

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 23A-0025E

**IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS
COLORADO ELECTRIC, LLC FOR COMMISSION APPROVAL OF AN
ALTERNATIVE ELECTRIC VEHICLE CHARGING RATE**

COMPREHENSIVE SETTLEMENT AGREEMENT

CONTENTS

I. INTRODUCTION AND BACKGROUND 2

II. SETTLEMENT TERMS..... 4

A. Rate Design and Rate Period 4

B. Rate Design Analysis for Future Filing..... 5

C. Stakeholder Engagement..... 6

D. Regulatory Compliance 7

III. GENERAL PROVISIONS 7

I. INTRODUCTION AND BACKGROUND

On January 4, 2023, Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”) filed a Verified Application for approval of an alternate electric vehicle (EV) fast charging station rate (“Application”). Black Hills submitted the Application consistent with the requirements of Commission Decision No. C21-0651 in its Transportation Electrification Plan (TEP) proceeding (Proceeding No. 20A-0195E). Paragraph 81 of Decision No. C21-0651, which approved the Company’s TEP, directed Black Hills to “begin working with stakeholders on the development of alternative rates within three months of the approval of this TEP and to submit a proposal for at least one additional commercial EV charging rate within one year.”¹

Per Decision No. C21-0651 in Proceeding No. 20A-0195E, over the course of 2022 the Company conducted quarterly stakeholder meetings, covering a wide range of topics within the Transportation Electrification Plan, including commercial EV charging rates. Through these stakeholder meetings, two Large General Service rate designs emerged as preferred by stakeholders and the Company. The purpose of the Application was to amend the Company’s tariffs to introduce two new optional base rate designs for EV fast charging station owners, and the Application sought Commission approval for the Commission’s preferred rate design.

On March 1, 2023, the Commission issued Decision No. C23-0151-I, which directed the parties to confer regarding a schedule for this Proceeding. Decision No. C23-0151-I also established the following parties to this Proceeding: the Company; Trial Staff of the Commission (“Staff”); the Colorado Energy Office (“CEO”); Electrify America, LLC (“Electrify America”); and ChargePoint, Inc. (“ChargePoint”). By Decision No. C23-0199-I (mailed March 22, 2023),

¹ Paragraph 81 of Decision No. C21-0651 (mailed Nov. 12, 2021) in Proceeding No. 20A-0195E.

the Commission established a procedural schedule in this proceeding.

Black Hills filed its Direct Testimony on March 6, 2023. The Answer Testimonies of Staff, Electrify America and ChargePoint were filed April 17, 2023. The Rebuttal Testimony of Black Hills and Cross-Answer Testimonies of CEO, Electrify America and ChargePoint were filed May 11, 2023. The Parties engaged in negotiations after the last round of testimonies were filed on May 11. On May 22, 2023, Black Hills, CEO, Electrify America, and ChargePoint (the “Settling Parties”) reached a settlement in principle. Staff did not agree to the terms of the settlement in principle. The Settling Parties notified the Commission of the settlement in principle, and by Decision No. C23-0347-I (mailed May 24, 2023), the Commission modified the procedural schedule to allow for the Settlement Agreement to be filed by May 26, 2023, and to consider the Settlement Agreement at a hearing scheduled for June 21, 2023.

This Settlement Agreement is intended to resolve all issues which were or could have been raised by the Settling Parties in this Proceeding with respect to Black Hills’ Verified Application (“Application”) for approval of: (1) the Company’s alternate EV charging station time of day (“TOD”) rate and rate period as proposed in its Direct Case; (2) approving any and all other relief set forth in the Company’s Direct Case, including any waivers, variances or other relief necessary to implement the Company’s alternate EV fast charging station rate; and (3) authorizing Black Hills to file the necessary tariffs to implement the approved alternate EV charging station rate through a compliance advice letter filing on not less than two business days’ notice.

This Comprehensive Settlement Agreement in Principle (“Settlement Agreement” or “Agreement”) is entered into by Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”), the Colorado Energy Office (“CEO”), Electrify America, LLC (“Electrify America”), and ChargePoint, Inc. (“ChargePoint”) (each a “Settling Party” and collectively the “Settling

Parties”), pursuant to Rule 1408 of the Colorado Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, 4 CCR 723-1.²

II. SETTLEMENT TERMS

1. The Settling Parties agree that the Commission should approve the Company’s Application, subject to certain modifications and additions as described below.

A. Rate Design and Rate Period

2. As noted above, two Large General Service rate designs emerged through stakeholder discussions. These two rate proposals were submitted in Black Hills’ Application, and explained in the Direct Testimony of Black Hills witness Grant Gervais. These new optional rates are designed to recover the same amount of revenue as the Company’s other Large General Service rates.³

3. The first rate design is a flat rate. This rate consists of a \$64.00 monthly customer charge and a constant energy charge of \$0.22406/kWh that does not change by time of use. As explained in their testimonies filed in this proceeding, Black Hills, Electrify America, and ChargePoint preferred the flat rate option, because of its simplicity and predictability in the cost to charge an EV. However, in the interest of compromise, the Settling Parties agreed to not propose the flat rate option in the Settlement Agreement.

4. The second rate design is a TOD rate. The TOD rate consists of a customer charge and an energy charge that varies depending on the time of day. The variable energy charge is

² Staff indicated it opposes the settlement.

³ Mr. Gervais’s Direct Testimony includes a table that compares different EV rate designs. See Hr. Ex. 100 at pp. 8-9. The table shows the effective \$/kWh that customers taking service under each proposed rate will pay at different levels of energy usage. The effective rates for each of the Company’s rate designs begin to converge around a 12% load factor and become virtually indistinguishable above a 14% load factor.

composed of a \$64.00 monthly customer charge, an on-peak energy charge of \$0.26/kWh, and an off-peak energy charge of \$0.21467/kWh. On-Peak hours are 1:00pm – 7:00pm Monday through Friday, with the exception of New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. All other times are defined as off-peak. The proposed tariffs for this rate are included in Attachments A (clean version) and B (redline version) of the Settlement Agreement.

Summary of Black Hills’ Proposed and Existing LGS Electric Vehicle Rates

	Flat Rate	Time-of-Day Rate (Settlement)	LGS-SEV (Existing)
Demand Charge	\$0	\$0	\$6.35/kW
Peak Period	N/A	1-7pm	1-7pm
On-Peak (Summer)	N/A	\$0.26/kWh	\$0.38879/kWh
On-Peak (Non-Summer)	N/A	\$0.26/kWh	\$0.26101/kWh
Off-Peak / Flat Energy Charge	\$0.22406/kWh	\$0.21467/kWh	\$0.1301/kWh
On-Peak to Off-Peak Price Ratio	N/A	All Year: 1.2 to 1	Summer: 3 to 1 Non-Summer: 2 to 1

5. The Company’s two originally-proposed rates are summarized in the figure above, alongside the Company’s existing commercial electric vehicle rate, LGS-SEV. The existing LGS-SEV rate includes a demand charge, while the other two rates do not.

6. The Settling Parties agree to the Company’s TOD rate, as described in the Company’s direct filing and as summarized above.

B. Rate Design Analysis for Future Filing

7. The Settling Parties agree to include a provision for analysis of EV rates in a future Company filing. Specifically, Black Hills agrees that it will conduct a rate design and rate period study to present an appropriate EV charging station rate proposal in its next appropriate filing for

this determination, likely the Company's Phase I/II rate case or 2026 Transportation Electrification Plan. The study will analyze the appropriate on-peak time periods applicable to all TOD rate classes, as well as the appropriate on/off-peak price differential applicable to all TOD rate classes.

8. The latest this study will be presented will be in the Company's next TEP proceeding scheduled to be filed in May 2026. The earliest this study will be presented is in the Company's next Phase I/Phase II rate case filing, which the Company anticipates will be filed prior to the next TEP proceeding. However, if a Phase I/Phase II rate case is filed prior to the next TEP proceeding, the Company will determine in its sole discretion whether the EV charging rate should be determined as part of the rate case, or the 2026 TEP proceeding. As part of its filing, the Company agrees to provide a description about why it either supports the rate approved in this proceeding, or a new rate, based on, but not limited to, feedback from stakeholders (see Section C) and results from the aforementioned study.

C. Stakeholder Engagement

9. Prior to the Black Hills's next appropriate filing that will determine the next rate design and rate period for EV charging stations, the Company agrees that it will discuss these rate design and rate period issues with stakeholders as part of regularly scheduled TEP stakeholder meetings. Stakeholders will include, but not be limited to, parties in this proceeding, and customers that may take service under a commercial EV rate, such as charging providers, local governments, and fleets. Such discussions will include how charging providers may be able to mitigate impacts from on-peak charging and encourage off-peak charging by EV drivers that are able to do so. These TEP stakeholder meetings will be held at a frequency of at least once per year. However,

the Company agrees to facilitate conversations with stakeholders requiring more frequent engagement, as needed, and include a summary of the conversations in its rate filing.

D. Regulatory Compliance

10. The Settling Parties agree that the Commission should authorize the Company to implement the Company's alternate EV charging station TOD rate and rate period as proposed in its Direct Case by filing the necessary tariffs to implement the approved alternate EV charging station rate through a compliance advice letter filing on not less than two business days' notice.

11. The Settling Parties agree that the Commission should grant all other necessary approvals and relief necessary, including any rule waivers or variances, to implement the Company's proposals set forth in its Direct Case and this Settlement Agreement.

III. GENERAL PROVISIONS

12. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

13. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

14. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

15. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

16. The Settling Parties agree to support or not oppose all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

17. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

18. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement. Further, the

integrated agreement represents a balance of Settling Party interests such that no single provision can be altered without undermining the Settlement Agreement as a whole.

19. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

20. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

21. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 26th day of May, 2023.

Agreed on behalf of:

**Black Hills Colorado Electric, LLC
d/b/a Black Hills Energy**

By: /s/ Michael J. Harrington
Michael J. Harrington
Director Regulatory and Finance
Black Hills Corporation
1515 Arapahoe Street,
Tower 1, Suite 1200
Denver, Colorado 80202
Telephone: (303) 566-3539
Michael.Harrington@blackhillscorp.com

Approved as to form:

By: /s/ Greg Sopkin
Greg E. Sopkin, #20997
Associate General Counsel
Black Hills Corporation
1515 Arapahoe Street,
Tower 1, Suite 1200
Denver, Colorado 80202
Telephone: (303) 566-3455
Greg.Sopkin@blackhillscorp.com

Agreed on behalf of:

COLORADO ENERGY OFFICE

By: /s/ Christian Williss
CHRISTIAN WILLISS
Managing Director, Transportation Fuels and
Technology
Colorado Energy Office
1600 Broadway, Suite 1960
Denver, CO 80202
Telephone: 720.425.0304
Email: christian.williss@state.co.us

Approved as to form:

By: PHILIP J. WEISER
Attorney General

/s/ David Banas
DAVID BANAS 36664*
Senior Assistant Attorney General
Natural Resources and Environment Section
1300 Broadway, 7th Floor
Denver, CO 80203
Telephone: 720.508.6284
email: david.banas@coag.gov
*Attorney of Record

Agreed on behalf of

Electrify America, LLC

/s/ Brent L. Coleman

David A. Fitzgerald (25476)

Brent L. Coleman (44400)

Davison Van Cleve, PC

1750 SW Harbor Way, Suite 450

Portland, Oregon 97201

Phone: (503) 241-7242

Facsimile: (503) 241-8160

daf@dvclaw.com

blc@dvclaw.com

Counsel for Electrify America, LLC

Agreed on behalf of:

ChargePoint, Inc.

By: /s/ Scott Dunbar

Scott Dunbar

Keyes & Fox, LLP

1580 Lincoln St., Suite 1105

Denver, Colorado 80203

949-525-6016

sdunbar@keyesfox.com

Counsel to ChargePoint, Inc.