

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

**PROCEEDING NO. 19A-0660E**

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IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF AN AMENDMENT TO ITS 2016 ELECTRIC RESOURCE PLAN CONCERNING A COMPETITIVE SOLICITATION FOR UP TO 200 MW OF RENEWABLE ENERGY AND ENERGY STORAGE.

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**UNOPPOSED AND COMPREHENSIVE SETTLEMENT AGREEMENT**

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**I. INTRODUCTION AND IDENTIFICATION OF PARTIES**

This Unopposed and Comprehensive Settlement Agreement (“Settlement Agreement” or “Settlement”) represents a full and complete resolution of the Application of Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy (“Black Hills” or the “Company”) for approval of an Amendment to its 2016 Electric Resource Plan (“ERP”), concerning a competitive solicitation for up to 200 MW of renewable energy and energy storage (“Renewable Advantage”), filed in Proceeding No. 19A-0660E. This Settlement Agreement is joined by Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”), the Office of Consumer Counsel (“OCC”), the City of Pueblo, the Board of County Commissioners of the County of Pueblo (“Pueblo County”), the Colorado Energy Office (“CEO”), Western Resource Advocates (“WRA”), and the Colorado Independent Energy Association (“CIEA”) (collectively, the “Settling Parties”).<sup>1</sup> Lafarge Holcim US Inc. (“Holcim”) does not oppose the Settlement Agreement.

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<sup>1</sup> The only party to this proceeding that is not a Settling Party, the Board of Water Works of Pueblo, Colorado (“Pueblo Water”), has indicated that it takes no position on the Settlement Agreement.

This Settlement is a comprehensive settlement among the Settling Parties, through the give and take of extensive settlement negotiations. This Settlement resolves all issues that have been raised or could have been raised in this proceeding. The diversity of interests represented in this proceeding helped ensure that this negotiated Settlement will serve the public interest. As a result, this Settlement Agreement represents a just and reasonable resolution of this proceeding and should be approved by the Commission.

## **II. BACKGROUND**

1. On November 22, 2019, Black Hills filed an Application for approval of an amendment to its 2016 ERP regarding the Company's Renewable Advantage competitive solicitation.

2. The Commission noticed the Company's Application on December 4, 2019, setting the intervention period through January 3, 2020. On January 29, 2020, by Decision No. C20-0064-I, the Commission referred this proceeding to an Administrative Law Judge ("ALJ").

3. Staff, OCC, the City of Pueblo, Pueblo County, Pueblo Water, CEO, WRA, Holcim, and CIEA subsequently filed interventions. By Decision No. R20-0094-I, issued February 12, 2020, the assigned ALJ acknowledged the interventions of right filed by Staff, OCC, and CEO, and granted all other requests for permissive intervention except for WRA, which was granted intervention on April 15, 2020, by Decision No. C20-0248-I.

4. On April 10, 2020, by Decision No. R20-0240-I, the ALJ, among other things, established a procedural schedule for this proceeding. The Decision directed the filing of: Black Hills' Supplemental Direct Testimony and 120-Day Report on June 19, 2020; the Independent Evaluator Report on July 2, 2020; Answer Testimony and Responses to the 120-Day Report on July 16, 2020; and Rebuttal and Cross-Answer Testimonies on August 3, 2020. The Decision

scheduled an evidentiary hearing for August 18-19, 2020, and established August 28, 2020 for filing Statements of Position.

5. The parties to the proceeding commenced settlement negotiations on July 27, 2020, and the Settling Parties reached a settlement in principle on July 31, 2020.

6. On July 31, 2020, Black Hills, on behalf of the Settling Parties, filed a Notice of Settlement, Unopposed Joint Motion to Vacate Rebuttal and Cross-Answer Testimony Deadline, and Request for Waiver of Response Time (“Joint Motion to Vacate”). The Joint Motion to Vacate stated that the Settling Parties had reached a settlement in principle, and requested that the ALJ waive the deadlines for the submittal of Rebuttal and Cross-Answer Testimonies and adopt proposed deadlines for the filing of a Settlement Agreement, Motion for Approval of the Settlement Agreement, and testimony in support of the Settlement Agreement.

7. On August 4, 2020, the ALJ issued Decision No. R20-0569-I, which granted the Joint Motion to Vacate. The Decision also directed the filing of a Settlement Agreement and Motion for Approval of the Settlement Agreement by August 10, 2020, and the filing of testimony in support of the Settlement Agreement by August 13, 2020.

8. The Settlement Agreement filed here represents the comprehensive agreements of all Settling Parties to resolve the issues in this Proceeding No. 19A-0660E that were raised, or could have been raised, by the Settling Parties. The Settling Parties agree that the Settlement is in the public interest and should be approved without modification.

### **III. SETTLEMENT TERMS**

9. The Settling Parties have agreed to the terms set forth in this Section.

**A. Approval of Amendment to 2016 ERP (Rule 3619)**

10. The Settling Parties agree that the Commission should approve the Company's proposal to amend its previously approved 2016 ERP to conduct the Renewable Advantage competitive solicitation for up to 200 MW of renewable energy and storage.

**B. Approval of Accion as the Independent Evaluator ("IE")**

11. The Settling Parties agree that the Commission should approve the designation of Mr. Harry Judd of the Accion Group to act as an IE in this proceeding.

**C. Approval of Bid 128-03 as the Preferred Bid**

12. The Settling Parties agree that the Commission should issue a decision finding that the Company's pursuit and acquisition of Bid 128-03 (the "Preferred Bid") is in the public interest. The Settling Parties further agree that the Commission should issue an order granting a presumption of prudence for the Company to proceed with negotiating and executing a Power Purchase Agreement ("PPA") with Bid 128-03, consistent with Rule 3617(d).

**D. Approval of Regulatory Asset Account**

13. The Settling Parties agree that the Commission should authorize the Company to track, record, and defer all incremental third-party costs, net of bid fees, associated with Renewable Advantage in a regulatory asset account.

14. The Settling Parties further agree that the Company is prohibited from seeking recovery in rates of any costs in the regulatory asset account until after the actual commercial operation date of the resource from Renewable Advantage.

**E. Approval of Two Back-Up Bids**

15. The Settling Parties agree that Commission approval of two back-up bids is in the public interest. The Settling Parties agree that Bid 232-01 will not be included in any part of the

Back-Up Bids described here. The Company will proceed with back-up bids according to and consistent with the following three scenarios:

- (1) If a delay or denial of the permit required under House Bill 74-1041 for the Company's planned West Station-Hogback 115 kV Transmission Project ("Reliability Upgrade for Southern Colorado") occurs that prevents approval of the Reliability Upgrade for Southern Colorado project in 2020, then Black Hills is authorized to replace the Preferred Bid with Bid 229-01 and Black Hills will immediately begin negotiations with the developer of Bid 229-01.
- (2) If negotiations fail with the Preferred Bid for any reason other than the event described in scenario 1 above, such as the bidder's inability to deliver the project pursuant to similar terms and conditions as bid, then Black Hills is likewise authorized to replace the Preferred Bid with Bid 229-01.
- (3) If, as a result of scenarios 1 or 2, Black Hills enters into negotiations with Bid 229-01 and negotiations fail with that bidder, then Black Hills is authorized to replace Bid 229-01 with Bid 128-01.

16. The Settling Parties agree that the Commission should issue an order granting a presumption of prudence consistent with Rule 3617(d) for the Company's acquisition of the backup bids to replace the Preferred Bid should the circumstances warrant (as described in the scenarios above).

17. The Settling Parties further agree that in the event Black Hills needs to replace the Preferred Bid or Backup Bid 229-01 for the reasons addressed above, the Company shall make a notice filing to the Commission providing an explanation of the need to replace the bid and Black Hills' plan to proceed with negotiations with the applicable backup bidder.

**F. Social Cost of Carbon (“SCC”) and Carbon Emissions**

18. The Settling Parties agree the Commission should find that the calculated SCC and carbon emission reductions by 2030, as presented by the Company, have only been provided as informational for the purposes of this proceeding and should not establish any precedential value for the purpose of any other proceedings.

**G. Resource Energy Cost of Renewable Advantage Exclusively Recovered Through the Energy Cost Adjustment (“ECA”) Rider**

19. The Settling Parties agree that the Commission should order the resource energy costs associated with the acquired resource to be exclusively recovered through Black Hills’ ECA. Accordingly, the Settling Parties agree that Black Hills’ Renewable Energy Standard Adjustment (“RESA”) rider is not applicable to this acquisition given the exclusive recovery from the ECA.

20. The Settling Parties further agree that—to the extent necessary—a partial temporary variance from or waiver of Rule 3661(h)<sup>2</sup> for the duration of any contracts executed to implement Renewable Advantage is reasonable and appropriate as Black Hills’ RESA is not impacted by this acquisition and hence does not create incremental costs that would be subject to Rule 3661. A variance or waiver of Rule 3661 is reasonable and appropriate because the record in this case demonstrates the cost of the Preferred and Backup Bids fall below the Company’s average cost of electricity, and they therefore do not create incremental costs subject to Rule 3661.

**H. Affiliate Bid (293-01)**

21. The Settling Parties agree that the Commission should not approve, and Black Hills does not recommend, the acquisition of Bid 293-01 in this proceeding.

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<sup>2</sup> 4 CCR 723-3-3661(h).

**I. Quarterly Status Reporting**

22. The Settling Parties agree that Black Hills shall file in this proceeding quarterly status reports that address the status of bid negotiations and the status of necessary transmission updates to facilitate the project. The quarterly status reports shall be filed no later than 45 days after the conclusion of the quarter being reported on.

**J. Best Value Employment Metrics (“BVEM”)**

23. The Settling Parties agree that Black Hills shall release publicly the BVEM information provided by the acquired resource developer consistent with the process provided in Rule 3613(j).

**K. Request for Proposal (“RFP”) Issues<sup>3</sup>**

24. Black Hills recognizes that it undertook an assessment of savings over a shorter timeframe without informing bidders in its RFP documents of that assessment. Black Hills commits to aligning its communication with bidders on the evaluation methodology with its actual bid evaluation methodology, and to advise bidders if that methodology changes from the language in the RFP, and if so, to consider providing bidders a chance to refresh or change submitted bids in response to such change. Further, the applicable Settling Parties agree that a robust and accurate bid process best advances the interests of the public.

**L. Issue Any Necessary Variances or Waivers to Enable the Relief Agreed to in This Settlement Agreement**

25. The Settling Parties also agree that the Commission should issue any variances or waivers necessary to enable and/or carry out the terms agreed to in this Settlement.

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<sup>3</sup> Staff takes no position on this provision of the Settlement.

#### **IV. GENERAL PROVISIONS**

26. This Settlement is made for settlement purposes only. Unless otherwise stated herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any future proceeding regarding any of the issues raised in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement does not constitute agreement, by any Settling 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.

27. Each Settling Party understands and agrees that this Settlement Agreement represents a negotiated resolution of all issues the Settling Party either raised or could have raised in this Proceeding. The Settling Parties agree the provisions of 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.

28. The discussions among the Settling 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 Settling Party with respect to any matter not specifically addressed in this Settlement Agreement. In the event this Settlement Agreement becomes null and void or in the event the Commission does not approve this Settlement Agreement, it, as well as the negotiations or discussions undertaken in conjunction with the Settlement, shall remain inadmissible into evidence in these or any other proceedings in accordance with Rule 408 of the Colorado Rules of Evidence.

29. The Settling Parties will support 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 hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling 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.

30. Approval by the Commission of this Settlement Agreement shall constitute a determination that this resolution of the matters in this proceeding represent a just, equitable, and reasonable resolution of issues that were or could have been contested among the parties in this proceeding. The Settling Parties state that reaching agreement as set forth herein by means of a negotiated settlement rather than through a formal adversarial process is in the public interest and that the results of the compromises and settlements reflected in this Settlement Agreement are in the public interest.

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

32. This Settlement Agreement shall not become effective until the Commission issues a final decision approving the Settlement Agreement. In the event the Commission modifies this

Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling 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.

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

34. This Settlement 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 may be executed and delivered electronically and the Settling 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 Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement by the Settling Parties to the same extent that an original signature could be used.

Dated this 10th day of August, 2020.

Approved on behalf of:

**Black Hills Colorado Electric, LLC**

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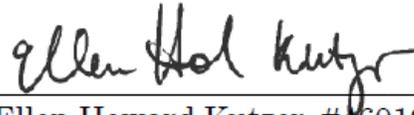
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