

Decision No. R14-0381-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0836E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2014 RENEWABLE ENERGY STANDARD COMPLIANCE PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DENYING MOTION FOR URGENT
RELIEF AND MOTION FOR VARIANCE**

Mailed Date: April 10, 2014

I. STATEMENT

1. On January 27, 2014, the Motion for Urgent Interim Decision by the Commission for Relief Under Public Service Company of Colorado Application 13A-0836E; Motion for Variance From and Amendment to Decision No. C13-0275; and Motion for Shortened Response Time (Motion) was filed by the Colorado Solar Energy Industries Association (COSEIA).

2. COSEIA requests a decision ordering Public Service Company of Colorado (Public Service or Company) to open the next two steps (8.2 MW each) for its medium tier Solar*Rewards Program. COSEIA states further that it is seeking to have the steps offered at the incentive levels proposed by Public Service in its Application in Proceeding No. 13V-0085E. Finally, COSEIA request a variance from Decision No. C13-0275 in Proceeding No. 13V-0085E issued March 1, 2013, regarding the acquisition and incentive levels for the medium Solar*Rewards program in 2014 so that a decision issued in response to its Motion would govern

acquisition and incentive levels for the medium tier Solar*Rewards program until a decision is issued in the instant proceeding or the 16.4MW capacity requested is exhausted.

3. On January 28, 2014, Public Service filed its response opposing the motion on grounds that it suffers procedural defects and separately that the relief sought through the Motion is improper. In its pleading Public Service contends that the Motion should be denied on its merits because it seeks resolution of an issue that is part of the current proceeding (*i.e.*, the capacity acquisition levels of the medium program in 2014).

4. By Decision No. C13-0275, the Commission granted Public Service's Petition for Waiver of Requirement to File 2014 and 2015 Renewable Energy Standard (RES) Compliance Plans On or Before March 1, 2013 with modifications. The Commission described the requested relief:

Public Service also seeks Commission approval of a proposal, if necessary, to continue its Solar*Rewards programs during the period January 1, 2014 through the effective date of the approval of the Company's 2014 RES Compliance Plan. Specifically, Public Service proposes to extend standard offers for the purchase of renewable energy credits (RECs) from small and medium Solar*Rewards participants at the levels and up to the amounts (totaling 26 MW) as presented for 2014 in the Company's 2013 RES Compliance Plan.

Decision No. C13-0275 at ¶6.

5. The Commission found good cause to grant Public Service's request as pertinent here:

We also find good cause to approve Public Service's proposal to extend standard offers to purchase RECs through its small and medium Solar*Rewards programs from January 1, 2014 to the effective date of the Commission's approval of its 2014 RES Compliance Plan, in the event that the final approval of the 2014 RES Compliance Plan becomes effective after January 1, 2014. Public Service is authorized to extend the incentives up to the amounts in MW as set forth in the Petition, consistent with the Company's 2012-2013 RES Compliance plan approved in Docket No. 11A-418E. Until a 2014 RES Compliance Plan is approved and in effect, Public Service is not authorized to advance funds to its

RESA deferred account after January 1, 2014 in order to continue the 2012-2013 RES Compliance Plan.

Id. at ¶12.

6. Tables No. 3 and 4 from the 2012-2013 compliance plan provide guidance on the acquisition and incentive levels. By Decision No. C13-0275 the Commission approved the acquisition of up to 16.4 MW of new capacity in the medium program in 2014 in two incentive steps of 8.2 MW each. Step 5 would be offered at \$.06 per kWh and Step 6 would be offered at \$.05 per kWh.

7. In response to the Motion Public Service argues that granting the requested relief would constitute a denial of the parties' rights to due process of law and a statutory process to adjudicate this proceeding. However, the argument confuses requested approval of the 2014 plan with the relief previously granted by the Commission pending the outcome of this proceeding. COSEIA does not request determination of matters at issue in this proceeding. Rather, COSIEA contends that the Company sought and the Commission approved an extension of the existing, approved 2012-2013 RES plan into 2014 in the event that a 2014 Plan was not approved before January 1, 2014. COSEIA notes correctly that the Commission's prior decision addressed extension of the medium program acquisition targets and incentives so that no party would be prejudiced by the Company's request to delay the filing of its 2014 RES plan. Public Service's response also claims that the Company would have to advance funds to the Renewable Energy Standard Adjustment (RESA) to extend the medium program into 2014. If that is the case, additional relief would be necessary to extend the medium program pending approval of a 2014 plan. As noted above, the Commission did not authorize new funds to be advanced to continue the existing 2012-2013 RES Plan into 2014 as a safeguard for consumers.

8. Public Service's unsupported claim appears confusing in light of admissions in the Company's testimony that the RESA account will be positive in 2014. It is not clear that funds would have to be advanced when the account will be positive (*i.e.*, have funds available).

9. In any event, the undersigned finds COSEIA's requested relief to be outside the scope of this proceeding referred for resolution. To the extent the Commission previously approved extension of the medium program, the requested relief is moot. As argued by Public Service, to the extent that COSEIA seeks a variance from, or modification of, a prior Commission decision, relief should properly be brought before the Commission in accordance with Rule 1003(b) of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* 723-1.

10. By Decision No. C13-0703, Proceeding No. 13A-0527E issued June 18, 2013, the Commission approved an agreement to amend the small program and that decision now governs the small program until the Company's 2014 RES Compliance Plan is approved. Public Service contends that COSEIA is attempting to modify substantive terms of the settlement agreement. If Public Service maintains that is the case or that COSEIA's requested relief violates the terms of the approved settlement or Commission decision, such matters may be raised if and when a request for other relief is made. Because the matters are outside the scope of referred matters, the merits of Public Service's objections will not be determined here.

II. ORDER

A. **It Is Ordered That:**

1. The Motion for Urgent Interim Decision by the Commission for Relief Under Public Service Company of Colorado Application 13A-0836E; Motion for Variance From and

Amendment to Decision No. C13-0275; and Motion for Shortened Response Time is denied consistent with the discussion above.

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director