

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14A-0102E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF  
COLORADO TO ADDRESS VOLUNTARY SERVICE OFFERINGS IN THE CITY OF  
BOULDER.

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**INTERIM DECISION: (1) DEEMING APPLICATION  
COMPLETE; (2) SETTING THE MATTER FOR  
HEARING *EN BANC*; (3) GRANTING PETITION  
TO PARTICIPATE AS AN *AMICUS CURIAE*;  
(4) GRANTING MOTION TO INTERVENE;  
(5) ORDERING FILING OF DIRECT TESTIMONY; AND  
(6) SCHEDULING PREHEARING CONFERENCE**

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Mailed Date: March 14, 2014  
Adopted Date: March 12, 2014

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an Application to Address Voluntary Service Offerings in the City of Boulder (Application) filed on January 28, 2014 by Public Service Company of Colorado (Public Service or Company). Public Service seeks to address how the Company should continue to offer electric Demand-Side Management (DSM) programs, Solar\*Rewards programs for on-site solar resources, and the Solar\*Rewards Community program for the development of Community Solar Gardens within the City of Boulder (City or Boulder), given that the City recently served the Company with a Notice of Intent to Acquire Public Service's electric business in Boulder.

2. Public Service explains that these voluntary programs provide long-term benefits to Public Service's system and, if continued in their current form and if the City completes its

condemnation action, these programs would benefit a new Boulder municipal utility rather than Public Service. Public Service does not believe it is appropriate for its non-Boulder customers to subsidize a new Boulder municipal utility and argues that it is important to address now how to avoid such subsidies.

3. Specifically, Public Service seeks a Commission approval to modify the programs as follows:<sup>1</sup>

- Include a termination provision in all of its new Boulder Solar\*Rewards contracts that would allow the Company to terminate its obligations to purchase energy and renewable energy credits (RECs) from its Boulder customers when and if the City assumes load serving responsibility.
- Modify Customer-Owned Small (<10 kW) Solar\*Rewards contracts for Boulder customers by making them “pure” pay-for-performance contracts, similar to the Company’s other Solar\*Rewards offerings;
- Limit participation of its Boulder customers in DSM programs so that the level of costs the Company incurs in Boulder does not exceed the DSM electric revenues received from all Boulder customers. Market transformation programs would be excluded from this limitation.
- Defer offering its Solar\*Rewards Community program to Boulder customers unless and until Boulder determines not to proceed with the formation of a municipal electric utility.

4. Public Service details the actions taken by Boulder in furtherance of the potential municipalization, including serving the Company with a statutory Notice of Intent to Acquire its electric utility infrastructure pursuant to § 38-1-121, C.R.S. Public Service represents that this Notice does not list the DSM investments or Solar\*Rewards contracts as property that Boulder intends to acquire. Public Service argues that, given the Notice, the Application is ripe for

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<sup>1</sup> The Company also requests waivers of Commission rules and past Commission orders to implement these modifications.

consideration<sup>2</sup> and that Boulder customers are no longer similarly situated to customers elsewhere on its system.

5. Public Service acknowledges it has a legal obligation to serve the electric load in Boulder unless and until the City forms a municipal utility. Public Service argues, however, that it only seeks to modify its “voluntary programs” that benefit both the utility as a whole and the individual participants. The Company states that it is concerned that the costs incurred for new contracts with customers within Boulder are justified and that only Public Service will continue to serve the customer for the life of the program. Public Service states it will seek compensation for these investments in a district court condemnation proceeding, but the Application will mitigate further damages or loss of benefits caused by the programs in Boulder under their current terms.

6. Public Service filed the Application without supporting testimony.

7. The Colorado Office of Consumer Counsel (OCC) and Staff of the Colorado Public Utilities Commission (Staff) timely filed notices of intervention by right. The OCC questions whether Public Service’s proposal to offer customers in Boulder different terms and conditions than to all other customers complies with § 40-3-106(1)(a), C.R.S.<sup>3</sup> The OCC is also concerned that Boulder’s potential municipalization by Boulder could impose costs on Public Service’s remaining customers. Staff states that the Application raises significant issues that

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<sup>2</sup> Public Service thus distinguishes the Application filed in this proceeding from its previous application the Commission dismissed as premature in Proceeding No. 12A-155E, Decision No. C12-0798 issued July 13, 2012.

<sup>3</sup> Section 40-3-106(1)(a), C.R.S., states: “[e]xcept when operating under paragraph (c) or (d) of this subsection (1), a public utility, as to rates, charges, service, or facilities, or in any other respect, shall not make or grant any preference or advantage to a corporation or person or subject a corporation or person to any prejudice or disadvantage. A public utility shall not establish or maintain any unreasonable difference as to rates, charges, service, facilities, or between localities or class of service. The commission may determine any question of fact arising under this section.”

may have unknown effects on Public Service's ratepayers. Staff suggests the Commission will need to make both factual and legal findings in this proceeding.

8. Boulder timely filed a motion to intervene by permission. Boulder opposes the Application and states that it hopes to learn more about the Application through discovery. Boulder also states it is open to discussing a possible settlement.

9. Western Resource Advocates (WRA) timely filed a petition to participate as an *amicus curiae*. WRA states that it has been instrumental in the creation and development of the programs at issue in the Application. WRA states it possesses a strong interest in ensuring these programs are successfully implemented to achieve its environmental protection goals.

## **B. Findings**

10. The Application contains the information required by the applicable Commission Rules. We therefore deem it complete for purposes of § 40-6-109.5, C.R.S.

11. We find good cause to grant Boulder's unopposed motion to intervene. Public Service, Staff, OCC, and Boulder, collectively, are parties in this proceeding.

12. We also find good cause to grant WRA's unopposed motion to participate as an *amicus curiae*.

13. We find that the Application raises issues of fact, law, and public policy. For this reason, and as we did with prior proceedings involving Boulder's potential municipalization,<sup>4</sup> we will hear this proceeding *en banc*.

14. To assist the Commission in issuing a just and reasonable decision in this matter, we direct Public Service to file direct testimony addressing the following:

- The value of the estimated subsidies Public Service alleges will occur between Boulder customers and non-Boulder customers if the programs at

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<sup>4</sup> Proceeding Nos. 12A-155E and 13D-0498E.

issue in the Application are not modified in the manner the Company proposes. Public Service shall provide these estimated costs for each specific program at issue in this proceeding assuming a specific cut-over date.

- Less restrictive alternatives, if any, to deferring the Solar\*Rewards Community program to Boulder customers that would address concerns regarding subsidies, in whole or in part.

15. Finally, we schedule a prehearing conference for **April 11, 2014**. We direct Public Service to confer with the parties regarding a proposed procedural schedule, including provisions for discovery and dates of filing testimony, prior to the prehearing conference. Public Service shall file its proposed procedural schedule on or before **April 8, 2014 at 12:00 p.m.**

16. If the parties reach an agreement concerning a procedural schedule, including discovery procedures, they shall file a procedural schedule in the form of a joint motion. In that instance, the Commission will consider vacating the prehearing conference. If an agreement is not possible, the parties should come to the prehearing conference prepared to finalize the procedural schedule and address any preliminary issues surrounding the scope of this proceeding.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Application to Address Voluntary Service Offerings in the City of Boulder (Application) filed on January 28, 2014 by Public Service Company of Colorado (Public Service) is deemed complete.

2. The Application is set for hearing before the Commission *en banc*, consistent with the discussion above.

3. The petition to participate as *amicus curiae* filed on February 27, 2014 by Western Resource Advocates, 2014 is granted.

4. The motion to intervene by permission filed on February 28, 2014 by the City of Boulder is granted.

5. Public Service shall file direct testimony in support of the Application, consistent with the discussion above.

6. Public Service shall confer with the parties regarding a proposed procedural schedule, including deadlines for the filing of the testimony and provisions for discovery, and file its proposed schedule on or before **April 8, 2014 at 12:00 p.m.**, consistent with the discussion above.

7. A prehearing conference in this matter is scheduled as follows:

DATE: April 11, 2014  
TIME: 10:00 a.m.  
PLACE: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
March 12, 2014.**

(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

JOSHUA B. EPEL

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PAMELA J. PATTON

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GLENN A. VAAD

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Commissioners