

**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.

---

**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
APPROVING SETTLEMENT AGREEMENT WITH  
MODIFICATIONS AND  
GRANTING APPLICATION AS MODIFIED**

---

---

Mailed Date: December 20, 2023

**I. TABLE OF CONTENTS**

I. STATEMENT, summary, and background .....	3
A. Summary .....	3
B. Procedural History .....	4
II. RELEVANT LAW .....	7
A. Commission Jurisdiction and Relevant Statutory Requirements .....	7
B. Burden of Proof and Relevant Commission Rules .....	8
III. EVIDENCE, ARGUMENTS, findings, analysis, and conclusions .....	8
A. Background .....	8
B. Settlement Agreement .....	10
C. Unopposed Settlement Agreement Provisions .....	12
1. 60-Day Notice Process, Methodology to Calculate Retail Rate Cap, and Prudency and Related Reporting Requirements .....	12
a. Findings, Analysis and Conclusions .....	13
2. Rider Recovery .....	14
a. Findings, Analysis and Conclusions .....	15
3. EV Charging Rates .....	17
a. Findings, Analysis and Conclusions .....	18

4.	Behavioral Charging Pilot.....	18
a.	Findings, Analysis and Conclusions .....	20
5.	EVSE Rebate Amortization and Engagement Programs .....	22
a.	Findings, Analysis and Conclusions .....	22
6.	Plan Administration and Reporting.....	23
a.	Findings, Analysis and Conclusions .....	26
7.	Plan Cost Effectiveness, Litigation and Expert Expenses, and Compliance Advice Letter .....	26
a.	Findings, Analysis and Conclusions .....	27
D.	Opposed or Partially Opposed Settlement Agreement Provisions .....	27
1.	Non-IQ Rebates .....	27
a.	Arguments .....	29
b.	Findings, Analysis and Conclusions .....	31
2.	IQ Programs .....	32
a.	Arguments .....	35
b.	Findings, Analysis and Conclusions .....	43
3.	Fleet Electrification Pilot .....	49
a.	Arguments .....	50
b.	Findings, Analysis and Conclusions .....	52
4.	Performance Incentive Mechanism .....	53
a.	Arguments .....	53
b.	Findings, Analysis and Conclusions .....	55
5.	Customer Communication Plan .....	56
a.	Arguments .....	56
b.	Findings, Analysis and Conclusions .....	61
6.	Budget .....	62
a.	Arguments .....	63
b.	Findings, Analysis and Conclusions .....	66
IV.	CONCLUSIONS .....	68
V.	ORDER.....	69
A.	The Commission Orders That: .....	69

## **I. STATEMENT, SUMMARY, AND BACKGROUND**

### **A. Summary**

1. This Decision approves with modifications the Partial Settlement Agreement filed on October 11, 2023 (Settlement Agreement or Agreement); grants the above-captioned Application with modifications; approves the associated (and modified) Transportation Electrification Plan (Plan), consistent with the below discussion; and closes this Proceeding.<sup>1</sup> The primary disputed issues in this Proceeding involve whether Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills or the Company) should be required to continue its existing Income-Qualified (IQ) Electric Vehicle (EV) Purchase Rebate offering (IQ EV Purchase Rebate); whether the Company should be required to add \$600,000 to the Plan budget to support school bus fleet electrification; whether the Company should be required to add between \$100,000 and \$300,000 to the Plan budget to directly fund community-based organizations; whether the Company's entire residential rebate budget should be dedicated to IQ customers; and whether the Commission should implement a Performance Incentive Mechanism (PIM) that ties the Company's ability to recover certain Plan costs to the Plan's performance. This Decision continues the IQ EV Purchase Rebate offering with modifications and a \$70,000 budget and rejects the remaining requests for relief mentioned above.

---

<sup>1</sup> Due to the volume of arguments raised in this Proceeding, this Decision may not address each argument. However, in reaching this Decision, the Administrative Law Judge (ALJ) has considered the entire record, including all evidence and arguments presented, including those discussed briefly or not at all. Any arguments not specifically discussed or granted have been considered and are rejected.

**B. Procedural History<sup>2</sup>**

2. On May 15, 2023, Black Hills filed the above-captioned Application (Application), and associated Plan.

3. On June 21, 2023, the Commission deemed the Application complete and referred this Proceeding to an Administrative Law Judge (ALJ) by minute entry for disposition.

4. In addition to Black Hills, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (UCA); the Colorado Public Utilities Commission Trial Staff (Staff); Colorado Energy Office (CEO); and GreenLatinos, Mothers Out Front, Vote Solar, and Womxn from the Mountain, who refer to themselves as the Environmental Justice Coalition (collectively the Coalition).<sup>3</sup>

5. With the parties' input, the ALJ scheduled a three-day hybrid evidentiary hearing for October 23, 24 and 26, 2023, and established numerous procedural deadlines to accommodate that hearing.<sup>4</sup>

6. On September 19, 2023, the ALJ held a public comment hearing, during which the ALJ received public comment on the Application. Members of the public have also submitted written public comment throughout the course of the proceeding.

7. On October 10, 2023, Black Hills filed a Motion to Approve Non-Unanimous Partial Settlement Agreement and a Non-Unanimous Partial Settlement Agreement.

---

<sup>2</sup> Only the procedural history necessary to understand this Decision is included.

<sup>3</sup> Decision No. R23-0461-I at 13 (mailed July 20, 2023). ChargePoint, Inc. (ChargePoint) 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). The Coalition is not a formal member organization, but instead is a group of separate entities who have associated themselves for purposes of litigating this Proceeding. October 26, 2023 Hearing Transcript (10/26/23 Tr.,) 141: 24-25—142: 1-11.

<sup>4</sup> Decision No. R23-0461-I at 14.

8. On October 11, 2023, the ALJ vacated the October 23, 2023 hearing date (while maintaining the October 24 and 26, 2023 hearing dates).<sup>5</sup>

9. Also on October 11, 2023, Black Hills filed a Notice of Redline Corrections to Black Hills Colorado Electric, LLC's Motion to Approve Partial Settlement Agreement; a corrected Motion to Approve Non-Unanimous Partial Settlement Agreement (Motion); and a corrected Agreement, marked as Hearing Exhibit 109, Rev. 1.

10. On October 16, 2023, based on the parties' preference, the ALJ converted the October 24 and 26, 2023 hybrid hearing to a fully remote hearing.<sup>6</sup>

11. The ALJ held the fully remote evidentiary hearing as scheduled on October 24 and 26, 2023. All parties appeared. During the hearing, the following witnesses testified: Messrs. Michael Harrington, Erik Lundeen, Grant Gervais, and Jamison Valdez; and Mses. Julie Rodriguez, Jocelyn Durkay, Carrie Atiyeh, Claudine Custodio, and Terea Macomber. The following Hearing Exhibits and their attachments were admitted into evidence during the hearing:

- Hearing Exhibit 100;
- Hearing Exhibit 101, Rev. 1 (Hearing Exhibit 101);
- Hearing Exhibit 102, Rev. 2 (Hearing Exhibit 102);
- Hearing Exhibit 103, Rev. 1 (Hearing Exhibit 103);
- Hearing Exhibit 104;
- Hearing Exhibit 107;
- Hearing Exhibit 108;
- Hearing Exhibit 109, Rev. 1 (Hearing Exhibit 109);
- Hearing Exhibit 111;
- Hearing Exhibit 113-115;
- Hearing Exhibits 300-301;
- Hearing Exhibits 400-402;

---

<sup>5</sup> Decision No. R23-0682-I at 4.

<sup>6</sup> Decision No. R23-0696-I (mailed October 16, 2023).

- Hearing Exhibits 500-506;
- Hearing Exhibits 700-713; and
- Hearing Exhibit 900.<sup>7</sup>

12. At the end of the evidentiary hearing, the ALJ directed the parties to ensure that their Statements of Position (SOPs) address the following items: their positions on whether the full amount of the \$7,500 federal tax incentive for EV purchases will be accessible to consumers regardless of tax liability based on recent federal guidance; and whether the Agreement allows the Company to compensate community-based organizations when the Company partners with such organizations.<sup>8</sup> In addition, the ALJ directed the Coalition to specifically identify in its SOP the provisions in the Agreement that it opposes.<sup>9</sup>

13. On November 9, 2023, the Company filed a “Joint Post-Hearing Statement of Position of Trial Staff of the Public Utilities Commission, the Office of the Utility Consumer Advocate and Black Hills Colorado Electric, LLC” (Joint SOP). That same day, CEO filed a “Statement of Position of the Colorado Energy Office” (CEO’s SOP), and the Coalition filed “GreenLatinos, Mothers Out Front, Vote Solar, and Womxn form the Mountain’s Statement of Position” (Coalition’s SOP).

---

<sup>7</sup> Hearing Exhibit 900 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing. That list includes information necessary to identify the specific document to be offered, (such as the exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence electronically using the excel version of Hearing Exhibit 900 with live links to each of the parties’ pre-filed exhibits, as they appear in the administrative record in this Proceeding. The majority of the admitted exhibits listed in Hearing Exhibit 900 were admitted by administrative notice; this means that the pre-filed exhibit identified by file date and filer in Hearing Exhibit 900 (as they appear in the administrative record) were taken into evidence in lieu of receiving an identical copy during the hearing. Hearing Exhibits 111, 113-115, 402, 506, and 713 were electronically received into evidence through the parties’ box.com folders during the hearing and were not admitted by administrative notice. Administrative support staff added those admitted exhibits to the administrative record on October 24, 2023. In addition, per Staff’s request, the ALJ took administrative notice of Colorado House Bill 23-1272 and the Federal Inflation Reduction Act.

<sup>8</sup> 10/26/23 Tr., 237: 11-25—238: 1.

<sup>9</sup> *Id.* at 238: 12-13.

## II. RELEVANT LAW

### A. Commission Jurisdiction and Relevant Statutory Requirements

14. The Commission has broad authority to regulate public utilities and has jurisdiction to enforce statutes affecting public utilities.<sup>10</sup> The Commission has specific jurisdiction over transportation electrification plans under § 40-5-107(1)(a), C.R.S., which requires investor-owned electric public utilities to file with the Commission, an application for a program for regulated activities to support widespread transportation electrification in its service territory by May 15, 2020, and every three years thereafter.<sup>11</sup>

15. Section 40-5-107, C.R.S., offers a wide variety of regulated activities a utility may undertake to support widespread transportation electrification, and includes numerous factors that the Commission must consider when evaluating a utility's proposed transportation electrification program and determining cost recovery for such program investments and expenditures.<sup>12</sup> Transportation electrification plans must "seek to minimize overall costs and maximize overall benefits . . .". This includes considering the cost of carbon dioxide emissions. Likewise, § 40-1-103.3(6), C.R.S., limits the retail rate impact resulting from a utility developing EV infrastructure to "one-half of one percent of the total annual revenue requirements of a utility." Section 40-3-116(1)(a), C.R.S., authorizes the Commission to approve rates and charges for services provided under a program created under § 40-5-107, C.R.S., that allow an electric public utility to receive a return on investments (including rebates) for such programs at the utility's

---

<sup>10</sup> Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

<sup>11</sup> In addition, § 40-3-116(2), C.R.S., requires electric public utilities to submit a proposal for a specific rate for commercial and industrial facilities for EV charging that supports grid operation.

<sup>12</sup> See e.g., § 40-5-107(1)(b) and (2), C.R.S.

weighted average cost of capital, including the most recent Commission-approved rate of return on equity.

## **B. Burden of Proof and Relevant Commission Rules**

16. The proponent of an order carries the burden of proof by a preponderance of the evidence that the requested relief should be granted.<sup>13</sup> The preponderance standard requires the fact-finder to determine whether the existence of a contested fact is more probable than its non-existence; a party has met this burden when the evidence, on the whole, tips in favor of that party.<sup>14</sup>

17. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration and must ensure that public utility rates are just and reasonable.<sup>15</sup>

18. The Commission encourages settlement of contested proceedings.<sup>16</sup>

19. The ALJ evaluates the Application, proposed Plan, Settlement Agreement, and all other proposals with the above in mind.

## **III. EVIDENCE, ARGUMENTS, FINDINGS, ANALYSIS, AND CONCLUSIONS**

### **A. Background**

20. In 2019, the Colorado General Assembly enacted Senate Bill 19-077 (SB19-077), codified in relevant part as §§ 40-1-103.3(6); 40-3-116; 40-3.2-106; 40-5-107, C.R.S. The

---

<sup>13</sup> § 24-4-105(7), C.R.S.; Rule 1500, of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>14</sup> *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). See e.g., *City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000) quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm'n*, 949 P.2d 577, 585 (Colo. 1997).

<sup>15</sup> § 40-3-101(1), C.R.S.; *Public Serv. Co. of Colo. v. Public Util. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

<sup>16</sup> Rule 1408(a), 4 CCR 723-1.

Company submitted the Application and Plan to comply with SB19-077, and §§ 40-5-107; 40-3-116, and 40-1-103.3, C.R.S.<sup>17</sup> As such, the Commission has specific jurisdiction over the Plan per § 40-7-107, C.R.S.

21. The Company filed its first required transportation electrification plan in May 2020, covering the 2021 to 2023 timeframe (Inaugural Plan).<sup>18</sup> The Company provides electric service to more than 106,000 customers in numerous Colorado communities, including: Pueblo, Cañon City, and Rocky Ford, and parts of Crowley, Custer, El Paso, Fremont, Otero, Pueblo, and Teller Counties.<sup>19</sup> Although the Commission has not yet adopted rules formally defining what constitutes a disproportionately impacted (DI) community, based upon a preliminary map that the Colorado Department of Public Health and Environment developed, the Company expects that much of its service territory could ultimately be designated as a DI community.<sup>20</sup> The median income in the Company's service territory is approximately \$48,000, well below the statewide average.<sup>21</sup>

22. There are over 700 registered EVs in the Company's service territory; the Company expects this volume to increase in the coming years.<sup>22</sup> When the Company submitted its Inaugural Plan three years ago, it estimated there were 300 registered EVs in its service territory; as a result, the number of registered EVs in the Company's service territory has more than doubled in the last few years.<sup>23</sup>

---

<sup>17</sup> Hearing Exhibit 100 at 4-5.

<sup>18</sup> Hearing Exhibit 109 at 3 (¶ 3). The Inaugural Plan initiated Proceeding No. 20A-0195E.

<sup>19</sup> Hearing Exhibit 100 at 8.

<sup>20</sup> Hearing Exhibit 102, 10: 9-16.

<sup>21</sup> Hearing Exhibit 101, 9: 18-19.

<sup>22</sup> *Id.* at 7: 15-19.

<sup>23</sup> Hearing Exhibit 102 at 12: 12-19.

**B. Settlement Agreement<sup>24</sup>**

23. Black Hills, Staff, and the UCA (Settling Parties) fully join and support the Settlement Agreement, while CEO partially joins the Agreement.<sup>25</sup> The Company explains that the Agreement is partial in the sense that CEO objects to certain aspects of the Agreement, but that the Agreement itself comprehensively resolves all issues in this Proceeding.<sup>26</sup>

24. Staff submits that the Agreement represents a set of compromises among the parties, and that its overall advocacy in this Proceeding reflects the unique characteristics of the Company's service territory, which features an unusually high energy burden due to widespread economic hardship and some of the highest electric rates in the state.<sup>27</sup> With this context in mind, Staff submits that the Agreement is in the public interest because it keeps the Company's overall Plan budget at a reasonable level, which minimizes rate increases; it supports efforts to manage EV charging so that any increased load will be beneficial to the electric system and not exacerbate peak conditions; it advances opportunities to electrify fleets, including school buses and public transit; it maintains necessary transparency and accountability measures; and it promotes equity in transportation electrification.<sup>28</sup>

25. The UCA describes the Agreement as having the underlying theme of fostering transportation electrification growth without using ratepayer funds where other funding sources are available.<sup>29</sup>

---

<sup>24</sup> The Agreement includes numerous general provisions that are common to agreements in Commission proceedings. Hearing Exhibit 109 at 21-24. This Decision does not outline all of those provisions, as unnecessary.

<sup>25</sup> Hearing Exhibit 109 at 1-2.

<sup>26</sup> Joint SOP at 2. *See* Hearing Exhibit 110, 23: 7-9.

<sup>27</sup> Hearing Exhibit 401, 6: 9-18.

<sup>28</sup> Hearing Exhibit 401, 7: 1-9.

<sup>29</sup> Hearing Exhibit 301, 4: 10-13.

26. CEO requests that the Agreement be approved, except for: ¶ 16 (Budget); ¶ 42 (IQ EV Purchase Rebate); ¶ 43(ii) (Residential IQ e-Bike Pilot (e-Bike Pilot)); ¶ 43(iii) (Multi-Family Residential Electric Vehicle Supply Equipment (EVSE) Grant Program); and ¶ 54 (Customer Communication Plan), to which it objects.<sup>30</sup> Broadly speaking, though the Agreement does not address all of CEO's concerns, it addresses many, including increased funding for fleet electrification advisory services, improved reporting requirements, program evaluation, increased incentives levels for multi-family housing customers where a majority of the residents meet income qualifications, wiring and charger incentives, and an ability to roll over unspent program funds from year to year.<sup>31</sup> CEO views the Agreement as a productive resolution to many issues in this Proceeding, and as serving the public interest.<sup>32</sup>

27. The Coalition opposes ¶ 16 (Budget); ¶ 38 (EVSE Rebates); ¶ 40 (Fleet Electrification Pilot (Fleet Pilot)); ¶ 42 (IQ EV Purchase Rebate); ¶ 43 (IQ Programs); ¶ 44 (IQ eligibility requirements); ¶ 48 (PIM); and ¶ 54 (Customer Communication Plan) of the Agreement, and does not oppose the remaining Agreement terms.<sup>33</sup> Generally, the Coalition does not support these Agreement terms because it believes that the Agreement does little to improve equity and the Company's allegedly poor performance in its Inaugural Plan.<sup>34</sup>

28. As practicable, the ALJ first addresses the unopposed Agreement provisions, then turns to the opposed provisions.<sup>35</sup>

---

<sup>30</sup> CEO's SOP at 29. Although CEO's SOP does not identify ¶ 42 of the Agreement (where the IQ EV Purchase Rebate term is found) as a provision that it objects to, CEO's SOP and Settlement Testimony plainly oppose ¶ 42. CEO's SOP at 9-23; 29; Hearing Exhibit 505, 12: 18—13: 1-17.

<sup>31</sup> Hearing Exhibit 505, 7: 2-7.

<sup>32</sup> Hearing Exhibit 505, 7: 10-12; 27: 16-18.

<sup>33</sup> Coalition's SOP at 32.

<sup>34</sup> Hearing Exhibit 712, 4: 2-3.

<sup>35</sup> This Decision does not include significant discussion of the unopposed Agreement provisions given that they are unopposed, and the Agreement speaks for itself. But, as noted, in reaching this Decision, the ALJ has considered the entire record, including all evidence and arguments concerning both the unopposed and opposed Agreement provisions.

**C. Unopposed Settlement Agreement Provisions****1. 60-Day Notice Process, Methodology to Calculate Retail Rate Cap, and Prudency and Related Reporting Requirements**

29. **60-Day Notice Process.** The Agreement states that all items agreed to therein are subject to a 60-day notice option, in which Black Hills may propose modifications to any provision regarding its terms, budgeted amount, ending date or extension, or otherwise.<sup>36</sup> As a part of that process, any party may file comments to any such proposal to oppose, support or seek modification of the proposal.<sup>37</sup> The Agreement also provides that per Decision Nos. R21-0486, ¶ 153 and C21-0017, ¶ 127 (in Proceeding No. 20A-0195E), Staff may file a notice of deficiency to any 60/90-day notice and any party may file comments to Staff's notice.<sup>38</sup> The Agreement states that the Commission will decide whether a new application is needed or any other appropriate action should be taken in response to a notice of deficiency.<sup>39</sup>

30. **Methodology to Calculate Retail Rate Cap.** The Agreement provides that Black Hills will conform its retail rate cap calculation for the Plan to be consistent with the methodology approved by the Commission in its final decision in the 2020 Public Service Company of Colorado (Public Service) transportation electrification plan, in Proceeding No. 20A-0204E, and that the resulting retail rate cap calculation will be addressed after a final budget is determined.<sup>40</sup>

31. **Prudency and Related Reporting Requirements.** The Agreement requires Black Hills to file an annual compliance report by April 1 following each Plan year (in addition to the October semi-annual report discussed below), beginning with the first April 1

---

<sup>36</sup> Hearing Exhibit 109 at 5 (¶ 11).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 5 (¶¶ 13-14).

after the Commission's final decision in this Proceeding.<sup>41</sup> This annual April 1 report will include all the necessary information for the Commission and parties to evaluate the reasonableness and prudence of actual Plan expenditures, as well as Black Hills' estimate of relevant EV revenues.<sup>42</sup> The Agreement provides that after Black Hills files its annual compliance report, the Commission will set a notice and intervention period during which parties may request a prudence review hearing.<sup>43</sup>

32. Neither the Coalition nor CEO object to these Agreement terms.<sup>44</sup>

**a. Findings, Analysis and Conclusions**

33. The suggested 60-Day Notice process provides needed flexibility to allow the Company to make Plan changes based on lessons learned in real-time to ensure that the Plan is implemented in the most cost-effective and efficient manner while also allowing for changes to be vetted by the parties and the Commission before they may be implemented.<sup>45</sup> The proposed methodology for calculating the retail rate impact provides consistency in how the Commission interprets and applies § 40-1-103.3(6), C.R.S. Likewise, the Agreement's prudence and reporting requirements are consistent with past Commission decisions on this issue.<sup>46</sup> For all these reasons, and because these Agreement terms are unopposed, the ALJ approves them. In addition, similar to past Commission directives, the ALJ will require Black Hills to file a detailed description of how it will estimate the EV revenues to be included in the retail rate cap calculation.<sup>47</sup> This

---

<sup>41</sup> *Id.* at 5 (¶ 15).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 5-6 (¶ 15).

<sup>44</sup> See Coalition's SOP at 30; CEO's SOP at 29; Hearing Exhibit 109 at 5-6 (¶¶ 11, and 13-15).

<sup>45</sup> See § 40-5-107(1)(b), C.R.S.

<sup>46</sup> See *e.g.*, Decision No. C21-0017 at 17 (¶ 55) (mailed January 11, 2021) in Proceeding No. 20A-0204E (Public Service's Inaugural Plan Proceeding) (hereinafter Decision No. C21-0017).

<sup>47</sup> Decision Nos. R21-0486 at 9 (mailed August 10, 2021), C21-0651 (mailed November 12, 2021), and C21-0823 (mailed December 23, 2021) in Proceeding No. 20A-0195E (hereinafter Decision Nos. R21-0486, C21-0651, and C21-0823); Decision No. C21-0017 at 13.

informational filing will facilitate a more transparent and accurate revenue estimate, consistent with § 40-5-107(2)(f), C.R.S.

## 2. Rider Recovery

34. The Agreement provides that the Company will continue to recover annual Plan costs through the Transportation Electrification Programs Rider (TEPR) and that Black Hills withdraws its request to recover costs through the DSMCA (demand-side management cost adjustment).<sup>48</sup> The Agreement states the TEPR will allocate Plan “expenditures based on Black Hills’ weighted average class cost allocation (‘WACC’) using actual cost of debt, actual capital structure, and the return on equity from its most recent Phase I rate review proceeding, which at this time is Proceeding No. 17AL-0477E.”<sup>49</sup> It goes on to state that if the Company completes a Phase I rate review during the 2024-2026 TEP period, the Company will adjust the TEPR to incorporate the most recent Commission-approved return on equity.<sup>50</sup>

35. The Agreement requires that the rider allocate Plan expenditures based on class cost-causation.<sup>51</sup> Specifically, the costs for the new Residential Behavioral Charging Pilot (Behavioral Charging Pilot) will be directly assigned to the residential class because it is applicable to residential customers.<sup>52</sup> The costs for the IQ Multi-Family Housing Grant Program (Grant Program) will be directly assigned to the Small General Services (SGS) class because it will be used to deploy Level 2 chargers, which will take service under the SGS rate schedule.<sup>53</sup> Customers that begin taking service as a result of participating in the Agreement’s proposed Fleet Pilot will

---

<sup>48</sup> Hearing Exhibit 109 at 7 (¶ 20).

<sup>49</sup> *Id.* at 7 (¶ 21).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 7 (¶ 22).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 7-8 (¶ 22).

take service under one of the Company's LGS rate schedules, so the costs of that program will be directly assigned to the LGS class.<sup>54</sup> These additional directly-assigned costs are used to calculate allocation factors for common costs. Consistent with the above, the Agreement outlines the resulting directly assigned costs among classes, the allocation factors for administrative and common costs, and the class-specific estimated revenue requirements for the Plan.<sup>55</sup>

36. In annual rider adjustment proceedings, the Company will use its actual spending from the prior year to establish the class-specific revenue requirement.<sup>56</sup> The Agreement requires that Black Hills' previous year's Plan revenues be trued-up in the TEPR and that Black Hills apply asymmetrical carrying costs on any balances, with over-recovered amounts applying a carrying charge at the Company's actual weighted average cost of debt and under-recovered amounts having no carrying charge.<sup>57</sup> The TEPR will be updated once a year, effective June 1 of each year.<sup>58</sup> Black Hills' April 2025 Semi-Annual Report filing will include actual program costs for 2024, which Black Hills will begin to collect on June 1, 2025.<sup>59</sup>

37. Neither the Coalition nor CEO object to these Agreement terms.<sup>60</sup>

**a. Findings, Analysis and Conclusions**

38. In ¶ 21, the Agreement appears to conflate two concepts: the financial return on unamortized balances and the allocation of costs among customer classes. The Agreement states the TEPR will allocate Plan "expenditures based on Black Hills' *weighted average class cost*

---

<sup>54</sup> *Id.* at 8 (¶ 22).

<sup>55</sup> *Id.* at 8-9 (¶¶ 23-25).

<sup>56</sup> Hearing Exhibit 109 at 9 (¶ 25).

<sup>57</sup> *Id.* at 9-10 (¶ 26).

<sup>58</sup> *Id.* at 10 (¶ 27).

<sup>59</sup> *Id.*

<sup>60</sup> See Coalition's SOP at 30; CEO's SOP at 29; Hearing Exhibit 109 at 7-10 (¶¶ 20-27).

*allocation ('WACC')* using actual cost of debt, actual capital structure, and the return on equity from its most recent Phase I rate review proceeding, which at this time is Proceeding No. 17AL-0477E.”<sup>61</sup> It goes on to state that if the Company completes a Phase I rate review during the 2024-2026 TEP period, the Company will adjust the TEPR to incorporate the most recent Commission-approved return on equity.<sup>62</sup> Paragraph 46 of the Agreement incorporates the above language into the Agreement’s requirements for a regulatory asset for EVSE rebates, stating the Company will “receive a return on the unamortized balance at Black Hills’ WACC, calculated as described in Paragraph 21 of this Settlement.”<sup>63</sup> In addition, the Agreement separately addresses class cost allocation in ¶¶ 23-25, despite the class allocation language in ¶ 21. Reading these provisions together, particularly the language in ¶ 46 indicating that ¶ 21 controls the Company’s return on the unamortized balances, the ALJ interprets and construes ¶ 21 of the Agreement to refer to the Company’s weighted average cost of capital as the WACC.<sup>64</sup> For the same reasons, the ALJ interprets ¶ 21 of the Agreement as informing the financial return on unamortized balances, and that the reference to the weighted average class cost allocation as the WACC is an inadvertent error. That said, the ALJ will require the Settling Parties to confirm the ALJ’s interpretation of ¶ 21 through Black Hills’ compliance filing. In addition, the compliance filing must also identify the cost categories and dollar values that the Settling Parties intend to have unamortized balances that accrue interest.

---

<sup>61</sup> Hearing Exhibit 109 at 7 (¶ 21) (emphasis added).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 17 (¶ 46).

<sup>64</sup> The Joint SOP defines WACC as the weighted average cost of capital, not the weighted average class cost allocation, which lends additional support for the ALJ’s interpretation of WACC in ¶ 21 of the Agreement. Joint SOP at iii. It also makes statements implying that the WACC referenced in the Agreement is the weighted average cost of capital. *See* Joint SOP at 12.

39. As clarified above, these Agreement terms are consistent with how the Commission has managed rider recovery in similar cases, including the Company's Inaugural Plan.<sup>65</sup> The ALJ finds that this approach is consistent with transparency goals in § 40-5-107(2)(f), C.R.S. In addition, the Agreement terms include safeguards intended to minimize or avoid over and under-recovery, which serves the public interest. The TEPR allocates costs to classes of customers based upon cost-causation principles such that the class of customers benefiting from a particular expenditure pays for the expenditure, which serves the public interest. Section 40-3-116(1)(a), C.R.S., authorizes the Commission to approve TEPR rate designs like the one proposed here. For all the reasons discussed, the ALJ approves these terms as just, reasonable, in the public interest, and consistent with § 40-3-101(1), C.R.S.

### 3. EV Charging Rates

40. The Agreement outlines the Company's most recently Commission-approved EV charging rates and time-of-day specifications (*e.g.*, on-peak definitions), and states that the Settling Parties agree to the same.<sup>66</sup> Those rates apply to customers who receive an EVSE rebate and applies to customers' whole-home electricity use (not just EV charging).<sup>67</sup> As Staff explains, because the details of the above rates are outside the scope of this Proceeding, the Agreement does not modify this rate design, which the Commission has already approved.<sup>68</sup>

41. Neither the Coalition nor CEO object to these Agreement terms.<sup>69</sup>

---

<sup>65</sup> See Decision Nos. C21-0017 at 21; R21-0486 at 14-15; C21-0651; and C21-0823.

<sup>66</sup> Hearing Exhibit 109, at 10 (¶ 28). See October 24, 2023 Hearing Transcript (10/24/23 Tr.), 85: 1-9; Decision No. R21-0486 at 51 and 54.

<sup>67</sup> Decision No. R21-0486 at 51 and 54.

<sup>68</sup> Hearing Exhibit 401, 10: 13-16—11: 1-2.

<sup>69</sup> See Coalition's SOP at 30; CEO's SOP at 29; Hearing Exhibit 109 at 10-11 (¶ 28).

**a. Findings, Analysis and Conclusions**

42. These Agreement terms mimic existing Commission-approved EV charging rates and specifications. No party has disputed Staff's assertion that changes to these specifications are outside the scope of this Proceeding. For all these reasons, and because these EV charging rates and specifications have been approved by the Commission, the ALJ approves these Agreement terms.

**4. Behavioral Charging Pilot**

43. The Agreement requires the Company to implement a new Behavioral Charging Pilot that will be available to residential customers who own an EV.<sup>70</sup> The Behavioral Charging Pilot will track charging behavior and offer on-going incentives for charging during off-peak times.<sup>71</sup> In its Settlement Testimony, the Company clarified that the Pilot will be capped at 500 customers.<sup>72</sup>

44. Under this Pilot, if a customer charges 85 percent or more of the time (in total monthly kWh) outside of the peak period for the billing month, the customer will receive a \$10 bill credit for the month.<sup>73</sup> In addition, the Agreement provides that the Behavioral Charging Pilot will give a one-time \$25 enrollment incentive as a bill credit to residential EV customers who do not or have not previously taken a home charging rebate, but who choose to participate in the Pilot.<sup>74</sup>

45. To enroll in the Behavioral Charging Pilot, customers must: (1) consent to Rolling Energy Resources (RER) obtaining their EV charging information; (2) provide a form to

---

<sup>70</sup> Hearing Exhibit 109 at 11 (¶ 30).

<sup>71</sup> *Id.*

<sup>72</sup> Hearing Exhibit 110, 25: 9.

<sup>73</sup> Hearing Exhibit 109 at 12 (¶¶ 32 and 34).

<sup>74</sup> *Id.* at 12 (¶ 33).

RER with proof of electric vehicle ownership; and (3) commit to stay enrolled in the Pilot for at least one year.<sup>75</sup> During the hearing, the Company clarified that EV customers who are already on the Company's existing EV time-of-day rate (in ¶ 28 of the Agreement) are eligible to join the Pilot.<sup>76</sup> But, to the extent that such customers previously received a rebate from the Company, they will not be eligible to receive the one-time \$25 enrollment incentive.<sup>77</sup> The Company also clarified that this Agreement term does not prohibit customers who have not already received a rebate from receiving the \$25 enrollment incentive or other Plan rebates.<sup>78</sup>

46. During the hearing, the Company committed to making information on the Behavioral Charging Pilot available to customers already on the Company's standard time-of-day rates in its customer education and marketing materials.<sup>79</sup>

47. As implied above, the Company will use RER as its vendor to track customer time-of-charging behavior. RER will charge \$50,000 per year to provide Black Hills vehicle telematics tracking and monthly reporting for up to 500 customers' time-of-day charging information.<sup>80</sup> The Agreement states that the Company determined that RER is the low-cost vendor to provide this service, as others would charge Black Hills at least double what RER is charging.<sup>81</sup>

48. RER will provide customers a monthly statement that details charging information, including associated cost savings.<sup>82</sup> The Agreement requires the Company to ensure that RER provides to customers, as part of the enrollment process, a clear and concise description, in English and Spanish, of the data that customers authorize RER to use; why the data is needed; how the

---

<sup>75</sup> *Id.* at 12 (¶ 32).

<sup>76</sup> 10/24/23 Tr., 86: 15-24.

<sup>77</sup> *Id.* at 88: 1-8.

<sup>78</sup> *Id.* at 89: 14-19.

<sup>79</sup> *Id.* at 86: 25—87: 1-10.

<sup>80</sup> Hearing Exhibit 109 at 11-12 (¶ 31).

<sup>81</sup> *Id.* at 12 (¶ 31).

<sup>82</sup> *Id.* at 12 (¶ 32).

data will be collected; how the data will be used; how long the data will be retained; and what control customers have over the collected data.<sup>83</sup> The Settling Parties agree that the Company will provide this clear and concise description to the parties and stakeholders at the first stakeholder meeting following the Plan’s approval and that the Behavioral Charging Pilot will use language such as “percent compliance” or “compliance with the off-peak charging requirement” and will not use any language that includes the term “strikes.”<sup>84</sup>

49. The Agreement states that Behavioral Charging Pilot’s “off-peak period” will be between the hours of 3:00 p.m. to 9:00 p.m.<sup>85</sup> During the hearing, the Company explained that this Agreement language (in ¶ 36) includes a typographical error, and that the reference to “off-peak” should be to “on-peak,” and that holidays and weekends are also off-peak periods.<sup>86</sup> With these clarifications and corrections, the Agreement provides that the Behavioral Charging Pilot’s on-peak period is non-holiday weekdays between 3:00 p.m. and 9:00 p.m.

50. The Agreement requires the Company to monitor compliance rates and evaluate whether percentage amounts should be altered, with extra consideration given to IQ customers who are enrolled in the program and potential flexibility they may require.<sup>87</sup>

51. The Coalition and CEO support these Agreement terms.<sup>88</sup>

**a. Findings, Analysis and Conclusions**

52. The Agreement does not speak to the rates that customers enrolled in the Pilot will be charged, whether for peak or off-peak EV charging. The absence of such details, and the clear

---

<sup>83</sup> *Id.* at 12 (¶ 35).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 13 (¶ 36). *See* Hearing Exhibit 110, 25: 14-16.

<sup>86</sup> 10/24/23 Tr., 90: 5-9; 90: 17-25—91: 1-6; Hearing Exhibit 109 at 13 (¶ 36).

<sup>87</sup> Hearing Exhibit 109 at 13 (¶ 37).

<sup>88</sup> Hearing Exhibit 712, 12: 12; Hearing Exhibit 505: 11: 1-3. *See* Coalition’s SOP at 30; CEO’s SOP at 29; Hearing Exhibit 109 at 11-13 (¶¶ 30-37).

implication in the Agreement that customers enrolled in this Pilot will not be charged the Company's standard time-of-day rates (for peak and off-peak charging), indicates that the Settling Parties intend that customers enrolled in this Pilot will be charged the Company's standard electricity rate. This is further supported by Agreement terms rewarding customers for use during off-peak hours with a \$10 bill credit and the lack of Agreement language penalizing customers with a higher rate for peak use. For these reasons, the ALJ construes the Agreement consistent with the above discussion. In addition, given that the Agreement does not state that the Pilot requires customers' whole-home electricity use to meet the 85-percent threshold to receive the \$10 bill credit, but instead ties this to customers' charging behavior, the ALJ construes the Pilot as applying only to customer's EV charging use (and not to their whole-home electricity use).<sup>89</sup>

53. With the above clarifications, the ALJ finds that the Behavioral Charging Pilot may address or minimize customer challenges with avoiding use during peak periods. Under the Company's standard time-of-day rates, peak electricity use results in much higher rates, and those rates apply to customers' whole-home electricity use (not just EV charging).<sup>90</sup> That rate structure does not offer much flexibility. It does not account for the reality that while customers may more readily manage EV charging to minimize peak use, it is far more challenging to avoid peak use for other electricity needs. By focusing on charging use (rather than whole-home use), and establishing a reward-based structure, the Pilot changes this dichotomy and may alleviate or mitigate customer challenges with the existing time-of-day rate structure. At the very least, the Pilot will result in helpful data that the Company and the Commission may use to better understand charging behavior and incentives, which can be used to refine this and other programs in the future. All of this is

---

<sup>89</sup> Hearing Exhibit 109 at 12 (¶ 34). In addition, the Agreement repeatedly refers to customer charging behavior, including that RER will track EV charging information. *See e.g., id.* at 11 (¶¶ 30-31); 12 (¶¶ 32, 34).

<sup>90</sup> *See supra* ¶ 40.

consistent with the statutory goals in § 40-5-107(1)(b)(III), (2)(a) and (c), C.R.S., to encourage vehicle charging that supports electric grid, improve grid use, and ensure system safety and reliability. For all these reasons, the ALJ finds that the proposed Pilot serves the public interest, and approves these Agreement terms, as modified or clarified, consistent with the above discussion. The ALJ stresses that, as discussed during the hearing, the Behavioral Charging Pilot must be made available to customers with EVs who are already on the Company's existing time-of-day rate, and that the Company must ensure that its customer communication and education strategy provides such customers information on the Behavioral Charging Pilot.

## 5. EVSE Rebate Amortization and Engagement Programs

54. The Agreement provides that a regulatory asset will be created for EVSE rebates; that the regulatory asset will be amortized over three years; and that the Company will receive a return on the unamortized balance at Black Hills' "WACC, calculated as described in paragraph 21" of the Agreement.<sup>91</sup> The Agreement requires the Company to continue to amortize the costs for the Inaugural Plan (covering 2021 to 2023) over a 10-year period.<sup>92</sup>

55. The Agreement requires the Company to work with Drive Clean Colorado to implement a Dealership Engagement Plan as proposed in the Company's Direct Testimony.<sup>93</sup>

56. Neither the Coalition nor CEO object to these Agreement terms.<sup>94</sup>

### a. Findings, Analysis and Conclusions

57. As already discussed, the ALJ interprets the reference in ¶ 21 of the Agreement to "weighted average class cost allocation ('WACC')" as an inadvertent error, and that the referenced

---

<sup>91</sup> Hearing Exhibit 109 at 17 (¶ 46).

<sup>92</sup> *Id.* at 17 (¶ 47).

<sup>93</sup> *Id.* at 18 (¶ 48). *See also* Hearing Exhibit 102, 21: 12-16; Hearing Exhibit 104, 29: 5-8.

<sup>94</sup> *See* Coalition's SOP at 30; CEO's SOP at 29; Hearing Exhibit 505, 25: 12-13; Hearing Exhibit 109 at 17-18 (¶¶ 46-47; ¶ 49).

language should instead be the weighted average cost of capital as the WACC. Because the Agreement's rebate amortization language in ¶ 46 incorporates ¶ 21 of the Agreement, the ALJ's construction of ¶ 21 extends to ¶ 46.

58. With the above clarification, the rebate amortization agreement terms provide reasonable approaches to rebate amortization in light of the nature of the Company's service territory. The proposed Dealership Engagement Programs serve statutory goals in § 40-5-107(2)(b)(IV), C.R.S., to increase awareness of Plan programs and transportation electrification benefits and to encourage greater EV adoption. For the reasons discussed, those outlined in the Company's Direct Testimony, and because these Agreement terms are unopposed, the ALJ approves these Agreement terms as in the public interest.

## 6. Plan Administration and Reporting

59. The Agreement provides that an additional "0.5 FTE to support the Ready EV plan" will be included for program administrative support.<sup>95</sup> The Agreement commits the Company to continuing to hold semi-annual stakeholder meetings.<sup>96</sup>

60. The Agreement adopts the reporting requirements in the Company's Direct and Rebuttal Testimonies, (except that the Company will provide semi-annual reports), as modified below.<sup>97</sup> Specifically, the Agreement adopts the following modifications to the reporting requirements proposed in the Company's Direct and Rebuttal Testimonies:

- For the Behavioral Charging Pilot, the Company will provide the following metrics in its semi-annual reports, in an executable file format;
  - Total cumulative number of customers enrolled each month;

---

<sup>95</sup> Hearing Exhibit 109 at 18 (¶ 51).

<sup>96</sup> *Id.* at 18 (¶ 50).

<sup>97</sup> *Id.* at 18 (¶ 52).

- Total new number of customers enrolled each month;
- Monthly number and value of enrollment incentives paid;
- Monthly number and value of on-going incentives paid;
- For each month the Pilot operates, the number of participants receiving the \$10 incentive and the number of participants ineligible to receive the \$10 incentive; and
- Total monthly volumes (kWh) of on-peak and off-peak charging;
- EV awareness by the following demographics through a survey at least once per year, but allowing for customers to opt out from answering questions regarding these demographics:
  - Customers who identify as female;
  - Spanish-speaking customers;
  - Hispanic versus non-Hispanic customers; and
  - Income Qualified customers, who can be identified by survey responses about household income and household size if the customers do not choose to skip those survey questions;
- Number of inquiries received about DCFC station rebates to-date for the Plan;
- Percentage of portfolio and program budgets spent on IQ customers to-date for the Plan;
- For the Fleet Pilot:
  - Number of participants to-date; and
  - Number and names of school districts that have been contacted;
- For the e-Bike Pilot:
  - 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; and
  - Marketing and outreach materials developed and distributed to Income Qualified customers and bicycle shops related to the rebates;
- For dealership engagement:
  - Updates on program development, implementation, and modification;
  - The number of locations (dealerships, *etc.*) engaged to date; and

- Marketing and outreach materials developed and distributed to Income Qualified customers and dealerships related to the Company's Plan.<sup>98</sup>

61. The Agreement requires Black Hills to use its in-house resources to conduct online customer program participant surveys for the following programs (at minimum): the new e-Bike Pilot; the Residential Wiring Rebate; the Fleet Pilot; and the Behavioral Charging Pilot.<sup>99</sup>

62. To provide Black Hills time to set up its new programs in 2024, the Agreement provides that customer participant surveys for each program will be fielded in 2025 via an online survey platform such as Medallia, Qualtrics or SurveyMonkey.<sup>100</sup> The Agreement requires the Company to share draft survey questions and a draft survey invitation letter and/or email language with stakeholders for their review, at a stakeholder meeting and via email, prior to surveys being sent to customers.<sup>101</sup> The Agreement explains that the surveys' intent is to understand participant satisfaction with each program and relevant application process so that any needed program design changes may be identified.<sup>102</sup> The Company will provide a detailed summary of customer survey results in its semi-annual report, when available, but at least in the semi-annual report prior to its next Plan filing date of May 15, 2026 in order to adequately inform the next Plan.<sup>103</sup> The Company will include an executable Excel file of survey results downloaded from Medallia, Qualtrics or SurveyMonkey as an attachment to the semi-annual report.<sup>104</sup>

63. The Coalition does not oppose these Agreement terms.<sup>105</sup> CEO supports these Agreement provisions.<sup>106</sup>

---

<sup>98</sup> *Id.* at 18-19 (¶ 52).

<sup>99</sup> *Id.* at 19 (¶ 53).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See Coalition's SOP at 30. Hearing Exhibit 109 at 18-19 (¶¶ 50-53).

<sup>106</sup> Hearing Exhibit 505, 20: 16-22—21: 1-9.

**a. Findings, Analysis and Conclusions**

64. These Agreement provisions serve to enhance transparency based upon actual outcomes, enabling a more thorough analysis of Plan performance and future program design, consistent with § 40-5-107(2(f), C.R.S. It will also provide a more accurate picture of the Plan's effectiveness in meeting numerous statutory goals.<sup>107</sup> For the reasons discussed, and because these Agreement terms are unopposed, the ALJ approves these Agreement terms as in the public interest. In addition, the ALJ requires that the Company ensure that it does not disclose customers' personally identifying information in any summaries of survey results that it files.

**7. Plan Cost Effectiveness, Litigation and Expert Expenses, and Compliance Advice Letter**

65. The Agreement states that the results of the economic analysis performed by Applied Energy Group show that, overall, the Company's 2024-2026 Plan is cost-effective, with a Modified Total Resource Cost (mTRC) score of 2.00.<sup>108</sup> The Agreement provides that the Plan, as modified by the Agreement, is cost-effective.<sup>109</sup>

66. The Agreement adopts Black Hills' proposal to recover its actual costs of litigation and expert expenses through the TEPR, amortized over three years.<sup>110</sup> After the Commission approves the Settlement Agreement, Black Hills will file a compliance advice letter to reflect the Agreement and the final Commission decision.<sup>111</sup>

---

<sup>107</sup> See *e.g.*, § 40-5-107(1)(a) - (b); and (2)(b), (d), (e) and (g), C.R.S.

<sup>108</sup> Hearing Exhibit 109 at 21 (¶ 57). See Hearing Exhibit 101, 18: 10-13—21: 1 (Company's cost effectiveness analysis).

<sup>109</sup> Hearing Exhibit 109 at 21 (¶ 57).

<sup>110</sup> *Id.* at 21 (¶ 58).

<sup>111</sup> *Id.* at 21 (¶ 59).

67. Neither the Coalition nor CEO object to these Agreement terms.<sup>112</sup>

**a. Findings, Analysis and Conclusions**

68. The Company’s mTRC analysis confirms that the Plan, as modified by the Agreement, is cost-effective, consistent with § 40-5-107(1)(b), C.R.S.<sup>113</sup> The mTRC analysis also establishes that the Company considered the cost of carbon dioxide and methane emissions as a part of this Plan, consistent § 40-3.2-106, C.R.S.<sup>114</sup> The other Agreement terms discussed above help ensure that the Company does not over- or under- recover Plan-related litigation and expert costs, and minimizes the rate impact by spreading cost recovery over three years. For the reasons discussed, and because these Agreement terms are unopposed, the ALJ approves them as in the public interest.

**D. Opposed or Partially Opposed Settlement Agreement Provisions**

**1. Non-IQ Rebates**

69. The Agreement requires Black Hills to provide EVSE rebates (up to the listed maximum) that do not exceed the actual installation and equipment costs as set forth below:

Program	Maximum Rebate Amounts
Residential Wiring Rebate (new)	\$500 per outlet or hard-wired charger
Commercial/Multi-Family Housing Level 2	\$2,000 per port
Governmental/Non-Profit/IQ Multi-Family Housing Level 2	\$3,000 per port
DCFC Level 3 (50-99 kW)	\$20,000 per unit
DCFC Level 3 (100 kW and greater)	\$35,000 per unit <sup>115</sup>

<sup>112</sup> See Coalition’s SOP at 30; CEO’s SOP at 29; Hearing Exhibit 109 at 21 (¶¶ 57-59).

<sup>113</sup> See Hearing Exhibit 101, 18: 10-13—21: 1.

<sup>114</sup> See *id.*

<sup>115</sup> Hearing Exhibit 109 at 13-14 (¶¶ 29 and 38(i) to (iii)).

70. **Residential Wiring Rebate.** The Agreement provides that customers receiving the new in-home \$500 Residential Wiring Rebate must enroll in the Company's time-of-day rate or the Behavioral Charging Pilot for at least one year.<sup>116</sup>

71. **Commercial/Multi-Family Housing Level 2 Charging Rebate.** The Agreement requires that EVSE must be separately metered to receive the \$2,000 Commercial Level 2 Charging Rebate.<sup>117</sup> During the hearing, the Company clarified that although this rebate applies to multi-family housing, it does not include an income-qualified designation.<sup>118</sup>

72. **Governmental/Non-Profit/IQ Multi-Family Housing Level 2 Charging Rebate.** This \$3,000 rebate includes governmental entities and non-profit entities that support IQ customers.<sup>119</sup> In addition, multi-family housing units where 66 percent or more of residents meet income qualifications, and which are not eligible for the Multi-Family Housing Grant Pilot (Grant Pilot) will be eligible for this rebate.<sup>120</sup> To be eligible, such a housing provider need only attest that 66 percent of its residents meet income qualifications.<sup>121</sup>

73. **DCFC/Level 3 Rebate.** This \$35,000 rebate will support expanding high-voltage EV charging infrastructure, consistent with the Commission's decision on the Company's Inaugural Plan.<sup>122</sup> Indeed, the rebate is available to school districts, police, and public transit agencies, which essentially provides them with infrastructure funding and support. The Agreement requires that EVSE must be separately metered to receive a DCFC Rebate, and that rebates are limited to \$70,000 per site, per year.<sup>123</sup> During the first two Plan years (2024 and 2025), rebates

---

<sup>116</sup> *Id.* at 13 (¶ 38(i)).

<sup>117</sup> *Id.* at 13 (¶ 38(ii)).

<sup>118</sup> 10/24/23 Tr., 147: 19-21.

<sup>119</sup> Hearing Exhibit 109 at 13 (¶ 38(ii)).

<sup>120</sup> *Id.*

<sup>121</sup> *See id.*

<sup>122</sup> Joint SOP at 27; 10/24/23 Tr., 208: 6-16. The rebate is available, but not limited to school districts, police, and public transit agencies. Joint SOP at 27. *See* Hearing Exhibit 109 at 14 (¶ 38(iii)).

<sup>123</sup> Hearing Exhibit 109 at 14 (¶ 38(iii)).

are limited to two sites per customer, per year, and in the third Plan year (2026), if funds remain for this line item, there will be no limit on the number of DCFC rebates for which a customer may apply.<sup>124</sup> This is intended to avoid one or two larger companies from swallowing up the entire DCFC rebate budget in the first two years, giving smaller companies more opportunity in the first two years to obtain these rebates.<sup>125</sup> The Agreement allows the Company to use the 60-Day Notice process to eliminate the two site per customer per year limit earlier than 2026.<sup>126</sup> The Agreement establishes an annual budget of \$260,000 for rebates in this category, for a total three-year budget of \$780,000, and that unspent funds may be rolled over from year to year.<sup>127</sup> In addition, the Settling Parties agree to the Company's recommendation in its Direct Testimony to adopt the Electric Power Research Institute's (EPRI) Vetted Product List of approved L2 and L3 chargers eligible for commercial rebates.<sup>128</sup>

**a. Arguments**

74. CEO supports or does not object to these Agreement terms, except to the extent that these Agreement terms incorporate budget items to which it objects.<sup>129</sup>

75. While the Coalition does not oppose the provision adopting EPRI's Vetted Product List, it opposes the proposed new Residential Wiring Rebate because it is available to non-IQ customers.<sup>130</sup> The Coalition argues that the entire residential EVSE rebate budget should be fully allocated to IQ customers, and that the rebate should be \$1,300 (the Residential IQ Level 2 Rebate amount), arguing this is necessary for IQ customers to overcome barriers to transitioning to an

---

<sup>124</sup> *Id.*

<sup>125</sup> Hearing Exhibit 110, 27: 11-14.

<sup>126</sup> Hearing Exhibit 109 at 14 (¶ 38(iii)).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 14 (¶ 39).

<sup>129</sup> See CEO's SOP at 29; Hearing Exhibit 109 at 11; 13-14 (¶¶ 29; 38-39).

<sup>130</sup> See Coalition's SOP at 30; Hearing Exhibit 109 at 15 (¶ 39); Hearing Exhibit 712, 7: 17-22—8: 1-2.

EV.<sup>131</sup> The Coalition argues that it is necessary to dedicate the entire residential rebate budget to IQ customers because the Company provided no IQ rebates during the Inaugural Plan (as of August 2023).<sup>132</sup>

76. Although the Company agrees that as of August 2023, it has not provided any IQ rebates to customers under its Inaugural Plan, it explains that it did not receive any applications for IQ rebates.<sup>133</sup> The Company adds that because the majority of its customers are located in DI communities, it is safe to conclude that at least some of the rebates it provided went to customers living in DI communities.<sup>134</sup>

77. The Company objects to the Coalition's suggestion that the Residential Wiring Rebate be limited to IQ customers at the IQ Rebate amount of \$1,300, arguing that this would reduce the number of rebates available from 110 to 50 per year.<sup>135</sup> As a result, only 150 residential customers would be eligible for an EVSE rebate, versus 330 customers under the Agreement's terms.<sup>136</sup> The Settling Parties submit that the Coalition's suggestion to dedicate all residential rebates to IQ customers does not meet the legislature's goal that the benefits of EV adoption should be widespread for consumers, not a limited category of consumers.<sup>137</sup> They argue that if the General Assembly intended otherwise, it could have stated that EV program subsidies be limited solely to IQ customers, but it did not.<sup>138</sup>

---

<sup>131</sup> See Hearing Exhibit 712, 7: 17-22—8: 1-2; Hearing Exhibit 702, 16: 13-14; Coalition's SOP at 20.

<sup>132</sup> Coalition's SOP at 5; 10/24/23 Tr., 147: 7-9; 223: 6-15.

<sup>133</sup> 10/24/23 Tr., 147: 4-9; 148: 9-14.

<sup>134</sup> 10/24/23 Tr., 148: 14-20.

<sup>135</sup> Hearing Exhibit 110, 21: 24-27.

<sup>136</sup> Joint SOP at 28; Hearing Exhibit 110, 21: 24-27.

<sup>137</sup> See Joint SOP at 28 and 31; Hearing Exhibit 110, 20: 20-21—21: 1-21.

<sup>138</sup> Hearing Exhibit 110, 21: 21-23.

**b. Findings, Analysis and Conclusions**

78. The ALJ finds that on the whole, the proposed rebates meet statutory goals to support widespread transportation electrification and increase access to the use of electricity as a transportation fuel, consistent with § 40-5-107(1)(a) and (2)(b), C.R.S. Indeed, the rebates will be available to residential and commercial customers and can be used to pay for infrastructure costs (such as electric wiring), and equipment costs. The various rebate programs incentivize investment and deployment of customer-owned charging infrastructure and associated electrical equipment that support transportation electrification, consistent with § 40-5-107(1)(b)(I), C.R.S.; incentivize investment to facilitate electrification of public transit or other vehicle fleets through significant commercial rebates, consistent with § 40-5-107(1)(b)(II), C.R.S.; and may attract private capital investment consistent with § 40-5-107(2)(e), C.R.S. In addition, through the rebate that will be available to multi-family housing units, the Agreement's proposals also increase access for IQ customers who live in such housing, consistent with § 40-5-107(2)(g), C.R.S.

79. While the ALJ shares and does not discount concerns surrounding the lack of IQ rebates issued during the Inaugural Plan, the ALJ fundamentally disagrees that the way to address these concerns is to punish non-IQ residential customers by barring them from receiving EV-related rebates. This would result in a Plan that excludes a good number of the Company's customers from receiving Plan benefits that encourage widespread EV adoption, while also being expected to pay for Plan costs. More importantly, the ALJ agrees with the Settling Parties that the Coalition's suggestion to restrict residential rebates to IQ customers is inconsistent with the General Assembly's goal to encourage widespread transportation electrification in the Company's

service territory.<sup>139</sup> For the reasons discussed, the ALJ approves these Agreement terms as in the public interest and rejects the Coalition’s arguments.

## 2. IQ Programs

80. **IQ EV Purchase Rebate.** The Agreement provides that the Company will discontinue its existing residential IQ Vehicle Purchase Rebate offering.<sup>140</sup>

81. **Residential IQ Level 2 Rebate.** The Agreement requires the Company to continue to offer the existing Residential IQ Level 2 Rebate (IQ Rebate) up to \$1,300 per outlet and charger for IQ customers who purchase and install a Level 2 charger.<sup>141</sup> During the hearing, the Company clarified that this rebate can be used to cover the costs of an EVSE charging station, home wiring, or any combination thereof.<sup>142</sup>

82. **e-Bike Pilot Program.** The Agreement requires the Company to implement a new IQ e-Bike Pilot that allows for a \$500 e-Bike rebate (exclusive of ancillary equipment) for up to 20 residential IQ customers per year (\$10,000 per year or \$30,000 for the entire Plan period).<sup>143</sup> The Agreement provides that the e-Bike rebate “is stackable with other incentive programs as long as the stacking does not exceed the purchase price of the eBike [*sic*].”<sup>144</sup> During the hearing, the Company clarified that this language references stacking its e-Bike rebate with non-Company e-Bike rebate programs, such as CEO’s e-Bike rebate program.<sup>145</sup> The e-Bike Pilot will provide after-purchase rebates (at least initially); the Company will work with CEO to explore implementing a point-of-sale rebate.<sup>146</sup> The Company and CEO plan to leverage CEO’s experience providing point-

---

<sup>139</sup> See § 40-5-107(1)(a), C.R.S.

<sup>140</sup> Hearing Exhibit 109 at 15 (¶ 42).

<sup>141</sup> *Id.* at 15 (¶ 43(i)).

<sup>142</sup> 10/24/23 Tr., 40: 17-25—41: 1-3.

<sup>143</sup> Hearing Exhibit 109 at 16 (¶ 43(ii)).

<sup>144</sup> *Id.*

<sup>145</sup> 10/24/23 Tr., 103: 14-25—104: 1-17.

<sup>146</sup> Hearing Exhibit 109 at 16 (¶ 43(ii)).

of-sale rebates. During the hearing, the Company clarified that any unused e-Bike rebate budgeted amounts may be rolled over to the e-Bike budget for the next Plan year.<sup>147</sup>

83. **Multi-Family Housing Residential EVSE Grant Program.** The Agreement requires the Company to develop this new Grant Program that will provide matching funds needed to participate in CEO's ChargeAhead Colorado Program, for certain HUD-regulated multi-family housing buildings where the owners are unable to invest any funds of their own for EVSE.<sup>148</sup> This Program will have a total three-year budget of \$70,000, that may be spent at any time during the 2024-2026 Plan period.<sup>149</sup> During the hearing, the Company clarified that grant funds may be used for EVSE (*i.e.*, charging stations themselves), other infrastructure needed to energize EVSE, and wiring or EVSE installation costs.<sup>150</sup>

84. **IQ Program Eligibility Requirements.** The Agreement provides the below simplified eligibility requirements for the Company's IQ programs. Initially, Black Hills customers enrolled in a Black Hills IQ program will be automatically deemed eligible for the IQ program offerings.<sup>151</sup> The Agreement states that "[w]ithin 8 months of a final Commission decision in this Proceeding," the Company agrees to implement an income verification process that expands eligibility of income-qualified Plan programs to all IQ customers that participate in at least one of the below programs:

- Colorado's Low-Income Energy Assistance Program;
- Energy Outreach Colorado's Affordable Residential Energy Program;
- Colorado's Weatherization Assistance Program;
- The Company's demand-side management income-qualified programs;
- Any Company program for IQ customers;

---

<sup>147</sup> 10/24/23 Tr., 41: 6-12.

<sup>148</sup> Hearing Exhibit 109 at 16 (¶ 43(iii)).

<sup>149</sup> *Id.*

<sup>150</sup> 10/24/23 Tr., 95: 2-19.

<sup>151</sup> Hearing Exhibit 109 at 16 (¶ 44).

- Community Assistance to Electric Bicycles Rebate Program;
- Vehicle Exchange Colorado;
- Income-qualified Community Solar Gardens;
- Supplemental Nutrition Assistance Program (SNAP); and
- The Temporary Assistance for Needy Families program (TANF), which will be verified by providing enrollment or award letters or eligibility cards.<sup>152</sup>

85. During the hearing, the Company explained that based on CEO's concerns, it agrees to modify the above language such that there is no eight-month delay in implementing the referenced simplified verification process.<sup>153</sup> Specifically, the Agreement should be modified to delete the words "[w]ithin 8 months of a final Commission decision in this Proceeding," in the last sentence of ¶ 44 before the bullet points, resulting in the sentence starting with "[t]he Company Agrees to implement."<sup>154</sup> The Company explained that with this change, it plans to implement the new verification process as soon as a Commission decision is issued in this Proceeding; this means there will not be an eight-month delay in implementing these simplified eligibility requirements (as originally proposed in the Agreement).<sup>155</sup>

86. In addition, the Agreement provides that third-party verification of customer eligibility will be performed through a similar process to that currently in place for IQ Community Solar Garden subscribers, BHEAP, and DSM services through the providers currently performing income-verification for those programs.<sup>156</sup> And, the Company may verify current participation directly to the extent it is able.<sup>157</sup>

---

<sup>152</sup> *Id.* at 17 (¶ 44). The Agreement includes footnote citations 1 and 2 among the above list of programs but does not include content for those footnotes. *See id.* During the hearing, the Company explained that there is no missing content for these two footnotes, and that they were included by mistake. 10/24/23 Tr., 19: 3-25—21: 1-2.

<sup>153</sup> 10/24/23 Tr., 41: 14-25.

<sup>154</sup> *Id.* *See* Hearing Exhibit 109 at 16 (¶ 44).

<sup>155</sup> 10/24/23 Tr., 42: 1-4.

<sup>156</sup> Hearing Exhibit 109 at 17 (¶ 44).

<sup>157</sup> *Id.*

**a. Arguments**

87. CEO opposes discontinuing the IQ EV Purchase Rebate program.<sup>158</sup> CEO argues that the Company should implement a point-of-sale IQ EV Purchase Rebate, which will reduce the up-front costs of an EV, making EV adoption more possible for IQ customers.<sup>159</sup> CEO recommends that the Company's existing IQ EV Purchase Rebate continue, which provides \$5,500 for new EVs and \$3,000 for used EVs.<sup>160</sup> CEO recommends an annual budget of \$70,000, either reallocated from or in addition to the proposed Grant Program.<sup>161</sup> If the Commission is inclined to approve a continued IQ EV Rebate Purchase program at a lower amount, CEO suggests that it not be set any lower than \$2,500 for new and used vehicles, which would allow for up to 28 total rebates and for the program to be administered in-house.<sup>162</sup> CEO also recommends that the Commission clarify that the rebates can be combined with state and federal tax incentives.<sup>163</sup> CEO offers to help the Company implement this program and the new e-Bike Pilot by leveraging its extensive experience developing and launching incentive programs.<sup>164</sup> CEO suggests that the Company be required to implement a point-of-sale IQ EV Purchase Rebate program within 120 days of a final Commission decision in this Proceeding, and that the Company be required to include in its semi-annual reports the following information on its IQ EV Purchase Rebate program:

- 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

---

<sup>158</sup> The IQ EV Purchase Rebate Agreement term appears in ¶ 42 of the Agreement. Hearing Exhibit 109 at 15. Although CEO's SOP does not identify ¶ 42 of the Agreement as a provision that it objects to, CEO plainly raises numerous arguments in opposition to ¶ 42. *See* CEO's SOP at 9-23; 29; Hearing Exhibit 505, 13: 1-13.

<sup>159</sup> Hearing Exhibit 505, 13: 1-5.

<sup>160</sup> *Id.* at 13: 5-8.

<sup>161</sup> CEO's SOP at 22.

<sup>162</sup> *Id.* at 11.

<sup>163</sup> Hearing Exhibit 505, 13: 8-9.

<sup>164</sup> *Id.* at 13: 9-13.

- Marketing and outreach materials developed and distributed to IQ customers and dealerships related to the rebates.<sup>165</sup>

88. In support, CEO argues that the Company has already completed the work necessary to stand-up the program; that the Company overstates the challenges and costs with providing a point-of-sale rebate; that upfront vehicle costs are the primary barrier for greater EV adoption; that Black Hills did not give its IQ EV Purchase Rebate program the chance to succeed given that it launched in March 2023; and that the Commission ordered Black Hills to provide this as an “upfront” rebate, but the Company failed to do so.<sup>166</sup> CEO also argues that a point-of-sale IQ EV Purchase Rebate has a greater benefit than tax credits to lower-income households and households with a lower tax burden because a household’s tax burden must be \$7,500 to receive the full \$7,500 federal tax credit (among other EV-related requirements).<sup>167</sup> CEO also argues that the federal tax credit is not available at the point-of-sale, and that the same holds true for most customers seeking Colorado’s tax credit.<sup>168</sup> At the same time, CEO agrees that the state tax credit was recently amended to allow auto dealers to take assignability of the state tax credit at the point-of-sale starting January 1, 2024.<sup>169</sup> CEO also agrees that guidance was recently issued by the U.S. Department of the Treasury on October 6, 2023, to allow a car buyer to transfer the federal tax credit to the auto dealer that sells the car, if the dealer meets certain requirements and chooses to opt-in.<sup>170</sup> These changes will facilitate consumers receiving the benefit of the tax credit at the point-of-sale.

---

<sup>165</sup> CEO’s SOP at 17-18.

<sup>166</sup> *Id.* at 9-10; 18-19.

<sup>167</sup> *Id.* at 12, citing Hearing Exhibit 500, 70: 1. *See* Hearing Exhibit 500, 72: 8-12.

<sup>168</sup> *Id.* at 13, citing Hearing Exhibit 500, 69: 4-11.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*, citing Hearing Exhibit 301, Attachment SEE-21 and *Transfer of Credit under Sections 30D and 25E from Taxpayer to Eligible Entity and Updated Requirements for Qualified Manufacturers and Sellers Section 2(3)*; *see also* U.S. Department of the Treasury, *IRS Release Guidance to Expand Access to Clean Vehicle Tax Credits, Help Car Dealers Grow Businesses* (Oct. 6, 2023).

89. Like CEO, the Coalition objects to discontinuing the IQ EV Purchase Rebate Program, raising similar arguments. For example, the Coalition agrees that the Company did not give the program enough opportunity to succeed given when it was launched.<sup>171</sup> The Coalition asserts that the main barrier to IQ customers transitioning to an EV is EV affordability, and that there is an inconsistency in offering EVSE rebates to such customers who cannot, without additional support, afford an EV.<sup>172</sup> The Coalition relies on Commission findings in the Company's Inaugural Plan Proceeding recognizing the impracticality of offering a rebate only for charging equipment and not for an EV where the highest cost of transitioning to electric transportation is the cost of the EV.<sup>173</sup> The Coalition asserts that there is "little assurance" that IQ and DI customers have sufficient access to information on how to access the state and federal incentives, and that these incentives "may not guarantee access" to EVs.<sup>174</sup> Similarly, it argues that there is "no guarantee" that a customer will qualify for every program, and such programs have stringent requirements (citing the federal up-front tax credit).<sup>175</sup> The Coalition asserts that adopting a "wait-and-see" approach for these communities risks them falling further behind in accessing EV benefits, and that the Commission has explicitly agreed with this principle.<sup>176</sup> Like CEO, the Coalition recommends that the Commission require the Company to provide an upfront rebate, ("cash on the hood") and to allocate \$600,000 as the budget for the entire Plan period (\$200,000 annually).<sup>177</sup> It suggests that that such a program work in coordination with the EVSE rebate programs.<sup>178</sup>

---

<sup>171</sup> Hearing Exhibit 712, 9: 3-7. *See* Coalition's SOP at 12, citing Hearing Exhibit 502, and at 15-16.

<sup>172</sup> Hearing Exhibit 702, 16: 13-14; Hearing Exhibit 712, 9: 13-16.

<sup>173</sup> Hearing Exhibit 702, 16: 14-21—17: 1, citing Decision No. C21-0651 at ¶ 29.

<sup>174</sup> Hearing Exhibit 712, 9: 17-20—10: 1.

<sup>175</sup> Coalition's SOP at 14-15, citing Hearing Exhibit 402 at 4, 6; Hearing Exhibit 701, 11: 20—12: 1-2; Hearing Exhibit 712, 9: 18-20—10: 1-7.

<sup>176</sup> Hearing Exhibit 712, 10: 1-2, citing Decision No. C21-0651 at 14.

<sup>177</sup> Hearing Exhibit 712, 10: 7-9; Hearing Exhibit 701, 12: 4-5 (Table TM-1).

<sup>178</sup> Hearing Exhibit 701, 11: 9-11.

90. As to the \$1,300 IQ Rebate, based on the clarifications during the hearing that this Rebate can be used for equipment, home wiring or any combination thereof, CEO no longer opposes this Agreement provision.<sup>179</sup>

91. The Coalition appears to oppose the \$1,300 IQ Rebate because it believes the rebate amount (\$1,300) should be higher, but it does not suggest any particular rebate amount, instead asserting that it should be higher since no IQ rebates were issued during the Inaugural Plan.<sup>180</sup> Conversely, the Coalition also states that it supports the “enhanced” \$1,300 IQ Rebate, arguing that the Company should “fully allocate its residential charging program to the enhanced \$1,300 rebate for IQ customers.”<sup>181</sup>

92. CEO partially supports the e-Bike Pilot.<sup>182</sup> CEO opposes this rebate being provided post-purchase, and instead suggests that it be a point-of-sale rebate from the start of the program, or alternatively, within 12 months after the Commission’s final decision here.<sup>183</sup> However, in its SOP, CEO argues that a point-of-sale e-Bike rebate could be launched within 180 days of the Commission’s final decision here.<sup>184</sup> CEO is willing to work with the Company to help it implement the e-Bike Pilot.

93. The Coalition “does not oppose” the e-Bike Pilot, but submits that e-Bikes are not a substitute for IQ EV Purchase Rebates, and that both rebates should be available.<sup>185</sup> The Coalition’s SOP includes a budget for the e-Bike Pilot identical to the Agreement’s proposed total

---

<sup>179</sup> 10/26/23 Tr., 8: 10-15; Hearing Exhibit 109 at 15-16 (¶ 43(i)).

<sup>180</sup> Hearing Exhibit 700, 16: 5-8. Although this written testimony states that Ms. Terea Macomber (another Coalition witness) addresses the rebate level in more detail in her written testimony, her testimony (Hearing Exhibit 701) does not suggest a different IQ rebate amount. *See* Hearing Exhibit 700, 16: 5-8. *See also* Coalition’s SOP at 20-21 and 30; Hearing Exhibit 109 at 15 (¶ 43(i)). *See generally*, Hearing Exhibit 701.

<sup>181</sup> Coalition’s SOP at 20.

<sup>182</sup> Hearing Exhibit 505, 15: 15-16.

<sup>183</sup> *Id.* at 16: 7-13.

<sup>184</sup> CEO’s SOP at 25. This makes it unclear whether CEO is advocating for a maximum 12-month delay in launching an e-Bike point-of-sale Rebate, or a maximum 180-day delay.

<sup>185</sup> Coalition’s SOP at 17.

budget for this Pilot.<sup>186</sup> The Coalition's SOP also states that it opposes ¶ 43 of the Agreement, which includes the e-Bike Pilot (in ¶ 43(ii)).<sup>187</sup>

94. Turning to the Grant Program, CEO conceptually supports the Program, but not at the cost of the IQ EV Purchase Rebate.<sup>188</sup> If this program can be provided alongside an IQ EV Purchase Rebate, CEO "would support this grant program."<sup>189</sup> If not, CEO suggests that the IQ EV Purchase Rebate replace the Grant Program such that the three-year \$70,000 budget for the Grant Program be shifted to the IQ EV Purchase Rebate.<sup>190</sup>

95. The Coalition's SOP states that it objects to ¶ 43 of the Agreement, which includes the Grant Program (¶ 43(iii)).<sup>191</sup> At the same time, the Coalition's SOP includes a proposed budget for the Grant Program identical to the Agreement's proposed budget for this Program.<sup>192</sup>

96. As to the IQ eligibility criteria, CEO does not oppose these Agreement provisions, as modified during the hearing.<sup>193</sup> The Coalition objects to the IQ eligibility criteria, suggesting that the criteria follow any eligibility criteria that the Commission adopts in Public Service's pending Plan Proceeding (No. 23A-0243E).<sup>194</sup>

97. Starting with the IQ EV Purchase Rebate, the Settling Parties agree that no statute or Commission rule requires electric utilities to offer EV purchase rebates, meaning that the Commission's decision on this is guided only by policy considerations, which advise against continuing an EV Purchase Rebate.<sup>195</sup> They argue that the Company's Plan must include programs

---

<sup>186</sup> Compare Coalition's SOP at 25 with Hearing Exhibit 109 at 16 (¶ 43(ii)).

<sup>187</sup> Coalition's SOP at 30; Hearing Exhibit 109 at 16 (¶ 43(ii)).

<sup>188</sup> See Hearing Exhibit 505, 17: 6-13.

<sup>189</sup> *Id.* at 17: 11-13.

<sup>190</sup> CEO's SOP at 22-23.

<sup>191</sup> Coalition's SOP at 30; Hearing Exhibit 109 at 16 (¶ 43(iii)).

<sup>192</sup> Compare Coalition's SOP at 25 with Hearing Exhibit 109 at 16 (¶ 43(iii)).

<sup>193</sup> See CEO's SOP at 29; Hearing Exhibit 109 at 16-17 (¶ 44).

<sup>194</sup> Coalition's SOP at 22, citing Hearing Exhibit 702, 28: 13-16.

<sup>195</sup> See Joint SOP at 8.

that support widespread transportation electrification and that its Plan “must seek to minimize overall cost and maximize overall benefits.”<sup>196</sup> They assert that contrary to the Coalition’s and CEO’s suggestions, there is no statutory or regulatory requirement that the Company (or other electric utilities) “ensure” EV adoption.<sup>197</sup> The Settling Parties argue that it is not equitable to force at least 99.8 percent of the Company’s ratepayers to subsidize the private purchase of EVs, which only .2 percent of the Company’s customers would benefit from.<sup>198</sup> Along these same lines, the Company submits that it is not prudent to use customer dollars to subsidize the private purchase of EVs.<sup>199</sup> As proposed by CEO (with a \$70,000 budget), the EV purchase rebate would benefit only 12 to 23 customers.<sup>200</sup> The Company submits that it is not in the public interest to allow a few customers to benefit from such a subsidy at the expense of “blue-collar workers or other retired customers” that cannot afford an EV, whether new or used.<sup>201</sup>

98. The Settling Parties also argue that the Commission should reject suggestions to continue the IQ EV Purchase Rebate program because it is duplicative of other incentive offerings (federal and state), but at a greater cost.<sup>202</sup> Staff explains that an EV Purchase Rebate program is costly for ratepayers given that the Company will amortize these rebates and earn a return at its weighted average cost of capital during the amortization period.<sup>203</sup> On top of that, the Company will pay taxes on those earnings, which it passes onto ratepayers. Staff estimates that with a three-year amortization period, ratepayers will spend \$1.20 for every dollar that the Company provides in EV purchase rebates.<sup>204</sup> Staff submits that it is both unwise and unfair to impose overall higher

---

<sup>196</sup> Joint SOP at 8, citing § 40-5-107(1)(a), C.R.S., and quoting § 40-5-107(1)(b), C.R.S.

<sup>197</sup> *Id.* at 9.

<sup>198</sup> *Id.* at 12.

<sup>199</sup> Hearing Exhibit 110, 12: 18-19.

<sup>200</sup> *Id.* at 12: 19-20; 13: 1-6 quoting Hearing Exhibit 500, 65: 14-19.

<sup>201</sup> *Id.* at 13: 11-14.

<sup>202</sup> Joint SOP at 9.

<sup>203</sup> Hearing Exhibit 401, 16: 3-6.

<sup>204</sup> *Id.* at 16: 7-9.

rates on all of the Company's ratepayers for the private benefit of a small number of people who could benefit from them.<sup>205</sup>

99. The Settling Parties argue that the rationale for ratepayer-funded rebates is weakened due to the recent enhancements to EV purchase incentives from the federal and state governments, and that the federal and state tax credits will soon be available at the point-of-sale, nullifying a key argument for continuing these ratepayer-funded rebates.<sup>206</sup> Combined, federal and state incentives can result in \$21,000 in incentives, tax credits and rebates for the purchase of an EV.<sup>207</sup> The Settling Parties explain that the federal rebate landscape will change dramatically during this Plan's period, allowing an EV purchaser to transfer their federal tax credit to the auto dealer, thereby creating a "cash-on-the-hood" rebate.<sup>208</sup> In addition, the Internal Revenue Service's recent guidance clarifies that an EV purchaser will be able to access the full \$7,500 tax credit, even if they do not have tax liability meeting or exceeding that amount.<sup>209</sup> Colorado now offers a \$5,000 tax credit for a new EV, which is available to the purchaser regardless of their tax liability.<sup>210</sup> The Settling Parties explain that in January 2024, this state tax credit will increase to \$7,500 for new EVs under \$35,000 MSRP, and, starting in 2025, state tax incentives will become available at the point-of-sale.<sup>211</sup> They also point to the new state Vehicle Exchange Colorado program, which began on August 31, 2023. This program offers another boon to the state EV landscape, by offering customers meeting income requirements who trade in a vehicle that is at least 12 years-old or that failed emissions testing \$6,000 for a new EV, and \$4,000 for a used EV, at the point-of-sale.<sup>212</sup>

---

<sup>205</sup> *Id.* at 16: 14-16.

<sup>206</sup> *Id.* at 15: 2-11. *See* Joint SOP at 9-11.

<sup>207</sup> Joint SOP at 11.

<sup>208</sup> *Id.* at 10, citing 26 U.S.C. § 30D(g).

<sup>209</sup> *Id.*, citing 88 FR 70310, 70319.

<sup>210</sup> *Id.* at 11, citing § 39-22-516.7(4)(a)(VI), and (7) C.R.S.; 10/26/23 Tr., 20: 23-25.

<sup>211</sup> *Id.*, citing § 39-22-516.7(2)(f)(VII) and (4)(a.5) C.R.S.

<sup>212</sup> *Id.*, citing Hearing Exhibit 111 at 2-3.

Staff adds when the Commission first considered transportation electrification plans in 2020, fewer federal or state EV purchase incentives were available, making a utility-provided rebate more valuable.<sup>213</sup>

100. The Company does not conceptually oppose point-of-sale rebates, but notes that administering and executing such a program is burdensome and costly.<sup>214</sup> The Settling Parties explain that administering such a program would not be cost-effective, meaning that the process to develop and administer the program would exceed some of the value from a point-of-sale rebate.<sup>215</sup> The Company estimates that the cost to administer a point-of-sale rebate would exceed the \$30,000 e-Bike budget and CEO's proposed \$70,000 budget for an EV purchase rebate.<sup>216</sup> The Company remains open and interested in learning more from CEO about its experience implementing point-of-sale rebates, but notes that CEO uses a third-party administrator to implement its point-of-sale e-Bike rebate program and the Vehicle Exchange Colorado program.<sup>217</sup> CEO pays the third-party administrator eight percent of the value of the rebates awarded.<sup>218</sup> Illustratively, if CEO's Vehicle Exchange Colorado program gives 350 new car rebates (\$6,000 each), the third-party administrator would be paid \$168,000 for the \$2.1 million in awarded rebates. The Settling Parties point out that CEO's decision to not self-administer point-of-sale rebates and pay hundreds of thousands of dollars to a third-party to do so demonstrates how expensive and burdensome point-of-sale rebates are.<sup>219</sup> The Settling Parties urge the Commission not to require point-of-sale rebates.

---

<sup>213</sup> Hearing Exhibit 401, 17: 1-6.

<sup>214</sup> Hearing Exhibit 110, 15: 19-21—16: 1-8.

<sup>215</sup> Joint SOP at 13-14, quoting 10/24/23 Tr., 46: 4-9.

<sup>216</sup> See Hearing Exhibit 110, 16: 11-13; Hearing Exhibit 506 at 1-2.

<sup>217</sup> Joint SOP at 14, citing 10/26/23 Tr., 83: 24-25—84: 1-10; 88: 10-18.

<sup>218</sup> 10/24/23 Tr., 125: 21-25; 10/26/23 Tr., 89: 5-7.

<sup>219</sup> Joint SOP at 14.

101. That said, the Company commits to working with CEO to explore implementing a cost-efficient point-of-sale rebate.<sup>220</sup> If this can be developed, the Company is willing to propose changes to the Plan to allow point-of-sale e-Bike rebates through the 60-day notice process in the Agreement.<sup>221</sup>

102. The Settling Parties submit that the Grant Program is a more equitable and efficient use of program funds than an IQ EV Purchase Rebate because the number of customers benefitting from a grant may be much greater than the 12-23 EV purchase rebates that would be available under CEO's proposed \$70,000 budget.<sup>222</sup> They assert that Senate Bill (SB) 19-077 contemplates increasing transportation electrification through a number of measures, including infrastructure improvements. They submit that for a smaller utility with limited program dollars, and a predominantly low-income customer base, the Grant Program offers a better, more effective, and more equitable program offering than an IQ-specific rebate because it will benefit more people and promotes investment in infrastructure.<sup>223</sup>

### **b. Findings, Analysis and Conclusions**

103. The question of whether to continue an IQ EV Purchase Rebate Program is a close one. The parties present compelling arguments in support of their positions on whether the Company's IQ EV Purchase Program should be eliminated. On the one hand, the ALJ agrees with the Settling Parties that the case for ratepayer-funded EV purchase rebates is weakened by generous state and federal incentives. But the extent and potential reach of the state and federal incentives is largely unknown at this time. The details of dealer, vehicle, and purchaser eligibility requirements to access state and federal incentives is not fully developed in the record. But the

---

<sup>220</sup> Hearing Exhibit 110, 15: 14-18; 29: 5-6.

<sup>221</sup> *Id.* at 16: 17-20.

<sup>222</sup> Joint SOP at 12-13

<sup>223</sup> *Id.* at 13.

record does establish that to access the federal incentive, a person must purchase a vehicle made by a qualified manufacturer; the vehicle must have a battery of at least 7 kWh and a weight rating of less than 14,000 pounds; the vehicle must undergo final assembly in North America; and, notably, the vehicle must meet “critical mineral and battery component requirements” starting April 18, 2023.<sup>224</sup> The record lacks evidence as to the impact these requirements will have on a purchaser’s ability to access the federal incentive. For example, there is no evidence as to whether there are ample EVs that would meet the federal requirements, such as the critical mineral and battery component requirements. Likewise, there is no evidence in the record as to the federally-qualified vehicle manufacturers. There is even less in the record as to the state incentive’s eligibility requirements. In short, while the generous federal and state incentives do weaken the argument for a utility EV purchase rebate, there is insufficient evidence to conclude that the federal and state incentives will be or are effective and accessible enough to render an EV purchase rebate unnecessary. Given the recency in which the federal and state incentives have changed, this may change over time.

104. CEO and the Coalition raise valid concerns that the cost of EVs has been a primary barrier for IQ customers to transition to EVs. CEO and the Coalition also rightly point out that the Company’s existing IQ EV Purchase Rebate Program had little time to be successful, given that it launched only two months before this Plan filing.

105. In the Company’s Inaugural Plan, the Commission reversed the Recommended Decision’s rejection of an EV Purchase Rebate and required the Company to provide an IQ EV Purchase Rebate.<sup>225</sup> It can be fairly reasoned that this represents the Commission’s preferred policy

---

<sup>224</sup> Hearing Exhibit 113 at 2.

<sup>225</sup> Decision No. C21-0651 at 14-15.

position on EV purchase rebates, at least at the time the Commission issued its decision in 2021. While many circumstances have changed since then, including the availability of other generous non-Company sponsored incentives, the ALJ finds the Commission's prior policy position on this issue compelling.

106. For the reasons discussed, the ALJ finds that on balance, continuing some version of an IQ EV Purchase Rebate Program serves the public interest, and is consistent with § 40-5-107(2)(g), C.R.S., by providing another option for income-qualified customers. As such, the ALJ does not approve ¶ 42 of the Agreement and orders the Company to continue its IQ EV Purchase Rebate Program, as modified by this Decision. In doing so, the ALJ explicitly rejects suggestions that Colorado law requires that a public electric utility "ensure" or "guarantee" EV adoption (by IQ customers or otherwise), contrary to the Coalition's suggestions. It does not.<sup>226</sup> Colorado law also does not require an electric utility to provide an EV purchase rebate at all. But, in the circumstances here, in the totality of the Company's Plan, an IQ EV Purchase Rebate is appropriate, reasonable, consistent with current Commission policy, and serves the public interest and the statutory goal to encourage widespread transportation electrification consistent with § 40-7-105(1)(a), C.R.S.

107. The ALJ shares the Settling Parties' concerns with the potential rate impact of an IQ EV Purchase Rebate, and the limited number of customers who could benefit from such a rebate. To mitigate these concerns, this Decision limits the total IQ EV Purchase Rebate program to a \$70,000 budget for the entire Plan period, and establishes a \$2,500 maximum rebate for the purchase of new or used EVs. Decreasing the rebate amount to \$2,500 increases the number of available rebates to 28, without significantly increasing the administrative burden on the

---

<sup>226</sup> See generally, § 40-5-107, C.R.S.

Company.<sup>227</sup> The limited \$70,000 budget and the lower rebate amount are also intended to recognize the potential that federal and state incentives may be available to provide additional financial assistance. This maximizes benefits while minimizing costs, consistent with § 40-5-107(1)(a), C.R.S.

108. The rebate will be stackable with other Company and non-Company rebates. Applicants for the rebate will be required to indicate whether they have applied for or received an EV purchase rebate (and if so, what amount) from other governmental sources, and the Company will be required to include in its semi-annual reports, aggregated and de-identified data disclosing this information. This data may shed light on whether federal and state incentives negate the need for a continued IQ EV Purchase Rebate program after this Plan period. The Company is also directed to use this data to encourage IQ EV Purchase Rebate applicants to apply for state and federal incentives (including by providing them information on how to apply for such incentives), provided that it can cost-effectively do so. Customers are not required to apply for a federal or state incentive to be eligible to receive the IQ EV Purchase Rebate. Rather, the IQ eligibility requirements approved by this Decision will apply.

109. The Company provided evidence indicating that a point-of-sale offering could be unreasonably costly, which would result in fewer rebates issued, and a costly program yielding fewer benefits to ratepayers.<sup>228</sup> For these reasons, and because federal and state incentives will be available at the point-of-sale, the ALJ does not require that the IQ EV Purchase Rebate be a point-of-sale rebate. That said, the Company is directed to further explore the costs of developing a point-of-sale rebate, which includes working with CEO. If the Company is able to develop a cost-

---

<sup>227</sup> Under the existing higher rebate amounts of \$5,500 for new EVs and \$3,000 for used EVs, with a \$70,000 budget, the Company could only provide 12 to 23 IQ EV Purchase Rebates during the entire Plan period.

<sup>228</sup> See 10/24/23 Tr., 125: 21-25; 10/26/23 Tr., 89: 5-7.

effective point-of-sale IQ EV Purchase Rebate program, it may amend the Plan through the 60-day notice process in the Agreement. The Company's communication and education outreach materials must include information on the IQ EV Purchase Rebate, including that the Rebate is stackable with other rebates. In addition, the ALJ adopts CEO's suggested reporting requirements for the IQ EV Purchase Rebate program discussed above, which facilitates transparency and a more accurate evaluation of the program's effectiveness, consistent with § 40-5-107(2)(f), C.R.S.

110. Turning to the IQ Rebate, the Coalition appears to both support this Rebate, while also objecting to it. On the one hand, the Coalition asserts that the IQ Rebate amount should be higher (but does not suggest different amount), and on the other, the Coalition argues that all the residential rebates should be dedicated to IQ customers at the \$1,300 IQ Rebate amount.<sup>229</sup> The record includes no evidence indicating that a higher rebate amount is necessary to cover the costs of residential charging equipment or wiring. For these reasons, the ALJ rejects the Coalition's suggestion that the IQ Rebate amount should be increased. The ALJ finds that the Agreement's IQ Rebate appropriately offers flexibility in how the amount can be used; is large enough to incentivize investment in charging infrastructure; is an investment that can be reasonably expected to increase access to the use of electricity as a transportation fuel and to provide access for low-income customers, consistent with § 40-5-107(2)(b) and (g), C.R.S. For all these reasons, the ALJ approves the IQ Rebate as proposed in the Agreement.

111. As to the e-Bike Pilot and the Grant Program, the Coalition again appears to both support and oppose these programs. It broadly opposes these programs while also suggesting a budget that includes the e-Bike Pilot and the Grant Program at the Agreement's proposed budgeted

---

<sup>229</sup> Coalition's SOP at 20 and 30; Hearing Exhibit 700, 16: 5-8. See Hearing Exhibit 109 at 15 (¶ 43(i)).

amounts.<sup>230</sup> The Coalition fails to support or explain its opposition (if any) to these specific programs.<sup>231</sup> To the extent that the Coalition objects to the e-Bike Pilot and the Grant Program because it believes that the entire residential rebate budget should be dedicated to IQ customers, this is unrelated to these two specific programs, which are already dedicated to IQ customers. For these reasons, and those discussed below, the ALJ rejects the Coalition's arguments as to the e-Bike Pilot and Grant Program.

112. The ALJ finds that the e-Bike Pilot amounts to an investment that can be reasonably expected to increase access to the use of electricity as a transportation fuel, consistent with § 40-5-107(2)(b), C.R.S. Although certainly not the same as an EV, e-Bike offerings may also serve to increase awareness of the benefits of transportation electrification, consistent with § 40-5-107(1)(b)(IV), C.R.S. Given cost concerns, the ALJ will not require the Company to provide e-Bike rebates at the point-of-sale, but the Company is directed to work with CEO before launching its e-Bike Pilot to determine if it can implement the e-Bike Pilot at the point-of-sale in a cost-effective manner. If it can, the Company may amend the Plan using the 60-day notice process in the Agreement. For all these reasons, the ALJ approves the Agreement's e-Bike Pilot consistent with the above discussion.

113. The ALJ finds that the Grant Program is a creative approach that may increase the number of IQ and/or DI customers who can benefit from infrastructure investments. Indeed, given the Company's larger population of IQ and/or DI customers, adding programs that advance investment in charging infrastructure in HUD multi-family housing buildings may provide benefits to a larger number of existing and future customers. And such IQ and/or DI customers can benefit

---

<sup>230</sup> Coalition's SOP at 25 and 30. *See* Hearing Exhibit 109 at 16 (¶ 43(ii) and (iii)).

<sup>231</sup> *See* Coalition's SOP at 30; Hearing Exhibit 109 at 16 (¶ 43(ii) and (iii)); Hearing Exhibit 712, 9: 1-20 (discussing ¶ 43 of the Agreement, but not objecting to the e-Bike Pilot and Grant Program). *See generally*, Coalition's SOP (no discussion of the e-Bike Pilot and Grant Program).

without directly shouldering the upfront costs to install such infrastructure (as they would in a single-family home). For these reasons, the ALJ finds that the Grant Program's design maximizes benefits while minimizing costs, consistent with § 40-5-107(1)(b), C.R.S. In addition, the ALJ concludes that the Grant Program is an investment that is reasonably expected to increase access to the use of electricity as a transportation fuel, and to provide access to low-income customers, consistent with § 40-5-107(2)(b) and (g), C.R.S. For the reasons discussed, the ALJ approves the Grant Program as proposed in the Agreement.

114. As to the Agreement's IQ program eligibility criteria, the ALJ finds that the proposed requirements, as modified during the hearing, provide simplified, reasonable, and relatively expansive and inclusive criteria that the Company will be able to implement without delay. For the same reasons, the ALJ concludes that the modified IQ program eligibility criteria may facilitate increased access for low-income customers, consistent with § 40-5-107(2)(g), C.R.S. While the ALJ finds some merit to the Coalition's suggestion to use the eligibility criteria that the Commission approves in Public Service's pending Plan Proceeding (No. 23A-0242E), until the Commission has issued a decision, it is unknown what the Commission will decide.<sup>232</sup> For all these reasons, the ALJ adopts the Agreement's IQ program eligibility criteria, as modified during the hearing and rejects the Coalition's argument.

### **3. Fleet Electrification Pilot**

115. The Agreement requires the Company to implement a Fleet Pilot that includes:

- Partnering with Drive Clean Colorado.
- Working with ten potential customers each year, including at least two school districts. If the Company does not achieve the goal of working with

---

<sup>232</sup> The ALJ agrees with the Company that given the nature of its service territory, it can be reasonably expected that there will be overlap in customers who qualify under the IQ eligibility requirements and those who also reside in DI communities.

ten customers in a year, then it shall add the unmet customer obligation to the following year. The Company shall work with at least 30 customers by the end of the three-year TEP, including at least six school districts.

- Educating customers about the benefits of fleet electrification and the funding and rebate opportunities available, including state and federal incentives and tax credits.
- Providing an analysis of and personalized recommendation for the customer's fleet electrification needs.
- Providing coaching, grant writing assistance, or application assistance to fleet customers, as needed.
- An annual budget of \$20,000, for a total three-year budget of \$60,000, with the allowance for unspent funds to be rolled over from year to year.<sup>233</sup>

**a. Arguments**

116. CEO supports the above Agreement terms, as it incorporates the recommendations that CEO made in its Answer Testimony.<sup>234</sup>

117. The Coalition opposes the above Agreement terms.<sup>235</sup> In support, the Coalition argues that in the Company's Inaugural Plan Proceeding, the Commission directed the Company to identify an electric bus pilot program to be implemented during the Inaugural Plan or propose one for this Plan.<sup>236</sup> The Coalition asserts that the Commission allowed the Company to come back with a more informed and detailed proposal for this Plan, but the Agreement does not do this and does little to meet "the urgent need to address health impacts on children."<sup>237</sup> The Coalition recommends that the Company allocate \$200,000 a year for fleet electrification for a total of \$600,000 for the Plan period, with a focus on school districts serving IQ and DI communities; that

---

<sup>233</sup> Hearing Exhibit 109 at 15 (¶ 40).

<sup>234</sup> Hearing Exhibit 505, 12: 5-13.

<sup>235</sup> See Hearing Exhibit 712, 8: 3-10.

<sup>236</sup> *Id.* at 8: 10-13, quoting Decision No. C21-0651 at 18.

<sup>237</sup> See *id.* at 8: 13-17.

the Company provide incentives for “heavy-duty EVSE” and technical assistance; and that the Company establish time-of-day rates for school districts.<sup>238</sup>

118. In support of the above Agreement terms, the Company explains that the \$60,000 budget is double the amount it originally proposed for a fleet program.<sup>239</sup> Staff is particularly encouraged by the Agreement terms requiring the Fleet Pilot to include working with at least two school districts each year to help them assess the potential to electrify their school buses and identify potential funding sources to do so.<sup>240</sup> Staff explains that while it supports public fleet electrification, it is essential that any such programs be developed in partnership with the agencies that will implement the programs, and that the Fleet Pilot provides a promising opportunity to develop such partnerships.<sup>241</sup>

119. The Settling Parties oppose the Coalition’s request for a \$600,000 fleet electrification program. They argue that the federal landscape for electric school buses is rapidly changing, including providing substantial funds for the electric transition, which undercuts the Coalition’s argument that there is a need for ratepayer-funded rebates.<sup>242</sup> They rely on the Bipartisan Infrastructure Law of 2021, which did not exist when the Company proposed its Inaugural Plan. That law authorizes the Environmental Protection Agency (EPA) to provide \$5 billion in funding over the next five years to support the transition to electric school buses.<sup>243</sup> They explain that six of the 12 school districts in the Company’s service territory are classified at a

---

<sup>238</sup> *Id.* at 8: 17-20.

<sup>239</sup> Hearing Exhibit 110, 20: 15-16.

<sup>240</sup> Hearing Exhibit 401, 11: 8-12.

<sup>241</sup> *Id.* at 11: 13-18.

<sup>242</sup> Joint SOP at 24.

<sup>243</sup> 10/24/23 Tr., 187: 16-21; Joint SOP at 24, citing 42 USCA § 16091.

priority level for this federal funding; and that the Company anticipates that school districts may be awarded at least \$1 million in federal funding under this law.<sup>244</sup>

120. The Settling Parties dispute the Coalition's assertion that the Agreement fails to comply with Commission directives in the Inaugural Plan Proceeding. In support, the Settling Parties explain that the Agreement complies with the Commission's directive because the proposed commercial rebates, including the Level 2 and DCFC rebates at up to \$35,000 per unit, can be used by mass transit agencies, other governmental entities (such as police), and school districts to develop infrastructure for fleet electrification.<sup>245</sup> The Company also explains that it diligently engaged with stakeholders, as the Commission directed, but stakeholders who would benefit from such a program were not ready to move forward for a variety of reasons, including timing issues.<sup>246</sup> Given the high cost of electric school buses (approximately \$300,000 per bus), and the potential for significant EPA grant awards that could cover the entire cost of electric school buses for many of the school districts in the Company's service territory, the Settling Parties submit that a better use of ratepayer dollars is to develop the Agreement's Fleet Pilot, which will be used to help school districts and public entities apply for EPA grants (among other things).<sup>247</sup>

### **b. Findings, Analysis and Conclusions**

121. The ALJ agrees that the proposed Fleet Pilot is a more appropriate use of ratepayer dollars than the Coalition's fleet electrification recommendations, particularly given the high cost of electric school buses and that school districts may have access to significant funding from the EPA to assist in school bus electrification. The ALJ is also mindful that transit agencies, school districts and other like entities make their own decisions based on their individual circumstances,

---

<sup>244</sup> 10/24/23 Tr., 167: 20-24; 187: 22-25—188: 1-5.

<sup>245</sup> Joint SOP at 27, citing 10/24/23 Tr., 208: 6-16.

<sup>246</sup> Joint SOP at 26-27, quoting 10/24/23 Tr., 166: 7-25—168: 1-15.

<sup>247</sup> See Joint SOP at 25-27, citing 10/24/23 Tr., 188: 6-9.

including overall cost, access to funding, and other factors outside the Company's control, such as timing issues. The Company did engage with stakeholders, though it is evident that the Company could have taken a more fulsome approach to engaging with school districts. But the fact remains that circumstances have dramatically changed since the Commission issued its Decision in the Company's Inaugural Plan, rendering school bus electrification more accessible without expending ratepayer dollars. The Fleet Pilot advances fleet electrification in a way that maximizes benefits and minimizes costs, consistent with § 40-5-107(1)(b)(II), C.R.S. Indeed, through the Fleet Pilot, the Company will spend \$60,000 over the entire Plan period to help school districts take advantage of available federal funds (including help with grant applications); advise and educate school districts, mass transit agencies, and other like entities about the benefits of electrification and funding and rebate opportunities; analyze such entities' fleet electrification infrastructure needs; and make customized recommendations for fleet electrification. For all these reasons, the ALJ approves the proposed Fleet Pilot, as in the public interest, and rejects the Coalition's arguments.

#### **4. Performance Incentive Mechanism**

122. Through the Agreement, Black Hills rescinds its initial Equity PIM proposal.<sup>248</sup> The Agreement does not propose a different PIM.<sup>249</sup>

##### **a. Arguments**

123. CEO supports this Agreement term.<sup>250</sup>

124. While the Coalition supports eliminating the Company's proposed PIM, it argues that the Commission should establish a PIM that ties recovery of \$280,000 of non-revenue

---

<sup>248</sup> Hearing Exhibit 109 at 18 (¶ 48).

<sup>249</sup> See generally, Hearing Exhibit 109.

<sup>250</sup> See CEO's SOP at 29.

producing consulting expenses to success in the IQ rebate programs.<sup>251</sup> The Coalition argues that that this PIM would incent the Company to successfully provide equity rebates, “without unnecessarily rewarding the Company given its unsatisfactory performance to date.”<sup>252</sup> The Coalition adds that administrative and consulting expenses that do not result in the projected programmatic success of a Plan are not prudently incurred expenses.<sup>253</sup>

125. In support of the above Agreement terms, the UCA asserts that eliminating the Company’s proposed PIM serves the public interest because PIMs should only be adopted where the desired behavior (the goal of the incentive) would not otherwise occur.<sup>254</sup> Here, the UCA submits that because the Company has committed to pursue equity programs, and has the same existing ability to recover costs for such programs, no incentive is necessary to achieve the desired outcome.<sup>255</sup> The UCA adds that given that the Plan’s rebates will be amortized, and the higher dollar amount of the IQ Rebate, the Company already has a greater earnings incentive to pursue the equity programs.<sup>256</sup>

126. The Settling Parties argue that the Coalition’s PIM proposal should be rejected as unsupported and inconsistent with Commission proceedings and public policy.<sup>257</sup> They highlight that the Coalition has failed to identify any Commission precedent establishing a PIM similar to the one the Coalition suggests.<sup>258</sup>

---

<sup>251</sup> Hearing Exhibit 712, 7: 6-9. *See* Coalition’s SOP at 23.

<sup>252</sup> Coalition’s SOP at 23.

<sup>253</sup> *Id.* at 24.

<sup>254</sup> Hearing Exhibit 301, 6: 20-21—7: 1-2.

<sup>255</sup> *Id.* at 7: 4-8.

<sup>256</sup> *Id.* at 7: 8-10.

<sup>257</sup> Joint SOP at 28.

<sup>258</sup> *Id.*

**b. Findings, Analysis and Conclusions**

127. Given that neither CEO nor the Coalition object to the Agreement's PIM provision, that provision is unopposed. That Agreement term merely acts as a vehicle for the Company to withdraw its original request for a PIM.<sup>259</sup> Given that this Agreement term is unopposed, and that the Company has built-in incentives to succeed in its equity programs (as the UCA explains), the ALJ approves this Agreement term.

128. As to the Coalition's alternative PIM proposal, the Coalition points to no Commission precedent, and the ALJ can find none, where the Commission established a PIM that ties *cost recovery* to rebate program success. Such an approach could result in deviating from a fundamental public utility law principle that utilities should recover prudently incurred expenses, without a finding that disallowed expenses were not prudently incurred.<sup>260</sup> Essentially, the Coalition's proposal would prejudge the Company's expenses as not being prudently incurred if the Company does not meet predetermined thresholds. Rather than carving new Commission policy, the ALJ leaves the Coalition to raise arguments as to whether the Company's consulting or administrative expenses were prudently incurred (and therefore recoverable) in an appropriate prudence review proceeding. For the reasons discussed, the ALJ rejects the Coalition's PIM recommendation.

---

<sup>259</sup> Hearing Exhibit 109 at 18 (¶ 48).

<sup>260</sup> See *CF&I Steel, L.P., v. PUC*, 949 P.2d 577, 584 (Colo. 1997); and *Public Utilities Comm'n v. District Court*, 527 P.2d 233, 234-5 (Colo. 1974). Indeed, ensuring that utilities recover their prudently incurred cost of service is necessary to ensure public utilities' continued operational viability for the purpose of serving the public. *CF&I Steel, L.P.*, at 584. Thus, failing to set rates that capture the cost of service may threaten a utility's ability to serve the public, contrary to the public interest. See *id.*

## 5. Customer Communication Plan

129. The Agreement supports or adopts the Company's Customer Communication Plan as presented and modified in Ms. Rodriguez's Direct and Rebuttal Testimonies.<sup>261</sup> Specifically, the Settling Parties agree that the total Plan budget for the Company's Customer Communication Plan is \$588,501 over the Plan period, with \$190,000 dedicated to community events.<sup>262</sup>

130. Consistent with other budget-related terms, the Agreement provides that unspent funds may be rolled over from year to year during the Plan period.<sup>263</sup> The Agreement also requires the Company to provide direct communication and education to IQ customers about the available programs and incentives in English and Spanish.<sup>264</sup>

### a. Arguments

131. The Coalition and CEO object to the Customer Communication Plan's budget, but do not object to the terms outlined in ¶ 130 above.<sup>265</sup> The Coalition argues that the Company should allocate an additional \$300,000 (\$100,000 per Plan year) to directly compensate community-based organizations to bring Plan information to their communities in culturally and linguistically reflective ways.<sup>266</sup> The Coalition asserts that community-based organizations have credibility, experience, relationships, and most importantly, trust within their communities that could extend the reach of the Company's communication program and help make its equity programs successful.<sup>267</sup> Without additional funding dedicated to compensating community-based

---

<sup>261</sup> Hearing Exhibit 109 at 20 (¶ 54), referring to Hearing Exhibits 104 and 108 (Ms. Rodriguez's Direct and Rebuttal Testimonies).

<sup>262</sup> *Id.* The Agreement details numerous other specific line items within the Customer Communication Plan's budget, which are not restated here as unnecessary. *Id.*

<sup>263</sup> Hearing Exhibit 109 at 20 (¶ 55).

<sup>264</sup> *Id.* at 21 (¶ 56).

<sup>265</sup> See Coalition's SOP at 30; CEO's SOP at 29; Hearing Exhibit 109 at 20 (¶¶ 54-56).

<sup>266</sup> Hearing Exhibit 712, 6: 1-3.

<sup>267</sup> See *id.* at 11: 16-20—12: 1.

organizations, the Coalition believes that the Company's equity programs will continue to be unsuccessful, and the historical inequities these communities have experienced will continue.<sup>268</sup>

132. CEO agrees that the Company should directly fund community-based organizations to assist with effective customer outreach and engagement.<sup>269</sup> CEO argues that Black Hills' efforts to educate IQ customers have clearly fallen short given the Inaugural Plan's performance.<sup>270</sup> CEO suggests that the Company allocate an additional \$100,000 over the entire Plan period to fund community-based organizations to assist with outreach and education.<sup>271</sup>

133. The Company submits that it would be a misuse of customer money to fund community-based organizations as suggested.<sup>272</sup> The Company asserts that the Coalition has not made any showing as to why its members or any other community-based organization should receive \$300,000 from Black Hills' ratepayers.<sup>273</sup> The Company requested information from the Coalition to better understand the tactics and effectiveness that its member community-based organizations used in previous community outreach events, but the Coalition refused to provide any information on these subjects, arguing that it is burdensome and outside the scope of this Proceeding.<sup>274</sup> The Company also asserts that the Coalition has provided no evidence at all as to the effectiveness of its member community-based organizations, or any other such organization.<sup>275</sup>

134. Likewise, the Company submits that the Coalition has provided no evidence that funding community-based organization is necessary for the Company to partner with such organizations.<sup>276</sup> The Settling Parties explain that during the Inaugural Plan, the Company

---

<sup>268</sup> *Id.* at 12: 5-8.

<sup>269</sup> Hearing Exhibit 505, 24: 6-11.

<sup>270</sup> CEO's SOP at 26-27.

<sup>271</sup> *Id.* at 27-28.

<sup>272</sup> Hearing Exhibit 110, 17: 1-6.

<sup>273</sup> *Id.* at 17: 6-7.

<sup>274</sup> *Id.* at 17: 10-14, citing Attachment MJH-1 to Hearing Exhibit 105 (Coalition discovery response).

<sup>275</sup> *Id.* at 17: 17-18.

<sup>276</sup> *Id.* at 17: 19-20.

meaningfully engaged with community-based organizations using its existing budget, which included event sponsorship and collaborative events.<sup>277</sup> Many of the events held in collaboration with community-based organizations or events led by such organizations that the Company sponsored were held in DI communities in the Company's service territory.<sup>278</sup> The Settling Parties submit that in doing so, the Company has leveraged its communication strategy to support community-based organizations' missions, and has directly reached DI communities and presumably, IQ customers.<sup>279</sup> They submit that the Company can (and is happy to) partner with community-based organizations using the Agreement's Customer Communications budget (such as the \$190,000 events budget), without the need to increase the budget to directly fund community-based organizations.<sup>280</sup> They also point to the fact that the agreed-upon Customer Communications budget is 38 percent more than the budget in the Inaugural Plan, much of which is based off community events.<sup>281</sup> The Company plans to continue to partner with community-based organizations to increase customer awareness and program success using the larger Customer Communications budget in the Agreement, which could include compensating them. The Company submits that it should have management discretion to choose the events and community-based organizations that are best suited to provide Plan-related communication and education, and to combine this messaging with other program information and services so that customer dollars are used efficiently.<sup>282</sup>

135. The Settling Parties also submit that CEO and the Coalition agree that there is no evidence in the record indicating that dedicating funding to community-based organizations will

---

<sup>277</sup> See Joint SOP at 16-17, citing 10/24/23 Tr., 246: 4-25—247: 1-23.

<sup>278</sup> Joint SOP at 17, citing 10/24/23 Tr., 246: 17-19.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.* at 20.

<sup>281</sup> *Id.* citing 10/24/23 Tr., 111: 14-19.

<sup>282</sup> *Id.* at 20-24. See 10/24/23 Tr., 230: 4-22; 247: 25—248: 1-8; Hearing Exhibit 110, 18: 11-13.

yield results commensurate with the amount of funding dedicated to such entities or what benefits that Black Hills' customers could receive through that funding that they could not receive through the Agreement's Customer Communications budget.<sup>283</sup>

136. The Company disputes claims that its community outreach (through its Inaugural Plan) was "highly unsuccessful."<sup>284</sup> The Company has increased customer familiarity with EVs and its rebates by 11 and 12 percent, respectively from 2021 to 2022.<sup>285</sup> When the Company submitted its Inaugural Plan three years ago, it estimated that there were 300 registered EVs in its service territory.<sup>286</sup> As of April 2023, there were over 700 registered EVs in the Company's service territory.<sup>287</sup> As a result, the number of registered EVs in the Company's service territory has more than doubled since its Inaugural Plan.

137. If the Commission believes additional funding is needed for community outreach, the Company argues that funds would be better allocated to the City of Pueblo or Pueblo County, who represent IQ and DI communities, and can partner with Black Hills to conduct outreach at various public events.<sup>288</sup> But if the Commission believes that direct funding to community-based organizations is necessary, the Company asserts that the amount should be much lower than the \$300,000 that the Coalition proposes.<sup>289</sup> The Company explains that the Agreement's three-year budget for community events is \$190,000, which highlights the excessiveness of the Coalition's request that \$300,000 be allocated solely to community-based organizations.<sup>290</sup>

---

<sup>283</sup> Joint SOP at 22-23, citing 10/26/23 Tr., 114: 10-19; 146: 16-22; 190: 23-25—191: 1-25; 215: 3-25—216: 1-6.

<sup>284</sup> Hearing Exhibit 110, 18: 14-15.

<sup>285</sup> *Id.* at 18: 19-21.

<sup>286</sup> Hearing Exhibit 102, 12: 12-13.

<sup>287</sup> Hearing Exhibit 101, 7: 15-19; Hearing Exhibit 102, 12: 13-16.

<sup>288</sup> Hearing Exhibit 110, 19: 16-19.

<sup>289</sup> *Id.* at 20: 4-6.

<sup>290</sup> *Id.* at 20: 6-8.

138. If the Commission is inclined to increase the budget, the Company argues that such spending should be allocated toward electrified transportation, such as for public transit, police cruisers or school buses, and not to subsidize community-based organizations.<sup>291</sup> The Company submits that the Commission should place a higher priority on funding public EVs than community-based organizations, as the former is more likely to bring direct EV benefits to customers.<sup>292</sup>

139. Staff is concerned with the Coalition's request to add \$300,000 to the budget to fund community-based organizations, which it describes as essentially "a blank check," given the Commission's emphasis on affordability and the economic circumstances of the population the Company serves.<sup>293</sup> Staff is also concerned because the Coalition's proposal is vague and undeveloped. For example, it does not specify which community-based organizations should receive the funds; how fund recipients will be selected or who selects them; what objectives the funds should be used to achieve; or which organizations should have decision-making authority over how those funds are distributed.<sup>294</sup> Staff notes that while the Coalition refers to activities and metrics of success from a community-based organization's outreach program in California, it does not provide details about what the program would look like in the Company's service territory, what activities these funds would support, or how the Commission and other stakeholders could evaluate its success.<sup>295</sup>

---

<sup>291</sup> *See id.* at 19: 3-11.

<sup>292</sup> *Id.* at 19: 12-15.

<sup>293</sup> Hearing Exhibit 401, 20: 1-8.

<sup>294</sup> *Id.* at 20: 10-19.

<sup>295</sup> *Id.* at 21: 1-5.

**b. Findings, Analysis and Conclusions**

140. The ALJ agrees that the record lacks 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.<sup>296</sup> Without this evidentiary support, the ALJ cannot find that the Coalition's and CEO's proposals to directly fund community-based organizations serves the public interest. What is more, the Agreement allows the Company to compensate community-based organizations when they partner together without the need to increase funding or dedicate funding to community-based organizations. Given all of this, the ALJ concludes that the Coalition's and CEO's proposals to fund community-based organization fail to minimize overall costs and maximize overall benefits of the Plan, contrary to § 40-5-107(1)(b), C.R.S. The lack of evidence as to the level of benefits that customers could receive through such funding, coupled with no suggested parameters for community-based organization's use of the funds or metrics to measure community-based organization's success, also raises concerns that funding community-based organizations as suggested may result in Plan costs that are not prudently incurred. For all these reasons and those that the Settling Parties provide, the ALJ rejects CEO's and the Coalition's arguments, and approves these Agreement terms. The ALJ encourages the Company to leverage the approved budget to partner with community-based organizations, including compensating them for their efforts, as appropriate.

---

<sup>296</sup> Joint SOP at 22-23, citing 10/26/23 Tr., 114: 10-19; 146: 16-22; 190: 23-25—191: 1-25; 215: 3-25—216: 1-6. The Coalition merely asserts that its proposal will benefit ratepayers because partnering with community-based organizations will result in more effective outreach and education to IQ customers and DI Communities. Coalition's SOP at 10. Assuming this is true (despite the lack of supporting non-conclusory evidence), this does not support a conclusion that ratepayers will receive benefits that align with the \$300,000 that they will be expected to shoulder or that customers could not otherwise receive the benefits from partnering with community-based organizations through the proposed budget.

**6. Budget**

141. The Agreement establishes a total Plan budget of \$2,751,001, broken down as follows:

<b>Budget Category</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>Total</b>
EVSE Wiring and Charge Rebates	\$370,000	\$375,000	\$380,000	\$1,125,000
IQ e-Bike Pilot Rebates	\$7,500	\$10,000	\$12,500	\$30,000
IQ Multi-family Pilot Grants	\$23,333	\$23,333	\$23,334	\$70,000
Fleet Electrification Advisory Services	\$20,000	\$20,000	\$20,000	\$60,000
Charging Behavior Pilot Incentive	\$18,000	\$42,000	\$60,000	\$120,000
\$25 Behavioral Sign-up Incentive	\$3,750	\$5,000	\$3,750	\$12,500
Customer Education and Communication	\$165,167	\$221,667	\$201,667	\$588,501
<b>Administrative &amp; General</b>				
Legal (3 yr. amortization)	\$25,000	\$25,000	\$25,000	\$75,000
Consulting (3 yr. amortization)	\$10,000	\$10,000	\$10,000	\$30,000
EV Vendor Expense	\$100,000	\$75,000	\$75,000	\$250,000
Ready EV Administration	\$130,000	\$130,000	\$130,000	\$390,000
<b>Total</b>	<b>\$872,750</b>	<b>\$937,000</b>	<b>\$941,251</b>	<b>\$2,751,001</b> <sup>297</sup>

142. This represents an overall increase of \$102,050 as compared to the Company’s original proposed budget. The Agreement increases the budget for EVSE wiring and charger rebates by \$6,000; increases the budget for fleet electrification by \$30,000; adds \$12,500 for a new sign-up incentive; increases the budget for customer education and outreach by \$60,501; and eliminates the proposed budget of \$6,951 for a PIM.<sup>298</sup>

143. The Agreement also provides that the Company will have the flexibility to move funds between budget categories, subject to a cap of 150 percent for any individual category, and to increase the overall budget to up to 125 percent of the annual budget costs per year.<sup>299</sup> In addition, the Agreement prohibits Black Hills from shifting more than 50 percent of budgets

<sup>297</sup> Hearing Exhibit 109 at 6 (¶ 16).

<sup>298</sup> Compare Hearing Exhibit 101, 16: 1-2 (Table MJH-3) with Hearing Exhibit 109 at 6 (¶ 16).

<sup>299</sup> Hearing Exhibit 109 at 6-7 (¶ 17).

between programs and from shifting any budgeted amounts away from programs that serve IQ and DI communities.<sup>300</sup>

144. The Agreement requires Black Hills to roll over any unspent budgeted amounts from year to year, and that this does not count against the cost cap.<sup>301</sup> Funds from programs for IQ customers and DI communities can only be rolled over into the same budget category or into other programs dedicated to such customers.<sup>302</sup> During the hearing, the Company clarified that this rollover provision applies to all of the Plan's programs, but does not include rolling over unused funds into the next plan.<sup>303</sup>

**a. Arguments**

145. CEO objects to the Agreement's proposed budget because it does not include funding dedicated to community-based organizations or for an IQ EV Purchase Rebate.<sup>304</sup> As discussed, CEO recommends that the Commission add or reallocate \$100,000 to fund community-based organizations and \$70,000 for an IQ EV Purchase Rebate.<sup>305</sup>

146. For many of the reasons already discussed, the Coalition objects to the Agreement's proposed budget. The Coalition states that it recommends a total budget of \$3,791,001 (or approximately \$3.8 million).<sup>306</sup> As already discussed, the Coalition recommends that the Commission add \$600,000 for the IQ EV Purchase Rebate; \$600,000 for school bus electrification; and \$300,000 to fund community-based organizations; and to eliminate the \$60,000 budget for the Agreement's Fleet Pilot, for a net total additional amount of \$1,440,000.<sup>307</sup>

---

<sup>300</sup> *Id.* at 7 (¶ 18).

<sup>301</sup> *Id.* at 7 (¶ 19).

<sup>302</sup> *Id.* at 7 (¶¶ 18-19).

<sup>303</sup> 10/24/23 Tr., 105: 8-16.

<sup>304</sup> Hearing Exhibit 505, 25: 9-12; CEO's SOP at 7, 9-10.

<sup>305</sup> CEO's SOP at 9; 27-28.

<sup>306</sup> Coalition's SOP at 25; Hearing Exhibit 702, 19: 1-3; Hearing Exhibit 712, 7: 14-16.

<sup>307</sup> *Compare* Coalition's SOP at 25 with Hearing Exhibit 109 at 6 (¶ 16).

147. The Coalition notes that it is important to recognize that outside of administrative costs, the Plan's programs are revenue-generating, which means that once investments have been made, they will provide additional revenues to the Company.<sup>308</sup> The Coalition argues that there is significant room within the retail rate impact cap to increase the Plan's budget, consistent with its recommendations.<sup>309</sup> The Coalition states that while it is always concerned with rate impact on customers, more investment needs to be made in the IQ and DI communities, and that attempting to minimize the rate impact on such customers with inadequate programs will perpetuate historical inequities.<sup>310</sup>

148. In support of the proposed budget terms, Staff emphasizes the importance of keeping the Plan budget at a reasonable level due to the extremely high energy bills that occurred over the fall and winter of 2022-2023, which created an affordability crisis.<sup>311</sup> This affordability crisis resulted in a significant volume of ratepayer complaints; Governor Polis calling on state agencies to work with utilities to reduce the energy cost burden; a state Joint Select Committee on Rising Utility Rates (during the 2023 session); and the Commission implementing its own Affordability Initiative.<sup>312</sup> As a part of the Commission's Initial Work Plan for its Affordability Initiative, the Commission Director asked Staff to consider energy affordability as a part of its role within the Commission.<sup>313</sup> Staff submits that the Agreement's budget appropriately balances Plan investments with concerns about imposing electric rate increases on a highly energy-burdened population, while supporting the widespread adoption of EVs and being consistent with the

---

<sup>308</sup> Hearing Exhibit 712, 7: 3-6.

<sup>309</sup> See Hearing Exhibit 702, 8: 9-18.

<sup>310</sup> Hearing Exhibit 712, 6: 13-20—7: 1-2.

<sup>311</sup> See Hearing Exhibit 401, 7: 11-21.

<sup>312</sup> Hearing Exhibit 401, 7: 16-21.

<sup>313</sup> *Id.* at 7: 21—8: 1-3.

Commission's goals to maintain affordability and advance equity.<sup>314</sup> Staff asserts that the Agreement promotes equity by keeping the budget at a reasonable level, which mitigates the Plan's rate and bill impacts.<sup>315</sup> Staff explains that because utility rates function much like a regressive tax, keeping rates low is disproportionately beneficial to low-income ratepayers.<sup>316</sup>

149. The Settling Parties argue that the Agreement's budget of \$2,751,001 is appropriate.<sup>317</sup> Staff submits that the budget supports the widespread adoption of electric vehicles, while also remaining attentive to the Commission's ongoing goals of maintaining affordability and advancing equity.<sup>318</sup> Staff is particularly wary of supporting proposals that will increase Black Hills' customers rates, given the economic circumstances of the Company's customers.<sup>319</sup> The UCA supports the Agreement and its budget, because its underlying theme is to foster growth of transportation electrification without using ratepayer funds where other funding sources are available.<sup>320</sup> The Company notes that it would have been easier for it to agree to the proposed budget increases given that customers (not shareholders) ultimately pay for the increased program costs, and that the Company could earn an additional return on at least some of these investments. But the Company did not do so because it, along with the Settling Parties, believes the proposed budget increases are not in the public interest.<sup>321</sup>

---

<sup>314</sup> *Id.* at 14: 6-11.

<sup>315</sup> *Id.* at 13: 12-14.

<sup>316</sup> *Id.* at 13: 16-18.

<sup>317</sup> Joint SOP at 4. This Decision does not repeat the Settling Parties' responses to the specific budget items that the Coalition and CEO recommend, as unnecessary.

<sup>318</sup> Hearing Exhibit 401, 14: 6-11.

<sup>319</sup> *Id.* at 20: 4-7.

<sup>320</sup> Hearing Exhibit 301, 4: 10-13.

<sup>321</sup> Joint SOP at 7.

**b. Findings, Analysis and Conclusions**

150. For the reasons already discussed, the ALJ rejects the Coalition's and CEO's proposals to add \$100,000 to \$300,000 to the budget to directly fund community-based organizations; and the Coalition's proposals to add \$600,000 to the budget for an electric school bus electrification program and \$600,000 for the IQ EV Purchase Rebate. In addition, the ALJ rejects these requests because the economic realities of customers in Company's service territory elevates the need to limit rate increases, particularly in light of the energy affordability crisis discussed above. The same customers who could benefit from increased budgeted amounts would also have to pay for them. While this may not represent a significant jump in their bills, such an increase cannot be considered in a vacuum given all the other subsidized programs required by statutes that result in increased customer bills, alongside other potential rate increases associated with increased costs to provide service. Put differently, each small bill increase adds up, whether due to this Plan, overall base-rate increases, or other programs required by statute or rule. Together, the small increases can create an even larger energy burden than what Black Hills' customers currently face. As the Commission explained in the Company's Inaugural Plan Proceeding, the budget approved here "is just one component of the Company's rates and [...] other factors, including decisions in other ongoing Commission proceedings, will themselves put stress of the Company's rates."<sup>322</sup> In continuing the IQ EV Purchase Rebate, the ALJ considered all of this, and established a limited \$70,000 budget to minimize the rate impact and burden on Black Hills' customers.

---

<sup>322</sup> Decision No. C21-0651 at 8 (¶ 14).

151. With this additional \$70,000, the approved total budget for the Plan is \$2,821,001.<sup>323</sup> The ALJ finds that this is an appropriate budget, particularly in light of the socioeconomic circumstances in the Company's service territory, including that the median income in its service territory is approximately \$48,000, well below the statewide average.<sup>324</sup> The approved budget is consistent with Commission's ongoing goals to maintain affordability and advance equity.<sup>325</sup> For many of the reasons already discussed, the ALJ concludes that the approved budget encourages widespread transportation electrification; minimizes costs while maximizing benefits; facilitates customer-owned charging infrastructure and fleet electrification; and can be reasonably expected to increase access to the use of electricity as a transportation fuel, to attract private capital investments, to provide access to low-income customers, and gives due consideration to impact on such customers, consistent with § 40-5-107(1)(a), (b)(I), (b)(II), (2)(b), (e), and (g), C.R.S. For all these reasons, and the reasons discussed throughout this Decision, the ALJ approves the Agreement's budget, as modified by this Decision.

152. Nonetheless, it is necessary to discuss the Coalition's total proposed budget to ensure a clear record because the Coalition's figures include significant mathematical errors.<sup>326</sup> While the Coalition states that it recommends an approximate budget of \$3.8 million, its budget proposals do not add up to \$3.8 million.<sup>327</sup> When the Coalition's proposed budget amounts are added together, the correct sum for its proposed Plan budget is \$4,191,001, with \$1,355,250 for 2024, \$1,417,000 for 2025, and 1,418,751 for 2026.<sup>328</sup> Each of the Coalition's yearly budget totals

---

<sup>323</sup> This is calculated by adding \$70,000 to the Agreement's \$2,751,001 budget. *See* Hearing Exhibit 109 at 6 (¶ 16).

<sup>324</sup> Hearing Exhibit 101, 9: 18-19.

<sup>325</sup> *See* Hearing Exhibit 401, 14: 9-11.

<sup>326</sup> These errors may also impact other evidence the Coalition submitted that directly tie into its proposed budget.

<sup>327</sup> Coalition's SOP at 25.

<sup>328</sup> *See id.*

in its SOP are incorrect, as the listed budget amounts add up to hundreds of thousands more than what is shown in the Coalition's yearly totals, and amounts listed as the "Total" per category include numerous mathematical errors.<sup>329</sup> The Coalition recommends a net total of \$1,440,000 (far more than the \$1.05 million of additional funding that the Coalition identifies in its SOP).<sup>330</sup> When adding this net total to the Agreement's \$2,751,001 budget, the sum is \$4,191,001; that amount is also the sum of the Coalition's total recommended budget amounts.<sup>331</sup> Thus, the Coalition's budget recommendations would result in a Plan budget of \$4,191,001, which is \$1,440,000 more than the Agreement's budget, and \$400,000 more than the \$3,791,001 budget that the Coalition states it supports.<sup>332</sup> In evaluating the proposed budget, the ALJ considered all of this.

#### IV. CONCLUSIONS

153. In reaching this Decision, the ALJ considered all the relevant factors in § 40-5-107, C.R.S. Taken as a whole, the Plan, as modified by the Settlement Agreement and this Decision, complies with and is consistent with § 40-5-107, C.R.S. The ALJ finds that the modified Settlement Agreement serves the public interest; supports widespread transportation electrification in the Company's service territory; maximizes benefits and minimizes costs; facilitates transparency through detailed public reporting requirements and the TEPR; satisfies the numerous

---

<sup>329</sup> *Id.* Specifically, the Coalition identifies: \$1,115,250 as its total proposed budget for 2024, but the amounts in its budget sum to \$1,355,250; \$1,202,000 as its total proposed budget for 2025, but the amounts in its budget sum to \$1,417,000; and \$1,203,751 as its total proposed budget for 2026, but the amounts in its budget sum to \$1,418,751. *Id.* The Coalition's budget lists \$400,000 as the total amount for its proposed IQ EV Purchase Rebates and \$400,000 as the total amount for its proposed electric school bus program, but the total for each category is \$600,000; this amounts to a \$400,000 mathematical error. *Id.* Other than its SOP, the ALJ has not been able to locate any other place in the record where the Coalition outlines its total proposed budget, broken down into the specific amounts it suggests. During the hearing, the ALJ questioned a Coalition witness about this, and she pointed to Hearing Exhibit 702, Attachment CC-3, page 5, but that document does not include all of the Coalition's proposed budget amounts. 10/26/23 Tr., 178: 20-25—179: 1-9; 180: 17-25—182: 1-6.

<sup>330</sup> Coalition's SOP at 25-26. Compare Coalition's SOP at 25 with Hearing Exhibit 109 at 6 (¶ 16). See Hearing Exhibit 702, 17: 3-6; 17: 11-13; 18: 9-12; Hearing Exhibit 712, 7: 14-16.

<sup>331</sup> See Coalition's SOP at 25; Hearing Exhibit 109 at 6 (¶ 16).

<sup>332</sup> See Coalition's SOP at 25.

other factors in § 40-5-107(2), C.R.S.; and results in just and reasonable rates. For these reasons, and those discussed throughout this Decision, the ALJ approves the Settlement Agreement, as modified during the hearing and in this Decision.

154. Any requested relief not granted in this Decision has been considered and is denied.

155. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order, and transmits to the Commission, the record in this proceeding along with this written recommended decision.

## **V. ORDER**

### **A. The Commission Orders That:**

1. The “Partial Settlement Agreement” filed on October 11, 2023 (Agreement), is approved with modifications, consistent with the above discussion. The Agreement is incorporated as if fully set forth herein and is included as Appendix A to this Decision.

2. Black Hills Colorado Electric LLC’s (Black Hills) Verified Application for Approval of its Transportation Electrification Plan, Ready EV, for Program Years 2024 through 2026 and for Related Tariff Approvals filed on May 15, 2023, is granted, consistent with the modifications in the Agreement and those discussed above.

3. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file, on not less than two business days’ notice, a compliance advice letter and all tariff sheets authorized in this Proceeding. The advice letter and tariff must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing

is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date.

4. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must also: file an updated version of its 2024 - 2026 Transportation Electrification Plan (Plan) to reflect all terms and conditions that are approved as a result of this Proceeding; and make a filing describing in detail how it will estimate the electric vehicle revenues to be included in the retail rate cap calculation, consistent with the above discussion. The updated version of the 2024 – 2026 Plan must include a summary of specific issues that have arisen in this proceeding that will be addressed through quarterly stakeholder meetings, semi-annual reports, and additional working group meetings as needed. Proceeding No. 23A-0244E is closed.

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

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

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

8. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript

or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

---

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director