

Decision No. C23-0433

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22F-0365E

SUNSHARE, LLC,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**COMMISSION DECISION DENYING, IN PART,
AND GRANTING, IN PART, EXCEPTIONS TO RECOMMENDED
DECISION NO. R23-0292**

Mailed Date: June 28, 2023
Adopted Dates: June 21, 2023

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies, in part, and grants, in part, the Exceptions to Recommended Decision No. R23-0292 (Exceptions) that SunShare, LLC (SunShare) filed on May 17, 2023. While we affirm the Recommended Decision’s ultimate conclusion that SunShare has not met its burden of proving a violation of Commission Rule or Decision, we find that the actions of Public Service Company of Colorado (Public Service or the Company) leave room for improvement. Accordingly, we direct Public Service to make every reasonable effort to extend the Target Completion Dates for SunShare’s Lincoln Project and Gerry Project and to keep the Commission apprised of the Company’s management of the community solar garden (CSG) interconnection process.

B. Procedural History

2. On August 17, 2022, SunShare filed a Formal Complaint (Complaint) against Public Service, alleging that the Company’s actions following the 2020 Solar Rewards Community

(SRC) Request for Proposals (RFP) violated (1) Colorado's CSG statute, § 40-2-127, C.R.S.; (2) Decision Nos. R20-0099, C20-0289, and C20-0708 in Proceeding No. 19A-0369E (collectively the RES Plan Decisions); and (3) Commission Rules 3853(d) and 3853(d)(VIII).

3. In its Complaint, SunShare requested the following relief: (1) an increase in the price that Public Service pays for the Renewable Energy Credits (RECs) generated by SunShare's two CSGs, (2) that Public Service be required to pay for the incremental interconnection costs above the amount SunShare budgeted, and (3) an extension of the Target Completion Dates for each of its CSGs to February 16, 2025.

4. By Decision No. C22-0503-I, issued August 24, 2022, the Commission referred the matter to an Administrative Law Judge (ALJ).

5. On August 25, 2022, the Commission entered its Order to Satisfy or Answer and issued an Order Setting Hearing and Notice of Hearing. The Commission served Public Service with the Orders and Notice and an Order to Satisfy or Answer within 20 days from service of the Orders and Notice.

6. On September 14, 2022, Public Service Company of Colorado filed a Motion to Dismiss Formal Complaint with Prejudice.

7. On September 21, 2022, Trial Staff of the Colorado Public Utilities Commission (Staff), filed its Notice of Intervention as of Right.

8. On October 31, 2022, Public Service's Motion to Dismiss was denied by Decision No. R22-0676-I.

9. On November 8, 2022, the Office of the Utility Consumer Advocate (UCA) filed a Motion to Participate as Amicus Curiae. This Motion was granted on November 10, 2022, by Decision No. R22-0711-I.

10. On December 8, 2022, the Colorado Energy Office (CEO) filed a public comment regarding this Proceeding.

11. On February 14, 2023, ALJ Farley convened an evidentiary hearing during which the following exhibits were entered into the evidentiary record: Hearing Exhibits 103, 104, 109, 114, 117, 118, 501, 509, and 600 (and all of the exhibits and confidential exhibits listed therein).

12. On May 3, 2023, ALJ Conor Farley issued Recommended Decision No. R23-0292 (Recommended Decision). The Recommended Decision ultimately concludes that SunShare did not meet its burden of proof of showing that Public Service violated any statute, regulation, or Commission Decision.

13. On May 17, 2023, SunShare filed Exceptions to the Recommended Decision. SunShare's first exception is to the Recommended Decision's conclusion that SunShare had not met its burden of proving that Public Service violated the Commission's rules on Small Generator Interconnection Procedures (SGIP), 4 CCR 723-3-3850, *et. seq.*¹ SunShare specifically argues that Public Service violated Rule 3853(d) when the Company rejected SunShare's requests for an SGIP study/System Impact Study (SIS) after SunShare submitted a complete SGIP application. In addition, SunShare asserts that Public Service violated the SGIP rules when it offered to connect one of SunShare's CSG projects at a reduced capacity (2.4 MW instead of 5 MW) and when applying its Minimum Daytime Load (MDL) Standard interconnection viability formula.²

¹ Exceptions, pp. 1, 3.

² *Id.* at 13-14.

14. SunShare's second exception is to the Recommended Decision's conclusion that SunShare had not met its burden of proving that Public Service violated the Commission's RES Plan Decisions. SunShare continues to assert that Decision No. R20-0099 (one of the RES Plan Decisions) allows unlimited site moves and that Public Service's site move policy violates this allowance. SunShare further asserts that Public Service's site move policy is an unauthorized modification of the CSG bid evaluation criteria in violation of the RES Plan Decision.³

15. In Exceptions, SunShare continues to request that the Commission increase the REC price for its two CSG projects to \$0.00/MWh.⁴ However, SunShare modifies its other requests for relief. In particular, SunShare drops its request that Public Service pay for the incremental interconnection costs above the amount SunShare budgeted.⁵ Regarding the extension of time, SunShare now requests that the Commission extend the Target Completion Date for each CSG to 90 days after the completion of the required network upgrades.⁶

16. On May 31, 2023, Public Service and Staff each filed a response to SunShare's Exceptions. In Public Service's Response, the Company defends the Recommended Decision's analysis and argues that the Commission should fully deny SunShare's Exceptions. In Staff's Response, Staff takes no position on the merits of the Recommended Decision but urges the Commission to not impose any new costs on ratepayers if the Commission reverses the Recommended Decision. Staff asserts, however, that extending the Target Completion date per SunShare's request would not adversely affect ratepayers.

³ *Id.* at 4, 21.

⁴ The current REC price for the two projects is highly confidential.

⁵ Exceptions, p. 4, n. 8.

⁶ *Id.* at 24.

C. Factual Background

17. The Recommended Decision includes a thorough factual background, which this Decision briefly summarizes. On October 16, 2020, Public Service issued the 2020 CSG RFP.⁷ At least as early as November 5, 2020, on its Q/A Tracker, Public Service released its site move policy for those bids that receive the interconnection viability points.⁸

18. The deadline for responses to the 2020 CSG RFP was November 16, 2020.⁹ On December 16, 2020, Public Service issued its award notices to all CSG awardees, including SunShare.¹⁰ In particular, on December 16, 2020, SunShare received an award notice for the Lincoln Project that would interconnect at the Cobb Lake substation (5 MW) and the Gerry Project that would interconnect at the Greeley Substation (5 MW).¹¹

19. SunShare understood that Public Service would place SunShare's Lincoln Project and Gerry Project in a queue when SunShare completed its post-bid requirements, and that the order of the queue would be determined on a "first submitted, first awarded basis."¹²

20. Regarding its Lincoln Project, SunShare completed the post-bid requirements for the Lincoln Project at Cobb Lake on March 15, 2021, at which point the Lincoln Project occupied third place in the queue. Public Service informed SunShare that it would have to perform additional studies to confirm whether grid/or substations upgrades would be needed to add

⁷ Recommended Decision, p. 9.

⁸ *Id.* at 10.

⁹ *Id.* at 9.

¹⁰ *Id.*

¹¹ *Id.* at 13.

¹² *Id.* at 14.

SunShare's generation to the Cobb Lake substation, so SunShare requested a site move to the Uintah feeder/substation on March 30, 2021.¹³

21. After SunShare's request to move the Gerry Project to the Uintah site, Public Service discovered that the Pre-Application Data Report (PADR) it supplied to SunShare incorrectly overestimated how much capacity was available at the Uintah site.¹⁴ Although Public Service honored SunShare's site move request because SunShare had reasonably relied on the erroneous PADR, SunShare would need to pay for upgrades at the Uintah site. Not wanting to pay for such upgrades, on April 6, 2021, SunShare requested a site move to the Platteville substation. However, pursuant to the Company's site move policy, on April 21, 2021, Public Service denied SunShare's request to move to the Platteville substation because the Platteville site did not meet the interconnection viability criterion.¹⁵

22. On March 8, 2022, SunShare requested to move the Lincoln Project to the Ault site. On March 18, 2022, pursuant to the site move policy, Public Service denied the requested site move to the Ault site because the site did not meet the interconnection viability criterion.¹⁶ On April 4, 2022, however, Public Service waived its site move policy and with it the requirement that a site move must satisfy the interconnection viability criterion. The Lincoln Project commenced the interconnection process at the Ault site.¹⁷

23. As for SunShare's Gerry Project, SunShare completed the post-bid requirements for the Gerry Project at Greeley Substation on March 10, 2021. There was at least one other

¹³ *Id.* at 16.

¹⁴ *Id.* at 17-18.

¹⁵ *Id.* at 18.

¹⁶ *Id.* at 19.

¹⁷ *Id.*

awardee that was ahead of SunShare in the queue for the Greeley substation, and SunShare learned that it would be required to pay for upgrades to the Greeley substation.¹⁸

24. On May 26, 2021, SunShare requested a PADR for the Cloverly substation to determine whether to request a site move to that feeder/substation, but the PADR results for Cloverly were not available at that time.¹⁹ After Public Service provided the requested PADR to SunShare in August 2021, SunShare requested to move the Gerry Project to the Cloverly site. On August 24, 2021, pursuant to the site move policy, Public Service rejected SunShare's requested site move because the site move did not meet the interconnection viability requirement.²⁰

25. On March 18, 2022, Public Service offered SunShare the ability to interconnect up to 2.4 MW of its Gerry Project at the Cloverly site. SunShare rejected the offer, which would have required a reduction in the Gerry Project from 5 MW to 2.4 MW.²¹

26. As with the Lincoln Project, on April 4, 2022, Public Service waived its site move policy and with it the requirement that a site move must satisfy the interconnection viability criterion. The Gerry Project commenced the interconnection process at the Cloverly site for the full 5 MW.²²

¹⁸ *Id.*

¹⁹ *Id.* at 20.

²⁰ *Id.* at 20-21.

²¹ *Id.* at 21.

²² *Id.*

D. Summary of Recommended Decision

27. The Recommended Decision notes that SunShare bears the burden of proving the claims alleged in the Complaint by a preponderance of the evidence.²³ To satisfy this burden, SunShare must demonstrate that the evidence, on the whole, tips in favor of SunShare.

28. As referenced above, in its Complaint, SunShare argues that Public Service's refusal to commence the interconnection process and approve its various site moves violated that SGIP Rules, such as Rule 3853. The Recommended Decision rejects these arguments, asserting that SunShare failed to specifically identify rules that Public Service violated. Instead, the Recommended Decision states that SunShare cites generally to Rule 3853(d) for its assertion that "there is nothing in the SGIP rules that allowed SunShare's interconnection requests to be denied."²⁴ The Recommended Decision reviews SunShare's Complaint to conclude that SunShare alleges violations of Rule 3853(d), Rule 3853(d)(VIII), and Rule 3853(a)(IV)(B).²⁵

29. The Recommended Decision first notes that Rule 3853 did not become effective until July 30, 2021. While portions of Rule 3853 existed in the predecessor rules, SunShare does not cite this predecessor rule. The Recommended Decision concludes that SunShare did not carry its burden of proving that Public Service violated Rule 3853 at a time when Rule 3853 did not exist.²⁶

30. Despite this timing issue, the Recommended Decision goes on to evaluate the specific components of Rule 3853(d) SunShare cited in its Complaint as well as the applicable

²³ Recommended Decision, pp. 5-6 (citing Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1200 of the Rules of Practice and Procedure, 4 Colorado Code Regulations (CCR) 723-1).

²⁴ *Id.* at 30 (citing SunShare's SOP at pp. 13-14).

²⁵ *Id.* at 30-31.

²⁶ *Id.* at 31.

predecessor rule. The Recommended Decision concludes that “[e]ven if Rule 3853 applied to the actions of Public Service identified by SunShare, the ALJ would conclude that Public Service has not violated Rule 3853 or any applicable predecessor rules.”²⁷ The Recommended Decision reasons, in part, that Rule 3853(d)(VI) and its predecessor Rule 3667(IV) address site moves but do not state that utilities do not have any discretion to place conditions/restrictions on site moves.²⁸

31. As to SunShare’s assertions that Public Service violated the RES Plan Decisions, the Recommended Decision concludes that Public Service’s site move policy did not violate prior Commission decisions. Specifically, the Recommended Decision notes that Recommended Decision No. R20-0099 does not expressly address whether developers are permitted to have unlimited site moves.²⁹ The Recommended Decision further concludes that Decision No. C20-0289 (the Commission Decision addressing exceptions to Decision No. R20-0099) and Decision No. C20-0708 (granting Public Service’s Unopposed Motion to amend the CSG bid evaluation criteria) do not require Public Service to accept all site moves or prohibit Public Service from imposing any conditions on site moves.³⁰

32. Similarly, the Recommended Decision concludes that while Decision No. C20-0289 requires Public Service to obtain Commission approval of any changes to the “CSG bid evaluation criteria,” the Decision did not require Public Service to seek Commission approval before instituting the site move policy, because this policy was implemented after bid winners were declared. Accordingly, the Recommended Decision rules that Public Service did not violate any

²⁷ *Id.* at 32.

²⁸ *Id.*

²⁹ *Id.* at 26-27.

³⁰ *Id.*

of the Commission's RES Plan Decisions by instituting the site move policy because the policy was not a bid evaluation criteria requiring prior Commission approval.³¹

33. In addition, the Recommended Decision expresses approval of Public Service's site move policy for practical considerations. The ALJ explains that per Decision No. C20-0708 (the RES Plan Decision amending the CSG bid evaluation criteria), bids that propose to interconnect at certain sites that are better able to accommodate new CSGs receive an additional 20 points under the interconnection viability criterion. Under Public Service's site move policy, if an awarded bid received the 20 points for interconnection viability it cannot move to a site that would not qualify for the interconnection viability points.³²

34. The Recommended Decision agrees with Public Service that allowing a bidder who used the 20 interconnection viability points to win its bid to subsequently move to a site that would not have earned the 20 interconnection viability points could be unfair to unsuccessful bidders. The Recommended Decision goes on to opine that allowing completely unrestricted site moves could cause bidders to game the system. A bidder could craft its bid to interconnect at a site where the bidder actually had no intention to build a CSG in order to obtain the 20 interconnection viability points. Then, after winning the bid, the bidder could move to a site that would have received zero interconnection viability points.³³

35. Ultimately, the Recommended Decision denies all of SunShare's claims in its Complaint.³⁴

³¹ *Id.* at 27-28.

³² *Id.* at 9-11.

³³ *Id.* at 11.

³⁴ *Id.* at 36.

E. Alleged Violations of Rule 3853(d)**1. SunShare's Exceptions**

36. In its Exceptions, SunShare argues that the Recommended Decision erred in concluding that there was no violation of Rule 3853(d). SunShare first argues that the Recommended Decision was incorrect that Rule 3853(d) was not effective at the time of the alleged violations. SunShare argues that—after the July 30, 2021, effective date—Public Service rejected SunShare's SGIP interconnection request for the Gerry Project to the Cloverly substation on August 24, 2021, and Public Service rejected the SGIP interconnection request for the Lincoln Project to the Ault substation on March 18, 2022.³⁵ SunShare maintains that the Recommended Decision's ruling "is overcome by the violations of the current rule after its effective date...."³⁶

37. Aside from the timing issue, SunShare argues that the Recommended Decision "missed the thrust of SunShare's argument – that Public Service was required to perform a [SIS] once a complete SGIP interconnection application was submitted."³⁷ SunShare argues that the Recommended Decision improperly conflates the improper denial of site moves with the improper denial of SGIP study requests.³⁸

38. Focusing solely on the SGIP study requests, SunShare argues that under Rule 3853(d), a utility may only refuse to perform an SIS if the Interconnection Customer (IC) fails to supply the required documentation or fails to pay the necessary fees. SunShare reasons that because its interconnection requests met these two requirements, SunShare was within its rights as an IC under Rule 3853(d) to enter the SGIP study process for the Lincoln Project at the Ault

³⁵ Exceptions, p. 9.

³⁶ *Id.* at p. 9, n. 28.

³⁷ *Id.* at 10.

³⁸ *Id.* at 8.

substation (requested on March 8, 2022) and the Gerry Project at the Cloverly substation (requested on August 13, 2021).³⁹

2. Public Service's Response

39. In its Response, Public Service adopts and defends the reasoning in the Recommended Decision that SunShare did not carry its burden of proving that Public Service violated Rule 3853 at a time when Rule 3853 did not exist. Public Service acknowledges that it rejected SunShare's interconnection requests to the Cloverly and Ault substations after the effective date of Rule 3853, but the Company argues that the appropriate focus should be on when SunShare initially submitted its interconnection applications.⁴⁰ Public Service asserts that the original SGIP application for the Gerry Project and the Lincoln Project were both made on or before March 2021—prior to the July 20, 2021, effective date of Rule 3853(d).⁴¹

40. Public Service goes on to argue that there was no violation of Rule 3853(d) even aside from the timing issue. Addressing SunShare's argument that Public Service was required to perform a SIS once a complete SGIP interconnection application was submitted, Public Service asserts that this oversimplified argument asks the Commission to ignore the underlying RFP. The Company argues that interpreting Rule 3853(d) such that there are no circumstances whatsoever when a utility can decline to perform a SIS after receiving a complete application might render the CSG RFPs and other program requirements meaningless. Public Service maintains that the Company must be allowed to ensure that CSG developers abide by the terms of their RFP bids. Public Service asserts that it did just this when dealing with SunShare's CSG projects: "The

³⁹ *Id.* at 12.

⁴⁰ Public Service's Response, p. 6.

⁴¹ *Id.* at 7.

Company reasonably ensured that the site move requests made by SunShare complied with its underlying bid awards, including the Interconnection Viability criterion.”⁴²

41. Public Service further argues that its refusal to process SunShare’s interconnection agreements was not based on whether the applications were complete but rather whether the requested site moves met the interconnection viability criterion. To do otherwise, Public Service reasons, would have allowed SunShare to game the RFP process. Public Service notes that “there were 28 other bids whose scoring would have been higher than SunShare’s awarded bids had Interconnection Viability scoring not been included in SunShare’s bids.”⁴³ Allowing SunShare to move its projects to sites that did not meet the interconnection viability criterion would have been unfair to other CSG developers.⁴⁴

3. Findings and Conclusions regarding the Alleged Violations of Rule 3853(d)

42. Beginning with the timing issue, the Commission is unpersuaded by Public Service’s arguments that all of SunShare’s claims are time-barred because SunShare submitted its initial application prior to the effective date of Rule 3853(d). While Public Service is correct that rules are effective prospectively, SunShare reasonably argues in Exceptions that the site moves it requested *after* July 30, 2021—and Public Service’s subsequent denial of these site moves—are governed by Rule 3853(d). In addition, to refuse to scrutinize Public Service’s actions because SunShare’s earlier requests to interconnect at different sites were made prior to July 30, 2021, is counterintuitive to state policy concerns, including those behind enacting Rule 3853(d) nearly two

⁴² *Id.* at 9-10.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 8-9.

years ago. Therefore, in this instance, the Commission will consider the rule's application. As set forth below, however, we find that Public Service's actions did not violate Rule 3853(d).

43. Even considering the application of the SGIP rules per SunShare's assertions, we find SunShare's arguments on Exceptions to be flawed. At bottom, SunShare seems to argue that as long as an IC submits the required documentation and fees for a project, the utility is required to conduct an SIS, even if the project is ineligible to connect at the requested substation for other reasons. This would produce the absurd result of requiring the utility to spend time and resources to study a project that—regardless of the outcome of the study—is ineligible for interconnecting at that location. Even if the IC ultimately pays for the costs of the study, this scenario might delay SIS studies for other CSG projects that *are* eligible to interconnect at that location.

44. We agree with Public Service that SunShare's argument that Rule 3853(d) requires the utility to conduct an SIS for all complete applications is oversimplified and ignores the larger regulatory framework governing SunShare's CSG projects. SunShare's reading of Rule 3853(d) would seemingly allow an IC to receive an SIS and reserve a position in the queue for a project even if the IC was not awarded a bid in the RFP or the proposed project violated the conditions of the RFP.⁴⁵

45. Moreover, SunShare does not cite a provision in Rule 3853(d) that requires Public Service to commence an SIS upon receipt of a complete application. Instead, SunShare argues that because Rule 3853(d)(VIII) prescribes instances in which a utility can reject an SGIP application, the rule implicitly prohibits denial for any other reason. The Commission finds this

⁴⁵ SunShare does acknowledge that only winning bidders may submit applications. (SunShare Statement of Position (SOP), pp. 13-14). However, this restriction—like the restrictions on site moves—does not appear in the language of Rule 3853(d).

myopic reading of Rule 3853(d) to be unreasonable given the larger regulatory context governing CSGs.

F. Other Alleged Violations of SGIP Rules at Cloverly Substation

1. SunShare's Exceptions

46. SunShare asserts that the Recommended Decision fails to address two other SGIP Rule violations SunShare alleged regarding the Gerry Project's interconnection at the Cloverly substation in August 2021. First, SunShare alleges that Public Service violated SGIP Rules when it informed SunShare that its Gerry Project could only connect to the Cloverly site if the project size was reduced from 5 MW to 2.4 MW. Second, SunShare alleges that Public Service violated SGIP Rules when it did not use the Company's own MDL Standard interconnection viability formula as modified by the utility's SRC Program Update noticed to CSG developers on May 27, 2021.⁴⁶

47. On the first point, SunShare asserts that Public Service testified during the hearing that SIS reports are the only means by which project-specific interconnection capacity and cost can be officially determined via the SGIP.⁴⁷ SunShare asserts that the "offer" to interconnect at 2.4 MW was not based on an SIS or interconnection agreement.

48. On the second point, SunShare states that Public Service sent an "SRC Program Update" on May 27, 2021, that removed generation queued after the 2020 RFP from the formula, which would have the effect of decreasing the MDL threshold. SunShare asserts, however, that Public Service did not follow its SRC Program Update because Public Service included post-RFP

⁴⁶ Exceptions, p. 13.

⁴⁷ *Id.* (citing Hrg. Trans. (Feb. 14, 2023), at 117-19).

queued generation in its calculation showing the MDL Standard was not met for the Gerry Project. SunShare asserts that, pursuant to the SRC Program Update formula, the Gerry Project should have cleared the site move restriction at the Cloverly substation.

2. Public Service's Response

49. In its Response to SunShare's Exceptions, Public Service argues at the outset that SunShare failed to present either of these arguments in a cogent manner and that it is not the ALJ's responsibility to articulate SunShare's claims.⁴⁸

50. Regarding Public Service's offer to interconnect the Gerry Project to the Cloverly site at 2.4 MW, the Company asserts that this offer adhered to the interconnection viability of the site and aligned with allocations at Cloverly for other awardees in the 2020 RFP. As for the MDL Standard formula, Public Service simply asserts that "it is difficult to understand what claim SunShare is attempting to make, including what rule violation or otherwise is alleged with this argument" and asserts that the Recommended Decision does consider the application of MDL and its relationship to PADRs.⁴⁹

3. Findings and Conclusions regarding the Other Alleged Violations of SGIP Rules

51. The Commission rejects SunShare's arguments regarding the SRC Program Update and the offer to connect to the Cloverly Site at a reduced size of 2.4 MW. Regardless of the Recommended Decision's analysis of these issues, the record evidence does not support

⁴⁸ Public Service's Response, p. 10.

⁴⁹ *Id.* at 10-11.

SunShare's arguments.⁵⁰ We fail to see how Public Service making the offer to ICs to connect at the Cloverly site at a 2.4 MW project size violates any Commission Rule. Rather, it appears that Public Service was simply making a good faith effort to keep projects moving, as the Company testified at hearing.⁵¹

52. As for the SRC Program Update, SunShare has again failed to carry its burden that Public Service's application of the MDL Standard violated any Commission Rule. Even though it appears Public Service created unnecessary confusion with the May 27, 2021, SRC Program Update and application of the MDL Standard, the Commission's Rules do not dictate how Public Service applies the MDL Standard. Moreover, as SunShare acknowledges, the change in the MDL Standard that the May 27, 2021, SRC Program Update discussed "did not change the reality of backfeeding and the need for VSR and 3V0 equipment [upgrades] at these substations."⁵²

G. Alleged Violations of RES Plan Decisions

1. SunShare's Exceptions

53. In Exceptions, SunShare continues to argue that the RES Plan Decisions allow as many site moves as a developer wishes to deploy. SunShare analyzes at length the language in Recommended Decision No. R20-0099 (one of the RES Plan Decisions) and argues that the Commission should resolve any ambiguity in Recommended Decision No. R20-0099 towards the explanation that ALJ Mirbaba "tacitly approved the site move proposal without restrictions."⁵³ To

⁵⁰ SunShare implies that the Commission should review these two alleged SGIP Rule violations *de novo* because the Recommended Decision fails to address them. However, when ruling on exceptions, the Commission may always adopt, reject, or modify the findings of fact and conclusions of an ALJ and may enter its own decision "without regard to the findings of fact and conclusions of any ... [ALJ]." § 40-6-109(2), C.R.S.

⁵¹ See SunShare's SOP, p. 21 (citing Hrg. Trans. (Feb. 14, 2023), at 127: 15-18; 146: 13-15).

⁵² *Id.* at 19.

⁵³ Exceptions, p. 20.

further support this position, SunShare notes that one month after Recommended Decision No. R20-0099 was issued, Public Service stated in Proceeding No. 19R-0654E that the Company has attempted to mitigate frustrations felt by the developer community “with cluster studies, *unlimited site moves*, free site moves, targeted RFP, as well as allowing additional time for studies.”⁵⁴ SunShare asserts that this is further proof that Recommended Decision No. R20-0099 approved Public Service’s proposal to allow unlimited site moves and that the Company violated Recommended Decision No. R20-0099 when it later restricted site moves.⁵⁵

54. SunShare also asserts that the Recommended Decision erred when it concludes that Public Service did not need Commission approval prior to instituting the site move policy. Decision No. C20-0289 (another one of the RES Plan Decisions) requires Public Service to obtain Commission approval of any changes to the “CSG bid evaluation criteria,” but the Recommended Decision ruled that the site move policy set forth in the Q/A Tracker does not constitute a CSG bid evaluation criteria.⁵⁶ In Exceptions, SunShare continues to argue that Public Service’s site move policy was a CSG bid evaluation criteria and thus Public Service violated Decision No. C20-0289 by instituting the policy without express Commission approval.⁵⁷ SunShare asserts that nothing in Decision No. C20-0289 indicates that “CSG bid evaluation criteria only applied in the time period before bid awards were made” and argues that the alleged violations did not occur until after the bid awards were made.⁵⁸

⁵⁴ *Id.* (quoting Hearing Ex. 101, Ex JRB-2, Bobrow Affidavit, at 2) (emphasis in Exceptions).

⁵⁵ *Id.* at 21.

⁵⁶ Recommended Decision, p. 28.

⁵⁷ Exceptions, pp. 21-22 (“the unapproved amendment of the CSG bid evaluation criteria was the application of the interconnection viability points to site moves of RFP awards”).

⁵⁸ *Id.*

55. SunShare also attempts to rebut the Recommended Decision’s reasoning that Public Service’s site move policy was necessary to prevent developers from gaming the system. SunShare argues that this reasoning ignores the fact that developers are incented to select sites without interconnection problems in the first place and that site moves are often driven by interconnection issues. SunShare also argues that “the site moves SunShare requested were driven by Public Service’s acts or omissions.”⁵⁹

2. Public Service’s Response

56. Regarding SunShare’s argument that Recommended Decision No. R20-0099 allows unlimited site moves, Public Service first reiterates that Recommended Decision No. R20-0099 does not expressly adopt the Company’s offer to allow unlimited site moves and no party sought exceptions on the issue. Thus, Public Service maintains, it is impossible to violate Recommended Decision No. R20-0099 by applying the interconnection viability criterion to the site move requests.⁶⁰ Public Service goes on to argue that the Commission need not consider extrinsic evidence in deciding whether Recommended Decision No. R20-0099 allows unlimited site moves. Public Service reasons that the ALJ did not find Recommended Decision No. R20-0099 to be ambiguous but interpreted it according to its plain language.⁶¹

57. Even assuming Recommended Decision No. R20-0099 adopted the Company’s offer to allow unlimited site moves, the Company argues that its site move policy is compliant. Public Service reasons that because “SunShare’s bids were awarded the Interconnection Viability

⁵⁹ *Id.* at 23.

⁶⁰ Public Service’s Response, p. 12.

⁶¹ *Id.* at 13.

criterion, it only makes reasonable sense for the Company to consider site move requests in light of that criterion.”⁶²

58. Moving to SunShare’s argument that Public Service needed Commission approval prior to implementing the site move policy, Public Service argues that its site move policy as stated in the Q/A Tracker is a post-bid issue, not an RFP bid evaluation criteria. The Company maintains that the Q/A Tracker is not intended to act as Commission-approved bid evaluation criteria but is a document created through the stakeholder and bidder-communication process that contains information regarding both the RFP process and post-bid award issues. Public Service further argues that SunShare “declined to challenge the Q/A Tracker or raise additional questions before the Commission or during the RFP process when the Company solicited questions regarding the RFP” and instead waited months after it was awarded bids.⁶³

3. Finding and Conclusions regarding the Alleged Violations of RES Plan Decisions

59. The Commission disagrees with SunShare’s claims that Public Service violated the RES Plan Decisions. Regardless of whether Recommended Decision No. R20-0099 permitted unlimited site moves, in Decision No. C20-0708 the Commission subsequently granted Public Service’s Unopposed Motion and modified the CSG bid evaluation criteria by adding, among other things, the interconnection viability criteria. Public Service’s subsequent site move policy, which was published in the Q/A Tracker shortly before responses to the 2020 CSG RFP were due, simply attempts to carry out Decision No. C20-0708. Awarding certain bids additional points because they target favorable interconnection locations but then allowing those bids to move to unfavorable

⁶² *Id.*

⁶³ *Id.* at 15.

locations would hardly comply with the spirit of Decision No. C20-0708. In other words, regardless of what was required in the earlier Recommended Decision No. R20-0099, Public Service had to implement the directives in Decision No. C20-0708 regarding interconnection viability criteria. Public Service's site move policy—or something like it—was necessary to effectuate the underlying purpose of the interconnection viability criteria.

60. We likewise are unpersuaded by SunShare's assertion that Public Service violated Decision No. C20-0289 by instituting the site move policy without express Commission approval. On this point, the Commission is aligned with the analysis in the Recommended Decision.⁶⁴ Decision No. C20-0289 requires Commission authorization prior to modifications to the CSG bid evaluation criteria. CSG bid evaluation criteria are how the winning bids are chosen (*i.e.*, how many points each bid is awarded). The site move policy only applies to projects that have been awarded a bid and thus is not a bid evaluation criteria.

H. SunShare's Requested Relief

1. SunShare's Exceptions

61. In Exceptions, SunShare continues to request that the Commission increase the price Public Service will pay for the RECs that SunShare's two projects will generate. SunShare asserts that at the increased REC price and 100 percent residential subscriptions, SunShare's 2020 CSG Projects can still be constructed at no added cost to the Renewable Energy Standard Adjustment.⁶⁵

⁶⁴ See Recommended Decision, pp. 27-28.

⁶⁵ Exceptions, pp. 4-5.

62. While SunShare maintains its request to increase its REC price, SunShare modifies its other requests for relief. Specifically, SunShare drops its request that Public Service pay for the incremental interconnection costs above the amount SunShare budgeted.⁶⁶ Regarding the time extension, SunShare now requests that the Commission extend the Target Completion Date to 90 days after the completion of the required network upgrades.⁶⁷ Originally, in its Complaint, SunShare asked that the “Target Completion Date in each Producer Agreement be extended to February 16, 2025.”⁶⁸ In its Statement of Position (SOP), this requested relief was modified to “the later of February 16, 2025 ... or within 90 days of completion of the construction of the required network upgrades....”⁶⁹

2. Staff’s Response

63. In both its SOP and Response to SunShare’s Exceptions, Staff argues against granting any relief that would impose any new costs on ratepayers. Staff reasons that ratepayers are not at fault for the delays and financial harms SunShare seeks to remedy, and thus ratepayers should not bear the costs of any remedy. Staff asserts that increasing the REC price as SunShare requests in Exceptions will lead to an increase in costs to retail ratepayers. Staff concludes that an increase in the REC price does not comport with the public interest and should be rejected.⁷⁰

64. While Staff opposes increasing the REC price, Staff asserts that the Commission could extend the Target Completion date as SunShare requests. Staff reasons that because extending the target completion date for the Gerry Project and the Lincoln Project does not appear

⁶⁶ *Id.* at p. 4, n. 8.

⁶⁷ *Id.* at 24.

⁶⁸ Complaint, p. 53.

⁶⁹ SunShare’s SOP, p. 33.

⁷⁰ Staff’s Response, pp. 1-2, 4-5.

to adversely affect ratepayers, “the Commission might wish to consider granting this relief to SunShare, and thus, allow SunShare to proceed with these projects.”⁷¹

3. Findings and Conclusions regarding the Requested Relief

65. While we agree with Staff’s rationale that ratepayers should not bear the burden of paying for SunShare’s requested remedy, more fundamentally, the Commission concurs with the Recommended Decision’s findings that SunShare failed to carry its burden of proving that Public Service violated any Commission Rule or the RES Plan Decisions. That said, the record illustrates that Public Service’s actions—while not rising to a violation of the SGIP Rules or RES Plan Decisions—did cause unnecessary confusion and delay. In the context of the state’s policy supporting efficient CSG interconnections, we direct Public Service to make every reasonable effort to extend the Target Completion Dates for SunShare’s Lincoln Project and Gerry Project and to keep the Commission apprised of the Company’s management of the CSG interconnection process.

66. As an example of Public Service’s actions that may be improved, SunShare requested a site move for its Lincoln Project to the Uintah Site arguably because of an erroneous PADR that the Company supplied. While having errors in the PADR does not violate Commission Rules or the RES Plan Decision, it did mean that SunShare spent time investigating the Uintah Site and requesting a site move before ultimately learning that expensive site upgrades would be necessary.

67. More troubling is the Company’s continued application of the site move policy even after the policy no longer served a purpose. As explained above, the application of some restriction

⁷¹ *Id.* at 5-6.

on site moves was necessary given the approved interconnection viability criteria. However, in the 2021 CSG RFP, Public Service and solar stakeholders agreed to revamp the process. Changes included prohibiting site moves after bid awards and staggering award notices for CSGs on the same substation based on RFP scoring.⁷² Thus, bids arising from the 2021 CSG RFP were not governed by the policies and restrictions of the 2020 CSG RFP. Nevertheless, the record shows that Public Service's use of the 2020 site move policy contributed to a 5 MW 2021 CSG bid entering the queue for the Cloverly site before SunShare's 5 MW Gerry Project was allowed to enter the queue.⁷³

68. We fail to see how applying the site move policy in this way promoted fairness or was necessary to ensure that bidders did not game the system. While the site move policy makes sense in the context of interconnecting 2020 CSG projects, there is little value in using the policy to benefit 2021 CSG projects at the expense of 2020 CSG projects. Indeed, when discussing its April 2022 waiver of the interconnection viability criterion, Public Service states: "Given that the 2021 RFP had already been launched and all other 2020 projects were already sited, there was no adverse impact to other projects and the Interconnection Viability criterion was effectively moot at this time given that the 2021 RFP did not utilize this criterion."⁷⁴ The Commission agrees that by the time Public Service waived the site move policy in April 2022, the policy had outlived its purpose. In fact, by failing to waive the site move policy sooner, Public Service caused unnecessary delay and confusion.

⁷² HE 300 (Klemm Answer), pp. 8-9.

⁷³ Hr. Tr. (Feb. 14, 2023), pp. 179-80, 182, 193-94; *see also* HE 117 (Discovery Request SunShare 3-7), p. 2.

⁷⁴ Public Service's SOP, p. 24.

69. Turning to the state policy surrounding CSGs, the Commission notes UCA's SOP in which it cites declarations from the general assembly that encouraging the development and deployment of CSGs is in the public interest,⁷⁵ as well as past Commission decisions stressing the importance of CSG programs and expressing concern about the negative impact of interconnection delays.⁷⁶ UCA thus argues that "to achieve the public interest outcomes desired by rule and law, the Company must be the facilitator of speedy, cost-efficient, and accessible interconnection."⁷⁷

70. CEO similarly reiterates the importance of CSGs in the public comment it filed in this Proceeding on December 8, 2022. CEO states that it is "paramount to have performant and timely interconnected [CSGs]."⁷⁸ CEO argues that if Public Service's interconnection procedures are causing delays and increased costs for CSGs, "the Commission [should] resolve these issues expeditiously and with a minimal cost impact to ratepayers."⁷⁹

71. The Commission agrees with CEO and UCA that ongoing encouragement of efficient CSG interconnections is in the public interest. Even though SunShare has not met its burden of showing a violation of Commission Rule or Decision, Public Service's actions managing the interconnection of the Lincoln Project and the Gerry Project leave much room for improvement. Public Service should do more to help facilitate speedy and cost-efficient interconnection. First, we direct the Company to work with SunShare to evaluate whether the Target Completion Dates for the Lincoln and Gerry Projects can be extended.⁸⁰ Specifically, if

⁷⁵ UCA's SOP, pp. 1-2 (citing § 40-2-127(1)(b), C.R.S.).

⁷⁶ *Id.* at 4-5 (Proceeding No. 19A-0369E, Decision C20-0289, ¶ 33; Proceeding No. 20D-0148E, Decision No. C20-0406E, ¶ 8).

⁷⁷ *Id.* at p. 7.

⁷⁸ CEO Public Comment, p. 1.

⁷⁹ *Id.* at 2.

⁸⁰ The Target Completion Date is essentially the day by which SunShare must bring its CSG project to substantial completion. If the CSG project is not brought to substantial completion by the Target Completion Date,

SunShare is willing to move forward with the Lincoln Project and the Gerry Project and the costs associated with the interconnection upgrades, the Company should make every reasonable effort to revise the Target Completion Dates per SunShare's request in its Exceptions.⁸¹

72. Second, Public Service shall keep the Commission apprised in future distribution system planning and RES Plan proceedings of Public Service's management of the CSG interconnection process and Public Service's success at implementing improvements.⁸² Specifically, in the next distribution system planning and RES Plan proceedings that Public Service brings, the Company shall report to the Commission on whether the interconnection process is improving, whether the Company is seeing higher success rates, and what challenges remain to enabling a speedy, cost-efficient, and accessible interconnection process for CSGs. The Commission intends to monitor the outcomes that the Company achieves with interconnecting CSGs to see if Public Service is making a concerted effort to make the interconnection process work as efficiently as possible so that Colorado can continue advancing CSGs.

SunShare could lose its deposit and, eventually, Public Service could choose to terminate the SRC Producer Agreement. (SunShare Complaint, Attachment A, p. 59).

⁸¹ In Exceptions, SunShare requests that the Commission extend the Target Completion Date to 90 days after the completion of the required network upgrades. (Exceptions, p. 24).

⁸² In Answer Testimony, Public Service notes that it made several changes to the 2021 CSG RFP process based on "lessons learned from the 2020 RFP." (HE 300 (Klemm Answer), p. 8). The Company states that award notices for CSGs on the same substation are now staggered based on RFP scoring, site moves are prohibited, and there is a waitlist of backup projects if the original CSG withdraws. Public Service notes that in the 2022-2025 RES Plan, the parties reached an unopposed comprehensive settlement agreement that incorporates some of these changes and aims to "remove interconnection and permitting uncertainty for awarded projects." (*Id.* at 9).

II. ORDER

A. It Is Ordered That:

1. The Exceptions to Recommended Decision No. R23-0292 that SunShare, LLC (SunShare) filed on May 17, 2023, are denied, in part, and granted, in part consistent with the above discussion.

2. Consistent with the discussion above, Public Service Company of Colorado (Public Service) shall make every reasonable effort to extend the Target Completion Dates for the Lincoln Project and the Gerry Project, per SunShare's request in its Exceptions.

3. In the next distribution system planning proceeding and the next Renewable Energy Standard Plan proceeding that Public Service brings, Public Service shall report to the Commission on whether the interconnection process is improving, whether the Company is seeing higher success rates, and what challenges remain to enabling a speedy, cost-efficient, and accessible interconnection process for community solar gardens, consistent with the discussion above.

4. 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.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 21, 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

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners