

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08A-518E

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 PLAN FOR CALENDAR YEARS 2009, 2010, AND 2011 AND FOR APPROVAL OF AN ELECTRIC DSM COST ADJUSTMENT CLAUSE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT
WITHOUT MODIFICATION**

Mailed Date: May 21, 2009

TABLE OF CONTENTS

I. STATEMENT.....2
II. FINDINGS AND CONCLUSIONS.....4
 A. Black Hills’ Initial DSM Application.....4
 B. The Settlement Agreement.....8
 1. Duration of DSM Plan.....8
 2. Detailed Potential DSM Study11
 3. Electric DSM Plan Energy Sales Reduction and Demand Reduction Goals for 2009 through 2011.12
 4. DSM Programs for 2009 through 201115
 5. Electric DSM Plan Budget for 2009 through 201119
 6. Electric DSM Plan Budget Flexibility21
 7. Low-Income Electric DSM Programs and Budget for 2009.....23
 8. Electric DSMCA and Incentive Mechanisms25
 9. Future Electric DSM Plan Applications.....29
III. ORDER.....30
 A. The Commission Orders That:30

Submitted to Colorado PUC E-Filings System

I. STATEMENT

1. On November 21, 2008, Black Hills/Colorado Electric Utility Company, L.P., doing business as Black Hills Energy (Black Hills) filed an 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) (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.

2. The Commission issued notice of the Application on November, 24, 2008. Therefore, petitions to intervene in this matter were due no later than December 24, 2008.

3. On December 22, 2008, the Colorado Office of Consumer Counsel (OCC) timely filed its Notice of Intervention of Right, Entry of Appearance and Request for Hearing.

4. On December 23, 2008, the Southwest Energy Efficiency Project (SWEEP) and Western Resource Advocates (WRA) timely filed a Petition for Leave to Intervene. The SWEEP/WRA intervention was granted.

5. On December 24, 2008, Cripple Creek & Victor Gold Mining Company (CC&V) timely filed its Motion to Intervene. The CC&V intervention was granted.

6. On January 5, 2009, Commission Staff (Staff) timely filed its Notice of Intervention, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing.

7. On January 21, 2009, The Board of Water Works of Pueblo, Colorado and the Fountain Valley Authority (together, Public Intervenors) filed a Petition to Intervene Out of Time in this matter. The Petitions to Intervene of the Public Intervenors were granted.

8. In order to facilitate the orderly resolution of this proceeding, a pre-hearing conference was scheduled for March 2, 2009. However, on February 20, 2009, Black Hills filed a Motion to Approve Stipulated Procedural Schedule and to Vacate Pre-hearing Conference. Black Hills stated that its counsel conferred with counsel for the Intervenors in this matter and all agreed to a procedural schedule, which provided for a hearing on the Application to be conducted on April 13 and 14, 2009. That procedural schedule was adopted and the pre-hearing conference scheduled for March 2, 2009 was vacated pursuant to Interim Order No. R09-0179-I.

9. On April 3, 2009, Black Hills filed a Stipulated Motion to Continue Hearing and Remaining Dates in Procedural Schedule. Black Hills represented that the parties to this matter believe that with the exception of issues raised by CC&V and Public Intervenors regarding the increased program costs associated with settlement discussions, to date, a good chance existed to conclude a settlement of all disputed issues in this matter.

10. As a result, the parties sought a continuation of the hearing in this matter which was set for April 13 and 14, 2009. The parties wished to re-schedule the hearing dates to May 5 and 6, 2009, while continuing with the remaining procedural schedule in this docket. The new deadline for filing stipulations and a written settlement agreement was April 28, 2009. To accommodate such a timeline, Black Hills agreed to waive the 210-day deadline for the Commission to enter a decision in this matter as required by § 40-6-109.5, C.R.S., for an additional period of 45 days, or to and including August 3, 2009.

11. On April 28, 2009, Black Hills filed a Settlement Agreement and Motion for Approval of Settlement Agreement that purports to resolve all disputed issues that have arisen or could have arisen between Black Hills and the parties (herein, collectively referred to as the Settling Parties) in this docket. The Settling Parties represent that the Settlement Agreement

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

12. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge (ALJ) hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

II. FINDINGS AND CONCLUSIONS

A. Black Hills' Initial DSM Application

13. House Bill (HB) 07-1037, a Bill *Concerning Measures to Promote Energy Efficiency, and Making an Appropriation Therefore*, was passed by the Colorado General Assembly and signed into law by Governor Ritter in 2007, and codified in relevant part at §§ 40-1-102(5), (6) and (7), C.R.S., as well as §§ 40-3.2-101 and 104, C.R.S. That bill establishes that:

... cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment. The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business. § 40-3.2-101, C.R.S.

14. Section 40-3.2-104, C.R.S., further charges the Commission to:

...establish energy savings and peak demand reduction goals to be achieved by an investor-owned electric utility, taking into account the utility's cost-effective DSM potential, the need for electricity resources, the benefits of DSM investments, and other factors as determined by the commission. The energy savings and peak demand reduction goals shall be at least five percent of the utility's retail system peak demand measured in megawatts in the base year and at least five percent of the utility's retail energy sales measured in megawatt-hours in the base year. The base year shall be 2006. The goals shall be met in 2018, counting savings in 2018 from DSM measures installed starting in 2006. The commission may establish

interim goals and may revise the goals as it deems appropriate. § 40-3.2-104(2), C.R.S.

15. In addition to these requirements, the Commission is to permit electric utilities to “implement cost-effective electricity DSM Programs to reduce the need for additional resources that would otherwise be met through a competitive acquisition process.” § 40-3.2-104(3), C.R.S. The Commission is to further ensure that utilities “develop and implement DSM Programs that give all classes of customers an opportunity to participate and ... give due consideration to the impact of DSM Programs on non-participants and low-income customers.” § 40-3.2-104(4), C.R.S. Additionally, the Commission is to allow for an “opportunity for a utility’s investments in cost-effective DSM Programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives.” § 40-3.2-104(5), C.R.S.

16. In order to comply with subsection (5), the Commission is to consider, without limitation, the following incentive mechanisms:

- (a) allow a rate of return on DSM investments that is higher than the utility’s rate of return on other investments;
- (b) allow the utility to accelerate the depreciation or amortization period for DSM incentives;
- (c) allow the utility to retain a portion of the net economic benefits associated with a DSM Program for its shareholders;
- (d) allow the utility to collect the costs of DSM Programs through a cost adjustment clause; and
- (e) other incentive mechanisms the Commission deems appropriate.

17. As part of its original Application, Black Hills stated that the assumption was made in the modeling that the Electric DSM Plan as proposed would result in MW reductions of load that range from just over 2 MW in 2009 through over 64 MW by 2027. Black Hills further represented that the portfolio of proposed Electric DSM Programs was designed to achieve the

stated goals of § 40-3.2-104(2), C.R.S., of 5 percent reduction from 2006 peak demand and energy by 2018.

18. Discussing the development of its proposed Electric DSM Program, Black Hills indicated that it began development of the programs with an efficiency potential analysis, which was intended to determine the technical, economic, and achievable potential for electric energy efficiency programs in Black Hills' service territory. As part of the analysis, a DSM advisory group was formed to review preliminary results and provide feedback. The outside members of the group included Staff, the OCC, the Colorado Governor's Office, the Colorado Energy Science Center, SWEEP, and Built Green Colorado.

19. According to Black Hills, based on the technical, economic, and achievable potentials, as well as the input it received from the DSM advisory group, a portfolio of DSM Programs was developed that included:

- Low Income Assistance Program
- School-Based Energy Education Program
- Residential High Efficiency Lighting
- 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

20. Black Hills represented that the achievement of the Electric DSM energy reduction requirements complied with the mandates of HB07-1037, and were designed to achieve the stated goals of HB07-1037 of a 5 percent reduction from 2006 peak demand and energy by the year 2018.

21. To achieve its proposed goals under the original Application, Black Hills proposed total expenditures over a three-year period (2009 through 2011) of \$7,441,204. The proposed budget for 2009 was \$1,704,129; for 2010 - \$2,824,798; and for 2011 - \$2,906,247.

22. The energy savings achievable in 2009 under the original Electric DSM Plan was proposed to be 8,122,727 MWh; in 2010 – 12,399,230 MWh; and in 2011 – 12,399,230 MWh.

23. Black Hills also sought authority to exercise discretion to move budgets between programs and customer segments to achieve the total portfolio level energy and demand goals incorporated into the Electric DSM Plan.

24. Black Hills proposed to file an Electric DSMCA tariff which contained a proposed mechanism to provide for concurrent recovery of costs incurred to implement DSM Programs under the 2009 through 2011 Electric DSM Plan. The proposed Electric Demand-Side Management Cost Adjustment (E-DSMCA) tariff sheets, attached to the Application in Appendix B, were to revise the E-DSMCA tariff sheets on file with the Commission. The proposed tariff sheet was to update the current tariff by including new determination and recovery periods that match the proposed new Electric DSM Programs, and reflect the prospective recovery of DSM costs.

25. For the proposed 2009 through 2011 Electric DSM Plan, Black Hills proposed to expense the projected annual DSM costs and collect those costs from customers concurrently over the same annual period. To accomplish current recovery, Black Hills proposed to file annual revisions on November 1 to be effective January 1.

26. Black Hills intended to true up the budgeted Electric DSM costs to actual incurred Electric DSM costs, and the budgeted Electric DSM Bonus to the actual Electric DSM Bonus in its annual filing with the Commission. The Electric DSMCA would also include the expense

recovery of budgeted Electric-related DSM costs. The Electric DSMCA was to be a percentage applied to all components of base rates.

B. The Settlement Agreement

27. The 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 in the Agreement, 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 the Settlement Agreement are fair, just, and reasonable.

28. A total of nine issues were disputed between the Settling Parties. The Settlement Agreement details the position of the Settling Parties on each disputed issue and the negotiated resolution of the disputed issue. Each issue will be discussed in the order it appears in the Settlement Agreement.

1. Duration of DSM Plan

29. In its original Application, Black Hills proposed that the Electric DSM Plan be approved for three years, or from 2009 through 2011. However, Staff proposed that the Electric DSM Plan be approved for two years, for 2009 and 2010. No other Party addressed this issue.

30. Staff raised concerns about the accuracy of the underlying information provided by Black Hills. It recommended that Black Hills' Electric DSM Program be approved for two years, rather than the three years requested by Black Hills in its Application. Staff asserted that this would allow Black Hills to implement its basic and known DSM measures right away to capture basic energy efficiency potentials, while allowing Black Hills time to conduct a more thorough potential DSM study to guide and direct its next DSM plan.

31. 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 ensure the gathering and analysis of data necessary to prepare a detailed potential study. Regardless of whether a two or three-year DSM Plan was 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, Black Hills indicates it prefers Electric DSM Plan years that run for 12 consecutive months (July to June) over 3 consecutive years.

32. Staff witness Mr. Caldara testified that the information provided by Black Hills showed both an economic potential and a budget-based achievable potential. According to Mr. Caldara, the economic potential was higher than the goals suggested by Staff and the achievable potential was lower than the goals suggested by Staff. As a result, Staff determined that the goals it recommended were reasonably close to the overall DSM potential indicated by Black Hills. Staff also looked into other considerations in taking into account the recommended goals, namely that the DSM Programs and measures proposed by Black Hills are commonly available and well understood technologies. Also, the programs can be subscribed to by many customers. Staff recognized that Black Hills specifically acknowledged in the Settlement Agreement that sufficient market potential exists to attain the stated goals of the Agreement. Additionally, Black Hills has agreed to perform a detailed market potential study to inform its next DSM Plan. Consequently, Staff is now satisfied with the information presented by Black Hills and is comfortable with a three-year Electric DSM Plan.

33. It is important to note that the DSM Programs and measures suggested by Black Hills are not unique. Rather, as Staff suggests, those programs and measures are commonly

available and well understood technologies. Through Mr. Caldara's testimony, it appears Staff is also assured that the programs can be subscribed to by many customers as there is a strong public awareness of energy issues and a desire for energy efficiency programs. Consequently, it is reasonable and in the public interest to incorporate Black Hills' Electric DSM Program for three years.

34. The Settling Parties further agree that a three-year Electric DSM Plan should be 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.) Black Hills specifically acknowledges that it has determined that there is sufficient market potential to attain the stated goals.

35. The Settling Parties further agree that the Commission should adopt an Electric DSM Plan for Black Hills that runs over 3 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 the 2011 Plan year would run from July 1, 2011 to June 30, 2012.

36. Based on Black Hills' pledge to perform a more detailed market potential study for its 2012 DSM Plan, and Staff's comfort level with the information provided by Black Hills in its DSM Application, an Electric DSM Plan for three years from 2009 through 2011 will be approved without modification as set forth in the Settlement Agreement. Additionally, requiring Black Hills to set mid-point goals similar to those set for Public Service Company of Colorado (Public Service or PSCo) in Decision No. C08-0560 assures that Black Hills' Electric DSM Program will yield increasing performance each year subject to set benchmarks. This is

critical to assuring that the Black Hills' DSM Program is aspiring towards significant, yet achievable goals.

2. Detailed Potential DSM Study

37. As indicated *supra*, 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. The AEG Market Assessment Study analyzed the energy efficiency, or DSM, potential at three levels: technical potential, economic potential, and achievable potential.¹

38. In its answer testimony, Staff expressed its concern that Black Hills had not conducted a detailed Market Potential Study prior to submitting its proposed Electric DSM Plan. According to Staff, such a study is important because it can provide objective criteria for a determination of which market sectors, geographic areas, end uses, measures, and programs would be constructive for attaining energy efficiency, as well as objective criteria as to how funds could be best spent to attain that same energy efficiency. Staff maintained that given the amount of information Black Hills provided in its potential assessment conducted by its consultant, the Commission should merely consider, but not rely on that information to make a determination of savings goals and a possible bonus. Staff argued 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.

¹ See Application, Appendix A, Electric DSM Plan, at pages ES-2, 14-21.

39. In resolution of this issue, 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 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 Staff agree that the prudently incurred costs of the study would be recoverable through the E-DSMCA and not impact cost effectiveness calculations.

40. While the Market Assessment Study prepared for Black Hills by Applied Energy Group provides basic information and some basic assessment of an efficiency savings analysis, it is clear that a more comprehensive analysis of Black Hills' 2009 through 2011 DSM Plan is necessary to serve as an adequate resource for establishing DSM goals and objectives for Black Hills' DSM Plan for 2012 and beyond. Therefore, the agreement for Black Hills to perform a detailed market potential study consistent with NAPEE guidelines to be included in its next DSM application will be approved without modification.

3. Electric DSM Plan Energy Sales Reduction and Demand Reduction Goals for 2009 through 2011.

41. Black Hills' original Electric DSM Plan proposed cost-effective DSM Programs designed to achieve the stated energy savings and peak demand reduction goals of at least 5 percent each by 2018, using 2006 as the base year, established in § 40-3.2-104(2), C.R.S. 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 savings of approximately 5.15 percent of Black Hills' 2006 energy sales by 2018, which is slightly in excess of the minimum goals established in § 40-3.2-104(2), C.R.S.

42. 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 1 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 1 percent by 2018.²

43. 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 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 2010.³ SWEEP and WRA made the same argument.⁴ Staff and SWEEP/WRA argued that because Public Service has approved Electric DSM goals to 2018, Black Hills as well should adopt the Public Service goals all the way out to 2018. Black Hills' position is that it should not

² See PB Schechter Answer Testimony at pages 4, lines 6-10; 5, line 12 – 6, line 15; 7, l. 22 – 8, line 15; Exhibit ___ (PBS-9).

³ See Paul C. Caldara Answer Testimony at pages 2, lines 14 through 18; 17, lines 1 through 8; 20, lines 12 through 15; and Exhibit PCC-3.

⁴ See Howard Geller Answer Testimony at pages 2, lines 8 through 10; 5, line 21 through 6, line 2; 24, lines 18 through 20).

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.

44. In resolution of this issue, 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 those revised energy and demand savings goals.⁵ 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 MWh * 0.0053 = 10,287 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 indicated in Paragraph No. 34 above, 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 the 2011 Plan year would run from July 1, 2011 to June 30, 2012.

45. As for energy and demand savings goals out to 2018, Black Hills agrees to accept the same goals in percentage terms as established for Public Service by Decision No. 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 revised either upwards or downwards when Black Hills files and the Commission acts on its next Electric DSM Plan.

46. The Commission is directed pursuant to § 40-3.2-104(2), C.R.S., to “establish energy savings and peak demand reduction goals ... taking into account the utility’s cost-

⁵ The phrase “a suite of changes necessary to reach these revised energy and demand savings goals” is interpreted to mean that the DSM Plan will only be modified if it is unable, in its present form, to achieve the savings goals.

effective DSM potential, the need for electricity resources, the benefits of DSM investments, and other factors as determined by the Commission.” The revised interim, midpoint energy savings and peak demand reduction goals proposed by the Settling Parties are reasonable and achieve the Commission’s policy of implementing DSM in a manner that is sustainable for achieving consistently higher DSM goals throughout the statutory timeframe. The Commission, in Decision No. C08-0560 also found it critical to balance administrative feasibility and market potential in setting energy savings and peak demand reduction goals for a DSM Program. It appears that the Settling Parties are satisfied that the interim, midpoint goals agreed to here, which mirror those approved for Public Service in Docket No. 07A-420E in fact accomplish those purposes. Therefore, the energy sales reduction and demand reduction goals agreed to for the years 2009, 2010, and 2011, as well as the tentative goals out to the year 2018, as set out in the Settlement Agreement will be approved without modification.

4. DSM Programs for 2009 through 2011

47. 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.

Staff found the DSM Programs in Black Hills' Electric DSM Plan were reasonable.⁶ Staff represented that the proposed programs were common and familiar and should be implemented. 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.⁷ 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.⁸

48. The Settling Parties agree that Black Hills should implement cost-effective DSM Programs, modifications to proposed DSM Programs, and an expanded portfolio of cost-effective DSM Programs as set out below. The Settling Parties agree that evaluation and measurement details for these DSM Programs are the responsibility of Black Hills. Attachment A to the Settlement Agreement provides the details of the modified, expanded, and new DSM Programs, which the Settling Parties agree should be approved by the Commission in this docket. Those programs include the following:

- (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.

⁶ See Paul C. Caldara Answer Testimony at pages 4, ll. 7-11; 22, ll. 13-23.

⁷ See Howard Geller Answer Testimony at page 25, ll. 3-10.

⁸ See PB Schechter Answer Testimony at page 6, ll. 7-15.

- (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.

49. The Settling Parties have agreed on a comprehensive and balanced portfolio of cost-effective individual DSM Programs that should be beneficial in developing a sound and sustainable DSM Plan for Black Hills. As part of the Settlement Agreement, Black Hills committed to expand its School-Based Energy Education Program, and Residential High Efficiency Lighting Program, as well as committed to add a second Refrigerator Recycling Program, Residential New Construction Program, and a second Residential Air-Conditioner Direct Load Control Pilot Program.

50. With regard to the impact of Black Hills' DSM Program on non-participants, Staff noted that the Commission indicated that one way to address this issue was to minimize the occurrence of non-participants, meaning that all customers need to be provided a reasonable opportunity to participate. Staff believes that adoption of the Settlement Agreement will allow all types of Black Hills' customers the opportunity to participate in DSM at some level.

51. Concerning Black Hills' proposed indirect impact programs, including its proposed customer education, market transformation and pilot programs, those components are

certainly beneficial in developing a comprehensive DSM portfolio and add substantially to Black Hills' DSM Plan. Therefore, Black Hills' DSM Programs for its 2009 through 2011 DSM Plan as set out in the Settlement Agreement will be approved in their entirety without modification.

52. The ALJ would advise Black Hills to consider the Commission's recommendations regarding customer education about DSM. The Commission expressed concern that a great potential exists for an imbalance in the information ratepayers will receive concerning DSM as it pertains to the costs and benefits.⁹ The Commission found it critical that ratepayers understand: (1) that DSM is a resource; (2) that DSM is a more cost-effective resource than building new generation resources; and (3) that the DSM costs incurred today are an investment that defers incurring higher costs for new generation equipment.¹⁰ Therefore, the undersigned ALJ would encourage Black Hills to continue to develop education strategies both internally and with outside organizations to effectively impart the actual benefits of DSM.

5. Electric DSM Plan Budget for 2009 through 2011

53. Black Hills' original Electric DSM Plan Application 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 indicated to be \$350,000 per year.

54. Dr. Howard Geller, testifying for SWEEP/WRA recommended a DSM budget of about \$2.7 million in 2009, \$4.4 million in 2010, and \$4.5 million in 2011, which are about 55 percent higher than the total DSM budget proposed by Black Hills. This budget was

⁹ See, C08-0560, ¶¶142-143, p.45.

¹⁰ *Id.*

reflective of increased energy savings goals for Black Hills, similar to those adopted for Public Service in Docket No. 07A-420E.

55. As part of the Settlement Agreement, Black Hills has agreed to the increased energy savings and peak demand reduction goals set forth in Issue 3 as described *supra*, and to the expanded portfolio of cost-effective DSM Program modifications and additions as described in Issue 4 *supra*. As a result, the annual DSM budget to achieve these increased energy savings and demand reduction goals must also be increased.

56. 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. As a result, the 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 the 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. The Settling Parties note that 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.

57. The budget as proposed by the Settling Parties takes into consideration the additional and expanded DSM Programs as part of the Settlement Agreement. Further, the proposed budgets appear to be reasonable for the estimated energy savings for each year.

Therefore, the Electric DSM Plan budget for 2009, 2010, and 2011 as set out in the Settlement Agreement will be approved without modification.

6. Electric DSM Plan Budget Flexibility

58. In its original 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. According to Black Hills, this budget flexibility was requested to promote the goals of § 40-3.2-104, C.R.S., and to better serve Black Hills' customers.¹¹

59. Staff witness Caldara 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.¹² SWEEP/WRA agreed, as long as the utility was responsible for implementing cost effective DSM Programs.¹³ If Black Hills exceeded the budget of any given DSM Program by 115 percent, Staff asserted that Black Hills should "have the burden of proof going forward with respect to the reasonableness and prudence of that specific DSM program."¹⁴ 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 a whole is cost effective. In addition, Black Hills should be allowed to

¹¹ See, Black Hill's Application, Paragraph 14, page 10; *see also*, Direct Testimony of Matthew E. Daunis, page 4, lines 6-15.)

¹² See, Paul C. Caldara Answer Testimony at page 23, lines 11 through 19.

¹³ See, Howard Geller Answer Testimony at page 24, lines 1 through 4.

¹⁴ See, Paul C. Caldara Answer Testimony at page 23, line 21 – page 24, line 3.

exceed the approved annual DSM portfolio budget up to 125 percent, without any comment on the burden of proof.¹⁵

60. In resolution of this issue, 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.

61. 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.

62. The provisions of the Settlement Agreement that allow Black Hills to incur costs in excess of the approved budget for the total DSM portfolio without seeking further

¹⁵ See Howard Geller Answer Testimony at page 24, lines 8 through 16.

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 provides Black Hills the flexibility to increase the chances of success in its DSM Plan, while simultaneously protecting ratepayers from possible excessive budget increases. This flexibility is also derived from the proposal to allow Black Hills to incur costs up to 125 percent of the budget for any single suite of DSM measures without seeking further Commission approval, and without having to defend the reasonableness or prudence of the over-budgeted expenditures. Therefore, the DSM budget flexibility as proposed in the Settlement Agreement will be approved without modification.

7. Low-Income Electric DSM Programs and Budget for 2009

63. Black Hills' filed Electric DSM Plan and budget included a low-income assistance DSM Program for the years 2009, 2010, and 2011.

64. 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 percent of the forecasted level of participation in the low-income DSM Program has been achieved.

65. Regarding low-income assistance programs, in Decision No. C08-0560, the Commission emphatically stated that low-income customers were to be given special attention and commitment by Public Service. The Commission also asserted that it expected a substantial commitment to low-income DSM in recognition that the low-income customer population has unique needs and challenges regarding DSM.

66. Black Hills' Low Income Assistance Program proposal calls for the program to work directly with local community action program (CAP) agencies that already provide services to low-income customers through the Department of Energy and other state agencies. Further, Black Hills intends to provide funds to the CAP agencies to pay the full cost of three measures, including:

- A.) Direct install of compact fluorescent lamps;
- B.) High efficiency (EnergyStar) refrigerator replacements;
- C.) Window/wall evaporative cooler installations.

Black Hills will also provide funds to customers with income levels up to 185 percent of federal poverty guidelines. While the local CAP agencies will provide many of the leads for this program, Black Hills will supplement those efforts with its own marketing. The measures proposed in this program are all currently part of the services that Pueblo County Housing & Human Services provides to the low-income community. According to Black Hills, other CAP agencies in its service territory will be offered the same funding for these measures.

67. It appears that Black Hills' low-income program encompasses the commitments expected by the Commission. The program represents a substantial commitment to low-income DSM. Further, Black Hills intends to coordinate its low-income program design with non-profit and governmental organizations to take advantage of existing resources and economies of scale to ensure the effectiveness of its low-income programs. Staff witness Mr. Caldara testified Staff believes that the combination of both the Low-Income Assistance Program, along with the provision in the Settlement Agreement that spending levels for low-income DSM Programs will not be reduced during the three years of the plan, unless 100 percent of the forecasted level of participation in the low-income program has been achieved, gives due consideration to the impact of DSM programs on low-income customers. The undersigned ALJ would further urge

Black Hills to continue to research and take advantage of the best practices of other utilities regarding low-income DSM program design and implementation. Therefore, the Low-Income DSM Program as detailed in Black Hills' DSM Application will be approved in its entirety without modification.

8. Electric DSMCA and Incentive Mechanisms

68. Black Hills' original Application and direct testimony requested approval of its E-DSMCA tariff, containing a proposed mechanism for prospective recovery of costs incurred to implement DSM Programs under the 2009 through 2011 Electric DSM Plan and including certain incentive mechanisms allowed for the implementation of cost-effective DSM Programs pursuant to §§ 40-3.2-104(2) and 40-3.2-104(5), C.R.S.¹⁶ 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 No. C08-0560 in the Public Service Enhanced DSM Docket.¹⁷ 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.¹⁸ 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.¹⁹

69. Staff recommended that the Commission authorize the same performance incentives for Black Hills as it did for Public Service in Decision No. 08A-0560 for 2009 and

¹⁶ See, Application, Paragraphs 10, 17 through 18, pages 7, 10, and 11; Direct Testimony of Maurice L. Arnall, page 6, line 1 – page 10, line 5.)

¹⁷ See, Direct Testimony of Maurice L. Arnall, page 6, line 1 – page 10, line 5.

¹⁸ See, Application, Paragraph 19, page 11; Appendix B.

¹⁹ See, Direct Testimony of Maurice L. Arnall, page 10, lines 1 through 5.

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.²⁰ Staff also recommended that the E-DSMCA contain a true-up mechanism for the deferred DSM cost recovery account. SWEEP/WRA agreed that the same incentive structure authorized for Public Service was appropriate for Black Hills.²¹ 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.²² Staff 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. 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.

70. In resolution of this matter, the Settling Parties agree that the Commission should authorize the same performance incentives for Black Hills as it did for Public Service in Decision No. C08-0560 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.

71. 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

²⁰ See, Paul C. Caldara Answer Testimony at pages 3, lines 1 through 3; 5, lines 1 through 5; 18, line 18 through 19, line 5.

²¹ See, Howard Geller Answer Testimony at page 9, line 8 through 10, line 4.

²² See, Paul C. Caldara Answer Testimony at pages 3, lines 5 through 8; 4, lines 13 through 15; 23, lines 1 through 9.

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.

72. The Settling Parties further agree that the E-DSMCA surcharge will not exceed 1.38 percent 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 percent 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 percent of revenues, and that the increment above or below 1.38 percent would be recovered or credited through the E-DSMCA tariff true-up provision.

73. 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.

74. Moreover, 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.

75. Section 40-3.2-104(5), C.R.S., provides that: “[t]he commission shall allow an opportunity for a utility’s investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives.” The purpose of DSM incentives is to remove disincentives and to bring forth what benefits the public most.²³

76. In Decision No. C08-0560, the Commission determined that it should:

... establish an incentive package that provides sufficient incentive to meet the statutory requirements, while signaling to the utility the Commission’s expectation that it aggressively pursue all cost-effective DSM, while also tempering the incentive package so that it does not raise rates more than necessary to achieve the desired results.²⁴

The incentive package and E-DSMCA proposed by the Settling Parties provides sufficient incentive to Black Hills to meet the statutory requirements set forth in § 40-3.2-104, C.R.S. It is the hope of the undersigned ALJ that the incentive package and E-DSMCA also moves Black Hills forward toward a more aggressive pursuit of cost-effective DSM, while at the same time, keeping rates at a reasonable level. Therefore, the Electric-DSMCA and incentive mechanisms agreed to by the Settling Parties as detailed in the Settlement Agreement will be approved without modification.

²³ See, Decision No. C08-0560, ¶¶88-90, p. 29.

²⁴ It is important to note that in considering DSM incentives in Decision No. C08-0560, the Commission noted that there was no precedent regarding the establishment of the appropriate level of incentives. The Commission was also cognizant that the incentive package it adopted may not achieve the precise desired objective and that a reassessment after a short period of time was necessary.

9. Future Electric DSM Plan Applications

77. 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 percent adder approved by the Commission for PSCo in Decision No. 08A-0560. SWEEP/WRA also proposed that in future Electric DSM applications, Black Hills allows future low-income programs with cost effectiveness calculations (Total Resource Costs (TRCs)) below 1.0.²⁵

78. 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 percent 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.

79. While it initially appeared that there was some confusion between Black Hills and the other Settling Parties regarding the 10 percent adder, counsel for Black Hills clarified at the hearing that it agreed with the Settling Parties that a 10 percent adder is to be used in screening DSM Programs, however, the adder is to be excluded when calculating the net economic benefits.

80. As the Commission determined in Decision No. C08-0560, the adder shall be used within the TRC calculation to represent non-energy benefits resulting from DSM. This 10 percent adder is to be applied to the sum of the other quantifiable benefits, and is to be used when calculating TRC values for specific DSM Programs and the overall portfolio. With that

²⁵ See, Howard Geller Answer Testimony at pages 23, lines 4 through 7 and 14 through 24.

clarification in mind, in future DSM applications, Black Hills is authorized to use a 10 percent adder similar to that approved for Public Service in Decision No. C08-0560. As well, Black Hills may propose low-income programs with a TRC below 1.

81. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Motion for Approval of Settlement Agreement filed by Black Hills /Colorado Electric Utility Company, L.P., doing business as Black Hills Energy (Black Hills) on April 28, 2009 is granted.

2. The Settlement Agreement entered into between Black Hills, Commission Staff, the Colorado Office of Consumer Counsel, the Southwest Energy Efficiency Project, Western Resource Advocates, Cripple Creek & Victor Gold Mining Company, the Board of Water Works of Pueblo County, and the Fountain Valley Authority is approved in its entirety, without modification consistent with the discussion and findings above.

3. The Black Hills Electric Demand Side Management (DSM) Plan is approved for the years 2009, 2010, and 2011.

4. The Black Hills' Electric DSM Plan shall run for three consecutive years as indicated in Ordering Paragraph No. 3, consisting of 12 consecutive months. Each Plan year shall be measured from July 1 to June 30.

5. Mid-point goals for Black Hills' Electric DSM Plan for 2009, 2010, and 2011 shall be set in accord with the goals approved in Paragraph No. 51 of Commission Decision

No. C08-0560 in Docket No. 07A-420E. Therefore, the interim, midpoint energy savings and peak demand reduction goals for Black Hills' Electric DSM Program are set as follows:

- 2009 0.53% sales reduction (calculated as 1,940,900 MWh * 0.0053 = 10,287 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.

6. Black Hills shall perform a detailed DSM market potential study consistent with the National Action Plan for Energy Efficiency guidelines to be included with its next Electric DSM application.

7. Black Hills' Electric DSM Plan budget shall be 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 the 2011 Plan year

8. Black Hills is authorized to incur costs in excess of the approved budget for the total 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.

9. If Black Hills incurs costs in excess of the approved budget for the total Electric DSM Plan by more than 15 percent, Black Hills shall 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.

10. Black Hills is authorized to incur costs in excess of the approved budget for any single DSM Program 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.

11. If Black Hills incurs costs in excess of the approved budget for any single DSM Program by more than 25 percent, Black Hills shall 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.

12. Black Hills' Low-income DSM Plan and budget for the years 2009, 2010, and 2011, as proposed in its original Application is approved without modification.

13. Black Hills' Electric-Demand-Side Management Cost Adjustment (E-DSMCA) as proposed in Paragraph Nos. 70 through 73 *supra*, is approved.

14. Black Hills shall file its E-DSMCA compliance tariff on not less than five days' notice.

15. Black Hills may include an adder value of 10 percent within the Total Resource Cost calculation to represent the non-energy benefits resulting from DSM. The percentage adder shall only be utilized by Black Hills in screening DSM Programs, and is to be excluded when calculating the net economic benefits.

16. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

17. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a.) If no exceptions are filed within 20 days after service, or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b.) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

18. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director