

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0633G

IN THE MATTER OF THE VERIFIED APPLICATION OF BLACK HILLS COLORADO GAS,
INC. FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R24-0784**

Issued Date: February 12, 2025
Adopted Date: January 8 & 22, 2025

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the exceptions filed to Recommended Decision No. R24-0784, issued October 29, 2024, by Administrative Law Judge (“ALJ”) Alenka Han. The Recommended Decision approves the Settlement Agreement (“Settlement Agreement”) filed August 16, 2024, and grants, with modifications, the Application for Approval of its 2024-2027 Clean Heat Plan (“Application”) that Black Hills Colorado Gas, Inc. (“BHCG” or the “Company”) filed December 29, 2023.

2. Through their exceptions, parties seek to reverse or modify portions of the Recommended Decision. After considering the filed exceptions, the responses thereto, and the evidentiary record in this Proceeding, we grant in part, and deny in part, the exceptions that the Southwest Energy Efficiency Project (“SWEEP”) filed on November 18, 2024.

B. Background

3. BHCG filed its inaugural Clean Heat Plan application pursuant to § 40-3.2-108, C.R.S. (the “Clean Heat Statute”) and Rules 4725 to 4733 of the Commission’s Rules Regulating Gas Utilities, 4 *Colorado Code of Regulations* (“CCR”) 723-4 on December 29, 2023. In its Application, BHCG requests that the Commission approve: 1.) BHCG’s inaugural Clean Heat Plan for 2024-2028; 2.) BHCG’s preferred Clean Heat Plan scenario; 3.) BHCG’s proposed budgets within the preferred scenario and the proposed budget flexibility; 4.) BHCG’s proposed cost recovery mechanisms including the creation of a new surcharge called the Clean Heat Plan Rider (CHPR); 5.) BHCG’s proposal to track and defer costs incurred in association with preparing and litigating this proceeding into a non-interest bearing regulatory asset that will be recovered through

the CHPR; and 6.) any waivers or variances the Commission deems necessary for approval and implementation of its proposed clean heat plan.

4. On March 7, 2024, the Commission referred the Proceeding to the above-mentioned ALJ through Decision No. C24-0148-I, and the following entities became parties: the Colorado Public Utilities Commission Trial Staff (“Staff”), the Colorado Energy Office (“CEO”), SWEEP, and the Colorado Utility Advocate (“UCA”).

5. On August 16, 2024, Black Hills filed a Motion to Approve the Settlement Agreement. Along with Black Hills, Staff, UCA, and CEO (collectively the “Settling Parties”) joined the Settlement Agreement. SWEEP did not join the Settlement.

6. The ALJ held an evidentiary hearing on August 29, 2024. On September 20, 2024, each UCA, Staff, SWEEP, CEO, and Black Hills filed Statements of Position (“SOP”).

7. On October 29, 2024, the ALJ issued Decision No. R24-0784 (the “Recommended Decision”). The Recommended Decision approves the Settlement Agreement in full.

8. On November 18, 2024, SWEEP filed exceptions to the Recommended Decision.

9. On November 26, 2024, the Commission granted a motion filed by CEO to extend the response deadline to SWEEP’s exceptions in Decision No. C24-0873.

10. On December 5, 2024, Black Hills (“Black Hills Response”) and CEO (“CEO Response”) each filed a response to SWEEP’s Exceptions.

11. At the January 8 and January 22, 2025 Commissioners’ Weekly Meeting, the Commission conducted live deliberations on the Exceptions, resulting in this Decision granting SWEEP’s exceptions in part and denying SWEEP’s exceptions in part. Except as expressly modified by this Decision, the Commission upholds the Recommended Decision.

C. SWEEP Exceptions

1. CHP Budget and Budget Flexibility

12. The Recommended Decision approves the proposed Settlement Agreement budget of \$18,374,321 for the three-year plan period, 2025-2027. It also bases the budget and cost cap calculations on a 5-year average of actual Company revenues for the years 2019-2023, with an assumed growth rate of 2 percent.¹

13. The ALJ determined that SWEEP's proposed budget (nearly three times the Settlement budget) is not in the public interest and far exceeds what can reasonably be imposed on Black Hills' customers. She found that SWEEP's budget imposes too high a cost burden on Black Hills' customers and thus exceeds the benefits of greater GHG emission reductions.² The ALJ also interprets the Clean Heat Statute to prohibit the Commission from requiring a gas utility to exceed the cost cap related to the 2025 target. SWEEP understands § 40-3.2-108(6)(d)(IV), C.R.S. to allow the utility to make a voluntary request for exceeding the cost cap but prohibits the Commission from imposing a budget above the cost cap on a smaller gas utility unilaterally.³

a. SWEEP's Exception

14. SWEEP argues that the Commission should order a higher budget than that approved in the Recommended Decision because the Settlement Agreement would achieve minimal emission reductions, and would actually result in Black Hills increasing its greenhouse gas emissions compared to the 2015 baseline and throughout the course of the Clean Heat Plan. SWEEP requests that the Commission find it in the public interest for Black Hills' Clean Heat

¹ Recommended Decision, ¶ 43.

² Recommended Decision, ¶¶ 105-107.

³ *Id.* at 108.

Plan to exceed the cost cap and approve the SWEEP portfolio and commensurate budget. SWEEP argues that exceeding the cost cap is in the public interest because doing so is necessary for this clean heat plan to “achieve significant and meaningful emissions reductions” and that the point of a clean heat plan is to reduce emissions compared to a 2015 baseline, which the Settlement Agreement fails to do. SWEEP argues that the Commission’s decision in Public Service Company of Colorado’s (“Public Service”) Clean Heat Plan Proceeding (Proceeding No. 23A-0392EG) is instructive and that the policy reasons outlined by the Commission there also apply to Black Hills.

15. SWEEP also suggests that the Settlement Agreement assigns an impermissibly large amount of the Clean Heat budget to two recovered methane resources: renewable natural gas (“RNG”) and advanced monitoring and leak detection (“AMLD”). SWEEP contends the Clean Heat statute limits how much recovered methane utilities can include in a Clean Heat Plan, and Black Hills’ Plan, supported by the Settlement, exceeds these limits.⁴ SWEEP argues these resources cost more per ton of emissions reductions than beneficial electrification and DSM. RNG also fails to provide several other benefits that beneficial electrification and DSM provide (discussed further below).

16. SWEEP also argues that the Recommended Decision incorrectly interprets the Clean Heat Statute relevant to the 2025 emissions target (§ 40-3.2-108(6)(d)(IV), C.R.S. as the instant proceeding is actually relevant to the 2030 emissions target which is referenced in a different section of the statute (§ 40-3.2-108(6)(a)(I), C.R.S). SWEEP argues that even if Section 6(d)(IV) applies, it would only limit the 2025 budget, not the remaining years covered under the Settlement.

⁴ SWEEP Exceptions, p. 1.

17. Finally, SWEEP argues that the Commission should reverse the Recommended Decision because it mischaracterizes the Commission's decision in the Public Service clean heat plan. SWEEP states that the Recommended Decision tries to distinguish Black Hills' gas customers from Public Service because Public Service's gas customers would not pay for electrification, when in actuality, the Commission allocated 50 percent of electrification costs to Public Service gas customers.⁵

18. The Recommended Decision approves the Settlement term that provides Black Hills with 15 percent budget flexibility to shift budgets within and between clean heat resources.⁶ SWEEP also requests the Commission order that the Company should not have discretion to shift funding away from lower-cost electrification and DSM resources towards higher cost-resources such as RNG.⁷

b. Responses

19. In response to SWEEP's exceptions, CEO argues that the Commission should reject SWEEP's proposal to exceed the statutory cost cap for this inaugural clean heat plan. CEO points out that the large growth in Black Hills' gas sales since 2015 makes meeting the clean heat target at a reasonable cost very difficult for Black Hills in particular, and states that it is "optimistic that by the next CHP filing in 2027, the Company will have developed more cost-effective paths towards meeting its 2030 clean heat targets based on the initial efforts undertaken as a result of this CHP."⁸ CEO argues that the Public Service case is based on different facts and should not dictate the Commission's reasoning here as to whether exceeding the cost cap is in the public interest.

⁵ SWEEP Exceptions, pp. 10-11.

⁶ Recommended Decision, ¶ 44.

⁷ SWEEP Exceptions, p. 31.

⁸ CEO Response to SWEEP Exceptions, p. 9.

20. Similarly, Black Hills urges the Commission to reject SWEEP's proposed budget of nearly 52.8 million dollars. The Company notes SWEEP's proposed budget is nearly three times larger than the expenditure supported in the Settlement even though it would produce emission reductions only twice as high as the Settlement.⁹ It argues that the Clean Heat Statute shows a clear intent to mitigate costs to customers for small gas utilities, that SWEEP's proposal would also not achieve the clean heat targets and, similar to the Settlement, would result in more greenhouse gases compared to the 2015 baseline. Black Hills suggests this is simply due to the substantial growth that has occurred in the Company's service territory since the 2015 base year. Further, Black Hills argues that there is no basis to exceed the cost cap because SWEEP has not presented evidence demonstrating that the factors found in § 40-3.2-108(6)(d)(III), C.R.S. are satisfied by its proposal.¹⁰ Black Hills also argues that the budget flexibility is reasonable and is typical for similar plan-type proceedings. Black Hills argues that the Settlement term actually affords higher levels of protection beyond, for example, the Commission's DSM rules on budget flexibility.

c. Findings and Conclusions

21. We are not persuaded that exceeding the cost cap for this inaugural clean heat plan is in the public interest for Black Hills' customers. We therefore uphold the Recommended Decision to the extent that it approves the Settlement budget and Settlement methodology for calculating the cost cap and deny SWEEP's Exceptions on this point. Because we decline to exceed the cost cap or otherwise increase the budget from the Settlement budget, we do not see a need to address individually SWEEP's arguments as to why the Recommended Decision's reasoning is unsound. Regardless of whether § 40-3.2-108(6)(d)(IV), C.R.S., strictly applies to this clean heat

⁹ Black Hills Response to SWEEP Exceptions, p. 4.

¹⁰ Black Hills Response to SWEEP Exceptions, pp. 8-9.

plan, its inclusion signals that the Legislature intended for costs to remain on the lower end for the first round of clean heat plan filings by small utilities. Similarly, regardless of whether the Recommended Decision correctly characterizes the Public Service clean heat plan decision, we are persuaded by the arguments of CEO and Black Hills that, in this instance, the facts are sufficiently different to justify a different outcome for Black Hills in terms of adherence to the cost cap. We find that the Settlement’s budget—supported by UCA, Staff, and the Company—is the best path forward for this inaugural clean heat plan. While we are troubled that the Settlement budget does not put the Company on a strong path to meeting the 2030 target, we decline to exceed the cost cap, which would impose far higher costs on customers. We agree with CEO that the Settlement budget presents a reasonable balance between “costs to customers, new funding approaches to emissions reductions, and employing various clean heat resources.”¹¹

22. Finally, we decline to modify the Settlement term regarding budget flexibility. We agree that some flexibility is appropriate for efficient plan administration, particularly for inaugural efforts like this clean heat plan.

2. Portfolio of Clean Heat Resources

23. The Recommended Decision approves the Settlement proposal of a 2024-2027 plan with clean heat resource spending of approximately \$3.5 million for AMLD, \$1 million for RNG (starting in 2027), \$13.2 million in DSM, \$100,000 for the Rocky Ford beneficial electrification pilot, \$455,000 for a thermal pilot feasibility study, and an additional \$100,000 for disproportionately impacted (“DI”) community engagement and outreach.¹²

¹¹ CEO Response to SWEEP Exceptions, p. 10.

¹² Recommended Decision, ¶ 47.

24. The ALJ found that the Settlement Agreement was in the public interest because it promotes an array of statutorily designated clean heat resources and in doing so lowers risk because AMLD and RNG are not reliant on customer adoption of technology. The ALJ recognizes that AMLD and RNG are higher cost resources than DSM or BE, but that their inclusion is beneficial to the plan and reasonably justified because their success is completely independent from customer action. Further, the ALJ finds that the large amounts of BE in SWEEP's proposal could negatively impact Black Hills' existing customers.¹³

a. Inclusion of RNG and AMLD

(1) SWEEP's Exceptions

25. SWEEP requests the Commission reject the Settlement Agreement because of the inclusion of recovered methane and AMLD. SWEEP argues that the amount of recovered methane and AMLD included in the Settlement violates the Clean Heat Statute. SWEEP argues that the Settlement relies on an impermissibly large amount of RNG and AMLD to reduce emissions because § 40-3.2-108(3)(b)(II), C.R.S. limits the proportion of emission reductions attributable to recovered methane to meet the 2025 and 2030 clean heat targets. SWEEP calculates that the under the Settlement, recovered methane will account for almost 28 percent of the overall 2030 emission reductions, but asserts that the statute limits recovered methane to 22.7 percent of the 2030 emission reductions. SWEEP states that the Colorado Department of Public Health and Environment ("CDPHE") verification workbook that Black Hills filed in this Proceeding references a permissible amount of reductions coming from recovered methane but that because the Settlement's emission reductions fall far short of the target, the proportion attributable to recovered methane is actually impermissibly large. SWEEP argues that the percentage of

¹³ Recommended Decision, ¶¶ 111-114.

recovered methane in a clean heat plan should be proportional to the plan's actual anticipated emission reduction, and not the statutory 2030 target.¹⁴

26. In addition to the legal argument above, SWEEP also argues that RNG and AMLD should not be included because both are comparatively expensive clean heat resources, and produce no additional benefits, compared to BE and DSM. SWEEP cites to the Commission's decision in Public Service clean heat plan, in which the Commission recognized other benefits of DSM and BE, including persistent emission reductions (compared to the need to buy recovered methane year over year), the potential need for reduced investment in gas infrastructure, and additional health benefits including lower indoor air pollution.¹⁵

(2) Responses

27. CEO supports the use of recovered methane resources in Black Hills' clean heat plan and believe that using RNG and AMLD will help Black Hills achieve its statutory goals. CEO highlights the guardrails that the Settlement imposes on RNG purchases, including compliance with CDPHE recovered methane protocols and the provision that reverts the funds to DSM if the Company does not enter into contracts for RNG by March 31, 2027.¹⁶ CEO also points out that Black Hills commits to adhering to receiving approval from the Air Quality Control Commission of its proposed AMLD recovered methane protocol before it generates any recovered methane credits, which CEO found important in agreeing to the Settlement Agreement.¹⁷

28. CEO also argues that SWEEP misinterprets the Clean Heat Statute because it claims that recovered methane cannot account for more than 25 percent of emission reductions the utility expects to achieve by 2025 and no more than 22.7 percent of any emission reductions the

¹⁴ SWEEP Exceptions, pp. 23-25.

¹⁵ SWEEP Exceptions, p. 26.

¹⁶ CEO Response to SWEEP Exceptions, p. 20.

¹⁷ *Id.* at 21.

utility expects to achieve by 2030 in any given clean heat plan, whereas the statute actually applies to the total amount of emission reductions required by the clean heat target.¹⁸

29. Black Hills argues that AMLD should be included in its clean heat plan because it has (1) shown the resource is cost-effective, and (2) because there is “no question” that the Clean Heat Statute “intended for utilities to seriously consider leaks” in clean heat plans.¹⁹ It also argues that the inclusion of recovered methane is appropriate because the Settlement contains appropriate guardrails, the Clean Heat Statute clearly contemplates the use of recovered methane as a clean heat resource, and as mentioned in the Recommended Decision, recovered methane does not require customer adoption.

(3) Findings and Conclusions

30. We decline to remove RNG and AMLD from the Company’s clean heat plan. We therefore uphold the Recommended Decision to the extent that it approves the Settlement inclusion of RNG and AMLD, and deny SWEEP’s Exceptions on this point.²⁰ We find that, for this inaugural plan, inclusion of a variety of resources is appropriate. We are also cognizant of the balance of interests represented in the Settlement Agreement, and strive to upset that balance as little as possible. For the policy reasons outlined by Black Hills and CEO in their respective responses, including that the Settlement contains appropriate guardrails and the assurance that AQCC protocols will be followed, we find that the limited spending here for RNG and AMLD is in the public interest. Further, we agree with CEO’s interpretation of the Clean Heat Statute—by its plain language, the Statute contemplates a percentage of the clean heat target, not a percentage of the

¹⁸ *Id.*

¹⁹ Black Hills Response to Exceptions, pp. 21-22.

²⁰ Commissioner Plant dissents from the inclusion of AMLD in this clean heat plan citing his concerns that a limited budget as we have implemented here requires prioritizing the most cost-effective technologies with a focus on clean heat resources, he goes on to conclude that including AMLD as proposed fails on both counts.

actual projected emission reductions. Further, SWEEP's own calculations show that the maximum projected emissions that could be achieved through recovered methane is very close to the percentage envisioned by the Legislature. While requiring proportional to the actual emission reduction use of recovered methane may be a policy to consider in the future, we find that the Clean Heat Statute does not require that outcome. For these reasons, we decline to modify the inclusion of AMLD and recovered methane in Black Hills' clean heat plan and approve the commensurate budgets approved in the Recommended Decision.

31. However, we have two additional requirements to add to the guardrails on use of recovered methane and AMLD already found in the Settlement. With respect to the purchase of RNG, we note that the Settlement does not reference the potential duration or number of contracts for the commodity the Company may enter, or whether the expenditure approved may continue beyond the CHP period. Accordingly, we find it necessary to limit the expenditures so that the total procured RNG costs no more than \$1 million on an NPV basis based on a return equal to the Company's weighted average cost of capital as established in its most recent rate case. With respect to AMLD, we recognize that the Legislature specifically attached requirements associated with the inclusion of methane reductions achieved by any leak repairs, including that "...the Commission must find that the leak reductions are cost-effective." and that "[t]he Commission may require the utility to evaluate nonpipelined alternatives." This record does not contain evidence needed to determine if certain leak repairs and their associated methane reductions are cost effective, so it is premature to determine that the use of AMLD will lead to methane reductions that are permitted to be considered as a clean heat resource. While we have some concern about the potential mismatch of spending monies collected through a rider intended to fund Clean Heat activities and resources on AMLD without the requisite cost-effectiveness determination set by the statute, we

also understand that deployment of AMLD may provide the measurements and information needed to determine, in the future, if certain leak repairs are cost-effective or not. Therefore, we find value in approving the AMLD inclusion in order to serve as a method to obtain this measurement and information. Accordingly, we find it necessary to require the Company to track and report on an annual basis the details and costs of improvements to infrastructure, by project, to mitigate leaks and the associated leak reduction measured by the AMLD equipment. The Company should make such information available upon its next clean heat plan application.

b. DSM

(1) SWEEP's Exceptions

32. In its exceptions, SWEEP argues that the Company's clean heat plan should include a larger DSM budget than approved in the Recommended Decision. SWEEP's proposal includes \$21.9 million in DSM spending. SWEEP comes to this amount of incremental DSM resources by increasing the maximum "Tier II" resources identified in Black Hills' modeling, using Black Hills' availability and cost assumptions, but also assuming a 0.75 percent sales savings as a result of existing DSM programs and the incremental DSM programs in this clean heat plan.²¹

(2) Responses

33. CEO argues that the Commission should not increase the DSM budget because to do so would require exceeding the cost cap. Further, CEO agrees with the Recommended Decision that diversification of resource type for the inaugural clean heat plan is appropriate. CEO urges the Commission to approve the level of DSM in the Settlement Agreement as reasonable and in the public interest.²²

²¹ SWEEP Exceptions, pp. 28-29.

²² CEO Response to Exceptions, p. 19.

34. Similarly, Black Hills urges the Commission to reject SWEEP's exceptions and maintain the DSM budget approved in the Recommended Decision. The Company highlights that DSM "is not a limitless resource that can be almost doubled in a short period of time" and that there is an upper bound for both DSM spendings and savings. Black Hills argues that doubling the funding as proposed by SWEEP would not yield the same level of savings for each incremental investment.

(3) Findings and Conclusions

35. We decline to adopt SWEEP's larger budget for DSM expenditures for the same reasons discussed above that we decline to exceed the cost cap for this inaugural clean heat plan. Because we find it important to remain within the cost cap for this clean heat plan, we deny SWEEP's exceptions to the extent it requests the Commission approve a larger DSM budget.

36. While we approve of the DSM budget contained in the Settlement Agreement and approved by the Recommended Decision, we have concerns with how the Company intends to spend these funds. According to the Settlement Agreement, the DSM funds will be used as an "over-flow" funding mechanism in the event budgets from traditional DSM programs are exceeded. These funds will supplement funding to implement traditional DSM program measures.²³ There will also be certain funding available for "incremental DSM" which represents energy-efficiency measures that were not included in the traditional DSM plan, but for which there may be market interest.

37. The Commission approved the Company's current DSM offerings in Proceeding No. 23A-0361G.²⁴ In reviewing the current DSM program offerings by the Company, we are

²³ Hr. Ex. 105, pp. 31-32.

²⁴ Hr. Ex. 105, p. 31.

uncertain if they will all result in quantifiable emission reductions that meet the intent of the Clean Heat Statute. In particular, the Company's current DSM programs provide rebates for high-efficiency furnaces, boilers and water heaters without any assurance that the new equipment is replacing less-efficient equipment. We struggle to see how it is appropriate to utilize clean heat plan-related funding for this purpose when replacing gas furnaces and other home equipment with new gas equipment without a demonstrated efficiency improvement may not actually result in emission reductions. Replacing "like for like" equipment results in negligible emission reductions, while simultaneously ensuring that the customer consumes natural gas, which produces associated emissions, for decades to come. Similarly, rebates for gas equipment in residential new construction will lock-in gas emissions for an extended period; the Commission finds this is incongruent with the purposes of the Clean Heat Statute. Further, the Company itself has repeatedly discussed how growth in its service territory makes meeting the clean heat target particularly difficult. By no means are we suggesting that further growth is prohibited or should be directly curtailed, only that using clean heat plan-related funding to encourage expanded gas usage in new construction is inconsistent with the purpose of the clean heat plan regime and unhelpful to Black Hills' future ability to reach its statutorily required targets.

38. To that end, we restrict the expanded DSM funding approved here in the clean heat plan to weatherization- and envelope-related initiatives. Weatherization and envelope offerings ensure reduced emissions while being fuel agnostic. We find that these DSM programs should be prioritized for clean heat funding because they are more consistent with the purpose of clean heat planning and provide a "no regrets" approach to incentivizing customer behavior. We acknowledge that restricting the available uses of the DSM budget will affect the Company's

ability to spend the entire DSM Settlement budget and discuss the priorities for that funding further below.

c. Beneficial Electrification

(1) SWEEP's Exceptions

39. SWEEP requests that the Commission approve its proposal which includes approximately \$30.9 million in spending allocated to BE, compared to the Settlement Agreement which allocates only \$100,000 to the Rocky Ford pilot. In addition to requesting that the Commission approve its proposed BE budget, SWEEP asks the Commission to reject the Recommended Decision's reasoning for excluding BE from Black Hills' clean heat plan.

40. According to SWEEP, the Rocky Ford Pilot that would apply to just 2,000 customers, or less than 1 percent of the Company's residential customers. SWEEP contends that the Clean Heat statute does not exempt gas-only utilities from beneficial electrification, and the record here shows that electrification, along with DSM, is the most cost effective and readily available resource to reduce Black Hills' greenhouse gas emissions.²⁵ SWEEP points to analysis conducted by Western Resource Advocates, using SWEEP data, and its own evaluation that indicates that BE is the lowest cost clean heat resource available to Black Hills.²⁶ SWEEP also notes that the Commission determined in Public Service's CHP (Proceeding No. 23A-0392EG) that BE, when combined with DSM, represents the best path forward for emission reductions aligned with SB 21-264.²⁷

²⁵ SWEEP Exceptions, p. 1.

²⁶ Hr. Ex. 500, Brant Answer, pp. 41-42. See FN 100, citing Western Resource Advocates, *Costs of Building Decarbonization Pathways: Colorado*, <https://westernresourceadvocates.org/wp-content/uploads/2023/11/Colorado-Synapse-Energy-Fact-Sheet-2023.pdf>.

²⁷ Hr. Ex. 500, Brant Answer, p. 11.

41. SWEEP argues that the Clean Heat Statute includes beneficial electrification in the list of clean heat resources without making any distinction between gas-only and dual-fuel utilities. It urges the Commission to reject Black Hills' argument that electrification is not a tool available to gas only utilities and asserts that ordering Black Hills to offer BE rebates would not result in unjust or unreasonable rates. SWEEP disagrees that ordering Black Hills to offer BE rebates would result in Black Hills no longer rendering service in most instances. It argues that this argument mischaracterizes the BE in the SWEEP portfolio because most customers will remain on the system and assumes that 75 percent of market-rate customer incentives would be for hybrid systems that combine heat pumps with gas furnaces or boilers. These customers, like those who participate in gas DSM programs, will reduce gas usage, but still remain customers. SWEEP disputes Black Hills' claim that including electrification would require the Company to "turn away" customers who request gas service, which could risk its CPCN, and contends BE adoption would remain "voluntary." SWEEP argues that despite Black Hills' argument to the contrary, no risk of a takings claim will result from the offering of voluntary BE rebates.²⁸

42. SWEEP also disputes the Recommended Decision's reasoning for rejecting BE, including that a portfolio of only DSM and BE presents compliance risks. SWEEP argues that the fact that customer adoption is necessary is not a basis for limiting the use of these clean heat resources. SWEEP also argues that the Recommended Decision is incorrect that a large amount of BE could negatively affect Black Hills' existing customers. SWEEP points out that most customers who receive a rebate will still be Black Hills customers and partial electrification is similar to gas DSM. It argues that the Recommended Decision incorrectly assumes that non-participating customers do not benefit from electrification when they actually do because of benefits to all

²⁸ SWEEP Exceptions, pp. 18-19.

customers, including health benefits, climate benefits, and reduced investments in gas infrastructure.²⁹

(2) Responses

43. In its response to SWEEP's exceptions, Black Hills continues to vehemently oppose the inclusion of BE in its clean heat plan. Black Hills argues that forcing gas only utilities to electrify its customers is a violation of the takings clause and violates long-standing Commission principles regarding utility cost recovery. Accordingly, Black Hill contends, electrification is not an available tool for Black Hills. Further, it argues that "forced electrification" violates cost recovery principles because it leads to unjust cross-subsidization. Black Hills argues that SWEEP's analysis skews the results towards electrification because it used current electric rates and future projected emission rates. The Company notes that the rates for electricity offered by Colorado Springs Utilities, Public Service and Black Hills Electric are all expected to increase in the future.³⁰ The Company also contends its portfolio produces emission reductions at a lower cost than SWEEP's portfolio which is limited to DSM and electrification.³¹ It also argues that the Commission's decision in the Public Service clean heat plan is not dispositive here.

44. CEO argues that the cost per amount of emission reductions is not the only metric that the Commission should consider when approving a clean heat plan. It also points out that the Settlement does include BE for a pilot in the Rocky Ford area and includes requirements for presentation of BE in the next clean heat plan. Overall, CEO argues that the level of BE in the Settlement Agreement is in the public interest and agrees with UCA's settlement testimony that increased levels of electrification could create a double economic burden on Black Hills' gas

²⁹ SWEEP Exceptions, pp. 19-21.

³⁰ Black Hills Response to SWEEP Exceptions, p. 17.

³¹ Black Hills Response to SWEEP Exceptions, p. 21

customers.³² CEO suggest that the Commission address these types of “seams issues” before ordering additional electrification for Black Hills.

(3) Findings and Conclusions

45. Overall, we agree with SWEEP that the Clean Heat Statute makes no distinction between gas-only and dual-fuel utilities as to which clean heat resources are available to each. Further, we agree that the Statute does distinguish between different types of utilities on other bases but makes no mention of a carveout for beneficial electrification for gas-only utilities. Thus, as a general matter, BE is a tool available to all utilities for compliance with the Clean Heat Statute.

46. At issue here is whether Black Hills is required to provide for the availability of *rebates* for electrification technologies for customers who choose to utilize them—a far cry from “forced electrification.” The Commission disagrees with Black Hills that, by requiring the Company to offer electrification rebates across its entire service territory, we are mandating Black Hills cease service to its customers. Accordingly, we direct the Company to offer the electrification rebates as described in SWEEP’s testimony to its entire customer base. The record here reflects that the vast majority of consumers who install electrification technology remain gas customers.³³ Black Hills’ own modeling shows that a customer who receives a BE rebate for technology such as a heat pump is still likely to remain a Black Hills customer. Offering BE rebates is no different than other DSM offerings which similarly reduce a customer’s total natural gas usage. In addition, the Company has repeatedly raised in this Proceeding that DSM is not a resource that can scale exponentially. The Company’s own witnesses express doubts about the

³² CEO Response to SWEEP Exceptions, p. 14, citing Hr. Ex. 301, Settlement Testimony of Leslie Henry-Sermos, at 12:3-8.

³³ REFERENCE Hr. Ex. 106, Harrington Suppl. Direct 17:16.

ability to dramatically scale DSM offerings, which is an indication that additional tools must be considered in order to move meaningfully toward the Clean Heat Targets. Offering BE rebates, in addition to existing DSM rebates, offers customers a choice to mitigate their overall gas usage, while still remaining on the gas system, and provides another viable pathway to compliance with the Clean Heat Statute.

47. The requirement for Black Hills to offer rebates on the scale approved here will not result in unjust or unreasonable rates. Making BE rebates available does not result in unjust or unreasonable rates for customers who choose not to receive a rebate because BE rebates are one of several costs the utility must pay to comply with statute. In Colorado, the Legislature has ordered gas utilities to reduce emissions. The Legislature was aware this would come at a cost to consumers, and costs to comply with statutory requirements generally are found to be just and reasonable. Costs to comply with the law are part of the costs of delivering service and we see no reason why those costs should not be shared amongst ratepayers.

48. Finally, we are unaware of any court that has found a regulatory taking where a utility was required to institute energy efficiency programs such as DSM. Utilities are often required to, whether by law or Commission directive, institute programs or offerings that overall reduce their sale of gas. At what point those programs diminish the value of the utility's property to such an extent that a confiscatory taking has occurred is an open question so far unanswered by the courts. However, we are confident that the relatively meager amount of rebate spending authorized here is safely within the zone of reasonableness. For these reasons, we agree with SWEEP that BE is an option for Black Hills to comply with the statutory clean heat targets, although given Black Hill's potentially conflicting financial incentives we remain concerned about

the Company's role in implementing this program effectively and, over time, may want to start exploring alternative marketing, education, and delivery options.

49. We also agree with SWEEP that BE is a viable solution to be included in this clean heat plan. We find SWEEP's analysis persuasive that BE, particularly when focused on existing residential customers, provides a path for reducing greenhouse gas emissions at a reasonable cost. We are unconvinced by Black Hills' analysis and find its limitation to considering the emission reductions only during the three-year life of the plan to be an unreasonable modeling constraint. As pointed out by SWEEP, heat pumps have emission reduction benefits for the life of the technology, long past 2027. Further, Black Hills' analysis, which used outdated assumptions and applied the full cost of upgrades (which is unlikely for most customers) results in an unreasonably high-cost estimate for BE.³⁴ We generally agree with SWEEP's findings that BE and DSM represent two lowest cost emission reduction opportunities available to Black Hills. Notably, the Recommended Decision does not dispute that BE and DSM are lower cost resources.³⁵ The Recommended Decision also does not contradict any of SWEEP's analysis.

50. Because we are mindful of exceeding the cost cap and agree that the Settlement budget sets a reasonable level of spending for the inaugural clean heat plan, we decline to approve SWEEP's BE budget. As discussed above, we have limited the availability of clean heat funds to supplement DSM programs. We cannot ascertain on this record what impact this limitation will have on the DSM budget in the Settlement. However, we are confident that limiting DSM as discussed above "frees up" some space under the cost cap for additional spending on BE. To that end, we require Black Hills to offer BE rebates with the remaining funds earmarked for DSM.

³⁴ Hr. Ex. 500, Brant Answer, at 36.

³⁵ Recommended Decision, ¶ 112.

Black Hills shall make BE rebates available to all customers in the manner suggested by SWEEP in its modeling.³⁶

D. Other Changes and Additions to the Recommended Decision

51. **Corrections to Recommended Decision:** SWEEP requests that the Commission correct the Recommended Decision to reflect that SWEEP filed answer testimony and exhibits of Wael Kanj, who is a Senior Research Associate at Rewiring America, in addition to the answer testimony of Justin Brant. We agree that this was an omission in the Recommended Decision and correct the Commission's decision accordingly.

52. **Thermal Pilot Study:** The Recommended Decision approves the thermal pilot study proposed in the Settlement Agreement. This study would "investigate an application in its service territory to understand the potential costs and opportunities at a cost of \$455,000."³⁷ The Settling Parties agree that the study would include a siting analysis and will include outreach to stakeholders for discussion on potential projects.³⁸ SWEEP does not address the thermal pilot study specifically in its Exceptions, but does not allocate any money to the study in its proposed portfolio. In its response, CEO reiterates its support for this study and highlights that thermal energy service presents an opportunity for Black Hills to begin to "bend the curve" on emissions and can help a gas utility retain its customers and reduce emissions. We find that certain parameters on the thermal energy study are necessary for the study to be an effective and prudent use of ratepayer funds. To that end, we require that Black Hills to coordinate with the stakeholders to this proceeding to develop reasonable assumptions, an appropriate scope of work and effective results

³⁶ See SWEEP Exceptions, pp. 21-22.

³⁷ Settlement Agreement, ¶ 23.

³⁸ Settlement Agreement, ¶ 24.

so that the study produces maximum insight into the opportunity of thermal networks. We also encourage Black Hills to prioritize studying the inclusion of a project located in a DI community.

53. **Third Party Administrator:** SWEEP requests that the Commission order Black Hills to use a third-party administrator to implement the BE programs. We do not have the record before us to institute this in a viable manner in this Proceeding. However, we find that, if Black Hills cannot effectively institute, promote and deliver BE rebates during this plan period, that a third-party administer will be reviewed as an option in the next clean heat plan.

54. **Compliance Filing:** The Commission requires Black Hills to file an updated version of its 2024-2028 clean heat plan to reflect all terms and conditions that are approved as a result of this Proceeding.³⁹ The updated version of the Company's clean heat plan must include a summary of the anticipated budgets for each clean heat resource (including BE) as modified by this Decision. 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.

55. If not specifically addressed here, we uphold the Recommended Decision and corresponding Settlement term.⁴⁰

³⁹ See Hr. Ex. 104, AWC-1.

⁴⁰ For example, we approve without modification the rider recovery mechanism, the timeframe for filing the next clean heat plan, and the annual reporting and notice process provisions.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R24-0784, filed November 18, 2024, by the Southwest Energy Efficiency Project, are granted in part, consistent with the discussion above.

2. Black Hills Colorado Gas, Inc., shall file an updated version of its 2024-2028 clean heat plan 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 Rehearing, Reargument, or Reconsideration (“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.

3. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the effective date of this Decision.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 8 & 22, 2025.**

(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