

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0025E

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

COMMISSION INTERIM DECISION: (1) DEEMING APPLICATION COMPLETE; (2) SETTING MATTER FOR HEARING *EN BANC*; (3) ESTABLISHING PARTIES; AND (4) REQUIRING PARTIES TO CONFER ON AN EXPEDITED PROCEDURAL SCHEDULE

Mailed Date: March 1, 2023
Adopted Date: February 22, 2023

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission deems complete and sets for hearing before the Commission *en banc* the Application of Black Hills Colorado Electric, LLC d/b/a Black Hills

Energy (Black Hills or the Company) filed on January 4, 2023, in which the Company requests the Commission approve an alternate electric vehicle (EV) fast charging station rate.

2. The Commission grants the requests for permissive intervention filed by Electrify America, LLC (Electrify America), and ChargePoint, Inc. (ChargePoint). The Commission acknowledges the notices of intervention of right filed by Trial Staff of the Commission (Staff), and the Colorado Energy Office (CEO).

3. The Commission requires Black Hills to confer with the established parties and file a proposed expedited procedural schedule.

B. Procedural History

4. On January 4, 2023, Black Hills filed the Application for approval of an alternate EV fast charging station rate. Black Hills is submitting this Application consistent with the requirements of Commission Decision No. C21-0651 in its Transportation Electrification Plan (TEP) proceeding (20A-0651E). Paragraph 81 of Commission Decision No. C21-0651 in the above proceeding, which approved the Company's TEP, directed Black Hills to "begin working with stakeholders on the development of alternative rates within three months of the approval of this TEP and to submit a proposal for at least one additional commercial EV charging rate within one year."

5. Black Hills states that over the course of 2022, the Company has conducted quarterly stakeholder meetings, covering a wide range of topics within its TEP, including commercial EV charging rates. Black Hills reports that, through these stakeholder meetings, two Large General Service rate designs emerged as preferred by stakeholders and the Company.

6. The first rate design, which Black Hills notes is preferred by the Company and EV charging vendors, is a flat rate. Black Hills explains that this rate is relatively simple and consists of a customer charge and a constant energy charge that does not change. Black Hills explains that public fast charging customers are relatively demand inelastic, so they are unlikely to delay or cancel charging due to higher rates on other rate designs with variable rates. Black Hills adds that the simplicity of this rate allows for public fast charging stations and customers to have predictability in the cost to charge an EV, which may make the decision to expand public direct current fast charging stations (DCFCs) easier for EV charging vendors.

7. The second rate design, which Black Hills notes is preferred by Staff, is a time of day (TOD) rate. The TOD rate consists of a customer charge and an energy charge that varies depending on the time of day. The variable energy charge will be more expensive during the on-peak times of 1:00 p.m. to 7:00 p.m. on weekdays, excluding holidays, compared to off-peak times. Black Hills states this on-peak period occurs when there are typically greater capacity constraints on the grid, so delivering energy to customers is more expensive for the Company. Black Hills explains that having higher rates during these times encourages customers to charge their EVs when there is excess capacity on the Company's system and the costs to the Company to provide energy to the customer are less. Black Hills adds that the time varying component can also be of benefit to fleets and public fast chargers that are able to minimize charging during on-peak times.

8. Black Hills notes that both optional rates are designed to recover the same amount of revenue as the Company's other Large General Service rates. Black Hills states the effective rates for each of the Company's rate designs begin to converge around a 12 percent load factor and become virtually indistinguishable above a 14 percent load factor.

9. The Commission issued a Notice of Application Filed on January 11, 2023. The Notice set a 30-day intervention period that ran through February 10, 2023.

10. On January 20, 2023, Staff filed a notice of intervention of right. On February 10, 2023, CEO filed a notice of intervention of right.

11. On February 10, 2023, Electrify America and ChargePoint filed timely motions for permissive intervention.

C. Completeness

12. The Commission finds the Application contains all the information required by applicable Commission Rules and is therefore deemed complete for purposes of § 40-6-109.5, C.R.S.

D. *En Banc* Hearing

13. Given the policy questions raised in the Application regarding the proper rate design for EV fast charging stations, the Commission finds good cause to set the Application for hearing before the Commission *en banc*.

E. Establishment of Parties

14. The Commission acknowledges the notices of intervention of right filed Staff and CEO.

15. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires persons seeking permissive intervention to show the following, in pertinent part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the

Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

16. Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

1. Electrify America

17. Electrify America states that it is building a nationwide network of ultra-fast DCFC stations, and has a network composed of approximately 800 locations and with over 3,500 individual DC fast chargers in total. Electrify America notes that it is developing DCFC stations along the major highway corridors in Colorado, and has commissioned eleven highway charging stations in the state to date. All these charging stations offer 350 kW electric vehicle chargers. Electrify America states it was an active participant in Proceeding No. 20A-0195E and testified extensively on the challenges to public EV charging posed by demand charges and the misalignment of costs incurred and revenues recovered from EV charging customers due to demand charges.

18. Electrify America states that the rates proposed for consideration and approval within the Application will directly affect its current and anticipated operation of public EV charging services and equipment within Black Hills' service territory. As an owner and operator of DCFC infrastructure, Electrify America argues it has a substantial pecuniary interest in the rates approved by the Commission for commercial EV charging services.

19. We find Electrify America has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

2. ChargePoint

20. ChargePoint states that it is an EV charging network, providing scalable solutions for every charging scenario from home and multifamily to workplace, parking, hospitality, retail, and transport fleets of all types. ChargePoint's primary business model consists of selling smart charging solutions directly to businesses and organizations while offering tools that empower station owners to deploy EV charging designed for their individual application and use case.

21. ChargePoint explains that as a provider of Level 2 EV chargers, DCFCs, and EV charging network services in Colorado, who has existing customers as well as prospective customers seeking to install EV charging stations in Black Hills' service territory, ChargePoint has a direct and substantial interest in Black Hills' proposed Schedule LGS-SFEV rates. Any rate design that is eventually approved in this proceeding would be available to both ChargePoint's existing and prospective customers. ChargePoint maintains the final rates, terms, and conditions approved in this proceeding will directly impact the value proposition for its products and services. ChargePoint concludes the outcome of this Proceeding will therefore substantially affect its pecuniary and tangible interests.

22. We find ChargePoint has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

F. Conferral

23. We direct Black Hills to confer with the parties to develop a proposed expedited procedural schedule, including provisions for discovery. We advise parties that the Commission prefers that the evidentiary hearing in this matter be scheduled for consecutive days.

24. We direct Black Hills to file a proposed procedural schedule as soon as possible but no later than March 13, 2023.

II. ORDER

A. It Is Ordered That:

1. The Application of Black Hills Colorado Electric, LLC d/b/a Black Hills Energy filed on January 4, 2023, in which the Company requests the Commission approve an alternate electric vehicle fast charging station rate, is set for hearing *en banc*.

2. The application is deemed complete, consistent with the discussion above.

3. The notices of intervention filed by Trial Staff of the Commission on January 20, 2023, and by the Colorado Energy Office on February 10, 2023, are acknowledged.

4. The motion to intervene filed by Electrify America, LLC on February 10, 2023, is granted.

5. The motion to intervene filed by ChargePoint, Inc. on February 10, 2023, is granted.

6. The parties to this Proceeding are: Black Hills, Trial Staff of the Commission, Colorado Energy Office, Electrify America, LLC, and ChargePoint, Inc.

7. Black Hills shall confer with the parties to develop a proposed expedited procedural schedule, consistent with the discussion above.

8. Black Hills shall file a proposed procedural schedule as soon as possible but no later than March 13, 2023.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 22, 2023.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director