

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

**PROCEEDING NO. 15A-0502E**

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**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PURCHASE AND OWN A 60 MEGAWATT WIND ELECTRIC GENERATING PLANT PURSUANT TO DECISION NO. C15-0373.**

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**PROCEEDING NO. 13A-0445E**

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**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.**

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**PROCEEDING NO. 13A-0446E**

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**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.**

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**PROCEEDING NO. 13A-0447E**

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**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.**

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**SETTLEMENT AGREEMENT**

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Pursuant to Rule 1408, Black Hills/Colorado Electric Utility Company, LP (“Black Hills” or the “Company”), Trial Staff of the Colorado Public Utilities Commission (“Staff”), the

Colorado Office of Consumer Counsel (“OCC”), the Colorado Energy Office (“CEO”), Western Resource Advocates (“WRA”), Invenergy Wind Development Colorado LLC (“Invenergy”), the Board of Water Works of Pueblo, Colorado and the Fountain Valley Authority (together the “Public Intervenors”), and the Rocky Mountain Environmental Labor Coalition (“RMELC”) (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 Company’s Verified Application for a Certificate of Public Convenience and Necessity to Purchase and Own a 60 MW Wind Electric Generating Plant Pursuant to Decision No. C15-0373 (“CPCN Application”) filed in Proceeding No. 15A-0502E. The Settling Parties specifically request that the Commission approve this Settlement Agreement as consistent with the public interest.

### **CERTIFICATE OF CONFERRAL**

The undersigned counsel certifies that counsel for Black Hills has conferred with counsel for all parties to this proceeding about this Settlement Agreement and is authorized to state that the Settling Parties join in the Settlement Agreement. Holcim, CIEA, Gas Intervenors, and Creative Energy Systems take no position, and all other parties to the proceeding did not respond to the conferral request.

### **I. BACKGROUND AND PROCEDURAL HISTORY**

1. On April 30, 2013, Black Hills filed a Verified Application seeking approval of its 2013 Electric Resource Plan (“2013 ERP”) and approval of its 2013-2014 Renewable Energy Standard Compliance Plan in consolidated Proceeding No. 13A-0445E.

2. On November 7, 2013, Black Hills, Staff and the Office of Consumer Counsel filed a Stipulation and Settlement Agreement (“2013 ERP Settlement Agreement”), which was

later joined by certain other parties, and a Joint Motion to Approve Stipulation and Settlement Agreement in this proceeding. The 2013 ERP Settlement Agreement requested, among other things, that the Commission authorize Black Hills to conduct an All-Source solicitation for energy resources to meet a 42 MW need in 2017 and for up to 60 MW of eligible energy resources in 2017 or 2018.

3. On January 6, 2014, the Commission issued Decision No. C14-0007, which, among other things, approved the 2013 ERP Settlement Agreement with certain modifications. As requested in the 2013 ERP Settlement Agreement, the Commission approved the All-Source solicitation and authorized Black Hills to consider bids to acquire eligible energy resources of up to 60 MW in 2017 or 2018 to meet the Company's Electric resource standards compliance obligations.<sup>1</sup>

4. On February 25, 2014, in response to Black Hills' Application for Clarification or Rehearing, Reargument or Reconsideration ("RRR") of Decision No. C14-0007, the Commission authorized Black Hills to evaluate and present bids for eligible energy resources with in-service dates prior to 2017, primarily to allow bids for solar energy resources to incorporate into their pricing the Investment Tax Credit, which requires an in-service date prior to December 31, 2016.<sup>2</sup>

5. On May 1, 2014 Black Hills issued an All-Source solicitation for the acquisition phase of the Company's 2013 ERP that sought bids for 42 MW of seasonal firm electricity supply and up to 60 MW of eligible energy resources. The Company received two bids in response to the Semi-Dispatchable Resources (Seasonal Firm Market Purchases) RFP and 30

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<sup>1</sup> Decision No. C14-0007, at ¶ 7, 12, Order ¶ 1 (mailed January 6, 2014).

<sup>2</sup> Decision No. C14-0204, at ¶ 5, Order ¶ 1 (mailed February 25, 2014).

bids in response to the Intermittent and Dispatchable Resources RFPs. Several of the bids included alternative pricing options. The Company evaluated 52 bids.

6. On November 26, 2014, Black Hills filed its 120-Day Report for the All-Source solicitation. In the 120-Day Report, Black Hills presented three alternative proposals for the acquisition of new utility generation resources, one of which was the acquisition of a 60 MW wind project on a parcel of land leased by the bidder in Huerfano and Las Animas Counties (“Peak View Wind Project” or “Project”).

7. On February 27, 2015, the Commission issued Decision No. C15-0199, in which it found that none of the resource proposals presented by Black Hills in its 120-Day Report was a cost-effective resource plan and ordered that Black Hills would not have a presumption of prudence if it elected to acquire any of the resources in the portfolios presented in the 120-Day Report.<sup>3</sup>

8. On March 19, 2015, Black Hills filed an application for RRR of Decision No. C15-0199. WRA, the Colorado Independent Energy Association and the Southeast Colorado Solar Coalition each also filed an application for RRR of Decision No. C15-0199. Black Hills and each of the other foregoing parties requested that the Commission reconsider Decision No. C15-0199, and each asked the Commission to approve the Peak View Wind Project.

9. On April 24, 2015, the Commission issued Decision No. C15-0373, denying each of the applications for RRR. Decision No. C15-0373 also modified Decision No. C15-0199 to allow Black Hills to renegotiate bids for eligible energy resources.

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<sup>3</sup> Decision No. C15-0199, at ¶ 34, Order ¶ 1 (mailed February 27, 2015).

10. Consistent with Decision No. C15-0373,<sup>4</sup> Black Hills asked the three top-rated bidders from the competitive solicitation, including Invenergy Wind Development Colorado LLC (“Invenergy”), to refresh their bids in terms of price and timing. The Company reevaluated the bids using a natural gas price forecast based on prevailing NYMEX natural gas prices and a revised integration cost adder. Invenergy’s updated bid was the most competitive based upon the standard set forth in Decision No. C15-0373. The bid contemplates a build-transfer structure with the Company acquiring the Peak View Wind Project immediately prior to commercial operation and owning it as a utility-owned asset.

11. The Company filed supplemental direct testimony in support of the Peak View Wind Project in consolidated Proceeding No. 13A-0445E on June 23, 2015. In addition, Black Hills filed an application for a Certificate of Public Convenience and Necessity (“CPCN”), also on June 23, 2015, in a new proceeding (ultimately Proceeding No. 15A-0502E) and filed several procedural motions. These motions, among other things, sought to consolidate the two proceedings and sought a partial waiver of Rule 3611(e). The Company also filed a request to reopen Proceeding No. 13A-0445E under Rule 1504(b) for the limited purpose of considering the information filed in the proceeding regarding the Peak View Wind Project.

12. On July 8, 2015, the Commission issued an interim decision reopening Proceeding No. 13A-0445E “for the limited purpose of considering additional witness testimony and associated exhibits addressing the Peak View Wind Project.”<sup>5</sup> The Commission also consolidated Proceeding No. 13A-0445E with Proceeding No. 15A-0502E and granted the

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<sup>4</sup> Decision No. C15-0373, at ¶ 60, Consolidated Proceeding No. 13A-0445E (mailed Apr. 24, 2015) (“Based upon updated assumptions for natural gas costs that start at levels commensurate with prevailing New York Mercantile Exchange futures, the Commission will consider a proposed contract (or contracts) that cause no net incremental costs over the period 2016 to 2025 based on an analysis in the same format as Attachment A to Black Hills’s RRR filing (*i.e.*, the sum of the “Difference” column for those years shall not exceed \$0). Any proposed contract also shall not require Black Hills to advance funds to the RESA deferred account.”)

<sup>5</sup> Decision No. C15-0642-I, at ¶1 (mailed July 8, 2015).

Company a partial waiver of Rule 3611(e).<sup>6</sup> Finally, the Commission set a prehearing conference for July 22, 2015. The Commission asked that parties come to the prehearing conference prepared to discuss specific issues, including “how the Commission should judge the projected costs of the wind energy produced by the Peak View Wind Project and how those costs compare to the costs of other wind projects recently acquired by other utilities in Colorado.”<sup>7</sup>

13. At the prehearing conference, the Commission set a procedural schedule and addressed the questions from Decision No. C15-0642-I. Thereafter, by Decision No. C15-0767-I, the Commission ordered the Company to file supplemental direct testimony addressing Peak View Wind Project cost issues and “compar[ing] the levelized cost of energy of the Peak View Project to the wind bids received by Public Service Company of Colorado [“Public Service”] in that company’s most recent solicitation for renewable energy sources.”<sup>8</sup> The Commission further directed the Company “to file the [Build Transfer Agreement (“BTA”)] no later than August 24, 2015” and stated that “[t]he CPCN Application shall be deemed complete for purposes of § 40-6-109.5, C.R.S., on the day Black Hills files the BTA.”<sup>9</sup> The Commission also ordered the Company to address cost recovery from ratepayers.<sup>10</sup> Finally, the Commission provided that intervening parties could address the issues set forth in Decision No. C15-0642-I, including the cost comparisons as between the Peak View Wind Project and recent Public Service wind projects.<sup>11</sup>

14. On August 7, 2015, Company witness Mr. Stoffel filed his second supplemental direct testimony in compliance with Decision No. C15-0767-I. This testimony included a

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<sup>6</sup> *Id.* at ¶¶ 2-3.

<sup>7</sup> *Id.* at ¶ 30.

<sup>8</sup> Decision No. C15-0767-I, at ¶ 11 (mailed July 22, 2015).

<sup>9</sup> *Id.* at ¶ 13.

<sup>10</sup> *Id.* at ¶ 11.

<sup>11</sup> *Id.* at ¶ 14.

comparison of the Peak View Wind Project to similar-sized projects bid in response to Public Service's request for proposals for wind resources in March 2013. Mr. Stoffel testified that the Peak View Wind Project was less costly than the Public Service wind bids, including the wind bids approved by the Commission.<sup>12</sup>

15. On August 24, 2015, the Company filed the fully executed BTA with the Commission. Consistent with Decision No. C15-0767-I, Black Hills' CPCN Application was deemed complete at that time.<sup>13</sup>

16. Also on August 24, 2015, supplemental answer testimony was filed by Staff, OCC, CEO, Invenergy and WRA. CEO,<sup>14</sup> Invenergy and WRA<sup>15</sup> supported a grant of a CPCN for the Peak View Wind Project in this proceeding. Moreover, OCC witness Mr. Fernandez testified that "the OCC is satisfied that the Peak View Wind Project wind energy costs favorably compares to recently approved PSCo wind energy projects."<sup>16</sup>

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<sup>12</sup> Second Supplemental Direct Testimony of Fredric C. Stoffel, at 5:5-14 ("On a levelized cost of energy basis, the updated "all-in" costs of the Peak View Wind Project are less expensive than all of the wind bids received by Public Service Company, regardless of size. For similar-sized projects submitted in response to Public Service Company's March 2013 request for proposals for wind generating resources, which are shown in the table below, the closest bid was approximately \$10 per MWh more expensive on an 'All-in LEC' basis compared to the Peak View Wind Project. It is also important to note that two of the larger projects, Bids W013 and W023 of Appendix A in Attachment FCS-2, were approved by the Commission in Decision No. C13-1267. As mentioned above, the Peak View Wind Project has a lower 'All-in LEC' than both of these Commission-approved bids.")

<sup>13</sup> Decision No. C15-0767-I, at 13.

<sup>14</sup> Answer Testimony of Christopher Worley, at 4:19 – 5:2 (filed Aug. 24, 2015) ("Comparing the cost of Peak View Wind to other wind projects around the state is an important step in determining whether the project should be approved, but care must be taken to ensure an accurate comparison. Further, it is important to remember that the Company conducted a competitive solicitation and Peak View Wind was the least-cost bid. Based on a preliminary cost comparison, CEO believes that the projected costs in Black Hills' proposal are on par with the per megawatt-hour cost for similarly sized wind projects.")

<sup>15</sup> Answer Testimony of Gwendolyn Farnsworth, at 2:20-23 (filed Aug. 24, 2015) ("My conclusion is the Peak View Wind Project is cost 20 competitive with natural gas-generated electricity, comparable to bids the 21 Commission approved in the Public Service Company of Colorado 2013 All-22 Source solicitation, and in the interest of Black Hills' ratepayers.")

<sup>16</sup> Supplemental Answer Testimony of Ronald Fernandez, at 5:17-19 (filed Aug. 24, 2015).

17. Staff expressed concerns with the Project and the Company's modeling of the Project's costs, as well as certain economic risks with regard to the Project.<sup>17</sup> Nevertheless, Staff witness Mr. Camp also noted that "the Project, if approved, will further Colorado's policy to utilize renewable energy resources to the maximum extent possible, promote development of rural economics, attract new jobs, provide a hedge against volatile natural gas prices, and improve the natural environment of the state."<sup>18</sup> No other parties filed answer testimony.

18. On September 14, 2015, Black Hills filed supplemental rebuttal testimony. Company witness Mr. Stoffel testified as follows:

The Company's analysis associated with the CPCN application shows that the Peak View Wind Project is in the public interest from both a modeled cost and from a RES compliance perspective. The Company believes that the evidence supports issuing a certificate of public convenience and necessity ("CPCN") for the Peak View Wind Project and is consistent with the Commission's standards as set forth in Decision No. C15-0373. For ratemaking purposes, this project should be treated like any other utility asset and all prudently incurred costs should be eligible for recovery from customers.<sup>19</sup>

Mr. Stoffel also stated that "[t]he Commission should embrace the Peak View Wind Project as a unique and timely Colorado solution to the compliance challenges posed by Amendment 37 and the Clean Power Plan."<sup>20</sup>

19. The Company and Staff commenced settlement discussions and reached an agreement in principle on September 21, 2015. The other parties to this proceeding were

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<sup>17</sup> Public Answer Testimony of Gene L. Camp, at 27:8-19 (filed Aug. 24, 2015) ("Yes. In the case of the Project, Black Hills will likely be allowed to recover all costs associated with the purchase, operation, and maintenance of the Project regardless of whether the Project produces as much energy as estimated or whether the Project's ongoing O&M costs exceed Black Hills' estimates. Only in the case of a finding of imprudence by the Commission would any costs be disallowed. This places the risk of performance squarely on the shoulders of Black Hills' customers. In the case of an alternate IPP project acquired through a PPA, the IPP will be allowed to recover costs from Black Hills based only on the contracted rates for actual energy production. If the alternative project production falls below projections, the IPP bears the loss in revenue. Similarly, if the costs for O&M exceed estimates, the IPP will bear those additional costs. This places the risk of performance squarely on the IPP rather than on Black Hills' customers.")

<sup>18</sup> *Id.* at 29:18-21.

<sup>19</sup> Supplemental Rebuttal Testimony of Fredric C. Stoffel, at 2:19 – 3:3 (filed Sept. 14, 2015).

<sup>20</sup> *Id.* at 8:11-13.



notified of the agreement in principle on the same day and the Settling Parties individually elected to join this Settlement Agreement.

20. This Settlement Agreement memorializes the negotiated settlement among and between the Settling Parties on all the issues raised in consolidated Proceeding No. 15A-0502E. 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 related to Black Hills' CPCN Application 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, and is in the public interest.

21. The Settling Parties agree that the Commission should grant Black Hills' CPCN Application filed in consolidated Proceeding No. 15A-0502E consistent with this Settlement Agreement.

22. The Settling Parties stipulate that all supplemental testimonies and attachments filed by Black Hills and the other parties in consolidated Proceeding No. 15A-0502E 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. General Overview and Customer Bill/Rate Impacts of Settlement***

#### *i. General Overview*

23. This Settlement Agreement reflects the input and careful consideration of all issues by the Settling Parties. The Settling Parties agree that the CPCN Application should be

granted as consistent with the public interest and C.R.S. § 40-5-101, as “the present or future public convenience and necessity require, or will require the construction” of the Peak View Wind Project.<sup>21</sup> Moreover, the Settling Parties have reviewed the record evidence in this proceeding and agree that the Peak View Wind Project satisfies the standard set forth by the Commission in Decision No. C15-0373.<sup>22</sup> For these reasons, the Settling Parties agree that the Commission should issue Black Hills a CPCN for the Peak View Wind Project and grant it permission to acquire the Project from Invenergy pursuant to the BTA filed with the Commission on August 24, 2015.

*ii. Customer Bill/Rate Impacts of Settlement Agreement*

24. The Settling Parties further agree that the Peak View Wind Project can be acquired with reasonable rate impacts to customers. The Commission has made clear its concern with rate impacts in the Black Hills service territory. In Decision No. C15-0199 the Commission rejected all the proposed resource portfolios set forth in Black Hills’ 120-Day Report stating as follows: “Primarily due to the associated costs and rate impacts during the Resource Acquisition Period, we find that no portfolio presented in the 120-Day Report is cost-effective, especially in light of the projected rate increase expected from the LM6000.”<sup>23</sup> In Decision No. C15-0373, the Commission reiterated this concern and stated that the evaluation of rate impacts would be an essential part of analyzing any rebids (the process that ultimately resulted in Black Hills filing the CPCN Application for the Peak View Wind Project):

Notwithstanding our determination that none of the bids featured in Black Hills’s 120-Day Report can be acquired at a reasonable cost and rate impact, we modify the Phase II Decision by removing the prohibition on the Company from pursuing any of the proposed projects. By this Decision, we have described our standards

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<sup>21</sup> C.R.S. § 40-5-101(1)(a).

<sup>22</sup> Decision No. C15-0373, at ¶ 60.

<sup>23</sup> Decision No. C15-0373, at ¶ 34 (mailed Feb. 27, 2015)

for determining whether a proposed eligible energy resource can be acquired at a reasonable cost and rate impact. We therefore will allow Black Hills, at its discretion, to renegotiate the bids for eligible energy resources up to 60 MW and to submit the associated contract or contracts for our approval according to those standards.<sup>24</sup>

25. The Settling Parties evaluated the Peak View Wind Project with this Commission directive in mind. In his supplemental direct testimony, Mr. Stoffel looked at the impact of the Peak View Wind Project on customer bills:

**Q. WILL INCLUDING THE COSTS OF THE PEAK VIEW WIND PROJECT IN THE COMPANY'S ELECTRIC RATES INCREASE CUSTOMERS' BILLS?**

A. Generally speaking, no. As mentioned several times, the electric energy generated from the Project will displace conventional generation, which constitutes the avoided cost. These avoided costs are replaced by the renewable energy, which, after the first three years is less expensive. During the first three years, when the cost of the renewable energy is more expensive than the avoided cost, the incremental costs are paid through the RESA fund. However, because customers are already paying the maximum two percent surcharge, their rates will not increase. Although, as modeled, there will be a slight extension of the RESA deferred account, customers rates will not increase. The important point is that the cost of the generation from the Peak View Wind Project will displace (avoid) higher cost electricity for 22 of the 25 years of the project life. This will create significant customer benefits.<sup>25</sup>

Mr. Camp undertook a similar analysis on behalf of Staff and analyzed the Project from a rate impact perspective while using his own assumptions and inputs. He concluded as follows:

While there is little certainty that the Project will provide customers savings, it does not appear that customers will be harmed either. Customers will see no significant change in rates, either positive or negative, regardless of whether the Project is approved. As a result, the Commission could decide to approve the Project based solely on its ability to provide renewable energy for compliance with the RES.<sup>26</sup>

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<sup>24</sup> Decision No. C15-0373, at ¶ 59.

<sup>25</sup> Supplemental Answer Testimony and Attachment of Fredric C. Stoffel, at 20:6-18.

<sup>26</sup> Public Answer Testimony of Gene L. Camp, at 29:12-17

26. Given the results of these analyses, the Settling Parties agree that the Peak View Wind Project can be acquired at a reasonable cost and rate impact. The Settlement Agreement now provides that the Peak View Wind Project will not be included in base rates and the cost of the Peak View Wind Project will be reset annually using the depreciated rate base. Therefore, the interaction of the ECA and RESA provides further assurance that there will not be an increase in rates to customers. Furthermore, the Settling Parties agree that the Peak View Wind Project avails customers of the benefit of the Production Tax Credit and the state enterprise zone credit, as reflected in Attachment 3.

*iii. Key Elements of Settlement Agreement*

27. The key elements of this Settlement Agreement and the CPCN issued consistent with this Settlement Agreement are as follows:

- The Settling Parties agree that the Peak View Wind Project is in the public interest, is consistent with Colorado law, and satisfies the standard established by the Commission in Decision No. C15-0373.
- The Settling Parties agree that, with the exception of transmission costs, Black Hills will recover the costs of the Peak View Wind Project through a combination of the ECA and RESA. Depending on timing, the capital costs of transmission associated with the Peak View Wind Project will be recovered through the Transmission Cost Adjustment (“TCA”) or base rates. The Settling Parties further agree that, for the first ten years of its commercial operation (through 2026), Black Hills will not put the Peak View Wind Project into base rates, but will recover the costs of the Peak View Wind Project during this period, as discussed in more detail below, through the ECA and RESA.
- The Settling Parties agree that the avoided costs of the Peak View Wind Project will be “locked down” for ten calendar years (through 2026) using the NYMEX-based natural gas forecast submitted in this proceeding and used by the Company to calculate the avoided costs. The use of the NYMEX for this purpose is consistent with Decision No. C15-0373.<sup>27</sup>

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<sup>27</sup> Decision No. C15-0373, at ¶ 60.

- The Settling Parties agree that Black Hills will perform a standalone pro-forma revenue requirements analysis for each of the first ten calendar years of commercial operation of the Peak View Wind Project, beginning in 2017.<sup>28</sup> The Company will perform this analysis twice – first to implement the projected costs for the coming year and second to perform a “true-up” using actual costs at the end of that year. Initially, the Company will conduct a revenue requirements analysis and project the costs to be recovered through the ECA and RESA over the coming year. This will be in the same format of Attachments 2 and 3 to this Settlement Agreement.<sup>29</sup> Black Hills will calculate the avoided cost of the forecasted wind production for the following calendar year by multiplying that forecasted wind production times the locked-down avoided cost. The Company will determine the “incremental cost” by subtracting the calculated avoided cost from the pro-forma revenue requirement. This difference will be credited or debited to the RESA account. Over the course of the year, the Company will recover these projected costs. In the second part, early in the following calendar year, (e.g., 2018 for the January 1, 2017 projection), the Company will conduct an analysis of actual costs and perform a true-up for any under- or over-recovery of the Peak View Wind project costs.
- The Settling Parties agree that the Company should use a performance assessment tool for calendar years 2018 through 2026. Accordingly, Black Hills will annually measure its calculated annual costs (as determined in the true-up process discussed in the previous paragraph) against the confidential Peak View Power Purchase Agreement (“PPA”) costs submitted in the Phase II solicitation as Bid 236-3 (“Peak View PPA”) (both of which will be increased to reflect system integration costs).<sup>30</sup> Attachment 1 to this Settlement Agreement sets forth the confidential Peak View PPA costs and the estimated Peak View Wind Project costs. This Peak View PPA price provides a useful benchmark reflecting the risk premium that a private developer included in a PPA bid price. Black Hills will have a presumption of prudence for the recovery of the Peak View Wind Project costs if its calculated cost per MWh<sup>31</sup> is lower than the confidential Peak View PPA cost per MWh. If the Peak View Wind Project cost is higher than the Peak View PPA cost, Black Hills will be required to show the reason(s) for the difference in order to recover that difference in cost and will bear the burden of

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<sup>28</sup> The Peak View Wind Project may achieve commercial operation during the fourth quarter of 2016. In that event, the Company may reflect the estimated cost in the ECA and the related impacts to the RESA, beginning in the fourth quarter of 2016 or as a true-up item during 2017.

<sup>29</sup> The Company has prepared Attachment 2, which shows the projected RESA and ECA costs for each of the first ten years for the Peak View Wind Project. This analysis sets forth the Peak View Wind Project annual cost estimates, split between the RESA and ECA, including the locked down avoided cost that will be used as part of the performance assessment evaluation. In addition, the Company has updated Attachment CMO-2 with revised O&M assumptions and wind production assumptions following its discussion with Staff and review of Staff’s supplemental answer testimony. This updated analysis is included as Attachment 3 to the Settlement Agreement.

<sup>30</sup> Currently, the integration costs are calculated pursuant to Public Service’s OATT Schedules 3 and 16.

<sup>31</sup> The wind production will be normalized as discussed in Paragraph 44 below.

establishing the prudence of any costs above the Peak View PPA cost prior to recovery.

- Beginning in the eleventh calendar year of the operation of the Peak View Wind Project (2027), avoided costs will be unlocked and the Peak View PPA-related ceiling and associated performance assessment tool, will no longer apply. Therefore, during the Peak View Wind Project’s tenth calendar year of operation (2026), Black Hills will file an application setting forth its proposal for maintaining (*i.e.*, through the ECA and RESA) or for changing the method of recovery of the costs of the Peak View Wind Project (*e.g.*, the Company may propose including the cost of the Peak View Wind Project through base rates). This filing will ultimately determine the appropriate method of cost recovery going forward.
- This Settlement Agreement is consistent with the Settlement Agreement in Proceeding No. 14A-0535E (“RES Compliance Settlement Agreement”) entered into by parties in Proceeding No. 14A-0535E addressing the Company’s 2015-2017 RES Compliance Plan.

***B. Approval of the Peak View Wind Project CPCN as consistent with Decision No.***

***C15-0373***

24. As discussed, by Decision No. C15-0373, the Commission provided the Company with an additional opportunity to acquire renewable energy resources and “allow[ed] Black Hills, at its discretion, to renegotiate the bids for eligible energy resources up to 60 MW and to submit the associated contract or contracts for our approval according to those standards.”<sup>32</sup> The Commission set forth the following standard of review for any such rebids:

Based upon updated assumptions for natural gas costs that start at levels commensurate with prevailing New York Mercantile Exchange futures, the Commission will consider a proposed contract (or contracts) that cause no net incremental costs over the period 2016 to 2025 based on an analysis in the same form as Attachment A to Black Hills’s RRR filing (*i.e.*, the sum of the “Difference” column for those years shall not exceed \$0). Any proposed contract also shall not require Black Hills to advance funds to the RESA deferred account.<sup>33</sup>

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<sup>32</sup> *Id.* at ¶ 59.

<sup>33</sup> *Id.* at ¶ 60.

Therefore, this decision sets forth a standard that: “1) requires the use of natural gas costs that start at levels commensurate with prevailing NYMEX futures prices, 2) causes no net incremental costs over the 2016 to 2025 time period, 3) does not require the Company to advance shareholder funds to the RESA deferred account, and 4) uses a reasonable proportion of the funds collected through the RESA to support a new project.”<sup>34</sup>

25. The Settling Parties agree that the Peak View Wind Project satisfies each element of this standard. First, the Peak View Wind Project was evaluated pursuant to a natural gas price forecast that starts at levels commensurate with prevailing NYMEX futures that is part of the evidentiary record in this proceeding.<sup>35</sup> Second, the Peak View Wind Project causes no net incremental cost over the ten-year period of 2016 to 2025.<sup>36</sup> Rather, the Peak View Wind Project results in a net incremental benefit to customers pursuant to separate analyses conducted by Black Hills<sup>37</sup> and Staff.<sup>38</sup> Third, the Peak View Wind Project will not require the Company to advance funds to the RESA. The Company’s analysis indicates that “[t]he RESA is forecast to collect approximately \$5.1 million, \$5.4 million, and \$5.2 million in 2016, 2017, and 2018, respectively, at the 2% maximum level. The net incremental cost (the amount charged against

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<sup>34</sup> Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 9:33 – 10:4 (filed June 23, 2015).

<sup>35</sup> Attachment JC-1; Supplemental Direct Testimony of Jodi Culp, at 8:6-10 (filed June 23, 2015) (“The NYMEX natural gas price forecast used by Ms. Seaman is attached to my testimony as Attachment JC-1. This NYMEX natural gas price forecast includes: (1) NYMEX natural gas futures prices; (2) basis differential for Northwest Pipeline Company ‘Rocky Mountains’ index location; (3) interstate pipeline commodity costs and interstate pipeline fuel charges, to compute a natural gas price forecast at a point of consumption.”)

<sup>36</sup> By joining this settlement, WRA does not waive any arguments concerning the validity of a “no net incremental cost” standard for evaluating renewable resources under § 40-2-124 or the Commission’s rules.

<sup>37</sup> Attachment FCS-1; Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 18:1-9 (“[T]he addition of the Peak View Wind Project to the Company’s portfolio, using prevailing NYMEX natural gas prices, would result in a net incremental benefit of approximately \$34.2 million over the 10-year period from 2016 through 2025 . . . . In aggregate, the Project causes no net incremental costs over the period 2016 –through 2025.”)

<sup>38</sup> Attachment GLC-11; Attachment FCS-3 (Staff discovery response to Black Hills noting that estimated customer savings found on Attachment GLC-11 “satisfies the standard ‘cause no net incremental cost over the period 2016-2025’ and as a result is eligible for Commission consideration”); Attachment FCS-4 (Staff discovery response to Black Hills stating that “[t]he Customer savings estimated in Attachment GLC-11 for the period 2016 through 2025 equals \$26,378,644.”)

the RESA) in these years is \$608,000, \$2.4 million, and \$760,000, respectively.”<sup>39</sup> Accordingly, “[t]here are sufficient RESA funds to cover the incremental cost in the first three years.”<sup>40</sup>

Staff’s analysis, using different O&M and performance inputs, reached a similar conclusion.<sup>41</sup>

Finally, the Company’s analysis shows that the Project will use a reasonable portion of RESA funds in the three years in which it is projected to have an incremental cost. It would require 12% of RESA funds in 2016, 44% of RESA funds in 2017, and 14% of RESA funds in 2018.<sup>42</sup>

26. For these reasons, the Settling Parties agree that the Peak View Wind Project satisfies each element of the standard set forth by the Commission in Decision No. C15-0373.

***C. Approval of the cost recovery mechanism for the Peak View Wind Project***

27. In its CPCN Application, Black Hills proposed to initially recover the costs associated with the Peak View Wind Project through the ECA and RESA until the filing of its next rate case in 2016, when Black Hills proposed to shift cost recovery from the RESA and ECA to base rates.<sup>43</sup> Mr. Stoffel further explained this proposal in his supplemental direct testimony:

Black Hills is proposing to acquire the Peak View Wind Project in the fourth quarter of 2016, just before it begins commercial operation. The Company’s Electric Cost Adjustment (“ECA”) provides for cost recovery of Company-owned eligible energy resources between base rate cases. Black Hills would intend to recover costs equal to the avoided cost of the Peak View Wind Project through the ECA and any incremental costs through the RESA. As part of its next electric

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<sup>39</sup> Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 17:17-20.

<sup>40</sup> *Id.* at 17:20-21.

<sup>41</sup> Public Answer Testimony of Gene L. Camp, at 26:14-19 (“The estimate exhibits that no additional advancement of funds to the Renewable Energy Standard Adjustment (RESA) account will be necessary, but the RESA balance will remain negative for approximately two additional years at a cost of roughly \$230,000 in additional interest accruing to Black Hills. This suggests that if the Project performs as estimated by Staff, the proposal would still meet the Commission’s criteria of requiring no additional advancement of funds to the RESA.”)

<sup>42</sup> See Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 17:17-20.

<sup>43</sup> Verified Application for a Certificate of Public Convenience and Necessity to Purchase and Own a 60 MW Wind Electric Generating Plant Pursuant to Decision No. C15-0373, at 6 (filed June 23, 2015) (“Cost recovery will shift from the ECA and RESA to base rates following a future rate case proceeding. The Company will file its next rate case proceeding in 2016.”)



rate case, the Company would intend to include the Peak View Wind Project as part of its overall revenue requirement and recover the cost through its base rates. The incremental cost above or below the avoided cost would be credited or debited against the RESA, with an offset to the ECA. This is the same treatment approved for the Company's fifty-percent ownership of the Busch Ranch Wind Project in the Company's last rate case (Proceeding No. 14AL-0393E).<sup>44</sup>

28. However, WRA raised questions about this approach in Ms. Farnsworth's supplemental answer testimony and suggested it was unclear how it would function.<sup>45</sup> To address this concern and in the interest of increased transparency with regard to cost recovery, the Company has set aside its initial proposal. Instead, the Settling Parties agree that the Company shall recover the costs of the Peak View Wind Project through the RESA and ECA over the first ten calendar years (through 2026) of Project operation. As noted in the CPCN Application, Advice Letter 700 filed in Proceeding No. 15AL-0259E implemented ECA and RESA cost recovery methods for eligible energy resources.<sup>46</sup>

29. The exception to the ECA and RESA recovery method discussed above is transmission costs. The Settling Parties agree that transmission costs associated with the Peak View Wind Project will be recovered through the TCA or base rates depending upon timing, and consistent with current practice and the Company's existing tariff.

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<sup>44</sup> Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 19:9-19.

<sup>45</sup> Supplemental Answer Testimony of Gwendolyn Farnsworth, at 19:12-17 ("I expect some of the costs shown in Attachment 12 FCS-1 for 2016 and 2017 might apply to the ECA and RESA before the Company's next rate case is concluded. However, the tables in FCS-1 show base rate costs in 2016. The Commission should require clarity on what costs Black Hills proposes to charge to the RESA and ECA prior to completion of its next rate case.")

<sup>46</sup> This tariff was implemented pursuant to a settlement agreement approved by Decision No. C15-0317 in Proceeding No. 14A-0534E. Decision No. C15-0317, at Ordering ¶ 3, Proceeding No. 14A-0534E (mailed Apr. 9, 2015).

***D. Approval of the 10-Year avoided cost lockdown and annual revenue requirements analysis***

30. In Decision No. C15-0373, the Commission focused on the initial ten years of the Project from an incremental costs analysis standpoint.<sup>47</sup> The key component in determining incremental costs is the determination of avoided costs.<sup>48</sup> Accordingly, to provide certainty and transparency to the cost recovery process for the Peak View Wind Project, the Settling Parties agree (1) to lock down the avoided costs of the Peak View Wind Project for ten calendar years (through 2026) using the analysis that used the natural gas price forecast that starts at levels commensurate with prevailing NYMEX futures and (2) that Black Hills will conduct an annual revenue requirements analysis that will determine the Project costs, and ultimately the incremental cost, for each year.

31. Black Hills witness Ms. Seaman calculated estimated annual avoided costs in her supplemental direct testimony using the natural gas forecast developed by Company witness Ms. Culp and shown in Attachment JC-1.<sup>49</sup> These avoided costs are reproduced below consistent with those set forth in Ms. Seaman’s testimony:<sup>50</sup>

**Peak View Wind Project Locked Down Avoided Cost Table**

Year	Estimated Annual Avoided Costs (\$/MWh)
<b>2016</b>	\$31.19
<b>2017</b>	\$33.18
<b>2018</b>	\$35.13

<sup>47</sup> Decision No. C15-0373, at ¶ 60.

<sup>48</sup> See, e.g., Rule 3661(h) (setting forth the basic method of estimating the retail rate cap through the RES/No RES analysis).

<sup>49</sup> See Supplemental Direct Testimony of Lisa M. Seaman, at 21:5 – 22:1 (filed June 23, 2015) (showing the estimated annual avoided costs used in evaluating the Peak View Wind Project); Attachment JC-1.

<sup>50</sup> Supplemental Direct Testimony of Lisa M. Seaman, at 22:1.

<b>2019</b>	\$37.70
<b>2020</b>	\$40.11
<b>2021</b>	\$43.12
<b>2022</b>	\$45.68
<b>2023</b>	\$48.28
<b>2024</b>	\$51.51
<b>2025</b>	\$54.10
<b>2026</b>	\$57.16

32. The Settling Parties agree that the avoided costs in the Peak View Wind Project Locked Down Avoided Cost Table above should be locked down for the first ten calendar years of operation for the Peak View Wind Project. This will provide the first step in determining the incremental cost for each of the first ten calendar years.

33. The second step involves the development by the Company of a revenue requirements analysis on an annual basis. This annual analysis will take the same format as Attachment CMO-2, which is in the record in this proceeding and sponsored by Black Hills witness Mr. Otto. The Company has updated Attachment CMO-2 with revised O&M assumptions and wind production assumptions following its discussion with Staff and review of Staff’s supplemental answer testimony. As previously discussed, this is included with the Settlement Agreement as Attachment 3.

34. The development of this revenue requirements analysis annually allows for a comparison of the calculated cost per MWh from the revenue requirements analysis as against the locked down avoided cost in the Peak View Wind Project Locked Down Avoided Cost Table. From this comparison, the Company can derive the incremental cost (*i.e.*, the cost per MWh above or below the locked down avoided cost). Consistent with the previous section, the avoided cost will be recovered through the ECA and the incremental cost will be recovered or credited through the RESA.

35. The Settling Parties therefore agree that the avoided costs should be locked down for the first ten calendar years of the Project as set forth in the Peak View Wind Project Locked Down Avoided Cost Table. In addition, the Settling Parties agree that the Company will conduct an annual revenue requirements analysis for the Peak View Project in the same format as Attachment 3 for purposes of determining the Project costs and incremental costs for the Peak View Wind Project each year.

36. The Company will perform this analysis twice – first to implement the projected costs for the coming year and second to perform a “true-up” using actual costs at the end of that year. Initially, the Company will conduct a revenue requirements analysis and project the costs to be recovered through the ECA and RESA over the coming year. This will be in the same format as Attachments 2 and 3 to this Settlement Agreement. Over the course of the year, the Company would recover these projected costs. Early in the following year, (*e.g.*, 2018 for a January 1, 2017 projection), the Company would conduct an analysis of actual costs and engage in a “true-up exercise” to ensure it is neither under- nor over-recovered for the Peak View Wind Project costs.

37. Finally, the Company can report the results of its annual revenue requirements analysis through existing reporting mechanisms. Specifically, Black Hills will report the results on this annual analysis through its annual Renewable Energy Standard Compliance Report filed with the Commission each year pursuant to Rule 3662. The Settling Parties agree that this reporting obligation provides an appropriate mechanism to report the results of this revenue requirements analysis and determination of annual incremental costs (savings). The Company will provide copies of Renewable Energy Compliance Reports filed with the Commission to each party to this proceeding when filed.

***E. Approval of presumption of prudence and performance assessment tool over the first ten years of Project commercial operation***

38. A utility is entitled to recover prudently incurred costs associated with “a new facility, plant, or system or the extension of its facility, plant, or system” after a CPCN is issued for the project in question.<sup>51</sup> Black Hills proposed a utility-owned structure in its CPCN Application because, after both the All-Source solicitation and the the rebidding process pursuant to Decision No. C15-0373, the Peak View Wind Project and its BTA structure provide the most customer benefits.<sup>52</sup> Staff raised concerns in its supplemental answer testimony about the risk allocation under a utility-owned option as opposed to a PPA. Mr. Camp testified on this issue as follows:

In the case of the Project, Black Hills will likely be allowed to recover all costs associated with the purchase, operation, and maintenance of the Project regardless of whether the Project produces as much energy as estimated or whether the Project’s ongoing O&M costs exceed Black Hills’ estimates. Only in the case of a finding of imprudence by the Commission would any costs be disallowed. This places the risk of performance squarely on the shoulders of Black Hills’ customers. In the case of an alternate IPP project acquired through a PPA, the IPP will be allowed to recover costs from Black Hills based only on the contracted rates for actual energy production. If the alternative project production falls below projections, the IPP bears the loss in revenue. Similarly, if the costs for O&M exceed estimates, the IPP will bear those additional costs. This places the risk of performance squarely on the IPP rather than on Black Hills’ customers.<sup>53</sup>

39. In supplemental rebuttal testimony, Mr. Stoffel addressed the risk concerns set forth by Mr. Camp:

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<sup>51</sup> C.R.S. § 40-5-101.

<sup>52</sup> Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 3:13-19 (“The Peak View Wind Project was previously Bid 236-3A in the Company’s 2013 ERP Phase II proceeding. The Peak View Wind Project is the best value for customers in terms of avoided cost savings over the life of the asset. Based on the Company’s analysis of updated bids, the use of federal Production Tax Credits (‘PTC’), NYMEX-based gas prices, and lower costs of integration regulation service for intermittent resources, the Peak View Wind Project is less expensive than providing the same level of energy production with gas-fired resources.”)

<sup>53</sup> Public Answer Testimony of Gene L. Camp, at 27:8-19.

The Company agrees that there is a different allocation of performance risk depending on the ownership of a project. This is true whether a project is a conventional resource or a renewable resource. In choosing the build transfer alternative, the Company was looking at the Peak View Wind Project as the most cost effective means of complying with the RES with use of renewable resources (as opposed to standalone RECs that do not have any ongoing value). There is by necessity an allocation of risk depending on an IPP or a utility-owned asset, but that issue is confronted with every project. IPP contracts embed a risk premium in the offered price. If the IPP's performance is better than reflected in the price, the IPP retains all benefits. Conversely, if the IPP's performance is less than expected, it is the owner's loss to bear. Under utility ownership, all losses as well as benefits from operations flow to customers. This Commission has historically resolved that choice by directing utilities to acquire power in the most cost effective manner available, be it through a PPA, BTA or self-build. Here, the results of a robust solicitation and a follow up bid-refresh process among the top three projects in the Company's 120-Day Report yielded the BTA as providing the most benefit to customers, so it followed that Black Hills brought that forward.<sup>54</sup>

40. Through settlement negotiations, Black Hills and Staff reached a compromise that allows Black Hills customers to benefit from the Peak View Wind Project while addressing the concerns raised by Staff. Specifically, the Settling Parties have agreed upon a performance assessment tool where, starting in the second year of operation (2018), the Company will annually measure its costs against the confidential costs of the Peak View PPA. The Peak View PPA was also bid into the Phase II resource solicitation in this proceeding and involves the same project as the Peak View Wind Project, *i.e.*, the same location, equipment and other fundamental components. The key distinction between the Peak View PPA and the Peak View Wind Project is that the Peak View PPA was offered as a PPA as opposed to the build-transfer offer. Attachment 1 to this Settlement Agreement sets forth the confidential Peak View PPA costs (increased to reflect system integration and regulation costs based on Public Service's OATT Schedules 3 and 16). This Peak View PPA price provides a useful benchmark reflecting the risk premium that a private developer included in a PPA bid price.

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<sup>54</sup> Supplemental Rebuttal Testimony of Fredric C. Stoffel, at 13:1-18.

41. For calendar years 2018 through 2026, Black Hills will annually compare the Peak View Wind Project annual costs against the Peak View PPA annual costs. The Settling Parties agree that Black Hills will have a presumption of prudence for the recovery of the Peak View Wind Project costs if its calculated cost per MWh is lower than the aforementioned confidential Peak View PPA cost per MWh. If the Peak View Wind Project cost is higher than the Peak View PPA cost, Black Hills will be required to show the reason(s) for the difference in order to recover that difference in cost and will bear the burden of establishing the prudence of any costs above the Peak View PPA cost prior to recovery. These Peak View PPA costs and projected Peak View Wind Project costs are reflected in Attachment 1.

42. The Settling Parties agree that this performance assessment tool is appropriate for the period calendar years 2018 - 2026 pursuant to Decision No. C15-0373.<sup>55</sup> If and when costs exceed the Peak View PPA costs, the burden is on the Company to establish the prudence of any such additional costs.

43. If the actual production from the Peak View Wind Project is less than the Settlement Agreement projection of energy production provided in the table below (which incorporates a projected annual production table of 0.1% degradation in average production each year), then Black Hills shall be allowed to normalize the actual wind generation measured for the previous year for determining its annual true-up.

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<sup>55</sup> Decision No. C15-0373, at ¶ 60.

Peak View Wind Project Annual Production, MWh									
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
219,040	218,821	218,602	218,383	218,164	217,945	217,726	217,507	217,288	217,069

The normalization factor shall be calculated utilizing the software product WindFarm<sup>®</sup>, Release 4, from ReSoft Limited.<sup>56</sup> Black Hills shall reproduce the Invenergy analysis using WindFarm<sup>®</sup> and the same historical meteorological data from which Invenergy projected an average annual energy production,  $E_a$ , of 219,040 MWh from the Peak View Wind Project. The Company shall, at the completion of each calendar year, reanalyze the Peak View Wind Project using WindFarm<sup>®</sup> and the same model inputs with the exception that Black Hills will input the actual recorded meteorological data for the prior year to determine the normalized projected energy production,  $E_n$ , without degradation. In a year in which the Peak View Wind Project production is less than shown in the above table, the Company shall be allowed to normalize the actual production for actual wind conditions by multiplying the actual production by the ratio of  $E_a/E_n$ .

44. The Settling Parties agree that this approach is consistent with the fundamental regulatory principle that the utility is entitled to the opportunity to recover prudently incurred costs while providing a performance evaluation tool and appropriate benchmark for the Peak View Wind Project annual costs. It also provides a mechanism to evaluate the performance and costs of the Project. In addition, the Settling Parties agree that implementation of this approach is consistent with the Commission’s authority under C.R.S. § 40-5-101.

45. Finally, the Settling Parties agree that, as with the annual revenue requirements analysis in the previous section, the results of the analysis comparing the annual costs of the Peak View Wind Project to the Peak View PPA costs will be reported in the annual Renewable

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<sup>56</sup> The Company may use later releases of this software with appropriate recalibrations.



Energy Standard Compliance Report. The Settling Parties agree that this reporting obligation provides an appropriate mechanism to report the results of the evaluation using this performance tool. Furthermore, as with the revenue requirements analysis in the previous section, this analysis would be conducted on a calendar year basis commencing January 1, 2018. Therefore, the first filing would be in early 2019 showing the performance of the Peak View Wind Project.

46. In those years that Black Hills reports in its annual Renewable Energy Standard Compliance Report that the actual Peak View Wind Project costs exceed the Peak View PPA costs and Black Hills requests a finding by the Commission that such costs were prudently incurred and can be recovered by Black Hills, interested parties may, within 90 days of the filing of the Renewable Energy Standard Compliance Report, challenge or contest Black Hills' request for a finding of prudence and may request that the Commission set the matter for hearing.

***F. Approval of process following the first ten calendar years of Project's commercial operation***

47. The Settling Parties agree that, beginning in the eleventh year of operation (2027), the avoided costs in Attachment 2 will be unlocked and the performance assessment tool benchmarking the Peak View Wind Project costs against the Peak View PPA costs will no longer be used. During the tenth year of Project operation (2026), the Company will file an application with the Commission setting forth a proposal to maintain (*i.e.*, keep cost recovery through the RESA and ECA) or modify (*e.g.*, the Company may propose including the cost of the Peak View Wind Project in base rates) the cost recovery method for the Peak View Wind Project.

***G. Interaction with the RES Compliance Settlement Agreement in Proceeding No. 14A-0535E and RES compliance***

48. The Settling Parties agree that this Settlement Agreement is consistent with the RES Compliance Settlement Agreement, which is a global, unopposed settlement currently pending Commission approval.<sup>57</sup> Under the RES Compliance Settlement Agreement, Black Hills will purchase standalone RECs to meet the Electric resource standards of the RES in 2015 and 2016.<sup>58</sup> For the 2017 compliance year, however, the settling parties in that proceeding agreed that “Black Hills will meet the applicable Electric resource standard (20% of retail electricity sales, with distributed generation equaling at least 2% of retail electricity sales)<sup>59</sup> through either: (1) the purchase of all standalone RECs needed for compliance if the Peak View Wind Project *is not* acquired by Black Hills, or (2) if the Peak View Wind Project *is* acquired by Black Hills, the purchase of standalone RECs to fill any remaining Electric resource standards compliance need.”<sup>60</sup> The settling parties agreed on this contingent approach because it “allows for compliance with the RES from a REC accounting perspective under either set of circumstances.”<sup>61</sup> As stated by Mr. Stoffel in his supplemental direct testimony in this proceeding, “[i]n 2017, the first full year of operation, the Peak View Wind Project is forecast to produce 219,100 RECs which will provide 55% of the applicable Electric resource standards.”<sup>62</sup>

49. The Settling Parties acknowledge and agree that compliance with the Electric resource standards of the RES through the purchase of eligible energy resources (*i.e.*, bundled

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<sup>57</sup> The settling parties in Proceeding No. 14A-0535E, which consist of Staff, OCC, CEO, CIEA and WRA (all parties to this proceeding), filed the RES Compliance Settlement Agreement on September 3, 2015. Administrative Law Judge Robert I. Garvey held a hearing on the RES Compliance Settlement Agreement on September 10, 2015, and this proceeding is currently designated for an initial Commission decision.

<sup>58</sup> Settlement Agreement, at ¶ 23, Proceeding No. 14A-0535E (filed Sept. 3, 2015) (hereinafter “RES Compliance Settlement Agreement”).

<sup>59</sup> C.R.S. § 40-2-124(1)(c)(I)(D). Black Hills forecasts compliance with the retail distributed generation requirement in 2015, 2016 and 2017 without the purchase of standalone RECs.

<sup>60</sup> RES Compliance Settlement Agreement, at ¶ 24.

<sup>61</sup> *Id.*

<sup>62</sup> Supplemental Direct Testimony and Attachment of Fredric C. Stoffel, at 4:1-3.

RECs) is preferable to compliance through standalone RECs when eligible energy resources can be acquired by the Company in a cost-effective manner.

50. Compliance with the Electric resource standards through bundled RECs generated by the Peak View Wind Project also provides more benefits to customers, as customers receive the benefit of the energy generated by the Peak View wind project and not just the environmental attributes associated with standalone RECs.

51. In addition, the interaction of this Settlement Agreement and the RES Compliance Settlement Agreement does not affect the Peak View Wind Project's compliance with the standard set forth by the Commission in Decision No. C15-0373. As part of the RES Compliance Settlement Agreement, the Company modeled Electric resource standards compliance under the agreement in two ways, assuming (1) that the RES Compliance Settlement Agreement is approved without modification and (2) the on-site solar and Community Solar Gardens programs are fully subscribed over the 2015-2017 compliance period.<sup>63</sup> One model included the Peak View Wind Project and one model did not,<sup>64</sup> and this modeling established "that the approval of this Settlement Agreement will modestly extend the RESA deficit, but will not require advancement of shareholder funds under either scenario."<sup>65</sup>

52. After reviewing the modeling, the parties to Proceeding No. 14A-0535E unanimously agreed that approval of the RES Compliance Settlement Agreement "will not require the Company to advance funds to the RESA to acquire the Peak View Wind Project (if the project is approved by the Commission in Proceeding No. 15A-0502E)."<sup>66</sup> Consistent with this conclusion, the RES Compliance Settlement included the following express agreement by all

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<sup>63</sup> RES Compliance Settlement Agreement, at ¶ 59.

<sup>64</sup> See Highly Confidential Attachment 3, RES Compliance Settlement Agreement (filed Sept. 3, 2015).

<sup>65</sup> RES Compliance Settlement Agreement, at ¶ 59.

<sup>66</sup> *Id.* at ¶ 61.

parties: “The Settling Parties acknowledge and agree that this Settlement Agreement does not affect the Company’s proposed Peak View Wind Project in Proceeding No. 15A-0502E. This Settlement Agreement should not affect the determination of whether the Peak View Wind Project should be approved.”<sup>67</sup>

***H. Additional benefits of the Settlement Agreement and approval of the Peak View Wind Project***

53. The Settling Parties agree that the Peak View Wind Project may provide additional compliance benefits going forward. The U.S. Environmental Protection Agency (“EPA”) recently finalized its Clean Power Plan rule under Section 111(d) of the Clean Air Act. While the Colorado-specific compliance pathway is still under development, it is reasonable to expect that the characteristics and environmental attributes of the Peak View Wind Project will be useful in meeting the carbon dioxide emission reduction requirements of a state plan.

54. Approval of the Peak View Wind Project is also consistent with the recently released Colorado Climate Plan, which was developed by several Colorado state agencies and offices, including CEO.<sup>68</sup> The Colorado Climate Plan was developed to meet the requirements of C.R.S. § 24-20-111,<sup>69</sup> and “represents advances in the discussion of how best to address

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<sup>67</sup> *Id.*

<sup>68</sup> Contributing agencies and offices include CEO, the Colorado Resiliency and Recovery Office, the Department of Agriculture, the Department of Local Affairs, the Department of Natural Resources, the Department of Public Health and Environment, the Department of Transportation, and the Office of Economic Development and International Trade.

<sup>69</sup> See C.R.S. § 24-20-111(3)(a) (“ The governor or his or her designee shall submit an annual report to the house agriculture, livestock, and natural resources committee, the house transportation and energy committee, and the senate agriculture, natural resources, and energy committee, or any successor committees, on climate change issues generally, the current climate action plan developed under this section, and the specific ways in which climate change affects the state. The report may address, as appropriate, the correlations between climate change and wildfires, bark beetle infestation, snowpack, water storage, drought, and statewide emissions of greenhouse gases. The report shall include information regarding efforts to reduce emissions of gases and to reform practices known to exacerbate climate change effects. The report shall also include additional prospective proposals to prepare the state for the effects of climate change and proposals to further reduce the factors that contribute to climate change within Colorado.”)

climate change at the state level ....<sup>70</sup> The RES is a fundamental aspect of this plan,<sup>71</sup> and the Peak View Wind Project in turn satisfies the requirements of the Electric resource standards of the RES in a cost-effective manner.

### III. GENERAL TERMS AND CONDITIONS

55. Through active prehearing investigation and negotiations, the Settling Parties have negotiated agreements set forth in this Settlement Agreement, resolving the enumerated contested and disputed issues in this proceeding in a manner which the Settling Parties agree is just and reasonable and in the public interest. This Settlement Agreement reflects the compromise and settlement of those issues between the Settling Parties in this proceeding. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through litigation, is in the public interest.

56. The Settling Parties agree to present, to support, and to defend this Settlement Agreement before the Commission and in the courts. They further agree to present testimony and exhibits in any hearing set, in whole or in part, for the purpose of obtaining the Commission's approval of this Settlement Agreement. This Settlement Agreement shall not become effective until the issuance of a final Commission order approving the Settlement Agreement which Commission order does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any of the Settling Parties, that Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this proceeding. The withdrawing

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<sup>70</sup> Colorado Climate Plan, at 1 (Sept. 2015), *available at* <http://cwcwebweblink.state.co.us/WebLink/ElectronicFile.aspx?docid=196541&searchid=243b8969-739b-448c-bd2d-699af9b7aea0&dbid=0>.

<sup>71</sup> *Id.* at 26.

Party shall notify the Commission and the other Party to the Settlement Agreement by e-filing within three business days of the Commission-ordered modification that the Party is withdrawing from the Settlement Agreement and that the Party is ready to proceed to hearing; the e-filing shall designate the precise issue or issues upon which the Party desires to proceed to hearing.

57. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of the disputed issues resolved herein.

58. The Settling Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement that is in the public interest with respect to the various matters and issues enumerated herein and for the reasons stated. The Settling Parties shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for in this Settlement Agreement, other than as specifically provided for herein. Notwithstanding the resolution of the issues set forth in this Settlement Agreement, none of the methods or principles herein contained shall be deemed by the Settling Parties to constitute a settled practice or precedent in any future proceeding.

59. This Settlement Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. The parties are not relying on any statement or representation not contained herein.

60. This Settlement Agreement may be executed in counterparts and by facsimile or electronic copies of signatures, all of which when taken together shall constitute the entire Settlement Agreement with respect to the matters addressed herein.

#### **IV. CONCLUSION**

For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order granting Black Hills' CPCN Application 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: September 24, 2015

Approved as to form:

BLACK HILLS/COLORADO  
ELECTRIC UTILITY COMPANY,  
LP:

Agreed on behalf of:

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Attorney for Black Hills/Colorado Electric  
Utility Company, LP



Approved as to form:

Agreed on behalf of:

OFFICE OF THE ATTORNEY GENERAL

STAFF OF THE COLORADO PUBLIC  
UTILITIES COMMISSION:

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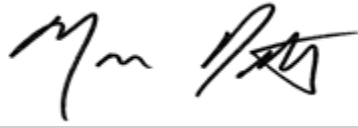
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DIETZE AND DAVIS, P.C.

A handwritten signature in black ink, appearing to read 'Mark Detsky', enclosed within a thin black rectangular border.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2015 the foregoing document was served on those parties shown on the Commission's Certificate of Service accompanying such filing.

By: /s/ Margo A. Parker