

Decision No. C23-0200

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0369E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY
OF COLORADO FOR APPROVAL OF ITS 2020-2021 RENEWABLE ENERGY
COMPLIANCE PLAN.

**COMMISSION DECISION DENYING
THE APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION OF
COMMISSION DECISION NO. C23-0089**

Mailed Date: March 23, 2023

Adopted Date: March 15, 2023

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies the Application for Rehearing, Reargument, or Reconsideration (RRR Application) of Decision No. C23-0083 jointly filed by the

Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA) on February 24, 2023.

B. Background

2. Public Service commenced this Proceeding on June 28, 2019, by filing its application for Commission approval of its 2020-2021 Renewable Energy Standard Plan (2020-21 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.

3. As explained in Decision No. R19-0694-I, issued August 22, 2019, the following parties either intervened of right, or were granted authority to permissively intervene in this matter: the Office of Consumer Counsel (the OCC); the Colorado Energy Office (CEO); the Colorado Public Utilities Trial Staff (Staff); the Colorado Solar and Storage Association and the Solar Energy Industries Association (collectively COSSA); Grid Alternatives Colorado, Inc. (Grid); the City of Boulder (Boulder); the City and County of Denver (Denver); Vote Solar; Energy Outreach Colorado (Energy Outreach); the Rocky Mountain Environmental Labor Coalition (Rocky Mountain) and the Colorado Building and Construction Trades Council, AFL-CIO (collectively Rocky Mountain/Trades Council); Western Resource Advocates (WRA); the Colorado Energy Consumers; and Climax Molybdenum Company (Climax).

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

(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.¹ The ALJ also approved a process through which Public Service could adjust bid evaluation criteria for the RFP program by filing a motion to amend its RE Plan.² 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

5. 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 CSG rulemaking, 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 Solar*Rewards Community (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, with bids due November 16, 2020.⁴ It subsequently awarded 75 MW of capacity in December 2020,⁵ and the Commission acknowledged Public Service's

¹ Decision No. R20-0099, issued April 14, 2020, at ¶¶ 60, 73-74.

² *Id.* at ¶ 35.

³ *Id.* at ¶ 30.

⁴ COSSA/SEIA and Public Service jointly filed a motion to further amend the 2020-2021 RE Plan on October 30, 2020 with a proposed modification to the plan relevant to the bids to the October 16, 2020 solicitation. That motion was approved by Decision No. C20-0806, issued November 13, 2020.

⁵ 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).

compliance with 2020 Renewable Energy Standard requirements by Decision No. C21-0567, issued September 14, 2021.

6. 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 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.

7. 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.

8. 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.⁶⁶ 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 acknowledged Public Service’s compliance with 2021 Renewable Energy Standard requirements and Staff’s review⁷ by Decision No. C22-0648, issued October 25, 2022.

C. Resolution of Motion to Modify by Decision No. C23-0083

9. On December 2, 2022, Public Service filed a Verified Motion of Public Service Company of Colorado 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). The Motion to Modify requested a Commission order addressing three issues. First, it requested the Commission authorize 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, stating ambiguity as to whether the 75 MW capacity level applied to CSGs generally or specifically to the RFP program. Second, Public Service requested a variance from subparts (a) and (d) of Rule 3878 to enable the City and County of Denver to own an income-qualified CSG project and administer it on behalf of the Denver Housing Authority.

10. Relevant to this Decision, Public Service also requested direction regarding

⁶⁶ Decision No. C22-0218, issued April 8, 2022, at ¶ 19 and OP ¶ 2.

⁷ Staff of the Colorado Public Utilities Commission Review of Public Service of Colorado 2021 RES Compliance Report (October 4, 2022).

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.⁸ 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.⁹ However, Public Service raised that the bids put forth in the 2021 RFP were costly due to adders and incentives for low-income projects. It suggested 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 Service estimated 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).

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

12. Staff recommended the Commission reject Public Service's request to affirm that it should proceed with offering the 10 MW 2021 Standard Offer program. Staff noted 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 contested the idea that the Colorado

⁸ 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.

⁹ Decision No. R20-0099, issued February 14, 2020, at ¶¶ 63, 74.

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 recommended the Commission select the \$0.015/kWh REC incentive (\$0.035/kWh income-qualified REC incentive) as representing a better approach for ratepayers.

13. COSSA/SEIA argued that the Commission need not take any actions with regard to the 2021 Standard Offer except to direct the Company to initiate it promptly. However, if the Commission decided to modify its prior decisions, COSSA/SEIA states that 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 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 argued, as Public Service did not publish the average winning bid price and so the developer community relied on direct communications from the Company. 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.

14. Energy Outreach Colorado (EOC) supported 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.

15. By Decision No. C23-0083, issued February 6, 2023, the Commission granted in part and denied in part Public Service's Motion to Modify. The Commission denied the Motion to Modify with respect to the Company's request to modify capacity levels for the Solar*Rewards program, stating that the Company was 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 Commission also granted a full and permanent variance from Rule 3878(a) and (d) for the purpose of facilitating ownership of an income-qualified CSG by the City and County of Denver on behalf of the Denver Housing Authority.

16. Specific to COSSA/SEIA's RRR Application, the Commission affirmed the Company should release the 2021 Standard Offer, but with modifications. Recognizing the concerns raised by Staff regarding cost, statements by the Company regarding human error in program administration, and agreement among all parties that using 2021 RFP prices would have resulted in exceptionally high costs, the Commission tempered the offering and directed the Company to release 5 MW of capacity instead of 10 MW at a REC price of \$0.0175/kWh for the base incentive, before the \$0.02 income-qualified adder. In doing so, the Commission affirmed that good cause existed to grant a variance pursuant to Rule 1003(a) from Decision No. R20-0099 and Decision No. C20-0289 to implement the more appropriate REC incentive.

D. RRR Application

17. In its RRR Application, COSSA/SEIA argues that inconsistent implementation of programs makes Colorado a volatile place for CSG developers to do business, and raises both procedural and substantive reasons claiming the Commission erred in selecting both a REC price and in reducing the Standard Offer capacity from 10 MW to 5 MW for the 2021 program. The RRR Application asserts that the Company's CSG program has been unstable, with delays and errors in implementation that resulted in there being no 2022 CSG Standard Offer or RFP. Procedurally, COSSA/SEIA argues that the Commission should have acknowledged § 40-6-112, C.R.S., which sets forth procedures for modifying a final decision; they cite precedent that the Commission only modifies final decisions in extraordinary circumstances.

18. Substantively, COSSA/SEIA assert that their recommendation to apply the 2020 Standard Offer price of \$0.02003/kWh as a REC incentive is consistent with the methodology set forth in the Recommended Decision, i.e., based on the weighted average winning bid from the RFP program. They explain that this proposal represents a significant compromise from what may be most economically appropriate for Standard Offer projects, which are sized up to 500 kW and thus are already challenged to achieve the economies of scale of RFP projects. COSSA/SEIA describes Public Service's proposed REC incentive of \$0.0150/kWh as an arbitrary recalculation of the bid price based on removing bonus scoring for income-qualified commitments, and raise concerns regarding a lack of evidence associated with the Commission's preferred REC price.

19. COSSA/SEIA raise further concerns regarding the Commission's selected capacity level of 5 MW, noting developer expectations set by prior decisions and by Public Service. They argue this approach harms both developers who have been engaged in preparing for projects and subscribers who rely on the capacity to be able to participate in the clean energy transition.

COSSA/SEIA raises concerns that CSG challenges are due to Public Service's program mismanagement and state that given the private market's ability to cost-effectively deliver income-qualified CSGs, the Company's dedicated income-qualified projects should be revoked rather than penalizing developers.

E. Findings and Conclusions

20. Section 40-6-112, C.R.S., provides that the Commission, "at any time upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it." In this instance, the Commission received a motion from the utility seeking modification, and therefore need not provide additional notice to that same requesting utility pursuant to § 40-6-112.¹⁰ Parties further had notice and opportunity to respond to the motion itself, in addition to pursuing applications for RRR. While no extraordinary circumstances are required for the Commission to mindfully change its prior decisions, the excessive REC incentive that all parties agree would have resulted from directly applying the weighted average winning bid methodology to the 2021 RFP further supports that changes to the REC incentive and capacity levels are reasonable. We therefore reject the procedural argument in the RRR Application that additional notice or hearing were needed, under § 40-6-112 or otherwise, in this instance.

21. We further find good cause to deny the substantive arguments raised in the RRR Application filed by COSSA/SEIA, and to retain our prior selection of both a REC price and capacity level for the 2021 Standard Offer. While the regulatory provisions governing standard

¹⁰ Notably, multiple parties to this very proceeding, including COSSA/SEIA, have sought revision to Commission orders given the RFP processes here. *See, e.g.*, Decision No. C20-0806, issued November 13, 2020 (addressing the joint motion filed October 30, 2020, by COSSA/SEIA and Public Service to further amend the 2020-2021 RE Plan). Consistent with prior orders, including in this proceeding, the Commission may consider motions raised seeking amendments.

offer procurements were established years ago, this remains only the second Standard Offer issued by Public Service for the CSG program. As Background to this Decision shows, and as evident by the multiple revisions sought by the parties, the CSG acquisition process has evolved over time, sometimes based on emerging information or changing rules and sometimes to correct apparent flaws. We desire to develop a process that provides good value to ratepayers (including non-participating customers) while maintaining reasonable certainty for industry. We see this as an evolution that will be further addressed through the Commission's recent decision to approve a significant and sweeping 2022-25 RE Plan for Public Service that incorporates additional RFP and Standard Offer CSG programs.¹¹

22. Parties proposed REC incentives with varying levels of donated subscriptions incorporated and which variously relied on either a recalculation of 2021 RFP data¹² or a return to 2020 RFP data¹³ despite a rapidly changing industry¹⁴ which is also experiencing unclear impacts from supply chain shortages.¹⁵ The specter of program mismanagement by Public Service,¹⁶ and the numerous changes to CSG program criteria cited in this Decision given changing statutes and rules, have resulted in challenges in comparing across individual CSGs and portfolios of CSGs. Accordingly, we saw fit to temper both the size and incentive associated with the 2021 Standard Offer. We reaffirm that approach and set the expectation for parties and particularly for Public Service that we will be carefully reviewing CSG programs and the Company's annual compliance

¹¹ Proceeding No. 21A-0625EG, Decision No. C22-0678, issued November 3, 2022.

¹² Public Service Company of Colorado, Motion to Modify (December 2, 2022), at p. 12.

¹³ COSSA/SEIA, Response to Motion to Modify (December 16, 2022), at p. 15.

¹⁴ The Inflation Reduction Act may result in additional changes to the cost of solar technology, as identified through Proceeding No. 23M-0053ALL.

¹⁵ See COSSA/SEIA, Notice of Supply Chain Disruption (November 16, 2021).

¹⁶ See Decision No. C23-0083 at para. 25.

reports to assess sufficiency of data, effectiveness of CSG program administration, stability in implementation, and affordability for participating and non-participating customers.

23. Therefore, we continue to agree with our prior order that 5 MW for the 2021 Standard Offer program, rather than 10 MW, is appropriate where errors indicate that we should adopt a policy of incremental inclusion. Similarly, given party advocacy, we further affirm that a REC price of \$0.0175/kWh for the base incentive, before the \$0.02 income-qualified adder, appropriately recognizes both the Company and COSSA/SEIA's raised concerns. Particularly where this 2019 proceeding has seen numerous requests for revision, lowering the capacity for the 2021 program and weighing the party positions best assists in taking incremental steps as the parties and Commission learn what processes, methodologies, and next steps are appropriate where RFP processes to date have identified improvements are needed.

24. Finally, by Decision No. C23-0083, paragraph 25, the Commission directed Public Service to submit a narrative explanation responding to COSSA/SEIA's claim that the 2020 CSG Standard Offer contracts were awarded using a REC incentive that was more than double that which it should have been based on average winning bid prices,¹⁷ and in a way that may raise the cost to ratepayers by \$12.4 million over the lifetime of the projects. The filing should address whether the characterization is accurate, provide the mathematical basis for the correct incentive as well as the incentive that was applied in the 2020 Standard Offer if they are different, and explain any efforts to modify contract prices, as well as how and why these costs are to be allocated to customers. This filing has not yet been submitted by Public Service. We direct Public Service to submit the requested information on or before its next annual compliance report in Proceeding 21A-0625EG.

¹⁷ COSSA/SEIA, Response to Motion to Modify, December 16, 2022, at Attachment A, p. 1.

25. We further remind Public Service of our expectation that it includes all pertinent information in its annual compliance filings and related reporting on CSG RFP and Standard Offer contracts. This information will assist in our better understanding of the processes involved and next steps forward, particularly since these initial CSG offerings have raised significant concerns and multiple requests for revision in the RFP from both the Company and parties.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration jointly filed by the Colorado Solar and Storage Association and the Solar Energy Industries Association on February 24, 2023, is denied, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 15, 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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Commissioners