

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO APPROVE
SETTLEMENT AND GRANTING APPLICATION**

Mailed Date: November 16, 2020

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I. STATEMENT

1. On May 1, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills) filed its Verified Application for approval of a natural gas demand side management (DSM) Plan for calendar years 2021, 2022, and 2023.

2. On May 19, 2020, the Colorado Public Utilities Commission Trial Staff (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a), and Request for Hearing.

3. On June 2, 2020, the Colorado Office of Consumer Counsel (OCC) filed an Intervention and Request for a Hearing.

4. On June 3, 2020, the Colorado Energy Office (CEO) filed its Notice of Intervention by Right.

5. On June 3, 2020, Energy Outreach Colorado (EOC) filed its Motion to Intervene and Entry of Appearance. EOC states that it has a tangible and pecuniary interest in ensuring that it may efficiently and administer its low-income DSM services.

6. During its weekly meeting on June 17, 2020, the Commission referred this matter to an Administrative Law Judge (ALJ).

7. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision in context.

8. On September 25, 2020, the Parties filed their Notice of Settlement, Unopposed Joint Motion to Vacate Hearing and Request for Waiver of Response Time (Motion to Vacate Hearing). In the joint motion, the Parties agreed to file a Settlement Agreement and any supporting testimony by October 19, 2020.

9. On September 29, 2020, by Decision No. R20-0693-I, the Motion to Vacate Hearing was granted.

10. On October 6, 2020, Black Hills filed its Unopposed Motion to Extend Deadline to File Settlement Agreement and Supporting Testimony (Unopposed Motion).

11. On October 7, 2020, by Decision No. R20-0713-I, the Unopposed Motion was granted and the October 19, 2020 deadline for a Settlement Agreement and any supporting testimony was extended to October 30, 2020.

12. On November 2, 2020, the Settling Parties¹ filed a Settlement Agreement as well as an Unopposed Joint Motion for Leave to Amend Demand Side Management Plan, to Approve the Settlement Agreement and Amended Demand Side Management Plan, and to Waive Certain Commission Rules and Response Time (Joint Motion). Black Hills, Staff, and CEO also filed testimony in support of the Settlement Agreement.

II. DISCUSSION

A. Testimony and Terms of Settlement Agreement

13. The Settlement Agreement, attached to this Decision as Attachment A, explains that the Settling Parties have negotiated a resolution of all disputed issues in this proceeding. The Settling Parties assert that the Settlement Agreement represents a compromise in the positions of all Settling Parties and has been negotiated as a comprehensive settlement. Further, the Settling Parties contend that the Settlement Agreement is in the public interest and supported by the Settling Parties' testimony.

14. The Settlement Agreement represents the result of settlement negotiations by the Settling Parties wherein Black Hills agreed to modify aspects of its proposed DSM Plan to reflect the settlement reached (Amended DSM Plan). As part of its Joint Motion, Black Hills requests leave to amend its DSM Plan for calendar years 2021-2023 pursuant to Commission

¹ The Settling Parties include Black Hills, Staff, OCC, EOC, and CEO.

Rule 1309, 4 *Code of Colorado Regulations* (CCR), 723-1 of the Rules of Practice and Procedure. Below is a summary of the terms agreed upon by the Settling Parties.

B. Approval of Compliance with Minimum Expenditure Requirements

15. The Settling Parties agree that the Amended DSM Plan satisfies the required minimum annual expenditure targets set out in § 40-3.2-103(2)(a) and (b), C.R.S., as well as Rules 4753(h)(II) and (IV) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4. The Settling Parties request that the Commission find the Amended DSM Plan meets the requirements of Rule 4753(h).

C. Approval of Amended DSM Plan

16. The Settling Parties agree that the Amended DSM Plan is reasonable and should be approved without modification. The Amended DSM Plan reflects changes to several programs, including the Residential Retrofit Program – Residential Evaluation Component, Residential Retrofit Program – Residential Prescriptive Component, and the Income-Qualified Weatherization Program. The Amended DSM Plan further reflects changes to the Avoided Capacity Cost, increases to energy savings goals, inclusion of non-energy benefit adders, and net economic benefits changes.

17. Specifically, the Settling Parties' request approval of the following aspects of the Amended DSM Plan, each of which is discussed in greater detail in the Settlement Agreement attached as Attachment A to this Decision:

- 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 for the Amended DSM Plan; and
- Flexibility.

18. Pertaining specifically to the Amended DSM Plan’s proposed Residential Retrofit Program, Black Hills, in its Joint Motion, seeks a partial waiver of Rule 4753(f)(VI) that requires “[e]ach proposed DSM program...to have a projected value greater than or equal to 1.0 using a modified TRC test,”² as the rule pertains to this program. Black Hills notes that a similar partial waiver was sought for Black Hills’ current DSM Plan for calendar years 2018 through 2020 and that this waiver was granted by the Commission in Decision Nos. R17-0832³ and C19-0468⁴ in Proceeding No. 17A-0272G. The Settling Parties agree that the requested partial waiver is appropriate given the importance of having a complete DSM portfolio, which would not be the case if the Residential Retrofit Program were eliminated.

D. Testimony in Support of the Settlement

19. The testimony filed by Black Hills in support of the Settlement Agreement establishes that the settlement is in the public interest.

20. The testimony filed by Staff and CEO in support of the Settlement Agreement establishes that the settlement is in the public interest and that the Settlement Agreement appropriately addresses the concerns raised in the Answer Testimony.

² Joint Motion at p. 5.

³ Decision No. R17-0832 was issued in Proceeding No. 17A-0272G on October 16, 2017.

⁴ Decision No. C19-0468 was issued in Proceeding No. 17A-0272G on June 5, 2019.

III. FINDINGS AND CONCLUSIONS

21. The parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned applied the Commission's direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

22. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

23. The undersigned has reviewed the Direct, Rebuttal, and Settlement Testimony filed by Black Hills; the Answer and Settlement Testimony of all Intervenors; and the recitations of the Settling Parties in both the Joint Motion and Settlement Agreement. The undersigned has duly considered the positions of all parties in this matter.

24. Based on this review of the entire record, the undersigned finds that approval of the Application filed in this proceeding consistent with the Settlement Agreement and changes reflected in the DSM Plan, is in the public interest.

25. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission.

IV. ORDER

A. **The Commission Orders That:**

1. The Unopposed Joint Motion for Leave to Amend Demand Side Management Plan, to Approve the Settlement Agreement and Amended Demand Side Management Plan, and to Waive Certain Commission Rules and Response Time filed by Black Hills Colorado Gas, Inc.,

doing business as Black Hills Energy (Black Hills) on November 2, 2020, is granted consistent with the discussion above.

2. The Settlement Agreement filed by Black Hills on November 2, 2020, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

3. The Verified Application for approval of a natural gas demand side management plan for calendar years 2021, 2022, and 2023 filed by Black Hills on May 1, 2020, is granted, consistent with the discussion above.

4. Black Hills shall comply with, and make all filings required by, the Settlement Agreement and this Decision.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director