

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0505E

IN THE MATTER OF ADVICE LETTER NO. 1840 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO UPDATE THE FIXED SOLAR* REWARDS COMMUNITY SERVICE CREDIT TO BECOME EFFECTIVE JANUARY 1, 2021.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING INTERVENTIONS, EXTENDING
EFFECTIVE DATE FOR TARIFF SHEETS,
GRANTING *PRO HAC VICE* MOTION AND
ADOPTING PROPOSED PROCEDURAL SCHEDULE**

Mailed Date: March 2, 2021

I. STATEMENT

1. On November 16, 2020, Public Service Company of Colorado (Public Service or the Company) filed Advice Letter No. 1840 with tariff sheets to modify the Solar*Reward Community Service (SRCS) Credit. The tariffs associated with the SRCS program, also known as Community Solar Gardens (CSG), have also been updated, pursuant to Decision No. C20-0628E in Proceeding No. 19R-0608E, to include definitions for SRCS Third-Party Administrator, SRCS Low-Income Subscriber, and Demand Side Management Cost Adjustment Component. The Advice Letter impacts tariff Colorado P.U.C. No. 8 – Electric, sheets 114A through 114G for the period January 1, 2021, through December 31, 2021.

2. On December 15, 2020, the Company filed an Amended Advice Letter No. 1840 in order to revise the effective date of the tariff sheets from January 1, 2021, to February 1, 2021,

and to alter the SRCS Credit calculation by removing costs recovered via the Colorado Energy Plan Adjustment (CEPA) rider. The Company states that, although it believes CEPA-related costs are appropriately recovered from SRCS participants, “the Commission has not specifically directed the Company to make this exclusion.”

3. On December 16, 2020, Staff of the Colorado Public Utilities Commission (Staff) took exception to the Company’s proposed changes to the calculation of the SRCS Credit. Staff argues that the Commission, via Decision No. C20-0700 in Proceeding No. 20AL-0191E, gave specific instruction to Public Service to recover the CEPA from “customers” and never attempted to differentiate CSG customers in any manner. Staff requested the Commission set for hearing the tariff sheets filed with Advice Letter No. 1840, as amended.

4. On January 27, 2021, by Decision No. C21-0045, Proceeding No. 20AL-0505E was referred to an Administrative Law Judge (ALJ).

5. On February 11, 2021, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) filed their Joint Motion to Intervene. COSSA is a membership-based nonprofit trade association established in 1989. SEIA is the national trade association for the U.S. solar energy industry.

6. On February 11, 2021, COSSA and SEIA filed their Out of State Counsel’s Motion Requesting *Pro Hac Vice* Admission (*Pro Hac Vice* Motion) for Melissa E. Birchard.

7. On February 19, 2021, Public Service filed its Second Amended Advice Letter No. 1840. The Company made the filing in order to remove the Low-Income Community Solar Garden elements of the tariff, which will be incorporated into a newly created and separate tariff contemporaneously filed in a separate Advice Letter proceeding. This filing did not revise the effective date of the tariff.

8. On February 22, 2021, Staff filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rules 1007(a) and 1401, and Request for Hearing (Staff's Intervention). Staff's Intervention is of right and identifies issues it will raise and address in this Proceeding.

9. On February 26, 2021, Public Service filed its Motion to Approve Proposed Procedural Schedule (Proposed Procedural Schedule).

10. On February 26, 2021, the City of Boulder (Boulder) filed its Motion to Permissively Intervene. The City of Boulder is a legally and regularly created, established, organized, and existing home rule city and municipal corporation created pursuant to Article XX of the Constitution of the State of Colorado and the Boulder Home Rule Charter.

11. On February 26, 2021, SunShare, LLC (SunShare) filed its Motion to Intervene. SunShare is an independent residential and commercial CSG developer, owner, operator, and subscription manager with over 100 MW of developed capacity online in Colorado and Minnesota and over 100 MW under development.

12. On February 26, 2021, the City of Denver (Denver) filed its Motion to Intervene. Denver is a legally and regularly created, established, organized, and existing home rule city and county, municipal corporation, and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado and the Home Rule Charter of Denver.

II. FURTHER SUSPENSION OF EFFECTIVE DATE OF TARIFF SHEETS

13. The Commission has suspended the effective date of the tariffs that accompanied Advice Letter No. 1840 until June 1, 2021. By further order, the Commission may suspend for additional time, the effective date of the tariff sheets that accompanied the Advice Letter.

14. By this Decision and pursuant to § 40-6-111(1), C.R.S., and Commission Rule 1305(c) and (e), 4 *Code of Colorado Regulations* (CCR) 723-1, the ALJ will suspend for an additional 130 days (that is until, October 9, 2020), the effective date of the tariff sheets that accompanied Advice Letter No. 1840. If the Commission does not establish new rates by that date, the tariff sheets filed with the Advice Letter may become effective.

III. INTERVENTIONS

A. Legal Standard for Intervention

15. Two classes of parties may intervene in proceedings such as this: (a) parties with a legally protected right that may be impacted by the proceeding (intervention of right), and (b) parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention). Rule 1401(b) and (c), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure; *see* § 40-6-109(1), C.R.S.; *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

16. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have

seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

17. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to represent that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. See *Denver Chapter of the Colo. Motel Ass’n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

18. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a “residential customer, agricultural customer, or small business customer” must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the OCC has a statutory mandate to represent the interests of residential ratepayers. The Colorado Supreme Court expressly stated that “if there is a party charged by law with representing his interest, then a compelling showing should be required to

demonstrate why this representation is not adequate.” *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

B. Interventions by Right

19. Staff is an intervenor by right. It is a party in this proceeding.

C. Permissive Interventions

20. The following parties have moved to permissively intervene in this proceeding: COSSA and SEIA, Denver, Boulder, and SunShare.

21. Public Service has not objected to the intervention of any party.

22. In their Joint Motion, COSSA and SEIA list the following issues they wish to address in the above-captioned proceeding:

- a) Whether the amended tariff as proposed reflects a just, reasonable, and nondiscriminatory application of relevant statutes, rules, and Commission decisions;
- b) Whether Public Service has correctly applied all components including any adjustments for riders;
- c) Whether the assignment of costs for all transmission resources is reasonable; and
- d) Whether the specific proposed rate changes for customers by Service Schedule, reflecting the tariffed rate as applied by Public Service, are consistent and accurate.

23. In its Motion to Permissively Intervene, Boulder lists the following issues it wishes to address in the above-captioned proceeding:

- a) The cumulative impact of alterations to the SRCS Credit over time;
- b) The disparate impact on a percentage basis on different rate classes, which ranges from a 1.1% increase for Schedule RD to a 20.2% decrease for SGL;
- c) The way in which the costs of the transmission system are reflected in the SRCS Credit; and
- d) The implementation of the Renewable Energy Standard Adjustment and Clean Energy Plan Adjustment with respect to the SRCS Credit.

24. In its Motion to Permissively Intervene, SunShare lists the following issues it wishes to address in the above-captioned proceeding:

- a) Preserving or enhancing the market for CSGs in Colorado; and
- b) The interest of its customers in preserving the benefit of the bargain based on the bill credits that were in place at the time when they entered into their subscription agreements.

25. In its Motion to Intervene, Denver lists the following issues it wishes to address in the above-captioned proceeding:

- a) How changes to the calculation of the SRCS credit impact Denver's costs/savings for owned facilities that are CSG subscribers; and
- b) How changes to the calculation of the SRCS credit impact the future subscribers to the CSGs under development by Denver.

26. All Intervenors properly show that the instant proceeding may substantially affect their pecuniary or tangible interests and that those interests would not otherwise be adequately represented without their participation in this proceeding. Therefore, all permissive interventions will be granted.

IV. PRO HAC VICE

27. COSSA and SEIA filed their *Pro Hac Vice* Motion for Melissa E. Birchard on February 11, 2021.

28. Rule 21(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, provides that a party to a proceeding may, in the Commission's discretion, be represented by an attorney currently in good standing before the highest tribunal of another state.

29. Having shown good cause, the *Pro Hac Vice* Motion will be granted.

V. PROPOSED PROCEDURAL SCHEDULE

30. The parties have agreed to the following procedural schedule:

Direct Testimony & Exhibits	April 9, 2021
Answer Testimony & Exhibits	May 21, 2021
Rebuttal/Cross Answer Testimony & Exhibits	June 25, 2021
Stipulations & Settlement Agreements	July 6, 2021
Pre-hearing Motions	July 6, 2021
Deadline for Corrected Testimony	July 9, 2021
Witness Order & Estimated Cross Time	July 9, 2021
Evidentiary Hearing	July 15, 2021
Statements of Position	, July 30, 2021

31. The parties also agree to the following discovery procedures:

- a) First, discovery requests and responses will be served electronically. This modification is appropriate because it will maximize the amount of time Parties are able to respond to discovery and will promote efficiency and cost savings.
- b) Any discovery served after 3:00 PM on Fridays shall be deemed served the following business day.
- c) Second, all responses to an individual set of discovery shall be served in a single, combined document to all Parties. In the event that responses to an individual set of discovery are not served simultaneously, Parties agree to provide all Parties with all available responses served on a given day in a single, combined document, and Parties also agree to provide a single, combined document including all responses to an individual set of discovery. This modification is appropriate because it will promote efficiency, as it is less time consuming for Parties to open one document versus multiple documents when reviewing responses.
- d) Third, all highly confidential and confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will be served only on Parties that have executed the appropriate

non-disclosure agreements, and all non-confidential requests and responses will be served on all Parties. This modification is appropriate because it will promote efficiency by minimizing duplicative discovery requests

32. The proposed procedural schedule and discovery procedures are acceptable and good cause is found for their adoption.

VI. ORDER

A. It is Ordered That:

1. The Motion to Approve Proposed Procedural Schedule filed by Public Service Company of Colorado on February 26, 2021, is granted.

2. The procedural schedule and discovery procedures, as stated above in paragraphs 30 and 31, are adopted.

3. An evidentiary hearing is scheduled in this matter as follows:

DATE: July 15, 2021

TIME: 9:00 a.m.

WEBCAST: Commission Hearing Room B

METHOD: By video conference. A link that will be provided to Parties by email

4. The parties may not distribute the link, and access or ID code, to non-participants.

5. The interventions of the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA), City of Boulder, City of Denver, and SunShare, LLC, are granted

6. The Motion to Appear *Pro Hac Vice* as Counsel filed by SEIA and COSSA on behalf of Melissa E. Birchard is granted.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director