Decision No. C24-0223

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0242E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2024-2026 TRANSPORTATION ELECTRIFICATION PLAN.

COMMISSION DECISION GRANTING APPLICATION WITH MODIFICATIONS APPROVING, IN PART, AND DENYING, IN PART, SETTLEMENT AGREEMENT, AND APPROVING, IN PART, AND DENYING, IN PART, STIPULATION

Mailed Date:	April 10, 2024
Adopted Date:	February 28, 2024 and March 13, 2024

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the application (Application) filed on May 15, 2023, by Public Service Company of Colorado (Public Service or the Company) requesting the Commission issue an order approving the proposals contained in the Company's 2024-2026 Transportation Electrification Plan (TEP).

2. Through this Decision, the Commission grants, with modifications, the Application for approval of the Company's 2024-2026 TEP. The instant Application represents a continuation and expansion of the Company's 2021-2023 TEP (Inaugural TEP), litigated in Proceeding No. 20-0204E.

3. Also through this Decision, the Commission grants in part, and denies in part, the Joint Motion for Approval of Non-Unanimous Comprehensive Settlement Agreement, to Vacate and Amend the Evidentiary Hearing Dates, and for Shortened Response Time, filed by Public Service and the Settling Parties (defined below) filed on December 13, 2023.

4. Through this Decision we also grant in part, and deny in part, the Joint Motion to Approve Non-Comprehensive and Non-unanimous Stipulation of the Affordability Coalition (defined below) filed on December 20, 2023.

B. Procedural History

5. On May 16, 2023, the Commission issued notice of Public Service's Application and set a 30-day notice and intervention period.

6. On June 23, 2023, through Decision No. C23-0425-I, the Commission deemed the Application complete. On July 7, 2023, through Decision No. C23-0446-I, the Commission determined it would hear the matter *en banc*.

7. Through Decision No. C23-0425-I, issued June 23, 2023, the Commission granted requests for permissive intervention filed by Tesla, Inc. (Tesla); the City and County of Denver (Denver); Colorado Energy Consumers (CEC); Western Resource Advocates and Sierra Club (jointly, Environmental Organizations); ChargePoint, Inc. (ChargePoint)[1]; Southwest Energy Efficiency Project (SWEEP); EVgo Services LLC (EVgo); the Regional Transportation District (RTD); Americans for Affordable Clean Energy (AACE); the City of Boulder (Boulder); Energy Outreach Colorado (EOC); Independent Electrical Contractors Rocky Mountain Association (IECRMA); Black Parents United Foundation, Cultivando, GreenLatinos, GRID Alternatives, Mi Familia Vota, National Association for the Advancement of Colored People (NAACP) Denver Branch, Vote Solar, and Womxn from the Mountain (collectively, the Environmental Justice Coalition); Electrify America, LLC (Electrify America); EV Energy Corp. (EV Energy); and Climax Molybdenum Company (Climax). Further, we acknowledged the notices of intervention of right filed by Staff of the Colorado Public Utilities Commission (Staff), the Utility Consumer Advocate (UCA), and the Colorado Energy Office (CEO). Through Decision No. C23-0446-I, the Commission granted a Motion for Late Intervention filed by Walmart Inc. (Walmart).

8. Through Decision No. C23-0514-I, issued August 7, 2023, the Commission scheduled a remote evidentiary hearing for January 10-12, 16-19, and 22-24, 2024. The Commission also extended the deadline for a final decision to issue by an additional 130 days, as permitted by § 40-6-109.5(1), C.R.S.

9. On September 29, 2023, AACE, Boulder, CEC, CEO, Denver, Electrify America, EOC, Environmental Organizations, EvGo, EV Energy, IECRMA, Staff, SWEEP, Tesla, UCA, Vote Solar, and Walmart filed Answer Testimony.

[1] On October 5, 2023, the Commission granted, in Decision No. C23-0663-I, Chargepoint's Motion to Withdraw Intervention and excused Chargepoint from this Proceeding.

10. On November 17, 2023, the following parties filed Rebuttal or Cross-Answer Testimony: Public Service, Denver, AACE, Boulder, CEO, Electrify America, EOC, Environmental Organizations, EV Energy, IECRMA, Staff, SWEEP, Tesla, and Vote Solar.

11. On December 13, 2023, Public Service submitted a Joint Motion for Approval of Non-Unanimous Comprehensive Settlement Agreement, to Vacate and Amend the Evidentiary Hearing Dates, and for Shortened Response Time (Joint Settlement Motion). The Non-Unanimous Comprehensive Settlement Agreement (Settlement) was joined by CEO, Denver, Boulder, Environmental Organizations, EJC, Tesla, SWEEP, EOC, RTD, Walmart, EvGo and EV Energy (Settling Parties). The Joint Settlement Motion requested that the Commission vacate the hearing dates of January 10-12 and 16, 2024 (reducing the hearing from ten to six days), since the Settlement is "comprehensive and resolves all issues in the proceeding," and shorten response time to the scheduling portion of the Joint Settlement Motion to two and a half business days.

12. Also on December 13, 2023, Staff filed a Non-Comprehensive and Non-Unanimous Stipulation (Stipulation). The Stipulation was joined by CEC, UCA, Climax, Electrify America, and AACE (collectively the Affordability Coalition or Stipulating Parties). On December 20, 2023, the Stipulating Parties filed a Joint Motion to Approve Non-Comprehensive and Non-unanimous Stipulation of the Affordability Coalition (Joint Stipulation Motion).

13. Through Decision No. C23-0849-I, issued December 20, 2023, the Commission found good cause to modify the deadline for corrections to pre-filed testimony and exhibits and established December 29, 2023, as the deadline for any corrections to pre-filed testimony and exhibits, as well as pre-hearing motions. The Commission also established January 2, 2024, at noon, as the deadline for submission of witness lists and a cross-examination matrix. However, the

Commission retained the ability to hold the full scheduled evidentiary hearing, if necessary. On January 2, 2024, Public Service filed with the Commission a Witness Order and Cross-Examination Matrix.

14. Through Decision No. C24-0006-I, issued January 5, 2024, the Commission found good cause to amend the procedural schedule and vacated the January 10, 11, 12, and 24, 2024 hearing dates in light of the cross-examination matrix, filed by Public Service on January 2, 2024, and the pending Settlement and Stipulation. The Commission found that the witness cross-examination matrix demonstrated that vacating three days of the scheduled ten days for the evidentiary hearing would retain sufficient hearing time, and therefore, not be prejudicial to any party.

15. On January 10, 2024, the Commission convened the scheduled remote public comment hearing scheduled by Decision No. C23-0676-I, from 4:00 p.m. to 6:00 p.m. The Commission received oral comments from approximately ten members of the public regarding Public Service's proposed TEP.

16. On January 16, 2024, the Commission commenced the evidentiary hearing. The Commission continued the hearing on January 17, 18, and 19, 2024. On January 19, 2024, the Commission adjourned the hearing, closed the evidentiary record, and vacated the remaining hearing dates of January 22 and 24, 2024.

17. At hearing, the Commission admitted: Hearing Exhibits 125, 1505, 1506, 1605, 1606, 205, 2200, 407, 408, 411, 412, 416, 420, 422, 600, 602, 401, 401 Attachment NTG-10 Revision 1, 2200, and all exhibits on 2200. The Commission also took administrative notice of Hearing Exhibits 207, 208, 424, and 1707.

18. On February 7, 2024, the following parties filed a statement of position (SOP): Denver, IECRMA, the Environmental Justice Coalition, Staff, a Joint Statement from the Affordability Coalition (Affordability Coalition SOP), and a Joint Statement from Public Service, CEO, Denver, Boulder, Environmental Advocates, Tesla, SWEEP, EOC, RTD, Walmart, EvGo, and EV Energy, all of which support the Settlement (Public Service Joint SOP).

19. On February 28, 2024, and March 13, 2024, the Commission deliberated on the merits of the Company's Application at the Commissioners' Weekly Meetings, resulting in this Decision.

C. Legal Standard and SB19-077 Overview

20. In 2019, Colorado enacted Senate Bill (SB) 19-077, establishing new requirements for electric public utilities to file a TEP application with the Commission every three years, beginning May 15, 2020. The purpose of a TEP application is "to support widespread transportation electrification" within the utility's service territory. The statutory changes adopted through SB19-077 are codified at §§ 40-1-103.3(2) and (6), 40-3-116, and 40-5-107, C.R.S.

21. Pursuant to the requirements set forth in § 40-5-107, C.R.S., a TEP application must seek to "minimize overall costs and maximize overall benefits." In considering a TEP application and in determining cost recovery, the Commission considers, in its discretion, whether the investments are:

> (a) Reasonably expected to improve the use of the electric grid, including improved integration of renewable energy;
> (b) Reasonably expected to increase access to the use of electricity as a transportation fuel;
> (c) Designed to ensure system safety and reliability;
> (d) Reasonably expected to contribute to meeting air quality standards, improving air quality in communities most affected by emissions from the transportation sector, and reducing statewide emissions of greenhouse gases by forty percent below 2005 levels by 2030 and eighty percent below 2005 levels by 2050;

(e) Reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure; attract private capital investments; and utilize high-quality jobs and skilled worker programs;

(f) Transparent, incorporating public reporting requirements to inform design and commission policy; and

(g) Reasonably expected to provide access for low-income customers, in the totality of the utility's transportation electrification programs, which may include community-based and multi-family charging infrastructure, car share programs, and electrification of public transit, while giving due consideration to the affect on low-income customers.[2]

The Commission may balance these factors in determining whether a TEP satisfies the statutory requirements.

22. The Commission encourages parties to offer stipulations resolving any factor or matter of substance that is at issue. The Commission may approve, order modification as a condition of approval of, or disapprove any stipulation offered into evidence or on the record.[3] Similarly, the Commission encourages settlement of contested proceedings and may approve, disapprove, or recommend modifications as a condition for approval of a settlement.[4] The Commission carefully balances the longstanding policy of encouraging settlements in contested cases and the Commission's independent duty to determine matters that are within the public interest.[5] In making this determination, the Commission is not necessarily bound by the parties' proposals—the Commission may do what it deems necessary to assure that the final result is just, reasonable, and in the public interest, provided the record supports the result and the reasons for the choice are stated.[6] In interpreting and implementing statutes, the Commission has

[2] § 40-5-107(2), C.R.S.

[3] Rule 1407, 4 *Code of Colorado Regulations* (CCR) 723-1.

[4] *Id*. at 1408(a)–(b).

[5] *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

[6] *See id*; *See also City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (stating that "[t]he evidence underlying the agency's decision must be adequate to support a reasonable conclusion.").

discretion to make determinations based on the aid of its staff and expertise.[7] When exercising any power granted to it, the Commission must give the public interest first and paramount consideration, and must ensure that public utility rates are just and reasonable.[8]

23. Accordingly, pursuant to SB19-077 and the Commission's overall statutory and constitutional authority, the Commission has discretion to determine whether a TEP application is reasonable, minimizes overall costs and maximizes overall benefits, and is in the public interest.

D. Overview of Settlement and Stipulation

1. Settlement

24. On December 13, 2023, Public Service submitted the Settlement, joined by CEO, Denver, Boulder, Environmental Organizations, EJC, Tesla, SWEEP, EOC, RTD, Walmart, EVgo, and EV Energy.

25. The Settling Parties assert that Public Service's 2024-2026 TEP, as modified by the Company's Rebuttal Testimony and the Settlement, are in the public interest and support the electric vehicle (EV) and climate goals of Colorado while appropriately addressing the potential inequities in Colorado's transition to electric transportation.[9] The Settlement proposes a budget of approximately $436.8 million over three years, and includes a budget flexibility of 25 percent, representing a potential total budget of $541.1 million over three years depending on consumer demand.[10] The flexibility provisions also allow for 150 percent budget flexibility between

[7] *See Atchison, Topeka & Santa Fe Ry. v. Public Utils. Comm'n*, 572 P.2d 138, 141 (1977) ("Moreover, the exercise of discretion and judgment should not be interfered with by the reviewing court. 'We adhere to the proposition that the legislature contemplated that the reviewing court, since it does not have the aid of a staff and the expertise of the PUC, should not undertake to duplicate the evaluation and judgment processes followed by the PUC in arriving at its decision.'"); *See also Pub. Serv. Co. v. Pub. Utilities Com.,* 765 P.2d 1015, 1019 (Colo. 1988).

[8] Decision No. R23-0244E, issued December 20, 2023, in Proceeding No. 23A-0244E, citing § 40-3-101(1), C.R.S.; *Public Serv. Co. of Colo. v. Public Util. Comm'n*, 350 P.2d 543, 549 (Colo. 1960).

[9] *See* Joint Settlement Motion, p. 4.

[10] Settlement, ¶ ¶ 5-7.

portfolios.[11] The Settling Parties contend that the investments and expenditures embodied in the Settlement will "improve the use of the electric grid, including improved integration of renewable energy," "increase access to the use of electricity as a transportation fuel," are "designed to ensure system safety and reliability," and "expected to contribute to meeting air quality standards, improving air quality in communities most affected by emissions from the transportation sector, and reducing statewide emissions of greenhouse gases," as well as satisfy the other elements the Commission is required to consider in evaluating a TEP.[12]

26. The Settlement proposes specific budgets and program design elements of the 2024-2026 TEP's six portfolios, which include Advisory Services, Clean Vehicles, Public Charging Acceleration Network (PCAN), Residential, Commercial, and Innovation. The Settling Parties support the approval of Public Service's proposed Advisory Services portfolio, which provides facilitating services for the Company's TEP programming, and the associated program parameters as updated by the Company's Rebuttal Testimony.[13] Similarly, the Settling Parties support the Company's proposed Clean Vehicles portfolio offerings as updated by Rebuttal Testimony and subject to modifications specified in the Settlement, such as a tiered rebate structure for Income-Qualified (IQ) customers.[14] The Settling Parties support approval of the Company's PCAN portfolio, as updated in the Company's Rebuttal Testimony and identified as the PCAN Alternative portfolio; this offering proposes to expand public fast charging access through the Company's service territory. Consistent with Company Witness Ms. Deborah E. Erwin's descriptions in her Supplemental Direct and Rebuttal Testimonies, the PCAN Alternative portfolio will provide rebates only to support non-regulated, third-party direct current fast charging (DCFC)

[11] *Id*. at ¶ 6.
[12] Public Service Joint SOP, p. 4, citing 40-5-107(2)(a)-(d), C.R.S.
[13] Settlement, ¶ ¶ 13-14.
[14] *See id*. at ¶ ¶ 15-20.

facilities that are located in a Disproportionately Impacted (DI) community.[15] Regarding Public Service's Residential portfolio, the Settling Parties agree to the Charging Perks and Optimize Your Charge (OYC) Managed Charging options for participation in the Company's EV Accelerate At Home (EVAAH) and EV Charger and Wiring Rebate Program.[16] The Commercial portfolio, the largest of the six portfolios, is supported by the Settling Parties and includes the Company's proposed "No Regrets" distribution investments and current list of distribution projects as identified in the Company's Rebuttal Testimony.[17] The Settling Parties further suggest that the Commercial portfolio should include both Company-owned EV Supply Infrastructure (EVSI) as well as an EVSI rebate program with a budget of $39 million.[18] Lastly, the Company's Innovation portfolio contains a budget carve-out of 50 percent of its Open Innovation project for projects and partnerships in DI communities, as described in Company Witness Mr. Partick J. Murphy's Rebuttal Testimony.[19] In addition to the continuation of Innovation projects from the Company's Inaugural TEP, the Settling Parties agree that Public Service will propose to bring forward customer-facing Commercial and Residential Vehicle-to-Grid (V2G) demonstrations, pilots, or programs in its 2027-2029 TEP.[20]

27. The Settling Parties propose that Public Service's incurred TEP investments and expenditures should continue to be recovered through the Transportation Electrification Programs Adjustment (TEPA) rider.[21] The Settling Parties also contend that the Company's proposed cost

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[15] *Id*. at ¶ 21-22.
[16] *Id*. at ¶ 29.
[17] *Id*. at ¶ ¶ 37, 39. See list, with the exception of the High Point substation, included in Table CLP-R-1 in Hrg. Exh. 118 (Paoletti Rebuttal).
[18] *Id*. at ¶ ¶ 41, 45.
[19] *Id*. at ¶ 48.
[20] *Id*. at ¶ 49.
[21] *Id*. at ¶ 8.

allocation methodology, as presented in the Direct Testimony and updated by the Rebuttal Testimony of Company Witness Mr. Derek S. Klingeman, is reasonable and in the public interest.[22]

28. Additionally, the Settling Parties address and support various equity considerations.[23] These considerations include eligibility criteria for participation in equity-focused programs that align its community eligibility criteria with the most recent State definitions enacted in HB23-1233, and equity-supportive spending that includes at least 15 percent of the total approved TEP budget with an annual minimum of 5 percent of the total budget.[24] However, the Settling Parties propose suspending the Company's implementation of its proposed equity performance incentive mechanisms (PIM), while reserving the right to revisit the issue in a future TEP.[25] Lastly, the Settling Parties support Public Service's inclusion of its TEP programming within the Company's broader IQ/DI Community Outreach and Engagement Plan and to support eligible TEP-specific outreach and engagement activities.[26]

29. The Settling Parties propose the Commission adopt the Company's estimated retail rate impact methodology for the 2024-2026 TEP, which incorporates all EV adoption since 2021, as presented in the Direct and Rebuttal Testimonies of Company Witness Mr. Derek S. Klingeman.[27] The Settling Parties assert that the retail rate impacts comply with the requirements of § 40-1-103.3(6), C.R.S., even if the Company were to exercise full budget flexibility. The Company states it will manage and report on the retail rate cap annually.[28] The Settling Parties

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[22] *Id*. at ¶ 10.
[23] *See id*. at ¶ ¶ 53-65.
[24] *Id*. at ¶ ¶ 53, 56.
[25] *Id*. at ¶ 59.
[26] *Id*. at ¶ 60.
[27] *Id*. at ¶ 11.
[28] Public Service Joint SOP, p. 10

further suggest that the TEP programs will, over time, place downward pressure on rates by spreading fixed costs over high sales levels.[29]

30. The Settling Parties propose that it is appropriate to transition to an annual report framework for the 2024-2026 TEP, and that the annual reports will continue to include the metrics approved in the Inaugural TEP, as well additional reporting requirements specified in the Settlement for new programs.[30] Additionally, the Settling Parties agree that Public Service should continue to use the 60/90-Day Notice process that was previously approved in the Inaugural TEP and will continue to report on the progress of the 2024-2026 TEP at its quarterly TEP stakeholder meetings.[31] Separately, the Company argued that it sits in a unique position to support the State's EV goals as it has the resources, expertise, and opportunity to educate its customers on EVs.[32]

2. Stipulation

31. Also on December 13, 2023, Staff filed a non-comprehensive and non-unanimous Stipulation joined by CEC, UCA, Climax, Electrify America, and AACE.

32. The Stipulation proposes a three-year budget of $108.37 million, which is equal to the unspent amount of the TEP budget approved in the 2021-2023 TEP.[33] The Stipulating Parties assert that they are aligned in their aim to achieve a cost-effective transition towards increasing the number of electric vehicles on Colorado's roads and highways, and that this value was approximately four times what was actually spent by the Company in the Inaugural TEP.[34] Separately, in Answer Testimony, Staff and UCA both questioned the need for the proposed increases in the TEP budget, and the TEP overall, to achieve the EV adoption outlined in the CEO

[29] *Id*.
[30] *See* Settlement at ¶ ¶ 66, 68.
[31] *Id*. at ¶ ¶ 69-70.
[32] Hrg. Exh. 101 (Ihle Direct), p. 57.
[33] Stipulation, ¶ 1.
[34] *See* Joint Stipulation Motion, p. 3.

State Greenhouse Gas Roadmap. Staff contends that EV adoption in the Company's service territory is on-track to exceed the State's EV adoption goal without the TEP spending requested in this proceeding and despite "extraordinary headwinds" experienced by the EV market, including the COVID-19 pandemic and associated supply-chain disruptions and inflationary pressures.[35]

33. The Stipulation proposes that the $108.37 million budget be apportioned as follows: Advisory Services portfolio ($4.79 million); Residential portfolio ($8.09 million); Commercial ($67.93 million); Innovation portfolio ($14.05 million); and Plan Administration ($13.5 million). The Stipulation proposes no allocation for the Clean Vehicles portfolio and the PCAN Alternative portfolio, arguing that clean vehicles are already well supported by federal and state rebates and credits, and that public charging is unreliable, and the Settlement fails to enforce charger reliability.[36]

34. The Stipulating Parties request that the Commission prohibit the Company from pursuing Company development and ownership of new DCFC stations.[37]

35. The Stipulation also proposes several terms related to portfolio offerings, including: (1) for any rebates offered in the Company's TEP, the related costs should be treated as unamortized operation and maintenance expenses;[38] (2) the Commission should require the Company to propose an approach to sunset the TEPA rider in its 2027-2029 TEP Application; and (3) IQ and DI expenditures should comprise at least 15 percent of the total three-year TEP budget, with an annual minimum of five percent of the annual TEP budget dedicated to supporting equity eligible programs.[39]

[35] Hrg. Exh. 400 (Haglund Answer), p.25.
[36] *Id*. at ¶ 3, 12.
[37] *Id*. at ¶ 7-8.
[38] *Id*. at ¶ 3.
[39] *Id*. at ¶¶ 11-15.

36. The Stipulating Parties reject the Company's argument that the TEP will place downward pressure on rates, and support a CEC proposal to defer incremental revenues from EV charging, to be trued-up at the Company's next rate case.[40] The Stipulation proposes to adopt the CEC deferral mechanism proposal that would, starting in 2024, create a mechanism to defer the net incremental from EV charging, using its best estimate of these revenues which is generally consistent with the Company's rate impact evaluation.[41]

E. Contested Issues

37. When reviewing a Settlement, the Commission must carefully balance the longstanding policy of encouraging settlements in contested cases and the Commission's independent duty to determine matters that are within the public interest. The Commission takes very seriously its role to balance the array of interests before it. We generally agree with the collective and individual arguments of the Stipulating Parties regarding broad affordability concerns given the array of current and near-term demands on ratepayers. The Company's Application and the proposed Settlement budget represents a massive increase from current spending levels. Some investment, such as distribution improvements to facilitate public chargers and customer facility buildout—while certainly important—are better suited for inclusion in a Distributed System Plan (DSP) application or, lacking that forward assessment, invested as a normal course of business. The Commission has other concerns with certain direct programmatic spending, as discussed below. Moreover, we do not find that the Company and Settling Parties have carried their burden to demonstrate that the Application as modified by the Settlement "minimize[s] overall costs and maximize[s] overall benefits" or defines with any precision to what

[40] *Id*. at ¶ 10.
[41] *Id*.

extent the TEP will specifically lead to greater EV adoption. These issues are also discussed further below.

38. Nonetheless, the State legislature has made clear its vision that regulated utilities play a critical role in the state's broad and extraordinary goal to remove greenhouse gas emissions from its transportation sector. We agree with arguments that the Company is in a unique position to facilitate the buildout of infrastructure necessary to support widespread confidence and practicality of EV adoption, particularly for sectors of the population that have yet to participate meaningfully in this transformation of the transportation sector. We must and do take the legislature's general desire for transportation sector electrification, and the specific language of SB19-077, as critical guidance as we weigh the merits of the arguments before us.

39. For these reasons, the Commission declines to adopt the Settlement Agreement in full or hold the budget static as proposed in the Stipulation. We find that the Company and the Settling Parties have not carried their burden to demonstrate that the Application as modified by the Settlement "minimize[s] overall costs and maximize[s] overall benefits" for reasons explained below.[42] While the Application as modified by the Settlement has many proposals that we find have value and further the legislative purpose of the SB19-077, we do not find it in the public interest to approve the Settlement Agreement in full. Similarly, we find that the Stipulation does not strike an appropriate balance between minimizing overall costs and maximizing overall benefits. More importantly, we find that approving the Stipulation terms in full would not go far enough towards meeting Colorado's EV and greenhouse gas reduction goals. As such, we address the discrete proposals in this Proceeding in turn below.

[42] § 40-5-107(1)(b), C.R.S.

1. Retail Rate Cap and Cost Benefit Evaluation

40. SB19-077, codified at § 40-1-103.3(6), C.R.S., establishes the parameters of the maximum retail rate impact of a utility's TEP. This statute provides:

> The commission shall consider revenues from electric vehicles in the utility's service territory in evaluating the retail rate impact. The retail rate impact from the development of electric vehicle infrastructure must not exceed one-half of one percent of the total annual revenue requirements of the utility.

a. Settlement Proposals

41. The Settling Parties agree that the Company's estimated retail rate impact calculation associated with the 2024-2026 TEP, as presented by Derek S. Klingeman, complies with the statutory requirements of § 40-1-103.3(6), C.R.S.[43] Mr. Klingeman calculated the retail rate impact by determining the annual TEP revenue requirements then subtracting an estimate of net annual revenues from EV charging in the Company's territory. That value is then weighed against total retail revenues to determine the percentage impact on overall retail rates. Based on that approach, the Company calculated a retail rate impact of -0.35 percent in 2024 and -0.32 percent in 2025 and 2026.[44]

42. Public Service explains that the methodology employed was consistent to that conducted in the Company's Inaugural TEP and approved by the Commission in its order to that proceeding. The Company claims that the proposed TEP continues to place "downward pressure on rates" as experienced from the Inaugural TEP.[45] The Company states it used a cost-benefit analysis (CBA) from The Brattle Group (Brattle) to evaluate the benefits and costs of

[43] Settlement, ¶ 11.

[44] Hrg. Exh. 124 (Klingeman Settlement), p. 7. These values are modified somewhat from the values presented in Hrg. Exh. 108, (Klingeman Direct), p. 22 which ranged from -0.16 percent to -0.42 percent over the three-year TEP period.

[45] Hrg. Exh. 108 (Klingeman Direct), p. 23.

transportation electrification in the Company's service territory based on the State's EV goals.[46] The Company claims that the costs and benefits of the TEP must be considered from the perspective of what the TEP is intended to achieve, which the Company states is widespread and equitable EV adoption, supported by charging and other electric infrastructure, and in turn, broad community and state-wide emission reductions. The Company contends that the non-settling parties' questioning of the benefits associated with incentivizing an individual to purchase an EV outweighs the cost of incentives is misplaced in light of the intention behind a TEP.[47]

b. Intervenor Positions

43. UCA contends that Public Service calculated the retail rate impact on an aggregate basis, including the revenues from the Company's prior TEP investments. If evaluating the TEP program on an incremental basis, as UCA suggests the Commission should do, then the rate impact is positive and trends close to the 0.5 percent statutory cap by 2026.[48]

44. Staff contends the rate impact evaluation proposed by the Company is dubious and questions several of the Company's assumptions, including that new EV load causes no incremental net costs, such as increased transmission and distribution (T&D) and generation costs, and that new EV load is directly attributable to Public Service's TEP programs. Staff notes there is no support of such on this record and possibly contradictory analysis excluded from the record. Staff also argues the Company's claim of reduced rates is based on simplistic accounting that ignores actual cost recovery mechanisms involved (specifically, the TEPA rider).[49]

45. Staff's Mr. Haglund notes that § 40-5-107(1)(b) C.R.S. requires that a TEP must seek to minimize overall costs and maximize overall benefits. Mr. Haglund contends that Public

[46] Public Service Joint SOP, p. 7.
[47] *Id*. at 8.
[48] Hrg. Exh. 200 (England Answer), pp. 11-12.
[49] Hrg. Exh. 400 (Haglund Answer), pp. 17-18.

Service has provided no evidence that its TEP proposal meets that requirement or any net benefits at all in terms of increased or accelerated EV adoption, and therefore the Commission would be justified in rejecting the Application outright.[50] Staff further argues that because the Company refuses to specify the benefits of its TEP program, authorizing up to $550 million on TEP spending is inconsistent with the Commission's recent focus on affordability. Staff suggests that, given the potentially competing priorities of achieving a cleaner energy system, advancing EV adoption, and addressing energy affordability, the Commission should exercise extreme caution in authorizing up to $550 million of regressive spending on top of numerous other initiatives, both ongoing and expected in the near future, that will require significant expenditures and longtime ratepayer commitments.

46. Staff also contends the Company may have had evidence regarding whether or not the TEP Application "minimizes overall costs and maximizes overall benefits" which it refused to provide through discovery, despite repeated requests for such.[51] Staff also suggests the modeling the Company did provide, conducted by consulting firms Guidehouse[52] (Guidehouse Report) and Brattle,[53] were largely irrelevant. According to Staff, the Guidehouse study was a simplistic "goal seeking" approach that assumed the State hits its 2030 target of 940,000 EVs, and connected the current level of EV adoption to that 2030 level. Brattle conducted a cost-benefit analysis but, according to Staff, Brattle's estimate of the cost of reaching the EV adoption goal is indifferent as to whether those costs are borne by Public Service ratepayers, the private market, or federal or state expenditures.[54]

[50] Hrg. Exh. 400 (Haglund Answer), p. 8.
[51] *Id*. at 14.
[52] Hrg. Exh. 105 (Jouve Direct) (subsequently adopted by Ms. Deborah E. Erwin).
[53] Hrg. Exh. 105, Attachment JLJ-2, The Brattle Group's *Transportation Electrification Cost-Benefit Analysis for Public Service Company of Colorado.*
[54] *Id*. at 36.

47. CEC proposes a deferral mechanism to ensure compliance with the statutory rate impact cap. CEC's Mr. Higgins explains that the mechanism would defer the net incremental revenues from EV charging for the benefit of customers starting in 2024. Under the CEC proposal, also supported by the Affordability Coalition in the Stipulation, to the extent that the period of deferral coincides with the test year in a Phase I rate case, the deferred revenues would be superseded by the test period revenues. However, if the deferral period does not coincide with the test year in a Phase I rate case, then the deferred net revenues should be accrued as a regulatory liability for eventual crediting to customers in rates.[55] This would defer net incremental revenue from EV charging, using its best estimate of these revenues, generally consistent with the Company's rate impact evaluation.

48. The Affordability Coalition's Stipulation supports CEC's proposed deferral mechanism. The Stipulation states this mechanism "will ensure that the same revenues the Company uses to demonstrate statutory compliance will accrue to the benefit of ratepayers when the Commission considers the Company's cost of service in a rate review. This mechanism also reflects the changed ratemaking circumstances between the Inaugural 2021-2023 TEP and this TEP due to the recent removal of the revenue decoupling adjustment mechanism, which was in place for the majority of the Inaugural 2021-2023 TEP. "[56]

c. Rebuttal Positions

49. In response to party opposition to its rate impact analysis, the Company asserts that the statute plainly refers to "revenues" and never to "incremental" revenues, as argued by UCA and Staff. Public Service contends the statutory guidance has not changed, that the Commission

[55] Hrg. Exh. 600 (Higgins Answer), p.7.
[56] Stipulation, ¶ 10.

approved the same approach to the calculation of the retail rate in the initial TEP, and should do so again here.[57]

50. The Public Service Joint SOP supports Public Service's condemnation of the incremental approach to retail rate impact calculation supported by the Stipulation. The Public Service Joint SOP notes that, per the Settlement, the Company will continue to estimate EV charging revenues as part of its annual retail rate impact calculation and reporting. The Public Service Joint SOP contends that EV revenues benefit customers by delaying the need for new Company rate cases and by lowering rate increases during a rate case.[58] It also argues that when a rate case application is made, the Company will incorporate all revenues, inclusive of EV revenues, just as it does for other forms of beneficial electrification.

51. With respect to calls by Staff to provide a more robust cost-benefit analysis, including evaluation of EV adoption directly attributable to the TEP investment, Public Service responds that there is no plain language in SB19-077 requiring any filing of a CBA, let alone a CBA with some sort of preferred methodology. Public Service states that "[w]hile the CBA prepared by Brattle may not follow the approach or method Mr. Haglund prefers, it is a rigorous analysis that is consistent with the SB19-077 and the approach used across numerous other jurisdictions."[59] Public Service's Mr. Ihle contends the CBA the Company provided is consistent with the approach used and approved during its inaugural TEP, decided less than three years ago. He also suggests that no legislation, Commission rule, or decision requires the Company to develop an analysis along the lines Mr. Haglund suggests, and the lack of such a requirement in

[57] Hrg. Exh. 113 (Ihle Rebuttal), p. 43.
[58] Public Service Joint SOP, p. 14.
[59] Hrg. Exh. 113 (Ihle Rebuttal), p.48.

SB19-077 sits in contrast to specific statutory guidelines found elsewhere, such as in SB21-264, where the legislature made explicit the need for similar analysis when it felt it necessary.[60]

52. With respect to the deferral mechanism proposed by CEC and adopted by the Affordability Coalition, the Public Service Joint SOP parties respond that the proposal is vague and unworkable. The Public Service Joint SOP argues "there is no statutory or rule support for such a proposal in the context of transportation electrification or other forms of beneficial electrification."[61] They also suggest the mechanism is not necessary for customers to reap the benefits of downward rate pressure. The Settling Parties acknowledge that the Revenue Decoupling Adjustment (RDA) expired; however, they "struggle" to see how a discrete revenue deferral makes for appropriate policy given EV charging revenues reflect fully embedded rates and are not strictly profits. They also argue the Commission should not treat revenues from one end-use differently from any other end-use. They argue "it makes little sense to consider the Company's EV revenue forecast in a vacuum when the electrification landscape has evolved so dramatically since the RDA was first approved."[62]

d. Conclusions and Findings

53. The Commission recognizes the Company's TEP programs, both existing and as proposed in the instant Application, represent a continuum of effort. We find that the benefits of EV ownership accrue over time, so limiting the rate impact evaluation time frame to an annual basis, as UCA suggests, would ignore that accrual of benefits. For that reason, we approve the rate impact methodology proposed in the Settlement, which allows for all EVs in Public Service's service territory since 2021, to be included in the rate impact evaluation. Given that guideline, and the analysis in the record before us, we find that the Company's TEP as approved here does not exceed the statutory rate impact cap. We note, however, that—as Staff raised—the rate impact

[60] *Id*.
[61] Public Service Joint SOP, p.14.
[62] *Id*. at 15.

calculation may be making simplistic assumptions with respect to generation and T&D investment necessary to support the EV sales incorporated in the analysis. Accordingly, we consider the rate impact analysis as presented to be an iterative effort and in need of further refinement to account for the full cost of such incremental electricity sales in the Company's next TEP application.

54. Moreover, we share Staff's concerns that the TEP does not clearly provide the information necessary to determine whether the Application meets the statutory requirement to minimize costs and maximize benefits,[63] or to sufficiently assess the EV adoption attributable to the Company's TEP investments. Given the very complex decision-making customers conduct in selecting the automobile they purchase, let alone in determining overall transportation needs, the Commission recognizes the potential difficulty of such an analysis. Nonetheless, the Company should endeavor to improve its assessment capabilities as necessary to evaluate the adoption impact and cost-benefit of its transportation programs as measured against other regions inside and outside the state. Such a cost-benefit evaluation should assess, as best as reasonably possible, EV adoption across various socio-economic classes, including the State's income qualified and disproportionately impacted community designations. We expect the Company to include such a CBA in its next TEP filing.

55. We decline to adopt the Stipulation's proposed deferral mechanism at this time. While we find this to be a creative proposal to ensure spending is in compliance with the statutory rate cap, we find it to be an unnecessary step in light of additional guardrails on spending established elsewhere in this Decision.

[63] § 40-5-107(1)(b), C.R.S.

2. Advisory Services Portfolio

56. The Company explains that the Advisory Services portfolio "promotes EV awareness through multi-faceted efforts and numerous communication channels."[64] It is intended to grow trade ally support, conduct advertising for the TEP, and improve customer-facing tools to ease difficulties in navigating the many EV options and Public Service offerings.

a. Settlement Proposals

57. The Settlement proposes an Advisory Services budget of $16.4 million and describes the uses to which these funds are to be spent in Settlement paragraphs 13, 14, and specific to the IQ/DI Community Outreach and Engagement Plan in Section IV.D. These expenses reflect the cost of customer outreach, engagement, and education, including marketing, information technology, and other administrative expenses necessary to conduct these efforts.[65] The Settling Parties support approval of the Company's proposed Advisory Services portfolio and associated program parameters as updated through the Company's rebuttal case. The Company also agrees to implement a Transportation Electrification IQ/DI Community Outreach and Engagement Plan within the Advisory Services portfolio. The Settling Parties state that the budget for Advisory Services is needed to "increase awareness of the programs and of the benefits of transportation electrification" and to "encourage greater adoption of electric vehicles."[66]

b. Intervenor Positions

58. The Stipulation suggests a total budget of $4.79 million total budget, but otherwise does not speak to any delivery aspects of the Advisory Services program. The Stipulating Parties do not explain how they reached this allocation.

[64] Hrg. Exh. 101 (Ihle Direct), p. 44.
[65] Public Service Joint SOP, p. 28.
[66] Public Service Joint SOP, p. 29, quoting § 40-5-107(1)(b)(IV), C.R.S.

c. Conclusions and Findings

59. In the sections that follow, we make several adjustments to approved capital spending within individual TEP portfolios. As we expect that the need for advisory services will scale with the magnitude of the programs implemented, we find it appropriate to scale each line item under the proposed Advisory Services budget in proportion to the ratio of approved to requested capital budget for the relevant portfolio, as demonstrated in the Revised Budget Estimate provided as Attachment A to this Decision. In addition, we scale the capital budget for the "Fleet Electrification Advisory" line item (which we understand to be intended for software development) by the ratio of approved to proposed capital spending on commercial EVSI and EVSE. Finally, we make no modification to the Community Advisory and Workforce Training budget. We otherwise approve of the Settlement terms applicable to the Advisory Services portfolio.

60. The total approved budget for Advisory Services is $15 million, as shown in Attachment A. We find that this level of budgetary support for advisory services, in light of the total programmatic offerings approved here, will ensure that the Company can "increase awareness of the programs and of the benefits of transportation electrification" and "encourage greater adoption of electric vehicles" through the 2024-2026 TEP.

3. Clean Vehicles Portfolio

61. In its direct case, the Company proposed to expand the availability of EV purchase rebates in four ways. First, the Company proposed to expand the existing Residential Equity Rebate pilot, which would provide rebates of $5,500 for new EVs and $3,000 for used EVs, by broadening eligibility of both participants and the value of vehicles eligible for purchase with the rebates. Second, the Company proposed to make EV rebates available for individual drivers for Transportation Network Companies (TNC) and Delivery Network Companies (DNC) who drive more than 25,000 miles per year. Third, the Company proposed to offer rebates to TNC rental car

companies that in turn offer discounted rentals to TNC drivers. And fourth, the Company proposed to offer EV rebates to state and local government entities to purchase or lease new EVs.

62. In response to party concerns about the need for and magnitude of vehicle rebates, in its rebuttal case the Company: (1) agreed to offer tiered equity rebates in DICs ($5,500 IQ / $2,750 non-IQ for new vehicles and $3,000 IQ / $1,500 non-IQ for used vehicles) and work to expand the availability of "cash-on-the-hood" (vs. mail-in) rebates; (2) withdrew its proposal to field the TNC Rental Fleet Rebate program; and (3) proposed reducing governmental rebates by half.[67]

a. Settlement Proposals

63. In paragraphs 15 through 20 of the Settlement, the Settling Parties express support for the Clean Vehicles portfolio (CVP) with the following modifications:

- EV rebates for IQ customers of $5,500 for new vehicles and $3,000 for used vehicles;
- EV rebates for non-IQ DIC residents or members of federally recognized tribes of $2,750 for new vehicles and $1,500 for used vehicles;
- The Company agrees to continue advancing the goal of providing the EV Rebate as an upfront incentive with EV retailers and original equipment manufacturers, including direct to consumer EV providers, and to continue efforts to support all EV retailers (inclusive of direct to consumer retailers);
- Rebates to TNC and DNC drivers of $6,500 for the purchase of new EVs or $3,500 for the purchase of used EVs;
- The Company commits to inform TNC/DNC rebate recipients that data on their miles traveled and emissions impacts will be collected annually and to work with the TNCs and DNCs to collect these data; and
- EV rebates to governmental entities that are not state agencies of $6,500 for new vehicles.

[67] Hrg. Exh. 115 (Erwin Rebuttal), pp. 26-38.

64. The Settlement proposes a total budget of $17.7 million for the Clean Vehicles portfolio.[68]

b. Intervenor Positions

65. In its Answer Testimony, Staff opposed the expansion of equity rebates for EVs beyond its level in the Inaugural TEP, specifically opposing expansion to non-IQ customers due to the expansion of federal and state rebates (which increases the potential for free ridership) and due to the fact that amortized rebates are very costly to ratepayers. Staff also states that the Company has provided no evidence that these rebates will increase or accelerate EV adoption, making it impossible to assess whether they are worth the expense. Staff argues that limiting incentives to IQ customers will minimize the regressive nature of subsidization, and that doing otherwise would increase the likelihood of forcing ratepayers to "subsidize purchase of luxury vehicles for high-income people."[69]

66. Staff also opposes the Company's proposed rebates for government vehicles, noting that some governments in the state have already adopted policies to transition their fleets to EVs, making the Company's proposal extremely wasteful.[70] Staff faults the Company for failing to provide a clear presentation of the costs and benefits of its vehicle rebate proposals, making it impossible to assess whether the benefits of its proposals are worth their cost. For this reason, Staff urges the Commission to reject the proposal to expand the EV purchase and lease rebates.[71]

67. In its Answer Testimony, UCA opposes the residential EV rebate for IQ customers, referencing the state and federal subsidies that are available regardless of income. It states that "[t]here is currently no demonstrated need for further funding through utility ratepayers to jump

[68] Settlement, ¶ 5, Table 2.
[69] Hrg. Exh. 400 (Haglund Answer), p. 80.
[70] *Id*. at 83.
[71] *Id*.

start the EV market. A more efficient process would be to see whether these state and federal stimulus funds fuel the EV adoption before adding more incentives."[72] UCA notes that the IQ EV rebate program was approved as a pilot, but that no analysis has been filed as to its overall effectiveness so far, or whether the program was cost-effective or persuasive in a customer's decision to purchase an EV as opposed to an internal combustion engine vehicle. UCA concludes that without this analysis, it is not in the public interest to continue the program, let alone expand it. UCA therefore recommends that the Commission reject the Clean Vehicles Portfolio in its entirety.[73]

68. The Stipulation would completely remove the Clean Vehicles portfolio from the 2024-2026 TEP. In its testimony supporting the Stipulation, Staff repeats its arguments that the amortization of rebates imposes high costs on ratepayers, that these rebates are unnecessary due to federal and state incentives, and that the Company has presented no evidence that the rebates would increase or accelerate EV adoption at a level that is worth the cost they impose on ratepayers. Staff notes that the U.S. Internal Revenue Service recently released guidance that will allow consumers to receive the federal credit as a rebate at the point of sale, regardless of tax liability. Staff further notes that the existing $5,000 state tax credit is fully refundable and will rise to $7,500 for EVs under $35,000 in 2025. Staff further points out that IQ owners of internal combustion engine vehicles that are at least 12 years old are eligible for an additional $6,000 for a new EV or $4,000 for a used EV. In light of all of the above, Staff concludes that "it is unwise to throw additional ratepayer dollars, on which the Company proposes to earn a WACC return, at additional vehicle purchase rebates."[74]

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[72] Hrg. Exh. 200 (England Answer), p. 47.
[73] *Id*. at 45-48.
[74] Hrg. Exh. 406 (Haglund Settlement), p. 20.

69. In its SOP, the Affordability Coalition urges the Commission to eliminate the Clean Vehicles Portfolio because 1) federal and state EV incentives make the proposed equity incentives duplicative; 2) the Colorado Air Quality Control Commission has adopted the Colorado Clean Car Rule, which establishes that 42 percent of new vehicles sold in Colorado must be a zero-emission vehicle or a plug-in hybrid vehicle by 2027, 68 percent in 2030, and 82 percent in 2032.[75] They argue that these incentives and policies diminish or eliminate the need for additional ratepayer-funded rebates, particularly since the proposed amortization of rebates makes them even more expensive. The Affordability Coalition argues that the Commission must reject the Clean Vehicles Portfolio in order to minimize overall costs and maximize overall benefits of the TEP.[76]

c. Conclusions and Findings

70. We acknowledge that the federal and state incentives for EVs have become more generous since the Inaugural TEP. Nonetheless, we find that the purchase cost of an EV remains a barrier for adoption to IQ customers and therefore, consistent with § 40-5-107(2)(g), C.R.S., we approve the IQ vehicle rebates proposed in the Settlement. However, we agree with Staff and the UCA that the proposed rebates to non-IQ residents of DICs and members of federally recognized tribes may result in additional subsidies to individuals that may not need them, since income-qualified individual and families would already qualify, and would likely result in excessive free-ridership. For this reason, we reject the Settlement proposal for the expansion of rebates to non-IQ residents of DICs and members of federally recognized tribes.[77] While we deny expansion of rebates for non-IQ ratepayers, we make no change to the overall proposed budget for equity vehicle rebates, which shall remain at $5.3 million.

[75] Affordability Coalition SOP, p. 24.
[76] Affordability Coalition SOP, pp. 2-24.
[77] Commissioner Tom Plant dissents from this finding and would instead have expanded rebate eligibility to DI communities.

71. The Settling Parties propose rebates to TNC and DNC drivers of $6,500 for new vehicles and $3,500 for used vehicles. The justification for these rebates is that these rebates would apply to vehicles driven a minimum of 25,000 miles per year, thereby generating significantly higher emissions reductions than the typical passenger vehicle. We find two significant problems with this concept. First, we find that the record in this Proceeding provides no certainty that any recipient of the proposed rebate will remain a TNC or DNC driver for any specific period of time, making any level of emission reductions entirely speculative. Indeed, a participant could purchase a vehicle, receive the rebate, and sell the vehicle or leave the state or the Public Service's service territory shortly thereafter. Second, we note that while the high-mileage vehicles this program would target offer disproportionate emission reduction potential, they also offer disproportionately high reductions in both fuel and maintenance costs to their owners, making EVs substantially more attractive to high-mileage drivers of all sorts. These operating cost savings are in themselves a very strong incentive to high-mileage drivers over and above the state and federal purchase-cost incentives.

72. We conclude that the TNC/DNC rebate proposal targets a population that is already highly incentivized to select EVs when purchasing new or used vehicles and that the proposed program design creates unwarranted risk and expense for non-participating ratepayers. Accordingly, we reject this proposal and the associated $1.9 million line item in the Settlement budget.

73. Similarly, we reject the Governmental EV Rebate program, which as proposed would provide rebates of $6,500 for the purchase of EVs to governmental entities in the state that are not state agencies. The record demonstrates that both state and local governmental agencies

are eligible for both the state and federal tax incentives.[78] Between the availability of these incentives and the operating cost benefits discussed above, we remain unconvinced that government entities require further inducement to select EVs. Furthermore, we find persuasive the argument advanced by both Staff and the UCA that the Company has failed to demonstrate any incremental benefit to this program. Accordingly, we reject the $8 million budget proposed for this program.

74. As discussed above, we deny the budgets for the proposed TNC/DNC and Government rebate programs. The approved capital budget for the Clean Vehicles portfolio of $5.3 million shall be used solely for vehicle rebates to IQ customers.

4. PCAN Portfolio

75. The Company's direct case PCAN proposal included $52 million in Company-owned EVSI and $68 million in Company-owned DCFCs. In its Supplemental Testimony, the Company presented its "PCAN Alternative" proposal, which proposed that, in lieu of DCFC ownership, the Company would: (1) provide $26 million in rebates to third-party charger developers; (2) reduce its EVSI investment to $44 million; and (3) invest $50 million in distribution system upgrades.[79]

a. Settlement Proposals

76. In paragraphs 21 through 27 of the Settlement, the Settling Parties express support the PCAN Alternative proposal from the Company's rebuttal case with the following modifications:

- The third-party DCFCs receiving rebates under the PCAN Alternative portfolio must be located either in a DIC or an area that meets the State's definition of a rural community;

[78] *See*, *e.g.,* Hrg. Exh. 1501 (Willis Answer), pp. 72-73.
[79] *See* Hrg. Exh. 111 (Erwin Supplemental Direct); Hrg. Exh. 115 (Erwin Rebuttal), pp. 14-22.

- The Company maintains the right to propose ownership of DCFCs in the future;
- The Company agrees to withdraw its proposed updated rate applicable to Company-owned DCFC stations under Schedule EVC;
- In exchange for DCFC rebates, applicants will be required to agree to maintain station uptime no less than 97 percent on a per-port basis and to provide data substantiating this semi-annually to CEO along with a description of any long-term downtime occurrences. The Settlement also specifies that CEO will provide uptime information to the Company in an aggregated or anonymized format for inclusion in its annual report;
- The Company commits to filing and using a scoring framework for the selection of DCFCs to receive rebates. One criterion in this framework will be the geographic distance from the nearest public charging station; and
- The Settling Parties support DCFC rebates of $17,500, $32,500 and $40,000 per port for DCFCs providing power output of 150-249 kW, 250-349 kW and 350 kW or more, respectively.

b. Intervenor Positions

77. The Stipulation proposes that any PCAN Alternative rebates approved by the Commission should be comfortably accommodated within the Stipulation's proposed total budget of $108 million.

78. Staff cites evidence that nearly 30 percent downtime has plagued DCFCs, creating unsatisfactory driver experience and posing a challenge to the public charging industry.[80] Staff contends that the Settlement's 97 percent uptime requirement for DCFCs is entirely toothless, putting ratepayers at risk while both developers and the Company (through the weighted average cost of capital (WACC) return on amortized rebates) benefit. Staff cites questioning at hearing indicating that the Company could not provide insight into how damages would be determined even if it were to pursue litigation and that there is no indication that the Company would return any litigation award to ratepayers.[81] Given their reliability issues, Staff argues that DCFC rebates

[80] Hrg. Exh. 400 (Haglund Answer), p. 70.
[81] Staff SOP, pp. 10-12.

should be excluded from the TEP unless and until the Commission has insight into the uptime statistics of stations taking the rebate and the uptime requirements are enforceable.[82]

c. Conclusions and Findings

79. As an initial matter, we applaud the Company's decision to withdraw its initial proposal for substantial investments in utility-owned charging stations, as it appears that the unregulated market is now poised to fill this role. We largely approve the PCAN Alternative portfolio as described in paragraphs 21 through 27 of the Settlement as well as the proposed $20.2 million budget. In doing so, we expect that this funding will: (1) increase access to electricity as a transportation fuel; (2) contribute to meeting air quality standards, improve air quality in communities most affected by transportation emissions, and reduce carbon emissions; and (3) stimulate innovation, competition and increased consumer choices in furtherance of §§ 40-5-107(2)(b), (d), and (e), C.R.S., respectively.

80. However, we share Staff's concern that without any enforceability, the 97 percent uptime "requirement" specified in Settlement paragraph 25 is meaningless. The Settlement provides that rebate recipients must provide port-level uptime data to CEO on a semi-annual basis, and that CEO will provide uptime information to the Company only on an aggregated or anonymized basis, thereby eliminating any possibility of holding DCFC developers accountable for poor charger performance. We find this arrangement to be unacceptable.

81. We find that ratepayers' investments in public charging equipment can be justified (and accelerate the adoption of EVs) only to the extent that both existing and potential EV drivers have confidence that public charging stations are highly reliable and can be counted on when needed. We acknowledge the potential competitive concerns that some charging station developers

[82] *Id*.

may have in sharing the operational data of their stations with Public Service, which could theoretically become a competitor at some point in the future. However, we note that (1) the Company is at best only operating a few public charging stations as of the time of answer testimony in this Proceeding, and (2) while it reserves the right (in Settlement paragraph 23) to propose such ownership in the future, the market factors that led the Company to withdraw its initial proposal to own public chargers in this Proceeding are only going to intensify in the future, making it increasingly unlikely that the Commission will approve Company ownership, except perhaps in areas that the unregulated market remains uninterested in serving. We find that these factors will significantly allay any competitive concerns that public charging station developers may harbor.

82. Accordingly, we find it in the public interest to direct the Company to withhold one-third of the per-port incentive to each station developer pending the second semi-annual report from CEO to the Company on station uptime performance. Although that report may show aggregate performance for each participating developer, it must include a report of the number of ports for each developer that achieved the 97 percent uptime requirement during the first year of operation. The Company is directed to pay the withheld portion of the rebate to each participating developer based on the number of ports achieving the uptime requirement.

83. In addition, we note that, to the degree that subsidization of public charging stations is shown to be necessary in the future, both the continued viability of this program and the rebate eligibility of individual charging station developers may depend on a demonstration of the reliability of the charging stations that this TEP supports. We note further that in the next TEP proceeding, we expect transparency on any and all performance failures, which may become a factor in the continued eligibility of station developers.

5. Residential Portfolio

84. The Company's direct case proposed to continue the following four programs from the Inaugural TEP:

- EV Accelerate At Home Program. The EVAAH program provides and services Company-owned level two (L2) chargers in customer residences. Program participants pay a monthly rental fee on their bill to cover program costs over a 10-year period.[83]
- EV Charger and Wiring Rebate Program. This program assists residential customers in overcoming the initial cost barrier to purchasing and installing an EV charger and installing home wiring by providing standard $500 rebates for residential customers and $1,300 rebates for IQ customers.
- Optimize Your Charge Program. This program requires participants to select one of three static off-peak charging windows and charge during that window at least 25 percent of the time in order to receive the $50 bill credit offered.[84]
- Charging Perks Program. This program provides dynamic charging signals to indicate the optimal time to charge. In the Inaugural TEP, this program operated as a pilot, and the Company proposed in this Proceeding to lift the participation cap, and to modify the participation incentive from a $100 annual incentive to a $50 sign-up credit and an annual $50 participation incentive.[85]

85. The Company's direct case proposed to add a Backup Power Option to the EVAAH program, which would allow customers to rent bi-directional charging equipment with an optional stationary battery add-on.

86. In its direct case, the Company also proposed to require participants in the EVAAH and Charger & Wiring Rebate programs to enroll in either the Charging Perks or OYC charging management programs, or in time-of-use (TOU) rates. It proposed that both OYC and TOU would remain options until all customers have smart meters and access to TOU rates, at which point it proposed to phase out the OYC program, retaining TOU as the sole passive charge management approach.

[83] Hrg. Exh. 103, Attachment HS-1, p. 36.
[84] *Id*. at 44-47.
[85] *Id*. at 47-48.

87. Finally, the Company's direct case proposed an Off-Peak Subscription program offering EV charging energy from midnight to 6 a.m. for a flat monthly fee. This program's $50 monthly charge would include up to 1,000 kWh of charging energy as well as rental of an L2 charger.

a. Settlement Proposals

88. The Settlement proposes the following modifications to Residential portfolio programs:

- For the Charger and Wiring Rebate program, retain the standard $500 rebate, but increase the IQ rebate to $2,300 and offer an equity rebate of $800 for non-IQ residents of DICs or non-IQ members of federally recognized tribes;
- Modify the OYC program to offer a single 12:00 a.m. to 12:00 p.m. charging window and require that eighty percent of charging occur within this window as a qualification for the $50 annual incentive;
- The Settlement provides that the OYC program will remain available for the duration of the 2024-2026 TEP, and that participation in the TOU will not be a compliance path for managed charging for participants in the EVAAH or EV Charger and Wiring Rebate programs;
- The Settlement commits the Company to work with stakeholders to provide detailed information on how charging schedules are determined and reflect energy pricing, hourly emissions and renewable generation;
- The Settlement commits the Company to convene a discussion with members of the Curtailment Stakeholder Group (established via the Updated Settlement Agreement approved in Proceeding 21A-0141E) to consider a potential future dynamic rate or program option for potential filing with the Commission by April 1, 2025; and
- The Settlement withdraws the Off-Peak Subscription proposal.[86]

89. The Settling Parties state that the equity rebates in the Settlement are intended to strike a balance between financial prudence and equitable access to EVs among IQ and other equity-eligible customers. They state that the modifications to managed charging options provide customer choice to drive greater participation enabling the Company to better realize grid benefits

[86] Settlement, ¶ ¶ 28-35.

such as reduced curtailments. The Settling Parties also contend that the proposed dialogue between the Company and stakeholders on dynamic rates could lead to the development of future rate designs to help drive even deeper emission reductions. They state that this would be an important next step in the evolution of the Company's managed charging offerings to enable interested stakeholders to help shape the next iteration of this program. In contrast, they claim that the Stipulation provides no explanation for how its proposed $8.09 million budget for the Residential portfolio is sufficient to meet customer and market demands. The Settling Parties argue that there is no reasonable basis for the Stipulation's budget and urge the Commission to reject it.[87]

90. In its SOP, Denver adds that the modifications to managed charging in the Settlement will provide customers with more flexible options to match their EV charging times with low emissions and high curtailment periods. Denver claims that these tools will enable the Company to reduce stress on the electrical grid, thereby allowing the expansion of electrification in all sectors, which Denver contends will be necessary to meet broader emissions reduction targets while allowing existing electrical capacity to serve more uses.[88]

91. The EJC supports Settlement provisions regarding the enhanced rebates in the Charger and Wiring Rebate program for IQ customers and DIC residents, stating that these rebates directly address the cost and access barriers to an equitable EV transition that these populations face. It argues that the Stipulation would eliminate and limit the TEP's ability to address these barriers. EJC notes that the Stipulation would cut funding in the Residential portfolio by 70 percent, resulting in significantly less incentives for IQ customers. EJC further notes the Stipulation does not guarantee that an IQ customer will be eligible for a rebate that covers the average cost of an EV charger, and it ignores other equity-eligible customers for any enhanced

[87] Public Service Joint SOP, pp. 24-25.
[88] Denver SOP, pp. 3-4.

rebate. As a result, the Stipulation would not meaningfully address access to residential chargers for IQ customers.[89]

b. Intervenor Positions

92. The Stipulation contains no provisions specific to the Residential Portfolio other than specifying a budget of $8.09 million across three years.[90]

93. Staff contends that the Company's managed charging programs fall short of achieving the full range of optimizations available, and characterizes the Settlement provision to host workshops and to consider filing a dynamic rate option in the future as "meager" and demonstrative of a level of complacency regarding managed EV charging rather than a commitment to harnessing the full potential of EVs to benefit the grid. It argues that delaying implementation of a program with a strong potential to reduce renewable energy curtailments and improve grid function during peak hours is not in the public interest. Staff therefore recommends that the Commission direct the Company to design and file a dynamic rate pilot program with a cost-based rate that allows for free electricity consumption during hours the Company would otherwise be curtailing renewable energy. Staff recommends further that the Company be required to file this pilot program design either as part of its upcoming time-of-use rate design filing or no later than within 12 months of the final decision in this Proceeding. Staff notes that doing so would reduce both rates and carbon emissions.[91]

94. Staff also recommends approval of the following Settlement provisions regarding the Residential portfolio:[92]

- Lift the enrollment cap on Charging Perks;

[89] EJC SOP, pp. 6-8.
[90] Stipulation, ¶ 3.
[91] Staff SOP, pp. 8-9.
[92] *Id*. at 9.

- Modify the Optimize Your Charge program charging window;
- Clarify that enrollment in the RE-TOU rate does not satisfy the managed charging requirements for the residential rebate programs; and
- Accept the withdrawal of the Off-Peak Subscription rate proposal.

95. Staff opposes Company ownership of behind-the-meter (BTM) assets generally, and batteries in particular. As relevant here, Staff opposes the inclusion of the stationary battery proposed as an optional component of the Backup Power Option in the EVAAH program. Staff argues that the Commission should generally presume such proposals for utility ownership of assets on the customer side of the meter are contrary to the public interest. It contends that such ownership is especially concerning because these batteries could be part of an effort by the Company to position itself advantageously with respect to potential competitors as a provider of Virtual Power Plant (VPP) services. Given the Commission's interest in third party implementation of VPPs, Staff urges the Commission to deny Company ownership of these assets.[93]

96. Staff discusses utility ownership of BTM assets more thoroughly in Answer Testimony. There, Staff notes that utilities have traditionally been forbidden from owning BTM assets, while acknowledging that SB19-077 allows utilities to propose such ownership. Staff states that while the law opens the door to utility ownership of BTM assets, the Commission is under no obligation to approve such proposals. Staff encourages the Commission to recognize the longstanding norm against utility ownership of BTM assets and argues that it should transgress that norm only with a clear understanding of the benefits likely to be gained in doing so. Staff claims that the Company has refused to provide any estimates of such benefits, so the

[93] *Id*. at 17.

Commission has no way to evaluate whether any benefits would outweigh the costs and risks of allowing the regulated monopoly to encroach on the unregulated market.[94]

97. Staff points out that Public Service's proposal violates the statutory requirement that the Commission "…consider whether the [TEP] investments and other expenditures are . . . reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services [and] attract private capital investments." To the contrary, Staff asserts that the Company's proposal would undermine the competitive market, presenting several examples of how a regulated monopoly could gain an unfair advantage over competitors in the unregulated market.[95]

98. Staff states that it sees no reason for this infrastructure to be owned by a public utility as a regulated asset rather than provided by private entities asserting that EVSI is a product widely available in the competitive, unregulated market. It argues that there is no market failure to correct by extending the reach of a regulated monopoly into this area. Citing testimony by the IECRMA (summarized below in paragraph 130 through 133), Staff concludes that Company-owned EVSI would not merely be an encroachment on the competitive market but would likely supplant the private market entirely. Instead, Staff recommends that the Company offer rebates in each case where it is proposing ownership of assets downstream of the meter.

c. Conclusions and Findings

99. We find that the Company has failed to provide a robust case as to why its ownership of BTM wiring and chargers should be continued in this TEP. We agree with Staff that such ownership should be allowed only in very specific circumstances where the utility can demonstrate that the benefits of utility ownership exceed its costs and risks. Not only has the

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[94] Hrg. Exh. 400 (Haglund Answer), pp. 45-57.
[95] *Id*. at 47-52.

Company failed to make this case, but it has not even argued that the competitive market is failing to deliver the services it proposes to provide with the EVAAH program. To the contrary, we find that there is a robust market for sales and installation of residential charging equipment, and that in some cases at least, chargers are bundled with EVs at the time of vehicle purchase.

100. Furthermore, we agree with Staff that continued Company ownership of BTM charging equipment would violate the § 40-5-107(2)(e), C.R.S., requirement that in evaluating a TEP, the Commission consider whether proposed investments are "[r]easonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services; attract private capital investments; and utilize high-quality jobs and skilled worker training programs." We find that, if allowed to continue, Company ownership of these BTM assets would in fact undermine innovation and competition, restrict consumer choice, and likely repel private capital investment.

101. Accordingly, with the exception of the EVAAH Backup Power Option (discussed below), we direct the Company to discontinue the EVAAH program[96] and to shift its $2.4 million budget to the Charger and Wiring Rebate program, providing rebates at the levels proposed in paragraph 35 of the Settlement. This will ensure continued access to incentives for residential customers, maintaining the same overall budget support for residential charging, but do so in the manner that appears to best foster competition and consumer choice. Additionally, we encourage the Company to develop and propose in its next TEP application an on-bill financing program to reduce the financial barriers presented by the up-front costs of L2 charger installations.[97]

[96] Commissioner Gilman generally agreed with discontinuing the EVAAH program, but dissented on this action at this time, instead preferring to continue the program until an on-bill financing alternative, which would provide a similar customer experience, could be provided to minimize the impact to newly participating customers.

[97] We acknowledge that it is less than ideal to terminate a program in which the Company is providing the full up-front cost of L2 charger installation, potentially replacing it at a later time with an on-bill financing program, but are taking this action due to the negative impacts that Company ownership is likely to have on the competitive market for charger sales and installation.

102. With regard to existing participants in the EVAAH program from the inaugural TEP, we clarify that once those participants have fully paid for the equipment installed in their homes, ownership of that equipment shall transfer from Public Service to the program participant. The Company's apparent current method of requiring proactive action from the customer at the end of a 10-year period in order for the ownership of the equipment to transfer to the customer establishes a default of the Company maintaining ownership and the ability to continue to charge those customers for assets that the customer has already fully paid for, which is contrary to the Commission's intent. If a customer chooses to have the Company retain ownership, that is a possible option, but should not serve as the default situation.

103. In contrast to our findings regarding the EVAAH program, we find that the Company's proposal for the Backup Power Option to the EVAAH, maintained in the Settlement with a budget of $3.2 million, would serve a very different market with competitive attributes entirely distinct from the main EVAAH program as proposed. Unlike the conventional one-way EV charging equipment proposed for the main EVAAH program, the Backup Power Option proposes novel bi-directional charging equipment that can provide participants with backup electrical service during outages. We find that this is a nascent market deserving of the support proposed by the Company and endorsed by the Settling Parties. In our discussion regarding the Innovation Portfolio, we provide support for other Company efforts to develop its expertise in providing and managing vehicle-to-home, vehicle-to building and vehicle-to-grid capabilities, as these capabilities will be instrumental in utilizing TEP investments to improve the use of the grid and in integrating renewable energy, in concert with § 40-5-107(2)(a), C.R.S. Accordingly, we approve the full budget specified in the Settlement for this demonstration project. As with any other demonstration or pilot project, approval of such comes with an expectation that the Company

will track and compile relevant outcomes and information and make such information available in future TEP filings.

104. While we have approved the Settlement provisions regarding rebates in the Charger and Wiring Rebate program, we are concerned that the IQ rebate could, in some situations, exceed actual project costs. Accordingly, we direct the Company to cap the IQ rebate at the lesser of $2,300 or actual project cost.

105. With regard to the Company's Charging Perks program, we find that the provisions in paragraph 30.1 and 30.2, which commit the Company to host a stakeholder workshop providing information on the development of charging schedules and lift the participation cap on the Charging Perks program, are in the public interest. While we approve those provisions, we agree with Staff's assessment that the Company's efforts to date are a far cry from harnessing the full potential of EVs to benefit the grid and that these Settlement provisions offer only partial advancements. The Company can and should do more to ensure that the TEP does as much as possible to put downward pressure on rates, to improve the use of the grid, and to ease the integration of renewable resources in compliance with § 40-5-107(2)(a), C.R.S. In particular, we are troubled that the Settling Parties have proposed identical participation incentives of $50 for the actively managed Charging Perks program and the passively managed Optimize Your Charge program. We find that active charge management has far greater potential than passive management to shift charging load to suit the needs of the grid from the transmission level down to individual distribution circuits. We also find it important that EV owners be incentivized to choose the Charging Perks program over the OYC program when they are first introduced to the Company's managed charging programs, as moving participants from one program to another in the future will require additional effort and expense, and may not be successful. Accordingly, we

direct the Company to increase the annual participation incentive for the Charging Perks program from $50 to $150 and to actively work to communicate and treat Charging Perks as the preferred charging management option. Furthermore, we direct the Company to provide detailed information on the value of charging flexibility in its next TEP application.

106. Settlement paragraph 31.1 proposes a $50 annual incentive for the Optimize Your Charge program, and specifies that 80 percent of participant EV charging must fall within the new proposed charging window of 12:00 a.m. to 12:00 p.m. Paragraph 31.2 specifies that the OYC program will be available to customers for the duration of this TEP. As articulated below, we approve the annual incentive amount and 80 percent in-window charging requirement, but reject the proposal to modify the charging window at this time.

107. In Decision No. C24-0117 in Proceeding No. 23AL-0243E, we found that the current TOU time periods were not well matched to evolving cost drivers, and directed Public Service to file amended TOU rates for residential and commercial customers by September 3, 2024, so that these new rates could go into effect by May 1, 2025. As noted in that decision, we anticipate that the Advice Letter to be filed this fall will shift the TOU peak periods closer to 6:00 to 9:00 p.m. on non-holiday weekdays.[98]

108. In this Proceeding, the Settling Parties have proposed that the charging window for the OYC program be modified from the current program's three window periods (*i.e.*, 9:00 p.m. – 6:30 a.m., 12:30 a.m. – 9:30 a.m., and 6:00 a.m. – 3:00 p.m.) to a single 12-hour window from 12:00 a.m. to 12:00 p.m. We note that prior to signing on to the Settlement, some parties, notably Denver, Boulder and WRA, advocated that the OYC charging window extend into the early- or

[98] *See* Decision No. C24-0117, ¶ ¶ 83-85, in Proceeding No. 23AL-0243E.

mid-afternoon hours when load net of renewables and emission rates are projected to be low, and the potential for curtailment of renewable resources is elevated.

109. We acknowledge that as the Company integrates the renewable resources approved in its most recent ERP, and as the composition of the Company's generation and demand-side portfolios continue to evolve in the future, the seasonal and diurnal cycles of operating costs, emissions and curtailment will also continue to evolve, reinforcing the growing importance of both actively managed charging and dynamic rates. The data in the record in this Proceeding demonstrates that there are already emission and curtailment-reduction benefits to EV charging in the afternoon hours, and we expect these benefits to intensify in the future. However, we are reluctant to modify the OYC charging window definitions to include afternoon hours at this point, because this would put the charging window into conflict with the elevated rates customers would face during the current TOU shoulder period, which begins at 1:00 p.m. Moreover, given the analysis that will be conducted in support of the TOU rate revisions we required pursuant to Decision No. C24-0117, we find that it would be both premature and confusing to customers to make any changes to the existing OYC charging window at this time, as this would require program participants to adapt to a new charging window now, and then adapt again once the new TOU periods are approved and implemented. Instead, these efforts should be more thoughtful and coordinated to ensure that customer receive as consistent of information and price signals as possible.

110. Accordingly, we find that it is not in the public interest to make changes to the OYC program charging window at this time. We therefore reject the modification of the charging window proposed in paragraph 31.1 of the Settlement. Further, we direct the Company to work with interested stakeholders to develop and submit a proposal for a revised OYC charging window

that reflects optimal charging periods but that is not in conflict with the new TOU time periods that will be approved pursuant to the Advice Letter filing required by Decision C24-0117. That new charging window should become effective on the same date as the revised TOU period definitions (which we currently anticipate to be May 1, 2025).

111. Regarding the conferral with stakeholders and potential for filing of a dynamic EV charging rate presented in paragraph 32 of the Settlement, we find that a dynamic rate would ideally send all the appropriate signals to customers to align their charging behavior with real-time or near-real-time marginal costs and emissions, providing benefits for EV owners, ratepayers, and the environment. While we would like such a rate to be available to customers as soon as possible, we recognize that there are many considerations and that significant analysis and stakeholder collaboration must precede the establishment of a dynamic rate to avoid undue impacts on revenue or undesired impacts on ratepayers. Accordingly, we approve the Settlement provisions regarding the stakeholder process and potential filing of a dynamic charging rate. As a backstop, if that process does not result in the filing of a dynamic charging rate by April 1, 2025, we direct the Company to include in the direct case of its next TEP application a full analysis of the challenges and opportunities for dynamic rates.

112. Paragraphs 33 and 34 of the Settlement withdraw (1) the Company proposals to allow use of the residential TOU rate as a compliance pathway for the managed charging required by participation in the EVAAH and Charger and Wiring Rebate programs and (2) the Off-Peak Subscription rate option that the Company proposed in its direct case. As these provisions are unopposed, we approve them.

113. Finally, with regard to the Residential portfolio, we approve the incentive levels presented in Settlement paragraph 35 for the Charger & Wiring Rebate program.

114. As the Revised Budget Estimate provided as Attachment A to this Decision demonstrates, the modifications discussed above result in an approximately $4 million increase to the Residential portfolio to a total of $31.66 million. This increase is due entirely to the tripling of the Charging Perks incentive budget relative to the proposed budget presented with the Settlement.[99]

6. Commercial Portfolio

115. In its direct case, Public Service proposed to make the following changes to its Commercial portfolio:

- Consolidate all its EVSI programs for fleets, workplaces, multi-family housing, public charging, Primary General Pilot, and Community Charging Hubs into a single Commercial EVSI program that will be available to all commercial customers;
- Reduce the minimum number of ports required for L2 charging installations from four to two and to eliminate any minimum port requirements for DCFC;
- Expand the EVSI offering to address curbside charging needs;
- Allow customers to "future proof" their EVSI projects up to a maximum of 300 kW of capacity;
- Provide EVSI wiring rebate to Primary General and Transmission General customers of $6,000 per port for L2 chargers and $7,000 per port for DCFCs;
- Expand eligibility for its EVSI wiring rebate program from multifamily housing to all new commercial construction and provide prescriptive, per-parking-space rebates depending upon existing code requirements;
- Install and own L2 charging equipment on customer premises for a monthly fee covering the cost of the charger, installation and maintenance over a 10-year period (this is in addition to the EVSI rebate);
- Increase the L2 rebate to $2,500 per port for equity eligible customers and to $8,500 per port for IQ multifamily housing (MFH) and nonprofit participants;
- Initiate a demonstration project to build, own and operate customer-sited battery systems to support DCFCs, with participants paying for all O&M costs and 80 percent of capital costs over 10 years (this proposal was withdrawn on rebuttal); and

[99] Hrg. Exh. 123, Attachment DEE-8.

- Spend $50 million on "no regrets" distribution upgrades to support distribution circuits in areas of likely fleet electrification. The Company proposed an additional $50 million of distribution investment to support public DCFCs as part of the PCAN Alternative proposal in its Supplemental Direct Testimony.

116. The Settlement proposes a budget for the Commercial portfolio of $260.6 million, consisting of $225.4 million in capital spending and $35.2 million in O&M expenses.[100]

117. The Stipulation specifies a budget of $67.93 million for the Commercial portfolio.[101] It asks the Commission to affirm that EVSI is defined as encompassing only BTM infrastructure, and that the meter and everything in front of it are subject to the Company's line extension policy and therefore ineligible for TEP recovery mechanisms. The Stipulation also specifies that the Company shall not be allowed to own EVSI in this TEP, providing EVSI support solely in the form of rebates.[102]

a. Distribution Project Proposals

(1) Settlement Proposals

118. Paragraphs 37 through 40 of the Settlement propose the following regarding distribution investments to support the TEP:

- Reduces the proposed budget for the "No Regrets Distribution Investments" from $50 million to $30 million by eliminating one of the projects identified in the Company's rebuttal case;
- Reduces the DCFC Distribution Investment from $50 million to $30 million and commits the Company to provide an informational filing identifying the specific projects it will undertake before spending this budget; and
- Specifies that DCFC Distribution Investments will prioritize projects located in areas of high customer interest, high forecasted charging loads and the least amount of available feeder capacity.

[100] Settlement, ¶ 5 Table 2.
[101] Stipulation, ¶ 3.
[102] *Id*. at ¶ 5.

119. In the Public Service Joint SOP, the Settling Parties justify the $60 million of distribution infrastructure investment in the Settlement as essential to support the anticipated levels of transportation electrification over the course of the TEP, stating "[i]t is not a case of 'if we build it, they will come,'" but rather "they are coming, we better build it."[103] The Settling Parties cite testimony by CEO and Tesla that there is a growing risk that distribution system constraints may become a bottleneck for reaching the State's electrification goals. The Settling Parties seek to allay concerns about review of distribution infrastructure investment by noting Settlement provisions that they claim will ensure the budget is well aligned with TEP policy goals. They state that the Settlement: (1) proposes a reasonable methodology to identify projects; (2) requires a report on the identification of projects to support DCFC facilities; (3) uses the 60-day Notice for new "No Regrets" projects; (4) proposes reporting obligations on fleet and DCFC load that connects to feeders; and (5) highlights the prudency review opportunity provided by TEPA rider filings. The Settling Parties state further that the distribution infrastructure investment projects are not part of the Company's capital budget, so without approval in this Proceeding, and specifically approval of Public Service's ability to recover its costs through the TEPA, "the Company has no current plans to fund them." The Settling Parties state that the distribution infrastructure investment proposals in the Settlement are a reasonable balance ensuring prudency and transparency while addressing the need for timely distribution infrastructure investment to support the State's 2030 EV goal.[104]

(2) Intervenor Positions

120. The Stipulation specifies that the proposed total TEP budget of $108.4 million shall explicitly exclude any spending on the distribution system. It specifies that any investments in the

[103] Public Service Joint SOP, pp. 16-17.
[104] Public Service Joint SOP, pp. 17-18 (internal quotes omitted).

distribution system to support transportation electrification should be made in the ordinary course of business and recovered through base rates rather than the TEPA.

121. Staff notes that the Settlement tacitly acknowledges that it proposes to shield this distribution spending almost entirely from Commission oversight by attaching "laughably loose" review provisions such as bringing forward currently unidentified distribution projects via the 60-Day Notice process and making an "informational filing" identifying specific distribution projects at some later date.[105] Staff argues that the Company should not be allowed to spend tens of millions of dollars on speculative distribution investment at its sole discretion, recover the funds via the TEPA before the assets are placed into service, and outside of the opportunities for parties or the Commission to review those investments holistically in a Phase I rate case.[106]

122. In its SOP, Staff decries the Company's failure to build a case demonstrating the need for these investments to accelerate EV adoption, and notes the varying degree of urgency claimed for them, as their distribution infrastructure investment proposal varied from \$50 million on direct, to \$100 million in Supplemental Testimony, to zero in its rebuttal case, and finally to \$60 million in the Settlement. Staff argues that if the Company is genuinely convinced of the need for the distribution investments it proposes in this Proceeding, it should feel comfortable implementing them in the ordinary course of business. Staff points out that there is no guarantee that, if allowed, these investments would actually be used to support EV adoption, as the Company is not able to reserve distribution capacity for that purpose. Staff contends that the new distribution capacity would be available to all customers on a first-come, first-served basis, with the likely result being that customers would pay for the distribution infrastructure investments through the TEPA even though some or all of its capacity would be used for other purposes. Staff argues

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[105] Hrg. Exh. 406 (Haglund Settlement), p. 28.
[106] *Id*. at 28-29.

further that these projects are neither atypical nor extraordinary, and should be considered in the DSP process, with approved costs recovered in a rate case rather than through the TEPA rider. Recovery of the proposed distribution infrastructure investments via the TEPA rider, Staff claims, would run afoul of 100 years of distribution planning practice and should be rejected by the Commission.[107]

123. The Affordability Coalition SOP characterizes the proposed distribution investments as unnecessary and unprecedented, in that this would be the first time that forecasted expenditures for distribution expenses would be recovered through a rider. The Affordability Coalition emphasizes the Company admission that the proposed distribution infrastructure investments could not be reserved solely for TEP purposes, and could potentially be used predominantly or entirely for general load growth unrelated to transportation; yet, if approved, it would be recovered through the TEPA. The Affordability Coalition further points out that the budget flexibility proposed in the Settlement could conceivably provide an additional $109 million that the Company could spend on distribution at its discretion with little party or Commission oversight.[108]

(3) Findings and Conclusions

124. We find ourselves in complete alignment with the shortcomings of the distribution infrastructure investment proposals as articulated by Staff and the Stipulating Parties. Neither the Company nor any of the Settling Parties has made a convincing case as to why the poorly supported distribution infrastructure investment proposals in the Settlement should even be considered within this Proceeding, let alone approved for extraordinary rider recovery in this case, rather than fully

[107] Staff SOP, pp. 21-26.
[108] Affordability Coalition SOP, pp. 6-11.

litigated and explored through the DSP process or moved forward with in the normal course of business and considered for cost recovery in a base rate case. A fundamental role of the DSP process is to identify distribution investments needed to support state policy goals. In fact, the minimum planning criteria is for the DSP forecasts used by the Company to anticipate meeting the state policy goals, which would include significant vehicle electrification, in line with state policy that this very TEP is designed to advance. For the Company to contend here that it will be unable to make the necessary distribution investments to support state policy absent this Commission's finding that these investments must be approved for recovery through the TEPA is simply unacceptable. It is axiomatic that if the Company projects need for investment in the distribution system due to load growth, it has the responsibility to plan for and conduct that investment in the ordinary course of business based on its obligation to serve electric customers within its territory.

125. We are further troubled by the proposal to recover the proposed distribution infrastructure investment via the TEPA, when, as the Stipulating Parties point out, it is conceivable that much of the capacity made available by the proposed distribution infrastructure investment could be used for a variety of purposes other than transportation electrification. Here, the Settling Parties are asking the Commission to approve $60 million of investment on a projected basis for a poorly-supported set of projects via an extraordinary cost recovery mechanism when there is (1) nothing to guarantee that the investment would be utilized to serve the purposes for which that cost recovery mechanism was established, and (2) the Company failed to identify the need for the proposed distribution infrastructure investment in its most recent DSP proceeding—a proceeding established precisely to identify and consider such investment. In addition to there being no reservation or prioritization of transportation electrification under the Company's proposal, the evidence related to how the Company identified potential locations of vehicle electrification,

including fleets, was vague and underwhelming, leading to a lack of confidence that pent up demand for vehicular electrification in those areas in particular exists and would be ready, willing and able to utilize the additional capacity before other load growth which could be totally unrelated to vehicle electrification. We reject this proposal in its entirety, adjust the budget accordingly and emphasize that we expect to see a robustly supported distribution plan reflecting investment needed to support ordinary load growth as well as state policy goals in the Company's next DSP Application.[109]

b. Company Ownership of Commercial EVSI

(1) Settlement Proposals

126. The Settlement proposes the following changes regarding EVSI:

- "Clarifies" the definition of EVSI to include service panels, conduit, and wiring from the service connection to the charger stub, as well as any necessary civil design work but to exclude the line extension, meter or charging equipment;
- Modifies the Company's current EVSI program to make $39 million of its Commercial EVSI budget available as rebates, allowing participants to hire their own electrical contractors (as opposed to exclusively Company-owned and installed EVSI);
- Establishes tiered EVSI rebates of $6,000 per port for L2 chargers that don't require a new service line, $12,000 per port for L2 chargers that do require a new service line, and $36,000 per port for DCFC chargers; and
- Maintains the commercial equity and new construction wiring rebate levels proposed in the Company's direct case.

127. The Settlement includes a budget of $117.3 million for Company-owned EVSI in addition to the $39 million it proposes for EVSI rebates.

[109] Commissioner Tom Plant dissents from this finding and would instead have approved some level of distribution investments within this Proceeding.

(2) Intervenor Positions

128. The Stipulation specifies that the Company shall not be allowed to own EVSI in this TEP, providing EVSI support solely in the form of rebates.

129. As discussed earlier in paragraphs 96 through 98, Staff contends that Company ownership of BTM EVSI assets is unnecessary, counter-productive and in violation of the requirement in § 40-5-107(2)(e), C.R.S., requirements that TEP investments be "reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services [and] attract private capital investments." Staff notes that when asked at hearing why a customer would select the EVSI rebate option when it is worth less than the Company-owned option, parties could only articulate speculative benefits such as selecting specific contractors or potentially reducing construction time. Staff contends that when faced with the choice, most customers will select the all-expenses paid Company-owned option rather than a rebate covering a fraction of the total costs. It argues that if the Commission determines subsidies are needed for EVSI, those subsidies should be in the form of rebates only, and the Company ownership of BTM EVSI should be prohibited. Staff recommends specifically that rebates be set at $5,835 per port for L2 charging at non-DIC sites and twice that amount in DICs, that EVSI rebates be set at $18,250 per port for DCFC charging at non-DIC sites and twice that amount in DICs, and that EVSI rebates for DCFC public fast charging stations be set at $45,000 and $90,000 per port for non-DIC and DIC locations respectively.[110]

130. IECRMA contends that Public Service has used its built-in advantages as a monopoly utility to move into the traditionally non-regulated market of building and owning infrastructure on the customer side of the meter since the Inaugural TEP, establishing what

[110] Staff SOP, pp. 4-7.

IECRMA characterizes as an "insurmountable position" in installing commercial EVSI because it offers design, installation and maintenance to program participants free of charge. It notes that some of its members have attempted to become contractors in Public Service's commercial EVSI program and have either been "trapped in a never-ending bureaucratic purgatory of misdirection or outright denied." IECRMA notes further that the Company's sole screening criterion for commercial EVSI installation contractors is membership in the International Brotherhood of Electrical Workers (IBEW) union, and that all of this work has been assigned to just a single IBEW contractor.[111]

131. IECRMA states that it did not sign on to the Settlement because the Settlement does not address the fundamental disadvantages faced by non-regulated entities when attempting to compete with the monopoly utility. IECRMA contends that a commercial EVSI rebate program could be established to foster true innovation, competition, and consumer choice but Public Service did not agree to such a program. IECRMA argues that the Commission should adjust the EVSI program to adhere to the legislative direction of SB19-077.[112]

132. IECRMA notes that when the Commission allowed the Company to own BTM EVSI in the Inaugural TEP, it did so based on the Company's argument that this was necessary to "seed the market," and that the Commission approved Company ownership to "fill market gaps that will eventually be fully market driven." IECRMA contends that these assumptions are no longer valid. It contends that the Company's provision of EVSI at no cost to customers drives out competition, because no electrical contractor can compete with the Company's offer of zero-cost EVSI, which is paid for by ratepayers.

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[111] IECRMA SOP, pp. 4-5.
[112] *Id*.

133. IECRMA also contends that the rebates proposed in the Settlement are inequitable, because they do not cover any maintenance expenses (which would be covered by Company-owned EVSI) and because the proposed rebates cover less than half of the average cost of commercial EVSI installation. IECRMA argues that the no-cost Company-owned EVSI option gives the Company an overwhelming advantage against the unregulated market, and that while the Settlement's rebate proposal "presents the guise of competition," it cannot be "reasonably expected to stimulate innovation, competition, and increased consumer choices" as required by statute.

(3) Findings and Conclusions

134. IECRMA rightly points out that in the Inaugural TEP, the Commission approved Company ownership of BTM EVSI to "fill market gaps that will eventually be fully market driven."[113] We find that IECRMA's active presence and arguments in this Proceeding demonstrate that the market conditions the Commission relied upon to justify utility EVSI ownership in the Inaugural TEP no longer exist, and that it is therefore time to transfer responsibility for the design and installation of BTM EVSI to the competitive market and to put the ownership of that EVSI into customers' hands. We expect that this change will have the beneficial effects of promoting competition (thereby driving down costs), stimulating innovation, increasing consumer choices, and attracting private capital investments, all in conformance with § 40-5-107(2)(e), C.R.S. Moreover, we find that this shift to the unregulated market will attract many more electrical contractors to provide these services, which is likely to both dramatically increase the number of salespeople available to help customers scope and design their projects while simultaneously shortening the time to complete a project. Additionally, by utilizing just one contractor and running a waiting list, with all steps needing to run through the Company, it appears that the

[113] Decision No. C21-0017, ¶ 179, in Proceeding No. 20A-0204E.

Company-ownership delivery model of the EVSI program may cause more of a bottleneck and delay than a free-market approach could, which we hope will also provide a program able to more quickly serve customer needs.

135. Rather than the 100 percent subsidy plus coverage of maintenance costs that Company-ownership would provide, we will adopt Staff's recommended rebate levels (described above in paragraph 129), which are based on 50 percent of the Company's estimated costs for market rate projects and 100 percent of those costs for multifamily housing in DICs.

136. Given our decision to move from a program combining Company-owned and rebated EVSI to a program offering rebates only, we find it appropriate to adjust the Commercial EVSI program budget. The Settlement proposed $117.3 million for Company-owned EVSI and another $39 million for EVSI rebates. As we expect the majority of rebates to be market rate projects, we find it appropriate to roughly halve the budget allocated for Company-owned EVSI and add this to the amount allocated to rebates. Accordingly, we approve a budget of $100 million for the Commercial EVSI program.

137. For the same reasons articulated above for the Commercial EVSI program, we reject Company ownership of EVSE and direct the Company to shift to a rebates-only EVSE program. The Settlement budget includes $6.1 million for Company-owned Commercial EVSE and $1.95 million for EVSE rebates. We find it appropriate to halve the proposed budget for Company-owned EVSE and maintain that for EVSE rebates, resulting in a budget of $5 million for Commercial EVSE.

138. We note that the Settlement budget includes a $14.4 million line item for "Infrastructure Maintenance." Given our decision to eliminate Company ownership of EVSI and

EVSE, maintenance responsibilities will also shift to the participating customers. Accordingly, we deny this budget line item.

c. Requiring Union Membership for EVSI Installers

139. The record indicates that the Company has thus far worked with a sole contractor to install EVSI through the programs in the Commercial portfolio. The Company is either in the process of or has recently completed a solicitation to hire additional contractors to implement the substantially expanded programs proposed for the 2024-2026 TEP. Labor issues are not addressed in the Settlement nor in the Public Service Joint SOP, however in response to concerns expressed by IECRMA in Answer Testimony, Public Service witness Mr. Ihle indicates that while the Company plans to continue to require union membership for the installation of Company-owned EVSI, the Company would have less influence over the type of labor employed for rebated EVSI.

140. While we share IECRMA's concern about the problems that restricting the labor pool (*i.e.*, requiring union membership) would have in the vastly-expanded commercial EVSI program the Settlement proposes, given our decision to require all Company funding of commercial EVSI and EVSE to be in the form of rebates, we find this issue to be moot. Customers will make their own decisions about contractors to complete their EVSI/EVSE projects and will be free to hire any contractor who can demonstrate compliance with the provisions of § 40-5-107(3), C.R.S. Further, we do not share the majority of the Company's concerns about third-party labor, as electricians are state licensed and neither Company-controlled nor particular additional requirements exist in many other realms of electrical work, making those concerns appear overblown in the discrete scope of EVSI work.

d. Including Civil Design Work in the EVSI Definition

141. As noted above, the Settlement states that the definition of EVSI includes any necessary civil design work. In its Settlement Testimony, Staff argues that the phrase "any necessary civil design work" is new, vague, and could possibly refer to a wide range of work and equipment. Staff states that parties have had no opportunity to investigate the implications of this change, so the Commission has no way of understanding what the consequences might be. Staff argues that the Company should have provided evidence to support its proposal and recommends that the Commission not approve such a potentially consequential change without a better understanding of what the implications are.[114] In their SOP, the Stipulating Parties express concern that the inclusion of civil design work would "expand the scope of EVSI funding beyond the parameters of Public Service's existing tariff—without seeking Commission authorization to modify the tariff," and would leave to the Company the decision over which costs it can incur and can subsequently earn a rate of return at its WACC.[115] The Affordability Coalition asks that the Commission direct the Company to submit a tariff filing seeking Commission approval of its inclusion of civil design work and related professional services within the scope of Line Extension Policy.[116]

142. Given our decision to require all Company funding of commercial EVSI and EVSE to be in the form of rebates, we find this issue to be moot. Any and all civil design work needed for commercial EVSI will be part of the overall cost of the project. Since project costs will be the responsibility of the customer (net of the available rebate), the Company will not be paying for

[114] Hrg. Exh. 406 (Haglund Settlement), p. 29.
[115] Affordability Coalition SOP, pp. 16-17.
[116] *Id*. at 18.

civil design work, so the specific tariff language that defines EVSI will not be invoked. Accordingly, we decline to require the Company to file a tariff revision.

e. Commercial Portfolio Budget

143. As the Revised Budget Estimate provided as Attachment A to this Decision demonstrates, the modifications to the Commercial portfolio discussed above result in a reduction of approximately $119 million to the Commercial portfolio capital budget to a total of approximately $106 million. We also note the elimination of the $14.4 million O&M budget for Infrastructure Maintenance, as described in paragraph 138.

7. Innovation Portfolio

144. In its direct case, the Company proposed a budget of $63.2 million to implement four programs within its Innovation portfolio:

- The Special Application Vehicle Electrification program, intended to promote heavy duty vehicle electrification in the agricultural, trucking, construction, mining and emergency response sectors;
- The V2X (vehicle-to-anything) program, which would continue bi-directional charging demonstration projects initiated in the inaugural TEP as well as develop utility operational tools to control vehicle-to-grid (V2G) resources;
- The School Bus Electrification program, which would conduct research into large scale school bus fleet electrification, and resilient charging hub deployment. It proposed rebates of $400,000 per bus as well as provision of EVSI and bi-directional EVSE to enable V2G capabilities; and
- The Open Innovation program, which would include funding to complete two projects initiated under the inaugural TEP as well as additional funds for projects to be identified "based on the needs of the EV ecosystem" and proposed via the 60-Day Notice process.

145. In its rebuttal case, the Company proposed reducing the scale of the School Bus Electrification project from 34 to 20 buses, thereby reducing its budget by $12.1 million, and reallocating this amount to Open Innovation projects. It also announced that it was terminating the Electric Vehicle Load Detection and Disaggregation Pilot in favor of a "more efficient"

approach to identify EV load through an existing solution. The Company also announced that it would terminate the Special Application Vehicle Electrification project due to the limited availability and long lead times for the types of vehicles the project sought to address. The Company proposed to reallocate its capital budget to the Commercial EVSI program and its O&M budget to Advisory Services.[117] These changes resulted in an overall $15.1 million budget reduction for the Innovation portfolio to $48.1 million.[118]

a. Settlement Proposals

146. The Settlement proposes the following changes to the Innovation portfolio:[119]

- 50 percent of the Open Innovation project budget will be set aside specifically for projects and partnerships in DICs. This budget will not be shifted to any other program. Such projects and partnerships will be identified and explained via a 60-Day Notice process and the Company will have final discretion in their selection;
- The Company will propose to bring forward customer-facing Commercial and Residential V2G demonstrations, pilots, or programs in its 2027-2029 TEP unless external factors make this impossible;
- The Company agrees to summarize the results and lessons learned from all Innovation projects from the 2021-2023 TEP through white papers submitted in the inaugural TEP proceeding within six months of a project's conclusion or full implementation, as applicable; and
- The School Bus Electrification project will provide rebates up to $400,000, but the minimum number of buses will be six rather than eight and school districts unable to provide matching funds will remain eligible.

147. The Settling Parties state that the Innovation portfolio will continue to build upon many of the programs implemented in the 2021-2023 TEP and argue that it is "pivotal to encourage new and innovative market development" to unlock benefits that EVs can bring to Colorado.[120]

[117] Hrg. Exh. 117 (Gouin Rebuttal), pp. 16-33.
[118] Hrg. Exh. 115 (Erwin Rebuttal), p. 43.
[119] Settlement, ¶¶ 48-52.
[120] Public Service Joint SOP, pp. 26-27.

b. Intervenor Positions

148. The Stipulation contains no provisions specific to the Innovation portfolio other than specifying a budget of $14.05 million across three years.[121]

149. Staff notes that the Commission directed the Company to file final reports for the projects initiated through its Partnerships, Research and Innovation portfolio (re-named to "Innovation Portfolio" in this TEP) with the filing of the 2024-26 TEP, which the Company did not file. Because the Company is out of compliance with the Commission's Decision in the Inaugural TEP, Staff recommends that the Commission direct the Company to submit final reports on these projects prior to initiating any new programs in the Innovation portfolio approved in this Proceeding.[122]

150. Staff contends that as Charging Perks scales, along with increased renewable energy, the strategy of reducing curtailments and utilizing V2G technology will become increasingly important, and notes that the dispatch of energy from vehicles participating in the Charging Perks program could constitute a non-wires alternative that the Company could propose for its next DSP application. Staff describes the potential benefits of V2G capability as including grid balancing, backup power, revenue generation for EV owners, reduced emissions, improved grid reliability, and increased renewable energy integration. Staff also acknowledges that V2G faces certain challenges, such as its cost, public acceptance and certain regulatory hurdles, but asserts that the technology can be encouraged by (1) capitalizing on previous research and development; (2) adopting standards and regulations; (3) educating the public about V2G benefits and its security risks; and (4) providing financial incentives to EV owners to install V2G-capable chargers. Staff recommends that the Commission order the Company to enable both residential

[121] Stipulation, ¶ 3.
[122] Hrg. Exh. 404 (Lamere Answer), pp. 10-12.

and commercial customers to utilize V2G within the timeframe of this TEP and utilize that capability to reduce curtailment of renewable energy.[123]

151. The Company notes that while V2G technology is evolving quickly, the viability of a widely-available residential and/or commercial V2G technology within the 2024-2026 TEP timeframe is uncertain. It notes the bidirectional charger rental option in the portfolio, which it expects to drive testing and market adoption, as well as its commitment in the Settlement to offer a customer-facing V2G demonstration, pilot or program in its next TEP, baring external factors that could prevent the Company from doing so. The Company notes that it has also committed to include additional information on vehicle-to-anything (V2X) program within its TEP annual reports.

152. Staff characterizes the $14.2 million the Settlement proposes for school bus electrification as "unnecessarily inflated" given the $5 billion Clean School Bus Program operated by the U.S. Environmental Protection Agency, the $500 million Renew America's Schools program operated by the U.S. Department of Energy, and the $65 million in funding the Colorado Department of Public Health and Environment has apportioned for electric school bus adoption. Staff proposes a budget of $2.2 million for school bus electrification, stating that this can be comfortably accommodated within the Affordability Coalition's proposed $14.05 million budget for the Innovation portfolio. Staff argues that school districts should be encouraged to apply for state and federal rebates before utility rebates, which the Company would recover with a return at its WACC. Staff recommends that the Commission adopt its proposed electric school bus budget with a per bus max rebate of $400,000 and ensure that recipients are required to pursue federal and state funding before receiving a rebate from the Company.[124]

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[123] Hrg. Exh. 403 (McCabe Answer), pp. 43-45, 52-54.
[124] Staff SOP, pp. 14-16.

153. The Public Service Joint SOP does not address this program. However, in its SOP, the EJC argues the Commission should approve the school bus provisions in the Settlement because they will result in greater air quality benefits than the Stipulation.[125] It also argues that the other federal and state sources of electric bus funding do not diminish the need for the Settlement's bus budget, as less than one percent of school buses in the state are currently electric.[126]

c. Findings and Conclusions

154. While we share Staff's disappointment that the Company has yet to file reports on projects from the Inaugural TEP that were to have been completed by now, and we find that greater transparency into these projects is needed, we disagree that the delay in filing project reports warrants a halt to launching any and all new projects under the Innovation portfolio. Rather than requiring that reports on the projects funded through the Inaugural TEP be filed prior to initiating new Innovation Portfolio projects, we will require the Company to either file those reports or to provide an update on when the reports will be available within 60 days after the effective date of this Decision, or, if any party files an application for rehearing, reargument, or reconsideration (RRR) pursuant to § 40-6-114, C.R.S., within 30 days after the effective date of the Commission's decision granting or denying the RRR.

155. With regard to V2G technology, we find that although this technology has the potential to provide numerous substantial benefits to the grid, to ratepayers and to the environment, we are cognizant of Rebuttal Testimony by Company witness Mr. Gouin indicating that this emerging technology remains at an early stage of development, and that, as of the date of that testimony, no UL listed bi-directional EV chargers under 50 kW were commercially available.[127]

[125] EJC SOP, pp. 10-12.
[126] *Id*.
[127] Hrg. Exh. 117 (Gouin Rebuttal), p. 21.

While we share the enthusiasm for V2G technology expressed by Staff and other intervenors, we recognize that a Commission directive to deploy the technology must await both commercial availability and market readiness. We find that the level of commitment to V2G presented in paragraph 49 of the Settlement, combined with the Company's plan to investigate bi-directional charging through the EVAAH Backup Power Option demonstration and the School Bus Electrification project in the Innovation portfolio, to be appropriate at this time. Accordingly, we strongly encourage the Company to design and propose one or more pilots or programs in its 2027-2029 TEP application, but decline to require the Company to deploy a V2G pilot during the timeframe of this TEP.

156. With regard to school bus electrification, we are in complete agreement with Staff that school districts should be encouraged to apply for the federal and state funds prior to being granted a ratepayer-funded subsidy for the entire cost of each bus. We find that ratepayers and school districts will be much better served if the funds provided by the Company program are considered matching funds to leverage those provided by the federal or state programs. Accordingly, we direct the Company to convene a group of interested stakeholders to develop and file, within 60 days of the mailing date of this Decision, a specific proposal for utilizing the budget allocated to the Electric School Bus program as matching grant funds requiring an appropriate level of funding from the relevant federal and/or state programs. This proposal shall be filed using the 60/90-Day Notice process.

157. In addition to funding the buses themselves, we perceive the need for two types of budget set-asides to improve the success of this program. The first is the need to ensure ample budget for Advisory Services to assist school districts in understanding the unique costs and benefits of establishing electric bus fleets, and developing their federal and state grant applications.

The second set-aside is to ensure that there is budget available to demonstrate electric school bus-based V2X projects and community resilience hubs to provide power during utility outages. We therefore direct the Company to work with the stakeholder group to establish appropriate budgets for these purposes within the $15.9 million budget that the Settlement establishes for this program.

158. With the modifications discussed above, we approve paragraphs 47 through 52 of the Settlement. We also approve the proposed $48.1 million budget for the Innovation portfolio.

8. Portfolio-level O&M and Plan Administration Budgets

159. In its direct case, the Company proposed a budget of $46.2 million for TEP Administration. The Company explained that this budget is necessary to support (1) stakeholder engagement, (2) extensive reporting requirements, (3) third-party program and project evaluations, and (4) significant investment in IT systems that are needed for customer program enrollment, charger and charging management solutions, system integrations, and data insights and reporting.[128] This budget remained unchanged by the Company's rebuttal case or by the Settlement.[129]

160. The Stipulation proposes a $13.5 million budget for plan administration.[130] UCA states in its Answer Testimony that the Plan Administration budget should be reduced in proportion to its recommended reductions in TEP program budgets.[131] Boulder points out that the Plan Administration budget excludes the actual administrative costs for any of the individual

[128] Hrg. Exh. 103, Attachment HS-1, pp. 74-76.
[129] Settlement, ¶ 5 (Table 2).
[130] Stipulation, ¶ 3.
[131] Hrg. Exh. 202 (Henry-Sermos Answer), p. 37.

portfolios, and that adding these in brings total administrative costs for the 2024-2026 TEP to $99.1 million.[132]

a. Findings and Conclusions

161. Given the modifications to the proposed portfolio capital budgets discussed previously in this Decision, we find that with three exceptions, the O&M components of each individual portfolio budget should scale with the magnitude of the capital expenditures of each portfolio. The three exceptions are as follows:

- As we are making no change to the incentives for the OYC program in the Residential portfolio, the O&M budget for these incentives will remain at $395,450;
- The O&M budget associated with incentives for the Charging Perks program will triple to just over $6.0 million; and
- The proposed $14.4 million O&M budget associated with maintenance of Company-owned infrastructure is set to zero, as discussed in paragraph 138.

162. Attachment A presents the approved portfolio-level O&M budgets for each portfolio.

163. Likewise, we find that the capital component of the Plan Administration budget should be reduced in proportion to the overall reduction in TEP capital spending approved in this Decision. Accordingly, this budget is reduced by $14.3 million to $20.1 million. While it is reasonable to assume that capital used for software and other needs to support the plan's goals scales to some degree, the Company provided only very vague descriptions on the use of these funds in the originally requested $20.1 million, essentially expressing the basis as little more than a percentage of total expenditures. The lack of specificity and identification of no pre-defined expenditures upon which this budget is based are another reason why reduction of this line item is appropriate. Accordingly, in its reporting on this TEP, we direct the Company to provide

[132] Hrg. Exh. 1300 (Lehrman Answer), p. 9.

clarification on the need for this budget and detail on what it has been and will be spent on. Additionally, in future TEPs, we recommend that the Company provide additional detail on line items like this if the Company intends to pursue ratepayer funding.

9. Overall 2024-2026 TEP Budget

a. Overall Budget

164. In Attachment A to this Decision, we provide a revised budget estimate based off Hrg. Exh. 123, Attachment DEE-8, as modified by our conclusions and findings in this Decision. This Attachment summarizes modifications made to the Company's Settlement proposals found within this Decision. In sum, we approve approximately $263,989,753 as the base budget for the Company's 2024-2026 TEP. We find this level of spending to be in the public interest and consistent with our portfolio level findings and conclusions. The budget approved here "minimize[s] overall costs and maximize[s] overall benefits" of the Company's TEP.

b. Budget Flexibility

(1) Settlement Proposals

165. The Settlement incorporates the Company's proposed budget flexibility of 125 percent of the overall three-year budget and 150 percent between portfolios.[133] The Settlement states the Settling Parties agree that it is reasonable for the Company to transition from an annual flexibility mechanism to a plan-level flexibility mechanism.[134] The Settling Parties argue that budget flexibility is critical to the Company's ability to meet customer demands in a rapidly evolving market, while helping to ensure continuity of programming.[135] They suggest that recent growth of the Commercial portfolio indicates that customer and market demands can change significantly over

[133] Settlement, ¶ ¶ 6.1 and 6.2.
[134] *Id*.
[135] Public Service Joint SOP, p. 7.

the course of a TEP, and argue the Settlement's budget flexibility will provide the Company with the nimbleness to satisfy customer demands for specific services and transportation-related investment.

166. The Settling Parties agree that the Company should continue to use the 60/90-Day Notice process previously approved for the Company's 2021-2023 TEP, as outlined in the Direct Testimony of Jack W. Ihle, to effectuate any needed budget flexibility.[136]

(2) Intervenor Positions

167. The Stipulation proposes a firm budget of $108.36 million over three years.[137] The Stipulation does not propose a flexibility allowance for either total program expenditure or support a shift between portfolios or programs.

168. Staff notes that, when including the overall program flexibility of 25 percent above proposed expenditure, the total three-year investment could reach $549 million.[138]

169. CEC recommends a total budget flexibility of 15 percent, rather than 25 percent, given the overall magnitude of the dollars at stake in this Proceeding. CEC's Mr. Higgins notes that, although the Commission previously approved a structure that allows Public Service to exceed its budget by 25 percent, that flexibility was for a much smaller program. CEC suggests the Company's current request requires a different approach.[139] CEC does not comment on the inter-portfolio budget flexibility.

(3) Findings and Conclusions

170. The Commission approves Public Service's plan-level TEP budget flexibility proposal, as supported by the Settling Parties.[140] We find it appropriate to support these programs

[136] Settlement, ¶ 69.
[137] Stipulation, ¶ 1.
[138] Hrg. Exh. 400 (Haglund Answer), p. 12.
[139] Hrg. Exh. 600 (Higgins Answer), p. 17.
[140] Settlement, ¶ ¶ 6.1 and 6.2.

in scenarios where demand for the array of services and inducements exceeds initial projections. We agree with Public Service that this flexibility will allow the Company to efficiently address the evolving EV market and expand programs in response to customer demand and market costs to ensure customers have access to appropriate support and continuity of programming.

171. With respect to the flexibility of dollars between portfolios, proposed by the Settlement at 150 percent of any portfolio, the Commission has concerns this could materially modify the overall TEP program as approved here and cause unforeseen problems. We believe a lower inter-portfolio flexibility allowance is appropriate, and set the value of any budget shift between two portfolios at 25 percent of the portfolio with the lower initial budget, as approved in this Decision. That being said, we generally agree that this flexibility should help ensure that Public Service uses TEP funds where they are most useful. We note the positive experience with DSM in which the Commission allows the Company flexibility regarding specific product and service offerings.

10. Cost Recovery

a. Return on and Amortization of Rebates

(1) Settlement Proposals

172. The Settling Parties agree that the Company should earn a return on its TEP capital investments, including rebates and batteries, at the Company's WACC, amortized/depreciated over ten years, except to the extent another period already applies (*i.e.*, distribution grid investments such as feeders and transformers).[141]

173. In its Settlement Testimony, Public Service indicated that its TEP proposal is predicated on three fundamental regulatory proposals: "First, is the Company's earning a return on

[141] Settlement, ¶ 8.1.

TEP investments—inclusive of rebates—at the Company's [WACC]. Second, is an amortization of rebates over a ten-year period. Third, is the recovery of prudently incurred TEP investments through the TEPA rider."[142] Mr. Ihle explains that it is critical, from the Company's perspective, to place TEP activities and investment on a "similar footing" to traditional infrastructure development through the proposed cost recovery approaches which the Commission has previously approved.[143] The Company notes that SB19-077 allows the Company to earn a return on its TEP investments and rebates at the Company's WACC, which the Commission granted in the Inaugural TEP.[144]

174. The record shows that approximately 79 percent of all TEP budget is categorized as capital expenditure, with the remaining 21 percent as operating expense in the form operations and maintenance or plan administration.[145]

175. Public Service notes that the Commission found that a ten-year amortization period for rebates was appropriate in the Inaugural TEP in part because "the assets associated with these rebates are expected to provide system benefits for years to come."[146] Mr. Ihle argues that this treatment allows the Company to make investments to support its TEP program and the State's EV goals while reducing the immediate rate impact on the Company's customers. He also contends the Company's WACC represents its true financing cost, and appropriately reflects that cost for the Company's investments. In his Rebuttal Testimony, Mr. Ihle argues the TEP rebates are not pass-through expense items or regular O&M costs associated with doing business as a regulated

[142] Hrg. Exh. 122 (Ihle Settlement), p. 15.
[143] *Id*.
[144] Decision No. C21-0017, ¶ 80, in Proceeding No. 20A-0204E. The rates and charges schedule for services provided by a program created under section 40-5-107 may allow: (a) A return on any investment made under section 40-5-107 by an electric public utility at the electric public utility's weighted average cost of capital. § 40-3-116(1)(a), C.R.S.
[145] Hrg. Exh. 124, Att, DSK-9.
[146] Hrg. Exh. 101 (Ihle Direct), p. 49 citing Decision C21-0017, ¶ 82 in Proceeding No. 20A-0204E.

utility. Public Service argues "[e]ven though Public Service will not own [assets invested through rebates], the financing is still coming from Public Service, representing utility-funded investments in service producing assets" and "TEP rebates represent utility funded capital that is being invested in the communities we serve."[147]

176. TEP rebates and program-related investment would be amortized for ten years, per the Settlement. According to Company calculations, distribution investments would be afforded a 56-year amortization period.[148]

(2) Intervenor Positions

177. The Stipulation suggests all rebates should be treated as operations and maintenance and should not be amortized.[149] The Stipulation removes all Distribution Investment and thus amortization of such is not addressed.

178. In its Answer Testimony, Staff suggests rebates should not be amortized or capitalized, or if the Commission rejects full expensing, a three-year amortization period on rebates is appropriate. In the Affordability Coalition SOP, they note that the law allows, but does not require, the Commission to authorize a WACC return on rebates and that the TEP is the only program under which the Company is currently able to amortize, rate-base, and earn a return on rebates.[150] Staff states it does not support the creation of long-term obligations that "will saddle future ratepayers" with current decisions and cause an overall increase in costs to ratepayers.[151] Mr. Haglund calculates that every dollar of rebate would require $1.51 from customers if amortized over a ten-year period, $1.18 if amortized over a three-year period versus $1.00 if simply

[147] Hrg. Exh. 113 (Ihle Rebuttal), pp. 36, 38.
[148] Hrg. Exh. 124 (Klingeman Settlement), p. 8.
[149] Stipulation, ¶ 13.
[150] Affordability Coalition SOP, pp. 24-25.
[151] Hrg. Exh. 400 (Haglund Answer), p. 57.

expensed.[152] Staff contends the proposed WACC / amortization treatment "essentially forces ratepayers to take a loan from the Company and pay it back at an interest rate of 6.95 percent. Not only that, but the Company has to pay additional taxes on the income it earns on the loan, and those taxes are passed on to ratepayers as well."[153]

179. Staff contends that a rebate itself is not a tangible asset with an expected service life without ownership or maintenance requirements.[154] In DSM programs, for example, rebates are expensed. Staff also suggests the Company is strongly incentivized to promote EV adoption even without any return on rebates, as more EVs in Public Service's territory would facilitate more electricity sales. Staff contends the Company is particularly incentivized due to termination of the RDA Pilot in which the Company was required to return excess revenues above a Commission-approved baseline. Staff's Mr. Haglund says "EV-associated load is likely one of the Company's best opportunities for such growth."[155] Staff also contends that expensing TEP rebates would leave the Company plenty of room under the statutory cap to support a total budget of up to $250 million.[156]

180. UCA argues WACC recovery on rebates is not appropriate if cost recovery is allowed via the TEPA rider. UCA also notes the inaugural 2021-2023 TEP is the only program for which Public Service gets to amortize and earn a return on issued rebates. UCA states that "because PSCo sets the TEP rider on a forecasted basis, the Commission should treat rebates appropriately as an expense item and not allow rebates to be amortized or for PSCo to earn a return on any rebates."[157]

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[152] *Id*. at 58; Affordability Coalition SOP, p. 25.
[153] *Id*.
[154] *Id*. at 62.
[155] *Id*. at 59.
[156] *Id*. at 61.
[157] Hrg. Exh. 406 (England Settlement), p. 8.

(3) Findings and Conclusions

181. In evaluating the appropriate return and amortization applicable to TEP rebates and other expenditures, the Commission notes the balance of interests at stake: to keep immediate rate impacts low, to minimize the burden on future ratepayers, and to encourage the Company to implement the program effectively and support the State's implementation of its transportation electrification goals. We recognize that DSM rebates, approved in prior proceedings, have historically not been afforded a return opportunity. We also note, as Staff suggests, incremental sales via transportation electrification represents a distinct business opportunity for Public Service, and thus the Company should already be incentivized to implement its TEP without significant additional Commission inducement and the ratepayer burden that would cause. Further, we note UCA's contention that the amortization schedule should be considered in light of rider recovery, if available. We agree, and find that rider recovery in and of itself is a distinct and utility-supportive cost recovery mechanism.

182. Accordingly, we find a ten-year amortization, as supported by the Settlement, especially when combined with TEPA rider recovery, represents an unnecessarily generous approach to support the Company's efforts. In addition to many of the intervenor objections raised in this proceeding, other details associated with cost recovery have changed since the initial TEP, causing an appropriate reevaluation of this treatment. This includes the elimination of the RDA, which in its initial TEP, the Company argued did not allow it to benefit from incremental revenues generated from EV charging. Without this mechanism, the potential for benefit to the Company is expanded.

183. However, we also acknowledge that the Settlement as modified by this Decision represents a meaningful shift away from direct Company investment as originally proposed by

Public Service and as approved by this Commission in the Inaugural TEP, and instead relies primarily on rebates to induce participation among an array of market actors. Accordingly, we find that, in the instant case, a direct expensing of rebates fails to induce the Company adequately, equitably account for the transition away from direct Company investment, or recognize the significant efforts necessary to make the TEP program successful. In this circumstance, similar to the Inaugural TEP, the Commission finds that this unique treatment of rebate cost recovery can serve as an inherent performance-based incentive to ensure successful deployment of TEP rebate programs. Therefore, we find merit in Staff's three-year amortization approach. Coupled with TEPA rider recovery, we believe this overall cost recovery approach represents a reasonable balance of Company inducement to manage its TEP program efficiently while simultaneously protecting ratepayers from unnecessary costs.

b. Continuation of the TEPA Rider Mechanism

(1) Settlement Proposals

184. The Settling Parties agree that the Company's prudently incurred TEP investments and expenditures should continue to be recovered through the TEPA rider, and that continuation of the TEPA cost recovery mechanism is reasonable and in the public interest.[158] The Settlement also states that the TEP revenue requirement shall be calculated and applied in accordance with the Company's existing TEPA tariff except for certain modifications, and implemented through a compliance advice letter filing to this Proceeding. It further states that no presumption of prudence shall attach to the budgets approved in this Proceeding. All costs incurred to implement the 2024-2026 TEP will be subject to the annual prudence review process set forth in the Company's TEPA tariff prior to any recovery occurring.[159]

[158] Settlement, ¶ ¶ 8-10.
[159] *Id*.

185. Public Service argues that the TEPA mechanism was developed less than three years ago in the Inaugural TEP, and that the Commission should allow the rider to continue to recover TEP-related costs. The Settling Parties argue that rider recovery is reasonable and in the public interest as well as necessary to support the State's aggressive EV goals.[160] They further argue that rider recovery promotes transparency as forecasts and true-ups will continue to be publicly filed exclusively for TEP investments, allowing the Commission and stakeholders greater visibility into cost and that because the Company pays the WACC on any overcollection of the TEPA and fronts capital without recovery for under-collection, it is incentivized to maintain a balanced budget.[161]

186. The Company also notes that any receipt of grants and new funding opportunities may lower the Company's actual TEP costs as collected through the TEPA rider.[162] Public Service suggests the TEPA will recover revenue requirements, which are not the same as program costs. Mr. Klingeman of Public Service projected average bill impacts of 0.75 percent (or $0.66 per month) for residential customers and 2.10 percent (or $54.01 per month) for Secondary General commercial customers over the three-year TEP period.[163]

(2) Intervenor Positions

187. The Stipulation refers to "those costs that are appropriately recovered through the TEPA rider," but does not specifically endorse the TEPA rider.[164] The Stipulation does suggest the Commission require the Company to propose an approach to sunset the rider in its 2027-2029 TEP application, and that any distribution investments approved here should only be recovered through

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[160] Public Service Joint SOP, p. 12.
[161] *Id.*
[162] Hrg. Exh. 101 (Ihle Direct), p. 27.
[163] Hrg. Exh. 124 (Klingeman Settlement), p. 10.
[164] Stipulation, ¶ 4.

base rates and not the TEPA.[165] The Affordability Coalition argues that rider recovery is extraordinary because of the unique and disparate ways it impacts ratepayers and the Company's bottom line, including that it shifts the risk of investment to ratepayers and insulates the Company and diminishes the Company's incentive to minimize costs because the Company does not bear financial risk.[166] In their SOP, they point the Commission to the Pipeline Safety Adjustment Rider as guide for how to structure the rider to return TEP costs to a more traditional recovery in rate case proceedings moving forward.[167]

188. In Answer Testimony, Staff recommends the Commission require the Company to recover TEP-related costs in the same way as other main investments—through base rates in the ordinary course of business.[168] Staff argues riders should be utilized to allow rapid recovery of costs where the Company has no control, such as fuel expenses, and to moderate customer bills by foregoing financing costs.[169] In the alternative, if the Commission maintains the TEPA rider, Staff recommends the Commission require that the Company clarify the types of costs included or excluded in the TEPA rider and establish a wind-down of the rider in any future TEP application including transition plans for cost recovery in the ordinary course of business.[170] Staff also suggests the Company be required to report on its rider termination progress.

(3) Findings and Conclusions

189. As discussed above, the Commission finds it necessary, in the instant case, to assess the mechanics of the cost recovery (*i.e.*, whether by rider or through base rates) in concert with evaluation of appropriate return and amortization period. We found it appropriate to allow WACC

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[165] Stipulation, ¶ ¶ 2, 15.
[166] Affordability Coalition SOP, p. 28.
[167] *Id*. at 29.
[168] Hrg. Exh. 401 (Ghebregziabher Answer), p. 11.
[169] *Id*. at 20.
[170] *Id*. at 27.

recovery and three-year amortization when considered in combination with TEPA rider recovery. We note that SB19-077 expressly authorizes TEPA rider recovery. Section 40-3-116(1)(b), C.R.S., states the Commission may allow "[r]ate recovery mechanisms that allow earlier, as determined by the commission, recovery of costs, including the use of rate adjustment clauses." Therefore, the Commission approves Public Service's proposal to continue to recover TEP expenses through the TEPA mechanism.

190. With respect to the Affordability Coalition's and Staff's suggestion to require a wind-down of the rider, we reject that suggestion for the immediate future. While we would like to see fewer riders and a less complex bill, we will take up the merits of a wind-down in the Company's next TEP application in light of the Company's overall effort and success of implementation.

c. Cost Allocation

(1) Settlement Proposals

191. The Settling Parties agree that the Company's proposed cost allocation methodology, as presented by Mr. Klingeman, should be approved by the Commission.[171] In his Direct Testimony, Mr. Klingeman explains that, in the prior TEP, the Commission approved five allocation methods depending on numerous TEP cost categories.[172] He argues that the previous allocation methodology was overly complicated as it required grouping of costs into several categories, and that these cost categories do not map very well to the costs at issue in this Application.[173]

[171] Settlement, ¶ 10, referring to Hrg. Exh. 108 (Klingeman Direct) and Hrg. Exh. 120 (Klingeman Rebuttal).

[172] Hrg. Exh. 108 (Klingeman Direct), p. 24.

[173] *Id*. at 26.

192. To replace the prior allocation method, the Company proposes a two-step allocation process uniformly applied to all costs in the TEP. The first step of the new allocation is to directly assign costs as being Residential or Non-Residential (not assignable costs are split between the two categories based on the resulting split from the directly assigned costs). After the Residential/Non-Residential split is determined, the Company allocates Non-Residential costs to customer classes using a class Non-Coincident Peak (NCP) allocation. The NCP methodology has been used to allocate costs resulting from the Company's first TEP, and Public Service believes is still appropriate.[174]

193. Public Service notes that a small portion of EVSI program funding for fleet and workplace charging is the only TEP programming relevant to Transmission-level commercial and industrial customers. Accordingly, these costs were directly assigned to that class.

194. Also, due to concerns raised by Boulder, Public Service proposes excluding the small commercial class from cost allocation of PCAN programs.[175]

(2) Intervenor Positions

195. The Stipulating Parties contend the cost allocation methodology should remain consistent with the Inaugural TEP where the Commission approved the proposed method based on non-coincident peak only.[176] The Affordability Coalition also argues allocation of TEP costs should be consistent with cost causation principles.[177]

[174] *Id.*
[175] Hrg. Exh. 120 (Klingeman Rebuttal), pp. 16-17.
[176] Stipulation, ¶ 4, citing Decision C21-0017 at ¶¶ 83, 84, in Proceeding No. 20A-0204E.
[177] Affordability Coalition SOP, p. 10.

196. CEC notes that the last TEP adopted an allocation of 44.5 percent for residential customers and 55.5 percent for commercial customers. The current TEP shifts the allocation to 23.3 percent for residential and 76.7 percent for commercial.[178]

197. CEC contends this is primarily due to an arbitrary reclassification of costs including all DCFC costs to commercial customers. CEC argues if Public Service is the owner of DCFC, they would be the commercial customer. Even if DCFC are third-party owned, CEC contends, there is no reasonable basis for 100 percent allocation to th commercial sector.[179] Instead, the Commission should ask who the primary beneficiaries of DCFC station expansion are—the answer, according to CEC, are the drivers of passenger cars. Thus, CEC suggests, such an allocation ignores cost-causation principles. Instead, the Commission should apply the allocator from the last TEP: class non-coincident demand, excluding Transmission General and Lighting (NCPXTGL), which is what Public Service uses in this case to allocate DCFC costs among non-residential classes.[180]

198. CEC also argues EVSE and EVSI investment at multi-family housing should be allocated to the residential class, as done in the last TEP, and not to commercial customers as it currently proposes.

199. CEC indicates that Public Service responded in discovery that they allocated that way because multi-family housing customers are commercial customers.[181] CEC argues the allocation should not be on the entity *hosting* the EV investment, but rather than the *users* or *beneficiaries* of the investment. CEC contends EVSE and EVSI investment at multi-family

[178] Hrg. Exh. 600 (Higgins Answer), p. 21.
[179] *Id*. at 22.
[180] *Id*. at 23.
[181] *Id*. at 24, citing Hrg. Exh. 600, Att. KCH-2.

housing should be directly assigned to residential class just as it was in the Inaugural TEP proceeding.

200. CEC makes similar arguments for Government EV rebate and School Bus programs: it makes little sense for Colorado non-residential customers to provide the sole funding support for the electrification of school bus fleets, when the function of such fleets is to bus the children of *residents* to and from school. Such costs should be shared between residential and non-residential distribution customers based on the Revenue Requirement allocator.

201. Overall, CEC offers an array of allocation modifications, outlined in Table KCH-4.[182] CEC calculates that, based on Public Service's initially proposed TEP budget, their recommendation results in an allocation of 41.2 percent residential and 58.8 percent non-residential.

(3) Findings and Conclusions

202. The Commission recognizes the proposed and Settlement-supported allocation approach causes a significant shift in program dollars to the non-residential sector. We also find merit in several of CEC's arguments that residential customers will directly benefit from the array of TEP programs, including some of those directly assigned to commercial classes. We note, however, that cost allocation among multi-family residences represents a unique challenge: although the end-consumers among multi-family buildings are clearly residential individuals and families, such buildings have historically been treated as non-residential with respect to class allocation due to uncertainty associated with metering or sub-metering of the individual units and the ultimate billing for electricity service. We also note that certain programs, such as School Bus electrification, benefit all customers, residential and non-residential alike. Generally, we find merit

[182] *Id*. at 11.

in CEC's proposed allocators as presented in Table KCH-4[183] except for one modification: the NCP allocator should be applied to allocate the costs of the multi-family program among both the residential and non-residential classes. We direct the Company to modify the allocators accordingly, and report to the Commission the rate impact of such in its compliance filing.

F. Other Settlement Terms and Proposals

1. Demand Response Management System

203. Neither the Settlement nor the Stipulation contain any provisions regarding or referencing demand response management system (DRMS) capabilities for aggregated control of EVs. We note, however, that this is a topic of discussion in Proceeding No. 23M-0466EG.

204. In supplemental testimony, the Company states that its current efforts on DRMS are focused on supporting its Renewable Battery Connect program, but that it "will be assessing the business case, use cases, functional requirements, and costs and benefits of integrating an EV managed charging solution with the Company's distribution planning and operational tools to allow managed charging to be used to help manage the grid."[184] The Company states that integrating managed EV charging with distribution operations will play a crucial role in optimizing vehicle charging to mitigate the impact of EVs on the grid and potentially to assist in leveraging EVs as a grid asset in the future, but that such functionality is not affiliated with the DRMS workstream.[185]

205. The Company states that integrating managed charging with distribution operations can provide numerous benefits, such as optimizing charging to match available generation, delaying or avoiding capacity expansion projects/infrastructure upgrades, and facilitating the

[183] Hrg. Exh. 600 (Higgins Answer), p. 26.
[184] Hrg. Exh. 112 (Paoletti Supplemental Direct), p. 8.
[185] *Id.*

management of V2G, once this capability is widely available. The Company states that integrating managed charging with distribution operations would also allow vehicle performance data (*e.g.*, charging start and stop time, kW, kWh, etc.) to flow from the managed charging platform to distribution tools to assist in distribution system planning, program planning, and measurement and verification of vehicle performance in demand response events.[186]

206. The Company states that several advancements are needed before this fully-integrated vision can become a reality. For example, the EV industry needs to adopt standard communication protocols between vehicle and charging management platform. The Company states that it has proposed to follow this technology closely and advance its capabilities by working with original equipment manufacturers to demonstrate V2X capabilities during the 2024-2026 TEP.[187]

207. In Answer Testimony, Staff notes that in its Decision on the Company's most recent DSP proceeding,[188] the Commission identified a lack of clarity in the Company's DRMS plans regarding integration of distributed energy resources other than stationary batteries, leaving "considerable questions about if the Company plans to make direct efforts to maximize the value of the DRMS in the near-term on behalf of ratepayers."[189] Staff notes further the Commission's directive in this proceeding to file supplemental direct testimony specifically on the application of its DRMS in the context of transportation electrification. Staff states that it sees an opportunity for the Company to both fully comply with the DSP Decision and optimize the DRMS to better support the TEP. Staff characterizes the Company's approach to implementing EV applications for the

[186] *Id*. at 9.
[187] *Id*. at 10-11.
[188] *See* Decision R23-0080, in Proceeding 22A-0189E.
[189] *Id*. at 81.

DRMS as "unclear, undefined, and insufficiently motivated."[190] Staff states that incorporating such functionality relies on Public Service's "diligence process" and its explorations of requirements for the DRMS that "could potentially include EVs."[191] Staff contends that the Company also appears to lack direction regarding "the appropriate avenue for incorporating a strategy to reflect broader [DRMS] technology options."[192] To remedy this situation, Staff recommends that the Commission direct the Company to first select a DRMS that incorporates managed charging capabilities for EVs, and also include electrified-transportation components of the DRMS as part of its reporting and planning requirements in both the DSP and the TEP.[193]

208. As an initial matter, we note that the Company is no longer pursuing acquisition of a DRMS, but is instead planning to procure a distributed energy resource management system (DERMS) which will incorporate the functionality previously planned for the DRMS.

209. We acknowledge that the absence of a standard communications protocol for managing EV charging may in the short term pose a challenge for utility programs seeking to optimize aggregated charging and discharging behavior. Nonetheless, as the Company acknowledges, the integration of managed EV charging with distribution operations will be essential in mitigating the potentially negative impact of EVs on the grid and in leveraging EVs instead as a grid asset. This being the case, we find it essential that any DERMS the Company procures must possess the functionality, or at the very least the flexibility to incorporate functionality in the future to support managed EV charging.

[190] Hrg. Exh. 402 (Fuller Answer), p. 31.
[191] *Id*.
[192] *Id*.
[193] *Id*. at 27-31.

2. Income-Qualified and Disproportionately Impacted Community Criteria

210. The Settling Parties propose and support various equity considerations regarding IQ and DI Communities.[194] Included in these considerations are eligibility criteria for participation in equity-focused programs, which are to align with the most recent definitions enacted in HB23-1233.[195] Public Service further commits to update its equity eligibility criteria as appropriate to align with any further statutory changes as well as the outcomes of the Commission's ongoing rulemaking processes.[196]

211. The Settling Parties also support Public Service's estimated equity-supportive spending for the 2024-2026 TEP, and contend it is reasonable based on the Company's current understanding of market demand.[197] The estimated spending, which Settling Parties acknowledge do not constitute final budget allocations or spending commitments, includes $9.8 million on Residential IQ/DIC rebates and $2 million on Commercial IQ/DIC rebates.[198] Additionally, at least 15 percent of the total approved TEP budget, with an annual minimum of five percent of the total budget, will be dedicated to support equity-eligible customers and communities.[199] Moreover, the Settling Parties propose suspending the Company's implementation of its proposed equity PIM for the 2024-2026 TEP, while reserving the right to revisit the issue in a future TEP, and submit that the rebates and offerings of the 2024-2026 TEP should be eligible to be stacked with other state or federal programs, rebates, and incentives.[200]

[194] *See* Settlement, ¶ ¶ 53-65.
[195] *Id*. at ¶ 53.
[196] *Id*. at ¶ 54.
[197] *Id*. at ¶ 56.
[198] *See id*. Table 9.
[199] *Id*. at ¶ 58.
[200] *Id*. at ¶ ¶ 2. 59.

212. The Settling Parties also support Public Service's inclusion of its TEP programming within the Company's broader IQ/DI Community Outreach and Engagement Plan and eligible TEP-specific outreach and engagement activities, as described in the Rebuttal Testimony of Company Witness Mr. Patrick J. Murphy.[201] The proposed total budget of the Community Outreach and Engagement Plan is approximately $3.9 million, or approximately $1.3 million per year, and the Settling Parties propose that the costs associated with IQ/DI outreach and engagement efforts be recoverable through the TEPA.[202] The Settling Parties contend that this budget aligns with the Company's ongoing efforts in its 2022-2025 Renewable Energy Standard Compliance Plan, in Proceeding No. 21A-0625EG, and includes funding for, among other things, workforce development for members of DICs and various community-based organizations.[203]

213. The Stipulating Parties propose that the 2024-2026 TEP's expenditures on IQ and DIC considerations should comprise at least 15 percent of the total three-year budget, with an annual minimum of 5 percent of the annual budget dedicated to supporting equity eligible programs.[204] In their post-hearing Statement of Position, the Stipulating Parties maintain this budgetary carveout for IQ/DIC expenditures, but caution the Commission that the solution to the energy burden on low-income ratepayers is not to spend an inordinate amount of money in this TEP, since the resulting increased rates will be applied equally to low income ratepayers.[205] They contend that the Stipulation's reduction in the overall TEP budget strikes the proper balance between targeting TEP programs with equity supportive expenditures without requiring IQ and DICs to bear undue additional energy burdens.[206]

[201] *Id*. at ¶ 60.
[202] *Id*. at ¶¶ 60-61, 63.
[203] *See id*. at ¶ 62.
[204] Stipulation, ¶ 14.
[205] Affordability Coalition SOP, p. 26.
[206] *Id*. at 27.

214. The Commission recognizes the importance of supporting IQ customers and DICs in considering Public Service's 2024-2026 TEP. While the Settling and Stipulating Parties differ in their proposals of the overall TEP budget, both largely agree that prioritizing spending on IQ and DICs is appropriate. The Stipulation proposes 15 percent of the overall budget, with an annual minimum of five percent, should be allocated to support equity considerations regarding IQ customers and DICs.[207]

215. The Commission agrees with both the Settling and Stipulating Parties on this issue. This budgetary carveout is appropriate, and in accordance with § 40-5-107(2)(g), C.R.S., in that it will provide access for IQ customers and members of DICs while giving due consideration to the overall effect that Public Service's 2024-2026 TEP will have on these communities. Accordingly, the Commission approves the Settling Parties' equity considerations contained in paragraphs 53 through 65 of the Settlement, as modified by the Commission's Decision here. Additionally, we find that the suspension of Public Service's PIM for the 2024-2026 is appropriate under the circumstances and affirm that rebates and offerings in the Company's 2024-2026 TEP are eligible to be stacked with other state or federal programs, rebates, or incentives, pursuant to § 39-22-516.7(11), C.R.S.

3. Reporting

216. The Settling Parties propose that Public Service transition to an annual reporting framework for 2024-2026 TEP, with the Company filing its annual reports by October 1 of each year, beginning in 2024.[208] In the annual reports, Public Service will continue to include the approved metrics established in the Inaugural TEP, and listed in the Direct Testimony of Company Witness Ms. Huma Seth, with the exception of (1) TEP revenue broken out by portfolio and

[207] Stipulation, ¶ 14.
[208] Settlement, ¶ 66.

program category, and (2) the number of small MFH sites that express interest in participating in MFH programs.[209] The Settling Parties further agree that Public Service will incorporate into its annual reports numerous additional requirements, including, among other things, reports on No Regrets Investments project areas and DCFC Distribution Investments, data regarding the Charging Perks Program, and updates on the status of the Company's IQ/DI Community Outreach and Engagement Plan.[210]

217. The Settling Parties also propose that Public Service should continue to use the 60/90-Day Notice process previously approved in the Inaugural TEP and as outlined in the Direct Testimony of Company Witness Mr. Jack W. Ihle.[211] Moreover, Public Service will continue to report on the progress of the 2024-2026 TEP at its quarterly TEP stakeholder meetings, as outlined in Company Witness Ms. Huma Seth's Direct Testimony, as well as provide updates on its IQ/DI Community outreach efforts as part of the meetings.[212] Additionally, the Settling Parties agree that Public Service will continue to report TEP product participation in the annual Community Energy Report, consistent with Paragraph 255 in Commission Decision No. C21-0017 in Proceeding No. 20A-0204E.[213]

218. Mr. Ihle explains that the 60-Day Notice Process:

> "allows the Company to undertake efficient changes to TEP portfolios, introduce programs, and make needed adjustments. The 90-Day Notice Process governs proposals to discontinue a program or product offering. Through the 60-Day Notice Process, the Company issues the notice to stakeholders who then have 30 days to provide comments to the Company. After the initial 30 days, the Company then has 30 days to consider the comments and respond to them accordingly. The Company then files a summary report in the appropriate TEP proceeding that summarizes the comments received and why they were incorporated into the final notice or justification of why comments were not incorporated. Upon filing the summary report, Commission Staff have 10 business days to file a Notice of Deficiency. If no Notice of Deficiency

[209] *Id*. at ¶ 67.
[210] *See id*. at ¶ 68.
[211] *Id*. at ¶ 69
[212] *Id*. at ¶ 70.
[213] *Id*. at ¶ 71.

> is filed, the Company moves forward with the noticed proposal consistent with the summary report. If a Notice of Deficiency is filed, the Company and stakeholders have the opportunity to respond and the Commission ultimately decides the path forward for changes proposed through the Notice (*e.g.,* file an application, move forward with the change as proposed, deny the change). For a 90-Day Notice, the process is relatively similar. Stakeholders have 30 days to provide comments, and then the Company has 60 days to consider the comments before the Company makes a final decision on the proposed discontinuance."[214]

219. In its post-hearing Statement of Position, Staff contends that Public Service should maintain the current semi-annual report requirement.[215] In support of this, Staff argues that since TEP programs are still new and evolving, and significant changes have already occurred between the Inaugural TEP and this proceeding, the Commission and stakeholders would benefit from the increased visibility afforded by semi-annual reporting.[216]

220. The Commission agrees with the Settling Parties and will allow Public Service to transition to annual reporting and otherwise approve of the Settlement terms related to reporting. The Commission finds the 60/90-day Notice process, as outlined by Mr. Ihle, to be efficient and appropriate, and approve its use to implement the flexibility allowance, as modified above. While we approve Settlement term 69 and the continuation of the 60/90-day process approved in the Inaugural TEP, in order to facilitate the overall goal of program success at reasonable cost to ratepayers, we encourage the Company to first work collaboratively and directly with stakeholders in evaluating program implementation, adoption levels and trends, budget appropriateness and in the necessary modification of program design or budget.

221. Accordingly, we deny Staff's request to maintain the current semi-annual reporting requirement. We would also like to note that reporting is related to the Company's cost-benefit

[214] Hrg. Exh. 101 (Ihle Direct), pp. 52-53.
[215] Staff SOP, p. 18.
[216] *Id*.

analysis and that, in the future, we would like to see the Company incorporate more information relating to this in future reporting.

4. Program Evaluation

222. In the Settlement, the Company proposes to file an evaluation prior to its next TEP filing (*i.e.,* prior to May 15, 2026) of any portions of the 2021-2023 TEP for which it has not yet filed complete program evaluations. It also agrees to file evaluations on new programs included in this Application by October 1, 2027.[217] These new programs include: the DCFC rebate program; the Commercial EVSI rebate program; EVSI future proofing; the TNC/DNC High Mileage rebate program; and the Governmental EV rebate program.[218] For other new programs, program components, and innovation projects, the Company agrees to include certain assessment information in its next TEP filing. Finally, the Company agrees to file a detailed evaluation proposal for its 2027-2029 programs, including the timing of when those evaluations will be conducted and be made publicly available.[219]

223. We support and agree with the Settlement's proposed program evaluation terms found in paragraphs 72 through 75, to the extent that the new programs and new program components were otherwise approved by this Decision.

5. Deferral of Litigation Expenses

224. In the Settlement, Public Service requests the Commission allow it to defer expenses associated with litigating this Proceeding in a non-interest-bearing regulatory asset account until they are presented for review and recovery in a future cost recovery proceeding.[220]

[217] Settlement, ¶ 72.
[218] Settlement, ¶ 73.
[219] Settlement, ¶ 74.
[220] Settlement, ¶ 79.

Public Service states it planned to rely on in-house counsel to prepare and litigate this proceeding, but the number of intervenors and high volume of discovery ultimately required outside legal help.

225. In the Settlement, the Company also agrees to withdraw its request for deferral of costs associated with Brattle Group's cost-benefit analysis (Brattle Study) prepared for the 2024-2026 TEP, and further commits to not seek recovery of such costs in any future proceeding.[221]

226. Staff opposes the deferral of costs associated with the creation of the Guidehouse Report. It argues that ratepayers are not well served by the confusion and uncertainty Guidehouse created in this Proceeding though the late correction of material mistakes in its analysis.[222]

227. The Commission approves the Company's request to track, record, and defer all costs incurred to prepare for and litigate this Proceeding in a non-interest-bearing account; provided, however, we expressly defer ruling on the appropriateness of recovering these costs until they are properly raised in Public Service's next rate case. We further approve Settlement term 80, which approves of the Company's request to withdraw deferral of costs associated with the Brattle Study and further approves of the Company's commitment to not seek recovery of such costs in any future proceeding. We note our expectation that generally any consultant reports for which the Company seeks cost recovery should be available to parties through direct inclusion in the record or through discovery, to the extent not covered by privilege.

228. We reject Staff's request to deny deferral of the Guidehouse Study associated costs. This report was made available to intervenors and was properly included within the evidentiary record here. The Company may defer costs associated with the Guidehouse Study for future consideration of cost recovery, where the appropriateness of their inclusion may be fully considered.

[221] Settlement, ¶ 80.
[222] Staff SOP, pp 17-18.

6. Rule Waiver

229. To facilitate the distribution system investments proposed by the Company, the Settling Parties support granting the Company a limited waiver of the Commission's DSP rules (specifically, the non-wires alternative screening process included in Commission Rule 4 CCR 723-3-3534) during the course of the 2024-2026 TEP.[223]

230. We deny this request as moot because the Commission did not approve any distribution system investments in this Proceeding.

7. Continuation of 2021-2023 TEP Programs

231. The Settling Parties request that the Commission approve continuation of the Company's 2021-2023 TEP programs through the issuance of a final Commission decision in this Proceeding.[224] We affirm that the Company's 2021-2023 TEP programs should continue to operate in 2024 and that the cost of prudently incurred TEP investments and expenditures associated with 2021-2023 TEP programs that are incurred in 2024 should continue to be recovered through the TEPA rider.

8. Compliance Filings

232. The Settling Parties agree that the Company should be permitted to file all tariff changes necessary to effectuate the approved TEP, through one or more compliance advice letters to be filed on less than statutory notice after the issuance of a final written Commission decision in this Proceeding. The Company commits to filing an updated 2024-2026 TEP into this proceeding within 60 days of receiving a final Commission decision, reflecting any changes needed to align the TEP with the Commission's final decision.[225]

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[223] Settlement, ¶ 76.
[224] Settlement, ¶ 12.
[225] Settlement, ¶ ¶ 77-78.

233. The Commission requires Public Service to file, on not less than two days' notice, all tariff sheets authorized as part of this Proceeding and an updated version of its 2024-2026 TEP to reflect all terms and conditions that are approved as a result of this Proceeding. The updated version of the Company's TEP must include a summary of specific issues that have arisen in this Proceeding that will be addressed through quarterly stakeholder meetings, semi-annual reports, and additional working group meetings as needed.

234. This filing is due within 60 days after the effective date of this Decision, or, if any party files an application for rehearing, reargument, or reconsideration (RRR) pursuant to § 40-6-114, C.R.S., the compliance filing will be due within 60 days after the effective date of the Commission's decision granting or denying the application for RRR.

G. Issues Not Addressed

235. The Commission denies all requests made in this Proceeding that have not been addressed in this Decision unless found in the Settlement Agreement. To the extent that we did not address a Settlement term in this Decision, we find it appropriate to approve that term.

II. ORDER

A. The Commission Orders That:

1. The application filed on May 15, 2024, by Public Service Company of Colorado (Public Service or the Company) requesting the Commission issue an order approving the proposals contained in Public Service's 2024-2026 Transportation Electrification Plan (TEP), is granted with modifications, consistent with the discussion above. Public Service shall make an informational filing in this Proceeding describing in detail how the Company will estimate the electric vehicle revenues to be included in the retail rate cap calculation, consistent with the discussion above. This filing is due within 60 days after the effective date of this Decision, or, if

any party files an application for rehearing, reargument, or reconsideration (RRR) pursuant to § 40-6-114, C.R.S., within 30 days after the effective date of the Commission's decision granting or denying the RRR.

2. Public Service shall file in a new proceeding, an advice letter and tariff on not less than two business days' notice. The advice letter and tariff 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.

3. Public Service shall file an updated version of its 2024-2026 TEP to reflect all terms and conditions that are approved as a result of this Proceeding. This filing is due within 60 days after the effective date of this Decision, or, if any party files an application for RRR pursuant to § 40-6-114, C.R.S., within 60 days after the effective date of the Commission's decision granting or denying the RRR.

4. The Joint Motion for Approval of Non-Unanimous Comprehensive Settlement Agreement, to Vacate and Amend the Evidentiary Hearing Dates, and for Shortened Response Time filed by Public Service, the Colorado Energy Office, the City and County of Denver, the City of Boulder, Western Resource Advocates and Sierra Club, Black Parents United Foundation, Cultivando, GreenLatinos, GRID Alternatives, Mi Familia Vota, National Association for the Advancement of Colored People (NAACP) Denver Branch, Vote Solar, and Womxn from the Mountain, Tesla, Inc., the Southwest Energy Efficiency Project, Energy Outreach Colorado, the

Regional Transportation District, Walmart Inc., EVgo Services LLC, and EV Energy Corp., on December 13, 2023, is granted in part, and denied in part, consistent with the discussion above.

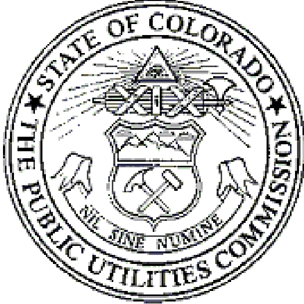
5. The Joint Motion to Approve Non-Comprehensive and Non-unanimous Stipulation of the Affordability Coalition filed by Staff of the Colorado Public Utilities Commission, the Utility Consumer Advocate, Colorado Energy Consumers, Climax Molybdenum Company, Electrify America, LLC, and Americans for Affordable Clean Energy on December 20, 2023, is approved in part, and denied in part, consistent with the discussion above.

6. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for RRR begins on the first day following the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING February 28, 2024 and March 13, 2024.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners