

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0369E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2020-2021 RENEWABLE ENERGY COMPLIANCE
PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING INTERVENTIONS AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: August 22, 2019

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I. STATEMENT

A. Summary.

1. This Decision notes the interventions of right, grants motions to permissively intervene, schedules a prehearing conference, orders the parties to confer prior to the prehearing conference, vacates the deadline for interveners to file testimony set by the Commission, finds

that additional time is necessary for a final Commission decision to issue, and extends the deadline by 90 days.

B. Background.

2. On June 28, 2019, Public Service Company of Colorado (the Company) commenced this proceeding by filing a Verified Application seeking Commission approval of its 2020-2021 Renewable Energy Compliance Plan (Application), with testimony and exhibits.

3. On July 1, 2019, the Commission gave notice of the Application, and established an intervention period and deadline for intervening parties to file testimony. *See* Notice of Application Filed.

4. The Company's 2020-2021 Renewable Energy Compliance Plan "proposes a measured increase in renewable energy programs and related customer choice market activities." Application at 2. The Plan seeks to make "some minor modifications to [the Company's] programs and offerings in order to 'right size' them to customer demand," including "the expansion of certain offerings, small reductions in other offerings, or transfers of capacity between options" as well as "some incremental changes to [its] administrative policies and practices." *Id.* Specifically, it proposes "certain modifications to its Solar*Rewards program and Solar*Rewards Community program, but is not proposing changes to the Company's Windsource, Recycled Energy, or Renewable*Connect programs beyond what was approved by Decision No. C16-1075 in Proceeding No. 16A-0139E." *Id.* at n.1.

5. During the Commission's weekly meeting held August 7, 2019, the Commission deemed the Application complete, and referred the matter to an administrative law judge (ALJ) for disposition.

C. Interventions of Right.

6. On July 30, 2019, the Office of Consumer Counsel (the OCC) and the Colorado Energy Office (the CEO) intervened of right, and on August 5, 2019, Colorado Public Utilities Commission Trial Staff (Trial Staff) also intervened of right. The OCC and Trial Staff both request a hearing on the Application pursuant to Rule 1401(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The OCC identifies many issues that it may address, including: the proposed acquisition levels, incentives, and program changes for the Solar*Rewards and Solar*Rewards Community programs; the Company's proposals relating to the Windsource, Recycled Energy, and Renewable*Connect programs; and the request to develop a total of eight MW of Company-offered CSGs over 2020 and 2021 to be offered exclusively to eligible low-income customers, via a Project Labor Agreement (PLA). The OCC also seeks to explore the impact, if any, of the legislation passed in 2019, and how this proceeding may impact Proceeding No. 19R-0096E, particularly as it relates to the Renewable Energy Standard (RES).

8. The CEO states that it may address the renewable distributed generation programming and low-income customer programming. The CEO submits that the Company's proposed Plan impacts customer investment decisions in RES-eligible technologies that CEO is statutorily charged to promote. The CEO further seeks to support its existing low-income rooftop program, which provides income-qualified clients with solar energy.

9. Trial Staff intends to raise and address the following (among others): the Company's proposal to reduce the existing two percent Renewable Energy Standard Adjustment (RESA) rider to one percent in January 2021; whether the proposed Retail Distributive Generation (RDG) offering will result in RESA deficit spending; whether the Company's

modeling assumptions and methods for determining calculated retail rate impact are consistent with its most recent Energy Resource Plan (approved in Proceeding No. 16A-0396E); and whether the proposed low-income programs are just, reasonable, and provided at the lowest possible cost to ratepayers.

10. The OCC, the CEO, and Trial Staff timely intervened of right and are each a party to this Proceeding.

D. Permissive Interventions.

11. Between July 9, 2019, and July 31, 2019, the following entities filed motions to permissively intervene: (1) the Colorado Solar and Storage Association (Colorado Solar) (formerly known as the Colorado Solar Energy Industries Association or COSEIA); (2) the Solar Energy Industries Association (Solar Energy); (3) Grid Alternatives Colorado, Inc. (GRID); (4) the City of Boulder (Boulder); (5) the City and County of Denver (Denver); (6) Vote Solar; (7) Energy Outreach Colorado (Energy Outreach); (8) the Rocky Mountain Environmental Labor Coalition (Rocky Mountain Labor); (9) the Colorado Building and Construction Trades Council, AFL-CIO (Colorado Trades Council); (10) Western Resource Advocates (WRA); (11) the Colorado Energy Consumers; (12) Climax Molybdenum Company (Climax); and (13) SunShare, LLC (SunShare).

12. As stated in its Joint Motion to Intervene,¹ Colorado Solar is a nonprofit trade association serving energy professionals, solar companies, energy storage providers and renewable energy users in Colorado with membership comprised of approximately 90 solar-related businesses, most of which operate in the Company's service territory. Solar Energy states that it is a national trade association for the solar energy industry, representing

¹ Colorado Solar and Solar Energy filed a Joint Motion to Intervene.

solar companies doing business in Colorado within the Company's service territory. Both entities argue that this proceeding may substantially affect the pecuniary or tangible interests of their members as they have participated in the Company's Plan programs for many years. Specifically, they assert that the amount of capacity offered through the Plan programs directly impacts the size and scope of their members' business presence in Colorado and that the incentive levels have a direct impact on the cost effectiveness of their members' products. They further assert that no other party can represent the specific business interests of their members. Colorado Solar and Solar Energy promise to contribute positively to this proceeding and aid the Commission in rendering a final decision by participating jointly through common counsel and offering a shared witness or witnesses.

13. GRID's Motion for Leave to Intervene states that is a non-profit solar energy installer working in Colorado since 2012 to implement solar power and energy efficiency for low-income families. GRID asserts a substantial pecuniary and tangible interests in this Proceeding because it uses RES funds allocated in Renewable Energy Plan proceedings to develop rooftop and solar energy generation. GRID expresses interest in many issues, including: structuring solar program acquisition and incentive levels to encourage access for low-income rate payers; and ensuring that RESA expenditures benefit low-income rate payers in proportion to their level of contribution to the RESA account. GRID further asserts that its interests will not be adequately represented by any other party as it is uniquely positioned to represent its interests.

14. Boulder's Petition for Leave to Intervene states that is a legally and regularly created, established, organized, and existing home rule city and municipal corporation. Boulder alleges it has a tangible and pecuniary interest in this proceeding that is not adequately represented by any other party because it is one of the Company's large customers and it receives

service under multiple schedules related to the proceeding. Boulder also asserts a pecuniary interest because it and its residents contribute to the RESA account, which is used to fund the Company's RE programs. Boulder states that it may address the following issues: the proposed capacity allocation and incentive levels for the Solar*Rewards and Solar*Rewards Community programs; the application of the cost of carbon, which affects Boulder's annual emissions reporting; and the retail rate impact, which affects Boulder's monthly utility bills.

15. Per its Motion to Intervene, Denver is a legally and regularly created, established, organized, and existing home rule city and county, municipal corporation, and political subdivision. Denver states that it has a tangible and pecuniary interest in this proceeding that is not adequately represented by any other party because if approved, the Company's Application will directly affect the accessibility and economic implications of Denver's participation in the Company's RE programs and Denver's efforts to satisfy its RE goals. Denver further states that it seeks to explore a number of issues in the Application, including: the adequacy of proposed program capacity acquisitions and incentives; and the Plan's failure to address certain directives from the 2019 legislative session that may impact the nature, scale, and cost of investments preceding the development and implementation of the 2022-2025 RE Plan. Denver asserts that its unique interest may not be adequately represented by other parties.

16. Vote Solar's Motion to Intervene states that it is a non-profit organization that seeks to promote the development of solar power and that it has more than 5,000 members in Colorado, some of whom are Public Service customers. Vote Solar asserts a substantial and tangible interest in this proceeding that is not adequately represented by any other party. Because the 2020-2021 RE Plan will set the capacity acquisition levels and incentives for the Solar*Rewards and Solar*Rewards Community programs, Vote Solar states that this proceeding

will directly impact Vote Solar's work promoting distributed solar. Vote Solar further states it has a substantial and tangible interest in ensuring the accurate calculation of the costs and benefits of distributed solar in the Plan, as development of solar power could be unnecessarily inhibited by limitations on the size, pace, and compensation rate for distributed solar resources. Additionally, Vote Solar states that the Company's proposal to maintain, rather than expand, the capacity levels for most of the Company's low-income programs will have a substantial and tangible impact on Vote Solar's work to expand access to solar for low-income customers through its Access and Equity program.

17. Energy Outreach Colorado's Motion to Intervene states that it is a nonprofit corporation whose mission is to ensure that low-income Colorado households meet their home energy needs. Energy Outreach Colorado states it has a tangible and pecuniary interest in ensuring that the Plan does not result in rate increases and uncertainty in rates that unjustly burden low-income customers, thereby ensuring that its services are not required for a growing number of Colorado citizens. Energy Outreach Colorado further states that it has a tangible and pecuniary interest in the 8 MW of low-income Community Solar Garden (CSG) capacity, which it plans to jointly develop with Public Service. Energy Outreach Colorado asserts that no other party represents its interests with respect to its statutorily-mandated administration of energy assistance contributions.

18. According to the Joint Motion to Intervene, Rocky Mountain Labor is a Colorado nonprofit that seeks to ensure a balance between rapid popular growth, labor interests and the preservation of the natural environment in the Rocky Mountain region.² Colorado Trade Council states that it is comprised of 23 Craft Local Unions who represent 13 national and international

² Rocky Mountain Labor and Colorado Trade Council filed a Joint Motion to Intervene.

Unions, which include many individuals who are trained to work on RE construction projects. Both entities assert a substantial and direct interest in this proceeding that would not otherwise be adequately represented in this proceeding. They assert an interest in the Company's proposal to utilize a PLA for the 8 MW for CSGs for low-income customers, and the Company's intention to enter into discussions with potential partners such as themselves, per the Direct Testimony of Jack Ihle (filed with the Company's Application).

19. WRA's Petition for Leave to Intervene asserts that it is a nonprofit conservation organization dedicated to protecting the land, air and water of the West. WRA asserts that the Commission's decision in this proceeding will directly impact its tangible interest in environmental protection, and no other party will adequately represent its interests. Specifically, WRA states that it will seek to ensure the Company's RE program offerings continue to support acquisition of distributed and non-distributed RE throughout the Company's system, thereby advancing WRA's interest in protecting Colorado's air and water quality. WRA also has specific interests in administrative aspects of the proposed RE programs, including: use of an RFP process to acquire distributed resources; and the interconnection of distributed generation resources outside of a particular Company incentive program.

20. Colorado Energy Consumers' Motion to Permissively Intervene asserts that it is an unincorporated association of corporations in Colorado. It further states that all of its members operate facilities within the Company's service territory and purchase electricity and related energy services from Public Service. Colorado Energy Consumers asserts that this proceeding may substantially affect the pecuniary or tangible interests of its members, and those interests cannot be adequately represented by any other party. Specifically, Colorado Energy Consumers states that it has a vested interest in the expenditure of RESA dollars in light of its

contributions to the RESA, and its members have a pecuniary and tangible interest in ensuring the availability of programmatic offerings to large commercial and industrial customers. Colorado Energy Consumers indicates that it may address, among other issues in the Application, how its contribution to the RESA are dedicated and whether there are alternative and preferable uses for the funds.

21. Climax's Motion to Intervene states that it operates molybdenum mines and related facilities near Leadville and Empire, Colorado. Climax states that is one Public Service's largest customers. Climax states that because elements of the proposed Plan affect the options and costs for Climax's electric service, the Commission's decision in this proceeding will substantially affect Climax's tangible and pecuniary interests. Climax further states that as one of the largest customers, with unique facilities, its interests will not be adequately represented unless intervention is permitted.

22. SunShare's Motion to Intervene states that it is a developer, owner, and operator of CSGs in Colorado. SunShare asserts that the Application and outcome of this proceeding may substantially affect its pecuniary or tangible interests. Specifically, SunShare states that the overall structure, incentive levels, available capacity, methods of project allocation, and other parameters of the Solar*Rewards Community program that will be established by the Commission in this matter significantly impact the financial viability of SunShare's potential CSG projects and its ability to offer competitive CSG subscriptions to its current and potential customers. SunShare further asserts that in light of its business model, leadership position in the CSG market, broad solar subscriber interests, and direct operational experiences, its interests cannot be adequately represented by any other party.

23. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 provides, in pertinent part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. ...

24. No objection was filed to any of the requests for permissive intervention.

25. Based on the reasons stated in the interventions, and the above legal standard, the ALJ finds good cause to allow each of the permissive interventions and will grant the motions to permissively intervene.

E. Prehearing Conference.

26. In anticipation of the hearing on the Application, the ALJ is setting a prehearing conference in accordance with Rule 1409(a), 4 CCR 723-1.

27. During the prehearing conference, the ALJ will establish a procedural schedule to file and exchange testimony, exhibits and witness lists, and will schedule an evidentiary hearing in this matter. The ALJ is also entering orders to facilitate efficiency at the prehearing conference.

28. The ALJ may address any other relevant issue during the prehearing conference.

29. The parties are on notice that the ALJ will deem their failure to appear at the prehearing conference as a waiver of any objection to any ruling made during the prehearing conference.

F. Deadline for Final Commission Decision.

30. Because the Company filed testimony and exhibits with its Application, a final Commission decision must issue within 120 days of the date the Commission deemed the Application complete under § 40-6-109.5(1), C.R.S. Given the large number of parties to this proceeding, and the significant and numerous issues the parties intend to address, the ALJ finds that additional time is necessary for a final decision to issue. Consequently, the ALJ extends the referenced deadline by 90 days, as permitted by § 40-6-109.5(1), C.R.S.

II. ORDER**A. It Is Ordered That:**

1. The Colorado Office of Consumer Counsel, the Colorado Energy Office, and Colorado Public Utilities Commission Trial Staff timely intervened of right and are each a party to this proceeding.

2. The requests for permissive intervention filed by the Colorado Solar and Storage Association, the Solar Energy Industries Association, Grid Alternatives Colorado, Inc., the City of Boulder, the City and County of Denver, Vote Solar, Energy Outreach Colorado, the Rocky Mountain Environmental Labor Coalition, the Colorado Building and Construction Trades Council, Western Resource Advocates, Colorado Energy Consumers, Climax Molybdenum Company, and SunShare, LLC., are granted. These entities are each a party to this proceeding.

3. A prehearing conference in this proceeding is scheduled as follows:

DATE: September 4, 2019
TIME: 2:00 p.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

4. The deadline for intervening parties to file testimony in the Commission's Notice of Application Filed is vacated.

5. Before the prehearing conference, the parties must confer about a proposed consensus procedural schedule meeting the following minimum criteria:

- The hearing must be complete at least 94 days prior to the statutory deadline for a Commission decision to issue under § 40-6-109.5, C.R.S. (2018), unless Public Service waives the statutory deadline.
- Rebuttal testimony must be filed and exchanged at least three weeks prior to the first day of hearing.
- Settlement Agreements must be filed at least two weeks prior to the first day of hearing.
- The parties must exchange and file final witness lists, exhibits, and exhibit lists at least one week prior to the first day of hearing.

6. The parties will present their proposed consensus procedural schedule at the prehearing conference.

7. Consistent with the discussion above, the deadline for a final Commission decision to issue is extended by 90 days, per § 40-6-109.5(1), C.R.S.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director