

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0139E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2017-2019 RENEWABLE ENERGY COMPLIANCE
PLAN.

**INTERIM DECISION REFERRING PROCEEDING
TO AN ADMINISTRATIVE LAW JUDGE,
GRANTING INTERVENTIONS,
GRANTING MOTION TO APPEAR PRO HAC VICE ,
DENYING MOTION TO SEVER
REC PRICING ISSUE FROM THIS PROCEEDING,
AND REQUIRING THE FILING OF
SUPPLEMENTAL DIRECT TESTIMONY**

Mailed Date: May 3, 2016
Adopted Date: April 15, 2016

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III. COMMISSIONER FRANCES A. KONCILJA CONCURRING, IN PART, AND DISSENTING, IN PART:20

I. **BY THE COMMISSION**

A. **Statement**

1. This Decision refers the Application for Approval of 2017-2019 Renewable Energy Compliance Plan (Application) filed by Public Service Company of Colorado (Public Service or Company) on February 29, 2016 to an Administrative Law Judge (ALJ) for the issuance of a Recommended Decision. We grant the requests for intervention filed in response to the Application and establish the parties to this Proceeding.

2. We further deny the Motion to Sever an Issue from the Proceeding filed by Public Service on April 8, 2016. We will not remove from this Proceeding our consideration of the price Public Service offers to purchase Renewable Energy Credits (RECs) through its Small Solar*Rewards program. We instead direct Public Service to file Supplemental Direct Testimony to explain how a final decision in the Company’s Phase II rate case in Proceeding No. 16AL-0048E that modifies or rejects the Company’s proposed rates for residential customers will change the Company’s requested approvals of its Small Solar*Rewards program.

B. **Procedural History**

3. On August 21, 2015, the Colorado Public Utilities Commission (Commission) granted Public Service’s motion to delay the filing of its next Electric Resource Plan (ERP) and its next Renewable Energy Standard (RES) Compliance Plan to February 29, 2016, from the deadline of October 31, 2015 established in Rules 3603 and 3657 of the Commission’s Rules

Regulating Electric Utilities 4 *Code of Colorado Regulations (CCR) 723-3*.¹ The Commission agreed with Public Service that, at that time, the Environmental Protection Agency's Clean Power Plan likely would have an impact on the timing and magnitude of the Company's future resource needs, including the need to acquire additional eligible energy resources as would be addressed in a RES Compliance Plan.

4. On February 16, 2016, we extended the time for Public Service to file its ERP to no later than June 1, 2016.² We also allowed Public Service to separate the filing of its ERP from its next RES Compliance Plan, and directed the Company to file its next RES Compliance Plan no later than February 29, 2016.

5. On February 29, 2016, Public Service filed the Application with testimony supporting approval of the Company's 2017-2019 Renewable Energy Standard (RES) Compliance Plan.

6. On March 1, 2016, the Commission issued a Notice of Application Filed setting a deadline for intervention filings to March 31, 2016.

7. On March 25, 2016, Public Service filed a Motion for Extraordinary Protection of Highly Confidential Information seeking protection of what the Company contends is proprietary data provided by a third-party vendor on prices for on-site solar, and of the Company's Strategist model output files used in the cost analyses of the 2017-2019 RES Compliance Plan.

8. On April 8, 2016, Public Service filed a Motion to Sever an Issue from the Proceeding (Motion to Sever). As discussed below, Public Service requests that the Commission remove from this Proceeding the Commission's consideration of the price the Company offers to

¹ Decision No. C15-0925, issued August 21, 2015, Proceeding No. 15V-0473E.

² Decision No. C16-0127, issued February 16, 2016, Proceeding No. 15V-0473.

pay for RECs through its Small Solar*Rewards program. Public Service instead requests that the Commission address the REC prices paid through the Small Solar*Rewards program as part of the Company's Phase II rate case in Proceeding No. 16AL-0048E.

9. On April 12, 2016, Public Service filed a second Motion for Extraordinary Protection of Highly Confidential Information seeking protection for the monthly historical customer and sales data by rate class, historical and forecasted weather data, economic, demographic, and price data that the Company used to develop the forecast of retail electric sales in the 2017-2019 RES Compliance Plan.

C. 2017-2019 RES Compliance Plan

10. Colorado's RES requires Public Service to provide 20 percent of its retail electric sales annually from eligible energy resources, including 2 percent of sales from renewable distributed generation (DG) resources in 2017, 2018, and 2019.³ In general, Public Service demonstrates compliance with these RES requirements through the retirements of RECs.

11. In the 2017-2019 RES Compliance Plan and supporting testimony, Public Service states that it has sufficient RECs to comply the RES through 2020. The Company offers that it has proposed a plan that goes beyond the statutory minimum amounts to address "growing customer preferences for renewable energy" and to add "clean energy to [its] system in an economically reasonable way."⁴ In addition, Public Service states that it projects that collections at the 2 percent surcharge rate of its Renewable Energy Standard Adjustment (RESA) will be sufficient to cover the costs to be charged for the 2017 to 2019 compliance years.⁵

³ §§ 40-2-124(c)(I) and 40-2-124(c)(II), C.R.S.

⁴ Application, p.1.

⁵ Application, p.6.

12. Public Service proposes to acquire RECs from retail renewable DG through its Small, Medium, and Large Solar*Rewards programs for on-site solar systems. Customers installing on-site solar system through these programs take Net Metering Service from Public Service.

13. The Company proposes two different customer options for the Small Solar*Rewards program for photovoltaic (PV) systems between 0.5 kW and 25 kW. In Option A, Public Service seeks approval to acquire RECs from up to 24 MW of PV systems per year where the customers take net metered service in conjunction with the Company's standard residential retail rate (Schedule R). The Company proposes to purchase the RECs at a standard offer price of \$0.005 per REC, which it claims will offset the economic impact on the net metering benefit to customers of the proposed changes in the design of Schedule R at issue in its Phase II rate case (*i.e.*, the introduction of the grid use charge).⁶ In Option B, Public Service proposes to pay a higher price for RECs (\$0.050 in 2017, \$0.0495 in 2018, and \$0.049 in 2019) in order to induce customers to take net metered service under the Residential Demand Time-of-Use pilot tariff (Schedule RD-TOU) also as proposed in the Phase II rate case. Public Service seeks approval to acquire RECs under Option B from up to 51 MW of PV systems over the three years of the 2017-2019 RES Compliance Plan, including 9 MW in 2017, 18 MW in 2018, and 24 MW in 2019. The Company states that the Option B REC price is designed to offset both the grid use charge and the monthly demand charge in Schedule RD-TOU.⁷

⁶ 2017-2019 RES Compliance Plan, Vol. 1, Section 5, pp. 5-6.

⁷ *Ibid.*

14. The Medium Solar*Rewards program serves customers installing on-site PV systems sized between 25.1 kW and 500 kW. Public Service proposes to purchase RECs from up to 12 MW of PV systems annually (or 36 MW over the three plan years).

15. The Large Solar*Rewards program serves customers installing on-site PV systems sized above 501 kW. Public Service proposes to use competitive solicitations to determine the price it pays for the RECs from PV systems acquired under the program. The Company seeks approval to purchase RECs from up to 6 MW of PV systems in 2017, 8 MW of PV systems in 2018, and 10 MW of PV systems in 2019.

16. Public Service's Solar*Rewards Community program supports the acquisition of RECs generated by community solar gardens (CSGs). Under § 40-2-127(5)(a)(IV), C.R.S., the Commission is required set annual minimum and maximum acquisition levels for CSGs. Public Service proposes to acquire RECs from a minimum of 10 MW of CSGs per year and a maximum of 30 MW of CSGs per year. The Company states that it will acquire the majority of the RECs through competitive solicitations, for which it would accept bids containing positive or negative REC prices.

17. Public Service also proposes to acquire 20 MW of recycled energy per year (60 MW total in the three plan years) with a customer incentive payment of \$500/kW. Pursuant to Commission Decision No. C15-1280 in Proceeding No. 15AL-0118E, Public Service included with its Application a revised tariff for recycled energy generators (Schedule RE) that includes a calculation of a lower monthly reservation charge based on six weeks of grace energy and a daily demand charge.

18. Finally, Public Service proposes to change the calculation of the premium customers pay to participate in the Windsource program. The Company states that using the currently approved methods for calculating the premium “would likely result in a Windsource premium that would reflect very low or possibly negative REC prices,” which it suggests is unfair to non-participating customers.⁸ Public Service argues that using the proposed method for calculating the Windsource premium would reduce the rate from \$2.1588 per 100 kilowatt-hour block to \$1.50 per 100 kilowatt-hour block.

D. Interventions

1. Interventions as of Right

19. Staff the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), and the Colorado Energy Office (CEO) each filed a notice of intervention as of right.

20. Staff does not request a hearing in this matter, but states that Public Service’s 2017-2019 RES Compliance Plan “raises significant issues which may have unknown effects on ratepayers.” Among its concerns, Staff cites Public Service’s statements that it will propose changes to the Small Solar*Rewards program depending on the outcome of the Company’s Phase II rate case. Staff suggests that further inquiry into this and other issues may be needed.

21. OCC opposes the Application and requests a hearing. OCC states many areas of concern, including: the proposed acquisition levels and incentives for the Solar*Rewards and Solar*Rewards Community programs; the Company’s proposed acquisition levels, incentives, and Schedule RE tariff for the recycled energy program; the proposed changes to the Windsource program; the Company’s modeled incremental and avoided costs for resources not previously

⁸ Attachment RLK 1, page 56.

“locked down;” and the resetting of the “lock down” for modeled incremental and avoided costs of resources previously “locked down.” OCC also expresses concern about how Public Service will modify the Company’s proposed REC purchase prices if the Commission does not approve the rate design changes put forward by the Company in its Phase II rate case.

22. CEO states that it is intervening as of right because “Public Service’s proposed changes have the potential to impact customer investment decisions in RES-eligible technologies.” CEO may address issues in the Renewable Energy Standard Compliance Plan (RE Plan) related to the Solar*Rewards program, the Solar*Rewards Community program, and the Recycled Energy program.

23. Staff, OCC, and CEO are each intervenors as of right and are each a party to this Proceeding.

2. Permissive Interventions

24. The following entities filed requests for permissive intervention: the City of Boulder (Boulder); the City and County of Denver (Denver); Interwest Energy Alliance (Interwest); Western Resource Advocates (WRA); Climax Molybdenum Company (Climax); Energy Outreach Colorado (EOC); the Colorado Solar Energy Industries Association (CoSIEA); Energy Freedom Coalition of America (EFCA); Sunrun, Inc. (Sunrun); Grid Alternatives, Inc. (Grid Alternatives); SunShare, LLC (SunShare); and Clean Energy Collective, LLC (Clean Energy).

25. Boulder indicates it has a tangible and pecuniary interest in this Proceeding because it and its citizens are customers of Public Service and would be impacted by the costs of the resource acquired in the RES Compliance Plan. Boulder states that it may address the following issues: the proposed changes to the Windsource premium; the proposed capacity

acquisitions for the Solar*Rewards program; the proposed recycled energy program; the capacity for the CSG program; and, the effect of the proposed RES Compliance Plan on the RESA.

26. Denver states that it does not know which issues it might pursue, but indicates that it has a tangible and pecuniary interest in this proceeding because the outcome will impact the city and Public Service customers that live within it.

27. Interwest is a Colorado nonprofit corporation and a 501(c)(6) trade association of wind, utility-scale solar, and other renewable energy project developers and equipment manufacturers. Interwest states that this Proceeding will substantially affect the pecuniary and tangible interests of its members, because Public Service's proposed acquisitions of renewable energy projects and the associated cost modeling and RESA accounting will determine the amount of resources that will be acquired over the 2017 to 20109 period. Further, Interwest claims that no other party adequately represents its interest because "no party combines the interests of renewable energy developers and the nongovernmental conservation organizations that are represented on Interwest's board."

28. WRA is a nonprofit conservation organization "dedicated to protecting the land, air and water of the West." WRA indicates that it seeks intervention to protect its tangible interest in reducing detrimental environmental impacts of electricity production.

29. Climax is one Public Service's largest customers. While Climax does not state specific concerns with Public Service's RES Compliance Plan, it expresses a more general concern that the outcome of this Proceeding will directly impact Climax's electricity costs.

30. EOC is a nonprofit corporation whose mission is to ensure that low-income Colorado households meet their home energy needs, and its claimed pecuniary and tangible interest in this Proceeding relate to that mission. EOC is concerned with whether and how any

low-income CSG proposal will be addressed, including how Public Service may differentiate pricing in a low-income CSG offering.

31. CoSEIA is a nonprofit trade association serving energy professionals, solar companies, and renewable energy users with membership comprised of approximately 200 solar-related businesses, most of which operate in the Company's service territory. CoSEIA states that it has a direct and substantial pecuniary interest in this Proceeding, because the proposed changes to Public Service's Solar*Rewards programs will affect many CoSEIA members and the Colorado solar industry as a whole. CoSEIA states that it "generally opposes many of the proposed solar program changes, such as the proposed incentive and capacity levels for Solar*Rewards, and the lack of new programs or changes to interconnection or other issues that [CoSEIA] believes are needed." CoSIEA requests a hearing.

32. EFCA is a national advocacy group that promotes the use of distributed energy resources. EFCA states that its members have a pecuniary or tangible interest in this Proceeding, because the amount of and price for on-site solar RECs Public Service acquires through its Solar*Rewards programs will affect the size and scope of EFCA's members' business in Colorado and the cost effectiveness of its members' products. EFCA expresses concern that Public Service does not provide any alternative REC prices or capacity acquisition amounts in its Application filing, even though Public Service states that, if the Company does not prevail with the proposed rate designs at issue in its Phase II rate case, it will change the amounts proposed in the RES Compliance Plan. EFCA also states that it will examine: whether the Company's proposed capacity acquisitions and incentive levels should be intertwined with its proposal to re-design rates in the Phase II rate case; the appropriateness of soliciting negative REC pricing

through the Company's proposed Solar*Rewards Community competitive solicitations; and, the Company's modeled avoided and incremental costs. EFCA requests a hearing.

33. Sunrun states that it is the largest rooftop solar company in the United States dedicated solely to residential customers. According to Sunrun, the REC payment levels that will be approved in this Proceeding are critical to determining whether on-site solar installations are cost effective for customers and thus directly impact its business in Colorado. Sunrun opposes the Company's Solar*Rewards proposal in the RES Compliance Plan and objects to Public Service tying the proposed Solar*Rewards capacity and REC payment levels to its proposal in the Phase II rate case.

34. Grid Alternatives is a non-profit solar energy installer working in Colorado since 2012 to implement solar power for low-income families. Grid Alternatives states that it has significant pecuniary and tangible interests in this Proceeding because "[r]obust, long-term growth for low-income access to solar generation in Colorado is a tangible and mission-critical objective." Grid Alternatives also states that the RES Compliance Plan may provide opportunities to for it to implement a grant it received to install community solar projects for low income subscribers in Colorado. Grid Alternatives states that it is likely to pursue several issues, including: how solar program acquisition and incentive levels will be structured to encourage access to the benefits of solar energy for low-income rate payers and multi-family housing; and ensuring that RESA expenditures benefit low-income rate payers in proportion to their level of contribution to the RESA account.

35. SunShare is a developer, owner, and operator of CSGs in Colorado. SunShare states that “The overall structure, incentive levels, available capacity, and other parameters of the Solar*Rewards Community program that the Commission establishes will significantly impact the financial viability of SunShare’s potential CSG projects and its ability to offer competitive CSG subscriptions to its customers and potential customers.” SunShare contests the Application and requests a hearing.

36. Clean Energy is a community solar CSG developer. Clean Energy states that Public Service’s Solar*Rewards Community proposal could have a direct impact on the ongoing and future operations of Clean Energy.

E. Motion for Leave to Appear Pro Hac Vice

37. On April 1, 2016, Frank A. Caro, Jr. and Luke A. Hagedorn filed a Motion to Appear *Pro Hac Vice* as counsel for Clean Energy. Their motion states that: they are attorneys in good standing with their respective bars, they are working with a local attorney in this Proceeding, and they filed a copy of their motion and the required fee with the Colorado Supreme Court. Mr. Hagedorn appeared *pro hac vice* in Public Service’s last RES Compliance Plan proceeding.

38. On April 4, 2016, the Colorado Supreme Court filed a statement that it has received the required filing fee from Mr. Caro and Mr. Hagedorn, and that a disciplinary history obtained by the office of Attorney Regulation revealed no adverse information.

F. Motion to Sever Issue from Proceeding

39. In its Application and supporting testimony, Public Service states that the prices for REC purchases proposed for the Small Solar*Rewards program are tied directly to the new rate designs the Company has proposed for residential customers in its Phase II rate case.

Public Service states in several places in its February 29, 2016 Application filing that, if the Commission approves a different rate design than requested by the Company, Public Service may amend its RES Compliance Plan filing.

40. For example, Public Service states in the Application that “Should the Company’s pricing proposals in our Phase II case not be adopted, incentive and capacity levels for these Options will change.”⁹ Public Service witness Robin L. Kittel states: “Should the Commission approve tariffs and rates that differ from the filed case, the Company requests that the incentives be reevaluated consistent with the decision affecting the [Schedule R] tariff or the [Schedule RD-TOU] tariff.”¹⁰ Most notably, in its Notice of Intent filed with the Application pursuant to Decision No. [2017-2019 RES Compliance Plan], Public Service states:

In the event a decision is reached in the Phase II to not make the proposed changes, the REC incentives and capacities proposed for customers participating in the Solar*Rewards Small program will be different than the current recommendations found in the [2017-2019 RES Compliance Plan]. We recognize this in our [2017-2019 RES Compliance Plan] and provide an explanation that the Company needs to revisit these REC incentives and possibly the offered capacity. In the event the Commission approves the Phase II proposed rate design changes with modifications, the REC incentive would also need to be reevaluated.”¹¹

41. In its Motion to Sever, Public Service argues that it would be simpler for the Company to make such a responsive proposal if the issue of REC prices for the Small Solar*Rewards program was removed from this Proceeding and made part of the Phase II rate case. The Company also argues that the consolidation of the REC pricing issue into the Phase II rate case could be more efficient for the Commission.

⁹ Application, p. 3.

¹⁰ Direct Testimony of Robin L Kittel, p. 31.

¹¹ Notice of Intent, filed by Public Service on February 29, 2016, p. 6.

42. Public Service states that it has conferred with all the persons seeking intervention in this proceeding and that several either do not object to the motion or take no position on the motion. Public Service states that WRA supports the request and that EFCA, Sunrun, CoSEIA, and Grid Alternatives oppose it.

G. Conclusion and Findings

1. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure states in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

Pursuant to Rule 1500, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

43. No responses to the requests for intervention were filed by any party. In accordance with Rule 1400(d), the "Commission may deem a failure to file a response as a confession of the motion."

44. Each of the entities seeking to intervene has demonstrated that this proceeding may substantially affect its pecuniary or tangible interests pursuant to Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. We therefore find good cause to grant all requests to intervene.

45. The Commission's finds good cause to grant the Motion to Appear *Pro Hac Vice* of Mr. Caro and Mr. Hegedorn. The attorneys have filed the required motion, met the requirements of the Commission's rules and of CRCP 205.3, and have filed the required fee with the Colorado Supreme Court.

46. The parties to the proceeding are: Staff, OCC, CEO, Boulder, Denver, WRA, Climax, EOC, CoSIEA, EFCA, Sunrun, Grid Alternatives, SunShare, and Clean Energy.

47. We deny the Motion to Sever. The proposed transfer of the REC prices the Company proposes to offer through the Small Solar*Rewards program from this Proceeding to the Company's Phase II rate case will neither garner procedural efficiencies nor foster any other benefits for rendering final decisions in either proceeding. Granting the motion would also separate the consideration of REC prices from the associated amounts of on-site solar resources to be acquired under the Small Solar*Rewards program. Rule 4 CCR 723-3-3657(b) requires Public Service to provide the Commission with its proposed standard offers to purchase RECs from customers installing on-site solar systems, as well as its plans to acquire additional retail renewable distributed generation, in its application for approval of a RES Compliance Plan. We decline to waive these requirements for Public Service's 2017-2019 RES Compliance Plan and will consider the Application consistent with the manner in which the Commission has reviewed and approved the Company's previous plans. Furthermore, given the procedural schedule in the Phase II rate case,¹² we are concerned that if Public Service makes new proposals

¹² At a prehearing conference on April 7, 2016, the ALJ established a procedural schedule for Proceeding No. 16AL-0048 with an evidentiary hearing on August 10 through 23, 2016. The adopted procedural schedule is premised on Public Service filing amended tariffs sheets under Advice Letter No. 1712-Electric with an effective date that extends the suspension period under § 40-6-111(1), C.R.S., to end no sooner than December 31, 2016.

for its Small Solar*Rewards program late in that proceeding, it could delay the implementation of approved rate designs beyond the intended effective date of January 1, 2017.

48. We also plan to render a final decision in this proceeding prior to the beginning of the 2017 RES compliance year and will take measures to prevent or to mitigate the factors that have caused delay in the Company's previous RES Compliance plan proceedings. We agree with certain intervening parties that Public Service has not provided any support for the alternative acquisition amounts for which it would seek approval in the event that its residential rate proposals in the Phase II rate case are not adopted. To avoid delay in the implementation of changes to the Solar*Rewards programs beginning January 1, 2017, we direct Public Service to file Supplemental Direct Testimony providing proposed acquisition levels and the associated standard offer for REC prices for the Small Solar*Rewards program if the Commission does not approve the proposed changes to Schedule R and the proposed Schedule RD-TOU in the Phase II rate case. The ALJ shall address the deadline for the filing of such Supplemental Direct Testimony by a separate decision.

49. Public Service alone has the responsibility to file a thorough application and to sustain the burden of proof that its approval is in the public interest. Here, the Company has stated in the Application that, should its proposals in its Phase II rate case not be approved by the Commission, the Company's position on incentives and capacity levels for its Small Solar*Rewards program will change. All Parties then would have to re-litigate these matters in this Proceeding, adding unnecessary cost and delay. Likewise, the implementation of Public Service's proposed programs and the deployment of additional renewable energy resources could also be delayed, causing harm to customers. We require Public Service to alleviate an issue it created and therefore our approach is fundamentally fair.

50. We find good cause to set this matter for hearing. We refer this matter to an ALJ to render a recommended decision pursuant to Rule 4 CCR 723-1-1404(b).

51. The ALJ shall rule on the Motions for Protective Order filed by Public Service by a separate decision.

II. ORDER

A. It Is Ordered That:

2. The Verified Application for Approval of 2017-2019 Renewable Energy Compliance Plan filed by Public Service Company of Colorado (Public Service) on February 29, 2016 was deemed complete for purposes of § 40-6-109.5, C.R.S., on April 15, 2016, by operation of Rule 1303(c)(III) of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1.

3. This matter is referred to an Administrative Law Judge (ALJ). The ALJ shall set a hearing date and establish other procedures by a separate decision.

4. The ALJ shall rule on the Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service on March 25, 2016 by a separate decision.

5. The ALJ shall rule on the Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service on April 12, 2016 by a separate decision.

6. The Petition for Leave to Intervene filed by the City of Boulder (Boulder) on March 24, 2016 is granted.

7. The Petition to Intervene filed by Interwest Energy Alliance (Interwest) on March 30, 2016 is granted.

8. The Motion to Intervene filed by the City and County of Denver (Denver) on March 30, 2016 is granted.

9. The Petition for Leave to Intervene filed by Clean Energy Collective, LLC (Clean Energy) on March 31, 2016 is granted.

10. The Motion for Leave to Intervene filed by Grid Alternatives Colorado, Inc. (Grid Alternatives) on March 31, 2016 is granted.

11. The Motion to Intervene filed by SunShare, LLC (SunShare) on March 31, 2016 is granted.

12. The Petition to Intervene filed by Climax Molybdenum Company (Climax) on March 31, 2016 is granted.

13. The Motion to Intervene filed by Energy Outreach Colorado (EOC) on March 31, 2016 is granted.

14. The Motion to Intervene filed by the Energy Freedom Coalition of America (EFCA) on March 31, 2016 is granted.

15. The Petition for Leave to Intervene filed by Western Resource Advocates (WRA) on March 31, 2016 is granted.

16. The Petition for Leave to Intervene filed by the Colorado Solar Energy Industries Association (CoSEIA) on March 31, 2016 is granted.

17. The Motion to Intervene filed by Sunrun, Inc. (Sunrun) on March 31, 2016 is granted.

18. Public Service, Staff of the Colorado Public Utilities Commission, the Colorado Energy Office, the Colorado Office of Consumer Counsel, Boulder, Interwest, Denver, Clean Energy, Grid Alternatives, SunShare, Climax, EOC, EFCA, WRA, CoSEIA and Sunrun are parties in this matter.

19. The Motion to Appear Pro Hac Vice filed on April 1, 2016 by Frank A. Caro and Luke A. Hagedorn as attorneys for Clean Energy is granted.

20. Response time to the Motion to Sever an Issue from the Proceeding filed by Public Service on April 8, 2016 is waived and the motion is denied, consistent with the discussion above.

21. Public Service shall file Supplemental Direct Testimony consistent with the discussion above. The ALJ shall establish a filing deadline by a separate decision.

22. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
April 15, 2016.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean, Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

Commissioners

COMMISSIONER FRANCES A. KONCILJA
CONCURRING, IN PART,
AND DISSENTING, IN PART.

III. COMMISSIONER FRANCES A. KONCILJA CONCURRING, IN PART, AND DISSENTING, IN PART:

I concur in part and dissent in part to the majority decision.

1. I concur with the majority's decisions to grant interventions, to grant the motion for pro hac vice and to refer the matter, as well as the motions for extraordinary protection, to an Administrative Law Judge for a recommended decision.

2. I disagree with the majority's decision to deny the Motion to Sever an Issue from the Proceeding (Motion to Sever) filed by Public Service Company of Colorado (Public Service Co.) and the decision to direct Public Service Co. to file Supplemental Testimony as recommended by Advisory staff. There are efficiencies in severing the narrow issue and allowing it to be considered in the Phase II rate case currently pending. It is unfair to require Public Service Co., at this time to provide work product (namely alternative calculations based on an assumption that Public Service Co. will receive adverse decisions in the pending Phase II rate case) to the Colorado Public Utilities Commission (Commission) and to intervenors in this proceeding.

A short review of the proceedings follows:

3. In response to customer demands and clean energy regulations, Public Service Co. has filed a number of proceedings with the Commission seeking authority to implement what Public Service Co. calls the "Our Energy Future." These numerous filings have presented the Commission, intervenors, as well as Public Service Co. with many challenges and a demanding work schedule during 2016. The proceedings are complex, inter related and have numerous intervenors, not all of whom are in each case.

4. To assist the Commission in dealing with these issues, on February 16, 2016, the Commission ordered Public Service Co. to file in each of the then existing proceedings a Notice of Intent (NOI) to explain Public Service Co.'s view of the relationship of the various filings, including the relationship of issues and impacts.¹³ On February 29, 2016, Public Service Co. filed a 21 page NOI with three attachments in, *inter alia*, this Proceeding and in Proceeding No. 16AL-0048E. At page 6 of the NOI, Public Service Co. alerted the Commission as well as the numerous intervenors as follows:

In the event a decision is reached in the Phase II to not make the proposed changes, the REC incentives and capacities proposed for customers participating in the Solar*Rewards Small program will be different than the current recommendations found in the 2017 RE Plan. We recognize this in our 2017 RE Plan and provide an explanation that the company needs to revisit these REC incentives and possibly the offered capacity. In the event the Commission approves the Phase II proposed rate design changes with modifications, the REC incentive would also need to be reevaluated.¹⁴

5. Public Service Co laid out a cogent explanation for the severing of this issue at paragraph 6 of the Motion to Sever, namely that the REC incentives for participants in the Small Solar* Rewards programs are related to the rate designs and tariffs for residential rate payers and that the REC incentive must be calculated consistent with the decisions in the 2016 Phase II rate case. Western Resources Advocates supports the Motion and the Colorado Office of Consumer Counsel and Interwest Energy Alliance had no objection to the Motion to Sever. Therefore, I would grant the Motion to Sever.

¹³ Decision No. C16-0127, issued February 16, 2016, Proceeding No. 15V-0473E.

¹⁴ Public Service stated at page 2 of the NOI that it was simultaneously filing this proceeding, its 2017 RE Plan.

6. I believe it fundamentally unfair and a violation of CRCP 26, relevant portions of which are incorporated by PUC Rule 1405, to require Public Service Co. to create, for the Commission and for all intervenors, scenarios and calculations based on theoretical adverse rulings in the Phase II rate case and to provide that information at this time to intervenors and to the Commission in this proceeding. Information of this type—alternative scenarios based on potential differing results in the Phase II case—is, at a minimum, work product and could be protected by the attorney client privilege.

7. Public Service Co. should not, in my opinion, be penalized for identifying the inter relationship of issues in the NOI required by the Commission. Forcing a party to provide different scenarios as to what will occur if the rate design they propose is not adopted, is work product and should not be compelled at this time.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

Commissioner