

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0633G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**RECOMMENDED DECISION
GRANTING MOTION TO APPROVE
SETTLEMENT AGREEMENT,
APPROVING SETTLEMENT AGREEMENT,
GRANTING APPLICATION, AND
CLOSING PROCEEDING**

Issue Date: October 29, 2024

TABLE OF CONTENTS

I.	STATEMENT AND PROCEDURAL BACKGROUND	2
A.	Summary.....	2
B.	Issue Presented	3
C.	Evidentiary Hearing.....	3
D.	Appearances and Exhibits	3
E.	Procedural History	4
II.	FACTUAL FINDINGS AND BACKGROUND	9
A.	Background Facts	9
B.	Terms of Settlement Agreement.....	12
1.	CHP Term	13
2.	Cost Cap	13
3.	Overall Budget	13
4.	CHP Budget Flexibility.....	13
5.	CHP Recovery	13
6.	Modified CHP	14
a.	DSM.....	14
b.	AML D.....	15

c. Renewable Natural Gas (“RNG”)16

d. Rocky Ford Electrification Pilot Program.....16

7. Hydrogen16

8. Community Based Organizations.....16

9. Performance Incentive Mechanism (“PIM”).....16

10. Thermal Pilot Program17

11. External Resources17

12. 60/90-Day Notice Process17

13. Annual Reporting18

14. Next CHP18

C. Summary.....19

III. PARTIES’ POSITIONS19

A. SWEEP’s Position19

B. Settling Parties’ Position23

IV. RELEVANT LAW28

A. Commission Jurisdiction28

B. Law Governing Clean Heat Plans28

C. Legal Standards31

V. FINDINGS, CONCLUSIONS, AND ANALYSIS32

A. CHP Cost Cap and Budget32

B. Clean Heat Resources34

C. Summary and Conclusion.....35

VI. ORDER.....36

A. The Commission Orders That:36

I. STATEMENT AND PROCEDURAL BACKGROUND

A. Summary

1. This Decision grants the Motion to Approve Settlement Agreement filed jointly by Applicant Black Hills Colorado Gas, Inc. (“BHCG” or “the Company”), Trial Staff (“Staff”) of

the Colorado Public Utilities Commission (“PUC” or “the Commission”), the Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”); approves the Settlement Agreement without modification; grants BHCG’s Application for approval of its Clean Heat Plan; and closes this Proceeding.

B. Issue Presented

2. The sole issue to be determined in this Recommended Decision is whether the Commission should approve the non-unanimous Settlement Agreement. SWEEP opposes the Settlement Agreement and Motion to Approve Settlement Agreement.¹

C. Evidentiary Hearing

3. A hybrid evidentiary hearing, accommodating both in-person and remote participation, was convened on August 29, 2024, in the Commission’s Hearing Room.

D. Appearances and Exhibits

4. The following individuals entered appearances at the hearing:
- a. Counsel Emanuel Cocian appeared on behalf of Applicant BHCG.
 - b. Counsel Michael Hiatt and counsel Robert Rigonan of Earthjustice appeared on behalf of SWEEP.
 - c. Counsel Kate Crampton, of the Colorado Office of the Attorney General (“OAG”), appeared on behalf of UCA.
 - d. Second Assistant Attorney General Jessica Lowrey and Senior Assistant Attorney General David Banas, both with OAG, appeared on behalf of CEO; and,
 - e. Assistant Attorneys General Ross Smith and Josh Horman, also with OAG, appeared on behalf of Staff.

5. The following individuals testified at the hearing:

¹ Hearing Exhibit 111, Settlement Agreement.

- a. Michael Harrington, Director of Regulatory for BHSC, a wholly-owned subsidiary of Black Hills Corporation (“BHC”), testified on behalf of BHCG²;
 - b. Maria Garduna, the Sustainability and Climate Manager within the Corporate Planning, Sustainability and ESG Department for BHSC;³
 - c. Andrew W, Cottrell, a partner in the Energy practice of ScottMadden Management Consultants, Inc., testified on behalf of BHCG⁴;
 - d. Justin Brant, Utility Program Director for SWEEP, testified on behalf of SWEEP⁵; and,
 - e. Wael Kanj, a Senior Research Associate with Rewiring America, also testified on behalf of SWEEP⁶;
6. The following exhibits were admitted during the hearing:
- a. BHCG’s Hearing Exhibits 113, 118, and 120;
 - b. Staff’s Hearing Exhibit 200, Attachment ERH-2, Rev. 1; Hearing Exhibit 200, Rev. 1; Hearing Exhibit 201, Attachment PCL-2, Rev. 1; and Hearing Exhibit 201, Attachment PCL-3, Rev. 1; and,
 - c. SWEEP’s Hearing Exhibits 504, 506, 507, and 509.

7. In addition, Hearing Exhibit 600, the spreadsheet of all exhibits identified and introduced by the parties during the entire course of this Proceeding, was admitted into evidence, along with all the exhibits listed thereon.

E. Procedural History

8. BHCG initiated this matter on December 29, 2023, by filing its Verified Application with the PUC seeking approval of its 2024-2028 Clean Heat Plan (“CHP”).⁷

² Hearing Transcript, p. 14, line 18 – p. 15, line 10; Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, p. 4, lines 3-11.

³ Hearing Transcript, p. 87, lines 1-25; Hearing Exhibit 102, Direct Testimony of Maria K. Garduna, p. 5, lines 3-9.

⁴ Hearing Transcript, p. 93, lines 10 - 22.

⁵ *Id.* at p. 129, line 3 – p. 130, line 4.

⁶ *Id.* at p. 200, line 18 – p. 202, line 3.

⁷ Verified Application of Black Hills Colorado Gas, Inc., doing business as Black Hills Energy, filed Nov. 21, 2023, p. 1.

9. Contemporaneously with its Application, BHCG filed the following testimony and documents:

- a. Direct testimony of Michael J. Harrington⁸, along with two attached exhibits;
- b. Direct testimony of Maria K. Garduna⁹, along with five attached exhibits;
- c. Direct testimony of Christopher L. Downey, General Manager of Colorado Operations for BHCG¹⁰, along with one attached exhibit;
- d. Direct testimony of Andrew W. Cottrell¹¹; and,
- e. Direct testimony of Matthew J. Christofferson, Manager – Regulatory with BHSC¹², along with five attached exhibits.

10. On December 29, 2023, the Commission sent out a Notice of Application Filed (“Notice”) to interested persons. The Notice stated that BHCG “has filed testimony and is seeking a Commission decision within 120 days” of the Application being deemed complete.¹³ In addition, the Commission ordered that any person or entity seeking to intervene in this Proceeding do so within 30 days of the Notice, and noted that Commission Trial Staff must file its intervention “within seven (7) days after this Notice expires.”¹⁴

11. After the Commission’s issuance of the Notice, the following entities filed Interventions as of right in this Proceeding:

- a. UCA filed its Notice of Intervention of Right, Request for Hearing and Entry of Appearances on January 16, 2024;
- b. CEO filed its Notice of Intervention by Right on January 29, 2024; and,

⁸ Hearing Exhibit 101, Direct testimony of Michael J. Harrington.

⁹ Hearing Exhibit 102, Direct testimony of Maria K. Garduna

¹⁰ Hearing Exhibit 103, Direct Testimony of Christopher L. Downey, p. 4, lines 4-12.

¹¹ Hearing Exhibit 104, Direct testimony of Andrew W. Cottrell.

¹² Hearing Exhibit 105, Direct Testimony of Matthew J. Christofferson, p. 4, lines 4-12.

¹³ Notice of Application Filed, filed Dec. 29, 2023, p. 1.

¹⁴ *Id.*

- c. Staff filed its Notice of Intervention of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing on February 2, 2024.

12. In addition, on January 29, 2024, SWEEP filed a Motion to Intervene, Entry of Appearance, and Notice of Financial Disclosure in this Proceeding (“Motion to Intervene”).

13. By Decision No. C24-0148-I, mailed March 7, 2024, the Commission noted that the Application had been deemed complete on February 13, 2024, in accordance with § 40-6-109.5, C.R.S., and referred the matter to an Administrative Law Judge (“ALJ”) for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

14. Because the Application was deemed complete effective February 13, 2024, pursuant to § 40-6-109.5(1), C.R.S., a final Commission decision would be due by June 22, 2024.

15. Decision No. C24-0148-I also ordered BHCG to file supplemental testimony on several topics within 30 days of the mailing of the Decision.¹⁵ The six topics on which BHCG was ordered to provide supplemental testimony were: (1) forecasting; (2) beneficial electrification; (3) disproportionately impacted (“DI”) communities; (4) workforce development; (5) Demand Side Management (“DSM”) technologies; and (6) safety, reliability, and resilience. BHCG’s supplemental direct testimony was thus due on or before April 8, 2024.

16. BHCG complied with the Commission’s directive on April 8, 2024, filing the Supplemental Direct Testimony of (1) Mr. Harrington, along with four attachments, and (2) Mr. Cottrell.

17. On April 9, 2024, the undersigned ALJ issued Decision No. R24-0218-I, acknowledging the interventions of right filed by Staff, UCA, and CEO, and granting SWEEP’s Motion to Intervene.

¹⁵ Decision No. C24-0148-I, issued Mar. 7, 2024, in Proceeding No. 23A-0633G, p. 7.

18. The parties to this Proceeding are thus BHCG, Staff, UCA, CEO, and SWEEP.

19. Decision No. R24-0218-I also extended the statutory time period within which a final Commission decision must issue by an additional 130 days, up to and including October 30, 2024, and scheduled a prehearing conference to discuss a procedural schedule to govern this Proceeding and schedule an evidentiary hearing.

20. On April 29, 2024, counsel for BHCG, Emmanuel Cocian, informally contacted the undersigned ALJ by email to advise that the parties had agreed to a proposed procedural schedule and dates for an evidentiary hearing.

21. Because the parties' proposed procedural schedule and evidentiary hearing dates did not allow for sufficient time between the hearing and issuance of a final Commission decision, BHCG, as the Applicant, waived the statutory time period pursuant to § 40-6-109.5(3), C.R.S. The ALJ acknowledged BHCG's waiver of the statutory time period in Decision No. R24-0326-I, issued May 13, 2024.

22. Decision No. R24-0326-I also adopted a procedural schedule to govern this Proceeding and set an evidentiary hearing to be held August 28, 29, and 30, 2024.

23. In accordance with the procedural schedule, the intervening parties filed the following Answer Testimony on June 21, 2024:

- a. Staff filed the Answer Testimony of (1) Eric Haglund, a Senior Economist with the PUC,¹⁶ accompanied by three attachments; (2) Patrick C. LaMere, also a Senior Economist with the PUC, along with three attachments¹⁷; and (3) Jack D. Turner, a Senior Analyst with the Commission.¹⁸

¹⁶ Hearing Exhibit 200, Answer Testimony of Eric Haglund, p. 4, lines 2-8.

¹⁷ Hearing Exhibit 201, Answer Testimony of Patrick C. LaMere, p. 4, lines 2-8.

¹⁸ Hearing Exhibit 202, Answer Testimony of Jack D. Turner, p. 3, lines 2-8.

- b. UCA filed the Answer Testimony of Leslie Henry-Sermos, a Rate and Financial Analyst with UCA,¹⁹ along with ten attachments;
- c. CEO filed the Answer Testimony of Jocelyn P. Durkay, the Associate Director of Regulatory Policy at CEO,²⁰ contemporaneously with 29 attachments; and,
- d. SWEEP filed the Answer Testimony of Justin Brant,²¹ along with three exhibits.

24. In response to the Intervenors' Answer Testimony, on July 26, 2024, BHCG filed the Rebuttal Testimony of Mr. Harrington²², Ms. Garduno²³, and Mr. Cottrell.²⁴

25. Also on July 26, 2024, CEO and SWEEP filed the Cross-Answer Testimony of Ms. Durkay²⁵ and Mr. Brant,²⁶ respectively.

26. Subsequently, on August 16, 2024, BHCG, Staff, UCA, and CEO (collectively the "Settling Parties") jointly filed a Motion to Approve Settlement Agreement ("Motion to Approve Settlement"). They advised that four of the five parties to this Proceeding had reached a settlement of all issues raised in this Proceeding, but represented that SWEEP did not join in the settlement.

27. After conferring with the parties about their various positions and preferences for how best to proceed, the ALJ issued Decision No. R24-0618-I on August 27, 2024, vacating the first and third days of the scheduled evidentiary hearing (August 28 and 30, 2024), and scheduling a one-day hybrid hearing on the Motion to Approve Settlement to be held August 29, 2024.

28. In advance of the evidentiary hearing on the Motion to Approve Settlement, on August 23, 2024, each party filed Settlement Testimony in support of their respective positions:

¹⁹ Hearing Exhibit 300, Answer Testimony of Leslie Henry-Sermos, p. 4, lines 1-5.

²⁰ Hearing Exhibit 400, Rev. 2, Answer Testimony of Jocelyn P. Durkay, p. 5, lines 2-5.

²¹ See Hearing Exhibit 500, Answer Testimony of Justin Brant.

²² Hearing Exhibit 108, Rebuttal Testimony of Michael J. Harrington.

²³ Hearing Exhibit 109, Rebuttal Testimony of Maria K. Garduna.

²⁴ Hearing Exhibit 110, Rebuttal Testimony of Andrew W. Cottrell.

²⁵ Hearing Exhibit 401, Cross-Answer Testimony of Jocelyn P. Durkay.

²⁶ Hearing Exhibit 502, Cross-Answer Testimony of Justin Brant.

- a. BHCG filed the Settlement Testimony of Mr. Harrington,²⁷ with two attachments;
- b. Staff filed the Settlement Testimony of Mr. Haglund²⁸;
- c. UCA filed the Settlement Testimony of Ms. Henry-Sermos²⁹
- d. CEO filed the Settlement Testimony of Ms. Durkay³⁰; and
- e. SWEEP filed the Settlement Testimony of Mr. Brant.³¹

29. The issues raised in the contested settlement are now ripe for consideration.

II. FACTUAL FINDINGS AND BACKGROUND

A. **Background Facts**

30. For the sake of clarity, the factual background provided here is limited to those facts relevant to the issue(s) addressed at the evidentiary hearing on the Motion to Approve Settlement and is not intended as a summation of all the evidence presented by the parties in this Proceeding or at the hearing.

31. BHCG is “a natural gas Local Distribution Company (“LDC”)” which provides natural gas sales and transportation services to approximately 207,000 customers across Colorado.³² As Mr. Harrington explained, “[t]he Company procures natural gas supplies for its retail sales customers and delivers that natural gas over its distribution system. Importantly, as it relates to the CHP, the Company does not provide electric utility service.”³³

32. CEO is a State of Colorado agency “with the mission of reducing greenhouse gas (“GHG”) pollution and consumer energy costs by advancing clean energy, energy efficiency, and

²⁷ Hearing Exhibit 112, Settlement Testimony of Michael J. Harrington.

²⁸ Hearing Exhibit 203, Settlement Testimony of Eric Haglund.

²⁹ Hearing Exhibit 301, Settlement Testimony of Leslie Henry-Sermos.

³⁰ Hearing Exhibit 402, Settlement Testimony of Jocelyn P. Durkay.

³¹ Hearing Exhibit 503, Settlement Testimony of Justin Brant.

³² Hearing Exhibit 101, p. 10, lines 2-6.

³³ *Id.* at p. 10, lines 6-8.

zero-emission vehicles to benefit all Coloradans.”³⁴ CEO is statutorily-mandated to promote Colorado’s transition “to a more equitable, low-carbon, and clean energy economy,” as well as “[p]romote energy efficiency,” and “an equitable transition to transportation electrification.”³⁵

33. SWEEP, which opposes the Settlement Agreement, is, in contrast, the only party in this Proceeding that is not a state agency or entity. Rather, “SWEEP is a private not-for-profit organization dedicated to advancing energy efficiency in six states in the Southwest, including Colorado. SWEEP was founded in 2001 and receives the majority of its funding from charitable foundations and the federal government.”³⁶

34. In 2021, the Colorado General Assembly passed Senate Bill 21-264 requiring natural gas LDCs to file CHPs with the goal of reducing GHG emissions in the State.³⁷ The entirely new provision was codified at § 40-3.2-108, C.R.S. The General Assembly found that the reduction of GHG emissions is necessary “to achieve . . . and maintain a healthy, livable climate for Coloradans”; that a “significant source of” GHG “pollution . . . comes from the use of gas to heat Colorado’s homes and businesses and to heat water in those buildings, from the use of gas in commercial and industrial processes, and from gas leaks in the supply chain”; that improving energy efficiency “will reduce pollution”; and that “switching from gas space and water heating to high-efficiency electric heating will reduce greenhouse gas pollution and lead to improved indoor air quality.”³⁸

35. To accomplish these goals, the legislature mandated that gas LDCs submit CHPs detailing how they “will achieve a reduction of carbon dioxide and methane emissions from the

³⁴ Hearing Exhibit 400, Rev. 2, p. 5, lines 9-12.

³⁵ *Id.* at p. 5, lines 5, lines 11-25.

³⁶ Hearing Exhibit 500, p. 3, lines 9-12.

³⁷ See Verified Application, ¶ 4, pp. 2-3.

³⁸ § 40-3.2-108(1)(a), C.R.S.

distribution and end-use combustion of gas.”³⁹ Section 40-3.2-108(4), C.R.S. requires LDCs to file CHPs “with the Commission . . . for approval.”⁴⁰ The General Assembly also mandated the information that an LDC must include in its CHP⁴¹, and required the Commission to adopt Rules implementing the CHP legislation.⁴²

36. The CHP BHCG filed with its Verified Application in this Proceeding is the Company’s “inaugural CHP” prepared after BHCG “conducted a robust analysis of various emission reduction measures available to” it.⁴³

37. Briefly, BHCG’s proposed CHP, which it filed with its Verified Application, advocates for the adoption of its “Clean Heat Preferred Plan” which targets emissions reductions of 5 percent (including anticipated growth) by 2025 and 11 percent by 2030 while staying within the 2.5 percent annual retail sales cost cap. If anticipated growth is excluded from the calculation of the targeted emissions reductions, the percentages jump to 44 percent by 2025 and 28 percent by 2030. The Company’s estimated costs for implementing its proposed Clean Heat Preferred Plan increase from a projected cost of \$5.4 million in 2025, to \$6.3 million in 2030. Finally, as required, the Plan includes a proposal for prioritizing DI communities and Income Qualified (“IQ”) customers to assist those communities and customers in reaching clean energy goals.⁴⁴

38. BHCG’s proposed CHP “relies on high levels of DSM [Demand-Side Management] implementation in the short term” to help it reach its GHG goals.⁴⁵ The Company noted that because of the high cost of achieving emissions reductions — “over sixty times greater

³⁹ § 40-3.2-108(3)(b)(I), C.R.S.

⁴⁰ §40-3.2-108(4)(a), C.R.S.

⁴¹ § 40-3.2-108(4)(c), C.R.S.

⁴² § 40-3.2-108(5), C.R.S.

⁴³ Hearing Exhibit 101, p. 6, lines 2-5.

⁴⁴ Hearing Exhibit 104, Attachment AWC-1, Black Hills Colorado Gas, Inc. 2024-2028 Clean Heat Plan.

⁴⁵ *Id.* at p. 9.

than the cost cap” — a plan reaching the goals “would cost Colorado ratepayers over \$2 billion in portfolio costs through 2030 to achieve.”⁴⁶ It also noted that because BHCG does not provide electric service, it is “unable to offer electrification programs.”⁴⁷

39. Instead, BHCG’s initial CHP proposal focuses on the following methods to reduce its GHG:

- a. A two-year DSM “budget of \$10,295,870 and a two-year total of 195,244 dekatherm energy savings goal.”⁴⁸
- b. A Beneficial Electrification (“BE”) pilot program for “dual-fuel customers in the Rocky Ford area.”⁴⁹
- c. Implementing a program using Renewable Natural Gas (“RNG”), also known as “recovered methane,” if BHCG can identify a supplier in the State of Colorado.⁵⁰
- d. Using Green Hydrogen, also known as hydrogen produced by electrolysis, as an energy source.⁵¹ And,
- e. Upgrading its systems to develop Advanced Monitoring and Leak Detection (“AML”) as a means of reducing the amount of gas lost during distribution.⁵²

B. Terms of Settlement Agreement

40. As noted above, the Settling Parties entered into a Settlement Agreement on August 16, 2024, by which the Settling Parties agreed to modify BHCG’s inaugural, proposed CHP. The terms of the Settlement Agreement are set forth below.

⁴⁶ *Id.* at p. 10.

⁴⁷ *Id.*

⁴⁸ *Id.* at pp. 26-27.

⁴⁹ *Id.* at p. 27.

⁵⁰ *Id.* at p. 28-30.

⁵¹ *Id.* at p. 30

⁵² *Id.*

1. CHP Term

41. The Settling Parties agreed to a shortened CHP timeframe of 2025-2027, rather than the initial proposal which would have been in place 2024-2028. Instead, the Company will file a combined DSM and CHP Application in 2027 which will cover the “period 2028-2032.”⁵³

2. Cost Cap

42. The Settling Parties agreed to use the cost cap of 2.5 percent proposed by UCA.⁵⁴

3. Overall Budget

43. The Settling Parties agreed to Staff’s proposal to base the budget and cost cap calculations on a 5-year average of actual Company revenues for the years 2019-2023, with an annual assumed growth rate of 2 percent, to reach a projected three-year budget total of \$18,374,321.⁵⁵

4. CHP Budget Flexibility

44. The Settling Parties agreed that the Company “has discretion to shift budgets up to 15 percent within and between clean heat resources.” Any shift in excess of 15 percent “must be preceded by the 60-Day Notice process.”⁵⁶

5. CHP Recovery

45. The Settling Parties agreed that the Company will recover CHP costs incurred through this inaugural 2025-2027 CHP “through a new Clean Heat Plan Rider (‘CHP Rider’).” The Rider rates will be set annually on a forecasted basis and will be subject to an “annual true-up” — filed by advice letter each April — to ensure the rider reflects the actual costs incurred.

⁵³ Hearing Exhibit 111, p. 5, ¶ 12.

⁵⁴ *Id.* at p. 6, ¶ 13.

⁵⁵ *Id.* at p. 6, ¶ 14.

⁵⁶ *Id.* at p. 6, ¶ 15.

The Company will file a compliance advice letter within 30 days of a final Commission decision in this Proceeding “to implement the CHP Rider.”⁵⁷

6. Modified CHP

46. The Settling Parties agreed to modify BHCG’s proposed inaugural CHP to include a DSM program “that is in addition to their approved DSM Plan budgets,”⁵⁸ and include funding in the budget specifically earmarked for income-qualified (“IQ”) customers.⁵⁹

47. A breakdown of the total budget is reproduced below from the Settlement Agreement:

Table 1 – CHP Resource Budgets

	2025	2026	2027	TOTAL
Total DSM	\$4,413,185	\$4,413,185	\$4,413,185	\$13,239,555
<i>DSM IQ*</i>	\$882,637	\$882,637	\$882,637	\$2,647,911
AMLD	\$793,474	\$1,271,421	\$1,414,871	\$3,479,766
RNG	\$0	\$0	\$1,000,000	\$1,000,000
Rocky Ford Pilot	\$40,000	\$40,000	\$20,000	\$100,000
DI Community Engagement and Outreach Plan		\$50,000	\$50,000	\$100,000
Feasibility Study	\$150,000	\$230,000	\$75,000	\$455,000
Hydrogen	\$0	\$0	\$0	\$0
TOTAL**	\$5,396,659	\$6,004,606	\$6,973,056	\$18,374,321

*DSM IQ is 20 percent of the Total DSM budget in the line above applied equally each year.

** The TOTAL budget line item does not equal the sum of the line items shown above because the DSM IQ line item represents a subset of the Total DSM budget.⁶⁰

a. DSM

48. The Settling Parties agreed that the Company will adhere to DSM programs described in Mr. Christofferson’s Direct Testimony. BHCG will use this allotted DSM as “an ‘over-flow’ funding mechanism” which will kick in “in the event budgets from the traditional

⁵⁷ *Id.* at p. 7, ¶¶ 16-18.

⁵⁸ *Id.* at p. 7, ¶ 19.

⁵⁹ *Id.*

⁶⁰ *Id.* at p. 8, ¶ 19.

DSM program are exceeded.”⁶¹ If the traditional DSM program exceeds “110 percent of the approved total annual budget,” funds to support the participation of any additional customers interested in the program will be drawn from the CHP budget.⁶² In general, the DSM funds in the CHP budget will not be earmarked for any specific program, but are instead intended to provide flexibility so that the Company can “continue implementing cost-effective DSM without delay.”⁶³

49. The one exception to the funds’ flexibility will be the funds that will be earmarked for the IQ Weatherization program.⁶⁴ Twenty percent of the total DSM budget will be applied to DSM IQ customers.⁶⁵ The Company will also automatically enroll its IQ customers in its Black Hills Energy Assistance Program (“BHEAP”) if they are not already enrolled.⁶⁶

b. AMLD

50. The Settling Parties agreed that BHCG can pursue AMLD technology,⁶⁷ by using “vehicle mounted, highly sensitive detection equipment that detects and quantifies methane plumes.”⁶⁸ The Company believes that the proposed equipment “will be more effective” and “will detect more leaks within a shorter timeframe allowing [BHCG] to address leaks more quickly and prioritize safety and emissions reductions.”⁶⁹

51. BHCG will submit written AMLD procedures to the Air Quality Control Division, which must approve the procedures “before any recovered methane credits may be generated.”⁷⁰

⁶¹ Hearing Exhibit 105, p. 31, lines 3-4.

⁶² *Id.* at p. 31, lines 7-13.

⁶³ *Id.* at p. 32, lines 3-6.

⁶⁴ *Id.* at p. 32, lines 6-12.

⁶⁵ Hearing Exhibit 111, p. 9, ¶ 19.2.b.

⁶⁶ *Id.* at p. 9, ¶ 19.2.c.

⁶⁷ *Id.* at p. 9, ¶ 19.3.a.

⁶⁸ Hearing Exhibit 103, p. 8, lines 4-6.

⁶⁹ *Id.* at p. 8, line 18 – p. 9, line 3.

⁷⁰ Hearing Exhibit 111, p. 9, ¶ 19.3.b.

c. Renewable Natural Gas (“RNG”)

52. The Settling Parties agree that BHCG may pursue RNG “as a clean heat resource” and may seek to make RNG purchases “beginning in 2027.”⁷¹ If BHCG secures a contract for RNG, only the incremental cost of RNG will be recoverable through the CHP Rider; commodity costs “are recoverable via the Gas Cost Adjustment.”⁷² Any specific RNG projects will be submitted “through the modified 60/90-Day Notice Process.”⁷³

d. Rocky Ford Electrification Pilot Program

53. The Settling Parties agreed that BHCG will implement a pilot BE program for its customers in the Rocky Ford area, but “no additional electrification programs . . . will be included in the inaugural CHP.”⁷⁴

7. Hydrogen

54. The Settling Parties agree that hydrogen will not be part of BHCG’s inaugural CHP.⁷⁵

8. Community Based Organizations

55. The Settling Parties agree that no funding for Community Based Organizations will be included in BHCG’s inaugural CHP. Instead, the Company “will develop a comprehensive DI Community Engagement and Outreach Plan in 2025.”⁷⁶

9. Performance Incentive Mechanism (“PIM”)

56. The Settling Parties agree there will be no PIM in BHCG’s inaugural CHP.

⁷¹ *Id.* at p. 10, ¶ 19.4.a.

⁷² *Id.* at p. 10, ¶ 19.4.c.

⁷³ *Id.* at p. 10, ¶ 19.4.f.

⁷⁴ *Id.* at p. 11, ¶ 19.5.

⁷⁵ *Id.* at p. 11, ¶ 20.

⁷⁶ *Id.* at p. 12, ¶ 21.

10. Thermal Pilot Program

57. The Settling Parties agree that BHCG will spend \$455,000 to conduct a Feasibility Study to investigate the implementation of a thermal energy pilot project. The results of the Study will be filed “within this proceeding” within 30 days of completion of the Study. The findings of the Study will be incorporated into BHCG’s next CHP.⁷⁷

11. External Resources

58. The Settling Parties agree that BHCG “will defer actual costs incurred with preparing and litigating this proceeding in a regulatory asset, which will be recovered through the CHP Rider with no interest.”⁷⁸

12. 60/90-Day Notice Process

59. The Settling Parties agree that the Company will use a 60/90-Day Notice Process for programs advanced under the CHP. A 60-Day Notice Process will be used “to propose new programs or make changes to existing programs.” Under this process, stakeholders will have 30 days to provide comments to the Company after BHCG issues a Notice. BHCG then will have 30 days to respond to any comments it receives. BHCG will then file a report summarizing the comments and their resolution.⁷⁹

60. The 90-Day Notice Process will be used to discontinue existing programs. Here, too, stakeholders will have 30 days to provide BHCG comments after the Company issues a Notice, and then the Company will then have 60 days to respond.⁸⁰

61. If no comments are received, BHCG may implement the proposed program change “on or after the 31st day from the date of the Notice.”⁸¹

⁷⁷ *Id.* at pp. 12-13, ¶¶ 23-25.

⁷⁸ *Id.* at p. 13, ¶ 26.

⁷⁹ *Id.* at p. 13, ¶ 27.a.

⁸⁰ *Id.* at p. 13, ¶ 27.b.

⁸¹ *Id.* at p. 13, ¶ 27.c.

62. Importantly, if Commission Staff determines that the Company has not adequately addressed comments or concerns raised by stakeholders, Staff may file a Notice of Deficiency asking the Commission to require BHCG “to file a new application to approve a proposed program change.”⁸²

13. Annual Reporting

63. The Settling Parties agree that BHCG will include the following in its Annual Reports to keep track of its progress towards its clean heat goals: “planned CHP expenditures, actual CHP expenditures, and tons of carbon dioxide equivalent emissions (‘tCO₂e’).”⁸³ BHCG’s Annual Reports will also include specific details “for how the incremental CHP DSM funds supplemented DSM Strategic Issues and Plan spending.”⁸⁴

14. Next CHP

64. The Settling Parties agree that BHCG’s next CHP will include the following information about tCO₂e: “a. 2015 Emissions Baseline attainment by 2030; and b. 2025 Emissions Reduction Target attainment by 2030.”⁸⁵ BHCG will also specifically explain “how building energy codes and standards impact its baseline, high, and low gas use case forecasts.”⁸⁶

65. BHCG’s next CHP will also include thermal energy, thermal energy networks, and BE,⁸⁷ and use “a modified version of the Utility Cost Test” when modeling all Clean Heat resources.⁸⁸

⁸² *Id.* at p. 13, ¶ 27.d.

⁸³ *Id.* at p. 14, ¶ 28.

⁸⁴ *Id.* at p. 14, ¶ 29.

⁸⁵ *Id.* at p. 14, ¶ 30.

⁸⁶ *Id.* at p. 14, ¶ 31.a.

⁸⁷ *Id.* at p. 14, ¶ 31.b.

⁸⁸ *Id.* at p. 14, ¶ 31.d.

C. Summary

66. The Settling Parties agree that the above-described Settlement Agreement is fair, just, reasonable, and in the best interest of the public. They therefore urge the Commission to grant their Motion to Approve Settlement, approve the Settlement Agreement, and grant the Application as modified by the Settlement Agreement.

III. PARTIES' POSITIONS

67. As noted above, SWEEP objects to the Settlement Agreement and the Motion to Approve Settlement. The parties' respective positions regarding the Settlement Agreement are summarized below.

A. SWEEP's Position

68. In its Statement of Position ("SOP"), SWEEP contends that the Commission should reject the Settlement Agreement because it "is fundamentally flawed in several ways."⁸⁹ SWEEP's arguments can be summarized as follows: (1) the agreed-upon CHP does not meet GHG targets because, rather than decreasing GHG emissions as compared to a 2015 baseline, the CHP permits BHCG to increase GHG emissions in both 2025 and 2030; (2) the CHP contains no BE, other than the pilot program to be launched in Rocky Ford; and (3) the CHP allocates too much money and resources to RNG and AMLD, which are more expensive than BE.⁹⁰

69. SWEEP proposes a total CHP three-year budget of \$52.8 million, of which \$30.9 million would be allocated to BE and \$21.9 million would be allocated for additional DSM programs.⁹¹ It is important to note that the budget SWEEP proposes is nearly triple the budget of \$18,374,321 set for the CHP in the Settlement Agreement.⁹²

⁸⁹ Southwest Energy Efficiency Project's Statement of Position (SWEEP's SOP), filed Sept. 20, 2024, p. 1.

⁹⁰ *Id.* at pp. 1-2.

⁹¹ *Id.* at p. 3.

⁹² *See* Hearing Exhibit 11, p. 8, ¶ 19.

70. Nevertheless, SWEEP argues that its proposed plan is more cost-effective because BE and DSM are the “two lowest cost Clean Heat resources” and, if used extensively in the CHP as SWEEP proposes, will result in “cumulative emissions reductions [that] . . . are over twice those contained in the Settlement Agreement.”⁹³ SWEEP insists that achieving these clean heat goals and further reducing GHG “is in the public interest” and therefore warrants exceeding the statutorily-set 2.5 percent cost cap.⁹⁴

71. By way of comparison, SWEEP notes that the Commission has set a precedent for making just such a finding, having approved a CHP for Public Service Company of Colorado (“Public Service”) which exceeded the cost cap, over Staff’s and UCA’s objections, because if the cap were not exceeded, Public Service would not meet its clean heat goals. Therefore, the Commission found a plan permitting Public Service to “exceed[] the cost cap is in the public interest because such a plan is necessary to put the Company on track to meet the 2030 statutory target as evidenced by the fact that the Company’s ‘Cost Target’ portfolio, which remains under the cost cap, would fall far short of meeting both the 2025 and 2030 emission targets set by the legislature.”⁹⁵ SWEEP argues that the trail blazed by the Commission in Public Service’s CHP — exceeding the cost cap to achieve greater GHG reductions — should be followed here, as well.

72. SWEEP also argues that the cost cap calculated in the Settlement Agreement “underestimates the Company’s likely revenues during the time frame covered by the” CHP and is therefore “unreasonably low.”⁹⁶ As calculated for the Settlement Agreement, BHCG used a five-year historical average of its actual revenues, or \$230.8 million. But, SWEEP points out, BHCG’s actual revenues for 2022 and 2023 were much higher: \$306.5 million and \$299.1 million,

⁹³ Hearing Exhibit 503, p. 6, line 19 – p. 7, line 1.

⁹⁴ SWEEP SOP, p. 6; *see also* § 40-3.2-108(6)(a)(I), C.R.S.

⁹⁵ Hearing Exhibit 506, Decision No. C24-0397 in Proceeding No. 23A-0392EG, p. 32, ¶ 71.

⁹⁶ SWEEP SOP, p. 9.

respectively. Thus, SWEEP claims, the five-year historical average used to calculate the cost cap is too low when compared to BHCG's significantly higher revenue in the last two years.⁹⁷ Instead, SWEEP argues the cost cap should be calculated using just BHCG's 2023 revenues, which increases the total cost cap over the three-year life of the CHP to \$21,565,866,⁹⁸ which, the ALJ notes, is still less than half the sum of the CHP budget SWEEP proposes.

73. SWEEP's proposed CHP would funnel \$30.9 million to BE programs, which would focus on heating electrification for BHCG's existing customers by replacing their "heating equipment at the time of equipment failure."⁹⁹ In contrast, per the CHP advanced in the Settlement Agreement, only 2,000 customers in Rocky Ford would be eligible to receive any BE funds, which the Settlement Agreement sets at only \$100,000.¹⁰⁰ SWEEP thus proposes increasing BHCG's BE budget by 300-fold over that proposed by the Settling Parties' CHP. Nevertheless, SWEEP argues that this increase "will either save customers' money or have a de minimis bill impact for many customers, even accounting for the difference in gas and electricity prices."¹⁰¹ SWEEP supports this statement by asserting that convincing BHCG customers to switch to heat pumps as their primary heat source would both reduce the customers' emissions and "lead to reduced heating bills for many households."¹⁰²

74. Citing to § 40-3.2-108(2)(c)(IV), C.R.S. — which lists BE as one of several Clean Heat resources a gas distribution utility may employ — SWEEP argues that although BHCG is a gas-only utility, "the Clean Heat statute authorizes and encourages gas-only utilities to implement

⁹⁷ *Id.* at p. 10.

⁹⁸ *Id.*

⁹⁹ SWEEP SOP, p. 11.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at p. 12.

¹⁰² Hearing Exhibit 501, p. 8, lines 12-13.

beneficial electrification.”¹⁰³ SWEEP counters that the Clean Heat statute make no distinction between gas-only utilities and dual-fuel utilities that provide both gas and electric service and that the Commission rejected calls by gas-only utilities to be exempted from BE.¹⁰⁴

75. SWEEP also argues that the CHP budget should significantly increase the funds allocated for DSM. Like BE, SWEEP argues, DSM is a cost-effective tool for reducing GHG that should be employed more liberally.

76. In contrast, SWEEP maintains that the CHP should not include any budget for RNG or AMLD, both of which SWEEP characterizes as overly expensive when compared to other Clean Heat resources.¹⁰⁵ SWEEP also objects to the flexibility the CHP grants BHCG to shift funds away from DSM and BE to RNG and AMLD.¹⁰⁶

77. Moreover, SWEEP argues, the agreed-upon CHP relies on recovered or captured methane to an extent exceeding the statutorily-imposed limit.¹⁰⁷ By SWEEP’s calculations, the CHP would permit BHCG to make recovered methane 26 percent of its total 2025 emissions reductions and 28 percent of its total 2030 emissions reductions, but “under the Clean Heat statute, recovered methane cannot account “for more than 25 [percent] of the projected 2025 emissions reductions and 22.7 [percent] of the projected 2030 emissions reductions.”¹⁰⁸

78. Underlying SWEEP’s contentions is its concern that the CHP outlined in the Settlement Agreement violates the Clean Heat statute’s directive to utilities to reduce emissions

¹⁰³ SWEEP SOP, p. 13.

¹⁰⁴ *Id.* at p. 14-15.

¹⁰⁵ SWEEP SOP, p. 26.

¹⁰⁶ *Id.* at p. 28.

¹⁰⁷ SWEEP SOP, p. 26; *see also* § 40-3.2-108(3)(b)(II), C.R.S.

¹⁰⁸ SWEEP SOP, p. 26.

between 2025 and 2030.¹⁰⁹ By pushing BE and DSM to the forefront of the CHP, SWEEP argues that BHCG will move closer to its clean heat targets.

79. SWEEP does not, however, oppose several other provisions of the Settlement Agreement, including the shorter, three-year timeframe of 2025-2027; the cost recovery provisions; the 60/90-Day Notice provisions; the immediate availability of DSM funds; the exclusion of hydrogen from the CHP; the inclusion of community-based organizations for outreach and education; and the annual reporting requirements.¹¹⁰

B. Settling Parties' Position

80. Each of the four Settling Parties filed an SOP. For purposes of this discussion, the Settling Parties' various SOPs will be addressed as a whole whenever possible.

81. The Settling Parties argue that SWEEP has not presented any evidence demonstrating that the Settlement Agreement is unfair or inequitable in balancing the interests of BHCG's customers against the goals of the Clean Heat statute.¹¹¹ Despite SWEEP's dissatisfaction with the Settlement Agreement, the Settling Parties maintain that, on balance, the Settlement Agreement "reflects a comprehensively fair and equitable resolution of all issues."¹¹²

82. According to the Settling Parties, the Settlement Agreement incorporates "a suite" of Clean Heat resources, namely DSM, recovered methane, electrification, and thermal energy,¹¹³ as well as RNG and AMLD. Under the Clean Heat statute, a gas utility's CHP may incorporate "any one or a combination of" eight listed Clean Heat resources.¹¹⁴ The CHP uses several of the

¹⁰⁹ SWEEP SOP, p. 7; *see also* § 40-3.2-108(3)(b)(I), C.R.S.

¹¹⁰ SWEEP SOP, p. 29.

¹¹¹ Post-Hearing Statement of Position of Black Hills Colorado Gas, Inc. in Support of Motion to Approve Settlement Agreement ("BHCG's SOP"), p. 1.

¹¹² *Id.* at p. 2.

¹¹³ *Id.* at p. 3.

¹¹⁴ *Id.* at p. 4.

statutorily-enumerated Clean Heat resources.¹¹⁵ Using these various and new technologies will benefit BHCG and its customers by “broaden[ing] the Company’s experience with new technological developments to further reduce emissions in future Black Hills CHPs.”¹¹⁶ Contrary to SWEEP’s argument, the Settling Parties contend, the legislature contemplated and anticipated that both recovered methane and AMLD will be part of any CHP.¹¹⁷ Likewise, the Clean Heat statute allows for the inclusion of RNG in a CHP.¹¹⁸ The Settlement Agreement incorporates multiple safeguards “to ensure the Company does not stray from compliance.”¹¹⁹

83. BHCG argues that SWEEP’s heavy emphasis on BE and DSM in its proposed CHP — to the exclusion of other tools in the Clean Heat resources toolbox — “handicaps the Company’s ability to achieve emissions reductions because DSM and electrification are dependent on customer adoption.”¹²⁰ Adding AMLD and RNG technology to the CHP, on the other hand, introduces Clean Heat resources that are not consumer participation-dependent.¹²¹

84. BHCG also criticizes SWEEP’s extensive employment of DSM, arguing that once “the upper limits of DSM potential [are] reached, the marginal returns are diminished.”¹²² These diminishing returns make the use of DSM to the extent SWEEP proposes counterproductive or at least less cost-effective in the end. Nevertheless, under the Settling Parties’ CHP “72 percent of the overall clean heat budget is dedicated to DSM measures.”¹²³

¹¹⁵ *Id.* at p. 4; *see also* § 40-3.2-108(2)(c), C.R.S.

¹¹⁶ Trial Staff’s Post-Hearing Statement of Position (“Staff’s SOP”), filed Sept. 20, 2024, p. 6.

¹¹⁷ BHCG’s SOP, p. 14-15.

¹¹⁸ *Id.* at p. 17.

¹¹⁹ Staff’s SOP, p. 6.

¹²⁰ BHCG’s SOP, p. 4; *see also* Post-Hearing Statement of Position of the Office of the Utility Consumer Advocate (“UCA’s SOP”), filed Sept. 20, 2024, p. 6.

¹²¹ *See* Statement of Position of the Colorado Energy Office (“CEO’s SOP”), p. 15.

¹²² *Id.* at p. 5.

¹²³ UCA’s SOP, pp 3-4.

85. With respect to SWEEP's push for significantly more BE, BHCG characterizes it as "forced electrification" that violates the takings clause.¹²⁴ BHCG argues that its "inability to collect payments after forced electrification . . . would clearly seem to preclude it from earning a rate of return on prior investments comparable to that enjoyed by similarly situated companies, or that would threaten its financial integrity and ability to raise capital."¹²⁵ BHCG also argues that "forced electrification violates cost recovery principles" by requiring gas-only customers to pay for others' electrification while increasing the gas-only customers' costs by requiring them to "cross-subsidize their neighbors that choose to electrify."¹²⁶

86. The Settling Parties also contend that SWEEP's use of current electric rates to advance electrification, while at the same time incorporating future projected emission rates, disregards costs that customers will incur when electric rates inevitably rise and improperly skews SWEEP's models in favor of BE.¹²⁷

87. The Settling Parties dispute SWEEP's characterization of BE as more cost-effective, illustrating that, when broken down, SWEEP's proposal results in a cost of \$1,004 per metric ton of emissions reductions while the CHP under the Settlement Agreement "is approximately \$718 per metric ton of emissions reductions."¹²⁸

88. With respect to SWEEP's criticism of the CHP's budget proposals, the Settling Parties point out that using only one year of revenues to calculate the cost cap, as SWEEP proposes, ignores the reality that, like any utility, the Company's costs and revenues "fluctuate substantially year over year."¹²⁹ Instead, using an average based on five years' of BHCG's actual revenues

¹²⁴ BHCG's SOP, p. 6.

¹²⁵ *Id.* at p. 7.

¹²⁶ *Id.* at p. 8.

¹²⁷ *Id.* at pp. 9-10.

¹²⁸ *Id.* at p. 14.

¹²⁹ *Id.* at p. 21.

“produces a stable average that both incorporates any outlier years and avoids including or excluding any particular year based on arbitrary criteria.”¹³⁰

89. In addition, the Settling Parties’ point out, the flexibility granted to BHCG under the Settlement Agreement to adjust its funding allocation based on changing needs will allow the Company to adapt in response to customers’ “uptake” of the new technologies, which will be “important because BE and DSM spending depends on customer participation.”¹³¹

90. The Settling Parties’ proposed CHP also gives due consideration to the needs and budgetary constraints of BHCG’s customers. First, remaining within the statutory cost cap addresses and ameliorates customer bill concerns,¹³² because programs such as the CHP “will drive an increase [in] customer bills.”¹³³ Second, the CHP allocates a significant amount of financial and other resources to assist IQ households.¹³⁴

91. Further, and perhaps more importantly, contrary to SWEEP’s insistence that the need for a steeper and faster reduction in emissions justifies exceeding the cost cap, the Clean Heat statute *prohibits* the Commission from requiring a gas utility with “fewer than two hundred fifty thousand meters” — like BHCG which has 207,000 customers — from spending “more than an amount equal to two percent of the utility’s total annual revenues . . . to comply with the 2025 emission reductions requirements of subsection (3)(b)(II) of this section.”¹³⁵ Conversely, the “eye-popping budget” SWEEP proposes would “vastly exceed the statutorily-established cost cap for Clean Heat Plans in Colorado.”¹³⁶ Under the Clean Heat statute, exceeding the cost cap at all, much

¹³⁰ UCA’s SOP, p. 4; *see* Hearing Exhibit 200, p. 19, line 20 – p. 18, line 3.

¹³¹ CEO’s SOP, p. 11.

¹³² Staff’s SOP, p. 7.

¹³³ UCA’s SOP, p. 5.

¹³⁴ Staff’s SOP, p. 8.

¹³⁵ § 40-3.2-108(6)(d)(IV), C.R.S.; BHCG’s SOP, p. 21.

¹³⁶ Staff’s SOP, p. 9; *see also* UCA’s SOP, p. 7.

less by the amount CHP proposes, would require the Commission to find that (1) the plan is in the public interest; (2) the costs are reasonable; (3) the plan mitigates rate increases on IQ customers; and (4) the benefits of the plan exceed the costs.¹³⁷ The Settling Parties argue that SWEEP has not established these crucial elements to support its push to exceed the cost cap. Moreover, the Settling Parties argue, staying within the cost cap will enable BHCG “to set the foundation to ramp up the deployment of clean heat resources before the Company’s next filing in 2027.”¹³⁸

92. As Staff summed up the Settlement Agreement and resulting CHP proposal:

Taken together, the Settlement Agreement represents the herculean effort of the Settling Parties to ensure compromises and commitments by Black Hills to best serve its customers, reduce emissions, and maintain cost-effectiveness. The agreement reached here is, in Staff’s view, just, reasonable, and in the public interest and should be approved without modification.¹³⁹

93. The Settling Parties maintain that SWEEP’s proposal, on the other hand, is not in the public interest because its costs — nearly three times those of the Settling Parties’ proposed CHP — are neither reasonable nor justified, the benefits of SWEEP’s proposal do not exceed the costs, and SWEEP’s proposal offers little-to-no mitigation of costs for BHCG’s IQ customers.¹⁴⁰ Indeed, as UCA points out, “SWEEP’s proposed CHP only achieves 15 percent of emissions reductions and is fundamentally dependent on customer action to achieve these reductions.”¹⁴¹ The Settling Parties agree and urge the Commission to find that “the Settlement Agreement presents a reasonable balance between costs to customers, new funding approaches to emissions reductions, and employing various clean heat resources.”¹⁴²

¹³⁷ Staff’s SOP, p. 10; *see* § 40-3.2-108(6)(d)(III), C.R.S.

¹³⁸ CEO’s SOP, p. 10.

¹³⁹ Staff’s SOP, p. 8.

¹⁴⁰ *Id.* at pp. 11-12.

¹⁴¹ UCA’s SOP, p. 8.

¹⁴² CEO’s SOP, p. 10.

IV. RELEVANT LAW**A. Commission Jurisdiction**

94. The Commission's authority to regulate BHCG's gas utility rates, services, and facilities derives from Article XXV of the Colorado Constitution. The Commission is charged with ensuring the provision of safe and reliable utility service at just and reasonable rates for customers pursuant to §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

B. Law Governing Clean Heat Plans

95. Pursuant to § 40-3.2-108, C.R.S., each gas distribution utility must develop a Clean Heat Plan to further the General Assembly's goal of reducing greenhouse gas emissions. The purpose of a gas distribution company's Clean Heat Plan "is to achieve clean heat targets by reducing carbon dioxide and methane emissions from gas distribution utilities."¹⁴³

96. A gas distribution utility's Clean Heat Plan must demonstrate the gas distribution utility's roadmap for achieving clean heat targets of "a four percent reduction in greenhouse gas emissions in 2025, of which not more than one percent can be from recovered methane; and a twenty-two percent reduction in greenhouse gas emissions in 2030, of which not more than five percent can be from recovered methane" as compared to a 2015 baseline.¹⁴⁴

97. The legislature specified that:

(I) In calculating the baseline and projected emissions covered under a clean heat plan, a gas distribution utility must include the following:

(A) Methane leaked from the transportation and delivery of gas from the gas distribution and service pipelines from the city gate to customer end use;

¹⁴³ § 40-3.2-108(3)(b)(I), C.R.S.

¹⁴⁴ § 40-3.2-108(3)(b)(II), C.R.S.

(B) Carbon dioxide emissions resulting from the combustion of gas by residential, commercial, and industrial customers not otherwise subject to federal greenhouse gas emission reporting and excluding all transport customers; and

(C) Emissions of methane resulting from leakage from delivery of gas to other local distribution companies.¹⁴⁵

98. In developing a CHP, a gas utility may employ a number of Clean Heat resources.

(c) “Clean heat resource” means any one or a combination of:

(I) Gas demand-side management programs as defined in section 40-1-102(6);

(II) Recovered methane;

(III) Green hydrogen;

(IV) Beneficial electrification as defined in section 40-1-102(1.2);

(V) Pyrolysis of tires if the pyrolysis meets a recovered methane protocol;

(V.5) Thermal energy; and

(V.8) Wastewater thermal energy; and

(VI) Any technology that the commission finds is cost-effective and that the division finds results in a reduction in carbon emissions from the combustion of gas in customer end uses or meets a recovered methane protocol approved by the air quality control commission. To qualify as a clean heat resource, all credits or severable, tradable mechanisms representing the emission reduction attributes of the clean heat resource must be retired in the year generated and may not be sold.¹⁴⁶

99. Any CHP approved by the Commission must result “in a reasonable cost to customers.”¹⁴⁷ With the financial impact on customers in mind, the General Assembly set the cost cap for a gas utility’s CHP at “two and one-half percent of annual gas bills for all full-service

¹⁴⁵ § 40-3.2-108(3)(c)(I), C.R.S.

¹⁴⁶ § 40-3.2-108(2)(c), C.R.S.

¹⁴⁷ § 40-3.2-108(6)(d)(I)(D), C.R.S.

customers as a whole.”¹⁴⁸ In the event that a CHP may exceed the 2.5 percent cost cap, the legislature imposed guardrails on the cost of any CHP to protect a gas utility’s customer, mandating that:

(III) The commission may approve, or amend and approve, a clean heat plan with costs greater than the cost cap *only if* it finds that the plan is in the public interest, costs to customers are reasonable, the plan includes mitigation of rate increases for income-qualified customers, and the benefits of the plan, including the social costs of methane and carbon dioxide, exceed the costs.¹⁴⁹

(IV) Notwithstanding subsection (6)(a)(I) of this section, the commission *shall not require* a utility with fewer than two hundred fifty thousand meters to spend more than an amount equal to two percent of the utility’s total annual revenues from full-service customers to comply with the 2025 emission reductions requirements of subsection (3)(b)(II) of this section, net of costs associated with a commission-approved demand-side management plan, avoided fuel costs, and avoided capital infrastructure costs. Notwithstanding subsection (6)(d)(III) of this section, a utility subject to this subsection (6)(d)(IV) may voluntarily request to spend a higher amount to comply with the 2025 clean heat targets, and the commission may approve the requested amount if the commission finds that the spending comes at a reasonable cost and rate impact and is in the public interest.¹⁵⁰ (Emphasis added).

100. As directed by the legislature, the Commission amended its Rules Regulating Gas Utilities (“Gas Rules”), 4 *Code of Colorado Regulations* (“CCR”) 723-4, to adopt Rules addressing Clean Heat Plans. Rules 4725-4734 of the Gas Rules were adopted to guide gas distribution utilities in the submission of their Clean Heat Plans. The Gas Rules’ implementation of CHPs largely mirrors the measures adopted by the General Assembly, while expanding on certain aspects of the Clean Heat statute, such as providing more guidance on the use of recovered methane as a Clean Heat resource.¹⁵¹ As pertinent here, the Gas Rules require all but the largest of gas utilities

¹⁴⁸ § 40-3.2-108(6)(a)(I), C.R.S.

¹⁴⁹ § 40-3.2-108(6)(d)(III), C.R.S.

¹⁵⁰ § 40-3.2-108(6)(d)(IV), C.R.S.

¹⁵¹ See, e.g., Rule 4730(a)(II) of the Rules Regulating Gas Utilities (“Gas Rules”), 4 *Code of Colorado Regulations* (“CCR”) 723-4.

to file their inaugural CHPs by January 1, 2024¹⁵², and file subsequent plans every four years thereafter.¹⁵³

C. Legal Standards

101. Rule 1408(a) of the Rules of Practice and Procedure, 4 CCR 723-1, encourages parties to settle contested proceedings. Settlement agreements are to be reduced to writing and must be filed with a motion seeking approval of the settlement.¹⁵⁴ The Commission may, within its discretion, approve, disapprove, or modify any settlement agreement reached by the parties.¹⁵⁵

102. In prior settled rate cases, the Commission has evaluated the settlement terms to determine whether “the settlement will result in rates that are just and reasonable.”¹⁵⁶ The Commission has stated that it believes it “has an obligation to review all the terms contained in a settlement agreement to ensure that they comply to the greatest extent possible with applicable regulatory principles, and are just and reasonable.”¹⁵⁷ Further, in rate cases, the Commission has considered whether the agreed-upon rates are “within the range of recommended increases proposed by the parties . . . and reflect[] a meaningful reduction in the proposed rates compared with” those initially sought by the utility in the proceeding.¹⁵⁸ The Commission has also considered whether a proposed settlement is in the public interest.¹⁵⁹

¹⁵² Rule 4729(d), 4 CCR 723-4.

¹⁵³ Rule 4729(e), 4 CCR 723-4.

¹⁵⁴ Rule 1408(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

¹⁵⁵ Rule 1408(b), 4 CCR 723-1.

¹⁵⁶ Decision No. C09-0595, ¶ 81, issued June 9, 2009, in Proceeding No. 08S-0520E.

¹⁵⁷ Decision No. C06-0259, ¶ 10, issued Mar. 20, 2006, in Proceeding No. 05S-0264G.

¹⁵⁸ Decision No. C09-0595, ¶ 81.

¹⁵⁹ See Decision No. R15-1292, ¶ 165, issued Dec. 8, 2015, in Proceeding No. 15A-0424E.

103. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.¹⁶⁰

V. FINDINGS, CONCLUSIONS, AND ANALYSIS

104. As discussed below, the ALJ is persuaded that approving the Settlement Agreement is in the public's best interests.

A. CHP Cost Cap and Budget

105. The ALJ is persuaded by the arguments presented by the Settling Parties that exceeding the cost cap by the amount SWEEP suggests, and nearly tripling the CHP budget the Settling Parties propose, is not in the public interest. While the ALJ understands that achieving GHG emission reductions will not be inexpensive, the budget SWEEP proposes far exceeds what can reasonably be imposed on BHCG's customers. The ALJ is not persuaded that the increased emissions reductions SWEEP's proposal achieves — only 15 percent — in comparison to the high cost warrant exceeding the cost cap by the amount SWEEP proposes. Consequently, the ALJ finds and concludes that the benefits of SWEEP's proposed emissions reductions do not outweigh the comparatively exorbitant costs that would be imposed on BHCG's customers.

106. Likewise, the ALJ rejects SWEEP's suggestion that the cost cap be calculated based on only one year's revenue. The ALJ is persuaded by the Settling Parties' argument that using an average of five years' revenue to calculate the cost cap protects against arriving at too high a cost cap based on an uncharacteristically high revenue year.

107. Nor is the ALJ persuaded to exceed the cost cap here simply because the Commission approved a budget in excess of the cost in Public Service's Clean Heat Plan

¹⁶⁰ § 13-25-127(1), C.R.S., and Rule 1500, 4 CCR 723-1, establish the burden of proof for a party which asks the Commission to adopt its advocated position. *See also*, Decision No. C06-0786, ¶ 40 and n.23, issued July 3, 2006, in Proceeding No 05A-072E.

Proceeding No. 23A-0392EG. There, Public Service pointed out that “its gas customers would not pay for any electrification under the Company’s proposal, as those costs will be implemented through a rider paid by the Company’s electric customers.”¹⁶¹ In contrast, BHCG’s customers — who are all gas customers — will not be spared the expense of paying for other customers’ BE because, unlike Public Service, BHCG has no electric customers who can pick up the cost of the BE. Instead, the full cost of any BE will be borne by BHCG’s gas customers.

108. More importantly, though, as the ALJ interprets the Clean Heat statute, the Commission *may not* require a gas utility of BHCG’s size — fewer than 250,000 customers and/or meters — to exceed the cost cap.¹⁶² While the statute does allow a smaller gas utility like BHCG to exceed the cost cap, the *utility* must make the voluntarily request; the statute prohibits the Commission from imposing a budget above the cost cap on a smaller gas utility unilaterally.¹⁶³ Here, BHCG made no such request and, in fact, vehemently opposes SWEEP’s proposed budget and plan that greatly exceeds the cost cap.

109. Accordingly, the ALJ finds and concludes that the CHP budget proposed by SWEEP, which would drastically increase the proposed CHP budget by nearly three-fold as compared to the amount agreed to by the Settling Parties, imposes too high a cost burden on BHCG’s customers and thus exceeds the benefit of greater GHG emissions reductions. The ALJ therefore recommends adopting the CHP budget proposed by the Settling Parties’ CHP in the Settlement Agreement.

¹⁶¹ Hearing Exhibit 506, p. 29, ¶ 62.

¹⁶² § 40-3.2-108(6)(d)(IV), C.R.S.

¹⁶³ *Id.*

B. Clean Heat Resources

110. Turning to SWEEP's recommendation that BHCG's CHP contain more DSM and dramatically increase BE, the ALJ is not persuaded by SWEEP's arguments addressing Clean Heat resources, either. The ALJ notes first that § 40-3.2-108(2)(c), C.R.S. lays out several options a gas utility may rely upon in reaching its Clean Heat targets. The statute grants gas utilities the flexibility to use "any one or a combination of" the various options. The CHP proposed by the Settling Parties incorporates several of the alternative Clean Heat resources set out in § 40-3.2-108(2)(c), C.R.S. Indeed, all of the GHG reduction mechanisms upon which the Settling Parties' CHP relies are recognized by the General Assembly as Clean Heat resources.

111. SWEEP's proposal, on the other hand, focuses exclusively on the use of BE and DSM — in enormous quantities — to get BHCG closer to its Clean Heat targets. Putting all of BHCG's eggs into the BE and DSM basket is not without risk, though.

112. First, as BHCG and CEO point out, BE and DSM are both dependent on customer adoption of the technology. While AMLD and RNG may, as SWEEP argues, cost more — notably, none of the Settling Parties dispute the higher cost of AMLD and RNG — that factor alone should not disqualify their use. Rather, because AMLD and RNG are completely independent of customer behavior, incorporating those technologies into the CHP will give BHCG avenues to achieve its Clean Heat targets even if its customers completely reject BE and DSM. The ALJ therefore finds that including AMLD and RNG in the CHP is reasonable and appropriate.

113. Second, the ALJ is persuaded that incorporating such a large amount of BE in BHCG's CHP could negatively impact BHCG's existing customers. The cost of BE incentives would be borne by BHCG's other residential customers who would see increased gas utility bills. Moreover, customers paying the higher bills — i.e. those customers who continue to use gas

appliances and therefore require natural gas service — would not benefit from the electrification. Thus, BHCG could be placed in the tenuous position of billing its customers for a service — electrification — from which they do not benefit, which could potentially violate the mandate that all utility charges “be just and reasonable.”

114. The ALJ therefore finds and concludes that the Clean Heat resources incorporated into the CHP proposed by the Settling Parties is reasonable, in the public interest, and should be adopted.

C. Summary and Conclusion

115. In reviewing the terms of the Settlement Agreement¹⁶⁴, the ALJ applied the Commission’s direction and policy with respect to review of settlement agreements as found in, e.g., Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

116. Based on the entire record, the ALJ finds that the Settling Parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, is in the public interest, and should be accepted by the Commission.

117. The ALJ will therefore recommend that the Settling Parties’ Motion to Approve Settlement be granted, the Settlement Agreement be approved without modification, and the CHP Application as modified by the Settlement Agreement be granted.

118. The ALJ notes that, to reach these findings and conclusion, it was not necessary to reach every argument raised by the parties. Any arguments or issues not expressly addressed herein should consequently be considered rejected as unpersuasive.

¹⁶⁴ Hearing Exhibit 114.

VI. ORDER**A. The Commission Orders That:**

1. The Motion to Approve Settlement Agreement jointly filed by Black Hills Colorado Gas, Inc. (“BHCG”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“PUC” or “Commission”), the Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”) (collectively the “Settling Parties”) on August 16, 2024, is granted.

2. The Settlement Agreement filed by the Settling Parties on August 16, 2024, and attached to this Decision as Appendix A, is approved without modification, consistent with the discussion above.

3. The Verified Application for Approval of its inaugural Clean Heat Plan filed by BHCG on December 29, 2023, is granted as modified by the Settlement Agreement, consistent with the discussion above.

4. Proceeding No. 23A-0633G is closed.

5. 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.

6. 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.

- a. 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.
- b. 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.

7. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director