

Decision No. C17-0150-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 17D-0082E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A DECLARATORY RULING CONFIRMING THAT PUBLIC SERVICE MAY ACCEPT NEGATIVE RENEWABLE ENERGY CREDIT VALUES FOR COMMUNITY SOLAR GARDEN BIDS.

**INTERIM DECISION ACCEPTING PETITION AND  
SETTING DEADLINES FOR  
INTERVENTION FILINGS AND BRIEFS**

Mailed Date: February 21, 2017

Adopted Date: February 16, 2017

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TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

**I. BY THE COMMISSION**

**A. Statement**

1. On February 7, 2017, Public Service Company of Colorado (Public Service or Company) filed a Petition for Declaratory Order (Petition) requesting that the Commission

**Colorado PUC E-Filings System**

determine that the Company may lawfully accept bids from developers of Community Solar Gardens (CSGs) at negative prices for renewable energy credits (RECs).

2. This Decision accepts the Petition and establishes an intervention period and briefing schedule. Requests for intervention and initial briefs shall be filed no later than March 24, 2017.<sup>1</sup> Response briefs shall be filed no later than April 7, 2017.

**B. Discussion**

3. In the Petition, Public Service explains that, in accordance with § 40-2-127(5), C.R.S., the Company must include in its Renewable Energy Standard (RES) Compliance Plan filings a plan for “purchas[ing] the electricity and renewable energy credits generated from one or more community solar gardens over the period covered by the plan.”<sup>2</sup>

4. Public Service states that it generally conducts competitive solicitations to acquire the electricity and RECs from CSGs as part of its Solar\*Rewards Community program. CSG developers submit bids, and the bid price includes a price for RECs, which Public Service claims is generally the key factor it considers when awarding bids to viable CSG projects.

5. Public Service states that the negative bid price for RECs was raised as an issue in the Company’s 2017-2019 RES Compliance Plan in Proceeding No. 16A-0139E. That proceeding was resolved by the Commission’s approval of the Non-Unanimous Comprehensive Settlement Agreement (Settlement) for Proceeding Nos. 16AL-0048E, 16A-0055E, and 16A-0139E filed August 15, 2016. The Settlement states that the parties “agreed to leave unresolved the question of whether Negative REC price bids are appropriate from a legal or

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<sup>1</sup> Initial briefs and responses may be filed by Public Service and each participant requesting intervention.

<sup>2</sup> Petition at ¶ 3

policy standpoint.”<sup>3</sup> At the hearing on the Settlement, the Company indicated that it would approach the Commission for a determination regarding treatment of negative REC bids.

6. Public Service further states that, on October 14, 2016, in response to its solicitation conducted pursuant to the Company’s 2014 RES Compliance Plan approved in Proceeding No. 13A-0836E, the Company received 118 bids from 10 CSG developers. Public Service reports that 9 of the 118 bids included negative REC values and that, on December 13, 2016, the Company awarded 32 contracts to 5 developers including all 9 bids with negative values.

7. Public Service provides a legal analysis in the Petition supporting its position that accepting CSG bids with negative REC values is not prohibited under Colorado law. Public Service also provides argument that its request for an order confirming that the Company may lawfully accept bids from CSG developers at negative REC prices is in the public interest.

8. Public Service also argues that this matter does not require a hearing and can be decided on pleadings.

**C. Conclusion and Findings**

9. The Commission accepts the Petition and will consider the matter *en banc*.

10. The Petition is available for public inspection at the Commission office located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m., excluding weekends and state holidays. This Decision is the notice of the filing of Public Service’s petition for declaratory order requesting a determination that Public Service may accept negative REC

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<sup>3</sup> Settlement at 64.

values for bids from CSG developers, based on Commission findings that such bids are permissible under Colorado law and are in the public interest.

11. We find good cause to establish a notice period and an intervention deadline for the Petition. Motions for intervention and notices of intervention of right shall be filed no later than 5:00 p.m. on March 24, 2017.

12. We agree with Public Service that a briefing schedule without an evidentiary hearing may suffice in this matter. Initial briefs shall be filed concurrent with the intervention filings no later than March 24, 2017. Responsive briefs shall be due on or before April 7, 2017.

## II. **ORDER**

### A. **It Is Ordered That:**

1. The Commission gives notice of the Petition for Declaratory Order filed on February 7, 2017, by Public Service Company of Colorado (Public Service).

2. Any person desiring to intervene or participate as a party in this proceeding shall file a motion to intervene or, under the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, other appropriate pleadings to participate formally in this proceeding on or before 5:00 p.m. on March 24, 2017.

3. Initial briefs regarding Public Service's request for an order declaring that bids from developers of Community Solar Gardens at negative prices for renewable energy credits are permitted under Colorado law and are in the public interest shall be filed no later than March 24, 2017, consistent with the discussion above. Response briefs shall be filed no later than April 7, 2017.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 16, 2017.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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WENDY M. MOSER

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Commissioners