

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
VACATING FEBRUARY EVIDENTIARY HEARING;
SCHEDULING APRIL EVIDENTIARY HEARING;
FURTHER MODIFYING PROCEDURAL SCHEDULE;
ESTABLISHING CUT-OFF DATES FOR, AND
ESTABLISHING RESPONSE TIME TO, DISCOVERY;
AND FURTHER SUSPENDING THE EFFECTIVE DATE
OF THE TARIFF SHEETS APPENDED TO ADVICE
LETTER NO. 1649 - ELECTRIC AMENDED**

Mailed Date: March 4, 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) to implement a new method to derive payment rates for Qualifying Facilities (QFs) with a design capacity between 10 and 100 kilowatts (kW) in Public Service's Electric Purchase - Small Power Production and Cogeneration Facility Policy Section of PSCo's P.U.C. No. 7-Electric tariff. Accompanying the Advice Letter are proposed tariff sheets that, if in effect, would implement the new method.

2. On September 25, 2013, by Decision No. C13-1196, the Commission set this matter for hearing, thus suspending, to and including January 25, 2014, the effective date of the proposed tariff sheets that accompanied the Advice Letter. On October 30, 2013, Decision No. R13-1367-I further suspended, to and including April 25, 2014, the effective date of those proposed tariff sheets.

3. The following intervened as of right or were granted permission to intervene: Trial Staff of the Commission (Staff); the Vote Solar Initiative (Vote Solar); and Western Colorado Power Company, LLC (WCPC).

4. Staff, Vote Solar, and WCPC, collectively, are the Intervenors. The Company and the Intervenors, collectively, are the Parties. All Parties are represented by legal counsel.

5. In Decision No. C13-1196, the Commission referred this Proceeding to an Administrative Law Judge (ALJ).

6. The procedural history of this Proceeding is set out in Interim Decisions previously issued in this matter. The ALJ repeats the procedural history as necessary to put this Interim Decision in context.

A. Further Suspension of Effective Date of Tariff Sheets Appended to Advice Letter No. 1649 - Electric Amended.

7. On January 16, 2014, Public Service filed its Advice Letter No. 1649 - Electric Amended (Amended Advice Letter). Appended to the Amended Advice Letter are 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.¹

8. Pursuant to § 40-6-111(1), C.R.S., and in its discretion, the Commission may suspend the effective date of the proposed tariff sheets for 120 days from the February 15, 2014 effective date. On January 17, 2014, by Decision No. R14-0071-I and pursuant to § 40-6-111(1), C.R.S., the ALJ suspended for 120 days (*i.e.*, through and including June 15, 2014), the effective date of the proposed tariff sheets appended to the Amended Advice Letter.

9. Pursuant to § 40-6-111(1), C.R.S., and in its discretion, the Commission, by separate decision, may suspend for an additional 90 days the effective date of the tariff sheets filed with the Amended Advice Letter. Thus, the Commission has the authority to suspend the effective date of the tariff sheets filed with the Amended Advice Letter for a maximum of 210 days (*i.e.*, until September 13, 2014²).

10. Pursuant to § 40-6-111(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1305(e),³ by this Interim Decision, the ALJ will further suspend, to **September 13, 2014**, the effective date of the tariff sheets that accompanied the Amended Advice Letter. If the Commission does not establish new rates by September 13, 2014, the tariff sheets that accompanied the Amended Advice Letter may become effective.

¹ The Amended Advice Letter, the appended proposed tariff sheets, and the new effective date supersede in their entirety the Advice Letter, the tariff sheets appended to the Advice Letter, and the original effective date.

² September 13, 2014 is a Saturday. Nonetheless, the tariffs may become effective on that date.

³ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

B. Evidentiary Hearing Dates and Procedural Schedule.

11. On January 14, 2014, by Decision No. R14-0046-I, among other things, the ALJ scheduled the evidentiary hearing in this Proceeding for February 20 and 21, 2014 and established a procedural schedule.

12. Following the filing of several motions, the ALJ held a motions hearing in this Proceeding on February 18, 2014.⁴ As pertinent here, at that motions hearing and at the Parties' request, the ALJ vacated the February 20 and 21, 2014 evidentiary hearing.⁵

13. At the motions hearing, the ALJ approved evidentiary hearing dates and a modified procedural schedule proposed by the Parties.⁶ The following procedural schedule, which contains slight changes to the procedural schedule proposed by the Parties, will be adopted: (a) not later than **February 21, 2014**, Public Service will provide, on a confidential (not Highly Confidential) basis, the results of a study of the information from the Cost Calculator using the same time period as that used in the study filed in this Proceeding and

querying to ... the cost of the marginal unit, for the last megawatt block, in each of the 8,760 hours of that period. [Public Service will] query for what is the unit, what is the cost, and then [it will] also query and determine the incremental heat rate of the unit that was producing that cost

(February 18, 2014 transcript (Feb. 18 tr.) at 87:14-22); (b) not later than **March 14, 2014**, each intervenor will file either supplemental answer testimony and exhibits addressing the additional study or a statement that the intervenor will not file such supplemental testimony and exhibits; (c) not later than **March 14, 2014**, each intervenor will file testimony addressing the Company's clarification that, under the proposed tariff, a QF will be required to sell 100 percent of its output

⁴ At the prehearing conference, the ALJ made a number of rulings. To the extent this Interim Decision does not address the rulings, the ALJ will memorialize her rulings in a subsequent Interim Decision.

⁵ This Interim Decision memorializes that ruling.

⁶ This Interim Decision memorializes that ruling.

to Public Service (tariff language clarification);⁷ (d) not later than **March 28, 2014**, Public Service will file its rebuttal testimony and exhibits addressed to the supplemental answer testimony and exhibits; (e) not later than **March 28, 2014**, Public Service will file its rebuttal testimony and exhibits addressed to the testimony and exhibits that respond to the tariff language clarification; (f) not later than **March 28, 2014**, intervenors will file cross-answer testimony and exhibits addressed to the supplemental answer testimony and exhibits; (g) not later than **March 28, 2014**, intervenors will file cross-answer testimony and exhibits addressed to testimony and exhibits that respond to the tariff language clarification; (h) not later than **April 2, 2014**, each party will file its prehearing motions, including dispositive motions, motions to strike testimony or exhibits (or both), and motions *in limine*;⁸ (i) not later than **April 2, 2014**, the Parties will file any stipulation or settlement agreement reached;⁹ (j) the evidentiary hearing will be held on **April 4 and 7, 2014**; and (k) not later than **April 21, 2014**, each party will file its post-hearing statement of position, to which (absent further order) no response will be permitted.

14. As adopted, the procedural schedule permits the Commission to issue its decision in this Proceeding by September 13, 2014, which is the expiration of the 210-day suspension period of the proposed tariff sheets' effective date.

⁷ Public Service provided the clarification in its rebuttal testimony and exhibits filed on January 31, 2014.

⁸ This is a change from the procedural schedule adopted on February 18, 2014. As a preliminary matter on the first day of the evidentiary hearing, the ALJ will hear argument on pending prehearing motions.

⁹ This is a change from the procedural schedule adopted on February 18, 2014.

C. Discovery Cut-Off Dates and Response Time to Discovery.

15. During the February 18, 2014 motions hearing, the Parties proposed, and the ALJ approved, discovery cut-off dates and response time to discovery.¹⁰

16. The last day on which to propound discovery addressed to the new PSCo study results will be **February 28, 2014**. Response time to this discovery will be *seven calendar days* from the date of service of the discovery request.

17. The last day on which to propound discovery addressed to intervenor supplemental answer testimony and exhibits will be **March 21, 2014**. Response time to this discovery will be shortened to *three business days* from the date of service of the discovery request.

18. The last day on which to propound discovery addressed to testimony and exhibits that respond to the tariff language clarification will be **March 21, 2014**. Response time to this discovery will be shortened to *three business days* from the date of service of the discovery request.

19. There will be no cut-off date for service of discovery addressed to Public Service rebuttal testimony and exhibits that address intervenor testimony and exhibits filed pursuant to this Interim Decision. Response time to discovery addressed to this Public Service rebuttal testimony and exhibits will be shortened to *two business days* from the date of service of the discovery request.

20. There will be no cut-off date for service of discovery addressed to intervenor cross-answer testimony and exhibits that address intervenor testimony and exhibits filed pursuant

¹⁰ This Interim Decision memorializes that ruling.

to this Interim Decision. Response time to discovery addressed to this intervenor cross-answer testimony and exhibits will be shortened to *two business days* from the date of service of the discovery request.

D. Additional Matters.

21. Except as modified by Decision No. R14-0009-I, Decision No. R14-0046-I, and this Interim Decision, the provisions of Decision No. R13-1443-I remain in effect and govern this Proceeding.

II. ORDER

A. It Is Ordered That:

1. Pursuant to § 40-6-111(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1305(e), the effective date of the tariff sheets filed with Advice Letter No. 1649 - Electric Amended is suspended for an additional 90 days (that is, until September 13, 2014). If the Commission does not establish new rates by September 13, 2014, the tariff sheets filed with Advice Letter No. 1649 - Electric Amended may become effective.

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

DATES: April 4 and 7, 2014
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. Consistent with the discussion above, the following procedural schedule is adopted: (a) not later than February 21, 2014, Public Service Company of Colorado (Public Service) shall provide, on a confidential basis, the results of the study described in the transcript

(at page 87, lines 14-22) of the February 18, 2014 motions hearing; (b) not later than March 14, 2014, each intervenor shall file either its supplemental answer testimony and exhibits addressing the additional study or a statement that the intervenor will not file such supplemental testimony and exhibits; (c) not later than March 14, 2014, each intervenor shall file testimony addressing the clarification that, under the proposed tariff, a Qualifying Facility (QF) will be required to sell 100 percent of its output to Public Service (tariff language clarification); (d) not later than March 28, 2014, Public Service shall file its rebuttal testimony and exhibits addressed to the supplemental answer testimony and exhibits; (e) not later than March 28, 2014, Public Service shall file its rebuttal testimony and exhibits addressed to testimony and exhibits that respond to the tariff language clarification; (f) not later than March 28, 2014, intervenors shall file cross-answer testimony and exhibits addressed to the supplemental answer testimony and exhibits; (g) not later than March 28, 2014, intervenors shall file cross-answer testimony and exhibits addressed to testimony and exhibits that respond to the tariff language clarification; (h) not later than April 2, 2014, each party shall file its prehearing motions; (i) not later than April 2, 2014, the Parties shall file any stipulation or settlement agreement reached; and (j) not later than April 21, 2014, each party shall file its post-hearing statement of position, to which (absent further order) no response will be permitted.

4. Consistent with the discussion above, cut-off dates for propounding discovery are adopted as set out in ¶¶ 16-20.

5. Consistent with the discussion above, response time to discovery is shortened as set out in ¶¶ 16-20.

6. The evidentiary hearing in this Proceeding scheduled for February 20 and 21, 2014 is vacated.

7. Except as modified by Decision No. R14-0009-I, Decision No. R14-0046-I, and this Interim Decision, the provisions of Decision No. R13-1443-I remain in effect and govern this Proceeding.

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

9. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director