

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 GRANTING
MOTION TO MODIFY REQUIRED SECURITY DEPOSIT**

Mailed Date: November 13, 2020
Adopted Date: November 12, 2020

I. BY THE COMMISSION

A. Statement

1. Through this Decision, we grant the motion filed by Public Service Company of Colorado (Public Service or the Company) and Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA) (together the Joint Movants), on October 30, 2020, requesting to modify its security deposit requirements for the Solar*Rewards Large and Solar*Rewards Community from \$100/kW to \$10/kW and Correspondingly Amend its 2020-2021 Renewable Energy Compliance Plan (2020-21 RE Plan or RE Plan) to reflect the modified security deposit (Motion).

B. Background

2. Public Service commenced this Proceeding on June 28, 2019, by filing its application for Commission approval of its 2020-21 RE Plan, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3657 of the Commission's Rules Regulating Electric Utilities. In its application, Public Service explains that its proposal is meant as a "bridge plan" that continues 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. After the evidentiary hearing on December 10, 11, and 12, 2019, and considering testimony filed by the numerous parties,¹ on February 14, 2020, Administrative Law Judge Mirbaba issued Decision No. R20-0099 (Recommended Decision), largely approving the 2020-21 RE Plan. The Commission addressed exceptions² to the Recommended Decision through Decision No. C20-0289, issued April 28, 2020, and the Company's request for rehearing, reargument, or reconsideration through Decision No. C20-0431, issued June 10, 2020. Subsequent motions were further addressed through Decision Nos. C20-0708 issued October 6, 2020 and C20-0749 issued October 26, 2020.

4. On October 30, 2020, the Joint Motion was filed requesting an order allowing Public Service to make a limited amendment to its 2020-2021 RE Plan to adjust the required security deposit to be paid by winning bidders in the Solar*Rewards Large and Solar*Rewards Community Programs for the duration of the RE Plan.

5. Through its motion, the Joint Movants state that Public Service originally proposed deposits, deposit forfeiture timing, and construction deadlines across its various Solar*Rewards programs. However, in Rebuttal Testimony, the Company modified its original

¹ The following parties either intervened of right, or were granted authority to permissively intervene in this matter: the Office of Consumer Counsel (OCC); the Colorado Energy Office (CEO); the Colorado Public Utilities Trial Staff; COSSA/SEIA; Grid Alternatives Colorado, Inc. (Grid Alternatives); the City of Boulder; the City and County of Denver; Vote Solar; Energy Outreach Colorado; the Rocky Mountain Environmental Labor Coalition and the Colorado Building and Construction Trades Council, AFL-CIO; Western Resource Advocates; the Colorado Energy Consumers (CEC); and Climax Molybdenum Company.

² Pursuant to § 40-6-109(2), C.R.S., and Rule 4 CCR 723-1-1505(a) of the Commission's Rules of Practice and Procedure, the following parties timely filed exceptions to the Recommended Decision: Public Service; CEO; jointly by Vote Solar/Grid Alternatives; and jointly by COSSA/SEIA. Responses were timely filed by Public Service, COSSA/SEIA, the OCC, and CEC.

proposal regarding deposits to correct an error in the amount of the deposit required for the Solar*Rewards Large offering. The Company proposed that winning bidders in both the Solar*Rewards Large and Solar*Rewards Community offerings would be required to provide a deposit of \$100 per kW, to be forfeited if the project is cancelled or if it is not complete by 180 days after the project completion deadline.

6. The Joint Motion states individual developers, as well as COSSA/SEIA, raised the issue to Public Service noting concerns with the amount of the proposed deposit approach. Under the currently approved \$100/kW deposit requirements, a 5 MW project would require a deposit of \$500,000 that is subject to forfeiture if the project is not completed in the prescribed timeframe. While Public Service initially offered refundability provisions for interconnection availability or excessive costs along with *force majeure* considerations, such provisions did not relieve developer concerns with the deposit, which may still be “at risk.” COSSA/SEIA and developers argued the deposit of \$100/kW would require the project developer to carry a significant sum on their balance sheets, which would create a barrier to participation from many smaller local developers who would not be able to finance such a large amount. Further, they believe that limiting the pool of potential developers in this way could serve as a *de facto*, artificial, and unnecessary barrier for developers to participate. Creating such barriers to developer participation could also lead to fewer projects and less competition among developers, ultimately leading to less customer participation in the program and likely higher subscription and Renewable Energy Credit bid prices.

7. Under the proposed modified \$10/kW deposit, a developer of a 5 MW Solar*Rewards Community project would still be required to deposit \$50,000, as well as provide the minimum \$100/kW escrowed funds while a Solar*Rewards Large project would put forward

only the \$10/kW deposit (which would be \$50,000 for a 5 MW project). The Company includes its expectation that the lower amount achieves the goal of ensuring ample financial commitment to project completion, while also being low enough to ensure that smaller developers can more readily participate in the market, but reserves the right to offer a different proposal in its next RE Plan if it proves not to achieve this goal.

8. The Joint Motion clarifies, however, that this agreement is a deviation from Public Service's approved RE Plan and thus Commission approval is required in order to implement it.

9. The Joint Movants request that the Commission allow Public Service to amend its 2020-2021 RE Plan in two specific and discrete ways. First, the Commission should allow the Company to modify its security deposit requirement for Solar*Rewards Large from \$100/kW to \$10/kW. Second, movants request that the Commission allow the Company to modify its security deposit requirement for Solar*Rewards Community from \$100/kW to \$10/kW.

10. The Joint Movants also request that the Commission expeditiously approve this requested amendment to the 2020-2021 RE Plan to avoid confusion in the bidding and awarding of projects, as well as ensuring robust participation and viable Solar*Rewards programs. Public Service states it has already announced awards stemming from its 2020 Solar*Rewards Large Request for Proposal (RFP) and issued its 2020 Solar*Rewards Community RFP on October 16, 2020 with bids due on November 16, 2020. Because COSSA/SEIA and Public Service have already agreed in principle to modify the deposit requirement, Public Service provided the winning bidders with a 60-day extension on paying the deposit, pending resolution of this motion.

11. The Joint Movants represent that they have conferred with all parties to this proceeding and are authorized to state that no party objects to the granting of this motion, except for Staff of the Commission (Staff). Included in the motion is the Joint Movants' representation that Staff opposes this request because the RFP has already been issued with the higher deposit amount included, and argues that Public Service should re-issue the RFP. Staff did not file a separate response stating its objections fully, and Joint Movants state that Staff does not oppose waiving response time to the motion.

12. In response to Staff's stated objection included in the Joint Motion, the Joint Movants remind the Commission of the delays in implementing the 2020 RE Plan and the need to take advantage of the 26 percent Investment Tax Credit (ITC), which steps down to 22 percent in 2021. The CEO, the City and County of Denver, Grid Alternatives, Vote Solar, and Western Resource Advocates support the motion.

13. Upon conferral, Joint Movants include that Grid Alternatives requested the following statement be included as well: "[Grid Alternatives] also notes that lowering the fee is especially important for projects serving low income customers."³

C. Findings and Conclusions

14. We find good cause to waive remaining response time, pursuant to Rule 4 CCR 723-1-1308(c).

15. We find that actions taken by the Company were timely in seeking this limited amendment, such that the "bridge" RES Plan will be able to take advantage of the ITC. Further still, considering concerns attributed to Staff, we agree that that lowering the deposit is appropriate, and a narrow revision that the Commission can approve without reissuing the RFP

³ Joint Motion at p. 6.

in this instance. We believe that this modification will not affect the long-term economic viability of the projects. We further agree with the statement included from Grid Alternatives that there are added benefits to reducing the security deposit, without impacting the projects overall. Balancing these considerations, we find good cause to grant the Motion and approve the limited amendment requested.

16. Public Service is authorized to modify authorizing the Company to modify its security deposit requirements for the Solar*Rewards Large and Solar*Rewards Community from \$100/kW to \$10/kW.

II. ORDER

A. The Commission Orders That:

1. The Motion to Modify its security deposit requirements for the Solar*Rewards Large and Solar*Rewards Community from \$100/kW to \$10/kW (Motion), approved in its 2020-2021 Renewable Energy Compliance Plan, filed by Public Service Company of Colorado on October 30, 2020, is granted, consistent with the discussion above.

2. Response time to this Motion is waived.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 12, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners