

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0369E

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

**COMMISSION DECISION DENYING
MOTION TO REVISE FINAL DECISION**

Mailed Date: October 26, 2020
Adopted Date: September 23, 2020

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, we deny the motion filed on August 13, 2020, jointly by Colorado Solar and Storage Association and the Solar Energy Industries Association (together referred to as COSSA/SEIA) requesting the proceeding be reopened and that we revise our final decisions (Motion).

2. Although we refuse COSSA/SEIA's invitation to revise our final decision as requested, we reiterate our expectations set through Decision No. C20-0289, issued April 28, 2020 (April Decision). We continue to expect Public Service Company of Colorado (Public Service or the Company) to engage in the development of solar + storage initiatives with stakeholders that include furthering efforts to bring forward pilot projects or proposals through separate proceedings, including in the near term that could timely take advantage of the federal investment tax credit (ITC). This proceeding remains an inappropriate forum to require such a filing, consistent with our April Decision, and the Motion is denied.

B. Background

3. Public Service commenced this Proceeding by filing on June 28, 2019, its application for Commission approval of its 2020-21 Renewable Energy Compliance Plan (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.

4. After the evidentiary hearing held on December 10, 11, and 12, 2019, and considering testimony filed by the numerous parties,¹ on February 14, 2020, Administrative Law Judge (ALJ) Mirbaba issued Decision No. R20-0099 (Recommended Decision), largely

¹ The following parties either intervened of right, or were granted authority to permissively intervene in this matter: the Office of Consumer Counsel (the OCC); the Colorado Energy Office (CEO); the Colorado Public Utilities Trial Staff (Staff); COSSA\SEIA); Grid Alternatives Colorado, Inc. (Grid); the City of Boulder; the City and County of Denver; Vote Solar; Energy Outreach Colorado; the Rocky Mountain Environmental Labor Coalition and the Colorado Building and Construction Trades Council, AFL-CIO; Western Resource Advocates; the Colorado Energy Consumers (CEC); and Climax Molybdenum Company.

approving the 2020-21 RE Plan. 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. Within her findings, 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.

5. 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 CEC.

6. The Commission addressed exceptions through its April Decision, including among its decision, granting the exceptions filed by COSSA/SEIA and CEO regarding further expansion of the increased annual capacity for Community Solar Garden Programs,² and agreeing with COSSA/SEIA in rejecting Public Service's request in exceptions regarding production meters.³ Subsequent to its April Decision, the Commission addressed rehearing, reargument, or reconsideration, and even addressed the subsequent petition request from Public Service effectuating the Commission's final orders.⁴

² April Decision ¶¶ 19-34.

³ *Id.*, at ¶¶ 41-48.

⁴ *See*, Proceeding No. 20V-0297E.

7. Regarding solar + storage initiatives within the context of this RE Plan proceeding, the Commission's April Decision agreed with the Recommended Decision in rejecting proposals from COSSA/SEIA to include solar + storage programs in this RE Plan. COSSA/SEIA proposed developing solar + storage programs using Renewable Energy Standard Adjustment (RESA) funding, arguing these programs are necessary to achieve legislative goals such as carbon dioxide emission reduction. The Recommended Decision found 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., within this RE Plan proceeding.

8. However, the ALJ notes that the RESA is a Commission-created cost recovery mechanism intended to provide funding for implementing the RES. She includes that the Commission could modify its RESA rules to accommodate funding certain energy storage projects in the future.⁵ The ALJ also pointed out to parties that, once the Company files its Clean Energy Plan (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 include energy storage systems.

9. In its exceptions, in contradiction to these filings, CEO and COSSA/SEIA again requested that the Commission find this Proceeding is the appropriate venue for approving RESA incentives for customer-sited storage. CEO acknowledged that the ALJ is correct that storage is

⁵ Recommended Decision ¶ 155, FN 37.

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.”⁶ Public Service and OCC filed responses in opposition to CEO and COSSA/SEIA’s exceptions, requesting that the Commission uphold the ALJ’s determinations on this point.

10. Through our April Decision, considering the party arguments, we agreed with 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.⁷ 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.

11. We also agreed with the ALJ that, 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.⁸

12. Although we affirmed the denial of proposals for solar + storage in this RE Plan, we also affirmed 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. We agreed there is little question that storage is a technology that warrants further consideration. We affirmed the ALJ’s

⁶ CEO Exceptions p. 24 (citing Recommended Decision ¶¶ 154, 156).

⁷ Recommended Decision ¶ 154.

⁸ *See*, Recommended Decision ¶ 157 (The ALJ found the record insufficient to fully analyze the proposed programs including efficiency, estimated costs, potential impact on the Company’s distribution infrastructure, or even details of how the programs would operate).

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.

13. Our April Decision also directed more immediate action by the Company. In fact, we emphatically agreed 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." We therefore directed Public Service to engage with interested stakeholders, including Staff, COSSA/SEIA, and CEO, and to propose a robust program for retail solar + storage and behind the meter storage. We ordered 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 the April Decision.

14. On July 27, 2020, the Company filed the 90-day report and update regarding progress on solar + storage programs and stakeholder outreach. The Company represents that in the 90-day period, it held four two-hour group meetings that included a variety of stakeholders and discussed program designs and funding avenues, and seven individual stakeholder meetings. The Company outlines each meeting, discusses opportunities and challenges, and next steps. The Company states that it intends to be positioned to seek Commission approval of a program in the next year, including possibly as part of the upcoming broader CEP or next RES Plan proceeding.

⁹ Hr. Ex. 7 (Ihle Rebuttal) at 7:8-9.

15. On August 13, 2020, COSSA/SEIA filed a “Response to Status Update and Motion to Modify Decision No. C20-0289.” COSSA/SEIA agree that the Company held significant outreach, but state that the report is insufficient because it does not include the immediate launch of a solar + storage program, and that the Commission should modify its decision to “fulfill and enforce the intent” of the April Decision and require such a filing from the Company, particularly to take advantage of ITCs.

16. On August 14, 2020, the Company provided a supplemental report to the Commission identifying updates to its DSM Residential Battery Demand Response Pilot (DSM DR Pilot). This includes updating the DSM DR Pilot rebate structure and battery system utilization levels so the Company can better utilize enrolled batteries while offering a more substantial upfront incentive. On August 27, 2020, the Company responded strongly to COSSA/SEIA’s August 13, 2020, pleading, claiming COSSA/SEIA’s request is substantively, legally, and procedurally inappropriate. Public Service notes the plain language of the decision includes it provide “*either* file an application proposing a solar plus storage program *or* a status [update].”¹⁰

17. The Company further notes that it is proposing the DSM DR Pilot in direct response to the Commission’s interests, including: (1) increasing the per customer rebate from \$500 at enrollment and a \$10 monthly credit to an upfront \$1,250 credit; and (2) increasing the share of the customer’s battery capacity that the Company may utilize to increase system benefits from the pilot. The Company correctly points out that COSSA/SEIA’s argument that the proposed pilot enhancements focus too narrowly on dispatchability and capacity are claims

¹⁰ Public Service Response, filed August 27, 2020, at 2 (emphasis in the original).

outside of the instant record. However, despite the Company noting that the DSM DR Pilot revisions are intended to “further the Commission’s stated objectives,”¹¹ it is unclear from the filings whether stakeholder engagement ordered by the Commission in the April Decision informed the Company’s updated program content or design proposal, or if it was a unilateral proposal from the Company.

18. Public Service also argues that COSSA/SEIA cite no legal authority to rescind, alter, or amend the prior decisions. Namely, COSSA/SEIA reiterate their arguments in exceptions, which were rejected in the context of this proceeding. Public Service also notes that COSSA/SEIA did not confer on the motion, and pleadings may be denied for this failure as well.

C. Findings and Conclusions

19. Despite the plain language of the Commission’s order that required either an application or a report, no party requested rehearing on this aspect of the April Decision through processes permitted in § 40-6-114, C.R.S. Relief under § 40-6-112, C.R.S., to modify a final decision outside of the process afforded parties through § 40-6-114, C.R.S., is used in extraordinary circumstances.¹² Such circumstances do not exist here.

20. COSSA/SEIA’s request to include a required solar + storage proposal as part of the RE Plan proceeding has been rejected by the ALJ and affirmed by the Commission already. The Commission considered these arguments, including COSSA/SEIA’s claims regarding expiration of the federal ITC.¹³ The Company was nevertheless directed to file either an

¹¹ Public Service Response, filed August 27, 2020, at 4.

¹² See, e.g., Decision No. C03-0438, Proceeding No. 02A-463AT, at 10 (issued April 25, 2003); Decision No. C14-0326, Proceeding No. 14D-0080TO, at 4 fn. 4 (issued March 27, 2014); Decision No. C05-1472, Proceeding No. 05A-161E, at ¶ 2 (issued December 15, 2005).

¹³ See, e.g., Recommended Decision, at ¶ 118; April Decision, at ¶ 68.

application with a pilot proposal, or provide a report on its progress toward such a filing in 90 days of the decision. To reopen the matter and again address these same arguments is unwarranted and inappropriate under § 40-6-112, C.R.S.

21. The April Decision is final regarding our determinations on solar + storage. While we recognize that the report represents the minimum required to comply with the April Decision, COSSA/SEIA have not provided support to revise the order based on arguments already raised, and rejected, in the context of this proceeding.¹⁴

22. Our denial of COSSA/SEIA's motion does not negate our ongoing emphasis that the Company continue its engagements with stakeholders regarding solar + storage initiatives. The Commission's directive in this proceeding directing either a report or proposal in 90 days does not preclude Company efforts beyond that 90-day timeline, including such that federal ITCs can be taken advantage of timely through separate proceedings and proposals. Meaningful stakeholder engagement continues to be encouraged consistent with statements made in the Recommended Decision and our April Decision.

23. As discussed within the context of this proceeding, in addition to the report and supplement provided, a number of ongoing and future proceedings are likely to address solar + storage initiatives. For example: (1) the Company includes that it directly responded to the Commission's interests through updates proposed in the DSM DR Pilot;¹⁵ (2) the Company recently provided reporting on its Stapleton Panasonic Innovative Clean Technology (ICT) projects;¹⁶ and (3) on May 1, 2020, the parties in Proceeding No. 19A-0225E filed a unopposed

¹⁴ Recommended Decision, at ¶¶ 146-158; April Decision, at ¶¶ 64-77.

¹⁵ See Public Service Supplemental Report, filed August 14, 2020; Public Service Response, filed August 27, 2020, at 4.

¹⁶ Public Service Report, filed July 27, 2020, at 7 (citing Proceeding No. 15A-0847E).

and unanimous comprehensive settlement, which will lead to seven discrete projects totaling approximately 6 MW and 15 MWh of rate-based energy storage system projects, with an initial report detailing construction and operation of the Community Resiliency Initiative projects expected December 15, 2020.¹⁷

24. Public Service further notes through its report and supplement, and in its testimony through the proceeding, that it intends to address solar + storage initiatives in future proceedings, including potentially its CEP filing expected in March of 2021, and in its future RES Plan application.

25. In addition, this Commission has stated on numerous occasions that the participants can and should advocate in ongoing rulemaking proceedings their respective positions on solar + storage, including without limitation, whether and how to account for RESA funds going forward. Consistent with the ALJ's findings and our April Decision, we reiterate that the RESA is a Commission-created cost recovery mechanism currently intended to provide funding for implementing the RES. The Commission could modify its RESA rules to accommodate funding certain energy storage projects in the future.¹⁸

26. While the report provided by the Company complies with our April Decision, it is at the same time disappointing. We appreciate the Company directed updates to the DSM DR Pilot, but it is unclear whether the direction to engage in stakeholder efforts has had any further, meaningful impact explicitly beyond those already anticipated by the Company. To that end, the report filed to comply with the Commission's April Decision should by no means signal the conclusion of robust and meaningful stakeholder engagement. As we concluded in the

¹⁷ See Public Service Report, filed July 27, 2020, at 7 (citing Proceeding No. 19A-0225E).

¹⁸ Recommended Decision ¶ 155, FN 37.

April Decision, there is little question that storage + solar technology is necessary in future considerations before this Commission. The required stakeholder engagement was directed as a means to provide a forum for meaningful input resulting in a consensus proposal, if possible. It remains our expectation that stakeholder discussions on a meaningful solar + storage pilot program will be ongoing and will take into account the timely nature of maximizing the contribution available from the federal ITCs. Should those discussions be fruitful, we look forward to seeing the effects of those efforts in future proceedings and the Company is in no way precluded from providing proposals in the near term, including those that take advantage of federal ITCs.

27. Consistent with our April Decision, we anticipate and continue to encourage solar + storage programs be integral to future proceedings and ongoing stakeholder engagement. We reiterate our interest and expectation that the Company and stakeholders continue these efforts, including through both rulemaking and adjudicated proceedings that are ongoing or anticipated, but also through initiatives proposed in those or other future proceedings that are responsive to robust stakeholder engagement.

28. Nevertheless, for purposes of this proceeding, we decline to amend our final decisions, or require further filings through the context of this RES Plan Proceeding. COSSA/SEIA's Motion is denied.

II. ORDER

A. The Commission Orders That:

1. The Motion to Modify Decision No. C20-0289, filed jointly by Colorado Solar and Storage Association and the Solar Energy Industries Association on August 13, 2020, is denied, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 23, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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Commissioners