Decision No. C11-0304

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11A-135E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A REDCUTION IN THE STANDARD REBATE OFFER.

ORDER APPROVING SETTLEMENT AGREEMENT

Mailed Date: March 21, 2011
Adopted Date: March 18, 2011

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Stipulation and Settlement Agreement (Settlement) filed on March 16, 2011 by Public Service Company of Colorado (Public Service or the Company). The Settlement is intended to resolve all issues that could have been litigated in this Docket with respect to the Company's Application for Approval of a Reduction in the Standard Rebate Offer (Application) filed on February 16, 2011.

2. In its Application, Public Service sought a Commission order approving a reduction in the minimum Standard Rebate Offer (SRO) paid to on-site solar installations from $2.00 per watt to $0.25 per watt. Section 40-2-124(1)(e)(I.5), C.R.S., sets the SRO at $2.00 per watt; however, it also permits the Commission to reduce the SRO, upon request by the utility, if market changes support the change.

3. Public Service stated that if the Commission were to approve the Application, the Company would combine a lower SRO of $0.25 per watt with a $1.00 per watt payment for the Renewable Energy Credits (RECs) generated by "small" customer-owned facilities under the Company's Solar*Rewards® program. Public Service further stated that comparable amounts for the purchase of RECs would also be established for the larger systems and for the small systems owned by third parties. The Company estimated that it would spend approximately $97 million on its Solar*Rewards® program in 2011 if the Commission approved the Application.

4. On February 17, 2011, Public Service posted a notice on its Solar*Rewards® website that a 3 MW capacity limit had been reached and that no additional applications would be accepted until after a Commission decision was issued in this Docket.

5. In immediate response to the Application and the closing of the Solar*Rewards® program, the Colorado Governors' Energy Office (GEO) filed a Motion for an Expedited Hearing Schedule on February 18, 2011. Colorado Solar Energy Industries Association (CoSEIA) also filed an Emergency Motion to Order Public Service Company to Restore the Statutory Rebate Level and the Capacity Acquisition Targets Set by Public Service Company of Colorado in Docket No. 09A-772E and a Motion for Full Consideration on the Merits, both on February 22, 2011.

6. By Decision No. C11-0201, issued on February 23, 2011, the Commission granted Public Service's request to shorten Commission notice on the Application and established an expedited intervention period. Pleadings to become a party were due by March 2, 2011, concurrent with the shortened notice period. A pre-hearing conference was also scheduled on March 4, 2011. The purpose of the pre-hearing conference was to take oral responses to interventions, to address various matters raised in pleadings filed in accordance with Decision No. C11-0201, and, potentially, to set a procedural schedule.

7. By Decision No. C11-0238, issued on March 4, 2011, we deemed the Company's Application complete and noted the interventions by right filed by Staff of the Colorado Public Utilities Commission (Staff), the GEO, and the Colorado Office of Consumer Counsel (OCC). We also granted petitions to intervene filed by Solar Alliance; CoSEIA; Western Resource Advocates (WRA); Colorado Renewable Energy Society (CRES); Cherry Creek School District; the City of Boulder (Boulder); CF&I Steel, L.P. and Climax Molybdenum Company, jointly (CF&I/Climax); Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC; and Ms. Leslie Glustrom.

8. The Commission also scheduled a prehearing conference on March 11, 2011 and established a process for parties to file additional comments concerning Public Service's Application by Decision No. C11-0238. The purpose of the prehearing conference was to enable the Commission to discuss, on an expedited basis, the matters raised by Public Service's Application and to consider answers to certain questions we set forth in Decision No. C11-0238.

9. On March 10, 2011, Public Service filed a Statement Concerning Status of Settlement Discussions and Request for Time to File Settlement Agreement (Statement). In its Statement, Public Service explained that the Company and the parties needed additional

time to give full consideration to the proposals that were being discussed in settlement negotiations.

10. By Decision No. C11-0274, issued on March 11, 2011, we granted Public Service's request for additional time to attempt to reach settlement with the parties. We also established a filing schedule leading to a hearing to be held on March 18, 2011 in the event Public Service and all or some of the parties reached an agreement. Specifically, a written settlement was required to be filed with the Commission on or before March 15, 2011, along with a joint motion to approve that agreement. If a settlement were submitted on March 15, 2011, the Company and any other interested party supporting the settlement would file, jointly or separately, a notice of witnesses who intend to appear at hearing in support of the settlement and an outline or summary of their testimony. Likewise, a party in opposition to the settlement would file a notice of witnesses expected to appear at hearing and an outline or summary of their testimony.

11. On March 16, 2011, Public Service filed a Motion for Leave to File Stipulation and Settlement Agreement. The Company filed this pleading because submission of the Settlement was not accomplished in our e-filings system before 5:00 p.m. on March 15, 2011. We find good cause to grant that motion, as parties were served the Settlement by email shortly after 5:00 p.m. on March 15, 2011 and no party was prejudiced by the official filing completed the morning of March 16, 2011.

12. The parties joining the Settlement include Public Service, Staff, the OCC, the GEO, CoSEIA, Solar Alliance, WRA, and CRES (the Settling Parties).

B. Terms of the Settlement

13. The Settlement provides for a reduction in the SRO offered by Public Service through its Solar*Rewards® program from the effective date of the Commission order approving the Settlement through the entry of a final Commission order approving the Company's 2012 Renewable Energy Standard (RES) Compliance Plan.[1] The proposed reduction in the SRO is tied to a shift away from incentives that were once paid up front to incentives that would be on a production basis (*i.e.*, payments received per kWh produced) over 10 to 20-year timeframes. The combination of SRO and REC payments established in the Settlement is lower than the combined incentives in effect prior to the filing of the Application but higher than the combination proposed in the Application. According to the Settling Parties, market changes warrant the proposed reduction in the SRO.

14. Given the new incentive structure proposed in the Settlement, Settling Parties agree that the Company will spend, between January 1, 2011 and the entry of a final Commission order approving the Company's 2012 RES Compliance Plan, no more than $97.3 million on the Solar*Rewards® programs subject to the Settlement and on the Company's Solar Gardens[2] program. The Settling Parties also agree that, in addition to the 43 MW the Company has already committed to acquire for 2011, the Company will acquire no more than 60 MW of additional capacity under the Solar*Rewards® program components subject to the Settlement

[1] Pursuant to Decision No. C10-1257 in Docket No. 10V-632E, mailed on November 22, 2010, Public Service is expected to file its 2012 RES Compliance Plan by May 1, 2011.

[2] By Decision No. C10-1061, mailed on September 30, 2010 in Docket No. 10R-674E, the Commission issued a Notice of Proposed Rulemaking to modify our rules pursuant to House Bill 10-1342 concerning Community Solar Gardens.

and the Solar Gardens program.[3] The Settling Parties further agree that if either the $97.3 million cost cap or the 60 MW capacity cap is reached, the entire Solar*Rewards® program will be closed. Finally, each component of the Company's Solar*Rewards® program subject to the Settlement will have its own MW cap. The Settling Parties likewise agree that if any of these caps is reached, that component of the Solar*Rewards® program will be closed.

15. The Settling Parties require the Company to actively monitor the applications that are in the queue for Solar*Rewards® incentives, so that expired applications and systems that are not actually installed are removed from the queue. Accordingly, the dollars that were once committed to these removed applications and projects will be made available for other new projects.

16. Finally, in accordance with Rule 1003 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Settling Parties request a waiver of Rules 3658(f)(III) and 3658(f)(VIII) of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, to the extent required to authorize the proposed changes to the SRO and REC payments.

C. March 18, 2011 Hearing

17. The Commission heard the arguments of counsel, testimony, and public comment regarding the Settlement at the March 18, 2011 hearing.

18. As an initial matter, the Direct Testimony of Public Service witnesses Robin Kittel, Debra Sundin, and Pamela Newell, which were filed with the Application, were

[3] The Settlement states that the component of the Solar*Rewards® program for large facilities (greater than 500 kW) are not counted against the expenditure or acquisition caps set forth in the Settlement. At the March 18, 2011 hearing, Public Service witness Karen Hyde explained that large facilities are developed pursuant to a Request for Proposals (RFP) process and any project installed pursuant to an RFP that were issued for large facilities would not likely be completed until after the terms of the Settlement expired.

stipulated into the record. By this pre-filed testimony, Public Service asserted that the Company had targeted to acquire 19 MW of capacity for 2011 under its 2010 RES Compliance Plan but was already on a trajectory to commit to acquire 37 MW for 2011. The Company asserted that market conditions required a reduction in the SRO and that without Commission approval to reduce the SRO, the Company was approaching the point where it was on course to spend more than $97 million on customer-sited solar in 2011.

19. At the March 18, 2011 hearing, the following parties provided testimony in support of the Settlement:

- Karen Hyde, Vice President, Rates and Regulatory Affairs—Colorado, on behalf of Public Service
- Gene Camp, Chief of the Energy Section of the Colorado Public Utilities Commission, on behalf of Staff
- P.B. Schechter, Rate Analyst, on behalf the OCC
- Matt Futch, Utilities Program Manager, on behalf of the GEO
- Gwen Farnsworth, Senior Energy Policy Analyst, on behalf of WRA
- Colin Murchie, Director of Government Affairs, Solar City, on behalf of the Solar Alliance
- Neal Lurie, Executive Director of CoSEIA, on behalf of CoSEIA
- Jonathan Koehn, Regional Sustainability Coordinator, on behalf of Boulder

20. Ms. Leslie Glustrom also provided testimony, although she does not oppose the Commission's approval of the Settlement. Written comments from CF&I/Climax were also entered into the record at the hearing. CF&I/Climax do not oppose the Commission's approval of the Settlement.

21. In general, the witnesses for the Settling Parties testified that the market for the installation of on-site solar systems has changed such that an immediate reduction of the SRO from $2.00 per watt for all systems is appropriate. Specifically, the witnesses for the Settling Parties support the reduction of the SRO for small, customer-owned systems to drop immediately

to $1.75 per watt and then to drop further to $1.00 per watt, to $0.50 per watt, and to $0 per watt depending on the level of accepted applications. With each reduction in the SRO for small systems, the price for RECs the Company will pay on a production basis will increase. The witnesses in support of the Settlement further testified that, for larger systems and third-party-owned small systems, the market could support both the immediate elimination of the SRO and a schedule of falling prices for production-based REC payments depending on the level of accepted applications.

22. The witnesses in support of the Settlement also explained how Public Service could expand the amount of on-site solar resources it acquires under its Solar*Rewards® program, as compared to the level of acquisitions the Company had proposed in its Application, while holding to the $97.3 million total level of spending through the period ending with a Commission order on the Company's 2012 RES Compliance Plan. First, the movement away from up-front incentive payments will defer the incurrence of a substantial level of costs to future periods. The Settling Parties project that under certain assumptions regarding accepted applications, such future costs could reach approximately $10 million per year for the next ten years[4] and approximately $7 million per year for the following ten years. Second, the Settling Parties expect that the removal of expired applications and uncompleted projects from the queue of previously committed incentive payments will make additional funds available under the $97.3 million cap. In order to effectuate these terms of the Settlement, Public Service has committed to actively monitor the applications that are in the queue and the dollars being committed and spent on completed on-site solar systems.

[4] The witness for CoSEIA testified that small, customer-owned systems generally require a 10-year rather than a 20-year commitment for REC purchases in order to obtain cost-effective financing.

23. Furthermore, the witnesses for the Settling Parties explained that the Settlement is intended to stabilize the on-site solar market for both customers and solar companies by reinstating the Solar*Rewards program. However, they also testified that the Settlement is meant only to serve as a "bridge" through the period when Public Service develops and the Commission considers the Company's 2012 RES Compliance Plan. The witnesses therefore suggested that this upcoming proceeding will be where the Commission will more carefully examine the changes appropriate for the longer-term conditions of the on-site solar market vis-à-vis Public Service's compliance needs under the RES.

24. Finally, the witnesses in support of the Settlement explained at the hearing the purpose of the Settling Parties' request that the Commission enter specific findings regarding the presumption of prudence of spending up to $97.3 million under the terms of the Settlement as well as the presumption of prudence of the expenditures made to date under the Company's Solar*Rewards® program. In sum, these provisions are intended to clarify the presence of a presumption of prudence with respect to the Company's spending under its Solar*Rewards® program. Notably, Public Service also agrees under the terms of the Settlement to request a Commission finding regarding the presumption of prudence in every future RES compliance plan or Electric Resource Plan proceeding in accordance with § 40-2-124(1)(g)(B), C.R.S., on the specific amount of funds to be advanced from year to year to augment the amount collected from ratepayers through its Renewable Energy Standard Adjustment, which is presently set at a maximum of 2 percent of customers' bills.

D. Findings

25. We recognize that the Settlement is a result of the significant efforts of the Settling Parties to reach a mutually acceptable compromise in order to restart Public Service's

Solar*Rewards® program as soon as practicable. We also acknowledge that an immediate resolution of this matter will not afford us the time to examine comprehensively the impact of the Settlement on the Company's future ability to comply with the RES given the retail rate impact cap under § 40-2-124(1)(g), C.R.S. However, we expect that the upcoming proceeding concerning the Company's 2012 RES Compliance Plan will allow us devote more time to examining the issues surrounding the on-site solar market in Colorado and to think about the costs and benefits of retail renewable distributed generation in the context of the Company's plans for longer-term compliance with the RES. Therefore, given the protections to ratepayers, as agreed to by the Settling Parties, in the form of the cap on total costs, the cap on total acquisitions, and the limited duration of the terms of the Settlement, we are willing, with some reservation, to adopt the Settlement as filed in order to quickly bring this matter to a close.

26. Specifically, we find that the record presented to the Commission in the form of the pre-filed Direct Testimony, the Settlement, and the comments and written and oral testimony regarding the Settlement is sufficient to warrant the reductions in SRO as set forth in the Settlement in accordance with paragraph 3658(c) of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3. We conclude that market conditions have changed as a result of declining solar energy costs as well as the availability of additional financing mechanisms so that production-based incentives, such as those proposed in the Settlement, can be offered to all participants in the Company's Solar*Rewards® program. We therefore approve the reduction in the SRO as set forth in the Settlement.

27. In rendering this decision, however, the Commission does not intend to create a precedent that would in any way limit our consideration of proposed changes to the system of

incentives for on-site solar installations that may be proposed in the Company's 2012 RES Compliance Plan.

28. We also approve, pursuant to the terms of the Settlement, the cap on the Company's expenditures of up to $97.3 million as well as the caps (in terms of megawatt hours) on the overall acquisition level under the Company's Solar*Rewards® program and on the specific program-components addressed in the Settlement. We further find that the expenditures associated with Public Service's Solar*Rewards® program to date are consistent with our prior orders approving the Company's RES compliance plans and are therefore presumed prudent. We also grant a presumption of prudence for the capped expenditures of $97.3 million in accordance with terms of the Settlement.

29. Finally, we find good cause to waive Rules 3658(f)(III) and 3658(f)(VIII), 4 CCR 723-3, as requested by the Settling Parties. These waivers are necessary for Public Service to implement production-based payments for RECs and to allow for REC payments to be made over a ten-year period for the small customer-owned installations.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to File Stipulation and Settlement Agreement filed by Public Service Company of Colorado (Public Service) on March 16, 2011 is granted, consistent with the discussion above.

2. The Motion to Approve Stipulation and Settlement Agreement and Motion for Waivers filed by Public Service on March 16, 2011 is also granted. We therefore approve the Stipulation and Settlement Agreement (Settlement) filed on March 16, 2011 without modifications.

3. Public Service is authorized to reduce the Standard Rebate Offer to the levels set forth in the Settlement, consistent with the discussion above.

4. The waivers of Commission Rules necessary to implement the terms of the Settlement, including waivers of the requirements of Rules 3658(f)(III) and Rule 3658(f)(VIII) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, are granted.

5. The Commission finds that Public Service expenditures of up to $97.3 million pursuant to the terms of the Settlement and all expenditures made to date under Public Service's Solar*Rewards® program are presumed prudent, consistent with the discussion above.

6. The Motion for an Expedited Hearing Schedule filed by the Colorado Governors' Energy Office on February 17, 2011 is denied as moot.

7. The Emergency Motion to Order Public Service Company to Restore the Statutory Rebate Level and the Capacity Acquisition Targets Set by Public Service Company of Colorado in Docket No. 09A-772E filed by the Colorado Solar Energy Industries Association (CoSEIA) on February 22, 2011 is denied as moot.

8. The Motion for Full Consideration on the Merits filed by CoSEIA on February 22, 2011 is denied as moot.

9. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Order.

10. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING March 18, 2011.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director