

Decision No. C14-1297-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0302E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS SOLAR*CONNECT PROGRAM.

PROCEEDING NO. 14A-0301E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL TO ISSUE TARGETED REQUEST FOR PROPOSALS TO ACQUIRE GENERATION RESOURCES TO SUPPORT THE SOLAR*CONNECT PROGRAM.

INTERIM DECISION ADOPTING HEARING PROCEDURES; AND INTERIM DECISION DENYING VOTE SOLAR’S MOTION TO COMPEL AND REQUEST FOR A SHORTENED RESPONSE TIME

Mailed Date: October 27, 2014
Adopted Date: October 22, 2014

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I. BY THE COMMISSION**A. Hearing Procedures**

1. In Decision No. C14-0665-I issued June 18, 2014, we set hearings for November 3 through 5, 2014. This Decision sets additional procedural requirements for those hearings. Parties shall comply with the following hearing procedures:

- a) Public Service Company of Colorado (Public Service) shall confer with parties to develop a witness list with an order of cross-examination and estimated cross-examination times. Public Service shall file this list on or before Friday, October 31, 2014, at 12:00 noon.
- b) All parties shall pre-mark the pre-filed testimony and exhibits prior to the start of hearings which begin at 9:00 a.m. on Monday, November 3, 2014. A court reporter will be available to assist in pre-marking on Monday, November 3, 2014, at 8:00 a.m.
- c) The pre-marked testimony and exhibits shall include all necessary corrections. All corrected testimony and exhibits shall be filed no later than October 29, 2014.
- d) At the start of hearing, we will ask the parties whether they have any objections to admitting into the evidentiary record all of the marked pre-filed testimony and exhibits. We direct the parties to confer regarding the admission of pre-filed testimony and exhibits prior to the start of hearings on November 3, 2014.
- e) Witnesses will be sworn in *en masse* as a preliminary matter each day of hearing, as necessary. We expect that cross-examination should begin immediately for most witnesses when they take the stand, without the routine swearing in and direct examination used to enter the pre-filed testimony into the evidentiary record.
- f) We direct the parties to review the Commission's rules governing the treatment of confidential and highly confidential information and to resolve, prior to the hearing, any questions or disputes surrounding the status of any materials claimed to be confidential or highly confidential. We also expect the cross-examination of witnesses to be structured in a manner that minimizes the instances when the hearing room must be cleared for purposes of protecting confidential and highly confidential information.

B. Vote Solar's Motion to Compel Discovery

2. On October 14, 2014, Vote Solar moved to compel Public Service to respond to Vote Solar's third set of discovery requests. Vote Solar also moved to shorten the response time to the motion. The Commission finds the motion untimely and therefore denies it.

3. The discovery dispute arises from Public Service's direct testimony. On April 3 and July 11, 2014, Public Service filed direct and supplemental direct testimony. On July 14, Public Service filed the corrected supplemental direct testimony of Scott B. Brockett.

4. On July 18, 2014, Vote Solar served its second set of discovery requests to Public Service. One request sought documentation supporting specific information in an attachment to Mr. Brockett's corrected supplemental direct testimony.

5. On August 11, 2014, Public Service provided Vote Solar with its response.

6. On August 29, 2014, the deadline for filing answer testimony, Vote Solar and other parties filed answer testimony.

7. On September 19, 2014, Vote Solar served its third set of discovery requests to Public Service seeking further clarification of, and additional information about, data in the response served by Public Service on August 11, 2014.

8. On September 25, 2014, Public Service responded that Vote Solar's third discovery requests were untimely because the requests concerned direct testimony and the discovery deadline had passed. *See 4 Code of Colorado Regulations* of the Commission's Rules of Practice and Procedure, 723-1-1405(d) ("In proceedings where prefiled testimony and exhibits are filed, the last day to propound written discovery directed solely to direct testimony and exhibits shall be the deadline for filing answer testimony[.]").

9. Between September 29 and October 2, 2014, counsel for Vote Solar conferred with counsel for Public Service about the discovery dispute, but the parties were not able to resolve it.

10. On Tuesday, October 14, at 4:32 p.m., Vote Solar filed its motion to compel and request to shorten response time.

C. Findings and Conclusions

11. We deny the motion to compel due to Vote Solar's delays in prosecuting its objections to Public Service's discovery responses and the timing of its filing. Vote Solar waited from August 11 until September 19, 2014 to seek clarification of Public Service's discovery responses, did not complete its consultation with Public Service until 7 days after Public Service's September 25, 2014 statement that it would not respond, and then delayed another 12 days after Public Service's counsel confirmed the Company's objection to file the motion to compel.

12. Vote Solar filed the motion on Tuesday, October 14, 2014 at 4:32, p.m. The deadline for filing items for Commission consideration is 5 p.m. each Tuesday of the week prior to the Commissioners' weekly meeting. The deadline for filing emergency addendum items is 12 noon on Tuesday the week of the meeting.¹ If Vote Solar had filed its motion before noon on Tuesday, October 14, 2014, the Commissioners could have considered it at the weekly meeting on October 15, 2014. However, because Vote Solar filed its motion after 12 noon on Tuesday October 14, 2014, the Commissioners could not consider the motion until the weekly meeting on Wednesday, October 22, 2014. The motion to compel requested Public Service to

¹ The agenda deadlines are printed on the first page of the Commissioners' Weekly Meeting Agenda.

provide responses by October 29, 2014, which is only seven days from when the Commission first could have considered the motion to compel.

13. The October 14, 2014 filing of Vote Solar's motion constitutes an unreasonable delay and unfairly compresses the time for the Commission to consider the motion and, if the motion were granted, for Public Service to respond. We also recognize the preparation in which Public Service and the other parties engage in the days before the start of an evidentiary hearing. Vote Solar placed an unreasonable burden upon Public Service when it was preparing for the hearing.

14. For these reasons, we find that Vote Solar's motion to compel was untimely. To advance and protect procedural efficiency and fairness to the parties, and to prevent discovery abuses, we deny the motion.

II. ORDER

A. It Is Ordered That:

1. Public Service Company of Colorado (Public Service) shall confer with the parties to develop a witness list with an order of cross-examination and estimated cross-examination times. Public Service shall file this list on or before Friday, October 31, 2014 at 12:00 noon.

2. All parties shall comply with the hearing procedures as detailed above.

3. The Motion to Compel and Request for a Shortened Response Time, filed by Vote Solar on October 14, 2014, is denied.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 22, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners