

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
GRANTING MOTION, VACATING AND
RESCHEDULING PREHEARING CONFERENCE
ON REMAND, AND SHORTENING RESPONSE TIME**

Mailed Date: October 3, 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. 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.

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

5. 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.

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

7. On August 1, 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 rate.¹ 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.

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

¹ The ALJ also addressed a number of other matters.

9. 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). The Commission discussed the energy payment rate component in Decision No. C14-1153 at ¶¶ 39-52. The Commission also made a number of other rulings that may have an impact on the energy payment rate component.

10. The issues on remand require additional hearings in this Proceeding.

11. On September 23, 2014, by Decision No. R14-1172-I, the ALJ scheduled an October 8, 2014 prehearing conference to discuss this remanded Proceeding; to establish a procedural schedule; and to discuss the matters identified in that Interim Decision. *See generally* Decision No. R14-1172-I at ¶¶ 17-23 (issues for prehearing conference). The ALJ informed the Parties that she would “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.” *Id.* at ¶ 24; *see also* Ordering Paragraph No. 3 (same).

12. On September 30, 2014, Vote Solar filed (in one document) a Motion to Reschedule Prehearing Conference [Motion to Reschedule] and [to] Shorten or Waive Response Time [Motion to Shorten Response Time].

13. Given the nature of the Motion to Reschedule and the need for a ruling as soon as practicable, by electronic mail sent to counsel on September 30, 2014, the ALJ granted the Motion to Shorten Response Time and shortened, to **noon on October 2, 2014** the response time to the Motion to Reschedule. This Interim Decision memorializes that ruling.

14. As good cause to grant the Motion to Reschedule, Vote Solar states that its counsel is unavailable on October 8, 2014 due to a previously-scheduled commitment in another state and notes that the remanded proceeding does not have a date by which a decision must or should issue. Given these facts, Vote Solar suggests that the prehearing conference be rescheduled to either October 14 or October 15, 2014. Vote Solar represents that neither Staff nor WCPC opposes the Motion to Reschedule and that, as of the filing of the motion, Public Service had not indicated its position on the Motion to Reschedule.

15. In the September 30, 2014 electronic mail, the ALJ informed the Parties that she will

deem a party's failure to file a response [to the Motion to Reschedule] within the shortened response time to be that party's: **(a)** confession of the Motion to Reschedule Prehearing Conference; and **(b)** *agreement to reschedule the prehearing conference to Wednesday, 15 October 2014 at 10:00 a.m.*

(Bolding and italics in original.)

16. As of the date of the Interim Decision, no party had filed a response to the Motion to Reschedule. The failure to respond is confession of the Motion to Reschedule and agreement to holding the prehearing conference on October 15, 2014.

17. The Motion to Reschedule states good cause. Given the absence of response, the Motion to Reschedule is unopposed. Given the absence of response, granting the Motion to Reschedule will not prejudice any party. The ALJ will grant the Motion to Reschedule;

will vacate the October 8, 2014 prehearing conference; and will schedule the prehearing conference on remand for **October 15, 2014**

18. Except as modified by this Interim Decision, Decision No. R14-1172-I remains in effect and governs the October 15, 2014 prehearing conference.

II. ORDER

A. It Is Ordered That:

1. The Motion to Reschedule Prehearing Conference is granted.

2. The prehearing conference scheduled for October 8, 2014 in this Proceeding is vacated.

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

DATE: October 15, 2014

TIME: 10:00 a.m.

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

4. Consistent with the discussion above, at the prehearing conference, the Parties shall be prepared to discuss the matters identified in Decision No. R14-1172-I.

5. 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.

6. Consistent with the discussion above and Decision No. R14-1172-I, 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.

7. The Motion to Shorten or Waive Response Time is granted.

8. Response time to the Motion to Reschedule Prehearing Conference is shortened: response to the Motion to Reschedule Prehearing Conference must be filed not later than noon on October 2, 2014.

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

10. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge