

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 13A-0445E

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.

Docket No. 13A-0446E

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.

Docket No. 13A-0447E

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.

STIPULATION AND SETTLEMENT AGREEMENT

Pursuant to 4 CCR 723-1-1408, Black Hills/Colorado Electric Utility Company, LP (“Black Hills”), the Staff of the Colorado Public Utilities Commission (“Staff”), and the Office of Consumer Counsel (“OCC”), by their undersigned counsel, and for good and valuable consideration, herewith enter into this Stipulation and Settlement Agreement (“Settlement Agreement”) to resolve all disputes that have arisen between them, regarding all issues related to this consolidated docket. The Settling Parties specifically request that the Commission approve this Settlement as consistent with the public interest.

CERTIFICATE OF CONFERRAL

The undersigned counsel certifies that counsel for Black Hills has conferred with counsel for all other parties¹ about this Settlement and is authorized to state that (1) Colorado Gas Producers, (2) Energy Recovery Specialist, LLC, (3) CEO and (4) RMELC have no objection to approval of the Settlement. These parties, together with Staff, OCC and Black Hills are referred to herein as the “Settling Parties.” AIM, SCSC, and the Public Intervenors have indicated that they oppose all or portions of the Settlement. Southwest Gen, Holcim, CIEA, WRA, and City of Pueblo have taken no position with respect to the Settlement.

I. PROCEDURAL HISTORY

1. On April 30, 2013, Black Hills filed the following three applications that are the subjects of this consolidated docket:

- (1) Application for Approval of Black Hills’ 2013 Electric Resource Plan (“ERP”) and Approval of its 2013-2014 Renewable Energy Standard Compliance Plan (“RES Compliance Plan”), which became Docket No. 13A-0445E (the “2013 ERP Application and RES Compliance Plan”);
- (2) Application for a Certificate of Public Convenience and Necessity (“CPCN”) to design, build, own, and operate a 40 MW LM6000 natural-gas fired generation unit at the Company’s Pueblo Airport Generation Station (“PAGS”), which became Docket No. 13A-0446E (the “LM6000 CPCN Application”); and
- (3) Application for a CPCN to retire Black Hills’ Pueblo 5 and 6 generating units located in Pueblo, Colorado on December 31, 2013, which became Docket No. 13A-0447E (the “Pueblo 5 and 6 Retirement Application”).

The Commission consolidated these three dockets in Decision No. C13-0536-I.

¹ The parties are defined in the Procedural History section below.

2. In addition to Staff and OCC, by Decision No. C13-0762-I, the following parties were granted intervention by the Commission in this consolidated docket:

- The Rocky Mountain Environmental Labor Coalition (RMELC)
- Energy Recovery Specialists, LLC (ERS)
- Southwest Generation Operating Company, LLC (Southwest Gen)
- Board of Water Works of Pueblo Colorado and Fountain Valley Authority, jointly (Public Intervenors)
- Southeast Colorado Solar Coalition (SCSC)
- Holcim (US) Inc. (Holcim)
- Western Resource Advocates (WRA)
- City of Pueblo, Colorado (Pueblo)
- American Iron and Metal, Inc. (AIM)
- Colorado Independent Energy Association (CIEA)
- Noble Energy Inc. and EnCana Oil and Gas (USA) Inc. (the Colorado Gas Producers)
- Colorado Energy Office (CEO)²

3. After the interventions were granted, the parties engaged in extensive written discovery. Staff, OCC, AIM, CIEA, RMELC, SCSC and WRA filed answer testimony. WRA and SCSC filed cross-answer testimony. Black Hills filed rebuttal testimony and supplemental rebuttal testimony.

4. All parties to this proceeding were invited to discuss settlement. On November 4, 2013, Black Hills hosted a settlement discussion at its offices, and virtually all the parties attended in person or by phone. Further settlement discussions occurred with parties amenable to settlement. The Settling Parties have reached a settlement of all issues, except for those enumerated in Paragraph 6.

5. This Settlement Agreement memorializes the negotiated settlement among the Settling Parties on the issues raised in this docket. 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 docket related to Black Hills' 2013 ERP Application and RES Compliance

² Interwest Energy Alliance was granted intervention but later withdrew from the case.

Plan, LM6000 CPCN Application, and Pueblo 5 and 6 Retirement 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.

6. Settlement is not reached regarding Section 123 status for the Vestas turbine.

7. The Settling Parties agree that the Commission should grant Black Hills' applications filed in this consolidated docket as set forth in the applications as modified in this Settlement Agreement. Any issue not discussed in this Settlement Agreement or the Joint Stipulation of Rocky Mountain Environmental Labor Coalition and Black Hills/Colorado Electric Utility Company, LP should be determined consistent with Black Hills' applications in this proceeding as modified by Black Hills' rebuttal and supplemental rebuttal testimonies, including, but not limited to, approval of: the Resource Acquisition Period ("RAP") and the Planning Period; the inputs and assumptions used in the ERP modeling; the 15% reserve margin; the revised model RFPs and PPAs to be provided in hearing and used in the Phase II competitive solicitation; the Phase I Contingency Plan; use of a carbon tax assumption in the Environmental Scenario only; and use of assumptions from the 2013 ERP rather than assumptions from the last approved ERP for calculation of net incremental costs of Eligible Energy Resources.

8. The Settling Parties stipulate that all testimonies and exhibits filed by Black Hills and the parties should be admitted into evidence and made part of the record in this consolidated docket. 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.

9. The retirement of Pueblo 5 and 6 effective December 31, 2013 is consistent with the public interest and should be approved. No party filed testimony opposing such retirement. Black Hills will make a separate filing for the decommissioning/removal of Pueblo 5 and 6 and the associated plant.

10. A CPCN should be granted for Black Hills' development and ownership of the 40 MW LM6000. Black Hills filed for a CPCN for an LM6000 using Decision No. C12-1223 in Docket No. 12A-851E as guidance for its application. The Company presented the required information regarding the scope, schedule and costs of the Company's proposed replacement capacity for Clark Station. Black Hills' direct evidence demonstrates that the LM6000 can be designed, engineered and constructed prudently and at a reasonable cost by the utility. The Settling Parties agree that Black Hills' estimated 4.8 percent increase in revenue requirement as set forth in the testimonies of Mr. Lux and Mr. Owens results in a reasonable revenue requirement impact under the Clean Air Clean Jobs Act ("CACJA"), C.R.S. § 40-3.3-201 *et seq.* This is consistent with the reasonable revenue requirement impact standard for replacement capacity set by the Commission in Decision No. C10-1330 (Docket No. 10M-254E), page 27, paragraph 91, which provides that "an increase of 5 percent or less in the Company's revenue requirement is reasonable."

11. The 40 MW LM6000 unit will replace the Clark Station generation closure pursuant to the Clean Air Clean Jobs Act. For the purpose of this Settlement Agreement, Black Hills has agreed to withdraw its request for a point cost cap and related incentive sharing mechanism. The CACJA entitles Black Hills to full recovery of the costs prudently incurred to

install replacement capacity facilities. Section 40-3.2-205(3), C.R.S., provides that “[a]ll actions taken by the utility in furtherance of, and in compliance with, an approved plan are presumed to be prudent actions, the costs of which are recoverable in rates as provided in section 40-3.2-207.” All Settling Parties reserve their rights to challenge the prudence of costs associated with the LM6000 when Black Hills seeks cost recovery in a rate proceeding.

12. Settling Parties agree that, consistent with the Clean Air Clean Jobs Act, Black Hills is not required to conduct a competitive solicitation for the replacement capacity for Clark Station, either for ownership and development or construction purposes.

13. Black Hills’ 2013 ERP Application and RES Compliance Plan should be approved as modified in this Settlement Agreement:

- a. Black Hills’ load forecast should be reduced as set forth in the Rebuttal Testimony of Ms. Seaman. Black Hills agreed to reduce its load forecast after considering the testimonies of OCC, WRA, and AIM, which advocated certain load reductions. The initial forecasted system need of 66 MW in 2017³ has been reduced to 42 MW after incorporating (1) the Commission-approved 2012 DSM Settlement Agreement in Docket No. 12A-100E; (2) the availability of 4.5 MW of buy-back capacity from Cripple Creek & Victor Gold Mine; and (3) 5.0 MW of interruptible load from Holcim. The Settling Parties acknowledge and agree that this reduced resource need of 42 MW is appropriate. The table below sets forth the revised load and resource balance.

³ This 66 MW resource need was beyond that need already met by the inclusion of the 40 MW LM6000 in 2017.

Revised Load and Resource Balance							
	2013	2014	2015	2016	2017	2018	2019
Peak Demand	412	427	451	458	465	453	457
DSM (100% of DSM Settlement)	-8.2	-14.5	-21.5	-21.5	-21.5	-21.5	-21.5
Net Peak Demand	403.9	412.0	429.8	436.7	443.2	431.9	435.9
Existing Resources **							
W.N. Clark 1	18	0	0	0	0	0	0
W.N. Clark 2	24	0	0	0	0	0	0
Pueblo 5	9	0	0	0	0	0	0
Pueblo 6	18	0	0	0	0	0	0
Pueblo Diesels	10	10	10	10	10	10	10
Airport Diesels	10	10	10	10	10	10	10
Rocky Ford Diesels	10	10	10	10	10	10	10
PAGS 1	90	90	90	90	90	90	90
PAGS 2	90	90	90	90	90	90	90
Busch Ranch Ownership*	1.8	1.8	1.8	1.8	1.8	1.8	1.8
LM6000 (40 MW)					40	40	40
Total Resources	280.8	211.8	211.8	211.8	251.8	251.8	251.8
Interruptible Resources							
Cripple Creek/Victor Gold Mine	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Holcim	5	5	5	5	5	5	5
Total Interruptible Resources	9.5	9.5	9.5	9.5	9.5	9.5	9.5
Purchases							
PAGS PPA	200	200	200	200	200	200	200
MPS Swap	5	5	5	5	5	5	5
Busch Ranch PPA*	1.8	1.8	1.8	1.8	1.8	1.8	1.8
Two-Year PPA (50 MW)			50	50			
Total Purchases	206.8	206.8	256.8	256.8	206.8	206.8	206.8
Total Resources and Purchases	497.1	428.1	478.1	478.1	468.1	468.1	468.1
15% Reserve Margin (MW)	61	62	64	66	66	65	65
Total Capacity Requirement (Peak plus Reserves)	464.5	473.8	494.3	502.2	509.7	496.7	501.3
Total Resources minus Total Capacity Requirement							
In MW	32.6	-45.7	-16.2	-24.1	-41.6	-28.6	-33.2
As a percentage	8.1%	-11.1%	-3.8%	-5.5%	-9.4%	-6.6%	-7.6%
Notes:							
*12.5% of Busch Ranch capacity counts as accredited capacity							
**Summer rated capacity shown							

- b. The Revised Baseline 1 with RES Plan should be adopted as modified in this Settlement Agreement. Black Hills’ original Baseline 1 with RES Plan resulted in significant negative RESA balances during the RAP. Black Hills’ Revised Baseline 1 with RES Plan delayed the acquisition of wind bids in order to reduce negative RESA balances and associated interest payments. The Revised Baseline 1 with RES Plan was set forth in the Rebuttal Testimony of Mr. Stoffel and the Rebuttal Testimony of Ms. Seaman reproduced below:

YEAR	Revised Baseline 1 with RES
2014	SFMP 50 MW
2015	SFMP 25 MW, 2 YR PPA 50 MW,
2016	SFMP 25 MW,
2017	40 MW LM6000, SFMP 50 MW, Wind PPA 30 MW
2018	SFMP 25 MW, Wind PPA 30 MW
2019	SFMP 50 MW
2020	SFMP 50 MW,
2021	SFMP 50 MW, Wind PPA 30 MW
2022	SFMP 50 MW, Wind PPA 30 MW
2023	SFMP 50 MW

SFMP – Seasonal Firm Market Purchases (reflects one year term unless otherwise specified)

The Revised Baseline 1 with RES Plan is modified such that the Company agrees to conduct a competitive solicitation to acquire up to 60 MW of eligible energy resources in lieu of 30 MW blocks in 2017 and 2018.⁴

- c. Second, Black Hills agrees to conduct an All-Source solicitation in Phase II of the ERP that will accept bids for resources over varying contractual terms from independent power producers, as well as offers for seasonal firm market purchases, covering the summer peak capacity needs in 2017, 2018 and 2019 (42

⁴ The Settling Parties reserve all rights in the Wind Solicitation Docket or any subsequent, related docket, and this Settlement Agreement shall not foreclose any Settling Parties’ ability to take any position in any such proceeding.

MW resource need⁵). All of these bids will compete head-to-head with one another in the All-Source solicitation. This is in lieu of the Company's Supplemental Rebuttal position to only meet the need through year-ahead seasonal firm market purchases. This will allow the Company and the Commission to evaluate bids of all types and contractual lengths and select the bid(s) that address the reduced resource need in the most cost effective manner.

- d. Black Hills agrees to provide regulation services to RFP bidders as described in the Supplemental Rebuttal testimony of Mr. Butcher. The Company will no longer require in its intermittent RFP that bidders acquire and include in their bids regulation services. So long as the bidder can obtain firm transmission support and scheduling support for the intermittent generation, the Company is able to supply regulation services. The cost of this firm transmission and any costs of scheduling and system set-up will be the responsibility of the bidder. RFP bidders for projects not directly connected to the Black Hills system will be allowed to acquire and include in their bids regulation services; bidders will have the choice of obtaining regulation services through a third party provider, balancing authority, or Black Hills when submitting bids for intermittent resources.
- e. Black Hills will provide econometric forecasting in its next ERP filing utilizing the metering data it receives from advanced customer meters that have been installed.
- f. The Commission should approve Black Hills' calculation of the net incremental cost of the Busch Ranch Wind Project and the 2012, 2013, and 2014 Solar Programs and for the "lock down" of the net incremental costs and savings of these Eligible Energy

⁵ This 42 MW resource need is beyond that need already met by the inclusion of the 40 MW LM6000 in 2017.

Resources for the RES planning period (2013-2023). The Commission also should lock down the costs associated with the Company's 2012 Renewable Energy Standard Compliance Plan.⁶

- g. Black Hills will consider standalone REC purchases in blocks of 50,000 RECs/per year as a bridge tool to meet the Electric resource standards of C.R.S. § 40-2-124 in its 2015-2017 RES Compliance Plan. The Company's analysis will consider the cost of RECs in the market as compared to other eligible energy resources, whether RESA funds are available, and whether purchasing RECs will benefit its customers before making such a purchase.
- h. Before any consideration to add generation resources at PAGS beyond the LM6000, Black Hills will study and address the issue of location risk and mitigation of any such risk and present such findings in conjunction with such a proposal.
- i. Black Hills will not expand its Time-of-Use (TOU) rate at this time. Black Hills will continue with (1) its TOU pilot program for large customers and (2) its investigation as to whether TOU rates can feasibly be offered to residential customers. Black Hills is conducting a study to determine customer interest in a TOU rate option and will file a report with the Commission no later than May 1, 2014, with a TOU proposal and tariff, or indicating why such a TOU is not feasible. This approach is consistent with the process set forth in Proceeding No. 12AL-1052E.
- j. Black Hills will implement its small solar program for 2013 and 2014 pursuant to Proceeding No. 12A-1207E.

⁶ See Decision No. C11-1009, Docket No. 11A-419E, at Ordering Paragraph 3 (mailed Sept. 19, 2011).

- k. Black Hills acknowledges that it should increase its efforts to shave peak load requirements. Accordingly, the Company has agreed to conduct a study regarding how it can increase participation in its interruptible program and make a filing with the Commission regarding the results of the study and proposed next steps no later than December 31, 2014.

III. GENERAL TERMS AND CONDITIONS

1. 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 docket 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 docket. The Settling Parties further agree that reaching agreement by means of negotiations, rather than through litigation, is in the public interest.

2. 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 the evidentiary hearing in this docket, or in a separate hearing set 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 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 docket. The

withdrawing Party shall notify the Commission and the other Party to the Settlement Agreement by e-mail 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-mail shall designate the precise issue or issues upon which the Party desires to proceed to hearing.

3. 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.

4. 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.

5. 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 relying on no other statement or representation not contained herein.

6. 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

7. For the reasons stated above, the Settling Parties respectfully request that the Commission enter an order 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 docket as to those issues.

Dated: November 7, 2013

Approved as to form:

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2013 the foregoing SETTLEMENT AGREEMENT was served on the following at the email address shown below:

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