

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.

**DECISION PERMANENTLY SUSPENDING EFFECTIVE
DATE OF PROPOSED TARIFF SHEETS,
ADDRESSING EXCEPTIONS, AND REMANDING
MATTER TO ADMINISTRATIVE LAW JUDGE**

Mailed Date: September 19, 2014

Adopted Date: September 10, 2014

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I. BY THE COMMISSION

A. Statement

1. On August 27, 2013, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1649 - Electric (Advice Letter) to approve standard tariffed rates for the purchase of electric power from Qualifying Facilities (QFs) with a design capacity between 10 and 100 kilowatts (kW).

2. On September 25, 2013, by Decision No. C13-1196, the Commission set this matter for hearing, suspended the effective date of the tariffs that accompanied the Advice Letter, and referred this Proceeding to an Administrative Law Judge (ALJ).

3. On January 16, 2014, Public Service filed an amended advice letter entitled Advice Letter No. 1649 – Electric Amended (Amended Advice Letter). The Amended Advice Letter appended proposed tariff sheets with an effective date of February 15, 2014; otherwise, the Amended Advice Letter is identical to the proposed tariff sheets appended to the Advice Letter.

4. During the proceeding and in response to testimony, Public Service revised its request to seek approval of methodologies to determine standard rates for QFs, withdrawing its request for the Commission to set specific rates.

5. On August 1, 2014, ALJ Mana Jennings-Fader issued Decision No. R14-0911 (Recommended Decision) to recommend the permanent suspension of the tariffs filed under the Advice Letters and denial of the proposed methods.

6. The Recommended Decision provides an accurate and thorough analysis of Public Service's proposed methods for determining the standard payment rates to QFs for electric power sold to the Company, the Public Utility Regulatory Policies Act (PURPA) and rules promulgated by the Federal Energy Regulatory Commission (FERC) and the Commission, alternative methods proposed by the Vote Solar Initiative (Vote Solar) and Western Colorado Power Company, LLC (WCPC), and the parties' positions on other issues contested in this Proceeding.

7. The Recommended Decision approved several components of the capacity and energy methodologies proposed by Public Service, but because individual elements of Public Service's proposed methods are non-compliant with the forward-looking requirement for determining rates under PURPA and implementing rules, the ALJ disapproved Public Service's methodologies in whole. The ALJ ordered Public Service to file a new application and use the Recommended Decision as guidance.

8. Public Service, Staff of the Colorado Public Utilities Commission (Staff), Vote Solar, and WCPC each filed exceptions to the Recommended Decision.

9. In its exceptions, Public Service requests that the Commission set aside the Recommended Decision and approve, in their entirety, the Company's proposed methods for determining capacity and energy payment rate components of the standard rate. The Company argues that it would be costly and inefficient for the Commission and the parties to start a new proceeding to resolve this matter as directed by the ALJ.

10. Staff agrees with Public Service that it would be costly and inefficient for the parties to litigate a new proceeding. Staff supports approval of Public Service's proposed methods with minor modifications. However, Staff acknowledges there may be other reasonable methods whose adoption is supported by the record.

11. Vote Solar requests the Commission adopt its alternative methods for determining avoided capacity and energy costs instead of Public Service's methods. If the Commission declines to do so, Vote Solar requests the Commission clarify, to the greatest extent possible, what aspects of Public Service's proposed methods should (and should not) be included in the Company's future application filing.

12. Like Vote Solar, WCPC requests the Commission approve its proposed methods or, in the alternative, clarify the Commission's approved methods.

13. By this Decision, 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.

B. Discussion

1. Capacity Payment Rate Component of Standard Rate

14. As explained in the Recommended Decision, Public Service proposes a 13-step method for calculating the Company's avoided capacity cost. The ALJ found several elements of

Public Service's method compliant with the forward-looking principles of PURPA and rules issued by FERC and the Commission.

15. We agree with the ALJ that Public Service's proposed method for determining the capacity payment rate component of standard rate "comes closest to an appropriate method for determining avoided capacity costs"¹ and approve it subject to the modifications set forth in this Decision.

16. We also uphold the ALJ's rejection of the alternative methods proposed by WCPC and Vote Solar for the reasons set forth in the Recommended Decision.

a. Avoided Generation Capacity Costs

17. The Recommended Decision disapproved Public Service's proposal to use the average costs of *two* natural gas-fired combustion turbines (CTs) to determine avoided capital and fixed operation and maintenance (O&M) costs. Public Service challenges the ALJ's recommendation, stating that two natural gas-fired CTs best represent the form of power generation the Company would need to acquire to meet a future resource need as shown in its most recent Electric Resource Plan (ERP). Public Service argues the cost of a single CT would be in excess of the Company's true avoided capacity cost. Public Service further suggests that even the average cost of two CTs may be too high, because bids received in response to the recent ERP resource solicitation were lower than the assumed average cost of the representative two-CT facility. However, because the Company must update avoided capacity costs annually and does not conduct annual solicitations for generation, using actual bids for CT capacity as the basis for the QF purchase rates would be problematic as a regular practice.

¹ Recommended Decision, ¶ 147.

18. In its exceptions, Vote Solar requests the Commission require Public Service to use a cost estimate of a single CT. Vote Solar argues that the Company's two-CT approach underestimates avoided capacity costs, as the cost of the first CT is the proper representation of incremental capacity. Vote Solar further argues that Public Service conceded it was possible to add a single CT to the Company's system and that some bids to the ERP solicitation were for single CT units and not pairs.

19. Although Staff supports Public Service's proposed use of natural gas-fired combustion turbines as a starting point, it suggests there is substantial evidence in the record to support directing Public Service to use a single CT instead of the two-CT average.

20. We direct Public Service to use the projected cost of a single CT facility to determine the capacity payment rate component of standard rate. Public Service can meet a capacity needs on its system with the development of a single CT instead of a two-unit facility, and a single CT best represents the size and type of forward-looking incremental capacity the Company avoids from purchases from small QFs. The cost of one CT, as represented for 2013 as "CT #1 (\$/kW-mo)" in Revised Exhibit No. DRB-2 (Hearing Exhibit 6) will therefore be the starting point for the determination of avoided capacity costs.

b. Avoided Transmission and Distribution Costs.

21. The ALJ recommended calculating avoided transmission and distribution costs to determine avoided capacity costs. According to Public Service, FERC rules do not require utilities to pay QFs for avoided transmission and distribution (T&D) costs, and the FERC decision cited by Vote Solar allowed, but did not require, included avoided T&D costs where the intent of the rate was to attract QFs to locate in a specific transmission-constrained area. Public

Service explains it is not trying to attract QFs to locate in any specific geographic area to avoid T&D investment and argues to do so through a tariff would be extremely inefficient.

22. Public Service further states the purchase of energy from small QFs does not result in the Company avoiding T&D system investment. The Company also argues Vote Solar failed to prove avoidance of actual T&D investment costs, either individually or collectively, from small and dispersed facilities.

23. In response, Vote Solar argues the size of the QFs at issue does not preclude consideration of avoided T&D capacity costs under FERC rules. Vote Solar suggests that the ALJ correctly identified the shortcoming of not considering avoided T&D costs as a methodological flaw. WCPC similarly agrees avoided capacity costs should include avoided T&D costs. In its response to exceptions, WCPC proposes an \$18.00/MWh measure for avoided transmission costs and a \$6.00/MWh measure for avoided distribution costs based on the testimony presented by Vote Solar.

24. We agree with Public Service that the record in this Proceeding does not support a finding that T&D costs will be avoided by small QFs who sell capacity to the Company. However, we are currently examining whether distributed generation resources do provide benefits generally in the form of avoided T&D investment in a separate proceeding (Proceeding No. 14M-0235E). To avoid precluding the potential consideration of a value of avoided T&D costs in the determination of the capacity payment rate, we instruct Public Service to add a step to the approved method for deriving avoided capacity costs where avoided T&D investment are considered. At this time, the value of the avoided T&D investment costs shall be \$0/kW-mo based on the record here. In the event the Commission finds in a future proceeding that small distributed generation resources result in avoided T&D system investment, Public Service shall

include a measure of avoided T&D investment costs in the determination of the capacity payment rate component.

c. Other Avoided Costs and Cost Factors

25. Public Service recommends use of the same modeling assumptions for representing capacity costs as used in its most recent ERP. Accordingly, the Company recommends the Commission approve the use of the Economic Carrying Charge (ECC) method for calculating avoided capacity costs, as used in the recent ERP, and reject the Levelized Carrying Cost (LCC) method, as proposed by Vote Solar in its exceptions.

26. Public Service challenges the Recommended Decision's conclusion that the Company did not use all of the capacity cost factors that were included in its 2011 ERP and the 2013 all-source solicitation. The Company requests the Commission set aside any suggestion that there are cost factors or elements the Company failed to incorporate into its avoided capacity cost estimation.

27. We agree with the general premise that, when establishing the avoided costs for the QF payment rate, Public Service should apply the same methods used in the Company's most recent ERP. We therefore approve the ECC approach. We also conclude there is insufficient basis to adopt the LCC method as suggested by Vote Solar, because that method is neither explained in detail nor contrasted sufficiently with the ECC approach.

28. We also find that Public Service's proposed method for deriving the capacity payment rate component of standard rate includes results in a reasonable measure of avoided capacity costs consistent with PURPA requirements and its recent ERP. We therefore strike part (c) of the last sentence of paragraph no. 147 from the Recommended Decision.

d. Surplus Capacity Credit

29. Public Service states, because it has no need for additional generation capacity from 2013 to 2018, acquiring capacity from QFs in those years will not cause avoidance of any capacity cost. The Company therefore proposes to substitute the annual capacity costs associated with a CT with an estimate of the market value of surplus capacity provided by the QF. Public Service proposes replacing the annual capacity cost value for a CT with the Surplus Capacity Credit as developed and applied in its most recent ERP.

30. Public Service explains the Surplus Capacity Credit accounts for the value any new surplus could have on the wholesale market even though the Company has sufficient capacity. Public Service argues that, while the Surplus Capacity Credit can be used under FERC rules, those rules result in a lower payment to the QFs in the years when Public Service has surplus capacity.

31. WCPC and Vote Solar recommend the Commission reject the use of the Surplus Capacity Credit. Both WCPC and Vote Solar argue that, because the Company is acquiring capacity in those years in accordance with its ERP, Public Service has already demonstrated a need for capacity and should, under FERC rules, be required to pay QFs a full avoided capacity payment rate instead of the Surplus Capacity Credit.

32. We agree with Public Service that the Surplus Capacity Credit values used in its most recent ERP are reasonable measures of avoided capacity costs in the years when the Company has no demonstrated capacity needs. We do not find persuasive the argument that, because the Company addressed a capacity need in certain years in the ERP, the QFs should be offered a full-value avoided capacity rate in those same years. The Commission carefully considers resource needs and resource acquisition periods in each ERP proceeding and ensures

no uneconomic capacity additions are made that cause the utility to have excess capacity for prolonged periods. The Surplus Capacity Credit is a reasonable proxy for the value of capacity during those years when an ERP shows no additional resource need.

e. Solar Effective Load Carrying Capability Study

33. Vote Solar urges the Commission to reject the use of the Company's 2012 Effective Load Carrying Capability (ELCC) study to derive the Generation Capacity Credit (GCC) for solar QFs in Step 11 of its proposed method. Vote Solar argues the 2012 ELCC study contains an extremely limited data set that improperly constrained the resulting values. Vote Solar requests that Public Service be required to update its study, and, in the meantime, use the 2009 ELCC study which would result in higher GCC values.

34. In response, Public Service argues the Company should use the most recent studies available for each of the steps in its proposed methodology. According to Public Service, Vote Solar provides no justification for using the outdated 2009 ELCC study in lieu of the most recent 2012 ELCC study the Company applied in its recent ERP.

35. We approve the use of the 2012 ELCC study results for deriving the capacity payment rate component of standard rate for photovoltaic facilities. We agree with Public Service that those results are the same as were used in its recent ERP and are the best available values for a GCC value for solar at this time. Consistent with Staff's recommendation,² if the Commission issues rulings in the future that conflict with the GCC values presented in this Proceeding for solar, Public Service must revise the QF rates and apply GCC values as approved by the Commission.

² Staff Statement of Position, p. 5.

f. Technology Differentiation

36. In its exceptions, WCPC objects to the conclusion in the Recommended Decision that Public Service's general approach for differentiating among QF technology types is adequate. WCPC requests the Commission acknowledge that a better approach is to use forward-looking costs of actual generation-technology specific proxies. For example, this approach means the Company sets the rate for hydro QFs based on what it costs the Company to acquire additional hydro generation.

37. Public Service disagrees with WCPC that FERC's PURPA rules suggest utilities set rates based upon what it costs the utility to install the same technology as the QF. Public Service states that the Company is not planning to add any new hydro facilities, because it would not be cost-effective.

38. We agree with Public Service that its approach for technology differentiation is based upon how each QF technology interfaces with the Company's system. WCPC's proposed method does not reflect the way the Company acquires generation capacity to meet future needs and therefore does not result in proper values for avoided capacity costs. As stated above, we do not approve WCPC's proposed methods because they are inconsistent with PURPA as determined by the ALJ in the Recommended Decision. Public Service's proposed approach for technology differentiation is approved.

2. Energy Payment Rate Component of Standard Rate

39. Public Service proposes a multiple-step process for deriving the energy payment rate component of the standard rate. Public Service starts by using its Cost Calculator model to determine the costs that would have been avoided in a recent period had the Company purchased energy from small QFs. These modeled system-wide avoided energy costs are then adjusted

with weights according to the typical generation curves of different types of QF resources on its system.

40. The ALJ declined to approve Public Service's proposed method, because the derivation of marginal energy costs experienced on the Company's entire system are disconnected from the Company's proposed approach to determining avoided capacity costs, which is dependent upon the estimated costs of a particular CT facility. The ALJ also declined to approve Public Service's proposed method because it is not forward-looking as required by PURPA.

a. Tie to Capacity Payment Rate

41. Public Service argues the ALJ erred by concluding it is necessary for the method used to calculate the avoided energy rate "tie together" with the assumptions made in support of the determination of the avoided capacity rate. Public Service argues its approach for deriving avoided energy costs properly reflects the economic dispatch of the Company's system.

42. Public Service also opposes Vote Solar's method that assumes a CT operating in the future at a 50 percent load factor, arguing it would be wrong to assume the Company avoids the marginal energy cost of a CT, because CTs operate as the marginal unit only for a small fraction of the hours of each year. Public Service further states that a QF cannot be dispatched as a peaking unit and its energy must be taken regardless of when it is delivered.

43. WCPC suggests that the Commission adopt one of two approaches for determining forward-looking energy costs. The first is to use ten years of levelized variable O&M costs for a representative generation-technology specific proxy (*e.g.*, a levelized value of a ten-year stream of projected variable costs for a new hydro facility added to Public Service's system). In the alternative, WCPC suggests the Commission adopt Vote Solar's proposed

approach using levelized fuel costs over ten years. In response, Public Service argues that WCPC's suggestions would result in customers paying rates that are higher than the Company's avoided costs, contrary to PURPA. Public Service also argues, due to changes in fuel prices and the Company's generation mix, it is important that costs be updated annually.

44. We agree with Public Service that the best approach for determining avoided energy costs is to consider how the Company economically dispatches the resources on its system. We therefore set aside the finding in the Recommended Decision that the approach for deriving the energy payment rate component of the standard rate must tie in a direct way to the method for deriving the capacity payment rate component. However, we agree with the ALJ and Public Service that annual updates to the QF tariff are the correct procedure for establishing the energy payment rate over time.

45. Because we conclude economic dispatch considerations are appropriate in determining Public Service's avoided energy costs, we do not approve either Vote Solar's or WCPC's proposed approaches because these approaches will result in energy payment rates that are too high, contrary to PURPA. Because we approve a portfolio dispatch approach for determining avoided energy costs, we also deny WCPC's request that Public Service be directed to include variable O&M costs of \$10.43/MWh in the derivation of avoided energy costs.

b. Determination of Forward-Looking System Marginal Energy Costs

46. The Recommended Decision rejected use of historical data to develop forward-looking rates. In its exceptions, Public Service argues neither FERC rules nor the Commission's rules prohibit using recent hourly marginal cost data to estimate future avoided energy costs. Public Service states Cost Calculator produces the best detailed energy cost

information for estimating the likely savings to its system in any hour had the Company not used the last dispatched block of energy and instead purchased energy from a QF.

47. Public Service explains, that while it continues to support the use of Cost Calculator's database from the most recent historic period available, the Company has no objection to complying with the ALJ's recommendation that the Company be directed to use projected system marginal energy costs for the upcoming calendar year. Public Service states, however, that it would need to do those calculations using ProSym, a different model than Cost Calculator.

48. Staff argues the ALJ's inquiry regarding the use of historical data should rest on whether unadjusted historical data is suitable for predicting future avoided costs. If it is, then the method is forward-looking and no less appropriate than any other method deemed suitable for estimating future costs. Staff asserts the unadjusted Cost Calculator data is suitable for estimating future costs and is the best method considered in this Proceeding. Staff further posits that adjustments to historical data intended to make the data better suited for deriving forward-looking cost estimates would lead to unwieldy controversy.

49. WCPC and Vote Solar object to the adoption of ProSym for calculating avoided energy costs instead of Cost Calculator, particularly because intervenors and the Commission have had no opportunity to review the ProSym model, its inputs, and its outputs.

50. We agree with the ALJ that Public Service has failed to show that Cost Calculator, using historic data inputs, will calculate avoided energy costs in the future. The record does not support the position argued by Public Service and Staff that a modeled dispatch analysis of recent historic data will produce avoided costs that are reasonably forward-looking. We do not reject use of historic data as part of a calculation of forward-looking costs under all

circumstances; however, the record here does not include adjustments or other methods necessary to produce forward-looking costs. In addition, Public Service acknowledges in its response to exceptions that avoided energy costs are updated annually, because these costs can change dramatically over time, not only due to changes in fuel prices, but also due to changes in the Company's energy mix. Those very same reasons cause us to question whether a recent historic period examined in Cost Calculator will produce sufficiently forward-looking avoided energy costs absent any empirical analysis substantiating such a claim.

51. We agree with Vote Solar and WCPC that the Company's offer to use ProSym with forward-looking inputs should not be adopted absent further review. We deny WCPC's request that Public Service be prohibited from using Cost Calculator in any method used to calculate avoided energy and capacity costs in the future.

52. The record of how Public Service shall determine forward-looking system marginal energy costs fall short of a complete method for deriving the energy payment rate. We recognize the parties have devoted considerable resources to this Proceeding with the expectation that the Commission would approve fully developed methods for the standard QF purchase rate. While the ALJ recommends a separate application proceeding, we conclude that the circumstances surrounding the status of the tariffs filed under the Advice Letter, as discussed below, provide an alternative avenue for reaching final approval of the Company's proposed methods. Specifically, we remand to the ALJ for further hearings and findings 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. We find that the remand of the case will be more expedited than a new application filing, particularly because this Proceeding

has a developed evidentiary record that can be supplemented regarding this single unresolved issued.

C. Suspension of Tariff Sheets

53. As discussed in paragraphs 99 through 108 of the Recommended Decision, Public Service modified its request for approvals during the course of the proceeding and no longer seeks approval of the specific rates set forth on the tariff pages filed under the Advice Letter. Public Service instead seeks approval of only the methods used to derive the capacity and energy payment rate components.

54. We agree with the ALJ's analysis of Public Service's remaining requests in this Proceeding and under § 40-6-111, C.R.S., permanently suspend the tariff sheets filed under the Advice Letter and Amended Advice Letter. This Decision serves as a final decision on the issue of permanent suspension of these tariff sheets subject to applications for reconsideration, reargument, or rehearing under § 40-6-114, C.R.S., and judicial review under § 40-6-115, C.R.S. Due to the circumstances in this case, the Commission shall issue a separate final decision in this proceeding, which shall incorporate the substantive determinations made by this Decision on the methodology proposed by Public Service, after the remanded proceedings have concluded and the Commission has findings on the remaining narrow question of how Public Service shall determine forward-looking system marginal energy costs. Therefore, the final decision subject to applicable statutes, including §§ 40-6-114, C.R.S., and 40-6-115, C.R.S., that approves the methods for determining the capacity and energy rate components of this standard rate, will be issued after remand.

D. Sale of 100 Percent of Production

55. The Recommended Decision disapproved Public Service's proposed tariff condition requiring a QF to sell its entire output to the Company to qualify for the tariffed rates. The ALJ cited the Commission's Decision No. C84-0635, I&S Docket Nos. 1603 and 1604 issued May 30, 1984, as addressing the same issue and as controlling authority.

56. Public Service requests that the Commission reverse the ALJ, because the Company's calculated avoided costs are under the "sell-all" offer and are different than an "as available" offer, in which some of the QF's generation is used to serve all or a portion of the customer's own load. In response, Vote Solar points to the same Commission decision cited by the ALJ to support her finding rejecting the imposition of a requirement on the QF to sell all of its output. Vote Solar argues QFs should not be restricted to selling all of their power, but should instead offer any amount of the facility's output to be purchased at the tariffed rates.

57. Staff argues it would be virtually impossible to develop an avoided cost rate for unknown "as-available" quantities. While Staff acknowledges PURPA may provide other small distributed generation resources the opportunity to sell energy on an as-available basis, Staff takes the position that this Proceeding is not where a gap in the Company's QF tariffs should be addressed. Staff also disagrees with applying a single rate to cover all scenarios, which will result in the Company paying something other than its avoided costs.

58. We grant Public Service's exceptions on this point. Circumstances have changed since the Commission issued Decision No. C84-0635 in terms of technology, Renewable Energy Standard (RES) compliance requirements, and service offerings such as net metering for distributed generation.

59. In the 30 years since Decision No. C84-0635 was issued, customers with small distributed solar generation have been selling energy to Public Service on an “as available” basis under the Company’s net metering tariff pursuant to § 40-2-124(1)(e), C.R.S. There are no customers selling energy under the current QF tariff, and there is no basis to adopt a tariff different from the net metering tariff for theoretical “as available” offers based on the record in this Proceeding. As found by this Commission, our rules governing net metering comply with PURPA’s net metering standards.³

60. Finally, we agree with Public Service and Staff that the methods for establishing capacity and energy purchase rates proposed and considered in this Proceeding are based upon small QFs offering to sell their entire output. The technical underpinnings of these methods depend on the assumption that all QF production would be available for purchase by the Company.

E. Renewable Energy Credits (RECs)

61. In its exceptions, Vote Solar requests that the Commission reverse the ALJ’s ruling that the Company purchases the RECs associated with the power purchased under the small QF tariff. Vote Solar argues that the Company should not be allowed to acquire the RECs without compensating the QFs for their value. According to Vote Solar, the Commission should clarify that small QFs retain their RECs. Alternatively, Vote Solar suggests that Public Service should pay for the RECs at the rates prevailing under its Solar*Rewards program for net metered on-site solar facilities.

³ *In the Matter of the Investigation into the Energy Policy Act of 2005 Addition of Five New PURPA Standards to Address Current Conservation and Efficiency Needs*, Proceeding No. 06I-169E, Decision No. C06-1423, issued December 6, 2006, at ¶ 12.

62. Vote Solar also argues that the Commission's RES Rules do not speak to the specific circumstances surrounding the sale of renewable energy and the transfer of RECs at issue here. Vote Solar argues the RES Rules address more narrowly the acquisition of RECs under existing purchased power agreements. WCPC states in its exceptions that it supports Vote Solar's position.

63. In response, Public Service asks the Commission to agree with the ALJ, arguing that when it is compelled to pay its full avoided costs to a QF, it should receive the RECs generated by the facilities so that it can count them against its RES obligations. Public Service further argues that if a QF sells power without the associated RECs, it is selling "brown energy," which would render the facility ineligible to be compensated at avoided costs as required under PURPA. Public Service argues that, under Colorado law, renewable energy sold to a utility automatically transfers the RECs; otherwise the sale would not be considered a sale of renewable energy, by definition. Public Service further notes that, because PURPA predates the REC concept, the FERC decisions cited by Vote Solar do not rely upon PURPA to determine the ownership of RECs; rather, state law controls.⁴

64. We deny Vote Solar's and WCPC's exceptions. We agree with Public Service that QFs must transfer to the Company the RECs generated with the power purchased under the tariff proposed in this proceeding. The approved rate is for power produced by a QF; if the power is sold without the RECs, the QF tariff should not apply in the context of § 40-2-124, C.R.S., and the Commission's RES Rules.

⁴ See Public Service Response, at 16 (citing *Morgantown Energy Associates*, FERC Docket Nos. EL 12-36-000, QF89-25-008, 139 FERC ¶ 61, 066 (2012), provided by Mr. Camp as his Exhibit GLC-02 (Hearing Exhibit 17)).

F. Tariff Applicable to Certain QFs Under 10 kW

65. Vote Solar requests that the Commission direct Public Service to make the tariff available to any QF with a design capacity of 10 kW or less that either does not elect or does not qualify to take service under the Company's net metering tariff.

66. We grant Vote Solar's request. Public Service' tariff as approved by this Decision should be available to QFs with a design capacity of 10 kW and under, which do not elect to take, or do not qualify for, service under the Company's net metering tariff schedule. Our conclusion above, requiring a QF selling power under the tariff to sell all of its output to Public Service, applies to QFs with a design capacity of 10 kW and under.

II. ORDER**A. The Commission Orders That:**

1. The effective date of the tariff sheets filed with Advice Letter No. 1649 - Electric on August 27, 2013, is permanently suspended and shall not be further amended. This Commission Decision to suspend permanently Advice Letter No. 1649 - Electric filed on August 27, 2013, constitutes a final decision under §§ 40-6-114, C.R.S., and 40-6-115, C.R.S.

2. The effective date of the tariff sheets filed with Advice Letter No. 1649 - Electric Amended on January 16, 2014, is permanently suspended and shall not be further amended. This Commission Decision to suspend permanently Advice Letter No. 1649 - Electric Amended on January 16, 2014, constitutes a final decision under §§ 40-6-114, C.R.S., and 40-6-115, C.R.S.

3. The Exceptions to Decision No. R14-0911 filed by Public Service Company of Colorado (Public Service) on August 11, 2104 are granted, in part, and denied, in part, consistent with the discussion above.

4. The Exceptions to Decision No. R14-0911 filed by the Vote Solar Initiative on August 11, 2104 are granted, in part, and denied, in part, consistent with the discussion above.

5. The Exceptions to Decision No. R14-0911 filed by Western Colorado Power Company on August 11, 2014, are denied, consistent with the discussion above.

6. The Exceptions to Decision No. R14-0911 filed by Staff of the Colorado Public Utilities Commission on August 21, 2104, are granted, in part, and denied, in part, consistent with the discussion above.

7. The issue of how Public Service shall establish forward-looking system marginal energy costs is remanded to the Administrative Law Judge for additional hearings and findings, consistent with the discussion above.

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 10, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners