Decision No. C22-0485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21AL-0494E

IN THE MATTER OF ADVICE LETTER NO. 1867 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS P.U.C. NO. 8 - ELECTRIC TARIFF FILING TO (1) UPDATE THE SCHEDULE SECONDARY VOLTAGE TIME-OF-USE - ELECTRIC VEHICLE SERVICE AS SCHEDULE S-EV-CRITICAL PEAK PRICING (SCHEDULE S-EV-CPP), (2) INTRODUCE A NEW SCHEDULE SECONDARY VOLTAGE - ELECTRIC VEHICLE SERVICE (SCHEDULE S-EV), (3) PROPOSE A NEW RATE FOR COMPANY-OWNED DIRECT CURRENT FAST CHARGING STATIONS WITHIN SCHEDULE ELECTRIC VEHICLE CHARGES (SCHEDULE EVC), AND (4) PROPOSE AN EQUITY PERFORMANCE INCENTIVE MECHANISM IN THE TRANSPORTATION ELECTRIFICATION PROGRAMS ADJUSTMENT (TEPA) TARIFF, TO BECOME EFFECTIVE NOVEMBER 14, 2021.

COMMISSION DECISION GRANTING, IN PART, AND DENYING, IN PART, EXCEPTIONS TO RECOMMENDED DECISION NO. R22-0378 AND REQUIRING COMPLIANCE FILING

Mailed Date: August 15, 2022
Adopted Date: August 3, 2022

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the exceptions filed to Recommended Decision No. R22-0378, issued June 24, 2022, by Administrative Law Judge (ALJ) Conor Farley (Recommended Decision).

2. The Recommended Decision permanently suspends the effective date of the tariff sheets filed by Public Service Company of Colorado (Public Service or the Company) with Advice Letter No. 1867 – Electric, filed October 15, 2021, to implement changes to its P.U.C. No. 8 – Electric tariff.[1] The Recommended Decision accepts, without modification, the Nonunanimous Partial Stipulation among the Colorado Energy Office (CEO), ChargePoint, Inc. (ChargePoint), Electrify America, LLC (Electrify America), and EVgo Services, LLC (EVgo) that addresses the rates and charges for Public Service-owned Direct Current Fast Charging (DCFC) stations (First Stipulation). The Recommended Decision accepts, without modification, the Nonunanimous Partial Stipulation among CEO, ChargePoint, Electrify America, EVgo, and Tesla, Inc. (Tesla) that addresses the rates and charges for commercial electric vehicle (EV) charging (Second Stipulation). The Recommended Decision denies, in most part, the Joint Motion for Approval of Non-Unanimous Comprehensive Settlement Agreement between Public Service and Trial Staff of the Colorado Public Utilities Commission (Staff).

3. Public Service, Staff, the Colorado Office of the Utility Consumer Advocate (UCA), and, jointly, CEO and Western Resource Advocates (WRA), filed exceptions seeking to

[1] Public Service filed an amendment to Advice Letter No. 1867 on April 6, 2022 that caused the suspension period of its proposed tariff changes to be extended through August 21, 2022.

reverse or modify portions of the Recommended Decision. Responses were filed by CEO, Electrify America, Public Service, UCA, and, jointly, ChargePoint, EVgo, and Tesla.

4. After considering the filed exceptions, the responses thereto, and the evidentiary record in this Proceeding, the Commission grants, in part, and denies, in part, the exceptions. We uphold the Recommended Decision except as modified by this Decision. To implement the approved changes to the Company's rates, Public Service is ordered to file on not less than two business days' notice to the Commission, modified tariff sheets consistent with the Recommended Decision, as modified by this Decision.

B. Background

5. In addition to Public Service, the parties to this Proceeding are CEO, ChargePoint, Electrify America, EVgo, Staff, Tesla, UCA, and WRA.

6. Through Advice Letter No. 1867 – Electric, filed October 15, 2021, the Company proposed to: (1) update the current secondary voltage time-of-use EV service rate and rename it as Schedule S-EV-CPP; (2) add a new secondary voltage time-of-use electric vehicle service rate without a critical peak pricing element (new Schedule S-EV); (3) add a rate for Public Service-owned DCFC stations in the Company's Schedule Electric Vehicle Charges (Schedule EVC); and (4) and include an equity performance incentive mechanism (Equity PIM) in the Transportation Electrification Programs Adjustment (TEPA) tariff.

7. Parties subsequently filed several stipulations and settlements. First, on March 31, 2022, CEO, ChargePoint, Electrify America, and EVgo filed the First Stipulation, agreeing to a single position concerning the prices charged at Company-owned DCFC stations under Schedule EVC. Then, on April 4, 2022, Public Service and Staff filed a joint motion to approve

the Non-Unanimous Comprehensive Settlement Agreement (Settlement Agreement) between those two parties. Finally, during the evidentiary hearing held April 21 through 22, 2022, the ALJ admitted into evidence the Second Stipulation among CEO, ChargePoint, Electrify America, EVgo, and Tesla, agreeing to rates and charges for Schedule S-EV and Schedule S-EV-CPP.

8. On June 24, 2022, the ALJ issued his Recommended Decision. The Recommended Decision accepts, without modification, the First Stipulation and the Second Stipulation, and adopts the stipulating parties' proposed rates and charges for Schedule EVC, Schedule S-EV, and Schedule S-EV-CPP. The Recommended Decision adopts the dwell charge rates and terms in Schedule EVC proposed by Public Service and Staff in the Settlement Agreement, but otherwise denies the request to approve the Settlement Agreement. The Recommended Decision permanently suspends the tariff sheets filed by Public Service pursuant to Advice Letter No. 1867 – Electric and instructs the Company to file modified tariff sheets consistent with the Recommended Decision, with an effective date of August 22, 2022.

9. On July 14, 2022, Public Service, Staff, UCA, and, jointly, CEO and WRA filed exceptions seeking to reverse or modify portions of the Recommended Decision. Responses were filed on July 22, 2022, by CEO, Electrify America, Public Service, UCA, and, jointly, ChargePoint, EVgo, and Tesla.

10. At its August 3, 2022 Commissioners' Weekly Meeting, the Commission conducted live deliberations on the exceptions, resulting in this Decision granting, in part, and denying, in part, the filed exceptions. Except as expressly modified by this Decision, the Commission upholds the Recommended Decision.

C. Exceptions

1. Schedule EVC (Public Service-Owned DCFC Charging)

a. Recommended Decision

11. The Recommended Decision adopts the rates proposed for Schedule EVC in the First Stipulation among CEO, ChargePoint, Electrify America, and EVgo. The ALJ finds the proposed rates best serve the interests identified in Senate Bill (SB) 19-077 for four reasons. First, the proposed rates meet the statutory objective to be "[r]easonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging."[2] The ALJ finds, in comparison, there is real risk the Settlement Agreement rates would undercut competition and lead to a decline in deployment of commercial DCFC stations.

12. Second, the Recommended Decision finds the proposed rates will support "widespread transportation electrification" and are "[r]easonably expected to increase access to the use of electricity as a transportation fuel."[3] The ALJ finds the off-peak rate proposed in the First Stipulation matches the average Colorado market price for DCFC charging, based on the E9 Study[4] in the record. The ALJ concludes this rate will increase access to DCFC stations by filling gaps in the network with competitive off-peak prices and foreclosing the possibility that a below-cost rate would limit growth. The ALJ also concludes the First Stipulation's on-peak rate, set 1.3 times higher than the state average, will send a strong price signal to charge when the system is not stressed. The ALJ dismisses Public Service's claim that these rates will lead to

[2] Recommended Decision, ¶ 114 (citing § 40-5-107(2)(e), C.R.S.).

[3] *Id*. at ¶ 117 (citing § 40-5-107(1)(a) and (2)(b), C.R.S.)

[4] *See id*. at ¶ 108 (discussing study cited by CEO, referred to a "E9 Study," admitted into the record as HE 501, Rev. 1, Attach. MWM-1 (Review of Charging Cost at Publicly Available Direct Current Fast Chargers in Colorado (February 2022))).

underutilization, finding instead, the off-peak rate matches the market rate and, further, these stations, sited in underserved areas with low traffic, will at first experience lower utilization.

13. Third, the Recommended Decision finds the proposed rates are "[r]easonably expected to improve the use of the electric grid, including improved integration of renewable energy."[5] The ALJ concludes the proposed on-peak to off-peak price differential of $0.13/kWh and a price ratio of 1.3:1 send a compelling price signal to drivers to encourage charging when it is less expensive for the grid. The ALJ finds significant that the proposed four-hour on-peak period of 3:00 p.m. to 7:00 p.m. in the First Stipulation matches the existing on-peak period in Public Service's residential time-varying rates. The ALJ concludes customers are therefore more likely to internalize this four-hour period than the 2:00 p.m. to 10:00 p.m. on-peak period proposed in the Settlement Agreement.

14. Finally, the Recommended Decision finds the proposed rates are "[r]easonably expected to provide access for low-income customers[.]"[6] The ALJ concludes, although the Settlement Agreement rates are lower, analysis of "access" considers both price and the number of DCFC stations. The ALJ notes he already found the Settlement Agreement rates risk undercutting competition and limiting growth in deployment of commercial DCFC stations.

b. Exceptions

15. Staff urges the Commission to reject the Recommended Decision's approval of the 3:00 p.m. to 7:00 p.m. on-peak period proposed in the First Stipulation and instead approve the 2:00 p.m. to 10:00 p.m. on-peak period proposed in the Settlement Agreement. Staff contends the eight-hour period better matches the expected peak demand on the Company's

[5] Recommended Decision, ¶ 119 (citing § 40-5-107(2)(a), C.R.S.).
[6] *Id*. at ¶ 120 (citing § 40-5-107(2)(g), C.R.S.).

system, according to the modeling presented.[7] Staff adds, as more solar generation and storage resources are added to Public Service's system, the Company's peak load net of renewable generation will likely shift to later hours.

16. Public Service contends the Recommended Decision overly emphasizes market competition. The Company states its maximum 25 DCFC stations represent five percent of total Colorado charging stations, and only five of those stations may be located within ten miles of other stations, amounting to less than one percent of total Colorado stations. Public Service adds, the extended eight-hour on-peak period in the Settlement Agreement allays any concern of market impact. Public Service argues the Recommended Decision erroneously justifies the concern with market competition by claiming the inelasticity of demand for EV charging will increase in the future. Public Service questions, if there is little inelasticity, then there is no basis to the concern that the Settlement Agreement rates will cause the Company's DCFC stations to impact market competition.

17. Public Service also contends the Recommended Decision errs by approving excessive rates. Public Service challenges the ALJ's finding that the E9 Study provides the most credible evidence of the Colorado market. Public Service argues the E9 Study is a consultant-prepared document without peer review, and only considers half of the state's charging ports. The Company argues the E9 Study does not consider any port that uses $/kWh pricing and does not consider sites with free pricing. Public Service urges the Commission to rely upon the pricing published by the Electric Power Research Institute (EPRI Study[8]). The Company states the Settlement Agreement rate is not below-market.

[7] *See* Staff Exceptions, p. 16 (citing Public Service and Staff SOP, p. 18; HE 300 at 24:1-9 (Haglund Answer)).
[8] *See* Recommended Decision, ¶ 100 (discussing EPRI publication of average national and state prices).

18. Finally, Public Service argues the approved rate does not support the statutory goal of improving grid operation, including integrating renewable energy. Public Service argues the Settlement Agreement rate, with a price ratio of 2.1:1, compared to the adopted 1.3:1, has more potential to shift load off-peak, especially considering the eight-hour on-peak period in the Settlement Agreement. Public Service also challenges the Recommended Decision does not discuss how the approved rate will improve integration of renewable energy. The Company states the Settlement Agreement proposes on-peak hours from 2:00 p.m. to 10:00 p.m., which captures 97 of the 100 highest load hours net of renewables.

c. Responses

19. CEO disputes Public Service's assertion that the Recommended Decision overly relies on consideration of market competition. CEO notes the Commission stated in prior Proceeding No. 20A-0204E, where the Commission approved the Company's 2021-23 TEP (2020 TEP Proceeding), "we expect that privately owned stations will not be directly competing with Company-owned stations based solely on the charging rate," based on the understanding those stations would be sited in less-trafficked areas that private developers are less likely to serve.[9] CEO argues, there is now likely to be competition because Public Service intends to site market stations only 0.5 miles from private stations and connector stations only ten miles from private stations. CEO also maintains Public Service fails to address that the four-hour on-peak period is designed to match the residential time-varying on-peak period and thus maximize drivers' ability to change their behavior. CEO argues, if drivers are accustomed to a four-hour on-peak period for their residential rates, they may be able to successfully shift their electricity

[9] CEO Response to Exceptions, p. 11 (citing Proceeding No. 20A-0204E, Decision No. C21-0117 at ¶ 50, issued March 2, 2021 (Commission Decision Addressing Applications for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017)).

use off-peak. CEO again points to the 2020 TEP Proceeding, where the Commission stated the purpose of time-varying rates is to change charging behavior, not merely set a price signal.[10]

20. Electrify America disputes Public Service's assertion that the EPRI Study is more representative of market rates than the E9 Study relied upon by the ALJ and points out the EPRI Study is not part of the evidentiary record. Electrify America further challenges that Staff's advocacy for the Settlement Agreement eight-hour on-peak period fails to address the reasoning that the adopted four-hour on-peak period is consistent with the on-peak period of Public Service's existing residential time-varying rates and therefore is more likely to be internalized.

21. CEO and WRA, responding jointly, dispute Public Service's claim that the Recommended Decision overly emphasizes market concerns. They maintain the Recommended Decision properly weighs the evidence presented and reasonably concludes there is real risk the Settlement Agreement rates would undercut competition and thereby lead to a decline in deployment by commercial EV charging providers.

d. Commission Findings and Conclusions

(1) Staff's Exception

22. The Commission grants, in part, and denies, in part, Staff's exception on this issue. We agree it is necessary to adjust the 4:00 to 7:00 p.m. on-peak period in the Recommended Decision, although we do not entirely adopt the 2:00 to 10:00 p.m. period advocated for by Staff in exceptions. We instead adopt an on-peak period of 4:00 p.m. to 10:00 p.m.

[10] CEO Response to Exceptions, p. 14 (citing Proceeding No. 20A-0204E, Decision No. C21-0017 at ¶ 162, issued January 11, 2021 (Commission Decision Granting Application With Modifications)).

23. We modify the approved on-peak period to extend from 4:00 p.m. to 10:00 p.m. based on the following considerations. First, we recognize Public Service is likely to have significant amounts of solar generation available midday and early afternoon such that we should incent increased usage, like EV charging, during those hours, rather than discourage it through higher pricing. We want to avoid forcing curtailment of solar generation, especially when we anticipate a growing electrification load. For these reasons, we decline to adopt Staff's proposal to start the on-peak period as early as 2:00 p.m. Second, Public Service's peak demand net of solar generation and storage, and highest loss of load probability hour, already seems to be approaching 7:00 p.m. and will likely shift even later as the utility adds more solar + storage to its system. Given this concern, we find it necessary to modify the Recommended Decision's endpoint of 7:00 p.m. for the on-peak period. Given these realities, we find it appropriate to start shifting now, in this Proceeding, toward a more data-drive approach, basing the on-peak pricing hours on actual, underlying system economics. We conclude that setting the on-peak period from 4:00 p.m. to 10:00 p.m. best meets this objective.

24. In addition, we acknowledge this is a new program and the Commission, utilities, and stakeholders have much to learn in how to be set pricing for the Company's DCFC stations. For instance, we recognize that stations sited in connector locations are likely to be used by the traveling public, who may seek to charge their EVs without regard to price signals. We believe this Decision strikes the best balance that we can, given the information available to us in this Proceeding. We anticipate re-visiting this issue as we continue to grapple with how best to structure pricing for utility-owned DCFC stations.

(2) Public Service's Exception

25. The Commission denies Public Service's exception on this issue.

26. We are not persuaded by Public Service's claim that the Recommended Decision overly relies on the market competition element of SB 19-077. As CEO responds, the Public Service-owned DCFC stations were approved in the Company's TEP with the expectation that they would not be immediately fully utilized, at least at first. Rather, Public Service was granted opportunity to own these stations to create confidence in the growing EV market and to ensure there is charging available in areas where the private market would not succeed in this early stage of the industry. In its exceptions, Public Service points to § 40-5-107(2)(e), C.R.S., provides that the Commission shall consider whether TEP programs/investments are "[r]easonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging." By enabling limited utility ownership of DCFC stations, the Commission determined that it was vital to focus on stations in locations that would not undermine market competition. In adopting rates at this stage, we remain mindful that the risk of utility-owned stations charging below-market rates could hamper the further development of private charging stations in these areas that are critical to enhance consumer confidence that EV charging is readily available.

27. We also are not persuaded by Public Service's contention that the ALJ erroneously relies on the E9 Study instead of the EPRI Study. As Electrify America correctly points out, the EPRI Study is not a part of the evidentiary record. In its Response, CEO presented the flawed assumptions made by the EPRI Study that was also presented in CEO's Statement of Position. The Recommended Decision properly evaluated the E9 Study filed into

this record, and acknowledged the shortcomings of the EPRI Study, which was not introduced into evidence.

28. Finally, we are not persuaded by Public Service's claim that the approved rates fail to support the statutory goal of improving grid operation, including integrating renewable energy. As discussed above, the Commission recognizes the importance of integrating renewable energy with our modifications to the on-peak period. In addition, the Commission explained that due to the likely inelastic nature of price signals at the connector locations, the price ratio of 1.3:1 approved by the Recommended Decision is appropriate in this initial stage of company owned DCFC deployment.

2. Schedules S-EV and S-EV-CPP (Commercial DCFC Charging)

a. Recommended Decision

29. The Recommended Decision adopts the rates proposed for Schedule S-EV and Schedule S-EV-CPP in the Second Stipulation among CEO, ChargePoint, Electrify America, EVgo, and Tesla. The ALJ concludes the proposed rates strike an appropriate balance between energy and demand charges and, because they represent a less dramatic change from existing rates than the Settlement Agreement rates, will better support growth of commercial charging.

30. The Recommended Decision discusses the points made by Public Service and Staff that, as a general matter, cost allocation should take place in a Phase II rate proceeding where the Commission assesses the utility's costs in total and then allocates the total costs to each rate class the portion of those costs caused by the class. However, the ALJ finds this cost allocation principle is not a hard and fast rule and this Proceeding presents a compelling argument to diverge from it. The ALJ notes, because there was no historical data upon which

Public Service could rely in creating its existing Schedule S-EV, the utility had to employ assumptions about how the EV charging community would respond. The ALJ notes those assumptions have turned out inaccurate and it is only appropriate to use the historical data now available to update the cost allocation upon which Schedule S-EV is based. The ALJ explains, the commercial EV charging industry is in an early, and thus vulnerable, stage of development, and rates that would charge commercial EV chargers more than the costs they cause Public Service risk chilling private investment and inhibiting further growth. The ALJ states the Commission has ordered the Company to soon file its next Phase II electric rate case, by September 26, 2022. The ALJ concludes that proceeding offers an opportunity to perform a holistic analysis of Public Service's costs and determine whether commercial EV charging ratepayers should be their own class and the appropriate cost allocation to all classes, and Public Service will have an opportunity to make any necessary adjustments to the rates adopted in this Proceeding for Schedules S-EV and S-EV-CPP based on the historical data.

b. Exceptions

31. Staff claims the Recommended Decision errs in finding the rates proposed in the Second Stipulation represent a less dramatic change than the Settlement Agreement rates. Staff counters that both rates in the Second Stipulation make the necessary yet more substantial changes to the distribution demand charge and the time-of-use energy charges. Staff further argues these rates utilize a novel and unique revenue requirement, thus creating a new *de facto* rate class for charging providers. Staff concludes the weight of the evidence demonstrates the demand for charging is elastic—or at least that charging providers act as though that is the case. Staff points out both EVgo and Tesla have begun to offer customer-facing time-varying rates.

Staff maintains the opposition to price competition from utility-owned DCFC stations by the commercial EV charging providers reveals a belief that drivers do respond to price signals.

c. Responses

32. CEO responds to Staff's concern of a new *de facto* rate class by explaining the ALJ acknowledged the assumptions used to create the existing Schedule S-EV rate are inaccurate and resolved the Commission should therefore use historical data to update the cost allocation upon which the current S-EV rate is based. CEO notes the Recommended Decision correctly found changes to cost allocation in and among rate classes will be appropriately addressed in the Company's upcoming Phase II electric rate case.

33. Electrify America disputes Staff's assertion that the Schedule S-EV rates proposed in the Settlement Agreement would represent a less dramatic change from existing rates and maintains the ALJ accurately determined the rates proposed in the Second Stipulation would represent a less dramatic change.

34. ChargePoint, EVgo, and Tesla, filing a response jointly, also dispute Staff's claim that the rates in the Settlement Agreement would represent a less dramatic change. They maintain the Second Stipulation's S-EV rate reduces the existing S-EV rate's demand charge by only half, while keeping all the energy charges within a cent or two per-kWh of the existing S-EV rates. They state these similarities are possible, in part, because the critical peak pricing component has been removed and the stipulated rate is lower than the existing S-EV rate.

d. Commission Findings and Conclusions

35. The Commission denies Staff's exception on this issue.

36. The Recommended Decision reasonably finds it is appropriate in this Proceeding to adjust Schedules S-EV and S-EV-CPP based on the historical data available, to respond to the incorrect assumptions the Company made in creating the existing Schedule S-EV. Our objective here is to strike an appropriate between appropriate cost allocation and not impeding the further development the industries private market. We are not persuaded by Staff's arguments on exceptions that the ALJ erred in finding the approved rates were a less dramatic change than the Settlement Agreement rates. As several parties point out throughout the proceeding, the lower demand charge and higher energy charges in the S-EV rates presented in the Settlement could significantly increase the cost of doing business for the commercial charging industry. Critically, we agree with the ALJ's concern that potentially charging commercial EV charging providers *more* than the costs they cause Public Service risks inhibiting the statutory objectives of increased access to EVs, further innovation, competition, and increased consumer choices in EV charging, and continued private investment in the commercial EV charging industry.[11] Finally, as the ALJ and parties have noted, Public Service will soon file its next Phase II electric rate case, where the Commission will have opportunity to determine whether commercial EV charging ratepayers should be their own class and determine the appropriate cost allocation among classes.

3. Additional Reporting Requirements

a. Exceptions

37. Staff requests the Commission modify the Recommended Decision to approve the reporting requirements set forth in the Settlement Agreement. *See* HE 107 at p. 5 ¶ (j) and p.6 ¶ (c) (Settlement Agreement, Rev. 2)). Staff states these reporting requirements will be essential

[11] Recommended Decision, ¶ 90 (citing § 40-5-107(2)(b) and (e), C.R.S. (changes made by SB 19-077)).

to the Commission's evaluation of the rates approved in this Proceeding for commercial EV charging and for Public Service-owned DCFC stations.

b. Responses

38. Public Service does not oppose Staff's request. The Company agrees the reporting requirements will enhance transparency of information with periodic updates filed every six months on details related to Schedule S-EV and Schedule S-EV-CPP, and Public Service-owned DCFC stations, including revenues, billing determinants, average load factors, and energy use during peak and off-peak periods.

c. Commission Findings and Conclusions

39. The Commission grants Staff's exception on this issue. We agree this reporting, which the Company does not oppose, will be a helpful tool in evaluating the EV rates adopted in this Proceeding. As we move forward, we anticipate learning through these initial deployments, so robust reporting will be crucial to the Commission's understanding of these programs and how we craft them in the future.

4. Equity PIM

a. Recommended Decision

40. The Recommended Decision finds it is in the public interest for the Company's initial Equity PIM to have: (a) a target-based threshold in each program that must be met before Public Service will earn any award; (b) incentive caps on each of the programs; (c) no incentives for Advisory Services; and (d) the total awards that Public Service can receive is capped at $1.5 million.

41. The Recommended Decision adopts a threshold of five percent of the overall target in each category. The ALJ finds the record establishes this threshold is necessary to incentivize Public Service to make a good faith effort to achieve the targets in each of the categories it agreed to in the 2020 TEP Proceeding. The ALJ concludes that a low minimum threshold will respect Public Service's agreement to the targets and incentivize it to develop all the programs, but also recognized the reality that those targets were, and continue to be, highly ambitious and the Company is already halfway through the term of its approved TEP.

42. The Recommended Decision finds that adopting an incentive cap on each of the programs is in the public interest for similar reasons. The ALJ concludes, without a cap, the Company may be incentivized to focus its efforts on only the most successful programs.

b. Exceptions

43. UCA argues the approved Equity PIM will not incentivize better implementation of the TEP. UCA points out Public Service has already stated it will be able to complete a substantial number of equity ports without a bonus. UCA further contends the PIM would pay for actions the Commission has already required Public Service to take. UCA explains, the Commission has already mandated at least 15 percent of spending in the Company's TEP budget be directed towards income-qualified customers and higher-emissions communities. UCA questions, since the Company is required to meet that minimum spending level, awarding a bonus for every port and rebate up to that level will only increase costs and will not actually incentivize the desired behavior. UCA contends the desired behavior should be to have the Company *exceed* its goals and to do so as efficiently as possible.

44. CEO/WRA reiterate their position that a PIM should reward a utility for outcomes that go beyond what is required, and that encourage utility actions where there are not already incentives. They note CEO recommended a minimum performance threshold of 80 percent of per-port or per-rebate targets in each program category before Public Service becomes eligible to earn an incentive. They continue to support the concept of a minimum threshold and do not challenge the ALJ's determination that achieving five percent of an equity target is sufficient to warrant Public Service earning this incentive. However, they challenge the ALJ's conclusion that there is not sufficient experience in equity programs to determine whether a higher number, such as 80 percent, represents a reasonable threshold. They state this TEP is an opportunity for the Company to gain experience in equity programs and therefore ask the Commission to require the Company to use an achievement level of at least 80 percent of a target or goal in calculating any equity-based PIM in its next TEP.

c. Responses

45. Public Service responds to UCA's exception, maintaining the Recommended Decision reasonably imposes a minimum threshold. The Company notes it did not advocate for any minimum threshold, but states it understands the rationale in the Recommended Decision. The Company claims the five percent threshold is reasonable because the equity program participation targets are highly ambitious. The Company notes the Commission will soon have opportunity to reevaluate the threshold as the Company's next TEP filing is less than a year away, and that proceeding will have the benefit of experience gained through this Equity PIM.

46. Public Service also responds to CEO/WRA's exception, arguing the Commission is generally resistant to make decisions that bind future Commissions or make future policy

determinations. The Company further points out, after it implements the Equity PIM, it may find the approved targets and minimum thresholds are overly aggressive and not achievable. Public Service concludes, during the next TEP application proceeding, the Commission and parties can evaluate the Company's achievement and determine any necessary revisions.

d. Commission Findings and Conclusions

47. The Commission denies the exceptions of UCA and CEO/WRA on this issue. While we understand the concerns of UCA and CEO/WRA that aggressive targets should be set for a utility to meet its incentive threshold, we agree in this instance with Public Service that the Recommended Decision strikes an appropriate balance, for this first TEP and first Equity PIM, between the proposed targets, the threshold level, and the incentive cap. Among other concerns, we recognize the TEP contemplates new areas of equity outreach. We see this PIM as an appropriate jumpstart to encourage and enable those efforts. We acknowledge this PIM offers a generous incentive for a fairly low level of performance, but being the first effort in this area, we believe it is appropriate.

48. We decline to bind future Commissions in any way as CEO and WRA seeks, but we clarify that the Commission is likely to re-evaluate this determination, especially since this is the initial Equity PIM. In future proceedings the Commission will determine on the record of each case what is appropriate.

5. PIM Reporting

a. Recommended Decision

49. During the proceeding, CEO recommended that an Equity PIM should include incentives for Advisory Services and proposed a new "Engagement-to-Action" sub-category of

an Advisory Services incentive. CEO proposed this incentive that would encourage Public Service to track and report information about its Equity PIM, as well as customer interactions before, during, and after community and fleet operator engagement. Public Service and Staff agreed in the Settlement Agreement to eliminate any such incentive. The Recommended Decision agrees with Public Service and Staff and finds incentives for Advisory Services should not be included in the Equity PIM. The ALJ notes the Commission has already required Public Service to direct a minimum of 15 percent of its Advisory Services budget toward income-qualified customers and higher-emissions communities. The ALJ concludes, although a PIM directed to Advisory Services as originally proposed may incentivize some marginal additional spending, it would largely reward Public Service for complying with the Commission's order.

b. Exceptions

50. In their exceptions, CEO/WRA concede that additional information can ensure that potential future incentives associated with Advisory Services are not duplicative. They therefore request the Commission direct Public Service to collect and report information associated with CEO's Engagement-to-Action PIM to inform potential future incentives. They state the Engagement-to-Action incentive proposed in CEO's Answer Testimony seeks to not only reward education, outreach, and community engagement, but measure how community engagement is translated into, or informs, action. They state their proposal seeks to set clear expectations for what may be required in subsequent TEPs in terms of community engagement and the utility's responsiveness to this engagement. CEO/WRA request the Commission order collection of the information proposed in CEO's Answer Testimony.

c. Responses

51. Public Service opposes this request and states the Company already has robust reporting requirements as part of its Commission approved TEP. Public Service contends, since the Recommended Decision declined to include Advisory Services in the Equity PIM, CEO/WRA seek to change the "Engagement-to-Action incentive" to a reporting obligation, with no financial reward opportunity to the Company for complying with the recommended voluminous reporting obligations. Public Service states it already submits semi-annual reports, and it conducts quarterly stakeholder meetings on the TEP to discuss updates and evolving matters. Public Service states although it understands the "more is better" interest of stakeholders, it is important for the Commission to consider that reporting requirements cause the Company to incur additional labor and associated costs.

d. Commission Findings and Conclusions

52. The Commission grants CEO/WRA's exception on this issue.

53. We recognize the "Engagement-to-Action" incentive proposed by CEO to track and report information about the Equity PIM, as well as customer interactions before, during, and after community and fleet operator engagement was not ultimately approved by the Recommended Decision. However, given the need to evaluate the performance of Public Service's stakeholder outreach and advisory services, we agree more detail on engagement led by the utility will be helpful to the Commission in future proceedings and potential new incentives. The more information we have about the Company's efforts for strategic outreach, the better we can understand how these efforts are going and whether they are valuable. There remains much

to learn about this program and we find the value of additional information outweighs the potential cost to the utility in this circumstance.

6. PIM Retail Rate Impact

a. Recommended Decision

54. The Recommended Decision notes that Public Service and Staff agree in the Settlement Agreement that Equity PIM awards will not count toward the statutory retail rate impact cap set forth in § 40-1-103.3(6), C.R.S., and that Public Service will include any awarded incentives in the subsequent year's TEPA rider.[12] The ALJ also notes UCA requests a legal finding that the Equity PIM is included within the retail rate impact cap.[13] The Recommended Decision denies all requests in the Settlement Agreement except for one unrelated issue, without direct discussion of this issue.

b. Exceptions

55. In its exceptions, UCA urges the Commission to confirm the ALJ correctly denied the request of Public Service and Staff to exclude any Equity PIM awards from the retail rate impact cap. UCA reasons the legislature intended to protect ratepayers from excessive rate hikes by plainly mandating "[t]he retail rate impact from the development of electric vehicle infrastructure must not exceed one-half of one percent of the total annual revenue requirements of the utility."[14]

56. UCA argues this plain language makes clear the limit on utility spending is determined based on the "retail rate impact" from a utility's transportation infrastructure

[12] Recommended Decision, ¶ 126.
[13] *Id*. at ¶ 129 (citing HE 400 at 6:1-6 (Answer Testimony of Dr. England)).
[14] UCA Exceptions, pp. 7-8 (citing § 40-1-103.3(6), C.R.S.).

spending, with no allowance to exclude any part of that impact. UCA reasons Public Service's rebates on equity ports and EVs are made for the purpose of developing EV infrastructure—as are any correlating bonuses the Company receives from ratepayers for having dispersed that money. UCA states the legislature contemplated utility incentives as part of a utility's TEP, citing § 40-5-107(1)(b)(I), C.R.S., which requires utility TEPs to include "[i]nvestments or incentives to facilitate the deployment of customer-owned or utility-owned charging infrastructure." UCA notes this language explicitly covers "incentives," both for customers as a rebate and for the utility as a bonus.

57. UCA adds that settling parties have no legal authority to "waive" a statutory limit by virtue of agreeing to a settlement provision.

58. Both Public Service and CEO/WRA urge the Commission to clarify on exceptions that any cost associated with the Equity PIM is not included in the retail rate impact cap. They contend the Commission already resolved this legal question through approving the Company's methodology for calculating the retail rate impact in the 2020 TEP Proceeding.[15] Public Service cites testimony from that proceeding stating the Company did not include any costs or revenues associated with PIMs in its analysis.[16] Public Service claims UCA ignores this history and instead lodges an impermissible collateral attack. CEO/WRA point to CEO witness testimony in this Proceeding, responding to UCA and arguing the Commission already decided not to include

[15] Public Service Exceptions, p. 17 (citing Proceeding No. 20A-0204E, Decision No. C21-0017 at ¶¶ 27, 38, issued January 11, 2021 (Commission Decision Granting Application With Modifications)).

[16] *Id*. (citing Proceeding No. 20A-0204E, HE 108 at 20:13-16 (Wishart Rebuttal, Rev. 1)).

the Equity PIM in the retail rate impact cap.[17] CEO/WRA argue that Public Service and Staff confirmed this understanding through the Settlement Agreement.[18]

c. Responses

59. Public Service disputes UCA's argument that all parties in the 2020 TEP Proceeding understood the entire cost of the Company's TEP would be included in the retail rate impact calculation. Public Service reiterates the Company, CEO, Staff, and WRA have all agreed the Commission resolved this issue. Public Service also responds that UCA is the party raising this issue in this Proceeding while the Company maintains the issue was already resolved.

60. In response to Public Service and CEO/WRA, UCA argues the Commission's prior decisions did not squarely address this statutory interpretation question. UCA argues the Commission could not have implicitly decided whether Equity PIM dollars are covered by the statute because it had no occasion to do so since it rejected the Company's entire PIM proposal. UCA concludes the time is ripe for consideration because the issue was not decided in the 2020 TEP Proceeding and because the Commission deferred the equity PIM issues to this Proceeding. UCA adds, even if the Commission finds it did implicitly consider this issue, that is no bar to reconsidering it here. UCA argues, first, this is a continuation of the 2020 TEP Proceeding, and the Commission now has a fully detailed equity PIM before it to analyze against the language of the statute. UCA argues, second, the Commission is not bound by any implicit language in a prior decision and has statutory authority to alter or amend a prior decision.

61. UCA also challenges the Company's substantive argument, that equity PIMs are not a "cost[] of distribution system investments to accommodate alternative fuel vehicle

[17] CEO/WRA Exceptions, p. 4 (citing HE 502 at 7:16-9:13 (Durkay Cross Answer Testimony)).
[18] *Id*. (citing HE 107 at 7-8, §§ III.C.g. (Settlement Agreement, Rev. 2)).

charging."[19] UCA argues this position is inconsistent with the Company and Staff's settlement proposal, which agrees that equity PIM dollars would be paid by ratepayers through their electric bills for the purpose of building and rebating new electric vehicle charging stations.[20] UCA also argues the Company's testimony on this issue omits the key language in the statute, which discusses "[t]he retail rate impact from the development of electric vehicle infrastructure."[21] UCA concludes the equity PIM is certainly part of the retail rate impact of the Company's TEP for the development of electric vehicle infrastructure, because ratepayers will have to pay it.

d. Commission Findings and Conclusions

62. The Commission grants UCA's exception on this issue. We deny the exceptions of Public Service and CEO/WRA.

63. We find Public Service and CEO/WRA fail to provide a compelling argument that the Commission has already decided this issue and is thus prevented from considering this question of statutory interpretation. As UCA argues, the Commission's prior decision did not squarely address this issue, which is logical, as UCA points out, since the Commission approved only the concept of an Equity PIM and found more information was required to move forward to implementation.[22] The Commission thus had no occasion to analyze or rule on this issue in its decisions in Proceeding No. 20A-0204E. As a result, with the benefit of the detailed Equity PIM presented in this Proceeding, and the testimony and briefing from the parties, we resolve this issue in this Proceeding as a case of first impression under SB 19-077. This Decision clarifies

[19] UCA Response to Exception, p. 5 (citing HE 103 at 25:1-16 (Klingeman Rebuttal); HE 106 at 29:17-20 (Peuquet Settlement)).

[20] *Id*. (citing HE 107 at 7-8 (Settlement Agreement)).

[21] *Id*. (citing § 40-1-103.3(6), C.R.S.).

[22] Proceeding No. 20A-0204E, Decision No. C21-0017 at ¶ 138, issued January 11, 2021 (Commission Decision Granting Application With Modifications).

that any awards under the Equity PIM approved in this Proceeding must, by statute, be included in the Company's calculation of the retail rate impact cap set forth in § 40-1-103.3(6), C.R.S.

64. Moving to the merits, we find UCA persuasively argues the plain language of SB 19-077 requires inclusion of these costs. Section 40-1-103.3(6), C.R.S., limits the rate impact on utility customers from development of EV infrastructure. There is no allowance for ratepayers to be subject to a rate impact that potentially surpasses this cap because the dollars are awarded through a performance mechanism. As UCA points out, the language in § 40-5-107(1)(b)(I), C.R.S., confirms the legislature contemplated utility incentives as part of a TEP. Moreover, the Equity PIM awards will be recovered from ratepayers in the same way as other TEP costs.

65. In contrast, we find Public Service and other opposing parties fail to offer persuasive argument in their testimony and exceptions that these costs can be lawfully excluded. As UCA points out, the opposing argument relies on a narrow reading of the first sentence of § 40-1-103.3(6), C.R.S., which states utilities "may recover the costs of distribution system investments to accommodate alternative fuel vehicle charging[.]"[23] However, the purpose of this first sentence is to expressly authorize, in statute, electric public utilities to recover costs of these distribution system investments. SB 19-077 enacted a change in law to allow electric public utilities to provide EV charging as a regulated service and added this subsection (6) allowing electric public utilities to recover distribution system investments to accommodate alterative fuel charging. The more important sentence in subsection (6) to the question here is the last sentence, which establishes the retail rate impact cap. This sentence, using different language, establishes a retail rate impact cap "from the development of electric vehicle infrastructure." We find Public

[23] *See* HE 103 at 25:10-12 (Klingeman Rebuttal) (arguing statute provides only the costs of distribution system investments are subject to the cap); HE 502 at 7:16-9:13 (Durkay Cross Answer) (arguing statute permits recovery of costs of distribution system investments).

Service and other opposing parties have not made a compelling case that the Commission should read a limit into this broader language so as to allow exclusion of PIM awards paid by ratepayers. Instead, we find UCA offers a sound statutory analysis rebutting this argument, and we agree the plain language of the statute requires inclusion of these costs.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R22-0378, filed July 14, 2022, by Public Service Company of Colorado, are denied, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R22-0378, filed July 14, 2022, jointly, by the Colorado Energy Office and Western Resource Advocates, are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R22-0378, filed July 14, 2022, by the Colorado Office of the Utility Consumer Advocate, are granted, in part, and denied, in part, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R22-0378, filed July 14, 2022, by Trial Staff of the Colorado Public Utilities Commission, are granted, in part, and denied, in part, consistent with the discussion above.

5. The tariff sheets filed by Public Service pursuant to Advice Letter No. 1867 – Electric are permanently suspended.

6. Public Service shall file on not less than two business days' notice to the Commission, modified tariff sheets consistent with this Decision. The effective date of the newly filed tariff sheets shall be August 22, 2022, as requested in Advice Letter No. 1867 –

Electric Second Amended filed on April 6, 2022. Public Service Company of Colorado shall file the compliance advice letter and tariff in a new advice letter proceeding. The compliance advice letter and tariff shall comply with all applicable rules must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

7. 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.

8. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 3, 2022.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners