

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
RULING, *NUNC PRO TUNC*, ON MOTIONS**

Mailed Date: July 8, 2014

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A. It Is Ordered That:35

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 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 established an intervention period and set this matter for hearing, thus suspending for 120 days the effective date of the proposed tariff sheets that accompanied the Advice Letter. On October 30, 2013, Decision No. R13-1367-I further suspended 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. 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. On January 17, 2014, by Decision No. R14-0071-I, 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. On March 4, 2014, by Decision No. R14-0231-I, the ALJ further suspended, to and including September 13, 2014, the effective date of those proposed tariff sheets. If the Commission does not establish new rates by September 13, 2014, the tariff sheets that accompanied the Amended Advice Letter may become effective.

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

8. There are motions on which the ALJ has ruled but as to which the ALJ has not issued a written ruling.¹ The ALJ addresses each of these below. All rulings are *nunc pro tunc*.

¹ Many of the motions discussed in this Interim Decision needed to be decided quickly to allow the Parties to proceed with discovery or to prepare filings. By electronic mail, the ALJ has previously informed the Parties of her ruling on those motions. This Interim Decision memorializes those rulings.

In addition, on February 18, 2014, the ALJ held a motions hearing in this Proceeding. During that motions hearing, the ALJ ruled from the bench on motions. This Interim Decision memorializes those rulings.

Further, on April 1, 2014, the ALJ held a status conference in this Proceeding. During that status conference, the ALJ ruled from the bench on motions. This Interim Decision memorializes those rulings.

Finally, as preliminary matters during the evidentiary hearing in this matter, the ALJ ruled from the bench on motions. This Interim Decision memorializes those rulings.

II. DISCUSSION AND CONCLUSIONS

A. **Western Colorado Power Company's Motion to Compel PSCo to Supplement Discovery Responses to WCPC's First Set of Discovery.**

9. On December 19, 2013, WCPC served its First Set of Discovery on Public Service. As pertinent here, on January 7, 2014, PSCo served its responses to those WCPC discovery requests.

10. On January 28, 2014, WCPC filed a Motion to Compel Public Service Company to Supplement its Discovery Responses to WCPC's First Set of Discovery (First WCPC Motion to Compel).² In that filing, WCPC seeks supplemental responses to Discovery Requests WCPC 1-12, WCPC 1-13, WCPC 1-14, WCPC 1-27, and WCPC 1-28, including in each as appropriate the inputs and assumptions of Cost Calculator.³

11. As good cause for granting the relief sought, WCPC states that several of its discovery questions seek information on

the assumptions and data sources used [by Public Service] in calculating the marginal energy cost ("MEC") for the technology category "Other." ... In response, PSCo directed WCPC to its responses to Staff concerning certain *outputs* derived from its model, Cost Calculator, to calculate MEC.

PSCo's responses do not adequately identify the modeling inputs or assumptions for Cost Calculator, however, including information concerning the energy and/or technology source of the hourly decremental costs. For example, Public Service Company disclosed solely hourly decremental costs, without identifying the source of such costs or the assumptions underlying their

² The WCPC discovery requests and the PSCo responses accompanied the filing.

³ The Cost Calculator and its inputs are described in the PSCo February 5 Response at Attachment 3 at 13-16.

calculation. The average of the decremental costs serves as the basis for the Company's calculation of the MEC of the "Other" technology category.

First WCPC Motion to Compel at ¶¶ 5-6 (italics in original). Because, in WCPC's opinion, Public Service did not respond fully to the five listed discovery requests, WCPC seeks to have the responses supplemented.

12. On February 5, 2014, the Company filed its Response to the First WCPC Motion to Compel (PSCo February 5 Response). The Company opposes the motion because: (a) the Company's responses were complete; and (b) supplementation is not necessary because the information requested in the five identified discovery requests are not relevant to this Proceeding. The Company asserts that the requested Cost Calculator information is not relevant because PSCo witness

Basquez relied upon the outputs from the Company's Cost Calculator, a computer tool that the Company uses in its ordinary course of business to perform many business functions. She did not rely on any of the inputs to Cost Calculator.

PSCo February 5 Response at 2. For these reasons, PSCo asks that the Commission deny the First WCPC Motion to Compel.

13. The Company also objects to the release of the Cost Calculator inputs and assumptions

on the grounds that the request is for commercially sensitive Highly Confidential Information that is used in the Company's daily trading operation and elsewhere in the Company's ordinary business operations that should not be supplied to a potential vendor or competitor of Public Service. As WCPC described in its Motion to Intervene, WCPC has been an active developer of generation in Colorado that sells its power on the wholesale market to utilities. Since the inputs in Cost Calculator are used by the Company to sell and [to] buy wholesale energy in the short term markets in Colorado, WCPC could be a vendor to Public Service or a competitor of Public Service in these markets.

PSCo February 5 Response at 4. The Company explains Cost Calculator, its uses, and the legal bases for its argument in *id.* at 4-9.

14. In support of its argument that the requested Cost Calculator information is highly confidential and commercially sensitive business information and that WCPC (as a potential competitor or as a potential vendor) cannot obtain this information, PSCo relies on § 40-6-107(2), C.R.S., and Rules 4 *Code of Colorado Regulations* (CCR) 723-3-3613(b) and 723-3-3613(c).⁴ If the Cost Calculator data are to be disclosed in this Proceeding, Public Service asks that the disclosure be limited to Staff. For these reasons, the Company requests that the Commission find that the requested data are highly confidential, grant extraordinary protection to the data, and restrict release of the data to Staff.

15. It appeared to the ALJ that the Company's claim that the requested Cost Calculator information is highly confidential and, thus, should be withheld from WCPC raised important issues to which neither WCPC nor any other intervenor had had the opportunity to respond. As a result, the ALJ permitted Intervenors to respond to those issues.

16. On February 11, 2014, WCPC filed its Reply to the PSCo February 5 Response (WCPC Reply). In that filing, WCPC argues: (a) obtaining the Cost Calculator outputs without obtaining the Cost Calculator inputs deprived WCPC of its ability to understand and to investigate the basis for the proposed QF tariff; (b) WCPC counsel and expert witnesses are prepared to sign nondisclosure agreements to protect any information found to be highly confidential, as has been done in other Proceedings; and (c) "to give any meaning to intervenors' participation in PSCo's rate-setting in this [Proceeding], the Company bears the burden of deriving the QF rate from a source to which the parties have access, either open access or access

⁴ These Rules are found in the Rules Regulating Electric Utilities, Part 3 of 4 *Code of Colorado Regulations* 723.

through highly confidential disclosures.” WCPC Reply at ¶ 10. For these reasons, WCPC opposes the Company’s request to limit disclosure of the Cost Calculator data to Staff.

17. On February 11, 2014, Vote Solar filed its Response to the PSCo February 5 Response (Vote Solar Response). In that filing, Vote Solar: (a) asserts that the Company has the burden of establishing that the data are highly confidential and, given the age of the data, has not met that burden; (b) supports the arguments in the First WCPC Motion to Compel; (c) asserts that the requested Cost Calculator data

are relevant to Vote Solar witness Rick Gilliam’s contention that the Company’s ... 10 MW decremental cost blocks are too big to be considered marginal costs, and that a forward-looking levelized ten-year projection of avoided natural gas costs [is] more appropriate

(Vote Solar Response at ¶ 7 (footnote omitted)); and (c) citing Rule 4 CCR 723-1-1101(i),⁵ states that Intervenor’s counsel and subject matter experts can sign nondisclosure agreements to protect any information found to be highly confidential. For these reasons, Vote Solar supports the First WCPC Motion to Compel and opposes the Company’s requests.

18. As the party seeking supplemental response to its discovery requests, WCPC bears the burden of establishing that the discovery-related requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

19. As the party seeking a determination that the Cost Calculator data are highly confidential and that the appropriate extraordinary protection for those data is to limit access to Staff, Public Service bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1101(b).

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

20. For the reasons discussed below, the ALJ finds that WCPC has met its burden with respect to Discovery Request WCPC 1-12 and has failed to meet its burden of proof with respect to Discovery Requests WCPC 1-13, WCPC 1-14, WCPC 1-27, and WCPC 1-28. In addition, for the reasons discussed below, the ALJ finds that Public Service has met its burden to establish that the requested Cost Calculator data are highly confidential information to which the ALJ should extend extraordinary protection.

21. *Discovery Request WCPC 1-12* states: “Please refer to DRB-1, Step 1. Please identify and produce all assumptions, data, calculations, and workpapers underlying the data source for the ‘annual average’ of ‘Other.’” In response, Public Service provided its response to Discovery Request CPUC 1-1 and the Confidential Attachment CPUC 1-1.A1.

22. The ALJ finds that this PSCo response was an insufficient response to Discovery Request WCPC 1-12. First, the referenced DRB-1 is Exhibit DRB-1 to the Direct Testimony and Exhibits of Dolores R. Basquez; and the referenced Step 1 states: “Derive the Marginal Energy Cost \$/MWH cost by technology” and, as relevant here, identifies the source of the data as “Cost Calculator 9/11 - 8/12[.]” Fairly read, Discovery Request WCPC 1-12 seeks the Cost Calculator data, which Public Service admits that it did not provide. Second, the scope of relevance in the context of discovery is broader than the scope of relevance in the context of admissible evidence. Thus, PSCo’s relevance argument is not persuasive. The Company’s response to Discovery Request WCPC 1-12 was insufficient.

23. Having found the Public Service response insufficient, the ALJ must address the Company’s assertion that the requested Cost Calculator information is *highly confidential information* that should be disclosed only to Staff. On this issue, the ALJ finds: (a) the Company has met its burden to establish that Cost Calculator information is highly confidential;

and (b) in order to participate fully and meaningfully in this Proceeding, each intervenor must have access to the highly confidential Cost Calculator information. Thus, the ALJ will designate the requested Cost Calculator data as highly confidential information; will afford extraordinary protection to those data; and will not limit disclosure only to Staff.

24. The ALJ has considered the nature of the highly confidential information, the uses to which a PSCo competitor or PSCo vendor could put the highly confidential information, and the fact that there may be significant harm to PSCo ratepayers if the highly confidential information is disclosed inappropriately. The ALJ has determined the criteria for access that, given the nature of the highly confidential information, are appropriate and necessary.⁶ The ALJ will limit access to the highly confidential Cost Calculator information to counsel in this Proceeding who sign the Nondisclosure Agreement Relating to Highly Confidential Information -- Legal Counsel in this Proceeding, which is appended to this Interim Decision as Attachment A. The ALJ will limit access to the highly confidential Cost Calculator information to subject matter experts in this Proceeding who sign the Nondisclosure Agreement Relating to Highly Confidential Information -- Subject Matter Expert for Party (NDA-SME) in this Proceeding, which is appended to this Interim Decision as Attachment B.

25. Subject to the filing of signed Nondisclosure Agreements Relating to Highly Confidential Information by legal counsel and by subject matter experts, the ALJ will order Public Service to supplement, not later than noon on February 14, 2014, its response to Discovery Request WCPC 1-12.

⁶ These criteria are set out in the Nondisclosure Agreements Relating to Highly Confidential Information that are appended to this Decision. A signatory to one of these nondisclosure agreements certifies that s/he meets the criteria for access contained in the agreement and that s/he will comply with the requirements of the agreement.

26. *Discovery Request WCPC 1-13 and Discovery Request WCPC 1-14.* *Discovery Request WCPC 1-13* states: “Please identify and state with particularity all assumptions and data sources used in calculating the total integration costs and marginal energy costs for the technology category of ‘Other.’” *Discovery Request WCPC 1-14* states: “Please produce all data and workpapers identified in or supporting your Response to WCPC 1-13.” In response, Public Service provided its response to Discovery Request CPUC 1-1 and the Confidential Attachment CPUC 1-1.A1.

27. Based on review of the information provided in response to these WCPC discovery requests, the ALJ finds that Public Service has provided the requested information. The ALJ will deny the request to supplement the Company’s responses to these two discovery requests.

28. *Discovery Request WCPC 1-27* states: “Please identify the individual or individuals who developed the ‘Cost Calculator’ software, state the date that the software was first placed into service and state the date of the latest revision to the ‘Cost Calculator’ software.” In response, the Company: (a) provided a list of names; (b) stated the date on which Cost Calculator was placed in service, and (c) stated the date of the last revision to Cost Calculator.

29. The First WCPC Motion to Compel’s prayer for relief at 4 requests that the Commission order Public Service to supplement its response to this discovery request. The body of that motion, however, neither references this discovery request nor contains information or argument explaining the basis for WCPC’s assertion that PSCo’s response was insufficient. Thus, WCPC did not support this request in its motion.

30. The ALJ will deny the request to supplement the Company’s response to Discovery Request WCPC 1-27.

31. *Discovery Request WCPC 1-28* states: “Please identify and describe all inputs which are used in PSCo’s ‘Cost Calculator’ software.” In response, Public Service provided, “[a]s listed in Schedule 4 of the Xcel Energy Open Access Transmission Tariff (OATT) Schedule 4 (Energy Imbalance Service)[, a list of] inputs ... used by Cost Calculator.”

32. The First WCPC Motion to Compel’s prayer for relief at 4 requests that the Commission order Public Service to supplement its response to this discovery request. The body of that motion, however, neither references this discovery request nor contains information or argument explaining the basis for WCPC’s assertion that PSCo’s response was insufficient. Thus, WCPC did not support this request in its motion.

33. The ALJ will deny the request to supplement the Company’s response to Discovery Request WCPC 1-28.

34. For the reasons discussed, the ALJ will deny grant, in part, and will deny, in part, the First WCPC Motion to Compel.

B. Western Colorado Power Company’s Motion to Compel PSCo to Respond to Second Set of Discovery Requests.

35. On January 17, 2014, WCPC served its Second Set of Discovery on Public Service. As pertinent here, on January 22, 2014, PSCo served its Objection to WCPC’s Second Set of Discovery.

36. On January 31, 2014, WCPC filed a Motion to Compel Public Service Company to Respond to Second Set of Discovery (Second WCPC Motion to Compel).⁷ In that filing, WCPC seeks an order that compels Public Service to respond to the Second Set of Discovery to which PSCo objected but otherwise did not respond.

⁷ The WCPC discovery requests and the PSCo objection accompanied the filing.

37. As good cause for granting the relief sought, WCPC states:

a. Pursuant to the procedural schedule established in this Proceeding, Rule 4 CCR 723-1-1405 governs discovery, including the dates by which discovery requests must be propounded. Rule 4 CCR 723-1-1405(d) provides, as pertinent here, that “the last day to propound discovery solely directed to answer testimony and exhibits shall be the deadline for filing rebuttal and cross-answer testimony[.]”

b. Pursuant to Decision No. R14-0046-I,⁸ the last day for filing rebuttal testimony and for filing cross-answer testimony is January 31, 2014.

c. The discovery at issue in the Second WCPC Motion to Compel involves questions directly related to WCPC Witness Eric Jacobson’s Answer Testimony, including the costs of power, labor, and other expenses associated with Public Service’s own hydropower plants, as well as the earnings and rate of return earned on the same. Public Service did not raise issues concerning its own hydropower plants in its Direct Testimony.

Second WCPC Motion to Compel at ¶ 5.

d. The discovery was propounded timely because it was served on January 17, 2014, well before the discovery cut-off for discovery addressed to answer testimony.

For these reasons, WCPC asks the ALJ to grant the Second WCPC Motion to Compel.

38. On February 5, 2014, the Company filed its Response to the Second WCPC Motion to Compel (PSCo Response to Second Motion). The Company opposes the motion because: (a) pursuant to Decision No. R14-0009-I,⁹ January 9, 2014 was the last date to file answer testimony; (b) Rule 4 CCR 723-1-1405(d) provides, as pertinent here, that “the last day to propound written discovery directed solely to direct testimony and exhibits shall be the

⁸ This Interim Decision was issued in this Proceeding on January 14, 2014.

⁹ This Interim Decision was issued in this Proceeding on January 3, 2014.

deadline for filing answer testimony”; and (c) the answer testimony relied on by WCPC to show that the discovery at issue was timely filed is WCPC’s answer testimony. The Company asserts that it

is not required to respond to discovery directed to the Answer Testimony of another party. This is particularly the case when the Answer Testimony in question is the testimony of the party conducting the discovery.

PSCo Response to Second Motion to Compel at 2. Public Service also highlights WCPC’s statement that the Company did not file direct testimony and exhibits that raised concerns about PSCo’s hydropower plants. For these reasons, PSCo asks the ALJ to deny the Second WCPC Motion to Compel.

39. As the party seeking relief, WCPC bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

40. For the reasons articulated by Public Service and set out above, the ALJ finds that WCPC has failed to meet this burden. The ALJ will deny the Second WCPC Motion to Compel.

C. The Vote Solar Initiative’s Motion for Clarification, or in the Alternative, for Waiver of Condition, Concerning Access to Highly Confidential Information.

41. On February 13, 2014, Vote Solar filed its Motion for Clarification, or in the Alternative, Waiver of Condition, Concerning Access to Highly Confidential Information (Vote Solar Motion for Clarification). In that filing, Vote Solar asks for clarification with respect to whether Vote Solar witness Gilliam may have access to the highly confidential information; and, if he may not have access because of the first condition stated in the NDA-SME, Vote Solar asks for waiver of that condition with respect to Mr. Gilliam.

42. As good cause for granting the motion, Vote Solar states: (a) Mr. Gilliam is Vote Solar’s Director of Research and Analysis; (b) Vote Solar is a non-profit grass-roots

organization, does not compete with Public Service, is not a vendor to Public Service, and does not intend to become either a competitor of, or a vendor to, Public Service; (c) Mr. Gilliam does not compete with Public Service, is not a vendor to Public Service, and does not intend to become either a competitor of, or a vendor to, Public Service; and Mr. Gilliam seeks access to the highly confidential information only to fulfill his responsibilities as a subject matter expert/witness in this Proceeding. In addition, Vote Solar states that Mr. Gilliam is

a PSCo customer and owns a 3.8 kW [kilowatt] solar installation on the roof of his residence. He has not undertaken any process to certify this installation as a QF and does not participate in a QF program with PSCo. However, due [to] its small size, certification is not required for the solar system to be considered a QF[.]

citing 18 *Code of Federal Regulations* (CFR) § 292.203(d). Vote Solar Motion for Clarification at ¶ 4 (footnote omitted). Finally, if the ALJ determines that the first paragraph of the NDA-SME precludes Mr. Gilliam from signing the NDA-SME, Vote Solar seeks a waiver of that condition because: (a) Mr. Gilliam's access to the highly confidential information is critical for Vote Solar because Vote Solar, through Mr. Gilliam, challenges the Company's avoided cost calculation method and the resultant payments to photovoltaic (PV) technologies; (b) one component of those payments is based on the MEC; (c) the source of the MEC is the Cost Calculator data, weighted by technology; and (d) in order to understand the Cost Calculator outputs, to which Vote Solar has access, Mr. Gilliam requires access to the highly confidential Cost Calculator inputs. For these reasons, Vote Solar asks the ALJ to grant the Vote Solar Motion for Clarification.

43. On February 14, 2014, Public Service filed its Response in Opposition to the Vote Solar Motion for Clarification (PSCo Opposition). The Company first states that, while it object to Mr. Gilliam's having access to the highly confidential information, the objection does not rest

on Mr. Gilliam's rooftop solar installation. In view of PSCo's statement and after review of the NDA-SME language, the ALJ clarifies that Mr. Gilliam's ownership of a 3.8 kW rooftop solar installation does not preclude his signing the NDA-SME.

44. Public Service objects to Mr. Gilliam having access to highly confidential information based on the membership of Vote Solar, whose interests he represents in this Proceeding. As grounds for its opposition, the Company states: (a) the NDA-SME incorporates by reference, and requires compliance with, this Rule 4 CCR 723-1-1101(h); (b) as pertinent here, that Rule provides:

No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed to individual members of a trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information[;]

(c) Mr. Gilliam is the Director of Research and Marketing for Vote Solar and, "by his own testimony[,]' oversees policy initiatives, development and implementation' to 'remove regulatory barriers and implement key policies need to bring solar to scale'" and who "is representing the interest of the 3300 members of his organization in Colorado" (PSCo Opposition at 1 (footnote omitted)); (d) in its Motion to Intervene, Vote Solar stated that it represents the interests of solar PV generators that will wish to sell power to the Company; (e) Vote Solar's membership consists of developers of distributed generation (*i.e.*, PV technologies) that are either direct competitors of Public Service or are vendors to Public Service (or both); and (f) under these facts, Rule 4 CCR 723-1-1101(h) precludes Mr. Gilliam from having access to the highly confidential information. For these reasons, the Company requests that the ALJ deny the Vote Solar Motion for Clarification.

45. On February 18, 2014, the ALJ held a motions hearing¹⁰ at which the ALJ heard argument on the Vote Solar Motion for Clarification. In addition, the ALJ heard the unrebutted and unrefuted testimony of Mr. Rick Gilliam that: (a) Vote Solar is not a solar industry trade association, which he defined as an association of the solar industry designed to represent that industry; (b) insofar as Mr. Gilliam is aware, Vote Solar's membership consists of individuals and not companies, although approximately 10 - 15 percent of those individuals self-identify as workers in the solar industry; (c) insofar as Mr. Gilliam is aware, Vote Solar has no member that is a third-party vendor, which he defined as an owner of a distributed solar system who can make direct sales of electricity at retail from the solar panels; (d) Vote Solar is a non-profit organization that receives contributions from numerous sources, possibly including contributions from third-party vendors; (e) in his role at Vote Solar, Mr. Gilliam is not involved in marketing or strategic planning of products and services that may compete with Public Service's products and services.

46. As the party seeking relief, Vote Solar bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

47. Based on the testimony of Mr. Gilliam, on consideration of the language of Rule 4 CCR 723-1-1101(h), on argument of counsel, and on consideration of the language of the NDA-SME (particularly the extraordinary protections in that NDA), the ALJ finds: (a) Vote Solar is not a trade association; (b) Mr. Gilliam is not concerned with marketing or strategic planning of products and services that compete with PSCo's products and services; (c) by its terms, Rule 4 CCR 723-1-1101(h) does not apply to prevent Mr. Gilliam from having access to

¹⁰ A transcript of this motions hearing has been filed in this Proceeding.

the highly confidential information; and (d) Mr. Gilliam is not precluded from signing the NDA-SME and having access to the highly confidential information.

48. For these reasons, the ALJ will grant the Vote Solar Motion for Clarification; clarifies that Mr. Gilliam is not precluded from signing the NDA-SME; and will not address the request for waiver as that request is moot.

D. The Vote Solar Initiative’s Motion to Suspend the Effective Date of the Proposed Tariff Sheets for an Additional 90 Days and Stay the Proceeding.

49. On February 14, 2014, Vote Solar filed a Motion to Suspend the Effective Date of the Proposed Tariff Sheets for an Additional 90 Days and Stay the Proceeding (Vote Solar Motion for Stay). In that filing, Vote Solar asks that the ALJ further suspend the effective date of the proposed tariff sheets¹¹ and that the ALJ stay this Proceeding “until the Commission concludes its deliberation concerning a new docket addressing, among other things, the Company’s distributed solar generation study, which underlies the proposed capacity payment rates at issue in this [Proceeding] for” PV QFs. Vote Solar Motion for Stay at 1.

50. As good cause for granting the motion, Vote Solar states: (a) as part of the Company-proposed 13-step method to calculate the technology-specific capacity payment rates for small QFs, “the Company adjusts the capacity cost value of QFs based on estimates of the capacity that the QF is likely to provide during the system peak period, which varies across QF technology categories” (Vote Solar Motion for Stay at ¶ 6); (b) to implement this adjustment, at step 11 of the calculation method, Public Service applies a technology-specific Effective Load Carrying Capability (ELCC) value to the capacity value derived from the previous steps; (c) the ELCC has a significant role in calculating the capacity value; (d) the ELCC used by

¹¹ At the time Vote Solar made this motion, the ALJ had not yet extended the suspension period.

Public Service in this Proceeding for the PV technology categories derives from the Solar ELCC Study that is Appendix V to the PSCo study entitled “Costs and Benefits of Distributed Solar Generation of the Public Service Company of Colorado System” (the DSG Study); (e) the Commission will consider net metering and related issues, including the DSG Study (which includes the Solar ELCC Study), in a future proceeding that has not yet commenced; (f) the Solar ELCC Study results are used in both the DSG Study that will be examined in the net metering proceeding and in this Proceeding, and the two proceedings likely will examine that study; and (g) as a result, it would be prudent and administratively efficient to stay this Proceeding pending issuance of a Commission decision that establishes the net metering proceeding, at which time the ALJ and the Parties here can determine what (if any) effect the net metering proceeding will have on the issues in this Proceeding, particularly the Solar ELCC Study. For these reasons, Vote Solar asks the ALJ to grant the Vote Solar Motion for Stay.

51. Due to the date on which the Vote Solar Motion for Stay was filed, no response to the motion was filed.

52. During the February 18, 2014 motions hearing, the ALJ heard argument on this motion. Staff and Public Service oppose the Vote Solar Motion for Stay.

53. As grounds for its opposition, Staff states: (a) through the prefiled testimony, the validity or usefulness of the Solar ELCC Study is at issue in this Proceeding; and (b) the Commission can make a determination on that issue on the record in this Proceeding. For these reasons, Staff asks the ALJ to deny the Vote Solar Motion for Stay.

54. As grounds for its opposition, the Company states: (a) there are at least seven QFs with payment rates tied to the outcome of this Proceeding, and a delay will affect those QFs; (b) staying this Proceeding serves no useful purpose as it will not give the

Commission additional time to take into consideration the impact of the net metering proceeding because, absent a Commission decision permanently suspending them, the tariff sheets as filed with the Amended Advice Letter will go into effect by operation of law on a date certain; (c) the PSCo-proposed payment rate offered in the net metering context and the PSCo-proposed QF payment rates in the instant Proceeding have different bases, and neither the rates nor the issues that they raise are related; and (d) only the Solar ELCC Study is at issue in this Proceeding, and it can be evaluated in this Proceeding without regard to the net metering proceeding. For these reasons, PSCo asks the ALJ to deny the Vote Solar Motion for Stay.

55. As the party seeking relief, Vote Solar bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

56. The ALJ finds that Vote Solar has failed to meet its burden with respect to the request to stay this Proceeding because: (a) the Solar ELCC Study is at issue in this Proceeding, and there is testimony concerning that study; (b) to reach a decision on the Company's proposed method, the ALJ likely will have to address the issues raised about the Solar ELCC Study; (c) given the statutory deadline for consideration of the proposed QF tariffs, there is no time available to consider the impact (if any) that a net metering proceeding may have on the instant Proceeding and to delay this Proceeding in order to assess that potential impact; and (d) the fact that the same study is at issue in, or may be examined in, two parallel proceedings is not sufficient reason to stay this case because this is not an unusual situation that warrants special treatment (that is, Public Service often uses the same study in different contexts and, as a result, that study often is at issue in different proceedings that are going on at the same time).

57. The ALJ will deny the Vote Solar Motion for Stay insofar as it requests a stay in this Proceeding. The ALJ will address *infra* the Vote Solar Motion for Stay's request for further suspension of the effective date of the tariffs.

E. Western Colorado Power Company's Motion for Leave to Endorse Rebuttal Witness and Western Colorado Power Company's Motion to Modify and Extend Procedural Schedule.

58. On February 13, 2014, WCPC filed a Motion for Leave to Endorse Rebuttal Witness (WCPC Motion to Endorse). In that filing, WCPC seeks permission to endorse Warren Wendling as a rebuttal witness to address PSCo's Cost Calculator.

59. On February 14, 2014, Vote Solar filed its Response in Support of the WCPC Motion to Endorse.

60. On February 14, 2014, Public Service filed its Response in Opposition to the WCPC Motion to Endorse.

61. On February 14, 2014, Staff filed its Response to the WCPC Motion to Endorse and opposes that motion.

62. On February 14, 2014, as pertinent here, WCPC filed (in one document) its Reply to the PSCo Response in Opposition [Reply] and a Motion to Modify and Extend Procedural Schedule [WCPC Motion to Modify]. The ALJ considered the Reply.

63. The ALJ treated the WCPC Motion to Endorse as a request for leave to file supplemental answer testimony.

64. During the February 18, 2014 motions hearing, the ALJ heard argument on the WCPC Motion to Endorse and on the WCPC Motion to Modify. Before the ALJ ruled on these motions, however, the Parties reached an agreement that: (a) addressed the WCPC Motion to Endorse; (b) addressed the Vote Solar Motion for Stay with respect to the request further to

suspend the effective date of the proposed tariff sheets; (c) addressed the WCPC Motion to Modify; and (d) proposed a new procedural schedule and new hearing dates. The ALJ accepted this agreement and, on March 4, 2014, issued Decision No. R14-0231-I that contained the substance of the agreement, established the new procedural schedule, and scheduled new evidentiary hearing dates.

65. With the ALJ's acceptance of the Parties' joint proposal, WCPC withdrew as satisfied the WCPC Motion to Endorse and withdrew as satisfied the WCPC Motion to Modify and Extend Procedural Schedule.

66. The ALJ's acceptance of the Parties' joint proposal, which further suspended the effective date of the proposed QF tariffs, also addressed the Vote Solar Motion for Stay's request for further suspension of the effective date of those proposed tariffs. The ALJ will deny as moot the Vote Solar Motion for Stay's request for further suspension of the effective date of the proposed QF tariffs.

F. Western Colorado Power Company's Motion to Compel PSCo to Respond to Third Set of Discovery Requests and Western Colorado Power Company's Motion to Set Aside March 11, 2014 Interim Decision.

67. On February 12, 2014, WCPC served on the Company WCPC's Third Set of Discovery Requests. On February 19, 2014, Public Service filed its responses and objections to those discovery requests.

68. On March 3, 2014, as pertinent here, WCPC filed its Motion to Compel Public Service Company to Respond to Third Set of Discovery Requests (Third WCPC Motion to

Compel).¹² In that filing WCPC requests that the ALJ order PSCo to respond to the third set of discovery requests.

69. As good cause for granting the relief sought, WCPC states: (a) the requested information is relevant to the issue of the appropriateness of the Company's proposed method of calculation of avoided cost; (b) WCPC has proposed an alternative avoided cost calculation method, the Company has sole possession of its technology-specific embedded cost data, and those data are necessary in order for WCPC to establish the relevant avoided cost using the WCPC-sponsored method; (c) PSCo's embedded costs are inherently at issue in this Proceeding; and (d) the Company's objection that the discovery is unduly burdensome is addressed because WCPC agrees to limit the discovery requests to information for the four years immediately prior to the filing of the Advice Letter. For these reasons, WCPC asks the ALJ to grant the Third WCPC Motion to Compel.

70. On March 10, 2014, Public Service filed its Response to the Third WCPC Motion to Compel. Generally, in that filing, the Company opposes the motion because: (a) this Proceeding involves setting the standard capacity and energy payment rates that the Company will offer small QFs that wish to sell their production to PSCo; (b) Public Service has provided information about its proposed avoided cost calculation method; (c) Federal Energy Regulatory Commission (FERC) regulations and FERC Order No. 69 govern the calculation of the avoided cost to be used to establish payment rates for purchasing capacity and energy from QFs; (d) using the FERC definitions, the specific cost information sought by WCPC is not relevant to this Proceeding; and (e) WCPC has not demonstrated how (if at all) the requested information is

¹² The WCPC discovery requests and the PSCo responses accompanied the filing.

relevant under the pertinent FERC regulations and FERC Order No. 69. For these reasons, PSCo asks the ALJ to deny the Third WCPC Motion to Compel.

71. As the party seeking relief, WCPC bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

72. For the following reasons, on March 11, 2014, the ALJ found that WCPC had not met this burden with respect to the WCPC Third Motion to Compel and that the motion was denied¹³ because: (a) WCPC's argument with respect to avoided cost is inconsistent with the definition of avoided cost in FERC regulations and with the discussion of avoided cost in FERC Order No. 69; (b) PSCo's argument is consistent with, and finds support in, the definition of avoided cost in FERC regulations and with the discussion of avoided cost in FERC Order No. 69; and (c) WCPC fails either to tie the disputed discovery requests directly to any of the factors stated in the applicable FERC regulations or to explain how the information sought in those requests is reasonably calculated to lead to the discovery of admissible evidence.

73. On March 20, 2014, WCPC filed a Motion to Set Aside March 11, 2014 Interim Decision (WCPC Motion for Reconsideration). In that filing, WCPC asks the ALJ to reconsider and to reverse the March 11 Interim Decision; to grant the Third WCPC Motion to Compel; and to order PSCo to respond to the WCPC's Third Set of Discovery Requests.

74. As good cause for granting the motion and the requested relief, WCPC states: (a) in the March 11 Interim Decision, the ALJ determined ultimate issues of law (*i.e.*, the law that controls this Proceeding and the scope of this Proceeding) when to do so was not necessary and when no party other than Public Service had addressed the legal issues; (b) the information

¹³ The ALJ made this ruling by electronic mail sent to the Parties on March 11, 2014. This Interim Decision refers to this ruling as the March 11 Interim Decision.

sought is relevant because, under governing federal law, the state utility commissions (including this Commission) have great discretion in setting avoided cost rates in the context of the Public Utility Regulatory Policies Act of 1978 (PURPA), and WCPC seeks to have this Commission, in the exercise of that discretion, adopt a new avoided cost calculation method; (c) the PSCo cost information sought by WCPC is relevant to, and is necessary for WCPC to prove, WCPC's proposed avoided cost calculation method; and (d) WCPC also opposes the Company's proposed avoided cost calculation method, and the PSCo cost information sought by WCPC is relevant to WCPC's opposition to the Company's proposal. For these reasons, WCPC asks the ALJ to grant the WCPC Motion for Reconsideration; to reconsider and to reverse the March 11 Interim Decision; to grant the Third WCPC Motion to Compel; and to order PSCo to respond to WCPC's Third Set of Discovery Requests.

75. On March 25, 2014, Public Service filed its Response in Opposition to Motion to Set Aside Interim Decision. In that filing, the Company opposes the motion because: (a) in order to determine whether the requested information is admissible or is reasonably calculated to lead to the discovery of admissible evidence, the ALJ necessarily had to consider and to articulate the law governing this Proceeding, and the ALJ properly did so in this case; (b) WCPC has not demonstrated that the information it seeks is pertinent to this Proceeding; and (c) WCPC is not precluded from making its legal arguments in its statement of position. For these reasons, PSCo asks the ALJ to deny the WCPC Motion to Reconsider.

76. Pursuant to Decision No. R14-0359-I,¹⁴ on April 1, 2014, the ALJ held a status conference in this Proceeding.¹⁵ At that status conference, the ALJ heard argument on the WCPC Motion to Set Aside and reargument on the Third WCPC Motion to Compel.

77. As the party seeking relief, WCPC bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

78. For the following reasons, the ALJ finds that WCPC has met its burden as to both the WCPC Motion for Reconsideration and the Third WCPC Motion to Compel.

79. As to the WCPC Motion for Reconsideration, the ALJ finds: (a) the Commission has broad discretion with respect to establishing avoided costs in the context of PURPA; (b) in its regulations and its Order No. 69, FERC has set out its definition of avoided costs; (c) FERC's view of avoided cost and the Company's proposed avoided cost calculation method notwithstanding, WCPC is allowed the opportunity to present and to advocate for its proposed avoided cost calculation method; (d) because it rests on the view that the definition of avoided cost in FERC regulations and the discussion of avoided cost in FERC Order No. 69 govern this Proceeding, the March 11 Interim Decision effectively precluded WCPC from presenting and advocating for its proposed method; and (e) under the circumstances presented, the ALJ should not have made a ruling that, as a practical matter, prevented WCPC from presenting its proposed avoided cost calculation method. The ALJ will grant the WCPC Motion for Reconsideration and will reconsider the March 11 Interim Decision.

¹⁴ This Interim Decision was issued on April 4, 2014 and scheduled, *nunc pro tunc*, an April 1, 2014 status conference in this Proceeding.

¹⁵ No transcript of this status conference has been filed in this Proceeding.

80. Turning to the March 11 Interim Decision, the ALJ finds that, by the arguments presented in support of the Third WCPC Motion to Compel coupled with the arguments presented in support of the WCPC Motion for Reconsideration, WCPC has shown that the disputed discovery requests seek information that either is itself admissible or is reasonably calculated to lead to the discovery of admissible evidence (or both). WCPC has established that the information pertains to at least two issues in this Proceeding (*i.e.*, WCPC's proposed avoided cost calculation method and WCPC's reasons for opposing PSCo's proposed avoided cost calculation method). The ALJ will reconsider and will reverse the March 11 Interim Decision, will grant the Third WCPC Motion to Compel, and will order PSCo to respond to WCPC's Third Set of Discovery Requests. The ALJ will order Public Service to respond, not later than April 11, 2014, to the Third Set of Discovery Requests.

81. Granting the WCPC Motion for Reconsideration and the Third WCPC Motion to Compel requires modification of the procedural schedule established in Decision No. R14-0231-I and rescheduling the April 4 and 7, 2014 evidentiary hearing. The ALJ modifies the procedural schedule and reschedules the evidentiary hearing to April 21 through 23, 2014 in Decision No. R14-0359-I.

G. Public Service Company's Motion to Strike Portions of Supplemental Answer Testimony of Warren Wendling.

82. On March 17, 2014, WCPC filed the Supplemental Answer Testimony and Exhibits of Warren L. Wendling (Wendling testimony). The testimony and exhibits contained highly confidential information.

83. On March 26, 2014, Public Service filed its Motion to Strike Portions of Supplemental Answer Testimony and Exhibits of Warren Wendling Sponsored by Western

Colorado Power Company (PSCo Motion to Strike). In that filing Public Service requests that the ALJ strike the following from the Wendling testimony: 23:15 through 28:10,¹⁶ 29:2-9, and Exhibit WLW-10.

84. As good cause for granting the relief sought, PSCo states: (a) as set out and described in Decision No. R14-0231-I at ¶ 13, the ALJ limited the scope of supplemental answer testimony to two topics (*i.e.*, the results of PSCo's Cost Calculator-based study and PSCo's clarification of its proposed tariff language); (b) based on the limited scope of the supplemental answer testimony, the Parties proposed, and the ALJ adopted, an expedited procedural schedule; (c) Cost Calculator and the new study information address the Company's avoided energy costs; (d) in the Wendling testimony at issue, WCPC witness Wendling proposes a new avoided cost calculation method and new avoided cost rates for both capacity and energy; and the method and the rates differ from those advocated by WCPC witness Jacobson in his answer testimony; and (e) while WCPC may offer alternative methods and alternative rates in its original answer case, to offer them in the Wendling testimony is unfair to the other parties because they will have very limited time within which to investigate and to respond to these new proposals. For these reasons, PSCo asks the ALJ to grant the PSCo Motion to Strike.

85. On March 31, 2014, WCPC filed its Response to the PSCo Motion to Strike (WCPC Response to PSCo Motion). In that filing, WCPC opposes the motion because:

¹⁶ In this Interim Decision, citations to testimony are stated as page number:line number. Thus, page 1, line 15 is cited as 1:15.

(a) the Wendling testimony is within the scope of Decision No. R14-0231-I since the recommendations and testimony

are the result of Mr. Wendling's vetting [the additional Cost Calculator] study by subjecting it to expert appraisal and concluding that an alternative methodology is preferable

(WCPC Response to PSCo Motion at 6); (b) "[b]ecause the Company provided no data concerning what generation types contribute to Cost Calculator's [*sic*] prior to the [supplemental] study" (*id.* at 7 (underlying in original)), supplemental direct testimony was WCPC's first opportunity more clearly to vet the asserted symmetry between the avoided cost capacity rate and the avoided cost energy rate; and (c) assuming the Wendling testimony exceeds the scope of Interim Decision No. R14-0231-I (an assumption with which WCPC disagrees), the testimony nonetheless should be permitted because it is relevant; assists the Commission to determine a just and reasonable capacity payment rate and a just and reasonable energy payment rate; and does not prejudice any party. For these reasons, WCPC asks the ALJ to deny the PSCo Motion to Strike.

86. At the April 1, 2014 status conference, the ALJ heard argument on the PSCo Motion to Strike. At the status conference, Staff supported PSCo's position that the Wendling testimony should be stricken. At the status conference, Vote Solar supported WCPC's position that the disputed Wendling testimony should not be stricken.

87. As the party seeking relief, Public Service bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

88. The ALJ finds that Public Service has met its burden: (a) for the reasons stated by Public Service; (b) because the issues that WCPC seeks to address in the disputed Wendling testimony were known at the time WCPC filed its original answer testimony, WCPC could have

conducted discovery and, in the original WCPC answer testimony, developed and presented the recommendations and additional options presented in the disputed Wendling testimony; and (c) on balance, it is unfair and prejudicial to the other parties to allow WCPC, at this late date, to present a new alternative avoided cost calculation method and new proposed capacity payment rates and new proposed energy rates.

89. The ALJ will grant the PSCo Motion to Strike. The ALJ will order the following stricken from the Supplemental Answer Testimony and Exhibits of Warren Wendling: 23:15 through 28:10, 29:2-9, and Exhibit WLW-10.

90. On March 28, 2014, Public Service filed the Supplemental Rebuttal Testimony of Scott B. Brockett. In that testimony, PSCo witness Brockett responds to the now-stricken Wendling testimony. The ALJ will order Public Service to strike from PSCo witness Brockett's Supplemental Rebuttal Testimony any testimony that responds to the now-stricken Wendling testimony.

H. Staff of the Commission's Motion to Strike Portions of Supplemental Answer Testimony and Exhibits of Eric Jacobson.

91. By Decision No. R14-0359-I, the ALJ scheduled the evidentiary hearing in this Proceeding for April 21 through 23, 2014.

92. On April 16, 2014, WCPC filed the Supplemental Answer Testimony and Exhibits of Eric R. Jacobson and the appended Exhibits ERJ-20 through ERJ-27.

93. On April 18, 2014, Staff filed its Motion to Strike Portions of Supplemental Answer Testimony and Exhibits of Mr. Eric Jacobson (Staff Motion to Strike). In that filing Staff requests that the ALJ strike the following from the Supplemental Jacobson testimony: 1:13-14; 2:9 (beginning with "Second,") through 6:10; 6:14-17 (sentence beginning with

“Focusing on”); 10:7-11; 11:13-17 (ending with “really are.”); 12:1 through 16:9; and Exhibits ERJ-20, ERJ-22, ERJ-23, and ERJ-27. This is the disputed Jacobson testimony.

94. As good cause for granting the relief sought, Staff states: (a) as pertinent to the motion, the ALJ limited the scope of supplemental answer testimony to incorporating information received in response to WPCPC’s Third Set of Discovery Requests; (b) in the disputed Jacobson testimony, WPCPC witness Jacobson provides testimony outside the permissible scope of supplemental answer testimony when he relies on data from the PSCo FERC Form 1 filed on April 11, 2014 (2014 PSCo FERC Form 1); (c) in the disputed Jacobson testimony, WPCPC witness Jacobson provides testimony outside the permissible scope of supplemental answer testimony when he impermissibly attempts to rebut the Cross-Answer Testimony and Exhibits of Staff witness Camp; (d) WPCPC had the opportunity to address the FERC regulations and FERC Order No. 69 in its answer testimony but elected not to do so; and (e) to allow WPCPC witness Jacobson to provide testimony that is outside the limited scope of supplemental answer testimony is unfair to the other parties. For these reasons, Staff asks the ALJ to grant the Staff Motion to Strike.

95. Due to the date on which the Staff Motion to Strike was filed, no response to the motion was filed.

96. As a preliminary matter at the evidentiary hearing, the ALJ heard argument on the Staff Motion to Strike. Public Service supported the Staff Motion to Strike.

97. WPCPC opposes the motion because: (a) the 2014 PSCo FERC Form 1 data are the most current publicly-available information, and WPCPC did not become aware of the data until after the date by which WPCPC was to file its notice of intent to expand the scope of the supplemental answer testimony; (b) WPCPC witness Jacobson uses the 2014 PSCo FERC Form 1

data to refresh or to update the data in his answer testimony, and this is permissible; (c) WCPC witness Jacobson neither proposes nor introduces a new or modified avoided cost calculation method in the disputed Jacobson testimony; (d) allowing the disputed Jacobson testimony based on the 2014 PSCo FERC Form 1 data will not prejudice Staff, which has access to the publicly-available data, and will not prejudice PSCo, which produced the data; and (e) the disputed Jacobson testimony at 12:1 through 16:9 is a continuation of WCPC witness Jacobson's previous answer testimony, underscores why his proposed avoided cost calculation method is relevant to this Proceeding, and underscores how his proposed avoided cost calculation method complies with PURPA. For these reasons, WCPC asks the ALJ to deny the Staff Motion to Strike.

98. As the party seeking relief, Staff bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

99. With respect to the Jacobson testimony based on 2014 PSCo FERC Form 1 data, the ALJ finds that Staff has met its burden with respect to the disputed Jacobson testimony that addresses capacity payment rates because, in his answer testimony, Mr. Jacobson addressed only energy payment rates.

100. With respect to the disputed Jacobson testimony that updates his answer testimony on energy payment rates based on 2014 PSCo Form 1 data, the ALJ will deny the Staff motion because, although it is a close question, the ALJ finds that the better approach is to have in the record, and thus available to the Commission, the most current publicly-available data.

101. With respect to the disputed Jacobson testimony at 12:1 through 16:9, the ALJ finds that Staff has met its burden for the reasons stated by Staff and because WCPC had the opportunity to address the FERC regulations, FERC Order No. 69, and Staff witness Camp's

answer testimony in cross-answer testimony but elected not to do so. On balance, it is unfair and prejudicial to the other parties to allow WCPC, at this late date, to present this testimony.

102. The ALJ will grant in part the Staff Motion to Strike. The ALJ will order the following stricken from the Supplemental Answer Testimony and Exhibits of Eric Jacobson: 3:6-8 (beginning with “huge” and ending with “that”); 6:14 (beginning with “Focusing on”) through 8:10 and the related footnotes; 10:7-11; 11:4-6 (the sentence beginning with “I also”); 12:1 through 16:9; Exhibit ERJ-24; and Exhibit ERJ-27.

103. On April 18, 2014, Public Service filed the Second Supplemental Rebuttal Testimony of Scott B. Brockett. In that testimony, PSCo witness Brockett responds to the now-stricken Jacobson testimony. The ALJ will order Public Service to strike from PSCo witness Brockett’s Second Supplemental Rebuttal Testimony any testimony that responds to the new-stricken Jacobson testimony.

I. Western Colorado Power Company’s Request for Administrative Notice.

104. At the April 1 status conference, the ALJ informed the Parties that her practice is to require that every document (*e.g.*, Commission decisions, Commission rules, federal regulations, federal agency decisions) of which administrative notice is taken be marked as an exhibit in the case. Having the documents available as exhibits makes the evidentiary record cleaner and easier to understand. In addition, having the documents as readily-available exhibits to which both witnesses and counsel may refer makes the evidentiary hearing proceed more smoothly and more quickly.

105. Rule 4 CCR 723-1-1501(c) governs administrative notice in Commission proceedings. As pertinent here, that Rule requires, “unless [the document is] already filed with

the Commission, the person requesting administrative notice [to] provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding.”

106. On April 17, 2014, WCPC filed a Request for Administrative Notice. In that filing, WCPC asks the ALJ to take administrative notice of these documents:¹⁷ (a) 16 United States Code § 824a-3; (b) 18 CFR Part 292; (c) Rules 4 CCR 723-3-3900 through 723-3-3902; (d) article V, § 25 of the Colorado Constitution; and (e) § 6-4-105, C.R.S.

107. The ALJ addressed this filing as a preliminary matter at the evidentiary hearing.

108. The ALJ will take administrative notice of: (a) 16 United States Code § 824a-3;¹⁸ (b) Rules 4 CCR 723-3-3900 through 723-3-3902;¹⁹ (c) article V, § 25 of the Colorado Constitution;²⁰ and (d) § 6-4-105, C.R.S.²¹ The ALJ finds that each document is a type of document of which the Commission may take administrative notice.

109. The ALJ will not take administrative notice of the proffered 18 CFR Part 292. By Rule 4 CCR 723-3-3008(f), the Commission incorporates by reference the April 1, 2006 version of 18 CFR Part 292 Subparts A, B, and C regarding §§ 201 and 210 of PURPA. Pursuant to Rule 4 CCR 723-3-3008(f), reference in the Commission’s rules to 18 CFR Part 292 Subparts A, B, and C is to the April 1, 2006 version of those federal regulations and no other version. When asked by the ALJ, WCPC counsel stated that the proffered 18 CFR Part 292 is the March 30, 2010 version of those federal regulations. Because the proffered 18 CFR Part 292

¹⁷ A copy of each document is appended to the request.

¹⁸ This document is Hearing Exhibit No. 19.

¹⁹ This document is Hearing Exhibit No. 20.

²⁰ This document is Hearing Exhibit No. 21.

²¹ This document is Hearing Exhibit No. 22.

is not the version of the federal regulations that the Commission has incorporated by reference, the ALJ will not take administrative notice of that document.

J. Miscellaneous Procedural Motions.

110. On January 28, 2014, WCPC filed its Motion to Compel Public Service Company to Supplement its Discovery Responses to WCPC's First Set of Discovery. In that filing, WCPC seeks shortened response time and expedited treatment. The ALJ will deny the request for shortened response time because Decision No. R13-1443-I²² at ¶ 20 and at Ordering Paragraph No. 9 renders the request moot. The ALJ will deny the request for expedited treatment as the motion fails to state good cause.

111. On February 13, 2014, WCPC filed its WCPC Motion to Endorse. In that filing, WCPC requests shortened response time. The ALJ will grant the request and will shorten response time to the WCPC Motion to Endorse.

112. On February 14, 2014, as pertinent here, WCPC filed a Request for Leave to File a Reply to PSCo's Response to the WCPC Motion to Endorse a Rebuttal Witness. Because the ALJ finds that the reply (which was filed with the request) addresses information presented by, or proposals not made earlier by, the Company, the ALJ will grant the request and will permit WCPC to file a reply to PSCo's Response to the WCPC Motion to Endorse a Rebuttal Witness.

113. On March 3, 2014, WCPC filed (in one document) its Motion to Compel Public Service Company to Respond to Third Set of Discovery Requests and Request for Shortened Response Time. The ALJ will deny the request for shortened response time because Decision No. R13-1443-I at ¶ 20 and at Ordering Paragraph No. 9 renders the request moot.

²² This Interim Decision was issued in this Proceeding on November 18, 2013.

114. On March 7, 2014, Vote Solar filed an Unopposed Motion for a Date Certain for Mr. Gilliam to Testify at the Evidentiary Hearing. Subsequently, the hearing dates were rescheduled. Rescheduling the hearing dates renders moot Vote Solar's Unopposed Motion for a Date Certain for Mr. Gilliam to Testify at the Evidentiary Hearing. The ALJ will deny that motion as moot.

115. On April 9, 2014, WCPC filed its Request for Extension of Time to File Motion for Leave to File Second Supplemental Answer Testimony and Exhibits that Exceeds Scope Set Forth in Decision No. R14-0359-I. The ALJ will grant this request and will extend, through April 11, 2014, the time within which WCPC may file a motion for leave to file second supplemental answer testimony.

116. On April 9, 2014, Vote Solar filed an Unopposed Motion for Leave to File Third Corrected Answer Testimony of Rick Gilliam. Vote Solar seeks to make the filing to correct an error in Mr. Gilliam's calculations. The ALJ will grant that motion.

III. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, Western Colorado Power Company's Motion to Compel PSCo to Supplement Discovery Responses to WCPC's First Set of Discovery is granted in part and is denied in part.

2. Not later than noon on February 14, 2014, and consistent with the discussion above, Public Service Company of Colorado (Public Service Company) shall supplement its response to Discovery Request WCPC 1-12.

3. Consistent with the discussion above, the Cost Calculator input and other information as described above are designated as highly confidential information.

4. Consistent with the discussion above, Western Colorado Power Company's Motion to Compel PSCo to Respond to Second Set of Discovery Requests is denied.

5. Consistent with the discussion above, The Vote Solar Initiative's Motion for Clarification, or in the Alternative, for Waiver of Condition, Concerning Access to Highly Confidential Information is granted.

6. Consistent with the discussion above, The Vote Solar Initiative's Motion to Suspend the Effective Date of the Proposed Tariff Sheets for an Additional 90 Days and Stay the Proceeding is granted in part and is denied in part.

7. Consistent with the discussion above, Western Colorado Power Company's Motion for Leave to Endorse Rebuttal Witness is withdrawn as satisfied.

8. Consistent with the discussion above, Western Colorado Power Company's Motion to Modify and Extend Procedural Schedule is withdrawn as satisfied.

9. Consistent with the discussion above, The Vote Solar Initiative's Unopposed Motion for a Date Certain for Mr. Gilliam to Testify at the Evidentiary Hearing is denied as moot.

10. Consistent with the discussion above, Western Colorado Power Company's Motion to Set Aside March 11, 2014 Interim Decision is granted.

11. Consistent with the discussion above, Western Colorado Power Company's Motion to Compel PSCo to Respond to Third Set of Discovery Requests is granted.

12. Consistent with the discussion above and not later than April 11, 2014, Public Service Company shall respond to Western Colorado Power Company's Third Set of Discovery Requests.

13. Consistent with the discussion above, Public Service Company's Motion to Strike Portions of Supplemental Answer Testimony of Warren Wendling is granted.

14. Consistent with the discussion above, the following are stricken from the Supplemental Answer Testimony and Exhibits of Warren Wendling: 23:15 through 28:10, 29:2-9, and Exhibit WLW-10.

15. Consistent with the discussion above, Public Service Company shall strike from the Supplemental Rebuttal Testimony of Scott B. Brockett any testimony that responds to the now-stricken portions of the Supplemental Answer Testimony and Exhibits of Warren Wendling.

16. Consistent with the discussion above, Staff of the Commission's Motion to Strike Portions of Supplemental Answer Testimony and Exhibits of Eric Jacobson is granted in part.

17. Consistent with the discussion above, the following are stricken from the Supplemental Answer Testimony and Exhibits of Eric Jacobson: 3:6-8 (beginning with "huge" and ending with "that"); 6:14 (beginning with "Focusing on") through 8:10 and the related footnotes; 10:7-11; 11:4-6 (the sentence beginning with "I also"); 12:1 through 16:9; Exhibit ERJ-24; and Exhibit ERJ-27.

18. Consistent with the discussion above, Public Service Company shall strike from the Second Supplemental Rebuttal Testimony of Scott B. Brockett any testimony that responds to the now-stricken portions of the Supplemental Answer Testimony and Exhibits of Eric Jacobson.

19. Consistent with the discussion above, Western Colorado Power Company's Request for Administrative Notice is granted in part.

20. Consistent with the discussion above, the administrative notice is taken of the following: (a) 16 United States Code § 824a-3; (b) Rules 4 *Code of Colorado Regulations*

723-3-3900 through 723-3-3902; (c) article V, § 25 of the Colorado Constitution; and (d) § 6-4-105, C.R.S.

21. Consistent with the discussion above, some of the miscellaneous procedural motions are granted and some of the miscellaneous procedural motions are denied.

22. Consistent with the discussion above, the rulings in this Interim Decision are made *nunc pro tunc*.

23. The Parties are held to the advisements contained in the Interim Decisions issued in this Proceeding.

24. 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