

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 17A-0271E

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY, LP FOR AN ORDER APPROVING THE
CONTINUATION OF THE INCENTIVE SHARING MECHANISM**

SETTLEMENT AGREEMENT

Pursuant to Rule 1408, Black Hills/Colorado Electric Utility Company, LP (“Black Hills” or the “Company”), and Staff of the Colorado Public Utilities Commission (“Staff”) (collectively, “Settling Parties”), by their undersigned counsel, and for good and valuable consideration, enter into this Settlement Agreement (“Settlement Agreement”) to resolve all concerns that have arisen between them related to the Company’s Verified Application (the “Application”) filed in Proceeding No. 17A-0271E. The Settling Parties specifically request that the Commission approve this Settlement Agreement as consistent with the public interest.

I. PROCEDURAL HISTORY

1. On May 1, 2017, Black Hills filed a Verified Application seeking Commission approval of to extend the current off-system incentive sharing mechanism an additional three years through December 31, 2021 pursuant to Decision No. C11-1373 and Rule 3002. The Company also filed direct testimony and attachments with its Verified Application.

2. On May 1, 2017, the Commission issued its Notice of Application Filed (“Notice”). That Notice established an intervention period and contained a *pro forma* procedural schedule.

3. On May 4, 2017, trial Staff of the Colorado Public Utilities Commission (“Staff”), through its counsel the Colorado Attorney General, intervened in the proceeding.

4. Staff identified the following issues that it would raise and address in the proceeding:

- a. Whether the Company considers off system sales, made pursuant to the Joint Dispatch Agreement (“JDA”), within the scope and treatment sought in the Application;
- b. Whether the Company is, by the Application, seeking authority to retain 10% of the margins from off system sales made pursuant to the JDA;
- c. To provide clarity for the Commission as to the specific types of off system sales transactions which are within the scope of a Commission approval in the Application; and
- d. Any and all other issues that, after investigation and analysis, are worthy of consideration by the Commission, are in the public interest, and are likely to assist the Commission to render its decision in this proceeding.

5. On June 7, 2017, the Commission deemed the Application complete and referred it to an Administrative Law Judge (“ALJ”) by Minute Entry.

6. Pursuant to Decision No. R17-0502-I, the Company submitted a proposed procedural schedule, which also included discovery procedures, confidentiality procedures, and a motion to vacate pre-hearing conference on June 30, 2017.

7. By Decision No. R17-0573-I, the ALJ adopted the following procedural schedule:

- August 25, 2017: Answer testimony due.
- September 1, 2017: Rebuttal and cross-answer testimony due.

- September 5, 2017: Pre-hearing Motions Due [Except for motions relating to discovery disputes].
- September 5, 2017: Corrected testimony due.
- September 6, 2017: Stipulation of Settlement due.
- September 8, 2017: Prehearing Conference.
- September 15, 2017: Evidentiary Hearing.
- September 29, 2017: Statements of Position due.

8. In July, Black Hills and Staff commenced settlement negotiations. This Settlement Agreement memorializes the negotiated settlement among and between the Settling Parties on all the issues raised in Proceeding No. 17A-0271E. 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' application for approval to extend the current off-system incentive sharing mechanism have been resolved to the satisfaction of the Settling Parties. The Settling Parties agree that this Settlement Agreement is a fair, just, and reasonable resolution of these issues. The Settlement Agreement is in the public interest.

9. The Settling Parties agree that the Commission should grant Black Hills' Verified Application filed in Proceeding No. 17A-0271E consistent with this Settlement Agreement.

10. The Settling Parties stipulate that the testimony and attachments filed by Black Hills in Proceeding No. 17A-0271E 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

This section sets forth the negotiated resolution of the issues between the Settling Parties.

11. Black Hills clarifies that it does not consider transactions made pursuant to the JDA within the scope of the Application.

12. Black Hills further clarifies that it is not seeking Commission's authority within the Application to retain any portion of the margins from transaction made pursuant to the JDA. All of the savings resulting from the JDA are passed on to customers.

13. Black Hills also states that the off system sales eligible for the Incentive Sharing Mechanism include all energy sales made to non-end-use customers only after the Company has met its native load requirements and excludes any JDA transactions.

14. Black Hills confirms that no new products or changes in methodology are being requested at this time. Black Hills is merely seeking to extend the current Incentive Sharing Mechanism through 2021.

15. Black Hills agrees that it will file an application seeking Commission approval of any new off-system sales products or changes in accounting or sharing methodology prior to implementation of such products or changes.

16. Black Hills will amend the applicable tariff sheet to include the following language: "Continuation of IS for calendar year 2022 and subsequent years shall depend on the Commission's decision in an application to be filed on or before May 1, 2021, to continue the incentive mechanism for off-system sales." Form tariffs are included as Attachment A.

III. GENERAL TERMS AND CONDITIONS

17. Through active prehearing investigation and negotiations, the Settling Parties have negotiated agreements set forth in this Settlement Agreement, resolving the 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 encouraged by Rule 1408 and is in the public interest.

18. 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 decision approving the Settlement Agreement which Commission decision 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 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.

19. 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.

20. 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. 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.

21. 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.

22. 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

23. For the reasons stated above, the Settling Parties respectfully request that the Commission enter a decision approving 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: August 25, 2017

Approved as to form:


BLACK HILLS/COLORADO
ELECTRIC UTILITY COMPANY,
LP:

By: /s/ Kevin L. Opp
Kevin L. Opp, #36607
Corporate Counsel
Black Hills Corporation
1515 Wynkoop, Suite 500
Denver, CO 80202
Telephone: 303-566-3455
Email: kevin.opp@blackhillscorp.com

Attorney for Black Hills/Colorado Electric
Utility Company, LP

Agreed on behalf of:

BLACK HILLS/COLORADO ELECTRIC
UTILITY COMPANY, LP:

By: 
/s/ Fredric C. Stoffel
Fredric C. Stoffel
Director of Regulatory Services
Black Hills Corporation
1515 Wynkoop, Suite 500
Denver, CO 80202
Telephone: 303-566-3386
Email: fred.stoffel@blackhillscorp.com

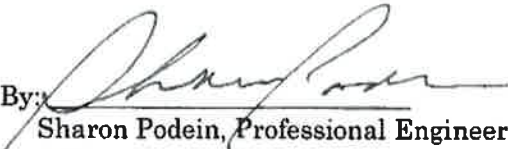
Approved as to form:

TRIAL STAFF OF THE COLORADO PUBLIC
UTILITIES COMMISSION:

By: /s/ David M. Nocera
David M. Nocera, 28776*
Senior Assistant Attorney General
Elizabeth Stevens, 45864*
Assistant Attorney General
Revenue and Utilities Section
Telephone: (720) 508-6333 (Nocera)
Telephone: (720) 508-6762 (Stevens)
Fax: (720) 508-6038
Email: dave.nocera@coag.gov
Email: Elizabeth.Stevens@coag.gov

Attorneys for Trial Staff of the Public Utilities
Commission

FOR STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

By: 
Sharon Podein, Professional Engineer
Energy Section
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202
Sharon.Podein@state.co.us

BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP

Attachment A

d/b/a BLACK HILLS

ENERGY

Colo. PUC No. 9

105 South Victoria

~~Second-Third Revised~~ Sheet No. 62

Pueblo, Colorado 81003

Cancels ~~First-Second Revised~~ Sheet No. 62

**ENERGY COST ADJUSTMENT (CONTINUED)
ELECTRIC**

Energy Sales Net Income: The net of Off-System Sales Revenue as recorded in FERC account 447 and Fuel Off-System Other Production Expense as recorded in FERC account 547, Purchased Power Off-System Sales Expense as recorded in FERC account 555, Off-System Transmission Expense as recorded in FERC account 565, and Generation Dispatch & Marketing Bonuses as recorded in FERC account 926.

D

Incentive Sharing (IS): Determined on a calendar year basis, the remaining previous calendar year Energy Sales Net Income not previously included in a current year ECA revision shall be divided by the number of ECA revisions expected to occur throughout the remaining current calendar year and the result shall be included in each remaining current year ECA revision. If the previous calendar year Energy Sales Net Income is negative, the negative Energy Sales Net Income shall not be passed on to retail customers. If the previous calendar year Energy Sales Net Income is positive, the positive Energy Sales Net Income shall be shared annually with retail customers through the ECA as follows:

- (1) For calendar years 2014 through ~~2021~~²⁰¹⁸, sharing shall be at ninety percent (90%) to retail customers / ten percent (10%) to the Company. C
- (2) Continuation of IS for calendar year ~~2022~~²⁰¹⁹ and subsequent years shall depend on the Commission's decision in an application to be filed on or before May 1, 2021, to continue the incentive mechanism for off-system sales. C

Net RESA Transfer: The net of (1) RESA incremental cost or savings of renewable purchase agreements, (2) less the sum of avoided cost of on-site small solar production, (3) plus the avoided cost of Company-owned eligible energy resources, prior to the resource being placed in base rates, (4) for Company-owned eligible energy resources placed in base rates, adjustments to offset any incremental costs or savings applied to the RESA associated with the production, and (5) any adjustments approved by the Commission include, but are not limited to, the adjustments related to eligible energy resources proposed by the Company in Proceeding No. 14A-0534E.

Advice Letter No.	Decision or Authority No.	
Signature of Issuing Officer /s/ Fredric C. Stoffel	Issue Date	
Title Director, Regulatory Affairs Black Hills Corporation	Effective Date	