

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0262E

IN THE MATTER OF VERIFIED PETITION OF SUNSHARE, LLC FOR A DECLARATORY ORDER APPROVING A RENEWABLE ENERGY CREDIT ADDER.

**INTERIM DECISION ACCEPTING PETITION FOR
DECLARATORY ORDER, GRANTING REQUEST FOR
HEARING EN BANC, GRANTING IN PART REQUEST
FOR AN EXPEDITED PROCEDURAL SCHEDULE, AND
ISSUING NOTICE**

Mailed Date: June 29, 2020

Adopted Date: June 24, 2020

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission accepts and issues notice of the Petition for Declaratory Order (Petition) filed by SunShare, LLC (SunShare), on June 17, 2020. The Petition requests the Commission enter an order declaring that Public Service Company of Colorado (Public Service) may reform the price paid for Renewable Energy Credits (RECs) for renewable energy production under five of SunShare's Producer Agreements resulting from Public Service's 2018 Solar*Rewards Community Solar Garden (CSG) Request for Proposals process. Additionally, the Petition requests a one-time waiver of Public Service's creditworthiness requirement concerning the use of a parent guarantee.

2. Through this Decision, the Commission also grants the request to hear the Petition *en banc* contained in SunShare's Motion filed on June 17, 2020 in this proceeding (Omnibus Motion) and grants in part the request for an expedited procedural schedule contained in SunShare's Corrected Motion filed on June 18, 2020 in this proceeding.

3. This Decision establishes a shortened notice and intervention period, including for Commission Staff, ending at 5:00 p.m. on July 2, 2020. Any responses to SunShare's request in the Omnibus Motion for extraordinary protection of highly confidential information must also be filed by 5:00 p.m. on July 2. Any briefs in response to the Petition must be filed by 5:00 p.m. on July 27, 2020.

B. Background

4. On June 17, 2020, SunShare filed its Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i) of the Commission's Rules of Practice and Procedure. Also on June 17, 2020, SunShare filed its Omnibus Motion that requests: hearing of the matter *en banc* or assignment of a hearing commissioner; extraordinary protection of highly confidential information; and establishment of an expedited procedural schedule. On June 18, 2020, SunShare filed its Corrected Motion requesting an expedited procedural schedule.

5. In support of its Petition, SunShare filed the following exhibits: a Settlement Agreement between SunShare and Public Service (Settlement Agreement) resolving SunShare's Notice of Dispute sent under Rule 4 CCR 723-3-3667(e)(II)(B); Public Service's 2018 Solar*Rewards CSG Request for Proposals; six of SunShare's Producer Agreements resulting from Public Service's 2018 Solar*Rewards CSG Request for Proposals process; Notices from Public Service to SunShare that certain feeders had reached maximum capacity for distributed energy resources; and Public Service's 2019 Solar*Rewards CSG Request for Proposals.

6. The Petition states that five of the six CSG projects awarded to SunShare pursuant to Public Service's 2018 Solar*Rewards CSG Request for Proposals process faced a lack of interconnection studies and the denial of proposed site moves. SunShare claims this has imposed an unreasonable delay on the projects and impeded SunShare's ability to maintain the projects'

viability at their bid REC prices. SunShare requests that the Commission permit Public Service to increase REC prices for the five projects that assertedly experienced unreasonable delay and claims that the projects' unique circumstances meet the Commission's standard to reform pricing for CSG contracts.

7. SunShare represents that Public Service agrees an increase in the bid REC prices is appropriate for the five CSG projects that assertedly experienced unreasonable delay and that the projects meet the Commission's standard to reform pricing. SunShare states that Public Service does not oppose the Petition's request for an increase in the bid REC prices, but it reserves its right to comment on the amount proposed.

8. SunShare also requests a one-time waiver of Public Service's creditworthiness requirements relating to the use of a parent guarantee. It explains that in the Settlement Agreement, SunShare and Public Service agreed that SunShare will provide interconnection payments for the CSG projects resulting from Public Service's 2018 Solar*Rewards CSG Request for Proposals either by providing full payment within 30 days of execution of interconnection agreements or by providing one-third of the estimated costs and securing the remaining two-thirds through a parent guarantee subject to Public Service's creditworthiness policy. SunShare states that the applicable creditworthiness requirement requires a guarantor to have certain long-term senior unsecured credit ratings from Moody's or S&P which SunShare cannot meet, that the requirement effectively bars SunShare from providing interconnection payments using a parent guarantee, and that the in-service dates of the CSG projects could be further delayed if it is unable to use a parent guarantee. It asserts that Public Service will not waive the creditworthiness requirement relating to use of a parent guarantee without approval from this Commission.

9. In the Petition, Omnibus Motion, and Corrected Motion, SunShare explains the federal Investment Tax Credit (ITC) will step down from 26 percent to 22 percent on January 1, 2021. It asserts that expedited treatment of this matter is necessary for the CSG projects to be placed in-service before the 2021 ITC stepdown.

10. In the Omnibus Motion, SunShare asks the Commission to enter an order to hear this matter *en banc*, or, in the alternative, refer this proceeding to a hearing commissioner. SunShare states the Commission has recently heard and decided a number of matters regarding CSG implementation, and that the Commission is in the position to act on the Petition with the necessary expediency.

11. Pursuant to Rule 4 CCR 723-1-1101(b), SunShare requests extraordinary protection of certain information contained in the Petition, including the requested increases in REC price amounts, pricing terms and residential commitments in Producer Agreements, and costs and results of its financial model. It requests this information be treated as Highly Confidential because it is sensitive competitive information and that access to this information be limited to a reasonable number of attorneys and subject matter experts who execute an NDA.

12. Additionally, SunShare requests an expedited procedural schedule. In its Corrected Motion, SunShare requests a notice, intervention, and response period of 30 days.

C. Findings and Conclusions

13. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, we then exercise our discretion to accept or dismiss the petition.

14. We find that evaluating the questions presented in the Petition will remove uncertainty regarding whether Public Service may reform the price paid for RECs under

Producer Agreements for the five CSG projects that assertedly experienced unreasonable delay and the issue of waiver of Public Service's creditworthiness requirement relating to use of a parent guarantee.

15. The Commission accepts SunShare's Petition and issues notice of the Petition to interested persons, firms, and corporations by service of this Decision.

16. We will hear this matter *en banc* in the interest of expediency.

17. Additionally, we find a shortened procedural timeline is appropriate due to the apparent benefit of the CSG projects at issue meeting a 2020 in-service date. To that end, we establish a shortened period for notice, interventions, and responses. Interventions must be filed by July 2, 2020. Responses to SunShare's request for extraordinary protection of highly confidential information must also be filed by July 2, 2020. Responses to the Petition must be filed by July 27, 2020.

18. The Petition is available by accessing the Commission's E-Filing system under the above proceeding number at Colorado.gov/dora/puc. **This Decision is the notice that SunShare's Petition seeking a declaratory order that Public Service may reform the price paid for RECs under five of SunShare's Producer Agreements resulting from Public Service's 2018 Solar*Rewards CSG Request for Proposals process and relating to a requested waiver of Public Service's creditworthiness requirement for use of a parent guarantee has been filed.**

19. The Commission's notice period for the Petition shall extend through and include **5:00 p.m. on July 2, 2020**. The intervention period will run concurrent with the notice period. Interventions, including those filed by Commission Staff, shall be due by **5:00 p.m. on July 2, 2020**.

20. Responses to SunShare's request for extraordinary protection shall also be due by **5:00 pm on July 2, 2020.**

21. Responses to SunShare's Petition shall be due by **5:00 p.m. on July 27, 2020.**

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order (Petition) filed by SunShare, LLC (SunShare), on June 17, 2020, is accepted.

2. The request contained in the Motion filed on June 17, 2020 by SunShare (Omnibus Motion) for the Commission to hear this matter *en banc* is granted.

3. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

4. The notice period for the Petition shall extend through and include **5:00 p.m. on July 2, 2020.**

5. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on July 2, 2020.**

6. Briefs in response to SunShare's request for extraordinary protection of highly confidential information contained in the Omnibus Motion shall be due from all parties by **5:00 p.m. on July 2, 2020.**

7. Briefs in response to the Petition shall be due from all parties by **5:00 p.m. on July 27, 2020.**

8. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments in response to the Petition on or before July 27,

2020, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 24, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners