Decision No. C23-0611

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0025E

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO ELECTRIC, LLC FOR COMMISSION APPROVAL OF AN ALTERNATE ELECTRIC VEHICLE CHARGING RATE.

COMMISSION DECISION: (1) APPROVING SETTLEMENT AGREEMENT WITH MODIFICATIONS; (2) GRANTING APPLICATION, SUBJECT TO SETTLEMENT AGREEMENT AND MODIFICATIONS THERETO; AND (3) ORDERING COMPLIANCE FILINGS

Mailed Date: September 12, 2023
Adopted Date: September 6, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Application filed by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (Black Hills or the Company) on

January 4, 2023, in which Black Hills requests Commission approval of an alternative electric vehicle (EV) direct-current fast charging (DCFC) station rate. The Commission approves, with modifications, the Comprehensive Settlement Agreement (Settlement Agreement) filed on May 26, 2023, among Black Hills and intervenors the Colorado Energy Office (CEO), ChargePoint, Inc. (ChargePoint), and Electrify America, LLC (Electrify America) (Settling Parties), pursuant to Rule 1408 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The Commission finds the Settlement Agreement, modified as set forth below, is in the public interest, results in just and reasonable rates, and should be approved.

2. The Commission therefore: (1) approves the Settlement Agreement with modifications; (2) grants Black Hills' Application, subject to the modifications and additions in the Settlement Agreement, as modified by this Decision; and (3) orders Black Hills to file a compliance advice letter to implement the tariffs necessary to implement the approved public fast charging station rate, consistent with the findings, conclusions, and directives in this Decision. We authorize Black Hills to file the compliance advice letter on not less than two business days' notice.

B. Procedural History

3. On January 4, 2023, Black Hills filed the Application for approval of a fast charging station rate, along with proposed tariffs for the alternative rate designs set forth in the Application.

4. On January 11, 2023, the Commission issued a Notice of Application Filed, wherein the Commission gave notice of Black Hills' Application and established a 30-day intervention period.

5. On January 20, 2023, Trial Staff of the Commission (Staff) filed a timely notice of intervention of right and request for hearing in this matter.

6. On February 10, 2023, CEO filed a timely notice of intervention of right.

7. On February 10, 2023, ChargePoint and Electrify America filed timely motions to permissively intervene.

8. On March 1, 2023, by Decision No. C23-0151-I, the Commission established the following parties to this Proceeding: Black Hills, ChargePoint, CEO, Electrify America, and Staff.

9. On March 6, 2023, Black Hills filed direct testimony of a single witness, describing the two rate designs offered and the stakeholder process preceding the Application.

10. On March 22, 2023, by Decision No. C23-0199-I, the Commission established the procedural schedule for this Proceeding, addressed discovery procedures, and scheduled the evidentiary hearing.

11. On April 17, 2023, intervenors ChargePoint, Electrify America, and Staff filed answer testimony.

12. On May 11, 2023, Black Hills along with CEO, ChargePoint, and Electrify America filed cross-answer and rebuttal testimony.

13. On May 23, 2023, Black Hills filed a notice indicating it had reached a non-unanimous comprehensive settlement, in principle, with CEO, ChargePoint, and Electrify America. As part of its filing, Black Hills requested the Commission extend the deadline for the filing of a final settlement agreement and modify the scheduled hearing dates.

14. On May 24, 2023, by Decision No. C23-0347-I, the Commission modified the procedural schedule to extend the deadline to file the settlement agreement to May 26, 2023, and vacated, as unnecessary, the first day of the evidentiary hearing scheduled for June 20, 2023.

15. On May 26, 2023, Black Hills filed the Settlement Agreement along with the proposed tariffs for the settled rate. The Settlement Agreement proposes to resolve all contested issues in this Proceeding. On June 2, 2023, witnesses for each of the Settling Parties filed testimony in support of the settlement and Staff filed testimony opposing the settlement.

16. On June 21, 2023, the Commission convened a one-day evidentiary hearing, during which parties had opportunity to cross-examine witnesses and Commissioners examined certain witnesses. In addition, the Commission admitted Hearing Exhibit 700 and all of the documents listed thereon into evidence, which comprised all the prefiled testimony and attachments in the Proceeding and the Settlement Agreement. In addition, during the course of the hearing, the following hearing exhibits were offered and admitted into the record: Hearing Exhibit 106, Hearing Exhibit 302, and Hearing Exhibit 300 Rev. 1.2.

17. On July 14, 2023, the Settling Parties and Staff filed closing statements of position.

18. The Commission conducted live deliberations in this Proceeding at its September 6, 2023 Commissioners' Weekly Meeting, resulting in this Decision.

C. Black Hills' Initial Application

19. In its initial filing, Black Hills stated it submits the Application pursuant to the directives in the Commission's decision approving its inaugural Transportation Electrification Plan (TEP), Proceeding No. 20A-0195E, where the Commission instructed Black Hills' to work with

stakeholders to develop a proposal for at least one additional commercial EV charging rate.[1] Black Hill stated it subsequently conducted stakeholder meetings, through which two Large General Service rate designs emerged as preferred by stakeholders and the Company, and are the basis for this Application.

20. Black Hills describes the two rate designs as follows. The first is a flat rate, which is preferred by Black Hills and EV charging vendors. Black Hills states this rate is relatively simple and consists of a customer charge and a constant energy charge that does not change. In support of this proposal, Black Hills contends drivers using public fast charging are demand inelastic and thus unlikely to delay or cancel charging solely because of higher rates or other variable components. Black Hills concludes the simplicity of the flat rate allows for station owners and their customers to have predictability in charging costs, which in turn, makes it easier for vendors to decide to expand public DCFCs.

21. The second rate design is a time of day (TOD) rate. This rate consists of a customer charge along with an energy charge that varies depending on the time of day. This variable energy charge is higher during the on-peak times of 1:00 p.m. to 7:00 p.m. on weekdays, excluding holidays. Black Hills explains, the on-peak period occurs when there are typically greater capacity constraints on the grid, making it more expensive to deliver energy. Black Hills states the intent of setting higher rates during these times is to encourage charging during off-peak times, when there is excess capacity on the system and delivery costs are lower. Black Hills adds the time-varying component can also benefit fleets and public fast chargers that are able to minimize the amount of charging they do during on-peak times.

[1] Proceeding No. 20A-0195E, Decision No. C21-0651 at ¶ 81 (issued Nov. 12, 2021).

22. Black Hills states both rates are designed to recover the same amount of revenue as its other, existing Large General Service rates. Black Hills calculates the effective rates for each design begin to converge around a 12 percent load factor and become virtually indistinguishable above a 14 percent load factor.[2]

23. In their initial testimony, Black Hills, ChargePoint, and Electrify America preferred the flat rate, for reasons of simplicity and predictability. CEO supported the TOD rate, on grounds that a time-varying rate best supports the emerging EV market in Black Hills' territory. Staff opposed both rates and provided its own options for consideration.

D. Settlement Agreement

24. On May 26, 2023, Black Hills, and intervenors CEO, ChargePoint, and Electrify America filed the Settlement Agreement, agreeing to the TOD rate as presented in the Application. The settled rate has the following components:

	Settled TOD Rate
Demand Charge	$0.00
Peak Period	1:00 p.m. to 7:00 p.m.
On-Peak (Summer)	$0.26 / kWh
On Peak (Non-Summer)	$0.26 / kWh
Off-Peak / Flat Energy Charge	$0.21467 / kWh
On-Peak to Off-Peak Price Ratio	All Year: 1.2 to 1

1. Terms of Settlement Agreement

a. Rate Design and Rate Period

25. The settled TOD rate consists of a $64.00 monthly customer charge and a variable energy charge representing an on-peak rate of $0.26/kWh, and an off-peak rate of $0.21467/kWh.

[2] Application at p. 4, Table 1, Comparison of Flat Energy Charge to Time of Day Energy Charge.

On-Peak hours are 1:00 p.m. to 7:00 p.m. Monday through Friday, with the exception of the holidays New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. All other times are off-peak.

b. Rate Design Analysis for Future Filings

26. Black Hills agrees to conduct a rate design and rate period study to present an appropriate charging rate proposal in its next appropriate filing. The study would analyze the on-peak periods and the on/off-peak price differential applicable to all TOD rate classes. The latest this study would be presented is the Company's next TEP, scheduled to be filed May 2026. The earliest it would be presented is the Company's next Phase I/Phase II electric rate case filing. If a rate case is filed first, Black Hills will determine whether the charging rate should be determined as part of that case. Black Hills will describe why it supports the rate approved in this Proceeding or a new rate, considering feedback from stakeholders and the results from the agreed-to study.

c. Stakeholder Engagement

27. Black Hills agrees to discuss these rate design and rate period issues with stakeholders as part of regularly scheduled TEP stakeholder meetings. Stakeholders would include, at minimum, parties in this Proceeding and customers that may take service under a commercial EV rate, such as providers, local governments, and fleets. Discussions would include how providers may be able to mitigate impacts from on-peak charging and encourage off-peak charging. Meetings will be held at least once per year. Black Hills agrees to facilitate more frequent conversations, as needed, and to include a summary of the conversations in its rate case filing.

2. Settling Parties' Testimony in Support of Settlement

a. Black Hills

28. Black Hills states the Settlement Agreement balances diverse interests and provides for a rate that will support the widespread adoption of EVs. Black Hills explains, while it initially preferred the flat rate, the alternative TOD rate provides a middle ground that respects both the need for charging companies to have a rate that is relatively simple to implement for their customers and to recognize a cost differential at different charging times.

29. Black Hills advocates that the settled terms are reasonable and in the public interest. It maintains the settled rate sends an accurate price signal to customers of the incremental costs to serve them. Black Hills states the on/off-peak ratio is low enough that it provides reliability in billing for station owners, which can spur additional deployment. Black Hills states it recognizes the on-peak period should be reviewed periodically to ensure rates continue to reflect system costs and that it has agreed to discuss rate designs in stakeholder meetings and to evaluate the rate adopted here in either its next rate case or TEP proceeding.

30. Black Hills advocates that the settled rate is consistent with the state goal of widespread EV adoption. Black Hills explains, since there are few stations in or near its territory, it prefers a rate that attracts new investment to this area. Black Hills notes the intervenors representing commercial charging stations prefer the settled TOD rate over Staff's proposals. Black Hills adds, since the rate adopted here will only be in effect for a few years (until its next rate case or TEP), a simpler rate should be implemented now to have the best chance of encouraging development during this relatively short period.

31. Black Hills also argues the Class Cost of Service Study (CCOSS) relied upon by Staff to develop its proposals is outdated and lacks the information needed to accurately assess the on- and off-peak system costs, because time-of-day or time-of-use cost information was not relevant when that study was done. Black Hills states it has agreed to perform a detailed examination of its hourly cost either in its next rate case or TEP, at which time a new rate will be determined. Black Hills adds this will also be the time to determine an appropriate on-peak period.

b. CEO

32. CEO reiterates that Black Hills' territory lacks needed infrastructure and argues that a well-designed charging rate can encourage new investment. CEO reasons, given the lack of public fast charging in Black Hills' territory, the primary objective of the rate adopted in this Proceeding must be to support investment, which the settled TOD rate accomplishes. CEO notes, to address longer-term considerations, the Settlement Agreement includes provisions for stakeholder engagement and studies to develop a new proposal for consideration in the future.

33. CEO supports the on- and off-peak prices in the settled rate. CEO maintains that drivers' use of public fast charging stations is generally inelastic because most drivers will not be able to shift their charging time without substantial inconvenience, if at all. CEO states, the moderate price differential reasonably balances the operating cost risk for providers to serve a predominantly inflexible charging group, while providing opportunity to encourage drivers who are able to shift their charging usage to do so.

34. CEO also supports the on-peak period of 1:00 p.m. to 7:00 p.m. in the settled rate. CEO notes that Black Hills affirms this period aligns with the on-peak period of its existing time-varying rates and agrees with Black Hills that retaining this period will avoid customer confusion.

35. CEO recognizes the on-peak period may need to be reviewed periodically and states this is addressed by the term in the Settlement Agreement requiring Black Hills to conduct a peak period study. CEO notes this aligns with one of its initial recommendations, which sought to revisit an EV rate no later than Black Hills' next TEP proceeding.

c. ChargePoint

36. ChargePoint explains it supports the settled TOD rate because it is more likely to support DCFC deployment than Staff's proposals. ChargePoint maintains the settled rate, with its lower on/off peak ratio, would provide more predictability and stability for providers that are evaluating whether to potentially invest in Black Hills' territory.

d. Electrify America

37. Electrify America advocates that the settled TOD rate will support installation of new DCFCs. It counters that Staff's high on-peak rate, coupled with the fact that charging customers have only limited ability to shift their charging time, will undoubtably create risk for operators. Electrify America states the settled rate provides strong economic certainty for operators, while simultaneously allowing the opportunity to explore options for expanded pricing options as drivers become more familiar with time-differentiated pricing. Electrify America reasons this increased economic and operational certainty will be more inviting for third-party investment as compared to a more extreme ratio, thus accomplishing the state's goal of expanded public charging.

3. Settling Parties' Final Statement of Position

38. The Settling Parties urge the Commission to adopt a rate that is simple to implement. They maintain the lower on-peak to off-peak differential in the settled TOD rate,

compared to Staff's proposals, provides more predictability for providers who serve customers with variable charging behavior and varying abilities to control their usage.

39. The Settling Parties state, even if the Commission were to "split the difference" between the settled TOD rate and Staff's proposals, the resulting rate would still risk stymying investment. They explain, considering the average cost to use a public fast charging station in Colorado is $0.42/kWh and that providers need to recover both electricity costs and upfront and ongoing costs through the rate they charge driver customers, a "split the difference" approach, with $0.39/kWh for summer and $0.30/kWh for non-summer on-peak rates, leaves little room for providers to recover non-electricity costs. Facing such risk, they caution, providers are less likely to move forward with a potential investment.

40. The Settling Parties urge that use of public fast charging is generally inelastic and price signals will likely not shift load to off-peak hours. They point to testimony by CEO demonstrating that public fast charging occurs all hours of the day, with a significant portion during the on-peak periods in both the Company's and Staff's proposals.[3] The Settling Parties reiterate that providers typically do not pass on time-of-day price signal to their customers, and even if they did, drivers may not be able to respond. They reason, for the few drivers who can shift their charging, if encouraged to do so, the moderate difference in the settled TOD rate's on- and off-peak prices reasonably balances the operating cost risk for providers to serve a predominantly inflexible charging user group, while providing the opportunity to encourage drivers to shift their usage for any provider that offers time-varying prices.

[3] Settling Parties Joint Statement of Position, p. 11 (citing Hrg. Exh. 400, Willis Cross Answer, Figures CW-4 and CW-5).

41. The Settling Parties reiterate that Staff's proposals were based on Black Hills' last CCOSS, from its 2016 rate case. They argue this study cannot be relied upon to determine on- and off-peak rates because it lacks the level of information needed to accurately assess the varying costs at those times. The Settling Parties explain this lack of hourly data is why Black Hills used a different methodology for its proposal. The Company compared a combined cycle plant and a peaker plant, with the former representing the off-peak period because such plants are operated both off- and on-peak, and the latter representing on-peak capacity cost because it is only run during peak periods. The difference between these types of plants is the basis for the Company's TOD ratio of 1.2 to 1.[4] The Settling Parties add the Company's TOD rate is carefully designed using the best information available to not result in a subsidy and that all the rates proposed are cost neutral and designed to fully recover the Company's costs.[5]

42. The Settling Parties urge the Commission act now to address the lack of EV growth in Black Hills' territory. They raise that, at present, there are only three fast charging stations in the Company's territory,[6] and suggest this lack of investment is likely due to the current rate, which not only has a demand charge but also the same 3 to 1 (summer) and 2 to 1 (non-summer) rate differentials as Staff proposes. They caution Staff's proposals risk more years of lagging investment.

43. The Settling Parties argue the settled on-peak period captures peak usage better than Staff's proposed on-peak periods of 3:00 p.m. to 9:00 p.m. or 2:00 p.m. to 10:00 p.m. They add that using the settled on-peak period, which mirrors the current rate, would avoid confusing customers. They counter that Staff's proposals rely on premature and speculative solar growth

[4] *Id*., p. 14 (citing Hrg. Trans., p. 36).
[5] *Id*., p. 14-15 (citing Hrg. Exh. 100, Gervais Direct, p. 11:12–17).
[6] Settling Parties Joint Statement of Position, p. 16 (citing Hrg. Exh. 100, Gervais Direct, p. 14:9–10).

expectations, and that it is unlikely substantial solar resources will be added during the three-year or less time period this rate is in effect. They state the system peak is determined by load and not generation. The Settling Parties allow that, as more distributed generation is installed, the peak could shift later, but argue a detailed hourly load analysis would be required to understand that shift. The Settling Parties state this is the analysis that Black Hills has agreed to perform via a rate design and rate period study.

44. Finally, the Settling Parties dispute Staff's claim that fleet customers would take advantage of the settled TOD rate. They explain, Staff's concern on this issue assumes a 15 percent load factor for fleet vehicles, which the Settling Parties claim is not realistic.[7] Black Hills' witness calculated a 15 percent load factor amounts to charging for about three and a half hours a day, which is unrealistically low for a fleet to be charging.[8] Thus, they conclude, fleet owners are likely to opt for rates other than the settled TOD rate.[9] They note, to the extent the Commission remains concerned about fleets using the settled rate, the rate could be limited to only public fast charging, as proposed at hearing.[10]

E. Staff's Alternative Rate Proposals

1. Staff's Answer Testimony

45. In its initial testimony, Staff provides two rate options for consideration, one with a narrower six-hour on-peak period and one with a longer eight-hour on-peak period.[11] Staff argues a time-varying rate is superior to a flat rate in following the traditional ratemaking principles of "fairness" (by ensuring that ratepayers who impose fewer costs on the system pay a lower rate)

[7] *Id*., p. 19 (citing Hrg. Trans., p. 64:9–14).
[8] *Id*., p. 19-20 (citing Hrg. Trans., p. 44:16–24).
[9] *Id*., p. 20 (citing Hrg. Trans., p. 44:16–24).
[10] Settling Parties Joint Statement of Position, p. 20 (citing Hrg. Trans., p. 64:5–14).
[11] Hrg. Exh. 300, Haglund Answer Rev. 1, p. 23–36.

and "efficiency" (by providing an efficient price signal and discouraging wasteful and costly on-peak usage). Staff argues a time-varying rate also advances the goals of Senate Bill 19-077 to "encourage vehicle charging that supports operation of the electric grid operation." Staff maintains that its options fulfill this goal by offering a discounted rate for charging during most hours. Staff states its options also encourage more charging overall, compared to the existing rates, because there is no demand charge. Finally, Staff states its options support a more efficient use of the grid by encouraging off-peak charging.

46. Staff disputes the claim that public fast charging customers are demand inelastic. Staff states that Black Hills admitted "[t]he Company has no such research."[12] Staff suggests this claim is based on language in a prior Commission decision that noted it may be more difficult for public fast charging stations to avoid on-peak charging compared to EV fleets.[13] Staff argues the behavior of several of the leading EV charging companies indicates they, in fact, do believe that drivers respond to price signals. Staff states both Tesla and EVgo have begun to offer time-varying rates for public charging and that charging companies have repeatedly argued to the Commission that too-low regulated prices offered at utility-owned stations could threaten the competitive market.

47. Staff objects to both the on-peak period and the price differential in Black Hills' proposed TOD rate. Staff's proposed rate options are as follows.

[12] *Id.*, p. 25 (citing Black Hills Response to CPUC2-4 (Att. ERH-8)).
[13] *Id.*, p. 26 (citing Proceeding No. 20A-0195E, Decision No. R21-0486 at ¶ 142 (issued Aug. 10, 2021)).

Table ERH-1: Staff's Proposed Commercial EV Rate Options[14]

	Staff TOU Option 1	Staff TOU Option 2
On-Peak Period	3pm to 9pm, non-holiday weekdays	2pm to 10pm, non-holiday weekdays
Off-Peak Period	All other hours	All other hours
Summer Period	June through September	June through September
Customer Charge ($/bill)	64.00	64.00
Summer on-peak ($/kWh)	0.52167	0.48628
Non-Summer on-peak ($/kWh)	0.34778	0.32418
Off-peak ($/kWh)	0.17389	0.16209

48. Staff states it used the same approach as the Commission approved for Black Hills' original rate[15] (Schedule LGS-SEV) and Public Service Company of Colorado's original rate[16] (Schedule S-EV): calculate a rate that would collect the same amount of revenue as Schedule LGS-SEV and LGS-S if the ratepayer had a load factor of 15 percent and the average load shape of the LGS rate class.

49. Staff maintains the rate adopted here must be revenue-neutral compared to existing options to avoid prohibited subsidization. Staff explains that if the new rate is designed to collect less revenue from EV charging companies than other members of the same rate class, the rate is not fully recovering the costs that have been allocated to that class. This outcome would represent a subsidized rate for that category of ratepayers. Staff challenges that a subsidized rate would violate the principles of sufficiency and fairness and be likely prohibited by § 40-3-106(1)(a),

[14] Hrg. Exh. 300, Haglund Answer Rev. 1, p. 32 (Table ERH-1).
[15] Proceeding No. 20A-0195E.
[16] Proceeding No. 19AL-0290E.

C.R.S.[17] Staff posits that a rate designed to recover less than the full allocated cost of service might be granting an unlawful preference or advantage to those customers.

50. Staff adds, one reason that transportation electrification is in the public interest is that it offers potential benefits to both EV drivers and non-drivers alike. Staff explains, the additional revenues utilities expect to collect from incremental EV load puts downward pressure on rates. Staff states that offering a subsidized rate for commercial charging will reduce those revenues, thereby attenuating the benefits shared among all ratepayers.

2. Staff's Testimony Opposing the Settlement Agreement

51. Staff recommends rejecting the Settlement Agreement and approving one of its rate options. Staff opposes the settled TOD rate for three reasons.

52. First, that the time-of-use price ratio of 1.2 to 1 is inconsistent with the evidence presented to the Commission regarding what constitutes good rate design for DCFCs. Among others, Staff cites prior testimony by Tesla, Inc. that "[a] good EV rate design for public DCFC stations consists of a lower demand charge (or no demand charge) combined with time-of-use ("TOU") energy charges that have a strong on-peak to off-peak price ratio."[18] Staff also cites prior CEO testimony that "recommend[ed] an on-peak to off-peak energy charge with at least a 2 to 1 *price differential*."[19] Finally, Staff cites testimony by Black Hills that "[t]he most important aspect of the proposed EV rates is the time-of-day component to the volumetric rates" and "[t]he current

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[17] § 40-3-106(1)(a), C.R.S., provides:

[A] public utility, as to rates, charges, service, or facilities, or in any other respect, shall not make or grant any preference or advantage to a corporation or person or subject a corporation or person to any prejudice or disadvantage. A public utility shall not establish or maintain any unreasonable difference as to rates, charges, service, facilities, or between localities or class of service. The commission may determine any question of fact arising under this section.

[18] Hrg. Exh. 301, Haglund Settlement, p. 7 (citing Proceeding No. 21AL-0494E, Hrg. Exh. 700, Tesla Ehrlich Answer, p. 11:57).

[19] Hrg. Exh. 301, Haglund Settlement, p. 8 (citing Proceeding No. 19AL-0290E, Hrg. Exh. 500, CEO Hay Answer, p. 54:19–20).

on-peak ratio for Small General Service customers [of 1.6 to 1] is too small of a price difference to encourage the shifting of load necessary for adding new EV load growth."[20]

53. Second, that the settled rate is likely to discourage load shifting by fleets because it undermines the existing rate option that encourages fleets to charge off-peak. Staff maintains fleets exercise discretion over when to charge and can respond to price signals and shift charging to low-cost time periods. Staff's concern is the outsized focus on the public DCFC use case could lead to adopting a rate that undermines any incentive for fleets to shift charging to off-peak hours. Staff contends fleets would likely choose Black Hills' existing Schedule LGS-SEV, assuming their load factor is less than 15 percent, because the demand charge is much lower than the default rate and because fleets can take advantage of the low off-peak energy charges. Staff believes LGS-SEV provides a good combination of incentives for a fleet because the strong time-varying price signal encourages off-peak charging, while the existence of a much reduced demand charge encourages managers to flatten load by staggering charging. Staff argues, in contrast, the settled rate could lead fleets to select a rate that gives them very little incentive to charge off-peak (because the price signal is so weak) and no incentive to flatten their load (because there is no demand charge).

54. Third, and finally, that the on-peak period poorly aligns with a system whose peaks are likely to increasingly occur later than 7:00 p.m. Staff contends Black Hills' commitment to conduct a rate design and rate period study is insufficient. Staff questions why the Settling Parties would support as just and reasonable a rate design that is already in need of re-evaluation.

[20] *Id.*, p. 9 (citing Hrg. Exh. 100, Gervais Direct, Att. PGG-8, Grubert Direct testimony from prior TEP proceeding, p. 16:4–5 and 11:3–5).

3. Staff's Final Statement of Position

55. Staff urges the Commission to find that Staff's proposals present the best rate designs, are supported by up-to-date data, and reflect a balancing of policy considerations. Overall, Staff challenges that the settled TOD rate, is poorly designed, departs from established policy considerations, and fails to balance the statutory requirements of Senate Bill 19-077, § 3.

56. Staff maintains its on-peak periods are based on more recent data and reasonable expectations about changes in Black Hills' generation mix, which are unaccounted for in the settled TOD rate. Staff explains, to address both the issues of out-of-date load data and increasing solar capacity, Staff's witness utilized the three most recent years of load data from Black Hills and factored in reasonable expectations about how changes in its generation mix will affect the time of peak load net of renewables in the coming years.[21] Staff contends the settled on-peak period is insufficiently forward-looking, arguing while it may have been well matched with conditions in 2020, system peaks will increasingly occur outside of this window as solar continues to grow.[22] Staff claims Black Hills even admitted that it could cite no evidence to contradict Staff's analysis on this point.[23] Staff objects that the only remaining reasoning for retaining the settled on-peak period is to avoid customer confusion, which Staff points out, contradicts the Settling Parties' own argument that customers, at least initially, will not be the ones paying the differential in TOD rates since providers tend to absorb those costs.

57. Staff contends the on- to off-peak ratio in the settled TOD rate is flawed and should be rejected. Staff claims the ratio fails to provide a sufficient price signal to encourage off-peak charging. Staff maintains TOD rates only result in fairness to ratepayers and improve grid

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[21] Staff Statement of Position, p. 6–7 (citing Hrg. Exh. 300 Rev. 1.2, Haglund Answer, p. 33:1–21).
[22] *Id*., p. 6 (citing Hrg. Exh. 300 Rev. 1.2, Haglund Answer, p. 30:10).
[23] *Id*. (citing Hrg. Trans., p. 52:4–12).

efficiency if the rates actually incentivize load shifting, and Staff objects the "trivial" 1.2-to-1 ratio will not accomplish this purpose.[24] Staff also objects that the ratio does not accurately reflect the capacity costs associated with providing service during on-peak hours. Staff claims its proposed ratio, in contrast, sends a strong price signal and balances traditional ratemaking principles.

58. Staff contends the settled TOD rate could have unintended consequences for EV fleets, which Staff's rates would prevent by continuing to incentivize load shifting. Staff states that fleets are uniquely positioned to manage charging and, if approved, the settled rate could induce fleets to take service on a rate that provides little incentive to use that flexibility to charge off-peak. Staff maintains its proposals give a stronger price signal to encourage fleets to charge off-peak, regardless of which rate they choose.

59. Staff challenges that the Settling Parties' arguments regarding inelasticity of demand of public charging are irrelevant and contradicted by available evidence. Staff claims the evidence suggests demand for public charging is at least someone elastic and likely depends on the circumstances including the station's location, utilization rate, and the available charging options.[25] Staff concludes, even if public charging is initially inelastic, a TOD rate with a strong price signal is better than a nearly flat rate because on-peak charging imposes greater costs on the grid. Staff points out the Commission does not regulate the rates EV charging companies assess to their customers and that the election to absorb any time-varying rates is a business decision.

60. Finally, Staff argues that the settled TOD rate does not adequately take into consideration the goals of Senate Bill 19-077, codified at § 40-3-116(2), C.R.S., to develop rates that encourage vehicle charging *and* that support the operation of the electric grid. Staff states the

[24] Staff Statement of Position, p. 8–9.
[25] *Id.*, p. 11 (citing Hrg. Exh. 300, Haglund Answer Rev. 1.2, p. 30:8–12).

settled rate focuses too much on attracting investment and not enough on grid operation. Similarly, Staff contends the settled rate should be evaluated in light of the considerations in § 40-5-107(2), C.R.S., regarding utility transportation electrification plans broadly. Staff argues, because the rate approved in this Proceeding is a continuation of Black Hills' initial TEP, the Commission can also evaluate the settled rate and Staff's proposals against the seven considerations identified in this statute at § 40-5-107(2), C.R.S. Staff concludes that its proposals satisfy those considerations whereas the settled rate does not.

F. Commission Findings and Conclusions

1. Settlement Agreement

61. The Commission's Rule 1408(b), 4 CCR 723-1, allows the Commission to approve, deny, or require modification to any settlement as the public interest requires. The Commission considers whether the settled terms adequately address the issues raised in the proceeding and reach a result that is just and reasonable and in the public interest. As the proponents of an order, the settling parties bear the burden of proof to establish by a preponderance of the evidence that the settlement is just and reasonable and in the public interest.[26] In determining whether to approve a settlement, the Commission balances the longstanding policy of encouraging settlements in contested cases[27] and the Commission's independent duty to determine whether matters are in the public interest.[28] The Commission does not necessarily need to find the settled terms are the same as the Commission would have reached; rather, the Commission considers whether the settled terms adequately address the issues raised in the proceeding and reach a result that is just and

[26] § 24–4–105(7), C.R.S.; § 13–25–127(1), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723–1.

[27] *See*, *e.g.*, Rule 1408 of the Commission's Rules of Practice and Procedure, Rule 4 CCR 723–1.

[28] *See*, *e.g.,* Proceeding No. 11A-833E, Decision No. C12-1107 at ¶ 31 (issued Sept. 24, 2012) citing *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

reasonable and in the public interest. The Commission applies these principles and legal standards here to assess the Settlement Agreement as a resolution of the issues in this Proceeding.

a. On-Peak Period

62. We find it necessary to modify the on-peak period in the settled TOD rate in order to align rate incentives along actual system needs. We therefore adjust the on-peak period from the settled period of 1:00 p.m. to 7:00 p.m. to shift later to the hours of 3:00 p.m. to 9:00 p.m. We are persuaded by Staff's advocacy in this Proceeding, including the robust evidence that Staff developed and provided into the record, that this later period more accurately captures the net load peak demand than the period agreed to by the Settling Parties. Specifically, given the 2022 data, and the likely impact of the resources added pursuant to the Company's Electric Resource Plan (ERP) (Proceeding No. 22A-0230E), we find Staff's suggested on-peak hours of 3:00 p.m. to 9:00 p.m. are more accurate than the settled period.

63. We also agree with Staff that net peak load (*i.e.*, system peak net of projected renewable production) is the correct metric to evaluate. We find Black Hills' focus on system peaks is inadequate, given the broader need for emission-free power; instead, the emphasis should be on matching loads to renewable energy production profiles as best as possible. Accordingly, we direct Black Hills to develop its upcoming CCOSS to assess, or be expanded to also assess, net peak loads in a manner consistent with the outcome of the ERP process.

b. Price Differential

64. We approve the price differential in the settled TOD rate without modification. In evaluating both the Settling Parties' and Staff's proposals, we aim to establish a rate that will serve to jumpstart the industry and spur more EV adoption in Black Hills' territory, while doing so in a sustainable way. We understand that a peak of 1.2 to 1 is not a strong price signal and will not

alter customer behavior as much as a larger differential would, but we are also sensitive to the Settling Parties' arguments that a simpler, flatter rate is more likely to incentivize development of EV charging infrastructure in Black Hills' service territory which, at present, is lagging. We also find persuasive the concern that public fast charging users may be relatively constrained in their ability to shift their usage and that site hosts tend to simply absorb these costs, at least for now. In approving the settled term, we make this decision with the understanding that this matter will be thoroughly evaluated with an improved CCOSS and with full comprehension of the resources to be selected in the critically-transitional ERP.

65. We also note that this is a transitional period for Black Hills' service territory and that our approval of this low differential is temporary and justified at this limited time because of the need to avoid stymying much-needed investment in charging infrastructure in this undeveloped area. Going forward, we expect time-varying rates to more strongly signal to customers the increased cost of providing service to them during on-peak times, and the decreased cost of providing service during off-peak times. To this end, we require the Company, working with the Parties and others, as appropriate, to collect data with the broad goal of improved comprehension regarding when and where EV charging occurs, including the percentage and practice of charging at-home versus at public charging stations, and whether public charging is utilized by local commuters or those who live outside the Company's service territory. This data will help the Commission and stakeholders better understand the array of benefits and costs associated with DCFC stations, a critical input as we transition to a price signal that is better informed by improved data and that accurately serves the users of the specific charging rate as well as the customer base at large.

c. Fleets

66. We limit the rate approved here to public fast charging, as the Settling Parties have proposed in response to concerns over misaligned incentives for fleets.[29] As discussed above, our approval of the relatively low price differential is, in part, because of the potential for users of public fast charging to not have flexibility to shift their charging time. This is not as much of a concern for fleets, and we want to avoid the potential for fleets to avail themselves of this more favorable rate, causing a negative revenue situation for the broader system.

2. Conclusion

67. Based upon substantial evidence in the record, the Commission finds approval of the Settlement Agreement is in the public interest, with the modifications set forth above to the on-peak hours period and the qualification that this rate will be available only to public charging stations. The Commission finds that the Settling Parties have established by a preponderance of the evidence that the Settlement Agreement, with these modifications, is just, is reasonable, and should be accepted by the Commission. Likewise, we grant the Company's Application, subject to the Settlement Agreement and the modifications ordered in this Decision.

3. Authorization of Compliance Tariffs

68. The Commission orders Black Hills to file a compliance advice letter to implement the tariffs necessary to implement the approved public fast charging station rate, consistent with the findings, conclusions, and directives in this Decision. We authorize Black Hills to file the compliance advice letter on not less than two business days' notice. Black Hills

[29] Settling Parties Joint Statement of Position, p. 20 (citing Hrg. Trans., p. 64:5–14).

is required to meet with and coordinate with Staff prior to its tariff filing in order to provide Staff with the pertinent information it will require to review the proposed tariff.

II. ORDER

A. It Is Ordered That:

1. The Comprehensive Settlement Agreement (Settlement Agreement) among Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (Black Hills), the Colorado Energy Office, ChargePoint, Inc., and Electrify America, LLC, on May 26, 2023, attached and incorporated into this Decision as Attachment A, is approved, subject to the modifications set forth in this Decision.

2. The Application filed by Black Hills on January 4, 2023, for approval of an alternative electric vehicle fast charging station rate, as modified by the Settlement Agreement, as modified by this Decision, is granted.

3. Black Hills shall file an advice letter compliance filing to implement the tariffs necessary to implement the approved public fast charging station rate, consistent with the findings, conclusions, and directives in this Decision. Black Hills shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

4. 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.

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING September 6, 2023.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

Rebecca E. White,
Director