Decision No. R25-0761

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0062E

IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR APPROVAL OF ITS 2025 DISTRIBUTION SYSTEM PLAN

RECOMMENDED DECISION APPROVING PARTIAL SETTLEMENT AGREEMENT, GRANTING APPLICATION AS AMENDED BY SETTLEMENT, GRANTING REQUEST FOR RULE WAIVER, AND SHORTENING RESPONSE TIME TO EXCEPTIONS

Issued Date: October 22, 2025

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I. STATEMENT

1. On January 31, 2025, Black Hills Colorado Electric, LLC ("Black Hills" or "Company") filed its Application ("Application") for Approval of its 2025-2029 Distribution System Plan ("DSP"). Concurrently, the Company filed a motion seeking certain waivers of

Commission Rules 3530, 3531(a)(II)(A-F), 3532(d)(I)(D) and (E), 3533(a), 3534, 3537 and 3541, 4 *Colorado Code of Regulations* ("CCR"), 723-3. On July 9, 2025, the Parties in this Proceeding filed a Partial Settlement Agreement ("Partial Settlement Agreement") that resolves all their concerns in this Proceeding except for the Company's request for a waiver of Commission Rule 3531(a)(II), and an Unopposed Motion to Approve the Partial Settlement Agreement ("Motion").

2. Through this Recommended Decision, the Hearing Commissioner grants the Motion to Approve the Settlement Agreement, approves the Partial Settlement Agreement (attached to this Decision as Appendix A), and grants the Application as amended by the Partial Settlement Agreement. The Hearing Commissioner also grants the Company's request for a waiver of Commission Rule 3531(a)(II).

3. Additionally, throughout this Proceeding the Hearing Commissioner and the Parties have discussed approaches to limiting the Company's capital spending for its distribution system. This Recommended Decision continues that discussion and directs that the Recommended Decision be served on the local governments and agencies who represent Black Hills electric customers, but does not require adoption of any particular approach to limit distribution system capital spending.

II. PROCEDURAL HISTORY

4. The Company filed its Application and Motion seeking certain waivers of Commission Rules on January 31, 2025, along with direct testimonies.

5. By Decision No. C25-0221-I, issued March 25, 2025, the Commission set the matter for hearing, acknowledged the interventions as of right filed by the Trial Staff of the Colorado Public Utilities Commission ("Staff") and the Colorado Office of the Utility Consumer

Advocate ("UCA"), and designated Commissioner Eric Blank as Hearing Commissioner for this Proceeding pursuant to § 40-6-101(2), C.R.S.

6. In Decision No. R25-0258-I, issued April 4, 2025, Hearing Commissioner Eric Blank scheduled a prehearing conference and ordered the Company to provide supplemental direct testimony and additional filings, including a customer bill impact analysis over the next twenty years, through 2045. The prehearing conference was held on April 24, 2025, at 11:00 a.m., and included discussion between the Parties and the Hearing Commissioner regarding supplemental direct testimony requirements and additional filings required by Decision No. R25-0258-I.

7. Through Decision No. R25-0332-I, issued May 1, 2025, the Hearing Commissioner adopted a stipulated procedural schedule, discovery procedures, and provided additional guidance for supplemental direct testimony.

8. Black Hills filed Supplemental Direct Testimony on May 12, 2025.

9. On May 30, 2025, Answer Testimony was filed by Staff and UCA. Rebuttal Testimony was filed by Black Hills on June 23, 2025.

10. Through Decision No. R25-0504-I, issued July 3, 2025, the Hearing Commissioner extended the settlement deadline in the procedural schedule from July 2, 2025, to July 9, 2025.

11. On July 9, 2025, Black Hills filed the Motion and the Partial Settlement Agreement, stating that testimony in support of the Partial Settlement Agreement and any further testimony addressing its waiver request of Rule 3531(a)(II)—the single contested issue among the Parties involving DSP hosting capacity analysis and maps—would be filed by July 16, 2025, and requested in the Motion that the second day of the scheduled hearing, July 25, 2025, be vacated.

Through Decision No. R25-0516-I, the Hearing Commissioner vacated the second day of the scheduled hearing.

12. On July 16, 2025, Black Hills, Staff, and UCA filed testimony in support of the Partial Settlement Agreement and addressing the waiver request of Rule 3531(a)(II).

13. Due to the Partial Settlement Agreement, the Motion requests that the procedural schedule be modified. Black Hills states that it plans to file, and any of the Parties may file, testimony in support of the Partial Settlement Agreement by July 16, 2025, and that the Parties may also address the waiver request of Rule 3531(a)(II). The Motion requests that the hearing scheduled by Decision No. R25-0332-I for July 24 and 25, 2025, be scheduled for one day on July 24, 2025. The Motion requests that the rest of the procedural schedule be vacated.

14. On July 24, 2025, the Hearing Commissioner held an evidentiary hearing on the Partial Settlement Agreement, the single contested issue among the Parties, and the issue of the Company's capital spending level going forward. During the hearing the Hearing Commissioner requested the Company to file revisions to the Revenue Requirement Forecast that was submitted in the Company's Supplemental Direct Testimony.

15. On August 6, 2025, Black Hills filed revisions to the Revenue Requirement Forecast that was submitted in the Company's Supplemental Direct Testimony.[1]

16. On August 29, 2025, statements of position were filed by UCA and jointly by Staff and Black Hills.

[1] With Black Hills' filing of revisions to the Revenue Requirement Forecast on August 6, 2025, the evidentiary record in this Proceeding is closed.

17. Pursuant to § 40-6-109, C.R.S., the Hearing Commissioner now transmits to the Commission the record and exhibits in this Proceeding along with a written recommended decision.

III. SETTLEMENT AGREEMENT AND TESTIMONY

18. All of the Parties in this Proceeding entered into the Partial Settlement Agreement. The Parties agree this settlement resolves all their concerns in this Proceeding, except for whether the Commission should grant the Company's request for a waiver to Commission Rule 3531(a)(II) addressing requirements for hosting capacity analysis and mapping.

19. The Parties agree the Commission should approve the Company's proposed DSP and grant the requested waivers, except the Parties do not agree on the waiver of Rule 3531(a)(II). The Parties also agree that Black Hills should be permitted to create a regulatory asset to recover the costs associated with this DSP in a future rate case, estimated by the Company to be approximately $15,000, which will accumulate without carrying costs while awaiting future recovery. Further, the Parties agree that the Company will include certain information in its next DSP that will be filed in January of 2027.

20. Specifically, under the Partial Settlement Agreement, the parties agree that the Commission should grant the Company's request for a waiver to Commission Rule 3530(a) which requires the Company to prepare a demand forecast for each year within the ten-year forecasts for load growth on the distribution grid, including growth of beneficial electrification and various types of DERs connected to the distribution forecast. Under the Partial Settlement Agreement, the Company will file its next ERP/CEP in 2026, and the Company shall use this forecast in the 2027 DSP.[2]

[2] Partial Settlement Agreement ¶ B.1.

21. The Parties agree the Commission should grant the Company's request for a waiver to Rule 3532(d)(I)(D) and (E) requiring an executable map. The parties agree the Company will continue to update its non-executable map and map it available to developers who sign a non disclosure agreement ("NDA").[3]

22. The Parties agree the Commission should grant the Company's request for a waiver to Rule 3533(a) regarding grid innovation and pilots and that the Company will not offer any pilots or programs as part of this DSP. Under the Partial Settlement Agreement, the Company commits it will examine in good faith the availability and practicality of a non-wires alternative ("NWA") or a distributed energy resource ("DER") pilot and provide its findings in its next DSP.[4]

23. The Parties agree the Commission should grant the Company's request for a waiver to Rule 3534 that requires the Company to develop, publish and apply a cost benefit method to assess the cost-effectiveness of NWA solutions and Rul 3537 that requires the Company to propose an NWA solicitation process, as no Major Distribution Projects have passed the criteria for a NWA alternative and there is no need for a Phase II in this proceeding.[5]

24. The Parties agree the Commission should grant the Company's request for a waiver to Rule 3541 that requires the Company to present a proposal and timeline for implementation of a public/private web portal, with the exception that UCA contends Black Hills should be present a proposal to provide its hosting capacity analysis and map on a public web portal in its next DSP.[6]

25. The Parties also agree that in the Company's next DSP, Black Hills will include identification of the distribution feeder with respective reliability metrics of System Average Interruption Duration Index ("SAIDI"), System Average Interruption Frequency Index ("SAIFI"),

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[3] Partial Settlement Agreement ¶ B.3.
[4] *Id.*, ¶ B.4.
[5] *Id.*, ¶¶ B.5, B.6.
[6] *Id.*, ¶¶ B.2, B.7.

and Customer Average Interruption Duration Index ("CAIDI") serving particular service points, in addition to providing the distribution feeders with respective reliability metrics of SAIDI, SAIFI, and CAIDI that exclusively serve 1) DI Communities, 2) non-DI Communities and 3) serve both DI Communities and non-DI Communities.[7] The Company believes this will allow for comparison to be made at both the distribution feeder but also between individual premises and specific distribution feeders.[8] To address reporting at the Census Block Group level, Black Hills commits to providing a latitude/longitude analysis at the service point, and in its next DSP, the Company commits to providing what would be require to provide Census Block level information.[9]

26. In the Partial Settlement Agreement, the Parties agree to a Non-Wire Alternative Performance Based Mechanism ("NWA PBM") with 8 percent/15 percent customer/Company sharing, a $100,000 annual cap, and that any PBM sharing be recognized in the Company's next Phase I rate case.[10] Staff contends that an 85:15 split in combination with the cap and rate case assessment is reasonable because customers would get to keep the vast majority of the savings with reduced risk of manipulation to the performance based mechanism.[11]

27. The Parties also agree that the Company will provide reporting on outreach in its next and future DSP Plans that: identify participating Community Based Organizations ("CBO") and community leaders in DI Communities; disclose any compensation paid to any CBO; provide a list of identified priorities and interests; provide a list of programs and projects developed based on engagement efforts or that otherwise address the concerns raised in outreach efforts; and provide a list identifying prioritized benefits to DI communities that addresses equity, identifies

[7] Partial Settlement Agreement ¶ 11.
[8] Hr. Ex. 107, Harrington Settlement Testimony at 15:15-17.
[9] Partial Settlement Agreement ¶¶ 11, 12.
[10] *Id.*, ¶ 13.
[11] Hr. Ex. 403, Turner Settlement Testimony at 12:14-17.

where the impacts have been minimized, and names historical inequalities of that community that are being addressed.[12]

28. Finally, the Parties agree that if the miscellaneous proceeding opened in accordance with directives in Proceeding No. 24A-0296E is for electric utilities in addition to Public Service Company of Colorado, Black Hills will actively participate. The Company will also provide updates in future DSP filings regarding the implementation of programs and investments associated with its wildfire mitigation plan.[13]

IV. RULE 3531(A)(II) WAIVER REQUEST

29. The Company requests a waiver of Rule 3531(a)(II), which addressed requirements for hosting capacity analysis and mapping. Staff supports this waiver request. Black Hills and Staff propose that Black Hills will provide a detailed updated cost estimate in its next DSP filing for the development of the hosting capacity analysis and map, at which time the Company would have the option of requesting a waiver to the rule requirement.[14]

30. Black Hills explains that in its July 2024 Report in its last DSP, it estimated that the cost to develop the hosting capacity analysis and map will be approximately $300,000. It contends that the actual costs will likely be higher due to rising inflation since 2024, and because the estimate includes only costs related to the hosting capacity and mapping, not the costs for a web portal or how the hosting capacity map would be made available for outside access from developers. Black Hills explains that it does not have an estimate for these additional costs, but it believes the ultimate costs would be considerably higher than $300,000.

[12] Partial Settlement Agreement ¶ 14.
[13] *Id.*, ¶ 15.
[14] Partial Settlement Agreement ¶ B.2; Hr. Ex. 403, Turner Settlement Testimony at 13:14-17.

31. Black Hills contends that given the significant cost for the hosting capacity project, the project is not necessary or justified. It states it has efficiently integrated DERs onto its system without the project, and that there are much less expensive ways of meeting the intent of Rule 3531(a)(II). The Company explains that it has developed a confidential map of its distribution system that displays its overhead and underground distribution feeders and substation locations, which can be viewed using Google Earth. This map is available to Staff and UCA, as well as any party with a business interest that signs an NDA.[15] Black Hills states it can also provide relevant information to developers on an ad hoc basis. It states that the non-executable map along with a good working relationship with developers makes a hosting capacity project with a significant cost unnecessary.[16]

32. The Company acknowledges that a hosting capacity analysis can have benefits for many larger utilities that have millions of customers. However, because Black Hills serves little more than 100,000 customers, the Company states that hosting capacity analysis and mapping is a "nice-to-have," not a "need-to-have."[17] Black Hills and Staff also emphasize that the waiver request is for the purpose of this proceeding only. In its next DSP filing, the Company would provide the updated costs and may seek a waiver of the requirement on the basis that the costs exceed the benefits.[18]

33. UCA argues that the Company should be required to develop the hosting capacity analysis and map to be presented in the Company's next DSP filing. UCA claims that Black Hills's cost estimate of $290,157 to develop the hosting capacity analysis and map is the highest in the Company's range of $68,675 to $290,157, and that the web portal cost estimates are not all specific

[15] Black Hills and Staff Joint Statement of Position, p. 5.
[16] *Id.*, p. 6.
[17] *Id.* p. 6.
[18] *Id.*, p. 8.

to hosting capacity development and mapping.[19] UCA also contends the cost estimate fails to consider the benefits such information would provide itself and to its customers. UCA argues that the result of not having a host capacity analysis and map is that solar cannot be more efficiently sited, which delays interconnection and increases costs to developers and to the Company.[20]

34. UCA also contends that a hosting capacity analysis and map is one of the most important steps a utility can take to efficiently integrate DER and inform the Company's distribution system plan, which is salient to concerns discussed in this Proceeding regarding capital spending for distribution investments. UCA argues that the Company's waiver request does not demonstrate good cause because it fails to consider the broadly recognized benefits of hosting capacity analysis planning as a crucial element for overall distribution planning, including potentially siting DERs and NWAs, but also providing valuable insights to inform determinations on system investments.[21]

35. Staff opposes UCA's position for two reasons. First, Staff explains the majority of Black Hills customers are in DI communities, and contends that without understanding these communities' needs, requiring hosting capacity analysis and mapping is putting the cart before the horse. Staff instead recommends the Company take time to understand the needs of its customers before engaging in such projects.[22] Second, Staff highlights that the Company estimates the cost of the hosting capacity analysis at about $290,157, and the cost of developing a web portal to implement the hosting capacity analysis and associated map at $553,745 to $810,142.[23] Staff states

[19] UCA Statement of Position, pp. 4-5.
[20] Hr. Ex. 300, Villarreal Answer Testimony at 19:14-20.
[21] UCA Statement of Position, p. 8.
[22] Hr. Ex. 403, Turner Settlement Testimony at 14:3-10.
[23] Hr. Ex. 403, Turner Settlement Testimony at 14:13-16.

it cannot support asking Black Hills' customers to bear this excess burden without knowing if the costs are going to benefit them.[24]

V. FINDINGS AND CONCLUSIONS ON THE SETTLEMENT AGREEMENT

36. The Parties supporting the settlement have the burden of proving by a preponderance of the evidence that the Partial Settlement Agreement is just and reasonable and in the public interest. In reviewing the terms of the Partial Settlement Agreement, the Hearing Commissioner applies the Commission's directions and policy with respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

37. The Hearing Commissioner has reviewed the full administrative and evidentiary record, and has duly considered the position of all parties in this matter and weighed the evidence presented. Based on the entire record, the Hearing Commissioner finds that the Partial Settlement Agreement provides a just, reasonable, and timely resolution of the contested issues addressed therein. As such, the Partial Settlement Agreement is in the public interest and is approved without modification. Additionally, for the sake of clarity given the discussions in this Proceeding surrounding capital investment levels, prudency of the ordinary course of business expenditures forecasted in this Proceeding will be determined at the time of request for cost recovery. Approval of the Partial Settlement Agreement and the Company's proposed DSP does not confer a presumption of prudence on these distribution system investments to be made in the ordinary course of business.

[24] Hr. Ex. 403, Turner Settlement Testimony at 14:18-15:3.

38. Regarding Black Hill's request for a waiver of Rule 3531(a)(II), the Company has demonstrated there is good cause to grant the waiver. The arguments put forth by Black Hills and Staff on this issue are generally persuasive. While hosting capacity analysis and mapping would likely provide benefits to Black Hills and its customers, this record shows that the costs would be significant. These costs are not currently necessary or justified given the fact that the Company serves approximately 100,000 customers and considering the alternatives the Company has developed. Staff's contention that Black Hills should determine if the hosting capacity analysis and mapping will benefit the communities it serves before proceeding with the hosting capacity project is also convincing. Therefore, Black Hill's request for waiver of Rule 3531(a)(II) is granted.

VI. CAPITAL SPENDING ON THE DISTRIBUTION SYSTEM: OVERVIEW, FINDINGS, AND CONCLUSIONS

39. Through Decision No. R25-0258-I, the Hearing Commissioner asked the Parties to help identify a total Colorado Black Hills electric capital spending level that would keep rates (both residential and total) growing no faster than inflation to help address long-term bill and rate impact concerns in a set of communities that are among some of the poorest in the state in terms of average incomes and other key metrics.[25]

40. In terms of understanding the extent of this long-term bill and rate impact concern, this record clearly shows that there has been a very large increase in the Company's proposed distribution capital spending. In the four years from 2020 to 2023, Black Hill's distribution capital spending averaged $27.4 million.[26] Going forward, in this DSP, the Company is now putting forward plans to spend an average of $48 million over the three years from 2026-2028 or just under

[25] Decision No. R25-0258-I at ¶ 9 (citing Decision No. C25-0183, Black Hills Electric Rate Case, Proceeding No. 24AL-0275E, issued March 17, 2025, ¶ 333).

[26] Hr. Ex. 101, Ahrens Direct Testimony, at p. 15.

an 80 percent increase in average annual distribution capital spending as compared to historical levels.[27]

41. The record also shows that distribution system capital spending represents roughly 30 percent of the total projected growth in overall Company capital spending of $755 million in the five-years from 2025-2029[28] and that unlike generation investment—that often produces transparent and easily quantifiable fuel and other cost savings—the distribution spending, focused on improving reliability, may have little or no direct offsetting cost savings or rate reduction benefits.[29]

42. The record in this case seems less clear about the underlying reasons for this large increase in average annual distribution capital spending. The Company provides convincing evidence that rising costs are at least one driver behind the increased capital spending levels, not just the pace of investment.[30] Staff, however, acknowledges that other factors such as "capital bias" —a utility's incentive to increase capital spending by more than necessary to grow utility earnings -- is something that can be of concern in these proceedings given the direct link between capital spending, rate base growth, and utility earnings.[31]

43. Despite this lack of clarity about the underlying causes of the growth in capital spending, there is little uncertainty about the projected bill and rate impacts of this and other increases in utility capital spending. In the Company's base case financial model,[32] this incremental increase in average annual distribution capital spending, when combined with the Company's other

[27] *Id*. at p. 21.
[28] Hr. Ex. 104, Attachment MJH-1, Forecast 2.
[29] Hr. Tr. July 24, 2025, pp. 115; 24-116: 23.
[30] *E.g.*, Hr. Ex. 104, Harrington Supplemental Direct Testimony, 18:7-19:2.
[31] Hr. Tr. July 24, 2025, pp. 107:18-108:12.
[32] *See* Hr. Ex. 111C, "Bill Impact Tab", Forecast 3 (describing the calculation in the context of a confidential, executable spreadsheet). Hearing Exhibit 111, the public, non-executable version of the spreadsheet, can also be used to reach the same conclusions, but is more difficult to follow as compared to the confidential executable version.

capital spending plans, results in projected average monthly residential bills that are expected to be over 26 percent higher in 2029 as compared to 2025 levels.[33]

44. The potential increase in average residential base rates may be even more concerning given the reaction of the communities served by Black Hills—some of the poorest in the state in terms of average income—to the Company's most recent base rate increase where these communities stated in no uncertain terms that they are simply unable to keep paying more for energy.[34] Despite these community concerns, the Company's revenue requirement modeling shows that the cumulative net impact of all the Company's capital spending expansion plans is projected to result in an increase in average residential base rates of roughly 50 percent from 2025 to 2029,[35] all of which will have to be approved by this Commission in the context of potentially highly contentious future electric base rate proceedings like the one that just concluded.

45. Of these proposed increases in both average residential bills and rates, the higher levels of average annual distribution capital spending being proposed in this case, as compared to the historical averages, appear to be driving roughly a quarter of the total increase[36] while total proposed distribution spending may account for over 40 percent of the projected bill and rate impacts.[37]

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[33] *See id*. The percentage increase in average residential electric bills is calculated by increasing the average annual distribution capital spending to the levels proposed in this DSP. This was done by replacing the historical average of $27.4 million in cell F53 in the "Net Plant by Function" tab, with the average annual amount proposed by the Company of $48 million. The "Bill Impact" tab, Forecast 3 scenario, cells D41 to T41, can then be used to calculate the percentage growth in average electric bills from 2025-2029 as (T41-D41)/D41 or equal to 26.3 percent.

[34] *See*, *e.g.*, Proceeding No. 24AL-0275E, SOPs of Pueblo Joint Movants, Canon City-Florences, and the Public Utility Intervenors (collectively, the "Community SOPs in the 2024 Black Hills Electric Rate Case").

[35] *See* Hr. Ex. 111; Hr. Ex. 111C, "Bill Impact Tab", Forecast 3. Again, this increase is calculated by including the current DSP capital spending plans in cell F53 of the "Net Plant by Function" tab and then looking at line 25 of the "Forecast 3" tab and comparing "Residential Base Rate ($/kWh)" in 2024 (cell D25) with those in 2029 (cell I25) through this formula ((I25-D25)/D25).

[36] This percentage increase is calculated consistent with the above methodologies in Hr. Ex. 111 and Hr. Ex. 111C for measuring average residential bill and base rate impacts with cell F53 in the "Net Plant by Function" tab set at the historical average $27.4 million in distribution capital spending and then increasing it to $48M to capture the higher levels of proposed DSP capital spending.

[37] This calculation is made by setting the distribution investment in cell F53 to zero.

46. Although the net impact associated with the distribution capital spending increase being proposed in this case is clearly highly significant to future bill and rate impacts (and likely the largest single driver), it appears that the local communities that are expected to pay for this increase were never clearly presented with the underlying increase in the distribution capital spending budgets. At hearing, Mr. Ahrens agreed that the primary concern of the local community was "high prices" and "the desire to maintain rate stability."[38] Nevertheless, Mr. Ahrens further acknowledged that he was not aware that the Company ever presented the size of the distribution capital spending increase to the community.[39]

47. Perhaps even more problematic, the financial models that quantify the residential bill and rate impacts are protected as confidential and only available to intervenors that sign a non-disclosure agreement in this case. Given the financial constraints expressed by the communities served by Black Hills about the costs of intervening in Commission processes[40] and the multiple ongoing Commission cases that implicate their interests,[41] the Hearing Commissioner is deeply concerned about making decisions that have significant bill and base rate impacts without any meaningful community participation or perhaps even disclosure.

48. Before and during the evidentiary hearing in this Proceeding, to try and address these projected bill and rate impact concerns, the Hearing Commissioner discussed with the Parties the concept of setting a maximum level of capital spending that would carry associated prudency presumptions including a presumption of imprudency if the spending exceeds the cap.[42]

[38] Hr. Tr. July 24, 2025, pp. 98: 17-99:10.
[39] *Id*., pp. 99:18-100:6.
[40] *See*, *e.g.*, Community SOPs in the Black Hills 2024 electric rate case.
[41] These cases recently include Proceeding No. 24AL-0275E (Black Hills' 2024 Electric Rate Case), Proceeding No. 22A-0230E (Black Hills' 2022 Electric Resource Plan and Clean Energy Plan), Proceeding No. 21A-0141E (Public Service's 2021 Electric Resource Plan and Clean Energy Plan), Proceeding No. 24A-0442E (Public Service's Just Transition Solicitation), and now this Proceeding.
[42] Hr. Tr. July 24, 2025, p. 116:12-15.

49. Black Hills and Staff do not support the concept of setting a forward-looking capital spending limit, including a level above which spending would carry a presumption of imprudency, nor does Staff provide a specific recommendation for a spending level to keep residential rates growing no faster than inflation.[43] Black Hills and Staff argue that they see no way to reconcile the traditional prudency standard, in which the Commission is able to review the prudency of actual investments made in the course of providing utility service, with a pre-approved limit on capital spending.[44] They also contend that such a spending cap may interfere with Black Hill's obligation under § 40-3-101(2), C.R.S., to provide safe and adequate service.[45] Further, Black Hills and Staff do not support using inflation as a benchmark for rate increases because the inflation rate has no bearing on whether a utility expense is necessary to the provision of safe, reliable service.[46]

50. Black Hills and Staff raise that a cap on capital spending may shift expenses from capital to maintenance type activities, which have a dollar-for-dollar impact on the cost of service instead of a longer time period for recovery, and therefore may result in a cost increase to customers.[47] They also contend that a spending cap is unnecessary because the Commission already has the ability to review the prudency of capital spending in rate cases and other proceedings and disallow recovery where spending is found to be imprudent.[48]

51. Black Hills and Staff contend that distribution capital spending is not fairly comparable to generation investments that may receive a presumption of prudence in Electric Resource Plan ("ERP") or Certificate of Public Convenience and Necessity ("CPCN") proceedings, and that this presents challenges even in the ERP context. Black Hills and Staff state

[43] Black Hills and Staff Joint Statement of Position, p. 12.
[44] *Id.*, pp.12-13.
[45] *Id.*, p. 14.
[46] *Id.*, p. 13.
[47] *Id.*, p. 14.
[48] *Id.*, p. 15.

that because nearly all of Black Hills' capital expenses for distribution investments are in the ordinary course of business, and are more numerous and not as fully developed as discrete generation projects that receive a presumption of prudence, setting a baseline for capital spending would be difficult.[49]

52. Further, Black Hills argues that imposing a capital spending cap or a presumption of imprudence on distribution investment would be contrary to case law holding that in the absence of a finding of abuse of managerial discretion, public utilities have discretion to manage their business, which includes day-to-day capital investment decisions.[50] They also raise that a distribution spending cap would confiscate the opportunity for due process by pre-judging prudency before the necessary information is available, and that adoption of a new prudency standard or a new burden of proof, if allowed under statute, would require a rulemaking.[51]

53. The hearing commissioner finds that many of the administrative, policy, and legal concerns raised by Black Hills and Staff are greatly overstated. In fact, the hearing commissioner finds that this Commission routinely reviews new generation and transmission proposals prior to investment—in resource planning and CPCN cases that are not too dissimilar to this one—and is able to make trade-offs between cost, rate impact, risk, reliability, and other benefits through those processes. Given that Colorado does not pursue reliability at any cost, these core trade-offs between system benefit and customer rate and bill impact are at the center of the generation and transmission pre-approval decision-making process.[52]

54. In contrast, regarding distribution capital spending, there does not appear to be any meaningful struggle over the trade-off between spending and long-term customer rate and bill

[49] Black Hills and Staff Joint Statement of Position, pp.15-17.
[50] *Id.*, p. 18.
[51] *Id.*, pp. 19-21.
[52] *See* generally, Hr. Tr. July 24, 2025, 108:18-112:21.

impact concerns in the distribution planning process.[53] Instead, within certain bounds, the utility appears to have complete discretion to spend whatever it wants—independent of the bill and rate impacts on one of the poorest communities in the state and given the capital spending bias that exists in current regulation—subject only to an after-the-fact prudency review in a future rate case.

55. The hearing commissioner agrees with Staff that after-the-fact prudency reviews can be a useful tool for addressing egregious or clearly imprudent utility behavior. The hearing commissioner would further acknowledge the arguments made by Staff that pre-approval of ordinary course distribution spending is likely to be more challenging[54] or less subject to competitive processes[55] than what currently occurs for generation pre-approvals in resource planning contexts or transmission project pre-approvals in CPCN processes.

56. At the same time, however, this record is clear that showing that a specific utility investment is imprudent can be difficult and a high bar to meet.[56] Likewise, Staff witness Haglund acknowledged at hearing that there have not been many successful instances of the Commission finding an investment imprudent, although he testified that did not mean that the approach was ineffectual.[57] Finally, after-the-fact prudency review occurs once the utility investment has been incurred and the issue is over who pays. In contrast, taking a hard look at capital spending—in the context of long-term rate and bill impacts, similar to how it is done with generation planning and transmission CPCNs—provides an opportunity to adjust capital spending levels before the investments are incurred.

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[53] *See*, *e.g*., Hr. Tr. July 24, 2025, 104:20-105:11 (the lead Company distribution system planning witness stating that he "purely looks at…overload[s] to the system, [and] what are the needs of the system…so, we make those investments purely on…what comes from that").

[54] *See* Hr. Tr. July 24, 2025, p. 112:2-21.

[55] *Id*. at p. 113:11-17.

[56] *Id.* at p. 114:8-12.

[57] *Id*. at pp. 114:21-115:12.

57. Given all of this, the hearing commissioner remains concerned that the current approaches to distribution and other capital spending will ultimately lead to bill and rate impacts that the communities served by Black Hills will find unacceptable. And this concern is greatly exacerbated by the fact that these impacted communities who have said that rate stability is their primary interest have not weighed into the determination in any meaningful way about whether the reliability and other benefits arising from these investments are worth the rate and bill impacts.

58. Under these circumstances, the Hearing Commissioner would welcome any comments the communities served by the Company may have regarding these bill and base rate increases arising from the significantly expanded capital spending as part of the exceptions process. The Hearing Commissioner recognizes that there may be limited options available to the Commission at this stage of the process but believes that the decisions being made here will have significant bill and base rate impacts that the community needs to better understand or at least be informed about. Therefore, this Recommended Decision should be provided to the Black Hills customer community,[58] to inform them of the bill and rate impacts that may result from the forecasted spending levels, and to allow them to file comments or make any appropriate filings.

59. Additionally, increased participation of the local communities could also help improve Black Hills' next DSP proceeding and, as such, the hearing commissioner would require Staff and Black Hills to coordinate to present projected retail rate impacts associated with the future application to the Black Hills customer community,[59] aligning with the retail rate impact

[58] This should include the City of Pueblo, the Pueblo County Board of County Commissioners, the Pueblo Economic Development Corporation, the City of Cañon City, Colorado, the City of Florence, Colorado, the Board of Water Works of Pueblo, Colorado, the Fountain Valley Authority, and Colorado Springs Utilities/Southern Delivery System.

[59] At a minimum, this should include the City of Pueblo, the Pueblo County Board of County Commissioners, the Pueblo Economic Development Corporation, the City of Cañon City, Colorado, the City of Florence, Colorado, the Board of Water Works of Pueblo, Colorado, the Fountain Valley Authority, and Colorado Springs Utilities/Southern Delivery System.

analysis directed by the Hearing Commissioner in this Proceeding. Such a process should provide the Black Hills customer community with sufficient time to consider intervening in that future proceeding.

60. At the same time, however, the hearing commissioner is currently unable to find a way to determine and set a cap on capital spending or develop an alternative approach. The positions of the customer interests in this case and their unwillingness to meaningfully grapple with the trade-offs between capital spending and rate impact in this process—instead leaving to a subsequent after-the-fact prudency review, once these costs are incurred—have simply made such a determination impossible.

VII. TIME FOR RESPONSES TO ANY EXCEPTIONS

61. To minimize further delay in the resolution of this Proceeding, response time to any filed exceptions to this Recommended Decision, if any, will be shortened to six days, as ordered below.

VIII. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Approve the Partial Settlement Agreement ("Motion"), filed on July 9, 2025, by Black Hills Colorado Electric, LLC ("Black Hills") is granted, consistent with the discussion above.

2. Consistent with the findings, discussion, and conclusions in this Recommended Decision, the Partial Settlement Agreement filed on July 9, 2025, as Attachment A to the Motion, is approved without modification. The Partial Settlement Agreement is attached to this Recommended Decision as Appendix A and is incorporated by reference.

3. The Motion for Waiver from Commission Rules Associated with Black Hill's Distribution Plan, filed on January 31, 2025, by Black Hills, including the request for waiver of Rule 3531(a)(II), 4 *Colorado Code of Regulations* ("CCR"), 723-3, is granted, consistent with the discussion above.

4. The Application for Approval of Black Hills' 2025-2029 Distribution System Plan, filed on January 31, 2025, by Black Hills, as modified by the Partial Settlement Agreement, is approved.

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

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

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

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. Copies of this Recommended Decision shall also be served upon the City of Pueblo, the Pueblo County Board of County Commissioners, the Pueblo Economic Development Corporation, the City of Cañon City, Colorado, the City of Florence, Colorado, the Board of Water Works of Pueblo, Colorado, the Fountain Valley Authority, and Colorado Springs

Utilities/Southern Delivery System, who may file comments or make any other appropriate filings, consistent with the discussion above.

8. Prior to Black Hills' next DSP, Staff and Black Hills to coordinate to present projected retail rate impacts associated with the future application to the Black Hills customer community, consistent with the discussion above.

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

10. Consistent with the discussion above, response time to any exceptions to this Recommended Decision, if any, is shortened to six days.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Hearing Commissioner

ATTEST: A TRUE COPY

Rebecca E. White,
Director