

Decision No. R23-0292

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22F-0365E

SUNSHARE, LLC,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
DENYING CLAIMS IN COMPLAINT AND CLOSING
PROCEEDING**

Mailed Date: May 3, 2023

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I. PROCEDURAL HISTORY

1. On August 17, 2022, SunShare, LLC (SunShare) filed a Formal Complaint (Complaint) against Public Service Company of Colorado (Public Service). In the Complaint,

SunShare requests the Commission direct Public Service to reform its bid prices for Renewable Energy Credits (RECs) for SunShare's two bid awards in the 2020 Solar*Rewards Community (S*RC) Community Solar Garden (CSG) Request for Proposals (RFP). SunShare requests an adjustment of the REC bid price per kWh generated (a REC adjustment) to \$0.00/kWh to maintain the viability of its CSG projects in light of increased costs due to alleged utility-caused unreasonable delays in interconnection and in allowing site moves, for 16 months. In addition, SunShare requests resolution of the uncertainty surrounding incremental costs for network upgrades at its new sites by approving a cap on its interconnection costs with the difference to be paid by Public Service's distribution system investments or by its shareholders. Finally, SunShare requests a one-time extension of the Target Completion Date in its 2021 Producer Agreements for its two projects to be in-service 30 months from the date of this Complaint to accommodate the delays allegedly caused by Public Service.

2. By Decision No. C22-0503-I, issued August 24, 2022, the Commission referred the matter to an Administrative Law Judge (ALJ). The proceeding was initially assigned to Chief ALJ G. Harris Adams.

3. 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 (including a copy of the Complaint) and an Order to Satisfy or Answer within 20 days from service of the Orders and Notice. The Commission also set an evidentiary hearing for November 30, 2022.

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

5. On September 21, 2022, Trial Staff of the Colorado Public Utilities Commission (Trial Staff), filed its Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, and Notice Pursuant to Rule 1007(a) and Rule 1401.

6. On September 28, 2022, SunShare filed its Response in Opposition to Public Service Company of Colorado's Motion to Dismiss.

7. On October 31, 2022, Chief ALJ Adams issued Decision No. R22-0676-I that denied Public Service's Motion to Dismiss.

8. On November 7, 2022, Public Service filed a Motion to Approve Procedural Schedule, Vacate Hearing Date, and Request for Shortened Response Time (Public Service's Motion).

9. On November 8, 2022, the Office of the Utility Consumer Advocate (UCA) filed a Motion to Participate as Amicus Curiae.

10. On November 10, 2022: (a) Chief ALJ Adams issued Decision No. R22-0711-I that granted UCA's Motion to Participate as Amicus Curiae; and (b) SunShare filed its Response to Public Service's Motion.

11. On November 14, 2022, Public Service filed its Answer to the Complaint.

12. On November 17, 2022, Chief ALJ Adams issued Decision No. R22-0731-I that vacated and rescheduled the hearing to February 29 and March 1, 2023, and established a procedural schedule. The hearing was scheduled as a hybrid hearing.

13. On November 23, 2022, SunShare filed an Unopposed Motion to Modify Procedural Schedule (Unopposed Motion).

14. On November 29, 2022, Chief ALJ Adams issued Decision No. R22-0770-I that granted the Unopposed Motion and vacated and rescheduled the hybrid hearing to February 14 and 15, 2023.

15. On November 30, 2022, SunShare filed the direct testimony of David Amster-Ozewski and Jacob R. Bobrow.

16. On December 8, 2022, the Colorado Energy Office filed a public comment regarding this proceeding.

17. On December 21, 2022, Public Service filed the answer testimony of Kerry R. Klemm and David Schiro, and Staff filed the answer testimony of Gene L. Camp.

18. On January 17, 2023, SunShare filed the rebuttal testimony of Mr. Amster-Olszewski.

19. On February 14, 2023, the hybrid hearing took place. All parties, attorneys, and witnesses attended the hearing in-person. During the hearing, 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).

20. On March 10, 2023, SunShare, Public Service, Staff, and UCA each filed a Statement of Position (SOP).

II. BURDEN OF PROOF

21. SunShare bears the burden of proving the claims alleged in the Complaint by a preponderance of the evidence.¹ The evidence must be “substantial evidence,” which is defined

¹ 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.

as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”² A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party.

III. ANALYTICAL APPROACH

22. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party’s position in each issue. Moreover, the ALJ has considered all the legal arguments set forth in the SOPs, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits.³

23. It is important to stress this analytical approach in light of SunShare’s imprecision in its factual allegations, legal claims, and explanations of how the allegations prove the claims. The lack of precision has made it difficult to understand and analyze SunShare’s claims.

IV. FINDINGS OF FACT

24. The facts of this proceeding are largely undisputed.

A. **Proceeding No. 19A-0369E**

25. In Proceeding No. 19A-0369E, Public Service requested Commission approval of its 2020-2021 Renewable Energy Compliance Plan. After a three-day hearing, ALJ Mirbaba

² *City of Boulder v. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)).

³ See *Durango Transportation, Inc. v. Colorado Public Utilities Comm’n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm’n.*, 702 P.2d 746, 750 (Colo. 1985).

issued Decision No. R20-0099 that approved the 2020-2021 Plan proposed by Public Service with some modifications. In one eight-page section of her 84-page decision, ALJ Mirbaba addressed one component of Public Service's proposed request for proposal (RFP) and bid evaluation processes for its Community Solar Garden (CSG) programs, known as Public Service's Solar*Rewards Community programs, as follows:

[Public Service] also asks the Commission to increase the standard timeline for CSG completion without penalty from 24 to 30 months to allow it to fully analyze site interconnections and potential location switches within a reasonable timeframe to complete RFP award requirements. To balance this, the Company offers not to collect fees for site moves and allow as many site moves as a developer needs, without providing timeline extensions related to site moves.⁴

In ruling on Public Service's proposals, ALJ Mirbaba stated as follows:

Based on evidence that [Public Service] requires more in-depth analysis of its interconnections and other reliability-related issues, the ALJ finds it is prudent, reasonable and in the public interest to approve [Public Service's] requests to increase the standard timeline to 30 months for CSG completion without penalty and to remove bid fees for site relocations.⁵

In her ruling, ALJ Mirbaba did not expressly address Public Service's offer to "allow as many site moves as a developer needs."

26. On exceptions, the Commission approved ALJ Mirbaba's Recommended Decision without expressly addressing the question of whether any restrictions on site moves would be permitted. However, the Commission did provide the following clarification:

[W]e respond to and clarify a point raised by Public Service's witness Klemm. Ms. Klemm testified that the Company reserves the right to change the CSG bid evaluation criteria if the Commission issues new rules that impact the Solar*Rewards Community program, or in the event of other unforeseen conditions. [Public Service] commits to making an informational filing that contains the modified criteria at least 15 days prior to releasing the RFP. We are concerned that [Public Service] could

⁴ Decision No. R20-0099 issued in Proceeding No. 19A-0369E on February 14, 2020, at 31 (¶ 66).

⁵ *Id.* at 35-36 (¶ 75).

make unilateral changes to something as significant as its evaluation criteria without Commission approval. This RE Plan is approved based on the rules now in effect. We appreciate [Public Service's] commitment to make an informational filing regarding modified criteria but clarify that [Public Service] should make a more substantive filing and that the filing should be made sooner than 15 days prior to its RFP, allowing sufficient time for Commission review. [Public Service] shall either file a request to amend its RE Plan based on the rule change or explain why such amendment is not appropriate.⁶

27. On September 21, 2020, Public Service filed an Unopposed Motion to Modify its CSG Bid Evaluation Criteria (Unopposed Motion to Modify), thereby amending its Commission-approved 2020-21 RE Plan. Specifically, in the Unopposed Motion to Modify, Public Service requested to amend its bid evaluation criteria by adding, among other things, a new criterion entitled Interconnection Viability, which evaluated whether a bid is able to site in a utility-targeted area or load-based setting where substation transformer Minimum Daytime Load (MDL) exceeds aggregate Distributed Energy Resources (DERs). Twenty points could be awarded for the Interconnection Viability criterion, but it was “all or nothing” scoring, so a bidder would receive either twenty or zero points based on the criterion.⁷

28. The purpose of adding the Interconnection Viability criterion was to support CSG developers by targeting an area in the Company's service territory where CSG interconnections may be more viable for interconnection. Public Service's experience with prior CSG RFPs was that a very small number of the Company's substations were receiving the majority of the bids, which led to too much solar capacity being brought onto the system without enough load to support that amount of generation. By adding the Interconnection Viability criterion, Public

⁶ Decision No. C20-0289 issued in Proceeding No. 19A-0369E on April 28, 2020, at 17-18 (¶ 35).

⁷ Hearing Exhibit 300, Attach. KRK-1 at 7-10 (Answer Testimony of Ms. Klemm).

Service sought to incentivize bidders to choose sites in Public Service-targeted areas and/or areas in which there was sufficient load to support the increase in generation if the CSG were built.⁸

29. On October 6, 2020, the Commission issued Decision No. C20-0708 that granted the Unopposed Motion to Modify.

B. RFP Process

30. Public Service issued the RFP at issue in this proceeding on October 16, 2020. It required any responses to the RFP to be filed by November 16, 2022.⁹ In the interim and before, Public Service engaged in a stakeholder engagement process in an attempt to provide answers to any questions stakeholders had regarding the RFP process and otherwise increase the clarity of the RFP process.¹⁰ SunShare participated in the stakeholder process.¹¹ Public Service issued its award notices to all awardees by email on December 16, 2020.¹²

C. Q/A Tracker

1. Site Move Policy

31. One result of the stakeholder process described above was a written document entitled “Q/A Tracker,” which included information regarding the RFP process and its aftermath

⁸ Hearing Exhibit 300 at 14:9-23 (Answer Testimony of Ms. Klemm).

⁹ Public Service’s SOP at 6; 2/14/2023 Transcript at 37:1-4; Hearing Exhibit 300, Attach. KRK-6 (Answer Testimony of Ms. Klemm).

¹⁰ Public Service’s SOP at 4; Hearing Exhibit 300 at 12:11-15, 16:19-17:16 (Answer Testimony of Ms. Klemm);.

¹¹ Hearing Exhibit 300 at 12:11-15, 16:19-17:16 (Answer Testimony of Ms. Klemm); 2/14/2023 Hearing Transcript at 40:15-44:14 (hearing testimony of Mr. Amster-Olszewski about SunShare’s participation in the stakeholder process).

¹² Hearing Exhibit 300, Attach, KRK-3 at 1 (award notice issued on December 16, 2020).

provided in the format of questions and answers. At least as early as November 5, 2020, the Q/A Tracker included information regarding site moves,¹³ which was as follows:¹⁴

Question Number	Question	Answer[]
20	Will projects awarded at sites that score 20 pts for Interconnection Viability be allowed to use site moves?	Site moves will be allowed, but any site moves must qualify under the interconnection viability criteria. For clarification to obtain the 20 points for this scoring criteria, the following must be met: (1) Site in a utility targeted area OR (2) Site in a location where the proposed, queued, and existing generation does not exceed the transformer Minimum Daytime Load (MDL). Using a PADR, the second criteria would be evaluated as: Transformer Minimum Daytime Load - (Substation Existing Generation + Substation Total Queued Generation + Proposed New Generation) > 0.

32. As explained by Ms. Klemm, the second requirement above means “that a certain site targeted by the utility must have sufficient load - energy use at the concurrent point in time - to support the injection of energy from interconnected DERs.”¹⁵ In other words, a substation must have minimum energy consumption (MDL) that equals or exceeds the rating for CSG generation, both existing and proposed. If the CSG generation exceeds the MDL, “it is possible that the proposed solar project could send more electricity back to the grid than can safely and reliably be accepted without grid upgrades. This typically results in distribution or substation system upgrades which are paid by the developer and not [Public Service].”¹⁶

33. The parties agree that the answer to question 20 on the Q/A Tracker meant that if a successful bid for a particular site was awarded 20 points for the Interconnection Viability

¹³ 2/14/2023 Hearing Transcript at 35:20-39:9. *See* Hearing Exhibit 300, Attach, KRK-3 at 1 (showing a “Last Updated” date of 11/5/2020).

¹⁴ Hearing Exhibit 300, Attach, KRK-3 at 2 (Answer Testimony of Ms. Klemm).

¹⁵ Hearing Exhibit 300 at 13:14-16 (Answer Testimony of Ms. Klemm).

¹⁶ *Id.* at 13:21-14:2.

criterion and the award was contingent upon those 20 points, a request to move to a new site would not be approved unless the proposed new site qualified for 20 points for Interconnection Viability as well.¹⁷ Public Service viewed this as a matter of fairness. Specifically, Public Service believed that allowing a successful bidder whose bid would not have been approved but for the 20 Interconnection Viability points to subsequently move to a site that did not qualify for the 20 Interconnection Viability points would be unfair to the original unsuccessful bidder(s) (Site Move Policy).¹⁸

34. The ALJ finds that Public Service is correct that allowing moves under such circumstances would potentially be unfair to the original unsuccessful bidder(s). Further, the ALJ finds that allowing completely unrestricted site moves could also cause bidders to attempt to game the system by identifying a site in its bid where it had no intention to build a CSG in order to obtain the 20 Interconnection Viability points and then, after winning the bid, moving to a site that would have received zero Interconnection Viability points.

2. Cluster Study Policy

35. Public Service reviewed and initially accepted bids submitted in response to the 2020 RFP in the order in which they were received. For the sites/substations at issue in this proceeding, Public Service accepted multiple bids that were placed in a position based on their order of submission. As explained in more detail below, one of the requirements for final acceptance of a bid was submission by the awardee of the Interconnection Study Fee for the interconnection study at the site/substation awarded. However, Rule 3853(d)(VIII) of the Commission's Rules Regulating Electric Utilities states:

¹⁷ SunShare's SOP at 10; Public Service's SOP at 5-6.

¹⁸ Hearing Exhibit 300 at 16:1-8 (Answer Testimony of Ms. Klemm).

The utility shall place interconnection requests in a first come, first served order per feeder, per substation transformer, and per substation based upon the date an application is complete pursuant to subparagraph 3853(d)(V). The order of each interconnection request will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection. At the utility's option, interconnection requests may be studied serially or in clusters for the purpose of the system impact study.¹⁹

The parties agree that the last sentence of Rule 3853(d)(VIII) permits what is known as a “cluster study,” which is a single study of the interconnection requests of all of the finally accepted awardees.²⁰

36. The Q/A Tracker that issued on November 5, 2020, included the following question and answer regarding cluster studies:²¹

Question Number	Question	Answer[]
22	Can RFP awards from different developers but on the same feeder utilize a Cluster Study?	Yes, details on the cluster study will be outlined in an agreement for all parties if they wish to pursue one. Otherwise, projects will be studied in order of the queue.

37. The parties agree this means that: (a) cluster studies are permitted but only if all of the parties not yet studied in the queue agree, in which case the parties to the agreement will share the cost of the study and the cost of any upgrades to the feeder/substation required by the study regardless of which bid triggers the need for upgrades; and (b) if there is no such

¹⁹ 4 *Code of Colorado Regulations* (CCR) 723-3.

²⁰ Hearing Exhibit 100 at 27:15-17 (Direct Testimony of Mr. Amster-Olszewski); Hearing Exhibit 101, Attach. JRB-2 at 11 (¶ 41) (Direct Testimony of Mr. Bobrow).

²¹ Hearing Exhibit 300, Attach. KRK-3 at 2 (Answer Testimony of Ms. Klemm).

agreement, then “projects will be studied in order of the queue” and each study, and any resulting upgrades, will be paid for by each individual awardee (Cluster Study Policy).²²

38. Public Service states that the Cluster Study Policy resulted from a stakeholder process that took place from May through September 2020.²³ According to Public Service, during that process:

Developers had discussed the challenges when projects ran into “lumpy” upgrade costs . . . that were necessary to address DER system impacts. Once these upgrades are installed, they also benefit projects that would interconnect after them. Developers were open to the idea of trying cluster studies on a voluntary and pilot basis.²⁴

SunShare contends that Public Service “never presented the cluster study limitation to stakeholders” and stakeholders did not support it.²⁵

D. December 16, 2020 Award Notices and Post-Award Process

39. As noted above, Public Service issued its award notices to the awardees in the RFP process on December 16, 2020. On that date, SunShare received an award notice for two sites: the Lincoln Project that would interconnect at the Cobb Lake substation (5 MW) (Lincoln Project) and the Gerry Project that would interconnect at the Greeley Substation (5 MW) (Gerry Project).²⁶ After identifying the bid locations awarded to the awardee, each award notice stated in part as follows:

Be aware that receiving an award does not guarantee capacity at the submitted site. Only a completed study and resulting Interconnection Agreement will guarantee the available capacity for any given interconnection request.

²² Hearing Exhibit 101, Attach. JRB-2 at 11 (¶ 41). Public Service’s SOP at 6; Hearing Exhibit 300 at 18:13-19:8 (Answer Testimony of Ms. Klemm).

²³ Hearing Exhibit 300 at 16:19-17:11 (Answer Testimony of Ms. Klemm).

²⁴ *Id.* at 18:19-23.

²⁵ Hearing Exhibit 102 at 26:17-27:

²⁶ 2/14/2023 Hearing Transcript at 46:3-50:12.

Note that final acceptance of the bid(s) is contingent upon completion of the Post-bid Requirements as stated in Section 4.7 of the RFP which are also outlined below. These must be completed within 90 calendar days of receiving this notice starting on the next business day making the required completion date March 17, 2021

1. Submission of an application to the SRC portal which includes a specific location (latitude/longitude or permanent 911 address);
 - a. Note the locational requirements laid out in section 4.8 of the RFP must be adhered to and will be checked by the Company when the application is submitted.
2. Submission of a security deposit in the amount of \$10/kW AC nameplate capacity
3. Submission of an escrow in the amount of \$100/kilowatt of the AC nameplate capacity of the application;
4. Submission of an executed SRC Producer Agreement;
5. Submission of a State Certificate of Good Standing;
6. Submission of an Interconnection Study Fee; and
7. Submission of the required engineering documents (one-line, site plan, and Small Generator Interconnection Application).²⁷

40. SunShare understood that Public Service would place it in a queue when it completed its post-bid requirements, provided they were completed before the deadline. Each queue was feeder/substation-specific and included all of the awardees who requested to interconnect their proposed project to the same feeder/substation. The order of the queue would be determined on a “first submitted, first awarded basis,” meaning that the queue order would be determined by the order in which the awardees completed their post-bid requirements. SunShare thus understood that the earlier it completed its post-bid requirements, the higher a queue position it would receive. If it wanted to be first in the queue for its awarded substation,

²⁷ Hearing Exhibit 300, Attach. KRK-4 at 1.

SunShare understood that it needed to complete its post-bid requirements before the rest of the awardees at the same site/feeder/substation.²⁸

41. Occupying the highest position in the queue was important. Each site/feeder/substation only has so much capacity or “headroom” to connect additional generation. Once that capacity or headroom is exceeded, the feeder/substation needs upgrades to accommodate any additional generation and the bid in the queue that triggered the need for the upgrades incurs the cost of the upgrades. Because it was not entirely clear after the bid-awards on December 16, 2020, which CSG project awarded to a particular feeder/substation would exceed the capacity of that feeder/substation, it was imperative to complete the post-bid requirements as fast as possible to obtain the highest queue position possible. SunShare understood all of this.²⁹

42. In its SOP, SunShare asserts that Public Service “caused the Gerry Solar project to fall behind in the SGIP queue and thus to incur the costs of [] network upgrades and extended delays.”³⁰ The record does not support this statement. The ALJ finds that SunShare’s positions in the queues for both the Lincoln and Gerry Projects (described below) were the result solely of SunShare’s informed actions/inaction.³¹

²⁸ 2/14/2023 Hearing Transcript at 46:3-50:12; Hearing Exhibit 300 at 19:9-20 (Answer Testimony of Ms. Klemm).

²⁹ 2/14/2023 Hearing Transcript at 46:3-51:1.

³⁰ SunShare’s SOP at 14.

³¹ See Hearing Exhibit 300 at 22:16-23:21 (Answer Testimony of Ms. Klemm).

E. SunShare's Compliance with Post-Award Requirements**1. Lincoln Project****a. Cobb Lake Site**

43. SunShare completed the post-bid requirements for the Lincoln Project at Cobb Lake on March 15, 2021, just before the deadline of March 17, 2021.³² Because SunShare took approximately three months to complete the post-bid requirements, SunShare's awarded bid occupied third place in the queue for the Cobb Lake site. Public Service informed SunShare that the two approved projects that preceded it in the queue for the Cobb Lake substation were designed to generate 4.75 MW. The then-existing generation connected to the Cobb Lake substation was 1.823 MW, and the MDL of the substation was 6.65MW. Thus, it appeared that adding SunShare's generation to the Cobb Lake substation would cause the DER generation on the Cobb Lake substation to exceed the MDL, which would likely result in backfeeding that would require grid and/or substation upgrades for which SunShare would have been required to pay. Public Service informed SunShare that it would have to perform one and possibly two additional studies to confirm whether grid/or substations upgrades would be needed to add SunShare's generation to the Cobb Lake substation.³³

44. For this reason, SunShare requested a site move to the Uintah feeder/substation on March 30, 2021.³⁴

³² *Id.* at 22:16-23:2 (Answer Testimony of Ms. Klemm).

³³ Hearing Exhibit 101, Attach. JRB-2 at 8 (¶¶ 24-26) (Direct Testimony of Mr. Bobrow).

³⁴ *Id.* at 8 (¶ 27).

b. Uintah Site

45. Because of the “increased project risk and uncertainty” at the Cobb Lake substation, “SunShare initiated a site move for the Lincoln Solar project to its back-up Uintah Site, located near Fruita, Colorado” on March 30, 2021.³⁵ SunShare had chosen the Uintah site based on a Pre-Application Data Report (PADR) for the Uintah substation supplied by Public Service. PADRs are reports that an interconnection customer can request pursuant to Rule 3853(a). They identify the feeder, transformer substation name serving the interconnection feeder, the rating of both the feeder (at the feeder exit) and the transformer, the feeder and transformer MDL(s), and the amount of DER (existing and queued).³⁶ A PADR can be requested at any point in the interconnection process by a developer, but is not required as part of the interconnection process.³⁷ Public Service provides them to CSG developers “as a tool to help with siting of CSGs.”³⁸

46. PADRs do not provide a CSG developer like SunShare a definitive identification of the system upgrades necessary to interconnect at any particular location, and the costs thereof.³⁹ Each PADR makes this clear by stating:

- 1) the existence of “Available Capacity” in no way implies that an interconnection up to this level may be completed without impacts since there are many variables studied as part of the interconnection review process, 2) the distribution system is dynamic and subject to change, and 3) data provided in the Pre-Application Data Report may become outdated and not useful at the time of submission of the complete Interconnection Request.⁴⁰

³⁵ Hearing Exhibit 101, Attach. JRB-2 at 8 (¶¶ 24-27) (Direct Testimony of Mr. Bobrow).

³⁶ Hearing Exhibit 301 at 9:9-10:9 (Answer Testimony of Mr. Schiro).

³⁷ Hearing Exhibit 300 at 23:12-16 (Answer testimony of Ms. Klemm).

³⁸ *Id.* at 23:9.

³⁹ *Id.* at 24:4-8.

⁴⁰ *Id.* at 23:18-24:3.

Instead, such definitive identification of upgrades and costs are not provided until the completion of a System Impact Study (SIS).⁴¹

47. Public Service's initial PADR for the Uintah site for the Lincoln project contained incorrect data that erroneously indicated that the site move met the Interconnection Viability criterion. Public Service discovered the error and provided SunShare with a follow-up, corrected Uintah PADR on April 2, 2021. The corrected PADR indicated that the Uintah site did not meet the Interconnection Viability criterion and that upgrades would thus be necessary.⁴² However, because Public Service made the error and SunShare had reasonably relied upon the erroneous PADR and moved forward with project development, Public Service honored the site move request, which was communicated to SunShare via email on April 5, 2021.⁴³

c. Platteville Site

48. Public Service would have required SunShare to pay for the cost of the upgrades at the Uintah substation if SunShare went forward at that location. Not wanting to do so, SunShare requested a site move to the Platteville substation where SunShare "had site control and a County Special Use Permit," which would have helped to make the development economically viable. SunShare submitted the request to move to the Platteville site on April 6, 2021.⁴⁴ However, the Platteville site did not meet the Interconnection Viability criterion and, consequently, Public Service denied the move on April 21, 2021.⁴⁵

⁴¹ *Id.* at 24:4-8.

⁴² *Id.* at 25:12-19.

⁴³ *Id.*, Attach. KRK-5.

⁴⁴ Hearing Exhibit 102, Attach. JRB-2 at 9 (¶¶29-32).

⁴⁵ Hearing Exhibit 300 at 26:9-15 (Answer Testimony of Ms. Klemm); Hearing Exhibit 101, Attach. JRB-2 at 84-86 (Direct Testimony of Mr. Bobrow).

d. Ault Site

49. On March 8, 2022, SunShare requested a move to a substation in Ault (Ault Site). Again, the Ault site did not satisfy the Interconnection Viability criterion. For that reason, Public Service initially denied the move on March 18, 2022.⁴⁶ However, on April 4, 2022, Public Service waived the requirement for a new site to satisfy the Interconnection Viability criterion for all projects awarded under the 2020 RFP that had experienced two or more failed site moves.⁴⁷ Public Service did so because: (a) “the time lapse of nearly two years since the original RFP awards [meant] the pre-award PADR[s] no longer reflected the realities of an ever-changing distribution system;” and (b) Public Service “desire[d] to help awardees site the very few remaining CSGs still seeking a location.”⁴⁸

50. The Lincoln Project is moving through the interconnection process with a completion deadline of June 16, 2024.⁴⁹

2. Gerry Project

51. The Gerry Project at the Greeley substation received twenty Interconnection Viability points. SunShare completed the post-bid requirements for the Gerry Project at Greeley Substation on March 10, 2021.⁵⁰ There was at least one other awardee that had completed its post-bid requirements before SunShare and thus was ahead of SunShare in the queue for the Greeley substation.⁵¹

⁴⁶ Hearing Exhibit 102, Attach. JRB-2 at 10 (¶¶35-37) (Answer Testimony of Mr. Bobrow).

⁴⁷ Hearing Exhibit 300 at 27:16-28:9 (Answer Testimony of Ms. Klemm)

⁴⁸ *Id.* at 27:18-28:1 (Answer Testimony of Ms. Klemm)

⁴⁹ *Id.* at 27:13-15, 28:10-13.

⁵⁰ Hearing Exhibit 102, Attach. JRB-2 at 10 (¶ 38) (Direct Testimony of Mr. Bobrow).

⁵¹ *Id.* at 10-11 (¶¶ 39-40).

52. On May 18, 2021, SunShare learned that because of its queue position, it would be required to pay for upgrades to the Greeley feeder.⁵² SunShare thus requested a cluster study, but the entities ahead of SunShare in the queue declined to agree. According to Public Service, the entities higher in the queue “expressed concern that a cluster study would slow their progress as their awarded project already was further along in the study process.”⁵³ According to SunShare, “the affected developer declined to participate in a cluster study that would likely increase its interconnection costs and study time.”⁵⁴ This meant that Public Service “would assign the cost of the incremental network upgrades to interconnect both bids as SunShare’s cost burden.”⁵⁵

53. As a result, on May 26, 2021, SunShare requested a PADR for the Cloverly substation that was in the process of being upgraded to determine whether to request a site move to that feeder/substation. The PADR results for Cloverly were not available at that time because the final configuration of the rebuilt substation had not been established. Other CSG developers who participated in the 2020 RFP had submitted requests for the Cloverly substation before SunShare’s request. In order to maintain fairness, Public Service processed the PADR requests in order of receipt. Results of the PADR were provided to SunShare in August 2021, at which time SunShare requested a site move to the Cloverly site.⁵⁶

54. On August 24, 2021, Public Service rejected SunShare’s site move request for not meeting the Interconnection Viability requirement. Specifically, several projects were before SunShare’s project in the Cloverly queue, and the sum thereof exceeded the substation

⁵² *Id.* at 11 (¶ 41).

⁵³ Hearing Exhibit 300 at 29:1-2 (Answer Testimony of Ms. Klemm).

⁵⁴ Hearing Exhibit 102, Attach. JRB-2 at 11 (¶ 41) (Direct Testimony of Mr. Bobrow).

⁵⁵ *Id.*

⁵⁶ Hearing Exhibit 300 at 29:16-30:4 (Answer Testimony of Ms. Klemm).

transformer MDL. As a result, the additional capacity of SunShare's project would have further exceeded Cloverly's MDL.⁵⁷

55. However, on March 18, 2022, Public Service offered SunShare up to 2.4 MW at the Cloverly site. This approach was based on a PADR issued to one party prior to the 2020 RFP that indicated Pleasant Valley potential capacity for 2.4 MW. Pleasant Valley was the name of the substation before Public Service upgraded it and renamed it Cloverly. Public Service thus allowed all parties to use the data from the pre-2020 RFP Pleasant Valley PADR in applications to Cloverly and split larger awards into 2.4 MW increments.⁵⁸ SunShare rejected Public Service's offer.⁵⁹

56. As noted above, on April 4, 2022, Public Service waived the requirement for a new site to satisfy the Interconnection Viability criterion for all projects awarded under the 2020 RFP that had experienced two or more failed site moves.⁶⁰ As a result, "SunShare is proceeding through the interconnection process for the Gerry project at Cloverly with the full 5 MW."⁶¹ Notably, Public Service offered the waiver to all CSG developers who participated in the 2020 RFP "in order to maintain a fair and nondiscriminatory RFP process," but "no other CSGs utilized this opportunity as all other 2020 RFP CSGs already were sited."⁶² Like the Lincoln Project, the completion deadline of the Gerry Project is June 16, 2024.⁶³

⁵⁷ *Id.* at 30:5-11.

⁵⁸ *Id.* at 30:5-23. *See also* Hearing Exhibit 101, Attach. JRB-2 at 88 (Direct Testimony of Mr. Bobrow).

⁵⁹ Hearing Exhibit 300 at 30:22-23 (Answer Testimony of Ms. Klemm).

⁶⁰ *Id.* at 27:16-28:9.

⁶¹ *Id.* at 31:2-3.

⁶² *Id.* at 28:6-9.

⁶³ *Id.* at 37:10-11.

F. Notice of Dispute and Complaint

57. In March 2022, SunShare provided Public Service with a Notice of Dispute for both the Lincoln and Gerry projects.⁶⁴ The parties could not resolve their differences, so, on August 17, 2022, SunShare filed the Complaint that initiated this proceeding. In the Complaint, SunShare alleged that Public Service violated: (a) Colorado’s CSG statute, § 40-2-127, C.R.S.; (b) Decision No. R20-0099 in Proceeding No. 19A-0369E; and (c) Commission Rules 3853(d) and 3853(d)(VIII).

58. For relief, SunShare requests that: (a) the Renewable Energy Credit be adjusted from a negative number, as bid by SunShare and awarded by Public Service, to \$0.00 per Megawatt hour (MWh); (b) Public Service be forced to pay the incremental interconnection costs above SunShare’s budgeted amount of \$150,000 detailed in its bids; and (c) an extension of the target completion date of the Lincoln and Gerry Projects to “the later of February 16, 2025 to account for delays to date or within 90 days of completion of the construction of the required network upgrades.”⁶⁵ SunShare’s actual awarded REC prices and originally budgeted interconnection costs, and the difference between SunShare’s budgeted interconnection costs and the estimated current costs, are highly confidential. SunShare also suggests that the Commission should impose a penalty on SunShare.

G. Staff’s Position

59. Staff takes no position on the merits of the claims alleged by SunShare against Public Service. Instead, Staff only addresses the relief requested by SunShare. Specifically, Staff argues that however the Complaint is decided by the Commission, no new costs should be

⁶⁴ *Id.* at 31:20-22.

⁶⁵ SunShare’s SOP at 33.

imposed on ratepayers. In particular, Staff opposes SunShare's requests to increase the REC payment from a negative number to \$0.00 and socialize the alleged incremental costs, both of which would increase the costs imposed on ratepayers.⁶⁶ As Staff states, "[r]etail customers of Public Service are not at fault for the delays and financial harms that SunShare seeks to remedy here. Hence, the remedies (if any) the Commission imposes on Public Service should not punish ratepayers in any way."⁶⁷ Staff also notes that any penalty would be paid into the General Fund and cannot be paid to SunShare. In contrast to SunShare's other requests for relief, Staff argues that SunShare's request for an extension of its CSG project target completion date "does not appear to adversely affect ratepayers."⁶⁸ Thus, Staff argues that extending the target completion date for the Gerry and Lincoln Projects to on or before February 16, 2025, would not adversely impact retail customers and is neither unjust nor unreasonable.⁶⁹

H. UCA's Position

60. Like Staff, UCA: (a) takes no position on who should prevail in this proceeding; (b) asserts that, if any relief is granted to SunShare, ratepayers should be held harmless and Public Service's shareholders should be forced to pay any penalties and/or costs resulting from the relief granted herein.; and (c) emphasizes that any penalty cannot be paid to SunShare. UCA also states that the record in this proceeding:

suggest[s] that Public Service is not meeting its obligation to facilitate the interconnection of approved CSG capacity. . . . [Public Service] must be the facilitator of speedy, cost-efficient, and accessible interconnection. Where [Public Service] is unable to achieve these goals, it should be accountable for the additional time, costs, and hurdles incurred. As ratepayers have no role in creating these challenges, they should be held harmless when they occur. As ongoing

⁶⁶ Hearing Exhibit 500 at 6:2-8 (Answer Testimony of Mr. Camp).

⁶⁷ Staff's SOP at 1.

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 15.

disputes related to timely interconnection continue to arise, ratepayers should no longer be responsible for the negative outcomes.⁷⁰

I. CEO's Public Comment

61. In its Public Comment, CEO stated its belief that “it is an important part of the state’s climate and clean energy strategy to have a vibrant community solar garden market in Colorado.” As support, CEO stated that: (a) the Colorado General Assembly has declared “it is in the public interest to promote broader participation in solar electric generation, by Colorado residents, including by renters, low-income utility customers, and agricultural producers;”⁷¹ (b) a 2021 CEO study found that expanding access to CSGs may be the best means to “provide discounted electricity to low- and moderate-income households” due to the prohibitively high cost of installing rooftop solar for most, if not all, of those households, and is “the most straightforward way to promote equity and reduce greenhouse gas emissions in the residential sector;”⁷² and (c) “CEO [] wants to ensure the benefits of community solar gardens . . . are realized expeditiously.”⁷³ Based on the foregoing, CEO concluded that “[t]o the extent that Public Service's interconnection procedures are causing delays in developers being able to install community solar gardens and increasing the costs of community solar gardens, CEO urges the Commission to resolve these issues expeditiously and with a minimal cost impact to ratepayers.”⁷⁴

⁷⁰ UCA OP at 6-7.

⁷¹ CEO's Public Comment at 1.

⁷² *Id.*

⁷³ *Id.* at 2.

⁷⁴ *Id.*

V. CONCLUSIONS OF LAW

A. Jurisdiction

62. Public Service argues in its SOP that the Commission lacks jurisdiction over the dispute in this proceeding because it is a contractual dispute. This is the same jurisdictional argument that Public Service made in its Motion to Dismiss. Consistent with Chief ALJ Adams' decision in Decision No. R22-0676-I, the undersigned ALJ holds that the Commission has jurisdiction over SunShare's claims that Public Service violated Commission decisions, Commission Rules, and Colorado's statute addressing CSG's. Whether the Commission has the authority to award the relief sought by SunShare in this proceeding is a separate question that is moot in light of the result below.

B. Claim 1: Alleged Violation of Decision Nos. R20-0099, C20-0289, and C20-0709 in Proceeding No. 19A-0369E

1. Allegations

63. Although difficult to ascertain due to lack of clarity, it appears that SunShare makes three arguments in support of this claim. First, SunShare alleges that Decision Nos. R20-0099, C20-0289, and C20-0709 in Proceeding No. 19A-0369E (Commission Decisions) did not approve restrictions on site moves and cluster studies and required Public Service to obtain the Commission approval for any such restrictions. By including restrictions on both without Commission approval, therefore, Public Service violated the Commission Decisions.⁷⁵ Second, the Commission Decisions afforded "discretion" to CSG developers and Public Service's restrictions on both site moves and cluster studies "revoked" that discretion.⁷⁶ Third, SunShare alleges that "[t]he Site Move Restriction policy was used by [Public Service] as a basis to

⁷⁵ SunShare's SOP at 7-10.

⁷⁶ *Id.* at 10.

materially delay SunShare’s projects” because Public Service applied the policy “only to Lincoln Solar and Gerry Solar in April 2022 when [Public Service] retracted the policy.”⁷⁷

2. Analysis

a. Commission Decisions

64. As stated above, Decision No. R20-0099 approved Public Service’s proposed 2020-2021 Renewable Energy Compliance Plan (REC Plan) with some modifications. Public Service’s REC Plan included a proposal for a standard timeline, which Decision No. R20-0099 summarized as follows:

[Public Service] also asks the Commission to increase the standard timeline for CSG completion without penalty from 24 to 30 months to allow it to fully analyze site interconnections and potential location switches within a reasonable timeframe to complete RFP award requirements. To balance this, the Company offers not to collect fees for site moves and allow as many site moves as a developer needs, without providing timeline extensions related to site moves.⁷⁸

Public Service’s proposal thus included three components: (a) a request to increase the timeline for CSG completion; (b) an offer to eliminate bid fees for relocations; and (c) an offer “to allow as many site moves as a developer needs.”

65. In ruling on Public Service’s proposals, Decision No. R20-0099 stated:

Based on evidence that [Public Service] requires more in-depth analysis of its interconnections and other reliability-related issues, the ALJ finds it is prudent, reasonable and in the public interest to approve [Public Service’s] requests to increase the standard timeline to 30 months for CSG completion without penalty and to remove bid fees for site relocations.⁷⁹

The ruling thus addressed two of the components of Public Service’s proposal – the request to increase the timeline for CSG completion and the offer to eliminate bid fees for relocations. The

⁷⁷ *Id.* at 10-11.

⁷⁸ Decision No. R20-0099 issued in Proceeding No. 19A-0369E on February 14, 2020, at 31 (¶ 66).

⁷⁹ *Id.* at 35-36 (¶ 75).

ruling did not, however, address Public Service's offer to "allow as many site moves as a developer needs."

66. Likewise, in Decision No. C20-0289, which ruled on the exceptions filed with respect to Decision No. R20-0099, the Commission did not address Public Service's offer "to allow as many site moves as a developer needs" or the question of whether Public Service could place any reasonable conditions on site moves. Nor did the Commission address either of those issues in its Decision No. C20-0709 that addressed Public Service's Unopposed Motion to Modify its CSG Bid Evaluation Criteria. Accordingly, the ALJ concludes that Decision Nos. C20-0289 and C20-0709 did not require Public Service to accept all site moves or prohibit Public Service from imposing any conditions on site moves.

67. Finally, the ALJ disagrees with SunShare's assertion that Decision No. C20-0709 required Public Service to seek Commission approval before instituting the Site Move and/or Cluster Study Policies. Instead, Decision No. C20-0709 required Public Service to obtain Commission approval of any changes to the "CSG bid evaluation criteria."⁸⁰ Such bid evaluation criteria were used to analyze the responses to the RFP, which were known as bids, to select the bid winners. In its Unopposed Motion to Modify its CSG Bid Evaluation Criteria filed on September 20, 2020, Public Service sought Commission approval for the addition of the Interconnection Viability criterion to be used in the bid evaluation process. The Commission gave its approval in Decision No. C20-0709. Thereafter, Public Service applied the bid evaluation criteria approved by the Commission (including the Interconnection Viability criterion) to select the bid winners that were announced on December 16, 2020.

⁸⁰ Decision No. C20-0289 issued in Proceeding No. 19A-0369E on April 28, 2020, at 17-18 (¶ 35).

68. In contrast, Public Service employed the Site Move and Cluster Study Policies to evaluate requests by bid winners for site moves and cluster studies *after* the bid winners had been declared. Site move requests were made by bid winners to move projects from the sites for which the bids were awarded to alternative sites. Likewise, cluster studies to study the system impacts and needs for upgrades were requested by multiple bid winners in queues for the same feeders/substations. As a result, the Site Move and Cluster Study Policies included in the Q/A Tracker were not “bid evaluation criteria” and Decision No. C20-0289 did not require Public Service to obtain the Commission’s approval of them.

69. This conclusion is corroborated by SunShare’s own actions. SunShare did not first request a site move until March 30, 2021, over three months after Public Share announced the bid winners. Similarly, SunShare did not request the cluster study at issue in this proceeding until on or after May 18, 2021, over five months after Public Share announced the bid winners. The timing of SunShare’s requests underscores that the Site Move and Cluster Study Policies were not bid evaluation criteria.

70. For this reason, the ALJ concludes that the Commission Decisions did not prohibit all limitations or conditions on site moves or cluster studies, either expressly or by implication and, consequently, the Site Move Policy and Cluster Study Policies did not violate the Commission Decisions. Accordingly, the ALJ concludes that Public Service did not violate any of the Commission Decisions by instituting the Site Move and Cluster Study Policies without Commission approval.

b. CSG Developers’ Discretion

71. In support of its argument that the Commission Decisions afforded “discretion” to CSG developers and Public Service’s restrictions on both site moves, and cluster studies

“revoked” that discretion,⁸¹ SunShare does not cite to any portion of the Commission Decisions. While it may be true that the decisions afforded CSG developers some level of discretion in certain areas, SunShare has not presented any evidence or detailed, persuasive argument that they granted such discretion generally, or with respect to site moves, such that CSG developers could unconditionally move their project(s) to any feeder/substation. As a result, SunShare has not carried its burden of establishing that Public Service’s actions violated any discretion afforded to SunShare over site moves.

c. Delay of the Lincoln and Gerry Projects

72. SunShare has not cited any credible evidence to support its allegation that Public Service used the Site Move Policy to materially delay SunShare’s – and only SunShare’s – projects, either intentionally or otherwise. The evidence cited by SunShare – that the Site Move Policy applied “only to Lincoln Solar and Gerry Solar in April 2022 when [Public Service] retracted the policy”⁸² – does not support the allegation. The record establishes that “all other 2020 RFP CSGs already were sited” as of April 2022.⁸³ As a result, no other 2020 RFP bid winner had an outstanding site move request to which the Site Move Policy, or the “retraction” thereof, could have applied. Accordingly, SunShare has not carried its burden of establishing that Public Service used the Site Move Policy to materially delay SunShare’s projects.

73. Based on the foregoing, the ALJ concludes that Public Service has not carried its burden of proving that Public Service violated the Commission Decisions.

⁸¹ *Id.* at 10.

⁸² *Id.* at 10-11.

⁸³ Hearing Exhibit 300 at 28:6-9 (Answer Testimony of Ms. Klemm).

C. Claim 2: Alleged Violations of SGIP Rules

1. Allegations

74. In its SOP, SunShare did not identify specific rules that it alleges Public Service violated and then provide detailed analysis showing how SunShare believes the evidence in the record establishes that Public Service violated the identified rules. Instead, SunShare cites generally to Rule 3853(d),⁸⁴ and asserts that “there is nothing in the SGIP rules that allowed SunShare’s interconnection requests to be denied”⁸⁵ and Public Service’s actions “caused the Gerry Solar project to fall behind in the SGIP queue and thus to incur the costs of 3V0 technology network upgrades and extended delays.”⁸⁶ SunShare then summarily concludes that Public Service violated the SGIP Rules.

75. The Complaint provides more detailed allegations and explains with slightly more clarity why SunShare believes Public Service violated the SGIP Rules. While the Complaint is a part of the administrative record in this proceeding, it was not entered into the evidentiary record at the hearing. Nevertheless, out of an abundance of caution, the ALJ will address the allegations in the Complaint.

76. In the Complaint, SunShare alleged that Public Service violated the Commission’s SGIP Rules by: (a) “refusing to study projects for which SunShare had made needed site move requests” because “it denied the underlying site moves”;⁸⁷ (b) “exercising its option to use the cluster study process, then reversing that decision, and finally delegating that decision to

⁸⁴ SunShare’s SOP at 13.

⁸⁵ *Id.* at 13-14.

⁸⁶ *Id.* at 14.

⁸⁷ Complaint at 32 (¶¶ 77-78).

competing developers in a manner that ensured no cluster study would ever move forward”;⁸⁸ and (c) “forcing SunShare to rely upon PADR or targeted substations that it later disavowed.”⁸⁹ SunShare alleged that the cited conduct violated Rule 3853(d), Rule 3853(d)(VIII), and Rule 3853(a)(IV)(B), respectively.⁹⁰

2. Analysis

77. As noted, SunShare alleges that Public Service violated Rule 3853(d), Rule 3853(d)(VIII), and Rule 3853(a)(IV)(B) by rejecting SunShare’s request for a cluster study in May 2021, declining SunShare’s requests for site moves on March 30, 2021 (Uintah site) and April 6, 2021 (Platteville site), and “forcing SunShare to rely upon PADR [prior to bid submission] or targeted substations that it later disavowed” in April 2021.⁹¹ However, Rule 3853 did not become effective until July 30, 2021. While portions of Rule 3853 existed in the predecessor rules in effect during the relevant time period, it is incumbent on a Complainant to cite to the *specific* provisions of the *applicable* rules and then prove that the Respondent violated them. As a result, the ALJ concludes that SunShare has not carried its burden of proving that Public Service violated Rule 3853 at a time when Rule 3853 did not exist.

⁸⁸ *Id.* at 35 (¶ 89).

⁸⁹ *Id.* at 52 (“Conclusion”). *See also id.* at 42-45 (¶¶ 113-124).

⁹⁰ It is not clear that SunShare intended this allegation to support a separate legal claim for violation of Rule 3853(a)(IV)(B). Indeed, SunShare does not mention Rule 3853(a)(IV)(B) in its SOP. While the SOP does make one mention of SunShare’s reliance on an incorrect PADR to its alleged detriment, it does not offer any legal analysis explaining why that misplaced reliance violated any rule or statute. In the Complaint, the allegation quoted above is included in a section entitled “THE RESPONDENT’S ACTIONS IMPLICATE ADDITIONAL RULE 1302(B) CRITERIA THAT SUPPORT GRANTING THE COMPLAINT” that is separate from the section in which it identifies its claims for relief. Thus, it appears that SunShare did not intend the allegation to be the basis for a separate legal claim. However, Public Service has identified it as a separate legal claim, perhaps out of an abundance of caution, *see* Public Service’s SOP at 21-22, so the ALJ will as well.

⁹¹ *See supra* at ¶¶ 45, 48 (SunShare’s requests for site moves), 52 (SunShare’s request for cluster study), 47 (error in PADR for Uintah feeder/substation discovered on April 2, 2021).

78. Even 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. 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. SunShare has not cited any other rule or predecessor rule that establishes otherwise. As a result, the ALJ concludes that SunShare has not carried its burden of proving that Public Service's Site Move Policy violated Rule 3853 or predecessor Rule 3667.

79. While Rule 3853(d)(VIII) and predecessor Rule 3667(b)(VI) references cluster studies, they likewise do not state that Public Service cannot place any conditions on its performance of a cluster study. Instead, Rule 3853(d)(VIII) and predecessor Rule 3667(b)(VI) state that “[*a*]t the utility's option, interconnection requests *may* be studied serially or in clusters for the purpose of the system impact study.”⁹² If a utility has the discretion to decide whether to conduct a cluster study, it follows that the utility can decide the circumstances in which it will do so. Nothing in Rule 3853 or predecessor Rule 3667 contradicts this conclusion, or otherwise compels the conclusion that Public Service could not condition the performance of a cluster study on all entities in a feeder/substation queue agreeing to such a study. Again, SunShare has not cited any other rule or predecessor rule that establishes otherwise. As a result, the ALJ concludes that SunShare has not carried its burden of proving that Public Service's Cluster Study Policy violated Rule 3853 or predecessor Rule 3667.

80. Rule 3853(a)(IV)(B) states in relevant part:

[A]n interconnection customer may submit a formal written request for a pre-application report on a proposed interconnection at a specific site. . . .

⁹² Emphases added.

(B) The [PADR] shall be non-binding on the utility and shall not confer any rights to the interconnection customer. The provided information does not guarantee that an interconnection may be completed. Data provided in the preapplication report may become outdated at the time of the submission of the complete interconnection request.

There was no predecessor to Rule 3853(a)(IV)(B).⁹³ Rule 3853(d)(IV)(B) could not be clearer that a CSG developer like SunShare should *not* rely on the information contained in a PADR. Instead, the PADR was an informational tool provided based on the best information available to utilities at the time of the request. The Rule does not impose the responsibility on the utility to perform a study to ensure that any information provided in a PADR was entirely accurate. Accordingly, Rule 3853(d)(IV)(B) makes unambiguously clear that CSG developers could not bring the type of claim brought by SunShare here.

81. Recognizing this problem, SunShare argues that the decision by the Commission in Decision No. C20-0708 to use the Interconnection Viability criterion in the bid evaluation analysis transformed PADRs from informational reports to “proof of Interconnection Viability” and “the key parameter of [the] bid evaluation process other than price.”⁹⁴ SunShare appears to argue that Decision No. C20-0708 thereby effectively eliminated the disclaimer language in Rule 3853(d)(IV)(B). SunShare is incorrect. The Commission did not amend Rule 3853(d)(IV)(B) during the time period in which SunShare allegedly relied on a PADR (indeed, the rule did not even exist) to remove the patently clear language warning CSG developers not to rely to their detriment on the information in PADRs. Quite simply, Rule 3853(d)(IV)(B) was not amended to remove the disclaimer language noted above during the relevant time period and, thus,

⁹³ See Decision No. C19-0951 issued in Proceeding No. 19R-0654E on November 25, 2019, at 11 (¶ 41) (“Proposed Rule 3853(a)(IV) includes a *new* option for customers to request a pre-application report.”) (emphasis added).

⁹⁴ Hearing Exhibit 101, Attach. JRB-2 at 42 (¶¶ 114, 115) (Direct Testimony of Mr. Bobrow).

SunShare's alleged reliance on a PADR to its detriment does not constitute a violation of Rule 3853(d)(IV)(B).

82. Finally, SunShare's allegation that Public Service "caused the Gerry Solar project to fall behind in the SGIP queue and thus to incur the costs of 3V0 technology network upgrades and extended delays"⁹⁵ is unsupported. Above, the ALJ found based on the record that SunShare's positions in the queues for both the Lincoln and Gerry Projects were the result solely of SunShare's informed failure to complete the post-bid requirements earlier.⁹⁶ As a result, SunShare's place in the queues was its own fault, not Public Service's.

83. Based on the foregoing, the ALJ concludes that SunShare has not produced evidence supporting its allegations or a compelling argument supporting its legal conclusion that Public Service violated the SGIP Rules. Accordingly, the ALJ concludes that SunShare has not carried its burden of proving that Public Service violated Rule 3853(d), any applicable predecessor rules, or the "SGIP Rules" generally.

D. Claim 3: Alleged Violation of Section 40-2-127(5)(a)(IV)(C)-(E), C.R.S.

1. Allegations

84. Section 40-2-127(5)(a)(IV)(C)-(E), C.R.S. states:

[A]s necessary, the commission shall formulate and implement policies consistent with this section that simultaneously encourage:

....

(C) The development of community solar gardens with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers;

⁹⁵ *Id.* at 14.

⁹⁶ *See supra* at ¶ 42.

- (D) Successful financing and operation of community solar gardens owned by subscriber organizations; and
- (E) The achievement of the goals and objectives of section 40-2-124.

85. SunShare alleges that Public Service violated the foregoing provisions of § 40-2-127(5)(a)(IV)(C)-(E), C.R.S. by “hinder[ing] the 2020 CSG Projects, and specifically hinder[ing] the successful financing and operation of the SunShare 2020 CSG projects.”⁹⁷ More specifically, SunShare alleges that Public Service: (a) “made unilateral decisions on site move criteria and cluster studies in a Q/A Tracker that were not presented to the Commission, despite the Commission so requiring;” and (b) issued the Q/A Tracker containing the site move criteria and the requirement for cluster studies “during the RFP, allowing no time for a challenge to [Public Service’s] change.”⁹⁸ According to SunShare, these specific actions violated § 40-2-127(5)(a)(IV)(C)-(E), C.R.S.

2. Analysis

86. The ALJ concludes that SunShare has not carried its burden of proving that the identified actions by Public Service violated § 40-2-127(5)(a)(IV)(C)-(E), C.R.S. As concluded above, the Commission Decisions did not require Public Service to obtain the Commission’s approval of the Site Move or Cluster Study Policies contained in the Q/A Tracker. SunShare has not presented any other basis for its contention that Public Service was required to obtain advance approval of those policies. As a result, SunShare has not carried its burden of establishing that the Site Move or Cluster Study Policies violated § 40-2-127(5)(a)(IV)(C)-(E), C.R.S.

⁹⁷ SunShare’s SOP at 34.

⁹⁸ *Id.* at 34-35.

87. SunShare also has not carried its burden of establishing that the timing of the release of the Q/A Tracker containing the Site Move and Cluster Study Policies effectively denied SunShare the ability to challenge them before the Commission. As found above, Public Service published the Q/A Tracker at least as early as November 5, 2020. SunShare did not first request a site move until March 30, 2021, over three months after Public Share announced the bid winners and almost five months after Public Service issued the Q/A Tracker containing the Site Move Policy. Similarly, SunShare did not request the cluster study at issue in this proceeding until on or after May 18, 2021, over five and a half months after Public Service shared the Q/A Tracker containing the Cluster Study Policy. The ALJ finds and concludes that SunShare had more than enough time to challenge both policies before the Commission before it first sought a site move and requested a cluster study.

88. For the foregoing reasons, the ALJ concludes that SunShare has not carried its burden of establishing that Public Service violated § 40-2-127(5)(a)(IV)(C)-(E), C.R.S.

VI. ORDER

A. The Commission Orders That:

1. The claims asserted in the Complaint filed by SunShare, LLC on August 22, 2022, against Public Service Company of Colorado are denied.
2. Proceeding No. 22F-0365E is closed.
3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
4. As provided by §40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of §40-6-114, C.R.S.
 - b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.
5. Response time to any exceptions that may be filed is shortened to seven (7) days.
6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge