

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 OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING MOTION TO STRIKE**

Mailed Date: May 1, 2014

I. STATEMENT

1. On April 23, 2014, Public Service Company of Colorado (Public Service or Company) filed a Motion to Strike Certain Pre-filed Testimony as Inadmissible (Motion to Strike). The Motion to Strike was timely filed in accordance with Decision No. R14-0295-I issued March 18, 2014.

2. Responses were timely filed by Staff of the Colorado Public Utilities Commission (Staff), Western Resource Advocates (WRA), the Alliance for Solar Choice (TASC), and SunShare LLC (SunShare).

3. On April 29, 2014, the Colorado Solar Energy Industries Association (COSEIA) filed a Motion to Accept Late Filed Response. Concurrently, COSEIA filed its response to Public Service's Motion to Strike.

4. Public Service argues that while Interim Decision No. C14-0219-I provided for rounds of supplemental testimony, the decision also limited the scope of that testimony. Public Service contends that the Supplemental Answer and Cross-Answer testimony of

several parties exceeds the scope provided by the Commission's decision, and therefore, should be struck from the record in this proceeding. If struck, subsequent responsive testimony would also need to be struck.

5. Staff agrees with Public Service that admission of supplemental testimony was limited. Staff further opines that the new ideas, program offering, and policy positions of TASC witness Ms. Nutting should be struck consistent with that understanding.¹

6. TASC states that the testimony that Public Service seeks to strike is relevant and within the scope of the supplemental testimony. TASC first argues that its testimony on the ability of solar customers to interconnect and net meter without selling Renewable Energy Credits (RECs) is highly relevant and that striking it would exclude all discussion of this issue from the proceeding. Second, TASC points out that its testimony on interconnection is highly relevant to its proposal on market-based REC pricing, which is not new testimony. Finally, TASC argues that its testimony is responsive to modifications that Public Service proposes to its net metering tariffs and interconnection applications and forms that were part of the Company's direct testimony. Based upon the discussion below, it is found that the subject testimony filed by TASC should be stricken because it is not within the scope contemplated by the Commission.

7. WRA takes the position that TASC's supplemental testimony is within the scope of the bifurcation for the reasons set forth by TASC and argues that since Ms. Farnsworth's testimony is responsive to TASC's testimony, it should not be struck. Further, WRA submits that Public Service's Motion to Strike should be denied based upon the rationale stated in Decision No. R14-0368-I.

¹ Ms. Nutting's testimony in this proceeding was adopted by witness Mr. Wright in a Notice of Substitution of Witness filed on April 23, 2014.

8. SunShare states that the following are the issues within its testimony that Public Service seeks to strike through its Motion to Strike: 1) the Request for Proposal (RFP) selection process and potential for negative bids in such; 2) operational changes regarding escrow and deposit requirements for solar gardens; and 3) imposing limitations on the time it takes Public Service to review RFP responses. (SunShare Response at 1). Similar to TASC, SunShare argues that some of these issues were raised in prior testimony (other than Public Service's supplemental testimony) in this proceeding. Based upon the discussion below, it is found that the subject testimony filed by SunShare should be stricken because it is not within the scope contemplated by the Commission.

9. On April 29, 2014, the COSEIA late filed its Response to Public Service's Motion to Strike was filed along with the 13A-0836E COSEIA Motion to Accept Late-Filed Response. No prejudice coming to any party, response time to the motion to accept late response will be waived and the request granted.

10. COSEIA argues that its supplemental testimony that Public Service seeks to strike is relevant to the proceeding. Based upon the discussion below, it is found that the subject testimony filed by SunShare should be stricken because it is not within the scope contemplated by the Commission.

II. DISCUSSION

11. By Decision No. C14-0219-I, the Commission noted uncertainty regarding the Company's proposals and recommendations for on-site solar acquisition levels and REC incentive payments, among other issues related to its on-site solar program, as a result of the Commission's decision to sever net metering incentive issues from this proceeding. (Decision No. C14-0219-I at ¶ 41.)

12. To resolve this uncertainty, the Commission directed Public Service to file Supplemental Direct Testimony addressing 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 Renewable Energy Standard Adjustment. Decision No. C14-0219-I at ¶ 44. Supplemental Answer testimony was permitted, “responsive to the Company’s Supplemental Direct Testimony and Exhibits.”

13. Footnote 10 in the decision further clarified the scope of the supplemental testimony. The Commission found that previous testimony was wanting in detail related to annual and ongoing costs of proposals made by the parties’ previously filed testimony. Therefore, the Commission directed parties to provide summary information related to those previously file plans.

14. In substance, the Commission granted the motion to sever filed by the Colorado Energy Office. The intent was to bifurcate an issue from this proceeding, not to broaden or re-litigate this proceeding. Thus, the scope of supplemental testimony was limited to the extent necessary in light of the action taken and to obtain specific omitted information.

15. Parties were to provide summary cost information regarding previously filed proposals for on-site solar or community solar gardens acquisition. Any additional supplemental testimony was to be directly responsive to the on-site solar or community solar gardens proposals put forward by Public Service in its Supplemental Direct Testimony.

16. Decision No. C14-0219-I allowed for responses to Public Service’s proposal. However, the Decision does not contemplate that Supplemental Answer testimony would be a second opportunity to file answer testimony (*e.g.*, to raise new acquisition levels or other suggested policy changes unless they were responsive to supplemental direct testimony). In its Supplemental Direct Testimony, Public Service proposed the same acquisition and

incentive levels proposed in its direct case. Given that the Company's proposal did not change significantly from its original filing, the ALJ would have expected that parties would have provided limited Supplemental Answer testimony.

17. Finally, to be clear, this Decision does not rest on the relevancy of the testimony at issue. The testimony will be stricken because it is an impermissible attempt to effectively amend previously-filed testimony, rather than to submit testimony permitted within the scope of the Commission's decision.

III. ORDER

A. It Is Ordered That:

1. Response time to the 13A-0836E COSEIA Motion to Accept Late-Filed Response filed by the Colorado Solar Energy Industries Association on April 29, 2014 is waived and the request is granted.

2. The Motion of Public Service Company of Colorado to Strike Certain Pre-filed Testimony as Inadmissible filed on April 23, 2014 is granted consistent with the discussion above.

3. The following testimony shall be stricken and will not be admitted:

- (1) Hearing Exhibit No. 26, page 21 line 8 through, page 23 line 13 through page 25 line 10, page 25 line 10, page 26 line 18 through page 27 line 23, page 28 lines 1-16.
- (2) Hearing Exhibit No. 27, page 18 lines 4-13, page 19 line 8 through page 21 line 11, and page 22 line 11 through page 23 line 5.
- (3) Hearing Exhibit No. 203. page 9 lines 7-17, page 11 lines 1-15 and a conforming change on page 10 line 4 with the phrase "and his proposed minimum price."
- (4) Hearing Exhibit No. 303, page 8, line 6 through page 9, line 3.
- (5) Hearing Exhibit No. 804, p. 14, lines 6-23, page 17 lines 4-6, page 22, line 13 through page 26, line 12 ending with "proceeding.". Conforming changes shall be made to Hearing Exhibit 805.

- (6) Hearing Exhibit No. 805 at page 3, line 11 through page 4, line 4 at footnote 9, page 4 line 17 through page 5 line 1, page 8 line 16 (starting with "In fact") through page 9 line 5, page 17 line 18 through page 18 line 6.
- (7) Hearing Exhibit No. 901, page 10 line 1 through page 11 line 15, page 12 lines 4-18.
- (8) Hearing Exhibit No. 1005, page 8 lines 1-24.
- (9) Hearing Exhibit No. 1301, page 10 line 2 through page 16 line 5, page 13 line 17 through page 16 line 5, page 15, lines 17-19.

4. Parties whose testimony is stricken by this Decision shall file a new revision of affected testimony in compliance with this Decision no later than 5:00 p.m. on May 6, 2014. In accordance with the prior decision, no party should file with a new hearing exhibit number, but should merely indicate the revision number consistent with the naming conventions used in this proceeding.

5. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge