

Decision No. C14-0007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0445E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR (1) APPROVAL OF ITS 2013 ELECTRIC RESOURCE PLAN, AND (2) APPROVAL OF ITS 2013-2014 RES COMPLIANCE PLAN.

PROCEEDING NO. 13A-0446E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A POWER PLANT CONSISTING OF A 40 MW SIMPLE CYCLE COMBUSTION TURBINE AND ASSOCIATED BALANCE OF PLANT PURSUANT TO COMMISSION DECISION NO. C12-1434.

PROCEEDING NO. 13A-0447E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY LP, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RETIREMENT OF PUEBLO 5 AND 6.

**PHASE I DECISION
APPROVING SETTLEMENT AGREEMENT;
APPROVING ELECTRIC RESOURCE PLAN WITH
MODIFICATIONS; APPROVING 2013-2014 RENEWABLE
ENERGY STANDARD COMPLIANCE PLAN WITH
MODIFICATIONS; APPROVING APPLICATION TO
CONSTRUCT TURBINE WITH MODIFICATIONS;
APPROVING APPLICATION TO RETIRE PUEBLO
UNITS 5 AND 6; REQUIRING COMPLIANCE FILINGS;
AND GRANTING, IN PART, MOTION FOR WAIVERS**

Mailed Date: January 6, 2014

Adopted Date: December 17, 2013

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I. BY THE COMMISSION**A. Statement**

1. Black Hills/Colorado Electric Utility Company, LP (Black Hills or Company), on April 30, 2013, filed the following three applications which are the subjects of this proceeding: Verified Application seeking a decision approving its 2013 Electric Resource Plan (ERP) and a decision approving its 2013-2014 Renewable Energy Standard Compliance Plan (2013-2014 RES Compliance Plan), Proceeding No. 13A-0445E; Application for a Certificate of Public Convenience and Necessity (CPCN) for the construction of a 40 MW LM6000 natural gas-fired generation unit at Black Hills' Pueblo Airport Generation Station (PAGS), Proceeding No. 13A-0446E; and Application for a CPCN approving the retirement (but not the decommissioning) of Pueblo 5 and 6 generation units on December 31, 2013, Proceeding No. 13A-0447E.

2. Black Hills also filed a Motion for Waivers in Proceeding No. 13A-0445E. Black Hills seeks a variance from the requirements in the Commission ERP Rules, 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, concerning the preparation of energy and demand forecasts for each major customer class; the presentation of estimates of losses to the transmission and distribution components of its system; and application of an end-use or econometric method for developing the energy and demand forecasts for each major customer class.

3. By Decision No. C13-0536-I, mailed May 8, 2013, the Commission consolidated the three proceedings and established Proceeding No. 13A-0445E as the primary proceeding.

4. By Decision Nos. C13-0762-I, mailed June 21, 2013, and C13-0771-I, mailed June 26, 2013, the Commission granted petitions to intervene or noted interventions by right filed by the following entities:

- Staff of the Colorado Public Utilities Commission (Staff);
- Colorado Office of Consumer Counsel (OCC);
- Energy Recovery Specialists, LLC;
- Rocky Mountain Environmental Labor Coalition (RMELC);
- Southwest Generation Operating Company, LLC (Southwest Gen);
- Board of Water Works of Pueblo Colorado and Fountain Valley Authority, jointly (Public Intervenors);
- Southeast Colorado Solar Coalition (SCSC);
- Holcim (US) Inc.;
- Western Resource Advocates (WRA);
- City of Pueblo, Colorado (Pueblo);
- American Iron and Metal, Inc. (AIM);
- Colorado Independent Energy Association (CIEA)
- Colorado Energy Office (CEO)
- Noble Energy, Inc., and EnCana Oil and Gas (USA) Inc. (Gas Producers); and
- Interwest Energy Alliance (Interwest).¹

5. By Decision No. C13-0820-I, mailed July 2, 2013, the Commission established a procedural schedule, discovery procedures, and required the filing of proposed scope of work for the Independent Evaluator (IE). By Decision No. C13-1381-I, mailed October 31, 2013, the Commission addressed hearing procedures.

6. On November 7, 2013, Black Hills, Staff, and the OCC filed a Stipulation and Settlement Agreement (Settlement) and a Joint Motion to Approve Stipulation and Settlement Agreement (Joint Motion). The following parties later joined the Settlement: Gas Producers, RMELC, CEO, CIEA, and WRA. Energy Recovery Specialist and Southwest Gen took no position on the Settlement. Public Intervenors, SCSC, and AIM opposed the Settlement.²

¹ By Decision No. C13-1422-I, mailed November 12, 2013, the Commission granted Interwest's Motion to withdraw.

² The Settlement Agreement, p. 2, states that Pueblo takes no position on the Settlement Agreement, yet in its SOP Pueblo opposed the Settlement.

7. The Settlement states that it intends to resolve all issues in this proceeding³ and requests that the Commission: grant Black Hills a CPCN for its proposed LM6000 generation facility for 40 MW to replace the 42 MW of its Clark Station that will be retired pursuant to the Clean Air-Clean Jobs Act (CACJA); approve the retirement of Pueblo units 5 and 6; authorize Black Hills to conduct a Phase II all-source solicitation for utility resources to meet a 42 MW resource need in 2017 and for up to 60 MW of eligible energy resources in 2017 and 2018; and approve the Company's 2013-2014 RES Compliance Plan, including the implementation of its on-site solar program pursuant to the terms of the settlement agreement approved in Proceeding No. 12A-1207E.

8. On November 7, 2013, Black Hills and RMELC also filed a separate settlement concerning labor issues (RMELC Settlement). No party opposed the RMELC Settlement.

9. The Commission held evidentiary hearings *en banc* on November 12 through 14, 2013, to address the three applications and the two settlements.

10. On November 25, 2013, Black Hills, Staff, and the OCC jointly filed a Statement of Position (SOP) in support of the Settlement. Gas Producers filed a separate SOP in support of the Settlement. Pueblo, Public Intervenors, AIM, and SCSC each filed an SOP in opposition of the Settlement.

11. The Settling Parties agree that the Commission should grant Black Hills' applications in this consolidated proceeding as articulated in the Company's Direct and Rebuttal cases and as modified by the Settlement.

³ The Joint Motion states, however, that the issue of whether a Vestas wind turbine from which Black Hills purchases Renewable Energy Credits qualifies as a "Section 123 resource" was not settled and that the Settling Parties request this matter be resolved by the Commission.

12. Based on the record in this proceeding, we approve the settlements reached by the parties with the modifications described in this Decision.

B. Burdens of Proof and Related Principles

13. Black Hills, as the proponent of a Commission decision granting approval of its applications, bears the burden of proof by a preponderance of the evidence.⁴ The evidence in support of a proposition must be “substantial evidence,” defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion.”⁵ The preponderance of the evidence standard requires the finder of fact to determine whether existence of a contested fact is more probable than its non-existence.⁶

14. If an intervenor advocates that the Commission adopt its position, that intervenor must meet the same preponderance of the evidence burden of proof with respect to its advocated position.

C. Electric Resource Plan

1. Resource Need

15. The most controversial aspect of Black Hills’ ERP is the Company’s determination of its future resource needs during the proposed Resource Acquisition Period extending from 2013 to 2019.

16. The Settling Parties have agreed to the calculation of resource needs as set forth in the load and resource balance presented on page 7 of the Settlement. The net peak demand derives from Black Hills’ load forecast as modified in the Rebuttal Testimony of Black Hills’

⁴ Sections 24-4-105(7) and 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁵ *City of Boulder v. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)).

⁶ *Swain v. Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

witness Lisa Seaman to account for savings from demand-side management (DSM) measures approved in Proceeding No. 12A-100E. The resource need also reflects the retirement of Clark Station, which reduces the Company's resources by 42 MW starting in 2014, and the proposed retirement of Pueblo units 5 and 6, which further reduces the Company's existing resource by another 27 MW starting in 2014. The agreed upon resource need also derives from interruptible resources totaling 9.5 MW and a planning reserve margin of 15 percent throughout the Resource Acquisition Period. The Settling Parties agree to a resource need in 2017 of approximately 82 MW.

17. The Public Intervenors and AIM dispute the resource need agreed upon by the Settling Parties and identify several alleged deficiencies in the Company's load forecast. They oppose the Company's use of a trending analysis instead of an econometric analysis for projecting peak demand.

18. At hearing, Black Hills' witness Fred Stoffel stated that the Company did not perform an econometric analysis to generate its load forecast because, in the Company's estimation, it did not have the data required to complete that type of analysis. He also explained that Black Hills considered the cost of such a study and the impacts on ratepayers.⁷

19. We approve the proposed Resource Acquisition Period of 2013 to 2019 and the proposed determination of resource needs during this period as set forth on page 7 of the Settlement. The growth rates underlying the Company's calculation of net peak demands reflect low levels of annual growth, which is supported by the record. We also find that the proposed 15 percent reserve margin is reasonable for addressing the risks associated with the development of new generation, the losses of generation or transmission capacity, and other risks, consistent

⁷ Hearing Transcript, November 13, 2013, p. 67.

with the ERP Rules. We further find that the Company has appropriately addressed demand reductions from DSM measures and interruptible resources presently under contract.

20. We disagree with the Public Intervenors and AIM that subparagraph 3606(c)(I) of the Commission's ERP Rules requires econometric forecasts. Instead, the rule allows the use of an end use forecast, a type of econometric forecast, or any another supportable methodology. Accordingly, we find that a waiver from subparagraph 3606(c)(I) is not necessary to approve the Settlement.

21. We acknowledge that the Settlement requires Black Hills to provide econometric forecasts in its next ERP filing using data from the Company's advanced meters. While we approve this provision of the Settlement, Black Hills shall continue to be required to use a supportable methodology as the basis for its forecasts and shall justify the use of any econometric approach other than end use modeling.

22. Finally, we grant Black Hills the other waivers related to its load forecast as requested in its Motion for Waivers. Consistent with the Settlement, we do not require Black Hills to provide energy and demand forecasts for each major customer class under subparagraph 3606(a)(II) or provide separate estimates of losses on the transmission and distribution systems under subparagraph 3606(a).

2. All-Source Solicitation

23. The Settling Parties request that the Commission approve an all-source solicitation for bids for resources to meet the resource need during a Resource Acquisition Period of 2013 to 2019. The Settling Parties further request that the Commission approve the Company's proposal to acquire up to 60 MW of eligible energy resources in 2017 or 2018 as part of this competitive bidding process.

24. In support of the proposed resource solicitation, the Settling Parties request that the Commission approve the revised Requests for Proposals (RFPs) and the associated model Purchased Power Agreements (PPAs) for Non-Intermittent Resources, Intermittent (Energy Only) Resources, and Semi-Dispatchable Resources filed on November 8, 2013. They also seek Commission approval of a proposed contract for Seasonal Firm Market Purchases.

25. At hearing, Mr. Stoffel stated that the Company is proposing to issue the RFPs on or before May 1, 2014.⁸

26. The Public Intervenors and AIM oppose the proposed all-source solicitation, primarily because they dispute whether there is a resource need to be satisfied in this ERP.

27. We find good cause to approve the proposed all-source solicitation for Phase II of this ERP. Competitive bidding shall be used to acquire resources during the Resource Acquisition Period of 2013-2019 consistent with the Commission's ERP Rules and this Decision. Given that Black Hills is projected to have insufficient eligible energy resources to meet the Renewable Energy Standard (RES) beginning in 2015, we also approve consideration of bids for up to 60 MW of such resources in 2017 or 2018. We further approve the revised model RFPs and the Seasonal Firm Market Purchases contract filed by the Company on November 8, 2013.

3. Bid Evaluation Criteria and Modeling Inputs and Assumptions

28. Section 5 of each of the proposed RFPs sets forth general bid evaluation criteria. At hearing, Mr. Stoffel explained that Black Hills will make its formal bid evaluation criteria publicly available prior to the pre-bid conference for the all-source solicitation in Phase II.

⁸ Hearing Transcript, November 13, 2013, p. 121.

Mr. Stoffel also stated that the updated modeling inputs or assumptions and bid evaluation criteria will be “locked down” prior to receiving any bids.⁹

29. Staff witness Gene Camp testified that, although the Commission will not necessarily rule on the final bid evaluation criteria pursuant to the terms of the Settlement, it would nonetheless be useful for bidders to understand what the Company is going to use for such criteria. While Mr. Camp cautioned that the absence of a formal Commission review of the bid evaluation criteria in Phase I may make it difficult for parties to advocate their positions on the results in Phase II, he stated that a resource need of only 40 MW will likely result in only a small number of projects to be awarded.¹⁰

30. Consistent with the Settlement, we approve a Resource Planning Period extending from 2013 to 2037 for the purpose of bid evaluation in Phase II. We also direct Black Hills to submit, as a compliance filing, the modeling inputs and assumptions as well as the final bid evaluation criteria to be used in Phase II no later than six weeks prior to the deadline for bids.

31. We recognize that, pursuant to the Settlement, the Phase II bid evaluation will use a single natural gas price forecast to be updated by Ventyx, Black Hills’ data provider and modeling consultant. We agree with the Company that it should use the most current forecast. We are also interested in the assessment of bids assuming higher and lower gas prices, because forecasting natural gas prices is difficult and projections will likely prove to be inaccurate to some degree. Consideration of higher and lower gas prices is also necessary because Black Hills will be seeking to acquire potentially up to 60 MW of eligible energy resources in Phase II and the cost-effectiveness of such resources is driven by future natural gas prices. Therefore, we

⁹ Hearing Transcript, November 13, 2013, p. 120.

¹⁰ Hearing Transcript, November 13, 2013, pp. 161-163.

direct Black Hills to propose the derivation of low and high gas price scenarios around the updated Ventyx forecast for the purpose of presenting a sensitivity analysis of the resource portfolios described in the Company's 120-Day Report. This proposal for high and low gas scenarios shall be included in the filing of the modeling inputs and assumptions due six weeks prior to the deadline for bids, as described above.

4. Modeling for Phase II Bid Evaluation and 120-Day Report

32. In their joint SOP, Black Hills, Staff, and the OCC request that the Commission establish the model runs required in the Phase II bid evaluation. We therefore issue the following directives.

33. Black Hills shall provide four sets of resource portfolios in the 120-Day Report filed under paragraph 3611(d) of the ERP Rules. One set shall comprise the least cost resources. Another set shall include the least-cost resources differentiated by the inclusion of each bid claiming status as a "Section 123 resource."¹¹ This second set of resource portfolios is necessary for the Commission to give the fullest possible consideration of new clean energy and energy efficient technologies under § 40-2-123(1), C.R.S.¹²

34. The third set shall include combinations of eligible energy resources that can be acquired within the constraints of the 2 percent cap on the retail rate impact under § 40-2-124(1)(g), C.R.S., and the 60 MW limit under the Settlement. If appropriate, the final set

¹¹ This approach deviates from the presentation of Section 123 resources contemplated in paragraphs 3604(k) and 3613(d) of the ERP Rules, and we therefore waive those provisions to the extent they conflict with this Decision.

¹² In its 120-Day Report, Black Hills shall set forth a summary of the information the bidders provide concerning the expected costs and benefits from the implementation of their proposed Section 123 resources.

shall include the maximum 60 MW of eligible energy resources potentially to be acquired under the terms of the Settlement without the constraint of the retail rate impact.¹³

35. Consistent with the terms of the Settlement, Black Hills shall present an Environmental Scenario for each set of portfolios using the assumed price of carbon dioxide emissions developed for Black Hills by Ventyx.

36. In addition, Black Hills shall provide in its 120-Day Report the energy generated each year by each eligible energy resource included in the portfolio and the annual cost per Renewable Energy Credit (REC) produced (or the cost per MWh produced by any other non-renewable eligible energy resources). Black Hills also shall provide, for each bid or proposal entered into computer modeling for the purpose of deriving a net present value of revenue requirements, the annual costs of the PPA or proposed utility resource. Finally, Black Hills shall present the resource portfolios under the base gas price, as well as the low and high gas price sensitivities discussed above.

5. Phase I Contingency Plan

37. As part of its ERP filing, Black Hills sets forth a contingency plan in accordance with paragraphs 3609(c) of the ERP Rules. The Settlement requests that the Commission approve this “Phase I Contingency Plan.”

38. While we are generally disinclined to approve contingency plans before the receipt of bids, we note that the proposed contingency plan does not include a self-build generation option. Given the absence of such an option, we approve the Phase I contingency

¹³ The Company shall include a calculation of the funds that it would have to advance to its Renewable Energy Standard Adjustment deferred account, if any, to acquire these resources.

plan consistent with the request in the Settlement. We also grant Black Hills a waiver of the requirement in paragraph 3609(c) to identify the associated cost of the contingency plan.¹⁴

6. Independent Evaluator

39. By Decision No. C13-0820-I, the Commission ordered Black Hills to file a proposed scope of work for an IE for Phase II of its ERP. In response, Black Hills submitted a copy of the proposed scope of work it attached to an RFP for IE services issued in January 2013. The Company also explained that it has entered into an agreement with the Accion Group (Accion) to perform the IE functions set forth in the RFP. Accion would also host the Phase II bid solicitation and fulfill other communication and administration processes.

40. By Decision No. C13-1023-I, mailed on August 20, 2013, the Commission declined to approve an IE at that time. The Commission allowed parties to discuss through testimony whether an IE is necessary.

41. No pre-filed testimony was submitted regarding the need for an IE in Phase II, except for the Rebuttal Testimony of Mr. Stoffel. Mr. Stoffel testified that the quantity and variety of bids anticipated through the all-source bid solicitation would involve more complex issues and require more extensive evaluation, modeling, and analyses than the Company's recent solicitation for wind resources in Proceeding No. 13A-0407E where Accion served as an Independent Auditor.¹⁵

42. Although we agree with Black Hills that an all-source solicitation can be complex, we conclude that no IE is necessary for this solicitation for only 42 MW of resources. We concur with Mr. Camp's observation at hearing that a solicitation of this size will involve

¹⁴ ERP Vol. I, p. 70 (Exhibit FCS-1).

¹⁵ Stoffel Rebuttal, p. 34.

only a few contracts being awarded.¹⁶ Further, we find that the need for an IE has been substantially reduced due to the provisions of the ERP Rules that provide parties and bidders access to critical information given proper non-disclosure agreements. Such access enables stakeholders to submit informed comments regarding Black Hills' bid evaluation as described in the Company's 120-Day Report. Finally, we do not think an IE is warranted in this instance given the associated cost and its impact on Black Hills' customers.

43. Because the RFP documents filed on November 8, 2013, describe the role of the IE in the proposed all-source solicitation, we direct Black Hills to amend the documents before they are issued to prospective bidders.

D. 2013-2014 Renewable Energy Standard Compliance Plan

44. Black Hills states in its 2013-2014 RES Compliance Plan that it does not need to acquire any additional eligible energy resources to meet RES requirements in those years.¹⁷ The Settling Parties agree that the plan should be approved by the Commission.

1. On-Site Solar Acquisitions in 2013-2014

45. The Settling Parties agree that Black Hills will implement its 2013-2014 on-site solar programs consistent with the terms of the settlement approved in Proceeding No. 12A-1207E. Accordingly, Black Hills will continue to use the unsubscribed capacity from its 2011 and 2012 on-site solar programs for years 2013 and 2014.

46. SCSC requests that the Commission set aside that settlement approved in Proceeding No. 12A-1207E and requests that the Commission approve expanded funding for on-site solar. SCSC further requests, contrary to the terms of the settlement in Proceeding

¹⁶ Hearing Transcript, November 13, 2013, pp. 162.

¹⁷ Black Hills is required to generate or cause to be generated at least 12 percent of its retail electric sales from eligible energy resources in 2013 and 2014.

No. 12A-1207E, that the Commission order Black Hills to re-open its 2013-2014 on-site solar programs if all of the capacity approved to be acquired in those years is purchased.¹⁸

47. Given that Black Hills does not need to acquire additional on-site solar to meet its RES requirements in 2013 or 2014, and because the record in this proceeding does not support modification of the settlement in Proceeding No. 12A-1207E, we deny SCSC's requests. Further, there was no guarantee when the settlement was reached in Proceeding No. 12A-1207E that it would achieve SCSC's intended goals.

2. On-Site Solar Acquisitions in 2015-2017

48. At hearing, Mr. Stoffel stated that the Company intends to acquire additional on-site solar during the Resource Acquisition Period and that the Company will bring forward its plan for such acquisitions when it files its 2015-2017 RES Compliance Plan.¹⁹

49. We direct Black Hills to address additional on-site solar acquisitions in its 2015-2017 RES Compliance Plan. In addition, due to the possibility that the Commission may not enter a final decision on that compliance plan before the end of 2014, the Company is directed to include a proposal for the continuation of its on-site solar program into early 2015 until such time that a final decision is issued and can be implemented by the Company.

3. RES Compliance After 2014

50. Black Hills asserts it may not generate or cause to be generated sufficient eligible energy to meet applicable RES standards beginning in 2015²⁰ without exceeding the 2 percent

¹⁸ SCSC signed on to the settlement in Proceeding No. 12A-1207E.

¹⁹ Hearing Transcript, November 13, 2013, p. 114.

²⁰ For the years 2015 through 2017, Black Hills has an overall RES requirement to generate or cause to be generated at least 20 percent of electricity from eligible energy resources. Hearing Exhibit 7 shows that Black Hills will not have sufficient eligible energy to meet this standard. (Stoffel Rebuttal, Revised Table 9, Exhibit FCS-4.)

cap on retail rates under § 40-2-124(1)(g), C.R.S., and subparagraph 3661(h)(IV) of the Commission's RES Rules, 4 CCR 723-3-3650, *et seq.*

51. We defer to Black Hills' 2015-2017 RES Compliance Plan proceeding for any determination on whether, beginning in 2015, the Company may acquire less eligible energy resources than the amounts listed in § 40-2-124(1)(c)(I), C.R.S., due to the retail rate impact cap. We anticipate that the Commission will have more information on alternative RES compliance strategies and on the status of its Renewable Energy Standard Adjustment (RESA) account balance in that future proceeding.

52. With respect to alternative RES compliance strategies, the Settling Parties agree that Black Hills will consider the purchase of standalone RECs in blocks of 50,000 RECs per year in its 2015-2017 RES Compliance Plan as a tool to meet the Company's RES obligations. We find merit in exploring specifically whether an RFP for RECs will permit Black Hills to achieve compliance with the RES while remaining under the retail rate impact cap. In addition, an RFP for RECs may also help establish a competitive market price for eligible energy resources generally. Therefore, we direct Black Hills to address the issuance of an RFP for RECs in blocks of 50,000 RECs in its 2015-2017 RES Compliance Plan.

4. Calculation and Lockdown of Net Incremental Costs

53. Subparagraph 3661(h)(V) of the RES Rules allows Black Hills to seek approval of locked-down values for the annual net incremental cost of certain eligible energy resources. Temporarily fixing the incremental costs of eligible energy resources that have already been acquired reduces the fluctuation of such costs when considering the retail rate impact over time, thereby simplifying plans for acquiring additional eligible energy resources and improving the management of the Company's RESA account balance. In these consolidated proceedings, the

Settling Parties request that the Commission approve Black Hills proposal to “lock down” the incremental costs for its existing on-site solar program and its Busch Ranch wind facility for the entire RES Planning Period extending from 2013 to 2023.

54. The Settling Parties also agree that Black Hills should be allowed to use the modeling inputs and assumptions the Company uses in this ERP when determining those incremental costs. At hearing, Staff witness Mr. Camp explained that it makes sense to lock-down these costs and that failing to do so in this proceeding would require the Commission to address the incremental cost of those same resources again in Black Hills’ next RES Compliance proceeding.²¹

55. We find good cause to approve these provisions of the Settlement.

5. Section 123 Status of Vestas 1.8 MW Turbine

56. Black Hills seeks a Commission finding that a 1.8 MW V100 Vestas wind turbine located at the Vestas plant in Pueblo is a Section 123 resource under paragraph 3602(q) of the Commission’s ERP Rules.

57. The Settling Parties have not reached agreement on this matter. Black Hills states that the Vestas V100 turbine was the first of its kind installed in North America and that Vestas used the turbine to test the generation of wind energy at low wind velocities.²² Staff counters that Colorado has roughly 2,300 MW of installed wind capacity and that, while aspects of the Vestas turbine were new when it was installed in 2010, wind technology itself is neither innovative nor lacking in commercial viability. Similarly, the OCC opines that the Vestas turbine represents only a small, evolutionary step in wind technology.

²¹ Hearing Transcript, November 13, 2013, p. 165.

²² Seaman Direct, at 14.

58. We agree with Staff and the OCC that the V100 turbine does not satisfy the definition of a Section 123 resource.

E. CPCN to Construct and Own LM6000 at PAGS

1. Legislative Background

59. The CACJA, codified at § 40-3.2-201, *et seq.*, C.R.S., requires all rate-regulated utilities that own or operate coal-fired electric generating units located in Colorado to submit to the Commission an emission reduction plan for emissions from those units on or before August 15, 2010.^{23,24} The plan must include a schedule that would result in the full implementation of the plan on or before December 31, 2017.

60. The Commission must consider nine specific factors in evaluating the emission reduction plan. These factors include, *inter alia*, whether the plan promotes Colorado economic development; whether the plan preserves reliable electric service; whether the plan is likely to protect Colorado customers from future cost increases; and whether the cost of the plan results in reasonable rate impacts, particularly on low-income customers.²⁵

61. CACJA requires approval of an emission reduction plan in which coal-fired electric generating units are replaced. Replacement plants may include natural gas-fired electric generating units utilized less than 20 percent on an annual basis.²⁶ The act allows a utility to include in its emissions reduction plan the retirement of a coal-fired facility if the utility had not announced a plan to retire the facility as of January 1, 2015, when CACJA was enacted.

²³ Section 40-3.2-204(1), C.R.S.

²⁴ That emissions reduction plan must cover a minimum of 900 MW or 50 percent of the utility's coal-fired electric generating units in Colorado, whichever is smaller. Section 40-3.2-204(2)(a), C.R.S.

²⁵ Section 40-3.2-205(1)(a), C.R.S.

²⁶ Section 40-3.2-204(2)(b)(III), C.R.S.

62. Pursuant to the CACJA, the Commission “shall allow, but not require, the utility to develop and own as utility rate-based property any new electric generating plant constructed primarily to replace any coal-fired electric generating unit retired pursuant to the plan.”²⁷ The Commission was required to issue a decision in regards to the plan by December 15, 2010.

2. Prior Commission Decisions

63. In compliance with the CACJA, Black Hills filed an emission reduction plan on August 13, 2010. After an evidentiary hearing, the Commission issued a decision approving that plan on December 15, 2010.²⁸

64. In its emission reduction plan, Black Hills proposed to retire its two coal units at Clark Station (42 MW) and replace that capacity with a portion of the capacity of a new LMS100 gas-fired unit that would be constructed at PAGS.²⁹ Black Hills explained that the LMS100 would have a total capacity of 92 MW, or 50 MW more than the retired capacity at Clark Station.³⁰ The Company planned to run the LMS100 as a peaking facility that would operate no more than 20 percent of all hours per year.³¹

65. In approving Black Hills’ emission reduction plan, the Commission considered the nine factors required by CACJA.³² The Commission found that the retirement of the Clark Station units by the end of 2013 was needed and in the public interest.^{33,34} The Commission also

²⁷ Section 40-3.2-207(6), C.R.S.

²⁸ Decision No. C10-1330, Proceeding No. 10M-254E issued December 15, 2010.

²⁹ Decision No. C10-1330, ¶ 35.

³⁰ *Id.*, fn. 3.

³¹ *Id.*, ¶ 37.

³² *Id.*, ¶ 79-91. Because the Commission has already considered these factors in approving the emission reduction plan (replacing as opposed to repowering Clark Station), they are no longer relevant in this proceeding.

³³ *Id.*, ¶ 54.

³⁴ The Commission noted that, due to the advanced age of these units, it did not make economic sense to install emission controls and re-powering Clark Station with an alternative fuel appeared to be neither feasible nor cost effective. *Id.* The Company estimated that the costs associated with the emission controls would increase its revenue requirements by approximately 12 percent. By contrast, replacing Clark Station with a gas-fired unit was estimated to increase revenue requirements by 5 percent. *Id.*, ¶ 74.

granted Black Hills a presumption of need for 42 MW of capacity with respect to a future CPCN application for the new LMS100 at PAGS.³⁵ Finally, in regards to the reasonableness of the cost of the plan, the Commission determined that “an increase of 5 percent or less in the Company’s revenue requirement is reasonable.”³⁶

66. In 2011, when Black Hills filed an application to construct, own, and operate the LMS100, the Commission found that the Company failed to establish there was a need for the full 92 MW capacity of the LMS100.³⁷ However, the Commission reiterated that 42 MW of replacement capacity for the closure of Clark Station was needed and in the public interest.³⁸

67. In 2012, the Commission dismissed without prejudice an ERP application filed by Black Hills and ordered the Company to re-file.^{39,40} The Commission explained that only those actions that the utility undertakes in furtherance of a Commission-approved emission reduction plan are entitled to cost recovery as well as the ownership and development rights under § 40-3.2-207(6), C.R.S.⁴¹ The Commission reaffirmed that the retirement of the Clark Station is needed and in the public interest and that 42 MW of replacement capacity is also needed and in the public interest.⁴² Finally, the Commission explained that Black Hills retained an opportunity to make a future filing and provide the evidence necessary to demonstrate that its replacement capacity project is just and reasonable.⁴³

³⁵ *Id.*, ¶ 66.

³⁶ *Id.*, ¶ 91.

³⁷ Decision No. R11-1344, mailed December 14, 2011 in Proceeding No. 11A-226E, ¶ 268; Decision No. C12-0380, mailed April 13, 2012, ¶ 41.

³⁸ Decision No. C12-0380, ¶ 46.

³⁹ *See generally*, Decision No. C12-1223, mailed October 25, 2012 in Proceeding No. 12A-851E.

⁴⁰ Proceeding No. 13A-0445E is the re-filed ERP.

⁴¹ Decision No. C12-1223, ¶ 19.

⁴² *Id.*, ¶ 28.

⁴³ *Id.*

68. In response to Black Hills' application for rehearing, reargument or reconsideration to the dismissal decision, the Commission explained that the 2012 LM6000 proposal did not provide enough information on the scope, schedule, and costs to enable the Commission to find whether the proposal was reasonable.⁴⁴ The Commission affirmed that the Company continued to enjoy a presumption under CACJA that the replacement capacity for Clark Station will be utility-owned and acquired without competitive bidding.⁴⁵ Finally, the Commission clarified that the standard for granting a CPCN will be met once Black Hills demonstrates that a similarly-sized generation facility can be accomplished prudently and for reasonable rate impacts.⁴⁶

3. Findings and Conclusions

69. For reasons stated below, we grant Black Hills a CPCN for the development and ownership of the proposed 40 MW LM6000 gas-fired generation unit at PAGS and a presumption of prudence for up to 5 percent of the Company's revenue requirement at the time the Company requests cost recovery. We therefore approve this provision of the Settlement.

70. In compliance with prior Commission decisions, Black Hills has demonstrated that a similarly-sized generation facility can be accomplished prudently and for reasonable rate impacts, with an increase of less than 5 percent in revenue requirement.^{47,48} Based on the record in this proceeding, we agree with the Settling Parties that Black Hills can construct the facility at a reasonable cost as a brownfield expansion project at PAGS. The cost is also comparable with

⁴⁴ Decision No. C12-1434, mailed December 14, 2012 in Proceeding No. 12A-0851E, ¶ 19.

⁴⁵ *Id.*, ¶ 20.

⁴⁶ *Id.*, ¶ 21.

⁴⁷ This is contrary to the 2012 LM6000 proposal which did not provide enough information on the scope, schedule, and costs to enable the Commission to find whether the proposal was reasonable.

⁴⁸ The Commission routinely considers projected increases in revenue requirements as a measure of projected rate impacts. Pursuant to the ERP Rules, the Commission develops cost-effective resource portfolios that can be acquired at a reasonable rate impact, where a primary goal, consistent with state policy, is to minimize the net present value of revenue requirements. Decision No. C07-0829, Proceeding No. 07R-0368E, pp. 20-21.

the costs and revenue requirement associated with a 42 MW portion of an LMS100 that Black Hills initially proposed in its emission reduction plan.⁴⁹ We conclude that the construction, ownership, and operation of the LM6000 are consistent with Black Hills' Commission-approved emission reduction plan. As such, it is entitled to cost recovery as well as ownership and development rights under § 40-3.2-207(6), C.R.S.⁵⁰

71. We find that the arguments presented by the parties opposing the Settlement do not overcome CACJA and its requirements. These parties are correct in that Black Hills plans to use the LM6000 as a peaking unit with a predicted annual capacity factor of 0.1 to 0.4 percent in the first five years. Further, Black Hills previously proposed to replace Clark Station with a peaking unit and the Commission has approved that component of the emission reduction plan.⁵¹ Consistent with our finding above that Black Hills has a resource need of approximately 82 MW in 2017 and given the requirements of § 40-3.2-207(6), C.R.S.,⁵² we find it reasonable for the Company to meet a portion of that need with the proposed LM 6000.

72. The parties opposing the Settlement also suggest that Black Hills may have retired the Clark Station units even in the absence of CACJA.⁵³ However, this is irrelevant as a matter of law. In enacting CACJA, the General Assembly chose allow older coal plants to be included in emission reduction plans. In addition, the General Assembly was aware that Black Hills was a utility that owned and operated a single coal-fired unit, yet it did not preclude the Company from retiring that unit as part of its plan.

⁴⁹ Decision No. C10-1330, Proceeding No. 10M-254E, at 13, ¶ 38.

⁵⁰ We note that the alternatives suggested by the parties opposing the Settlement, such purchasing existing stranded generation assets or exploring power purchase agreements, do not meet the "own and develop" requirements of CACJA. Public Intervenors SOP, at. 6.

⁵¹ Decision No. C13-1330 is now final and not subject to appeal.

⁵² Settlement, ¶ 13.

⁵³ Hearing Transcript, November 13, 2013, p. 52, line 18 to p. 53, line 23; Public Intervenors SOP, at 7.

73. The Commission has received numerous public comments filed in opposition to the CPCN because of increased rates, and the Commission is aware of the economic hardship faced by many in Black Hills' service area. Even though the Commission is bound to follow CACJA, we will strive to mitigate resulting rate shocks. In a subsequent proceeding to place the LM6000 unit into its rate base, Black Hills will bear the burden of proof with respect to any costs that exceed 5 percent of the Company's revenue requirement.

F. CPCN to Retire Pueblo 5 and 6

74. Black Hills' application for a CPCN approving the retirement of Pueblo units 5 and 6 is unopposed.

75. At hearing, Mr. Camp stated that Staff had toured the facilities and recommended not to extend the life of these units. Black Hills witness Mark Lux also testified that the Company is not anticipating any rate impacts as a result of decommissioning.⁵⁴

76. Based on the age of the units and the expectation of no rate impacts from their decommissioning costs, we find good cause to approve the retirement of Pueblo units 5 and 6 and grant the application filed in Proceeding No. 13A-0447E.

G. Settlement with RMELC

77. Paragraph 3611(h) of the ERP Rules requires Black Hills to provide the Commission with best value employment metric information for resources that it proposes to own as a rate base investment, such as the LM6000 for which the Company seeks a CPCN in this proceeding.

78. Black Hills and the RMELC reached a settlement regarding the best value employment metrics for the workers hired in the construction of the LM6000 at PAGS. For

⁵⁴ Hearing Transcript, November 14, 2013, p. 141.

instance, if the Commission grants the Company a CPCN to construct the LM 6000, Black Hills and RMELC agree to work in good faith to develop questions for the RFP sent to contractors to determine, among other things, the best value employment metrics information contained in § 40-2-129, C.R.S. Similarly, after the Company selects the contractors for construction of the LM6000, Black Hills and RMELC agree to work together to use the information and to file a report that summarizes such information.

79. We find good cause to approve this unopposed settlement.

H. American Iron and Metal Access to Interruptible Service Rider

80. AIM requests that the Commission require Black Hills to offer the Company's Interruptible Service Rider to AIM. AIM states that it has a 3 MW load that could be interrupted with no notice, but, according to AIM, Black Hills has denied AIM's request to be an interruptible customer.

81. In their Joint SOP, Black Hills, Staff, and the OCC argue that interruptible rates should be available only to customers that cause load at system peaks. Because AIM does not consistently consume power at peak times, Black Hills, Staff, and the OCC take the position that AIM should not be placed on an interruptible rate, since other customers would receive no benefit because capacity needed to serve the system at peak would not be reduced.

82. We agree with the Settling Parties and deny AIM's request. Black Hills' customers receive the greatest benefits from an interruptible service tariff when the interruptions are used to reduce peak system demand. Based on the record in this proceeding, AIM is not causing significant load system peak and therefore offering an interruptible rate to AIM is unlikely to reduce peak system demands. We further note that the Settlement requires Black Hills to conduct a study regarding how it can increase participation in its interruptible program

and to make a filing with the Commission regarding the results of the study and proposed next steps no later than December 31, 2014. We approve this approach and direct Black Hills to address how frequently and for what durations customers taking service under the Interruptible Service Rider have been interrupted since 2007. If Black Hills proposes to increase participation in its interruptible service offerings, the Company shall also address how interruptions will lower its system peak loads, including the projected frequency and duration of future interruptions and the expected level of demand reduction.

I. Expansion of Time-of-Use Rates

83. The Settling Parties agree that Black Hills will not expand its Time-of-Use (TOU) rate at this time. Black Hills indicates that it is currently conducting a study to determine customer interest in TOU rates and that it will file a report with the Commission no later than May 1, 2014, which may include a proposal for a TOU rate for residential customers.

84. SCSC suggests TOU rates can play a critical role in reducing peak load and that the Commission should order Black Hills to expand its TOU pilot immediately and to investigate whether TOU rates can be offered to residential customers.⁵⁵

85. SCSC provides no evidence or support for how Black Hills' current studies on TOU offerings could be improved or why the current timeframe for its TOU report is inadequate. Therefore, we deny SCSC's request.

J. Requests for Additional Approvals and Associated Waivers

86. According to the terms of the Settlement, any issue not discussed in the Settlement or the RMELC Settlement should be determined to be consistent with Black Hills'

⁵⁵ SCSC SOP, at 2.

applications in these consolidated proceedings, except as modified by the Company's rebuttal and supplemental rebuttal testimonies, and approved by the Commission.

87. We grant such approvals, subject to Black Hills filing a list of these items, including any waivers associated with the requested approval, within 30 days of the effective date of this Decision; absent further action by the Commission, the listed items will be deemed approved.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Stipulation and Settlement Agreement (Settlement) filed by Black Hills/Colorado Electric Utility Company, LP (Black Hills or Company), Staff of the Public Utilities Commission, and the Colorado Office of Consumer Counsel on November 7, 2013 is granted. The Settlement is approved, consistent with the discussion and any modifications stated above.

2. The Verified Application seeking a decision approving its 2013 Electric Resource Plan and a decision approving its 2013-2014 Renewable Energy Standard Compliance Plan filed by Black Hills in Proceeding No. 13A-0445E on April 30, 2013 is granted, with modifications, consistent with the discussion above.

3. The Motion for Waivers filed by Black Hills in Proceeding No. 13A-0445E on April 30, 2013 is granted, in part, consistent with the discussion above.

4. The Application for a Certificate of Public Convenience and Necessity (CPCN) for the construction of a 40 MW LM6000 natural gas-fired generation unit at Black Hills' Pueblo Airport Generation Station filed in Proceeding No. 13A-0446E by Black Hills on April 30, 2013, is granted, with modifications, consistent with the discussion above.

5. The Application for a CPCN approving the retirement of the Pueblo 5 and 6 generation units filed by Black Hills in Proceeding No. 13A-0447E on April 30, 2013 is granted.

6. Consistent with the discussion above, Black Hills shall file the modeling inputs and assumptions as well as the final bid evaluation criteria to be used in Phase II no later than six weeks prior to the deadline for bids. Within this filing, Black Hills shall also propose a derivation of low and high natural gas price scenarios for the purpose of presenting a sensitivity analysis of the resource portfolios described in the Company's 120-Day Report.

7. Consistent with the discussion above, Black Hills shall make a compliance filing within 30 days of the effective date of this Decision listing the items not addressed by this Decision but subject to approval pursuant to the terms of the Settlement, including any associated waivers required.

8. The Motion to Approve Joint Stipulation (RMELC Stipulation) filed by Black Hills and the Rocky Mountain Environmental Labor Coalition on November 7, 2013, is granted. The RMELC Stipulation is approved.

9. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

10. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
December 17, 2013.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners