

Decision No. R19-0810-I

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
DISMISSING SUNSHARE AS A PARTY**

Mailed Date: October 3, 2019

I. STATEMENT

1. On August 22, 2019, the Administrative Law Judge (ALJ) granted SunShare, LLC's (SunShare) "Motion to Intervene . . . and Entry of Appearance" (Motion to Intervene), under Rule 1401(c), 4 *Code of Colorado Regulations* 723-1. Decision No. R19-0694-I, Ordering ¶ 2. This allowed SunShare to participate in this proceeding as a permissive intervener. Decision No. R19-0694-I, Ordering ¶ 2. On that same date, the ALJ scheduled a prehearing conference for September 4, 2019 at 2:00 p.m. to be held at a Commission Hearing Room. *Id.* at Ordering ¶ 3.

2. SunShare failed to appear at the prehearing conference. *See* Decision No. R19-0749-I issued September 12, 2019, ¶ 3. SunShare did not file a motion seeking to be excused from appearing at the prehearing conference. Nor did it make any other filing indicating it was unable to appear before the prehearing conference, or afterward.

3. On September 12, 2019, the ALJ issued a Decision addressing SunShare's failure to appear at the prehearing conference and failure to make a filing seeking to be excused from appearing. Decision No. R19-0749-I, ¶ 9. The Decision explains that SunShare's failure to

appear raises the question of whether SunShare should be permitted to continue to participate in this matter because, contrary to assertions in its Motion to Intervene, “its failure to appear, and failure to request to be exempt from appearing at the very first hearing in this matter contradicts the actions of a party with a substantial pecuniary or tangible interest in this proceeding.” *Id.* Consequently, the ALJ ordered SunShare to make a filing by September 26, 2019 “showing cause for: its failure to appear at the September 4, 2019 prehearing conference; its failure to file a motion seeking to be excused from appearing at the prehearing conference; and to establish that it should be permitted to continue to participate as a party in this proceeding.” *Id.* at Ordering ¶ 2. The same Decision warns that failing to make the show cause filing as required may result in a decision dismissing SunShare as a party in this proceeding. *Id.* at ¶ 9.

4. SunShare failed to make the required show cause filing on September 26, 2019 as ordered. Instead, at 1:03 p.m. on September 27, 2019, SunShare filed a “Response to Interim Decision of Administrative Law Judge Melody Mirbaba Scheduling Hearing, Establishing Procedures and Deadlines and Ordering SunShare to Show Cause” (Response).

5. SunShare’s one-paragraph Response asserts that it did not appear at the prehearing conference because it agreed to Public Service Company of Colorado’s proposed procedural schedule and because “there was no mandate” for SunShare to appear at the prehearing conference.¹ In addition, SunShare also asserts that “[t]his Response serves to notify the Public Utilities Commission of the State of Colorado that SunShare, LLC intends to continue to participate as a party to this Proceeding.” *Id.*

¹ The ALJ notes that on August 28, 2019, Grid Alternatives Colorado, Inc., (Grid) filed a motion seeking to be excused from appearing at the prehearing conference, which was granted. *See* Decision No. R19-0725-I. Grid’s motion should have served as a cue to SunShare that its position that it was not required to appear at the prehearing conference could be incorrect.

6. SunShare's Response provides no explanation for its failure to make the show cause filing by the September 26, 2019 deadline, and makes no request for the late filing to be accepted beyond the ordered deadline. SunShare also did not file a motion asking for the late filing to be accepted.

7. SunShare was given over two weeks to make its one-paragraph show cause filing by September 26, 2019, but failed to do so. SunShare provided no cause whatever for its blatant failure to comply with this show cause filing requirement, despite having been warned that it may be dismissed as a party. *See* Decision No. R19-0749-I, ¶ 9 and Response. Much like its failure to appear at the hearing and failure to file a motion to be excused from appearing, SunShare's failure to comply with Decision No. R19-0749-I contradicts the actions of a party with a substantial pecuniary or tangible interest in this proceeding.² For the foregoing reasons, the ALJ will dismiss SunShare as a party to this proceeding.³

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, SunShare, LLC is dismissed as a party to this proceeding.

² SunShare's actions also suggest a pattern of disregarding Commission decisions (or portions thereof).

³ The substance of SunShare's Response provides additional support to dismiss it as a party. Contrary to the show cause filing requirements, the Response fails to establish that SunShare *should be permitted* to continue to participate as a party in this proceeding. *See* Decision No. R19-0749-I, Ordering ¶ 2. Instead, it purports to "notify" the Commission that it intends to continue to participate. Response.

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