Decision No. C25-0351

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0275E

IN THE MATTER OF ADVICE LETTER NO. 871 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC TO INCREASE BASE RATE REVENUES, TO IMPLEMENT REVISED BASE RATES FOR ALL RATE SCHEDULES, AND OTHER TARIFF REVISIONS EFFECTIVE JULY 15, 2024.

COMMISSION DECISION GRANTING, IN PART, AND DENYING, IN PART APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C25-0183 AND AUTHORIZING FURTHER ADJUSTMENTS TO BASE RATES

Issued Date: May 6, 2025
Adopted Date: April 23, 2025

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. Through Decision No. C25-0183 ("Rate Case Decision"), issued in this Proceeding on March 17, 2025, the Commission established new base rates for electric service provided by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy ("BHCOE" or the "Company"). By this Decision, the Commission addresses the issues raised in the applications for rehearing, reargument, or reconsideration of the Rate Case Decision ("RRR" or "RRR

Applications") filed on April 7, 2025, by the following parties to this Proceeding: (1) BHCOE, (2) Trial Staff of the Commission ("Staff"), and (3) the Office of the Utility Consumer Advocate ("UCA"). Consistent with the discussion below, we either grant or deny, in whole or in part, the RRR Applications. We further direct BHCOE to make a compliance tariff filing to implement further adjustments to base rates consistent with the findings and directives set forth in this Decision.

B. Procedural Background

2. On June 14, 2024, BHCOE filed Advice Letter No. 871 with tariff sheets to revise base rate revenue for all electric services in the Company's Colorado P.U.C. No. 11 Tariff, along with certain other changes to its tariff.

3. The Rate Case Decision provides a full procedural background from the initial advice letter filing through the issuance of the Rate Case Decision on March 17, 2025.

4. Following issuance of the Rate Case Decision, BHCOE filed on March 19, 2025, Advice Letter No. 884[1] in Proceeding No. 25AL-0114E with the compliance tariffs setting forth the new base rates effective March 22, 2025, in accordance with the findings and directives in the Rate Case Decision. BHCOE then filed on March 25, 2025, Advice Letter No. 885 in Proceeding No. 25AL-0124E a revised Sheet No. R45 with updates to the Extension Allowance in the tariff sheet, pursuant to the findings and directives in the Rate Case Decision. BHCOE then filed on April 7, 2025, Advice Letter No. 888 in Proceeding No. 25AL-0162E a revised Tariff Sheet No. 65 with changes to the calculation of the Company's Energy Cost Adjustment rate, pursuant to the findings and directives in the Rate Case Decision.

[1] BHCOE initially filed this advice letter as "Advice Letter No. 883" but then corrected the number to "884" by an Amendment filed on March 20, 2025.

5. On April 7, 2025, BHCOE, Staff, and UCA filed their respective RRR Applications,[2] each requesting certain clarifications or modifications to the findings and directives in the Rate Case Decision, as discussed below.

6. On April 23, 2025, the Commission deliberated on the RRR Applications at its Commissioners' Weekly Meeting ("CWM"), resulting in this Decision.

C. Legal Standard

7. As we discussed in the Rate Case Decision, the setting of just and reasonable rates, both as to level and design, goes to the essence of the Commission's powers and duties.[3] The Rate Case Decision more fully addresses the foundational principles that underly our ratemaking authority and the determinations we make in rate proceedings, underscoring the interrelated considerations necessary for the Commission to make its final decisions setting rates.

8. As discussed in the Rate Case Decision, under the just and reasonable standard, the Commission considers both the utility investors' interest in avoiding confiscation and the utility customers' interest in preventing exorbitant rates.[4] This requires the Commission to protect the public interest by ensuring that a utility's rates are not excessive, burdensome, or unjustly discriminatory while also protecting the right of the utility and its investors to earn a fair return reasonably sufficient to attract capital and maintain the utility's financial integrity. So far as the utility is concerned, it must have adequate revenues for operating expenses and to cover the capital costs of doing business, and its revenues must be sufficient to assure confidence in its financial

[2] By Decision No. C25-0256, issued April 4, 2025, the Commission authorized a 40-page limit for applications for RRR in this Proceeding.

[3] *Colorado-Ute Elec. Ass'n, Inc. v. Pub. Utils. Comm'n*, 760 P.2d 627, 638 (Colo. 1988); *see* §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S. (Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates).

[4] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Colo. Mun. League v. Pub. Utils. Comm'n*, 687 P.2d 416, 419 (Colo. 1984).

integrity so as to maintain credit and to attract capital. This ratemaking function involves the making of pragmatic adjustments and there is no single correct rate.

9. The Rate Case Decision reiterates that ratemaking is not an exact science, and that, when setting rates, the Commission necessarily exercises judgment rather than complete reliance on a mathematical or legal formula to establish just and reasonable rates that balance the interests of both the utility investors and customers.[5] Accordingly, our decision-making in this rate case inherently involves myriad interrelated legal conclusions, factual findings, and policy decisions—all of which contribute to our final determination of what constitutes just and reasonable rates—to disturb one factor considered by the Commission in setting the final rates risks upsetting the careful balance achieved by the Commission in this process.

10. We also reiterate here our discussion of the burden of proof from the Rate Case Decision. As the party seeking Commission approval or authorization, BHCOE bears the burden of proof with respect to the relief sought;[6] intervenors bear the burden of proof with regard to each of their proposals advanced in answer testimony. The burden of proof is by a preponderance of the evidence.[7] A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party. The evidence must be "substantial evidence," which is defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion … it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."[8] In rate cases, after the

[5] *Pub. Utils. Comm'n v. Nw. Water Corp.*, 451 P.2d 266, 276 (Colo. 1969).

[6] *See* Rule 1500, 4 *Code of Colorado Regulations* 723-1 (burden of proof and initial burden of going forward shall be on the party that is the proponent of a decision, *i.e.*, the regulated entity proposing a tariff change) and § 24-4-105(7), C.R.S. (proponent of order has burden of proof).

[7] *See* § 13-25-127(1), C.R.S. (burden of proof in any civil action shall be by a preponderance of the evidence).

[8] *City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 585 (Colo. 1997)).

utility proposing a tariff change presents its case-in-chief, putting forth evidence to justify its requested rate increase, the burden of going forward shifts to intervenors who then have the opportunity to provide evidence either rebutting the proponent's evidence or supporting intervenors' own arguments. However, the Commission has an independent duty to determine matters that are within the public interest.[9] Because the Commission has an independent duty to determine matters that are within the public interest, the Commission is not bound by the proposals of the parties. The Commission may do what it deems necessary to assure that the final result is just, reasonable, and in the public interest, provided the record supports the result, and provided the reasons for the policy choices made are stated.[10]

D. RRR Applications

11. In considering the RRR Applications, we hold to the same principles as applied when establishing rates through the Rate Case Decision. Our evaluation of the various requests set forth in the RRR Applications is therefore made upon consideration of the record as a whole. Discrete decision points on numerous issues, in sum, amount to just and reasonable rates overall. Should any one material finding or conclusion change, we may need to reconsider whether the material revision impacts the entirety of the case and make revisions accordingly.

[9] *Caldwell v. Pub. Utils. Comm'n,* 692 P.2d 1085, 1089 (Colo. 1984).

[10] *See, Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198, 1207-08 (Colo. 2001) (holding the Commission acted reasonably in its legislative capacity to accomplish its ratemaking function when it required utility to include a merger savings adjustment to benefit ratepayers because there was sufficient support in the record); *CF&I Steel*, 949 P.2d at 586-87; *Colo. Off. of Consumer Couns. v. Pub. Utils. Comm'n*, 786 P.2d 1086, 1095-97 (Colo. 1990) (holding the Commission did not act arbitrary or capriciously in setting rates, even though it did not accept any of the experts' opinions in full); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 653 P.2d 1117, 1120 (Colo. 1982) (holding the Commission did not abuse its discretion when it chose not to include out-of-test year debt cost because the decision was reasonable and based on the record); *Integrated Network Services, Inc. v. Pub. Utilities Comm'n of State of Colo*., 875 P.2d 1373 (Colo. 1994) (holding that fact that no party at rate proceeding before Public Utilities Commission formally advocated measured rate services for shared tenant service did not preclude PUC from adopting that option).

1. Inclusion of Prepaid Pension and Retiree Medical Asset Liability in Rate Base

12. In its RRR Application, Staff raises that the Commission did not expressly deliberate on BHCOE's request to include its Prepaid Pension and Retiree Medical Asset Liability in rate base.[11] Staff suggests, if this was an oversight, it thus had the unintended effect of denying this issue via the catch-all provision in ¶ 326 of the Rate Case Decision, which states any contested issue not expressly addressed in the Decision are denied. The Company's compliance filing, discussed at the March 5, 2025 CWM, did include the prepaid pension and retiree medical net assets in rate base and used to determine the rates that are now in effect.

13. We did not specifically address the issue of prepaid pension and retiree medical net assets in our previous deliberations and do so now for clarity.

14. BHCOE requests the inclusion in rate base $962,680 of balance sheet assets and liabilities associated with pension and retiree healthcare.[12] The Company states that these reflect the difference between contributions and expenses. That is, the expense is used for ratemaking but if the Company has contributed a cumulative amount less than the expense, ratepayers shall see the lower contributions through a reduction in rate base. If the asset reflects contributions greater than the expense, inclusion in rate base will reflect the cost of the higher contributions. The Company notes that higher cumulative contributions will reduce the expense in the cost of service.[13]

15. BHCOE notes that the issue of including pension and retiree healthcare assets in rate base was addressed in Proceeding No. 17AL-0363G, a rate case filed by Public Service

[11] The Commission did address the Aquila Prepaid Pension and Retiree Medical Asset and authorized the Company's inclusion of its pension and retiree medical annual expense in the cost of service and authorized a tracker for those expenses. Rate Case Decision at ¶ 196.

[12] Hr. Ex. 104, Stevens Direct, p. 27:18-19.

[13] Hr. Ex. 119, Stevens Rebuttal (Rev. 1), p. 22:7-11.

Company of Colorado ("Public Service").[14] In that Public Service case, the Commission removed Public Service's prepaid pension asset from rate base.[15] However, the Denver District Court reversed the Commission's decision,[16] and found that the prepaid assets resulting from the timing differences between contributions and expense for these plans resulted in assets that could be included in rate base. BHCOE also references the Commission's decision in the Public Service rate case which followed the Denver District Court decision in which the Commission allowed Public Service to include its prepaid pension asset and prepaid retiree medical asset in rate base with a weighted-average cost of capital ("WACC") return. [17]

16. Staff recommends the Commission reject the inclusion of the pension and retiree healthcare net assets in rate base. Staff argues that ratepayers should not be responsible for additional payment into the pension fund over what the Company requests in each rate case, and to do so would be retroactive ratemaking.[18] Staff also questions the incentive this would give the Company to properly manage investment trust because ratepayers would be called on to make up any losses.[19]

17. Staff argues that the Commission has not previously allowed unrecovered, non-test-year expenses to be converted to assets and then allowed in rate base. Staff argues that doing so would reward the Company for poor investment performance and reward miscalculation of the expense.[20]

[14] Hr. Ex. 119, Stevens Rebuttal (Rev.1), p. 24:1-16.
[15] Decision No. C18-0736-I in Proceeding No. 17AL-0363G issued on August 29, 2018 at ¶ 104, reversing Decision No. R18-0381-I issued on May 11, 2018.
[16] Denver District Court Case No. 19CV31427.
[17] Decision No. C22-0642 in Proceeding No. 22AL-0046G issued on October 25, 2022 at ¶¶ 187, 196-198.
[18] Hr. Ex. 500, Sigalla Answer (Rev. 1), p. 142:20-143:2.
[19] *Id.* at p. 143:3-6.
[20] *Id*. at p. 144:12-19.

18. BHCOE objects to Staff's characterization that the Company seeks to recover past "underestimates" and "under collections," stating that the pension asset is the result of contributions to the plan being greater than the cumulative expense and is not the result of under- or over- collections.[21]

19. BHCOE rejects Staff's statement that the Company has invested and lost money. The Company states that the pension plan is healthy and has a funded ratio of about 89 percent, as of December 31, 2023. BHCOE also notes contributions to the plan are governed by Internal Revenue Code and by the Financial Accounting Standards Board ("FASB") under Generally Accepted Accounting Principles ("GAAP"). These are separate rules and can result in differing amounts, so there is a likelihood that an asset or liability could result. Such assets or liabilities are not indicative of underperformance or outperformance.[22]

20. Finally, BHCOE rejects Staff's argument that inclusion in rate base constitutes retroactive ratemaking, and confirms that it proposes only to include current balances of the pension asset and retiree healthcare liability in rates going forward and cites a similar action in Proceeding No. 23AL-0231G, the last rate case filed for Black Hills Colorado Gas, Inc.[23]

21. We have considered the arguments presented by Staff and BHCOE and agree with BHCOE that including the Pension and Retiree Healthcare Actuarial Net Assets in rate base is appropriate. The Company has provided an explanation that these net assets are the result of compliance with IRS and GAAP rules and has confirmed that the pension plan is healthy and that there are no issues with management of the investment. As these costs were reflected in the tariffs

[21] Hr. Ex. 119, Stevens Rebuttal (Rev. 1), p. 24:20-25:6.
[22] *Id*. at p. 25:11-26:2.
[23] *Id*. at p. 26:21-27:4.

that the Commission reviewed at the March 12, 2025 CWM, this finding should not affect the rates currently in effect.

2. Authorization of a Rate Increase

22. In its RRR Application, UCA requests the Commission reconsider its decision to allow any rate increase—at all—in this Proceeding and urges the Commission to reevaluate the entire case with affordability as the critical foremost issue. UCA challenges the Commission's approach (that affordability serves as a relevant backdrop of its decisions) and suggests instead that affordability should be at the forefront of every Commission decision point.[24] To defend this position, UCA notes the Commission's existing "Affordability Work Plan" includes the statement that, "Affordability is a critical part of the Commission's oversight as it regulates Colorado gas and electric utilities"[25] and points to the Commission's statement in its 2023 decision in Public Service's Solar Rewards proceeding that: "... it is increasingly critical to consider each decision the Commission makes from the perspective of its impact on affordability."[26]

23. UCA reiterates its testimony that BHCOE's territory is economically distressed and that these customers nonetheless pay higher rates than elsewhere in Colorado. UCA cites Energy Outreach Colorado's testimony in this Proceeding affirming that nearly 40 percent of BHCOE's customers would qualify for financial assistance programs based on their income.[27] UCA argues that, in contrast, the record demonstrates BHCOE's increasing dividends and earnings' growth from 2015 through 2023, which calls into question whether BHCOE actually requires a rate increase.

[24] UCA RRR Application, pp. 2-4.
[25] Hr. Ex. 300, Schonhaut Answer, Att. CZS-4 p. 3.
[26] Decision No. C23-0083 at ¶¶ 11 and 24 issued in Proceeding No. 19A-0369E on February 6, 2023.
[27] Hr. Ex. 601, Nussbaumer Answer, p.16:3-4 (Figure EN-2: Comparison of the Percentage of Households Income-Qualified Across all of Colorado and the Company's Customer Households).

24. UCA distinguishes the West Virginia case cited in the Rate Case Decision, in which the West Virginia public utility commission found it would be unlawful to deny a rate increase based on affordability from the circumstances in this Proceeding. It argues that this legal concern would not apply in Colorado because the Commission has established an "Affordability Initiative" and in its recent Electric Retail Rate Survey Report, specifically invited UCA to address the use of economic conditions in determining just and reasonable rates in BHCOE's next rate case. Additionally, UCA points to statements from the Colorado legislature and governor requesting the Commission find ways to reduce the energy cost burden for Coloradoans.[28]

25. Finally, UCA reiterates its argument that the Commission has authority to reject any rate increase and that doing so would not constitute a regulatory taking or result in a confiscatory rate. UCA contends the Commission's duty in a rate case extends beyond a review of cost studies, citing recent discussion by the Colorado Supreme Court concluding that "cost-of-service … is not the exclusive factor to be considered in a ratemaking decision of the PUC" and reasoning that: "Indeed if such were the case, the PUC would have little ratemaking discretion; rather, it would become a rubber stamp relegated to examining cost studies of utilities."[29]

26. The Commission denies UCA's RRR Application on this issue. We held three in-person public comment hearings and one remote public comment hearing and have received more than 900 written and telephoned comments. We acknowledge the deep economic distress voiced by these commenters, many of which are ratepayers in Black Hills service territory. These comments were considered, along with testimony in the Proceeding, as the Commission

[28] UCA RRR Application at pp. 3-8.

[29] *See Holcim v. Pub. Utils. Comm'n*, 562 P.3d 55, 61 (Colo. 2025) (citing *Integrated Network Srvs., Inc. v. Pub. Utils. Comm'n*, 875 P.3d 1373, 1383 (Colo. 1994)).

made its decision overall, and in each of the discrete components of the Company's requested increase. The reality of utility regulation are that we must consider many factors in evaluating a proposed rate increase and in this Proceeding a denial of any rate increase, as UCA requests, is inappropriate.

27. UCA's request for reconsideration attempts to address the lack of legal support for its position that the Commission highlighted in the Rate Case Decision, but UCA continues to fall short of addressing how the Commission can abandon balanced ratemaking principles and a legislative mandate to balance a utility's constitutional right to recover costs and earn a return with ensuring consumers pay a rate which accurately reflects the cost of service rendered.

3. Capital Structure

28. In the Rate Case Decision, the Commission found that using the capital structure of Black Hills Corporation ("BHC"), adjusted to exclude certain unregulated entities from the array of operations conducted under the holding company structure, was the appropriate structure to use for setting rates in this Proceeding because it best reflected the capital structure actually used to finance BHCOE's operations. The Commission reasoned that it was BHC, the holding company, that interfaces with and is disciplined by financial markets, not BHCOE, the operating company. The Commission determined this approach was consistent with the court's observation in *Peoples Natural Gas v. Pub. Utils. Comm'n*, 193 Colo. 421, 567 P.2d 377 (1977) ("*Peoples*") that: "[u]nless it has been demonstrated by a substantial showing that rate payers are materially prejudiced by the actual capital structure which finances utility operations, the PUC should use the actual capital structure in calculating rates."[30] The Commission found that, as in *Peoples*, it was

[30] 567 P.2d at 379 (quoting *Mountain States Telephone and Telegraph Co. v. Pub. Utils. Comm'n,* 513 P.2d 721, 727 (1973)).

not seeking to override management and impose a more favorable hypothetical ratio, but rather determining the appropriate capital structure to use in rate calculations for the operating company that reflects the actual capitalization backing the utility operation.

29. In its RRR, BHCOE urges the Commission to reconsider the capital structure established in the Rate Case Decision. BHCOE contends the Commission unlawfully changed course from its string of prior decisions that used BHCOE's per-book capital structure as the "actual" capital structure required by *Peoples*. BHCOE further contends the Commission unlawfully imposed a hypothetical capital structure on BHCOE.

30. We deny this RRR. The Commission was not bound in this Proceeding by "precedent" to indiscriminately accept BHCOE's position that its stand-alone per-book capital was the "actual" capital structure that the Commission should use to set rates. Rather, the Commission had to make an independent, rigorous determination based on the record and present circumstances of the most accurate capital structure to use in setting rates. In doing so, the Commission concluded that what BHCOE presented in this case as its "actual" capital structure was, in effect, only a discretionary level set by the parent and that BHC's adjusted capital structure was the more reflective "actual" capital structure because, BHC, not BHCOE, interfaces with and is disciplined by financial markets.

31. In the Rate Case Decision at ¶ 111, we found a common equity ratio of 47-49 percent, and thus 51-53 percent financed as long-term debt represents a reasonable adjustment to the holding company capital structure to determine the actual operating company capital structure, is likely to support BHCOE's financial integrity, and to facilitate BHC's ability to raise capital. We noted this range presents an approximate mid-point between BHCOE's and Staff's proposals, and reasonably balances customer affordability and the Company's ability to

raise capital as necessary to meet its energy delivery obligations. We found Staff raised important questions as to the fairness of debt and equity allocation amongst BHC's regulated and unregulated subsidiaries.[31] We found compelling that the National Association of Regulatory Utility Commissioners ("NARUC") suggests this approach, *i.e.*, using BHC's capital structure as the appropriate starting point because that is the level at which the utility actually interfaces with and is disciplined by the capital markets.[32] And we found this approach accorded with the *Peoples* case law. By this Decision, we affirm these rationales and further explain and support our decision-making on this issue.

a. Commission Not Bound by Precedent

32. First, we address BHCOE's claim that the Rate Case Decision unlawfully departs from prior Commission decisions where the Commission rejected intervenors' proposals to use BHC's capital structure and accepted BHCOE's argument that its stand-alone per-book capital was the "actual" capital structure to use in setting rates.

33. Because of its unique authority, and duty, to regulate public utilities in the public interest, the Commission is not bound by its prior decisions as "precedent" or by any doctrine similar to *stare decisis*. Administrative agencies, including the Commission, need flexibility to adapt to changing circumstances and the specifics of each case in front of them.[33] This is particularly the case when the Commission is setting rates for regulated utilities, as is the case here, because rate-setting is a legislative function.[34] Further, since rate-setting is a legislative function

[31] Rate Case Decision at ¶ 108 discussing Staff's SOP at pp. 26-27.
[32] Rate Case Decision at ¶ 109 (citing Hr. Ex. 1502, "A Cost of Capital Market and Capital Market Primer for Utility Regulators, prepared by NARUC for the U.S. Agency for International Development in April of 2020").
[33] *See B & M Service, Inc. v. Pub. Utils. Comm'n*, 429 P.2d 293, 295 (1967) (discussing the necessary flexibility of performance that arises from the nature of the administrative method).
[34] *Colorado-Ute Elec. Ass'n, Inc. v. Pub. Utils. Comm'n*, 602 P.2d 861, 865 (Colo. 1979) (internal citations omitted).

that involves many questions of judgment and discretion, the Commission "is not bound by a previously utilized methodology when it has a reasonable basis, in the exercise of its legislative function, to adopt a different one."[35]

34. Recognizing that Commission decisions are based on the record of each case, the Colorado Supreme Court has instructed "while consistency in administrative rulings is considered essential, and while agency rulings are entitled to great weight in subsequent proceedings … the appearance of arbitrariness is dispelled when new findings are made … on the basis of new evidence and a new record."[36]And the Court has said prior rulings have no weight at all where the public interest may be adversely affected.[37]

35. Here, we reach a different conclusion than in prior cases because we find intervenors' arguments compelling based on this particular record, and we have adjusted our overall approach to now examine the components of BHCOE's cost of capital through the lens of overall financial integrity. *Peoples* recognizes that the Commission has a definite area of expertise in analyzing utility operations, and that there are undoubtedly numerous ways of determining the actual capitalization of utility operations. We largely view this case as more similar to a case of first impression, particularly in light of the time between rate cases for this utility and that this is the first rate case for BHCOE before this particular bench.

36. On the issue of what is the "actual" capital structure to use for setting rates for BHCOE, we find compelling Staff's straightforward point that: "Markets look to BHC, not to BHCOE, when investing in the equity and debt that will be used to finance BHCOE."[38] As Staff

[35] *Glustrom v. Colo. Pub. Utils. Comm'n*, 280 P.3d 662, 669 (Colo. 2012) (citing *CF & I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 584 (Colo.1997)).
[36] *Id.*
[37] *B & M Service*, 429 P.2d at 295.
[38] Staff SOP at p. 26 (citing Hr. Ex. 500, Sigalla Answer Testimony (Rev. 1), p. 123:11-12).

explains, BHC's financing flows to BHCOE.[39] Put another way, when BHCOE needs financing, it is perceived by markets along with all of BHC's leverage and risk.[40] And Staff points out, and BHCOE concedes,[41] there are no BHCOE level metrics for financial integrity or credit ratings; the only available metrics are for the holding company.

37. We likewise find persuasive Staff's characterization that, since it is BHC, not BHCOE, that actually interfaces with and is disciplined by markets, the capital structure assigned by BHC to BHCOE is simply that, an assigned number to which the Company seeks to manage to. Staff goes so far as to claim that BHCOE is "misrepresenting" its actual capital structure.[42] Staff's reasoning is that rather than having market forces determine the appropriate capital structure for financing utility operations, BHCOE is "choosing" a capital structure assigned by its parent.[43] We agree with this reasoning; what BHCOE is claiming to be its "actual" capital structure is only "actual" in that it is the numbers assigned to it by BHC—it is not the structure interfacing with the markets. Since the assigned numbers are discretionary by BHC, we do not see reason to rely on those numbers to set our Colorado rates.

38. And further, Staff rightly cautions that: "Because BHCOE is a subsidiary utility, there is risk that 'the regulated utility may pursue a rate structure that benefits the parent company rather than ratepayers."[44] In its SOP, Staff points to BHCOE testimony admitting that riskier financing is allocated to BHC's regulated entities. We agree with Staff's concern that BHC, as the parent holding company, has an intrinsic motivation to allocate debt and equity between subsidiaries in a way that benefits its unregulated subsidiaries. This calls into question the validity

[39] Staff SOP at p. 26 (citing Hr. Ex. 500, Sigalla Answer Testimony (Rev. 1), p. 124:10-11).
[40] Staff SOP at pp. 26-27 (citing Hr. Ex. 500, Sigalla Answer Testimony (Rev. 1), p. 126:3-5).
[41] Staff SOP at p. 27 (citing Hr. Tr. December 4, 2024, pp. 112:22-24.).
[42] Staff SOP at p. 28.
[43] Staff SOP at pp. 28-29.
[44] Staff SOP at p. 28 (citing Hr. Ex. 500, Sigalla Answer Testimony (Rev. 1), p. 117:15-17).

of the capital structure that the parent company assigns to its regulated operating companies and is reason for us to look for a more accurate number to use as the input in our rate-setting calculations.

39. We find it appropriate at this point in the Proceeding to give little weight to UCA's testimony on this issue. Whereas UCA initially supported BHCOE's proposed capital structure, it effectively set this aside in its closing SOP and instead adopted Staff's analysis of capital structure. Although we recognize that UCA's position change reflects more its desire to achieve a lower revenue requirement deficiency than an actual revision of its analysis, the effect is the same. We find its changed position diminishes the weight we will give this testimony regarding a position the party no longer supports.

b. Commission's Approach Consistent with *Peoples*

40. Second, we address BHCOE's contention that use of BHC's capital structure in lieu of the assigned BHCOE structure contravenes the principle discussed in *Peoples* that capital structure is a matter for utility management and such judgment can only be overridden if it is materially prejudicing ratepayers.

41. In *Peoples*, the court upheld the Commission's use of a capital structure for a utility subsidiary that started with the parent company's capitalization and then adjusted for non-utility operations. The court noted the Commission adjusted the parent's capitalization based on a study of other industrials to determine what portion of their capital structure was equity, debt, and preferred stock, and that these figures were then applied to the amounts in the parent company's capitalization that related to non-utility operations. The court said the Commission's analysis of the utility operation was appropriate, even though this was not the only way to make the

determination. The court observed the capital structure utilized by the Commission to set rates was reflective of the actual capitalization backing the utility operation.

42. Our approach here is consistent with *Peoples* because it ascertains the actual capital structure that finances BHCOE's operations. Like in *Peoples*, the Commission's analysis is intended to discern the accurate "actual" capital structure that finances BHCOE's operations. BHCOE contends the Commission erred by not first making a finding that use of BHCOE's assigned capital structure would result in material prejudice to customers; however, such finding is only required to override the utility's actual capital structure and impose a hypothetical capital structure in our judgment. Although previous Commission decisions accepted BHCOE's position that its assigned capital structure is the "actual" capital structure that we should input into our rate calculations, we have utilized a more rigorous analysis in this Proceeding that recognizes that BHC's capitalization is the more the appropriate starting point to use for setting rates because it best reflected the capital structure actually used to finance BHCOE's operations. Thus, here, we disagree with BHCOE that its internally assigned capital structure is the "actual" capital structure, so we do not need to find prejudice to ratepayers before we determine to input another ratio, BHC's capitalization with necessary adjustments, into the rate calculation.[45]

c. Commission's Adjustments Reflect Actual Capitalization of BHCOE's Operations

43. Finally, we address the pragmatic adjustments that we made to BHC's capital structure. That is, in the Rate Case Decision, we recognized that BHC's capital structure of 44 percent equity and 56 percent debt may fall outside the range of most electric utility operating

[45] Even if we were imposing a hypothetical capital structure on BHCOE for ratemaking purposes, a finding of "prejudice" would be supported by Staff's testimony regarding the risk that BHC has an intrinsic motivation to assign a rate structure that benefits the parent company rather than ratepayers.

companies and we therefore excluded certain unregulated entities from the array of operations conducted under the BHC holding company structure.[46] We agree with Staff that, in order to reasonably calculate the debt and equity BHCOE would have been able to raise if it interacted with the financial markets directly, it is necessary to adjust the BHC capital structure to remove the financing of unregulated subsidiaries and the impact of financing the above-book value "goodwill" Black Hills incurred when acquiring the assets from Source Gas, the prior owner of the assets.[47] As such, the Commission started with the capital structure of BHC, backed out the debt and equity of the unregulated subsidiaries, and explored different allocations of the debt and equity associated with the SourceGas goodwill. Although we note that the adjustments to the holding company's financial structure are based on record evidence classified as highly confidential, this analysis strongly supports an adjusted capital structure in the 47-49 percent range.[48] We believe that our approach is consistent with the rationale upheld by the court in *Peoples*, where the court affirmed it was within the Commission's power to pierce corporate structures of corporations that operate non-utility subsidiaries in order to impute a capital structure for the utility operation that reflects the capitalization backing the utility operations. Just as we determined to use BHC's capital structure as the "actual" capital structure, these adjustments – taking out the debt and equity associated with the unregulated subsidiaries – are made for the sole purpose of better reflecting the capitalization reasonably backing BHCOE's operations as if it were directly interfacing with the

[46] Rate Case Decision at ¶ 110 (noting specific data held confidential (*see* Hr. Ex. 500HC, Sigalla Answer, Table FDS-24)).

[47] Highly Confidential Hr. Tr. December 5, 2025, pp. 118.

[48] *See* Hr. Ex. 514HC (Beginning with Column (b) "BHC Consolidated," and backing out Column (h) "Non-Utility Consolidation," and then adjusting allocations of the debt and equity associated with the SourceGas goodwill in Column (e) "Black Hills Service Company Stand-Alone,")

capital markets, consistent with the record evidence and testimony of BHCOE witness Mr. Steven's at hearing.[49]

44. Further, this method of determining BHCOE's actual capital structure is supported elsewhere in the record. The capital structure ordered by the Commission is consistent with other Black Hills subsidiaries, similar regulated electric utilities nationwide, and represents a middle point between party positions in this Proceeding. The Company's testimony reflects that other Black Hills subsidiaries utilize a capitalization ratio of 44.5 percent at the low end and approximately 50 percent average.[50] BHCOE's testimony also reflects that electric utilities nationwide have recently received an average low common equity ratio of 45-46 percent, an average high of 54-55 percent, with an overall average of roughly 51 percent equity to total capital.[51] As such, the allowed range identified in this proceeding is generally consistent with other market outcomes presented by the Company, even if leans somewhat toward the lower end of the range.

4. Return on Equity ("ROE")

45. In its RRR Application, BHCOE challenges that, although the Commission's adopted ROE range of 9.3 to 9.5 percent supposedly falls within the stock market's valuation of its parent company, BHC, this rationale ignores the market cost of equity. BHCOE asserts that the market cost of equity, which reflects current market conditions, was shown to be 9.83 percent on this record. BHCOE claims the record demonstrates that BHCOE's proposed ROE is similar to that of other financially sound businesses having similar or comparable risks and consistent with

[49] *See, e.g.,* Highly Confidential Hr. Tr. December 4, 2025, at pp. 153-59, and 168-78.
[50] Hr. Ex. 500HC, Sigalla Answer, Table FDS-24, p. 128; Hr. Ex. 514HC, (showing CE ratios for each BH subsidiary and an average of roughly 50 percent for "Utility Consolidated" in column (z)).
[51] Hr. Ex. 120, Mckenzie Rebuttal, Table AMM-7R, p. 58.

the average authorized ROE for vertically integrated utilities for the 12 months ending September 30, 2024.[52]

46. BHCOE contends the Commission's adopted range also ignores what it sees as errors and flaws in Staff and UCA's testimony. BHCOE argues that Staff utilized only a single analytical model with no objective checks on reasonableness, had formula errors in initial calculation of discounted cash flow ("DCF") projections that, when corrected, changed the constant growth rate DCF by 43 basis points, and utilized an overly restrictive proxy group selection criteria, which excluded companies of comparable risk and impacted Staff's overall analysis. As to UCA's testimony, BHCOE contends UCA inappropriately limited its equity risk premium evaluation to historical rates of return, inaccurately reported the historical market risk premium as compared to UCA's own source, relied on two highly questionable sources of projected Treasury bond yields, inaccurately included a lower 30-year Treasury bond yield than what was within UCA's cited source, and failed to reflect a size adjustment. BHCOE states the combined average of Staff's proxy group ROE is 9.68 percent and UCA's proxy group is 10.04 percent, respectively, which averages to 9.86 percent, slightly higher than BHCOE's request.[53]

47. Further, according to BHCOE, the Rate Case Decision does not consider record evidence that (1) utility bond yields are 98 basis points higher than when the Commission authorized a 9.37 percent in BHCOE's 2016 Phase I Rate Case in Proceeding No. 16AL-0326E ("2016 Phase I Rate Case"); (2) 10-year Treasury bond yields are 190 basis points higher than in 2016; and (3) 30-year Treasury bond yields are 149 basis points higher than in 2016.

[52] BHCOE RRR Application at pp. 16-17.
[53] *Id*. at p. 18.

48. The Commission denies BHCOE's RRR Application on this issue. We find that experts for UCA and Staff raised numerous arguments we find compelling and, while certain calculation errors in answer testimony may have existed, the broad record evidence – discussed below – supports the authorized range of our initial decision. We find that BHCOE's Testimony was inconsistent with the stock price data and investor communications for its own parent, BHC.[54] Accordingly, we continue to find that our authorized range of 9.3 – 9.5 percent is reasonable and appropriate and deny the Company's request to modify it.

49. UCA argued that long term historical equity risk premiums and growth rates of the economy are an appropriate input for the Company's CAPM models. Mr. Fernandez calculates the U.S. economy has grown long-term at about five percent per year, as measured by gross domestic product (GDP).[55] He notes that Mr. McKenzie's projections suggest large companies will grow at 10.1 percent (*i.e.*, over twice the historical rate), and contends that such an assumption would produce an illogical result. The Commission notes that BHC's own projected growth rate, as it conveys to the investor community, is four percent to six percent, consistent with Mr. Fernandez's arguments.[56] We find UCA's historical growth projections are relevant and, overall, more reasonable than the growth rates embedded in Mr. McKenzie's analysis.

50. UCA argued that the size adjustment made by Mr. McKenzie was self-serving and not particularly relevant. As Mr. Fernandez notes, one of the rare utility bankruptcies involved one of the largest utilities – PG&E. UCA submitted analysis which indicated that there is virtually no correlation between size and risk for regulated electric gas utilities.[57] We agree and reject

[54] Compare BHCOE's request for a 9.83 percent ROE with Hr. Ex. 1500, BHE EEI Investor Presentation 11-13-24.
[55] Hr. Ex. 303, Fernandez Answer, p. 22:12-14.
[56] Hr. Ex. 1500, p. 4.
[57] Hr. Ex. 303, Fernandez Answer, p. 27:4-16.

Mr. McKenzie's size adjustment as it pertains to his economic models. Mr. Fernandez also contends that when the Company's CAPM analysis is modified for the last two issues – earnings growth rate and size adjustment – the estimated ROE would decline from 11.6 percent to 7.6 percent.[58]

51. The Company argued in its RRR that the Commission failed to consider the "market" cost of equity. We disagree. In fact, the Commission finds that the Company's testimony ignores the dividend yield and growth projections of its own parent as directly experienced by, or communicated to, the investor community. As such, the Commission finds that the Company argument upon reconsideration suggests we should ignore the only meaningful arbiter of what constitutes the market, and that is the market itself.

52. UCA argued that certain entities of Mr. McKenzie's proxy group appear inappropriate including Emera and Fortis (both Canadian and Emera is not even a Value Line Company), Otter Tail (substantial non-utility operations) and Allete (going private).[59] Staff also raised reasonable concerns with the Company's proxy group. Overall, the Commission has serious concerns with the selection and forecasting of proxy groups that may be subject to multiple biases. As explained above, we believe any evaluation of an appropriate return should also include an examination of the current returns of the actual entity under consideration, or at least the relevant parent holding company which directly embodies the revenues and risks of the operating company in question. In the instant case, the Company had available to it real world stock prices, dividend yields, and projected earnings growth rates, each specifically communicated to the investor community, the accuracy of which it must support on a regular basis.

[58] Hr. Ex. 303, Fernandez Answer, p. 23:13-21.
[59] UCA SOP at p. 24.

53. UCA argued that a non-utility proxy group is not particularly insightful and has been rejected by the Commission in the past.[60] We agree and note that utilities that provide essential services within monopoly service territories and which are afforded immediate cost recovery for substantial portions of operating costs have far different risk characteristics than entities in competitive arenas without the luxury of rider adjustments. Accordingly, we reject the Company's ROE analysis based on non-utility proxy groups.

54. UCA and Staff argued that Mr. McKenzie failed to provide an analysis using the MS-DCF model.[61] Both Mr. Fernandez and Ms. Sigalla conducted MS-DSF projections and calculated ROE values well within the range authorized by this Commission. We believe the MS-DCF model has merit and is reasonably considered along with other record evidence in determining an appropriate ROE.

55. UCA and Staff raised important questions with respect to data elimination from the Company's modeling. We also find troubling the elimination of certain results as practiced by Mr. McKenzie and note the results frequently call into question the overall process of forecasting the returns of proxy entities.[62] As explained above, this Commission finds additional merit in ROE calculation borne from actual stock prices, dividend yields, and growth rates that are consistently communicated to the investor community, in addition to other methods which rely on projections of other utilities with questionable relevance where results are subjectively altered before final recommendations are made.

56. UCA argued against the inclusion of stock flotation costs, contending they are not relevant to stock price information as most trading takes place on secondary markets. UCA also

[60] UCA SOP at p. 24.
[61] Hr. Ex. 500, Sigalla Answer (Rev.1), p. 100:9-13; Hr. Ex. 303, Fernandez Answer, p. 48:14-15.
[62] Hr. Ex. 105, McKenzie Direct, Att. AMM-5, p. 3.

notes that stock flotation costs have been repeatedly rejected by this Commission. We agree and continue to reject this adjustment.

57. We also note that the Commission raised in discussions with Mr. McKenzie at hearing that Beta – a critical component of the CAPM model – was subject to extraordinary volatility based on the source of the data and how it was measured over time. We continue to have concerns with the calculation and source of Beta, and for this reason, place less weight on the CAPM model.

58. The Commission also raised at hearing, as mentioned in the Rate Case Decision, the Company's analysis conflates holding companies with operating companies, thus making it very difficult to ascertain the true return required by the markets specific to operating companies.[63] Operating companies generally operate with higher equity ratios than their holding company parents (as reflected by the capital structure established here) and thus are less risky. BHCOE should consider the differences between holding and operating companies, and the necessary returns for each, in future rate case filings.

59. Finally, the Commission notes that despite virtually no revenue growth since 2021, and despite the fact that the Company's service territory has become relatively more disadvantaged versus average state incomes over time, BHCOE has greatly increased capital spending from an annual average of $36 million (over the 2016 to 2021 time period) to over $60 million in 2022, and over $90 million in 2023.[64] We note that sizable increase is characterized by Black Hills as overwhelming "non-revenue generating", not supporting new sales or revenues, and appears to be

[63] Rate Case Decision at ¶ 107.
[64] Hr. Ex. 101, Harrington Direct (Rev.1), p. 30, Table MJH-3.

the primary factor driving the rate increase in this case, as Mr. Harrington generally acknowledges in his oral testimony.[65] This record also suggests that the Company intends to maintain these higher levels of non-revenue generating capital spending through at least 2028.[66] Given these actual and proposed levels of non-revenue generating capital spending in a struggling community that has historically not experienced meaningful sales and revenue growth, on this record we believe a somewhat lower return on capital expenditure, as compared to the Company's request, may provide incentives that encourage meaningfully greater capital spending restraint. For all the above reasons, we find the ROE range authorized in our initial decision to be reasonable and appropriate and deny the Company's application for reconsideration on this issue.

5. Cost of Debt

60. In its RRR Application, BHCOE claims the Commission's decision to truncate BHCOE's actual cost of debt, to which both Staff and UCA had stipulated, to the second decimal point was arbitrary and capricious. BHCOE points out this decision had the practical effect of reducing BHCOE's cost of long-term debt from 4.61 percent to 4.60 percent. BHCOE questions the Commission's justification, that ratemaking is not an exact science and that incorporating two decimal places presumes a false level of precision. BHCOE responds that this decision not to use two decimal places is inconsistent with how the Commission has measured cost of capital in prior decisions and is not adequately explained in the Rate Case Decision, including why this truncated number reflects a better estimate of the actual cost of long-term debt.

[65] Hr. Tr. December 2, 2024, pp. 280-81.
[66] *Id.* at pp. 290-91.

61. The Commission grants BHCOE's RRR Application of this issue and agrees that 4.61 percent, supported by the Company, Staff, and UCA, is the proper value to utilize for the cost of long-term debt in this Proceeding.

6. LM6000 Generation Units

a. Required $3.7 Million Refund for Clean Air Clean Jobs Act ("CACJA") Income Taxes

62. BHCOE requests the Commission reconsider its decision that the Company refund $3.7 million of federal income taxes collected through the CACJA rate adjustment mechanism associated with the LM6000 generating unit.[67] The excess income taxes were collected because the CACJA rider tax rate was not adjusted from 35 percent to 21 percent when the federal 2017 Tax Cuts and Jobs Act ("TCJA") went into effect. The Company characterizes this directive as retroactive ratemaking and contends that updating the LM6000 revenue requirement in order to modify the income tax component alone would have constituted single-issue ratemaking. BHCOE cites the discussion in the 2016 Phase I Rate Case Decision No. C16-1140 of this rider, which stated as follows:[68]

> The annual revenue requirement to be collected by the CACJA Adjustment rider shall not change unless modified by the Commission in a future Phase I rate case proceeding. However, the class cost allocators used to establish the rate values shall be modified as necessary based on the results of the Company's next Phase II rate case.
>
> Because the CACJA Adjustment rider will no longer serve as a special regulatory practice under § 40-3.2-207(3), C.R.S., the mechanism will not be used to "trueup" costs with revenues after December 31, 2016. The final true up will be in the six months beginning July 1, 2017, consistent with the terms of the existing CACJA Adjustment rider tariff sheets.

[67] BHCOE RRR Application at p. 19.
[68] Decision No. C16-1140 at ¶¶ 104, 105 in Proceeding No. 16A-0326E (December 19, 2016).

63. BHCOE argues that the Commission subsequently opened Proceeding No. 18M-0074EG for the purpose of addressing the reduced corporate income tax on gas and electric utility services resulting from the TCJA. BHCOE raises that the Commission, when opening Proceeding No. 18M-0074EG, stated the intent was to ensure that utility customers benefitted from the lowered federal income tax rate but did not make any determinations regarding the just and reasonableness of any utility's rates.[69] BHCOE explains that it specified in the plan it presented in that proceeding that the CACJA rider would *not* be included, because, based on the terms of Decision No. C16-1140, the Company could not alter the CACJA rider. BHCOE notes, at the time, the Commission neither disagreed with the Company's position nor took any steps to alter the 2016 Phase I Rate Case decision.

64. BHCOE maintains it was under no obligation to file a rate case in order to revise the CACJA rider and further rejects any general contention that it must revise its rates if there is a change in one element of the revenue requirement that was used to establish rates. The Company states § 40-3-104(1), C.R.S., affords utilities the right to file to change rates, along with the requirement that the utility bears the burden of proof. And the Company counters that the Commission itself can, at any time, initiate a formal investigation under § 40-6-108, C.R.S., should it wish to examine a utility's rates.

65. BHCOE further contends the Commission lacks the authority to require this refund of $3.7 million without making a finding that the CACJA rider was not just and reasonable. The Company reasons, because the Commission only has authority to set just and reasonable rates on a prospective basis, ordering a refund constitutes unlawful retroactive ratemaking.

[69] BHCOE RRR Application at p. 22 (citing Decision No. C18-0075 at ¶ 9 in Proceeding No. 18M-0074EG (February 1, 2018)).

66. Finally, BHCOE objects that there is no evidence that a CACJA filing by BHCOE, had it made one, would have decreased rates. The Company raises that any review of the tax rate would likely have also included a review of the unique capital structure applied to the LM6000 (in 2016) and that review could have resulted in a finding, as in this Proceeding, that the capital structure was obsolete, resulting in a net rate increase.

67. To support its contention that the $3.7 million refund amount is arbitrary, BHCOE cites Staff's Testimony that concluded: "there is no way for Staff to be certain about the amount of over-collection that occurred" and Staff conducted a "back of the envelope estimate."[70]

68. Should the Commission decline to reverse this decision, BHCOE requests the Commission clarify that the refund will be treated in the same manner as the amortization of litigation expenses also authorized in the Rate Case Decision. That is, while the Commission authorized a negative General Rate Schedule Adjustment ("GRSA") to be effective when the litigation expenses have been recovered, a positive adjustment should be authorized for effect once the CACJA refund has been completed.

69. We deny BHCOE's RRR Application to reverse the $3.7 million refund, but grant the request to implement a GRSA for effect after the $3.7 million has been refunded through rates. In this Proceeding, the Company requested that the Commission consider a different regulatory treatment for the LM6000 asset than previously approved in Commission Decision No. C16-1140. In consideration of the proper terms by which to continue cost recovery for this asset, the Commission found that the fair treatment of the LM6000 asset cost recovery supports rolling it into base rates, less the excess tax revenue. The Commission found that it was highly relevant that both the Company and the Commission agreed that the TCJA-related tax cuts should benefit

[70] BHCOE RRR Application at p. 25 (citing Hr. Ex. 500, Sigalla Answer (Rev. 1), p. 63:5-6).

customers, and yet that did not occur at a cost of upwards of $3.7 million to ratepayers.[71] We continue to find that the tax rate charged to customers should reflect accurate costs actually incurred to the Company, consistent with the Commission's duty to protect the right of consumers to pay a rate which accurately reflects the cost of service rendered.

70. In light of the fact that BHCOE kept rates in place that had an inaccurate tax rate, despite agreement by both the Commission and the Company that benefits should flow to customers, we find it necessary to adjust the terms by which the LM6000 asset rolls into rate base. Overall, the Company has received approximately $3.7 million more than anticipated towards repayment of this asset so rolling in the total value of the asset less this amount is in the public interest. The Commission has discretion to set the terms by which assets in rate base are recovered,[72] and the Commission may consider current, future, or past test periods and "… other factors that may affect the sufficiency or insufficiency of such rates" during the period in which the rates will be in effect.[73] Here we find that the total value of the asset would otherwise be collected in excess through prospective rates if this differential is not accounted for now at the time the asset is included in rate base. The Company shall still be able to recover all of its approved LM6000 costs—some $62.7 million—but the Commission is simply reconciling the amount already received towards this asset with the amount the Company can receive through future rates.

[71] Rate Case Decision at ¶ 123.

[72] *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 513 P.2d 721, 727 (Colo. 1973) ("[A] public utility is entitled to demand just compensation, which is defined as a fair return upon the reasonable value of its property being used for the public. This value is the rate base upon which a fair return must be predicated.").

[73] § 40-6-111, C.R.S.

71. The Commission's decision to adjust the terms by which the LM6000 asset rolls into rate base does not constitute retroactive ratemaking. First, the $3.7 million adjustment does not result in confiscatory rates, nor does it impose a disability or duty on past actions, but instead accounts for excess collections through an adjustment to prospective rates. Second, this adjustment can be distinguished from the circumstances of *Colorado Office of Consumer Counsel*. And finally, the matching principle supports this type of adjustment, and the adjustment is necessary to ensure final rates are as accurate as possible.

72. Generally, retroactive ratemaking is impermissible because we must prevent the "unfairness entailed in altering the legal consequences of events or transactions after the fact."[74] Here, that potential legal harm is not present. The Company has and will continue to receive full value of its investment in the LM6000 asset. The Commission is not altering what the Company may do with funds already received or requiring a refund to customers already charged—that is, the Commission is not imposing a duty or disability on a past action. The Commission is not ordering a refund of payments already received by the Company, but is instead accounting for the payments already received in calculating the proper prospective rates by setting the "test period operating experience" accordingly.[75]

73. BHCOE accurately cites to *Board of Public Utility Commissioners v. New York Telephone Co.,* which holds that "[p]rofits of the past cannot be used to sustain confiscatory rates for the future."[76] While this is true, no one claims that this adjustment will result in confiscatory

[74] *Peoples Natural Gas Co. v. P.U.C.*, 590 P.2d 960, 962 (1979); *Silverado Commun. Corp. v. Pub. Utilities Comm'n of State of Colo*., 893 P.2d 1316, 1321 (Colo. 1995).

[75] "Rather than engaging in retroactive rate-making, the proper approach for the Commission is to consider these extraordinary monies in setting the test period operating experience when a future rate increase is requested." *S.C. Elec. and Gas Co. v. Pub. Serv. Comm'n*, 272 S.E.2d 793, 795 (S.C. 1980).

[76] *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. 23, 31-32 (1926).

rates. The overall rates established by the Commission here, including the LM6000 tax rate adjustment, are just, reasonable, and will allow a utility to earn a reasonable rate of return.

74. While charges by utilities are constitutionally prohibited if "connected to the past performance of utility"[77] this Proceeding is distinguishable from *Colorado Office of Consumer Counsel* in which the Commission improperly allowed the utility to retain money owed to ratepayers (*i.e.*, the Commission allowed the Company to retain a small amount of a refund as a bonus). There, the Court found that a utility retaining a refund owed to the Company's customers in effect retroactively raised customers rates, thus violating the constitutional prohibition on retroactive ratemaking. Returning the refund to ratepayers through reductions to future gas and electric rates was permissible.[78] Here, the Commission is ensuring that future rates reflect accurate costs. Just as it would be impermissible for the utility to retain any of the bonus at issue in *Colorado Office of Consumer Counsel* because doing so would in effect "retroactively raise rates paid by ratepayers" prior, to set prospective rates here without acknowledging the payments already received would be impermissible.

75. The matching principle generally requires ensuring the cost of service reflects the operational relationships and interplay between rate base, expenses, and revenues in a manner that is representative of the period when the resulting rates will be in effect.[79] However, Colorado courts recognize that a "blind adherence ... to the relationship between costs, revenue and average investment in the historic test period without weighing the factors involved with proper in-period and out-of-period adjustments would be erroneous."[80] Here, where the out-of-period adjustment has occurred and is known and measurable, it is common and acceptable practice to adjust the

[77] *Colorado Off. of Consumer Counsel v. Pub. Serv. Co. of Colorado*, 877 P.2d 867, 870 (Colo. 1994).
[78] *Id*.
[79] *See* Hr. Ex. 118, Johnson Rebuttal (Rev.1), p. 28:15-29:3.
[80] *Colo. Mun. League v. Pub. Utils. Comm'n. of State of Colo*., 687 P.2d 416, 423 (Colo. 1984).

revenue requirement accordingly.[81] Further, the Commission's decision is appropriate because it ensures rates are as accurate as possible. Colorado case law recognizes that rates must "accurately reflects the cost of service rendered."[82] Here, by adjusting the total amount that rolls into rate base to reflect revenues already received for this asset, the Commission is ensuring that rates are as accurate as possible.

b. Decision to Roll LM6000 Cost Recovery into Base Rates

76. In the Rate Case Decision, the Commission authorized the Company to roll into base rates the cost recovery associated with the LM6000. The Commission found the weighted average cost of capital of 6.02 percent applied in the 2016 Phase I Rate Case for this asset alone is obsolete and that rolling the cost recovery into base rates would be fair to BHCOE because the LM6000 is financed in the same way that all the Company's assets are financed.[83]

77. In its RRR Application, UCA argues that rolling these costs into base rates is unfair to ratepayers. UCA also contends that BHCOE changed the way the LM6000 was financed and did not request Commission approval to do so.[84]

78. The Commission denies UCA's RRR Application of this issue. As detailed in the Rate Case Decision, we find that it is appropriate to include cost recovery of the LM6000 in base rates because the capital structure established in the 2016 Rate Case was set for the initial years of operations[85] and because the Company's actual financing of the LM6000 is the same as the

[81] *See Pub. Serv. Co. of Colorado v. Pub. Utils. Comm'n. of State*, 26 P.3d 1198, 1206 (Colo. 2001) (adjustments made outside the test year may occur only when costs are known and measurable); *Mountain States Tel. & Tel.*, 576 P.2d at 552 (Out-of-period adjustments are those changes to costs, revenues, or investments that have "occurred or will occur, or [are] expected to occur after the close of the test year."),

[82] *Peoples Natural Gas v. Pub. Utils. Comm'n*, 193 Colo. 421, 567 P.2d 377 (1977); *Mountain States Telephone & Telegraph v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.12d 721 (1973).

[83] Rate Case Decision at ¶ 123.

[84] UCA RRR Application at p. 12.

[85] Decision No. C16-1140 at ¶ 41 issued in Proceeding No. 16AL-0363G on December 19, 2016.

financing for any of the Company's assets. We find no merit in UCA's argument that the Company changed the financing mechanism without approval from the Commission—we generally do not approve specific financing approaches, so long as the rates continue to reflect what the Commission approved.

79. We considered the refund of federal income taxes associated with the CACJA rider and the roll-in of LM6000 cost recovery together in the Rate Case Decision[86] and find that UCA has provided no compelling rationale to alter our overall decision establishing a new cost recovery mechanism for the LM6000 asset than previously utilized.

7. Treatment of Rate Case Expense Collections

80. BHCOE contends the Commission exceeded its authority when it found the Company had over-collected, and must therefore refund, $962,498[87] in rate case expenses from the 2016 Phase I Rate Case. BHCOE maintains that no tracker on rate case expense recovery was established in that proceeding and the Commission cannot, now, "rectify its omission by retroactively imputing a limitation on the Company's recovery of rate case expenses."[88]

[86] Rate Case Decision at ¶ 123.

[87] The Rate Case Decision references the rounded number used in Commission deliberations but the amount included in total rate case expenses in ¶ 143 of Decision No. C25-0183 is Staff's calculation of $962,498. *See* Hr. Ex. 500, Sigalla Answer (Rev 1.), p. 194:16-19.

[88] BHCOE RRR Application at p. 29.

81. BHCOE argues, in past rate cases when the Commission intended to limit recovery of amortized costs, it included specific directives that the utility must file for a rate decrease after the costs were amortized.[89] The Company points out that, in this Proceeding, the Commission has done that and clearly indicated when it is establishing a tracker.[90] BHCOE argues that, in contrast, the Commission included no such directives in the 2016 Phase I Rate Case decision. Instead, the 2016 Phase I Rate Case decision states:

> We are not inclined to adopt a process that could adjust further the GRSA resulting from this Proceeding for the purpose of reconciling actual incurred rate case expenses to the $550,000 amount. We direct Black Hills to provide actual rate case costs to date as an input to its cost of service model for the upcoming Technical Conference described below. However, the input amount will be limited to no more than the Company's estimate of $550,000 and shall be recovered over a three-year period.[91]

BHCOE argues that the finding of overcollection and required refund is arbitrary, is single issue ratemaking, and constitutes retroactive ratemaking.

82. In its RRR Application, UCA requests the Commission modify the Rate Case Decision to reflect a four-year amortization of rate case expenses, rather than the three-year amortization authorized in the decision. UCA raises that the Company, in its Rebuttal Testimony, expressly agreed to UCA's proposed four-year amortization.[92]

83. The Commission addresses BHCOE's request and UCA's request holistically. We grant BHCOE's RRR Application on the issue of the treatment of litigation expenses from the 2016 Rate Case,[93] and reverse the requirement that the authorized litigation expenses for this

[89] BHCOE RRR Application at p. 27 (citing to Decision No. C99-579 in Proceeding No. 98S-518G and Decision No. C01-231 in Proceeding No. 00S-422G).

[90] The Rate Case Decision at ¶¶ 143, 196, 207.

[91] Decision No. C16-1140 in Proceeding No. 16AL-0326E issued on December 19, 2016 at ¶ 143.

[92] Hr. Ex. 116, Harrington Rebuttal (Rev. 1), p. 73:11-18 and Hr. Ex. 118, Johnson Rebuttal (Rev. 1), p. 23:4-6.

[93] Commissioner Plant does not join in this portion of the Decision, noting that allowable recovery should be limited to the specified allowable expense.

Proceeding and previous proceedings be offset by $962,498. BHCOE is authorized to recover $184,000 for litigation expenses in this case and $2,046,898 for litigation expenses for Proceeding Nos. 17AL-0477E, 22A-0230E, and 23A-0357E. The total authorized recovery for these expenses is $2,230,898. We also grant UCA's request that the amortization period for rate case expenses be modified from three years to four years since as UCA points out, no party contested a four-year amortization period.

84. We are persuaded by BHCOE's arguments that the 2016 Phase I Rate Case decision does not specify that the recovery of litigation expenses for that proceeding should cease after three years, thus it would be inappropriate to make an adjustment in this Proceeding. We are, however, concerned that this circumstance of excess collections came about and note that we will be cognizant of this issue in future proceedings to ensure that ratepayers pay no more than the authorized litigation expenses.

85. We agree with UCA that because BHCOE agreed to a four-year amortization of rate case expense recovery, that is the appropriate amortization period.

8. Calculation of Depreciation Expense

86. BHCOE requests reconsideration of the Commission's decision that the Company's annual depreciation expense be based on a 13-month average calculation, in the same manner as the authorized 13-month valuation of rate base. BHCOE reiterates its arguments that depreciation expense is an actual expense necessary to the Company's operations and is unrelated to the valuation of rate base used to calculate a return on investments. The Company cites the testimony of its witness Ms. Johnson, which states as follows:

> A public utility is entitled to recover all of its prudently incurred expenses and a reasonable opportunity to earn its authorized return. Depreciation expense, along with other expenses necessary to operate and maintain the

> business, are included in the revenue requirement study because they are allowed to be recovered dollar for dollar, whereas rate base is relevant to the Company's authorized return. As indicated in the ratemaking formula, the allowed Rate of Return ("ROR"), or weighted-average cost of capital ("WACC"), is applied to the rate base -- whether calculated using the year-end or 13-month average method -- to derive the level of utility earnings included in the revenue requirement. In the ratemaking formula, annual depreciation expense is a direct expense amount in the revenue requirement the utility is entitled to recover.[94]

87. BHCOE further argues that in prior Proceeding Nos. 17AL-0429G[95] and 22AL-0426G[96] the Commission rejected UCA's arguments that year-end depreciation expense is inconsistent and inappropriate when a historical test year has been authorized. In Decision No. R18-0014, the Administrative Law Judge ("ALJ") hearing the matter concluded as follows:

> The ALJ rejects the [UCA's] proposed reversal of the pro forma adjustment to depreciation expense. In determining revenue requirement, a pro forma adjustment to depreciation expense to reflect known and measurable changes is appropriate. A known and measurable adjustment to expense levels to reflect changes that have or will occur up to one year after the end of the [historical test year] will not distort the relationship between investment, revenues, and expenses and will not violate the matching principle. Atmos witness Mr. Christian testified on rebuttal that over the course of the [historical test year], depreciation expense increased from the level experienced on average during the test year. There is no dispute about that fact. The *pro forma* adjustment to depreciation expense for known and measurable changes as of the end of the [historical test year] will reflect depreciation expense when the rates adjudicated in this case are in effect, and it is reasonable.[97]

88. BHCOE notes that in Decision No. R23-0336 in Proceeding No. 22AL-0426G, the ALJ hearing the matter rejected UCA's arguments and specifically found the method of calculating depreciation expense to be just and reasonable. The Commission denied UCA's exceptions on the issue in Decision No. C23-0456, finding the year-end method "fair and reasonable."[98]

[94] Hr. Ex. 118, Johnson Rebuttal (Rev. 1), pp. 37:18–38:6.
[95] This was an Atmos Energy Corporation rate case.
[96] This was a Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy rate case.
[97] BHCOE RRR Application at p. 32 (citing Decision No. R18-0014 at ¶ 109 in Proceeding No. 17AL-0429G (January 8, 2018)) (emphasis added).
[98] BHCOE RRR Application at p. 32 (citing Decision No. R23-0336 in Proceeding No. 22AL-0246G at ¶ 94 (May 30, 2023).

89. BHCOE points out that the case cited by UCA in which year-end depreciation expense was denied, the denial of year-end depreciation expense was based solely on the utility's failure to explain the depreciation expense adjustments.[99]

90. The Commission denies BHCOE's RRR Application on this issue. We reaffirm our decision that matching the rate base valuation with the depreciation expense period is appropriate, particularly when considering a balance of issues in this Proceeding. We are particularly convinced by UCA's argument that the Company failed to make matching annualization adjustments for customer counts nor the revenues to reflect year-end values, despite annualizing depreciation expense.[100]

9. Inclusion of Production Meters in Cost of Service Study

91. In this Proceeding, BHCOE included a cost of $683,297 for production meters in its cost of service study. Staff urges the Commission to disallow $525,474 of that cost, specifically, the portion of production meters associated with "Net Metering Only" customers who did not eventually opt-in for the "Production Based Incentive." In the Rate Case Decision, the Commission disallowed the full balance of BHCOE's production meters.

92. In its RRR Application, BHCOE requests the Commission reconsider this decision and allow the difference of $157,823 (between Staff's proposed disallowance of $525,474 and the Rate Case Decision disallowance of $683,297). BHCOE maintains the production meters for "Production Based Incentive" customers are needed to track Renewable Energy Credits ("RECs") from customers who participate in its Renewable Energy Standard plan, and that the production meter is the best way to track compliance with the State's renewable energy standard statutes.

[99] *See* Decision No. C23-0414 at ¶ 21 issued in consolidated Proceeding No. 22AL-0348G &23AL-0235G (June 21, 2023).

[100] UCA SOP at p. 28 (citing Hr. Tr. December 5, 2024 at p. 186).

93. The Commission denies BHCOE's RRR Application of this issue. BHCOE asserts that the production meter is the best way to track RECs, but as indicated in the Rate Case Decision, publicly available tools can also be used. At the direction of the Commission, Public Service has used PVWatts, a publicly available tool, to make REC payments for years.[101] As discussed in the Rate Case Decision, BHCOE has not demonstrated a use for these meters beyond that duplicative purpose. And while Staff specifically recommended the disallowance of those production meters associated with "Net Metering Only" customers, disallowance of the entire production meter balance is aligned with Staff's general assessment throughout its case that the production meters are collectively unnecessary, including for REC tracking.[102]

10. Disallowance of Long-Term Incentive Plan ("LTIP")

94. BHCOE requests the Commission reconsider its decision to disallow LTIP entirely and instead authorize inclusion of 50 percent of these costs. BHCOE explains that LTIP is awarded as restricted stock and performance share awards to executives at the vice president level and above. BHCOE states this program is intended to motivate employees to make significant contributions to the success of the Company and provide competitive compensation to attract and retain talent. BHCOE raises, for contrast, that the Commission allowed recovery of 50 percent of LTIP in prior Proceeding Nos. 19AL-0075G, 21AL-0236G, and 23AL-0231G.[103]

95. The Commission denies BHCOE's RRR Application of this issue. BHCOE provides no evidence that LTIP has led to employee retention nor that ratepayers benefit from LTIP. We note that of the three previous cases cited by BHCOE in which the LTIP was allowed for cost recovery, two were settled cases in which Staff and the UCA had initially

[101] Hr. Ex. 507, Dalton Answer, p. 21:9-16.
[102] *Id.* at pp. 5:20-6:3; 6:12-6:14.
[103] These were Black Hills Colorado Gas, Inc., doing business as Black Hills Energy rate cases.

recommended denying costs associated with LTIP. We have also denied recovery of these costs in recent Public Service rate cases.[104]

11. Disallowance of Severance Costs

96. BHCOE contends there is no precedent for the Commission's decision to disallow severance costs and requests the Commission thus reconsider this determination. BHCOE states the Commission has never disallowed all employee severance expenses from recovery and that disallowing them, now, is an unreasonable and arbitrary decision.[105] BHCOE maintains these expenses are a part of normal course of business, are prudently incurred costs consistent with industry practice, and have been found prudent by the Commission for decades. The Company objects to the Commission's rationale, that these expenses are within the utility's control, countering that severance costs are a necessity in both the private and governmental sectors.

97. The Commission grants BHCOE's RRR Application of this issue.[106] We agree with the Company's argument that these expenses are a part of normal course of business and are consistent with industry practice.

12. Requested Trackers

a. Insurance Cost Trackers

98. BHCOE requests the Commission reconsider its denial of a tracker for insurance costs, contending this denial is inconsistent with the Commission's authorization of a tracker for property taxes. BHCOE contends its insurance expenses have varied considerably from

[104] *See* Decision No. C24-0778 at ¶ 149, issued in Proceeding No. 24AL-0049G on October 25, 2024 (disallowing all LTIP expenses); Decision No. C23-0592 at ¶ 53 issued in the consolidated Proceeding No. 22AL-0478E & 22AL-0530E on September 6, 2023 (the Commission accepted a settlement that allowed only partial recovery of LTI).

[105] BHCOE RRR Application at p. 34.

[106] Commissioner Gilman does not join in this portion of the Decision.

year to year and are a cost outside the Company's control, noting the Company's premium on renewal in July 2024 increased by 155 percent.[107]

99. In the Rate Case Decision, the Commission agreed with UCA and Staff, who advocated for denial of this tracker. Staff countered that BHCOE does have control over property insurance expenses because it can manage the perceived risk that could lead to increases in insurance costs; for example, it can take steps such as vegetation management to reduce risk. The Commission agreed with that rationale, finding ultimately that BHCOE had not demonstrated these costs are extraordinary or strictly pass-through costs that could be included in a rate review proceeding.

100. The Commission denies BHCOE's RRR Application of this issue. The Company's testimony regarding the proposed property insurance tracker is confusing and inadequate to support creation of a tracker. In its RRR Application BHCOE states that its excess liability coverage premium renewed in July 2024 had increased by 155 percent[108] but that appears to be the amount for BHC as an overall organization.[109] BHCOE's testimony on the proposed tracker indicates that while insurance costs have varied since 2018, and the increase from 2023 to 2024 was 43 percent, the year over year variations for previous years were about five percent, or less.[110] BHCOE has not demonstrated that a single year's change is indicative of continued volatility that warrants the creation of a tracker.

b. Greenhouse Gas ("GHG") Fees Tracker

101. BHCOE requests the Commission reconsider the denial of a tracker for the Company's GHG fees required under the Environmental Justice Act,

[107] BHCOE RRR Application at p. 35.
[108] BHCOE RRR Application at p. 35.
[109] Hr. Ex. 118, Johnson Rebuttal (Rev.1), p. 49:1-3.
[110] Hr. Ex. 118, Johnson Rebuttal (Rev.1), p. 61, Table SKJ-5R.

Colorado House Bill 21-1266. The Company argues that since these fees are imposed by a state agency, they are conceptually indistinguishable from Colorado Public Utilities Commission fees.[111]

102. The Commission denies BHCOE's RRR Application of this issue. In its Direct Testimony, the Company states that its first annual GHG Fee of $44,000 was paid in July 2024[112] but provides no additional information as to why, after one year's evaluation of the fees, the Company has determined that a tracker is necessary.

103. The Commission's decision to deny BHCOE's RRR Application regarding the implementation of a GHG tracker and a property insurance tracker is consistent with the Commission's Rate Case Decision. Generally, Trackers are employed for "certain material expenses in a utility's cost of service/revenue requirement study that vary substantially and unpredictably from year to year and are thus significantly more volatile than other expenses tracked in the utility's records."[113] Trackers facilitate the reconciliation of under- and over-collections in future rate cases. Only in certain instances is the extraordinary treatment of a tracker a reasonable cost recovery approach, and the degree to which the Company has control over the expenses is a relevant factor.[114]

104. These decisions are consistent with each other—those categories in which the Company largely lacks control over the expense category and in which the costs could change year over year were granted a tracker. Other categories in which the Commission found that the Company had a degree of control over the costs or otherwise did not prove that the costs were volatile or highly variable were denied. Here, the Commission declined to institute trackers for

[111] Black Hills RRR Application at p. 35.
[112] Hr. Ex. 101, Harrington Direct (Rev. 1), p. 103:9-12.
[113] *See* Decision No. R21-0748 at ¶ 63 issued in Proceeding No. 21AL-0236G on November 23, 2021.
[114] *See* Staff SOP at p. 45 (citing Hr. Tr. December 3, 2024, 191:22-192:3).

property insurance expenses, vegetation management, rate case expenses, customer communication and education planning, and GHG expenses.[115] The Commission did institute a tracker for PUC administrative fees and property taxes.[116]

13. Rate Mitigation

105. UCA requests the Commission reverse its decision to accept a rate mitigation strategy that applies a uniform 10.13 percent increase across all rate classes, except the Large Power Service Transmission. UCA contends this strategy was not presented during the evidentiary hearing and that intervenors were therefore denied due process. UCA objects to the shift of $600,000 to the Residential and Small General Service classes.[117]

106. UCA notes that BHCOE had proposed a 13.99 percent increase across all rate classes in its Rebuttal Testimony and Staff opposed any rate mitigation. UCA suggested that by using its proposed Class Cost of Service Study ("CCOSS"), rate mitigation would be unnecessary.[118]

107. UCA argues that the rate mitigation authorized by the Commission was first proposed during the technical conference, held after the evidentiary record was closed. UCA argues that the Commission violated the Colorado Administrative Procedure Act, which requires all parties be accorded due process,[119] and is contrary to the Colorado Supreme Court's

[115] Rate Case Decision at ¶ 203 (insurance expenses), ¶ 211 (GHG fees), ¶ 215 (vegetation management), ¶220 (customer communication).
[116] Rate Case Decision at ¶ 200 (property taxes); ¶ 207 (PUC administrative fees).
[117] UCA RRR Application at pp. 13-15.
[118] *Id.* at 16.
[119] UCA RRR Application at p. 15 (citing § 24-4-105(1), C.R.S.).

holding that the Commission can base a ruling on information gained on its own initiative, but that information must be included in the record and be subject to party comment.[120]

108. UCA recommends the Commission reverse its decision on this point and instead adopt UCA's CCOSS, which would require no rate mitigation.

109. The Commission denies UCA's RRR Application of this issue. We found no compelling reason to accept UCA's proposed CCOSS, and we find no reason to accept the CCOSS now. The authorized rate mitigation strategy aligns with our discussions regarding balancing rate increases for residential customers with moderating increases for larger businesses, which was fully adjudicated before the evidentiary record closed. Parties had abundant opportunities to discuss and respond to the merits of implementing rate mitigation through testimony and hearing.

110. The Commission has ample ability to design rates as it sees fit, and because the Commission has an independent duty to determine matters that are within the public interest, the Commission is not bound by the proposals of the parties. The Commission may do what it deems necessary to assure that the final result is just, reasonable, and in the public interest, provided the record supports the result, and provided the reasons for the policy choices made are stated. The Commission need not be bound to only those choices proposed by parties. Here, after seeing the implementation results (analysis which the Commission received through a technical conference for convenience), it adjusted during deliberations at the March 5, 2025 CWM its initial decision. It did not do so based on new evidence, only a presentation of final figures at the technical conference implementing its initial deliberations. It based its decision not on the presentation at the technical conference, but on the policy evidence presented in the record. Further, the

[120] *Id.* (citing *Colo. Energy Advocacy Off. v. Pub. Utils. Comm'n*, 704 P.2d 298, 304 (1985) ("[t]he PUC may obtain information on its own investigation [but the Commission must] place all information under consideration in the public record and provide an opportunity for the parties to comment thereon.")).

Commission was not limited only to those rate mitigation strategies presented by the parties—as it did here, it could go with a different approach if needed to assure the final result is in the public interest.

14. Continuance of Inclining Block Rates

111. In this Proceeding, BHCOE proposed to eliminate its existing inclining block rate structure and move to a default flat rate. Energy Outreach Colorado opposed this shift and recommended the Commission instead retain the inclining block structure.[121]

112. In the Rate Case Decision, the Commission found Energy Outreach Colorado's position persuasive and therefore directed BHCOE to maintain the inclining block structure as it exists currently. The Commission agreed with the concerns raised by Energy Outreach Colorado that eliminating this structure could have the unintended effect of making it more difficult for income qualified customers to manage their bills by conservation.[122] Commissioner Gilman dissented from this portion of the decision on grounds that this inclining block structure is inconsistent with both the concept of cost causation and the State's policy goals. She also concluded that the record did not support this finding that inclining block rates offer this benefit to income qualified customers nor that an extension of such rates to the larger customer base as a default rate has been shown to be appropriate or beneficial.[123]

113. In its RRR Application, BHCOE reiterates in large part the concerns and rationale of Commissioner Gilman's dissent and contends the evidence shows that inclining block rates actually have the effect of causing harm to income qualified customers.

[121] Rate Case Decision at ¶ ¶ 253-257 (discussing party positions).
[122] Rate Case Decision at ¶ 258.
[123] Rate Case Decision Dissent at ¶¶ 4-5.

114. The Commission denies BHCOE's RRR Application of this issue. We continue to have concerns about the impact that eliminating the inclining block rate structure could have on income-qualified customers and note that inclining block rates provide not only a benefit to customers who use less energy, but also a strong incentive to reduce intensity of electricity usage. The inclining block rate structure is well-established and provides an easy-to-understand way for customers to achieve bill savings. While we recognize the concern that inclining block rates could act as an impediment to beneficial electrification, customers can opt in to BHCOE's time-of-use tariffs as another way to reduce their bills.[124]

15. Required Data Retention

115. BHCOE objects to the directive in the Rate Case Decision that BHCOE revise its tariff sheets to reflect a policy of retaining data for ten years on grounds that this directive is ambiguous and overbroad. BHCOE requests the Commission reverse its directive or, at minimum, narrow its application. BHCOE explains that Staff requested this data retention directive because BHCOE had been unable to respond to several of its discovery requests in this Proceeding; BHCOE contends this was an issue limited to discovery in this Proceeding and does not warrant this new data retention policy. BHCOE further objects that no existing Commission rule requires that data be retained for ten years. BHCOE also raises concern that data retention, whether in physical or digital form, is costly and will therefore have the unintended consequence of leading to higher rates for customers.

116. We agree that Staff's proposed tariff language is unclear and grant BHCOE's RRR Application on this issue. We reverse the requirement that BHCOE file tariff sheets with a data

[124] Commissioner Megan M. Gilman dissents from this portion of the Decision, and reiterates concerns raised in the Dissent of Commissioner Gilman in the Rate Case Decision.

retention policy. However, we acknowledge that access to historical data is important and therefore direct Staff and BHCOE to establish parameters on data retention by the Company and in what form it should be retained. Staff and BHCOE shall, together or separately, include a proposed tariff terms for data retention, with supporting testimony, in BHCOE's next Phase I or Phase II rate review filing.

16. Clarifications

a. Disallowance of Travel Expenses

117. In the Rate Case Decision at ¶ 125, the Commission states that BHCOE removed travel expenses that were associated with the development and review of testimony for this Proceeding. In its RRR Application, UCA requests the Commission clarify that *all* travel expenses associated with this Proceeding are disallowed. Specifically, UCA raises that the revenue requirement study provided by BHCOE in the technical conference for this Proceeding included $30,041 for "Other Rate Case Expenses" of $30,041.[125]

118. The Commission grants UCA's RRR Application regarding this issue. We find it unclear in BHCOE's revenue requirement study[126] whether any additional travel expenses remain. To clarify, to the extent any such expenses were previously included, they should be removed to comply with the Commission's findings and directives in the Rate Case Decision.

b. Calculation of Total Litigation Expenses

119. UCA suggests there is an error in the calculation of total litigation expenses in ¶ 145 of the Rate Case Decision. The Rate Case Decision states an amount of $184,000 is authorized for litigation expenses for this Proceeding and $2.0 million is authorized for litigation expenses for

[125] Hr. Ex. 205, BHCOE RRS, Schedule H-11(a).
[126] *Id*.

Proceeding Nos. 17AL-0477E, 22A-0230E, and 23A-0357E. The Rate Case Decision states these amounts are to be offset by $962,000 in overcollection of litigation expenses in Proceeding No. 16AL-0326E. UCA points out this totals to $1,222,000, not the $1,268,400 figure in ¶ 145 of the Rate Case Decision. UCA notes that BHCOE witness Ms. Johnson included $2,046,898 as the total for litigation expenses from prior proceedings.

120. The Commission grants UCA's RRR Application of this issue. We clarify the rounded numbers used in ¶ 145 of the Rate Case Decision are the numbers the Commission conceptually discussed in its deliberation of an appropriate method for addressing these expenses. The numbers the Commission referenced in deliberations are the amounts found in the evidentiary record. Specifically, Staff witness Ms. Sigalla calculated the excess collection of expenses from the 2016 Phase I Rate Case as $962,498[127] and as UCA notes, BHCOE witness Ms. Johnson included $2,046,898 as total litigation expenses from prior proceedings.[128] While we grant this clarification and acknowledge the error in the Rate Case Decision, as noted above in Paragraph 83 above, the total litigation expense recovery authorized this Proceeding and previously authorized proceedings is $2,230,898.

121. UCA also notes a typographical error in at ¶ 144 of the Rate Case Decision, where the amount for litigation of prior proceedings is indicated to be $2.4 million, contrary to the $2.0 million included in the calculation in ¶ 145 of the Rate Case Decision.

[127] Hr. Ex. 500 , Sigalla Answer (Rev. 1), p. 194:16-19.
[128] Hr. Ex. 118, Johnson Rebuttal (Rev. 1), p. 23:7-13.

122. To correct this error, we modify ¶ 144 of the Rate Case Decision to indicate that $2,046,898 was authorized for litigation expenses for prior proceedings, resulting in the following modified language for this paragraph:

> We also agree with the Company that the Commission authorized litigation expense recovery for the previous proceedings as the Company has proposed, and confirm that BHCOE may recover $2,046,898 million associated with litigation expenses for Proceeding Nos. 17AL-0477E, 22A-0230E, and 23A-0357E.

c. Inclusion of Prepaid Pension and Retiree Medical Assets in Rate Base

123. Staff requests the Commission clarify that recovery of 2024 pension and retiree medical expense is appropriate in the cost of service and prepaid pension and retiree medical assets and liabilities should not be included in rate base and earn a weighted average cost of capital return. Staff thus requests the Commission revise ¶¶ 193-196 of the Rate Case Decision so that the record is clear on recovery of pension and healthcare expenses in the cost of service.

124. Staff contends that BHCOE did not include prepaid pension and retiree medical assets and liabilities in rate base in its last rate review and suggests Paragraph 193 of the Rate Case Decision be modified to remove the statement that the Company asserted that including the prepaid pension and retiree medical assets and liabilities is consistent with prior Commission decisions:

> 193. BHCOE requests recovery of the *pro forma* 2024 accrual amounts recorded for net periodic pension expense and net periodic retiree healthcare expense. The Company also proposes the addition of the pension and retiree healthcare regulatory assets and liabilities in the rate base calculation, as well as the associated balance sheet tax impacts. ~~The Company asserts, this approach is consistent with prior Commission decisions.~~

125. We deny Staff's proposed modification of Paragraph 193. BHCOE witness Stevens explains in his Rebuttal Testimony that the Company made a similar request that was granted in Proceeding No. 23AL-0231G.[129]

126. Staff suggests it would be appropriate to acknowledge the Company's request for the prepaid pension and retiree medical assets and liabilities to be included in rate base in Paragraph 194, suggesting that Paragraph 194 be modified as follows:

> 194. Accordingly, BHCOE requests the inclusion of $373,582 in pension related costs and $352,293 in retiree healthcare-related costs in its revenue requirement. BHCOE also requests, for the first time, inclusion of $962,680 in pension and retiree medical assets and liabilities in rate base to earn a WACC return.

127. We decline to accept this modification to Paragraph 194, as BHCOE witness Stevens addresses this in his Rebuttal Testimony.[130]

128. Staff suggests that Paragraph 195 seems to conflate recovery of the 2024 pension and retiree medical expense in the cost of service with including the prepaid pension and retiree medical assets and liabilities in rate base. Staff suggests clarifying that the 2024 pension and retiree healthcare expense is actuarily determined and recovers the annual cost of these benefits; Staff agrees the cost of service should use these costs. However, Staff explains that neither Staff nor the Company recommended including 2024 pension and retiree medical expense in rate base with the WACC return. Additionally, Staff reiterates its recommendation against including $962,680 for the prepaid pension and retiree medical assets and liabilities in rate base.

129. Staff notes that Paragraph 196 references including 2024 pension and retiree medical expense in rate base and suggests clarifying language that these costs are not to be included in rate base because they are not properly included in the definition of rate base.

[129] Hr. Ex. 119, Stevens Rebuttal (Rev. 1), pp. 28:6-29:2.
[130] *Id.*

130. Accordingly, Staff suggests Paragraphs 195 and 196 be modified as follows:

> 195. Staff ~~dis~~agrees with the inclusion of the 2024 pension and retiree medical expense in ~~rate base~~ the cost of service and suggests implementing a tracker mechanism with true-up ~~will~~ to prevent over- or under-recovery. Staff contends this will help both the Company and ratepayers in projecting these types of costs and dealing with volatility year to year. Staff also expresses concerns about the actuarial study used to determine the expense as it appears there has been an over-recovery since the last rate case. Staff notes that the Company agreed with this proposal in Proceeding No. 19AL-0075G. Staff disagrees with inclusion of prepaid pension and retiree medical assets and liabilities in rate base, with the associated WACC return. Staff contends that these assets are not being used to render the service of producing and delivering electricity to its customers and therefore ratepayers should not be responsible for paying more for pension and retiree medical funding than the Company requests at each rate case.
>
> 196. We authorize recovery of costs related to the 2024 pension and retiree medical expense ~~in rate base~~ and approve a tracking mechanism, with no associated return, to be used to true-up the expenses to prevent over- or under-recovery and help both the Company and ratepayers in dealing with volatility year to year. The baseline amount shall be $725,284, comprising $372,991 for pension expense and $352,293 for retiree medical expense. The dollars requested to be included in a prepaid pension and retiree medical asset and liability are not being used to render the service of producing and delivering electricity to customers and should not be included in rate base.

131. We agree with the clarification that Staff agrees with the inclusion of the 2024 pension and retiree medical expense in the cost of service, not rate base, and a tracker to prevent over- or under-recovery. However, we reject Staff's proposed additional statements; we have addressed Staff's opposition to include the prepaid pension and retiree medical assets and liabilities in Paragraph 21 of this Decision. We also note that Staff's Answer Testimony does not include the discussion of whether these assets are used in the production or distribution of electricity.

132. We find that Paragraphs 193 and 194 of the Rate Case Decision shall not be modified. Paragraphs 195 and 196 shall be modified as follows:

> 195. Staff agrees with the inclusion of the 2024 pension and retiree medical expense in the cost of service and suggests implementing a tracker mechanism with true-up to prevent over- or under-recovery. Staff contends this will help both the Company and ratepayers in projecting these types of costs and dealing with volatility year to year. Staff also expresses concerns about the actuarial study used to determine the expense as it appears there has been an over-recovery since the last rate case. Staff notes that the Company agreed with this proposal in Proceeding No. 19AL-0075G.
>
> 196. We authorize recovery of costs related to the 2024 pension and retiree medical expense and approve a tracking mechanism, with no associated return, to be used to true-up the expenses to prevent over- or under-recovery and help both the Company and ratepayers in dealing with volatility year to year. The baseline amount shall be $725,284, comprising $372,991 for pension expense and $352,293 for retiree medical expense.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0183, filed on April 7, 2025, by Black Hills Colorado Electric, LLC, doing business as Black Hills Energy ("BHCOE"), is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0183, filed on April 7, 2025, by Trial Staff of the Commission, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0183, filed on April 7, 2025, by the Office of the Utility Consumer Advocate, is granted, in part, and denied, in part, consistent with the discussion above.

4. BHCOE shall file an advice letter compliance filing to modify the tariff sheets in its Colorado P.U.C. No. 11 Tariff consistent with the findings and directives in this Decision. BHCOE shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

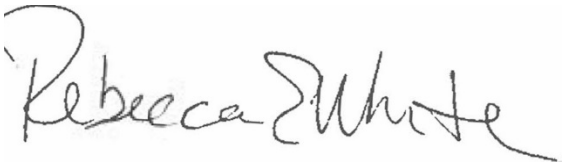
5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

6. This Decision is effective upon its Issued Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 23, 2025.

(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