

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0836E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2014 RENEWABLE ENERGY STANDARD
COMPLIANCE PLAN.

**INTERIM DECISION GRANTING MOTION
TO SEVER NET METERING INCENTIVE ISSUES FROM
PROCEEDING, ORDERING PARTIES TO FILE REVISED
AND SUPPLEMENTAL TESTIMONY, ESTABLISHING
PROCEDURAL SCHEDULE, AND RETURNING
MATTER TO AN ADMINISTRATIVE LAW JUDGE**

Mailed Date: February 27, 2014

Adopted Date: February 19, 2014

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I. BY THE COMMISSION**A. Statement**

1. On January 21, 2014, the Colorado Energy Office (CEO) filed a Motion to Sever Issues Related to Net Metering (CEO Motion) from Public Service Company of Colorado's application for approval of its 2014 Renewable Energy Standard Compliance Plan, to a new proceeding. The CEO requested that the Commission, *en banc*, rule on the merits of the CEO Motion although the matter, Proceeding No. 13A-0836E, had previously been referred to an Administrative Law Judge (ALJ) by Decision No. C13-1102-I, issued on September 6, 2013.

2. By Decision No. R14-0082-I, issued on January 22, 2014, the ALJ shortened response time to the CEO Motion.

3. Responses to the CEO Motion were timely filed on January 28, 2014 by: Public Service Company of Colorado (Public Service or the Company); the Colorado Office of Consumer Counsel (OCC); City of Boulder (Boulder); SunShare LLC (SunShare); the Solar Energy Industries Association (SEIA); Western Resource Advocates (WRA); and the Vote Solar Initiative, the Colorado Solar Energy Industries Association, and the Alliance for Solar Choice (TASC) (jointly Joint Solar Parties).

4. After deliberation of the CEO Motion at our weekly meeting of January 29, 2014, we grant the CEO Motion to sever the net metering incentive issues from this proceeding, as discussed below. We will open a new proceeding to investigate net metering issues by a separate, future decision.

5. We also address two additional motions. On February 11, 2014, Public Service filed a Motion for Leave to File Response to the Joint Solar Parties' Response to the CEO Motion (Leave to Reply Motion). In addition, on February 18, 2014, Public Service filed a Motion for a Temporary Suspension of Commission Deliberations (Suspension Motion). We deny both of these motions.

B. Procedural Background

6. On July 24, 2013, Public Service filed an Application for Approval of its 2014 Renewable Energy Standard (RES) Compliance Plan (Application). Public Service seeks approval of its proposed amounts of on-site solar resources to be acquired through the Company's Solar*Rewards programs. Public Service also seeks approval of its proposed standard offer incentives for the purchase of Renewable Energy Credits (RECs) generated by these on-site solar systems. As part of its plan to acquire on-site solar resources, the Company seeks approval of a net metering incentive in its Renewable Energy Standard Adjustment (RESA) with a corresponding adjustment to its Electric Commodity Adjustment (ECA). The Company further seeks approval of certain changes to its on-site solar programs and the associated tariffs. Public Service also seeks approval to advance funds to its RESA to cover the costs of the on-site solar resources acquired in 2014.

7. In addition, the Application seeks Commission approval of: (1) a new tariffed rate for Public Service's Windsource program; (2) a charge for net metered customers who install on-site generation on or after January 1, 2014, to cover the costs of the production meter; (3) a surcharge for new net metered customers to supplement their contributions to the RESA account; (4) a new program to acquire recycled energy; (5) a new program to acquire retail renewable distributed generation from resources other than on-site solar; and

(6) incremental and avoided cost calculations to determine the retail rate impact under § 40-2-124(1)(g), C.R.S.

8. By Decision No. C13-1102-I, issued September 6, 2013, the Commission referred this matter to an ALJ for a recommended decision.

9. By Decision No. R13-1225-I, issued October 1, 2013, the ALJ scheduled an evidentiary hearing for February 3 through 7, 2014. The ALJ also found the existence of extraordinary conditions requiring the applicable statutory period for the issuance of a final Commission decision in this matter be extended until July 3, 2014, under § 40-6-109.5(4), C.R.S.

10. By Decision No. C14-0115-I, issued January 29, 2014, the Commission vacated the evidentiary hearing scheduled before the ALJ.

11. On February 3, 2014, a public comment hearing occurred before the ALJ. The majority of the comments the Commission received at the hearing related to net metering issues.

C. Public Service Motion to Suspend Deliberations

12. In its Suspension Motion, Public Service requests a delay of Commission deliberations on the outstanding motions and issues in this proceeding for two weeks, or until March 5, 2014.

13. Public Service explains that the Company has made significant progress in working towards a comprehensive settlement agreement with Staff of the Colorado Public Utilities Commission (Staff) and the OCC. According to Public Service, such a settlement, if approved, would result in: (1) the opening up of its Solar*Rewards programs more promptly than would otherwise be the case if this proceeding is litigated through its conclusion; and (2) the Company withdrawing certain of its requests in this proceeding, thereby eliminating the need for the Commission to determine how to sever the net metering issue. The requested delay

would provide Public Service time to reduce any potential settlement to writing and contact other parties¹ to negotiate additional agreement with the settlement.

14. Public Service also states that the contemplated settlement would suggest a procedural path for further debate on the net metering issues raised and discussed in this proceeding. Public Service further argues that a delay in the Commission's deliberations would be advisable so that the parties' current position and the current status of the issues of the proceeding can be made better known.

15. We deny the Suspension Motion. We are prepared to enter findings to sever the Company's net metering incentive proposals from this proceeding as requested in the CEO Motion. Any delay in our deliberations will not save the Commission significant time or resources.

16. We are also unconvinced that delaying our deliberations would benefit the intervening parties, given that the Company's settlement discussions do not appear to have garnered support. We find that the interests of the parties are best served by severing the net metering incentive issue from this proceeding and establishing a procedural schedule for our consideration of the remainder of Public Service's 2014 RES Compliance Plan.

17. Finally, the procedures we adopt for severing the Company's net metering incentive proposals from this proceeding will accommodate any potential settlement filed within a few weeks of this Decision. As explained below, we also intend to adopt a decision opening a new proceeding to investigate net metering at a future weekly meeting. Our discussion regarding the initiation of that new proceeding likely will not occur prior to March 12, 2014.

¹ The parties include: Public Service, Staff, the OCC, CEO, the Joint Solar Parties, WRA, Boulder, SunShare, and Climax Molybdenum Company (Climax). *Amici curiae* include: SEIA, the Interstate Renewable Energy Council, Inc.; Noble Energy, Inc.; and EnCana Oil & Gas (USA).

D. CEO Motion to Sever Issues Related to Net Metering**1. CEO Motion**

18. The CEO Motion requests the Commission to sever from this proceeding issues related to the Company's net metering incentive proposal and the Distributed Solar Generation Study (DSG Study) upon which it is based. The CEO Motion proposes that the Commission move the net metering issues to a separate, non-adversarial investigatory proceeding in which the Commission would make findings on, among other findings, the costs and benefits of net metered on-site solar resources.

19. The CEO Motion argues that Public Service's net metering incentive proposal requires pre-approval of its DSG Study. The CEO Motion also states that an analysis of the costs and benefits of on-site solar is complex and so far unexamined by the Commission. The CEO Motion offers that, at a minimum, the new proceeding should address the procedures to conduct a study, the methods to estimate the costs and benefits of net metered distributed generation, and whether the Commission should conduct the study.

20. Although the CEO Motion suggests that the Company's DSG Study could serve as the starting point for the new proceeding, it also states that net metering issues go beyond the identification and quantification of incremental and avoided costs. Accordingly, the CEO Motion recommends the Commission also investigate the effects of net metering on cost allocation and rate design.

21. Finally, the CEO Motion suggests that the Commission allow participation of a broad range of stakeholders in the new proceeding.

2. Responses to CEO Motion

a. Joint Solar Parties

22. The Joint Solar Parties agree with the relief sought in the CEO Motion. They argue for a complete, comprehensive, methodological, and analytical framework in which to calculate the costs and benefits of on-site solar and to incorporate safeguards to protect the integrity of the data employed. They also warn the Commission that, if the issues surrounding the costs and benefits of net metering are addressed in a fragmented way across various proceedings, there is a risk of inconsistent results and of duplicated efforts.

23. The Joint Solar Parties further argue that litigation of the DSG Study and of its use in a formal proceeding does not allow for the collaborative understanding, analysis, and “question and answer process” necessary to form the basis of sound decision-making. They state that the goal of an alternative informal process, such as proposed in the CEO Motion, should be to bring as much useful and relevant information to light as possible in order for the Commission to make a reasoned decision. They state that an informal proceeding will help assure that the process used to investigate net metering issues is as inclusive as possible from the beginning, whereas a formal proceeding, such as this proceeding, has the effect of limiting participation.

24. The Joint Solar Parties offer several recommendations to the Commission for establishing and overseeing an “information process” to explore net metering issues. First, they recommend that the Commission engage the services of an independent facilitator with expertise in the area of renewable resources, and on-site solar resources in particular, to promote a collaborative dialogue and to facilitate the sharing of information. Second, they recommend that the Commission adopt for consideration the list of costs and benefits associated with on-site solar as identified in the Answer Testimony and Exhibits of CEO witness Christopher Worley.

Third, they recommend that the Commission focus on “generator exports” from net metered systems as opposed to generation used on-site. Fourth, they recommend that the Commission identify the intended outcomes of the process at the outset. Along these lines, they suggest that the new proceeding begin with an informal meeting to discuss the goals of the Commission and the participants.

25. The Joint Solar Parties further recommend that the scope of the new proceeding include the following: (1) the rights of a retail electricity customer to self-generate; (2) the effects on, and potential changes to, utility regulation and operations over the longer term; (3) the effect of the net costs and benefits on future proceedings, including RES compliance plan proceedings, rate case proceedings, and electric resource plan proceedings; and, (4) the effects of innovative technologies on regulated utility service generally.

b. Public Service

26. Consistent with the CEO Motion, Public Service supports the severing of the issues relating to net metering costs and benefits and the net metering incentive from this proceeding. Public Service states, however, that its support for that aspect of the CEO Motion is contingent on the Commission ensuring a fair and balanced process for debate. The Company opposes the procedural recommendations set forth in the CEO Motion.²

27. Public Service states that it has accomplished its goal to bring to the public’s and the Commission’s attention the problem of cost shifting that results from net metering on-site solar generation. Public Service is concerned, however, that the CEO Motion does not provide

² Public Service states in its response to the CEO Motion that it is authorized to relay to the Commission that Staff supports the Company’s procedural approach should the Commission sever the net metered issues from this proceeding. Staff takes no position on whether the net metering issues should be severed. Public Service also states that it is authorized to convey that Climax also supports the Company’s procedural proposal, noting that subsidization of net metered customers has been a concern of the Commission.

sufficient details about the proposed investigation into net metering issues and the issues that would remain in this proceeding. The Company therefore seeks clarification from the Commission regarding the scope of both the instant and the new proceedings.

28. In addition, Public Service argues that the CEO Motion proposes an unworkable process for the new proceeding. For instance, Public Service argues that determining the Company's costs and benefits associated with on-site solar through a "Miscellaneous Docket" would deny the Company and other parties procedural rights guaranteed by Colorado Public Utilities Law. The Company is particularly concerned that parties might not be afforded discovery rights as authorized in application proceedings. Public Service also argues that, before the Commission could adopt any statewide policies on net metering or methods for calculating net metering incentives that could be binding and enforceable on other regulated utilities, it must adopt those policies in a rulemaking proceeding conducted pursuant to the Administrative Procedures Act.

29. Finally, if the CEO Motion is granted and net metering issues are severed from this proceeding, Public Service suggests that the Commission:

- Order the Company to file an application on or before December 1, 2014, to address the substantive net metering issues severed from this proceeding;
- Direct the Company to describe in that application the methods the Company proposes to use to estimate the costs and benefits of net metered on-site solar generation and other distribution connected to solar generation;
- Direct the Company to describe in the application the effects on the full range of distributed solar generation on cost allocation and other components of rate design;
- Direct the Company to describe in the application how it conducted the study it proposes to conduct the study; and,

- Direct the Company to describe in the application the results of the study of distributed solar generation costs and benefits.

c. WRA

30. WRA generally supports the CEO Motion, stating that the issues surrounding the costs and benefits of net metered distributed generation are complex and important. However, WRA recognizes that the CEO Motion raises procedural issues. For example, the CEO Motion does not specifically define the issues to be severed from this proceeding and does not identify the specific portions of pre-filed testimony and exhibits that should be struck. WRA also notes that there are some issues related to net metering that could be retained in the instant proceeding, such as the proposed changes to the Company's net metering tariff.

31. WRA also suggests that a rulemaking may be the most appropriate form of proceeding to investigate net metering issues. WRA suggests, however, that it may be appropriate for the Commission to oversee a workshop or comment process in advance of issuing a formal Notice of Proposed Rulemaking.

d. Other Parties

32. SEIA concurs with the CEO Motion. SEIA recommends that, if the net metering issues are severed from this proceeding, the Commission should develop a scope and process for the new proceeding that can address the costs and benefits of on-site solar as applicable to both Public Service and Black Hills/Colorado Electric Utility Company, LP.

33. Boulder also supports the CEO Motion. Boulder argues that the changes to net metering proposed by Public Service are significant enough that they could have lasting effects on the future of the on-site solar industry in Colorado. Boulder agrees with the CEO Motion that

a separate proceeding would permit participation by others, such as energy assistance organizations and low-income residents.

34. SunShare neither supports nor opposes the CEO Motion. In the event that the Commission grants the motion, however, SunShare requests that it retain consideration of the allocation of funds for the Solar*Rewards Community program for 2014 in the instant proceeding.

3. Findings and Conclusions

35. We agree with Public Service and WRA that the CEO Motion does not specify the issues to be severed from this proceeding. We define the net metering incentive issue for severance as the proposals set forth in Section 9 of Volume 1 of the Company's 2014 RES Compliance Plan,³ and direct testimonies of Public Service witnesses Karen Hyde, Kent Scholl, and Scott Brockett. In sum, the net metering incentive issue is Public Service's proposal to reflect a net metering incentive in its RESA with a corresponding adjustment to its ECA.⁴

36. Public Service's response to the CEO Motion indicates that, if the net metering issues are severed, the Company agrees to no longer to seek approval of the Company's proposed net metering incentive in this proceeding. Therefore, the Commission finds that Public Service's proposal to recognize the net metering incentive as a cost to the RESA with an equivalent offset to the ECA is dismissed from the instant proceeding. The Commission will not rule on the merits of that proposal or the DSG Study upon which it was based.⁵

³ Direct Testimony of Robin Kittel, Exhibit No. RLK-1, 2014 RES Compliance Plan, Volume 1, Section 9, pp. 9-1 - 9-3.

⁴ Application, pp. 2-4.

⁵ Direct Testimony of Kent Scholl, Exhibit No. KLS-1.

37. Severing the net metering incentive issue requires the striking from the instant proceeding pre-filed testimony and exhibits submitted into the administrative record. Based upon our adopted definition of this issue, we strike, in their entirety, the pre-filed direct testimonies and exhibits of Public Service witnesses Karen Hyde and Kent Scholl. We also strike, in their entirety, the pre-filed rebuttal testimonies and exhibits of Public Service witnesses Kent Scholl and Jack Ihle. We find no changes are required to the pre-filed direct testimonies and exhibits of Public Service witnesses Kari Chilcott Clark, Jannell Marks, Steve Mudd, and Debra Sundin. We also find that no changes are necessary to rebuttal testimonies and exhibits of Public Service witnesses Steve Mudd and Ramsay Sawaya.

38. With respect to pre-filed testimonies and exhibits of the intervening parties, we strike, in their entirety, the answer testimonies and exhibits of TASC witness R. Thomas Beach and CEO witness Christopher Worley. We find that no changes are needed to the answer testimony and exhibits of WRA witness Christine Brinker and the cross-answer testimonies and exhibits of WRA witness Christine Brinker and the SunShare witness David Amster-Olszweski.

39. For pre-filed testimonies and exhibits not listed above, we find that it is necessary to strike portions of the submitted material. The specific lines of testimony and exhibits to be stricken are identified for each witness in Attachment A to this Decision.

40. Parties shall file revised testimony and exhibits pursuant to these directives by **March 12, 2014.**⁶ Parties shall file two copies of the revised testimony: the first copy shall

⁶ Parties shall file the revised testimony and exhibits in accordance with the filing requirements, naming conventions, and exhibit number blocks set forth in Decision No. R13-1496-I issued by ALJ G. Harris Adams on December 3, 2013. Specifically, if a party is required to modify a previously identified Hearing Exhibit, the same exhibit number shall be used for the title as the original. However, the title shall be modified to add a revision number reference. In addition, the parties shall bring two copies of all filings to the hearing.

show the revisions with strikethroughs and additions,⁷ whereas the second copy shall eliminate the strikethroughs and accept the additions.⁸

41. In addition, we recognize that Public Service's request for approval of its "recommended plan" or "proposed plan" as set forth in the 2014 RES Compliance Plan is conditioned on the Commission's approval of its net metering incentive proposals. As the net metering incentive issue is removed from this proceeding, the Company's proposals and recommendations for on-site solar acquisition levels and REC incentive payments are now uncertain. We therefore address this situation by three means.

42. First, to preserve useful information in the pre-filed testimony and exhibits, we order replacement of "recommended plan," "proposed plan," and similar phrases with "modeled plan." This change to the pre-filed testimony and exhibits removes any preference attached to the proposals as initially filed in the Application and yet retains the presented facts and other information associated with the acquisition of 42.5 MW of on-site solar resources in 2014. Our directive to use "modeled plan" applies to each witness's pre-filed testimony and exhibits listed in Attachment A to this Decision.⁹

43. Second, we acknowledge that it is not possible in all instances to neutralize the preferences, stated or implied, by ordering the simple change from "recommended plan" to "modeled plan." Therefore, we order some portions of the pre-filed testimony and exhibits to be stricken as the parties' positions are now unclear. The striking of such pre-filed testimony and exhibits is also set forth in Attachment A to this Decision.

⁷ The copy shall be identified as Revision 2.

⁸ The copy shall be identified as Revision 3.

⁹ The required changes to testimony shall be reflected in the revised testimony due on March 12, 2014.

44. Third, we direct Public Service to file Supplemental Direct Testimony and Exhibits presenting the Company's current positions and proposals, given that the net metering incentive issue will not be addressed in this proceeding. Such Supplemental Direct Testimony and Exhibits shall be limited to addressing proposed on-site solar acquisition levels, proposed standard offer incentive payments for RECs, and the associated direct costs, including any funds that may need to be advanced to the RESA.¹⁰ The Supplemental Direct Testimony and Exhibits shall be filed on or before **March 12, 2014**. Supplemental Answer Testimony responsive to the Company's Supplemental Direct Testimony and Exhibits is due **March 26, 2014**. Public Service shall file Supplemental Rebuttal Testimony Exhibits, and the intervening parties shall file Supplemental Cross-Answer Testimony and Exhibits, on or before **April 9, 2014**. This compressed procedural schedule is necessary to facilitate our consideration of the 2014 RES Compliance Plan in reasonably short order.

45. Because it is essential for the Commission to render a decision on the Company's 2014 RES Compliance Plan as soon as reasonably possible, we disagree with the CEO Motion in regards to the sequencing of our decisions. Whereas the CEO suggests that the Commission could issue a final decision about the costs and benefits of net metering in a separate proceeding and that the decision could be later incorporated into this proceeding,¹¹ we find that any applicable results from our investigation will not be available in time. We expect careful review

¹⁰ Although we are limiting the scope of the supplemental testimony, we find the previously filed testimonies and exhibits in these areas to be unclear or not readily accessible. Therefore we direct Public Service and the intervening parties to state plainly and in summary form at the beginning of the supplemental testimony: the capacity (in MW) proposed to be acquired in total and through each Solar*Rewards program; the annual costs of those proposed acquisitions and the total costs over the terms of the standard offer REC purchase contracts; the impact of the proposed acquisitions on the RESA balance and the amount of funds, if any, that are needed to be advanced; and the ongoing annual obligations charged to the RESA for each year's vintage of programs, beginning with 2011 and continuing through the 2014 program, through the RES planning period.

¹¹ CEO Motion, p. 4.

of the net metering issues sought by the CEO Motion will take at least several months and will likely continue into 2015.

46. A necessary result of CEO's Motion and Public Service's concurrence is the extension of time required to conduct the instant proceeding beyond the statutory deadline for a final Commission decision on the Application. We require Public Service to file a notice on or before **March 5, 2014**, confirming the Company is waiving the decision deadline under § 40-6-109.5, C.R.S.

47. With respect to the proposal in the CEO Motion that the Commission dedicates a new and separate proceeding to the investigation of net metering issues, we will issue a separate decision to be adopted upon deliberations at a future open meeting.

48. Finally, we return the instant proceeding to an ALJ for the issuance of a recommended decision on the Application, as amended by this Decision. The ALJ shall establish additional procedures, including new dates for the evidentiary hearing, by separate decision.

E. Public Service Motion for Leave to Reply

49. In its Leave to Reply Motion, Public Service seeks permission to respond to the Joint Solar Parties' response to the CEO Motion. Public Service argues that the Joint Solar Parties' response contains new issues and arguments not made by the CEO Motion and that the Joint Solar Parties request broader and different relief than what the CEO Motion has requested. Public Service further states that it opposes all of these requests and should therefore be given the opportunity to respond to them.

50. By Decision No. C14-0173-I, issued on February 13, 2014, the Commission shortened response time to the motion to noon on February 18, 2014. Timely responses were filed by WRA and the Joint Solar Parties.

51. We deny the Leave to Reply Motion. As stated above, we will address the opening of a new proceeding to investigate net metering issues at a future deliberations meeting. At that time, the Commission will decide how best to initiate the proceeding and discuss how to develop the goals and scope of the proceeding. We find that further argument about severing the net metering issues is not germane to the instant proceeding.

II. ORDER

A. It Is Ordered That:

1. The Motion to Sever Issues Related to Net Metering filed by the Colorado Energy Office (CEO) on January 21, 2014 is granted, consistent with the discussion above. The Commission will not rule on the merits of Public Service Company of Colorado's (Public Service or Company) proposal to recognize a net metering incentive as a cost to the Renewable Energy Standard Adjustment with an equivalent offset to the Electric Commodity Adjustment in this proceeding, consistent with the discussion above.

2. The pre-filed Direct Testimonies and Exhibits of Public Service witnesses Karen Hyde and Kent Scholl, the pre-filed Rebuttal Testimonies and Exhibits of Public Service witnesses Kent Scholl and Jack Ihle, and the pre-filed Answer Testimonies and Exhibits of the Alliance for Solar Choice witness R. Thomas Beach and CEO witness Christopher Worley are stricken in their entirety, consistent with the discussion above.

3. The parties are directed to submit revised testimonies and exhibits as set forth in Attachment A to this Decision. Parties shall file revised testimony and exhibits, consistent with the discussion above, on or before **March 12, 2014**.

4. Public Service shall file Supplemental Direct Testimony and Exhibits, consistent with the discussion above, on or before **March 12, 2014**. Parties shall file Supplemental Answer

Testimony responsive to the Supplemental Direct Testimony and Exhibits on or before **March 26, 2014**. Public Service shall file Supplemental Rebuttal Testimony Exhibits and the intervening parties shall file Supplemental Cross-Answer Testimony and Exhibits on or before **April 9, 2014**.

5. The Commission will issue a separate decision opening a new proceeding to investigate net metering issues, consistent with the discussion above.

6. Public Service shall file a notice confirming the Company is agreeing to waive the decision deadline under § 40-6-109.5, C.R.S., on or before **March 5, 2014**.

7. This matter is returned to an Administrative Law Judge for the issuance of a recommended decision.

8. The Motion for Leave to File Response to the Joint Solar Parties' Response to the CEO Motion filed by Public Service on February 11, 2014, is denied, consistent with the discussion above.

9. The Motion for a Temporary Suspension of Commission Deliberations filed by Public Service on February 18, 2014, is denied, consistent with the discussion above.

10. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 19, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners