

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0394E

IN THE MATTER OF ADVICE LETTER NO. 789 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO APPROVE A BILL CREDIT FOR THE RETURN OF THE NON-PROTECTED EXCESS DEFERRED INCOME TAX REGULATORY LIABILITY STEMMING FROM THE TAX CUT AND JOBS ACT.

PROCEEDING NO. 20AL-0395E

IN THE MATTER OF ADVICE LETTER NO. 790 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO APPROVE A BILL CREDIT FOR THE RETURN OF THE PROTECTED EXCESS DEFERRED INCOME TAX REGULATORY LIABILITY STEMMING FROM THE TAX CUT AND JOBS ACT.

UNOPPOSED AND COMPREHENSIVE SETTLEMENT AGREEMENT

I. INTRODUCTION AND IDENTIFICATION OF PARTIES

This Unopposed and Comprehensive Settlement Agreement (“Settlement Agreement” or “Settlement”) represents a full and complete resolution of Advice Letter Nos. 789 and 790 submitted by Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy (“Black Hills” or the “Company”), in Proceeding Nos. 20AL-0394E and 20AL-0395E, respectively. Both Advice Letters concern the implementation of the Tax Cuts and Jobs Act (“TCJA”) by providing customers bill credits associated with non-protected and protected Excess Deferred Federal Income Taxes (“EDFIT”). Along with Black Hills, this Settlement is joined by Colorado Public Utilities Commission Trial Staff (“Staff”) and the Colorado Office of Consumer Counsel (“OCC”). Collectively, the parties are referred to as “Settling Parties.”

This Settlement is a comprehensive settlement among the Settling Parties and resolves all issues that have been raised or could have been raised in these Proceedings. The Settlement

Agreement represents a just and reasonable resolution of this Proceeding and the Public Utilities Commission (“Commission”) should approve it accordingly.

II. BACKGROUND

1. The TCJA was enacted on December 22, 2017. Among other things, it reduced the federal corporate income tax rate from 35 percent to 21 percent and required the revaluation of federal deferred tax assets and liabilities. To address the TCJA, the Company filed its “Plan to Implement in Rates the Cost Savings Benefits of the Tax Cuts and Jobs Act” (“TCJA Plan”) in Proceeding No. 18M-0074EG. As part of the TCJA Plan, the Company proposed to provide customers a bill credit mechanism to refund amounts to customers according to the Average Rate Assumption Method (“ARAM”) for the protected EDFIT and using a four-year amortization period for the non-protected EDFIT.¹ The Company’s TCJA Plan provided that customers would receive the benefits of the EDFIT bill credit mechanisms in April 2019.²

2. On April 11, 2018, in Decision No. C18-0326-I, the Commission approved the Company’s TCJA Plan.

3. Since the approval of the TCJA Plan, the Company filed required and publicly available status reports in Proceeding No. 18M-0074EG, discussing certain elements of the Company’s implementation of the TCJA Plan.

4. On February 13, 2020, the Company filed an unopposed motion in Proceeding No. 18M-0074EG to permit the Company to return to its customers in April 2020 a bill credit of \$7,283,320 of non-protected EDFIT owed through a one-month, as opposed to a four-year,

¹ Black Hills’ May 31, 2018 Corrected TCJA Plan, Attachment A, Proceeding No. 18M-0074EG, at 14.

² *Id.* at 15.

amortization period. On March 11, 2020, the Commission issued Decision No. C20-0194-I, requesting that Black Hills provide certain additional information.

5. On September 23, 2020, the Company filed two separate Advice Letters to provide the bill credits for the protected and non-protected EDFIT, as well as to address the Commission’s information requests contained in Decision No. C20-0194-I. Advice Letter No. 789 filed in Proceeding No. 20AL-0394E proposes a \$7,283,320 bill credit for the non-protected EDFIT. Advice Letter No. 790 filed in Proceeding No. 20AL-0395E calculates a net regulatory liability of protected EDFIT of \$44,908,303,³ and it calculates a 2018 and 2019 bill credit amount for protected EDFIT according to ARAM of \$1,046,822 and \$994,583, respectively. The Company proposed in Advice Letter No. 790 to continue providing protected EDFIT amortizations according to ARAM through annual advice letter filings in April of each year, until the Company files its next rate review, which will enable the Company to reflect in base rates the annual amortizations of protected EDFIT.⁴

6. On September 23, 2020, Staff filed a Request for Show Cause Order against Black Hills in Proceeding No. 20C-0408E, alleging the Company intentionally violated Commission Decision Nos. C18-0326-I and C20-0194-I.

7. On October 23, 2020, the Commission issued Decision Nos. C20-0747 and C20-0748 that respectively suspended Advice Letter Nos. 789 and 790, permitting resolution of Staff’s Request for Show Cause Order before resolving the Advice Letter filings.

8. On November 6, 2020, the presiding Administrative Law Judge (“ALJ”) issued Decision No. R20-0780-I, dismissing Staff’s Request for Show Cause Order, but also preserving

³ Hearing Exhibit 102, Direct Testimony of Justin W. Klapperich, Proceeding No. 20AL-0395E, at 10:6-9.

⁴ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, Proceeding No. 20AL-0395E, at 15:8-12.

Staff's ability to seek civil penalties in the future as Staff monitors Black Hills' actions in Proceeding Nos. 20AL-0394E and 20AL-0395E.⁵

9. On November 9, 2020, Black Hills filed a Notice Of Settlement In Principle in Proceeding Nos. 20AL-0394E and 20AL-0395E, advising the Commission that after interventions are permitted, Black Hills intends to submit a settlement agreement with Staff and OCC to resolve their concerns in these Proceedings.

10. On November 20, 2020, the Commission issued Decision Nos. C20-0818 and C20-0819, establishing the respective intervention periods for Proceeding Nos. 20AL-0394E and 20AL-0395E and assigning them to an Administrative Law Judge. Both Staff and the OCC intervened in these two Proceedings.

11. The Settlement Agreement filed here represents the comprehensive agreements of the Settling Parties to resolve the issues in Proceeding Nos. 20AL-0394E and 20AL-0395E that were raised, or could have been raised, by the Settling Parties. Contemporaneous with the filing of this Settlement Agreement, the Settling Parties have also filed an Unopposed Joint Motion to Approve Settlement Agreement, Consolidate Proceedings, and for Waiver of Response Time.

12. The Settling Parties agree that the Settlement is in the public interest and should be approved without modification.

III. SETTLEMENT TERMS

13. The Settling Parties have agreed to the terms set forth in this Section. As a preliminary matter, and as discussed in more detail herein below, and with regard to both the Non-Protected EDFIT and the Protected EDFIT bill credits and interest addressed within this Settlement Agreement, the total bill credit amount to be refunded to Black Hills' various

⁵ Decision No. R20-0780-I, Proceeding No. 20C-0408E, at ¶ 23.

customer classes is \$9,324,725, and the total interest amount to be donated to certain non-profit organizations is \$338,098.

A. Proceeding No. 20AL-0394E; Non-Protected EDFIT Bill Credits

14. The Settling Parties agree to the Company’s proposed calculation of the non-protected EDFIT liability, resulting in a total liability of \$7,283,320. The Settling Parties agree to the Company’s proposal to provide customers the liability through a one-time bill credit totaling \$7,283,320, as shown in Table MJH-1 in the Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, at page 17, filed in Proceeding No. 20AL-0394E. The bill credits will be allocated to the Company’s customer classes based on the percentages from the Company’s last Phase 2 electric rate case proceeding. The Settling Parties agree to the Company’s proposal to true-up any remaining amounts following application of the bill credit.⁶ The Settling Parties also agree to the Company’s proposal to communicate the bill credit, including customers’ ability to donate the bill credit to non-profit energy assistance programs and the Company’s commitment to match those funds with shareholder funds.

15. The Settling Parties agree that it is appropriate for the Company to also provide customers the benefit of an interest calculation. The interest calculation reflects a time period of 12 months (*i.e.*, April 2019 to April 2020), and an interest percentage that reflects the Company’s authorized Weighted Average Cost of Capital (“WACC”) of 7.43%, applied to 25% of the one-time bill credit of \$7,283,320. The interest calculation results in a total interest amount of \$146,562.

⁶ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, Proceeding No. 20AL-0394E, at 17:12-16 (“To the extent that the actual amount credited to customers is less than the total targeted amount, the Company will deposit the difference into the Black Hills Energy Assistance Program (“BHEAP”). If the total amount credited to customers exceeds the targeted amount, the Company will not seek to make up the difference.”).

16. The Settling Parties agree that the additional interest amount of \$146,562 will be given to local non-profit organizations for energy assistance purposes. An exclusive list of organizations eligible for receipt of the interest amount include: (1) Aspen Mine Center; (2) United Way; (3) Loaves and Fishes; (4) Tri-County Family Care Center; (5) Posada; and (6) the Pueblo Latino Chamber of Commerce.⁷ The local non-profit organizations that receive funding of the additional interest amount must use the funding to provide direct energy assistance to the Company's customers.

B. Proceeding No. 20AL-0395E; Protected EDFIT Bill Credits

17. The Settling Parties agree to the Company's proposed calculation of the protected EDFIT liability, resulting in a total liability of \$44,908,303. The Settling Parties agree to the Company's proposal to provide customers the liability through amortizations according to the Average Rate Assumption Method ("ARAM"). The Settling Parties agree the 2018 and 2019 ARAM amortizations are \$1,046,822 and \$994,583, respectively. The Settling Parties agree that the 2018 and 2019 ARAM amortizations will be provided as a one-time bill credit totaling \$2,041,405, as shown in Table MJH-1 in the Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, at page 15, filed in Proceeding No. 20AL-0395E. The bill credits will be allocated to the Company's customer classes based on the percentages from the Company's last Phase 2 electric rate case proceeding. The Settling Parties agree to the Company's proposal to true-up

⁷ In the event the above list of organizations are not able to receive a portion of the total funds provided for in paragraphs 16, and 20, for direct energy assistance within forty-five (45) days of a final Commission Decision in this Proceeding, then Black Hills will donate that remaining sum to Rocky Mountain Human Services.

any remaining amounts following application of the bill credit.⁸ The Settling Parties also agree to the Company’s proposal to communicate the bill credit, including customers’ ability to donate the bill credit to non-profit energy assistance programs and the Company’s commitment to match those funds with shareholder funds.

18. The Settling Parties agree that it is appropriate for the Company to also provide customers the benefit of an interest calculation for the 2018 and 2019 protected EDFIT amortizations. The interest calculation for the 2018 amortization reflects a time period of 21 months (*i.e.*, April 2019 to December 2020), and an interest percentage that reflects the Company’s authorized WACC of 7.43%, applied to 100% of the one-time bill credit of \$1,046,822. The interest calculation for the 2018 amortization results in a total interest amount of \$136,113.

19. The interest calculation for the 2019 amortization reflects a time period of nine months (*i.e.*, April 2020 to December 2020), and an interest percentage that reflects the Company’s authorized WACC of 7.43%, applied to 100% of the one-time bill credit of \$994,583. The interest calculation for the 2019 amortization results in a total interest amount of \$55,423.

20. The Settling Parties agree that the additional aggregate interest amount of \$191,536 will be given to local non-profit organizations for energy assistance purposes. The exclusive list of organizations eligible for receipt of the interest amount is the same as in paragraph 16 above: (1) Aspen Mine Center; (2) United Way; (3) Loaves and Fishes; (4) Tri-

⁸ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, Proceeding No. 20AL-0395E, at 16:10-14 (“To the extent that the actual amount credited to customers is less than the total targeted amount, the Company will deposit the difference into the Black Hills Energy Assistance Program (“BHEAP”). If the total amount credited to customers exceeds the targeted amount, the Company will not seek to make up the difference.”).

County Family Care Center; (5) Posada; and (6) the Pueblo Latino Chamber of Commerce.⁹ The local non-profit organizations that receive funding of the additional interest amount must use the funding to provide direct energy assistance to the Company’s customers.

21. The Settling Parties agree that once Black Hills has concluded providing donations of interest amounts detailed in paragraphs 16 and 20 of this Settlement Agreement to local non-profit organizations, as this Settlement requires, Black Hills will file a report, with supporting affidavit, in these consolidated proceedings to provide a full accounting of all interest amounts donated, the organizations that received the donations, and the date of the donations.

22. The Settling Parties agree to the Company’s proposal to provide annual bill credits until the protected EDFIT balance is fully amortized. The Company will file annual advice letters so that every April, starting with April 2021, customers will receive the annual bill credit for the portion of the outstanding protected EDFIT balance that was amortized in the previous calendar year, unless or until the Company files a rate review and receives a Commission determination of a final annual protected EDFIT amortization amount that is incorporated in base rates.

C. Proceeding No. 20C-0408E; Staff’s Request For Show Cause Order

23. Decision No. R20-0780-I dismissed Staff’s Request For Show Cause Order filed in Proceeding No. 20C-0408E. However, Decision No. R20-0780-I provides that “Staff retains full prosecutorial discretion to pursue civil penalties for intentional violation of a Commission decision by refileing an appropriate request or issuing a [civil penalty assessment notice.]”¹⁰ Concerning Staff’s Request For Show Cause Order, this Settlement does not count as any

⁹ See *supra* n.6.

¹⁰ Decision No. R20-0780-I, Proceeding No. 20C-0408E, at ¶ 17.

Settling Party's admission or denial of any alleged violation of prior Commission decisions. However, Staff agrees to not pursue against the Company future requests for civil penalties concerning the issues raised in Staff's Request For Show Cause Order filed in Proceeding No. 20C-0408E.

D. Bill Credit Implementation

24. The Settling Parties agree the Company will make every reasonable effort to implement the one-time bill credit for non-protected EDFIT and the 2018 and 2019 bill credits for protected EDFIT in January or February 2021, with the understanding that implementation must follow Commission approval of the Settlement Agreement. Whenever the Commission approves the Settlement, the Company will act in a timely manner to implement the bill credit.¹¹

25. Following Commission approval of the Settlement Agreement, the Company shall make a compliance advice letter filing on not less than two business days' notice to effectuate the one-time bill credit for non-protected EDFIT and the 2018 and 2019 bill credits for protected EDFIT and associated tariff sheets.

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

¹¹ See *supra* 7.

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 proceedings, 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 these proceedings. 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 these Proceedings represent a just, equitable, and reasonable resolution of issues that were or could have been contested among the parties in the Proceedings. 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 a fully 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) business 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 8th day of December 2020.

Approved on behalf of:

Black Hills Colorado Electric, LLC

By: /s/ Michael J. Harrington

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