

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0836E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2014 RENEWABLE ENERGY STANDARD COMPLIANCE PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DENYING MOTION TO STRIKE**

Mailed Date: April 7, 2014

I. STATEMENT

1. On March 31, 2014, The Alliance for Solar Choice Motion to Strike Supplemental Answer Testimony and Attachments of Chris Neil on Behalf of the Colorado Office of Consumer Counsel (OCC) was filed by The Alliance for Solar Choice (TASC).

2. By Decision No. R14-0343-I, response time to the motion was shortened to April 3, 2014.

3. Responses were filed by OCC, Public Service Company of Colorado (Public Service), the Vote Solar Initiative (Vote Solar) and the Colorado Solar Energy Industries Association (COSEIA). Vote Solar and COSEIA support the requested relief. Public Service takes no position regarding the motion.

4. TASC contends that the entirety of Sections II through VI of OCC's Supplemental Answer Testimony (approximately 19 of 23 pages) should be stricken from Hearing Exhibit 202, Supplemental Answer Testimony and Attachments of Chris Neal on Behalf of the Colorado Office of Consumer Counsel (OCC Supplemental Answer Testimony), filed on March 26, 2014,

because the testimony addresses subjects severed by the Commission or is outside the scope of supplemental direct testimony.

5. By Decision No. C14-0219-I, the Commission severed the net metering incentive issue from the instant proceeding – “Public Service’s proposal to reflect a net metering incentive in its RESA with a corresponding adjustment to its ECA.” Decision No. C14-0219-I at 11. As noted by Vote Solar and COSEIA, the Commission struck significant portions of the record addressing costs and benefits of on-site solar as well as net metering policy.

6. Parties were ordered to file revised versions of prefiled testimony to reflect the severing of issues.

7. Given that the Company’s proposed acquisition for on-site solar had been tied to its net metering proposal that was severed, the Commission directed Public Service to file limited “Supplemental Direct Testimony and Exhibits presenting the Company’s current positions and proposals, given that the net metering incentive issue will not be addressed in this proceeding.” Id. at 14.

8. Supplemental Answer Testimony was also permitted in response to Supplemental Direct Testimony.

9. The Commission’s decision defines the scope of issues remaining in this proceeding.

10. TASC contends that matters other than those required by the Commission in Decision No. C14-0219-I or issues in response to those raised by Public Service in its limited Supplemental Direct Testimony are outside the scope of the Supplemental Answer Testimony.

11. The undersigned agrees with TASC, Vote Solar, and COSEIA that portions of the OCC Supplemental testimony address issues severed from the proceeding. The OCC testimony at issue addressing bill credits and “total cost” is conceptually similar to severed net metering issues that were addressed in other testimony stricken by the Commission. No decision will enter in this proceeding on matters severed by the Commission.

12. Where the OCC argues that it is providing testimony sought by the Commission, regarding “total cost,” the undersigned disagrees and applies the Commission’s decision in the context of the manner prior plans have been considered, which have looked at the cost of solar REC payments or upfront incentives and distinct from the net metering issues severed.

13. The undersigned relies upon language of the decision as guiding and considers the language in footnote 10 of Decision No. C14-0219-I as providing clarification of the information requested. The Commission sought testimony of the parties regarding annual and total costs of REC incentive payments and the effect on the RESA balance -- not the total cost as applied by the OCC. Notably, the OCC’s interpretation and application of footnote 10 would conflict with the Commission’s severance of net metering issues.

14. On the other hand, TASC requests that the entirety of Sections II through VI should be stricken. While the OCC’s testimony is contrary to the Commission’s decision in some regard, TASC’s attempt to strike the testimony with an axe rather than a scalpel fails. TASC failed to meet the burden of proof for the relief requested. Some of the subject OCC testimony requested to be stricken is responsive to issues identified by the Commission or direct testimony. Solely for illustration, and without limitation, the OCC addresses the proposed capacity to be acquired and the amount of funds necessary to be advanced to the RESA.

15. In its response, Public Service opines that other parties have exceeded the scope of permissible answer testimony under the Commission's decision.

16. The undersigned notes that to the extent that any testimony should be admitted in the proceeding outside of the scope of the proceeding defined by the Commission, it remains irrelevant to the issues to be decided. If admitted and found relevant at all to issues in this proceeding, it will be given appropriate weight.

17. Turning specifically to Sections V and VI, TASC requests that testimony be stricken as beyond the scope of permitted supplemental direct testimony set forth in C14-0219-I. It is noteworthy that TASC does not seek to strike any of Public Service's direct supplemental testimony. Also, Mr. Neil's opinion that large scale solar would be a more effective use of customer dollars than on-site solar was not stricken from his answer testimony by the Commission.

18. While the undersigned is specifically not requesting testimony of parties outside the scope of the Commission's decision in any event, answer testimony will not be stricken without consideration of direct testimony to which it responds. This is viewed by the undersigned as the lesser evil, particularly in light of the fact that all other parties will have an opportunity to respond to the answer testimony.

19. In Public Service's supplemental answer testimony, the Company presents its current positions and proposals after severance of the net metering incentive issue. The OCC continues to oppose the Company's position. TASC has failed to meet its burden of proof to demonstrate that the entirety of Sections V and VI are not responsive to the testimony filed by Public Service.

II. ORDER

A. The Commission Orders That:

1. The Alliance for Solar Choice Motion to Strike Supplemental Answer Testimony and Attachments of Chris Neil on Behalf of the Colorado Office of Consumer Counsel on March 31, 2014 is denied consistent with the discussion above.
2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director