

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0148E

IN THE MATTER OF THE PETITION OF THE COLORADO SOLAR AND STORAGE ASSOCIATION FOR AN EXPEDITED DECLARATORY RULING THAT THE CO-LOCATION RESTRICTIONS SET OUT IN THE NON-UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT IN PROCEEDING NO. 16A-0139E APPLY TO THE CURRENT STATUTORY DEFINITION OF A COMMUNITY SOLAR GARDEN.

**INTERIM DECISION ACCPETING
PETITION FOR DECLARATORY
ORDER WITH QUALIFICATIONS**

Mailed Date: April 17, 2020

Adopted Date: April 15, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision we accept Colorado Solar and Storage Association's (COSSA) Petition for a Declaratory Ruling that the Co-location Restrictions Set Out in the Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 16A-0319E Apply to the Current Statutory Definition of a Community Solar Garden (Petition). We set an initial procedural schedule for a notice and intervention period, as well as initial responses to COSSA's Petition consistent with the discussion below. The Commission will decide this matter *en banc*. We further deny COSSA's request that this matter be decided on the briefs rather than conducting a hearing.

2. The Petition filed by COSSA on April 2, 2020, seeks a Commission interpretation to terminate a controversy and remove uncertainty regarding the proper interpretation of colocation restrictions for community solar gardens (CSGs) set forth in a Non-Unanimous

Comprehensive Settlement Agreement approved by the Commission in Decision No. C16-1075 on November 23, 2016 in Proceeding No. 16A-0139E (Multi-Case Settlement) in light of the current definition applicable to CSGs contained in Colorado law. COSSA asks the Commission to interpret its order approving the Multi-Case Settlement, which applied to Public Service Company of Colorado's (Public Service) 2017-2019 Renewable Energy Plan, under existing law that defines maximum CSG capacity size as 5 Megawatts (MW). COSSA requests the Commission find that, for CSGs subject to the 2017-2019 Renewable Energy Plan, current law allows such projects to co-locate up to 5 MW in total aggregate capacity

3. According to COSSA, it filed the Petition to resolve a controversy that requires the Commission's interpretation of the Multi-Case Settlement as affected by the CSG Modernization Act to ensure the appropriate application of the law, as well as the successful development of various CSG projects that received awards pursuant to Public Service's 2017-2019 Renewable Energy Plan, as the Multi-Case Settlement placed co-location restrictions on CSG Requests for Proposal (RFPs) bids. COSSA states that according to the settlement, bidders in each Plan year's RFP could not bid on co-located projects exceeding 2 MW in aggregate capacity within a half mile of one another. COSSA states that the Multi-Case Settlement tied those co-location limits to the statutory maximum capacity allowed at that time for CSGs pursuant to § 40-2-127(2)(b)(I)(A), C.R.S. (prior to the 2019 amendment). However, the statute has now changed to allow 5 MW total aggregate capacity. (*See*, § 40-2-127(2)(b)(I)(D), C.R.S.) COSSA argues that nonetheless, Public Service continues to hold to the 2 MW limit with respect to CSGs awarded in 2017 through 2019.

4. COSSA notes that Public Service granted certain COSSA members CSG awards in the 2017, 2018, and/or 2019 RFPs for location-specific projects; however, Public Service

subsequently issued “Notices of Feeder Maximum Capacity Reached” (No Capacity Notices) and asked those developers to relocate planned CSGs.

5. COSSA points to Proceeding No. 19A-0369E in which Public Service disclosed substantial capacity constraints at certain substations including Imboden, Quincy, and Vasquez. These capacity constraints occurred at several substations where CSG bids had been awarded projects pursuant to the Company’s 2017-2019 Renewable Energy Plan. As a result, COSSA claims CSG developers with projects in the queue at those substations have been issued No Capacity Notices and were directed by Public Service to relocate planned CSGs to new sites that do not have capacity constraints. According to COSSA, this has led to an increased need for developers to relocate projects at new suitable locations with sufficient interconnection capacity. COSSA suggests that a viable option would be to co-locate such projects with other projects under development.

6. COSSA maintains that Public Service has not allowed CSG developers to co-locate multiple awarded projects because the Company interprets the Commission order approving the Multi-Case Settlement in Proceeding No. 16A-0139E as prohibiting two projects from co-locating if they exceed 2 MW. As a result, COSSA requests that the Commission grant its Petition and hold that the Multi-Case Settlement does not preclude projects from co-locating up to 5 MW.

7. COSSA maintains time is of the essence for the Commission to resolve this ongoing dispute that is affecting the ability of projects with awarded 2017-19 Producer Agreements to complete construction within allowed timeframes, and that the dispute is narrow in scope.

8. COSSA seeks an expedited ruling on this Petition for two reasons: 1) prompt resolution is essential so that CSG developers can timely meet their contractual timelines under Producer Agreements; and 2) an expedited ruling is critical to enable CSG developers and subscribers to take advantage of the Investment Tax Credit prior to the January 1, 2021 tax credit “step down” deadline. As such, COSSA requests that the Commission shorten the notice and intervention period as follows: two weeks for interventions and responses to this Petition to be filed by interested parties; and, an additional two weeks for replies to responses. COSSA also requests that the Commission decide this matter on written briefing since it argues that there are no disputed facts and the issues are purely legal. COSSA urges that without a speedy resolution to this controversy, time will expire for opportunities to co-locate 2017 through 2019 CSG awards and any associated savings and other benefits will be lost.

B. Findings and Conclusions

9. Under Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-1206(a), the Commission is to provide notice of a petition or application within 15 days of the date it is filed. Unless a mailed notice is required by Commission decision or specific rule, the Commission is to provide notice of applications and petitions to all persons through the e-filings system.

10. Pursuant to Rule 1206(c)(III), the Commission is not required to provide notice of a petition for declaratory order until the Commission, in its discretion, opens a proceeding regarding such a petition.

11. Rule 1206(d) sets out that unless shortened by Commission decision or rule, the intervention period for notice mailed by the Commission shall expire 30 days after the mailing date (or in this case, after the date of filing notice in e-filings).

12. Pursuant to Rule 1403(a), the Commission may determine a petition without hearing and without further notice, on either its own motion or upon the motion of a party, if the petition is unopposed, if a hearing is not requested or required by law, and if the petition is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing. A person having knowledge of the stated facts shall, under oath, sign a sworn statement attesting to the facts stated in the application or petition and any attachments and/or exhibits.

13. COSSA requests shortening the notice and intervention periods to two weeks for interventions and responses to its Petition to be filed by interested parties, as well as an additional two weeks for replies to responses. COSSA also requests that the Commission decide this matter on written briefing since it argues that there are no disputed facts and the issues are purely legal.

14. We will accept COSSA's Petition for Declaratory Order. COSSA states adequate information and cause to show that a controversy or uncertainty exists as to a Commission decision and it is appropriate for the Commission to issue a declaratory order to terminate such a controversy or remove uncertainty affecting the petitioner with regard to a statutory provision or Commission decision as required under Rule 1304(i)(I)(II)(III). Further, the Commission will determine this matter rather than refer it to an Administrative Law Judge.

15. We decline to adopt the truncated procedural schedule proposed by COSSA to shorten the intervention and response period to this Petition to two weeks for interested parties. Rather, we find it appropriate to set a 30-day intervention and response period. Further, we decline to make a determination on COSSA's Petition solely on the pleadings. Rather, we will make that determination after responses to the Petition are reviewed.

16. We additionally understand COSSA's concern with a timely decision to its Petition and intend to move the matter forward with dispatch.

II. ORDER

A. It Is Ordered That:

1. The Petition for a Declaratory Ruling that the Co-location Restrictions Set Out in the Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 16A-0319E Apply to the Current Statutory Definition of a Community Solar Garden (Petition) filed by the Colorado Solar and Storage Association (COSSA) on April 2, 2020 is accepted.

2. The notice period and response time to the Petition shall coincide and shall run concurrently for 30 days from the effective date of this Decision.

3. The Request by COSSA that the Petition be determined is denied consistent with the discussion above.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 15, 2020.**

(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

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners