

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13AL-0958E

IN THE MATTER OF ADVICE LETTER NO. 1649 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT A NEW METHODOLOGY TO DERIVE PAYMENT RATES APPLICABLE TO QUALIFYING FACILITIES ("QFS") WITH A DESIGN CAPACITY BETWEEN 10 AND 100KW, TO BECOME EFFECTIVE SEPTEMBER 27, 2013.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
SCHEDULING PREHEARING
CONFERENCE ON REMAND**

Mailed Date: September 23, 2014

I. STATEMENT

1. On August 27, 2013, Public Service Company of Colorado (Public Service, PSCo, or Company), filed Advice Letter No. 1649 Electric (Advice Letter) to implement new methods to derive payment rates for Qualifying Facilities (QFs) with a design capacity between 10 and 100 kilowatts (kW) in Public Service's Electric Purchase - Small Power Production and Cogeneration Facility Policy Section of PSCo's P.U.C. No. 7 - Electric tariff. Proposed tariff sheets accompanied the Advice Letter.

2. On September 25, 2013, by Decision No. C13-1196, the Commission set this matter for hearing, which suspended the effective date of the proposed tariffs. In that Decision, the Commission also referred this Proceeding to an Administrative Law Judge (ALJ).

3. The procedural history is set out in decisions previously issued in this matter. The ALJ repeats the procedural history here as necessary to put this Interim Decision in context.

4. Trial Staff of the Commission (Staff) intervened as of right. The Vote Solar Initiative (Vote Solar) and Western Colorado Power Company, LLC (WCPC), were granted leave to intervene.

5. Staff, Vote Solar, and WCPC, collectively, are the Intervenors. Public Service and Intervenors, collectively, are the Parties. Each party is represented by legal counsel.

6. On January 16, 2014, Public Service filed its Advice Letter No. 1649 - Electric Amended (Amended Advice Letter) and proposed tariff sheets.¹ On January 17, 2014, by Decision No. R14-0071-I, the ALJ suspended, until June 15, 2014, the effective date of the tariff sheets appended to the Amended Advice Letter. On March 4, 2014, by Decision No. R14-0231-I, the ALJ further suspended the effective date of the tariff sheets that accompanied the Amended Advice Letter.

7. The Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3(a) (PURPA), and the Federal Energy Commission rules implementing PURPA require

electric utilities [to] purchase electric energy and capacity made available by [QFs] at a rate reflecting the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers.

Hearing Exhibit No. 17 at Exhibit GLC-01 at 2. Section 292.304(a)(2) of 18 *Code of Federal Regulations* provides that no electric utility is required to pay more than its avoided costs for purchases from QFs. *See also* Rule 4 *Code of Colorado Regulations* 723-3-3902(e) (same).²

¹ The Amended Advice Letter and the appended proposed tariff sheets superseded in their entirety the Advice Letter, the proposed tariff sheets, and the original effective date of the proposed tariff sheets that the Company filed on August 27, 2013.

² This Rule is found in the Rules Regulating Electric Utilities, Part 3 of 4 *Code of Colorado Regulations* 723.

8. The Company's avoided cost-based payment rate for small QFs (standard rate) is contained in tariff³ and has an avoided capacity payment rate component and an avoided energy payment rate component. At present, Public Service uses one Commission-approved method to calculate the avoided capacity payment rate component and another to calculate the avoided energy payment rate component.

9. In this Proceeding, Public Service seeks Commission approval of the new method that PSCo will use to determine each component of the tariffed standard rate. PSCo will use the Commission-approved methods to determine the standard rates for purchases from small QFs.

10. The Company proposed a method for calculating its avoided energy costs and a method for calculating its avoided capacity costs. To recognize the differences in the production profiles of various small QF technologies, Public Service proposed a method that allows differentiated standard rates in these generation categories: PV-Fixed; PV-Tracking; Wind; Hydroelectric; and Other.

11. Although they agreed with the concept of differentiated rates by technology category, Vote Solar and WCPC each proposed an alternative method for calculating PSCo's avoided energy costs and an alternative method for calculating PSCo's avoided capacity costs. In addition, they criticized the Company's proposed calculation methods.

12. On August 12, 2014, by Decision No. R14-0911 and as pertinent here, the ALJ addressed the method for calculating the capacity payment rate component of the standard rate and addressed the method for calculating the energy payment rate component of the standard

³ The PSCo small QF tariff at issue in this Proceeding also contains the terms and conditions under which the Company will purchase capacity and energy from small OFs.

rate.⁴ For the reasons stated in that Decision, the ALJ concluded that she could approve neither a method for calculating the capacity payment rate component nor a method for calculating the energy payment rate component. As a result, the ALJ ordered Public Service to file an application to obtain Commission approval of an avoided cost-based payment method.

13. Each party filed exceptions to Decision No. R14-0911.

14. On September 19, 2014, by Decision No. C14-1153, the Commission addressed the exceptions filed to Decision No. R14-0911 and stated:

we deny the exceptions filed by WCPC and grant, in part, and deny, in part, the exceptions filed by Public Service, Staff, and Vote Solar. We permanently suspend the tariff sheets filed under the Advice Letter; we approve, with modifications, the Company's proposed method to derive the capacity payment rate component of the standard rate; and, we approve with modifications all but one aspect of the Company's proposed method to derive the energy payment rate component of the standard rate. *We remand to the ALJ for further hearings and findings the consideration and approval of a method for establishing system-wide, forward-looking marginal energy costs, as discussed below.*

Decision No. C14-1153 at ¶ 13 (emphasis supplied).

15. The Commission discussed the energy payment rate component in Decision No. C14-1153 at ¶¶ 39-52. In that discussion, the Commission stated:

We agree with Public Service that the best approach for determining avoided energy costs is to consider how the Company economically dispatches the resources on its system. We therefore set aside the finding in the Recommended Decision that the approach for deriving the energy payment rate component of the standard rate must tie in a direct way to the method for deriving the capacity payment rate component. However, we agree with the ALJ and Public Service that annual updates to the QF tariff are the correct procedure for establishing the energy payment rate over time.

Because we conclude economic dispatch considerations are appropriate in determining Public Service's avoided energy costs, we do not approve either Vote Solar's or WCPC's proposed approaches because these approaches will result in energy payment rates that are too high, contrary to PURPA. Because we approve a portfolio dispatch approach for determining avoided energy costs, we also deny

⁴ The ALJ also addressed a number of other matters.

WCPC's request that Public Service be directed to include variable O&M [Operations and Maintenance] costs of \$10.43/MWh in the derivation of avoided energy costs.

* * *

We agree with the ALJ that Public Service has failed to show that Cost Calculator, using historic data inputs, will calculate avoided energy costs in the future. The record does not support the position argued by Public Service and Staff that a modeled dispatch analysis of recent historic data will produce avoided costs that are reasonably forward-looking. We do not reject use of historic data as part of a calculation of forward-looking costs under all circumstances; however, the record here does not include adjustments or other methods necessary to produce forward-looking costs. In addition, Public Service acknowledges in its response to exceptions that avoided energy costs are updated annually, because these costs can change dramatically over time, not only due to changes in fuel prices, but also due to changes in the Company's energy mix. Those very same reasons cause us to question whether a recent historic period examined in Cost Calculator will produce sufficiently forward-looking avoided energy costs absent any empirical analysis substantiating such a claim.

We agree with Vote Solar and WCPC that the Company's offer to use ProSym with forward-looking inputs should not be adopted absent further review. We deny WCPC's request that Public Service be prohibited from using Cost Calculator in any method used to calculate avoided energy and capacity costs in the future.

The record of how Public Service shall determine forward-looking system marginal energy costs fall[s] short of a complete method for deriving the energy payment rate. We recognize the parties have devoted considerable resources to this Proceeding with the expectation that the Commission would approve fully developed methods for the standard QF purchase rate. ... Specifically, *we remand to the ALJ for further hearings and findings [on] the narrow question of how Public Service shall determine forward-looking system marginal energy costs as the initial step in calculating the energy payment rate component.* We find that the remand of the case will be more expedited than a new application filing, particularly because this Proceeding has a developed evidentiary record that can be supplemented regarding this single unresolved issue[].

* * *

Due to the circumstances in this case, the Commission shall issue a separate final decision in this proceeding, which shall incorporate the substantive determinations made by this Decision on the methodology proposed by Public Service, after the remanded proceedings have concluded and the Commission has findings on the remaining narrow question of how Public Service shall determine forward-looking system marginal energy costs. Therefore, the final decision subject to applicable statutes, including §§ 40-6-114, C.R.S., and

40-6-115, C.R.S., that approves the methods for determining the capacity and energy rate components of this standard rate, will be issued after remand.

Decision No. C14-1153 at ¶¶ 44-45, 50-52, 54 (emphasis supplied). The Commission made a number of other rulings that may have an impact on the energy payment rate component (e.g., under the small QF tariff, a QF must sell 100 percent of its production to the Company; the small QF tariff will be available to certain QFs under 10 kW).

16. The remand requires additional hearings in this Proceeding. The ALJ will schedule an **October 8, 2014** prehearing conference to discuss this remanded Proceeding and to establish a procedural schedule. At the prehearing conference, the Parties must be prepared to discuss the matters identified below.

17. *At the prehearing conference*, each party must be prepared to present its understanding of the scope of the remand, which the Commission described as: “remand to the ALJ for further hearings and findings the consideration and approval of a method for establishing system-wide, forward-looking marginal energy costs, as discussed below” (*id.* at ¶ 13); “further hearings and findings [on] the narrow question of how Public Service shall determine forward-looking system marginal energy costs as the initial step in calculating the energy payment rate component” (Decision No. C14-1153 at ¶ 52); and the “issue of how Public Service shall establish forward-looking marginal energy costs is remanded to the [ALJ] for additional hearings and findings, consistent with the discussion above” (*id.* at Ordering Paragraph No. 7). For example (and without limitation), does any statement limit the ALJ’s ability to consider and a party’s ability to address one or more issues related to the method for calculation (establishing)

⁵ By listing these rulings, the ALJ expresses no opinion with respect to whether in fact these issues are pertinent to the remand.

the energy payment rate component? If one does, what is the basis for that conclusion and what are the specific limitations? If there are no limitations, what is the basis for that conclusion?

18. The remanded portion of this Proceeding is not subject to a statutory or rule requirement with respect to the date by which a decision on remand must or should issue. *At the prehearing conference*, the Parties must be prepared to discuss the date by which (or the timeframe within which) the recommended decision on remand should issue and the reasons for the proposal. This also will be factored into the considerations underlying any proposed procedural schedule.

19. Public Service made the filing that commenced this Proceeding and had the burden of proof with respect to its proposed methods. During the course of the Proceeding, Vote Solar and WCPC each proposed an alternative method for calculating the energy payment rate component; each had the burden of proof to the extent it sought to have its proposed method approved by the Commission. *At the prehearing conference*, the Parties must be prepared to discuss the impact (if any) on the procedural schedule (for example, the simultaneous filing of direct testimony containing proposed methods or the need for sur-rebuttal testimony and exhibits) should an intervenor wish to propose its own method for calculating the energy payment rate component.⁶

20. *At the prehearing conference*, the Parties must be prepared to discuss: (a) the date by which Public Service will file its direct testimony and exhibits; (b) the date by which each intervenor will file its answer testimony and exhibits; (c) the date by which Public Service will file its rebuttal testimony and exhibits; (d) the date by which each intervenor will file its

⁶ The procedural dates listed in this Interim Decision at ¶ 20 do not take into consideration this issue.

cross-answer testimony and exhibits;⁷ (e) the date by which each party will file its corrected testimony and exhibits; (f) the date by which each party will file its prehearing motions, including motions to strike and motions *in limine*;⁸ (g) whether a final prehearing conference is necessary and, if it is, the date or dates for that prehearing conference; (h) the date by which the Parties will file any stipulation or settlement reached;⁹ (i) the date(s) for the evidentiary hearing; (j) the date by which each party will file its post-hearing statement of position; and (k) the date by which each party will file its response to post-hearing statements of position filed by other parties.

21. *At the prehearing conference*, the Parties must be prepared to discuss discovery if the procedures and timeframes contained in Rule 4 CCR 723-1-1405¹⁰ are not sufficient. If the Parties wish to adopt for the remand the discovery-related procedures previously adopted in this Proceeding, the Parties must cite to the relevant portions of the pertinent Interim Decisions.

22. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate. If the Parties wish to adopt for the remand the confidentiality-related procedures and the extraordinary protections previously adopted in this Proceeding, the Parties must cite to the relevant portions of the pertinent Interim Decisions.

23. *At the prehearing conference*, a party may raise any additional issue.

⁷ Cross-answer testimony responds only to the answer testimony of another intervenor.

⁸ This date **must** be at least seven calendar days before the final prehearing conference or, if there is no final prehearing conference, **must** be at least ten calendar days before commencement of the hearing.

⁹ This date **must** be at least five business days before the first day of hearing.

¹⁰ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

24. **The Parties are advised and are on notice that** the ALJ will deem the failure to attend or to participate in the prehearing conference to be a waiver of objection to the rulings made, the procedural schedule (if any) established, and the hearing date(s) (if any) established at the prehearing conference.

25. The Parties must consult prior to the prehearing conference with respect to the matters to be discussed at the prehearing conference and are encouraged to present, if possible, a procedural schedule and hearing date(s) that are satisfactory to all Parties. The ALJ requests that the Company coordinate the discussions.

II. ORDER

A. It Is Ordered That:

1. A prehearing conference in this Proceeding is scheduled for the following date, time, and place:

DATE: October 8, 2014

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. Consistent with the discussion above, at the prehearing conference, the Parties shall be prepared to discuss the identified matters.

3. A party's failure to attend or to participate in the prehearing conference is deemed to be a waiver of objection to the rulings made during the prehearing conference, the procedural schedule established as a result of the prehearing conference, and the hearing date (if any) scheduled as a result of the prehearing conference.

4. Consistent with the discussion above, Public Service Company of Colorado and the Intervenor shall consult prior to the prehearing conference. Public Service Company of Colorado is requested to coordinate the discussions.

5. The Parties are held to the advisements contained in Interim Decisions issued in this Proceeding.

6. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

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

Doug Dean,
Director