

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0580E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING REGULATORY TREATMENT OF MARGINS EARNED FROM CERTAIN TYPES OF RENEWABLE ENERGY CREDIT AND ENERGY TRANSACTIONS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION; APPROVING
STIPULATION AND SETTLEMENT AGREEMENT;
AND GRANTING APPLICATION, AS MODIFIED**

Mailed Date: September 18, 2014

I. STATEMENT

1. On May 30, 2014, Public Service Company of Colorado (Public Service, Company, or PSCo) filed a Verified Application (Application) that seeks Commission approval of PSCo's requested regulatory treatment for the margins that the Company expects to earn in connection with certain types of transactions involving the sale of Renewable Energy Credits (RECs). That filing commenced this Proceeding.

2. With the verified Application the Company filed the Direct Testimony of Eric W. Pierce and the Direct Testimony of Kari Chilcott Clark. Neither testimony is verified.

3. On June 3, 2014, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period, which has expired.

4. On July 9, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

5. On July 9, 2014, by Minute Order, the Commission deemed the Application complete as of that date. On July 15, 2014, by Decision No. R14-0827-I, the ALJ extended for an additional 90 days the time for Commission decision in this Proceeding.

6. On July 1, 2014, Trial Staff of the Commission (Staff) timely intervened as of right. Staff is a party in this matter.

7. On July 2, 2014, the Colorado Office of Consumer Counsel (OCC) timely intervened as of right. OCC is a party in this matter.¹

8. On July 2, 2014, Western Resource Advocates (WRA) timely filed its Petition for Leave to Intervene. On July 17, 2014, by Decision No. R14-0847-I, the ALJ granted the petition and permitted WRA to intervene as a party in this Proceeding.

9. OCC, Staff, and WRA, collectively, are the Intervenors. Public Service and Intervenors, collectively, are the Parties.

10. By Decision No. R14-0827-I and as relevant here, the ALJ scheduled a July 28, 2014 prehearing conference in this Proceeding. On July 25, 2014, by Decision No. R14-0892-I and for the reasons stated in that Interim Decision, the ALJ vacated the prehearing conference.

11. On September 5, 2014, Public Service, on behalf of the Parties, filed a Motion to Approve Stipulation and Settlement Agreement (Motion). The Stipulation and Settlement Agreement (Stipulation) accompanied the Motion.

¹ On August 1, 2014, First Assistant Attorney General Stephen W. Southwick withdrew as counsel for OCC. OCC is now represented by Senior Assistant Attorney General Gregory E. Bunker and Assistant Attorney General Brent Coleman.

II. DISCUSSION AND CONCLUSION

12. Public Service is an investor-owned “Qualifying Retail Utility” or “QRU,” as that term is defined in Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3652(t).²

13. As defined in Rule 4 CCR 723-3-3652(y), a REC is

a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one megawatt-hour of electric energy generated from a renewable energy resource.

See also Rule 4 CCR 723-3-3659 (rule governing RECs). Investor-owned QRUs use RECs to demonstrate their compliance with the Renewable Energy Standard (RES) established in § 40-2-124, C.R.S. *See generally* 4 CCR 723-3-3650 through 723-3-3663 (rules implementing the RES).

14. At present, Public Service has obtained more RECs from its generation resources than are needed by the Company to meet its RES requirement.

15. The Company has had, and anticipates continuing to have, opportunities to sell RECs that it does not need to demonstrate its RES compliance. With respect to the Application, these are the relevant types of REC sales made by the Company: (a) stand-alone REC sales (Stand-Alone REC transactions); (b) RECs bundled with the sale of energy produced by PSCo system resources (Gen-Gen REC transactions); and (c) RECs bundled with the sale of energy produced in wholesale markets for resale (Hybrid REC transactions).³

² This Rule is found in the Rules Regulating Electric Utilities, Part 3 of 4 *Code of Colorado Regulations* 723.

³ There is a fourth type of PSCo REC transaction: the Proprietary Book (or Prop Book) REC transaction. In a Prop Book REC transaction, PSCo “purchases RECs, with or without associated energy, that it [intends] to resell.” Stipulation at 3 & n.2. The Application does not address and does not seek to change the Commission-approved treatment of the margins that PSCo earns in Prop Book REC transactions.

16. Generally speaking, the Company earns a margin when it sells a REC. The regulatory treatment of the margins that the Company earns in each of the three listed types of REC transactions is the subject of the Application.

17. At present, for Stand-Alone REC transactions, Public Service shares the margins that it earns: 90 percent goes to customers, and 10 percent is retained by PSCo. The Commission established this regulatory treatment in Decision No. R11-0380.⁴

18. At present, for Gen-Gen REC transactions, Public Service shares the margins that it earns: 90 percent goes to customers, and 10 percent is retained by PSCo. The Commission established this regulatory treatment in Decision No. C12-0494.⁵

19. At present, for Hybrid REC transactions, Public Service shares the margins that it earns: for the first \$ 20 million in sales, 80 percent goes to customers, and 20 percent is retained by PSCo; if total sales exceed \$ 20 million, 90 percent of the amount over \$ 20 million goes to customers, and 10 percent is retained by PSCo. The Commission established this regulatory treatment in Decision No. C12-0081 (as subsequently clarified and corrected).⁶

⁴ This Decision was issued on April 7, 2011 in Proceeding No. 10A-542E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Regulatory Treatment of Margins Earned from Certain REC Transactions*.

⁵ This Decision was issued on May 9, 2012 in Proceeding No. 11AL-947E, *In the Matter of Advice Letter No. 1597-Electric Filed by Public Service Company of Colorado to Revise Its Colorado PUC NO. 7-Electric Tariff to Implement a General Rate Schedule Adjustment and Other Changes Effective December 23, 2011*. The Commission clarified and corrected Decision No. C12-0494 in Decision No. C12-0640, which was issued on June 14, 2012.

⁶ This Decision was issued on January 27, 2012 in Proceeding No. 11A-510E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Regulatory Treatment of Margins Earned from Certain Renewable Energy Credits and Energy Transactions and Petition for Declaratory Order Clarifying the Meaning of the Phrase "Transactions Executed" as the Phrase Is Used in the Settlement Agreement Approved in Docket No. 09A-602E*. The Commission clarified and corrected Decision No. C12-0081 in Decision No. C12-0294, which was issued on March 14, 2012.

20. As pertinent here, Rule 4 CCR 723-3-3659(n) provides that “[p]roceeds from the sales of RECs shall be credited to the account associated with the” Renewable Energy Standard Adjustment (RESA).⁷ Thus, Public Service credits to the RESA account the customer portion of the margins on the three types of REC transactions discussed above. To keep the Commission apprised of the revenues and expenses booked to the RESA account, Public Service files monthly reports with the Commission; in the monthly reports, the customer portion of the REC margins is a line item.

21. The current regulatory treatment expires on December 31, 2014.

22. By the Application, Public Service seeks Commission approval of

the Company’s requested regulatory treatment for the margins that Public Service expects to earn in connection with certain types of transactions involving the sale of [RECs] on either a standalone basis or bundled with electric power. With one limited modification, Public Service requests that the treatment of margins previously approved by the Commission continue to apply to such transactions.

Application at 1. The referenced modification proposes to change the treatment of the margins from Hybrid REC transactions: going forward, the two tiers would be eliminated, and the margin sharing would be 80 percent going to customers and 20 percent being retained by PSCo.

23. In the Stipulation, the Parties agree that: (a) the current REC margin-sharing percentages should continue without modification;⁸ and (b) absent further order, the current REC margin-sharing percentages should be in effect from January 1, 2015 through and including December 31, 2017, a period of three years. Stipulation at 4-5. In the Stipulation, Public Service agrees “to continue to provide the Commission the monthly total of the Customer’s [*sic*] share of

⁷ As defined in Rule 4 CCR 723-3-3652(cc), the RESA is “a forward-looking cost recovery mechanism used by an investor owned QRU to provide funding for implementing the renewable energy standard.”

⁸ This has the effect of withdrawing the PSCo-proposed modification to the treatment of the margins from Hybrid REC transactions.

any REC margins arising from any of the three transactions that are subject to this Application in [its] monthly RESA reports.” *Id.* at 5.

24. Rule 4 CCR 723-3-3659(n) lists factors that the Commission must take into account when asked to determine the appropriate sharing of margins from the sale of RECs:

The investor owned QRU may seek approval in an annual compliance plan filing under [Rule 4 CCR 723-3-3657] or by separate application to retain as earnings a percentage of the funds from REC sales that the investor owned QRU expects to have available to acquire eligible energy and RECs under the retail rate impact in [Rule 4 CCR 723-3-3661] for the compliance year. In considering the percentage of funds to be retained as earnings by the investor owned QRU, the Commission shall take into account the development of the REC market and the expected value added by the investor owned QRU in marketing and trading the RECs.

The Commission may consider additional factors on a case-by-case basis as appropriate.

25. The Parties propose to continue the existing sharing percentages for an additional three years. The Parties state that the current Commission-approved margin-sharing percentages take the Rule factors in consideration. In essence, they assert that the Commission has already done the required analysis so that it need not be repeated in this Proceeding.

26. Based on the verified Application and the information provided in the Stipulation, the ALJ finds the Stipulation modifies the Application. In addition, the ALJ finds that the modified Stipulation is reasonable; is supported; and is in the public interest. Finally, the ALJ finds that the REC margin-sharing percentages proposed in the modified Stipulation are identical to the REC margin-sharing percentages reviewed and approved in Proceedings No. 10A-542E, No. 11A-510E, and No. 11AL-947E. The ALJ agrees with the Parties that, given the facts of this case, the review of the REC margin-sharing percentages done in those previous Proceedings is sufficient to meet the requirements of Rule 4 CCR 723-3-3659(n) in this Proceeding.⁹

⁹ To be clear, this determination is specific to, and applies to, this Proceeding only.

27. Based on the foregoing, the ALJ will grant the Motion; will approve the Stipulation; and will grant the Application, as modified by the Stipulation.

28. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Motion to Approve Stipulation and Settlement Agreement is granted.

2. Consistent with the discussion above, the Stipulation and Settlement Agreement filed on September 5, 2014 is approved.

3. Consistent with the discussion above, the verified Application filed on May 30, 2014 by Public Service Company of Colorado, as modified by the Stipulation and Settlement Agreement filed on September 5, 2014, is granted.

4. Commencing on January 1, 2015 and, unless otherwise ordered, continuing through and including December 31, 2017, Public Service Company of Colorado shall share the margins that it earns from Renewable Energy Credit transactions; the sharing percentages and process are as set out in the discussion above.

5. Consistent with the discussion above, Public Service Company of Colorado shall file with the Commission monthly Renewable Energy Standard Adjustment reports that contain, in addition to other information, the monthly total of the customers' share of any Renewable Energy Credit margins from any of the three types of Renewable Energy Credit transactions that are the subject of the Application in this Proceeding.

6. Public Service Company of Colorado shall comply with the Stipulation and Settlement Agreement filed on September 5, 2014 and with this Decision.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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