

Decision No. R22-0710-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22F-0365E

SUNSHARE, LLC,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING HIGHLY CONFIDENTIAL PROTECTIONS**

Mailed Date: November 10, 2022

I. STATEMENT

1. On August 17, 2022, SunShare, LLC (Complainant or 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. On that same day, SunShare filed its Omnibus Motion Requesting Accelerated Complaint Procedures, Assignment of a Hearing Commissioner, and Requesting Extraordinary Protection of Highly Confidential Information (Motion). In the Motion, SunShare requests that the Commission grant highly confidential protection for information related to its 2020 RFP Project's pricing terms in its Producer Agreements, its financial model detailing the costs subject to the REC Adjustment, its proposal for cap on interconnection costs, and the site names of projects that reveal landowner information.¹ SunShare asserts that disclosure of the above information could impede its ability to compete in future RFPS; reveal commercially sensitive landowner information, and impact how its commercial CSG projects are perceived by the market in the future.² SunShare requests that access to the highly confidential information described above be limited to attorneys or subject matter experts who execute its proposed Highly Confidential Non-Disclosure Agreement attached to the Motion.³

3. By Decision No. C22-0503-I, issued August 24, 2022, the Commission referred this matter to an Administrative Law Judge (ALJ), and denied the Motion in part, leaving the

¹ SunShare's Omnibus Motion Requesting Accelerated Complaint Procedures, Assignment of a Hearing Commissioner, and Requesting Extraordinary Protection of Highly Confidential Information filed on August 17, 2022 at ¶ 14.

² *Id.* at ¶¶ 15 and 16.

³ *Id.* at ¶ 24.

issue of SunShare's request for extraordinary protection of highly confidential information at outstanding.

4. Under, Rule 1101(b), 4 *Code of Colorado Regulation* (CCR) 723-1, a motion seeking highly confidential treatment:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and

(VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

5. SunShare does not merely conclude that its information is proprietary and confidential; SunShare demonstrates that extraordinary circumstances require the protection for the highly confidential information.

6. The ALJ finds that SunShare met the requirements of Commission Rule 1101, 4 CCR 723-1 of the Commission's Rules of Practice and Procedure, to receive highly confidential protection for the identified information. SunShare met its burden of proof to show that extraordinary circumstances require highly confidential protection for the subject information; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that the highly confidential protections proposed will afford sufficient protections for the highly confidential information. The highly confidential protections will be granted as ordered below.

II. ORDER

A. It Is Ordered That:

1. The request for highly confidential protection in SunShare, LLC's (SunShare) Omnibus Motion Requesting Accelerated Complaint Procedures, Assignment of a Hearing Commissioner, and Requesting Extraordinary Protection of Highly Confidential Information,

filed on August 17, 2022, is granted consistent with the discussion above. The remainder of the requested relief has been addressed by separate Interim Decisions.

2. SunShare's information related to its 2020 RFP Project's pricing terms in its Producer Agreements, its financial model detailing the costs subject to the REC Adjustment, its proposal for cap on interconnection costs, and the site names of projects that reveal landowner information are highly confidential. The Commission, Administrative Law Judges (ALJs), Staff of the Public Utilities Commission (Staff) and its attorneys, may access the highly confidential information subject to executing an annual nondisclosure agreement in accordance with Rule 1100(i), 4 *Code of Colorado Regulation* (CCR) 723-1. Attorneys for parties and amici curiae, and subject matter experts in this proceeding who execute SunShare's proposed Highly Confidential Non-Disclosure Agreement may access the highly confidential information pursuant to the terms of the agreement.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director