Decision No. C21-0117

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0204E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021-2023 TRANSPORTATION ELECTRIFICATION PLAN.

COMMISSION DECISION ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C21-0017

Mailed Date: March 2, 2021
Adopted Date: February 24, 2021

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Applications for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017 (RRR) filed pursuant to § 40-6-114, C.R.S., on February 1, 2021 by parties to this Proceeding. Through its Decision No. C21-0017, issued January 11, 2021, the Commission granted, with modifications, the application of Public Service Company of Colorado (Public Service or Company) for approval of the Company's proposed 2021-2023 Transportation Electrification Plan (TEP).

2. Public Service requests approval of this TEP pursuant to the requirements of Senate Bill (SB) 19-077, signed into law May 31, 2019. SB 19-077 requires investor owned electric public utilities to file with the Commission "an application for a program for regulated activities to support widespread transportation electrification" within the utility's service territory. The statutory changes adopted through SB 19-077 are codified at §§ 40-1-103.3(2) and (6), 40-3-116, and 40-5-107, C.R.S. This 2021-2023 TEP is Public Service's inaugural TEP and the first utility application the Commission has considered under SB 19-077.

3. On February 1, 2021, the following parties filed applications for RRR seeking reconsideration of portions of Decision No. C21-0017: Public Service; Trial Staff of the Public Utilities Commission (Staff); the Colorado Energy Office (CEO); ChargePoint, Inc. (ChargePoint); Electrify America, LLC (Electrify America); EVgo; and Tesla, Inc. (Tesla). Below, the

Commission addresses each issue raised in RRR by these parties and grants or denies their requests.

B. Issued Raised in Applications for RRR

1. Return on Equity for TEP Investments

4. Decision No. C21-0017 states at Paragraph 87 that the TEP revenue requirement will use the Company's return on equity (ROE) approved in Proceeding No. 19AL-0268E, which is Public Service's most recent rate case before the Commission.

5. In its RRR, Staff requests the Commission reconsider this determination and instead set Public Service's TEP revenue requirement using the ROE approved in whichever proceeding is Public Service's most recent Phase I rate case before the Commission. Staff states this modification will ensure that the TEP revenue requirement uses Public Service's most recent Commission-approved ROE if the Company completes a Phase I rate case during the three-year TEP period approved in this Proceeding.

6. The Commission grants Staff's RRR on this issue.

7. We note the relevant language in § 40-3-116(1)(a), C.R.S., states the "return on any investment" made under a TEP may be set "at the electric public utility's weighted average cost of capital, including the most recent rate of return on equity, approved by the commission." Based on this language, we find valid Staff's concern with using a potentially outdated ROE for the TEP. We therefore order the TEP revenue requirement will use the Company's most recent ROE approved by the Commission.

2. Depreciation of EV Supply Infrastructure

8. Decision No. C21-0017 states at Paragraph 179 that the Commission approves Public Service's proposal to install and own EV supply infrastructure (EVSI) to support

Multi-Family Home (MFH) and Commercial customers and that the Commission agrees with Public Service that a ten-year depreciable life is appropriate, consistent with industry practice.

9. In its RRR, Staff requests the Commission reconsider the ten-year depreciable life for EVSI and instead direct Public Service to record EVSI in FERC Account 369, which would result in an approximately 50-year depreciation life. Staff asserts the record lacks sufficient evidence to support a ten-year depreciation rate. Staff argues the testimony cited in Decision No. C21-0017 for industry practice relates to charging equipment, not the wiring and conduit that constitute EVSI.[1] Staff notes that Public Service originally proposed to record EVSI in FERC Account 369, but subsequently revised its position to a ten-year depreciable life in its rebuttal testimony.[2] Staff challenges, although the Company claims it made this change because it was having difficulty executing contracts with the extended depreciable life, the record lacks first-hand testimony substantiating this claim.[3] Finally, Staff argues Public Service already records similar assets in FERC Account 369.

10. The Commission denies Staff's RRR on this issue.

11. We continue to find persuasive Public Service's concern that site hosts, such as the owners of MFH units, would be reluctant to enter into a contract that could leave them liable for the vast majority of the EVSI costs.[4] While we acknowledge that Public Service has not yet finalized its customer service agreements for the TEP, the record contains a sample EVSI Service Agreement that serves as an illustrative contract for customers receiving Company-owned EVSI.[5]

[1] Staff Application for RRR pp. 6-7 (citing Hrg. Exh. 103 (Freitas Direct, Rev. 1) pp. 9-10; Hrg. Exh. 107 (Freitas Rebuttal, Rev. 1) pp. 20-21).

[2] *Id.* at 7.

[3] *Id.* at 7-8.

[4] Hrg. Exh. 107 (Freitas Rebuttal, Rev. 1) p. 12.

[5] Hrg. Exh. 1006; *see also* Hrg. Exh. 1005 (explaining content of Hrg. Exh. 1006).

The sample agreement demonstrates, if a party elects to terminate or declines to renew at the end of the contract term, there must be some mechanism to transfer title of the EVSI from Public Service to the site host.[6] To execute this transfer, the site host would need to pay Public Service the undepreciated balance of the EVSI.[7] Given these practical considerations, we remain concerned that the extended 50-year depreciable life advocated for by Staff would leave site hosts liable for significant costs. The Company has confirmed this, explaining that "[u]sing the approved depreciation rate for FERC Account 369 would result in customers owing approximately 80 percent of the cost of the project at the end of the ten-year contract."[8] Thus, the Commission finds that a shorter, ten-year depreciable life, will better encourage program participation and facilitate robust deployment of EVSI.

12. In reaching this conclusion, we acknowledge Staff's observation that similar capital assets are recorded in FERC Account 369. However, we find it more compelling that shortening the overall EVSI depreciable life to ten years will incent greater participation in this TEP program by lowering the financial risk to potential site hosts. We also note, although a shorter depreciable life increases short-term costs for ratepayers, it ultimately reduces the total costs ratepayers must pay by decreasing the amount of time in which the investment earns a return as part of the Company's rate base.

13. Finally, we also find persuasive the Company's rebuttal testimony that a ten-year depreciable life helps promote consistency and intergenerational equity.[9] Public Service notes the rebates for EVSI (both residential and new construction for MFH units) are amortized over ten

[6] Hrg. Exh. 1006 pp. 9-10.
[7] *Id.*
[8] Hrg. Exh. 107 (Freitas Rebuttal, Rev. 1) pp. 12.
[9] *Id.* at pp. 12-13.

years. We find that amortizing the costs of EVSI ownership over ten years supports similar benefits and promotes a more consistent cost-recovery path. Public Service also makes a compelling point that a ten-year depreciable life eliminates the risks that ratepayers will still be paying for EVSI assets in 20 or 30 years, even if the EVSI is no longer being used.[10] By shortening the depreciable life to ten years, it is more likely the cost of the EVSI will be fully recovered during the period when the EVSI is providing benefits.

3. Retail Rate Impact Calculation

14. In Decision No. C21-0017, the Commission established that revenues from EVs purchased prior to 2021 would be excluded from the retail rate impact calculation. We based this decision on a commonsense interpretation of § 40-1-103.3(6), C.R.S., which states, in part: "The commission shall consider revenues from electric vehicles in the utility's service territory in evaluating the retail rate impact."

15. In its RRR, CEO requests the Commission reconsider this interpretation and instead order the Company include revenues associated with EVs purchased prior to 2021 in its calculation. CEO claims the Commission's interpretation is contrary to the plain statutory language and that a 2021 cutoff would potentially exclude EV revenues attributable to TEP investments.[11] CEO contends the Commission's interpretation impermissibly adds the word "incremental" to the statute. CEO admits the legislature did not use the word "all," but contends that adding the word "all" would not change the meaning of the sentence, while the Commission's interpretation, effectively adding the word "incremental," would change its meaning.[12] CEO also

[10] *Id.* at p. 13.
[11] CEO Application for RRR p. 14.
[12] *Id.* at pp. 14-15.

challenges the premise that revenues from EVs purchased prior to 2021 are not attributable to the investments made through this TEP. CEO states this TEP may incent current EV owners to purchase new EV charging stations or modify their charging behavior. CEO provides hypothetical examples in which the TEP motivates owners of EVs purchased prior to 2021 to enroll in a TEP program and change their charging behavior.[13] CEO goes on to argue that participation in the TEP by EV owners who purchased their EVs prior to 2021 is "consistent with Senate Bill 19-077's requirements that a TEP support widespread transportation electrification, increase access to electricity as a transportation fuel, and improve the use of the electric grid."[14]

16. The Commission denies CEO's RRR on this issue.

17. We find no merit to CEO's challenge that the Commission's statutory interpretation of § 40-1-103.3(6), C.R.S., is unlawful. CEO claims the Commission's interpretation impermissibly adds the word "incremental," yet CEO itself advances an interpretation that adds the word "all" to the statute. We find unfounded CEO's conclusion that adding "all" to the statute does not change its meaning, while adding "incremental" would change its meaning. As we addressed in Decision No. C21-0017, the plain language of the statute does not prescribe whether the revenues to be considered are all EV revenues in the utility's territory or some measure of incremental revenues reasonably attributable to the TEP investments. We therefore affirm our finding that the statute reasonably leaves to the Commission's discretion which revenues from EVs in the utility's service territory should be considered to calculate the retail rate impact.

18. We also find unpersuasive CEO's claim that excluding revenues from EVs purchased prior to 2021 may exclude revenues attributable to the TEP. We acknowledge there may

[13] *Id.* at p. 16.
[14] *Id.* at p. 17.

be circumstances where revenues from EVs purchased prior to 2021 will be attributable to this TEP. However, on balance, we expect there will be many more situations in which the revenues from these EVs are not reasonably attributable to the TEP. Moreover, CEO's hypotheticals fail to take into account Public Service's proposed Demand Side Management plan in Proceeding No. 20A-0287EG, which already includes a monetary incentive for owners of EVs purchased prior to 2021 to enroll in a charging optimization program and change their charging behavior.[15] In sum, we continue to find our decision to select 2021 as the cut-off date a reasonable and practical metric that ensures the Company's cost calculations are not over-inflated by revenues not attributable to its TEP investments, while still ensuring the TEP can support widespread transportation electrification, increase access to electricity as a transportation fuel, and improve use of the grid.

4. Requirements for Future TEP Applications

19. Decision No. C21-0017 states at Paragraph 103 that Staff and the Office of Consumer Counsel left a void in this Proceeding by not offering constructive guidance or proposing alternatives for determining how EV purchase rebates can further the public interest.

20. In its RRR, Staff alleges, for the Commission's procedural rules to give intervenors reasonable opportunity to present constructive guidance and alternatives to novel programs, the Commission should instruct Public Service to include in its direct case all future TEP programs estimated to cost at least $1 million.[16] Staff argues that Public Service should neither propose significant new programs for inclusion in its TEP through its rebuttal testimony nor contrive with other parties to introduce its own proposals through their answer testimony.[17]

[15] Decision No. C21-0017 ¶ 205.
[16] Staff Application for RRR pp. 9-10.
[17] *Id.* at p. 9.

21. The Commission denies Staff's RRR on this issue.

22. On the one hand, we understand Staff's preference that the Company put forth substantial TEP programs in its direct testimony and we agree the Commission's adjudicatory processes work best when intervenors are given opportunity to respond to the utility's proposals in their answer testimony. On the other hand, we continue to find Staff could have offered constructive alternatives to the EV purchase rebate program to which it objected. Staff had opportunity in its cross-answer testimony to provide constructive alternatives to the EV purchase rebate program put forth in CEO's answer testimony, or Staff could have filed a motion for other relief after Public Service filed its rebuttal testimony.

23. As for future TEP applications, we are reluctant to impose in this Proceeding restrictions to govern a future proceeding. Particularly, we do not want to impose restrictions that would limit Public Service's ability to respond to suggestions and critiques that arise in answer testimony. We will therefore continue to rely on the Commission's Rules of Practice and Procedure to guide the orderly adjudication of future TEP applications.

5. Managed Charging Requirement

24. Ratepayers who receive certain rebates and incentives under the TEP must enroll in a managed charging program, which encourages them to charge their EVs at certain times of the day. To satisfy this managed charging requirement, Decision No. C21-0017 at Paragraph 201 indicates a participant can enroll in either a charging optimization program *or* a time-based electric rate. Relatedly, Paragraphs 219 and 221 clarify that income-qualified rebate recipients in the MFH portfolio must be automatically enrolled in a charging optimization program but can later opt out.

25. In its RRR, Public Service requests the Commission clarify these managed charging requirements.

26. First, Public Service seeks clarification whether a time-based electric rate satisfies the managed-charging requirement.[18] Public Service notes, while the parenthetical in Paragraph 201 indicates that "managed charging" refers to either a charging optimization program or a time-based electric rate, Paragraph 201 also states the Commission approves the policy agreed to in the Partial Settlement Agreement.[19] Public Service points out the Partial Settlement Agreement at Paragraph 28 is narrower and refers only to a charging optimization program.

27. Second, Public Service seeks clarification whether the Commission intended for the MFH charging optimization requirement to apply only to the MFH assigned parking program rather than all MFH programs. Public Service explains the charging optimization program only makes sense in the context of the assigned parking program where a tenant in a MFH unit has an assigned parking spot and can exercise control over his or her charging behavior.[20] Public Service argues, although it can work to develop more nuanced charging optimization programs in the future, its current charging optimization programs are not compatible with situations where tenants share parking spots.

28. The Commission grants Public Service's RRR on these issues.

29. Regarding Public Service's first request, we clarify the Commission's intent was to follow the Partial Settlement Agreement's concept of managed charging. Accordingly, we clarify only a charging optimization program satisfies the managed-charging requirement for rebate recipients and a time-based electric rate would not satisfy this requirement.

[18] Public Service Application for RRR pp. 2-3.

[19] *Id.*

[20] *Id.* at p. 4.

30. We also grant Public Service's second request. We agree, within the Company's MFH portfolio, the charging optimization requirement should apply only to the MFH assigned parking program. We find persuasive the Company's practical concerns that charging optimization programs are best suited for individuals who can control their charging behavior and should not be required for tenants who share parking spaces.

6. Company-Owned DCFC Stations

31. Decision No. C21-0017 states at Paragraph 153 that the Commission approves Public Service's proposal to develop 13 direct current fast charger (DCFC) "connector stations" in rural areas with lower traffic volume and 11 DCFC "market stations" in areas that feature the lowest traffic volume. This same paragraph requires the Company to work with stakeholders to develop specific criteria for evaluating public DCFC applications and requires the Company to file a report by April 30, 2021, describing the stakeholder process, providing details on the chosen criteria, and explaining how the criteria will be used to identify existing gaps in service.

32. CEO, ChargePoint, Electrify America, and EVgo filed RRR requesting the Commission reconsider this portion of its Decision.

33. CEO contends the Commission did not directly address the timing for Public Service's build out of Company-owned DCFC stations. CEO raises concern that Public Service could build DCFC stations before the gaps in the private network are truly known, resulting in the Company spending ratepayer dollars to build stations in areas the private market would eventually fill. CEO argues the Company could instead use these ratepayer dollars to fund other areas of the TEP the private market is less suited to address. CEO urges that Public Service should build

Company-owned DCFC stations only in the truly "hard-to-reach" areas where the market will not fill the gaps.[21]

34. ChargePoint requests the Commission only approve the Company-owned DCFC proposal if the Commission requires Public Service to provide site hosts a choice in the charging equipment and network services utilized and a choice whether to be the utility customer of record and set pricing for drivers. ChargePoint contends all Public Service's other TEP programs that support EV charger deployment allow site hosts to choose the charging equipment and network services that are used. ChargePoint claims the Company-owned DCFC proposal does not provide this choice and therefore is inconsistent with the directive in § 40-5-107(2)(e), C.R.S., that TEP expenditures "stimulate innovation, competition, and increased consumer choices."[22]

35. Electrify America requests the Commission delay authorization for Company-owned DCFC stations. Electrify America cautions the balance between the regulated monopoly and the competitive market may suffer long-term damage should the effects of the unknown magnitude of Company investment and the yet-to-be established rate to be charged for services significantly destabilize the competitive market.

36. EVgo requests the Commission direct Public Service to defer its request for approval of Company-owned DCFC stations to its next TEP. EVgo urges, at that time, the competitive issues can be resolved in a manner consistent with statute and areas of inadequate coverage will be more apparent. EVgo requests, at a minimum, the Commission should reconsider

[21] Hrg. Ex. 701 (Williss Answer Rev. 1) p. 31

[22] ChargePoint Application for RRR pp. 3-4.

approval of utility owned "market stations" and limit utility ownership to "connector stations," which EVgo argues are more likely to meet the criteria of filling gaps in the private market.[23]

37. Several parties also noted an issue with the language in Paragraph 153 referring to a specific number of "connector" and "market" stations. Staff asks the Commission to clarify that Public Service is not required to build and own any specific number or type of DCFC stations. Staff notes Public Service's proposal is to install, own, and operate roughly 20-25 DCFC stations in underserved areas and to engage in a collaborative process to determine the siting of these stations. Staff requests the Commission adopt this proposal so that stakeholders can use a collaborative process driven by up-to-date data to site the proposed stations. Likewise, EVgo requests the Commission clarify the authorized number of stations, station capacity, and number of ports per station and establish clearer guidelines for the stakeholder process.

38. The Commission grants, in part, and denies, in part, these RRR requests.

39. First, we correct the error in Paragraph 153 referring to a specific number of "connector" and "market" stations as we recognize these figures were hypothetical and not intended to be final. We clarify that Public Service's proposal is to install, own, and operate approximately 20-25 DCFC stations in underserved areas and to engage in a collaborative process to determine the number and siting of these stations.

40. Second, we direct the Company to work with stakeholders to identify and develop siting metrics, including metrics related to some stated distance between Company-owned DCFCs and privately-owned chargers. We expect this stakeholder engagement to last through 2021. We find this extended collaborative process will better ensure that Company-owned DCFC stations

[23] EVgo Application for RRR pp. 3-4.

are sited in areas unlikely to be served by the private market, particularly while EV adoption remains low in these underserved areas. We agree with CEO that the purpose of Company-owned DCFCs is to support areas the market is not serving and that it would be a wasted opportunity if ratepayer dollars were used to build utility-owned stations in places private investment would have eventually reached. We agree with Staff the collaborative process to site these Company-owned DCFCs should be driven by up-to-date data. Finally, we agree with Electrify America the regulated monopoly and competitive market sit in a critical balance, and in a rapidly evolving market like EV charging services and EV supply infrastructure, this balance is vulnerable. We thus require the Company and stakeholders proceed cautiously and thoughtfully in siting the Company's stations.

41. Third, we find EVgo's request to limit the Company to "connector stations" is a determination more appropriate for resolution in the collaborative stakeholder process than through RRR. We also note we expect the Commission will be better positioned to evaluate the program specifics for Company-owned DCFC stations and provide feedback on the stakeholder process used to develop siting metrics in the Company's next TEP application.

42. Finally, we disagree with the requests to modify the utility ownership of DCFC stations made by ChargePoint, Electrify America, and EVgo in their RRR.

43. We find no merit to the suggestion that utility ownership of DCFC stations is inconsistent with SB 19-077. Through the changes adopted in SB 19-077, the legislature modified § 40-1-103.3, C.R.S., to allow for electric public utilities to provide EV charging services as a regulated service. Further, we note § 40-5-107(1)(b)(I), C.R.S., plainly allows for TEP programs to include investments to facilitate the deployment of utility-owned charging facilities. Turning to the specific arguments in RRR, we find these parties overly-rely on the language in § 40-5-107(2)(e), C.R.S., concerning competition, consumer choice, and private capital, to the

exclusion of the other policy objectives in SB 19-077 and without attention to the context of this initial Proceeding. As we previously stated, § 40-5-107(2), C.R.S., provides a list of elements the Commission must consider when determining cost recovery for TEP investments and expenditures.[24] Accordingly, we directed the Company's annual TEP compliance report contain all the necessary information for the Commission and parties to evaluate the reasonableness and prudency of the Company's actual TEP expenditures pursuant to the many considerations in subsection (2) of the statute.[25] The Commission therefore denies these legal challenges in RRR.

7. Rates at Company-Owned DCFC Stations

44. Decision No. C21-0017 at Paragraph 161 directs the Company to replace the critical peak pricing (CPP) rate in its Company-owned DCFC rate with a time-varying rate. The Commission ordered Public Service to file a new rate with this modification as a tariff compliance filing in this Proceeding.

45. In its RRR, CEO requests the Commission reconsider this determination. CEO contends the testimony in this Proceeding regarding time-varying rates for public DCFC stations was limited to the Environmental Organizations' recommendation that the Company price electricity at Company-owned DCFC stations using the S-EV rate, which has a time-varying component. CEO questions whether this justification is adequate. CEO also disagrees with the Environmental Organizations' reasoning, countering there is a fundamental difference between privately owned and utility owned stations. CEO notes, for privately owned stations, the site host pays the S-EV rate and sets its own pricing for EV drivers, while the rate CEO is seeking to establish in this Proceeding for Company-owned stations is the rate EV drivers will pay to charge

[24] Decision No. C21-0017 ¶ 54.
[25] *Id*. ¶ 55.

their vehicles. CEO requests, at a minimum, the Commission should require Public Service to file a new advice letter for its public DCFC rate in a separate proceeding so the Commission and interveners have opportunity to review the proposed rate before it goes into effect.

46. In its RRR, Electrify America also requests the Commission reconsider this determination. Electrify America contends, by rejecting a CPP rate component, the Commission has given Company-owned DCFC operations an advantage over private DCFC services. Electrify America states private service providers take service under Schedule S-EV, or other commercial schedules. Electrify America notes Schedule S-EV contains a CPP component of $1.50 per kWh. Electrify America notes that alternative rates available to commercial customers are not time varying.[26] Electrify America concludes these differences create discrepancies that must be absorbed by private market stakeholders without the cushion of ratepayer support.

47. In its RRR, EVgo requests the Commission clarify its "partial" approval of Public Service's proposed DCFC rate at Company-owned stations and direct Public Service to implement a market-neutral rate in its compliance filing so as not to undermine private sector competitors. EVgo urges the Commission to address rate parity issues left in place by the removal of a CPP component for Company-owned DCFCs by directing Public Service to introduce a new commercial EV rate that removes CPP costs to ensure parity with the rate at Company stations.

48. In its RRR, Tesla requests the Commission provide guidance regarding the pricing level of a time-varying rate relative to the proposed CPP rate of Company-owned stations. Tesla states it is unclear whether the statement in Decision No. C20-0017 at Paragraph 162 that a time-varied rate could be designed to achieve a similar overall financial outcome as a rate with a

[26] Electrify America Application for RRR pp. 18-19.

CPP refers to revenue requirements recovered via EV drivers through the Company's rate or how the rate is priced relative to private DCFC stations.[27] Tesla requests the Commission mitigate risk that the Company's rate would be developed in a manner that undercuts private DCFC station pricing.

49. The Commission grants CEO's request to require that Public Service file a new advice letter for its public DCFC rate in a separate proceeding. We agree the advice letter process will provide appropriate and necessary opportunity for the Commission and intervenors to review the Company's proposal. We expect to address the following considerations in that proceeding. First, although the Commission continues to deny the use of a CPP component for these Company-owned "connector" stations, with fewer options for charging, and "market" stations, with lower expected utilization. Second, several parties have noted the competitive advantage the Company may have if other DCFC providers remain subject to the CPP under the S-EV rate, but the Company's rate does not have a CPP component. With these factors in place, the Commission maintains that a time-varying rate is still an important piece to the development of EVs, as well as fostering a competitive market for DCFC charging stations.

50. The Commission denies the RRR requests of Electrify America, EVgo, and Tesla. We find these parties' requests concerning the rate at the Company's DCFC stations can be more appropriately addressed in the separate advice letter proceeding that we order above. As discussed above, we expect the stakeholder process will result in the siting of these connector and market DCFC stations in areas that private developers, including those filing RRR on this issue, will likely not develop. For this reason, we expect that privately owned stations will not be directly competing with Company-owned stations based solely on the charging rate. However, we do find the

[27] Tesla Application for RRR p. 4

additional advice letter proceeding will provide needed opportunity to address potential competition issues.

8. Multi-Family Home Programs

51. Decision No. C21-0017 at Paragraph 216 orders Public Service to make a condition of participation in its MFH shared parking programs the site host's agreement to pass on time-varying price signals to EV drivers consistent with the residential time-varying rate peak periods.

52. Decision No. C21-0017 at Paragraph 256 further orders Public Service to work with participants in its MFH and Commercial portfolio programs funded by the TEP to develop a way to provide certain data points in its annual reports. This data includes: (1) the site-specific quarterly data recommended by Staff; and (2) the data on load-shifting, energy sales during on-peak, shoulder, and off-peak periods, and aggregated customer load profile data recommended by the Environmental Organizations.

a. Conditions of Participation

53. In its RRR, ChargePoint concedes that the Commission regularly approves utility program requirements with which customers must comply to participate in voluntary programs but argues that imposing a default pricing arrangement on MFH site hosts crosses a line the Commission should not and cannot cross. ChargePoint contends, in other cases where the Commission has imposed conditions on participation, the program requirements closely related to the utility's ability to implement the program. ChargePoint objects that requiring EV site hosts to charge a specific price or price signal constitutes economic regulation, which the Commission does not have authority to exert over non-utilities.

54. ChargePoint incorporates these same arguments to object to reporting requirements for MFH and Commercial portfolio program participants. In addition, ChargePoint contends, other than a non-specific reference to ensuring ratepayers obtain maximum benefits from the TEP, the record lacks support for this reporting requirement. ChargePoint challenges the Commission's Decision does not acknowledge the burden this reporting would impose on site hosts and network service providers. ChargePoint alleges this data includes competitively sensitive information that private businesses would typically closely guard and not provide to competitors.

55. In its RRR, Electrify America also objects that the reporting requirements for MFH and Commercial portfolio program participants are unlawful. Electrify America asserts the Commission cannot use Public Service as a "strawman." Electrify America contends this "precondition to participation" is unlawful because these participants are not public utilities as defined in § 40-1-103(1)(a)(I), C.R.S., and are thus not subject to the Commission's jurisdiction.[28] Electrify America asserts the data at issue remains the property of the program participant and cannot be compelled by the Commission to be produced.

56. The Commission denies the RRR of ChargePoint and Electrify America on this issue.

57. We find it is reasonable and fair for the Commission to condition the receipt of TEP funds on agreement to these narrow and specific conditions that ensure these programs further policy objectives consistent with SB 19-077. Imposing conditions to receive funds is not unusual. The federal government frequently attaches conditions to federal funds granted to states.[29] The

[28] ChargePoint Application for RRR p. 5.

[29] *See, e.g.*, *South Dakota v. Dole*, 483 U.S. 203, 206-08 (1987) (upholding Congress's condition of federal highway funds on states raising drinking age).

federal government may attach conditions to a grant of public funds if the conditions are related to the general welfare, are unambiguous and are related to a federal interest.[30] The rationale is that conditioning funding is a means of encouraging, rather than compelling, the recipient to accept the terms.[31]

58. In this case, the record contains support reasonably tying these conditions of participation to the policy objectives of Public Service's TEP and consistent with SB 19-077.

59. The Environmental Organizations' witness, Mr. Kressig, testified the Commission should ensure that time-variant price signals are passed through to drivers "to realize grid benefits and the fuel cost savings that motivate EV purchase decisions."[32] Mr. Kressig noted that establishing the pass-through of time-variant price signals as the default arrangement would also align with requirements established for utility programs in other jurisdictions, citing two recent decisions by the California and Minnesota commissions.[33]

60. Similarly, Mr. Kressig explained why the required data reporting would further the policy objective in SB 19-077 of grid optimization.[34] He argued that detailed load profile data which demonstrates how customers on each of the Company's proposed programs are charging their EVs is essential to ensure the Company's TEP is improving the use of the electric grid. He

[30] *See, e.g.*, *id.*; *Charles v. Verhagen*, 348 F.3d 601, 607-08 (7th Cir. 2003).

[31] *See, e.g.*, *Rust v. Sulli*van, 500 U.S. 173, 199 (1991) (finding federal subsidies are just that, subsidies, and recipient can "avoid the force of the regulations" by electing to "simply decline the subsidy").

[32] Hrg. Exh. 1001 (Kressig Answer) p. 61.

[33] *Id.* at pp. 61-62 (citing California Public Utilities Commission, Application No. 18-06-015, Decision 20-08-045, Decision Authorizing Southern California Edison Company's Charge Ready 2 Infrastructure and Market Education Programs, at 139; Minnesota Public Utilities Commission, Docket No. E-002/M-18-643, Order Approving Pilots With Modifications, Authorizing Deferred Accounting, and Setting Reporting Requirements, issued July 17, 2019, at p. 22).

[34] *Id.* at p. 66; *see, e.g.*, § 40-5-107(1)(b)(III) (providing TEP applications may include rate designs or programs that encourage vehicle charging that supports the operation of the electric grid).

cautioned, without detailed data for each program, it will be difficult to determine which programs are leading to efficient off-peak charging and which are not—and will make it impossible to remedy any of those problems.[35]

61. Finally, we find no indication that these required conditions of participation are not a voluntary choice for program participants. We find potential participants retain the choice whether to accept these conditions and participate or decline to participate in these optional TEP programs.

b. Requirements for Rates Charged by MFH Site Hosts

62. In its RRR, Public Service requests the Commission restore the opt-out option for site hosts as set forth in the Partial Settlement Agreement. The Company explains, although it appreciates the Commission's interest in protecting tenants from being charged rates that could be unfair or unreasonable, it is concerned that removing the opt-out option for site hosts would discourage overall participation.

63. To respond to the Commission's concern that a site host could potentially charge unfair or unreasonable rates, Public Service proposes the Commission could require Public Service to incorporate terms in the program contracts requiring site hosts to charge fair and reasonable prices and providing that Public Service would terminate the site host's participation, and claw back associated EVSI costs, if the Commission determines the rate a site host charges is not fair and reasonable. Public Service affirms the Commission has the authority to regulate Public Service, its program participation requirements, and related contracts to ensure conditions are fair and reasonable for EV drivers. Public Service proposes a driver charging an EV through the

[35] Hrg. Exh. 1001 (Kressig Answer) p. 66.

program could file a complaint with the Commission alleging Public Service had allowed a rate that was not fair or reasonable and requesting the Commission order Public Service to terminate a site host's participation if the site host does not remedy the issue.

64. In its RRR, CEO urges the Commission find, at this early stage of the EV market, time-varying rates at MFH sites are not appropriate and will not serve the public interest. CEO argues that site hosts can set their own prices under other TEP programs, such as public DCFC and community charging hubs. CEO urges it is not appropriate to single out the MFH sector for this restriction. CEO concedes time-varying rates can be effective at shifting load and reducing emissions but cautions that education must accompany these rates and customer experience must be considered. CEO reasons, since time-varying rates are not yet widespread for residential customers, there has not been sufficient education for these customers. CEO also raises concern that, because parking spaces are shared, MFH residents may not have flexibility to choose when they charge their EV. CEO requests the Commission adopt the recommendation in the Partial Settlement Agreement to allow site hosts to opt out of the time-varying rate at their discretion and to set pricing that reflects other considerations or needs, and to require site hosts to report their pricing to Public Service.

65. In its RRR, ChargePoint argues, even if the Commission had the authority to impose a default pricing arrangement, it is unclear what default pricing arrangement the Decision approves or how a site hosts would meet the requirement. ChargePoint cautions the default pricing arrangement would be a significant administrative burden for MFH site hosts and would constrain their ability to set pricing in a manner that supports their own unique goals for hosting charging stations. ChargePoint urges the Commission should not impose this burden and constraint for the purpose of addressing a concern for which there is no evidence at this time.

66. The Commission grants, in part, and denies, in part, the RRR of Public Service, CEO, and ChargePoint on this issue. Specifically, we grant the request to restore the opt-out option for MFH site hosts that was proposed in the Partial Settlement Agreement. We deny the remaining requests.

67. We find compelling the Company's concern that removing the opt-out option could have the unintended consequence of discouraging program participation. We agree to restore this option for program participants with the safeguards that the Company structure this program to include the requirement in its program contracts that site hosts opting out of the default arrangement agree to charge fair and reasonable rates to their tenants and agree to report their pricing to Public Service. We find these safeguards and transparency reasonable measures to mitigate against unfair and unreasonable rates being charged to EV drivers using this TEP-funded infrastructure. We appreciate the Company's efforts to suggest additional protections through the Commission's complaint processes but we discourage reliance on those processes as ill-fitting for this circumstance. We note the Company will have reporting from site hosts that it could use to identify outliers and proactively raise concerns with any site hosts that are falling outside of common practice. We find these measures will provide a reasonable level of assurance for this inaugural TEP that site hosts are accountable for the rates they charge and will ensure the utility and the Commission can learn from these initial programs what type of additions or changes may be appropriate for the Company's next TEP.

9. Company Reporting on Smaller MFH Participation

68. Decision No. C21-0017 at Paragraph 261(a) directs Public Service to include access for smaller MFH buildings as a topic for the quarterly stakeholder meetings.

69. In its RRR, CEO requests the Commission require Public Service to submit additional reporting in this area. Specifically, CEO recommends the Commission require the following data points in the Company's annual reports:

> 1. The number of multifamily buildings (and number of units in such buildings) that express interest in wiring rebates, but do not qualify for the residential or multifamily wiring rebate programs.
>
> 2. The number of multifamily buildings that express interest in applying to receive support for charging stations but decline to participate due to the four-port requirement.

CEO states, without this reporting requirement, the Company may not adequately track or share this information, which will make it difficult to make progress on this topic through the stakeholder meetings.[36]

70. The Commission grants CEO's RRR on this issue.

71. We agree the Commission should require reporting for smaller MFH buildings participation. We reiterate, as applicable to all aspects of this TEP, robust reporting is essential the success of the programs approved in this inaugural TEP and the ability for these programs to inform future utility applications. We also note CEO has refined its request in RRR to limit the amount of data required to be collected by Public Service.

10. 60/90 Day Notice Process

72. In Decision No. C21-0017 at Paragraph 127, the Commission approved the Company's proposed 60/90 Day Notice Process with the modification that Staff has discretion to file a Notice of Deficiency petitioning the Commission to require the Company to file a new application to approve a proposed program change. The Commission clarified such Notice would not automatically trigger a requirement that the Company commence a new application. The

[36] CEO Application for RRR pp. 17-18.

Commission stated, instead, the Notice would be presented to the Commission as a petition requesting a decision whether a new application is needed, or other appropriate action should be taken.

73. In its RRR, CEO requests the Commission allow the Company and parties to respond to any Notice of Deficiency filed by Staff. CEO maintains that having the full range of perspectives on the alleged deficiencies in Staff's Notice of Deficiency will help the Commission reach a more informed decision on whether a new application is appropriate. CEO suggests establishing a 20-day response period after Staff files a Notice of Deficiency.

74. The Commission grants CEO's RRR on this issue.

75. We agree that allowing responses to Staff's Notice of Deficiency will increase transparency and improve the fairness of this process. We affirm Staff remains the sole party able to file a Notice of Deficiency; provided, however, we agree with CEO that having opportunity for a full range of perspectives on potential alleged deficiencies raised by Staff will better inform the Commission's decision whether an application is the appropriate next step. We agree a 20-day period from the filing of Staff's Notice of Deficiency is an appropriate deadline for responses.

11. Fleet Advisory Services Program

76. Decision No. C21-0017 at Paragraph 261(b) directs Public Service to ensure that participating fleets in its fleet advisory services program represent a variety of duty classes, in particular, medium- and heavy-duty vehicles. The Decision instructs the Company's fleet programs should focus on less mature market segments, such as the heavy-duty sector including public transit and school buses.

77. In its RRR, EVgo requests the Commission require Public Service to include in its customer education and outreach efforts a comprehensive and market-neutral description of

service offerings including a list of third-party companies that offer fleet charging services. EVgo states this will ensure customers are aware of all non-utility solutions. EVgo maintains this is important to ensure level competition since the Company will be able to offer a turnkey Company-owned charger option via a monthly subscription fee to potential fleet customers, which EVgo states will allow the utility to compete with the private market.

78. The Commission grants, in part, EVgo's RRR on this issue.

79. We note a similar competitive concern arose during Proceeding No. 16AL-0048E, Public Service's Solar Connect (now Renewable Connect). In the settlement agreement approving that program, the settling parties agreed to address competitive concerns by establishing a common platform web site landing page for all the Company's voluntary renewable energy programs through which customers may access information on all the available programs.[37] We find it appropriate to direct the Company to establish a similar web site landing page that describes the Company's Advisory Services portfolio, including its Fleet Advisory program, with options for customers to access a list of third-party companies offering similar services. We agree with EVgo that requiring Public Service to include the full scope of market offerings in its educational outreach is also consistent with the directives of SB 19-077 because it advances the statutory goal of increasing access to the use of electricity as a transportation fuel and encouraging competition. In such occasions where the Company offers product or service to its customers that may also be provided by a third-party, that information should be made readily available to its customers on its website in a clear and obvious manner.

[37] Proceeding No. 16AL-0048E, Joint Statement of Position in Support of Non-Unanimous Comprehensive Settlement Agreement pp. 29-30.

12. Equity PIM Required Filing

80. Decision No. C21-0017 at Paragraph 140 directs Public Service to file additional information detailing the mechanics of its proposed modified Equity PIM. Ordering Paragraph 4 specifies this filing is due 30 days after the Commission's decision addressing RRR.

81. In its RRR, CEO requests the Commission extend the filing date for this additional information to 180 days after the effective date of the Commission's decision addressing RRR. CEO contends, if an equity PIM is to be developed, this should occur through a collaborative stakeholder process. CEO raises concern that 30 days is not enough time for parties to work with Public Service to develop a well-designed equity PIM.

82. The Commission grants CEO's RRR on this issue.

83. We agree with CEO that an extended period for stakeholder engagement will allow Public Service and parties needed time to determine appropriate PIM metrics, thresholds, reward levels, and timing, as well as take into account the high level considerations and specific principles related to PIMs put forward in this Proceeding. As we noted in Decision No. C21-0017 at Paragraph 261(d), we recognize the stakeholder process is the best path forward for the development of other potential PIMs that address issues of equity and communities impacted by higher-emissions from the transportation sector. The Commission therefore encourages Public Service and parties to use the stakeholder process to engage on innovative PIMs that have clear and defined metrics, and that result in an outcome where there is clearly a lack of incentives on behalf of the Company, particularly focused on ways to address issues of equity and communities impacted by higher-emissions from the transportation sector. We extend the deadline for this filing to 180 days after the Commission's final decision granting or denying parties' RRR.

13. Equity EV Purchase Rebate

a. Eligibility Criteria for Participation

84. Decision No. C21-0017 at Paragraph 233 establishes the eligibility criteria for the several equity-focused TEP programs proposed by the Company. This Paragraph adopts the criteria agreed to by parties to the Partial Settlement Agreement.

85. In its RRR, Staff notes the list of programs in Paragraph 233 omits the Equity EV Purchase Rebate, which the Commission approved as a pilot program offering a rebate for income-qualified customers at the point-of-sale of a new or used EV. Staff requests the Commission clarify whether the same equity-focused eligibility criteria identified in Paragraph 233 also apply to the Equity EV Purchase Rebate program.

86. The Commission grants Staff's RRR on this issue.

87. We clarify the same equity-focused eligibility criteria used for the programs listed in Paragraph 233 also apply to the Equity EV Purchase Rebate program.

b. Additional Reporting Requirements

88. In its RRR, CEO requests the Commission adopt reporting requirements for the Equity EV Purchase Rebate program that include:

1. Demographic data, including annual income and zip code for participants
2. Make and model of EVs purchased by participants
3. Age of EV purchased by participants
4. EV purchase price
5. Whether the utility EV rebate impacted the participants decision to buy an EV
6. How the customer found out about the Equity EV Purchase Rebate program[38]

[38] CEO Application for RRR p. 7.

89. The Commission grants CEO's RRR on this issue.

90. Through Decision No. C21-0017 the Commission approved the Equity EV Purchase Rebate expressly as a *pilot* program in order to gain a better understanding of the market and the potential interactions with the existing state EV tax credit. We found this program would provide access to the direct benefits of transportation electrification to a broader group of customers and could make the state of Colorado a more attractive state for both new and used EV sales. In addition, we found this program would complement the other equity-focused programs approved in the Company's TEP that are designed to meet the goal in SB 19-077 to ensure the TEP provides access so that income-qualified customers can take part in the state's widespread transportation electrification.

91. We continue to recognize the Equity EV Purchase Rebate is a unique and innovative proposal that we expect will yield helpful lessons learned for this TEP and, potentially, for other utility programs and regulatory commissions. Given these objectives, we agree with CEO that the proposed data reporting is appropriate and warranted and will be helpful for all involved to learn how this pilot program was utilized by utilities, dealerships, and advocacy groups, and how future programs can be improved.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by Public Service Company of Colorado on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by Trial Staff of the Public Utilities Commission on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by the Colorado Energy Office on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

4. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by ChargePoint, Inc. on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

5. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by Electrify America, LLC on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

6. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by EVgo on February 1, 2021, is granted, in part, and denied, in part, consistent with the discussion above.

7. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C21-0017, filed by Tesla on February 1, 2021, is denied, consistent with the discussion above.

8. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

9. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 24, 2021

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners