

October 07, 2013

IOWA UTILITIES BOARD

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

---

IN RE:

BLACK HILLS/IOWA GAS UTILITY  
COMPANY, LLC D/B/A BLACK HILLS  
ENERGY

DOCKET NO. EEP-2013-0001

---

**AMENDED NON-UNANIMOUS SETTLEMENT AGREEMENT**

On this 7th day of October, 2013, Black Hills/Iowa Gas Utility Company LLC, d/b/a Black Hills Energy (“BHE,” “Black Hills Energy” or “Company”) and the Office of Consumer Advocate (“OCA”) (collectively, the “Parties”) hereby submit the positions noted below on the terms and conditions of this Settlement Agreement (“Agreement”), including amendments to Issue Nos. 1 and 2. The only other party to this docket, Winneshiek Energy District (“WED”), is not a signatory to this Agreement.

**ARTICLE I – INTRODUCTION**

On March 29, 2013, BHE submitted its 2014-2018 Energy Efficiency Plan (“EEP”) to the Iowa Utilities Board (“Board”) for approval. Direct testimony and exhibits were filed by the OCA and WED on June 27, 2013. BHE submitted its rebuttal testimony on August 6, 2013. The OCA and WED submitted surrebuttal testimony on August 15, 2013. On August 20, 2013, the Parties submitted a Joint Statement of Issues. The OCA and BHE have reached agreement on all of the issues submitted in the Joint Statement of Issues as delineated below. An earlier draft of the Agreement was provided to WED by BHE’s counsel on October 1, 2013, but WED has informed

counsel for the OCA and BHE that it has not had sufficient time to determine whether to be a signatory to the Agreement.

## **ARTICLE II – PURPOSE**

This Agreement has been prepared and executed by the Parties for the purpose of memorializing their positions regarding the 2014-2018 EEP. Further, while it is the intention of the Parties that this Agreement resolve or address certain issues, as set forth below, certain issues may remain for litigation. Those issues are enumerated, to the extent possible, in this Agreement.

## **ARTICLE III – 2014-2018 EEP AND ASSOCIATED AGREEMENTS**

The Parties have structured this Agreement to address the issues numbered 1 through 17 set forth in the Joint Statement of Issues. The Parties concur that the following resolutions to the issues presented in the Joint Statement of Issues represent a reasonable compromise by the parties on the issues.

The following are the points of compromise, as well as the points of continued contention, expressed and agreed to by the signatory parties:

1. *Whether the EEP as a whole is cost-effective under the societal test, utility cost test, rate-payer impact test, and participant test pursuant to Iowa Code § 476.6(14).*

Issue No. 1 is not in contention on the merits between BHE and OCA; however, the settling parties agree this does not preclude ongoing review and modification of programs during the 5-year plan.

2. *Whether the EEP meets the plan requirements set forth in 199 IAC 35.8, 199 IAC 35.9, and 199 IAC 35.10.*

Issue No. 2 is not in contention on the merits between BHE and the OCA; however, the settling parties agree this does not preclude ongoing review and modification of programs during the 5-year plan.

3. *Whether BHE recognizes the appropriate amount of achievable economic potential pursuant to the 2012 Statewide Assessment of Energy and Capacity Savings Potential in Iowa (Statewide Assessment).*
  - a. *Whether the Statewide Assessment is accurate and complete;*
  - b. *Whether BHE should recognize a higher level of potential;*
    - i. *If BHE recognized a higher level of potential, the impact this would have on its customers;*
    - ii. *If BHE recognized a higher level of potential, the impact this would have on its resource planning;*

Issue No. 3 has been resolved between BHE and the OCA through the negotiation and settlement of the issues set forth below.

4. *Whether BHE's proposed annual savings targets are appropriate.*

Issue No. 4 has been resolved between BHE and the OCA through the negotiation and settlement of the issues set forth below.

5. *Whether BHE's proposed energy efficiency programs and budgets are appropriate to achieve those energy savings, and whether supplemental performance-based criteria are appropriate to help maximize achievement of cost-effective energy efficiency opportunities are needed.*

Issue No. 5 has been resolved between BHE and the OCA. BHE agrees that it will strive to find cost-effective, customer-centered, performance-based incentives to vendors/contractors that motivate customer engagement, energy efficiency market development, and market transformation. BHE will report on these efforts as part of

its Fall Operations Report (Appendix 2).

6. *Whether BHE's proposed energy efficiency programs demonstrate a sufficient level of consistent and sustained coordination, such that there is integrated and systematic and cost-effective implementation of energy efficiency measures within and across program sectors.*

Issue No. 6 has been resolved between BHE and the OCA. BHE will incorporate provisions for third-party subcontracting within its Request for Proposal (RFP) process. Additionally, BHE will strive to work with Green Iowa Americorps (GIAC), in the communities in which GIAC operates, to develop a supplemental weatherization program for customers on Community Action Program (CAP) agency waiting lists in those communities. Please see the resolution of Issue Nos. 9 and 11 below for more information regarding these concessions. It is further envisioned that BHE's Low- Income Weatherization Team and Low-Income Affordable Housing Programs may also serve as avenue for engaging third-parties and local energy efficiency resources.

7. *Whether BHE has proposed an appropriate plan and budget for the evaluation, measurement and verification of its EEP.*

Issue No. 7 has been resolved between BHE and the OCA. It is agreed that the Evaluation, Measurement and Verification (EMV) plan set forth in Appendix 1 to this Agreement is an appropriate resolution of the issues raised by the Parties. Quality assurance and quality control for BHE's programs will be addressed in the EMV plan. As the EMV plan is implemented, BHE will monitor whether budget adjustment is needed in order to fully implement the plan components.

8. *Whether technical assistance standards are adequate and effective to achieve high levels of “conversion,” or practice implementation, and to adequately attribute practice implementation and savings back to technical assistance provided versus stand-alone prescriptive or custom rebate.*

Issue No. 8 has been resolved between BHE and the OCA through the negotiation and settlement of the other issues set forth herein.

9. *Whether technical assistance (energy auditing, assessments, planning, follow-through) to all customer classes ought to be open to additional qualified energy professionals not currently participating in BHE’s EEP.*

Issue No. 9 has been resolved between BHE and the OCA. BHE will incorporate provisions for third-party subcontracting within its Request for Proposal (RFP) process. During contract negotiations with the successful bidder, BHE will reserve the right to allow third-party qualified subcontracting and will retain the right to require the vendor to support third-party subcontracting as defined and directed by BHE. BHE will retain oversight, management and direct access to the third-party contractor.

10. *Whether a more formal collaboration and/or enhanced reporting process for energy efficiency plan performance is warranted.*

Issue No. 10 has been resolved between BHE and the OCA. The Parties agree that Collaborative Meetings shall continue throughout the period of the 2014-2018 EEP in the manner described in Appendix 2 to this Agreement. Included in Appendix 2 are the specific actions BHE agrees that it will undertake.

11. *Whether BHE has proposed appropriate Residential Portfolio Programs, including the potential for stand-alone direct install programming open for implementation by qualified community-level organizations, including but not limited to Green Iowa Americorps teams and hosts.*

Issue No. 11 has been resolved between BHE and the OCA. BHE agrees it will undertake the following actions:

A. As discussed in the resolution of Issue No. 9 above, the contracts resulting from the RFP for residential and small business energy assessments will encourage BHE's primary vendor to subcontract with local experts and incorporate performance-based criteria as discussed in the resolution of Issue No. 5 above.

B. BHE will strive to coordinate with electric service providers and leverage community resources as appropriate.

C. BHE will encourage its customers to adopt behavioral approaches that will reduce energy consumption. Tactics include offering the free online audit that provides recommendations to customers to reduce energy and offering incentives for a WiFi thermostat that will encourage customers to be more engaged in controlling their energy usage.

D. In the communities in which GIAC operates or expands its operations, BHE will strive to work with GIAC to develop a supplemental weatherization program for customers on CAP agency waiting lists in those communities.

E. BHE will include the Low-Income EnergyWise Education program in its EM&V plan and prioritize the program for early review within the new plan.

F. Multifamily – BHE agrees to participate in joint utility promotion targeted at tenants to increase demand for efficient dwellings. OCA and BHE will continue to monitor this program for rating options and efficiency designations.

G. New Home Construction – BHE has addressed quality assurance and quality control for this program in its EMV described in Appendix 1 to this Agreement. BHE will continue to monitor this program and consider market research to guide possible incentives for even more efficient home designations. BHE will review baseline assumption (2012 International Energy Conservation Code) to determine savings that should be attributed to this program. BHE will evaluate offering a more comprehensive RNC option, giving consideration to Alliant’s and MidAmerican’s program offerings, and will report its conclusions to OCA by year-end 2013.

H. HVAC SAVE – BHE will review evaluations of the HVAC SAVE programs of MidAmerican Energy Company (MEC) and Interstate Power and Light Company (IPL) in 2013 and 2014. If the savings from the programs are proven to be cost-effective, BHE will strive to certify as many as possible of the HVAC dealers that perform work in BHE’s service territory in the HVAC SAVE training program during the 2014 and 2015 program years and would be willing to adopt HVAC SAVE as a program requirement in program year 2016 and eliminate dealer incentives for obtaining SAVE certification.

12. *Whether BHE has proposed appropriate Nonresidential Portfolio Programs.*

Issue No. 12 has been resolved between BHE and the OCA. BHE agrees that it shall undertake the following actions:

A. Business Assessments – BHE now has a system that will allow for tracking of assessment recommendations and matching those recommendations

to its program offerings. BHE will issue an RFP in alignment with the OCA's recommendations for third-party inclusion, as described in the resolutions of Issue Nos. 9 and 11 above, and with the performance-based criteria described in the resolution of Issue No. 5 above. BHE will evaluate the outcomes through its EMV set forth in Appendix 1 to this Agreement.

B. Commercial New Construction – BHE will update its baseline as applicable codes and standards are revised. BHE will make verified savings reports at the measure level available for the EMV process. BHE also plans to increase its annual goal to eight participants per year.

C. Custom Rebates – BHE will: 1) strive to develop a bundling strategy to encourage comprehensive projects; 2) maintain appropriate staffing levels to address customers' needs; and 3) maintain appropriate market segmentation and outreach.

D. Prescriptive Rebates – BHE will review the possibility for an upstream HVAC program based on research findings that will be reported to the OCA and EEP parties by IPL. BHE reserves the right to do its own research regarding this matter. Based on these findings, BHE may add an upstream HVAC program as early as the 2015 program year. BHE will continue to review product qualifications in an annual program review. Although BHE believes that test in/test out blower door tests for infiltration measures may not be cost-effective, it will monitor the response to such tests for the residential program and will determine whether it would be appropriate to include the same for the non-residential program during the course of the 2014-2018 EEP.

E. Benchmarking – BHE will offer benchmarking options to each Commercial & Industrial audit participant.

13. *Whether BHE's support for tree planting programs is adequate.*

Issue No. 13 has been resolved between BHE and the OCA. All trees programs administered by BHE will maintain a clear energy efficiency nexus and be accompanied by appropriate energy efficiency informational materials.

14. *Whether BHE has proposed appropriate Outreach, Education and Training Portfolio Programs, including the potential local or community programs, including but not limited to Green Iowa Americorps teams and hosts for local activities.*

Issue No. 14 has been resolved between BHE and the OCA. BHE agrees that it will undertake the following actions:

A. Education – BHE will consider behavioral change/energy challenge for school-based programs. BHE will evaluate LivingWise through its EMV plan described in Appendix 1 to this Agreement.

B. Marketing Plan – BHE will monitor whether budget adjustments are necessary to support initiatives designed to motivate customer engagement, energy efficiency market development and market transformation as described in the resolution of Issue No. 5 above.

C. The Parties acknowledge that program/measure-specific advertising will be retained, tracked in the program budget, and reported.

D. Builder Training – BHE will meet on a regular basis with residential home builders to educate them on program requirements, processes and procedures.

15. *Whether BHE is appropriately integrating a market transformation approach in its EEP and, if so, what the implications of market transformation (e.g., when the market has been transformed via codes and standards or other intervention strategies) are.*

Issue No. 15 has been resolved between BHE and the OCA. Specifically, the procedures included in the resolutions of Issue No. 7 (EMV), Issue No. 5 (performance-based incentives), Issue No. 10 (Collaborative Meetings) and Issue No. 20 (Technical Reference Manual, or TRM) sufficiently address the concerns regarding market transformation.

16. *What considerations there should be regarding a technical reference manual, including formulation, consistency among utilities, timing of implementation, and independent oversight process and administration.*

Issue No. 16 has been resolved between BHE and the OCA. BHE agrees to work with MEC, IPL and interested parties in the development of a TRM. The development strategy for the TRM is addressed in more detail in Section 1.4 of Appendix 1 to this Agreement.

17. *What the implications are of, and what consideration should be given to, implementing net-to-gross ratios other than 1.0 for specific programs.*

Issue No. 17 has been resolved between BHE and the OCA. Net-to-gross ratios will be addressed in the context of the EMV as described in the resolution of Issue No. 7 above and Settlement Appendix 1, section 1.5.

#### **ARTICLE IV – JOINT MOTION**

The Parties will jointly file this Agreement with the Board in Docket No. EEP-2013-0001 in conjunction with a joint motion asking the Board to approve this

Agreement without condition or modification. In addition, the Parties will file an Amended Joint Statement of Issues that will identify the unsettled issues that must be decided by the Board in this docket and the testimony relevant to those issues.

#### **ARTICLE V – CONDITION PRECEDENT**

No provision of Article III of this Agreement shall become effective unless and until the Board accepts the same provision in its entirety without condition or modification. The Board's approval of a settled term shall not prevent Parties who objected to that term from requesting reconsideration of the Board's decision to approve that settled term.

#### **ARTICLE VI – PRIVILEGE AND LIMITATION**

This Agreement is made pursuant to Iowa Code § 17A.10 and 199 IAC § 7.2(11). This Agreement shall become binding upon the Parties upon its execution; provided, however, that if this Agreement does not become effective in accordance with Article V above, it shall be null and void. This Agreement relates only to the specific matters referenced herein, and neither signatory waives any claim or right that it may otherwise have with respect to any matter not expressly provided for herein. Except as expressly provided in this Agreement, neither signatory shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle, any method of cost of service determination, or any method of cost allocation underlying the provisions of this Agreement or to be prejudiced or bound thereby in any other current or future proceeding before any agency. Except as necessary to implement Article III, this

Agreement shall not, directly or indirectly, be referred to for any reason in any other current or future proceeding before the Board except with the written consent of the Parties.

#### **ARTICLE VIII – EXECUTION**

To facilitate and expedite execution, this Agreement may be executed by the Parties in multiple conformed copies which, when the original signature pages are consolidated into a single document, shall constitute a fully-executed document binding upon the Parties. The facsimile signatures of the signatories shall be deemed to constitute original signatures, and facsimile copies hereof shall be deemed to constitute duplicate originals.

#### **ARTICLE IX – MODIFICATIONS AND AMENDMENT**

This Agreement shall not be amended or modified except by an instrument in writing signed by the Parties.

#### **ARTICLE X – TERM**

This Agreement and the obligations of the signatories shall terminate if the Board does not approve the terms of this Agreement to which the signatory did not object.

## **ARTICLE XI – BINDING NATURE**

This Agreement shall be binding upon the Parties. The Parties shall take no actions, directly or indirectly, to eliminate or otherwise limit or expand the scope or effect of this Agreement throughout its term.

## **ARTICLE XII – FURTHER ASSURANCES**

The Parties agree to cooperate in order to effectuate the full and complete intent of the Parties as expressed in this Agreement.

## **ARTICLE XIII – ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties. There are no additional terms, whether consistent or inconsistent, oral or written, that have not been incorporated into this Agreement.

Dated this 7th day of October, 2013.

Respectfully submitted,

**Black Hills/Iowa Gas Utility LLC  
d/b/a Black Hills Energy**

*/s/ Philip E. Stoffregen*

Philip E. Stoffregen  
Brown, Winick, Graves, Gross,  
Baskerville and Schoenebaum, P.L.C.  
666 Grand Avenue, Suite 2000  
Des Moines, IA 50309-2510  
Tel.: (515) 242-2415  
Fax: (515) 323-8515  
[stoffregen@brownwinick.com](mailto:stoffregen@brownwinick.com)  
[whipple@brownwinick.com](mailto:whipple@brownwinick.com)

ITS ATTORNEY

**Office of Consumer Advocate**

*/s/ Jennifer C. Easler*

Jennifer C. Easler  
Anna K. Ryon  
Office of Consumer Advocate  
1376 E. Court Ave., Room 63  
Des Moines, IA 50319-0063  
Tel.: (515) 725-7200  
[ocaservice@oca.iowa.gov](mailto:ocaservice@oca.iowa.gov)