

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0369E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2020-2021 RENEWABLE ENERGY COMPLIANCE PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING, ESTABLISHING
PROCEDURES AND DEADLINES, AND
ORDERING SUNSHARE TO SHOW CAUSE**

Mailed Date: September 12, 2019

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I. STATEMENT

1. By Decision No. R19-0694-I, this matter was scheduled for a prehearing conference for September 4, 2019. With the exception of Grid Alternatives Colorado, Inc. (GRID), all parties were required to appear at the prehearing conference. *See* Decision

2. Nos. R19-0694-I (requiring all parties to appear) and R19-0725-I (excusing GRID from appearing).

3. The Administrative Law Judge (ALJ) called the matter for a prehearing conference as noticed. The following parties appeared: Public Service Company of Colorado

(Public Service); the Colorado Office of Consumer Counsel; the Colorado Energy Office; Colorado Public Utilities Commission Trial Staff; Colorado Solar and Storage Association (Colorado Solar); the Solar Energy Industries Association (Solar Energy); the City of Boulder; the City and County of Denver; Vote Solar; Energy Outreach Colorado; the Rocky Mountain Environmental Labor Coalition; the Colorado Building and Construction Trades Council; Western Resource Advocates; Colorado Energy Consumers; Climax Molybdenum Company; and GRID.¹ SunShare, LLC (Sunshare) did not appear.

4. During the prehearing conference, Public Service offered a proposed consensus procedural schedule, hearing dates, and proposed procedures relating to discovery. Colorado Energy Consumers suggested additional language for the proposed discovery procedures, to which no party objected. In light of the procedural schedule outlined below, several parties suggested that the response time to discovery issued in relation to cross-answer testimony, settlement agreements, and testimony in support of settlement agreements be shortened to five calendar days; no party objected to this. The ALJ scheduled a hearing, established a procedural schedule, including the referenced shortened discovery response time, and approved the proposed discovery procedures, as set forth in the ordering paragraphs below.

5. In addition, the ALJ sought the parties' position on whether the evidence should be presented electronically during the hearing. No party objected to doing so; the ALJ took the matter under advisement. The ALJ has determined that electronic evidence should be presented

¹ Per Decision No. R19-0725-I, GRID was excused from appearing, but a non-attorney GRID representative appeared to observe the hearing.

at the evidentiary hearing to the fullest extent possible. This Decision establishes procedures to accomplish this.

6. Public Service filed direct testimony and attachments with its Application in this proceeding. As a result, those filings are not marked in accordance with the procedural requirements for hearing exhibits outlined below. Assuming that Public Service intends to use its direct testimony and attachments as exhibits in this proceeding, the ALJ will require Public Service to mark its direct testimony and attachments consistent with this Decision's requirements, and re-file those as Hearing Exhibits. This will facilitate the use of electronic exhibits at the hearing, and avoid the need to make corrections to testimony or exhibits to be filed in response to Public Service's direct testimony and attachments.

7. During the prehearing conference, Public Service requested that a final Commission Decision issue by March 31, 2020, 13 days before the April 13, 2020 statutory deadline for a final decision to issue. *See* § 40-6-109.5(1), C.R.S. (as amended by Senate Bill 19-236). As stated during the hearing, the ALJ is unable to make assurances that the request will be accommodated.

8. Also during the prehearing conference, Colorado Solar and Solar Energy raised Public Service's Verified Motion to Extend 2017-19 Renewable Energy Compliance Plan through First Quarter 2020, and Motion for Waiver of Rule 3657 (Motion), and their Response thereto (filed on July 16, 2019). Colorado Solar and Solar Energy are the only parties who filed a response to the Motion. The ALJ noted that the time to respond to the Motion under Commission Rules had long expired, as Public Service filed the Motion on June 28, 2019. *See* Rule 1400(b) (14-day response time to motions, unless otherwise ordered), Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. Given that the response time

to the Motion expired before any of the interveners became parties to this proceeding, the ALJ polled the parties to determine if any party wished to respond to the Motion. No party indicated they wish to respond to the Motion. Thus, the ALJ will take the Motion under advisement based on the current record and will issue a decision in due course.

9. As noted, Sunshare did not appear at the prehearing conference. Sunshare did not file a motion requesting to be excused from appearing; nor has it made any such filing since the prehearing conference. Sunshare's failure to appear has two effects. First, as noticed in Decision No. R19-0694-I, the ALJ deems Sunshare's failure to appear as a waiver of any objections to the rulings made during the prehearing conference. Second, Sunshare's failure to appear raises the question of Sunshare's future participation in this matter. Specifically, Sunshare's "Motion to Intervene . . . and Entry of Appearance" asserts that it has a substantial pecuniary or tangible interest in the outcome of this proceeding, but its failure to appear, and failure to request to be exempt from appearing at the very first hearing in this matter contradicts the actions of a party with a substantial pecuniary or tangible interest in this proceeding. The ALJ will order Sunshare to show cause for its failure to appear, its failure to file a motion seeking to be excused from appearing, and to show cause why it should be permitted to continue participate as a party in this proceeding. *Sunshare is on notice that if it fails to submit the required show cause filing, the ALJ may dismiss Sunshare as a party for failing to pursue or prosecute its Intervention.*

II. ORDER

A. It Is Ordered That:

1. An evidentiary hearing in this proceeding is scheduled as follows:

DATES: December 10, 11, and 12, 2019

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. **Show Cause Filing.** SunShare, LLC (Sunshare), must submit a filing showing cause for: its failure to appear at the September 4, 2019 prehearing conference; its failure to file a motion seeking to be excused from appearing at the prehearing conference; and to establish that it should be permitted to continue to participate as a party in this proceeding by September 26, 2019. Based on its failure to appear at the prehearing conference, Sunshare has waived objections to rulings made during the prehearing conference as set forth in this Decision.

3. **Direct Testimony.** Provided that Public Service Company of Colorado (Public Service) wishes to use the direct testimony and attachments filed with its Application in this proceeding as hearing exhibits in this matter, it must mark those documents as hearing exhibits and attachments thereto, consistent with this Decision's requirements and file and serve the exhibits by September 20, 2019.

4. **Answer Testimony.** The parties must file and serve answer testimony by October 23, 2019.

5. **Rebuttal Testimony.** Rebuttal testimony must be filed and served by November 18, 2019.

6. **Cross-Answer Testimony, Settlement Testimony, and Settlement Agreements.**

The parties must file and serve settlement agreements, cross-answer testimony, and testimony in support of settlement agreements by November 25, 2019. As this type of settlement testimony serves the purpose of providing evidentiary support for a settlement agreement, all parties are permitted, but not required to file testimony in support of a settlement agreement.

7. **Hearing Exhibits, Hearing Exhibit Lists, and Witness Lists.** The parties must file and serve hearing exhibits, hearing exhibit lists, and witness lists by December 2, 2019. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number and the title of each hearing exhibit and provide a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Nothing in this Decision requires parties to pre-file and serve hearing exhibits that the parties intend to use solely for impeachment or rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing. The parties are encouraged to confer with each other to avoid offering identical duplicative exhibits during the hearing. The parties are on notice that the Administrative Law Judge anticipates denying requests to admit identical duplicative hearing exhibits during the hearing.

8. **Corrections, Modifications, and Amendments to Hearing Exhibits.** The parties may make corrections to exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as correcting typographical errors. Corrections do not include material or substantive changes. Any party wishing to amend or modify an exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the

filing. Unreasonable delay in filing such a motion is cause to deny the motion. *Final hearing exhibits and attachments, including corrected, modified, or amended hearing exhibits and attachments, must be filed and served by 11:59 p.m. on December 4, 2019.* Any exhibit filed after this deadline will not be included in the spreadsheet of electronic exhibits discussed below, and will not be admitted in electronic form during the hearing.

9. **Joint Witness Testimony Matrix.** The parties must submit a joint witness testimony matrix listing all the witnesses the parties anticipate will testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses by December 5, 2019.

10. **Discovery Procedures.** The parties must follow the below discovery procedures, but nothing in this Decision precludes a party from filing a motion relating to discovery, including a motion to compel.

a) **Shortened Discovery Response Time.** Given the hearing date and other deadlines, the response time to discovery issued in relation to cross-answer testimony, settlement agreements, and testimony in support of settlement agreements is shortened to five calendar days.

b) **Public Service Discovery Responses.** Public Service will serve a complete set of discovery responses once it has finished responding to an entire set of discovery requests.

c) **Cut-Off Time for Discovery Issued on Fridays or Day before Holiday.** Any party issuing a discovery request on a Friday or the day before a holiday must send the discovery request to the party from whom discovery is sought by 3:00 p.m. on the day issued, (e.g., by 3:00 p.m. on Friday, or by 3:00 p.m. the day before the holiday).

d) **Process When Discovery Responses Will Be Untimely.** In the event a party responding to discovery requests believes that the party will be unable to respond by the applicable discovery deadline, that party must send an email to the party who issued the discovery requests which includes the following: (a) notice that the party that it believes it cannot timely respond; (b) the reasons it cannot timely respond; and (c) the anticipated date by which it will respond to discovery. This email must be sent as soon as the party becomes aware that it will not be able to respond to discovery by the relevant deadline. The party needing additional time to respond to discovery must make best efforts to reach an agreement with the party issuing discovery as to the date it will respond to discovery.

11. **Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file a statement of position by December 20, 2019.

12. **Electronic Evidence Presentation at Evidentiary Hearing.** During the hearing, the parties will be required to present evidence electronically to the fullest extent possible, except that nothing in this Decision requires the electronic presentation of evidence when not practicable (*e.g.*, impeachment and rebuttal exhibits). The Administrative Law Judge (ALJ) anticipates the need to take administrative notice when pre-filed electronic hearing exhibits in the Commission's file are admitted into evidence.

13. **Electronic Hearing Exhibit Spreadsheet and Hearing Exhibit Display.** All pre-marked electronic hearing exhibits filed before the deadline in ¶ 8 will be available during the evidentiary hearing through a hyperlinked spreadsheet identifying filings in the Commission's E-Filing System; the spreadsheet will be marked as a hearing exhibit. During the course of the hearing, Commission staff will use the referenced spreadsheet to display electronic

hearing exhibits offered or admitted into evidence on large monitors in the hearing room.² The spreadsheet and related documents (except for confidential and highly confidential exhibits), will be available to the parties before the hearing.

14. **Paper Copies of Hearing Exhibits.** Unless otherwise ordered, the sponsoring party must bring to the hearing at least one paper copy of each hearing exhibit the party intends to offer into evidence for use by witnesses during examination, marked consistent with this Decision. The sponsoring party must ensure that the paper copies of hearing exhibits are identical to the pre-filed electronic versions of the hearing exhibits in the Commission's file. In addition, any party who files corrected, modified, or amended hearing exhibits after the deadline in ¶ 8 above, or offers exhibits that are not pre-filed (*e.g.*, exhibits for impeachment or rebuttal) must bring to the hearing: the original, enough copies for all parties, a copy for the witness, copies for two advisors, and a copy for the ALJ.

15. **Hearing Exhibit Number Block Assignments.** Public Service is assigned hearing exhibit numbers 1 to 199. All other parties are assigned a sequential block of 100 exhibit numbers starting with hearing exhibit 200, in the order that their notices of intervention or motions to intervene were filed, as reflected in the Commission's E-Filings System. Illustratively, the first party who filed a notice of intervention or motion to intervene is assigned hearing exhibit numbers 200 to 299, with the second filing party assigned hearing exhibit numbers 300 to 399. The last unassigned block of hearing exhibits is reserved for hearing exhibits first presented at hearing (*e.g.*, exhibit for rebuttal).

² The parties may contact Ms. Christie Nicks at (303) 894-2010 with technical questions relating to presenting exhibits electronically.

16. Hearing Exhibit Identification Requirements.

a. General Identification Requirements – All Types of Exhibits. The parties must sequentially number each hearing exhibit within their assigned hearing exhibit number blocks. Parties must conspicuously mark for identification each exhibit as a “hearing exhibit” with its corresponding hearing exhibit number, and a brief description of the document, such as the document’s substantive title. This means that any party offering witness testimony as an exhibit must include the specific type of witness testimony (*e.g.*, direct or rebuttal) as its brief description. For example, if Hearing Exhibit 1 is John J. Doe’s direct testimony, the party offering the exhibit must mark the exhibit for identification as follows: “Hearing Exhibit 1, John J. Doe’s Direct Testimony.” Parties offering written testimony with attachments as an exhibit must mark the entirety of the witnesses’ testimony including all attachments, with one hearing exhibit number. In addition, the parties must mark all attachments to witness testimony as an “attachment” to the testimony with the relevant hearing exhibit number, the witness’s initials, and a number sequence.³ For example, if John J. Doe’s direct testimony includes an attachment, the party must mark the attachment as follows: “Hearing Exhibit 1, Attachment JJD-1.”

b. Additional Identification Requirements for Executable Exhibits. When a party files an executable version of a hearing exhibit as required by this Decision, the party must mark the exhibit for identification using the exact same title as the non-executable version (as provided above), and must add the word “Executable” immediately after the hearing exhibit

³ Because attachments to a hearing exhibit are part of the hearing exhibit, it must not be marked with a separate hearing exhibit number, or as an appendix or other like title to the hearing exhibit.

number.⁴ For example, an executable attachment to John J. Doe’s Testimony should be marked for identification as, “Hearing Exhibit 1, Executable Attachment JJD-1.” Likewise, an executable version of an exhibit titled “Hearing Exhibit 2, Costs” should be marked as, “Hearing Exhibit 2, Executable Costs.”

c. Additional Identification Requirements for Confidential and Highly Confidential Exhibits. The parties must mark confidential or highly confidential hearing exhibits and attachments for identification using the exact same title as the non-confidential version (as provided above), and must add a “C” for confidential or “HC” for highly confidential immediately following the exhibit or attachment number. For example, John J. Doe’s confidential or highly confidential direct testimony should be marked as “Hearing Exhibit 1C, John J. Doe’s Direct Testimony,” or “Hearing Exhibit 1HC, John J. Doe’s Direct Testimony,” respectively.

d. Additional Identification Requirements for Corrected, Modified, and Amended Hearing Exhibits. Parties must mark corrected, modified, and amended hearing exhibits and attachments for identification using the exact same title as the original version of the exhibit or attachment (as provided above), immediately followed by “Rev.” to indicate a revision, with the revision number. For example, John J. Doe’s modified direct testimony should be marked as “Hearing Exhibit 1, John J. Doe’s Direct Testimony, Rev. 1.” Likewise, a modified attachment to John J. Doe’s Direct Testimony should be marked as “Hearing Exhibit 1, Attachment JJD-1, Rev. 1.” The same requirements apply to revised executable exhibits and

⁴ Filing executable exhibits may result in the automatic creation of a corresponding PDF version in the Commission’s E-Filing System. That PDF will be disregarded for all purposes, including reference and display during hearing.

attachments. For example, a revised executable attachment to John J. Doe's testimony should be marked for identification as, "Hearing Exhibit 1, Executable Attachment JJD-1, Rev. 1."

17. **Hearing Exhibit Page Numbering.** The parties must sequentially number each page of each hearing exhibit and attachment starting with the exhibit's or attachment's first page, regardless of the first page's content. For example, if the first page of the hearing exhibit is a cover page, that page must be marked as page number 1, and all pages to follow (including table of contents, executive summaries, intentionally blank pages and the like) must be sequentially page-numbered. The parties must format page numbering to include the total number of pages, and the document's title (consistent with this Decision); this should be placed at the top right corner of each page of the hearing exhibit or attachment. For example, John J. Doe's direct testimony should include page-numbering at the top right corner of each page with the following information and format: "Hearing Exhibit 1, John J. Doe's Direct Testimony, Page 1 of 20." This paragraph does not apply to executable spreadsheet exhibits.

18. **Requirements for Titling Hearing Exhibits in E-Filing System.** When filing hearing exhibits and attachments in the Commission's E-Filing System, the parties must enter the exact same title used to mark the hearing exhibit or attachment for identification (as required by this Decision) as the document title in the E-Filing System. Building on the above examples for marking exhibits and attachments for identification, when filing John J. Doe's Direct Testimony, the party must enter the document title, "Hearing Exhibit 1, John J. Doe's Direct Testimony" in the Commission's E-Filing System in order to exactly match the language used to mark the exhibit for identification. Likewise, when filing John J. Doe's modified direct testimony, the party must enter the document title, "Hearing Exhibit 1, John J. Doe's Direct Testimony, Rev. 1."

19. **PDF and Executable Exhibit Filing Requirements.** To minimize electronic file size and allow electronic text searches, parties filing hearing exhibits and attachments in PDF or similar format, must ensure that the filed PDF is generated from the native executable electronic file format when possible. For example, when possible, parties must file a PDF exhibit created by electronically converting a Word document, rather than a PDF exhibit created by printing a Word document and electronically scanning it. Parties offering hearing exhibits or attachments created from a spreadsheet or which rely on a foundation not viewable in the filed version must simultaneously file the hearing exhibit or attachment in its native executable electronic format. The parties must leave all cell formulae or links intact, and must not convert cell formulae to values in the executable version or exhibits.

20. If the Commission's E-Filings system does not accept the electronic format of a hearing exhibit, parties must file an electronic copy of the exhibit on a CD, DVD, or portable drive.

21. **Additional Filing Requirements for Corrected, Modified, and Amended Hearing Exhibits.** In addition to all the other filing requirements in this Decision, the parties must file and serve corrected, modified, or amended exhibits and attachments thereto in a redlined or similar format that highlights the changes as compared to the original.⁵ Parties filing more than one revision to an exhibit or attachment must: ensure that the redlined version shows changes as compared to the original version; and file a notice identifying changes in the latest revision as compared to the most recent version. If this Decision requires the corrected, modified, or amended exhibit or attachment to be filed in its executable format (*e.g.*, a spreadsheet with formulae), the parties are only required to file a redlined version to the extent

⁵ Filing a "clean" version is not necessary and is discouraged.

practicable. For example, it may not be practicable to redline an executable spreadsheet to show changes to formulas. In such circumstances, the parties must file a notice identifying the changes from the last filed version. Parties filing corrected, modified, or amended hearing exhibits or attachments before the deadline in ¶ 8 must file the complete document. Parties filing corrected, modified, or amended hearing exhibits or attachments after the deadline in ¶ 8 may only file the specific pages of the exhibit or attachment impacted by the changes (*i.e.*, replacement pages), and must simultaneously file a notice identifying the changes as compared to the original and the most recent version.

22. **Managing Multiple Versions of Exhibits.** During the evidentiary hearing, so long as the corrected, modified, and amended exhibits or attachments are permitted, only the most recent revision of a hearing exhibit or attachment will be used, except for revised exhibits and attachments filed after the deadline in ¶ 8. Because parties may only file replacement pages after the deadline in ¶ 8, the parties must mark a paper copy of the replacement pages for identification as a separate hearing exhibit. If the changes from the replacement pages are permitted, the previous most recent filed hearing exhibit or attachment and the replacement pages will be both considered for admission into evidence with the replacement pages superseding the same pages in the previous version. References in hearing exhibits and attachments (*e.g.*, written testimony) to obsolete versions of hearing exhibits and attachments will be construed as referring to the latest filed version of the hearing exhibit or attachment, unless otherwise ordered. Hearing exhibits and attachments whose page and line citations are affected by corrected, modified, or amended exhibits will be construed as citing to the new

location (and citation), provided that the prior citation is in reasonable proximity⁶ to the new citation.⁷ In such circumstances, the parties should not submit revised exhibits merely to correct page and line citations. This also applies to discovery requests or responses referring to an obsolete exhibit or attachment.

23. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

⁶ For example, answer testimony citing to page 10, line 5 of an obsolete version of direct testimony is within reasonable proximity to the new citation when it is still on page 10.

⁷ The parties may modify the formatting for revised hearing exhibits to minimize the impact to page number and line references and citations (*e.g.*, widen a margin to insert a word without changing the line reference or page number where the modification appears).