

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 MOTION TO EXTEND
2017-19 RENEWABLE ENERGY COMPLIANCE PLAN**

Mailed Date: October 1, 2019

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I. STATEMENT

A. Summary

1. This Decision grants Public Service Company of Colorado’s (Public Service or the Company) Verified Motion to Extend 2017-19 Renewable Energy Compliance Plan through

First Quarter 2020 and Motion for Waiver of Rule 3657 (Verified Motion). Only those relevant portions of the procedural history are included.

B. Background and Arguments.

2. Public Service initiated this proceeding by filing the above-captioned Application on June 28, 2019. Simultaneous with the Application, the Company filed a Verified Motion seeking the Commission to extend its 2017-19 Renewable Energy Compliance Plan (2017-19 Plan) approved by Decision No. C16-1075 (Proceeding No. 16A-0139E) issued November 23, 2016, for one calendar quarter starting on January 1, 2020. The Verified Motion also seeks the Commission to waive the requirement in Rule 3657(a) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, that qualifying retail utilities submit their renewable energy plans on a four-year cycle with their electric resource plan filings.

3. Except for Colorado Solar and Storage Association and the Solar Energy Industries Association (collectively, the Associations), no parties filed a response to the Verified Motion.

4. Since Public Service filed its Verified Motion, the Administrative Law Judge (ALJ) held a prehearing conference, established a procedural schedule, and set the matter for an evidentiary hearing for December 10, 11, and 12, 2019. Decision No. R19-0749-I. The ALJ notes that it was difficult to establish a procedural schedule to accommodate the hearing dates, but that the parties worked cooperatively together to schedule the matter for a hearing as soon as possible.

5. During the prehearing conference, Public Service requested that a final Commission decision issue by March 31, 2020 (the end of the first quarter of 2020). *See*

Decision No. R19-0749-I, ¶ 7. In addition, the Associations raised Public Service's Verified Motion and their Joint Response to the Verified Motion (Joint Response) during the prehearing conference. *Id.* at ¶ 8. Given that the response time to the Verified Motion expired before any of the interveners became parties to this proceeding, the ALJ polled the parties to determine whether anyone wished to file a response to the Verified Motion. None did. *Id.*

1. Verified Motion

6. The Verified Motion explains in detail how it proposes to treat each program under its 2017-19 Plan in the first quarter of 2020 should the Verified Motion be granted. Verified Motion at 3-7. The ALJ will not repeat that here. Public Service explains that because most of the activities for the 2017-19 Plan programs take place on a monthly or quarterly basis, extending the Plan for an entire quarter is the most straight-forward approach. *Id.* at 3.

7. As grounds for its Verified Motion, Public Service asserts that it is unlikely that the Commission will issue a final decision in this matter before the end of 2019, when its 2017-19 Plan expires. As a result, if the 2017-19 Plan is not extended through the first quarter of 2020, Public Service will not have an effective renewable energy plan in place at all for the first quarter of 2020. Verified Motion at 2-3. Public Service argues that extending the 2017-19 Plan through the first quarter of 2020: maximizes continuity for customers and interested parties; provides regulatory and administrative certainty; and ensures that there is no period during which the Company does not have an effective plan. *Id.*

8. Public Service argues that the Commission has previously granted similar requests, and specifically points to Commission Decision No. C14-1505 in Proceeding No. 13A-0836E, which extended the 2014 renewable energy plan for an additional six months beyond its expiration date. *Id.* at 3-4.

9. Public Service filed the Application in this proceeding in June 2019 because the 2019 legislative session involved many proposed and enacted bills that could impact this proceeding. *Id.* at 7.

10. While Public Service offers to agree to an expedited procedural schedule to move this matter toward a final decision as quickly as possible, it also acknowledges that this may be difficult due to other pending matters. *Id.* at 2. If the extension is not granted, the Company alternatively requests that the Application be expedited to allow for a final Commission decision by January 1, 2020. *Id.* at 11.

11. Public Service also seeks a waiver of Rule 3657's requirement that it submit a renewable energy plan on a four-year cycle with its electric resource plan filing. *Id.* at 8; *see* 4 CCR 723-3. Public Service does not seek to waive any other requirement in Rule 3657. *Id.* at 8-9. In support, the Company argues that Rule 1003 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 allows the Commission to waive rules for good cause shown, and that the Commission has granted similar waivers in the past. *Id.* at 8-10, *citing* Decision No. C12-0066 in Proceeding No. 11A-870E.

12. Public Service seeks a partial waiver of Rule 3657 because the Application in this proceeding is not filed with an electric resource plan as the Rule contemplates, and because both the 2017-19 Plan and the plan proposed in the Application cover less than four years. *Id.* at 9. The Company argues that its 2020-21 Plan is designed to largely continue existing programs while the Commission addresses new statutory requirements and ongoing relevant rulemaking. *Id.* Public Service also states that while it is clear the Commission wants to sync the Company's electric resource plan proceeding with its renewable energy compliance plan (this proceeding), the Commission has not determined when the electric resource plan should be filed. *Id.* In any

event, the Company argues that its 2020-21 Plan is intended to be a two-year bridge plan so that the electric resource plan proceeding and its next renewable energy compliance plan proceeding may be synced. *Id.*

2. Colorado Solar's and Solar Energy's Response.

13. The Associations' Joint Response focuses on the need for a final Commission decision by the end of 2019. Joint Response at 1-5. The Associations request that this matter proceed on an expedited schedule allowing for a final Commission decision 180 days from July 1, 2019, or alternatively, that the Commission not use the full 250 days allowed under § 40-9-106.5, C.R.S., to issue a final decision. Joint Motion at 5.

14. The Joint Response appears to object to extending the 2017-19 Plan to the first quarter of 2020 because it disagrees with certain aspects of the plan such as features allowing for Requests for Proposals (RFPs) and solicitations. *Id.* at 5-6. The Associations argue that if Public Service seeks to issue RFPs or solicitations for plan programs in the second quarter of 2020, such a request should be denied. *Id.* at 6.

15. The Associations also argue issues relating to a filing in another proceeding seeking to sever Public Service's Certified Renewable Energy Percentage from its Phase I Rate Case (Proceeding No. 19AL-0268E). *Id.* at 6. The Associations point to Public Service's response to that filing stating that it prefers to provide supplemental direct testimony in this proceeding rather than severing the issue from its Phase I Rate Case. *Id.* The Associations argue that the scope of this proceeding should not be expanded to address the Company's Certified Renewable Energy Percentage. *Id.* at 6. Nowhere in Public Service's Verified Motion does this issue appear; in fact, the Verified Motion lacks so much as a reference to the Certified Renewable Energy Percentage.

16. The Joint Response is silent as to the Verified Motion's request for a partial waiver of Rule 3657.

C. Findings and Conclusions.

17. The Associations' arguments do not address the basis for Public Service's Verified Motion, including the issues that the Company seeks to resolve by extending the 2017-19 Plan into the first quarter of 2020. Instead, the Associations raise issues unrelated to the Verified Motion, focus on the merits of this proceeding, and push for an expedited decision. This is neither helpful nor persuasive.

18. While the ALJ appreciates the need for a timely final Commission decision, it is simply not possible for a final Commission decision to issue before the end of 2019. The Application was scheduled for the earliest possible hearing date that would allow the parties to conduct discovery, submit written testimony, and fully develop their legal positions on the merits of the Application. *See* Decision No. R19-0749-I. The schedule allows for a decision to issue as soon as possible while also ensuring the parties receive due process.

19. Under § 40-6.109.5(1), C.R.S., a final Commission decision is not due to issue until April 13, 2020. *See* Decision No. R19-0694-I (and related Errata Notice). This means that it is likely that Public Service will not have an effective renewable energy compliance plan through the first quarter of 2020, unless its Verified Motion is granted.

20. With a few exceptions, extending the 2017-19 Plan as proposed maintains the status quo until the Commission issues its final decision in this proceeding. The ALJ finds that doing so provides customers and interested parties continuity in programming, and serves administrative and regulatory certainty. The ALJ finds it is in the public interest to extend the

2017-19 Plan as proposed in Public Service's Verified Motion. The ALJ concludes that Public Service has established good cause to extend the 2017-19 Plan as proposed.

21. In addition, nothing in Public Service's Verified Motion indicates that it seeks a decision allowing it issue RFPs or solicitations in the second quarter of 2020. As a result, the ALJ finds that it is unnecessary to address the Associations' request that Public Service be prohibited from issuing RFPs or solicitations in the second quarter of 2020.

22. Public Service's request for a partial waiver of Rule 3657(a) is unopposed. Indeed, the Associations do not address it and no other party responded. This is notable given that the parties had an opportunity to indicate that they want to respond to the Verified Motion during the prehearing conference.

23. For the reasons Public Service outlines in its Verified Motion, the ALJ finds that circumstances here do not align well with Rule 3657(a)'s requirement that its renewable energy plan be filed on a four-year cycle with its electric resource plan filing. The ALJ finds that granting the requested waiver serves to more effectively implement policy on an individual basis, consistent with Rule 1003, 4 CCR 723-1. The ALJ concludes that Public Service has established good cause for a partial waiver of Rule 3657(a), 4 CCR 723-3.

II. CONCLUSION

24. Consistent with the above discussion, the ALJ concludes that Public Service has met its requisite burdens for the relief it seeks, and will grant the Company's Verified Motion.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Public Service Company of Colorado's Verified Motion to Extend 2017-19 Renewable Energy Compliance Plan through First Quarter 2020 and Motion for Waiver of Rule 3657 filed June 28, 2019, is granted.
2. 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