Decision No. C20-0816

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0191E

IN THE MATTER OF ADVICE LETTER NO. 1825 – ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 – ELECTRIC TARIFF TO IMPLEMENT A COLORADO ENERGY PLAN ADJUSTMENT AND REDUCE THE RENEWABLE ENERGY STANDARD ADJUSTMENT TO BECOME EFFECTIVE JUNE 1, 2020.

DECISION DENYING JOINT APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: November 19, 2020
Adopted Date: November 12, 2020

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I. BY THE COMMISSION

A. Statement

1. This Decision addresses the Application for Rehearing, Reargument, or Reconsideration (RRR) of Decision No. C20-0700 jointly filed October 22, 2020, by the Colorado Energy Consumers, the Colorado Energy Office, the Colorado Solar and Storage Association and Solar Energy Industries Association, Public Service Company of Colorado (Public Service or the Company), and Western Resource Advocates (collectively, Joint Parties). As discussed in detail below, we deny the RRR that misconstrues prior Commission decisions and processes. Contrary to Joint Parties' claims, the Decision did not modify prior Commission orders or party settlement agreements, nor does it obfuscate stakeholder due process regarding future implementation of the Renewable Energy Standard Adjustment (RESA).

2. As stated in Decision No. C20-0700, Public Service may file a supported advice letter (AL) to continue the RESA after December 31, 2022. Establishing a RESA surcharge at 1 percent through December 31, 2022, as requested and supported in this proceeding, does not preclude opportunity for the Joint Parties and other interested stakeholders to support continued future billings of the RESA in appropriate proceedings, including future application, AL filings and rulemakings, as appropriate.

3. Consistent with the discussion below, we also direct Staff of the Commission (Staff) to hold one or more workshops in early 2021 related to the future of the RESA in order to inform the development of modified rules implementing the Renewable Energy Standard (RES).

B. Relevant Background

4. On May 1, 2020, Public Service filed AL No. 1825 with tariff sheets to implement the Colorado Energy Plan Adjustment (CEPA) as a percent surcharge to customer bills, and to

reduce the RESA from a 2 percent surcharge to a 1 percent surcharge.[1] The Company included that proposed AL No. 1825 and its accompanying tariff sheets resulted from prior Commission decisions, including Decision No. C18-0761,[2] which approved the Colorado Energy Plan (CEP) Portfolio as part of the Company's 2016 Electric Resource Plan (ERP), and Decision No. C18-0762 (2018 Decision),[3] which approved the settlement in which the CEPA and concurrent reduction to the RESA were proposed.

5. The Commission suspended the effective date of the tariff sheets filed with AL 1825 by setting the matter for hearing *en banc*[4] and soon after requested more information from Public Service,[5] which was filed on August 31, 2020.[6] A major focus of the Commission's questions was to understand the future of the RESA, given that there are no longer projected to be Total RESA Costs after 2022.[7]

6. Commission decisions in this proceeding continued to reiterate that this Proceeding remained narrowly focused on the RESA.[8] Parties were reminded that the instant focus remained on whether the tariffs filed with the AL are in the public interest and should be approved. At the same time, the Commission recognized that it is continuing its ongoing rulemaking that addresses updating rules of general applicability, which include potential

[1] The proposed effective date of the tariffs filed with AL No. 1825 was June 1, 2020.

[2] Decision No. C18-0761, issued September 10, 2018, Proceeding No. 16A-0396E.

[3] Decision No. C18-0762, issued September 10, 2018, Proceeding No. 17A-0797E.

[4] Decision C20-0410, issued May 29, 2020.

[5] Decision C20-0518-I, issued July 16, 2020.

[6] The Commission approved the timeline proposed by Public Service and other parties, and vacated a prehearing conference scheduled for August 22, 2020, in Decision No. C20-0602-I (issued August 18, 2020).

[7] Commission Decisions in this proceeding address additional processes, including addressing interventions, and late-filed interventions. *See* Decision Nos. C20-0518-I, issued July 16, 2020, and C20-0555-1, issued August 3, 2020.

[8] *See* Decision No. C20-0555-I, issued August 3, 2020.

revisions to the RESA. Those rulemaking considerations, however, would be considered within the appropriate proceeding,[9] and not with regard to whether Public Service adequately supported the instant tariff changes sought through the filing of AL No. 1825.

7. Through Decision No. C20-0700, issued October 2, 2020, the Commission addressed its review of the Company's responses and found that Public Service demonstrated that it has a projected revenue requirement for the RESA that can be funded through 2022, even if the RESA is reduced to 1 percent. The Company was permitted to make an AL compliance tariff filing to implement the 1 percent CEPA and reduce the RESA to 1 percent as requested in AL No. 1825, but the Commission also required that the RESA tariff sheet be revised to cause the RESA to expire on December 31, 2022. While "expiration" of the RESA after December 31, 2022, was included within the context of this proceeding given the supporting filings, ongoing proposals to continue the RESA were not precluded. The Commission specifically stated that Public Service could file an AL in a separate future proceeding to continue the RESA after December 31, 2022, if Public Service can demonstrate a revenue requirement requiring RESA surcharge funds.[10]

8. On October 22, 2020, Joint Parties filed RRR claiming Decision No. C20-0700 is "incompliant" with prior Commission orders and terminates the RESA without due process. In their RRR, the Joint Parties seek reconsideration of the Commission's determination in the following three areas: (1) whether Decision No. C20-0700 improperly modifies the 2018 Decision; (2) whether Decision No. C20-0700 is contrary to the stipulation reached in Proceeding No. 16A-0396E; and (3) whether the Commission's findings in Decision

[9] *Id.*, at fn 1.

[10] Decision No. C20-0700, at ¶ 21.

No. C20-0700 obfuscated due process opportunities that should be afforded the Company and interested stakeholders.

9. Subsequently, public comments supporting the RRR were filed by GRID Alternatives, the City and County of Denver, Vote Solar, and the Colorado Independent Energy Association. Commenters request that the Commission not eliminate the RESA without further due process.

10. Through filings made on October 27, 2020, and Consistent with Decision No. C20-0700, Public Service provided the required compliance filing to introduce the CEPA at 1 percent and to reduce the RESA from 2 percent to 1 percent, implementing the relief sought by Public Service pursuant to its AL 1825 tariff filing and thus preserving the offset impact of a RESA reduction to 1 percent sought by the settling parties in the previous related proceedings.

C. Findings and Conclusions

11. Joint Party's claims mischaracterize prior Commission decisions and well-established processes. In approving the requested RESA reduction to 1 percent through December 31, 2022, consistent with its constitutional and statutory duties, the Commission found that this rate is just and reasonable and supported by the record in this proceeding. The Decision appropriately focused on the narrow request before it and does not modify prior orders or party settlements.

12. Permitting the RESA reduction through December 31, 2022, in no way prohibits settling parties to continue to support filings and policies that continue the RESA at 1 percent on and after January 1, 2022. We reject each of the claims raised in the Joint Parties' RRR and emphasize our statements that note future potential proceedings and processes that continue to ensure the appropriate level of the RESA, in both AL and rulemaking contexts. To assist those

efforts, we instruct Staff to engage in at least one informal workshop with interested stakeholders[11] regarding the RESA.

1. The Decision Does Not Modify the 2018 Decision or Party Stipulations

13. Joint Parties argue that the Commission's findings in Decision No. C20-0700 that, among its findings, approves the RESA surcharge at 1 percent through December 31, 2022, are contrary to the Commission's 2018 Decision. The 2018 Decision approved, in part, the proposal to create a regulatory asset to recover incremental depreciation associated with the early retirement of Comanche 1 and Comanche 2, creating a process by which Public Service would establish a CEPA at 1 percent with a concurrent reduction of the RESA from 2 percent to 1 percent.

14. Joint Parties argue that the Commission's statement in the 2018 Decision that it would "make any determination about the appropriate level of RESA collections in 2028 based on the facts and circumstances at that time"[12] disposed of the issue of RESA collections "based on a full record and after contemplating the impacts to customers."[13] Joint Parties then include that the Commission may modify a prior decision only after providing notice to the public utility affected, as well as an opportunity to be heard.[14] Because they claim the Commission's 2018 Decision necessarily requires approval of the RESA reduction to 1 percent through 2028 in

[11] Staff shall broadly engage to include not only parties to this proceeding, but also potentially interested persons participating in the ongoing Proceeding No. 19R-0096E in which the Commission recently indicated it would sever the Renewable Energy Standard Rules and issue a separate Notice of Proposed Rulemaking. *See* Decision No. C20-0661-I, issued September 15, 2020, Proceeding No. 19R-0096E.

[12] 2018 Decision, at ¶ 39.

[13] Joint RRR at 6.

[14] § 40-6-112, C.R.S.

this proceeding, Joint Parties state that the Commission modified its 2018 Decision without evidence nor testimony.[15]

15. We disagree with this characterization of Decision No. C20-0700 and accordingly reject this argument of the RRR. The Commission neither improperly modified its prior 2018 Decision, nor did it deprive Joint Parties (or any stakeholders) of appropriate procedural options regarding maintaining the RESA at appropriate, supported levels after December 31, 2022.

16. While Public Service has characterized AL No. 1825 as a "compliance" filing,[16] in its 2018 Decision, the Commission did not agree that a mere compliance filing was appropriate to support reducing the RESA to 1 percent for nearly a decade. The decision conceptually approved the RESA surcharge to be reduced from 2 percent to 1 percent given that the parties in that proceeding had demonstrated "*likely* amounts to be foregone and to be collected and therefore, the *potential* impacts to customers."[17] However, rather than allowing for a compliance filing on not less than two days' notice, the Commission rejected this preferred path from settling parties in that proceeding, and instead, directed Public Service to file the AL implementing the CEPA and reducing the RESA on not less than 30 days' notice.[18] The Commission further stated that "Staff, the OCC, and other potential interveners should have an opportunity to inform the Commission of the accuracy of the calculations presented . . . ."[19] Consistent with its duty to ensure just and reasonable rates,[20] the Commission appropriately gave itself flexibility to

[15] Joint RRR at 7.
[16] *Id.*, at 3.
[17] 2018 Decision, at ¶ 34 (emphasis added).
[18] *Id.*, at ¶ 34.
[19] *Id.*, at ¶ 34.
[20] *See*, e.g., § 40-3-102, C.R.S. (utility rates must be reasonable and based on the cost of service).

understand whether the "likely amounts" and "potential impacts" would translate into actual costs at the time the AL was filed proposing the agreed-to RESA reduction.

17. Through its 2018 Decision, the Commission did not approve the RESA surcharge at 1 percent through 2028, by stating it would *also* necessarily review an appropriate RESA amount in a decade. As Joint Parties correctly summarize, the Commission declined to increase "automatically" the RESA surcharge from 1 percent back to 2 percent in 2028, which was requested by settling parties. The Commission reasoned that such a determination is appropriately left to the facts and circumstances at that time. The 2018 Decision was silent on what level of RESA surcharge was appropriate generally, given the reduction to 1 percent was based on anticipated, rather than actual, costs. The 2018 Decision therefore approved the Company coming forward with an AL filing supporting the reduction in the RESA surcharge concurrent with the implementation of the CEPA surcharge—a request that was granted by Decision No. C20-0700—but not indefinitely based on this record.

18. In its 2018 Decision, the Commission agreed with Staff, who argued that the Commission "should not pre-approve a compliance tariff filing for ten years in the future."[21] This concept is core to the Commission's role as an economic regulator—there is no cost recovery without a revenue requirement. As Decision No. C20-0700 explained, the Company has not provided evidence of a future revenue requirement associated with the RESA surcharge, as there are no longer "Total RESA Costs" associated with the RESA after 2022. The 2018 Decision's statements regarding the specific question of automatically restoring the RESA to 2 percent in 2028 is different, however, than approving the RESA at 1 percent *through* 2028. Joint Parties inappropriately conflate the statement regarding one matter to infer the other.

[21] 2018 Decision, at ¶¶ 38-39.

19. Moreover, we disagree with the characterization that the RESA is being "terminate[d],"[22] "sunset,"[23] or "eliminate[d]."[24] First, Decision No. C20-0700 did not impact the RESA account, only the RESA surcharge. The RESA account may still be used where needed to collect revenues and fund programs and administration. Second, and more importantly, the RESA surcharge *may be reinstated at any time if a revenue requirement can be demonstrated*. As we discuss below, there are multiple procedural paths by which Joint Parties, and other stakeholders, can determine the future of the RESA surcharge, and we encourage active participation in those proceedings.

20. The Commission's decisions in this proceeding are consistent with its path forward provided through the 2018 Decision. The Commission recognized the current circumstances since the decision issued two years ago, putting parties on notice that it would take a hard look at actual costs and customer impacts, to confirm the *likely* amounts and *potential* customer impacts presented in the prior proceeding. Decision No. C20-0410, which set AL No. 1825 for hearing *en banc* and suspended the effective date of the tariff pages, specifically stated that "[b]efore approving the proposed reduction to the RESA, we find it necessary to examine further the proposed reduction in the RESA surcharge."[25] In support, the Commission noted ongoing rulemakings related to the RESA surcharge; new statutory provisions that implicate the RESA surcharge and retail rate caps; and the justification of the RESA surcharge being set at 1 percent given there are no "Total RESA Costs" beginning in 2023.[26] The Commission specifically asked in Decision No. C20-0518-I not only for an explanation as to

[22] Public Comment of City and County of Denver at 3.
[23] Joint RRR at 7.
[24] Public Comment of Vote Solar at 2.
[25] Decision No. C20-0410 at ¶ 8.
[26] *Id.*, at ¶¶ 9-11.

"why it is in the public interest for RESA rider collections to continue when there are no Total RESA Costs,"[27] but also for an assessment of the impacts of setting the RESA to zero.[28] Accordingly, not only were Joint Parties on notice that AL No. 1825 was not to be treated as a compliance filing, the Commission clearly stated that it wanted to understand whether there were costs anticipated to be recovered through the RESA surcharge after 2022.

21. Joint Parties next argue that the Commission's findings in Decision No. C20-0700, are contrary to the stipulation reached in Proceeding No. 16A-0396E. Joint Parties state that they are each signatories to the 2016 ERP stipulation, and "feel bound to collectively support its terms."[29] They state that the stipulation was heavily negotiated, and that "provisions linking the RESA reduction to the timing and the need to fund early coal retirements were paramount to the ability of at least some parties to enter into the 2016 ERP stipulation."[30] Specifically, Joint Parties state that the RESA surcharge reduction would begin in 2021 or 2022 and be in place "for a period of time as needed to allow for implementation of the Colorado Energy Plan Portfolio."[31]

22. Because we disagree with this characterization of Decision No. C20-0700, we accordingly reject this argument as well. The Commission neither modified the stipulation or its terms, nor could the Commission itself be bound to the stipulation as it is not a settling party.

23. First, the Commission did not modify the settlement or its terms through its determination that the Company has met its burden in this proceeding regarding the RESA

[27] Decision No. C20-0518-I at ¶ 24 (Question 4.a).
[28] *Id.* at ¶ 24 (Question 9.l).
[29] Joint RRR at 8.
[30] *Id.*, at 9.
[31] *Id.*, at 9 (quoting 2016 ERP Stipulation at 17).

surcharge reduction through 2022, but no further. As previously discussed, the 2018 Decision approved only the process forward to reduce the RESA surcharge concurrent with the implementation of the CEPA. The Commission's 2018 Decision implemented certain terms settled in the related 2016 ERP proceeding, Proceeding No. 16A-0396E, and importantly rejected the parties' position that a compliance filing was sufficient to set the RESA at 1 percent for nearly a decade. The only term of the 2016 ERP stipulation explicitly approved by the Commission in Proceeding No. 16A-0396E was the stipulating parties' request that Public Service be allowed to develop and present a Colorado Energy Plan Portfolio in Phase II of the ERP proceeding that is consistent with the terms of the stipulation.[32] Neither the 2018 Decision nor the 2016 ERP settlement were revised in Decision No. C20-0700.

24. The Commission itself is not a party to a settlement agreement. Parties to the settlement are bound by settled terms, not the Commission, which must review those terms as they relate to the public interest. That the instant filings insufficiently supported continuing the RESA surcharge at 1 percent beyond December 31, 2022 does not revise the settlement, of which the Commission was not a party. The Commission understands the Joint Parties' position to support the settlement and that they will continue to proffer the RESA's continuation at 1 percent. Consistent with the 2018 Decision, however, the Commission must ensure that that continuation aligns with actual costs and customer impacts.

2. Stakeholders Retain Significant Opportunities for Due Process

25. Joint Parties argue that the Commission's findings in Decision No. C20-0700 to "eliminate" the RESA were made without appropriate due process. Joint Parties correctly state that a Commission decision must be based on substantial evidence is "such relevant evidence as

[32] Decision No. C18-0191, issued March 22, 2018, Proceeding No. 16A-0396E, ¶¶ 127-128.

a reasonable person's mind might accept as adequate to support a conclusion . . . ."[33] Joint Parties are also correct that, under § 40-6-111(1)(a), C.R.S., the Commission has discretion over whether to conduct a hearing. However, the Joint Parties go on to state that the Commission erred because it did not provide an opportunity for them to address whether to eliminate the RESA. Parties claim it is "particularly striking" since the Commission quoted the Company's response, which notes that parties have different perspectives on the continuation of the RESA when there are no total RESA costs: "The parties reserve the right to take whatever positions they choose on the use of future RESA funds." Joint Parties argue there was "no evidence presented in this in this [*sic*] case on the topic of the expiration of the RESA, whether at year-end 2022 or at any other time" and had the Commission asked interveners to opine on the continuation of the RESA surcharge after 2022, it may have received different answers."[34]

26. We disagree with this characterization of Decision No. C20-0700 and accordingly reject this argument of the RRR. The decision allows Public Service to implement the CEPA of 1 percent upon a reduction to the RESA of 1 percent as requested in AL 1825. The absence of an evidentiary hearing in this Proceeding does not mean that the Commission's findings lacked sufficient support or that Joint Parties and other stakeholders lack opportunities to advocate for their interests.

27. Public Service's responses to the Commission's questions present uncertain information at best beyond December 31, 2022. The RRR does not identify any flaws in the Commission's findings on that point and agrees that there are not yet estimates associated with future renewable acquisitions beyond the 2016 ERP.[35] While the Joint Parties agree that the

[33] Joint RRR at 10 (quoting *Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n*, 26 P. 3d 1198 at 1205 (2001)).
[34] Joint RRR at 14.
[35] *Id.*, at 13.

RESA surcharge should be retained at 1 percent through 2028, each has a different perspective as to the purposes for which those funds should be used. In the absence of evidence of an ongoing revenue requirement; given the lack of concrete suggestions from Joint Parties in this record as to what may comprise a future revenue requirement; and given the opportunities available for Joint Parties and other stakeholders to advocate for their interests in other proceedings, the Commission has sufficient basis to support its findings.

28. Joint Parties seem to argue that Decision No. C20-0700, which approved a reduced RESA surcharge at 1 percent through 2022, precludes a future filing supporting continuing the RESA surcharge at 1 percent—or another appropriate level—in future years. This is not correct. As previously stated, we reject the interpretation that Decision No. C20-0700 "eliminated" or "sunset" the RESA surcharge. Instead, future proceedings will necessarily include support for RESA billings to Public Service's retail electric customers, including how the associated revenues should be used, as economic circumstances and policy objectives change. For example, any future RESA surcharge may need to be developed with consideration to legislative or regulatory changes, such as the rulemaking process related to the RES that has been under consideration in Proceeding No. 19R-0096E.[36] The Company's upcoming CEP and next Renewable Energy Standard Compliance Plan could also result in the need for RESA funding depending on "future eligible energy resources."[37] Alternatively, the Company could submit an AL with more robust support for how programs are funded by the RESA, justifying an appropriate level for the surcharge. The Colorado Supreme Court has opposed due process

[36] *See* Decision No. C20-0661-I, issued September 15, 2020, Proceeding No. 19R-0096E. RES Rules will continue to be considered through a separately issued Notice of Proposed Rulemaking.

[37] Joint RRR at 13.

challenges where multiple valid procedural paths could allow parties to advocate for their interests, as is the case here.[38]

3. Emphasis and Direction to Staff

29. While we reject the arguments raised by the Joint Parties and deny the RRR, we also recognize larger questions remain. Notably, the RESA question is before us in large part because "eligible RESA portfolio resources are less expensive than the costs associated with the alternative form of energy such as natural gas and coal-based generation."[39] Furthermore, Senate Bill 19-236 has set aggressive goals for regulated electric utilities with regard to carbon reduction. We recognize that Joint Parties have different opinions on the future of the RESA surcharge, as might other interested stakeholders. In its public comment, GRID Alternatives specifically raised the potential role of the RESA surcharge in promoting equitable program access. Neither Decision No. C20-0700 or this Decision should be construed as encouragement to end meaningful programs. However, which programs are funded and to what level must be justified.

30. In order to understand this issue better, and to inform the development of the RES Rules which will be reissued in a Notice of Proposed Rulemaking (NOPR) in 2021, we direct Staff to hold one or more workshops related to the future of the RESA surcharge, including without limitation what costs it may recover, whether there are new programs or set-asides that should be considered, and how the surcharge level should be set.

[38] *Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n*, 653 P.2d at 1121-1122.

[39] Public Service Company of Colorado's Responses to Questions Set Forth in Decision No. C20-0518-I, filed August 31, 2020, at p. 12.

31. The informal workshop is intended to engage interested stakeholders, particularly as the Commission moves towards issuance of a NOPR specifically focused on the RES Rules. Therefore, any such workshop should be held in advance of the issuance of a NOPR related to the RES and should consider topics such as appropriate uses for RESA revenues, appropriate programs and set-asides, and the calculation of the RESA surcharge. This workshop, in addition to the other potential proceedings available to the interested stakeholders, further emphasizes that the Joint Parties' claims in the RRR neglect to recognize meaningful processes and proceedings available to move supported proposals regarding the RESA forward, as appropriate.

II. ORDER

A. The Commission Orders That:

1. The Joint Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0700 filed October 22, 2020, by the Colorado Energy Consumers, the Colorado Energy Office, the Colorado Solar and Storage Association and Solar Energy Industries Association, Public Service Company of Colorado, and Western Resource Advocates is denied, consistent with the discussion above.

2. We direct Staff of the Colorado Public Utilities Commission to convene a workshop regarding the future of the Renewable Energy Standard Adjustment (RESA), consistent with the discussion above. The RESA workshop shall be held in advance of the reissuance of a Notice of Proposed Rulemaking associated with the Renewable Energy Standard Rules.

3. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 12, 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