Decision No. R25-0500

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0496E

IN THE MATTER OF ADVICE LETTER NO. 878 FILED BY BLACK HILLS COLORADO ELECTRIC, LLC DOING BUSINESS AS BLACK HILLS ENERGY TO AMEND THE TARIFF APPLICABLE TO COMMUNITY SOLAR GARDENS FIXED BILL CREDITS AND THEIR SUBSCRIBERS, TO BECOME EFFECTIVE JANUARY 1, 2025.

RECOMMENDED DECISION ESTABLISHING BILLING CREDITS PAID TO SUBSCRIBERS OF COMMUNITY SOLAR GARDENS

Issued Date: July 7, 2025

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I. STATEMENT

1. On November 15, 2024, Black Hills Colorado Electric, LLC ("Black Hills" or the "Company") filed Advice Letter No. 878 ("AL 878") with tariff sheets establishing the billing credits paid to subscribers of Community Solar Gardens ("CSGs") effective January 1, 2025.

2. Black Hills filed AL 878 in accordance with Rule 3881(b) of the Commission's (the "Commission" or "PUC") Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-3. Because AL 878 is Black Hills' first advice letter with solar garden billing credits since the Commission adopted new rules pursuant to House Bill ("HB") 23-1137, the tariff sheets filed with AL 878 include nearly all CSG billing credit-related sheets in the Company's Colorado P.U.C. No. 11 Electric Tariff (*i.e.*, Sheet Nos. 94A through 94I).

3. Black Hills filed the tariff sheets without supporting Direct Testimony.[1]

4. On December 10, 2024, the Colorado Solar and Storage Association ("COSSA"), the Solar Energy Industries Association ("SEIA"), and the Coalition for Community Solar Access ("CCSA"), collectively the "Solar Parties," jointly filed a protest to AL 878.

5. Because the Solar Parties alleged that AL 878 is inconsistent with HB 23-1137 and the Commission's rules, they requested that the Commission suspend the effective date of the filed tariff sheets and hold a hearing.

6. On December 31, 2025, by Decision No. C24-0952, the Commission suspended the effective date of the tariff sheets filed with AL 878 until May 1, 2025, allowed interventions to be filed until January 31, 2025, and referred the matter to an Administrative Law Judge ("ALJ").

[1] The Direct Testimony of Black Hills witness Daniel S. Ahrens was later filed as Hearing Exhibit 100 on March 14, 2024, in anticipation of the evidentiary hearing.

7. On January 28, 2025, the Solar Parties filed their Motion to Permissively Intervene. COSSA is a 501(c)(6) nonprofit trade organization established in 1989 (originally under the name of "Colorado Solar Energy Industries Association"). COSSA serves energy professionals, solar companies, energy storage providers, and renewable energy users in Colorado. SEIA is the national trade association for the U.S. solar energy industry, which employs more than 279,000 Americans. SEIA represents all organizations that promote, manufacture, install, and support the development of solar energy. CCSA is a 501(c)(6) nonprofit trade organization focused on supporting the community solar industry through legislative and regulatory efforts.

8. On January 31, 2025, Trial Staff of the Public Utility Commission ("Trial Staff") filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

9. On February 13, 2025, by Decision No. R25-0099-I, the intervention of the Solar Parties was granted and a procedural schedule was adopted that scheduled an evidentiary hearing for May 16, 2025.[2]

10. In Decision No. R25-0099-I, the ALJ also found that additional time was necessary to issue a final Commission decision and extended the statutory deadline by an additional 130 days, pursuant to § 40-6-111(1), C.R.S. The resulting deadline for a final Commission decision to issue was extended to September 8, 2025.

11. On May 16, 2025, the above-captioned proceeding was called and entries were made by Black Hills, Trial Staff and the Solar Parties.

[2] The hearing was initially scheduled for two days, but shortly before the hearing the parties advised the ALJ that only one day was necessary.

12. Black Hills offered the testimony of Daniel Ahrens, Staff offered the testimony of Dr. Nick Bongiardina and the Solar Parties offered the testimony of Blake Elder. Hearing Exhibits Nos. 107, 108, Corrected 300 and attachment BWE-03, 301, 302, and 500 were offered and admitted into the record of the proceeding or administratively noticed. At conclusion of the evidence the record was closed, and the matter was then taken under advisement.

13. On June 10, 2025, Statements of Position ("SOPs") were filed by all parties to the proceeding.

14. In reaching this Recommended Decision the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

15. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. FINDING OF FACTS / POSITION OF PARTIES

A. House Bill 23-1137

16. House Bill 23-1137 amended § 40-2-127, C.R.S., to allow for billing credit amounts paid to subscribers of CSGs to take one of two forms: a bill credit amount that changes annually, or a bill credit amount that remains fixed starting at the time the subscriber organization applies for or bids capacity into a utility CSG program.

17. By Decision No. C24-0447, issued on June 25, 2024, in Proceeding No. 24R-0133E ("CSG Bill Credit Rulemaking"), the Commission adopted rules to implement these provisions from HB 23-1137.

18. Rule 3881(b) within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, codified the practice by which annual tariff filings are used to establish CSG bill credits for each utility. When adopting modifications to Rule 3881(b), the Commission clarified that each year, the utility's November 15 tariff filing will set forth the CSG billing credits applicable in the following year.[3] The bill credits that change annually will be updated based on estimated values of the total aggregate retail rates to be in effect in the coming year and the prevailing costs to the utility to deliver, integrate, and administer the CSGs. In addition to the annual bill credits, a fresh vintage of fixed bill credits to be made available in the following calendar year will also be set forth on the filed tariff sheets. The Commission explained that such utility tariff filings will be the primary way the utilities and the Commission will "consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms."[4] The Commission also stated that if there is a controversy the Commission must resolve, a hearing can support the establishment of just and reasonable rates.[5]

B. Black Hills' Position

1. <u>Adjustment Mechanism</u>

19. Black Hills argues that the Commission did not require an adjustment mechanism to the CSG fixed bill credit set forth on the tariff sheet filed with AL 878 and therefore the tariff filing was not deficient.[6]

[3] Decision No. C24-0447 at ¶ 19 issued in Proceeding No. 24R-0133E on June 25, 2024.
[4] *Id.* at ¶ 21.
[5] *Id.* at ¶ 22.
[6] Black Hills' SOP, at p. 6.

20. Black Hills looks to Decision No. C24-0447 in the CSG Bill Credit Rulemaking in support of this argument. In the CSG Bill Credit Rulemaking, the Commission declined to include in Rule 3881 a proposed four-year interval to reevaluate fixed bill credit adjustment.[7]

21. Black Hills states that during the rulemaking proceeding the parties offered consensus rules that would have provided for a miscellaneous proceeding on or before June 1, 2025, and every four years after, to consider the change of value to CSG subscribers of the fixed bill credit over time which the Commission rejected.[8]

2. Pre-2025 Vintage Year Fixed Bill Credit

22. Black Hills believes that the Commission should also reject the Solar Parties' proposal to allow pre-2025 fixed bill credit vintages to include 2018, 2021, and 2022 in addition to the 2025 vintage that was included in the Company's init

ial filing.

23. Black Hills argues the Commission specifically provided in Decision No. C24-0447 that the Company's initial advice letter filing in November 2024, implementing fixed rates to be effective for 2025, should provide for the initial fixed rate going forward.

24. In addition, Black Hills argues that the *Ex Post Facto* clause of the Colorado Constitution bars the Colorado Legislature from passing "retrospective laws" which are those that retroactively eliminate or impair vested rights under existing laws, create new obligations, impose new duties, or attach a new disability with respect to past events.

25. Finally, Black Hills argues that CSG developers would have the option of selecting the proposed 2025 fixed credit in prior years.

[7] Decision No. C24-0447.
[8] Black Hills' SOP, at p. 7 (citing Decision No. C24-0447 at ¶ 43).

C. Solar Parties' Position

1. Adjustment Mechanism

26. The Solar Parties argue that both HB 23-1137 and Commission Rule 3881(b)(II) require the tariff sheets filed with AL 878 to provide an adjustment mechanism to CSG fixed bill credits.

27. The Solar Parties rely on the following language in support of this proposition:

> Section 40-2-127(5)(b)(II)(E), C.R.S.
> (E) By June 30, 2024, the Commission shall adopt rules to implement the fixed bill credit. The rules must consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms.

and paragraph 45 of Decision No. C24-0447 in the CSG Bill Credit Rulemaking

> 45. Notwithstanding the flexibility afforded by these adopted rules to the establishment of any vintage of fixed billing credits, we clarify that the annual tariff filings are not occasions for subscriber organizations and CSGs to reopen the fixed bill credits. Fixed bill credits are instead predetermined and not subject to changes after they have been set. In accordance with the plain language of the statute, fixed is fixed.

28. The Solar Parties aver that the Commission made it "clear" in the CSG Bill Credit Rulemaking that it "expects a fixed bill credit adjustment methodology to be adopted in this Proceeding."[9]

29. The Solar Parties argue for an adjustment mechanism that is linked to the Consumer Price Index ("CPI").

2. Pre-2025 Vintage Year Fixed Bill Credit

30. The Solar Parties further argue that Black Hills should be ordered to adopt pre-2025 vintages of bill credits. The Solar Parties believe that this would be consistent with Rule 3881(b),

[9] Solar Parties SOP, at p. 5.

which allows any CSG subscriber organization that has not reached commercial operation to elect to receive a fixed bill credit.

31. The Solar Parties believe that neither the Commission nor the Colorado General Assembly specified any limit on the earliest vintage for which a CSG subscriber organization or developer can choose the fixed bill credit for vintages before 2025.

32. The Solar Parties aver that allowing for prior-year vintages better aligns with the statutory intent behind HB 23-1137, which is to maximize the predictability for CSG subscribers by allowing any CSG that has not yet reached commercial operation to receive a fixed bill credit.

D. Staff's Position

1. Adjustment Mechanism

33. Staff argue that the Commission is not required to institute an adjustment mechanism to the CSG fixed bill credit.

34. Staff states that the Commission declined to adopt the Solar Parties' support for an adjustment mechanism in the CSG Bill Credit Rulemaking.

35. In the alternative, Staff presents an alternative to the Solar Parties adjustment mechanism.

2. Pre-2025 Vintage Year Fixed Bill Credit

36. Staff recommends that 2025 be the first fixed bill credit vintage, which is consistent with the Company's Advice Letter, its direct testimony, and complies with HB 23-1137.

37. Staff urges the Commission to reject the Solar Parties request for fixed bill credit vintages before 2025. Staff believe that the request does not align with Decision No. C22-0272 issued by the Commission in Proceeding No. 21A-0166E and violates the *Ex Post Facto* clause of the Colorado Constitution.

38. Staff states that the *Ex Post Facto* clause of the Colorado Constitution bars the Colorado Legislature ("Legislature") from passing "retrospective laws", which are those that retroactively eliminate or impair vested rights under existing laws, create new obligations, impose new duties, or attach a new disability with respect to past events.[10] The Legislature may establish retroactive laws if it expresses clear intent of retroactive application and the law can be applied retroactively without being retrospective, in violation of the *Ex Post Facto* clause. Staff states that there is no evidence of legislative intent to make HB 23-1137 retroactive.[11]

III. APPLICABLE LAW

39. The Commission has jurisdiction over this proceeding pursuant to § 40-1-103(1)(a)(I), C.R.S., and § 40-3-102, C.R.S. Section 40-1-103(1)(a)(I), C.R.S., states as follows:

> The term "public utility," when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, … operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

40. Section 40-3-102, C.R.S., provides in relevant part that power and authority is vested in the Commission and it is the Commission's duty to adopt rates, charges and regulations, as well as to govern and regulate all rates, charges, and tariffs of every public utility. It is also within the Commission's power and authority to correct abuses and prevent unjust discrimination and extortions in the rates, charges, and tariffs of public utilities in Colorado.

[10] Staff's SOP, at p. 5 (citing Decision No. C22-0272 at ¶ 41, issued in Proceeding No. 21A-0166E on May 5, 2022).

[11] *Id.* at p. 6.

41. Under that jurisdictional charge, the Commission must ensure that all rates are just, reasonable, and non-discriminatory pursuant to § 40-3-101(1), C.R.S., which provides that:

> All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful.

42. The Commission must exercise reasoned judgment in setting rates. Ratemaking is a legislative function (*City & Cnty. of Denver v. Pub. Utils. Comm'n*, 226 P.2d 1105 (Colo. 1954)) and not an exact science (*Pub. Utils. Comm'n v. Northwest Water Corp.*, 551 P.2d 266 (Colo. 1963)). As a consequence, the Commission "may set rates based on the evidence as a whole" and "need not base its decision on specific empirical support in the form of a study or data." *Colo. Off. of Consumer Couns. v. Colo. Pub. Utils. Comm'n*, 275 P.3d 656, 660 (Colo. 2012).

43. In the normal course of the proceeding, as the party that seeks Commission approval or authorization, Black Hills bears the burden of proof with respect to the relief sought; and the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. The evidence must be "substantial evidence," which the Colorado Supreme Court has defined as:

> [S]uch relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

City of Boulder v. Colo. Pub. Utils. Comm'n, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 585 (Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a *contested fact* is more probable than its non-existence. *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party

has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

44. The standard is understood and applied less easily in the context of a rate case because: (a) many of the thorniest and most controversial issues require policy-based decisions; (b) parties present facts to persuade the decision-maker to adopt a particular policy or approach (*i.e.*, regulatory principle) or to change an existing policy or approach (*i.e.*, regulatory principle) and, generally speaking, do not dispute facts *per se*; and (c) the Commission "may set rates based on the evidence as a whole" and "need not base its decision on specific empirical support in the form of a study or data." *Colo. Off. of Consumer Couns.*, 275 P.3d at 660. For these reasons, the ALJ principally applied the reasonable basis standard when resolving issues in this proceeding.

IV. ISSUE

45. Should the tariff sheets filed with ALJ 878 be approved thereby establishing the billing credits paid to subscribers of community solar gardens within Black Hills' service area?

V. DISCUSSION

A. Issues to be Resolved

46. The intervening parties do not take issue with the methodology used by Black Hills to determine the CSG fixed-rate billing credit. The only issues in this case relate to aspects that Black Hills determined were not required under HB 23-1137.

47. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984). The ALJ further finds that the parties have established by a preponderance of the evidence that the CSG fixed-rate billing methodology is just, is reasonable, and should be accepted by the Commission.

48. This leaves only the issues of whether the fixed rate should include vintages prior to 2025 and whether this tariff filing should include an adjustment mechanism.

B. Pre-2025 Vintage Year Fixed Bill Credit

49. The *Ex Post Facto* Clause of the Colorado Constitution bars the General Assembly from passing "retrospective" laws.[12] This prohibition applies to this Commission's regulation of public utilities.[13] A law is unconstitutionally retrospective if its retroactive application eliminates or impairs vested rights under existing laws, creates a new obligation, imposes a new duty, or attaches a new disability with respect to past events.[14]

50. Courts apply a two-step inquiry when determining whether new laws can be applied retroactively. First, courts consider whether the lawmaking body intended retroactive application. If such an intent is found, the next step requires analysis of whether retroactive application is unconstitutional in violation of the *Ex Post Facto* clause in Colo. Const. art II, § 11.[15] Because laws are generally presumed prospective, to apply them retroactively, the Colorado General Assembly must intend that they be applied retroactively. Courts may find such intent even without express language from the Legislature or regulatory body.[16] For example, courts have relied on express legislative declarations that the changes were intended to clarify, and not alter existing law as evidence of an intent to apply the changes retroactively.[17] Only after finding what the

[12] Colo. Const. art. II, § 11, provides that: "No *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly."

[13] *See e.g., Peoples Natural Gas Div. of Northern Natural Gas Co. v. Pub. Utils. Comm'n*, 590 P.2d 960 (Colo. 1979).

[14] *City of Colo. Springs v. Powell,* 156 P.3d 461, 465 (Colo. 2007); *City of Greenwood Village v. Petitioners for Proposed City of Centennial,* 3 P.3d 427, 442 (Colo. 2000).

[15] *City of Colo. Springs,* 156 P.3d at 465; *Abromeit v. Denver Career Serv. Bd.*, 140 P.3d 44, 50 (Colo. App. 2005), *cert. denied* August 14, 2006.

[16] *Abromeit*, 140 P.3d at 50.

[17] *Academy of Charter Schools v. Adams County School Dist. No. 12*, 32 P.3d. 456, 466 (Colo. 2001).

lawmaking body intended for the law to be applied retroactively is it appropriate to move to the next step in the analysis.[18]

51. The purpose of the prohibition against retrospective laws is to prevent the unfairness entailed in altering the legal consequences of events or transactions after the fact.[19] Thus, the second step in the analysis is to determine whether applying a law retroactively is unconstitutional (*i.e.,* retrospective). For a statute to be applied retroactively in a constitutional manner, it *must not* take away or impair vested rights, create new obligations, impose new duties or attach a new disability "in respect to transactions or considerations already past."[20] Procedural and remedial laws generally do not create or impair vested rights, because procedural and remedial laws relate to remedies or the procedure to enforce vested rights or liabilities, while substantive laws create, eliminate, or modify vested rights or liabilities.[21]

52. Here, the Solar Parties rely on Decision No. C24-0447 to argue that the fixed bill credit should apply to prior vintage years for 2018, 2021, and 2022, prior to the enactment of HB 23-1137.

53. The Solar Parties do not address the argument raised by both Black Hills and Staff that such application would violate the *Ex Post Facto Clause* of the Colorado Constitution. They argue that because "Decision No. C24-0447 does not prohibit the Commission from adopting fixed bill credits before the 2025 vintage year" and that the Commission should adopt fixed bill credits for vintage years prior to 2025.[22]

[18] *See e.g., City of Colo. Springs*, 156 P.3d at 465 (the Court did not address the second step in analysis after finding that the General Assembly did not intend legislation to be retroactive; thus, the amended statute was prospective and did not apply in determining the rights and liabilities at issue in cases that arose before the effective date of the act).

[19] *Peoples Natural Gas Div.,* 590 P.2d at 962.

[20] *Abromeit,* 140 P.3d at 51.

[21] *Id.*

[22] Solar Parties' SOP, at p. 12.

54. As such, the Solar Parties also fail to offer any evidence that the Legislature intended HB 23-1137 to apply retroactively. Without such evidence of legislative intent, the Solar Parties rely on Decision No. C24-0447 to argue that the fixed bill credit should apply to prior vintage years for 2018, 2019, and 2022, prior to the enactment of HB 23-1137 in 2023. The Solar Parties do not, however, point to any language in Decision No. C24-0447 or HB 23-1137 that suggests a legislative intent for HB 23-1137 to be applied retroactively.

55. In his direct testimony, Solar Parties' witness Blake Elder suggests that Rule 3881(b) and HB 23-1137 both plainly allow the inclusion of vintage years prior to 2023 because "[n]either the commission nor the Colorado General Assembly specified any limit of the earliest vintage for which a CSG subscriber organization or developer can choose the fixed bill credit."[23] Mr. Elder goes on to state that "[t]he absence of a specified vintage limit in statute or regulation indicates that the fixed bill credit option was intended to be available to as many CSG developers and subscriber organizations as possible."[24]

56. The flaw inherent in this argument is that the Legislature must intend the law to apply retroactively. Because a statute is presumed to apply prospectively absent legislative intent to the contrary, the Solar Parties must point to more than "[t]he absence of a specified vintage limit" in the statute or rule to establish that retroactive application of the statute is appropriate.

57. Although courts may find such intent even without express language, it is not sufficient to point to the absence of language specifically prohibiting retroactive application. Indeed, such a reading of the statute would negate the presumption against retroactive application.

[23] Hr. Ex. 300, Rev. 1, at pp. 14:16-15:2.
[24] *Id.*

58. As stated above, courts have found that statutes were intended to apply retroactively where, for example, statutes include express legislative declarations that legislative changes were intended to clarify and not alter an existing law. This reasoning is not applicable here as HB 23-1137 added the fixed bill credit option; it did not simply clarify an existing law without introducing any changes.

59. The Solar Parties have identified no other argument to support the retroactive application of the statute. Accordingly, the ALJ finds that the Solar Parties have provided no evidence to overcome the presumption that statutes apply prospectively.

60. The request of the Solar Parties for the inclusion of fixed bill credit vintages prior to 2025 is denied.

C. Adjustment Mechanism

61. The next question, for those vintages starting in 2025, is whether the Commission is required to adopt an adjustment mechanism.

62. Both Black Hills and Staff witnesses testified that they do not believe an adjustment mechanism is required, as HB 23-1137 only requires the Commission to "consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanism." While the Solar Parties initially argued that HB 23-1137 requires an adjustment mechanism, it later acknowledged that the Commission must only consider the change in value of fixed bill credits.[25]

63. The Solar Parties focus on the language in Decision No. C24-0447 that the annual tariff filing approach "will provide an opportunity each year for the utility or a protesting party

[25] Hr. Tr. (5/16/25) at pp. 122:9-12; 123:13-22.

such as COSSA/SEIA to pursue a change in the applicable bill credits."[26] They argue that this language indicates an adjustment-mechanism requirement in the adopted Rule. However, this is not a Commission directive that "the fixed bill credit adjustment methodology should be determined each year in the annual advice letter filing" as the Solar Parties suggest.[27] In adopting its approach the Commission noted that "[t]he annual bill credit tariff filings are also flexible enough to accommodate multiple possible ways to establish the fixed bill credits in accordance with HB23-1137."[28] The Commission even identified potential means of considering the change in value over time that do not require an annual rate adjustment mechanism.[29] Additionally, the Commission expressed an intent to avoid "a prescriptive approach to addressing 'the change of value to community solar garden customers of the fixed bill credit.'"[30]

64. Neither § 40-2-127, C.R.S., Rule 3881, nor Decision No. C24-0447 suggest that a fixed bill credit adjustment methodology be adopted each year in the annual advice letter filing and the ALJ declines to impose such a requirement where none exists.

65. The Commission did provide in Decision No. C24-0447 that, with regard to annual tariff rates, "if there is a controversy the Commission must resolve, a hearing can support the establishment of just and reasonable rates."[31] While the Solar Parties propose a CPI-based approach to determining an adjustment methodology, they fail to establish in this Proceeding that such an adjustment methodology would be just and reasonable.

66. The Solar Parties "do not claim that the change in the price of each individual good or service included in the calculation of the Consumer Price Index for All Urban Customers

[26] Decision No. C24-0447 at ¶ 45.
[27] Solar Parties' SOP, at p. 7.
[28] Decision No. C24-0447 at ¶ 44.
[29] Decision No. C24-0447 at ¶ 44.
[30] Decision No. C24-0447 at ¶ 44.
[31] Decision No. C24-0447 at ¶ 22.

("CPI-U") is indicative of the change in cost of utility service provided by Black Hills Energy."[32] Rather, they argue that its CPI-based proposal is intended to represent general cost inflation.[33]

67. Although neither Black Hills nor Staff believe an adjustment mechanism should be adopted in this Proceeding, both argue that Staff's proposal should be adopted if one is required. Both parties contend that the Solar Parties' approach is not just, reasonable, or in the public interest as the CPI-based approach "does not reflect the costs incurred or avoided by the utility, nor does it account for specific factors that impact the value of CSGs on a utility's system."[34] As such, "[u]sing CPI to escalate credits injects an external economic variable into a utility compensation framework that is otherwise cost-based."[35]

68. Black Hills identifies a number of other issues with the Solar Parties' proposal including that it will increase costs to Black Hills' customers through the Renewable Energy Standard Adjustment ("RESA") as its costs incurred for both CSG credits paid to CSG providers are recovered through the RESA mechanism.[36]

69. Although the Solar Parties argue that their approach will increase certainty and predictability, the ALJ is not convinced that the Solar Parties' proposal would provide any additional certainty or predictability over the lifespan of a CSG project as its proposed CPI-based mechanism "is not tied to the Company's actual system costs and is calculated based on the price of consumer goods and services over time that are irrelevant to CSG billing credits."[37]

70. The ALJ finds that the Solar Parties have not established that their proposal is just and reasonable, therefore declines to further address the Solar Parties' CPI-based adjustment

[32] Hr. Ex. 107; Black Hills' SOP, at p. 8.
[33] Hr. Ex. 107; Black Hills' SOP, at p. 8 n. 12.
[34] Hr. Ex. 400, at p. 13:5-9; Black Hills' SOP, at p. 8.
[35] Hr. Ex. 400, at p. 13:5-9; Black Hills' SOP, at p. 8.
[36] Black Hills' SOP, at pp. 11-12.
[37] Staff's SOP, at p. 9.

methodology. The ALJ further finds that the Commission is not required to adopt an adjustment mechanism for the fixed CSG billing credit in this Proceeding. Therefore, the ALJ concludes that it is also unnecessary to consider the adoption of Staff's alternative approach.

71. The request of the Solar Parties that the Advice Letter be amended to include an adjustment mechanism is denied.

D. Conclusion

72. In accordance with the discussion above, and to ensure the prospective application and imposition of the CSG billing credits, Black Hills shall file, no later than five business days after this Recommended Decision becomes a Commission Decision (if that is the case), an advice letter compliance tariff filing with tariff sheets identical to the tariff sheets filed with AL 878 except for effect on not less than two business days' notice.

VI. ORDER

The Commission Orders That:

1. The tariff sheets filed by Black Hills Colorado Electric, LLC's ("Black Hills") with Advice Letter No. 878 on November 15, 2024, are permanently suspended and shall not be further amended.

2. Black Hills shall file an advice letter compliance filing consistent with the findings, conclusions, and directives in this Recommended Decision. Black Hills shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to

the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Colorado Public Utilities Commission (the "Commission"), if that is the case, and is entered as of the date above.

4. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

5. Response time to exceptions shall be shortened to seven days.

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

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

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

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director