

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0371E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY FOR AN ORDER APPROVING EXPENSES RECOVERED THROUGH THE ENERGY COST ADJUSTMENT AND PURCHASED CAPACITY COST ADJUSTMENT IN 2023

**INTERIM DECISION GRANTING UNOPPOSED MOTION
TO APPROVE UNANIMOUS COMPREHENSIVE
SETTLEMENT AGREEMENT AND REQUEST FOR
WAIVER OF RESPONSE TIME**

Issued Date: June 5, 2025

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I. STATEMENT

A. Procedural Background

1. On August 30, 2024, Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (“Black Hills”) filed an Application for an Order approving expenses recovered through the Energy Cost Adjustment (“ECA”) and Purchased Capacity Cost Adjustment (“PCCA”) in 2023.

2. With its Application, Black Hills filed the Direct Testimonies of Jennifer Bass, Andy Butcher, Kent Kopetsky, and Jeremy Retzlaff.

3. The Commission issued a Notice of Application on August 30, 2024.

4. The Colorado Office of the Utility Consumer Advocate (“UCA”) and Trial Staff of the Colorado Public Utilities Commission (“Staff”) timely intervened of right.

5. The matter was referred by minute entry to an administrative law judge (“ALJ”) for resolution during the Commissioner’s Weekly Meeting on October 16, 2024.

6. By Decision No. R24-0825-I, issued November 14, 2024, a hearing was scheduled to be held in this matter on April 9-11, 2025, and a procedural schedule was established.

7. On November 20, 2024, Black Hills filed a notice waiving the statutory period in this proceeding.

8. On January 24, 2025, Staff filed the Answer Testimonies of Erin O’Neill and Dr. Nick Bongiardina.

9. On February 21, 2025, Black Hills filed the Rebuttal Testimonies of Jennifer Bass and Jeremy Retzlaff.

10. On March 14, 2025, Staff filed an Unopposed Motion to Extend Procedural Schedule to allow time for the Commission to issue its decision in the pending rate case filed by Black Hills in Proceeding No. 24AL-0275E on the basis that the decision there may resolve some of the disputes in this proceeding.

11. By Decision No. R25-0185-I, issued March 18, 2025, the undersigned ALJ granted the Unopposed Motion to Extend the Procedural Schedule and adopted the amended procedural schedule with a settlement deadline of May 19, 2025, and a settlement testimony deadline of May 26, 2025.¹ No evidentiary hearing was scheduled.²

B. Factual Background

12. As stated above, in this proceeding, Black Hills seeks to recover costs for expenses recovered through the ECA and PCCA for 2023. In the related rate case in Proceeding No. 24AL-0275E, Staff raised concerns regarding the return Black Hills applied to the Peak View Wind Facility (“Peak View”) Deferred Tax Asset (“DTA”).³ Peak View is a Black Hills-owned 60 MW (megawatt) generation facility approved in Black Hills’ 2013 Electric Resource Plan.

13. Black Hills collects avoided costs of Peak View through the ECA and transmission cost adjustment, with incremental costs above the avoided cost charged to the renewable energy standard adjustment (“RESA”).⁴

14. Although Peak View generates Production Tax Credits (“PTCs”), the PTCs have not been used, so a DTA of approximately \$40 million was created. Beginning in 2018, Black

¹ Decision No. R25-0185-I, at p. 3.

² *Id.*

³ Hr. Ex. 107, at p. 2.

⁴ *Id.* at pp. 2-3.

Hills applied a weighted average cost of capital (“WACC”) return on DTAs included in recovery in the ECA and RESA.⁵

C. Motion

15. On May 23, 2025, Black Hills filed an Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and Request for Waiver of Response Time (“Motion”). The Unanimous Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”), filed with the Motion as Hearing Exhibit 107 and attached to this Decision as Appendix A, is entered into by Black Hills, Staff, and UCA (collectively, the “Settling Parties”).⁶

16. Black Hills filed its Settlement Testimony on May 30, 2025.

17. Pursuant to Rule 1400(a) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1, Black Hills conferred with counsel for all parties regarding the Motion. All parties to this proceeding support the Motion.⁷

18. The Settlement Agreement is intended to resolve “all issues which were or could have been raised by the Settling Parties in this Proceeding with respect to the Company’s Application for approval of expenses recovered through the Energy Cost Adjustment and Purchased Capacity Cost Adjustment.”⁸

19. The Settling Parties agree that the provisions of the Agreement, as well as the negotiation process undertaken to reach the Agreement, are just, reasonable, and consistent with

⁵ *Id.* at p. 3; Hr. Ex. 108 (Settlement Testimony of Michael J. Harrington), at p. 11:1-18.

⁶ The Parties informally communicated the status of settlement negotiations in advance of the deadlines regarding any settlement. However, the Motion was filed before any decision issued. Deadlines will be extended herein *sua sponte* and the corresponding filings will be accepted as timely.

⁷ Motion, at p. 2.

⁸ Hr. Ex. 107, at p. 3.

and not contrary to the public interest, and request that the Settlement Agreement be approved and authorized by the Commission without modification.⁹

20. The parties agree that the Settlement Agreement obviates the need for an evidentiary hearing, but request that if the ALJ determines a hearing is necessary, it be held on July 11, 2025.¹⁰ The Settling Parties also request that the ALJ waive the filing of Statements of Position.¹¹

21. Finally, the Settling Parties request that the ALJ waive response time to the unopposed Motion pursuant to Rule 1308(c), 4 CCR 723-1.

II. SETTLEMENT AGREEMENT AND TESTIMONY

A. Settlement Testimony

22. On May 30, 2025, Black Hills filed the Settlement Testimony of Michael J. Harrington in support of the Settlement Agreement as Hearing Exhibit 108.¹² In addition to reiterating Black Hills' support for the Settlement Agreement, the testimony provides some additional background for Black Hills' position¹³ and indicates Mr. Harrington's support for the Settlement Agreement.¹⁴ This was the only settlement testimony filed in this proceeding.

B. Terms of the Settlement Agreement

23. The Settlement Agreement resolves all issues that were or could have been raised in this proceeding with respect to Black Hill's Application for an Order approving expenses recovered through the ECA and PCCA in 2023.

⁹ Motion, at pp. 1-2; Hr. Ex. 107, at p. 7.

¹⁰ Motion, at p. 2.

¹¹ *Id.*

¹² *See* Hr. Ex. 108.

¹³ *See id.*

¹⁴ *Id.* at pp. 6:21-7:3.

24. In addition to the specific agreements discussed below, the Settling Parties also agreed to numerous General Provisions, found in Section III of the Settlement Agreement, including that the provisions of the Settlement Agreement and the negotiation process undertaken to reach it are just, reasonable, and consistent with and not contrary to the public interest, and should be authorized by the Commission.

25. The ALJ reviews each of the substantive settlement terms in turn below.

C. Future Filing Recommendations

26. The Settling Parties agree that Black Hills shall file the following information in its annual ECA and PCCA Prudency Reviews going forward:

- a. Unit-level monthly and annual equivalent availability factor calculations in executable format;
- b. A complete set of available Generating Availability Data System event records, including outage and derate events for the relevant year in executable format where available;
- c. Monthly and annual calculations of the revenue requirement for Black Hills-owned facilities in the ECA or PCCA in executable format;
- d. An explanation of any significant changes in the ECA or PCCA compared to the previous filing year in the ECA and PCCA overview attachment that Black Hills files with its applications in the ECA and PCCA Prudency Review proceedings; and
- e. An update on efforts to reduce repair delays for the Peak View wind facility.¹⁵

27. In addition to these annual filing requirements, the parties also agree that Black Hills shall provide in its Quarterly ECA Advice Letters going forward: (a) a comparison of actual and forecasted fuel prices for the relevant quarter; and (b) all workpapers in executable format.¹⁶

¹⁵ Hr. Ex. 107, at p. 4; Hr. Ex. 108, at pp. 7:18-8-9.

¹⁶ Hr. Ex. 107, at p. 4; Hr. Ex. 108, at p. 8:10-14.

D. Corrections to the 2023 Peak View Revenue Requirement

28. In this section, Black Hills acknowledges certain errors in the 2023 Peak View Revenue Requirement, which shall be corrected pursuant to the terms of the Settlement Agreement.¹⁷

29. First, Black Hills agrees that the 2023 Annual Renewable Energy Standard (“RES”) Compliance Report contained the incorrect Purchased Power Agreement benchmark, which was reported as year eight at \$50.20/MWh (megawatt-hour) instead of year seven at \$49.98/MWh.¹⁸

30. Next, Black Hills identified that the 2023 Peak View Revenue Requirement used an incorrect income tax rate, which has since been corrected.¹⁹

31. Black Hills also removed all ancillary service costs from the 2023 Peak View Revenue Requirement. Black Hills has added costs related to Schedule 3 Regulation and Frequency Response Service in the Peak View Revenue Requirement settlement calculations.²⁰

32. Finally, Black Hills erroneously normalized the PTCs twice, which has been corrected in the Peak View Revenue Requirement settlement calculations.²¹

33. In addition to correcting the errors identified above, Black Hills agrees to reflect the Peak View DTA amount at the December 31, 2022, balance of \$31,703,866 for the 2023 revenue requirement.²²

¹⁷ Hr. Ex. 107, at p. 4; Hr. Ex. 108, at pp. 9:1-10:6.

¹⁸ Hr. Ex. 107, at p. 4.

¹⁹ *Id.*

²⁰ *See id.*; Hr. Ex. 107, Attachment 1; Hr. Ex. 105 (Rebuttal Testimony of Black Hills Witness Jennifer L. Bass) at pp. 13:18–14:2.

²¹ Hr. Ex. 107, at p. 5; Hr. Ex. 107, Attachment 1.

²² Hr. Ex. 107, at p. 5; *see also* Hr. Ex. 301C (Confidential Answer Testimony of Staff Witness Erin T. O’Neill), at p. 15.

34. The Settling Parties agree that Black Hills shall update its 2023 Annual RES Compliance Report with the corrected information identified in this section, and it shall ensure that the 2024 report does not replicate these errors.²³

E. Peak View Deferred Tax Asset

35. In Decision No. C25-0183, issued in Proceeding No. 24AL-0275E, the Commission stated that Black Hills “shall not charge its WACC to the DTAs for the Peak View facility in future years, and provided this policy guidance to the ALJ presiding over Proceeding No. 24A-0371E for implementation there as appropriate.”²⁴

36. Consistent with the above and the Settlement Agreement, the Settling Parties agree that Black Hills shall not earn WACC on the Peak View DTA beginning on January 1, 2023, and going forward. While Black Hills agrees with this settlement provision, it notes that because the DTA was not imprudently created but rather a product of changes in applicable tax law, the outright denial of recovery of the DTA would not be appropriate.²⁵

37. Additionally, pursuant to the Peak View CPCN Settlement Agreement in Proceeding No. 15A-0502E, approved by the Commission in Decision No. C15-1182, certain provisions of that agreement are set to expire on December 31, 2026. The Settling Parties agree that Black Hills will make a filing in 2026 to address future cost recovery of Peak View, at which time the Commission will review the annual revenue requirement calculation and performance incentive mechanism.

38. For purposes of the 2023 through 2026 ECA periods, the Settling Parties agree to allow Black Hills to recover the cost of long-term debt associated with the Peak View DTA at the

²³ Hr. Ex. 107, at p. 5.

²⁴ Decision No. C25-0183, at ¶ 296.

²⁵ Hr. Ex. 108, at p. 11:1-21.

approved cost of debt of 3.91 percent through March of 2025, consistent with the effective date of base rates in Proceeding No. 24AL-0275E.²⁶ The Settling Parties agree that a cost of debt of 4.61 percent may be recovered beginning in April 2025 through the end of the 2026 period.²⁷

39. For the period from January 2023 through March 2025, the total difference between full WACC recovery and cost of debt recovery was \$3,958,020.²⁸ The Settling Parties agree that Black Hills shall apply a Settlement Credit to the ECA reflecting this amount, as discussed further below.

40. Black Hills anticipates that this DTA will amortize down beginning in 2025 and ending in 2032. Accordingly, Black Hills agrees to cap the DTA balance used for purposes of calculating the carrying costs at the projection provided in the Peak View Revenue Requirement settlement calculations.²⁹

41. Finally, with regard to the Peak View DTA, Black Hills agrees to pursue all options to sell or transfer PTCs generated from Peak View starting in 2023. Black Hills shall report the DTA balance as part of the revenue requirement reporting pursuant to Section A of the Settlement Agreement.³⁰

F. Normalization Adjustments to Annual Peak View Revenue Requirement

42. The Settling Parties agree that Black Hills shall not normalize the PTCs as part of the wind normalization calculations.

²⁶ Hr. Ex. 107, at p. 5.

²⁷ *Id.*

²⁸ *See* Hr. Ex. 107, Attachment 1 at p. 5.

²⁹ *Id.* at p. 7.

³⁰ *See* Hr. Ex. 107, at p. 4.

G. Liquidated Damages

43. Black Hills agrees to pursue liquidated damages, as appropriate. If damages are received, any operations and maintenance reductions shall be passed along to customers.

H. Settlement Credit

44. Black Hills agrees that the Settlement Credit of \$3,958,020 shall apply as a reduction to the Peak View Revenue Requirement over an eighteen-month period beginning in July of 2025 through December of 2026, as provided in the Peak View Revenue Requirement settlement calculations.³¹

45. The Settling Parties agree that the reduction in the revenue requirement will be reflected as a reduction in the total ECA balance.

I. Other Components of 2023 ECA and PCCA Expenses

46. The Settling Parties agree that the remaining components of Black Hills' 2023 actual ECA and PCCA costs were reasonable and prudently incurred to provide reliable electric service to its customers.

47. The parties reserved the right to take any position they deem appropriate on all other components of the forthcoming 2024 ECA/PCCA prudence review proceeding and all subsequent ECA/PCCA prudence reviews.

III. FINDINGS AND CONCLUSIONS

48. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. In reviewing the terms of the Settlement Agreement, the ALJ applied the Commission's directions and policy with

³¹ See Hr. Ex. 107, Attachment 1.

respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

49. The Commission has an independent duty to determine matters that are within the public interest.³²

50. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct testimony filed by Black Hills; the answer testimony filed by Staff; the terms and conditions of the Settlement Agreement; and testimony filed in support of the Motion. The ALJ has duly considered the positions of all parties in this matter and weighed the evidence presented.

51. The Motion being unopposed, it is appropriate that response time to the Motion be waived; there is no need for an evidentiary hearing in this proceeding; and the deadline for filing of Statements of Position should be vacated.

52. Based on the entire record, the ALJ finds that the motion should be approved and that approval of the Settlement Agreement without modification is in the public interest. The Settlement Agreement proposes a fair, reasonable, and timely resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties and customers.

IV. ORDER

It is Ordered That:

1. The deadline for filing any Settlement or Stipulation is extended to May 23, 2025. The deadline for filing any testimony in support of any Settlement/Stipulation filed is extended to May 30, 2025. The deadline for filing Statements of Position is vacated.

³² See *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

2. Consistent with the discussion above, response time to Black Hills Colorado Electric, LLC d/b/a Black Hills Energy's ("Black Hills") Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement ("Motion"), filed on May 23, 2025, is waived and the request is granted.

3. Accordingly, the Unanimous Comprehensive Settlement Agreement ("Settlement Agreement") filed on May 23, 2025, as Hearing Exhibit 107 and attached hereto as Appendix A, is approved without modification. The Settlement Agreement is incorporated herein by reference. All parties shall comply with the terms thereof.

4. 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.

5. As provided in § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director