

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 EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
IDENTIFYING HIGHLY CONFIDENTIAL
INFORMATION AND ORDERING EXTRAORDINARY
PROTECTIONS, ADDRESSING DISCOVERY,
SHORTENING RESPONSE TIME TO
MOTIONS PERTAINING TO DISCOVERY,
ADDRESSING INFORMATION CLAIMED TO BE
CONFIDENTIAL, ADDRESSING OTHER PROCEDURAL
MATTERS, AND CONTAINING ADVISEMENTS**

Mailed Date: October 27, 2014

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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). Proposed tariff sheets accompanied the Advice Letter. On January 16, 2014, Public Service filed its Advice Letter No. 1649 - Electric Amended (Amended Advice Letter). Appended to the Amended Advice Letter were proposed tariff sheets that contain an effective date of February 15, 2014 and that are otherwise identical to the proposed tariff sheets appended to the Advice Letter. On September 19, 2014, by Decision No. C14-1153, the Commission permanently suspended the effective date of the proposed tariff sheets.

2. The procedural history is set out in Decisions previously issued in this matter. The Administrative Law Judge (ALJ) repeats the procedural history here as necessary to put this Interim Decision in context.

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. Staff, Vote Solar, and WCPC, collectively, are the Intervenors.

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

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

6. On September 19, 2014, by Decision No. C14-1153, the Commission addressed the exceptions filed to Decision No. R14-0911 and “remand[ed] to the ALJ for further hearings and findings the consideration and approval of a method for establishing system-wide, forward-looking marginal energy costs” (Decision No. C14-1153 at ¶ 13) as further discussed in Decision No. C14-1153 at ¶¶ 39-52 and 54. In that Decision, the Commission made rulings on other issues that may have an impact on the energy payment rate component.

7. Pursuant to Decisions No. R14-1172-I² and No. R14-1215-I,³ the ALJ held a prehearing conference in this matter on October 15, 2014. All Parties were present, were represented, and participated. During the prehearing conference, the ALJ made a number of rulings; this Interim Decision memorializes those rulings.

A. Scope of the Proceeding.

8. The Commission described the scope of this remand 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” (Decision No. C14-1153 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 system marginal energy costs is remanded

¹ The ALJ addressed a number of other matters.

² This Interim Decision was issued in this Proceeding on September 23, 2014.

³ This Interim Decision was issued in this Proceeding on October 3, 2014.

to the [ALJ] for additional hearings and findings, consistent with the discussion above” (*id.* at Ordering Paragraph No. 7).

9. The Parties agreed that this Proceeding focuses on developing the method for determining PSCo’s avoided energy costs in a future period. They also agreed that Public Service would use the developed method to calculate, each year, the energy payment rate component of the standard rate to be in effect for the next calendar year.

10. The Parties did not agree on the method for determining the forward-looking (or projected) avoided energy costs. Based on its reading of Decision No. C14-1153, Public Service took the position that the method to calculate the projected avoided energy costs should use or include data from only one year as that was the period during which the calculated energy payment would be in effect. Staff tended to agree with PSCo. Based on its reading of Decision No. C14-1153, Vote Solar took the position that the method to calculate the projected avoided energy costs might use or include data from multiple years (for example, use an average of data from five years). WCPC agreed with Vote Solar. All Parties stated that, in Decision No. C14-1153, the Commission did not mandate the use of data from only one year and did not preclude the use of data from multiple years.

11. The ALJ agrees with the Parties that nothing in Decision No. C14-1153 precludes the use of data from multiple years to calculate the Company’s projected avoided energy costs. The Commission remanded issues pertaining to the method, including the number of years of data to be used or included in the method, to this Proceeding. To allow the Commission and the Parties the necessary flexibility to develop an appropriate method for determining the Company’s forward-looking (projected) avoided energy costs, the ALJ ruled that a party may propose a method that uses data from more than one year.

B. Date for Commission Decision.

12. This remand is not subject to a statutory or rule requirement with respect to the date by which a decision on remand must or should issue.

13. At the prehearing conference, Public Service stated its preference that there be a Commission-approved method for determining avoided energy costs in time for the Company to have its tariffs in effect not later than January 1, 2016.⁴ No intervenor opposed or commented on this preferred (target) date.

14. The ALJ finds that the Company's preferred date allows adequate time for this Proceeding and that the preferred date is reasonable. The procedural schedule adopted in this Interim Decision will permit the Commission to issue its decision in this Proceeding in time to accommodate the Company's preferred target date.

C. Hearing Dates and Procedural Schedule.

15. The Parties proposed, and the ALJ will adopt, the following procedural schedule in this Proceeding: (a) not later than **January 16, 2015**, Public Service will file its direct testimony and exhibits;⁵ (b) not later than **March 13, 2015**, each intervenor will file its answer testimony and exhibits;⁶ (c) not later than **April 10, 2015**, Public Service will file its rebuttal testimony and exhibits;⁷ (d) not later than **April 10, 2015**, each intervenor will file cross-answer testimony and exhibits;⁸ (e) not later than **April 24, 2015**, each intervenor who proposed a

⁴ This assumes a fully-litigated case. An intervening event (such as a settlement) could result in the Company's tariff being in effect in advance of January 1, 2016.

⁵ This direct testimony will contain PSCo's proposed method for determining avoided energy costs.

⁶ This answer testimony will contain: (a) the filing intervenor's proposed method for determining avoided energy costs (if the filing intervenor proposes a method); and (b) the filing intervenor's response to PSCo's proposed method.

⁷ This rebuttal testimony will contain: (a) PSCo's rebuttal to intervenor testimony concerning PSCo's proposed method; and (b) PSCo's response to each intervenor-proposed method.

⁸ This cross-answer testimony will contain the filing intervenor's response to the answer testimony (including a proposed method) of another intervenor.

method will file sur-rebuttal testimony and exhibits⁹ *and* rebuttal testimony and exhibits;¹⁰ (f) not later than **April 30, 2015**, each party will file prehearing motions (including dispositive motions, motions to strike, and motions *in limine*); (g) not later than **May 4, 2015**, each party will file corrected testimony and exhibits; (h) not later than **May 4, 2015**, the Parties will file any stipulation or settlement agreement reached; (i) the evidentiary hearing will be held on **May 21 and 22, 2015**; and (j) not later than **June 8, 2015**, each party will file its post-hearing statement of position, to which (absent further order) no response will be filed.

16. **The Parties are advised, and are on notice, that** absent a showing of unusual circumstances, the ALJ will not permit a party to ask its witness, as part of the witness's oral direct testimony, to make corrections to the witness's prefiled testimony or to an exhibit appended to the witness's prefiled testimony. The ALJ expects a sponsoring party to assure that, when offered as an exhibit at hearing, its witness's testimony and exhibits are as prefiled, including corrections filed pursuant to the procedural schedule, and that all necessary corrections have been prefiled in accordance with the procedural schedule.

With respect to witness testimony and exhibits that contain highly confidential information or information claimed to be confidential, or both: The Parties must comply with the requirements in Decision No. R13-1443-I¹¹ at ¶¶ 13-15.

⁹ This sur-rebuttal testimony will contain only the filing intervenor's rebuttal to PSCo's response to the filing intervenor's proposed method. An intervenor that did not propose a method cannot file sur-rebuttal testimony.

¹⁰ This rebuttal testimony will contain only the filing intervenor's rebuttal to another intervenor's response to the filing intervenor's proposed method. An intervenor that did not propose a method cannot file rebuttal testimony.

¹¹ This Interim Decision was issued on November 18, 2013 in this Proceeding.

D. Burden of Proof.

17. Each party that proposes a method for calculating the energy payment rate component will have the burden of proof and of persuasion with respect to its proposed method; and the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1500.¹²

18. A party that proposes a change to another party's proposed method or a condition to be placed on the relief granted by the Commission has the same burden of persuasion and of proof -- *i.e.*, preponderance of the evidence -- with respect to its advocated change or condition.

E. Discovery.

19. Unless modified by this Interim Decision, Rule 4 CCR 723-1-1405 will govern discovery in this Proceeding. With respect to discovery, the Parties will comply with the requirements in Decision No. R13-1443-I at ¶¶ 17-19.

20. Motions pertaining to discovery may be filed at any time. Absent further order, written responses to motions pertaining to discovery will be filed. The ALJ continues the shortened **five business day** response time ordered in Decision No. R13-1442-I at ¶ 20 and Ordering Paragraph No. 9. If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion and response are filed.

F. Confidential and Highly Confidential Information.

21. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential. Rule 4 CCR 723-1-1101(b) will govern the process by which information is determined to be highly confidential.

¹² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

22. **The Parties are advised, and are on notice, that** information is not highly confidential unless, in this Proceeding, there is a decision that finds the information to be highly confidential and that establishes the extraordinary protection to be afforded to that information. A party that claims that information is highly confidential must file an appropriate motion in this Proceeding to obtain a ruling on the status of the information and on the extraordinary protection to be afforded to the information if it is found to be highly confidential.¹³

23. **The Parties are advised, and are on notice, that** Staff has access to all highly confidential information and to all information claimed to be confidential. Rule 4 CCR 723-1-1100(h). A party may not refuse to provide, and may not delay providing, information to Staff based on a claim that the information is highly confidential or confidential.

24. In Decision No. R14-0767-I,¹⁴ *inter alia*, the ALJ found that the inputs into the Company's Cost Calculator model are highly confidential data and required extraordinary protections. In that Interim Decision, the ALJ: (a) ruled that "in order to participate fully and meaningfully in this Proceeding, each intervenor must have access to the highly confidential Cost Calculator information" (Decision No. R14-0767-I at ¶ 23); and (b) limited access to the highly confidential data to "counsel in this Proceeding who sign the Nondisclosure Agreement Relating to High Confidential Information -- Legal Counsel in this Proceeding ... [and] to subject matter experts in this Proceeding who sign the Nondisclosure Agreement Relating to Highly Confidential Information -- Subject Matter Expert for Party ... in this Proceeding" (*id.* at ¶ 24).¹⁵

¹³ This does not apply to the highly confidential information discussed *infra*.

¹⁴ This Interim Decision was issued on July 8, 2014 in this Proceeding.

¹⁵ The referenced nondisclosure agreements are appended to Decision No. R14-0767-I.

25. At the prehearing conference, Public Service: (a) represented that in this Proceeding it will use types of input data (*i.e.*, inputs into an unspecified model) that are similar to the types of highly confidential Cost Calculator input data; (b) requested a determination that the data used as inputs into the new-but-unspecified model are highly confidential; and (c) requested for those data the same extraordinary protections as those afforded to the highly confidential Cost Calculator input data. Intervenor generally supported the Company's request with the proviso that, should an intervenor believe that some or all of the data are not highly confidential, the intervenor may file an appropriate motion to challenge the designation as highly confidential information and to have the data reviewed. Public Service agreed to that proviso.

26. Given the Parties' agreement, the ALJ extended to the input data used in the unspecified model the extraordinary protections afforded to the highly confidential Cost Calculator input data. The ALJ conditioned her ruling on PSCo's filing a statement describing the new input data and explaining how the new input data are similar to the highly confidential Cost Calculator input data.

27. On October 22, 2014, Public Service filed its Statement in Support of Extraordinary Treatment. In that filing at 3, the Company describes the subject data thusly:

On Remand, Public Service will propose the use of new power market simulation software to compute forward-looking system marginal energy costs, instead of the Cost Calculator. Specifically, Public Service will propose to use new software to perform simulations of the unit commitment and economic dispatch of the Public Service supply system including co-optimization with ancillary services. The unit commitment and economic dispatch logic of the new model commits and dispatches resources to balance the system energy demand and meet the system reserve requirements while enforcing all generating resource and operation constraints. [These] new model inputs are similar to the Cost Calculator inputs and will include variables such as the Public Service load forecast, generating unit characteristics and operating parameters, committed purchases and sales, fuel commodity prices and electric market prices. Thus, as with the Cost Calculator inputs, the data would provide a potential supplier or

wholesale competitor of Public Service with significant business intelligence, in a highly granular form, of the costs Public Service incurs for generating power under numerous system conditions.

28. The ALJ finds that this description is sufficient; finds that the described input data are highly confidential; and will order that the described input data receive the same extraordinary protections as those afforded the highly confidential Cost Calculator input data. Those afforded access to the highly confidential data must comply with the ordered protections. Rule 4 CCR 723-1-1100(i).

G. Hearing Exhibits.

29. The Parties will comply with Decision No. R13-1443-I at ¶¶ 25-28 with respect to the treatment and marking of hearing exhibits.

II. ORDER

A. It Is Ordered That:

1. The evidentiary hearing in this matter is scheduled for the following dates, at the following times, and in the following location:

DATES: May 21 and 22, 2015

TIME: 9:00 a.m. each day

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

2. Consistent with the discussion above, the following procedural schedule is adopted: (a) not later than January 16, 2015, Public Service Company of Colorado (Public Service) shall file its direct testimony and exhibits; (b) not later than March 13, 2015, each intervenor shall file its answer testimony and exhibits; (c) not later than April 10, 2015, Public Service shall file its rebuttal testimony and exhibits; (d) not later than April 10, 2015, each

intervenor shall file cross-answer testimony and exhibits; (e) notlater than April 24, 2015, each intervenor who proposed a method shall file sur-rebuttal testimony and exhibits and shall file rebuttal testimony and exhibits; (f) not later than April 30, 2015, each party shall file prehearing motions; (g) not later than May 4, 2015, each party shall file corrected testimony and exhibits; (h) not later than May 4, 2015, the Parties shall file any stipulation or settlement agreement reached; and (i) not later than June 8, 2015, each party shall file its post-hearing statement of position, to which (absent further order) no response shall be filed.

3. Parties shall comply with Decision No. R13-1443-I at ¶¶ 13-15 with respect to the identification of confidential information and of highly confidential information contained in testimony and exhibits and other documents filed in this Proceeding.

4. Parties shall comply with Decision No. R13-1443-I at ¶¶ 25-28 with respect to the treatment and marking of hearing exhibits in this Proceeding.

5. Except as modified by this Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 and Decision No. R13-1443-I at ¶¶ 17-19 govern discovery in this Proceeding.

6. Decision No. R13-1443-I at ¶ 20 governs motions pertaining to discovery in this Proceeding.

7. The response time to a motion pertaining to discovery is shortened to five business days from the date of service of the motion.

8. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 govern treatment of information claimed to be confidential in this Proceeding.

9. Rule 4 *Code of Colorado Regulations* 723-1-1101(b) governs motions for extraordinary protection of information claimed to be highly confidential in this Proceeding.

10. Consistent with the discussion above, the model input data described above are designated as highly confidential information and are afforded the same extraordinary protections as those afforded in Decision No. R14-0767-I to the highly confidential Cost Calculator model inputs.

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

12. This Interim Decision is effective immediately.

(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

MANA L. JENNINGS-FADER

Administrative Law Judge