

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 20A-0190G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A NATURAL GAS DEMAND SIDE MANAGEMENT PLAN FOR CALENDAR YEARS 2021, 2022 AND 2023.

SETTLEMENT AGREEMENT

Pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-1408, Black Hills Colorado Gas, Inc. (“BHCG”), Trial Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), Energy Outreach Colorado (“EOC”), and the Colorado Energy Office (“CEO”) (collectively, “Settling Parties”), by their undersigned counsel, and for good and valuable consideration, enter into this Settlement Agreement (“Settlement Agreement”) to resolve all disputes that have arisen between them related to the Verified Application that commenced the instant Proceeding No. 20A-0190G (the “Proceeding”). The Settling Parties specifically request that the Colorado Public Utilities Commission (the “Commission”) approve this Settlement Agreement as consistent with the public interest.

I.BHCG DSM PLAN BACKGROUND AND PROCEDURAL HISTORY

1. Demand Side Management (“DSM”) is generally predicated on the notion that saving a unit of energy is less expensive than producing and consuming a unit of energy. Investing in technologies, products and process improvements that save energy can be more economical than building additional supply side resources or finding, producing, delivering and burning additional energy commodities. The energy benefits from DSM then yield additional benefits to ratepayers through cost savings and emissions reductions.

2. House Bill (HB) 07-1037, *Concerning Measures to Promote Energy Efficiency, and Making an Appropriation Therefore*, was passed by the Colorado General Assembly and signed into law by Governor Ritter in 2007, and codified in relevant part at § 40-1-102(5), (6) and (7), C.R.S., as well as §§ 40-3.2-101 and 103, C.R.S. The legislative purpose of DSM is found in § 40-3.2-101, C.R.S., which states:

The general assembly hereby finds, determines, and declares that cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment. The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

The Colorado Legislature tasked the Commission with, among other things, developing expenditure and natural gas savings targets, funding and cost-recovery mechanisms, and a financial bonus structure.

3. In Rule 4750, the Commission summarized the overview and purpose of gas DSM as well as its Rules, stating in part as follows:

Consistent with statutory requirements, the purpose of these Demand Side Management (DSM) rules is to reduce end-use natural gas consumption in

a cost effective manner, in order to save money for consumers and utilities, and protect the environment by encouraging the reduction of emissions and air pollutants.

4. Colorado gas utilities, consistent with the above-referenced Colorado statutes and Commission rules, are required to have DSM plans. In particular, pursuant to Rule 4750, a gas utility is required to:

design DSM programs for its full service customers to achieve cost-effective energy savings, considering factors such as: achievable energy savings, customer benefits, cost effectiveness ratios, adoption potential, market transformation capability and ability to replicate in the utility service territory.

In addition, DSM plans are required to cover a period of three years, unless otherwise ordered by the Commission.¹

5. Consistent with the foregoing requirements, BHCG has previously implemented natural gas DSM Plans through calendar year 2020.

6. On May 1, 2020, BHCG commenced this proceeding by filing the Verified Application, seeking approval of a Natural Gas DSM Plan for calendar years 2021, 2022 and 2023 (the “DSM Plan”) (Attachment LAP-1 to the Company’s Witness Pfitzinger’s Direct Testimony (HE 102)).

7. On May 4, 2020, the Commission issued its Notice of Application Filed and, thereafter, Staff filed its Notice of Intervention as of Right on May 19, 2020 and requested a hearing. On June 2, 2020, the OCC filed its Notice of Intervention as of Right and requested a hearing. On June 3, 2020, CEO filed its Notice of Intervention as of Right. On June 3, 2020, EOC also filed its Motion to Intervene. There are no other intervenors in this Proceeding.

¹ Commission Rule 4752(c).

8. At its weekly meeting on June 17, 2020, the Commission deemed the Application complete and referred it to Administrative Law Judge Robert I. Garvey (the “ALJ”).

9. On July 8, 2020, by Interim Decision No. R20-0494-I, EOC’s intervention was granted and a prehearing conference was scheduled for July 28, 2020. On July 24, 2020, the parties filed a Joint Motion to Vacate Prehearing Conference, for Approval of Proposed Procedural Schedule, Discovery Procedures, Confidentiality Procedures and for Waiver of Response Time.

10. On July 29, 2020, through Decision No. R20-0545-I, the ALJ vacated the prehearing conference, set the procedural schedule, and adopted discovery and confidentiality procedures. The adopted procedural schedule is as follows:

Answer Testimony	August 14, 2020
Rebuttal/Cross Answer Testimony	September 11, 2020
Prehearing and Dispositive Motions	September 21, 2020
Corrected Testimony and Attachments	September 21, 2020
Stipulations and Settlement	September 24, 2020
Evidentiary hearing	October 1-2, 2020
Statements of Position	October 16, 2020

11. On August 14, 2020, Staff, OCC, and CEO filed Answer Testimony. On September 11, 2020, EOC and CEO filed Cross-Answer Testimony and BHCG filed Rebuttal Testimony.

12. In August, the parties to the Proceeding commenced settlement negotiations, and thereafter reached an agreement in principle. As a result of those discussions, BHCG determined it was appropriate to revise the DSM Plan to reflect the settlement reached. Attachment MJC-1 to the Settlement Testimony of Mr. Christofferson is the Amended Natural Gas DSM Plan for Calendar Years 2021, 2022, and 2023 (“Amended DSM Plan”).

13. This Settlement Agreement memorializes the negotiated settlement among and between the Settling Parties on all the issues raised in the Proceeding. As a result of these negotiations and this Settlement Agreement, the Settling Parties agree as set forth herein that the issues in dispute between them in this Proceeding have been resolved to the satisfaction of the Settling Parties. The Settling Parties agree that this Settlement Agreement is a fair, just, and reasonable resolution of these issues. The Settling Parties also believe that approval of the Settlement Agreement is in the public interest.

14. The Settling Parties agree that the Commission should grant the Joint Motion and approve the Amended DSM Plan consistent with this Settlement Agreement.

15. The Settling Parties stipulate that all testimonies and attachments filed by the Settling Parties in the Proceeding should be admitted into evidence and made part of the record in this Proceeding. The Settling Parties agree to support and defend the terms and principles of the Settlement Agreement before the Commission.

II. SETTLEMENT AGREEMENT

The Settling Parties hereby stipulate and agree as follows:

A. Background and Compliance with Minimum Expenditure Requirement

15. This Settlement Agreement reflects the input and careful consideration of all issues by the Settling Parties. Through this Settlement Agreement, the Settling Parties agree that the Amended DSM Plan incorporates substantial public policy reasons for approval by the Commission and is, with the partial waiver of the requirements of Rule 4753(f)(VI), in compliance with Commission rules.

16. The Settling Parties agree that, in compliance with Colorado statutes and Commission rules, the purpose of the Amended DSM Plan is to reduce end-use natural gas consumption in a cost-effective manner, in order to save money for consumers and BHCG, and

protect the environment by encouraging the reduction of emissions and air pollutants. The Settling Parties agree that BHCG has designed the Amended DSM Plan to achieve cost-effective energy savings, considering factors such as: achievable energy savings, customer benefits, cost effectiveness ratios, adoption potential, market transformation capability and ability to replicate in their service territories.

17. Consistent with these objectives, and as explained in more detail in this Settlement Agreement, BHCG seeks to implement and continue, as applicable, DSM programs with only modest changes to design, incentives, delivery, and operating protocols.

18. The Settling Parties acknowledge that BHCG presents an overall cost-effective portfolio, with an mTRC of 1.14. While, as discussed later in this Settlement Agreement, individual programs within the portfolio are not cost-effective, the Settling Parties agree that the Amended DSM Plan, as presented by the BHCG, is cost-effective and should be approved by the Commission.

i. Approval of Compliance with Minimum Expenditure Requirements

19. The Colorado legislature established minimum expenditure and savings targets for natural gas DSM programs in § 40-3.2-103(2)(a) and (b), C.R.S., which direct the Commission to:

- Adopt DSM program expenditure targets equal to at least one-half of one percent of a natural gas utility's revenues from its full service customers in the year prior to setting such targets; and
- Establish DSM program savings targets that are commensurate with program expenditures and expressed in terms of an amount of gas saved per unit of program expenditures.

20. The Commission's rules also address gas DSM program minimum annual expenditure targets in Rule 4753(h)(I):

The utility's annual expenditure target for DSM programs shall be, at a minimum, two percent of a natural gas utility's base rate

revenues, (exclusive of commodity costs), from its sales customers in the 12-month calendar period prior to setting the targets, or one-half of one percent of total revenues from its sales customers in the 12-month calendar period prior to setting the targets, whichever is greater.

A utility is also permitted to “propose an expenditure target in excess of two percent of base rate revenues.” *See* Rules 4753(h)(II) and (IV).

21. The Settling Parties agree that the Amended DSM Plan satisfies these required minimum annual expenditure targets. Specifically, the Settling Parties agree that the Amended DSM Plan meets the “whichever is greater” requirement of Rule 4753(h), as depicted in Table 1 below:

TABLE 1

	BHCG
2019 Base Rate Rev. from Sales Customers*	\$79,109,364
2019 Total Sales Rev. from Sales Customers**	\$183,548,492
PUC Rule 4753(h)(I) Requirements	
2.0% of Total Base Rate Rev.	\$1,582,187
0.5% of Total Rev. from Sales	\$917,742
Calendar Year 2021	
Proposed Budget	\$5,045,436
Minimum Budget Requirement	\$1,582,187
Proposed Budget as a Percent of Base Rate Rev.	6.4%

* Source FERC pg. 301 less FERC pg 319

** Source FERC pg. 301

22. The Settling Parties request that the Commission find that the Amended DSM Plan meets the requirements of Rule 4753(h).

B. Approval of Amended DSM Plan

23. The Settling Parties, as discussed in more detail below, agree that the Amended DSM Plan is reasonable and should be approved by the Commission. This includes the proposed DSM programs, energy savings goals, budgets, indirect products, Residential Retrofit Program changes, Income-Qualified Weatherization Program changes, non-energy benefits, cost-effectiveness, technical assumptions, and flexibility.

i. Approval of DSM Programs

24. BHCG, through the Verified Application and supporting testimony, presented a DSM Plan that proposed a continuation of the current DSM plan, with some slight modifications. Under the Amended DSM Plan, BHCG will continue to offer six programs: Residential Retrofit, Residential New Construction, Nonresidential Retrofit, Nonresidential New Construction, Income Qualified Weatherization, and School-Based Energy Education.

25. The Settling Parties agree that BHCG's current DSM plan has thus far been implemented throughout BHCG's natural gas service territory, and that the energy efficiency portfolio of the DSM plan is intended to serve all customer types, including residential and non-residential.

26. The Settling Parties acknowledge that the Residential Retrofit Program, on its own, is not cost-effective. However, as discussed in more detail in the cost-effectiveness section below, the Settling Parties agree that it is appropriate to include this program within the portfolio in order to have a comprehensive DSM plan that provides a variety of savings opportunities for customers.

ii. Approval of Energy Savings Goals

27. Energy savings goals under the Amended DSM Plan as presented in this Settlement Agreement are greater than the savings goals for BHCG in the current DSM plan. A comparison is reflected in Table 2 below:

TABLE 2

2020 Energy Savings Goal (Dekatherms)	Average Annual Energy Savings Goal (Dekatherms) under Amended DSM Plan
150,879	158,940

28. The Settling Parties agree that the savings goals in the Amended DSM Plan are reasonable and request that they be approved by the Commission.

iii. Approval of Budgets

29. As discussed earlier in this Settlement Agreement, the budgets proposed in the Amended DSM Plan meet the requirements of Rule 4753(h)(I).

30. The Settling Parties agree that the proposed budgets in the Amended DSM Plan, which exceed the statutory minimum and are an increase over BHCG’s budgets in the current DSM plan, are reasonable and appropriate here, and should be approved. The budgets in the Amended DSM Plan, as compared to the current DSM plan, are shown in Table 3 below:

TABLE 3

2019	2020	2021	2022	2023
\$4,764,100	\$4,722,300	\$5,045,436	\$5,207,400	\$5,349,352

iv. Approval of Indirect Products

31. The Settling Parties agree to BHCG’s classification of DSM education programs as indirect product offerings. Indirect product offerings support direct products in the DSM portfolio,

but stand-alone, are not intended to be cost-effective. Accordingly, BHCG classified the Residential Retrofit Program – Residential Evaluation Component and Residential Retrofit Program – Residential Behavior Change Component as indirect product offerings within the Amended DSM Plan.

32. Due to the Residential Retrofit Program – Residential Evaluation Component and Residential Retrofit Program – Residential Behavior Change Component being classified as indirect products within the Amended DSM Plan, the Residential Evaluation Component and Residential Behavior Change Component will be excluded from Residential Retrofit Program basis cost-effectiveness calculations.

33. Residential Retrofit Program – Residential Evaluation Component and Residential Retrofit Program – Residential Behavior Change Component will be included in portfolio-wide cost-effectiveness calculations as part of the Residential Retrofit Program.

v. Approval of Residential Retrofit Program Modifications

34. Settling Parties agree the Residential Retrofit Program – Residential Evaluation Component will offer 500 online evaluations, 400 virtual audits, and 100 in-home audits annually. If the results of virtual audits necessitate more in-home audits, up to 400 in-home audits will be performed annually. All marketing and lead generation related to audits will be covered by the implementation contractor.

35. Settling Parties agree the Residential Retrofit Program – Residential Prescriptive Component will offer 500 high-efficiency furnace installations annually.

36. Settling Parties agree Residential Retrofit Program – Residential Prescriptive Component marketing budget of \$21,920 in 2021, \$24,533 in 2022 and \$27,146 in 2023 is appropriate.

vi. Approval of Income-Qualified Weatherization Modifications

37. BHCG agrees to cover the cost of income-qualified audits, income-qualified enhanced education costs, and income-qualified environmental, health and safety issue repairs formerly paid for by EOC.

38. As a result of the changes to the Income-Qualified Weatherization Program, Settling Parties agree the Income-Qualified Weatherization Program budget of \$1,322,064 in 2021, \$1,325,264 in 2022 and \$1,328,864 in 2023 is appropriate.

vii. Approval of Non-Energy Benefits

39. The Settling Parties agree that for the purposes of evaluating cost-effectiveness, BHCG shall apply a 50 percent “non-energy benefits adder” to the Income-Qualified Weatherization Program and a 20 percent “non-energy benefits adder” to all other programs. However, the non-energy benefits adder will only apply for screening purposes and will be excluded from the calculation of net economic benefits used to derive the proposed financial incentives.

viii. Approval of Cost-Effectiveness

40. The Settling Parties agree the cost-effectiveness of DSM programs are appropriate as displayed below:

Program	Three-Year mTRC
Residential Retrofit Program	0.87
<i>Residential Retrofit Program Excluding Indirect Products</i>	<i>1.08</i>
Residential New Construction Program	1.15
Nonresidential Retrofit Program	1.19
Nonresidential New Construction Program	1.48
Income-Qualified Program	0.58
School-Based Energy Education Program	2.63
Total Portfolio	1.14

41. The Settling Parties agree that BHCG presents an overall portfolio that is cost-effective, with an mTRC of 1.14. As mentioned earlier in this Settlement Agreement, however, BHCG seeks a partial waiver of Rule 4753(f)(VI) in connection with the Residential Retrofit Program which does not satisfy the Rule's program-level mTRC requirement of 1.0 or greater. The Settling Parties agree it is important to include this program in the Amended DSM Plan.

42. For this reason, and the reasons stated above and in the Settlement Testimony submitted in this Proceeding, the Settling Parties agree that the requested partial waiver of Rule 4753(f)(VI) as it applies to the Residential Retrofit Program is appropriate. The Settling Parties agree it is important to have a complete DSM portfolio, which would not be the case if the Residential Retrofit Program was eliminated.

ix. Approval of Technical Assumptions

43. The primary technical assumptions for the Amended DSM Plan include: Net-to-Gross Ratios, Avoided Gas Capacity Costs, Discount and Inflation Rates, Gas Costs, and Lost Revenue Calculations.

44. Gas Cost assumptions used in the Amended DSM Plan were developed by BHCG's independent consultant as found in Appendix A of the Amended DSM Plan.

45. Avoided Gas Capacity Cost assumptions in the Amended DSM Plan are based on firm transportation reservation rates as contracted by BHCG. Avoided Gas Capacity Costs are applied to peak demand.

46. The Settling Parties agree that the Amended DSM Plan's technical assumptions are supported by the Verified Application and the testimony and attachments submitted by BHCG's witnesses in this Proceeding, including the Amended DSM Plan.

x. Approval of Flexibility

47. Commission Rule 4753(k) allows each Company to “spend more than the annual expenditure target established by the Commission up to twenty-five percent over the target, without being required to submit a proposed DSM plan amendment.” Any such additional spending will continue to be subject to the cost-effectiveness considerations outlined in Commission Rule 4750, *et seq.* The Settling Parties agree that BHCG should also have the flexibility to, within the Amended DSM Plan and consistent with the requirements of Commission Rule 4757(a), adjust incentive amounts, add or remove DSM measures, change eligibility requirements, modify rebate levels, and modify approved technical assumptions as necessary to administer the Amended DSM Plan.

48. The Settling Parties agree that a Notice of Changes provision, as found in Section 8 at page 50 of the Amended DSM Plan, is appropriate for inclusion. The Notice of Changes provision allows BHCG to make the aforementioned changes to the Amended DSM Plan, after appropriate notice to the Settling Parties.

49. Any issue not directly addressed herein should be determined consistent with the Verified Application, the Amended DSM Plan, associated testimonies and attachments, and this Settlement Agreement.

III. GENERAL TERMS AND CONDITIONS

50. The Settling Parties agree that this Settlement Agreement is in the public interest and will be supported by the Settling Parties’ testimony and/or statements of counsel in this proceeding. The Settling Parties agree to support this Settlement Agreement as being in the public interest in proceedings before the Commission and to advocate in good faith that the Commission approve this Settlement Agreement in its entirety.

51. The Settling Parties agree that this Settlement Agreement represents a compromise in the positions of all Settling Parties and has been negotiated as a comprehensive settlement. As

such, the Settling Parties acknowledge that their support and advocacy of the Settlement Agreement is based upon the Settlement Agreement as a whole and not based upon its individual components viewed in isolation. Additionally, evidence of conduct or statements made in the negotiation and discussion phases of this Settlement Agreement will not be admissible as evidence in any proceeding before the Commission or any court.

52. The Settling Parties agree that all negotiations relating to this Settlement Agreement are privileged and confidential, and that no party will be bound by any position asserted in the negotiations, except to the extent expressly stated in this Settlement Agreement.

53. The Settling Parties agree that except as otherwise expressly noted in this Settlement Agreement: (a) the execution of this Settlement Agreement will not be deemed to constitute an acknowledgment of any Settling Party of the validity or invalidity of any particular method, theory or principle of ratemaking or regulation, and no Settling Party will be deemed to have agreed that any principle, method or theory of regulation employed in arriving at this Settlement Agreement is appropriate for resolving any issue in any other proceeding; (b) the execution of the Settlement Agreement will not constitute the basis of estoppel or waiver in future proceedings by any Settling Party; and (c) no Settling Party will be deemed to be bound by any position asserted by any other Settling Party, and no finding of fact or conclusion of law other than those expressly stated will be deemed to be implicit in this Settlement Agreement. Any specific reservation of future litigation rights contained in the Settlement Agreement should not be deemed to waive the applicability of this general reservation of litigation rights in future proceedings as to all matters contained in the Settlement Agreement.

54. The Settling Parties acknowledge that their support and advocacy of the Settlement Agreement may be compromised by material alterations thereto. In the event the Commission

rejects or materially alters the Settlement Agreement, the Settling Parties agree that within seven days of such Commission Decision any Settling Party may provide notice to the other Settling Parties of its objection to the Settlement Agreement as revised. Upon such objection, the Settling Parties will no longer be bound by its terms and will not be deemed to have waived any of their respective procedural or due process rights under Colorado law. If a Settling Party objects to the Settlement Agreement as revised, it may withdraw from the Settlement Agreement.

55. If the Commission chooses to adopt and approve the Settlement Agreement, this Settlement Agreement resolves all disputed matters relative to this proceeding between the Settling Parties. Any disputed matters will be deemed resolved to the extent that the Settlement Agreement is not compromised by material alterations.

56. Except as otherwise expressly provided in this Settlement Agreement, the issuance of a Decision approving this Settlement Agreement will not be deemed to work as an estoppel upon the Settling Parties or the Commission, or otherwise establish, or create any limitation on or precedent of the Commission, in future proceedings.

57. This Settlement Agreement will not become effective and will be given no force and effect until the issuance of a final written Commission decision that accepts and approves this Settlement Agreement.

58. This Settlement Agreement may be executed in one or more counterparts and each counterpart will have the same force and effect as an original document and as if all the Settling Parties had signed the same document. Any signature page of this Settlement Agreement may be detached from any counterpart of this Settlement Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of the Settlement Agreement

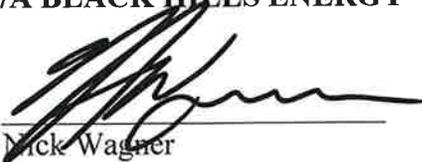
identical in form hereto but having attached to it one or more signature page(s). The Settling Parties agree that “pdf” signature pages exchanged by e-mail will satisfy the requirements for execution.

IV. CONCLUSION

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order approving the Amended DSM Plan consistent with this Settlement Agreement, with the finding that the Commission’s approval of this Settlement Agreement represents a fair, just, and reasonable resolution of any and all disputes in this Proceeding as to those issues.

Date: October 30, 2020.

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Dated this 30th day of October 2020

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, the foregoing **SETTLEMENT AGREEMENT** was served via electronic filing with the Commission and served on those parties shown on the Commission's Certificate of Service accompanying such filing.

/s/ Blair Wetzel