Decision No. C23-0083

**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 GRANTING IN PART, AND DENYING IN PART, PUBLIC SERVICE'S MOTION TO MODIFY 2020-2021 SOLAR*REWARDS CAPACITY LEVELS, TO AFFIRM WHETHER TO PROCEED WITH THE 2021 STANDARD OFFER, AND TO WAIVE CERTAIN COMMISSION RULES

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# I. BY THE COMMISSION

## A. Statement

1. By this Decision, the Commission grants in part and denies in part the Verified Motion of Public Service Company of Colorado (Public Service or the Company) to Modify 2020-2021 Solar*Rewards Capacity Levels, to Affirm Whether the Company Should Proceed with Issuing Up to 10 MW of 2021 Standard Offer Capacity, and for Waiver from Commission Rules 3878(a) and (d) (Motion to Modify), filed on December 2, 2022.[1]

## B. Background

2. This Proceeding having been initiated in 2019, only relevant background is included in this Decision.

3. Public Service commenced this Proceeding by filing on June 28, 2019, its application for Commission approval of its 2020-2021 Renewable Energy Standard Plan (2020-2021 RE Plan), pursuant to Rule 4 *Code of Colorado Regulations* 723-3-3657 of the Commission's Rules Regulating Electric Utilities. In its application, Public Service explained that its proposal was meant as a "bridge plan" to continue 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. On February 14, 2020, Administrative Law Judge (ALJ) Melody Mirbaba issued Decision No. R20-0099 (Recommended Decision), largely approving the 2020-2021 RE Plan. In that decision, the ALJ approved Public Service's proposed total annual community solar garden

[1] While the initial filing was provided in Proceeding No. 21A-0625EG, it was administratively transferred to this Proceeding with a corrected filing date as stated here. No party contests the filing date and responses are accepted as timely.

(CSG) capacity levels of 15 MW minimum and 54 MW maximum, as well as the mechanisms for the request for proposal (RFP) program and the Standard Offer program.[2]

5. On April 28, 2020, the Commission addressed exceptions to the Recommended Decision through Decision No. C20-0289. In its decision, the Commission found that the record supported increasing community solar gardens (CSG) program levels and set a maximum annual purchase level at 75 MW and, on its own motion, a minimum annual purchase level at 35 MW.[3]

6. On September 21, 2020, Public Service filed an Unopposed Motion to Modify Solar*Rewards Community Bid Evaluation Criteria and Correspondingly Amend its Renewable Energy Compliance Plan. Public Service reported that it had delayed its 2020 RFP for the completion of the Commission's rulemaking on CSG, Proceeding No. 19R-0608E. Based on the rulemaking and meetings with stakeholders, Public Service proposed modified bid evaluation criteria for use in the 2020-2021 RE Plan S*RC solicitations. By Decision No. C20-0708, issued October 6, 2020, the Commission granted the motion to modify the S*RC bid criteria with a limited amendment to the 2020-2021 RE Plan. Public Service issued its 2020 RFP on October 16, 2020, awarded 75 MW of capacity in December 2020,[4] and the Commission acknowledged Public Service's compliance with 2020 Renewable Energy Standard requirements by Decision No. C21-0567, issued September 14, 2021.

7. On September 14, 2021, Public Service filed its Unopposed Second Motion of Public Service Company of Colorado to Modify its Solar*Rewards Community Bid Evaluation

[2] Decision No. R20-0099, issued April 14, 2020, at ¶¶ 60, 73-74.

[3] *Id*. at ¶ 30.

[4] Public Service Company of Colorado's Informational Notice Regarding its 2020 Solar*Rewards Community Program Request for Proposal (December 16, 2020); Xcel Energy 2020 Renewable Energy Standard Compliance Report (June 1, 2021); Staff of the Colorado Public Utilities Commission Review of Public Service of Colorado 2020 RES Compliance Report (August 2, 2021).

Criteria and Amend its 2020-2021 Renewable Energy Standard Plan. Based on significant stakeholder engagement, Public Service again proposed changes to the bid evaluation criteria to be used in the S*RC 2021 RFP. By Decision No. C21-0602, issued September 24, 2021, the Commission granted Public Service's motion, finding the changes to bid evaluation criteria to be in the public interest.

8. On December 10, 2021, Public Service filed a motion to extend its 2020-2021 RE Plan until such time as it commenced implementation of its 2020-2025 RE Plan. It stated that it intended to keep open the 2021 Standard Offer during the extension period until filled, to the extent capacity remained unavailable, and that no extension would be needed for the RFP programs as they represented annual competitive solicitations. The Commission approved the motion for extension by Decision No. C21-0838, issued December 30, 2021.

9. Public Service issued its 2021 RFP on October 5, 2021. On January 12, 2022, it notified winning bidders for 37.1 MWAC of capacity. On January 22, 2022, it filed an informational notice alerting the Commission to concerns about the cost impacts associated with awarding the full 74.4 MW of capacity. On February 23, 2022, Public Service filed its third motion to amend its 2020-2021 RE Plan and presented the Commission with three options for how to proceed on the RFP. By Decision No. C22-0218, issued April 8, 2022, the Commission rejected Public Service's motion and directed it to "award the balance of Solar*Rewards Community bids in compliance with prior Commission decisions," *i.e.,* to award the full 74.4 MW of capacity.[5] Public Service filed its 2021 RES Compliance Report on July 1, 2022, stating that it was awarding the 74.4 MW capacity but that the 2021 Standard Offer was delayed indefinitely. The Commission

[55] Decision No. C22-0218, issued April 8, 2022, at ¶ 19 and OP ¶ 2.

acknowledged Public Service's compliance with 2021 Renewable Energy Standard requirements and Staff's review[6] by Decision No. C22-0648, issued October 25, 2022.

### C. Motion to Modify

10. On December 2, 2022, Public Service filed its Motion to Modify, requesting a Commission order addressing three issues.

11. First, Public Service states that it believes its renewable energy team misinterpreted what it characterizes as "some degree of ambiguity in the record" and therefore it inadvertently over-subscribed its 2020 S*RC RFP program by 14 MW.[7] Public Service states that it interpreted Decision No. C20-0289 as authorizing up to 75 MW of annual RFP capacity rather than up to 75 MW of total annual CSG capacity, including that allocated to the RFP. Public Service provides Table 1 showing a breakdown of annual CSG capacity it believes was authorized in the 2020-2021 RE Plan, where it calculates 75 MW including 61 MW for the RFP program, 10 MW for the Standard Offer, and 4 MW for Company-owned CSGs. Across the 2020 and 2021 RFPs, Public Service states that it issued 149.4 MW of CSG RFP capacity, whereas the decision contemplated 122 MW of CSG RFP capacity. Public Service states that this is a regrettable oversight, but controls are now in place regarding program management, including the "checkpoint" between the RFP and the Standard Offer programs that the Commission implemented in Proceeding No. 21A-0625EG.[8]

[6] Staff of the Colorado Public Utilities Commission Review of Public Service of Colorado 2021 RES Compliance Report (October 4, 2022).

[7] Motion to Modify at 7.

[8] Proceeding No. 21A-0625EG, Decision No. C22-0678, issued November 3, 2022, at ¶ 67.

12. Public Service proposes that, since the Solar*Rewards Medium program has been undersubscribed by 44.4 MW, that capacity be allocated to the S*RC program for the 2020-2021 RE Plan. It asserts that applying this capacity to the S*RC program represents fewer costs to ratepayers annually and over 20 years, than had the capacity been expended on the incentives and bill credits for the Solar*Rewards Medium program to which it was originally assigned. Public Service states that this approach is consistent with § 40-2-127(5)(a)(IV)(A)-(B), C.R.S., which encourages CSG ownership if the Commission finds there is demand for it, and Decision No. C20-0289, which addresses the principle that CSG programs should be cost-effective. Accordingly, Public Service requests the Commission authorizes the Company to modify its 2020-21 RE Plan capacity levels to 75 MW for the 2020 S*RC RFP program and 74.4 MW for the 2021 S*RC RFP program.

13. Public Service's second request is for direction regarding whether to issue up to 10 MW of capacity for the 2021 S*RC Standard Offer program, and if so, what renewable energy credit (REC) price it should apply.[9] Recommended Decision No. R20-0099 specified that the Standard Offer incentive should be calculated using the weighted average winning bid price from the annual S*RC RFP plus adders, including $0.02/kWh for projects that commit to 100 percent direct-billed residential low-income subscribers.[10] However, Public Service raises that the bids put forth in the 2021 RFP were costly due to adders and incentives for low-income projects. It suggests that the Commission apply a reduced REC price of $0.015 ($0.035 for projects with income-qualified commitments) based on removing bonus scoring from the 2021 RFP bids. Public

[9] In its Motion to Modify, Public Service notes that provisions regarding the RFP program have been mooted through Proceeding No. 21A-0625EG, by which the next CSG RFP is to be offered in 2023. However, it seeks Commission direction on the 2021 Standard Offer due to "strong developer interest in maintaining continuity and a thriving marketplace." Motion to Modify at 4-5, fn. 4.

[10] Decision No. R20-0099, issued February 14, 2020, at ¶¶ 63, 74.

Service estimates that this REC price would result in costs of $12.3 million over 20 years (without bill credits) for the 2021 Standard Offer, whereas setting a REC price using the higher winning bid price would result in costs of $28.8 million over 20 years. Should Public Service be directed to issue the 2021 Standard Offer, it requests a variance from Decision No. R20-0099 as affirmed by Decision No. C20-0289, for good cause shown consistent with Rule 1003(a).

14. Public Service's third request is for a variance from subparts (a) and (d) of Rule 3878, which specifies that no CSG subscriber organization may own more than a 40 percent interest in the electricity and the RECs associated with a CSG after it has been in commercial operation for 18 months. In support of its request that the Commission grant a variance for good cause shown per Rule 1003(c), Public Service represents that the City and County of Denver (Denver) is working with developer McKinstry on a 446 $kW_{AC}$ CSG project that Denver would own on behalf of a single subscriber, the Denver Housing Authority (DHA). DHA would administer the project on behalf of 100 DHA customers. Public Service argues that DHA is an eligible low-income service provider as defined in Rule 3877(g) and so the project would result in benefits to income-qualified customers and disproportionately impacted communities, which aligns with the Commission's policies including Senate Bill 21-272 directives. Public Service represents that Denver supports the relief requested.

### D. Responses to Motion to Amend

15. Three parties timely filed responses to Public Service's Motion to Modify on December 16, 2022.

16. Staff recommends the Commission deny Public Service's first two requests. First, Staff recommends the Commission deny Public Service's request to modify the capacity levels of

the CSG RFP program for the 2020-2021 RE Plan. Staff characterizes Public Service's request to reallocate capacity from the Solar*Rewards Medium program as a red herring that would eliminate savings that ratepayers have already received given the program was undersubscribed. Staff asserts that this request is essentially intended to provide Public Service with a presumption of prudence for actions that were unauthorized, citing § 40-2-124(1)(i), C.R.S., to explain that a qualifying retail utility's actions under an approved compliance plan shall carry a rebuttable presumption of prudence. Staff argues that Public Service's actions are, in fact, inconsistent with the capacity levels of 61 MW annually that the Commission approved for the RFP program.

17. Second, Staff also recommends the Commission reject Public Service's request to affirm that it should proceed with offering the 10 MW 2021 Standard Offer program. Staff suggests the Commission not affirm its original decision by instructing Public Service not to initiate the 2021 Standard Offer. Staff notes that given the Company already oversubscribed its S*RC RFP program by 27.4 MW, it would be equitable to provide ratepayers with a cost reduction elsewhere. Staff also contests the idea that the Colorado marketplace is awaiting these additional 10 MW given the Company already awarded more CSG capacity than was called for in the 2020-2021 RE Plan. Should the Commission direct the Company to proceed with the 2021 Standard Offer, however, Staff recommends the Commission select the $0.015/kWh REC incentive ($0.035/kWh income-qualified REC incentive) as representing a better approach for ratepayers.

18. Finally, Staff recommends granting Public Service's third request, as to a permanent variance from Rule 3878(a) and (d). Staff agrees with arguments made by the Company, explaining that granting the variance would align with the Commission's overall policy of improving access to equity in energy programs for income-qualified customers. Staff also expresses that ownership by a governmental entity dedicated to income-qualified issues does not

invoke the same concerns about a single entity dominating CSG capacity that the rule was intended to address.

19. COSSA/SEIA argues that the Commission need not take any actions with regard to the Company's first two requests.[11] As to the correct level of CSG RFP capacity, COSSA/SEIA argues that the Company is already in compliance with prior Commission decisions. COSSA/SEIA explains that Decision No. C20-0289 directly addressed arguments made by it and by the Colorado Energy Office on the 2020 and 2021 CSG RFP capacity levels, not total CSG program levels. While recognizing the ambiguity of the Commission's phrasing regarding total annual maximum capacity, COSSA/SEIA raise the Commission's intent in addressing specific exceptions and the fact that it did not adjust capacity levels for other CSG programs besides the RFP. COSSA/SEIA also recommends applying the usual canons of statutory interpretation to this situation, which include consistency. COSSA/SEIA argues that subsequent actions by the Commission and Staff, including but not limited to review of and decisions on the Company's annual Renewable Energy Standard compliance reports, and the Commission's decisions regarding RFP bid evaluation criteria, support that the Company has correctly awarded up to 75 MW of CSG RFP capacity.

20. COSSA/SEIA also argue that because the Company remains in compliance with prior Commission decisions, the Commission need not take action on the Company's second request except to direct it to initiate the 2021 Standard Offer promptly. However, COSSA/SEIA argues that if the Commission decides to modify its prior decisions, it should not only reconsider the REC pricing for the 2021 Standard Offer, but also consider revoking the Company's authorization for 4 MW of owned income-qualified CSGs. This is because of mistakes made by

[11] COSSA/SEIA states that GRID Alternatives supports its response and that the Colorado Energy Office supports Section 2 of its response but does not agree with its alternative recommendation in Section 3.

the Company—including, for example, awarding a REC price for the 2021 Standard Offer of $0.04861 instead of the correct price of $0.02003, with a potential impact of $12.4 million to the Renewable Energy Standard Adjustment (RESA) account over 20 years. Eliminating the 2021 Standard Offer would be unfair to the developer community, COSSA/SEIA argue, as Public Service did not publish the average winning bid price and so the developer community relied on direct communications from the Company. CSG developers have invested time and money in project development work, such as pre-qualifying sites. Public Service has produced materials that indicated the 2021 Standard Offer would move forward. Moreover, the Commission should not interpret statements from the Company on investments it has made in Company-owned income-qualified CSGs to mean that those costs are sunk; Public Service's development capital should not be protected while that of third parties is put at risk.

21. Should the Commission modify the 2021 Standard Offer program, it should select a REC price of $0.02003/kWh ($0.04003/kWh income-qualified), which is what Public Service should have offered for its 2020 Standard Offer program. Using the 2021 RFP bid results to calculate the Standard Offer REC price would be high and the price is further distorted by scoring criteria that included incentives for projects with benefits to income-qualified subscribers. However, Public Service's proposal is too low, as it assumes zero bonus scoring for additional commitments for income-qualified subscribers. COSSA/SEIA argues that when the time value of money is taken into account, its preferred REC price for the 10 MW 2021 Standard Offer would result in lower costs to ratepayers over 20 years as compared to the Company's 4 MW of owned, income-qualified CSGs—and even if 4 MW of the Standard Offer were set aside for income-qualified customers. Given that the 2021 RFP resulted in significant levels of donated CSG subscriptions to direct-billed residential income-qualified customers, and the 2021 Standard

Offer is likely to include further income-qualified benefits under the Commission's current CSG rules, the Company-owned income-qualified CSGs are neither critical nor cost-effective compared to third-party developer offerings.

22. Finally, COSSA/SEIA recommends granting Public Service's third request, as to a permanent variance from Rule 3878(a) and (d).

23. Energy Outreach Colorado (EOC) generally supports the Company's Motion to Modify. It recommends the Commission issue a decision authorizing the Company to modify S*RC capacity for the 2020-2021 RE Plan, specifically permitting the Company to re-allocate unused capacity from the Solar*Rewards Medium program to the S*RC program. EOC supports directing the Company to move forward with the 2021 Standard Offer, which it says the market has been expecting, but it does not take a position on the appropriate REC price except to say that a revised price formula is likely warranted. EOC further adds its support for the 8 MW of Company-owned gardens, as it oversees subscriber acquisition for those CSGs and they provide a unique tool for income-qualified customers to receive meaningful energy bill savings through practices like consolidated billing.

### E. Findings and Conclusions

24. Public Service's Motion to Modify comes at a time where it is increasingly critical to consider each decision the Commission makes from the perspective of its impact on affordability. We are also concerned about the long history of requests from the Company to modify prior orders and by its statements regarding human error—as well as the concerns alluded to by COSSA/SEIA regarding potentially incorrect REC awards—and whether the Company has fully implemented effective controls. While we resolve the Motion to Modify here, we are

concerned that the Company and parties are not providing the Commission with sufficiently granular information in a timely manner in order for us to make decisions on the nuances of CSG program administration, particularly given the diverse perspectives on the policy goals that CSGs are intended to meet and the challenges this translates into in implementation. We put parties on notice that we expect far more detailed and timely information on CSG program administration in the future, and we may seek to issue more specific directives if needed.

25. As part of this effort to better understand the Company's approach to implementing this program, we request that the Company submit a narrative explanation responding to COSSA's claim that CSG Standard Offer contracts were awarded to developers with REC pricing that was more than double the authorized amount and in a way that may raise the cost to ratepayers by $12.4 million. If this characterization is accurate, this narrative should also explain why these contracts weren't subsequently modified to include the accurate pricing and why these costs are planned to be allocated to customers.

26. As to the Company's request to modify capacity levels for the Solar*Rewards program, we deny this portion of the Motion to Modify. The Company is acting in compliance with prior Commission decisions, including those acknowledging its annual RES compliance filings and, most recently, Decision No. C22-0218, which directed the Company to award the full 74.4 MW of capacity bid into the 2021 RFP. The Company has acted consistently in awarding up to 75 MW of capacity in compliance with Decision No. C20-0289, and the Commission has acknowledged the Company's annual RFP capacity levels of up to 75 MW maximum in its decisions since that time.

27. As to the 2021 Standard Offer, we affirm that the Company should release the 2021 Standard Offer, with modifications. Recognizing the significance of the kinds of concerns Staff

raises regarding cost, we see fit to temper the offering and authorize the Company to offer up to 5 MW capacity, rather than the full 10 MW of capacity originally authorized. This approach recognizes the potential expectations of the CSG industry and CSG subscribers while moderating costs. Furthermore, we appreciate the proposals by parties to reduce the REC incentive to a more appropriate level given the high costs of the 2021 RFP. With a further eye toward cost impacts, we direct Public Service to establish a REC incentive that is the midpoint of those proposed in its Motion to Modify and the response of COSSA/SEIA, or $0.0175 per kWh for the base incentive, before the $0.02 income-qualified adder. Given the recognized high prices from the 2021 RFP which would otherwise result in high costs attributable to the 2021 Standard Offer, we affirm that good cause exists to grant a variance pursuant to Rule 1003(a) from Decision No. R20-0099 and Decision No. C20-0289 to implement this more appropriate REC incentive.

28. Finally, we find good cause to grant Public Service a full and permanent variance from Rule 3878(a) and (d) for the purpose of facilitating Denver's ownership of the income-qualified CSG on behalf of DHA. This request is uncontested, and we agree with parties' characterization of this request as supporting the Commission's overall policy of promoting equitable access to clean energy programs for income-qualified customers.

## II. ORDER

### A. The Commission Orders That:

1. Verified Motion of Public Service Company of Colorado (Public Service or the Company) to Modify 2020-2021 Solar*Rewards Capacity Levels, to Affirm Whether the Company Should Proceed with Issuing Up to 10 MW of 2021 Standard Offer Capacity, and for

Waiver from Commission Rules 3878(a) and (d) (Motion to Modify), filed on December 2, 2022, is granted in part, and denied in part, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 25, 2023.**

(S E A L)

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

Commissioners

COMMISSIONER JOHN GAVAN'S TERM
EXPIRED ON FEBRUARY 3, 2023.