

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10AL -- 008E

**IN THE MATTER OF THE TARIFF SHEETS FILED BY BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP WITH ADVICE LETTER NO. 628 -- ELECTRIC.**

**SETTLEMENT AGREEMENT
AND MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

Black Hills/Colorado Electric Utility Company, LP ("Black Hills" or the "Company"), the Trial Staff of the Colorado Public Utilities Commission ("Trial Staff"), and the Colorado Office of Consumer Counsel ("OCC") (the Settling Parties), by and through their respective undersigned counsel, and for good and valuable consideration, herewith enter into this Settlement Agreement to resolve all disputed issues that have arisen or could have arisen in this docket regarding Black Hills' amended Advice Letter No. 628 and accompanying tariffs. The Board of Water Works of Pueblo, Colorado and the Fountain Valley Authority (the "Public Intervenors"), Cripple Creek & Victor Gold Mining Company ("CC&V"), Holcim (U.S.), Inc. ("Holcim"), the City of Pueblo ("Pueblo"), the City of Cañon City, ("Cañon City"), and the International Brotherhood of Electrical Workers ("IBEW") (the non-objecting parties) have authorized the statement herein that they do not object to the approval of this Settlement Agreement and to the implementation of the General Rate Schedule Adjustment ("GRSA") tariff.

The Settling Parties request that the Commission approve this Settlement Agreement and the GRSA Tariff, which is attached hereto as Appendix A. The Settling Parties submit to the Commission that this Settlement Agreement results in a fair disposition of all disputed issues that could have arisen in this docket and that this Settlement Agreement is just and reasonable. The

Settling Parties have also filed a Motion requesting that the Commission vacate all remaining filing dates and procedural deadlines,¹ vacate the hearing set for the week of June 21, 2010, and, if a hearing on this Settlement Agreement is required, that it be set at the earliest possible date prior to June 21, 2010. All Parties agree that the Public Comment Hearing set for June 8, 2010 should be held.

I. PROCEDURAL HISTORY

1. On January 5, 2010, Black Hills filed Advice Letter No. 628, requesting to increase the Company's overall annual revenue requirement to recover the increased costs associated with providing electric service to Colorado customers and that the accompanying tariff sheets become effective on February 5, 2010.² In support of the increase in rates sought through Advice Letter No. 628, Black Hills also included direct testimony and exhibits.

2. In Advice Letter No. 628, Black Hills stated that it sought to increase overall electric revenues annually by \$22,973,975, or 12.84 percent, based upon the test year ending July 31, 2009. If granted by the Commission, the requested revenue increase would be implemented through a new General Rate Schedule Adjustment (GRSA) rider, applicable to base electric rates for all customers, and which would increase base rates by 17.23 percent. The increase to base rates would not apply to the individual rate riders, which include the: 1) Electric Cost Adjustment; 2) Transmission Cost Adjustment; 3) Renewable Energy Standard Adjustment; and 4) Demand Side Management Cost Adjustment. Black Hills also stated that the proposed

¹ Answer testimony and exhibits are due on May 17, 2010. Black Hills's rebuttal and intervenor cross-answer testimony and exhibits are due on June 11, 2010. Statements of Position are due July 9, 2010.

² Because the effective date was incorrectly stated in the originally filed Advice Letter No. 628, on January 20, 2010, Black Hills filed an Amended Advice Letter No. 628 to state the correct effective date of February 5, 2010.

increase in revenue requirement would allow Black Hills to earn an 11.80 percent return on equity and a 9.995 percent return on rate base. As proposed, the rate impact would have been a monthly increase of \$10.79 to the average residential customer and a monthly increase of \$36.00 for an average small business customer.

3. Customer notice of the filing of tariffs accompanying Advice Letter No. 628 was timely given, pursuant to the notice requirements of Colo. Rev. Stat. § 40-3-104(1)(c)(I) and applicable Commission Rules.

4. On January 28, 2010, the Commission issued Decision No. C10-0084, which set the proposed tariff sheets for hearing and suspended their effective date, in order to determine whether the rates contained in the tariff sheets accompanying Advice Letter No. 628 are just and reasonable. Based on the proposed effective date of February 5, 2010, the Commission suspended the effective date of the proposed tariffs for 120 days or through June 4, 2010. The Commission noted that it may, by separate order, further suspend the effective date of the tariff sheets for an additional 90 days, or through September 2, 2010.

5. The Commission also referred the matter to an Administrative Law Judge (ALJ) for disposition, and this proceeding was subsequently assigned to ALJ Paul C. Gomez.

6. By Decision No. C10-0084, the Commission also established a deadline for interventions 30 days from the mailed (issued) date of its Decision, or no later than March 1, 2010.³ Timely intervention notices were filed in this matter by Trial Staff and the OCC. Timely

³ Commission Rule 4 *Code of Colorado Regulations* 723-1-1203(a) provides in relevant part that when the day for the performance of any act, or upon which a document must be filed falls on a Saturday, Sunday, legal holiday, or any other day when the Commission's office is lawfully closed, then the day for performance or effective date shall be continued until 5:00 p.m. on the next business day.

permissive intervention pleadings were filed by Pueblo; CC&V and Holcim; the Public Intervenor; and the IBEW, and were granted by the ALJ. *See* Decision No. R10-0198-I (issued March 4, 2010).

7. A pre-hearing conference was held by ALJ Gomez on March 22, 2010.⁴ Cañon City's Out-of-Time Petition to Intervene was granted at the prehearing conference.

8. At the pre-hearing conference, the following procedural schedule was agreed to by the Parties and then adopted by ALJ Gomez in Decision No. R10-0268-I (issued March 23, 2010):

Answer Testimony due	May 3, 2010
Rebuttal/Cross-Answer Testimony due	June 4, 2010
Dispositive Motions due ⁵	June 2, 2010
Stipulations/Settlement Agreements due	June 14, 2010
Public Comment Hearing	June 8, 2010, 6:00 p.m., in Pueblo, Colorado
Evidentiary Hearing	June 21-25, 2010, and
Statements of Position due	July 9, 2010.

9. By Decision No. C10-0268-I, ALJ Gomez also suspended the effective date of the proposed tariff sheets attached to Advice Letter No. 628 for an additional 90 days, or through September 2, 2010, pursuant to Colo. Rev. Stat. § 40-6-111(1).

⁴ The pre-hearing conference was originally scheduled for April 6, 2010. (*See* Decision No. R10-0198-I, issued March 4, 2010.) On March 19, 2010, Black Hills filed an unopposed motion to reschedule the Pre-hearing Conference, which was granted by Decision No. R10-0258-I, in which the pre-hearing conference of April 6, 2010 was vacated and rescheduled for March 22, 2010.

⁵ This deadline for filing dispositive motions is not applicable to any discovery motions. Such motions may be filed at any time prior to the hearing date.

10. By Interim Order issued in Decision No. C10-0374-I (issued April 22, 2010), ALJ Gomez, granted Black Hills' unopposed motion and extended the filing date for answer testimony to May 10, 2010, in order to permit the parties to dedicate their attention to settlement negotiations.

11. During the prehearing phase of this docket, the Parties⁶ have actively exchanged information through discovery and informal exchanges of information and settlement discussions. As a result of settlement negotiations, the Parties have concluded a settlement of all the disputed issues in this docket.

12. This Settlement Agreement memorializes the negotiated settlement and stipulations among the Settling Parties. As a result of the settlement negotiations, the Settling Parties agree, as set forth below, that all issues in dispute, or that could have been disputed in this docket, have been resolved to their satisfaction, that the terms and stipulations in this Settlement Agreement are fair, just and reasonable, and that the Commission should approve the settlement and the GRSA tariff.

II. THE SETTLEMENT

13. **Revenue Requirement Increase.** Black Hills requested \$22,973,975 in additional annual revenues in this rate case filing. As a result of this settlement, the Settling Parties agree that an increase in Black Hills' annual revenue requirement of \$17.9 million is just and reasonable.

⁶ Together the Settling parties and the non-objecting parties are sometimes referred to as the "Parties."

14. **Regulatory Principles Agreed to in the Settlement.** For purposes of settlement, the Settling Parties agree that the \$17.9 million annual revenue requirement increase is based upon the following regulatory principles and agreements.

- a) A fair and reasonable rate of return on equity for Black Hills in this docket is 10.50 percent.
- b) Black Hills' filed capital structure, consisting of 52 percent equity and 48 percent debt, and Black Hills' filed cost of long-term debt of 8.04 percent are adopted. As a result, Black Hills' overall cost of capital, or rate of return on rate base, is agreed to be 9.319 percent.
- c) The historical test year of the twelve months ending July 31, 2009 is a reasonable test year upon which to determine revenue requirement and the required revenue increase in this proceeding.
- d) Black Hills should recover rate case expenses for the purpose of preparing, filing and litigating this rate case proceeding capped at the amount of \$250,000, amortized over a two-year period. Black Hills reserves the right to request recovery in a future rate case of any unamortized rate case expenses subject to the \$250,000 cost cap.
- e) An adjustment should be made to test year expenses for advertising and consumables. Black Hills agrees to create a mechanism to track accurately its expenses for consumables (i.e., food and beverages), commencing within sixty (60) days after the effective date of the Commission's administratively final decision in this proceeding.
- f) The Settling Parties agree that the foregoing regulatory principles and agreements and the \$17.9 million annual revenue requirement increase are fair, just and reasonable.

15. **Additional agreements to the settlement.** For purposes of settlement, the Settling Parties enter into the following additional agreements.

- a) The Settling Parties agree to support a request to the Commission that the rates adjudicated in this proceeding become effective by July 1, 2010.
- b) Black Hills agrees to perform and to submit a depreciation study before the filing of the next electric rate case.
- c) Black Hills agrees to utilize the billing determinants for calculating the GRSA as agreed to between Black Hills and the Trial Staff.
- d) Black Hills agrees to address the treatment of off-system sales in a separate proceeding. After the tariff adjudicated by this rate case docket becomes effective, Black Hills will commence recording all expenses and any revenues associated with off-system sales in segregated regulatory accounts. The Settling Parties agree the order in the separate proceeding should address the treatment of the balances held in the off-system sales segregated regulatory accounts, as well as how off-system sales net margins thereafter shall be treated.
- e) Black Hills agrees to extend its current Quality of Service Plan ("QSP") reporting requirements under the existing conditions approved in Docket No. 04A-064E for three (3) additional years from the currently scheduled end of the QSP program. The QSP program is currently scheduled to end on July 1, 2010.
- f) Black Hills agrees to address the issue of whether Black Hills' Automated Metering Infrastructure ("AMI") project is in the ordinary course of business, or requires a Certificate of Public Convenience and Necessity, pursuant to Colo. Rev. Stat. § 40-5-

101 through filing a petition for declaratory order with the Commission within 90 days after the Commission issues its final decision approving this Settlement Agreement.

16. The Settling Parties agree that the overall \$17.9 million revenue requirement increase will be collected from all customer classes through a uniform GRSA rider tariff and that the overall percentage increase in base rates will be 12.63 percent. These rate revisions, except for adjustment clause revisions authorized by the Commission, are intended to be in effect only until the Commission authorizes their revision by entry of a final decision in Black Hills' next general rate case, or by entry of some other final decision setting new base rates.

17. The Settling Parties agree that the uniform percent increase for each customer class and the approval of this Settlement Agreement and the GRSA tariff are just, reasonable and in the public interest.

18. Under this Settlement Agreement, the average residential customer would receive an increase of approximately \$7.90 per month. An average small business customer would receive an increase of approximately \$26.38 per month.

19. If the Commission approves this Settlement Agreement, the GRSA tariff implementing the provisions of this Settlement Agreement and complying with the Commission's approval decision may be filed on one business day's notice, pursuant to applicable Commission rules.

III. GENERAL TERMS AND CONDITIONS

20. Through active prehearing investigation and negotiation, the Parties have reached the settlement set forth herein resolving all contested and disputed issues in this docket in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Settlement Agreement reflects the compromise and settlement of all issues raised or that could

have been raised in this docket. The Settling Parties further agree that reaching agreement by means of negotiation and settlement rather than through litigation is in the public interest.

21. The Settling Parties agree to present, to support, and to defend this Settlement Agreement before the Commission and in the courts. The Settling Parties further agree, if the Commission sets a hearing on this Settlement Agreement, to present testimony and exhibits in a hearing to obtain the Commission's approval of this Settlement Agreement. If such a hearing is conducted, the Settling Parties hereby agree that all pre-filed testimony and exhibits shall be admitted into evidence in this docket without cross-examination.

22. This Settlement Agreement shall not become effective until the issuance of a final Commission Order approving the Settlement Agreement, which Order does not contain any modifications of the terms and conditions of this Settlement Agreement that are unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Party shall have the right to withdraw from this Settlement Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this docket. The withdrawing Party shall notify the Commission and the other Parties to this Settlement Agreement by e-mail and facsimile within five (5) business days of the Commission Order that the withdrawing Party is withdrawing from the Settlement Agreement and that the withdrawing Party is ready to proceed to hearing; the e-mail and facsimile notice shall designate the precise issue or issues on which the withdrawing Party desires to proceed to hearing (the "Hearing Notice").

23. The withdrawal of a Party shall not automatically terminate this Settlement Agreement as to any other Settling Party. Within three (3) business days of the date of the Hearing Notice from the first withdrawing Party, all Parties shall confer to arrive at a

comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Settlement Agreement. Within five (5) business days of the date of the Hearing Notice, the Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled. The Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Settlement Agreement.

24. Hearing shall be scheduled as soon as practicable on all of the issues designated in the formal Hearing Notice filed with the Commission. In the event that this Settlement Agreement is not approved, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall not be admissible into evidence in this or any other proceeding. In the event that this Settlement Agreement is approved with conditions that are unacceptable to any Settling Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall not be admissible into evidence in this or any other proceeding as to that withdrawing Party.

25. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested amongst all the Parties in this proceeding.

26. The Settling Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement in the public interest with respect to the various matters and issues presented in this docket, for the sole purpose of the settlement of the matters agreed to in this Settlement Agreement. No Settling Party or person shall be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Settlement Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the

specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the methods or principles herein contained shall be deemed by the Parties to constitute a settled practice or precedent in any future proceeding.

27. This Settlement Agreement may be executed in counterparts and by facsimile copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Settlement Agreement.

CONCLUSION

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving this Settlement Agreement with findings that the Settlement Agreement represents a fair, just, and reasonable resolution of all disputed issues that have arisen, or which could have arisen, in this docket; that the increase in annual revenue requirement stipulated in this Settlement Agreement is just and reasonable; and that the GRSA tariff rider of 12.63 percent is just and reasonable, and will be approved.

RESPECTFULLY SUBMITTED this 17th day of May, 2010.

Approved as to form:

Agreed on behalf of:

DAVIS GRAHAM & STUBBS LLP

BLACK HILLS/COLORADO ELECTRIC
UTILITY COMPANY, LP d/b/a BLACK
HILLS ENERGY:

By:



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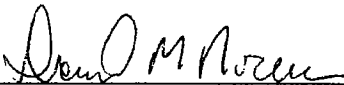
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Agreed on behalf of:

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May 2010, the original of the foregoing **Settlement Agreement and Motion for Approval of Settlement Agreement** was filed through the Commission's E-filing System;

and a copy was sent electronically to the following parties through the E-filing system or at the e-mail addresses indicated:

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	PUC E-filings	Pueblo, City of
and as set forth in the Certificate of Service maintained by the PUC, the following were served via US mail:		
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William McEwan 3257 East Fremont Drive Centennial, CO 80122	Jerry Bellah IBEW 667 P.O. Box 1029 Pueblo, CO 81002	

s/ Geraldine Kelley