

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO****DOCKET NO. 08A-518E**

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**RE: IN THE MATTER OF THE APPLICATION OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, L.P. D/B/A BLACK HILLS ENERGY FOR APPROVAL OF ITS ELECTRIC DEMAND SIDE MANAGEMENT (DSM) PLAN FOR CALENDAR YEARS 2009, 2010 AND 2011 AND FOR APPROVAL OF AN ELECTRIC DSM COST ADJUSTMENT CLAUSE.**

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**SETTLEMENT AGREEMENT  
AND MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

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Black Hills/Colorado Electric Utility Company, LP, doing business as Black Hills Energy (“Black Hills” or “BHE”), Trial Staff of the Colorado Public Utilities Commission (“Trial Staff”), the Colorado Office of Consumer Counsel (“OCC”), Southwest Energy Efficiency Project (“SWEEP”) and Western Resource Advocates (“WRA”), Cripple Creek & Victor Gold Mining Company (“CC&V”), and the Board of Water Works of Pueblo, Colorado and the Fountain Valley Authority (together the “Public Intervenors”) (all referred to as the “Settling Parties”), by and through their respective undersigned counsel, and for good and valuable consideration, herewith enter into this Settlement Agreement to resolve all disputed issues that have arisen or could have arisen in this docket between them, regarding the Verified Application for an order: (1) approving Black Hills’ 2009 - 2011 Electric Demand-Side Management (DSM) Plan, or Energy Efficiency Plan (as modified by the Settlement Agreement), which set forth in detail Black Hills’ proposed Electric DSM programs, energy savings, budgets, calculation methods, and technical assumptions; and (2) authorizing Black Hills to place into effect its Electric Demand-Side Management Cost Adjustment (Electric DSMCA) tariff and to implement Electric DSMCA rates. The Settling Parties

submit that this Settlement Agreement results in a fair disposition of all disputed issues between them in this docket and that this Settlement Agreement is just and reasonable. Therefore, the Settling Parties respectfully request that the Commission approve this Settlement Agreement.

## I. PROCEDURAL HISTORY

1. On November 21, 2008, Black Hills filed this Application for Approval of its Electric Demand Side Management (“DSM”) Plan for Calendar years 2009, 2010, and 2011, and for Approval of an Electric DSM Cost Adjustment Clause (“DSMCA”) (the “Application”). The Application seeks approval of its plan to implement DSM measures for the next three years and for a DSMCA charge for associated costs of the DSM Plan. Black Hills filed its direct testimony and exhibits with the Application.

2. The Commission issued Notice of the Application on November 24, 2008.

3. The Trial Staff and the OCC filed timely interventions as of right in this matter. Petitions to intervene permissively were granted for SWEEP and WRA, CC&V, and the Public Intervenors.

4. In his Prehearing Order, Administrative Law Judge Paul C. Gomez adopted a procedural schedule negotiated by the parties and set the hearing for April 13 and 14, 2009. (*See* Decision No. R09-0179-I dated February 23, 2009.) Pursuant to the adopted procedural schedule, answer testimony and exhibits were filed on March 16, 2009 by Trial Staff, OCC, SWEEP/WRA, and Public Intervenors.

5. By Decision No. R09-0364-I dated April 7, 2009, ALJ Gomez granted the Stipulated Motion to Continue the remaining procedural schedule and hearing filed jointly on behalf of all the Parties. A new procedural schedule was adopted for the remaining dates, and the hearing was

scheduled for May 5 and 6, 2009. Pre-hearing stipulations, including any written settlement agreement, are due on April 28, 2009.

6. During the prehearing phase of this docket, all the Parties have actively exchanged information through audit requests, formal data requests, informal exchanges of information, and active settlement discussions. As a result of settlement negotiations, the Settling Parties, who are all of the Parties in this docket, have concluded a settlement of all the disputed issues between them in this docket. An agreement in principle to settle all disputed issues between them in this docket was reached by the Settling Parties on April 27, 2009.

7. This Settlement Agreement memorializes the negotiated settlement and stipulations among the Settling Parties. As a result of the settlement negotiations, the Settling Parties agree, as set forth below, that all issues in dispute between them, or that could have been disputed between them, in this docket have been resolved to the satisfaction of the Settling Parties, and that the terms and stipulations in this Settlement Agreement are fair, just and reasonable.

## II. THE SETTLEMENT

A total of nine (9) issues were disputed between the Settling Parties. This section of the Settlement Agreement will set forth the position of the Settling Parties on each disputed issue and the negotiated resolution of the disputed issue.

1. **Issue: Duration of the DSM Plan.** Black Hills proposed that the Electric DSM Plan be approved for three years, or from 2009 through 2011. Trial Staff proposed that the Electric DSM Plan be approved for two years, or only for 2009 and 2010. No other Party addressed this issue. During settlement negotiations, the following concerns were addressed: Black Hills believes a three-year plan is more appropriate. Black Hills has not had an Electric DSM program since 2004,

and it estimates three years will be required to insure the gathering and analysis of data necessary to prepare a detailed potential study. Regardless of whether a two or three year DSM Plan were adopted, Black Hills has concerns with any Plan period significantly less than 12 months. Assuming approval in this docket to start DSM programs by July 1 2009, BHE prefers Electric DSM Plan years that run for 12 consecutive months (July to June) over three consecutive years.

**Resolution:** The Settling Parties agree that the Commission should adopt a 3-year Electric DSM Plan contingent on the following:

- 1) Mid-point goals for 2009, 2010, and 2011 must be set in accord with the goals approved in paragraph 51 of Decision No. C08-0560 in Docket No. 07A-420E (“PSCo Enhanced DSM docket”) as detailed below; and
- 2) BHE specifically acknowledges that it has determined that there is sufficient market potential to attain the stated goals. BHE acknowledges this determination, as requested.

The Settling Parties agree that the Commission should adopt an Electric DSM Plan for Black Hills that runs over three consecutive years consisting of 12 consecutive months (July to June) each. That is, the 2009 Plan year would run from July 1, 2009 to June 30, 2010; the 2010 Plan year would run from July 1, 2010 to June 30, 2011; and 2011 Plan year would run from July 1, 2011 to June 30, 2012.

**2. Issue: More detailed potential DSM study.** Black Hills prepared the Electric DSM Plan after engaging a consultant, Applied Energy Group (“AEG”), to conduct a Market Assessment Study of potential electric savings associated with energy-efficiency measures (“EEMs”). The AEG Market Assessment Study analyzed the energy efficiency, or DSM, potential at three levels: technical potential, economic potential and achievable potential. (*See Application, Appendix A, Electric DSM Plan, at pages ES-2, 14-21.*) Trial Staff alleged that Black Hills should be required to perform a more detailed potential DSM study, following National Action Plan for

Energy Efficiency (“NAPEE”) guidelines, to be filed with Black Hills’ 2011 Electric DSM Plan application.

**Resolution:** Black Hills agrees to perform a detailed market potential study consistent with NAPEE guidelines to be included with the next DSM application, which Black Hills believes should follow three full program years. Black Hills and Trial Staff agree that approval of a three year Plan would provide the greatest opportunity for developing the quality of data necessary for such a study. Black Hills and Trial Staff agree that the prudently incurred costs of the study would be recoverable through the E-DSMCA and not impact cost effectiveness calculations.

3. **Issue: Electric DSM Plan energy sales reduction and demand reduction goals for 2009, 2010 and 2011.** Black Hills’ filed Electric DSM Plan proposed cost-effective DSM programs designed to achieve the stated energy savings and peak demand reduction goals of at least five percent each by 2018, using 2006 as the base year, established in Colo. Rev. Stat. § 40-3.2-104(2). Specifically, Black Hills’ Electric DSM Plan proposed cost-effective DSM programs designed to achieve retail energy sales savings goals of 8,122,727 MWh for 2009 (the first full year of the DSM Plan), 12,399,230 MWh for 2010, and 12,399,230 MWh for 2011; and retail system peak demand reduction goals of 2,186 kW for 2009, 3,946 kW for 2010, and 3,946 kW for 2011. The OCC estimated that these energy savings and peak demand reduction goals, combined with Black Hills’ projected energy savings and demand reduction through 2018, would result in a saving of approximately 5.15% of Black Hills 2006 energy sales by 2018, which is slightly in excess of the minimum goals established in Colo. Rev. Stat. § 40-3.2-104(2).

Trial Staff, the OCC, SWEEP and WRA each argued that the Commission should order Black Hills to adopt a more aggressive Electric DSM Plan. The OCC asserted that Black Hills should be ordered to acquire one percent of its projected energy sales per year from DSM resources,

but deferred to SWEEP and Black Hills on specific DSM measures to achieve that goal. Alternatively, the OCC suggested that the Commission order a phased-in DSM Plan so that Black Hills would acquire 0.3 percent of its projected energy sales in 2009 from DSM resources, ending at one percent by 2018. (See PB Schechter Answer Testimony at pages 4, ll. 6-10; 5, l. 12 – 6, l. 15; 7, l. 22 – 8, l. 15; Exhibit \_\_\_ (PBS-9).) Trial Staff argued that the Commission should order Black Hills to achieve the same interim, midpoint DSM savings goals set by the Commission for Public Service Company of Colorado (“PSCo”) by Decision No. C08-0560 in Docket No. 07A-420E, which are energy sales reduction goals of 0.53 percent for 2009 and 0.76 percent for 2010, and demand savings goals of 2.8 MW for 2009 and 4.8 MW for 2010. (See Paul C. Caldara Answer Testimony at pages 2, ll. 14-18; 17, ll. 1-8; 20, ll. 12-15; and Exhibit PCC-3.) SWEEP and WRA made the same argument. (See Howard Geller Answer Testimony at pages 2, ll. 8-10; 5, l. 21 – 6, l. 2; 24, ll. 18-20.) Both Trial Staff and SWEEP/WRA argued that because PSCo has approved electric DSM goals to 2018, Black Hills should adopt the PSCo goals all the way out to 2018. Black Hills’ position is that it should not be required to set goals beyond 2012 until it gains more experience with new DSM programs and evaluates data from the DSM programs implemented in this docket.

**Resolution:** Black Hills agrees to the following energy and demand savings goals, as long as DSM program modifications and additions (as suggested by any Party) are limited to a suite of changes necessary to reach these revised energy and demand savings goals. The Settling Parties agree to the following revised interim, midpoint energy savings and peak demand reduction goals:

2009 0.53% sales reduction (calculated as  $1,940,900 \text{ MWh} * 0.0053 = 10,287 \text{ MWh}$ ) and 2.8 MW demand reduction.

- 2010 0.76% sales reduction (calculated as 1,994,200 MWh \* 0.0076 = 15,156 MWh) and 4.8 MW demand reduction.
- 2011 0.80% sales reduction (calculated as 2,065,200 MWh \* 0.008 = 16,522 MWh) and 4.8 MW demand reduction.

As set forth in Section II, Paragraph 1, the Settling Parties agree that the 2009 Plan year would run from July 1, 2009 to June 30, 2010; the 2010 Plan year would run from July 1, 2010 to June 30, 2011; and 2011 Plan year would run from July 1, 2011 to June 30, 2012.

As for energy and demand savings goals out to 2018, Black Hills agrees to accept the same goals in percentage terms as established for PSCo by Decision C08-0560 in Docket No. 07A-420E with the caveat that the Settling Parties acknowledge that the DSM goals between 2012 and 2018 may be changed either upwards or downwards when Black Hills files and the Commission acts on its next electric DSM Plan.

4. **Issue: DSM Programs in the Electric DSM Plan for 2009, 2010 and 2011.** Black Hills' filed Electric DSM Plan set forth a portfolio of nine electric DSM programs:

- Low Income Assistance Program
- School-Based Energy Education Program
- Residential High Efficiency Lighting Program
- Residential High Efficiency Cooling Program
- Commercial Prescriptive Rebate Program
- Commercial Custom Rebate Program
- Commercial Commissioning Program
- Commercial New Construction and LEED Buildings Program
- Industrial Energy Efficiency Program.

Trial Staff agreed that the DSM programs in Black Hills' Electric DSM Plan were reasonable. (See Paul C. Caldara Answer Testimony at pages 4, ll. 7-11; 22, ll. 13-23.) SWEEP/WRA recommended that the Commission direct Black Hills to expand a number of its proposed programs, namely the

residential lighting and cooling programs and the commercial and industrial prescriptive and custom rebate programs. In addition, SWEEP/WRA recommended that the Commission direct Black Hills to implement a second refrigerator recycling program, an ENERGY STAR new homes program, and an air conditioner load control program. (See Howard Geller Answer Testimony at page 25, ll. 3-10.) While the OCC favored expanding Black Hills' Electric DSM Plan, it did not propose specific DSM measures, but recommended that the Commission consider SWEEP's proposed additional measures and Black Hills' recommendations. (See PB Schechter Answer Testimony at page 6, ll. 7-15.)

**Resolution:** The Settling Parties agree that Black Hills should implement the following cost-effective DSM programs, modifications to proposed DSM programs, and expanded portfolio of cost-effective DSM programs. The Settling Parties agree that evaluation and measurement details for these DSM programs are the responsibility of Black Hills. Attachment A to this Settlement Agreement provides the details of the modified, expanded and new DSM programs described above in this Paragraph 4, which the Settling Parties agree should be approved by the Commission in this docket.

- (a) Low Income Assistance Program. The program should be approved as filed.
- (b) School-Based Energy Education Program. Black Hills agrees to: (i) Expand the program to 1,000 students per year; (ii) Adopt an energy savings of 315 kWh per student; and (iii) Provide additional program details to the Settling Parties when they are finalized. The program should be approved as modified.
- (c) Residential High Efficiency Lighting Program. Black Hills agrees to:
  - (i) Increase Year 1 (Plan year 2009) penetration by 20,000 units; (ii) Increase Year 2 (Plan year 2010) penetration by 26,500 units; (iii) Increase Year 3 (Plan year 2011) penetration by 48,500 units; and (iv) Provide additional program details to the Settling Parties when they are finalized. The program should be approved as modified.



- (d) Residential High Efficiency Cooling Program. Black Hills agrees to evaluate SWEEP/WRA's recommendations for consideration, as a possible program modification if its present plan is under-performing after Plan Year 1, or in its next Electric DSM application. The program should be approved as filed.
- (e) Commercial Prescriptive Rebate Program. Black Hills agrees to add the Industrial customers to the prescriptive rebate program and agrees to evaluate SWEEP/WRA's remaining recommendations for consideration, as a possible program modification if its present plan is under-performing after Plan Year 1, or in its next Electric DSM application. The program should be approved as filed.
- (f) Commercial Custom Rebate Program. Black Hills agrees to evaluate SWEEP/WRA's recommendations for consideration in its next Electric DSM application. The program should be approved as filed.
- (g) Commercial Commissioning Program. Black Hills agrees to evaluate SWEEP/WRA's recommendations for consideration in its next Electric DSM application. The program should be approved as filed.
- (h) Commercial New Construction and LEED Buildings Program. Black Hills agrees to evaluate SWEEP/WRA's recommendations for consideration in its next Electric DSM application. The program should be approved as filed.
- (i) Industrial Energy Efficiency Program. Black Hills agrees to evaluate SWEEP/WRA's recommendations for consideration in its next Electric DSM application. The program should be approved as filed.
- (j) Second refrigerator recycling program. Black Hills agrees to add a second refrigerator-recycling program. Program details are described in Attachment A to this Settlement Agreement.
- (k) Residential New Construction Program. Black Hills agrees to add a Residential New Construction Program. Program details are described in Attachment A to this Settlement Agreement. Black Hills agrees to hold meetings with interested parties regarding the implementation details for the Residential New Construction Program. Black Hills agrees to contact gas utilities serving in its electric service territory, to determine the level of cooperation available, and to explore ways to partner with those gas utilities in implementing this program and other DSM measures, as appropriate.
- (l) Residential air-conditioner direct load control pilot program. Black Hills agrees to add a residential air-conditioner direct load control pilot program, to be developed in conjunction with the current deployment of an AMI system. Pilot program details are described in Attachment A to this Settlement Agreement.

Additionally, Black Hills agrees to work cooperatively with the Public Intervenors in mutual efforts to address the demand levels of the Public Intervenor loads with the goal of maximizing the benefit of participation by the Public Intervenors in the DSM Program approved by the Commission.

5. **Issue: Electric DSM Plan budget for 2009, 2010 and 2011.** Black Hills' filed Electric DSM Plan set forth annual budgets to deploy the proposed cost-effective DSM programs in the amounts of: \$1,704,129 for 2009; \$2,824,798 for 2010; and \$2,906,247 for 2011, excluding the costs for DSM program planning, evaluation, and administration which was stated to be \$350,000 per year.

**Resolution:** Black Hills has agreed to the increased energy savings and peak demand reduction goals set forth in Section II, Paragraph 3, and to the expanded portfolio of cost-effective DSM program modifications and additions (set forth in Section II, Paragraph 4. Therefore, the annual DSM budget to accomplish these increased energy savings and demand reduction goals must also be increased. The Settling Parties agree to revised Electric DSM Plan annual budgets to deploy the expanded portfolio of cost-effective DSM programs in the amounts of: \$2,402,916 for the 2009 Plan year; \$3,822,462 for the 2010 Plan year; and \$3,865,797 for 2011 Plan year. Hence, this Settlement Agreement will result in an increase of \$1,606,001 in the total three-year Electric DSM budget, from a proposed total budget of \$8,485,174 to a settled total budget of \$10,091,175. Attachment B to this Settlement Agreement provides the details of the filed annual DSM budgets for the three-year Electric DSM Plan, the additional costs to deploy the agreed modifications to the proposed DSM programs and the new DSM programs, and a comparison of the new budgets to the proposed budgets, including the difference between the annual and three-year budgets. All of the

budget references in this paragraph include the annual administrative budget of \$350,000 applicable to each program year as requested in the Application and not disputed by any Party.

6. **Issue: Electric DSM Plan budget flexibility.** In its Verified Application for approval of the Electric DSM Plan and annual budgets to deploy the proposed cost-effective DSM programs, Black Hills sought the authority to exercise discretion to move budgets between programs and customer segments in order to achieve the total portfolio level energy savings and demand reduction goals incorporated in the Plan. This budget flexibility was requested to promote the goals of Colo. Rev. Stat. § 40-3.2-104 and better to serve Black Hills' customers. (Application, Paragraph 14, page 10; *see* Direct Testimony of Matthew E. Daunis, page 4, ll. 6-15.) Trial Staff agreed that Black Hills should have the requested discretion to shift budgets between programs as necessary, as long as energy savings and demand reduction goals were set higher than the filed DSM Plan. (*See* Paul C. Caldara Answer Testimony at page 23, ll. 11-19.) SWEEP/WRA agreed, as long as the utility was responsible for implementing cost effective DSM programs. (*See* Howard Geller Answer Testimony at page 24, ll. 1-4.) If Black Hills exceeded the budget of any given DSM program by 115 percent, Trial Staff asserted Black Hills should "have the burden of proof going forward with respect to the reasonableness and prudence of that specific DSM program." (*See* Paul C. Caldara Answer Testimony at pages 23, l. 21 – 24, l. 3.) SWEEP/WRA recommended that Black Hills could incur costs in excess of the approved DSM portfolio budget without seeking further Commission approval as long as the portfolio as whole is cost effective, and that Black Hills should be allowed to exceed the approved annual DSM portfolio budget up to 125 percent, without any comment on the burden of proof. (*See* Howard Geller Answer Testimony at page 24, ll. 8-16.)

**Resolution:** The Settling Parties agree that the Commission should authorize Black Hills to incur costs in excess of the approved budget for the total DSM portfolio (i.e., the Electric

DSM Plan) without seeking further Commission approval, and without having to defend the reasonableness or prudence of the over-budget expenditures, up to 115 percent of the approved Electric DSM Plan budget. If Black Hills incurs costs in excess of the approved budget for the total Electric DSM Plan (i.e., the total electric DSM portfolio) by more than 15 percent, Black Hills agrees to bear the burden of going forward and the burden of proof required by Colorado law in any future proceeding in which Black Hills must defend challenges to such DSM expenditures.

The Settling Parties also agree that the Commission should authorize Black Hills to incur costs in excess of the approved budget for any single DSM program (i.e., any single suite of DSM measures) without seeking further Commission approval, and without having to defend the reasonableness or prudence of the over-budget expenditures, up to 125 percent of the approved single DSM program budget. If Black Hills incurs costs in excess of the approved budget for any single DSM program (i.e., any single suite of DSM measures) by more than 25 percent, Black Hills agrees to bear the burden of going forward and the burden of proof required by Colorado law in any future proceeding in which Black Hills must defend challenges to such DSM expenditures.

**7. Issue: Low- income Electric DSM programs in the Plan and budget for 2009, 2010 and 2011.** Black Hills' filed Electric DSM Plan and budget included a low-income assistance DSM program for the years 2009, 2010 and 2011.

**Resolution:** The Settling Parties agree that the low-income electric DSM program included in the Plan and budget for the Plan years 2009, 2010 and 2011 should be approved. The Settling Parties agree that the spending levels for low-income DSM programs will not be reduced during the three years of the Plan, unless 100% of the forecasted level of participation in the low-income DSM program has been achieved.

8. **Issue: Electric DSMCA and incentive mechanisms.** Black Hills' filed Electric DSM Plan and direct testimony requested approval of its Electric Demand-Side Management Cost Adjustment ("E-DSMCA") tariff, containing a proposed mechanism for prospective recovery of costs incurred to implement DSM programs under the 2009 - 2011 Electric DSM Plan and including certain incentive mechanisms allowed for the implementation of cost-effective DSM programs pursuant to Colo. Rev. Stat. §§ 40-3.2-104(2) and 40-3.2-104(5). (*See* Application, Paragraphs 10, 17-18, pages 7,10-11; Direct Testimony of Maurice L. Arnall, pages 6, l. 1 – 10, l. 5.) Specifically, Black Hills sought approval of incentives that included the prospective recovery of DSM program costs, an upfront incentive bonus (or disincentive offset) of \$150,000, and a performance incentive, comparable to the electric DSM incentive package the Commission authorized in Decision C08-0560 in the PSCo Enhanced DSM Docket. (Direct Testimony of Maurice L. Arnall, pages 6, l. 1 – 10, l. 5.) The prospective recovery of DSM program costs by the E-DSMCA would be accomplished through a uniform percentage DSMCA surcharge applied to all customer classes. (*See* Application, Paragraph 19, page; Appendix B.) As part of an approved E-DSMCA mechanism, Black Hills would include interest on over-collections at the customer deposit interest rate and exclude the charging of interest on under-collections. (Direct Testimony of Maurice L. Arnall, page 10, ll. 1–5.)

Trial Staff recommended that the Commission authorize the same performance incentives for Black Hills as it did for PSCo in Decision No. 08A-0560 for 2009 and 2010, but that any financial disincentive offset (the up-front incentive bonus of \$150,000) should be tied to Black Hills' achievement of its energy savings goals. (*See* Paul C. Caldara Answer Testimony at pages 3, ll. 1-3; 5, ll. 1-5; 18, l. 18 – 19, l. 5.) Trial Staff also recommended that the E-DSMCA contain a true-up mechanism for the deferred DSM cost recovery account. (Paul C. Caldara Answer

Testimony at pages 4, ll. 13-15; 18, l. 18 – 19, l. 5.) SWEEP/WRA agreed that the same incentive structure authorized for PSCo was appropriate for Black Hills. (See Howard Geller Answer Testimony at pages 9, l. 8 – 10, l. 4.) Trial Staff also recommended that the E-DSMCA tariff be approved with certain modifications, including correlation of the Determination Period with the Commission’s approval date, and adding language to set out the financial incentive calculation and the disincentive offset. (See Paul C. Caldara Answer Testimony at pages 3, ll. 5-8; 4, ll. 13-15; 23, ll. 1-9.) Trial Staff also requested that the E-DSMCA compliance tariff be filed on five days’ notice so as to allow Trial Staff more time to review the filing. (Paul C. Caldara Answer Testimony at page 23, ll. 7-9.) SWEEP/WRA supported approval of the filed E-DSMCA tariff and prospective recovery of DSM program costs by the E-DSMCA through a uniform percentage DSMCA surcharge applied to all customer classes. (Howard Geller Answer Testimony at pages 2, ll. 13-15; 11, ll. 9-23; 24, l. 23 – 25, l. 2.)

**Resolution:** The Settling Parties agree that the Commission should authorize the same performance incentives for Black Hills as it did for PSCo in Decision No. 08A-0560 for Plan years 2009, 2010, and 2011. The Settling Parties agree that the financial disincentive offset (the up-front incentive bonus) in the amount of \$150,000 per year for the three-year term of the Plan would be earned and recovered contingent on Black Hills’ achievement of 80 percent of the established midpoint energy savings goal in each Plan year. The Settling Parties agree that the E-DSMCA should contain a true-up mechanism for the deferred DSM cost recovery account. The Settling Parties agree that the E-DSMCA tariff should be approved with certain modifications, including correlation of the Determination Period with the Commission’s approval date, and adding language to set out the financial incentive calculation and the disincentive offset. The Settling Parties agree that the prospective recovery of DSM program costs shall be accomplished through a uniform

DSMCA surcharge applied to all customer classes. The Settling Parties agree that the E-DSMCA surcharge will not exceed 1.38% in the first year and that the true-up provision in the E-DSMCA tariff will address any under or over collection by the E-DSMCA after the first year. In other words, the Settling Parties agree that the E-DSMCA surcharge of 1.38% is only for the 2009 Plan year (the first year of the Plan), that expenditures in the 2009 Plan year may or may not exceed 1.38% of revenues, and that the increment above or below 1.38% would be recovered or credited through the E-DSMCA tariff true-up provision. The Settling Parties agree that, in administering the E-DSMCA mechanism, Black Hills will include interest on over-collections at the customer deposit interest rate and will not charge interest on under-collections. The Settling Parties agree that the E-DSMCA compliance tariff should be filed on five days' notice so as to allow Trial Staff more time to review the filing. Black Hills agrees to work with the Settling Parties on language for a true-up mechanism and to modify the E-DSMCA tariff to reflect the terms of this Settlement Agreement. The Settling Parties agree to conclude development of the modified E-DSMCA compliance tariffs so that Black Hills can file the compliance tariffs to reflect the terms of this Settlement Agreement by June 23, 2009, with an effective date of July 1, 2009. The June 23, 2009 compliance filing shall reflect the terms agreed upon by the Settling Parties. In the event the Settling Parties are unable to agree on tariff language to implement the true-up provision or other terms of this Settlement Agreement, Black Hills agrees to file a subsequent Advice Letter that will serve as the vehicle to allow those dispute(s) to be resolved by the Commission.

**9. Issue: Future Electric DSM Plan Applications.** Neither Black Hills' filed Electric DSM Plan nor its direct testimony requested any relief relating to future Electric DSM applications. SWEEP/WRA, however, proposed that in future electric DSM applications Black Hills include a non-energy benefits adder to cost effectiveness calculations, similar to the 10% adder approved by

the Commission for PSCo in Decision No. 08A-0560. SWEEP/WRA also proposed that in future electric DSM applications Black Hills allow future low-income programs with cost effectiveness calculations (TRCs) below 1.0. (Howard Geller Answer Testimony at pages 23, ll. 4-7 and 14-24.)

**Resolution:** The Settling Parties agree that, in this current and in future Black Hills electric DSM applications, the Commission should allow Black Hills (1) to include a non-energy benefits adder to cost effectiveness calculations, similar to the 10% adder approved by the Commission for PSCo in Decision No. 08A-0560; and (2) to propose low-income programs with cost effectiveness calculations (TRCs) below 1.0.

### **III. GENERAL TERMS AND CONDITIONS**

10. Through active prehearing investigation and negotiation, the Settling Parties have reached the settlement set forth herein resolving all 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 all issues raised or that could have been raised between them in this docket. The Settling Parties further agree that reaching agreement by means of negotiation and settlement rather than through litigation is in the public interest.

11. The Settling Parties agree to present, to support, and to defend this Settlement Agreement before the Commission and in the courts. The Settling Parties further agree, if the Commission sets a hearing on this Settlement Agreement, to present testimony and exhibits in a hearing to obtain the Commission's approval of this Settlement Agreement. If such a hearing is conducted, the Settling Parties hereby agree that all pre-filed testimony and exhibits of the Settling Parties shall be admitted into evidence in this docket without cross-examination.



12. 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 modifications of the terms and conditions of this Settlement Agreement that are unacceptable to any of the Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling 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 Settling Party in this docket. The withdrawing Settling Party shall notify the Commission and the other Settling Parties to this Settlement Agreement by e-mail and facsimile within five (5) business days of the Commission Order that the Settling Party is withdrawing from the Settlement Agreement and that the Settling Party is ready to proceed to hearing; the e-mail and facsimile notice shall designate the precise issue or issues on which the withdrawing Settling Party desires to proceed to hearing (the "Hearing Notice").

13. The withdrawal of a Settling Party shall not automatically terminate this Settlement Agreement as to any other Settling Parties. Within three (3) business days of the date of the Hearing Notice from the first withdrawing Settling Party, all Settling Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Settling Party's withdrawal from this Settlement Agreement. Within five (5) business days of the date of the Hearing Notice, the Settling Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled. The Settling Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Settlement Agreement.

14. Hearing shall be scheduled as soon as practicable on all of the issues designated in the formal Hearing Notice filed with the Commission. In the event that this Settlement Agreement is not approved, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall not be admissible into evidence in this or any other proceeding. In the event that this Settlement Agreement is approved with conditions that are unacceptable to any Settling Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall not be admissible into evidence in this or any other proceeding as to that withdrawing Settling Party. However, as to Settling Parties that do not withdraw from this Settlement Agreement, the negotiations or discussions undertaken in conjunction with the Settlement Agreement shall be admissible into evidence in any proceeding to enforce the terms of this Settlement Agreement.

15. Approval by the Commission of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Settling Parties in this proceeding.

16. All Settling Parties specifically agree and understand that this Settlement Agreement represents a negotiated settlement in the public interest with respect to the various matters and issues presented in this docket, for the sole purpose of the settlement of the matters agreed to in this Settlement Agreement. No Settling Party or person shall 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 Parties to constitute a settled practice or precedent in any future proceeding.

17. 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 issues addressed by this Settlement Agreement.

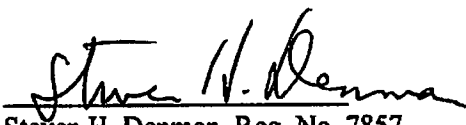
**CONCLUSION**

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 all disputed issues that have arisen, or which could have arisen, in this docket and further closing this docket.

DATED this 28th day of April 2009.

Approved as to form:

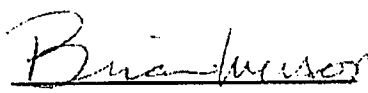
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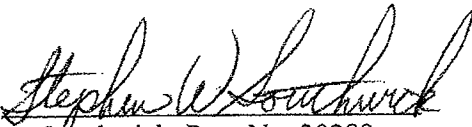
BLACK HILLS/COLORADO ELECTRIC  
UTILITY COMPANY, LP d/b/a BLACK  
HILLS ENERGY:

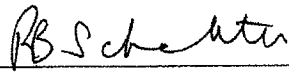
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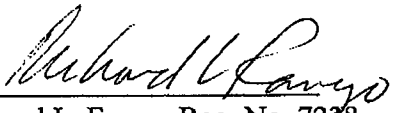
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## CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April 2009 the original and four (4) copies of the foregoing **SETTLEMENT AGREEMENT AND MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT** were filed by hand delivery with:

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and a copy was served electronically on the following persons by email addressed to:

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