Decision No. C14-1485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0302E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS SOLAR*CONNECT PROGRAM.

PROCEEDING NO. 14A-0301E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL TO ISSUE TARGETED REQUEST FOR PROPOSALS TO ACQUIRE GENERATION RESOURCES TO SUPPORT THE SOLAR*CONNECT PROGRAM.

DECISION DENYING APPLICATIONS, DENYING MOTION TO DISMISS AS MOOT, AND ADDRESSING SHORT-TERM SOLAR ENERGY AGREEMENT

Mailed Date: December 16, 2014
Adopted Date: December 8, 2014

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I. BY THE COMMISSION

A. Statement

1. This Decision denies the Application for Approval of the Solar*Connect Program (Program Application) and the Application for Approval to Issue Targeted Request for Proposals to Acquire Generation Resources to Support the Solar*Connect Program (RFP Application) filed by Public Service Company of Colorado (Public Service or Company). We also deny the Motion to Dismiss filed by the Staff of the Colorado Public Utilities Commission (Staff) as moot, and we address the regulatory treatment of the energy the Company has obtained for an initial period of the Solar*Connect Program through the Short-Term Solar Energy Purchase Agreement with Solar Star Colorado III, LLC.

B. Public Service's Proposed Solar*Connect Program

2. On April 3, 2014, Public Service filed the Program Application in Proceeding No. 14A-0302E. On the same day, Public Service filed the RFP Application in Proceeding No. 14A-0301E.

3. Public Service's Program Application proposes the acquisition of 50 MW of solar generation and associated Renewable Energy Credits (RECs) through long-term solar power purchase agreements (PPAs). The Company would offer retail customers short-term subscriptions to the solar energy produced for up to 100 percent of their annual consumption.

4. Public Service would bill participating customers the same tariffed charges as other customers, but would also issue a program bill credit and bill a program charge.

The proposed bill credit would be set forth in the tariffs approved in this Proceeding based on what Public Service calls the "embedded costs" of current utility service, though the embedded cost reduction contained in the Company's proposed tariffs does not reflect the utility costs avoided by customers taking Solar*Connect service. The credit instead is a reduction in rates to a level where Public Service expects the Solar*Connect program to be marketable.[1] This credit would be supported using funds from the Company's Renewable Energy Standard Adjustment (RESA).[2] The proposed program charge would be set at the Company's discretion within 100 percent to 150 percent[3] of the bill credit.[4]

5. After recovering the start-up, marketing, and administration costs of the program through collections of the program charge, the Company would share 40 percent of program earnings with ratepayers through credits to the RESA.[5] Public Service would retain the remaining 60 percent of profits.

6. Public Service proposes that ratepayers purchase any unsubscribed solar energy from the PPAs at the average hourly incremental cost of the prior year's total system generation. If the program is oversubscribed, the Company would purchase solar energy from the utility system at the average cost of energy from large scale solar.

[1] *See* Brocket Direct P.9, L.13-20; Brockett Rebuttal P.21, L.10-21.

[2] Because RESA funds would be used to support the Solar*Connect program, the Company proposes to retain the associated RECs rather than retiring them on behalf of the subscribing customers.

[3] A charge set at 150 percent of the credit would be approximately $0.03/kWh above the total aggregate retail rate.

[4] Public Service's proposal includes a discretionary escalation rate between 0 and 3 percent as a term in initial enrollment agreements to represent escalation rates that are typically included in solar PPAs.

[5] There would be no sharing until start-up marketing and administration costs are covered, which are forecast to be approximately $830,000. Then, any earnings over $200,000 would be shared 60 percent to the Company, 40 percent to customers.

7. Public Service's RFP Application requests Commission approval to issue a targeted request for proposals (RFP) to acquire the necessary generation resources to support the Company's Solar*Connect Program.

C. Procedural History

8. On May 6, 2014, Public Service moved for an expedited Commission decision on its RFP Application and an expedited bidding procedures schedule for the RFP process.

9. On June 9, 2014, the Commission: (1) denied Public Service's motion for expedited consideration of the RFP Application; (2) consolidated the Program Application and the RFP Application proceedings; and (3) set the consolidated application before the Commission *en banc*.[6]

10. The Commission granted interventions to the following entities: The Alliance for Solar Choice (TASC); City of Boulder; Clean Energy Collective, LLC (Clean Energy); Colorado Energy Consumers; Colorado Independent Energy Association; Colorado Solar Energy Industries Association (CoSEIA); Interwest Energy Alliance (Interwest); NextEra Energy Resources, LLC (NextEra); Solar Energy Industries Association (SEIA); SunShare, LLC (SunShare); Vote Solar Initiative (Vote Solar); and Western Resource Advocates (WRA).[7]

11. Staff, the Colorado Office of Consumer Counsel (OCC), and the Colorado Energy Office (CEO) each timely filed notices of intervention by right.

12. The following parties filed written testimony: Public Service, Staff, OCC, CEO, Clean Energy, CoSEIA, SEIA, SunShare, Vote Solar, and WRA.

[6] Decision No. C14-0616-I.
[7] Decision No. C14-0616-I.

13. On August 29, 2014, Staff filed a Motion to Dismiss both the Program Application and the RFP Application. The Motion to Dismiss argues that Public Service's proposed program violates § 40-3-114, C.R.S., which says: "The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize nonregulated activities." Staff contends that, under the proposed program, Public Service charges unregulated rates to subscribers; yet, the program's services are supported through state subsidies funded through surcharges paid by ratepayers. Staff asserts that § 40-3-114, C.R.S., precludes the use of a surcharge to support the unregulated aspects of the program.

14. Our decision of October 20, 2014, informed the parties that resolution of Staff's Motion to Dismiss requires consideration of the factual record in this case. We stated that we would address the motion after the evidentiary hearings as part of the merits of the case. We also allowed the parties to address the Motion to Dismiss in their final Statements of Position (SOPs).[8]

15. On October 31, 2014, Staff filed a Motion to Strike Certain Substantive Corrections to Public Service's Direct Testimony (Motion to Strike).

16. We conducted an evidentiary hearing on November 3 through 5, 2014. As discussed below, we addressed the Motion to Strike as a preliminary matter at the hearing. Hearing Exhibits numbered 1-57 were offered and admitted at the hearing, including all of the written testimony.

17. After the hearing, the following parties submitted SOPs: Public Service, Staff, OCC, CEO, Clean Energy, CoSEIA, Interwest, SEIA, Vote Solar, and WRA.

[8] Decision No. C14-1260-I,

D. Staff's Motion to Strike

18. Staff argues that Public Service made substantive changes in the Corrected Direct Testimony of Alice K. Jackson filed by the Company on October 29, 2014. Ms. Jackson's original testimony proposed that, if the Commission denies the Program Application, resale of any contracted start-up energy[9] would be treated as a Proprietary Book sale. In her Corrected Direct Testimony, Ms. Jackson proposes to sell the start-up energy as a Generation Book sale.[10] According to Staff, this and related modifications to the pre-filed testimony were substantive, effectively altering the Company's proposal, and thus parties were prejudiced because the changes were made less than a week before the evidentiary hearing.

19. The Commission heard arguments on Staff's Motion to Strike at the hearing on November 3, 2014. Public Service argued that Ms. Jackson sought to change her testimony to comply with the Company's Trading Business Rules and that the change would benefit ratepayers. [11] OCC, TASC, and WRA supported Staff's motion.

20. At the hearing, we concluded that the process for corrected testimony is intended to govern changes of a typographical nature, not the substance of a party's position, and that Public Service's late changes prejudiced the ability of other parties to respond. For these reasons, the Commission granted Staff's Motion to Strike.[12]

[9] Public Service contracted for start-up energy through its Short-Term Solar Energy Purchase Agreement with Solar Star Colorado after Direct Testimony was filed.

[10] *See Public Service Company of Colorado Policy for Resource Management and Cost Assignment for Short-Term Electric Energy and Renewable Energy Credit Transactions (Revised June 10, 2013),* Attachment A to Stipulation and Settlement Agreement approved by Commission Decision No. R13-1544 in Proceeding No. 13A-0689E issued December 16, 2013.

[11] November 3, 2014 Hearing Transcript, 13-19.

[12] *Id.* at 27-28.

21. Additionally, TASC and WRA orally moved to strike other portions of Ms. Jackson's corrected testimony. TASC moved to strike a sentence in Ms. Jackson's Corrected Rebuttal Testimony in which she states that 90 percent of small and medium Solar*Rewards installations came from a single supplier in 2014.[13] TASC argued that the corrected sentence was materially different from the statement in Ms. Jackson's original Rebuttal Testimony, which says that 70 percent of small and medium Solar*Rewards applications came from a single supplier in 2013.[14] Public Service argued that both statements were correct, but it agreed that the testimony may revert to the original sentence.[15]

22. WRA moved to strike a statement in Ms. Jackson's Corrected Supplemental Direct Testimony, which stated that Solar*Connect customers would pay Demand Side Management (DSM) costs, in contrast to her original Supplemental Direct Testimony stating that Solar*Connect customers would not pay DSM costs.[16] Public Service admitted that the change was an error.[17]

23. On November 4, 2014, Public Service filed corrected testimony of Ms. Jackson (Second Corrected Direct, Second Corrected Supplemental Direct, and Corrected Rebuttal) reflecting the Commission's decision and Public Service's stipulations. This testimony was entered into the record as Hearing Exhibits 43, 44, and 45, respectively.

[13] *Id.* at 19-20.
[14] *Id.*
[15] *Id.* at 23.
[16] *Id.* at 21.
[17] *Id.* at 23.

E. Positions of the Parties

24. Public Service argues that approval of the Solar*Connect Program is in the public interest. The Company states that the Solar*Connect program would bring more solar energy to Colorado for less cost than the Solar*Rewards and Community Solar Gardens programs due to economies of scale, location, orientation, and tracking advantages. The Company further asserts that Solar*Connect allows customers to subscribe to a solar program though unable to participate in the Solar*Rewards and Community Solar Gardens programs. Public Service also says it is unfair for all customers to pay RESA-funded subsidies for on-site solar and Community Solar Gardens when many customers are not able to participate in those programs.

25. Public Service asserts that Solar*Connect results in lower ratepayer subsidy levels than the current Solar*Rewards and Community Solar Gardens programs. For example, in Supplemental Direct Testimony, Public Service contrasts Solar*Connect to its existing solar programs, asserting that full utility bills are subsidized by $0.0745/kWh for Solar*Rewards and by $0.03966/kWh for Community Solar Gardens as compared to a subsidy of $0.03235/kWh for Solar*Connect.[18]

26. No interveners support approval of the Solar*Connect program as proposed by Public Service. In general, interveners object to the calculation of the proposed credit, the lack of transparency regarding the proposed program, and the absence of necessary regulatory oversight.

27. Staff contests the program's legality, as reflected in its Motion to Dismiss, stating that Public Service's proposal to maintain the charge within a pricing band does not alleviate the

[18] Jackson Supplemental Direct, at 28.

illegality of using ratepayer subsidies to support an unregulated activity and its merits. Staff highlights the magnitude of Public Service's proposed subsidy, arguing that it is greater than 50 percent of the cost of the utility-scale photovoltaic resources likely to be used to serve Solar*Connect. Staff asserts that Public Service would still make a significant profit even if the program is marketed with no premium over standard service. Staff agrees with other parties that the program creates an unfair competitive advantage over other programs authorized by the General Assembly.

28. Similarly, the OCC recommends that the Commission deny the program because it would benefit shareholders while imposing additional costs and subsidies on ratepayers. According to the OCC, the program would cost ratepayers $4 million per year, or $47 million over 20 years.

29. WRA recommends that the Commission modify Solar*Connect into a more transparent, cost-based program with regulated rates and profits.

30. The solar industry parties argue that the program, as proposed, would harm the competitive environment for the current Solar*Rewards and Community Solar Gardens programs. For instance, Community Solar Gardens face restrictions not placed on Solar*Connect, such as a 5 percent low income set-aside, a 2 MW limit on project size, and a requirement that the facility be located in the same county as the subscriber. Further, they argue that Public Service has advantages in its capacity as the administrator of Solar*Rewards and Community Solar Gardens programs, because it has access to customer information and can market to prospective customers through utility mailings.

31. Some parties argue that specific changes to the Solar*Connect program are necessary for it to be in the public interest. For example, WRA proposes a fully-regulated

Solar*Connect program with rates, administrative cost limits, and profit margins set by the Commission. The OCC suggests that Solar*Connect should be offered as a non-subsidized, Windsource-style program,[19] which would charge a premium for solar energy without subsidization from other customers. In addition, both WRA and OCC suggest that the Commission direct Public Service to solicit additional utility-sale solar resources for the system to take advantage of the price benefits from the federal 30 percent Investment Tax Credit.

32. Clean Energy and SunShare propose a competitively open program where all solar providers can participate in the new solar facility, with certain controls on Public Service's participation. CoSEIA suggests third-party oversight for all solar programs and recommends the Commission require Public Service to participate only through an unregulated subsidiary. SEIA suggests that Public Service implement a collaborative approach, similar to Windsource, to design a new Solar*Connect proposal.

F. Conclusions and Findings

1. Program Application

33. Only Public Service supports approval of the Solar*Connect program as proposed. The proposed program suffers from four infirmities and therefore the program is not in the public interest.

34. First, Public Service has no need for the solar RECs supported by RESA funds, because the Company's Renewable Energy Standard compliance requirements are essentially satisfied through at least 2030. There is also no system energy or capacity need for the

[19] Windsource is a voluntary program in which retail customers pay for RECs (wind and utility-scale solar) to be retired on their behalf in order to make environmental claims regarding their electricity usage. The Commission approves the price of the RECs sold to Windsource customers. The current pricing method is based on a modeled cost to acquire additional renewable energy resources on Public Service's system.

generation output from the PPAs acquired to support the program. Public Service's recent Electric Resource Planning (ERP) proceeding, Proceeding No. 11A-869E, demonstrated that the Company has relatively low system capacity needs for several years. Within the ERP process, the Commission recently approved a cost-effective resource plan, including 170 MW of utility-scale solar, to fulfill those limited needs. The Commission denied approval of an additional 50 MW utility scale project. Shortly we will consider the acquisition of utility-scale resources again in the Company's next ERP to be filed in October 2015. Additionally, the Solar*Connect program would require substantial support from non-participating customers, including RESA funds and the payment of costs associated with the purchase or sale of solar energy.

35. Second, we find it unacceptable to require ratepayers to fund proposed subsidies for a program that produces unspecified utility profits. As pointed out by Staff, Public Service would make a significant profit even if Solar*Connect were marketed at the bottom of the range for the proposed charge, which would result in participating customers paying no premium above standard service at the time of enrollment. Public Service profits would increase if it successfully markets the program with higher charges. The program as proposed does not have adequate regulatory oversight.

36. Third, Public Service has not adequately demonstrated that it will ensure a level competitive playing field with other solar providers. Solar*Connect may have significant advantages due to facility size (economies of scale) and superior solar locations that are not permitted under the existing programs' statutes. We also agree with the arguments that Public Service has access to customer information and other marketing advantages because of its status as the regulated monopoly utility.

37. Finally, Public Service did not adequately demonstrate that there is customer demand for the proposed Solar*Connect product. It is unclear whether the Company can successfully market this program without offering prices that are at or near prices for standard utility service.

38. We also deny the requests to order Public Service to modify its proposed Solar*Connect program, as none are fully developed in the record.[20]

39. Further, we deny the recommendation that the Commission direct Public Service to issue an RFP to acquire additional utility-scale solar for its system. The Commission rejected the Company's proposal to acquire 50 MW of additional solar generation in its recent ERP proceeding. The Commission will consider the acquisition of utility-scale resources to meet future resource needs again in the Company's next ERP to be filed in October 2015.

40. For the reasons described above, we deny the Program Application. Because an RFP is not needed to support Solar*Connect, we deny the RFP Application as moot.

2. Staff's Motion to Dismiss

41. Staff argues that Public Service's proposed program violates § 40-3-114, C.R.S., because it would require the use of ratepayer funds to subsidize nonregulated activities. Because we deny the Program Application for other reasons, we deny the Motion to Dismiss as moot.

G. Short-Term Energy Contract

42. In the Program Application, Public Service asks permission to use, as start-up energy, the solar production from one or more of the developments that were the winning bidders

[20] Many parties expressed favor toward the acquisition of cost-effective solar resources and new programs that offer additional solar energy opportunities to retail customers that cannot install facilities or participate in Community Solar Gardens. We encourage the Company to work cooperatively with all of the parties if the Company is to prepare a voluntary program that cures all of the identified deficiencies.

in the recent ERP bid solicitation. The Company explains that the start-up energy would be provided under a separate contract by advancing the in-service date of these facilities, and it would not diminish the benefits to the Public Service system expected from the winning bids.

43. Under cross-examination at the hearings, Public Service witness Alice Jackson stated that Public Service has entered into a short-term "bridge contract"[21] for the start-up energy. In its SOP,[22] Public Service requests that if the Commission denies the Program Application, the Commission should allow Public Service to treat the energy purchased under the contract the same as Proprietary Book transactions under the Company's Business Trading Rules.

44. Proprietary Book transactions are wholesale purchase and sale transactions that are separate from the wholesale purchases and sales Public Service makes to serve its native load in Colorado. The Company's Business Trading Rules, approved by the Commission in Proceeding No. 13A-0689E, govern the execution of and accounting for Proprietary Book transactions. In general, the profits and losses of all Proprietary Book transactions in a given year are summed and the overall net profits are divided 90 percent to shareholders and 10 percent to ratepayers.

45. Staff recommends that, as a matter of fairness to customers, the Commission require Public Service to bear 100 percent of the risk of handling the contracted solar energy. Staff further suggests that the Company should not reduce the margins from its other Proprietary Book trades available for sharing with ratepayers by any losses from sales of the start-up

[21] The contract was provided as Hearing Exhibit 33 and is discussed in the November 3, 2014 transcript at 57-61.

[22] Public Service SOP, at 25-27. *See also* footnote 8.

energy.[23] However, if Public Service sells the energy at a profit, Staff suggests that shareholders may keep all of the margins.

46. We adopt Staff's recommendation and require Company shareholders to bear 100 percent of any losses, and receive 100 percent of the gains, associated with the sale of the start-up energy. The short-term purchase agreement for the start-up solar energy is outside the assumptions underlying our assignment of risk and profit in our Business Trading Rules. Public Service entered the contract at its own risk, despite the Commission having denied the earlier application. The bridge contract was to support retail sales through the Solar*Connect program, and not for a contemplated wholesale transaction or an economic energy purchase to serve native load. The parties to the short-term agreement necessarily selected solar as a generating resource to provide energy for a subsidized solar program; the agreement's terms and conditions, particularly the pricing, were not negotiated in the context of the overall wholesale market for energy. It is unfair to impose upon ratepayers losses sustained under a wholesale contract that was negotiated and priced as a solar project with subsidies, and not one that considered the pricing necessary to compete in the overall wholesale energy market without subsidies. The short-term agreement for start-up energy therefore deviates from the transactions governed by the Business Trading Rules as approved in Proceeding No. 13A-0689E. These unusual circumstances therefore warrant a divergence from typical Proprietary Book allocations of losses and profits.

47. We therefore require the Company to sell the start-up energy in the wholesale market rather than use it as system energy. Public Service does not need the RECs, the energy, or the capacity to serve native load. The start-up energy transactions shall be evaluated and

[23] Staff SOP, at 24-26.

accounted using Proprietary Book procedures, consistent with the Company's request. In accordance with Staff's suggestion, Public Service shall track these sales separately from other Proprietary Book transactions so any losses will not reduce the margins otherwise available for sharing with ratepayers. The Company's shareholders may retain 100 percent of any profits from the start-up energy sales.

II. ORDER

A. The Commission Orders That:

1. The Application for Approval of the Solar*Connect Program filed by Public Service Company of Colorado (Public Service) on April 3, 2014 is denied.

2. The Application for Approval to Issue Targeted Request for Proposals to Acquire Generation Resources to Support the Solar*Connect Program filed by Public Service on April 3, 2014, is denied as moot, consistent with the discussion above.

3. The Motion to Dismiss filed on August 29, 2014, by Staff of the Colorado Public Utilities Commission (Staff) is denied as moot, consistent with the above discussion.

4. The Motion to Strike Certain Substantive Corrections to Public Service's Direct Testimony filed on October 31, 2014, by Staff is granted, consistent with the discussion above.

5. Because the Application for Approval of the Solar*Connect Program is not approved, Public Service shall track and account for the purchase and resale of the already-acquired start-up energy as if they were Proprietary Book Transactions under its Business Trading Rules, with modifications, consistent with the discussion above. Public Service shall not reduce the margins from its Proprietary Book trades available for sharing with ratepayers by any losses associated with the purchase and resale of the energy under the contract intended for program start-up energy.

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING December 8, 2014.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director