Decision No. C24-0446

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0242E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2024-2026 TRANSPORTATION ELECTRIFICATION PLAN.

COMMISSION DECISION ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF COMMISSION DECISION C24-0223 AND GRANTING COMMISSION STAFF'S MOTION FOR LEAVE TO RESPOND

Mailed Date: June 26, 2024
Adopted Date: May 29, 2024

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the applications for rehearing, reargument, or reconsideration (RRR) of Commission Decision No. C24-0223 (TEP Decision or Decision) filed by the Colorado Energy Office (CEO), Western Resource Advocates and Sierra Club (WRA-SC), the City of Boulder (Boulder), Southwest Energy Efficiency Projects (SWEEP), Walmart Inc. (Walmart), Staff of the Public Utilities Commission (Commission Staff or Staff), Energy Outreach Colorado (EOC), Public Service Company of Colorado (Public Service), and the Office of the Utility Consumer Advocate (UCA), on April 30, 2024.

2. Through this Decision, the Commission grants, in part, and denies, in part, the applications for RRR filed by CEO, WRA-SC, Boulder, SWEEP, Staff, EOC, Public Service, and UCA. The Commission denies the application for RRR filed by Walmart.

3. The Commission also grants the Motion for Leave to Respond to RRR (Motion for Leave to Respond), filed by Commission Staff on May 7, 2024.

B. Background

4. We have previously detailed the background and procedural history of this Proceeding in the TEP Decision, issued on April 10, 2024. Here, we provide only that background and procedural history necessary for this Decision.

5. In the TEP Decision, the Commission granted, with modifications, the application for approval of Public Service's 2024-2026 TEP. The Commission also granted, in part, and denied, in part, both the Joint Motion for Approval of Non-Unanimous Comprehensive Settlement Agreement (Joint Settlement) filed by Public Service and the Settling Parties, and the Joint Motion to Approve Non-Comprehensive and Non-unanimous Stipulation of the Affordability Coalition (Stipulation), filed on December 13, 2023.

6. On April 30, 2024, the following nine parties submitted applications for RRR: CEO, WRA-SC, Boulder, SWEEP, Walmart, Commission Staff, EOC, Public Service, and UCA.

7. On May 7, 2024, Commission Staff filed a Motion for Leave to Respond to RRR, Request for Waiver of Response Time, and Response to the RRR of the Colorado Energy Office (Motion for Leave to Respond).

8. Through Decision C24-0320-I, issued on May 9, 2024, the Commission established a shortened response time to the Motion for Leave to Respond of May 15, 2024.

9. On May 15, 2024, CEO filed a Response to Trial Staff's Motion for Leave to Respond (Response to Staff Motion).

10. On May 20, 2024, Boulder filed an Amendment to the City of Boulder's Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0223.

11. Through Decision No. C24-0362, issued on May 29, 2024, the Commission granted the applications for RRR for the sole purpose of tolling the statutory deadline pursuant to § 40-6-114, C.R.S.

12. The Commission deliberated on the merits of the RRR applications at the May 29, 2024 Commissioners' Weekly Meeting (CWM).

C. Staff's Motion to Respond

(1) Motion

13. In its Motion for Leave to Respond, filed on May 7, 2024, Commission Staff contends CEO attempts to introduce facts not in evidence by presenting new and material issues on RRR for the first time in the Proceeding. Staff argues that CEO's statements regarding Electric Vehicle Supply Infrastructure (EVSI) is an attempt to introduce facts not in evidence.[1] Specifically, Staff points to CEO's statement that it "understands there to be roughly $40 million in forecasted expenses for signed contacts in the Company's EVSI pipeline," arguing it is without any support in the record and, if true, would materially alter the arguments parties could have made throughout the hearing.[2] Staff acknowledges that the Company, in its rebuttal testimony, refers to an estimated $83 million of capital for EVSI projects in its pipeline.[3] However, Staff argues that CEO, without evidentiary support or citation to the record, implies there is a distinction between projects that are in the Company's pipeline ($83 million) and those under contract ($40 million).[4] Staff asks the Commission to strike the statement from CEO's RRR.

[1] Staff's Motion for Leave to Respond at p. 3.
[2] *Id*. at p. 5.
[3] *Id*. (citing Hr. Ex. 114, Rebuttal Testimony of Company Witness Seth, pp. 13:11–15:1 and Hr. Ex. 113, Rebuttal Testimony of Company Witness Ihle, pp. 54:7–9).
[4] Staff's Motion for Leave to Respond at p. 6.

14. Second, Staff contends CEO makes two related statements that present novel recommendations that CEO failed to properly raise earlier in the proceeding.[5] Specifically, CEO recommends the Commission (1) "approve no more than $40 million to fund Company-owned EVSI projects with signed contracts from the 2021-2023 TEP" and (2) "increase the EVSI budget by $20 million and allow $20 million of the already approved $100 million to fund Company-owned EVSI projects from the 2021-2023 TEP."[6] Staff argues that these recommendations have no evidentiary basis in the proceeding and appear to be based entirely on CEO's assertion regarding the $40 million under contract, which does not have support in the record.[7] Staff asserts that any projects executed under the 2021-2023 TEP should be supported with funds from the 2021-2023 TEP budget, and that it is inappropriate to introduce any new budget carveouts at this point in the proceeding.[8] Staff asks the Commission to deny both of CEO's recommendations.

(2) CEO's Response

15. In its Response to Staff's Motion, filed on May 15, 2024, CEO contends there is evidence in the record that supports the existence of an EVSI pipeline that includes projects with executed agreements.[9] CEO acknowledges that its statement regarding $40 million in forecasted expensed for signed contracts does not include a citation but argues there is evidence elsewhere in the record or that was shared with the parties that supports the existence of the Company's EVSI pipeline and the stages those projects are in.[10] CEO points to answer and cross-answer testimonies from CEO Witness Christian Williss, in which he provided information regarding Company

[5] *Id*. at p. 3.
[6] *Id*. at pp. 3–4.
[7] *Id*. at p. 6.
[8] *Id*. at p. 7.
[9] CEO's Response to Motion at p. 3.
[10] *Id*. at p. 4.

project timelines, the steps a customer needs to take when submitting a Customer Intake Form for an EVSI project, and CEO's analysis of actual EVSI costs provided by the Company.[11] Specifically, CEO refers to CEO's workpaper GCW-2, which it shared with all parties, that included information about the status of EVSI projects, including whether a service agreement was signed.[12] Additionally, CEO points to the rebuttal testimony of Company Witness Huma Seth Hearing that includes two figures showing EVSI pipeline growth: the size of the actual/pipeline costs is approximately $40 million for 2024 and 2025, and there is $83 million worth of EVSI currently in the Company's pipeline.[13] CEO states that the specific amount of $40 million stemmed from its decision not to argue that the Commission should approve the full $83 million, given the Commission's preference for rebates, but rather advocate for a lesser amount that would best serve the public interest.[14] Moreover, CEO argues that its EVSI recommendations are consistent with its positions through the Proceeding and are appropriate for this phase of the Proceeding. CEO states that it has advocated for a Commercial EVSI program that includes Company-owned projects and rebate options throughout this Proceeding.[15] Given the Commission's decision to eliminate the budget for company-owned EVSI, CEO now advocates for a total budget for Commercial EVSI of $120 million, which is below the proposed total in the Settlement Agreement ($156 million) that CEO initially supported.[16] CEO contends that a key purpose of RRR is to encourage the Commission to reconsider an aspect of its decision, and CEO's recommendations are a part of its request for reconsideration, as well as a direct response to the Commission's TEP Decision.[17]

[11] *Id*.
[12] *Id*. at p. 5.
[13] *Id*.
[14] *Id*. at pp. 5–6.
[15] *Id*. at pp. 8–9.
[16] *Id*. at p. 9.
[17] *Id*.

1. Findings and Conclusions

16. Rule 1506(b) of the Rules of Practice and Procedure, 4 CCR 723-1, governs when a party may file a response to a RRR application. Rule 1506(b) states the following:

> No response to an application for RRR may be filed, except upon motion. Any motion for leave to file a response must demonstrate a material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have guarded against; or newly discovered facts or issues material for the moving party.

Commission Staff argues that CEO attempts to introduce facts not in evidence by presenting new and material issues on RRR for the first time in this Proceeding. Namely, Staff points to CEO's assertion that there is $40 million in signed contracts for EVSI contracts in the Company's pipeline, and the accompanying recommendations. CEO contends their estimation of the EVSI contracts pipeline is supported by the record and argues that the accompanying recommendations are aligned without its positions throughout the Proceeding. We agree with Staff that CEO cites to facts not found in the evidentiary record and therefore grant its Motion to Respond pursuant to Commission Rule 1506(b). We find that CEO was not adequately able to support its assertions with specific evidence in the evidentiary record. While CEO cites to Hearing Exhibit 1501, Attachment GCW-18 and Hearing Exhibit 114, Figure HS-R-2 as record support for its estimate of $40 million in signed contracts, but neither of these sources actually support that number, nor any other. Additionally, we share Staff's concerns that CEO's additional proposals are misplaced in its RRR filing, particularly because such proposals are linked to evidence found outside the record. Accordingly, the Commission grants Staff's Motion for Leave to Respond.

D. Issues Addressed on RRR

17. The aforementioned parties filed applications for RRR pursuant to § 40-6-114, C.R.S., and Rule 1506, 4 CCR 723-1. The Commission addresses each issue, in turn, presented in the applications below.

a. Governmental Electric Vehicle Rebate Program

(1) Party Arguments

18. CEO argues the Commission should approve the Governmental Electric Vehicle (EV) Rebate Program as described in the Settlement Agreement.[18] CEO states it understands that for many local governments and public colleges and universities, the upfront costs of electric vehicles remain a barrier.[19] CEO argues that it is too early to know whether changes to federal and state tax credit requirements will be sufficient to remove that barrier, noting that federal requirements on the origin of EV batteries and components have reduced the number of EV models eligible for federal tax credit.[20] As a result, CEO supports the easy to access point-of-sale Governmental Rebate proposed in the Settlement Agreement. Additionally, CEO suggests that as agencies become more familiar with EVs, and more confident in the technology, they can accelerate adoption of their own fleets and in turn those of their constituents.[21]

b. Conclusions and Findings

19. We find that it is too early to know whether the availability of federal and state tax subsidies to governmental agencies will be sufficient inducement for entities to purchase EVs. The Company will be filing its next TEP in only about two years, and that substantially more

[18] CEO RRR Application at p. 20.
[19] *Id*.
[20] *Id*. at p. 21.
[21] *Id*.

information on this point will be available at that time. Accordingly, we deny CEO's request to restore funding for the Governmental Rebate program.

2. DCFC Rebate Dependence on Uptime Compliance

a. Party Arguments

20. Public Service requests the Commission amend the two-part Direct Current Fast Charging (DCFC) structure and uptime requirements.[22] Pointing to Paragraph No. 82 of the TEP Decision, where the Commission added several additional requirements, Public Service again states its concerns that these new requirements will materially reduce program participation, whether the program can reasonably function as the Commission envisions, and whether the requirements will be effective.[23] Public Service asserts that charging companies have communicated that they are not willing to provide uptime data directly to the Company and CEO may be overburdened if it is expected to report this information to the Company, the contents of which will no longer be aggregated or anonymized as contemplated in the Settlement.[24]

21. Public Service requests the Commission amend Paragraph No. 82 of the Decision to remove the two-part rebate structure and uptime requirements and instead direct the Company to work with stakeholders on addressing this issue and to bring forward a workable uptime structure as part of its next TEP filing.[25]

22. Walmart requests that the Commission reconsider its decision to require disclosure to Public Service of confidential and competitively sensitive uptime data on a granular level and without any consideration of the cause of downtime occurrences in exchange for a rebate incentive

[22] Public Service RRR Application at pp. 17–18.
[23] *Id*. at p. 18.
[24] *Id*. at pp. 18–19.
[25] *Id* at p. 19.

to build DCFC stations in underserved areas.[26] Alternatively, if the Commission continues to require this disclosure, Walmart requests that it be limited to the disclosure of granular data to each charging station's first year of operation.[27] Walmart argues that, upon receipt of the developers' second semi-annual report for a particular charging station, CEO should provide to the Company a report identifying the number of ports at that charging station that achieved the 97 percent uptime requirement during the station's first year of operation along with a narrative relating to the cause of downtime occurrences. Walmart further argues that CEO should be directed to provide to the Company an annual report that anonymizes and aggregates the uptime data provided by all participating developers for the prior year along with a narrative relating to the cause of downtime occurrences.[28] Walmart asserts that these reports will provide the Company with the information required by the Commission's Decision, while protecting participating developers' confidential and sensitive uptime data.[29]

23. CEO states that it has several concerns regarding the Commission's proposed changes to the Public Charging Acceleration Network (PCAN) Alternative portfolio (Paragraphs No. 79-82 of the Decision).[30] As part of the Settlement Agreement, CEO volunteered to collect uptime information from charging providers and share an aggregated and anonymized version of the information with the Company to include in its annual reporting.[31] CEO believes this will result in transparency, greater participation in the program, and increased investment in underserved areas and disproportionately impacted communities (DICs).[32]

[26] Walmart RRR Application at pp. 2–3.
[27] *Id*. at p. 3.
[28] *Id*. at p. 3–4.
[29] *Id*. at p. 4.
[30] CEO RRR Application at p. 6.
[31] *Id*.
[32] *Id*.

24. First, CEO asserts, given the Commission's decision to require CEO to provide the number of ports for each developer that achieve 97 percent uptime (during the first full year of operation), the protection of confidential business information proposed in the Settlement likely cannot be preserved.[33] In light of the Commission's discussion on this point, CEO believes the Commission either misunderstands providers' hesitance to disclose confidential business data, or does not share their confidentiality concerns.[34] While CEO believes some providers will pursue PCAN Alternative rebates (if they are willing to forego these competitive concerns), it anticipates that others will choose not to participate in the program and instead will develop in areas where utilization and revenue are economically viable without a rebate.[35] Given these concerns, CEO encourages the Commission to carefully weigh the benefits of requiring providers to share port level data with a competitor against the risk of discouraging participation in the program.[36]

25. Second, CEO asserts the Commission's modifications appear not to allow any exceptions or accommodations for the 97 percent uptime requirement for events outside of provider's control, such as vandalism or cars crashing into chargers. CEO states that the Commission's proposed structure would tend more towards punishing providers than incentivizing them.[37] Third, CEO contends the Commission's proposed changes to the PCAN Alternative portfolio may undermine and moot CEO's role in the data collection process. If CEO is essentially passing through non-anonymized information to the Company, it believes it makes more sense for the Company to receive that information directly. However, CEO also

[33] *Id*. at p. 7.
[34] *Id*.
[35] *Id*.
[36] *Id*. at pp. 7–8.
[37] *Id*. at p. 8.

believes that submitting this information directly to the Company would discourage overall participation.[38]

26. Next, CEO asserts that clarifications are needed to ensure its role is not expanded beyond what was agreed to in the Settlement Agreement. CEO clarifies that if the Commission maintains its approval for split rebates, CEO is not proposing to collect port-level data from each provider on a rolling basis and exactly one year after each port becomes operational.[39] Instead, it will have two set times during the year when information must be reported, which will ensure an appropriate level of effort. CEO also points out that it is voluntarily fulfilling this role to support investments in charging infrastructure.[40]

27. Further, assuming the Commission approves a split rebate, CEO states that its ability to collect information from providers on a semi-annual basis may be delayed and some providers could experience a delay of up to six months before the second portion of their rebates can be provided.[41] CEO is unsure whether this will be an issue for providers, but raises it for the Commission to consider. Additionally, CEO states that it will be able to collect information from providers through the end of 2027 (notwithstanding its preference for the Settlement Agreement to be approved).[42]

28. In light of the aforementioned concerns, CEO offers several modifications the Commission should consider in implementing the PCAN Alternative portfolio.[43] First, CEO proposes the Commission could approve the PCAN Alternative portfolio, as proposed in the

[38] *Id*. at p. 9.
[39] *Id*.
[40] *Id*.
[41] *Id*.
[42] *Id*. at p. 10.
[43] *Id*.

Settlement Agreement. This continues to be CEO's preferred option.[44] Second, CEO proposes the Commission approve the general structure of what the Commission proposed in its Decision, but include a hybrid approach where CEO and the Company both collect uptime information. This is CEO's second choice.[45] The third option CEO suggests is that the Commission approve the general structure of what it has proposed in its Decision, including CEO's involvement, but with several modifications. This option attempts to make the Commission's Decision implementable, notwithstanding CEO's concerns enumerated above.[46] Lastly, CEO suggests approval of the general structure of what the Commission proposed in its Decision, excluding CEO's involvement, and with several other modifications.[47] CEO does not believe all charging providers will support this approach, but cannot presently represent their position.

b. Conclusions and Findings

29. We note that none of the DCFC charging network providers that are parties to this Proceeding submitted RRR, and so the only arguments describing competitive providers' concerns with the requirement to provide DCFC uptime data to the Company is coming from the Company itself, or from CEO. We are thus at a loss to understand how the provision of data regarding the aggregate performance of any individual provider's charging ports to the Company presents a competitive concern for the providers or a competitive advantage for Public Service, particularly now that Public Service will own limited chargers itself under this TEP.

30. In light of the concerns the Company, Walmart, and CEO express in their RRR filings, we will retract the requirement we made in the Decision to withhold one third of the rebate,

[44] *Id*. at p. 11.
[45] *Id*.
[46] *Id*.
[47] *Id*.

pending delivery of data on the number of each provider's ports achieving 97 percent uptime. Public Service may make the full rebate available to the provider once a charging station becomes operational. We therefore grant the RRR request to this extent. However, as CEO has voluntarily taken on the role of charging station performance data intermediary per Paragraph No. 25.1 of the Settlement Agreement, we ask that, in addition to the report it makes to the Company pursuant to that paragraph, it also maintains a list of DCFC providers receiving rebates through the program that have failed to meet the 97 percent uptime threshold, as modified below. We ask that CEO refresh this information and provide it to the Company on at least an annual basis. Providers that fail to achieve the uptime threshold, as modified below, could be ineligible to receive rebates for additional charging stations within or after the term of this TEP.

31. We wish to emphasize that our motivation in establishing a performance aspect of the rebate to third-party DCFC providers is to incentivize very high levels of performance in the charging stations that ratepayers are subsidizing. These stations must be functional when they are needed, because if they are not, they will have the opposite of the intended effect of promoting the use of electricity as a transportation fuel. We therefore find that a blanket allowance for charger downtime due to events beyond the control of the DCFC provider will not create the proper motivation to the provider to quickly restore charging stations to normal operation following downtime events, whether these are due to forces within or outside the provider's control. Accordingly, we will not extend a global exception to the 97 percent uptime requirement for events claimed to be beyond the charging provider's control.

32. At the same time, we acknowledge that there may be cases of extended charger downtime where, despite its best efforts, a provider is unable to restore one or more charging ports

to full functionality. As we cannot distinguish *a priori* between extended downtime that either truly is or is not out of the charging provider's control, we find that we must request that CEO use its judgement to determine, based on data and narrative submitted by the charging provider, whether a given downtime event, or a portion thereof, should be excluded from the calculation of any given port's uptime percentage.

3. Residential Portfolio

a. Termination of EVAAH Program

(1) Party Arguments

33. The Company, pointing to Paragraphs Nos. 101 and 103 of the Decision, wishes to clarify that it no longer plans to offer the EV Accelerate at Home Backup Power Option (EVAAH) Program.[48] Despite the Commission's approval of a $3.2 million budget for the EVAAH Program, the Company does not see sufficient economies of scale, or a sufficient technical or business case, to justify the EVAAH program in light of the Commission's decision to broadly terminate Company ownership of equipment.[49]

34. Similar to the Company's position with the EVSI and EVAAH programs, it is concerned that customers participating in any program that depends on Company ownership could very likely face potential future disruption in service with another change in policy. Further, Public Service expresses a broader concern that rapid policy shifts (*e.g.*, the Commission's decision on the EVSI program) can provide further evidence to customers and market participants that institutions supporting EV adoption are uncertain, which will drive additional instability for the electric transportation industry.[50] Accordingly, Public Service requests the Commission amend its

[48] Public Service RRR Application at p. 13.
[49] *Id*.
[50] *Id*. at p. 14.

Decision to re-allocate the $3.2 million from the EVAAH Backup Power Option to its vehicle-to-grid (V2G) program within the Innovation portfolio.[51]

35. CEO contends the EVAAH Program is effectively an on-bill financing offering and, as a result, the Commission should permit the program to operate until an on-bill financing alternative is established, or the company files its next TEP, whichever comes earlier.[52] CEO argues the termination of the EVAAH, without an alternative in place, will reduce the options for customers for whom the combined upfront costs of an EV purchase, charger purchase, and wiring upgrades are prohibitive.[53]

36. CEO also states it concerned about the mixed messages the Commission's decision sends to customers and the market; on one hand, the Commission is terminating the EVAAH program, citing concerns about the utility undermining the private market. On the other hand, the Commission is encouraging the Company to bring forth an on-bill financing program in the next TEP that would provide a very similar service as exists now, albeit without the utility owning and maintaining the equipment.[54] Accordingly, and in alignment with Commissioner Gilman's dissenting proposal, CEO recommends the Commission approve the EVAAH program with the expectation that it will be phased out when an on-bill financing alternative has been established or the Company's next TEP has been filed, whichever is earlier.[55]

37. WRA-SC also requests that the Commission reconsider its decision to discontinue the EVAAH program, arguing that it should be maintained for the duration of the 2024-2026 TEP, or until Public Service offers an equivalent on-bill financed product.[56] WRA-SC asserts that the

[51] *Id*.
[52] CEO RRR Application at p. 18.
[53] *Id*. at p. 19.
[54] *Id*.
[55] *Id*.
[56] WRA-SC RRR Application at pp. 1–2.

EVAAH program established in the Inaugural TEP has been one of Public Service's most popular TEP programs (as of Spring 2023, over 1,100 customers were enrolled in the program, with 94 percent of customers stating they were satisfied with the experience) and is one of the few financing options available in the residential sector.[57]

38. WRA-SC contends the Commission, in construing that Company ownership of behind-the-meter (BTM) charging equipment would violate § 40-5-107(2)(e), C.R.S., has created a new statutory test.[58] WRA-SC argues this provision is not a mandatory perquisite for approval of any TEP program, but rather is one of seven factors that Commission must consider when reviewing and determining TEPs.[59] These factors must be weighed, WRA-SC continues, but were not intended to provide an independent basis for the Commission to reject a particular program. Actually, WRA-SC argues, the EVAAH program is justified on a number of bases, as it is expected to satisfy a number of the other statutory factors, including (1) providing access for low-income customers by providing an alternative financing option to mitigate the up-front cost of charging equipment, (2) increase access to the use of electricity as a transportation fuel by facilitating residential charging, (3) improve use of the electric grid by facilitating residential charger and customer participation in load management programs, and (4) increase consumer choice in electric vehicle charging by providing an accessible financing option to at-home charging.[60]

39. WRA-SC further argues that no intervening party specifically expressed concern with Company BTM ownership regarding the EVAAH program; rather, the Commission's finding relied heavily on Staff witness Haglund's testimony that Company ownership of BTM charging

[57] *Id*.
[58] *Id*. at pp. 2-3 (citing Decision at 99-100.).
[59] *Id*.
[60] *Id*. at p. 3.

would "undermine innovation and competition . . . and likely repel private capital investment."[61] However, WRA-SC asserts, there is no evidence in the record that supports this conclusion and Haglund's testimony did not specifically identify the EVAAH program.[62] WRA-SC contends the time-limited nature of EVAAH is unique from other programs, and the Commission's decision should reflect that difference.[63] To the extent the Commission is worried about long-term impacts after the equipment is installed, WRA-SC points out that the Decision established mitigating guardrails (ownership automatically transfers to the customer after ten years).[64]

(2) Conclusions and Findings

40. We acknowledge the accuracy of CEO's contention that the EVAAH program effectively mimics an on-bill financing program, at least from the customer's perspective, particularly with the clarification in Paragraph No. 102 of the Decision that ownership of the installed equipment reverts to the participant once the cost of the equipment is fully repaid to the Company. We therefore rescind the directive we made to the Company in the Decision to terminate the EVAAH program, and we approve the $2.4 million budget for the EVAAH program as proposed in the Settlement Agreement. Once the Company has established the on-bill financing program discussed in Paragraph No. 101 of the Decision, we direct it to utilize this new financing mechanism to support participants in the EVAAH program in place of the utility ownership model used thus far in the EVAAH program. As part of the expected transition of this program, the Commission expects that the Company will move forward with design and planning for the on-bill financing program replacement in earnest.

[61] *Id*.
[62] *Id*.
[63] *Id*.
[64] *Id*. at pp. 3–4.

41. We expect that in making this change, the Company will reconsider its decision to terminate the Backup Power Option to that program as discussed in its RRR filing.

b. Incentives for Charging Perks Program

(1) Party Arguments

42. Public Service requests the Commission clarify and explain the basis for increasing the Charging Perks Rebate Level from $50 to $150.[65] Pointing to Paragraph No. 105 of the Decision, Public Service claims the Commission's decision to triple the Charging Perks rebate is grounded in speculation rather than data-driven evidence, as no supporting evidence exists in the record.[66] The Company contends that no party submitted data-backed evidence to support a higher incentive near or at the $150 level.[67] Accordingly, the Company requests the Commission reconsider this determination, but only to provide additional rationale and basis for deciding to increase the incentive to $150.[68]

(2) Conclusions and Findings

43. In his answer testimony, Staff witness McCabe addressed the following shortcomings of the Guidehouse analysis that the Company used as the basis for its proposed $50 per year incentive for Charging Perks participants: (1) it was limited to the year 2022, so had a small sample that was inadequate to completely evaluate program costs and benefits; (2) it failed to consider the dramatic rapid growth of solar capacity on the Company's grid since 2022, and therefore undervalues curtailment reduction; (3) it recognized demand reduction of only 0.17 kW, when each incremental EV charger load represents roughly 10 to 100 times that power; (4) it recognized an average reduction in curtailment during early morning hours of just 0.55 kWh, when

[65] Public Service RRR Application at pp. 14–15.
[66] *Id*.
[67] *Id*.
[68] *Id*.

typical EV battery capacities are between 40 and 100 kWh, suggesting far greater load shifting capacity; and (5) the analysis assumed price signals that fail to consider the approximately $62/MWh value of reducing curtailment, thus modeling inadequate inducement to shift load. Mr. McCabe asserted that this program could dramatically increase EV charging demand during periods of curtailment by providing a deeply discounted or even negative price for EVs to absorb otherwise curtailed renewable energy. [69]

44. We find many of Mr. McCabe's critiques of the Guidehouse analysis compelling and that in total, Staff's concerns with the Guidehouse study all point in the same direction—a higher incentive than proposed by the Company. Mr. McCabe's testimony (unrebutted by the Company) suggests that the Guidehouse result of $23.76 in annual benefits per vehicle is questionable, and likely dramatically below the actual benefits to the system if the program is designed and utilized by the Company to maximize benefits to the grid. In fact, Company witness Gouin explains in rebuttal testimony[70] that further evaluation of Charging Perks "will be needed beyond this initial pilot report," and that the Company reduced the incentive from $100 to $50 (rather than the less than $25 identified by the Guidehouse analysis) to roughly reflect the identified benefits but keep the incentive high enough to attract new participants. While the Commission's selection of a $150 incentive is not set at a level specifically proposed by a party, it is supported by the record that shows the Company's incentive level is likely too low. Further, the Commission's reasoning, that the incentive should encourage participation in this specific program over the Optimize Your Charge (OYC) program, remains salient.

[69] Hr. Ex. 403, Answer Testimony of Staff Witness McCabe, pp. 31–38.
[70] Hr. Ex. 117, Rebuttal Testimony of Company Witness Gouin, p. 13.

45. We reaffirm our rationale in setting the incentive at $150, both because the record reflects that a higher incentive level is necessary and to make the Charging Perks program significantly more attractive than the OYC program. In addition, we direct the Company to conduct and provide in its next TEP application a more thorough and robust analysis of the current and potential future benefits provided by the program. Furthermore, we direct the Company to provide in its next TEP application a detailed description of how it is using this program to shift load to benefit the grid, reduce curtailment, and reduce ratepayer costs. This description should be accompanied by data on the number of participants in the program, details on the variation of the proxy price used to modify EV charging behavior on an hourly and seasonal basis, estimates of load reduction during peak hours, and reduction in curtailment due to the program.

c. Charging Window for the Optimize Your Charge Program

(1) Party Arguments

46. Public Service requests the Commission clarify a procedural point regarding the manner in which the Company is to updates its OYC charging windows.[71] Pointing to Paragraph No. 110 of the Decision, Public Service wants clarification affirming that implementing the Decision's charges to the OYC hours can be done through the 60-Day Notice process, rather than a standalone advice letter filing.[72] Public Service also states that, while it will seek to minimize the possibilities of hours that do not match the OYC program, there is an inherent risk that there could be a relatively brief period where the hours do not match due to procedural issues that are outside the Company's complete control.[73] Alternatively, should the Commission determine the

[71] *Id*. at p. 19.
[72] *Id*. at pp. 19–20.
[73] *Id*.

Company must request reconsideration of the Decision on this point, the Company requests that its requests clarification be construed as a request for reconsideration.[74]

(2) Conclusions and Findings

47. We agree that as the charging windows are an element of the OYC program, the Company can recommend changes to the window definitions through the 60-Day notice process, rather than through the filing of an advice letter; we grant the Company's RRR to this extent.

d. Publication of Day-Ahead and Week-Ahead Renewable Generation

(1) Party Arguments

48. Initially, Boulder requested that the Commission reconsider the apparent omission of the direction to require Public Service to publish week-ahead and day-ahead renewable percentages to enable customers to better align electric vehicle charging with low emissions hours.[75] Despite accepting advisors' recommendation during the CWM to direct the Company to develop and publish hourly week-ahead and day-ahead forecasts of the system's clean energy percentages, Boulder argued, the Decision does not include the results of this vote, or direction to Public Service and stakeholders on how to proceed on this topic.[76]

49. However, on May 20, 2024, Boulder filed an Amendment to its RRR filing withdrawing this request.[77] Boulder states that it has committed to working with Public Service to collaboratively address this issue within the construct of a broader effort to make historical and

[74] *Id*.
[75] Boulder RRR Application at pp. 2–3 (citing Commissioner deliberations, accessed at: https://www.youtube.com/watch?v=6uPfyxodEqE&t=11096s (beginning at video timestamp 3:04:57)).
[76] *Id*.
[77] *See* Boulder's Amendment of its Application for RRR.

forecast renewables and emissions data available for broader customer use, rather than the narrow focus on Charging Perks within this proceeding.[78]

(2) Conclusions and Findings

50. Boulder is correct that the Company directive it cites was unanimously adopted by the Commission but inadvertently omitted from the Decision. The Commission also unanimously adopted a related directive requiring the Company to propose an hourly price signal for Charging Perks that fully reflects the value of avoided curtailments, via the 60-day notice, within 90 days of the final Commission Decision. This second directive was also inadvertently omitted from the Decision. Although Boulder has withdrawn its request that the Commission correct the omission of the directive for the Company to publish hourly forecasts of renewables generation, this does not change the facts that both directives were unanimously approved by the Commission, and that both were inadvertently left out of the Decision. We will correct those errors here. The Company is directed to (1) develop and publish day-ahead and week-ahead forecasts of hourly percentage renewable generation, and (2) propose through the 60-day notice process within 90 days of the final Commission decision, an hourly proxy price signal for the Charging Perks program that fully reflects the value of avoided curtailments.

4. Commercial Portfolio

a. Utility Ownership of Behind-the-Meter Assets

(1) Party Arguments

51. Public Service is disappointed with the Commission's decision to preclude Company ownership of EV assets in favor of a rebate-only approach, and does not believe the record supports this approach.[79] Public Service also notes its concerns with how parties may rely

[78] *Id.*
[79] Public Service RRR Application at p. 5.

on these findings as future precedent across regulatory matters. While it does not request rehearing on this issue, it believes the record would benefit from a clear statement that the Commission findings on Company ownership will not be construed as having precedential value.[80]

52. Public Service raises several points regarding the transition from company ownership of EV assets to rebates-only program. Public Service offers the example of the Decision's reduction to the advisory services budget which, combined with the fact that they will no longer be the turnkey solution to customer transportation electrification needs, may have a negative impact on customer experience.[81] Additionally, Public Service is concerned that the decision on multi-family housing (MFH) development may result in a material market gap given the lack of third-party interest in serving this market due to the complexity and cost.[82] While it is not asking the Commission to reverse its decision on the issue of Company ownership, Public Service states it raises the uncertainty and concerns in the interest of being transparent and to express an interest to monitoring any unintended consequences that may result from this policy shift.[83]

53. Second, Public Service points out, "for the sake of awareness and transparency," that it has a significant existing pipeline of customer projects that involve Company-owned EVSI.[84] These projects, which were authorized under the Inaugural TEP, must be completed and wound down. Given the popularity of these projects and the amount still in the pipeline (225 percent growth from 2022 to 2023), the Company notes it is not likely to complete all of these projects (with signed agreements) by the end of 2024.[85] Public Service estimates the capital costs

[80] *Id*. at p. 6.
[81] *Id*. at p. 7.
[82] *Id*.
[83] *Id*.
[84] *Id*. at pp. 7–8.
[85] *Id*. at pp. 8–9.

it will incur in 2024 associated with its pending pipeline of projects is approximately $30 million, and can potentially take up to two years to complete, with trailing Transportation Electrification Programs Adjustment (TEPA) charges expected to accrue into its 2024-2026 TEP.[86]

54. Lastly, and also in the interest of transparency, Public Service clarifies that the figures included in Table 9 of the Settlement Agreement (addressing equity-supportive spending) were not calculated based on the Commission's material modification of the Settlement.[87] While Public Service states it can no longer stand behind the accuracy of Table 9, it clarifies that it continues to stand behind the Settlement commitments made in Paragraph No. 58 of the Settlement, which requires at least 15 percent of the total TEP three-year budget to be dedicated to support equity-eligible customers and communities, with a minimum of five percent of the annual budget dedicated to support the initiatives.[88]

55. CEO supports the Commission's decision to transition to a rebate-only EVSI program moving forward; however, it states the Commission's decision fails to clarify the status of not yet completed Company-owned EVSI projects that are under contract with EVSI customers.[89] CEO contends the Commission should clarify that Company ownership is allowed for these in-progress projects, and explicitly allow Company ownership of EVSI projects for customers with signed contracts from the Inaugural TEP.[90]

56. CEO also recommends that the Commission require the Company to notify existing EVSI customers when the rebate option will be available, and that they are eligible to back out of the signed EVSI contract if so desired.[91] Next, CEO recommends the Commission approve no

[86] *Id*. at p. 9.
[87] *Id*. at p. 11.
[88] *Id*.
[89] CEO RRR Application at pp. 15–16.
[90] *Id*.
[91] *Id*. at pp. 16–17.

more than $40 million to fund Company-owned EVSI projects with signed contracts from the Inaugural TEP.[92] Additionally, CEO recommends the Commission increase the EVSI budget by $20 million and allow $20 million of the already approved $100 million to fund Company-owned EVSI projects from the 2021-2023 TEP.[93] Lastly, CEO recommends the Commission approve any additional reporting it deems appropriate, including approving all parts of Paragraph No. 68.7 of the Settlement Agreement, which specifies reporting requirements for EVSI projects, including Company-owned projects.[94]

57. WRA-SC argues the Commission should revisit its decision to reject utility ownership of BTM assets for all Commercial portfolio market segments based on the assumption that market conditions that previously justified such ownership no longer exist.[95] WRA-SC contends this decision is based on an "inexact and incomplete reading of the evidentiary record," and, at a minimum, the Commission should narrow its decision so that it does not apply to the MFH market segment, where the evidence shows a need for more support, not less.[96]

58. WRA-SC asserts the Commission's reliance on the Independent Electric Contractors Rocky Mountain Association's (IECRMA) "active presence and arguments" on this point is improper for two reasons: (1) IECRMA's presence in the docket (while helpful) is not evidence, and (2) the Commission overinterprets IECRMA's position. IECRMA is primarily concerned with the contractor limitations that Public Service has attached to utility-owned EVSI projects, rather than utility ownership itself.[97] WRA-SC points to IECRMA's own testimony for support, including that their recommendations include a commercial EVSI program with both

[92] *Id*.
[93] *Id*.
[94] *Id*.
[95] WRA-SC RRR Application at p. 5.
[96] *Id*. at p. 5.
[97] *Id*. at pp. 5–6.

utility- and customer-owned EVSI, so long as the options are on equal footing and all qualified contractors are fairly considered for the installation work.[98] In light of this, WRA-SC argue the Commission is wrong to rely on IECRMA's testimony for a general finding that BTM ownership is inherently anti-competitive.[99]

59. Additionally, WRA-SC asserts that the Commission is wrong to conclude that major changes in markets conditions have occurred across all market segments, and that neither the Decision nor the testimony upon which it relies differentiates between the varied market segments served by the Commercial Portfolio and their respective stages of development.[100] WRA-SC contends there is significant evidence in the record that shows the MFH market remains underserved and faces unique challenges that cannot be adequately addresses by rebates.[101] For support, WRA-SC points to, among others, the City and County of Denver's testimony that states increased rebate levels alone are not likely to solve the unique challenges faced by would-be EV drivers living in MFH.[102]

60. Boulder also seeks reconsideration of the Commission's decision to eliminate Public Service ownership of EVSI, arguing that transitioning to a rebate-only EVSI program creates uncertainty for customers in two ways.[103] First, Boulder argues, customers have already negotiated EVSI contracts that cover both existing and future projects, so shifting to a rebate-only program means new contracts with new vendors must be established, which taxes customer service and creates time consuming delays that adds a barrier to installing more charging stations and

[98] *Id*.
[99] *Id*.
[100] *Id*. at p. 6.
[101] *Id*.
[102] *Id*.
[103] Boulder RRR Application at p. 3.

electrification as a whole.[104] Second, Boulder asserts that, if the transition to a rebates-only program is affirmed, the Commission must clarify if customers of the existing EVSI program must now install separate and additional EVSI for future projects that receive approves rebates, or if the new EVSI can be integrated with the existing EVSI supported by funds approve in the Inaugural TEP.[105] Boulder states it is unclear if customers with existing EVSI projected funded through the Inaugural TEP must build entirely new EVSI for future projects funded by rebate, or if Public Service-owned EVSI can be integrated with rebate-funded EVSI.[106]

61. Ultimately, Boulder requests modification of the Commission's Decision to allow two alternatives: (1) permit Company ownership of EVSI for current and planned public sector projects (*e.g.*, municipal, state, or federal) under EVSI agreement terms already negotiated between a public entity and Public Service, covering 100 percent of the cost of the project; and (2) allow any customer to choose between Public Service-owned EVSI and rebates for customer-owned EVSI based on 50 percent of Public Service's estimated costs of market rate projects and 100 percent of those costs for multifamily housing in DICs.[107]

62. SWEEP urges the Commission to reconsider its decision to disallow Company-owned EVSI in favor of a program that consists only of EVSI rebates. As an alternative to approving the Settlement Agreement, SWEEP recommends the Commission modify its decision in a few limited ways to eliminate uncertainty regarding the transition from turnkey EVSI program to the new rebate-only program.[108]

[104] *Id*. at pp. 3–4.
[105] *Id*. at p. 4.
[106] *Id*.
[107] *Id*. at p. 5.
[108] SWEEP RRR Application at p. 4.

63. First, SWEEP suggests the Commission modify its decision so that customers who executed a contract with Public Service for EVSI services, but whose work has not yet been completed, can still receive the Company-owned EVSI services.[109] SWEEP states that as of November 2023, the Company reported $83 million of Commercial EVSI project in its project queue, and projected that about half of those project would be deployed in 2024, and the other half in 2025.[110] SWEEP contends that shifting these existing projects to the rebate model would introduce new obstacles to participation, including for those who cannot afford the upfront costs prior to receiving a rebate, as well as near-term challenges for governments and quasi-governmental agencies that are subject to TABOR requirements.[111]

64. SWEEP recommends the Commission provide a more fair and gradual transition to the rebate-only program in two ways: (1) by affirming that the Inaugural TEP Commercial EVSI program will remain in place and operational until sixty days after the decision on RRR, and (2) by explicitly allow Public Service to honor all signed contracts for Commercial EVSI work under the terms of the Inaugural TEP (as long as the contracts are executed while the Inaugural TEP remains active).[112] Second, SWEEP recommends that the Commission approve a limited additional budget of $60 million for Company-owned turnkey EVSI services as part of the 2024-2026 TEP to accommodate work that has been contracted for, but not yet completed.[113] This budget will be used during the term of the 2024-2026 TEP to complete projects that are initiated, but not completed; SWEEP contends this will help ease the transition to the rebate-only approach.[114] Additionally, because some of this additional budget would overlap with the

[109] *Id*. at pp.4–5.
[110] *Id*. at p. 5.
[111] *Id*.
[112] *Id*. at p. 6.
[113] *Id*.
[114] *Id*.

$100 million Commercial EVSI budget established in the decision (but also likely represent additional program demand), SWEEP recommends that the Commission increase the Commercial EVSI budget to $130 million.[115]

(2) Conclusions and Findings

65. Regarding concerns expressed by both the Company and WRA-SC[116] about the Commission's decision regarding utility ownership of BTM assets, we remind all parties of the policy doctrines underlying regulated monopolies, including that such regulation is necessary in areas where competition is unlikely or unable to flourish in the private sector. In keeping with this principle, we must be very careful to avoid allowing utility operations to extend into activities that commonly are, or could be, conducted by the competitive market, and that utility ownership of BTM assets should therefore be both rare and well-justified by unique circumstances that clearly demonstrate net benefits to ratepayers. In its RRR, WRA-SC suggests that the Commission's reference to IECRMA's participation in this case as justification to eliminate utility EVSI ownership is a misreading of IECRMA's testimony, which merely requested that its membership have fair access to the installation of Company-owned EVSI. While this may be true regarding IECRMA's request, we find that the nature and content of IECRMA's participation in this Proceeding demonstrated that the unregulated competitive market is ready, willing, and able to provide the services the Company proposed to reserve for itself. The record simply does not support the contention that broad utility ownership of BTM assets is necessary to support the adoption of EVs or the use of electricity as a transportation fuel nor that it is necessarily the most efficient or cost-effective method for implementation. We therefore reinforce our initial decision

[115] *Id*. at pp. 6–7.

[116] The Commission declined to take up the requests on RRR of WRA-SC related to multifamily housing at the oral deliberations.

to terminate, in almost every case, utility ownership of EVSI and EVSE on the customer side of the meter for this TEP. Going forward, the burden is on proponents of utility ownership of such assets to identify exactly what market barrier is addressed by utility ownership that could not otherwise be overcome, and how such ownership will benefit ratepayers. They must explain how the purported benefits of utility ownership will overcome its attendant drawbacks, such as limited customer choice, absence of competition, likely repression of private capital investment, likely higher prices, and likely project delays caused by limitations on which contractors can perform the work.

66. We recognize that the Company has a pipeline of commercial EVSI projects in various stages of design, contracting, and construction. We find nothing in the record specifying the dollar amount of pipeline projects actually under contract. We recognize that our decision to terminate utility ownership of BTM assets in favor of rebates will unavoidably cause disruption to the market, and would be particularly disruptive for projects already under contract. Accordingly, we will allow the Company to honor such contracts, utilizing an appropriate portion of the $100 million budget for commercial EVSI that we approved in the TEP Decision.

67. Regarding SWEEP's recommendation to allow the Company to continue signing contracts under the terms of the Inaugural TEP (*i.e.*, Company-owned BTM EVSI) until 60 days following publication of this Decision, we find that doing so would likely initiate a "gold rush" on the parts of both customers and the Company to execute contracts for hastily-designed and potentially poorly thought-out projects before the expiration of the proposed 60-day period. This proposal would also further limit the portion of the budget approved for commercial EVSI that is available as rebates for projects installed by contractors in the competitive market. Accordingly,

we reject this proposal. We direct the Company to honor contracts for commercial EVSI projects that were executed up to and including the publication date of our initial TEP Decision in this proceeding, which was April 10, 2024.

68. With regard Boulder's concern that excess capacity in Company-owned EVSI projects that are already in place might not be available for interconnection with new customer-owned EVSI or EVSE projects installed in the future, we find that given that such projects were installed using ratepayer funds for the benefit of ratepayers in the area of transportation electrification, any and all such excess capacity must be made available for interconnection with and use by new, customer-owned equipment.

b. Commercial Level 2 EVSE Tiered Rebates

(1) Party Arguments

69. The Company does not challenge the Commission's decision to reduce the Settlement's EVSI budget (Paragraph No. 137 of the TEP Decision), but it notes the Decision is unclear as to the specific non-income qualified (IQ) rebate levels for the Commercial Level 2 (L2) EVSE Program.[117] Public Service seeks clarification and reconsideration to confirm two issues related to Paragraph No. 137: (1) it requests clarification that the Commercial L2 EVSE rebates should be available to all customers, and (2) requests confirmation (and reconsideration to the extent necessary) that Commercial L2 rebates of $1,250 per port for market rate participants, $2,500 per port for participants in DICs, and $8,500 per port for IQ multifamily and Nonprofit Energy Efficiency Program (NEEP) participants are reasonable and appropriate.[118]

[117] Public Service RRR at p. 17.
[118] *Id*.

(2) Conclusions and Findings

70. We agree that L2 EVSE rebates should be available to all customers and that the rebate levels the Company cites are consistent with its prior testimony and the Settlement Agreement.

We approve these rebate levels.

c. Elimination of O&M for EVSI Maintenance

(1) Party Arguments

71. The Company asserts that the Decision's termination of an operations and maintenance (O&M) budget associated with continued ownership of equipment overlooks the fact the ongoing O&M will be needed to support Company-owned assets approved under the Inaugural TEP. The Company, while not asking the Commission to increase its 2024-2026 TEP budget to reflect these O&M costs, wishes to clarify that it will need to manage its approved budgets to reflect the trailing O&M and administrative expense to maintain and support Company-owned assets that were authorized under the previous TEP.[119] Public Service states this clarification is intended to assure its customers that they can count on the Company to follow through with prior commitments made in accordance with the Commission's decision in the Inaugural TEP. Public Service argues the alternative, declining to maintain existing infrastructure, would be irresponsible and not aligned with the Commission's intentions.[120]

(2) Conclusions and Findings

72. We acknowledge that the Company does own existing EVSI installed under the inaugural TEP, and that this equipment may require maintenance over time. Given that Company ownership of this equipment was predicated on an expectation of high-quality installation, we

[119] *Id*. at p. 10.
[120] *Id*. at pp. 10–11.

expect that such expenditures will remain low, especially in the short term, since the installations were recently completed.

d. Rebates for EVSI in IQ Multifamily Housing

(1) Party Arguments

73. Commission Staff states that it does not seek for the Commission to alter any of its findings or conclusions established in its Decision, but only seeks clarification of the eligibility criteria for enhanced commercial EVSI for DICs. Specifically, Staff contends the Decision, while detailing the specific EVSI rebate amounts in Paragraph No. 129, does not specify the eligibility criteria to qualify for higher rebate levels available to DICs.[121] Staff recommends that to qualify for the enhanced DIC rebates, the Commission should require that (1) the project be located in a DIC census block with an EnviroScreen score in the 50th percentile or greater, or (2) the DIC is identified in the Federal Justice40 initiative. Staff asserts that these eligibility criteria will ensure that the enhanced rebates for DICs appropriately target the intended recipients.[122]

74. EOC argues that the Commission, if it decides to uphold its rebate-only approach to EVSI, should reconsider a rebate gap in the Commercial portfolio for MFH development projects serving IQ residents.[123] EOC contends the Commission's decision to cover 100 percent of EVSI costs for customers in DICs amounts to an equity rebate based on geographic location.[124] While this may be appropriate in some scenarios, EOC asserts that treating the IQ MFH customer segment differently based on geographic location for rebate eligibility is inappropriate and will diminish EV access to IQ customers who reside in affordable MFH in non-DICs. EOC is also

[121] Commission Staff RRR Application at p. 2.
[122] *Id*. at pp. 2–3.
[123] EOC RRR Application at pp. 1–2.
[124] *Id*. at p. 3.

concerned that covering only 50 percent of installation costs may ultimately be insufficient to fund EVSI for certain IQ MFH customers that already face heightened barriers to EV adoption.[125]

75. EOC contends its request aligns with the Commission's decision regarding EV purchase rebates (and the Commission's concerns for excessive free-ridership).[126] EOC argues that Paragraph 135 of the Decision may have the unintended consequence of free-ridership in the MFH segment of the TEP's Commercial portfolio: for example, a "luxury" market-rate multi-family apartment complex that does not rely on subsidies or government assistance, but is located in a DIC, would be eligible for the enhanced, fully covered EVSI rebates, whereas an MFH project located outside of a DIC would only be eligible for a partial rebate.[127]

76. EOC requests that the Commission modify Paragraph No. 135 of the Decision so that the enhanced EVSI rebate levels that are to be made available to both IQ and non-IQ MFH customers in DICs are extended to all IQ MFH customers, no matter their geographic location or community status.[128]

77. Based on the Commission's statement it "will adopt Staff's recommended rebate levels, which are based on 50 percent of the Company's estimated costs for market rate projects and 100 percent of those costs for multifamily housing in DICs," SWEEP is concerned that IQ MFH development located outside of a DIC would not qualify for the enhanced equity rebates for Commercial EVSI.[129] SWEEP requests that the Commission amend and clarify its decision so that all IQ MFH developments qualify for enhanced equity rebates, regardless of where they are located.[130]

[125] *Id*. at pp. 3–4.
[126] *Id*. at p. 5.
[127] *Id*.
[128] *Id*. at pp. 5–6.
[129] SWEEP RRR Application at p. 7.
[130] *Id*. at pp. 7–8.

(2) Conclusions and Findings

78. We agree with all three of these parties and therefore grant the RRR to this extent as well as adopt the following provisions related to IQ MFH: (1) within DICs, we adopt the eligibility criteria proposed by Staff to reduce the potential for free ridership; and (2) outside of DICs, the equity rebate levels for EVSI will be available to MFH in which at least 66 percent of residents have income below 80 percent of the Area Median Income, or to nonprofit organizations that have participated in NEEP within the last five years.[131]

5. Electric School Bus Program

a. Party Arguments

79. Public Service requests that the Commission reconsider and amend several aspects of its Decision regarding the School Bus Electrification Program. Public Service states that while the Decision generally supports the Program, it adds several additional provisions and conditions, including requirements that school districts apply for state and federal funding prior to receiving the utility rebate, and that the Company engage in a stakeholder process to develop budget set-asides for the program.[132]

80. The Company states that it appreciates the Commission's sentiment, but notes that to date it has only offered partial funding for electric school buses and that growing support for and adoption of electric school buses has been very slow and challenging.[133] Given this, Public Service is concerned that injecting too much process and complexity into the debate structure may only further exacerbate these challenges. The Company therefore requests the Commission reconsider and amend Paragraphs Nos. 156 and 157 of the Decision to remove stakeholder

[131] We note that these are the criteria for IQ MFH proposed in the Company's rebuttal testimony and in the Settlement Agreement.
[132] Public Service RRR Application at pp. 11–12.
[133] *Id*. at p. 12.

engagement and the 60-day Notice process, and clarify that while the Company must encourage school districts to seek matching funds, obtaining such funds is not a prerequisite to receiving a utility rebate.[134] Instead, Public Service requests the Commission direct the Company to focus its time and efforts on providing advisory services to school districts, while operating within the approved $15.9 million budget.[135]

b. Conclusions and Findings

81. For the reasons specified in Paragraph No. 156 of the Decision, we reject the changes requested here by the Company. The Company shall work with interested stakeholders to develop and file a specific proposal for utilizing the approved Electric School Bus budget as matching grant funds requiring an appropriate level of funding from the relevant federal or state programs. In the event that the federal EV Bus grant program has expired, is rescinded, or efforts to seek matching funds is unsuccessful, the company is then authorized to revert to a basic rebate program for the buses. Moreover, we make no changes to the directives in the Decision for the Company to work with stakeholders to set aside portions of the approved budget to fund advisory services and for the demonstration of electric school bus-based vehicle-to-anything (V2X) projects.

6. Presumption Against Utility Ownership of BTM Assets

a. Party Arguments

82. WRA-SC argues that, in two different sections of the Decision, the Commission appears to establish a general presumption against utility ownership that would apply in future TEPs and exclude turnkey programs. WRA-SC requests that the Commission clarify that the

[134] *Id*.
[135] *Id*. at pp. 12–13.

passages in question apply only to this case and to strike the language suggesting otherwise, arguing it is not prudent for the Commission to tie its hands given an evolving market and likely unforeseen challenges to EV adoption that may arise in the future.[136] Further, WRA-SC argues that while the Commission may exercise discretion in applying SB19-077's standards, it is not empowered to establish new standards altogether.[137] Additionally, regarding Paragraph No. 99 of Decision, WRA-SC argues that the Commission appears based it solely on a statement made by Staff (that there is a longstanding norm against utility ownership of BTM assets), which is not supported by any evidence.[138]

83. Specifically, WRA-SC points to the following paragraphs in the Decision, and ask the Commission to strike the italicized language:

> Paragraph No. 81: " . . . the market factors that led the Company to withdraw its initial proposal to own public chargers in this Proceeding are only going to intensify in the future*, making it increasingly unlikely that the Commission will approve Company ownership*, except perhaps in areas that the unregulated market remains uninterested in serving."
>
> Paragraph No. 99: "We find that the Company has failed to provide a robust case as to why its ownership of BTM wiring and chargers should be continued in this TEP. *We agree with Staff that such ownership should be allowed only in very specific circumstances where the utility can demonstrate that the benefits of utility ownership exceed its costs and risks."*

b. Conclusions and Findings

84. None of the language WRA-SC suggests excising from Paragraphs Nos. 81 and 99 establishes an absolute prohibition of Company ownership of BTM assets, and the language it would strike in Paragraph No. 99 establishes an eminently reasonable test for why the Commission might (and in the past, has) consider allowing BTM ownership. We therefore reject WRA-SC's

[136] WRA-SC RRR Application at p. 7.
[137] *Id*.
[138] *Id*. at pp. 7–8.

arguments and reinforce the principles behind the language it objects to. However, we also acknowledge that this Commission cannot bind future Commissions and so while we find the policy enacted here reasonable and supported by the record, it does not require the same outcome in future proceedings.

7. Continuity of Programs and Funding from 2021-2023 TEP

a. Party Arguments

85. CEO requests the Commission clarify that all TEP programs and their associated funding approved in this TEP may continue until the Commission's decision becomes effective in the Company's next TEP.[139] CEO states that the delay between the Commission's approval to continue 2021-2023 TEP programs and the programs' expiration at the end of 2023 caused uncertainty in how programs could operate.[140] CEO recommends the Commission clarify now that all programs and their associated funding approved through a final decision in this proceeding may continue until the Commission's decision becomes effective in the Company's next TEP.[141]

86. Similarly, SWEEP requests that the Commission clarify that Public Service should continue to offer the 2021-2023 TEP programs until sixty days after the effective date of the Commission's decision on RRR, or until the Company files a compliance filing (whichever comes first).[142] SWEEP further requests that the Commission clarify that projects invoiced prior to that date will qualify under the rules of the Inaugural TEP. Relatedly, SWEEP also requests that the Commission explicitly clarify now that the 2024–2026 TEP programs should continue without

[139] CEO RRR Application at p. 22.
[140] *Id*.
[141] *Id*. at pp. 22–23.
[142] SWEEP RRR Application at p. 2.

interruption until sixty days after the effective date of the Commission's final decision regarding the 2027–2029 TEP.[143]

b. Conclusions and Findings

87. We agree with CEO and SWEEP that future market disruption will be minimized by allowing the Company to continue implementing the programs and budget levels approved in this proceeding beyond the anticipated end date of this TEP, should the final Decision on the Company's 2027-2029 TEP not issue by December 31, 2026. Accordingly, we authorize such continued program implementation if and as warranted.

8. Amortization

a. Party Arguments

88. WRA-SC urges the Commission to reverse its decision to discontinue the ten-year amortization period, previously adopted in the Inaugural TEP, in favor of a rebate amortization period of three years.[144] WRA-SC argues that the ten-year amortization best balances the Commission's interests by (1) keeping immediate rate pressures low, minimizing burden of future ratepayers by aligning realization of benefits with recovery of costs, and (2) incentivizes successful program implementation at a critical moment in the state's electrification process.[145] On the other hand, WRA-SC argues, a three-year amortization period compresses cost recovery to the detriment of the ratepayer and fails to achieve the basic purpose of amortizing a utility expenditure, which is to align cost recovery with the period of use, so that benefitting customers pay for the asset. WRA-SC points to its witness Mr. Jester's critique of Staff witness's Haglund's analysis of

[143] *Id*. at p. 3.
[144] WRA-SC RRR Application at p. 9.
[145] *Id*.

amortization, stating that Mr. Haglund did not consider, among other factors, the time value of money.[146]

b. Conclusions and Findings

89. An amortization schedule needs to support numerous objectives, including spreading out the rate impacts so they are just and reasonable to both existing and future ratepayers and incentivizing the Company to invest in combination with other mechanisms. We generally agree with WRA-SC that Staff's analysis of cost impact ignored the time value factor, and that certain ratepayers may place a time value of money very similar to the Company's weighted average cost of capital on their investments or other expenditures. However, we also note that the discount rate placed on future benefits is frequently adjusted in testimony as parties seek a specific outcome, and that adjusting the time value of money could cause repercussions on the evaluation of future emission reduction benefits or other aspects of a cost-effectiveness evaluation.

90. Overall, we find that a shorter amortization period protects customers from the cumulative impact of annual spending, and when combined with rider recovery, can represent reasonable inducement to the Company to invest. We affirm the three-year amortization approved in our Decision to this Proceeding and deny WRA-SC's request to modify it.

9. Cost Allocation

a. Party Arguments

91. UCA argues that the Commission should approve Public Service's cost allocation methodology that would directly apportion costs to the rate class that is the direct beneficiary because this allocation estimated that this would apportion approximately

[146] *Id*. at pp. 10–11.

23.3 percent to the residential customer class and 76.6 percent to commercial customers.[147] UCA contends the Commission's decision to adhere to the 44.5 percent allocation of budget costs to the residential class results in $117,475,442 of the total budget being allocated to the Residential class, which would reflect an excess burden of $50,916,477 on the Residential class. UCA supports Public Service's proposed cost allocation because it avoided interclass cross subsidization; the Settlement Agreement proposed a cost allocation that would apportion 23.3 percent of the costs to the Residential class, and 76.6 percent to the Commercial customers.[148]

92. UCA finds fault in the Commission's reliance on Colorado Energy Consumers' (CEC) arguments that the Residential class are beneficiaries of various TEP programs, and asserts that Commercial customers, who will directly benefit from rebates, should not be allowed to off-load the cost of repaying the apportioned rebates to the residential class.[149] Rather, UCA argues, the TEP costs should be directly allocated to commercial classes that will benefit economically from TEP spending, as proposed by Public Service and the Settlement Agreement. UCA argues that since multi-family residences are currently on a non-residential electric rate, because they are likely owned by a landlord or reality company, expenditures on MFH should not be allocated to residential ratepayers.[150] Additionally, UCA contends that residential customers and other property owners already pay property taxes for such things as school buses, and argue it is inherently unfair to then ask these same residential customers to pay twice, once through property taxes and then through the cost allocation process proposed by CEC, or to pay for another community's buses.[151]

[147] UCA RRR Application at p. 3.
[148] *Id*.
[149] *Id*. at pp. 3–4.
[150] *Id*. at p. 4.
[151] *Id*.

93. UCA asks the Commission to reconsider and modify its decision by adopting UCA's recommendation (demonstrated in Attachment A to its Application for RRR) to allocate the expenses based on a percentage of 25.2 percent to residential customers and 74.8 percent to commercial customers (which is the same methodology initially proposed by Public Service and the Settlement Agreement).[152]

b. Conclusions and Findings

94. We based our original decision on the general concept of public benefit (*i.e.*, that all classes will benefit from such investments and the availability of associated services). And while that remains generally true, we are persuaded by UCA's argument that the allocation of these investments to residential customers is counter to general concepts of cost causation and the fact that increased sales associated with the TEP investments referenced here will only be credited to the commercial and industrial classes. Accordingly, we reverse our original decision and grant UCA's RRR request to this extent. The Company shall allocate the full costs of specific TEP investments available to only the classes that are able to directly participate. Thus, we require Public Service to allocate the full costs of the EVSI, EVSE, and School Bus programs to the commercial classes.

10. Transcription Error in Ordering Paragraph of Commission Decision

a. Party Arguments

95. Public Service notes to the Commission that Order Paragraph No. 1 contains a directive regarding retail rate impact, which it believes may be a transposing error. The Company requests the Commission clarify that this was added in error, and if not, that the Commission explain the rationale and basis for the inclusion of this directive.

[152] *Id*. at pp. 5–6.

> Ordering Paragraph No. 1: "Public Service shall make an informational filing in this Proceeding describing in detail how the Company will estimate the electric vehicle revenues to be included in the retail rate cap calculation, consistent with the discussion above. This filing is due within 60 days after the effective date of this Decision, or, if any party files an application for rehearing, reargument, or reconsideration (RRR) pursuant to § 40-6-114, C.R.S., within 30 days the RRR."[153]

b. Conclusions and Findings

96. The Commission acknowledges that the inclusion of this Ordering Paragraph was a remnant of the 2021-2023 TEP and clarifies that it was added in error to the 2024-2026 TEP Decision. The Company need not make the informational filing referenced in Ordering Paragraph No. 1 of the Decision.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, and Reconsideration of Decision C24-02243, filed on April 30, 2024, by the Colorado Energy Office is granted, in part, and denied, in part.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision C24-02243, filed on April 30, 2024, by Western Resource Advocates and Sierra Club is granted, in part, and denied, in part.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision C24-02243, filed on April 30, 2024, by the City of Boulder is granted, in part, and denied, in part.

4. The Application for Rehearing, Reargument, or Reconsideration, filed on April 30, 2024, by Southwest Energy Efficiency Project is granted, in part, and denied, in part.

[153] Public Service RRR Application at pp. 20–21.

5. The Application for Rehearing, Reargument, or Reconsideration, filed on April 30, 2024, by Staff of the Public Utilities Commission is granted, in part, and denied, in part.

6. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0223, filed on April 30, 2024, by the Public Service Company of Colorado is granted, in part, and denied, in part.

7. The Application for Rehearing, Reargument, or Reconsideration, filed on April 30, 2024, by Energy Outreach Colorado is granted, in part, and denied, in part.

8. The Application for Rehearing, Reargument, or Reconsideration, filed on April 30, 2024, by Walmart, Inc., is denied.

9. The Application for Rehearing, Reargument, or Reconsideration, filed on April 30, 2024, by the Office of the Utility Consumer Advocate is granted, in part, and denied, in part.

10. The Motion for Leave to Respond to RRR, Request for Waiver of Response Time, and Response to the RRR of the Colorado Energy Office, filed on May 9, 2024, by Staff of the Public Utilities Commission is granted, consistent with the discussion above.

11. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for RRR begins on the first day following the effective date of this Decision.

12. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING May 29, 2024.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners