Decision No. C20-0289

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19A-0369E

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

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# COMMISSION DECISION ADDRESSING EXCEPTIONS TO RECOMMENDED DECISION NO. R20-0099 AND REQUIRING STAKEHOLDER ENGAGEMENT

Mailed Date: April 28, 2020
Adopted Date: April 8, 2020

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## I. BY THE COMMISSION

### A. Statement

1. Through this Decision, we address the exceptions filed to Recommended Decision No. R20-0099, issued in this Proceeding on February 14, 2020, by Administrative Law Judge Melody Mirbaba (Recommended Decision). The Recommended Decision approves, with modifications, Public Service Company of Colorado's (Public Service or the Company) 2020-2021 Renewable Energy Compliance Plan (2020-21 RE Plan or the Plan). Exceptions seeking to reverse, modify, or amend the Recommended Decision were filed by: Public Service; the Colorado Energy Office (CEO); jointly by Vote Solar and GRID Alternatives Colorado, Inc. (GRID Alternatives) (together referred to as Vote Solar/GRID); and jointly by Colorado Solar and Storage Association and the Solar Energy Industries Association (together referred to as

COSSA/SEIA). Responses to Exceptions were filed by Colorado Energy Consumers (CEC), COSSA/SIEA, Office of Consumer Counsel (OCC), and Public Service.

2. After considering the exceptions and the evidentiary record in this Proceeding, we address the exceptions, consistent with discussion below. Within our determinations, we grant the requests of CEO, COSSA/SEIA, in part, to increase the annual capacity levels for electrical output to be purchased from newly installed community solar gardens (CSG) pursuant to the 2020-21 RE Plan, but not to the full amounts proposed by intervenors. We increase the total annual maximum capacity for CSG programs to 75 MW and, on our own motion, increase the total annual minimum capacity to 35 MW. We also grant the request for certain procedural modifications and clarifications requested by Public Service and intervenors.

3. In addressing the exceptions, we also affirm the "bridge plan" concept proposed by Public Service for this 2020-21 RE Plan. We anticipate that the Company's next RE Plan for years 2022 through 2025 will be influenced by our significant ongoing rulemaking efforts and potentially by the Company's next electric resource plan, and we expect the Company's next RE Plan to be dramatically different from this "bridge plan." In these circumstances, we agree with many of the ALJ's determinations that this adjudication is not currently the best forum to make sweeping policy statements, particularly where rulemaking efforts are ongoing. We encourage parties to this Proceeding to continue to participate robustly in our ongoing rulemakings.

4. While we deny proposals to include solar + storage programs in this RE Plan because of the current constraints of existing law and our rules, we agree with intervenors that argue increased storage development is consistent with state policy. We therefore encourage parties to participate in our ongoing rulemakings that address relevant issues on this and other

pertinent matters, and we direct the Company to engage immediately with stakeholders to consider a pilot or other program to propose to the Commission. Public Service shall provide the results of stakeholder efforts, including an application for any resulting pilot proposal, within 90 days of a final decision in this Proceeding.

5. These and the remaining exceptions are addressed in full below, including direction and clarifications we find necessary or prudent given the considerations before us.

**B. Recommended Decision**

6. Public Service commenced this Proceeding by filing on June 28, 2019, its application for Commission approval of its 2020-21 RE Plan, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3657 of the Commission's Rules Regulating Electric Utilities. In its application, Public Service explains that its proposal is meant as a "bridge plan" that continues the Company's existing programs pending resolution of ongoing Commission rulemakings and other factors that could result in a dramatically different RE Plan for the years 2022 through 2025.

7. On February 14, 2020, ALJ Mirbaba issued the Recommended Decision, largely approving the 2020-21 RE Plan as proposed by the Company, including amendments filed during the Proceeding. In the opening paragraphs of the Recommended Decision, the ALJ describes that the approved Plan exceeds the requirements of the renewable energy standard (RES), codified at § 40-2-124(1), C.R.S., expands the Company's renewable energy offerings, and results in broader opportunities for customers to participate in renewable energy programs.

8. The ALJ explains that the Recommended Decision does not approve significant Plan changes requested by intervenors and instead opts for a measured approach that still exceeds statutory and regulatory requirements while safeguarding the Company's ability to

provide safe, efficient, and adequate service at just and reasonable rates. The ALJ explains that she found the numerous broad policy issues raised by parties more appropriately resolved through the several significant ongoing Commission rulemakings. Finally, the ALJ states the Recommended Decision attempts to remain true to the Commission's constitutional and statutory obligations and related legislative intent to sculpt a fair, equitable, and cost-effective RE Plan that benefits Colorado overall.

### C. Exceptions

9. Pursuant to § 40-6-109(2), C.R.S., and Rule 4 CCR 723-1-1505(a) of the Commission's Rules of Practice and Procedure, the following parties timely filed exceptions to the Recommended Decision: Public Service; CEO; jointly by Vote Solar/Grid; and jointly by COSSA/SEIA. Responses were timely filed by Public Service, COSSA/SEIA, the OCC, and the CEC. Below, we address these exceptions as well as issues the Commission adopts on its own motion considering the Recommended Decision and record on this matter.

#### 1. Bridge Plan Concept

10. The Recommended Decision accepts the Company's proposal that this 2020-21 RE Plan be a two-year "bridge plan" to the Company's next RES compliance plan and electric resource plan. As explained by Public Service, the Company's next RES compliance plan will be influenced by new Commission rules to be issued in multiple ongoing rulemaking proceedings and, potentially, by the Company's next electric resource plan, which will include a proposed Clean Energy Plan (CEP) for the Company to achieve 80 percent carbon dioxide emissions reduction by 2030, as required by recent Senate Bill (SB) 19-236, codified at § 40-2-125.5, C.R.S. Public Service proposes this 2020-21 RE Plan facilitates the shift from

significant changes already required by its last plan to the anticipated dramatically different next compliance plan for 2022 through 2025.

11. The Recommended Decision finds the scope of this Proceeding is properly focused on enforcing the RES and related regulations currently in effect. In their testimony and at hearing, intervenors objected to the "bridge plan" concept on grounds that it delays expanding the use of renewable energy resources and meeting the state goals set forth in other statutes including reduction of carbon dioxide emission and greenhouse gas pollution. The Recommended Decision agrees with intervenors that the legal landscape surrounding renewable energy is changing but finds these concerns with meeting the goals of other statutes exceed the scope of this Proceeding. The ALJ concludes that focusing on the law as it exists today will avoid unintended consequences including imprudent spending that may result from the narrow perspective that this Proceeding offers. The ALJ also raises that this Proceeding is not the Company's only opportunity to invest in renewable resources and the Company's upcoming CEP and electric resource plans offer a more appropriate forum to look at many of the issues raised here including new programs.

**a. CEO and COSSA/SEIA: *Acknowledge Broader Purposes of Proceeding***

12. In exceptions, CEO and COSSA/SEIA request that the Commission acknowledge that RES compliance plan proceedings have broader policy purposes than the "bridge plan" approved in the Recommended Decision.

13. CEO argues the Commission should consider more than statutory compliance. CEO argues that the Recommended Decision fails to consider relevant policy directives and public interest considerations including reducing greenhouse gas emissions and increasing access to renewable energy generation for residential ratepayers. CEO suggests a RES compliance plan

proceeding presents opportunity to approve renewable energy resource acquisitions that meet the statutory RES requirements in § 40-2-124(1)(c), C.R.S., the CSG requirements in § 40-2-127, C.R.S, and further the state's energy and environmental goals within the bounds of the 2 percent retail rate impact limit in § 40-2-124(1)(g), C.R.S.

14. COSSA/SEIA similarly object that the Recommended Decision takes an overly-narrow interpretation of the Commission's authority in this Proceeding when affirming the "bridge plan" proposed by the Company. COSSA/SEIA urge that the Commission's broad constitutional and legislative authority to regulate utilities in this state and the new legislative mandates in SB 19-236, codified at § 40-2-125.5, C.R.S., and § 40-3.2-106, C.R.S., provide the Commission authority to encourage Public Service to expand RES compliance plan programming to help position Colorado to transition to a carbon-free economy in the short time remaining to avoid severe climate impacts. They also argue that the Commission has previously taken the legislative intent of the RES into account in approving RES compliance plans. Finally, COSSA/SEIA urge the Commission to incorporate guidance from the policy goals of Governor Jared Polis set forth in the "Polis Administration's Roadmap to 100% Renewable Energy by 2040 and Bold Climate Action." COSSA/SEIA challenge that endorsing the Company's "status quo" approach to distributed generation is "far from" the "'bold climate action'" urged by Governor Polis because it fails to drive innovation and does not move Colorado substantially closer to achieving the carbon emission reduction goals announced in House Bill (HB) 19-1261 and SB 19-236.[1]

15. Considering these exceptions, we decline to rule on the limited record of this adjudication to make broad policy statements or decisions regarding the scope and purpose of

[1] COSSA/SEIA Exceptions p. 2.

RES compliance plan proceedings. The Commission is already in the process of evaluating significant rule changes, including in Proceeding Nos. 19R-0096E (Electric Resource Planning, Qualifying Facilities, RES, and Net Metering Rules, in addition to workforce transition planning and cost of carbon considerations); 19R-0608E (CSG Rules); 19R-0654E (Interconnection Rules); and 19M-0670E (pre-rulemaking concerning integrated distribution system planning). We appreciate the concerns of intervenors that the Company's "bridge plan" will delay significant action toward implementing the state's policies of renewable energy development; however, we share the ALJ's concern that the Commission is already undertaking significant rulemaking efforts to update its rules. We agree with Public Service that the Company's next RES compliance plan will be influenced by these significant ongoing rulemaking efforts and potentially by the Company's next electric resource plan and CEP proposal. We find it reasonable for this Plan to be a "bridge" to the Company's next RES compliance plan and electric resource plan processes that will operate under new Commission rules. We agree with the ALJ in declining to address broad policy guidance or directives in this Proceeding and reserve those considerations and discussion for the more appropriate rulemaking processes underway.

16. While we agree with the ALJ that the "legal landscape surrounding renewable energy is changing," the Recommended Decision also offers that the Company's CEP and electric resource plans offer a more appropriate forum to examine comprehensively certain issues raised here.[2] We find it appropriate to clarify that deferral of all issues to the upcoming CEP is not appropriate. We recognize the recent statutory changes, including through SB 19-236, are significant, including those that place emphasis on the upcoming CEP and electric resource plans and their effect on efforts to reduce carbon emissions. However, we note that historically the

[2] Recommended Decision, at ¶ 32.

electric resource planning process has not included the same focus as a RES compliance plan on distributed generation including retail distributed generation programs for on-site solar and CSGs. We agree that a bridge plan is appropriate in this case, but decline to defer addressing matters before us for the reason that they would be addressed in a CEP or electric resource plan proceeding.

17. Finally, although we share the intervenors' concerns that Public Service could be more aggressive in meeting state energy and environmental goals, as the Company pointed out, the approved Plan does not simply maintain the "status quo," as COSSA/SEIA argue. The approved Plan in the Recommended Decision continues and increases Public Service's renewable energy offerings and programs. Through this Decision, we encourage and expand that trajectory, including by increasing the approved capacity levels for CSG programs.

18. With these considerations, and noting that this RE Plan will be in place for fewer than two years, we deny the requests of CEO and COSSA/SEIA to address in this Proceeding broader policy determinations. We remind and urge parties that our rulemakings are the most appropriate proceedings to address these and other policy objectives. We encourage parties to this Proceeding to continue to fully engage with the Commission as we address these and other policy issues.

### 2. Community Solar Gardens Programs

19. The Company's Solar*Rewards Community program is a combination of several CSG offerings: Solar*Rewards Community Request for Proposal (General RFP), Low-Income Solar*Rewards Community RFP (Low-Income RFP), Solar*Rewards Community Standard Offer (Standard Offer), and Low-Income Solar*Rewards Community Company-Offered (Company-Offered Low-Income CSG).

20. The Recommended Decision approves: 15 MW minimum and 40 MW maximum for the combined General RFP and Low-Income RFP; 10 MW maximum annual capacity for the Standard Offer; and 4 MW maximum annual capacity for the Company-Offered Low-Income CSG; totaling an annual maximum capacity of 54 MW and a total capacity of 108 MW over the course of the 2020-21 RE Plan.[3] This Recommended Decision approves a total annual minimum capacity for CSG programs of 15 MW and total annual maximum capacity of 54 MW.

21. The Recommended Decision approves the Company's proposed competitive market-based RFP process, bid evaluation criteria, and bid scoring criteria for filling its Solar*Rewards Community capacity. The Recommended Decision finds the Company proposes a balanced and flexible approach that weighs economic factors and other worthy factors such as subscriber diversity, developer experience, financial soundness, energy efficiency, system needs (including location), and other commitments.[4]

22. Finally, the Recommended Decision approves the Company's proposal for 8 MW of Company-Offered Low-Income CSG program. The Company intends for these CSGs to target direct-billed low-income residential subscribers with a goal of 25 percent bill savings. The Company proposes to receive an upfront renewable energy credit (REC) incentive of up to $0.05 per kWh to support this project. The Recommended Decision approves the proposed upfront REC incentive with the condition the Company review the final incentive amount with Commission Staff prior to signing agreements.[5]

[3] Recommended Decision ¶ 60.
[4] *Id.*, at ¶ 73.
[5] Recommended Decision ¶ 89.

### a. CEO and COSSA/SEIA: *Increase Capacity for CSG Programs*

23. In its exceptions, CEO urges the Commission to increase the approved range of CSG annual capacity to a minimum of 50 MW and a maximum of 150 MW. To support these increases, CEO states in its testimony that: all CSGs are fully subscribed; Public Service has a waiting list for its Company-owned Renewable*Connect (a product offering similar to CSGs); the average annual capacity of CSGs bid into the Company's regular CSG RFPs is roughly 150 MW; and the average annual amount bid into the low-income RFP is 15 MW.[6] CEO challenges the ALJ's finding that Public Service cannot safely and reliably interconnect these amounts of CSG. CEO argues the Company's witnesses admitted at hearing that the Company did not complete an analysis to determine how many CSGs they can interconnect over the course of the RE Plan because the Company has more than 100 MW of interconnection capacity available on its system.[7] CEO also argues the Company testified that analysis of interconnection availability is location dependent, and the current interconnection capacity problems are due to a large number of CSGs being sited around a few substations.[8] CEO notes that recent HB 19-1003, codified at § 40-2-127(2)(b)(II), C.R.S., alleviated some of the location constraints because it eliminated the requirement that a CSG subscriber be located in the same or adjacent county as the CSG system.

24. COSSA/SEIA also advocate for greater CSG capacity to be included in the RE Plan to meet customer demand. COSSA/SEIA argue that CSGs are not currently serving their intended purpose. COSSA/SEIA cite the legislative declarations in §§ 40-2-127(1)(b)(I) and (II), C.R.S., which state CSGs are a means to "[p]rovide Colorado residents and commercial entities

[6] CEO Exceptions pp. 10-11 (citing Hr. Ex. 700 (Hay Answer, Rev. 1) 31:19-33:26).
[7] CEO Exceptions p. 11 (citing Hr. Tran. Dec. 10, 2019, 81:17-82:24; Hr. Tran. Dec. 11, 2019, 140:19-142:15).
[8] CEO Exceptions p. 11 (citing Hr. Tran. Dec. 11, 2019, 142:8-15).

with the opportunity to participate in solar generation in addition to the opportunities available for rooftop solar generation on homes and businesses" and to "[a]llow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities." They argue that with CSGs fully subscribed, there is no availability to provide these customers the intended alternative to rooftop solar.

25. COSSA/SEIA argue that in testimony they provided several indicators of unmet demand. These include an extremely low level of unsubscribed CSG capacity, capacity levels bid into prior RFPs far in excess of the maximum RFP size cap (150 MW on average in the standard RFP), and a long waiting list for the Company's similar Renewable*Connect program.[9] They argue that, even if the Commission finds the evidence does not support the intervenors' proposed 150 MW capacity level, it should at least find demand is higher than the Company's proposal. Finally, COSSA/SEIA argue the interconnection rules and procedures are designed such that the Company is not permitted to interconnect generation if it fails the technical screens regarding safety and reliability, unless the interconnecting party pays for upgrades to resolve such issues.[10] COSSA/SEIA object that technical issues in some cases are the fault of the Company for failing to identify and mitigate impacts during the interconnection review process. They urge that concerns about interconnection availability should not stifle CSG development, and at the same time note that the Commission and stakeholders are already working on solving some of the interconnection challenges in ongoing rulemaking Proceeding No. 19R-0654E.

26. In its response, Public Service points out that the 54 MW of capacity approved by the Recommended Decision will more than double CSG capacity already interconnected

[9] COSSA/SEIA Exceptions p. 20 (citing Hr. Ex. 201 at 14; Hr. Ex. 700 at 32-33; and Attachment JC-5).
[10] COSSA/SEIA Exceptions p. 21 (citing Rules 4 CCR 723-3-3667(d)(I) and 3667(d)(V)(G)).

and will push the Company's retail distributed generation acquisitions beyond RES requirements for 2020 to 2021. Public Service argues that COSSA/SEIA selectively quote subsections § 40-2-127(5)(a)(IV)(A) and (B), C.R.S. Public Service argues the language, "[t]o the extent," in the statute is a critical limiting phrase that means the Commission should only encourage CSGs up to the point of demand. Public Service cautions that utility-scale resources can achieve Colorado's goals more cost-effectively than CSGs. In addition, Public Service objects to the suggestion that the Commission should set capacity levels at the highest level for which demand is demonstrated.

27. The Company argues that, as the Recommended Decision finds, the plain language of § 40-2-127(5)(a)(IV)(A) and (B), C.R.S., does not require the Commission to ensure that CSG capacity meets demand; rather, it "encourage[s] ownership in CSGs if [the Commission] finds there is demand for it."[11] Finally, Public Service objects to the contention that the unsubscribed rate should be a proxy for strong customer demand and, even if there were additional demand, the 2020-21 RE Plan balances the cost of serving that demand with other more cost-effective approaches and serious technical constraints.

28. In its response to exceptions, the OCC likewise responds that CEO and COSSA/SEIA's proposals are largely based on untested assumptions that certain data indicates a higher capacity demand. The OCC urges that the Recommended Decision correctly finds that CEO and COSSA/SEIA failed to demonstrate that expanding CSG capacity would "result in lower overall total costs" for the utility's customers, as required under § 40-2-127(5)(a)(IV)(C),

[11] Public Service's Response to Exceptions at p. 17.

C.R.S., [12] and that expansion would not undermine the Company's obligation to provide safe and reliable service at just and reasonable charges, required in § 40-3-101, C.R.S.

29. As an initial matter, we affirm the Recommended Decision's legal conclusion that § 40-2-127(5)(a)(IV)(A) and (B), C.R.S., does not require the Commission to ensure CSG capacity meets demand, but rather encourages CSG ownership if the Commission finds there is a demand for it.[13] However, we take seriously our statutory directive to "encourage" CSG ownership if we find demand to increase program capacity levels. We further agree with intervenors that this Proceeding is the appropriate opportunity to expand capacity for CSG.

30. We find the record in this Proceeding supports increasing the annual CSG purchase levels beyond those approved in the Recommended Decision, but not to the full extent proposed by CEO and COSSA/SEIA. We agree with the intervenors that CSG capacity has increased substantially in each RES compliance plan approved by the Commission and this trajectory should continue even in this "bridge" RE Plan. Although we agree with the Recommended Decision that the evidence does not establish demand for CSG ownership at the high level proposed by CEO and COSSA/SEIA,[14] we find that purchase levels should be higher than the Company's proposal. We increase the maximum annual purchase level to 75 MW and, on our own motion, increase the minimum annual purchase level to 35 MW. We find this range gives Public Service flexibility to respond to the possibility of increases in demand cost effectively, without endangering the Company's ability to provide safe, reliable, and adequate service.

[12] OCC's Response at p. 9.
[13] Recommended Decision ¶ 56.
[14] Recommended Decision ¶ 57.

31. We find troubling that CSG install and operational capacity lags relative to Commission-approved maximum capacity levels, and as compared to distributed generation. Based on the information in the Company's RE Plan, since 2012, the start of CSG programs, through 2018, installed CSG capacity has been only a fraction of the approved capacity.[15] As of December 31, 2018, operational capacity for CSGs was at 53.8 MW, with awarded capacity at 181 MW,[16] much less than the nearly 400 MW of on-site solar installations connected to Public Service's system.[17] If CSG is to serve its intended purpose as an alternative to rooftop solar, more needs to be done to make CSG available to interested customers.

32. CEO and COSSA/SEIA provided several data points to indicate the CSG market may be artificially constrained by the maximum CSG purchase levels approved through RES compliance plans. CEO argues in its exceptions that CEO Witness Hay testified that all CSGs are fully subscribed, with an average annual amounts bid of 150 MW into the Company's regular CSG RFP and a 15 MW bid into the low-income RFP.[18] COSSA/SEIA also argue that the capacity levels bid into RFPs in excess of the maximum size cap provide evidence of unmet demand. Both parties also point to the long waiting list for the Company's Renewable*Connect programs as evidence of unmet demand.[19]

33. We are mindful of the ALJ's concerns with interconnection safety and reliability issues. The ALJ found the evidence shows that, under current conditions, the Company cannot add CEO and COSSA/SEIA's proposed increased capacity levels without threatening its ability

[15] *See* Attachment JWI-1, Tables 5 and 7.

[16] Attachment JWI-1 p. 38.

[17] *Id*. p. 26.

[18] CEO Exceptions p. 10 (citing Hr. Ex. 700 (Hay Answer, Rev. 1) 31:19-33:26).

[19] For example, CEO points out the Renewable*Connect waitlist includes 2,686 residential customers and 725 commercial customers for a combined demand of 168.5 MW. This amount is nearly the same as the proposed capacities of the Solar*Rewards and Solar*Rewards Community programs combined in this RE Plan.

to provide safe, adequate, efficient, just, and reasonable service to its customers.[20] However, CEO and COSSA/SEIA point out that, while Public Service's written testimony discusses over-voltage issues that have recently been identified at sites where multiple CSGs have been interconnected, the Company admitted at hearing that it did not evaluate the available interconnection capacity for the amount of CSGs it is proposing in this Plan because it has more than 100 MW of interconnection capacity available on its system.[21] We find merit to the argument from COSSA/SEIA that the Commission's interconnection rules provide some protection, as the Company is not permitted to interconnect generation that fails the technical screens designed to protect safety and reliability without the interconnecting party paying for upgrades to resolve such issues. We also agree with COSSA/SEIA's point that the Commission is actively working through rulemaking to resolve interconnection issues. We encourage parties to participate in that rulemaking including to help identify what issues are causing constraints and delays and what solutions the Commission can affect through rule changes going forward.

34. In setting the minimum and maximum purchase levels, we agree with the Recommended Decision that CSG programs should be cost effective, including that CSG programs result in "lower overall total costs" for customers[22] and, consistent with the Commission declaration in Rule 4 CCR 723-3-3656(a), the RES be met in the "most cost effective manner." Although established methods for determining incremental costs suggests such CSG additions would not put pressure on the Renewable Energy Standard Adjustment (RESA) deferred account, the expected overall costs of the additions to be recovered through the Electric Commodity Adjustment for CSGs are substantial. Company witness Trowbridge

[20] Recommended Decision ¶ 58.
[21] CEO Statement of Position (SOP) p. 11.
[22] § 40-2-127(5)(a)(IV)(C), C.R.S.

estimates the impact to ratepayers of the 150 MW capacity level proposed by intervenors would be $311.1 million each year.[23] He notes the average life of a CSG and the associated subscription is 20 years, thus the total cost impacts would continue over this period. Intervenors dispute these cost considerations, but we find these estimates persuasive enough to caution against over-committing to CSG capacity in this RE Plan. We therefore decline to approve the full 150 MW advocated by intervenors.

35. Finally, we address two additional points regarding the Company's CSG programs. First, although we affirm the Recommended Decision's approval of the Company's proposed bid evaluation criteria for purposes of this RE Plan, we urge intervenors who advocated for changes to the evaluation criteria to participate in our ongoing rulemakings. Those proceedings provide a better forum to consider larger policy changes like revising this criteria to better serve the intended purposes of CSGs. And second, we respond to and clarify a point raised by Public Service's witness Klemm. Ms. Klemm testified that the Company reserves the right to change the CSG bid evaluation criteria if the Commission issues new rules that impact the Solar*Rewards Community program, or in the event of other unforeseen conditions.[24] The Company commits to making an informational filing that contains the modified criteria at least 15 days prior to releasing the RFP.[25] We are concerned that the Company could make unilateral changes to something as significant as its evaluation criteria without Commission approval. This RE Plan is approved based on the rules now in effect. We appreciate the Company's commitment to make an informational filing regarding modified criteria but clarify that the Company should make a more substantive filing and that the filing should be made sooner than 15 days prior to its

[23] Hr. Ex. 9 (Trowbridge Rebuttal, Rev. 1) p. 32, Table AGT-R-6.

[24] Hr. Ex. 2 (Klemm Direct) at 47:20-22; *see also* Recommended Decision ¶ 62 (noting Company seeks to reserve the right to change the criteria based on rule change or other unforeseen condition).

[25] Hr. Ex. 2 (Klemm Direct) at 47:22-48:2.

RFP, allowing sufficient time for Commission review. The Company shall either file a request to amend its RE Plan based on the rule change or explain why such amendment is not appropriate.

### 3. On-Site Solar Programs

36. Public Service proposes 56.35 MW of annual on-site Solar*Rewards capacity per plan year, with a total plan capacity of 112.7 MW.

#### *a. On-Site Small Offering for Systems Less Than 25kW:*

37. The Recommended Decision approves the Company's proposal to provide up to 12 MW annual capacity for its On-Site Small program, for a total of 24 MW over two years. The Recommended Decision approves the Company's proposal to discontinue "Option B" from this offering, which was available to customers who installed new solar under the Peak-Demand Pricing portion of the Company's rate pilot program, because Public Service represents that there was no customer interest during the 2017-19 RE Plan.

38. The Recommended Decision rejects Public Service's proposal to require production meters for On-Site Small customers and directs the Company to follow the requirement in Rule 4 CCR 723-3-3658(f)(X)(F) to use PV Watts for the Company's data needs for On-Site Small customers.

#### *(1) On-Site Medium Offering for Systems Between 25 kW and 500 kW:*

39. The Recommended Decision approves the Company's proposal to provide up to 24 MW of annual capacity for its On-Site Medium program. The Company proposes maintaining the current incentive for the program, $0.0375 per kWh paid to customers over 20 years.

**b. *On-Site Large Offering for Systems Greater Than 500 kW:***

40. The Recommended Decision approves the Company's proposal to provide up to 20 MW annual capacity for its On-Site Large program, which is a 43 percent increase from the current program capacity level. The Recommended Decision finds the Company's proposed capacity level allows for measured growth in the solar market and expanded customer access while also being consistent with the "bridge plan" concept for this RE Plan.

**c. Public Service: Require Production Meters for Systems Below 10 kW**

41. In its exceptions, Public Service recommends the Commission direct the Company to maintain the "status quo" on the treatment of production meters and update its billing and operational practices as necessary only after issuance of final rules in ongoing rulemaking Proceeding No. 19R-0096E. Public Service agrees with the Recommended Decision that the treatment of production meters is an open issue in the rulemaking but states it is concerned there may be confusion regarding the current treatment of production meters. Public Service expresses concern that there could be unintended consequences if the Commission requires it to update its tariffs now. Public Service argues that its existing Schedule PV expressly requires the Company to require production meters for Solar*Rewards customers and to recover associated costs from those customers. The Company argues that maintaining the status quo until new rules are adopted avoids potential conflict with the new rules.

42. In addition, the Company argues that, for purposes of distribution planning, solar production data improves the accuracy of hosting capacity process. Public Service states this information from production meters helps it identify how much solar generation is on a given feeder, as well as specific locations along the feeder. Public Service argues that if this data is not available it will reduce the precision of its solar hosting capacity analysis.

43. COSSA/SEIA respond that the Recommended Decision correctly concludes the Commission's existing rules require the use of PV Watts rather than a production meter to calculate the annual expected production for all incentivized on-site solar systems that are 10 kW or under. COSSA/SEIA note that Rule 4 CCR 723-3-3664 concerning the production of net metered customers is even clearer. COSSA/SEIA state this rule confirms that Public Service cannot require customers with solar systems under 10 kW who receive utility incentives, or net metered customers of any size who do not receive utility incentives, to pay for production meters.

44. COSSA/SEIA also notes that Public Service did not request a waiver in this Proceeding, although its current rule waiver has expired. COSSA/SEIA argue that, although the Company received a waiver of Rule 4 CCR 723-3-3664(f) in Proceeding No. 16AL-0048E, that waiver was limited to the Company's 2017-19 RE Plan. They note that the waiver was granted as part of a settlement, which is non-precedential, and argue that if Public Service seeks permission to require production meters for customers with systems of 10 kW or under it must show good cause in this Proceeding to waive Rules 4 CCR 723-3-3658(f)(X)(F) and 3664(e).

45. Finally, COSSA/SEIA challenge Public Service's claim that the Recommended Decision conflicts with the Company's tariffs on file. COSSA/SEIA point out that Commission rules are not required to be in compliance with utility tariffs; utility tariffs are required to be in compliance with Commission rules. They add that Public Service omits to mention that it put the tariff in place to effectuate the temporary waiver that is now expired. COSSA/SEIA argue that Public Service typically makes a number of tariff compliance filings following each RE Plan decision and can do so here to correct its tariff.

46. We deny Public Service's exceptions on this point. We agree that the Commission's existing rules require the use of PV Watts rather than a production meter to calculate the annual expected production for all incentivized on-site solar systems that are 10 kW or less. Rule 3658(f)(X)(F) instructs utilities to estimate the output of these smaller systems to determine the amount of a customer's REC payment. And Rule 3664(e) specifies that production meters may only be installed for systems that are 10 kW or less when the customer consents or requests that one be installed.

47. Although the Commission previously waived these rules for purposes of the Company's 2017-19 RES compliance plan in Proceeding No. 16AL-0048E, the Recommended Decision reasonably finds the Company has not shown good cause to waive these requirements in this Proceeding.[26] And we agree with intervenors, the Company did not request a waiver in this Proceeding for Rule 3658(f)(X)(F) and Rule 3664(e), nor did it show good cause for waiving the rule if a request were made. We uphold the ALJ's finding that the evidence in this Proceeding does not justify the cost of the production meters and directing the Company to follow existing rules.

48. We also uphold the ALJ's conclusion that the rulemaking proceeding is a better forum to address the Company's concerns with the existing rules.

**d. COSSA/SEIA: *Increase Solar*Rewards Medium Program Incentive Level***

49. The Recommended Decision approves Public Service's proposal to maintain the current incentive for its Solar*Rewards Medium Program of $0.0375 per kWh paid to customers

[26] Recommended Decision ¶ 97.

over 20 years. The ALJ rejected COSSA's proposed increases as not fully developed and potentially resulting in a dramatic increase in costs.[27]

50. COSSA/SEIA claim this incentive level should be increased, arguing the Recommended Decision fails to recognize that COSSA/SEIA's cost estimates for increasing incentive levels are nearly identical to Public Service's, just presented over different time horizons. COSSA/SEIA further claim the Recommended Decision ignores that the uptake of onsite solar for Medium customers has lagged behind customers in the Small program or NEM-only projects. COSSA/SEIA claim a higher Medium program incentive will ensure that more customers have access to onsite solar and will spur more privately financed development of solar technologies. COSSA/SEIA argue such an approach is consistent with the Commission's past practice of ensuring an approved RE Plan will help sustain a viable and robust market.

51. Public Service responds that this request is unsupported. Public Service argues, first, COSSA/SEIA expressly acknowledge their proposal would cost about $1 million more per year. And second, COSSA/SEIA's claims are based on unsubstantiated claims that, absent increased incentives and tariff changes, the Medium program "is likely to continue to see decreased participation."[28] Public Service responds that creating an incentive that is available to all customers for medium systems but is based only on the least-financially advantageous rate scenario, as COSSA/SEIA advocate, would likely lead to a fully-subscribed Medium offering selling out in seconds each quarter as was observed the last time Medium incentives exceeded $0.05 per kWh.

[27] Recommended Decision ¶ 108.

[28] Public Service Response to Exceptions at p. 21.

52. We find that Public Service provided sufficient evidence regarding the activity in the Medium program at the current incentive level. Although the Medium program has not had the same participation rates as other programs, we find COSSA/SEIA did not provide sufficient evidence in support of increasing the incentive to $0.055 per kWh. We agree that a high incentive can create complications like duplicate or speculative applications reserving capacity and preventing other well vetted and viable projects from moving forward. We believe there are other steps both the Company, advocates, and solar developers can take to increase participation in the Medium program in lieu of simply raising the incentive level. We agree with the ALJ's reasoning in rejecting parties' arguments that are raised again in exceptions on this matter. Nevertheless, we encourage the stakeholders to continue to work together to increase participation in these programs.

### e. CEO: *Increase Solar*Rewards Large Program Offering*

53. The Recommended Decision approves Public Service's proposal to increase to 20 MW annually its Large program offering. The ALJ rejects COSSA/SEIA's proposal to increase capacity to 28 MW annually as not fully developed and inconsistent with the bridge plan concept for this RE Plan. The ALJ finds the Company's proposed 20 MW capacity level will allow for measured growth in the solar market and expanded customer access while also being consistent with a bridge plan concept.[29]

54. In its exceptions, CEO reiterates its support for requiring Public Service to issue an RFP for up to 28 MW of capacity for the Large program. CEO states this would increase the megawatt capacity released in an RFP, but not require the Company to award the full 28 MW each year. CEO claims that several parties, including Public Service and COSSA/SEIA,

[29] Recommended Decision ¶ 116.

acknowledge the RFP component of this program has a lower cost impact to the RESA as compared to other customer choice programs. In its exceptions, CEO calculates this increase in capacity would result in a $16.9 million increase in net present value over 20 years.

55. Public Service responds that its proposed 20 MW of capacity for the Large program already represents a 43 percent increase from current levels. Public Service requests that the Commission deny CEO's recommendation as unsupported. Public Service objects to CEO's calculation of a $16.9 million increase in net present value over 20 years is presented for the first time in exceptions and not in the record.

56. While several parties, including Public Service, acknowledge the RFP component to this program causes less cost impacts to the RESA than other customer choice programs, as Public Service points out, CEO now seeks to support its position with a $16.9 million revenue requirement not contained in the evidentiary record. We note the Company's proposed 20 MW of capacity for the Large program represents a 43 percent increase from current levels. As Public Service points out in its response to exceptions, while it has previously received low-cost bids for its Large program, the customer base is limited in size, which may lead to higher priced projects than in the past.[30] We deny the exceptions and uphold the ALJ's determinations and reasoning.

**f. COSSA/SEIA: *Modify Solar*Rewards Community Producer Agreements***

57. In their exceptions, COSSA/SEIA request that the Commission modify the Company's proposed Revised Solar*Rewards Producer Agreement to remove the assumption that RECs must always be conveyed to the Company. COSSA/SEIA argue that recent HB 19-1003, which amends § 40-2-127, C.R.S., directs the Commission to consider and determine whether the utility shall purchase all of the electricity and RECs generated by a CSG

[30] Public Service Response to Exceptions at p. 24.

or whether a subscriber may choose to retain or sell to the utility the subscriber's RECs. They urge the Commission to require the Company to strike this change from its RE Plan model contracts until the Commission has ruled on this issue.

58. Public Service responds that, although the Commission is considering this issue in ongoing rulemaking Proceeding No. 19R-0608E, in the most recently *adjudicated* proceeding to address this matter, the Commission determined that the Company is allowed to purchase the energy and RECs as a bundle. Public Service adds that the Company has committed in this Proceeding to modify its form contracts to comport with Commission decisions after they are made. [31]

59. We find that Public Service is correct that our prior Decision No. C18-0149 confirms the Company may proceed with treating CSG RECs and energy as a bundled product. In that decision, the Commission found that § 40-2-127(5)(a)(IV), C.R.S., allows Public Service to purchase the energy generated by a CSG and the associated RECs as a bundle.[32]

60. We note, however, that revisions to the Commission's CSG rules are currently being considered in ongoing rulemaking Proceeding No. 19R-0608E, including revisions to implement HB 19-1003. We direct Public Service to make appropriate filings to implement any rule change adopted in that rulemaking concerning this issue. [33]

#### 4. Solar + Storage Programs

61. The Recommended Decision rejects proposals from COSSA/SEIA to include solar + storage programs in this RE Plan. COSSA/SEIA proposed developing solar + storage

[31] Public Service SOP, p. 28

[32] Proceeding No. 17D-0082E, Decision No. C18-0149 ¶ 53 (Mar. 1, 2018).

[33] Hr. Ex. 7 (Ihle Rebuttal), at 48:6-16.

programs using RESA funding, arguing these programs are necessary to achieve legislative goals such as carbon dioxide emission reduction. Intervenors CEO, Western Resource Advocates, the City and County of Denver, and the City of Boulder supported this proposal. The Company and intervenors CEC, the Colorado Public Utilities Trial Staff (Staff), and the OCC objected that solar + storage is not an eligible energy resource under the plain language of § 40-2-124(1)(a), C.R.S., and as such, the RESA cannot be used to fund such programs (at least in this Proceeding). The OCC added that the use of RESA funds for energy storage can only be decided as part of a clean energy plan, per § 40-2-125.5, C.R.S. The Company also argued that storage proposals are premature as it is continuing to evaluate the role of storage on its system and hone its related interconnection procedures.

62. The Recommended Decision finds that under the plain language of § 40-2-124(1)(a), C.R.S., energy storage systems are not included in the definition of an eligible energy resource. The ALJ concludes, as such, energy storage systems are not an eligible energy resource that may be used to meet the RES in § 40-2-124(1)(c), C.R.S. The ALJ reasons that, since energy storage systems are not eligible energy resources that may be used to comply with the standard, allowing storage systems under the compliance plan renders language in § 40-2-124(1)(g), C.R.S., meaningless, and may subvert the statute's intent to ensure that the retail rate impact for compliance with the RES not exceed 2 percent of retail electric customers' annual bill.

63. The ALJ notes, however, that the RESA is a Commission-created cost recovery mechanism intended to provide funding for implementing the RES. She notes the Commission could modify its RESA rules to accommodate funding certain energy storage projects in the

future.[34] The ALJ also notes that, once the Company files its CEP in its next electric resource plan, the Company may propose to use up to half of the funds collected under § 40-2-124(1)(g), C.R.S., for the incremental costs of clean energy resources and their directly related interconnection facilities, which includes energy storage systems.

**a. CEO and COSSA/SEIA: *Allow Proposed Solar + Storage Programs***

64. In its exceptions, CEO requests that the Commission find this Proceeding is the appropriate venue for approving RESA incentives for customer-sited storage. CEO acknowledges that the ALJ is correct that storage is not an "eligible energy resource," as defined in § 40-2-124(1)(a), C.R.S., and emphasizes her finding that it "does not mean RESA dollars may never be used to pay for energy storage, or solar + storage."[35]

65. CEO claims that Public Service opposes using RESA funds for solar + storage and therefore is unlikely to support a proposal for solar + storage incentives funded by the RESA. CEO argues that in the upcoming CEP and electric resource plan proceeding, that Public Service is likely to focus on utility-scale resources rather than customer-sited solar + storage, and adds that, while SB 19-236 permits utilities filing CEPs to use RESA funds for storage projects, it does not require Public Service to propose customer-sited resources or offer RESA incentives for these customer-sited resources.

66. Similarly, COSSA/SEIA request that the Commission allow RESA funds for solar + storage. COSSA/SEIA argue that as long as the Commission finds there is a benefit or public interest justification, it can condition incentives on paired energy storage. They note their proposals do not contemplate using the RESA to incent standalone storage but rather to

[34] Recommended Decision ¶ 155, FN 37.
[35] CEO Exceptions p. 24 (citing Recommended Decision ¶¶ 154, 156).

compensate onsite solar at a higher level when paired with storage. COSSA/SEIA argue that § 40-2-109.5, C.R.S., tasks the Commission with developing policies "to establish incentives for consumers who produce distributed generation, including, but not limited to, small wind turbines, thermal biomass, electric biomass, and solar thermal energy." And they argue § 40-2-109, C.R.S., includes "solar thermal energy" as a distributed generation technology that can be incentivized because solar thermal is a storage technology that stores solar energy in the form of hot water and does not produce electricity.[36]

67. COSSA/SEIA point out that the Colorado Legislature has recently enacted laws to stimulate expedited storage deployment. First, recent SB 18-009, which provides the threat of grid disruptions makes distributed resources, including storage paired with other distributed resources, an effective way for residents to provide their own reliable and efficient electricity. And second, HB 18-1270, which provides that storage provides potential opportunities to reduce system costs, support diversification, and enhance grid safety and reliability.

68. Finally, COSSA/SEIA urge that moving forward now with storage will maximize incentives under the federal investment tax credit.

69. Public Service responds that parties who support including solar + storage cobble together statutes, stretching the meaning of a "condition," and proposing a meaning of "implement" in the Commission's rules that would leave no principled limit on what may be funded through the RESA. The Company argues that COSSA/SEIA rely heavily on the phrase "but not limited to" in § 40-2-109.5, C.R.S., which requires the Commission to establish incentives for "consumers who produce distributed generation, including, but not limited to, small wind turbines, thermal biomass, electric biomass, and solar thermal energy." The Company

[36] COSSA/SEIA Exceptions at p. 5. (Emphasis omitted)

argues that COSSA/SEIA fail to acknowledge that the prefatory phrase "distributed generation" narrows the scope of the listed items after. Public Service concludes there is no debate that storage is not a generation resource and for this reason is not covered by § 40-2-109.5, C.R.S.

70. Public Service responds that there is substantial evidence in the record challenging whether solar + storage would benefit customers in a cost-effective manner. The Company also responds that the intervenors fail to acknowledge that customers are already allowed to interconnect their batteries and are doing so at increasing rates without any special incentives.

71. Public Service refutes CEO's claim that, because SB 19-236 allows RESA funds for storage projects, the Commission could authorize such use in this RES proceeding, stating that CEO ignores that SB 19-236 prescribes a specific process through which the Company is to develop and propose a CEP. Public Service responds that CEO's strained reading of Rule 3652, which states RESA is used for "implementing the RES" provides no limiting principle as to what resources could be funded through the RESA. Public Service reasons that, under CEO's logic, an energy efficiency program could be interpreted to implement the RES by reducing total sales and thereby increase the share of renewable energy.

72. Finally, Public Service states it is not opposed to investigating the role of storage technology on its system. Public Service points to its testimony that the Company is "excited about the many potential applications of battery storage, and continue[s] to explore their value in new pilots and proposals."[37] Public Service argues the record demonstrates the Company is actively working with customers on battery solutions that include battery pilots, interconnection issues, and evaluating integration of major utility-scale batteries coupled with large solar +

[37] Public Service Exceptions p. 14 (citing Hr. Ex. 7 (Ihle Rebuttal) at 14:1-9).

storage installation power purchase agreements.[38] Public Service notes that Company witness Ihle stated that the Company is interested in engaging stakeholder working groups on retail DG battery pilots that would benefit customers and the Company, within the bounds of Colorado Public Utilities Law.[39] Public Service reiterates that the Company is interested in ongoing engagement and will follow any Commission order to engage with stakeholders.

73. In its response to exceptions, OCC states that it continues to believe that RESA funds cannot be used to fund energy storage systems without legislative action. The OCC supports the Recommended Decision's rejection of proposals in this Proceeding to use the RESA to fund or incentivize storage.

74. We uphold the ALJ's legal conclusion that, under the plain language of § 40-2-124(1)(a), C.R.S., energy storage systems, even when coupled with solar electric generation facilities, are not included in the definition of an eligible energy resource for the purposes of complying with the RES.[40] As the ALJ finds, no language within that definition includes a reference to storage or batteries, paired or otherwise. As such, energy storage systems are not an eligible energy resource for the purposes of complying with the RES in § 40-2-124(1)(c), C.R.S.

75. We also agree the ALJ properly found, even if § 40-2-124, C.R.S., allows the Company to use solar + storage programs to comply with the RES, the record in this Proceeding is lacking in the detail we would need to approve these significant proposals. The ALJ found the record insufficient to fully analyze the proposed programs including efficiency, estimated costs,

[38] *Id.* (citing Hr. Ex. 7 (Ihle Rebuttal) at 13:17-14:8).

[39] Hr. Ex. 7 (Ihle Rebuttal) at 31:15-17

[40] Recommended Decision ¶ 154.

potential impact on the Company's distribution infrastructure, or even details of how the programs would operate.[41]

76. Although we affirm the denial of proposals for solar + storage in this RE Plan, we also affirm the Recommended Decision's additional points that this does not mean RESA dollars may never be used to pay for energy storage or solar + storage. In addition, we agree there is little question that storage is a technology that warrants further consideration. We affirm the ALJ's encouragement of Public Service and stakeholders to engage in robust discussion to raise these issues through the relevant ongoing rulemaking proceedings and in the Company's next electric resource plan proceeding where the Company will propose its CEP.

77. Our decision denying the proposals offered in this Proceeding for solar + storage does not preclude more immediate action by the Company. We emphatically agree with intervenors that there is strong state policy support to move forward with storage projects and that the imminent step-down of the federal investment tax credit for solar is reason to move swiftly. Public Service commits that it is "open to working with stakeholders on developing solar + storage pilots in future filings."[42] We therefore direct Public Service to engage with interested stakeholders, including Staff, COSSA/SEIA, and CEO, and to propose a significant program for retail solar + storage and behind the meter storage. We order the Company to start this engagement immediately and to file either an application for approval of a proposed pilot or other program or a status update to the Commission within 90 days of the effective date of this Decision.

[41] Recommended Decision ¶ 157.

[42] Hr. Ex. 7 (Ihle Rebuttal) at 7:8-9.

### 5. Low-Income Programs

#### a. CEO: Clarify Low-Income Customer Commitments in Solar*Rewards Community

78. The Recommended Decision approves Public Service's proposal to combine its General and Low-Income CSG RFPs into a single solicitation with a 10 percent low-income target in the General RFP. This results in a 4 MW capacity target for low-income residential customers.

79. In its exceptions, CEO requests that the Commission clarify that these "targets" are binding and must serve as a minimum on an annual portfolio level. CEO states it understands the term "target" as non-binding, meaning Public Service is not required to ensure the target capacity is subscribed by low-income customers. But CEO acknowledges that Public Service states it will file an annual compliance report confirming the Company has met adder commitments, which suggests the Company considers these targets a requirement.

80. In addition, CEO requests the Commission clarify whether Public Service's proposal for the CSG Standard Offer program's subscriber mix is approved as proposed by the Company. CEO states that Public Service proposes "letting the market prevail" for a subscriber mix in the CSG Standard Offer program, rather than determine a required low-income customer commitment as it presently does. CEO states that it supports increased commitments to low-income customers in this Proceeding and is concerned this change may result in reduced access to CSGs for low-income customers if a minimum commitment is not established.

81. We grant the requested clarification and recognize that in most CSG programs the Company cannot commit to "binding" targets as they are subject to CSG developer bids that are outside the Company's control. However, in the case of the Company-owned program, we intend

that, in setting a minimum 10 percent (4 MW) low-income "target" for the General CSG RFP, to establish a 10 percent minimum commitment by the Company.

### b. CEO: *Modify CEO Low-Income Rooftop Solar Program Size Cap and Incentives*

82. The Recommended Decision approves continuing the Low-Income Rooftop Solar Weatherization Assistance Program (Low-Income WAP) in the short term, with several changes.

83. The Low-Income Rooftop Solar WAP was created as part of the Three-Case Settlement in 2016.[43] It is a three-year program providing access to distributed energy generation for low-income customers who have limited opportunities to use existing distributed generation programs. The original plan called for 300 rooftop installations over the three years, with a program capacity of 0.35 MW. Each installation is capped at 3.5 kW.

84. This offering provides access to distributed energy generation for low-income customers who have limited opportunities to use existing distributed generation programs. In this Proceeding, Public Service proposed that the program shift from installation counts to capacity, with a maximum annual program capacity of 0.35 MW. Public Service proposed to maintain the current incentive structure of an upfront incentive of $2.00 per installed watt, plus a performance based incentive of $0.034 per kWh for electricity generated by the system paid for 20 years. The ALJ found the record lacking in analysis that could help determine whether and in what form the program should continue in the long term, but found that continuing the program for the short Plan period will allow time for the Company to work with stakeholders to analyze the program as part of a holistic review of the low-income landscape without losing ground.

[43] Hrng. Exh. 1608, Non-Unanimous Comprehensive Settlement Agreement in Proceeding Nos. 16AL-0048E, 16A-0055E, and 16A-0139E.

85. In its exceptions, CEO urges the Commission to consider two additional changes to improve CEO's administration of this program.

86. First, CEO supports increasing the individual system size cap from 3.5 kW to 7 kW. CEO explains that under the existing cap, CEO cannot install a distributed generation system that exceeds 3.5 kW, even if it would be cost-effective or permitted under state net energy metering requirements. CEO contends that increasing the cap will increase program administrative efficiencies while ensuring a prudent use of RESA funds. CEO notes that the Recommended Decision found the evidence did not establish a need to increase the per-system size cap and raised questions about the long-term impact of such an increase. CEO responds that increasing the individual system cap, but not the overall program cap, will not raise ratepayer costs. CEO explains the program's budget derives from the overall 0.35 MW annual program capacity cap, so the maximum amount of incentive payments that CEO may receive each year is based on this overall program capacity cap. CEO also adds that as the size of systems go up and the number of systems go down, the cost of each system is lower.

87. Second, CEO requests that, for the 2021-2022 RE Plan, it receive all of its incentives as upfront incentives. CEO's current PBI and upfront incentives would combine to equal an upfront incentive of $2.44 per Watt. CEO estimates this would result in an annual $845,000 budget for the program. CEO notes the Recommended Decision finds some merit in CEO's arguments that the Commission should consider restructuring the incentives, but concludes any restructuring should be done after the Company's holistic review of the low-income landscape, including determining the effectiveness of CEO's program incentives, and whether it should continue in the long-term. CEO notes the Recommended Decision encourages Public Service to work with CEO to find a solution to the incentive structure. CEO requests that

the Commission expressly require Public Service to work with CEO to find a solution and that the Commission set a 60-day deadline for an agreement to be reached.

88. In their exceptions addressing low-income customer access issues, Vote Solar and GRID Alternatives support CEO's proposals to modify this program. They request the Commission approve the proposals to increase the program cap to at least 500 kW each year, increase the system capacity cap to at least 7 kW, and restructure the program to offer upfront payments.

89. Although we give full consideration to requests by the program administrator, CEO, for changes that will improve this program, we find we are unable on the record of this Proceeding to approve these requests. Critically, CEO fails to provide sufficient evidence in this Proceeding that there is a benefit to increasing the individual system capacity to 7.0 kW. CEO provides no information as to how many projects would benefit from an increase nor the effect on the overall number of customers in the program. Although some customers would benefit from a larger system capacity, that could come at the cost of additional systems being installed. In its SOP, CEO states it would "prefer the flexibility of an increased system size cap to permit larger systems for higher energy users," that a larger system size would decrease the per watt cost for those customers, and that "some CEO WAP customers' energy use would allow for a larger system under the Renewable Energy Standard statute and Commission rules."[44] In its exceptions, CEO states internal data shows a majority of program clients could support systems larger than 3.5 kW, but fails to provide data for the Commission to consider in determining whether it is in the public interest for the system size to be increased. Additionally, since the

[44] CEO SOP at p. 19.

program would be subject to the low-income holistic review, system size can be considered as part of all low-income renewable energy programs.

90. As to CEO's request to receive all incentive payments for the program upfront, we find these administrative issues are best worked out between CEO and Public Service. We therefore grant CEO's alternate suggestion to require Public Service to work with CEO to identify a solution to the current incentive structure that reduces CEO's administrative burden. We direct the parties to come back to the Commission within 60 days from the effective date of this Decision with a status update indicating the progress they have made to resolve this issue.

**(1) CEO: *Order Commission Facilitated Holistic Review of Utility Low-Income Programs***

91. The Recommended Decision directs Public Service to initiate stakeholder outreach to investigate low-income issues across the broad spectrum of customer needs, which should include, at minimum, CEO, the OCC, and Staff. The Recommended Decision directs the Company to present the results of this review as part of its next RE Plan. Throughout testimony and at hearing, Public Service objected to many of the low-income program proposals on grounds that before expanding or substantially changing a current program, the Company should engage in a holistic review of all its low-income programs, including renewable programs, demand-side management programs, and energy assistance programs.

92. In its exceptions, CEO urges that this Proceeding is not the proper proceeding for the Commission to make a decision about the scope of a holistic review of Public Service's low-income programs. Furthermore, CEO argues that Public Service should not conduct this review itself. Instead, CEO suggests that the Commission should convene and conduct such a holistic review of all utility low-income programs, as advocated by CEO and others in the Joint

Supplemental Comments filed in 19R-0096E. CEO asks the Commission to reverse this part of the Recommended Decision, and recognize that a low-income holistic review is outside the scope of an RE Plan proceeding, and instead address such a review in the ongoing rulemaking Proceeding No. 19R-0096E, where it was first presented by a coalition of stakeholders, some of which are not parties to this RE Plan proceeding.

93. The ALJ's support of the Company pursuing a holistic review of low-income programs does not preclude the Commission, in its rulemakings or as it otherwise finds appropriate, from concurrently or later engaging in similar review. Regardless of the Company's internal efforts, the Commission's rulemakings and other initiatives will continue to consider these issues. That the ALJ agrees and supports that Public Service pursue stakeholder efforts nevertheless remains appropriate. CEO and others should continue to raise process and review considerations in the context of the appropriate proceedings.

94. In the context of the rulemaking, the Commission can continue to address low-income issues raised within that proceeding. For the Commission to address holistic review requested by participants in the rulemaking in this Proceeding is inappropriate. We therefore deny the exceptions, but strongly encourage parties to continue advocacy and efforts through Commission processes that address an array of low-income considerations, in addition to participation in the Company-lead review.

#### (2) Vote Solar and GRID Alternatives: *Adopt Low-Income Equity Principles and Increase Capacity and Incentives for Low-Income Customers*

95. In their joint exceptions, Vote Solar and GRID Alternatives object that the approved RE Plan largely maintains the status quo for the Company's renewable programs and would do very little to expand low-income customers' access to solar. They argue that low-income customers, comprising 20 to 30 percent of Public Service's residential customers,

have paid the RESA charge since its inception, yet the Company's RESA-funded renewable energy programs have underserved low-income customers.

96. Vote Solar and GRID Alternatives request that the Commission amend the Recommended Decision to make clear low-income access and equity issues are within the scope of this RE Plan proceeding and that this Proceeding is the proper forum to increase the equity of Public Service's renewable energy programs. They object that, by limiting the Commission's role to determining whether a plan will meet the minimum RES compliance requirements, the Recommended Decision "summarily sweeps aside" low-income equity and many other broad policy issues as outside the scope of this Proceeding.[45] Vote Solar and GRID Alternatives object that this contravenes the statutory directive to "formulate and implement policies" that "encourage … [o]wnership in community solar gardens" by low-income customers.[46] They challenge the ALJ's suggestion that the Commission could better address these issues in other proceedings. They argue that although some of the Commission's ongoing rulemakings address discrete low-income issues, none of the proposed rules address the critical issues regarding the breadth of low-income customers and the historic under-delivery of distributed generation programs to these customers. They question if the Commission foregoes a decision in this Proceeding, it is unclear if or when the Commission will ever conduct a thorough review or develop a comprehensive policy to address low-income customers' access to solar.

97. Vote Solar and GRID Alternatives request that the Commission adopt the following low-income equity principles raised by Vote Solar during this Proceeding:

a. Reaffirm Colorado law establishes a policy goal of equitable low-income access to rooftop and community solar, and equitable RE Plans are essential to achieving this goal

[45] Vote Solar and GRID Alternatives Exceptions pp. 8-9.
[46] *Id*. p. 9 at FN 3 (quoting § 40-2-127(5)(a)(IV)(B), C.R.S.).

b. Low-income solar programs should be apportioned between rooftop and community solar programs to reflect the ratio of low-income homeowners to low-income renters

c. Low-income solar capacity should generally reflect a proportional amount of the total installed capacity using a benchmarking approach, and there should be a supplemental allocation to help make up the historic shortfall in low-income participation

d. Each RE Plan should establish specific low-income capacity targets for rooftop solar and community solar programs using these principles, and the specific low-income programs should collectively achieve these capacity targets

98. Vote Solar and GRID Alternatives also argue that it is imperative that the Commission increase the Plan's capacity and incentives for low-income rooftop solar and CSG programs. They urge the Commission to approve GRID Alternatives' recommendations regarding the Plan's low-income capacity and incentives as well as CEO's proposals to improve the CEO Low-Income Rooftop Solar Program (noted above).

99. Vote Solar and GRID Alternatives conclude that it is imperative for the Commission to take immediate action to make Public Service's RE Plans more equitable for low-income customers. They challenge that the potential for a holistic review does not justify delaying a decision now to increase the capacity and incentives for low-income programs. They object that low-income customers have paid the RESA charge and yet are underrepresented in Public Service's existing renewable energy programs.

100. Public Service responds that the Recommended Decision already devotes much discussion to low-income issues and the ALJ properly recognized the scope of this Proceeding is to enforce the RES and related regulations. Public Service argues that for purposes of the RES, § 40-2-124(1)(e)(III), C.R.S., requires the Commission to "encourage … utilities to design solar programs that allow consumers of all income levels to obtain the benefits offered by solar electricity generation and shall allow programs that are designed to extend participation to

customers in market segments that have not been responding to the standard offer program." Public Service contends the Recommended Decision satisfied this by considering the continued low-income programs offered and the proposal to holistically review low-income offerings in the Proceeding.

101. Public Service also challenges the record support for the exceptions. The Company cautions that the urging of Vote Solar and GRID Alternatives to go further in this Proceeding to incentivize low-income customers' access ignores testimony from Staff questioning the costs and value of current low-income programming. Public Service adds that Vote Solar and Grid Alternatives presented no evidence that investments in their proposals will increase low-income customer participation or lead to greater equity.

102. Finally, Public Service urges the Commission to reject the proposed equity principles, which Public Service contends are overly-prescriptive, unnecessary, ungrounded in law, and outside the scope of this RE Plan proceeding. Public Service cautions that these principles would set the proportional share of low-income customers in CSG and rooftop offerings even if low-income customers could be more cost-effectively served through different approaches. Public Service states that it anticipates the Commission will have a more robust evidentiary record and more tangible proposals to base its decision on in future RE Plan proceedings after completion of a holistic review.

103. We agree with Public Service that Vote Solar and GRID Alternatives understate the discussion in the Recommended Decision to address low-income customer access issues and the tangible progress to date by the Company. As the Company points out, by the end of the 2017-19 RES compliance plan, the Company's low-income programs will have 35 MW of total

capacity dedicated to low-income customers, representing a five-fold increase from the 7 MW that was directed to low-income customers before that Plan.[47]

104. While we affirm the principles of low-income access to renewable energy programs and equity across customer groups, and recognize that further progress remains to be made for low-income customers to access the Company's renewable energy programs, we find the record in this Proceeding, and the purpose of this Proceeding, does not support granting the requests in these exceptions. Vote Solar and GRID Alternatives fail to provide evidence of specific needs from the low-income community that could be clearly addressed in this RE Plan. For example, GRID Alternatives' witness Figel states that GRID has 2,000 clients in Colorado and a customer waitlist for its programs but provides no information as to the capacity of the waitlist or factors that would influence a low-income customer's participation.[48] Mr. Figel claims that demand is strong "when incentives and programs are appropriately designed" but provides no detail of how the incentives and programs should be designed.[49] And we are not prepared in this Proceeding to adopt the argument of Vote Solar and GRID Alternatives that, as a matter of equity, proportionate access should be made available for low-income customers paying into the RESA. Vote Solar's own witness admits that proportionality is not a goal of the RESA and that the cost of programs for low-income customers will be higher than for other programs. *See* Hr. Ex. 800 (Gilliam Answer) at 19:17-21 ("While the RESA is not intended to match contributions with expenditures for every customer class or subgroup of customers, it would be equitable for all PSCo customers to have an opportunity to access solar resources [.]")

[47] Public Service Exceptions p. 28 (citing Hr. Ex. 7 (Ihle Rebuttal) at 51:12-15).
[48] Hr. Ex. 300 (Figel Answer) at 31:3-5.
[49] *Id.*

105. We appreciate the concerns raised by parties with regard to low-income customers, and remain committed to this issue and agree that low-income customer access to renewable energy programs is a critical issue. Parties are encouraged to continue work through stakeholder processes, including the holistic review of low-income renewable energy programs, to find appropriate avenues through which low-income customers can fully participate in renewable energy programs. However, we uphold the Recommended Decision in this Proceeding as a measured approach that will continue annual capacity growth in these offerings pending a more comprehensive review.

### 6. Procedural Modifications and Clarifications

#### a. Public Service: *Modify Timing of Compliance Obligations in Ordering ¶ 3*

106. Public Service requests that the Commission clarify the timing of the obligations in Ordering ¶ 3 of the Recommended Decision regarding calculating the REC incentive for the Company-owned Low-Income CSG offering. The Company objects that the two ten-day timeframes in the Recommended Decision cannot be met from a practical project development standpoint. Public Service argues these ten-day timeframes do not allow sufficient time for the Company to engage in the level of due diligence, planning, and negotiations necessary to develop reasonable cost estimates.

107. Public Service proposes the following revisions:

> ~~Within ten days of the date~~ After this ~~Recommended Decision becomes a Commission decision, if that is the case~~ decision becomes final, Public Service must review the cost drivers, amounts, and the resulting final renewable energy credit (REC) incentive for the Company-owned Low-Income Community Solar Garden offering with Colorado Public Utilities Commission Staff. This review must be completed before Public Service signs any agreements that commit funds for this offering. ~~Within ten days of completing~~ After completing this review, the Company must make a filing establishing this review is complete, and identifying the final agreed-upon REC incentive for the Company-owned Low-Income Community Solar Garden offering.

108. We grant these uncontested exceptions, in part. We agree that Public Service should have opportunity to engage in meaningful consultation with Staff prior to entering into agreements or committing funds to its Company-owned Low-Income CSGs, as described in the exceptions. However, we conclude some reasonable time constraint should be placed on the Company's review and filing. We order that Public Service to: (1) perform its review with Staff within **30 days** after the effective date of this Decision on exceptions; and (2) make a filing establishing this review is complete and identifying the agreed-upon REC incentive within **30 days** after completing its review with Staff.

**b. Public Service: *Clarify Modeling Requirements in ¶ 178***

109. The Company requests that the Commission revise the last sentence in ¶ 178 to clarify the intended instruction for future RES/No-RES modeling. The Company proposes the following revisions:

> As such, the costs of eligible energy resources previously locked down are reset and allocated for cost recovery consistent with this Decision and the costs of new eligible energy resources acquired under this Plan are similarly locked down and allocated for cost recovery. the costs of eligible resources which are reset and allocated for cost recovery in this proceeding are consistent with the list of resources listed as "unlocked" in Exhibit AGT-1. The Commission orders that those resources shall be reset and locked down during the 2020-21 RE Plan period, and until such resources are reevaluated in a subsequent RE Plan or ERP filing.

110. We grant these exceptions and adopt this uncontested requested change.

**c. COSSA/SEIA: *Require Amending RE Plan Based on Bid Results***

111. COSSA/SEIA note that the Recommended Decision approves the Company's proposed large program offering, which is an RFP based program. COSSA/SEIA generally support this program; however, in their exceptions, COSSA/SEIA object to the Company's

proposal that, if there are insufficient reasonably priced bids for its Solar*Rewards Large program to award the full capacity solicited, then the Company will discuss plans for not awarding the increased full capacity with Commission Staff prior to finalizing award decisions.[50] COSSA/SEIA object that this would amount to allowing a subset of litigants to this Proceeding to decide what bids are reasonable without Commission oversight or input from other parties. COSSA/SEIA request that the Commission require Public Service to file an amendment to its RE Plan if the Company seeks to deviate from the Commission-approved program capacity allocations.

112. We grant these exceptions, in part. We agree that a more inclusive process is reasonable in the event bid results necessitate deviation from the Commission-approved capacity allocations and that the proper procedure would be to amend the RE Plan. We therefore require Public Service to make a filing with the Commission, no later than 60 days after the receipt of the bids, describing its proposal not to fill the full approved amounts because of insufficient reasonably priced bids. Any information concerning actual bid values shall be filed as highly confidential with access to that information limited strictly to the following persons: the Commission, its Staff and Advisors, and respective counsel; the OCC and its counsel; and experts and counsel for parties to this Proceeding that sign highly confidential non-disclosure agreements. These non-disclosure agreements should have similar restrictions as those used to review electric resource plan bids. The Commission can then take up the matter in an expedited manner and determine whether to approve the proposed amendment.

[50] COSSA/SEIA Exceptions p. 28 (citing Hr. Ex. 2 (Klemm Direct) 29:19-22).

## II. ORDER

### A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R20-0099, issued in this Proceeding on February 14, 2020 (Recommended Decision), filed on March 5, 2020 by Public Service Company of Colorado (Public Service) are granted, in part, denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed by Colorado Energy Office on March 5, 2020, are granted, in part, denied, in part, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed jointly by Vote Solar and Grid Alternatives Colorado, Inc., on March 5, 2020, are denied, consistent with the discussion above.

4. The exceptions to the Recommended Decision filed jointly by Colorado Solar and Storage Association and the Solar Energy Industries Association, on March 5, 2020, are granted, in part, and denied, in part, consistent with the discussion above.

5. Public Service shall initiate stakeholder engagement and make a filing regarding a solar + storage program, within 90 days of the Mailed Date of this Decision, consistent with the discussion above.

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 8, 2020.**

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners