) are greater than the energy savings realized in 2014.

52. Continuing to increase energy savings²³ from one DSM plan to the next is a key factor in the Commission's evaluation of DSM plans.²⁴ The record establishes that, over the course of the 2016-2018 DSM Plan, the peak demand savings goals and the energy savings goals provide increased incremental savings when compared to the savings realized in 2014.

2. Calculation and Reporting of 2016-2018 DSM Savings Goals and of Realized Savings.

53. Historically and in its two previous DSM Plans, Black Hills has reported DSM program savings goals and realized savings at the generator. The savings at the generator are not based on readings at the generator. The determination of the savings at the generator results from a mathematical calculation in which the Company multiplies the MW measured at the

²¹ Hearing Exhibit No. 1 at ¶ 18.

²² Hearing Exhibit No. 1 at ¶¶ 18 and 44.

²³ Unless the context indicates otherwise, in this Decision and for ease of reference, the terms "energy savings" and "savings" include both peak demand (MW) savings and energy (MWh) savings.

²⁴ See, e.g., Decision No. C14-0731 at ¶ 18 (addressing DSM programs proposed by Public Service Company of Colorado and stating "[w]e believe an abrupt reduction in the goals will negatively affect ratepayers who rely on the Company's programs"). This Decision was issued on July 1, 2014 in Proceeding No. 13A-0686EG, *In the Matter of the Application of Public Service Company of Colorado for Approval of a Number of Strategic Issues Relating to its Demand Side Management Plan*.

customer meters by the Company's average line losses (*i.e.*, the energy lost between the generator and the customer meter).²⁵

54. The Settlement Agreement provides that, for the 2016-2018 DSM Plan, the Company will measure and report savings goals and realized savings at the customer meter. The savings at the customer meter are based on readings at the customer meter. Using this measurement is appropriate because the DSM programs are customer-facing. Savings at the customer meter provides the customer-level savings that are realized at the customer side of the Company's distribution system.

55. Black Hills agrees to report savings from both perspectives (*i.e.*, at the generator and at the customer meter) in its Annual Status Reports filed each April 1.²⁶ Continuing to report savings at the generator will allow comparisons of actual savings realized from the programs in the 2016-2018 DSM Plan with actual savings realized from the programs in the previous DSM programs implemented by the Company.²⁷ In addition, reporting the savings at the generator is consistent with, and will be useful in reporting DSM resources in the Company's Electric Resource Plan.

56. Based on the record, the ALJ approves the savings goals and realized savings calculation method and reporting requirements. In its Annual Status Reports, Black Hills must report: (a) savings goals and realized savings at the customer meter; and (b) savings goals and realized savings at the generator.

²⁵ Tr. at 55:4-16.

²⁶ Hearing Exhibit No. 1 at ¶ 53.

²⁷ Tr. at 25:1-6.

57. For these reasons and based on the entire record, the ALJ finds good cause to approve the calculation and reporting method, as described in the Application and modified by the Settlement Agreement, as being in the public interest.

3. The Residential DSM Programs.

58. In the Application, Black Hills included these residential DSM programs²⁸ in the 2016-2018 DSM Plan: (a) Residential High Efficiency Lighting; (b) Appliance Recycling; (c) Residential On-Site Energy Evaluation; (d) Residential High Efficiency Cooling; (e) Residential Home Energy Comparison Report; and (f) Residential On-line Home Energy Evaluation. The Residential Home Energy Comparison Report and the Residential On-Site Energy Evaluation are new programs. The remaining programs continue, with modifications, existing residential DSM programs. The Company also proposed to discontinue its current Residential High Efficiency Appliance Program.

59. The Company's direct testimonies and attachments provide persuasive evidence that supports the Residential DSM programs as proposed and the discontinuance of the Residential High Efficiency Appliance Program.

60. The Settlement Agreement describes changes to the Residential DSM Programs from the 2016-2018 DSM Plan filed by the Company.²⁹ These changes are: (a) an increase in the participation rate in the Residential High Efficiency Lighting Program; (b) a decrease to the compact fluorescent light (CFL) Net to Gross (NTG) ratio; (c) the addition of an energy savings kit to the Residential Appliance Recycling Program; and (d) the discontinuation of the Residential On-line Home Energy Evaluation Program.

²⁸ The Parties also referred to these as measures within the residential DSM program.

²⁹ Hearing Exhibit No. 1 at ¶¶ 31-34.

61. The increased participation in the Residential High Efficiency Lighting Program will increase use of light emitting diode (LED) bulbs. LED bulbs are the newer technology in efficient lighting.

62. The CFL NTG decrease from 90 percent to 70 percent is based on recent studies. This decrease has the effect of reducing the projected annual net savings and net demand savings goals for CFLs.

63. The addition of the energy savings kit to the Residential Appliance Recycling Program will promote efficient use of DSM dollars: the Company will be in a customer's home to retrieve a recycled appliance and can take advantage of that opportunity to provide the customer with a free energy savings kit. Providing the kit may encourage further energy efficiency and may increase potential energy savings because there is direct interaction with the customer.

64. The Residential On-line Home Energy Evaluation Program generally has had low participation.³⁰ The 2016-2018 DSM Plan includes a Residential On-Site Energy Evaluation Program in which customers receive a home energy evaluation and direct installation (at no cost) of low-cost energy efficiency measures.³¹ The whole house evaluation also identifies potential efficiency improvements, educates the customer on managing energy costs, and provides information about Company programs. Given the low participation in the on-line program and

³⁰ Tr. at 27:22-24.

³¹ Hearing Exhibit No. 1 at Attachment 3 at 18 (identifying low-cost measures: "faucet aerator, low-flow showerhead, water temperature setback, hot water pipe insulation and CFLs").

the availability of the new on-site evaluation program, the record supports discontinuance of the Residential On-line Home Energy Evaluation Program.³²

65. The Settlement Agreement uses the Modified Resource Cost Test (mTRC)³³ to assess the cost-effectiveness of each program within the Residential DSM Program. The Residential High Efficiency Cooling Program has the highest mTRC (8.37),³⁴ and the Residential Home Energy Comparison Report Program has the lowest mTRC (1.19).³⁵ Each program within the Residential DSM Program has a cost-effectiveness that exceeds one.

66. For these reasons and based on the entire record, the ALJ finds good cause to approve the Black Hills Residential DSM Programs, as described in the Application and modified by the Settlement Agreement, as being in the public interest.

4. The Commercial and Industrial Programs.

67. In the Application, Black Hills included these commercial and industrial (C&I) DSM Programs³⁶ in the 2016-2018 DSM Plan: (a) C&I New Construction (includes certification requirement); (b) C&I Custom; (c) C&I Prescriptive; and (d) C&I Lighting. The programs continue, with modifications, existing C&I DSM Programs. The Company also proposed to discontinue its current C&I Self-Direct Program.

³² During the 2016-2018 DSM Plan, the Company may propose a modified or different Residential On-line Home Energy Evaluation Program if research and discussion at a DSM annual meeting or a stakeholder meeting (discussed below) demonstrate that such a DSM program is warranted and cost-effective. Hearing Exhibit No. 1 at ¶ 34; Tr. at 28:6-17.

³³ This cost-effectiveness test is discussed below.

³⁴ Hearing Exhibit No. 1 at Attachment 3 at 25.

³⁵ Hearing Exhibit No. 1 at Attachment 3 at 27.

³⁶ The Parties also referred to these as measures within the C&I DSM program.

68. The Company's direct testimonies and attachments provide persuasive evidence that supports the C&I DSM programs as proposed and the discontinuance of the C&I Self-Direct Program.

69. The Settlement Agreement contains changes to the C&I DSM Programs initially proposed by Black Hills.³⁷ These changes are: (a) removal of the Leadership in Energy and Environmental Design (LEED) certification requirement from the C&I New Construction Program; (b) continuation (or reinstatement) of the C&I Self-Direct Program; and (c) an increase in the participation in the C&I Prescriptive Program and in the C&I Lighting Program.

70. The C&I New Construction Program historically has had low participation levels.³⁸ The removal of the LEED certification requirement is designed to stimulate participation in the C&I New Construction Program. Removing the LEED certification will make the program more customer friendly, may reduce the cost for participation in the program, and may result in more participants.

71. The Self-Direct Program provides rebates to large C&I customers for self-funded energy efficiency projects. Under this program, businesses that design, engineer, implement, and commission qualifying projects can receive increased rebate levels to offset their costs of implementation. In the Application, Black Hills proposed to discontinue the Self-Direct Program. The Settlement Agreement proposes to continue (or to reinstate) this program.

72. Reinstating the C&I Self-Direct Program will provide DSM alternatives for interested customers and does not affect the overall budget for the 2016-2018 DSM Plan.³⁹

³⁷ Hearing Exhibit No. 1 at ¶¶ 35-37.

³⁸ Tr. at 28:23-24.

³⁹ Tr. at 30:7-12; *see also* Hearing Exhibit No. 1 at ¶ 36 ("To facilitate this change, the Settling Parties agreed to reallocate a portion of the budget dollars from the C&I Custom program to fund the C&I Self-direct program").

Black Hills will conduct the evaluation, measurement, and verification (EM&V) analysis on the C&I Self-Direct Program in 2018.⁴⁰

73. The Settlement Agreement also states that Black Hills will provide coordination assistance to, and will work with, FVA (which will be solely responsible for meeting the DSM program qualifications⁴¹) to maximize the opportunity for a FVA pump replacement project to qualify for either the C&I Custom Program or the C&I Self-Direct Program.⁴² This illustrates the benefits associated with having multiple potential programs for which C&I customers, like FVA, may qualify and from which they (and others) may benefit.

74. At hearing, Black Hills stated that, upon request, it will provide coordination assistance to, and will work with, other C&I customers to maximize the opportunity for those customers' projects to qualify for either the C&I Custom Program or the C&I Self-Direct Program.⁴³ Thus, there may be additional opportunities for the Company to collaborate with new or existing C&I customers to find a C&I DSM program that will generate energy savings.

75. The ALJ will modify the Settlement Agreement as necessary to require Black Hills, upon request, to provide coordination assistance to, and to work with, its C&I customers (in addition to FVA) to maximize the opportunity for those customers' projects to qualify for either the C&I Custom Program or the C&I Self-Direct Program. At the hearing, none of the Settling Parties objected to this modification.

⁴⁰ Tr. at 30:17-21.

⁴¹ Hearing Exhibit No. 1 at ¶ 59 ("FVA acknowledges that it is solely responsible for undertaking the Replacement Project redesign and procuring equipment that meets the eligible DSM Program requirements approved in this Proceeding").

⁴² Hearing Exhibit No. 1 at ¶ 59; Hearing Exhibit No. 5 at 6:14-15 ("FVA very much appreciates the commitment made by Black Hills to work with us to qualify the Replacement Project as an eligible DSM program").

⁴³ Tr. at 78:2-19.

76. The increase in the projected participation levels in both the C&I Prescriptive Program and C&I Lighting Program, combined with the residential participation increases, will increase the energy and demand savings goals in the 2016-2018 DSM Plan.

77. The Application and the Settlement Agreement contain the mTRC for each program within the C&I DSM Program. The C&I Lighting Program has the highest mTRC (3.69),⁴⁴ and the C&I Custom Program has the lowest mTRC (2.76).⁴⁵ Each program within the C&I DSM Program has a cost-effectiveness that exceeds one.

78. For these reasons and based on the entire record, the ALJ finds good cause to approve the Black Hills C&I DSM Programs, as described in the Application and modified by the Settlement Agreement and this Decision, as being in the public interest.

5. The Low-Income Assistance Program and Related Reporting Obligation.

79. In the Application, Black Hills includes these components⁴⁶ in the Low-Income Assistance Program: (a) Home Energy Evaluation/Direct Install (includes direct installation of low-cost measures⁴⁷ at no cost to the customer); (b) Standard CFL bulbs; (c) Standard LED bulbs; (d) ENERGY STAR® Refrigerator; and (e) Window/Wall Evaporative Coolers. Black Hills will pay the full cost of measures that reduce electric cooling, lighting, and refrigeration, up to \$ 1,500 in direct install measures, for each of the estimated 750 low-income participants per year.

⁴⁴ Hearing Exhibit No. 1 at Attachment 3 at 46.

⁴⁵ Hearing Exhibit No. 1 at Attachment 3 at 32.

⁴⁶ The Parties also referred to these as measures within the Low-Income Assistance Program.

⁴⁷ These low-cost measures include, for example, faucet aerators, low-flow shower head, CFLs, water temperature set-back, and hot water pipe insulation. Hearing Exhibit No. 1 at Attachment 3 at 47.

80. The Company's direct testimonies and attachments provide persuasive evidence that supports the Low-Income Assistance Program as proposed.

81. The Settlement Agreement contains changes to the Low-Income Assistance Program as contained in the 2016-2018 DSM Plan filed by the Company.⁴⁸ The changes are: (a) distribution of only LED bulbs to low-income customers and elimination of the CFL bulb component of the program; (b) increased participation for all measures in the Low-Income Assistance Program; and (c) providing Home Energy Evaluation/Direct Install participants with information about local agencies that provide bill payment assistance.

82. The decision to distribute only LED bulbs and no longer to distribute CFL bulbs is consistent with the general trend to shift from encouraging the use of CFL bulbs to encouraging the use of LED bulbs. Providing low-income customers with LED bulbs instead of CFL bulbs allows low-income customers the opportunity to experience greater energy savings.

83. Providing Home Energy Evaluation/Direct Install participants with information about the local agencies that provide bill payment assistance will give those participants useful information about available sources of assistance.

84. The ALJ finds that the Company's efforts to increase participation of low-income customers in Black Hills's DSM programs is consistent with § 40-3.2-104(4), C.R.S..

85. The Settlement Agreement contains the mTRC for the Low-Income Assistance Program. That mTRC is 3.81.⁴⁹ The program has a cost-effectiveness that exceeds one.

⁴⁸ Hearing Exhibit No. 1 at ¶¶ 38-39.

⁴⁹ Hearing Exhibit No. 1 at Attachment 3 at 49.

86. For purposes of the Low-Income Assistance Program, Black Hills agrees to report in its Annual Status Reports: (a) the number of participants in the Home Energy Evaluation/Direct Install component of its Low-Income Assistance Program; and (b) the number of participants in the Home Energy Evaluation/Direct Install component of the Low-Income Assistance Program who also participate in the Black Hills Energy Assistance Program (BHEAP).⁵⁰ This allows Black Hills, the Commission, and other interested persons to evaluate, on an annual basis, the number of customers who are receiving benefits from both the BHEAP and the Low-Income Assistance Program under the 2016-2018 DSM Plan.

87. Based on the record, the ALJ approves these reporting requirements. In its Annual Status Reports, Black Hills must report: (a) the number of participants in the Home Energy Evaluation/Direct Install component of the Low-Income Assistance Program; and (b) the number of participants in the Home Energy Evaluation/Direct Install component of the Low-Income Assistance Program who also participate in the BHEAP.

88. For these reasons and based on the entire record, the ALJ finds good cause to approve the Black Hills Low-Income Assistance Program and related reporting, as described in the Application and modified by the Settlement Agreement, as being in the public interest.

6. The School-Based Energy Education Program.

89. The 2016-2018 DSM Plan includes a School-Based Energy Education Program, which provides hands-on education lessons and energy savings kits to middle school and high school students within Black Hills's service territory.⁵¹ This program is designed to provide,

⁵⁰ Hearing Exhibit No. 1 at ¶ 54.

⁵¹ Hearing Exhibit No. 1 at ¶ 40.

at no cost to the students, energy savings kits⁵² to 2,000 middle school students and 500 high school students each year of the DSM Plan. The program provides middle school students and high school students an opportunity to learn about the role energy efficiency plays in the provision of electric services.

90. The Company's direct testimonies and attachments provide persuasive evidence that supports the School-Based Energy Education Program as proposed.

91. The Settlement Agreement describes one change to the School-Based Energy Education Program from the 2016-2018 DSM Plan filed by the Company.⁵³ The change is: the addition of four CFL bulbs to each energy savings kit distributed through this program. This addition furthers the educational purpose of the kits by adding an additional type of bulb at a reasonable cost.

92. Black Hills has phased out CFL bulbs in other DSM programs included in the 2016-2018 DSM Plan. Nonetheless, providing the CFL bulbs in the School-Based Energy Education Program creates an additional, cost-effective opportunity for energy savings by Black Hills's customers who receive the kits and use the bulbs. In addition, adding the CFL bulbs does not increase the cost of the School-Based Energy Education Program because the bulbs are low cost when purchased in bulk.⁵⁴

93. To the extent that the School-Based Energy Education Program is an education program as defined in § 40-1-102(7), C.R.S., it is "not be subject to independent

⁵² The energy savings kit may include, for example, kitchen faucet aerator, low-flow shower head, toilet leak detector tablets, flow rate test bag, efficient night light, LED bulbs, furnace/air conditioner filter alarm, digital thermometer, mini tape measure, and natural resources fact chart. Hearing Exhibit No. 1 at Attachment 3 at 50.

⁵³ Hearing Exhibit No. 1 at ¶ 40.

⁵⁴ Tr. at 32:18-25.

cost-effectiveness requirements.” The Settlement Agreement nevertheless contains the mTRC for this program: 2.37.⁵⁵ The program has a cost-effectiveness that exceeds one.

94. For these reasons and based on the entire record, the ALJ finds good cause to approve the Black Hills School-Based Energy Education Program, as described in the Application and modified by the Settlement Agreement, as being in the public interest.

7. Notice Requirements and EM&V Reports.

a. Notice Requirements.

95. In the Application, the Company sought approval to hold of DSM annual meetings.⁵⁶ With respect to each meeting, the Company will provide notice of the DSM annual meeting to the Parties in this Proceeding and will post the notice on the Company’s energy efficiency website. In addition, within 30 days following the meeting, the Company will provide a summary of the DSM annual meeting to the Parties in this Proceeding and will post the meeting summary on the Company’s energy efficiency website. The Settlement Agreement does not modify this aspect of the Application.

96. In the Application, the Company also sought approval to provide 30-Day Notice and 60-Day Notice of 2016-2018 DSM Plan changes without the requirement of Commission approval.⁵⁷ The Company no longer seeks this approval.

97. In the Settlement Agreement, the Company retains -- and seeks approval of -- the 60-Day Notice and 90-Day Notice process that is used in the 2012-2015 DSM Plan.⁵⁸

⁵⁵ Hearing Exhibit No. 1 at Attachment 3 at 51.

⁵⁶ Hearing Exhibit No. 6 at ¶18.

⁵⁷ Hearing Exhibit No. 6 at ¶¶ 19-21.

⁵⁸ Hearing Exhibit No. 1 at ¶¶ 49-50.

98. First, subject to the 115 percent budget flexibility discussed below: (a) the 60-Day Notice process will apply to the addition of a new DSM program, to changes to eligibility requirements, to changes related to rebate levels, to new or eliminated measures within a DSM program, and to modification of the approved avoided costs or technical assumptions; and (b) the 90-Day Notice process will apply to discontinuance of any DSM program.

99. Second, Black Hills will provide each 60-Day Notice and the 90-Day Notice to the Parties on the certificate of service for this Proceeding through the Commission's E-Filings System. Black Hills also will post the Notices on its energy efficiency website; this is a new requirement that was not contained in the 2012-2015 DSM Plan implemented by the Company.

100. Third, the Settlement Agreement contains a detailed process that includes interested persons providing responses to the Company and for the Company's actions following receipt of responses (if any).⁵⁹

101. While she generally agrees with these provisions, the ALJ finds that additional requirements are necessary. The ALJ will modify the notice process contained in the Application and Settlement Agreement by adding requirements to make that process more meaningful, inclusive, and robust.

102. These are the additional requirements: (a) Black Hills will provide the notice of the DSM annual meeting, the summary of the DSM annual meeting, the 60-Day Notice, the 90-Day Notice, and a notice of the ultimate decision on any issue (Decision Notice) to the Parties on the certificate of service for this Proceeding through the Commission's E-Filings System; (b) Black Hills will post each notice of a DSM annual meeting, each summary of a DSM annual meeting, each 60-Day Notice, 90-Day Notice, and each Decision Notice on its

⁵⁹ Hearing Exhibit No. 1 at ¶ 50.

energy efficiency website; (c) Black Hills will provide notice to the Commission by filing, in this Proceeding, each notice of a DSM annual meeting, each summary of a DSM annual meeting, each 60-Day Notice, each 90-Day Notice, and each Decision Notice; and (d) Black Hills will provide, by e-mail, each notice of a DSM annual meeting, each summary of a DSM annual meeting, each 60-Day Notice, each 90-Day Notice, and each Decision Notice to each person who participates in an DSM annual meeting or one or more of the stakeholder processes (discussed below) and who provides an e-mail address to the Company. At the evidentiary hearing, Black Hills generally agreed to the additional requirements;⁶⁰ and no Intervenor objected to them.

103. As modified by this Decision, the notice procedures provide the Commission and interested persons with adequate and effective notice of relevant program-related activities; provide interested persons with an opportunity to participate in program-related discussions; and are, therefore, in the public interest.

b. Evaluation, Measurement, and Verification (EM&V) Reports.

104. In accordance with the schedule contained in the Settlement Agreement and within 30 days of completion of the report, Black Hills will file in this Proceeding the DSM Evaluation, Measurement, and Verification (EM&V) Reports for the 2016-2018 DSM Plan.⁶¹ Each EM&V Report must contain the information and data specified in the Settlement Agreement. This process generally is consistent with the procedures used for evaluation, measurement, and verification of the programs in the Company's 2012-2015 DSM Plan.

⁶⁰ Tr. at 58:2-25; *id.* at 62:21 - 63:16.

⁶¹ Tr. at 78:21 - 80:4; *see also* Hearing Exhibit No. 1 at Attachment 3 at 11 (discussion of evaluation, measurement, and verification of programs).

105. The EM&V Report procedures provide the Commission and interested persons with information about the programs as implemented and are, therefore, in the public interest.

8. DSM Annual Meetings and Stakeholder Processes.

106. In the Application, Black Hills seeks approval to hold an annual DSM-related meeting;⁶² the Settlement Agreement also contains that request.⁶³ In addition, the Settlement Agreement describes, and seeks approval of, three separate stakeholder processes: (a) a low-income customer stakeholder process; (b) a demand response pilot investigation process; and (c) an enhanced C&I customer outreach process.⁶⁴

107. The DSM annual meeting will be held in the fourth quarter of each DSM Plan year and will provide an opportunity for Black Hills and interested persons “to discuss changes to the programs, issues of concern, new program ideas, existing program evaluations, and the results of [Black Hills’s] DSM programs.” Hearing Exhibit No. 6 at 7. If changes to the 2016-2018 DSM Plan result from an DSM annual meeting, the changes will be implemented through the notice procedures discussed above.

108. The first stakeholder process is the low-income customer stakeholder process. Black Hills, CEO, and other interested stakeholders (including EOC as appropriate) will begin to meet in January 2016 on a quarterly basis (or at a different frequency as mutually agreed by Black Hills and CEO). The purpose of these meetings is to discuss the coordination and cross-promotion of BHEAP and the Low-Income Assistance Program implemented as part of the 2016-2018 DSM Plan. If changes to the 2016-2018 DSM Plan result from this stakeholder process, the changes will be implemented through the notice procedures discussed above.

⁶² Hearing Exhibit No. 6 at ¶ 18.

⁶³ Hearing Exhibit No. 1 at ¶ 25.

⁶⁴ Hearing Exhibit No. 1 at ¶¶ 55-58.

109. The second stakeholder process is the investigation of a demand response pilot program. Black Hills, EEBC, SWEEP, and other interested persons will meet quarterly (or at another frequency as mutually agreed by Black Hills, EEBC, and SWEEP) beginning in January 2016 to develop a mutually-acceptable framework for a potential demand response pilot program focused on residential and/or small commercial customers. The investigation will include consideration of a program to study demand response potential and energy savings from Smart Thermostat or other technology adoption. If a *pilot demand response program* is deemed feasible and projected to result in a cost-effective full scale program,⁶⁵ the Company will implement the pilot through the 60-Day Notice procedure (discussed above) or as otherwise agreed to by the Settling Parties.

110. If a pilot demand response program proves to be feasible and cost-effective, the Settlement Agreement neither requires nor contemplates that the Company will implement a *full-scale demand response program* within the 2016-2018 DSM Plan.⁶⁶ At the evidentiary hearing, the Company agreed⁶⁷ -- and the ALJ will modify the Settlement Agreement as necessary to require -- that, should the Company decide to implement a full-scale demand response program within the 2016-2018 DSM Plan, the Company: (a) will give notice to the Commission and interested persons through the notice procedures discussed above; and (b) will make a filing that supports the full-scale demand response program and that provides for that program the same types of information provided with respect to the C&I DSM programs in the 2016-2018 DSM Plan.⁶⁸

⁶⁵ Tr. at 84:10-19.

⁶⁶ Tr. at 119:11-22.

⁶⁷ Tr. at 72:1 - 73:6.

⁶⁸ See generally Hearing Exhibit No. 1 at Attachment 3 at 28-46 (C&I Programs); *id.* at Appendix A (Detailed Benefit-Cost Analysis Results).

111. In the Application, Black Hills proposed to file a report with the Commission on the economic feasibility of implementing a residential DSM “Saver’s Switch” program within 24 months of a final Commission decision in this Proceeding. The Company has withdrawn this proposal.⁶⁹

112. The third stakeholder process is an enhanced C&I customer outreach process. The Company will hold semi-annual (*i.e.*, twice yearly) C&I customer outreach meetings. These meetings may allow the Company and its C&I customers to identify additional opportunities for energy savings through the C&I New Construction, C&I Custom, C&I Self-Direct, C&I Prescriptive, and other programs. The Company believes that the outreach process has the potential to attract additional participation in the C&I DSM programs and, thus, to garner additional energy and demand savings.⁷⁰ If changes to the 2016-2018 DSM Plan result from this stakeholder process, the changes will be implemented through the notice procedures discussed above.

113. The DSM annual meetings and the three stakeholder processes each serve a different worthwhile purpose, and each advances the DSM program-related goals of the relevant statutes (quoted above) and this Commission. In addition, the ALJ finds it persuasive that the investigation of a demand response pilot program is supported by business interests through EEBC and energy efficiency experts through SWEEP. Finally, the DSM annual meetings and each of the three stakeholder processes provide interested persons with an opportunity to discuss programs and their effectiveness and to review and to comment on the Company’s proposed program-related actions.

⁶⁹ Hearing Exhibit No. 1 at ¶ 57.

⁷⁰ Tr. at 75:7-16.

114. For these reasons and based on the entire record, the ALJ finds good cause to approve the DSM annual meetings (described in the Application) and the three stakeholder processes (described in the Settlement Agreement) as being in the public interest.

9. Avoided Costs.

115. The avoided costs used by Black Hills in the development of the 2016-2018 DSM Plan are shown in the table in the Settlement Agreement (Hearing Exhibit No. 1) at ¶ 51. Black Hills witness Cottrell and Black Hills witness Seaman addressed these avoided costs.

116. Black Hills witness Seaman explained the derivation of the figures in the Avoided Cost column and the Capacity Cost column (*i.e.*, the first and second columns) in the table in the Settlement Agreement at ¶ 51.⁷¹ The Avoided Cost column figures were developed by comparing two model runs based on data from the Company's most recent Electric Resource Plan. The Capacity Cost column figures are based on the marginal resource (*i.e.*, the LM 6000), the most recent resource that will be added to the Black Hills system.

117. Black Hills witness Cottrell addressed the Avoided Cost w/NEBs column, the Capacity Cost w/NEBs column, and the Avoided Energy Cost column (*i.e.*, the final three columns) in the table in the Settlement Agreement at ¶ 51.⁷² He explained: (a) the dollar values in the three columns are net present value stated in 2016\$; (b) the use of Company-provided data and of publicly-available data as inputs in the analysis; and (c) the modeling process that resulted in the figures in the three columns. Black Hills witness Cottrell also explained: (a) NEBs are nonenergy benefits, as provided for in § 40-1-102(5)(b)(III), C.R.S.; (b) he used a 10 percent NEBs adder; and (c) Black Hills has used a 10 percent NEBs adder in its past DSM filings.

⁷¹ Tr. at 97:9 - 98:18.

⁷² Tr. at 92:16 - 94:24.

118. SWEEP witness Geller provided testimony regarding the Commission's use of the NEBs adder.⁷³ His testimony is based on his extensive experience in past Black Hills DSM proceedings and past Public Service Company of Colorado (Public Service) DSM proceedings.

119. The witnesses provided uncontested and detailed substantive testimony regarding the derivation of the avoided costs. The ALJ finds this testimony to be persuasive.

120. With respect to the use of a NEBs adder in general: (a) to recognize all benefits potentially to be derived from a DSM program, the avoided cost and benefit/cost analysis of the DSM program must account for NEBs; (b) § 40-1-102(5)(b)(III), C.R.S., requires the Commission to determine the NEBs but leaves to the Commission's discretion the implementation of that requirement; (c) determining the NEBs and quantifying them are difficult to do; and (d) a NEBs adder is an appropriate tool to use to account for, or to recognize, NEBs when conducting a cost-effectiveness analysis of a DSM program.⁷⁴ *See generally* Decision No. C08-0560 at ¶¶ 67-81 (discussion of NEBs, use of NEBs adder).⁷⁵ Approving the use of a NEBs adder is within the Commission's discretion.

121. With respect to the 10 percent NEBs adder used in the analysis in this Proceeding, the adder is consistent with the NEBs adder used in previous Company DSM filings, without Commission objection or reservation. In addition, but less persuasive given the different circumstances of the two electric utilities (discussed below), the 10 percent NEBs adder is consistent with the NEBs adder that the Commission approved for Public Service in Proceeding

⁷³ Tr. at 118:3 - 119:22.

⁷⁴ In making this determination, the ALJ neither finds nor suggests -- and does not intent to find or to suggest -- that a NEBs adder is only tool one may use to account for NEBs in a cost-effectiveness analysis.

⁷⁵ That Decision was issued on June 5, 2008 in Proceeding No. 07A-420E, *In the Matter of the Application of Public Service Company of Colorado for Authority to Implement an Enhanced Demand Side Management Program and to Revise its Demand-Side Management Cost Adjustment Mechanism to Include Current Cost Recovery and Incentives*.

No. 13A-0686EG.⁷⁶ Based on the entire record, the ALJ finds good cause to approve the use of the 10 percent NEBs adder for the Company's electric DSM programs in this Proceeding.

122. Based on the testimony and the entire record, the ALJ finds the avoided costs shown in the Settlement Agreement (Hearing Exhibit No. 1) at ¶ 51 to be reasonable. On this basis, the ALJ approves, for this Proceeding, the use of the avoided costs shown in the table in the Settlement Agreement (Hearing Exhibit No. 1) at ¶ 51.

10. DSM Incentive Structure.

123. The Settlement Agreement retains Black Hills's existing DSMCA incentive structure as contained in the DSMCA tariff and implemented through the DSMCA Rider found at Tariff Sheet No. 71.⁷⁷ The Company filed the supplemental direct testimony of Black Hills witness Jurek that, among other things, provides information that supports maintaining the existing incentive structure.⁷⁸

124. The Company's current DSMCA incentive structure is comprised of three components: (a) the financial disincentive offset (FDO); (b) the performance incentive; and (c) the incentive cap. The incentive structure is found in the Company's electric DSMCA Tariff, which is found in Hearing Exhibit No. 1 at Attachment 1 at Sheet No. 69.⁷⁹

125. The FDO authorizes Black Hills to collect \$ 150,000 in additional after-tax revenue annually through the DSMCA tariff, provided the Company achieves at least 80 percent of the annual energy savings goal that is contained in the applicable DSM Plan. The FDO has remained at \$ 150,000 since 2009.

⁷⁶ Decision No. C14-0731 at ¶¶ 106-10.

⁷⁷ Hearing Exhibit No. 1 at ¶ 60.

⁷⁸ This testimony is Hearing Exhibit No. 3.

⁷⁹ This Attachment 1 is the electric DSMCA tariff with proposed language changes. One can ascertain the current tariff by disregarding the proposed language changes.

126. Black Hills is authorized to collect a performance incentive when Black Hills achieves more than 80 percent of its energy savings goal. The performance incentive contains two structural components. First, for each 1 percent of energy savings achieved *above 80 percent*, the Company will earn two tenths (2/10) of 1 percent of the net economic benefits achieved. This component is applicable up to a level of 10 percent (*i.e.*, 130 percent of goal attainment). Second, for each 1 percent of energy savings achieved *above 130 percent*, Black Hills earns 1 tenth (1/10) of 1 percent of the net economic benefits achieved. This component is applicable up to 12 percent (*i.e.*, 150 percent of goal attainment).

127. The incentive is capped: the sum of the FDO and the performance incentive cannot exceed an amount equal to 20 percent of the total annual expenditure on DSM for each program year.

128. By Decision No. C14-0731 issued in Proceeding No. 13A-0686EG, the Commission established an incentive structure for Public Service that precludes Public Service from receiving a performance incentive bonus unless it achieves 100 percent of its annual savings goal.⁸⁰

129. Aware that the Commission had established this incentive structure for Public Service, Staff performed an independent analysis and compared Black Hills's market, its customers, and its certificated area to those of Public Service. Staff also reviewed the supplemental direct testimony and attachments of Black Hills witness Jurek. Based on its review and analysis, Staff concluded that there are sufficient differences between Black Hills and Public Service to support Staff's recommendation that the Black Hills incentive mechanism be retained

⁸⁰ Decision No. C14-0731 at ¶¶ 31-32.

and that the Commission not order for Black Hills the incentive structure that it ordered for Public Service.⁸¹

130. Hearing Exhibit No. 1 at Attachment 5 and Hearing Exhibit No. 3 at 8-22 and Attachment SMJ-1 provide extensive data comparing Black Hills and Public Service from a number of perspectives. In addition, Black Hills witness Jurek provided oral testimony comparing the two utilities.⁸²

131. The ALJ finds it appropriate to retain the Black Hills incentive structure.

132. First, the testimony and the comparative analyses are persuasive. In particular, the ALJ finds persuasive the evidence pertaining to: (a) the Company's historical energy savings performance as compared to that of Public Service; (b) the differences in DSM program allocations between the two utilities; and (c) the differences in the demographics of the two utilities' service territories.

133. It appears that Public Service's strong performance was a key factor in the Commission's decision to change Public Service's incentive structure;⁸³ and, historically, Black Hills has not achieved the savings results that Public Service has achieved. In addition, the budget allocations as between the two utilities are very different, with Black Hills having substantially more spending for low-income programs. Moreover, the demographic differences (*e.g.*, size of service territory, customer incomes, number of customers, number and value of homes) support maintaining the current treatment for Black Hills.

⁸¹ Tr. at 107:14-24.

⁸² Tr. at 14:17 - 15:13.

⁸³ See Decision No. C14-0731 at ¶ 18 ("Public Service has been very successful and has consistently exceeded its electric DSM goals").

134. Second, given the proportionally smaller DSM market potential in the Black Hills service territory compared to that in the Public Service service territory and the higher average cost per kWh of energy saved by the Black Hills DSM programs, imposing Public Service's incentive structure on Black Hills could have negative consequences for the Black Hills customers. Specifically, if the Commission were to impose Public Service's incentive structure on Black Hills and were to set the goal at an inappropriately high level (*i.e.*, 100 percent), Black Hills might increase its spending in an effort to reach the goal, which would increase costs for customers and decrease the cost-effectiveness of the Black Hills DSM Plan. Conversely, if the Commission were to set the goal too low (*i.e.*, below 80 percent), Black Hills potentially could achieve the goal easily and collect its incentive without providing as many benefits to customers.

135. Third, the Company's existing incentive structure has inherent flexibility, which allows Black Hills to collect a smaller or larger incentive for varying levels of goal attainment.

136. Based on the testimony and the entire record, the ALJ approves retention of the existing Black Hills electric DSMCA incentive structure as being in the public interest.

11. Budget for the 2016-2018 DSM Plan and Budget Flexibility.

a. The Budget.

137. The Settlement Agreement increases the budget in each of the three years under the 2016-2018 DSM Plan as compared to the corrected budget for the 2016-2018 DSM Plan filed by the Company.⁸⁴ Specifically, the Settlement Agreement resulted in budget increases of: (a) 5.6 percent in 2016; (b) 5.6 percent in 2017; and (c) 5.5 percent in 2018.

⁸⁴ Hearing Exhibit No. 1 at ¶ 42.

138. While the total budget increases in each year, the Settlement Agreement substantially reduces the General Administration cost category and the General Marketing/Education cost category in each year of the 2016-2018 DSM Plan.⁸⁵ As a result, kWh savings per dollar under the Settlement Agreement is 2.95 kWh per dollar spent, which is an increase over the corrected Black Hills filing of 2.84 kWh per dollar spent.⁸⁶

139. Based on the evidence and the entire record, the ALJ finds the budget for the 2016-2018 DSM Plan to be reasonable and in the public interest. The ALJ will approve the budget for the 2016-2018 DSM Plan.

b. Budget Flexibility.

140. Under its 2012-2015 DSM Plan, Black Hills may move budget dollars between programs and customer segments within the Plan without further Commission authorization and approval provided the Company does not incur costs in excess of 115 percent of the applicable annual Plan budget amount.⁸⁷ Black Hills seeks to retain the same budget flexibility in the 2016-2018 DSM Plan. In addition, the Company agrees that, if it exceeds the 2016-2018 DSM Plan budget in any given year by more than 115 percent, the Company will have the burden of proof going forward with respect to the reasonableness and prudence of any expenditures exceeding the 115 percent cap.⁸⁸

141. With this budget flexibility and by way of example, Black Hills could implement a demand response pilot even though the 2016-2018 DSM Plan contains no specific funds allocated to such a pilot.⁸⁹ As another example, the budget flexibility allows for more

⁸⁵ Each category is reduced by 37.5 percent in 2016, 2017, and 2018. Hearing Exhibit No. 1 at ¶ 42.

⁸⁶ Hearing Exhibit No. 1 at ¶ 17.

⁸⁷ Hearing Exhibit No. 2 at 27:15-19.

⁸⁸ Hearing Exhibit No. 2 at 28:4-6.

⁸⁹ Tr. at 84:15 - 85:12.

participants in certain DSM programs, such as the C&I programs, if significant interest and qualifying applicants materialize over the course of the 2016-2018 DSM Plan.⁹⁰

142. Based on the evidence and the entire record, the ALJ finds that the proposed budget flexibility is consistent with, and furthers, the DSM program-related goals of the relevant statutes (quoted above) and this Commission. The proposed budget flexibility is an appropriate means by which to maximize the impact of the dollars spent in the DSM Plan.

143. The Settlement Agreement does not specify the process by which Black Hills will notify the Commission and interested persons when it exceeds the 115 percent budget cap. To maintain general yet meaningful Commission oversight of the Black Hills 2016-2018 DSM Plan, particularly in the area of the impact on participants and nonparticipants (§ 40-3.2-104(4), C.R.S.), the ALJ finds it necessary and appropriate to establish an explicit process to notify the Commission and interested persons in the event Black Hills exceeds the 115 percent cap on its budget flexibility. During the evidentiary hearing, the Company indicated that it would find a reporting requirement to be acceptable.⁹¹ No Settling Party objected to the addition of a reporting process.

144. Section 40-3.2-104(6), C.R.S., requires electric IOUs to file an “annual report to the commission describing the DSM programs implemented by the electric utility in the previous year.” That provision lists the information that a utility must provide, including “[a]ny other information required by the” Commission (§ 40-3.2-104(6)(f), C.R.S.). Notice of, and information about, the Company’s exceeding the 115 percent DSM budget cap is information that the Commission requires the Company to report pursuant to that statute.

⁹⁰ Tr. at 75:17-25.

⁹¹ *See generally* Tr. at 47:8 - 51:15 (testimony of Black Hills witness Jurek).

145. In addition, the Black Hills electric DSMCA tariff provides an avenue for this Commission review and approval: the tariff requires Black Hills to “apply with the Commission for revisions to its DSMCA to reflect the recovery of the Financial Disincentive Offset and Performance Incentive and any over or under collection of prior year costs” on April 1 of each year.⁹² Any costs in excess of the 115 percent budget figure would result in an under-collection that would be identified as part of this filing for Commission approval.

146. The ALJ finds the following four-step process to be reasonable and to balance the interests of Black Hills and those of interested persons while maintaining a reasonable level of Commission oversight of the implementation of the 2016-2018 DSM Plan.

147. The first step: if the Company exceeds 115 percent of the established annual DSM budget, the Company will inform the Commission and interested persons by making -- in this Proceeding -- one of two filings (DSM Budget Notice): (a) if it elects to do so, the Company will file a motion that identifies, and seeks to establish the prudence of, the costs in excess of 115 percent of the established annual budget for a particular year and will file this motion *at any time* after Black Hills establishes that the 115 percent budget cap has been exceeded, *but in no event later* than April 1 of the year following the year in which the 115 percent budget cap was exceeded;⁹³ or (b) if it elects not to file the motion described in (a), the Company will include, in the Annual Status Report filed each April with the Commission, a notice that the 115 percent budget cap was exceeded in the calendar year for which the report is filed and will include a motion seeking to establish the prudence of those costs. The DSM Budget Notice filed in the

⁹² Hearing Exhibit No. 1 at Attachment 1 at 1 (definition of April DSMCA Filing Date).

⁹³ Tr. at 49:8-14.

first step must include any evidence and supporting information regarding the prudence of the costs in excess of 115 percent of the established annual budget.

148. The April 1 Annual Status Report provides the backstop for the filing of notice of, and supporting information regarding the prudence of, costs in excess of the 115 percent budget figure. Black Hills has the option to make a separate filing earlier than April 1 if it seeks to have the Commission determine the prudence of these costs on a more expedited basis.

149. The second step: following the filing of a DSM Budget Notice, interested persons will have the opportunity to file a response to that Notice (including the supporting information) and may request a hearing on the DSM Budget Notice. An interested person's response to the DSM Budget Notice must be filed in this Proceeding within 21 days of the filing of that Notice.

150. The third step: the Company will have the opportunity to file a reply to any responses filed by interested persons. The Company's reply to a response must be filed in this Proceeding within seven days of the filing of the response.

151. The fourth step: as it deems necessary, the Commission will enter a Decision addressing the DSM Budget Notice, including the prudence of any excess costs. As it deems necessary, the Commission may hold a hearing on, or may require additional information with respect to, the DSM Budget Notice.

152. Costs identified in a DSM Budget Notice are not approved and, thus, do not carry a presumption of prudence or a finding of prudence absent a Commission Decision that addresses the excess DSM Program costs identified in the Notice and their prudence.

153. The ALJ will modify the Settlement Agreement as necessary to require Black Hills to implement the above-described four-step process for the DSM Plan years of 2016, 2017, and 2018. This likely will require changes to the Company's electric DSMCA tariff.

154. With the addition of the process described above, the record establishes that approving the Company's request for budget flexibility is reasonable and is in the public interest. The ALJ will approve, with the addition of the above-described four-step process, the requested budget flexibility for the 2016-2018 DSM Plan.

12. Cost-Effectiveness of 2016-2018 DSM Plan.

155. The mTRC is an accepted method to measure cost-effectiveness of DSM programs and plans and is used in Colorado to assess the cost-effectiveness of individual DSM programs and overall DSM plans.⁹⁴

156. The mTRC evaluates the cost-effectiveness of measures and programs from a societal perspective. "The mTRC measures the net costs of an energy efficiency program as a resource option based on the total costs of the program, including participant costs and utility costs."⁹⁵ To be consistent with, and to implement, § 40-1-102(5)(b)(III), C.R.S., the mTRC includes the NEBs adder.

157. The mTRC represents the combination of the effects of a DSM program on both participating and non-participating customers. The mTRC allows the Commission to meet its § 40-3.2-104(4), C.R.S., obligation to "give due consideration to the impact of DSM programs on nonparticipants and on low-income customers."

158. Based on the evidence in this Proceeding, the forecasted benefit-cost ratio for the DSM programs was calculated in accordance with §§ 40-1-102(5)(b) and 40-1-102(5)(c), C.R.S. The evidence establishes that, based on its forecasted mTRC, each DSM program, the Low-Income Assistance Program, and the School-Based Energy Education Program have a

⁹⁴ Hearing Exhibit No. 1 at Attachment 3 at 3; Tr. at 120:10-12.

⁹⁵ Hearing Exhibit No. 2 at 11:11-13.

benefit-cost ratio that exceeds one.⁹⁶ As a result, the programs in the 2016-2018 DSM Plan are cost-effective, as defined in § 40-1-102(5)(a), C.R.S.

159. Based on the evidence in this Proceeding, the ALJ finds that the 2016-2018 DSM Plan is cost-effective and is in the public interest.⁹⁷

13. Ratepayer Impacts.

160. The Settlement Agreement projects that the electric DSMCA rider for the next DSMCA tariff filing (*i.e.*, calendar year 2016) will be approximately 2.60 percent.⁹⁸ Under this projection, as of January 1, 2016, the typical Black Hills residential customer will see an increase of approximately 0.33 percent (\$ 0.33) per month, and the typical Black Hills small commercial customer will see an increase of approximately 0.33 percent (\$ 1.26) per month.

161. The ALJ finds that these impacts are just and reasonable. In making this finding, the ALJ considered: (a) the breadth of the DSM programs' reach across all customer classes and, within the residential customer class, low-income customers; (b) the refinements and modifications agreed to in the Settlement Agreement that resulted in -- compared to the DSM Plan contained in the Application -- an approximately 10 percent increase in energy savings over the Plan period (2016-2018), a higher (and therefore better) mTRC result, and greater kWh savings per dollar of Plan spending;⁹⁹ and (c) the 10 percent increase in the energy savings goals for a 5.6 percent budget increase that was achieved in the Settlement Agreement.

⁹⁶ The higher the benefit-cost ratio (*i.e.*, the more the ratio exceeds one), the more cost-effective is the DSM program or measure.

⁹⁷ See generally Tr. at 128:17-23 (discussion of public interest).

⁹⁸ Hearing Exhibit No. 1 at ¶ 47; *id.* at Attachment 4 (*estimated* calculation of electric DSMCA for calendar year 2016).

⁹⁹ Hearing Exhibit No. 1 at ¶ 17.

14. DSMCA Tariff Changes.

162. As a result of the terms in the Settlement Agreement, the Settling Parties propose revisions to the DSMCA tariff.¹⁰⁰ In addition, the Settling Parties agreed that, if approved, the Company would file compliance tariffs on not less than two days' notice following a final Commission decision in this Proceeding.¹⁰¹

163. The ALJ finds good cause to approve the clarifying changes to the electric DSMCA tariff generally in the form set forth in Attachment 1 to the Settlement Agreement. In addition, and to the extent necessary to implement the four-step process that will occur should the Company exceed the 115 percent budget flexibility cap, the ALJ orders Black Hills to change its electric DSMCA tariff to incorporate the process.

164. Filing compliance tariffs on two days' notice may not allow sufficient time to review tariff changes (if any) made necessary by the addition of the four-step process that occurs when the Company exceeds the 115 percent budget flexibility cap. Consequently, the ALJ will order Black Hills to file -- *on not less than five business days' notice* -- its tariffs that: (a) include the form set forth in Attachment 1 to the Settlement Agreement; and (b) as necessary, include the four-step process that occurs when the Company exceeds the 115 percent budget flexibility cap.

15. Summary of Findings and Approvals.

165. For the reasons discussed, based on the record, and subject to the modifications and additions discussed in this Decision, the ALJ finds that Black Hills has established that the Settlement Agreement attached to this Decision as Appendix A, including the 2016-2018 DSM Plan that is Attachment 3 to the Settlement Agreement, meets the requirements of

¹⁰⁰ Hearing Exhibit No. 1 at Attachment 1; Hearing Exhibit No. 2 at 31:15 - 32:22.

¹⁰¹ Tr. at 23:12-14.

§ 40-3.2-104, C.R.S.; is appropriate; and is in the public interest. This finding includes approval of the Black Hills 2016-2018 DSM programs, the energy and demand savings goals, the participation goals, the DSM budgets, the technical assumptions, the projected savings, the avoided costs, the NTG ratios, and the EM&V reporting schedule.

166. For the reasons discussed, based on the record, and subject to the modifications and additions discussed in this Decision, the ALJ finds that Black Hills has established that approval of the requested flexibility to revise the 2016-2018 DSM Plan -- including the requested budget flexibility -- is consistent with § 40-3.2-104, C.R.S.; is appropriate; and is in the public interest.

167. For the reasons discussed, based on the record, and subject to the modifications and additions discussed in this Decision, the ALJ finds that Black Hills has established that approval of the annual report filing requirements, the DSM annual meetings, the three stakeholder processes, the notice procedures with regard to 2016-2018 DSM Plan changes, and the DSMCA tariff revisions is consistent with § 40-3.2-104, C.R.S.; is appropriate; and is in the public interest.

168. For the reasons discussed, based on the record, and subject to the modifications and additions discussed in this Decision, the ALJ finds that Black Hills has established that approval of the request to retain its existing DSMCA incentive structure and to continue to use this incentive structure over the 2016-2018 DSM Plan period is consistent with § 40-3.2-104, C.R.S.; is appropriate; and is in the public interest.

III. CONCLUSIONS

169. The Commission has jurisdiction over the subject matter of this Proceeding and over the Settling Parties.

170. The Settlement Agreement, with the modifications and additions discussed in this Decision, is a just, equitable, and reasonable resolution of issues that were or could have been contested among the Parties in this Proceeding.

171. Approval of the Settlement Agreement, with the modifications and additions discussed in this Decision, is just; is reasonable; and is in the public interest.

172. Consistent with the discussion above, the Settlement Agreement, which is attached to this Decision as Appendix A and is incorporated by reference, as modified by this Decision, should be accepted.

173. Consistent with the discussion above and consistent with the Settlement Agreement as modified by This Decision, and subject to the modifications and additions identified above, the Application should be granted.

174. Black Hills must comply with the terms of this Decision and with the terms of the Settlement Agreement, as modified by this Decision.

175. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Settlement Agreement and its five attachments filed on September 18, 2015, as corrected, are attached to this Decision as Appendix A and are incorporated by reference into this Decision as if set out in full.

2. Consistent with the discussions above, the Settlement Agreement is modified.

3. Consistent with the discussion above and subject to the conditions below, the Settlement Agreement, as modified, is approved.

4. Consistent with the discussion above and subject to the conditions below, the Unopposed Joint Motion to Approve Settlement Agreement is granted.

5. Consistent with the discussion above and as modified by the Settlement Agreement and this Decision, the Application for approval of its electric demand side management plan for program years 2016 through 2018 filed by Black Hills/Colorado Electric Utility Company, LP, is granted.

6. Consistent with the discussion above, Black Hills/Colorado Electric Utility Company, LP, shall make the filings, and shall provide the information, as required by this Decision and as required by the terms of the Settlement Agreement, as modified.

7. Consistent with the discussion above, Black Hills/Colorado Electric Utility Company, LP, shall comply with the terms of this Decision and with the terms of the Settlement Agreement, as modified.

8. Consistent with the discussion above, Black Hills/Colorado Electric Utility Company, LP, shall make, on not less than five business days' notice following a final Commission decision in this Proceeding, a compliance filing of revisions to the electric Demand Side Management Cost Adjustment tariff that both includes the form set forth in Attachment 1 to the Settlement Agreement (which is attached to this Decision as Appendix A), and implements the processes ordered in this Decision. This compliance filing shall be in the form of an Advice Letter with the modified tariff sheets appended. As authority for filing the Advice Letter on five business days' notice, the Company shall cite this Decision.

9. The Motion for Waiver of Response Time filed on September 18, 2015 is denied as moot.

10. 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.

11. 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.

a) 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.

b) 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.

12. 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)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge