

Decision No. C23-0516-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0371E

IN THE MATTER OF THE PETITION OF THE CITY AND COUNTY OF DENVER'S
PETITION FOR DECLARATORY ORDER REGARDING COMPENSATION FOR 2020-2021
SOLAR REWARDS COMMUNITY-BASED PROJECTS.

**INTERIM DECISION ACCEPTING PETITION FOR
DECLARATORY ORDER, ISSUING NOTICE,
ESTABLISHING 30-DAY INTERVENTION PERIOD,
AND REFERRING MATTER TO AN
ADMINISTRATIVE LAW JUDGE**

Mailed Date: August 7, 2023

Adopted Date: August 2, 2023

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR
CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission accepts, and issues notice of the Petition for Declaratory Order (Petition) filed by the City and County of Denver (Denver), on July 17, 2023. The Petition requests direction on the application of a renewable energy credit (REC) multiplier for community-based projects to Solar*Reward Community incentives under the 2020-2021 Renewable Energy Compliance Plan for Public Service Company of Colorado (Public Service or Company) considered in Proceeding No. 19A-0369E, and specifically as discussed in Decision No. R20-0099 (Recommended Decision).

2. If the Commission agrees with Denver's understanding of application of the multiplier as discussed in the Petition, Denver asks that the Commission order the Company

compensate producers of community-based projects for the 2020 Standard Offer based on RECs supplied to the Company and to update producer agreements for its 2020 Solar*Rewards Community Standard Offer project on a going-forward basis.

3. This Decision establishes a 30-day notice and intervention period for Denver's Petition. Interventions shall be due by **5:00 p.m. on September 6, 2023**.

4. The Commission refers this matter to an Administrative Law Judge (ALJ) for disposition and to establish the procedural schedule. The procedural schedule adopted by the ALJ will set the deadline for future filings including any briefs to be filed by intervenors in response to the Petition.

B. Background

5. On June 28, 2019, the Company filed its Application for Commission Approval of its Renewable Energy Compliance Plan in Proceeding No. 19A-0369E. The Company filed the plan in accordance with its obligations to meet the Renewable Energy Standard (RES), codified in § 40-2-124, C.R.S., which requires the utility to generate or cause to be generated a certain percentage of their retail sales from renewable energy.

6. Denver's Petition points out that the RES has been amended by the General Assembly since it was enacted in 2004. Through House Bill (HB) 07-1281, the definition of "community-based projects" was added, and codified what is now reflected in Rule 3654(h), 4 *Code of Colorado Regulations* (CCR) 723-3, that, for each kWh of electricity generated from eligible energy resources at a community-based project, for purposes of compliance with the RES, it shall be counted as 1.5 kWh of eligible energy (aka the "community-based project multiplier").

7. Denver's petition goes on to note that, through later amendments in HB 10-1342, the legislature established "community solar gardens" directing certain utilities to set forth a plan to purchase the electricity and RECs generated from one or more community solar gardens. In Proceeding No. 19A-0369E, the Company proposed to acquire up to 48 MW of Solar*Rewards Community capacity in each program year, split between a request for proposal (RFP) track, a "Standard Offer" track, and Company-owned solar gardens. The Commission ultimately approved a maximum annual purchase level of 75 MW,¹ and found the Solar*Rewards Community incentives prudent, reasonable, and in the public interest.²

8. Denver claims that Public Service has inconsistently applied the community-based project multiplier to Solar*Rewards Community producer compensation. Denver states that the Company has refused to compensate Denver for the additional community-based project RECs that it provides to the company through the Standard Offer track, despite offering this compensation for projects selected through the RFP track.

9. Denver claims that the Company's application in Proceeding No. 19A-0369E referred to Solar*Rewards Community producer compensation as "REC incentives", even for the Standard Offer. Denver includes in its Petition that the Company's proposal was to determine the incentive for the Standard Offer directly from the average REC price of the awarded RFP bids, plus \$0.02 per kWh.³ Both because of how the Company refers to the Standard Offer as a "REC

¹ Proceeding No. 19A-0369E, Decision No. C20-0289, ¶30.

² Proceeding No. 19A-0369E, Decision No. R20-0099, ¶74.

³ Petition at 8, citing Hrg. Ex. 3, Klemm Direct Testimony, Rev. 1, at 51:6-8, Proceeding No. 19A-0369E.

incentive” and because of its incentive being derived from the RFP incentive, Denver argues that – as proposed and ultimately approved – the Commission approved “REC incentives” both for the RFP and Standard Offer.

10. Based on this reading, Denver notes that its community-based projects generate 50 percent more compliance RECs for the Company than projects not subject to the multiplier. Denver’s reading of the application and subsequent decision to include its Standard Offer track projects as “REC incentives” would therefore apply a per-REC incentive that includes the community-based project multiplier (i.e., 1.5 kWh for every 1 kWh for community-based projects).

11. Denver represents that it has attempted to resolve its reading of the Recommended Decision but that ultimately seeking resolution from the Commission was necessary. If its reading of the Recommended Decision is affirmed, Denver asks that the Commission direct the Company to compensate producers of community-based projects for the 2020 Standard Offer based on RECs supplied to the Company and update Denver’s producer agreements for its 2020 Standard Offer projects on a going-forward basis.

12. On July 26, 2023, Public Service provided a filing noting that it agrees with Denver that a controversy exists and that it can address its position more fully if the Petition is accepted and a briefing schedule is established once intervention concludes.

C. Findings and Conclusions

13. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule,

regulation, or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, the Commission then exercises its discretion to accept or dismiss the petition.

14. We find that evaluating the questions presented in the Petition will remove uncertainty on how to address the community-based project multiplier as approved in Decision No. R20-0099. We therefore accept the Petition and issue notice of the Petition to interested persons, firms, and corporations by service of this Decision.

15. The Commission refers this matter to an ALJ for disposition including the establishment of a procedural schedule and any filing dates for intervenors' briefs in response to the Petition.

16. The Petition is available for public inspection by accessing the Commission's E-Filings System under Proceeding No. 23D-0371E at Colorado.gov/dora/puc. **This Decision is the notice that Denver's Petition for Declaratory Order regarding application of a community-based project multiplier, has been filed with the Commission.**

17. This Decision establishes a 30-day notice and intervention period for Denver's Petition. The Commission's notice period for the Petition shall extend through and include **5:00 p.m. on September 6, 2023**. The intervention period will run concurrent with the notice period. Interventions shall be due by **5:00 p.m. on September 6, 2023**.

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order (Petition) filed by the City and County of Denver on July 17, 2023, is accepted.

2. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

3. The notice period for the Petition shall extend through and include **5:00 p.m. on September 6, 2023.**

4. Any person desiring to intervene or participate as a party in this Proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on September 6, 2023.**

5. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments on or before **5:00 p.m. on September 6, 2023**, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or through the Commission's E- Filings System under Proceeding No. 23D-0371E at <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

6. The Commission refers the matter to an Administrative Law Judge for disposition.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 2, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners