

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 ADDRESSING INTERVENTIONS,
GRANTING REQUEST FOR EXTRAORDINARY
PROTECTION, AND REQUIRING FILING OF PROPOSED
PROCEDURAL SCHEDULE**

Mailed Date: July 14, 2020

Adopted Date: July 8, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Motion to Intervene filed by Public Service Company of Colorado (Public Service) on June 30, 2020, and recognizes that intervenors as of right that are parties to this proceeding include the Colorado Office of Consumer Counsel (OCC), Trial Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Energy Office (CEO). We also grant the request for extraordinary protection contained in the Omnibus Motion filed by SunShare, LLC (SunShare), on June 17, 2020 (Omnibus Motion). Additionally, we require that parties to this proceeding confer and file a proposed procedural schedule, jointly if possible, on or before July 17, 2020, consistent with the discussion below.

B. Procedural History

2. In this proceeding, SunShare filed a Petition for Declaratory Order (Petition) requesting the Commission enter an order declaring that 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, SunShare requests a one-time waiver of Public Service's creditworthiness requirement concerning the use of a parent guarantee.

3. Through Decision No. C20-0472-I, issued June 29, 2020, we issued notice of the Petition, granted SunShare's request for the Commission to take up the matter *en banc*, set a notice and intervention period ending July 2, 2020, required that responses to SunShare's request for extraordinary protection of highly confidential information also be filed on or before July 2, 2020, and required that responses to the Petition be filed on or before July 27, 2020.

C. Interventions

1. Interventions as of Right

4. On July 2, the OCC timely filed its Notice of Intervention of Right. The OCC explains that it intervenes in this proceeding to fulfill its statutory requirement to represent the public interest in matters before the Commission. It identifies concerns with the impacts of REC price reformation on members of the OCC's constituency that do not subscribe to SunShare's CSG, and states that it will be in a better position to analyze the Petition after it receives confidential and highly confidential information.

5. Staff timely filed its Notice of Intervention as of Right and Request for Hearing on July 2, 2020. Staff states it will raise and address numerous issues, including whether Public Service should be allowed to adjust the accepted REC bid prices, the impact of price reformation on the competitive CSG market, and the cost of the proposed bid price adjustment on ratepayers.

6. On July 2, 2020, CEO timely filed its Notice of Intervention by Right. It explains that it intervenes in this proceeding to fulfill its statutory charge to promote the investment in and

interconnection of clean and renewable energy. CEO notes that it has been an active participant in numerous recent proceedings and rulemakings that concern the interconnection of CSGs, and states it seeks to continue participation in matters concerning the interconnection of CSGs as they are raised in this proceeding.

7. Under Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no action is necessary on these interventions as of right. The OCC, Staff, and CEO are parties to this proceeding.

2. Public Service's Motion to Intervene

8. On June 30, 2020, Public Service filed its Motion to Intervene. Public Service states that this proceeding could materially affect the Renewable Energy Standard Adjustment impacts to the Company's Solar*Rewards Community (SRC) program and Requests for Proposals stemming from its 2017-2019 Renewable Energy Standard Plan, and that the proceeding will impact its CSG programs and participating developers and customers. Public Service also states it should be permitted to intervene in a proceeding that directly involves its own filing, SRC program, and its creditworthiness policies.

9. Under Rule 4 CCR 723-1-1401(c), persons seeking permissive intervention must demonstrate that the proceeding may substantially affect the pecuniary or tangible interests of the movant, and that the movant's interests would not otherwise be adequately represented. Public Service's Motion to Intervene demonstrates the required pecuniary or tangible interests and that its interests would not otherwise be adequately represented. Therefore, we find it appropriate to grant Public Service's request for intervention in this proceeding.

D. SunShare's Request for Extraordinary Protection

10. In its Omnibus Motion, pursuant to Rule 4 CCR 723-1-1101(b), SunShare requests extraordinary protection of certain information contained in the Petition and Attachment C to the Petition. This information includes the pricing term in each of SunShare's 2018 CSG Project Producer Agreements, the proposed adjustments to the accepted REC bid prices, and a schedule setting forth the nature and extent of SunShare's cost increases.

11. SunShare claims the information is competitively sensitive, and states that disclosure of the information to certain entities would likely cause competitive harm to SunShare's CSG projects and future bids. SunShare requests that party access to the information be limited to a reasonable number of attorneys or subject matter experts who execute the proposed Highly Confidential Non-Disclosure Agreement. SunShare states that the "Highly Confidential Agreement must remain protected indefinitely and shall be destroyed at the conclusion of the proceeding," which we understand as a request that information for which SunShare is seeking extraordinary protection be protected indefinitely and destroyed at the conclusion of the proceeding.

12. Along with its Omnibus Motion containing the request for extraordinary protection, SunShare provided as Attachment B an affidavit identifying all persons with access to the information and the period of time for which the information must remain subject to Highly Confidential protection. SunShare also filed a proposed Non-Disclosure Agreement as Attachment A to the Omnibus Motion, and public versions of the documents containing information for which it is seeking extraordinary protection.

13. No party to this proceeding filed a response in opposition to SunShare's request for extraordinary protection.

14. We find that the information SunShare seeks to protect contains highly confidential and sensitive commercial information, and should be given extraordinary protection under our rules. We therefore find good cause to grant SunShare's request for extraordinary protection contained in the Omnibus Motion.

E. Conferral and Procedural Schedule

15. In Decision No. C20-0472-I, issued June 29, 2020, we required that responses to the Petition be filed on or before July 27, 2020. Other aspects of the procedural schedule for this proceeding have not yet been determined. The parties are therefore directed to confer on the remainder of the procedural schedule.¹ Parties shall provide, jointly if possible, a preferred procedural schedule for the remainder of the proceeding no later than July 17, 2020.

II. ORDER

A. It Is Ordered That:

1. The Motion to Intervene filed on June 30, 2020, by Public Service Company of Colorado (Public Service) is granted.

2. SunShare, LLC (SunShare), Public Service, the Office of Consumer Counsel, Trial Staff of the Colorado Public Utilities Commission, and the Colorado Energy Office are parties in this proceeding.

3. The request for extraordinary protection of highly confidential information contained in the Omnibus Motion filed by SunShare on June 17, 2020, is granted.

¹ The parties should consider, for example, a date for the filing of reply briefs and whether an evidentiary hearing should be scheduled, if an evidentiary hearing continues to be requested.

4. The parties to this proceeding shall confer and file a proposed procedural schedule for the remainder of this proceeding, jointly if possible, no later than July 17, 2020, consistent with the discussion above.

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

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 8, 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