

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17A-0272G

IN THE MATTER OF THE VERIFIED JOINT APPLICATION OF BLACK HILLS/COLORADO GAS UTILITY COMPANY, LP D/B/A BLACK HILLS ENERGY AND BLACK HILLS GAS DISTRIBUTION, LLC D/B/A BLACK HILLS ENERGY, FOR APPROVAL OF A COMBINED NATURAL GAS DEMAND SIDE MANAGEMENT (DSM) PLAN FOR CALENDAR YEARS 2018, 2019 AND 2020 AND FOR APPROVAL OF REVISIONS TO THEIR GAS DSM COST ADJUSTMENT TARIFFS.

MODIFIED SETTLEMENT AGREEMENT

I. INTRODUCTION

On August 24, 2017, Black Hills Gas Distribution, LLC (“BH Gas Distribution”) and Black Hills/Colorado Gas Utility Company, Inc. (“BH Gas Utility”) (collectively, the “former utilities”), Trial Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), and Energy Outreach Colorado (“EOC”) filed a Settlement Agreement for Commission approval. There were no other intervenors in this proceeding. On September 26, 2017, a hearing was held on the Settlement Agreement and Commission Decision No. R17-0832 issued on October 16, 2017 approved the Combined Plan as modified by the Settlement Agreement.

In 2018 in an effort to simplify the corporate structure of Black Hills Energy’s Colorado gas utility subsidiaries, the former utilities sought to consolidate into one newly created public utility named Black Hills Colorado Gas, Inc. (“BH Colorado Gas” or the “Company”). The consolidation was approved by the Commission in Decision No. C18-0934 issued in Proceeding No. 18A-0583G. As a result of the consolidation, the former utilities no longer own or operate any

Colorado gas utility assets and have ceased providing public utility services in Colorado. The consolidation became effective December 31, 2018.

As a result, BH Colorado Gas determined it was appropriate to revise the Combined Plan to reflect the remaining entity providing public utility service in Colorado. Accordingly, BH Colorado Gas amended the Combined Plan effective for calendar years 2019 and 2020 (“Amended Plan”). The Amended Plan is merely a consolidation of the former Combined Plan from the former utilities to one entity, BH Colorado Gas. It presents the same data and information for BH Colorado Gas that had previously been provided individually for the former utilities. Therefore, BH Colorado Gas considers the changes to be a ministerial act consistent with the consolidation, rather than a substantive change to the Combined Plan. The Amended Plan generally provides as follows:

1. The Amended Plan is for the 2019-2020 calendar years, whereas the Combined Plan was effective 2018-2020.
2. There are no changes in the programs offered, the Amended Plan has the same six DSM programs that were offered under the Combined Plan.
3. Instead of there being two separate budgets for BH Gas Utility and BH Gas Distribution, there is one set of budgets for BH Colorado Gas which is simply the summation of the former BH Gas Utility and BH Gas Distribution’s budgets.
4. Instead of there being two separate cost-effectiveness and projected participations, there is one cost-effectiveness measure and projected participation for BH Colorado Gas.
5. Under the Amended Plan there is an mTRC of 1.37 which is more cost effective than the mTRC for BH Gas Utility which was 1.19 and BH Gas Distribution which was 1.17.
6. The mTRC and other cost-effectiveness measures for BH Colorado Gas were developed using the more conservative of former utilities’ technical assumptions thereby improving the cost effectiveness which are described in more detail below.

II. MODIFIED SETTLEMENT AGREEMENT

1. As a result of the consolidation and its desire to amend the Combined Plan, BH Colorado Gas commenced additional settlement negotiations with Staff, the OCC and EOC (collectively the “Settling Parties”) in January 2019. The Settling Parties reached a settlement

which is reflected in this Modified Settlement Agreement. The Modified Settlement Agreement memorializes the negotiated settlement on all the issues that were or could have been raised in this proceeding as a result of the consolidation.

2. Pursuant to Rule 1408 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-1408, the Settling Parties entered into this Modified Settlement Agreement. The Settling Parties believe that this Modified Settlement Agreement is a fair, just, and reasonable resolution of these issues, is consistent with the consolidation approved by the Commission, and therefore, that approval of the Modified Settlement Agreement is in the public interest. The Settling Parties request that the Commission should approve the Amended Plan, consistent with this Modified Settlement Agreement. The Amended Plan is attached hereto as **Attachment A**.

3. The Settling Parties stipulate that the Amended Plan filed by the Company in the Proceeding 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 Modified Settlement Agreement before the Commission.

4. This Modified Settlement Agreement reflects the input and careful consideration of all issues by the Settling Parties. Through this Modified Settlement Agreement, the Settling Parties have agreed to revise the Combined Plan to reflect the Amended Plan, and they further agree that the Amended Plan as filed in the Proceeding, incorporates substantial public policy reasons for approval by the Commission and are, with the partial waiver of the requirements of Rule 4753(f)(VI), in compliance with Commission rules.

5. The Settling Parties agree that, in compliance with Colorado statutes and Commission rules, the purpose of the Amended Plan is to reduce end-use natural gas consumption in a cost effective manner, in order to save money for consumers and the Company, and protect

the environment by encouraging the reduction of emissions and air pollutants. The Settling Parties agree that the Company has designed the Amended Plan to achieve cost-effective energy savings, considering factors such as: achievable energy savings, customer benefits, cost effectiveness ratios, adoption potential, market transformation capability and ability to replicate in their service territories.

6. The Settling Parties acknowledge that the Amended Plan presents an overall cost-effective portfolio, with an mTRC of 1.37. While, as discussed later in this Modified Settlement Agreement, some of the individual programs within the portfolio are not cost-effective, the Settling Parties agree that the Amended Plan, as presented by the Company, should be approved by the Commission.

A. Approval of Compliance with Minimum Expenditure Requirements

7. The Settling Parties agree that the Amended Plan satisfies the required minimum annual expenditure targets. Specifically, the Settling Parties agree that the Amended Plan meets the “whichever is greater” requirement of Rule 4753(h), as depicted in the table below:

	BH Colorado Gas
2017 Base Rate Rev. from Sales Customers*	\$58,514,993
2017 Total Sales Rev. from Sales Customers**	\$166,551,716
PUC Rule 4753(h)(I) Requirements	
2.0% of Total Base Rate Rev.	\$1,170,300
0.5% of Total Rev. from Sales	\$832,759
Calendar Year 2019	

Proposed Budget	\$4,764,100
Minimum Budget Requirement	\$1,170,300
Proposed Budget as a Percent of Base Rate Rev.	8.1%

* Source FERC Form 2 pg. 319

** Source FERC Form 2 pg. 301

8. The Settling Parties request that the Commission find that the Amended Plan meets the requirements of Rule 4753(h).

B. Approval of the Amended Plan

9. The Settling Parties, as discussed in more detail below, agree that the Amended Plan is reasonable and should be approved by the Commission. This includes continuation of the DSM programs established in the former Joint Application, energy and peak savings goals, participation goals, budgets, cost-effectiveness, technical assumptions, the Evaluation, Measurement and Verification (“EM&V”) reporting schedule, and flexibility.

i. Approval of DSM Programs

10. The Amended Plan proposes a continuation of the former utilities DSM Programs. The Company will offer six programs under the Amended Plan: Residential Retrofit, Residential New Construction, Nonresidential Retrofit, Nonresidential New Construction, Income Qualified, and School-Based Energy Education.

11. The Settling Parties agree that the former utilities DSM plan has thus far been implemented successfully throughout the former utilities natural gas service territory, and that the energy efficiency portfolio of the Amended Plan is intended to serve all customer types, including residential and non-residential.

12. The Settling Parties acknowledge that the Non-Residential New Construction Program on its own, is not cost-effective, and that the Residential New Construction Program is also not cost-effective.

13. However, as discussed in more detail in the cost-effectiveness section below, the Settling Parties agree that it is appropriate to include these two programs within the portfolio in order to have a comprehensive DSM plan that provides a variety of savings opportunities for all customer classes.

ii. Approval of Energy and Peak Savings Goals.

14. As stated in Section 3.5 of the Amended Plan, estimated savings were calculated at the measure level, including

[R]eviewing all current and future federal and local standards, incorporating historical participation data, and updating all engineering estimates with the most current industry standards. Additionally, sources for all engineering inputs for each measure were reviewed, and whenever possible, inputs were updated with best available Colorado-specific data from recently completed potential assessments by Xcel Energy and Colorado Springs

15. Savings goals under the Amended Plan as presented in this Modified Settlement Agreement are equal to the savings goals for each of the former utilities under the Combined Plan. A comparison is reflected on the following table:

Company	2019 Net Energy Savings Goal under Combined Plan (Dekatherms)	2019 Energy Savings Goal under Amended Plan (Dekatherms)
Former BH Gas Utility	75,530	--
Former BH Gas Distribution	75,349	--
BH Colorado Gas	--	150,879

16. The Settling Parties agree that the savings goals in the Amended Plan are reasonable and request that they be approved by the Commission.

iii. Approval of Participation Goals

17. As stated in Section 3.7 of the Amended Plan, participation for the Company under the Amended Plan was based on the number of their respective customers in 2016. Factors balanced in estimating each Company's participation goals under the Amended Plan included the pool of eligible participants, the available budget, and past program performance. For the Non-Residential New Construction Program, a similar program offered in their Iowa affiliate's territory was considered because the former utilities were not offering the Non-Residential New Construction Program in 2016.

18. The Amended Plan anticipates having 6,682 residential participants. These participation numbers are exclusive of the Behavioral Program. In addition, it is estimated there will be 2,360 nonresidential participants. Participation is set forth in the Amended Plan on a program and component level basis in Chapters 4, 5, 6, 7, 8, and 9.

19. The Settling Parties agree that the participation goals in the Amended Plan are reasonable and request that they be approved by the Commission.

iv. Approval of Budgets

20. As discussed earlier in this Modified Settlement Agreement, the budgets proposed in the Amended Plan meet the requirements of Rule 4753(h)(I).

21. The Settling Parties agree that it is appropriate to propose budgets under the Amended Plan that are more than the statutory minimums. Specifically, the Settling Parties agree that successful natural gas DSM programs rely on sustained education, marketing, trade allies and financial support.

22. The Settling Parties agree that the proposed budgets in the Amended Plan, which exceed the statutory minimum are reasonable and appropriate here, and should be approved. The budgets in the Amended Plan as compared to the Combined Plan, are in the table below:

Company	2019	2020
Former BH Gas Utility	\$2,353,900	\$2,334,800
Former BH Gas Distribution	\$2,410,200	\$2,387,500
BH Colorado Gas	\$4,764,100	\$4,722,300

v. Approval of Cost-Effectiveness

23. The Settling Parties agree that the Company presents an overall cost-effective portfolio, with an mTRC of 1.37. The Company seeks a partial waiver of Rule 4753(f)(VI) in connection with the two programs under the Amended Plan which do not satisfy the Rule's program-level mTRC requirement of 1.0 or greater: Residential New Construction and Nonresidential New Construction.¹ The Settling Parties agree it is important to include both of these programs in the Amended Plan just as it did in the original Combined Plan.

24. The Residential New Construction Program seeks to promote construction of energy-efficient, single-family and multifamily homes by providing incentives to new home builders as described in the Amended Plan. Notably, the cost-effectiveness of this program under the Amended Plan is affected by several factors, including new building and appliance codes, as well as the low price of natural gas.

25. With respect to the Residential New Construction Program, the former BH Gas Utility spent the last 4+ years gaining the support of builders through education and outreach efforts. By doing so, the builders are now engaged in building more efficient homes. In fact, the

¹ See Unopposed Joint Motion for Leave to Amend Demand Side Management Plan, to Approve the Modified Settlement Agreement and Amended Demand Side Management Plan, and to Waive Certain Commission Rules and Response Time filed simultaneously herewith.

builders are required to achieve a Home Energy Rating of 10% greater than local code. Without the rebate, the chances of the building practices falling back to code levels is increased, thus imposing higher operating costs on the homeowner. Removal of the Residential New Construction Program from the portfolio at a point when it is finally maturing and succeeding could result in less-efficient homes being built.

26. Due to the low price of natural gas and the stricter building codes, the Nonresidential New Construction Program also does not pass the cost-effectiveness test. Nevertheless, the Settling Parties agree it is important to include this program in the Amended Plan. By educating the architects and engineering firms on the most efficient measures available in the market, the Company's commercial and industrial customers will benefit by having highly efficient measures designed and built into their new facilities.

27. While the Amended Plan is cost effective overall, the Company's inclusion of the Residential New Construction and Nonresidential New Construction programs in the portfolio is to their detriment from an incentive perspective. This is because one component of the bonus calculation, per Rule 4754(III)(IV), is dependent upon the Dth saved per dollar expended. A more cost effective program would have greater Dth saved per dollar expended which would increase the calculated bonus amount. A less cost effective program would have fewer Dth saved per dollar expended, which would reduce the calculated bonus amount.

28. For this reason, and the reasons stated above, the Settling Parties agree that the requested partial waiver of Rule 4753(f)(VI) as it applies to the Residential New Construction Program and the Nonresidential New Construction Program is appropriate. The Settling Parties agree it is important to have a complete DSM portfolio, which would not be the case if these two programs were eliminated.

vi. Approval of Technical Assumptions

29. The primary technical assumptions for the Amended Plan include: Net-to-Gross Ratios, Avoided Gas Capacity Costs, Discount and Inflation Rates, Gas Energy Costs, Avoided Variable O&M Costs, and Lost Revenue Calculations. The Settling Parties agree that the Company's technical assumptions are supported by the Amended Plan.

vii. Approval of EM&V Reporting Schedule

30. Rule 4755 requires that each program be evaluated at least once per the DSM plan period. The Settling Parties agree that the EM&V schedule set forth in Section 1.4 of the Amended Plan meets the requirements of Rule 4755 and should be approved.

viii. Approval of Flexibility

31. Commission Rule 4753(k) allows the Company to "spend more than the annual expenditure target established by the Commission up to twenty-five percent over the target, without being required to submit a proposed DSM plan amendment." The Settling Parties agree that the Company should also have the flexibility to, within the Amended Plan and consistent with the requirements of Commission Rule 4757(a), adjust incentive amounts and measures as necessary to administer the Amended Plan. Any such additional spending will continue to be subject to the cost-effectiveness considerations outlined in Commission Rules 4750 *et seq.*

III. GENERAL TERMS AND CONDITIONS

32. The Settling Parties agree that this Modified Settlement Agreement is in the public interest and will be supported by the Settling Parties' testimony and/or statements of counsel in this proceeding. The Settling Parties agree to support this Modified Settlement Agreement as being in the public interest in proceedings before the Commission and to advocate in good faith that the Commission approve this Modified Settlement Agreement in its entirety.

33. The Settling Parties agree that this Modified Settlement Agreement represents a compromise in the positions of all Settling Parties and has been negotiated as a comprehensive settlement. As such, the Settling Parties acknowledge that their support and advocacy of the Modified Settlement Agreement is based upon the Modified Settlement Agreement as a whole and not based upon its individual components viewed in isolation. Additionally, evidence of conduct or statements made in the negotiation and discussion phases of this Modified Settlement Agreement will not be admissible as evidence in any proceeding before the Commission or any court.

34. The Settling Parties agree that all negotiations relating to this Modified Settlement Agreement are privileged and confidential, and that no party will be bound by any position asserted in the negotiations, except to the extent expressly stated in this Modified Settlement Agreement.

35. The Settling Parties agree that except as otherwise expressly noted in this Modified Settlement Agreement: (a) the execution of this Modified Settlement Agreement will not be deemed to constitute an acknowledgment of any Settling Party of the validity or invalidity of any particular method, theory or principle of ratemaking or regulation, and no Settling Party will be deemed to have agreed that any principle, method or theory of regulation employed in arriving at this Modified Settlement Agreement is appropriate for resolving any issue in any other proceeding; (b) the execution of the Modified Settlement Agreement will not constitute the basis of estoppel or waiver in future proceedings by any Settling Party; and (c) no Settling Party will be deemed to be bound by any position asserted by any other Settling Party, and no finding of fact or conclusion of law other than those expressly stated will be deemed to be implicit in this Modified Settlement Agreement. Any specific reservation of future litigation rights contained in the Modified Settlement Agreement should not be deemed to waive the applicability of this general reservation

of litigation rights in future proceedings as to all matters contained in the Modified Settlement Agreement.

36. The Settling Parties acknowledge that their support and advocacy of the Modified Settlement Agreement may be compromised by material alterations thereto. In the event the Commission rejects or materially alters the Modified Settlement Agreement, the Settling Parties agree that within seven days of such Commission Decision any Settling Party may provide notice to the other Settling Parties of its objection to the Modified Settlement Agreement as revised. Upon such objection, the Settling Parties will no longer be bound by its terms and will not be deemed to have waived any of their respective procedural or due process rights under Colorado law. If a Settling Party objects to the Modified Settlement Agreement as revised, it may withdraw from the Modified Settlement Agreement.

37. If the Commission chooses to adopt and approve the Modified Settlement Agreement, this Modified Settlement Agreement resolves all disputed matters relative to this proceeding between the Settling Parties. Any disputed matters will be deemed resolved to the extent that the Modified Settlement Agreement is not compromised by material alterations.

38. Except as otherwise expressly provided in this Modified Settlement Agreement, the issuance of a Decision approving this Modified Settlement Agreement will not be deemed to work as an estoppel upon the Settling Parties or the Commission, or otherwise establish, or create any limitation on or precedent of the Commission, in future proceedings.

39. This Modified Settlement Agreement will not become effective and will be given no force and effect until the issuance of a final written Commission decision that accepts and approves this Modified Settlement Agreement.

40. This Modified Settlement Agreement may be executed in one or more counterparts and each counterpart will have the same force and effect as an original document and as if all the Settling Parties had signed the same document. Any signature page of this Modified Settlement Agreement may be detached from any counterpart of this Modified Settlement Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of the Modified Settlement Agreement identical in form hereto but having attached to it one or more signature page(s). The Settling Parties agree that “pdf” signature pages exchanged by e-mail will satisfy the requirements for execution.

IV. CONCLUSION

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving the Amended DSM Plan consistent with this Modified Settlement Agreement, with the finding that the Commission’s approval of this Modified Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this Proceeding as to those issues.

Date: March 28, 2019.

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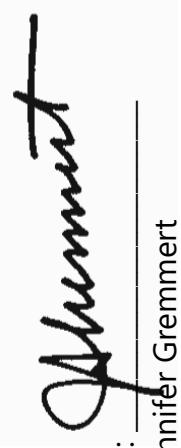
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ATTORNEYS FOR ENERGY OUTREACH COLORADO

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2019, the foregoing document was served via electronic filing with the Commission and served on those parties shown on the Commission's Certificate of Service accompanying such filing.

/s/ Elaine Hegler