

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

**PROCEEDING NO. 23A-0633G**

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**IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO  
GAS, INC. FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.**

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**SETTLEMENT AGREEMENT**

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**August 16, 2024**

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## **I. INTRODUCTION**

Pursuant to Rule 1408, Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy (“BHCG” or the “Company”), Staff of the Public Utilities Commission of the State of Colorado (“Staff”), the Colorado Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”) enter into this Settlement Agreement (“Settlement Agreement”) to resolve all of the issues that have been raised or could have been raised in this proceeding. BHCG, Staff, UCA, and CEO shall be referred to herein collectively as the “Settling Parties” and individually as a “Settling Party.” The Settling Parties submit that this Settlement Agreement provides for a just and reasonable resolution of all issues that were raised in BHCG’s Clean Heat Plan (“CHP”) proceeding. The Settling Parties are four of the five parties to this proceeding.<sup>1</sup>

## **II. PROCEDURAL BACKGROUND**

1. On December 29, 2023, BHCG filed a verified application for approval of its 2024-2028 CHP in accordance with § 40-3.2-108 C.R.S., and Rule 4729(d), along with direct testimony and attachments from five witnesses: Michael J. Harrington (Hearing Exhibit 101), Maria K. Garduna (Hearing Exhibit 102), Christopher L. Downey (Hearing Exhibit 103), Andrew W. Cottrell (Hearing Exhibit 104), and Matthew J. Christofferson (Hearing Exhibit 105).<sup>2</sup>

2. On January 16, 2024, the UCA filed its notice of intervention of right, request for hearing, and entry of appearances. On January 29, 2024, CEO filed its notice of intervention by Right and SWEEP filed its motion to intervene, entry of appearance, and notice of financial disclosure. On February 2, 2024, Staff filed its notice of intervention as of right, entry of appearance, notice pursuant to Rule 1007(a) and Rule 1401, and request for hearing.

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<sup>1</sup> Southwest Energy Efficiency Project (“SWEEP”) is the only other party to this proceeding.

<sup>2</sup> Hearing Exhibit 100 was reserved for the application.

3. On March 7, 2024, the Commission issued Decision No. C24-0148-I requiring filing of supplemental direct testimony and referring this proceeding to an administrative law judge (“ALJ”).

4. On April 8, 2024, BHCG filed supplemental direct testimony and attachments from two witnesses pursuant to Decision No. C24-0148-I: Michael J. Harrington (Hearing Exhibit 106) and Andrew W. Cottrell (Hearing Exhibit 107).

5. On April 9, 2024, ALJ Alenka Han issued Decision No. R24-0218-I, acknowledging the interventions of right from UCA, CEO, and Staff, granting SWEEP’s motion to intervene, extending the applicable statutory period for a Commission decision, and scheduling a prehearing conference. As recognized in that decision, BHCG, Staff, UCA, CEO, and SWEEP are the only parties to this proceeding.

6. On May 13, 2024, ALJ Alenka Han issued Decision No. R24-0326-I acknowledging the Company’s waiver of the statutory deadline for a Commission decision, adopting procedural schedule, scheduling a hybrid evidentiary hearing, scheduling public comment hearings, and providing instructions concerning exhibits and participating in the hearings.

7. On May 30, 2024, Staff filed the answer testimony and attachments of Eric Haglund (Hearing Exhibit 200), Patrick LaMere (Hearing Exhibit 201) and Jack D. Turner (Hearing Exhibit 202), UCA filed the answer testimony and attachments of Leslie Henry-Sermos (Hearing Exhibit 300), CEO filed the answer testimony and attachments of Jocelyn P. Durkay (Hearing Exhibit 400), and SWEEP filed the answer testimony and attachments of Justin Brant (Hearing Exhibit 500) and Wael Kanj (Hearing Exhibit 501).

8. On July 26, 2024, the Company filed the rebuttal testimony of Michael J. Harrington (Hearing Exhibit 108), Maria K. Garduna (Hearing Exhibit 109), and Andrew W. Cottrell (Hearing Exhibit 110), CEO filed the cross-answer testimony of Jocelyn P. Durkay (Hearing Exhibit 401), and SWEEP filed the cross-answer testimony of Justin Brant (Hearing Exhibit 502).

9. As a result of settlement negotiations, including several all-party settlement conferences, the Settling Parties have come to an understanding and reached an agreement to resolve all of the issues in this proceeding. This Settlement Agreement memorializes such agreement.

### **III. SETTLEMENT AGREEMENT**

10. This Settlement Agreement reflects the input and careful consideration of all issues by the Settling Parties. As memorialized in this Settlement Agreement, the Settling Parties have agreed to a resolution of all issues that were or could have been raised in this proceeding and the issues in dispute between them in this proceeding have been resolved to the satisfaction of the Settling Parties.

11. In resolution of the issues raised or which could have been raised by the parties to this proceeding, the Settling Parties agree that the Company's application and the Clean Heat Plan should be approved as modified in rebuttal testimony and subject to the following terms:

#### ***A. CHP Term.***

12. The Settling Parties agree to a shortened initial CHP timeframe of 2025-2027 (shortened from 2024-2028). The Company will file a combined Demand Side management ("DSM") and CHP Application in 2027 for a Clean Heat Plan action period of 2028-2032.

***B. Cost Cap.***

13. The Settling Parties agree to UCA's proposal to implement the plan within the statutory 2.5% cost cap.<sup>3</sup>

***C. Overall Budget***

14. The Settling Parties agree to Staff's proposal<sup>4</sup> to approve a CHP budget based on the following: 2019 – 2023 5-year average of actual Company revenues and an assumed annual growth rate of 2% as updated in the Company's Rebuttal Testimony.<sup>5</sup> As reflected in Table 1 below, the Settling Parties agree to a 3-year budget total of \$18,374,321.

***D. CHP Budget Flexibility***

15. The Settling Parties agree that the Company should be afforded the flexibility to shift dollars between program budgets. Any shift between program budgets shall be based on clean heat resource adoption, and intended to maximize emissions reductions under the CHP. The Settling Parties agree that the Company has discretion to shift budgets up to 15 percent within and between clean heat resources. Any shift of budget dollars in excess of 15 percent must be preceded by the 60-Day Notice process, as described below in the 60/90-Day Notice Process.<sup>6</sup> If budget is shifted into the DSM program, then the DSM IQ program budget will increase proportionally in accordance with the provision stated under the Settlement section titled DSM IQ customers.

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<sup>3</sup> HE 300, 31:7-9.

<sup>4</sup> HE 200, 19:16-20:18.

<sup>5</sup> HE 108, 20:1-21:6.

<sup>6</sup> See Section III.L.

***E. CHP Recovery.***

16. Settling Parties agree that for the period of Black Hills' inaugural CHP (2025-2027), the Company will recover CHP costs through a new Clean Heat Plan Rider ("CHP Rider"). Parties reserve the right to advocate for a combined CHP/DSMCA rider in future proceedings.

17. The CHP Rider will recover the CHP cost through volumetric charges and will include:

- a. Rider rates will be set annually on a forecasted basis to recover the costs of the Clean Heat expenditures as defined in Table 1;
- b. An annual true-up of the rider amount to reflect actual incurred costs;
- c. An asymmetric carrying charge equal to the Company's Commission authorized weighted average cost of capital ("WACC"), such that over-recovered balances earn a WACC but under-recovered balances are trued up with no carrying charge;<sup>7</sup> and
- d. A clarification that the rider can only recover costs associated with clean heat resources.

18. The Company will file a compliance advice letter within 30 days of a final Commission decision to implement the CHP Rider, which will have an effective date of January 1, 2025. The Company will file annual true-up advice letters each April to reconcile recovered CHP funds to actual incurred CHP costs, similar to the current filing cadence of the Company's DSMCA.

***F. Modified Clean Heat Plan***

19. The Settling Parties agree that the Company's inaugural Clean Heat Plan will include DSM program funding that is in addition to their approved DSM Plan budgets. The Clean Heat Plan will include funding specifically earmarked for income-qualified ("IQ") customers as discussed in "DSM IQ Customers" below, Advanced Monitoring and Leak Detection ("AMLD"),

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<sup>7</sup> HE 200, 39:5-40:2.

Renewable Natural Gas (“RNG”), and the Rocky Ford Beneficial Electrification Program. The total estimated cumulative greenhouse gas emissions reductions from the Modified CHP Portfolio are approximately 25,595 Mt CO<sub>2</sub>e compared to 23,483 Mt CO<sub>2</sub>e cumulative greenhouse gas emissions reductions over the same three-year time period (2025-2027) under BHCG’s original Preferred Portfolio. The Settling Parties agree to the following proposed budgets:

**Table 1 – CHP Resource Budgets**

	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>TOTAL</b>
Total DSM	\$4,413,185	\$4,413,185	\$4,413,185	<b>\$13,239,555</b>
<i>DSM IQ*</i>	<i>\$882,637</i>	<i>\$882,637</i>	<i>\$882,637</i>	<b><i>\$2,647,911</i></b>
AMLD	\$793,474	\$1,271,421	\$1,414,871	<b>\$3,479,766</b>
RNG	\$0	\$0	\$1,000,000	<b>\$1,000,000</b>
Rocky Ford Pilot	\$40,000	\$40,000	\$20,000	<b>\$100,000</b>
DI Community Engagement and Outreach Plan		\$50,000	\$50,000	<b>\$100,000</b>
Feasibility Study	\$150,000	\$230,000	\$75,000	<b>\$455,000</b>
Hydrogen	\$0	\$0	\$0	<b>\$0</b>
<b>TOTAL **</b>	<b>\$5,396,659</b>	<b>\$6,004,606</b>	<b>\$6,973,056</b>	<b>\$18,374,321</b>

\*DSM IQ is 20% of the Total DSM budget in the line above applied equally each year.

\*\* The TOTAL budget line item does not equal the sum of the line items shown above because the DSM IQ line item represents a subset of the Total DSM budget.

**I. DSM**

- a. The Settling Parties agree to the Total DSM budget reflected in Table 1 above.
- b. The Settling Parties agree to the programs and measures as described in the Company’s Direct Testimony.<sup>8</sup> The Company retains discretion to introduce new DSM program concepts through the 60/90-Day Notice Process during the course of its CHP, such as those presented in CEO’s Answer Testimony,<sup>9</sup> within the Total DSM budget reflected in Table 1 above.
- c. The Settling Parties agree that the three-year Total DSM Budget shown in Table 1 above will be applied evenly during the inaugural CHP timeframe.

<sup>8</sup> HE 105, 31:2-40:13.

<sup>9</sup> HE 400, Rev. 2, 64:3-65:11.



- d. The Settling Parties agree to modify the Company's Expanded DSM funding proposal to make these funds immediately available, and Black Hills will take reasonable actions to accelerate its DSM Plan expenditures.

## **2. DSM IQ Customers**

- a. The Settling Parties agree that BHCG will prioritize Clean Heat resource investments for IQ customers by specifically earmarking DSM funding for income-qualified customers in the amounts noted in Table 1.
- b. The Settling Parties agree that 20% of the Total DSM Budget will be applied to DSM IQ Customers on an annual basis of \$882,637 as reflected in Table 1 above.
- c. The Settling Parties agree that BHCG will use its CHP to facilitate greater enrollment in its gas Black Hills Energy Assistance Program ("BHEAP") for eligible CHP DSM IQ Program participants. Specifically, BHCG will automatically enroll CHP DSM IQ Program participants in its gas BHEAP if they are not already enrolled. BHCG will use its CHP DSM IQ Program budget to cover the cost of the BHEAP benefit if the gas BHEAP surcharge is at the maximum permitted level pursuant to Rule 4412 at the time of the customer's enrollment and BHEAP has reached its enrollment capacity.

## **3. AMLD**

- a. The Settling Parties agree that BHCG can pursue AMLD technology as proposed in its Direct Testimony.<sup>10</sup>
- b. Written AMLD procedures will be submitted to the Air Quality Control Division ("Division") in accordance with AQCC Regulation 22, 5 CCR 1001-26, Part C, § I.C.6.<sup>11</sup> The Division must approve the AMLD procedures before any recovered methane credits may be generated.

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<sup>10</sup> HE 103, 8:2-11:7.

<sup>11</sup> See AQCC Regulation 22, 5 CCR 1001-26, Part C, § I.C.6.

- c. The quantification of emissions following the written procedures submitted to the Division will be verified by an accredited body or organization as detailed in 5 C.C.R. 1001-26, Part C, Section I.C.7.a.
- d. The Settling Parties agree to include the revenue requirement associated with the AMLD technology in the CHP overall budget as reflected in Table 1 above.

#### **4. Renewable Natural Gas**

- a. The Settling Parties agree that BHCG will be able to pursue RNG as a clean heat resource for potential implementation and to make RNG purchases beginning in 2027.
- b. The Settling Parties agree that BHCG will pursue RNG at the budget reflected in Table 1 above, with the lower abatement costs presented in its Rebuttal Testimony.<sup>12</sup>
- c. If BHCG successfully contracts for RNG, the Settling Parties agree that only the incremental cost of RNG is recoverable in the CHP rider, while commodity costs are recoverable via the Gas Cost Adjustment.
- d. BHCG will adhere to the AQCC recovered methane protocols.<sup>13</sup>
- e. BHCG will adhere to the Commission rules for the share of its CHP emission reductions that can come from RNG.<sup>14</sup>
- f. The Settling Parties agree that BHCG will submit specific RNG projects through the modified 60/90-Day Notice Process described in the 60/90-Day Notice Section below. At a minimum, any such notice must contain the following:
  - (1) the term of the contract (i.e., how many years BHCG would commit to purchase recovered methane);
  - (2) the estimated emissions reductions of the recovered methane pursuant to the approved recovered methane protocols;
  - (3) the anticipated environmental justice impacts of the project, including—pursuant to Rule 4731(f)(III), 4 CCR 723-4—the location of the project and whether any portions are located in disproportionately impacted communities;
  - (4) whether the Company would acquire bundled or unbundled recovered

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<sup>12</sup> HE 109, 11:11-17.

<sup>13</sup> CCR 1001-26, Part C, § I.C.2. - § I.C.6.

<sup>14</sup> Commission Rule 4728(d)(I)(B).

methane and, if unbundled, how such a structure complies with the recovered methane protocols;

(5) the total price of the recovered methane, including any infrastructure costs necessary to deliver the recovered methane to BHCG's system, and resulting abatement costs of the recovered methane (i.e., the dollars per MT of CO<sub>2</sub>e); and

(6) any other material contract terms that are necessary to evaluate whether the acquisition of the recovered methane is in the public interest.<sup>15</sup>

- g. The Settling Parties agree that the Company will present a map of which RNG projects will take place in Disproportionately Impacted Communities, as required by Commission Rule 4731(f)(III).
- h. The Settling Parties agree that should the Company fail to enter into a contract for RNG resources by March 31, 2027, the funds associated with the RNG budget would be reallocated to the CHP DSM budget.

**5. Rocky Ford Electrification Pilot Program**

- a. The Settling Parties agree that the Company will implement the Rocky Ford Electrification Pilot Program in its inaugural CHP.
- b. The Settling Parties agree that no additional electrification programs beyond the Rocky Ford Electrification Pilot Program will be included in the inaugural CHP.
- c. The Settling Parties agree to the Rocky Ford Electrification Pilot Project budget reflected in Table 1 above.

**G. Hydrogen**

- 20. The Settling Parties agree that Hydrogen will not be included in the Company's inaugural CHP.

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<sup>15</sup> See Decision No. C24-0397, in Proceeding No. 23A-0392EG, ¶¶ 104-105 (Public Service's Clean Heat Plan Decision).

***H. Community Based Organizations***

21. The Settling Parties agree that BHCG will not include dedicated funding for Community Based Organization (“CBO”) engagement in the CHP portfolio. The Company will develop a comprehensive DI Community Engagement and Outreach Plan in 2025 and provide annual reporting on its IQ and DI community engagement as recommended by Staff Witness Turner.<sup>16</sup> The Settling Parties agree to the DI Community Engagement and Outreach Plan budget reflected in Table 1 above.

***I. Performance Incentive Mechanism (“PIM”)***

22. The Settling Parties agree that no PIM will be included in the Company’s inaugural CHP.

***J. Thermal Pilot Program***

23. The Settling Parties agree that BHCG will conduct a Feasibility Study to investigate an application in its service territory to understand the potential costs and opportunities at a cost of \$455,000 as reflected in Table 1 above.

24. The Settling Parties agree this Feasibility Study should include a siting analysis of potential locations for this pilot program. The siting analysis must provide a consideration of the potential direct and indirect economic benefits to the Company, its customers, and direct end-users, avoided fuel and gas infrastructure costs and impacts to each of the sites proposed from the development of the project in those communities. BHCG agrees the Feasibility Study will include outreach to stakeholders for discussion on potential projects and the Feasibility Study will include at least one project that assesses the potential costs, avoided costs, and GHG emissions reduction opportunities from implementing a thermal energy pilot.

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<sup>16</sup> HE 202, 13:5-14:5.

25. The Company will file the results of the Feasibility Study within 30 days of completion within this proceeding. The Settling Parties agree that the Company will incorporate the findings of the Feasibility Study in its next CHP, as described in greater detail below in the Next CHP section.

***K. External Resources***

26. The Settling Parties agree that the Company will defer actual costs incurred with preparing and litigating this proceeding in a regulatory asset, which will be recovered through the CHP Rider with no interest.

***L. 60/90-Day Notice Process***

27. The Settling Parties agree that the Company will use the following process for all 60/90-Day Notices issued as part of this Clean Heat Plan<sup>17</sup>:

- a. The 60-Day Notice Process is used to propose new programs or make changes to existing programs. Through the 60-Day Notice Process, the Company issues a notice to stakeholders who then have 30 days to provide comments to the Company. After the initial 30 days, the Company then has 30 days to consider the comments and respond to them accordingly. The Company then files a summary report in the appropriate proceeding that summarizes the comments received and why they were incorporated into the final notice or justification of why comments were not incorporated.
- b. The 90-Day Notice Process is used to discontinue existing programs or aspects of existing programs. For a 90-Day Notice, the process is relatively similar. Stakeholders have 30 days to provide comments, and then the Company has 60 days to consider the comments before the Company makes a final decision on the proposed discontinuance.
- c. If there are no timely comments on the proposal in the Notice, the Company will implement the proposed change on or after the 31st day from the date of the Notice. If

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<sup>17</sup> See Decision No. C24-0397, in Proceeding No. 23A-0392EG, ¶ 264 (Public Service's Clean Heat Plan Decision).

timely comments are received by the Company, prior to implementing the proposed change upon expiration of 60- or 90-Day Notice, the Company will act in good faith in considering any comments received. When comments to a notice are timely received by the Company, it will post the final decision on the Notice on its energy efficiency website.

- d. Commission Staff is authorized to file a Notice of Deficiency petitioning the Commission to require the Company to file a new application to approve a proposed program change if Staff believes the Company has not adequately addressed concerns raised by parties in response to the 60/90-Day Notice.

***M. Annual Reporting***

28. The Settling Parties agree that, in order to understand progress towards its clean heat targets, Black Hills will provide the following in its annual reports: planned CHP expenditures, actual CHP expenditures, and tons of carbon dioxide equivalent emissions (“tCO<sub>2</sub>e”). Black Hills will provide this information for each clean heat resource approved in this proceeding and will break out the results by Total DSM and DSM IQ.

29. The Settling Parties agree that Black Hills will include specific details in its Annual Reports for how the incremental CHP DSM funds supplemented DSM Strategic Issues and Plan spending.

***N. Next CHP***

30. The Settling Parties agree that Black Hills will include the following two additional portfolios in its next Clean Heat Plan in terms of tCO<sub>2</sub>e:

- a. 2015 Emissions Baseline attainment by 2030; and
- b. 2025 Emissions Reduction Target attainment by 2030.

31. Related to portfolio modeling on the Company’s next CHP, the Settling Parties agree the Company will:

- a. Explain specifically how building energy codes and standards impact its baseline, high, and low gas use case forecasts; and the Company will assume reasonable adoption of low- and no-carbon energy building codes within its service territory in its high use case forecast;
- b. Include thermal energy, thermal energy networks, and beneficial electrification in its next CHP portfolio modeling and include a narrative explaining how this clean heat resource and other clean heat resources were incorporated into modeling using the information gained from the Feasibility Study;
- c. Clearly identify how its cost-effectiveness analysis complies with Commission Gas Rule 4731(d)(I)(E);
- d. When modeling all clean heat resources, use a modified version of the Utility Cost Test that includes the cost of avoided emissions and use publicly available and non-proprietary inputs and calculations to the greatest extent feasible.

32. Related to proposed DSM spending:

- a. Black Hills will include specific details in its next CHP for how the incremental CHP DSM funds will supplement DSM Strategic Issues and Plan spending.

#### **IV. GENERAL TERMS AND CONDITIONS**

33. 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 and among the Settling Parties in this proceeding. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through the formal adversarial litigation process, is encouraged by Rule 1408 and is in the public interest.

34. This Settlement Agreement shall not become effective until the issuance of a final Commission decision approving the Settlement Agreement that 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 Settlement Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this proceeding.

35. 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.

36. 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.

37. The Settling Parties agree to join in a motion that requests that the Commission approve this Settlement Agreement, and to support the Settlement Agreement in any subsequent pleadings or filings. Each Settling Party further agrees that in the event that it sponsors a witness to address the Settlement Agreement at any hearing that the Commission may hold to address it,



the Settling Party's witness will testify in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement.

38. The Settling Parties agree that all their pre-filed testimony and exhibits shall be admitted into evidence in this proceeding without cross examination by the Settling Parties.

39. The discussions among the Settling Parties that have produced this Settlement Agreement have been conducted with the understanding, pursuant to Colorado law, that all offers of settlement, and discussions relating thereto, are and shall be privileged and shall be without prejudice to the position of any of the Settling Parties, are not to be used in any manner in connection with this or any other proceeding, and that no party will be bound by any position asserted in the negotiations, except to the extent expressly stated in this Settlement Agreement.

40. All Settling Parties have had the opportunity to participate in the drafting of this Settlement Agreement and the term sheet upon which it was based. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

41. This Settlement Agreement embodies the entire agreement and understanding between the Settling Parties 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.

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

Date: August 16, 2024

**BLACK HILLS COLORADO GAS, INC.  
D/B/A BLACK HILLS ENERGY**

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