

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0244E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PLAN, READY EV, FOR PROGRAM YEARS 2024 - 2026 AND FOR RELATED TARIFF APPROVALS.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO RECOMMENDED DECISION NO. R23-0843**

Mailed Date: February 26, 2024

Adopted Date: February 14, 2024

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the exceptions filed to Recommended Decision No. R23-0843, issued December 20, 2023, by Administrative Law Judge (ALJ) Melody Mirbaba. The Recommended Decision approves, with modifications, the Partial Settlement Agreement (Settlement Agreement) filed October 10, 2023, and grants, with modifications, the Application for Approval of its 2024-2026 Transportation Electrification Plan (TEP) that Black Hills Colorado Electric, LLC (Black Hills or the Company) filed May 15, 2023.

2. Through their exceptions, parties seek to reverse or modify portions of the Recommended Decision. After considering the filed exceptions, the responses thereto, and the evidentiary record in this Proceeding, we grant the exceptions that Colorado Energy Office (CEO) filed on January 8, 2024. Conversely, we deny the Exceptions that the Office of the Utility Consumer Advocate (UCA) filed on January 8, 2024, as well as the exceptions that GreenLatinos, Mothers Out Front, Vote Solar, and Womxn from the Mountain (collectively, the Environmental Justice Coalition or EJC) filed on January 8, 2024.

B. Background

3. Black Hills filed its Application for approval of its proposed TEP pursuant to Senate Bill (SB) 19-077, under which investor-owned electric public utilities must file with the Commission every three years “an application for a program for regulated activities to support widespread transportation electrification.”¹ As discussed in the Recommended Decision, § 40-5-107 includes numerous factors that the Commission must consider when evaluating a

¹ § 40-5-107(1)(a), C.R.S.

utility's proposed transportation electrification program and determining cost recovery for such program investments and expenditures.

4. On June 21, 2023, the Commission referred the Proceeding to the above-mentioned ALJ by minute entry, and the following entities became parties: the Colorado Public Utilities Commission Trial Staff (Staff), CEO, UCA, and EJC.²

5. On October 10, 2023, Black Hills filed a Motion to Approve the Settlement Agreement. Along with Black Hills, Staff and UCA joined the Settlement Agreement. CEO partially joined the Settlement Agreement, while opposing certain provisions. EJC opposed the Settlement Agreement.

6. The ALJ held an evidentiary hearing on October 24 and 26, 2023. On November 9, 2023, the Company filed a Joint Statement of Position (SOP) with Staff and UCA. That same day, CEO and EJC each filed a separate SOP.

7. On December 20, 2023, the ALJ issued Decision No. R23-0843 (the Recommended Decision). While the Settling Parties had agreed to discontinue the income-qualified (IQ) electric vehicle (EV) Purchase Rebate Program (IQ EV Purchase Rebate Program), the Recommended Decision modifies the Settlement Agreement to include a pared-down version of the program. Specifically, the Recommended Decision limits the overall budget of the IQ EV Purchase Rebate Program to \$70,000 over three years, and establishes a \$2,500 maximum rebate for the purchase of new or used EVs.³ Otherwise, the Recommended Decision largely approves the Settlement Agreement and its proposed budget.

² ChargePoint, Inc. was a party, but filed a Motion to Withdraw its Intervention that was granted on October 11, 2023. (Decision No. R23-0682-I (mailed October 11, 2023)).

³ Recommended Decision, ¶¶ 106-07.

8. On January 8, 2024, CEO, UCA, and EJC filed Exceptions to the Recommended Decision. Neither Black Hills nor Staff filed Exceptions.

9. On January 22, 2024, Black Hills filed a Response to EJC's and CEO's Exceptions. On that same day, EJC filed a Response to UCA's Exceptions.

10. At its February 14, 2024, Commissioners' Weekly Meeting, the Commission conducted live deliberations on the Exceptions, resulting in this Decision granting CEO's Exceptions and denying the exceptions from EJC and UCA. Except as expressly modified by this Decision, the Commission upholds the Recommended Decision.

C. Exceptions

1. Discontinue the EV Purchase Rebate Program

a. Recommended Decision

11. In Paragraph 42 of the Settlement Agreement, the Settling Parties agree to discontinue the IQ EV Purchase Rebate Program. As noted above, however, the Recommended Decision modifies the Settlement Agreement, and requires Black Hills to implement a pared-down version of the IQ EV Purchase Rebate Program. The Recommended Decision finds that, in the totality of the Company's TEP, the IQ EV Purchase Rebate Program is appropriate, reasonable, consistent with current Commission policy, and serves the public interest and the statutory goal to encourage widespread transportation electrification.⁴

b. Exceptions

12. UCA disagrees with the Recommended Decision's continuation of the IQ EV Purchase Rebate Program and associated modification of the Settlement Agreement. UCA first asserts that IQ EV purchase rebates do not minimize costs while maximizing benefits,

as required by statute. UCA notes that Black Hills provides electric service to 106,000 customers, but that under the IQ EV Purchase Rebate Program, a maximum of 28 rebates over three years would be distributed. UCA argues that this will not significantly improve access to transportation electrification nor make any significant impact on emissions reductions. In contrast, UCA argues that the rebates will only be useful to a small handful of IQ customers in very specific situations, even though all of Black Hills' IQ customers will be forced to fund these rebates.⁵

13. UCA believes the TEP should not arbitrarily allow one group of IQ customers to benefit at the expense of other IQ customers, and urges the Commission to “consider IQ consumers who would have no other option than to subsidize another individual’s EV purchase through the issuance of rebates administered by their regulated utility.”⁶ As further support, UCA cites analysis from Staff that every \$1.00 spent on IQ EV purchase rebates will cost Black Hills’ ratepayers \$1.20 and argues that the Black Hills’ rebate does not meaningfully increase the benefits of EVs given all of the other federal and state incentives.⁷ UCA goes on to argue that widespread transportation electrification can be achieved without ratepayers (including IQ ratepayers) subsidizing EV purchases for a “fortunate few.”⁸

14. UCA also asserts that utility EV purchase rebates are redundant following the enactment of recent federal and state government incentives. UCA argues that such incentives, and the recent uptick in EV adoption represent significant changed circumstances that render the Recommended Decision’s reliance on the Commission’s policy directives in Black Hills’

⁴ Recommended Decision, ¶¶ 106-07.

⁵ UCA’s Exceptions, pp. 1-2

⁶ UCA’s Exceptions, pp. 3-4.

⁷ UCA’s Exceptions, pp. 3-4.

⁸ UCA’s Exceptions, p. 8.

inaugural TEP misplaced.⁹ UCA notes that the inaugural TEP decision that initially established the IQ EV Purchase Rebate Program was issued prior to the passage of the Infrastructure Investment and Jobs Act, the Inflation Reduction Act, and prior to state and federal tax incentives becoming significantly easier to access. UCA asserts that Black Hills' IQ customers can now receive combined state and federal rebates totaling \$21,000 for a vehicle that costs less than \$35,000.¹⁰ Thus, UCA asserts that "the Commission's policy implementing the IQ EV Purchase Rebates from 2021 is inappropriate in today's EV ecosystem."¹¹

c. Response

15. In EJC's Response to UCA's Exceptions, EJC urges the Commission to reject UCA's Exceptions and affirm the Recommended Decision's reinstatement of the IQ EV Purchase Rebate Program. To begin, EJC raises several counterarguments against UCA's assertion that the EV Purchase Rebate Program does not minimize costs and maximize benefits. For instance, EJC argues that UCA dismisses the benefits of the IQ EV Purchase Rebate Program. EJC asserts that the IQ EV Purchase Rebate Program will directly address cost concerns for IQ customers and advance equitable vehicle electrification. EJC further notes that the 28 IQ rebates contemplated in the program will result in progress from Black Hills' inaugural TEP, in which the Company awarded zero EV rebates.¹²

⁹ UCA's Exceptions, pp. 3, 5.

¹⁰ UCA's Exceptions, pp. 5-7.

¹¹ UCA's Exceptions, pp. 6-7.

¹² EJC's Response, p. 4.

16. As for UCA's argument that all customers will fund the IQ EV Purchase Rebate Program, but only select individual customers will receive a benefit, EJC notes that other programs within the TEP are similarly structured. EJC specifically references the enhanced-equity charging rebates and the eBike Pilot, and notes that UCA does not oppose these programs. More broadly, EJC asserts that the basic structure of demand-side management, beneficial electrification, and transportation electrification programs is assisting individual customers.¹³ EJC goes on to assert that UCA's argument about the IQ EV Purchase Rebate Program failing to minimize costs does not adequately weigh other relevant factors that the Commission must consider, including whether the TEP investments and expenditures are reasonably expected to provide access for low-income customers.¹⁴

17. EJC also raises several arguments against UCA's assertion that the IQ EV Purchase Rebate Program is redundant after the recent enactment of new federal and state incentives. Citing § 39-22-516.7(11), C.R.S., EJC notes that Colorado's EV tax credit legislation explicitly allows the simultaneous use of government tax credits and utility rebates for the purchase of an EV.¹⁵ EJC further argues that an IQ customer might not qualify for every federal, state, and utility program. EJC notes, for example, the numerous requirements to receive the \$7,500 federal tax credit (*e.g.*, the EV must be produced by a qualified manufacturer and meet critical mineral and battery component requirements).¹⁶ Moreover, EJC argues that the existence of other incentives does not render the EV Purchase Rebate Program unnecessary or redundant, because the program still makes EVs more affordable to IQ customers.¹⁷

¹³ EJC's Response, pp. 4-5.

¹⁴ EJC's Response, p. 5.

¹⁵ EJC's Response, p. 6.

¹⁶ EJC's Response, pp. 6-7.

¹⁷ EJC's Response, p. 9.

d. Commission Findings and Conclusions

18. The Commission denies UCA's Exceptions and upholds the Recommended Decision on this point. We find unpersuasive UCA's arguments against Black Hills ratepayers subsidizing rebates for only a select few individuals. As EJC notes in its Response, many of the programs within the TEP are similarly constructed.

19. Moreover, when weighing the costs and benefits of the IQ EV Purchase Rebate Program, we find it more appropriate to consider the larger portfolio of programs within the TEP. For example, we view the benefits of the IQ EV Purchase Rebate Program together with the requirement that the Company use the application process for the EV Purchase Rebate to gather data regarding whether the applicants are aware of and have applied for other federal and state EV incentives. In this vein, the Recommended Decision directs Black Hills to use this data "to encourage IQ EV Purchase Rebate applicants to apply for state and federal incentives."¹⁸

20. In addition, the Commission finds persuasive EJC's Response regarding the benefits of the Program, including how it will help address cost concerns for IQ customers. The small number of rebates awarded under the EV Purchase Rebate Program does establish that the benefits to the program are outweighed by its costs. Rather, the limited number of rebates reflect the compromise position the Recommended Decision reaches to minimize the costs of the program.

21. Although UCA is correct that there have been significant changes in federal and state incentives since the Commission's initial TEP decision, EJC is also correct that these incentives have several conditions. We concur with the Recommended Decision's finding that

¹⁸ Recommended Decision, ¶ 108.

the record lacks evidence as to the impact that such conditions will have on a purchaser's ability to access federal and state incentives.

2. Point-of-Sale Rebates for the EV Purchase Rebate and eBike Pilot Programs

a. Recommended Decision

22. While the Recommended Decision amends the Settlement Agreement to require Black Hills to implement an IQ EV Purchase Rebate Program, it stops short of requiring Black Hills to offer the IQ EV Purchase Rebate as a point-of-sale rebate.¹⁹ In so holding, the Recommended Decision dismisses arguments from CEO and EJC that the rebates should be administered at the point of sale. Noting concerns about the costs of administering a point-of-sale rebate program, the Recommended Decision simply directs Black Hills to work with CEO to further explore the costs of developing a point-of-sale rebate.²⁰

23. Likewise, for the IQ eBike Pilot, the Recommended Decision does not require the Company to provide the eBike rebates as a point-of-sale rebate, but directs Black Hills to work with CEO before launching its eBike Pilot to determine if it can implement the eBike Pilot at the point of sale in a cost-effective manner.²¹ Neither the Settlement Agreement nor the Recommended Decision specifies a date by which the IQ eBike Pilot must commence.

¹⁹ Recommended Decision, ¶ 106.

²⁰ Recommended Decision, ¶ 109.

²¹ Recommended Decision, ¶ 112; Settlement Agreement, ¶ 43(ii).

b. CEO's Exceptions

24. Consistent with its position throughout the Proceeding, in Exceptions, CEO argues that a point-of-sale EV purchase rebate is necessary to address the primary barrier to EV adoption for lower-income households—the upfront costs. A point-of-sale rebate, CEO asserts, is more effective at increasing adoption and has greater benefit to lower-income households or households with lower tax burden. CEO notes that the Commission directed the Company to make EV purchase rebates available upfront in Proceeding No. 20A-0195E, but the Company has failed to do so.²²

25. Accordingly, CEO requests the Commission require the Company to launch the IQ EV Purchase Rebate program as a point-of-sale rebate. CEO argues that the deadline for the implementation of the point-of-sale rebates should be 120 days after the effective date of the TEP, but also states that 180 days is a reasonable timeframe if the Commission wishes to provide the Company with additional flexibility. CEO states that “a clear and specific timeline is necessary to ensure this crucial step of the rebate program is completed in a reasonable amount of time and can be communicated to the Company’s customers.”²³

26. In connection with its request for a point-of-sale directive, CEO requests that the Commission require Black Hills to file in this Proceeding a status report, jointly completed with CEO, that describes the status of the point-of-sale IQ EV Purchase Rebate Program.²⁴ CEO suggests that Black Hills be required to file this status report concurrently with the deadline to implement the point-of-sale rebates (*i.e.*, either 120 days, or 180 days after the effective date

²² CEO's Exceptions, p. 6.

²³ CEO's Exceptions, p. 7.

²⁴ CEO's Exceptions, p. 8.

of the TEP) and then file subsequent program updates as part of the standard semi-annual reports. CEO asks that the status report include the following metrics:

- Updates on program development, implementation, and modification;
- The number of locations (dealerships, etc.) engaged to-date regarding rebates;
- The number of participating locations accepting the Company's rebates; and
- Marketing and outreach materials developed and distributed to IQ customers and dealerships related to the rebates.²⁵

27. As with its requests regarding the IQ EV Purchase Rebate Program, CEO requests that the Commission require Black Hills to launch the eBike Rebate Pilot as a point-of-sale rebate program within a date certain. CEO argues that a point-of-sale rebate for the IQ eBike Pilot reduces financial barriers at the time of purchase, since customers do not have to be reimbursed and that the point-of-sale rebate is a "key aspect" of the eBike rebate program that CEO administers. Moreover, CEO argues that it is more efficient for the Company to offer the eBike Pilot as a point-of-sale program at the outset rather than adjusting the program after its launch.²⁶

28. CEO argues that the Commission should direct that the program be commenced—with rebates offered at the POS—within 180 days of the TEP approval. Alternatively, CEO states that if the Commission wants to give the Company additional time, any deadline within 12 months of an effective date of the TEP would be reasonable.²⁷

²⁵ CEO's Exceptions, p. 8.

²⁶ CEO's Exceptions, p. 10.

²⁷ CEO's Exceptions, pp. 10-11.

29. Finally, as with the IQ EV Purchase Rebate, CEO requests that the Company be required to file a report, jointly completed with CEO, describing the status of the point-of-sale eBike Rebate Program. The first filing would be concurrent with the deadline to implement the point-of-sale eBike Rebate Program (*i.e.*, 180 days after TEP approval) and then subsequent updates would be provided as part of the standard semi-annual reports.²⁸ CEO asks that the status report for the eBike Pilot include the following metrics:

- Updates on program development, implementation, and modification;
- The number of locations (bike shops, etc.) engaged to-date regarding rebates;
- The number of participating locations accepting the Company's rebates;
- Marketing and outreach materials developed and distributed to IQ customers and bicycle shops related to the rebates²⁹

c. Black Hills Response

30. In its Response, Black Hills states that it is agreeable to filing status reports on both the IQ EV Purchase Rebate Program and the eBike Pilot per CEO's requests in Exceptions.³⁰ Black Hills objects, however, to CEO's requests that the Company be required to implement either the IQ EV Purchase Rebate Program or the IQ eBike Pilot as point-of-sale rebates within a date certain.

31. Black Hills emphasizes that it wants to offer point-of-sale rebates if there is a feasible and cost-effective way to do so, and has agreed to collaborate with CEO to explore a solution. Black Hills states, however, that to implement a point-of-sale rebate program, the

²⁸ CEO's Exceptions, p. 11.

²⁹ CEO's Exceptions, p. 11.

³⁰ Black Hills' Response, p. 22.

Company would need to enter agreements with all participating bike and automobile dealers, and ensure that those dealers understand the preapproval and eligibility requirements for the rebates. Doing so, Black Hills asserts, is administratively burdensome, and outsourcing that work to a third-party administrator is costly.³¹ As support, Black Hills states that for the related rebate programs that CEO runs, CEO does not self-administer point-of-sale rebates but pays a third-party significant money to do so. The Company further argues that the small size of the Company's programs (up to 28 \$2,500 rebates for EVs and 60 \$500 rebates for eBikes) makes paying any substantial amount of money to a third-party administrator infeasible, and the Company's internal resources are inadequate to accomplish the burdensome and time-intensive task of administering a point-of-sale rebate program.³²

32. Finally, Black Hills asserts that implementing the IQ EV Purchase Rebate Program and the IQ eBike Pilot as point-of-sale rebates is unnecessary. The Company argues that the simplified and relatively expansive eligibility criteria that the Settlement Agreement establishes greatly reduces the need for a point-of-sale rebate program. Moreover, other federal and state tax rebates will soon be available at the point of sale, thus reducing the need for Black Hills to offer point-of-sale rebates.³³

d. Commission Findings and Recommendations

33. The Commission grants CEO's Exceptions regarding the IQ EV Purchase Rebate and the IQ eBike Pilot Programs. We find that requiring these rebates to be administered at the point-of-sale better aligns with the policy direction of related state and federal rebate programs. The record in this Proceeding demonstrates that both state and federal rebates for EV purchases

³¹ Black Hills' Response, p. 23.

³² Black Hills' Response, pp. 23-24.

³³ Black Hills' Response, pp. 24-25.

are increasingly moving to a point-of-sale structure.³⁴ There are good reasons for this shift. As CEO notes, point-of-sale rebates are more effective at increasing adoption and have greater benefit to lower-income households and households with lower tax burden. Simply put, point-of-sale rebates help break down a massive barrier to EV adoption—the upfront purchase price.

34. Conversely, we find unconvincing Black Hills’ arguments regarding the costs and administrative burdens associated with implementing point-of-sale rebates. Although important, these programs are modest in size. The IQ EV Purchase Rebate Program might produce a total of 28 rebates over the three-year TEP, and the IQ eBike Pilot might produce a total of 60 eBike rebates over that same period.³⁵ The type of process necessary to administer these programs does not need to rise to the level of complexity or sophistication necessary for statewide programs.

35. Accordingly, the Commission directs Black Hills to implement both the IQ EV Purchase Rebate Program and the IQ eBike Pilot as point-of-sale rebate programs. The Company shall have 180 days within which to commence both the IQ EV Purchase Rebate Program and the IQ eBike Pilot with point-of-sale rebates.

36. Black Hills shall also file additional reporting on these programs, consistent with CEO’s Exceptions.³⁶ Within 180 days, the Company shall file a status report, prepared jointly with CEO, describing the status of the IQ EV Purchase Rebate Program as well as another such

³⁴ See Recommended Decision, pp. 41-42.

³⁵ Recommended Decision, ¶ 107; Joint SOP, p. 4.

³⁶ As noted above, Black Hills does not oppose CEO’s requests for additional reporting. (Black Hills’ Response, p. 22).

joint status report for the IQ eBike Pilot. These joint status reports shall detail, at a minimum, the metrics set forth in CEO's Exceptions. Subsequent updates shall be filed for both programs as part of the standard semi-annual TEP reports.

3. Compliance TEP Filing

a. Exceptions and Response

37. CEO also requests the Commission direct the Company to file an amended version of its TEP into this Proceeding within 30 days of a final Commission decision that reflects any changes adopted during the pendency of this Proceeding. CEO argues that Black Hills has made similar filings for its customer programs in the past, and that these filings increase transparency for the Commission and stakeholders.³⁷

38. In its Response, Black Hills states that it is agreeable to CEO's request to file an updated TEP.³⁸

b. Commission Findings and Conclusions

39. The Commission grants CEO's request and directs Black Hills to file, within 30 days, an amended version of the Company's TEP that reflects any changes adopted during the pendency of this Proceeding. This filing will help the Commission and stakeholders better monitor how Black Hills implements its approved TEP programs, and Black Hills does not oppose it.

³⁷ CEO's Exceptions, p. 12.

³⁸ Black Hills' Response, p. 22

4. Dedicated Funding for Community-Based Organizations

a. Recommended Decision

40. The Recommended Decision rejects EJC's request that Black Hills pay an additional \$300,000 (\$100,000 per year) to directly compensate community-based organizations (CBOs) as part of the Customer Communication Plan. The Recommended Decision likewise rejects CEO's request for an additional \$100,000 over the entire plan period to fund CBOs. In rejecting these requests, the Recommended Decision notes that the Settlement Agreement already allows Black Hills to compensate CBOs when they partner with the Company. The Recommended Decision "encourages the Company to leverage the approved budget to partner with [CBOs], including compensating them for their efforts, as appropriate" but states that there is a lack of evidence regarding how direct funding for CBOs would benefit customers.³⁹ The Recommended Decision further notes that there are no suggested parameters for how CBOs would use such funds, nor metrics to measure the effectiveness and prudence of the expenses.

b. Exceptions

41. In Exceptions, EJC continues to argue that the Commission should require Black Hills to dedicate an additional \$300,000 (\$100,000 annually) toward CBO-led outreach and education. EJC clarifies that the Company would fund CBOs who would then use such funding to conduct outreach and education.⁴⁰

42. EJC states that the Commission should amend the Recommended Decision and approve EJC's funding requests for CBO for various reasons. First, EJC asserts that—contrary

³⁹ Recommended Decision, p. 61.

⁴⁰ EJC's Exceptions, pp. 5-6.

to the Recommended Decision’s findings—there is sufficient evidentiary support for direct CBO funding. Arguing that Black Hills’ current strategies are ineffective, EJC points to the Company’s own survey data that shows that higher-income customers are more familiar with EVs, and Black Hills’ programs, while customers with the lowest incomes were the least familiar with the Company’s EV rebates.⁴¹ Conversely, EJC argues that testimony from EJC and CEO demonstrates that funding CBOs will improve community outreach and education. According to EJC, such evidence is not “conclusory” as the Recommended Decision claims, and the Commission should weigh this evidence alongside the Company’s lackluster inaugural TEP results.⁴²

43. In addition, EJC asserts that CBO-led outreach is a recognized best practice utilized by other utilities, the Commission, and other state agencies. Specifically, EJC states that the approved budget in Public Service Company of Colorado’s 2022-2025 Renewable Energy Plan includes money for CBO, outreach, education, and other program implementation partnerships;⁴³ the Commission has used partnerships with CBOs in Proceeding No. 21R-0449G; and the Colorado Environmental Justice Action Task Force has adopted the use of CBO expertise to conduct outreach as a best practice.⁴⁴

44. As to the Recommended Decision’s point that there are no suggested parameters for how CBOs would use such funds, nor metrics to measure the effectiveness of the expenditures, EJC asserts that the Commission should not reject EJC’s outreach and education

⁴¹ EJC’s Exceptions, p. 7.

⁴² EJC’s Exceptions, pp. 9-10 (citing Recommended Decision, at ¶ 140 n.296).

⁴³ EJC also states that “Public Service intends to provide this type of outreach in its pending TEP.” (EJC’s Exceptions, p. 11 (citing Proceeding No. 23A-0242E)).

⁴⁴ EJC’s Exceptions, pp. 11-12.

proposal based on a standard that the Company's own proposal also fails to meet.⁴⁵ EJC similarly dismisses the point that the Settlement Agreement allows Black Hills to compensate CBOs, arguing that this type of compensation is not a substitute for outreach and education that CBO directly conducts.⁴⁶

45. Finally, EJC argues that, in rejecting EJC's request for CBO funding, the Recommended Decision ignores a relevant statutory factor. EJC asserts that the Recommended Decision exclusively analyzes whether EJC's proposal minimizes the overall costs and maximizes the overall benefits, but fails to consider whether the TEP will provide access for low-income customers.⁴⁷ EJC asserts that it is a basic administrative principle that an agency must consider all relevant factors. EJC further argues that the Commission must also provide equity, minimize impacts, prioritize benefits to disproportionately-impacted (DI) communities, and address historical inequalities.⁴⁸

c. Responses

46. In its Response, Black Hills urges the Commission to reject EJC's request to include \$300,000 in direct funding for CBOs. Black Hills reiterates the Recommended Decision's findings regarding the lack of evidentiary support for CBO funding, and cites testimony from Staff that the \$300,000 in direct funding for CBOs would essentially be a "blank check."⁴⁹ Black Hills further asserts that, during cross examination, EJC witness Ms. Macomber confirmed that her recommendation for CBO funding does not include a list of eligible CBOs, the criteria that a CBO must meet to receive funding, a process for selecting CBOs, or any

⁴⁵ EJC's Exceptions, p. 12.

⁴⁶ EJC's Exceptions, pp. 12-13.

⁴⁷ EJC's Exceptions, p. 13 (citing § 40-5-107(2)(g), C.R.S.)

⁴⁸ EJC's Exceptions, p. 13 (citing § 40-2-108(3)(a)(II), (b), C.R.S. (SB 272); § 40-5-107(2)(d)(I), (g), C.R.S.).

⁴⁹ Black Hills' Response, p. 6.

reporting that would be used regarding how the funds were spent.⁵⁰ Black Hills goes on to argue that cross-examination testimony from CEO and EJC witnesses indicate that there is no record evidence that dedicated funding for CBOs will yield results commensurate with the amount of funding being dedicated.⁵¹

47. Black Hills also pushes back against EJC's assertions that the Company's communication and education efforts have so far been unsuccessful. The Company states that, based on its surveys, the number of customers who indicated they were "very aware" of the Ready EV Plan doubled between the first and second year of the TEP. Black Hills notes that going forward, the Company will focus its communications efforts on IQ customers, DI communities, bilingual customers, and women.⁵²

48. Instead of the direct funding for CBOs that EJC requests, the Company argues that partnering with CBOs is the more appropriate approach. Emphasizing the Recommended Decision's finding that the Settlement Agreement already allows the Company to compensate CBOs for their partnership, Black Hills states that building trust with customers and communities will continue using the existing Communications Plan budget, including partnerships with CBOs. In addition, citing Public Service's Rebuttal Testimony in the Public Service TEP proceeding, Black Hills asserts that Public Service does not support creating a specific CBO grant program, but instead "intends to partner with CBOs to better understand community needs."⁵³ While Black Hills states that it is "happy to partner with CBO's [sic] using the TEP

⁵⁰ Black Hills' Response, p. 7.

⁵¹ Black Hills' Response, pp. 7-8.

⁵² Black Hills' Response, pp. 11-12.

⁵³ Black Hills' Response, p. 11 n.27 (citing Proceeding No. 23A-0242E, Hearing Exhibit 116 (Patrick Murphy Rebuttal Testimony), p. 34).

events budget of \$190,000,” it argues that the Company should have management discretion to choose which events and CBOs to support.⁵⁴

d. Commission Findings and Conclusions

49. The Commission denies EJC’s Exceptions as to the additional \$300,000 in direct funding for CBOs, but we modify the Recommended Decision to provide more structure for Black Hills’ efforts to partner with CBOs. EJC’s arguments in Exceptions fail to address the unanswered question of whether the additional \$300,000 will be an effective use of ratepayer funds, given that the Settlement Agreement already allows—and the Recommended Decision encourages—Black Hills to leverage the \$588,501 allocated for the Customer Communication Plan to partner with CBOs. At bottom, we agree with the Recommended Decision that there is an insufficient basis to conclude that direct funding of CBOs will bring about benefits that cannot be achieved by using the existing budget to partner with CBOs, and that such benefits warrant an additional \$300,000.

50. EJC argues that compensating CBOs if they assist the Company with Black Hills-led events “is not a substitute for outreach and education that is directly conducted by [CBOs].”⁵⁵ This argument mischaracterizes what the Settlement Agreement permits and what the Recommended Decision encourages. The Recommended Decision “encourages the Company to leverage the approved budget to partner with [CBOs], including compensating them for their efforts, as appropriate.”⁵⁶ Nowhere does the Recommended Decision condition CBO compensation to only events that are led by Black Hills. Indeed, in its Response, Black Hills

⁵⁴ Black Hills’ Response, pp. 12-13.

⁵⁵ EJC’s Exceptions, p. 13.

⁵⁶ Recommended Decision, ¶ 140.

suggests that partnership with a CBO could include supporting or sponsoring a CBO event.⁵⁷ The evidence in the record does not establish that partnering with a regulated utility somehow reduces the value of community-led outreach and education.

51. The Commission is also unpersuaded by EJC's argument that the Recommended Decision fails to consider other relevant statutory criteria, such as whether the TEP will provide access for low-income customers per § 40-5-107(2)(g), C.R.S.⁵⁸ The Recommended Decision cites many reasons, including those from the Settling Parties, for why EJC's proposal to fund CBOs is not in the public interest. Notably, the ALJ found in her analysis that "the record lacked evidentiary support demonstrating that direct funding to community-based organizations will yield results commensurate with the amount of funding dedicated to them, or that Black Hills' customers could receive benefits through that funding that they could not receive through the Agreement's Customer Communications Plan and budget."⁵⁹ Moreover, the Recommended Decision expressly states that "the ALJ considered all the relevant factors in § 40-5-107, C.R.S.,"⁶⁰ and it references § 40-5-107(2)(g) multiple times, including in regards to the multi-family housing rebates and the IQ EV Purchase Rebate Program.⁶¹ Thus, contrary to EJC's claim, the Recommended Decision finds that EJC failed to provide sufficient evidence to support its advocacy, or why its proposal met the standards found in subsection 107(2)(g) and clearly and explicitly states that the ALJ considered all factors in 107(1)(b) as well as 107(2)(g).

52. Regardless, the Commission clarifies that, in its review of the record, the Commission has considered EJC's proposals in light of whether the approved TEP investments

⁵⁷ Black Hills' Response, p. 12 ("[I]t could be that a CBO comes to us and asks if we will support or sponsor their event.") (quoting Ms. Rodriguez's testimony).

⁵⁸ EJC's Exceptions, p. 13 (citing § 40-5-107(2)(g), C.R.S.)

⁵⁹ Recommended Decision, ¶ 140.

⁶⁰ Recommended Decision, ¶ 153.

⁶¹ See Recommended Decision, ¶¶ 78, 106.

and other expenditures are reasonably expected to provide access to low-income customers. After consideration of all of the relevant statutory factors, the Commission concludes that EJC's proposal is not in the public interest, given the totality of the TEP programs already designed to provide access to low-income customers.⁶²

53. While the Commission declines to grant EJC's request for additional funds for direct CBO funding, we strongly encourage Black Hills to use \$100,000 out of the existing budget for community events/sponsorships to fund partnerships with CBOs,⁶³ and we will require Black Hills to expressly address in its annual TEP reports whether the Company is on track to meet this expectation. EJC raises legitimate concerns with the results of Black Hills' outreach and education efforts in its inaugural TEP. We find that Black Hills should make more of an effort to partner with CBOs to engage in effective communication and outreach, beyond simply sponsoring various events. The focus of the community events/sponsorship budget should in large part be partnering with CBOs.

54. Our hope and expectation is that Black Hills will use \$100,000 for CBO partnerships during the three-year TEP. We note, however, that the Settlement Agreement provides for a certain amount of budget flexibility.⁶⁴ To the extent the Company finds

⁶² Granting EJC's request for \$300,000 in direct funding for CBOs is not the only way to advance access for low-income customers. The enhanced residential rebates for IQ customers, the IQ multi-family housing grants, the IQ eBike Pilot, and the Recommended Decision's modification of the Settlement Agreement to include an IQ EV Purchase Rebate Program are all examples of TEP programs that will provide access for low-income customers per § 40-5-107(2)(g).

⁶³ To be clear, the three-year budget for community events/sponsorships is \$190,000. (Recommended Decision (Appendix A), ¶ 54). We strongly encourage Black Hills to reallocate \$100,000 from this existing \$190,000 to fund partnerships with CBOs. This \$100,000 is for the total three-year period covered by the TEP.

⁶⁴ Recommended Decision (Appendix A), ¶¶ 17-19.

partnerships with CBOs to be beneficial, the Company may increase the amount of funds used for CBO partnerships in accordance with the approved budget flexibility provisions in the Settlement Agreement.

5. Dedicated School Bus Electrification Program

a. Recommended Decision

55. The Recommended Decision approves the Settlement Agreement's provisions regarding the Fleet Electrification Pilot.⁶⁵ Pursuant to these provisions, Black Hills will allocate \$20,000 per year, for a total three-year budget of \$60,000 to educate customers about the benefits of fleet electrification and the available rebates and tax credits; provide an analysis and personalized recommendation for the customer's fleet electrification needs; and provide coaching, grant writing, and application assistance to fleet customers, as needed. Black Hills must work with ten potential fleet customers each year, including at least two school districts each year.⁶⁶ CEO, Staff, Black Hills, and UCA all support these provisions in the Settlement Agreement.⁶⁷

56. In conjunction with approving the Fleet Electrification Pilot, the Recommended Decision rejects EJC's recommendations regarding electric school buses. The Recommended Decision notes that, since the Commission approved Black Hills' inaugural TEP, circumstances have changed dramatically, and the Fleet Electrification Plan will help school districts take advantage of available federal funds as well as advise and educate mass-transit agencies and similar entities about the benefits of fleet electrification.⁶⁸

⁶⁵ Recommended Decision, ¶ 121.

⁶⁶ Recommended Decision (Appendix A), ¶ 40.

⁶⁷ See CEO's SOP, p. 29.

⁶⁸ Recommended Decision, ¶ 121.

b. Exceptions

57. EJC requests that the Commission amend the Recommended Decision and direct Black Hills to implement an electric bus program that (1) focuses on school districts; (2) provides a \$200,000 annual budget for a total budget of \$600,000; and (3) includes a specific time-of-day rate for school districts, incentives for EV Supply Equipment (EVSE), and technical assistance.⁶⁹ EJC argues that in rejecting its electric bus proposal, the Recommended Decision solely focuses on the cost impacts while ignoring other statutory considerations, including whether TEP programs are reasonably expected to contribute to “improving air quality in communities most affected by emissions from the transportation sector.”⁷⁰ EJC asserts that a dedicated electric school bus program would improve air quality and would help address the harmful diesel fumes that affect children.⁷¹

58. EJC goes on to argue that the new federal government programs do not obviate the need for a school bus electrification program. Rather, the federal programs demand a robust program that complements and maximizes the use of federal incentives. EJC asserts that, under its proposal, Black Hills would offer additional incentives to school districts that complement federal programs, allowing the Company to better address the needs of school districts and defray the initial costs of electric school buses.⁷²

⁶⁹ EJC’s Exceptions, p. 15.

⁷⁰ EJC’s Exceptions, p. 15 (quoting § 40-5-107(2)(d)(I), C.R.S.).

⁷¹ EJC’s Exceptions, pp. 15-16.

⁷² EJC’s Exceptions, p. 16.

59. Finally, EJC asserts that the Company failed to comply with the Commission's inaugural TEP Decision, which requires the Company to implement a mass-transit rebate program and an electric bus pilot program. EJC argues that its requested electric school bus program will meet the Commission's requirements from the inaugural TEP while better supporting school districts.⁷³

c. Response

60. In its Response, Black Hills states that there is no public policy dispute that fleet electrification, including school bus electrification, should be promoted at reasonable cost. Citing the high cost of electric school buses, however, Black Hills asserts that EJC's requested \$600,000 addition to the TEP budget would, at best, add one or two electric school buses. Black Hills argues that the Fleet Electrification Plan in the Settlement Agreement offers a better approach in which the Company would help school districts and public transit agencies seek federal funding.⁷⁴

61. Black Hills goes on to argue that even without a specific electric school bus rebate, the Company's TEP still benefits school districts. The Company notes that school districts can apply for EV equipment rebates that could be used in combination with the expected federal funding. Black Hills specifically notes that the TEP's commercial rebates can be used by mass-transit agencies, other governmental entities, and school districts to develop infrastructure for fleet electrification.⁷⁵

⁷³ EJC's Exceptions, pp. 17-18.

⁷⁴ Black Hills' Response, pp. 13, 15.

⁷⁵ Black Hills' Response, pp. 13-14.

62. Finally, Black Hills characterizes EJC’s argument regarding the failure to consider all statutory factors as “nonsense.” The Company asserts that the benefits the Recommended Decision discusses implicitly include improvements to air quality and that the “shall consider” language in the statute simply affords the Commission discretion to make a decision regarding the subject matter in question.⁷⁶

d. Commission Findings and Conclusions

63. The Commission rejects EJC’s request in Exceptions for an additional \$600,000 for school bus electrification. CEO and the Settling Parties support the Settlement Agreement’s approach that would require Black Hills to work with school districts and other fleet customers to provide, among other things, personalized recommendations and assistance with grant writing and application assistance. We agree with these parties and find that requiring Black Hills to proactively help school districts pursue federal funding pursuant to the Settlement Agreement promotes school bus electrification while balancing the relatively high costs of electric school buses with the need to keep rates affordable.

64. EJC’s arguments do not convince us that we should add an additional \$600,000 for electric school buses. For instance, the TEP already complements the use of federal incentives in a manner that all the other parties to this Proceeding support. The Fleet Electrification Pilot helps school districts obtain federal funding, and the commercial rebates under the TEP can be used to help school districts defray the costs of EVSE for electric school buses. While additional funding for school bus electrification may further promote school bus electrification with its associated benefits—including improving air quality benefits⁷⁷—we find

⁷⁶ Black Hills’ Response, p. 15.

⁷⁷ To clarify, in our review of the record, we considered all of the relevant statutory factors, including whether TEP investments are reasonably expected to improve air quality.

that the Recommended Decision strikes an appropriate balance between the benefits of school bus electrification and the need to protect affordability.

65. As for the directives from Black Hills' inaugural TEP, EJC is correct that the Commission directed Black Hills to work with stakeholders to implement a mass transit infrastructure rebate program and an electric bus pilot program in the inaugural TEP or propose such programs in the 2024-2026 TEP.⁷⁸ In its Answer Testimony in this Proceeding, however, Staff recommends that the Commission waive this directive at least for the 2024-2026 TEP, in part because of the City of Pueblo's plans to move its transit center.⁷⁹ The Recommended Decision notes that transit agencies and school districts make their own decisions based on factors that are often outside of the Company's control, and states that circumstances have dramatically changed since the Commission's Decision in the inaugural TEP.⁸⁰

66. We agree with the Recommended Decision's reasoning. Given the facts presented in this Proceeding, including the opportunity to receive significant federal funding, it is not appropriate to require Black Hills to implement a rebate program specific to mass transit or school bus electrification in its 2024-2026 TEP. Accordingly, the Commission waives the directive from Black Hills' inaugural TEP to implement a mass-transit infrastructure rebate program and an electric bus pilot program.⁸¹

⁷⁸ Proceeding No. 20A-0195E, Decision No. C21-0651, issued November 12, 2021, ¶ 39.

⁷⁹ Through discovery, Staff learned that the City of Pueblo is hesitant to invest in infrastructure to support e-buses because it plans to relocate its transit center in the near future. Staff states that collaboration with and buy-in from local transit authorities is essential. (HE 400 (Eric Haglund Answer Testimony), pp. 17-19.)

⁸⁰ Recommended Decision, ¶ 121.

⁸¹ Proceeding No. 20A-0195E, Decision No. C21-0651 ¶ 39.

6. Dedicate Residential Charging Rebates to IQ Customers

a. Recommended Decision

67. The Recommended Decision approves the Settlement Agreement provisions regarding rebates that are designed to help offset the costs of installing residential EV chargers.⁸² Under these provisions, residential customers can receive a \$500 dollar rebate to offset the costs of new wiring necessary for a Level 2 EV charger.⁸³ In addition, IQ customers who purchase and install a Level 2 charger qualify for a \$1,300 rebate.⁸⁴ CEO and the Settling Parties support these provisions.⁸⁵

68. In approving these provisions, the Recommended Decision rejects arguments from EJC that only IQ customers should be eligible to receive residential EV rebates. The Recommended Decision states that EJC's suggestion to restrict residential rebates to IQ customers is inconsistent with the General Assembly's goal to encourage widespread transportation electrification.⁸⁶

b. Exceptions

69. In its Exceptions, EJC continues to argue that the Company should fully allocate its residential rebate program to IQ customers so that Black Hills can begin to address the additional cost barriers and needs of IQ customers in the EV transition. EJC argues that the Recommended Decision fails to consider the evidence for the need for dedicated IQ charger rebates. Specifically, EJC cites evidence that IQ customers face additional cost barriers and other financial needs in the EV transition.⁸⁷

⁸² Recommended Decision, pp. 31-32, 47.

⁸³ Recommended Decision (Appendix A), ¶ 38(i).

⁸⁴ Recommended Decision (Appendix A), ¶ 43(i).

⁸⁵ See CEO's SOP, p. 29.

⁸⁶ Recommended Decision, ¶ 79.

⁸⁷ EJC's Exceptions, pp. 18-19.

70. In addition, EJC asserts that the Recommended Decision fails to properly consider the need to focus on IQ customers. While EJC acknowledges that widespread transportation electrification is a statutory goal, it argues that the Commission must also increase adoption and access for low-income customers and pollution-burdened communities. Given that Black Hills issued no IQ rebates in its inaugural TEP, EJC argues that fully allocating the residential rebate program to IQ customers is necessary to shift attention toward the customers most in need.⁸⁸

c. Responses

71. Black Hills states that, pursuant to § 40-5-107(2)(d)(I)(g), the goal of widespread EV adoption includes all consumers, including those with low and moderate incomes. The Company argues that EJC’s proposal would “exclude moderate-income and other customers from one of the most important aspects of the TEP, which is residential charging infrastructure rebates.”⁸⁹ Black Hills goes on to list the programs in the TEP that are already earmarked for IQ customers, including the IQ EV Purchase Rebate Program, an IQ eBike rebate, the \$1,300 residential rebate for IQ customers, and a \$2,000/port Level 2 charger rebate for multi-family housing. The Company thus argues that the totality of the TEP program expenditures is reasonably expected to provide access for low-income customers, addressing the statutory criterion in § 40-5-107(2)(g).⁹⁰

d. Commission Findings and Conclusions

72. The Commission upholds the Recommended Decision on this point and rejects EJC’s request that the Company fully allocate the residential rebate program to IQ customers. We agree with EJC’s assertions that IQ customers face additional cost barriers and other financial

⁸⁸ EJC’s Exceptions, pp. 20-21.

⁸⁹ Black Hills’ Response, p. 16.

⁹⁰ Black Hills’ Response, pp. 16-17.

needs in the EV transition and that the statute requires that widespread EV adoption include low-income consumers and underserved communities. As Black Hills notes in its Response, however, there are already several programs in the TEP that are designed specifically to increase access for low-income consumers. Notably, the TEP includes a \$1,300 residential rebate for IQ customers. The fact that this IQ residential rebate is more than twice as high as the \$500 residential rebate for non-IQ consumers is an example of the TEP addressing the additional cost barriers and financial needs of IQ customers.

73. Ultimately, we fear that EJC's recommendation to eliminate the residential rebate for non-IQ customers could slow overall adoption of EVs in Black Hills' service territory. As the EV market matures over the next few years, the Commission might reconsider EJC's proposal in subsequent TEP filings. At this point, however, it is appropriate to continue to provide support for non-IQ customers through the residential rebate program.

7. TEP Budget

a. Recommended Decision

74. The Recommended Decision approves a total TEP budget of approximately \$2.8 million. This \$2.8 million includes the additional \$70,000 for the IQ EV Purchase Rebate Program.⁹¹ In approving this budget, the Recommended Decision rejects EJC's requests to further increase the TEP budget. The Recommended Decision states that there is an elevated need to limit rate increases and notes that "each small bill increase adds up, whether due to this [TEP], overall base-rate increases, or other programs required by statute or rule."⁹² The Recommended Decision concludes that the \$2.8 million budget is appropriate given the socioeconomic circumstances in the

⁹¹ Recommended Decision, ¶ 151.

⁹² Recommended Decision, p. 66.

Company's service territory and is consistent with Commission's ongoing goals to maintain affordability and advance equity.⁹³

b. Exceptions

75. In connection with its above requests to increase the TEP budget by \$300,000 for direct funding for CBOs and by \$600,000 for a dedicated school bus electrification program, EJC asks that the Commission increase the total TEP budget to \$3.8 million.⁹⁴ EJC argues that Black Hills must invest more money into its equity programs to fulfill equity mandates and reiterates that the additional investments will make EVs more affordable for IQ customers, reduce air pollution for children, and increase collaboration with IQ customers and DI communities.⁹⁵

76. Acknowledging the Settling Parties' arguments about the rate impacts of a larger budget, EJC urges the Commission not to consider arguments on costs and bill impacts "in a vacuum."⁹⁶ EJC states that under the Settlement Agreement's budget, the average residential customer would experience a bill increase of approximately 6¢ per month in 2025, 13¢ per month in 2026, and 18¢ per month in 2027. EJC asserts that if the Commission approves EJC's proposals and its \$3.8 million budget, the average residential customer's monthly bill would only increase an additional 3¢ to 7¢ per month, compared to the Settlement Agreement. EJC argues that this 3¢ to 7¢ per month additional bill increase is reasonable because it would result in a more effective and equitable TEP.⁹⁷

77. EJC protests that the Recommended Decision does not rigorously evaluate whether the proposed budget fulfills the equity mandates in § 40-5-107, and instead focuses on

⁹³ Recommended Decision, pp. 66-67.

⁹⁴ EJC's Exceptions, p. 22.

⁹⁵ EJC's Exceptions, p. 24.

⁹⁶ EJC's Exceptions, p. 22.

⁹⁷ EJC's Exceptions, p. 23.

minimizing the TEP's rate impact. EJC asserts that "the Recommended Decision makes a misguided and unsupported assumption that socioeconomic hardship should result in less investment."⁹⁸

c. Responses

78. Black Hills characterizes EJC's arguments regarding the rate impacts of its proposed \$3.8 million budget as a "no big deal" argument, and warns that the aggregate effect of this argument across all of the programs presented to the Commission would be substantial. Black Hills argues that Staff and UCA are the only parties in this case tasked to broadly represent the public interest, and notes that they both support the Settlement Agreement's proposed budget. Black Hills further notes that CEO does not argue for an increased budget in its Exceptions, meaning that "EJC now stands alone in its increased budget request."⁹⁹

79. Black Hills goes on to state that EJC ignores how the Settlement Agreement adopts EJC's position that no budget be shifted away from IQ or DI programs, and also requires that the Company not shift more than 50 percent of budgets between programs. In addition, Black Hills states that under the Settlement Agreement, unspent funds will be rolled over from year to year, and rolled-over funds from programs designated to serve IQ and DI Communities must remain earmarked for IQ/DI programs.¹⁰⁰

d. Commission Findings and Conclusions

80. The Commission rejects EJC's request to enlarge Black Hills' TEP budget to \$3.8 million. While EJC states that arguments on costs and bill impacts should not be considered "in a vacuum," this is essentially what EJC does when it simply looks at the differential between the

⁹⁸ EJC's Exceptions, pp. 23-24.

⁹⁹ Black Hills' Response, pp. 19-20.

¹⁰⁰ Black Hills' Response, pp. 20-21.

monthly bill impact under a \$2.8 million budget and a \$3.8 million budget. As Black Hills notes, if all of the proceedings before the Commission followed this approach, it would have a substantial aggregate effect. In this vein, the Recommended Decision correctly looks at this TEP budget alongside the current energy burden many Black Hills' customers face and the larger regulatory environment that impacts the rates that customers will pay.¹⁰¹

81. In addition, we find unpersuasive EJC's argument that the Recommended Decision focuses on minimizing the TEP's rate impact while providing only general conclusions regarding the other required considerations. This argument glosses over the arguments considered and analysis provided throughout the 71-page Recommended Decision, including that the Recommended Decision modified the Settlement Agreement's proposed budget to include an additional \$70,000 for an IQ EV Purchase Rebate program. Although additional investment might have some incremental benefits regarding some of the required statutory considerations, the Commission must balance any such incremental benefits with cost concerns. We find that the Recommended Decision strikes the appropriate balance with the approved \$2.8 million budget.

8. Expanded Eligibility Criteria for Equity Programs

a. Recommended Decision

82. The Recommended Decision adopts the Settlement Agreement's IQ program eligibility criteria, as modified during the hearing. The Recommended Decision reasons that eligibility criteria "provide simplified, reasonable, and relatively expansive and inclusive criteria that the Company will be able to implement without delay."¹⁰²

¹⁰¹ Recommended Decision, ¶ 150.

¹⁰² Recommended Decision, ¶ 114.

83. The Recommended Decision goes on to reject EJC’s request to use the eligibility criteria that the Commission will approve in Public Service’s pending TEP proceeding (Proceeding No. 23A-0242E), noting that until a Commission has issued a decision in that proceeding, it is unknown what the Commission will decide.¹⁰³

b. Exceptions

84. EJC continues to argue that the Commission should proactively require Black Hills to adopt the eligibility criteria the Commission approves in Public Service’s pending TEP proceeding. Noting again how Black Hills did not issue any equity rebates during its inaugural TEP, EJC reasons that widening the pool of applicants could help program uptake. EJC further argues that equity requires consistency among Colorado’s utilities. Ultimately, EJC recommends that the Commission direct Black Hills to update its equity program qualification criteria to be consistent with Public Service’s eligibility criteria within 60 days of the Commission’s final decision in Public Service’s 2024–2026 TEP proceeding.¹⁰⁴

c. Response

85. Black Hills counters that the EJC proposal is legally improper. Black Hills notes the ALJ rejected EJC’s proposal because “until the Commission has issued a decision [in the Public Service’s TEP Proceeding], it is unknown what the Commission will decide.”¹⁰⁵ Black Hills argues that to apply “whatever is decided” in the Public Service TEP proceeding to Black Hills’ TEP violates the due process rights of every party to this Proceeding. Black Hills states the evidentiary record in the Public Service TEP proceeding has not been adopted or administratively noticed in the Black Hills TEP Proceeding. Consequently, no party in this

¹⁰³ *Id.*

¹⁰⁴ EJC’s Exceptions, pp. 21-22.

¹⁰⁵ Recommended Decision, ¶ 114.

Proceeding has had the opportunity to consider and respond to whatever eligibility proposals have been made in the Public Service TEP proceeding.

86. Black Hills finds EJC's argument non-availing that whatever happens in a Public Service proceeding must also be adopted in a Black Hills proceeding because of "equity." Black Hills points out that it, Public Service, and the Commission have stated on various occasions that Black Hills is differently-situated than Public Service in many respects, including utility resources, customer base, geography, and other measures. As a result, the Commission has often reached different decision points in Public Service proceedings than Black Hills proceedings, even regarding the same subject matter.

d. Commission Findings and Conclusions

87. The Commission agrees with the Company's due process claim and denies EJC's Exceptions on this point. To require Black Hills to adhere to a decision in a different proceeding, involving a different utility with different issues, in a proceeding in which it did not participate, is a clear violation of Black Hills' due process rights.

88. Administrative due process is determined on a sliding scale. It is not fixed in time or place. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."¹⁰⁶ This fundamental requirement of due process is not fixed or rigid. "[T]he process required by [the Due Process Clause] with respect to the termination of a protected interest will vary depending upon the importance attached to the interest and the particular circumstance under which the deprivation may occur."¹⁰⁷

¹⁰⁶ *Whiteside v. Smith*, 6 P.3d 1240, 1248 (2003) (citing, *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)), (citing, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

¹⁰⁷ *Walters v. Radiation Survivors*, 473 U.S. 305, 320; *see also*, *Cafeteria and Rest. Workers v. McElroy*, 367 U.S. 886, 895 (1961).

89. To determine whether the flexible requirements of due process are satisfied, a decision maker must analyze the affected private and government interests by weighing three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.¹⁰⁸

90. Here, the private interest affected by EJC's proposal is Black Hills' right to notice and opportunity to be heard. By subjecting it to the requirements of the decision in the Public Service TEP hearing without the opportunity to participate or to be heard on the effects of a decision it had no part in will certainly affect Black Hills' ability to reasonably and effectively participate in a process that will nonetheless affect it directly. Requiring Black Hills to adhere to the Public Service TEP decision will also erroneously deprive it of its due process rights. There is no government-related interest in requiring Black Hills to adhere to the Public Service TEP decision, and the fiscal and administrative burdens associated with the administrative and possibly judicial appeal processes Black Hills would undoubtedly incur would be substantial.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R23-0843, filed January 8, 2024, by Colorado Energy Office, are granted, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R23-0843, filed January 8, 2024, by the Office of the Utility Consumer Advocate are denied, consistent with the discussion above.

¹⁰⁸ *Whiteside* 6 P.3d at 1248-49 (citing *Mathews* 424 U.S at 335).

3. The exceptions to Recommended Decision No. R23-0843, filed January 8, 2024, by GreenLatinos, Mothers Out Front, Vote Solar, and Womxn from the Mountain are denied, consistent with the discussion above.

4. The 20-day time period provided pursuant to § 40-6-116, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 14, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners