

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0255E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A 50 MW BATTERY STORAGE AND OTHER FACILITIES PURSUANT TO COMMISSION DECISION NOS. C24-0634 AND C24-0837.

UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

PUBLIC VERSION

Pages 4, 6, 7, 8, 9 and 10 are redacted.

October 8, 2025

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I. INTRODUCTION AND BACKGROUND

This Unanimous Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (“Black Hills” or the “Company”), Trial Staff of the Commission (“Staff”), and the Office of the Utility Consumer Advocate (“UCA”) (each a “Party” and collectively the “Parties”), pursuant to Rule 1408 of the Colorado Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, 4 CCR 723-1.

On June 12, 2025, Black Hills Colorado Electric, LLC (“Black Hills” or “Applicant”) filed its Verified Application of Black Hills Colorado Electric, LLC For a Certificate of Public Convenience and Necessity to Construct a 50 MW Battery Storage and Other Facilities and Request for Expedited Decision (“Application”), with supporting written testimony and exhibits.

By Decision No. C25-0583-I, issued August 7, 2025, the Commission, among other things, deemed the Application complete and referred this matter to an Administrative Law Judge (“ALJ”). The Colorado Office of the Utility Consumer Advocate (“UCA”) and Trial Staff of the Colorado Public Utilities Commission (“Trial Staff”) timely intervened of right. By Interim Decision Nos. R25-0655-I, the ALJ set a procedural schedule in this proceeding, including that the parties would file a Settlement Agreement by October 30, and settlement testimony by October 31.

With its Application Black Hills filed the Direct Testimonies of Mark L. Lux and Michael J. Harrington. The Parties are also filing settlement testimony on October 10, 2025 in support of the Settlement Agreement, which provides a complete record by which the ALJ may render a decision.

II. SETTLEMENT TERMS

The Parties agree that the Commission should approve the Company's Application, subject to the following modifications and conditions:

A. Approval to Own and Operate the PBR

1. The Parties recommend approval of the CPCN Application of Black Hills Colorado Electric, LCC to own and operate the Pueblo Battery Resource ("PBR"), located at the Pueblo Airport Generation Station ("PAGS").

B. PBR Cost

1. The Parties support a presumption of prudence finding per Rule 3617(d) for the acquisition cost of the PBR. The Parties agree that the total acquisition cost of the PBR is [REDACTED] including Administrative and General Loading. The purchase price of the PBR is [REDACTED], to be paid to the developer in four separate milestone payments. The estimated 20 year PBR Revenue Requirement is provided in Highly Confidential Attachment 1 to the Settlement Agreement.
2. The Parties agree that the PBR will qualify for the federal Investment Tax Credit ("ITC") equal to 30% of the value of the qualifying capitalized project. The Company agrees to implement a minimum net ITC value of [REDACTED]¹ in the annual PBR revenue requirement.² If the actual net ITC value is higher than the minimum, the Company will use the actual higher ITC value in the annual revenue requirement. The net ITCs will be amortized over ten years

¹ See WP Investment Tax Credit worksheet in Highly Confidential Attachment 1.

² Net of the cost to transfer ITCs.

and will be treated as an offset to rate base and the annual amortization will also be treated as a reduction to income tax expense.³ The Company may have the opportunity to adjust the ITC minimum net value to reflect changes in Federal laws that impact the ITC eligibility and/or transferability. If such a change is requested, the Company will utilize the process discussed in Section D.1.c below.

3. The Company agrees to pursue the Colorado Enterprise Zone Tax Credit (“EZ ITC”). The final certification will be completed when the Company files the income tax return for the year the project is placed in service. If applicable, the EZ ITC will offset up to fifty percent of the state income tax, up to \$750,000 per year. Any unused EZ ITC may be carried forward for fourteen years. If applicable, the EZ ITC will be amortized over the life of the project. The EZ ITC benefit will be included in the PBR revenue requirement for the benefit of customers. The Company also agrees to provide status updates on its progress to obtain the EZ ITC as indicated in the Reporting Section below.
4. The Parties agree that there are minimal interconnection and network upgrades costs associated with the PBR. The Company agrees to exclude these costs from the PBR revenue requirement. These costs are considered normal course of business and will be recovered through a future rate review proceeding.

³ As an offset to rate base, the amortization will effectively have a carrying cost at the Company’s current Weighted Average Cost of Capital.

5. The Parties agree it is reasonable for Black Hills to accelerate certain construction activities in 2025 to ensure that it qualifies for the ITC and is excluded from the new Foreign Entity of Concern (“FEOC”) rules from the One Bill Beautiful Bill Act (“OBBBA”). This change increases the total project cost by [REDACTED]. The acceleration of this cost does not impact when cost recovery begins due to the modifications made below in Section C.

C. PBP Cost Recovery

1. The Parties agree that the Company will recover the costs for the PBR through the Energy Cost Adjustment (“ECA”) through 2030 and until the Company’s first rate case with rates in effect beginning after 2030. At that time, the PBR revenue requirements will be rolled-into base rates. Specifically, the Company will perform a standalone pro-forma revenue requirement to be included in the ECA. The costs in the pro-forma revenue requirement will be subject to an annual true-up using actual cost. The costs associated with the PBR will be subject to review through the Company’s Annual Prudency Review filings.
2. The Parties agree the Company can recover the Construction Work In Progress (“CWIP”) balances, which avoids additional financing cost (AFUDC), subject to the modifications specified in subparts ‘a’ and ‘b’ below. The modifications to the CWIP recovery framework bring the total Net Present Value of the Revenue Requirement (“NPVRR”) for the PBR to approximately the same as the NPVRR of the AFUDC recovery method as demonstrated in Highly Confidential Attachment 1.

- a. The Company agrees to a long-term debt-only return on the CWIP balances until the PBR is placed in service, at which time the Company will apply the most recently approved Weighted Average Cost of Capital.
- b. The Company agrees to delay CWIP recovery until July of 2026.
- c. The Company acknowledges the NPVRR calculation in the Direct Testimony of Mr. Harrington was incorrect. Highly Confidential Attachment 1 to this Settlement Agreement provides a corrected NPVRR calculation.
- d. The Company agrees during CWIP recovery that it will not calculate an income tax gross-up since the Company agrees to a long-term debt only return during CWIP recovery.

D. PBR PIMs

1. The Parties agree to establish a CtC PIM for the PBR.
 - a. The Parties agree to set the baseline amount for the CtC PIM at [REDACTED] as clarified in Decision No. C24-0837 at paragraph 40.
 - b. The Parties agree that the Company may adjust the CtC PIM Baseline should a change in law or force majeure event occur as addressed in Decision No. C24-0837 at paragraph 38, which states that “events meeting the definition of force majeure in the model PPA” and “changes in federal law such as the imposition of additional tariffs that directly increase the cost of project components for a selected project” “will generally warrant adjustments to the CtC PIM.”

c. Further, the Parties agree that any changes to the CtC Baseline be capped at a total of [REDACTED].

1. In order to effectuate such an adjustment, the Company shall file a Notice in this proceeding detailing the proposed adjustment and providing justification for the change. Parties would have 30 days to respond and raise any objection to the proposed PIM baseline adjustment.

d. The Parties agree to keep the upper and lower deadbands at five percent of the CtC baseline.

e. The Parties agree to the following parameters in the event that there is an incentive/disincentive that arises from the total actual CtC being above or below the five percent bands of the CtC baseline:

1. Any incentive/disincentive will be amortized over a period of ten years.
2. Any incentive will have no carrying charge over the life of the amortization.
3. The Company will collect any disincentive or credit any incentive through the ECA beginning the second quarter after the PBR is placed in service.

2. The Parties agree that there will not be an operational PIM associated with the PBR for at least the first six years of operations.

3. The Parties agree that there will not be an emissions PIM associated with the PBR.

E. Operational Issues:

1. The Parties agree that the PBR will be operated to maximize its economic value while contributing to system reliability. To the extent possible, and consistent with such operation, the Company will charge the battery with renewable energy that would otherwise be curtailed.
2. The Parties agree that the expected in-service date for the PBR is on or near November 1, 2027. The Company will receive liquidated damage payments of [REDACTED] associated with the developer not achieving substantial completion of the project by November 22, 2027. Liquidated damages, if received by the Company, will be passed onto customers.
3. The Parties agree that the expected useful life of the PBR is 20 years. The estimated decommissioning cost provided by the developer is [REDACTED]. The Company will include one-twentieth of this cost in the annual depreciation expense amount. The Company will update the estimated decommission cost when it performs its next depreciation study. At that time, the Parties can review the updated decommission cost estimates and propose changes, and the Parties agree to retain discretion to seek Commission review of any Company cost estimates at that time.
4. The Company is currently preparing a safety plan and is actively engaged with the Pueblo Fire Department in order to conduct a fire risk analysis for this project. The Company agrees to file this safety plan as an informational filing

in this proceeding once it is finalized but no later than the completed in-service date.

5. Best Value Employment Metrics: The Developer has contracted with [REDACTED] as the Engineering Procurement and Construction (“EPC”) contractor. Through the Prevailing Wage Agreement (“PWA”), the EPC contractor is responsible for ensuring compliance with all applicable laws. Once construction begins, the contractor shall complete and submit a copy of the Prevailing Wage and Apprenticeship requirements. The Company agrees to file this Prevailing Wage and Apprenticeship report in this proceeding as an informational filing once the Project is completed. The Company will comply with Commission Rule 3618(a)VII regarding reporting in Annual ERP Progress reports regarding craft labor and other BVEM metrics as shown in Recommended Decision R25-0669 Attachment A in Proceeding No. 24R-0559EG.

F. Reporting:

1. Quarterly construction reporting on the Battery Project until project completion including (filed into the instant CPCN Proceeding No. 25A-0255E):
 - a. Project accomplishments
 - b. Potential issues/complications encountered
 - c. Construction cost information
 - d. Project timeline updates
 - e. Progress towards completion of the Investment Tax Credit
 - f. Transfer of the ITC

2. Annual operational performance information (filed in the annual ECA Prudence Review Proceedings).
 - a. Hourly battery operations (charging, discharging, and state of charge of the battery).
 - b. Estimate of annual cycling of battery (full charge/discharge and partial charge/discharge).
 - c. Comparison of actual operations/availability compared to contractual obligations:
 1. Availability of power pack,
 2. Reporting regarding any liquidated damages sought/received,
 3. Round trip efficiency and total throughput on an annual and cumulative basis.
 - d. During the first three full years of operation, the Parties recognize the Company will gain experience operating the PBR in different use cases. In the fourth full year of operations annual ECA Prudence Review (August 2031), the Company will present its operational plan and specific uses for the PBR. Parties will have the ability to review and comment on the Company's operational plan at that time.
3. Black Hills agrees to conduct an Annual meeting with Staff/UCA for at least the first 3 years to discuss Company operations of the battery and use cases (first meeting after the first year of operations). During this meeting the Company will discuss:

- a. Black Hills' process/protocol for battery operational decisions regarding charging and discharging of the battery,
- b. Estimate of economic benefits of battery operations,
- c. Estimate of impact on energy curtailments,
- d. Estimate of impact on ancillary services and description of the battery usage (e.g., for frequency regulation).

G. Other Components

1. The developer of the PBR requires a final Commission decision approving the CPCN by February 15, 2026, as stated in the BTA contract. The Parties agree that the final Commission's decision should be issued prior to the deadline to avoid breach of this provision. Further, the Parties agree that an initial decision approving the CPCN in this proceeding should be issued by December 15, 2025, or earlier.

III. GENERAL PROVISIONS

Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

The Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

The discussions among the Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

Nothing in this Settlement Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Settlement Agreement.

The Parties agree to support or not oppose all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

The Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Party, that Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Parties in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

There shall be no legal presumption that any specific Party was the drafter of this Settlement Agreement.

This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Parties to the same extent that an original signature could be used.

Dated this 8th day of October 2025

**BLACK HILLS COLORADO ELECTRIC, LLC
D/B/A BLACK HILLS ENERGY**

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