

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0262E

IN THE MATTER OF VERIFIED PETITION OF SUNSHARE, LLC FOR A DECLARATORY ORDER APPROVING A RENEWABLE ENERGY CREDIT ADDER.

**COMMISSION DECISION ISSUING
DECLARATORY RULINGS AND
AUTHORIZING MODIFICATIONS TO BIDS**

Mailed Date: February 25, 2021
Adopted Date: January 20, 2021

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, we address the Petition for Declaratory Order filed on June 17, 2020, corrected on July 17, 2020, and amended on November 23, 2020, and December

29, 2020 (Petition), by SunShare, LLC (SunShare). We allow Public Service Company of Colorado (Public Service or the Company) to reform the price paid for Renewable Energy Credits (RECs) for renewable energy production under five of SunShare's six executed Producer Agreements with Public Service resulting from the Company's 2018 Solar*Rewards Community Solar Garden (CSG) Request for Proposals (RFP) process, consistent with the discussion below. Additionally, we deny SunShare's request for a waiver of Public Service's creditworthiness requirements.

B. Background and Procedural History

2. On June 17, 2020, SunShare filed its Verified Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1304(i) of the Commission's Rules of Practice and Procedure. SunShare explains that it was awarded six bids for CSG projects in Public Service's 2018 CSG RFP process (2018 CSG Projects), each for 2 MW of capacity. It states it has experienced significant interconnection delays and that the projects are no longer viable at their bid REC prices. SunShare requests an increase in the REC price per kWh generated (a REC Adder) for five of the six 2018 CSG Projects. SunShare also requests that we grant a one-time waiver of Public Service's creditworthiness requirement for use of a parent guarantee to fund interconnection payments upon the execution of an Interconnection Agreement or find that the creditworthiness requirement cannot be applied in Colorado.

3. By Decision No. C20-0472-I, issued June 29, 2020, we accepted the Petition for consideration, determined the Commission would hear the Petition *en banc*, and set a partial procedural schedule.

4. By Decision No. C20-0506-I, issued July 14, 2020, we allowed the following parties to participate in this proceeding: Public Service, the Colorado Office of Consumer

Counsel (OCC), Trial Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Energy Office (CEO). We also granted SunShare's unopposed request for extraordinary protection of certain information included in the Petition, including the pricing term in each of SunShare's 2018 CSG Project Producer Agreements, proposed REC Adder amounts, and a schedule setting forth the nature and extent of SunShare's cost increases. Additionally, we directed parties to confer and provide a preferred procedural schedule for the remainder of the proceeding.

5. Initial briefs were filed on or before July 27, 2020, by the following parties: Public Service, the OCC, Staff, and CEO. Two developers of CSG projects, Pivot Energy (Pivot) and Oak Leaf Energy Partners (Oak Leaf), submitted comments.

6. By Decision No. C20-0562-I, issued July 31, 2020, we set August 6, 2020, as the deadline for the filing of Reply briefs and required that parties submit a filing asserting whether an evidentiary hearing is necessary. Reply briefs were filed on or before August 6, 2020 by each of the parties.¹ On August 10, 2020, SunShare filed a response to Decision No. C20-0562-I.

7. On October 29, 2020, SunShare and Public Service filed a Joint Status Report. The Joint Status Report states that SunShare and Public Service have executed an Interconnection Agreement for a project comprised of 5 MW of the capacity at issue in the Petition. The Joint Status Report also states "[e]arly indications are positive that the parties can achieve Interconnection Agreements regarding all 12 of the 12 MW of 2018 CSG Projects" subject to the Petition, and that SunShare has begun the county application process for the 7 MW of conditional land use permitting for projects awaiting Interconnection Agreements.²

¹ Public Service filed a Corrected Reply on August 7, 2020.

² Joint Status Report, filed October 29, 2020, at pp. 2-3.

8. By Decision No. C20-0809-I, issued November 16, 2020, we required SunShare to file an amendment if the activity listed in the Joint Status Report changed the issues raised in the Petition. On November 23, 2020, SunShare filed its First Amended Petition for Declaratory Order, in which it did not amend the relief requested but clarified that the activities listed in the Joint Status Report have changed expected in-service dates and that a waiver of Public Service's creditworthiness requirement would no longer apply to the 5 MW of its 2018 CSG Projects that have received an Interconnection Agreement. SunShare also advocated for a decision *en banc* arguing that there is an absence of any factual dispute.

9. By Decision No. C20-0841-I, issued December 4, 2020, we set December 7, 2020, as the deadline for responses to SunShare's First Amended Petition. The decision stated that the Commission "agree[ed] with SunShare that there appears to be an absence of factual dispute," and determined "the matter is ripe to move forward with a declaration regarding the matters to which SunShare seeks."³ On December 7, 2020, the OCC and Staff filed responses.

10. On December 29, 2020, SunShare filed a Second Amended Petition for a Declaratory Order with a revised proposed REC Adder amount. At the time the original Petition was filed, the federal Investment Tax Credit (ITC) was slated to step down from 26 percent to 22 percent on January 1, 2021, and SunShare's proposed REC Adder amounts reflected this step down by requesting a higher REC Adder amount for projects that reach a 2021 in-service date compared to projects that reach a 2020 in-service date. In its Second Amended Petition, SunShare explains that the 2020 ITC level was extended through the end of 2022 by the Consolidated Appropriations Act, 2021, H.R. 133, and decreased its proposed REC Adder for projects with a 2021 in-service date to account for this.

³ Decision No. C20-0841-I, at ¶¶ 10-11.

C. SunShare's Request for Relief

11. In its Petition SunShare explains that on November 30, 2018, it was awarded six bids for CSG projects in Public Service's 2018 CSG RFP, each for 2 MW of capacity. SunShare explains that the Producer Agreements memorialized a December 31, 2019 in-service date for each project to take advantage of the 2019 ITC level of 30 percent, and that its six bids included either \$0 or negative REC prices based on its proposed sites and plan to build the CSGs in 2019. Additionally, it explains that to facilitate favorable financing terms and to minimize transaction costs, its CSG projects are "bundled," and financing for all of the 2018 CSG Projects is tied to the entire twelve MW Portfolio.⁴

12. SunShare states that prior to submitting its bids in the 2018 RFP, Public Service provided non-binding pre-application studies for the substations to which the majority of SunShare's bids would interconnect. After it filed the interconnection requests required by its Producer Agreements for the 2018 CSG Projects, it received notices from Public Service stating that there was no capacity available to support SunShare's CSGs at substations associated with the interconnection requests. SunShare states that five of the six 2018 CSG Projects have been affected by the No Capacity Notices, and that its only options were to move project sites or wait for another developer to withdraw an existing interconnection request.

13. Following the April 29, 2019 enactment of H.B. 19-1003, codified at C.R.S. § 40-2-127(2)(b), which allows CSGs at a single location to be up to 5 MW in nameplate capacity, SunShare proposed site moves for five of its 2018 CSG Projects to maximize the capacity per site up to 5 MW. SunShare states that Public Service rejected SunShare's proposed site moves, and that after it was unable to reach an agreement with Public Service to allow for

⁴ SunShare Corrected Petition, filed July 17, 2020, at ¶ 14.

the interconnection of the five 2018 CSG Projects, SunShare provided Public Service with a Notice of Dispute under the Commission's SGIP Rules. SunShare further explains that following the issuance of our Decision No. C20-0406 in Proceeding No. 20D-0148E, issued May 29, 2020, Public Service changed its positions concerning the co-location of SunShare's 2018 CSG Projects and entered into a Settlement Agreement with SunShare to resolve the Notice of Dispute and the interconnection issues facing the five 2018 CSG Projects. SunShare states that the Settlement Agreement, attached to the Petition as Confidential Attachment A, includes interconnection accommodations necessary to allow the five 2018 CSG Projects to move forward with interconnection studies.

14. Despite the accommodations provided for in the Settlement Agreement, SunShare explains that the delay caused by the unexpected lack of capacity on Public Share's system has impeded the projects' viability at their bid REC prices. SunShare states the delays have forced the projects to contend with intervening events including the reduction of the Federal Investment Tax Credit (ITC) and the Trump Administration's actions to repeal tariff exemptions on bifacial solar panels. SunShare asserts it has borrowed deposit and escrow funds for far longer than budgeted and that the five 2018 CSG Projects have been forced to acquire, design, permit, and move to new locations which have lower solar insolation.

15. Therefore, SunShare requests that the Commission issue a declaratory order stating that Public Service may reform the REC price in the Producer Agreements for the five 2018 CSG Projects. In its Highly Confidential Petition, it sets forth a proposed REC Adder amount that would apply to projects with a 2021 in-service date,⁵ and revises this proposal in the Highly Confidential Corrected Petition and the Highly Confidential Second Amended Petition (Requested REC Adder).⁶ SunShare states that the Requested REC Adder amount accounts for financing and transaction costs, reduction of the ITC from the 2019 level of 30 percent to the current level of 26 percent, decreased production forecasts due to the relocation of projects, carrying costs for required escrows, deposits, and other development costs, increased equipment costs due to the elimination of exemption for bifacial panels by the Trump administration, and increased development costs for new projects sites. SunShare asserts the Requested REC Adder amount does not incorporate net financing proceeds, change in customer pricing necessitated by the COVID-19 pandemic, or standard costs at the original bid sites. It also provides a minimum REC Adder amount, below which it states the projects would be “unworkable given the risks and lower expected project revenues” (Lowest Viable REC Adder).⁷

16. SunShare asserts that while it is “rare for the Commission to grant REC Adder relief,” the standard for granting a REC Adder has been unique circumstances that result in an

⁵ In its Highly Confidential Corrected Petition, SunShare proposes two different REC Adder amounts. One would have applied to projects with 2020 in-service dates, and the other is meant to apply to projects with a 2021 in-service dates. Because the projects will not reach a 2020 in-service date, we do not address SunShare’s requested REC Adder amount for projects with a 2020 in-service date.

⁶ SunShare Highly Confidential Corrected Petition at p. 9; SunShare Highly Confidential Second Amended Petition at p. 7.

⁷ SunShare Corrected Petition at ¶ 47; SunShare Highly Confidential Corrected Petition at ¶ 47. Because SunShare’s request for extraordinary protection of proposed REC Adder amounts was granted by Decision No. C20-0506-I, issued July 14, 2020, the proposed REC Adder amounts are not specified in this Decision and are instead set forth in Highly Confidential Attachment A.

unreasonable delay to CSG Projects or a material change to their financial models, and which REC Adders are necessary to maintain the viability of the projects.⁸ SunShare argues the circumstances facing the five 2018 CSG Projects that were forced to move sites meet this standard.

17. SunShare contends a REC Adder that would allow its 2018 CSG Projects to move forward is in the public interest. It states that by maintaining the viability of these projects, the Commission would be furthering State policy objectives of reducing greenhouse gas pollution and promoting development of distributed generation and clean energy.

18. SunShare asserts that competitive acquisitions principles would not be thwarted if the Commission grants its request for a REC Adder. It states it was the only developer awarded bids during the 2018 CSG RFP not notified of potential interconnection issues prior to execution of Producer Agreements.

19. Additionally, SunShare requests a waiver of Public Service's creditworthiness requirement relating to the use of parent guarantees. It explains that in the Settlement Agreement, SunShare and Public Service agreed that "upon execution of the Interconnection Agreements within 30 business days of issuance, SunShare will either provide 100 percent of the cost of interconnection payments as it relates to the 2018 [CSG] Projects or provide one-third of the estimated costs and secure the remaining two-thirds of IA funding through a parent guarantee subject to the Company's creditworthiness policy."⁹ SunShare included in its Petition Public Service's creditworthiness policy, which requires a guarantor meet certain unsecured credit

⁸ SunShare Corrected Petition at ¶ 67.

⁹ SunShare Corrected Petition at ¶ 35.

ratings from Moody's or S&P.¹⁰ It claims that as a small company, it cannot meet the required unsecured credit ratings, and that Public Service will not waive the creditworthiness requirement relating to a parent guarantee without Commission approval.

20. In its Petition, SunShare states that the purpose of using a parent guarantee as security for the final 2/3rd cost payment is to allow SunShare to use cash-on-hand in to approve an Interconnection Agreement as soon as it is agreed upon. In the absence of a parent guarantee, SunShare would receive the Interconnection Agreement requiring payment of an amount not yet known, and then seek financing to provide 100 percent of the upgrade costs within 30 business days, which could delay grid upgrades by 1.5 months.

21. In its original Petition, SunShare stated that the 2018 CSG Projects must be placed in service by December 31, 2020, before the previously planned step down of the ITC in 2021, to allow ratepayers to receive the full value of the ITC and to keep the necessary REC Adder as low as possible. According to SunShare, Public Service's creditworthiness policy is a barrier to a timely in-service date because it prevents SunShare from using the parent guarantee option allowed for in the Settlement Agreement.

22. In its First Amended Petition, SunShare removed its request for the creditworthiness waiver as it relates to the 5 MW project that has an executed Interconnection Agreement. In the Second Amended Petition, SunShare explains that it paid 100 percent of the upgrade costs for that project and did not use a parent guarantee. It also states that a waiver of the creditworthiness requirement may still assist the remaining projects in proceeding with interconnection upgrade construction on an expedited timeline as set forth in the Settlement

¹⁰ SunShare Corrected Petition at ¶ 38.

Agreement. SunShare also states that there is no factual dispute at issue in this Proceeding, and it asks that the Petition be decided without a hearing.

D. Positions of the Parties

23. SunShare's Petition presents two issues: (1) whether the Commission should grant a REC Adder and in what amount; and (2) whether the Commission should grant SunShare's request for a waiver of Public Service's creditworthiness requirement relating to the use of parent guarantees.

1. REC Adder

24. Public Service agrees with SunShare that the five 2018 CSG Projects at issue in the Petition meet the Commission's legal standard to grant a REC Adder. Specifically, Public Service states that in the Settlement Agreement, it agreed SunShare may present a REC Adder amount for Commission approval within SunShare's discretion based on SunShare's financial models.¹¹ It emphasizes that SunShare's circumstance is distinct from other CSG developers that have asserted challenges interconnecting to Public Service's system because "SunShare had no prior notice of the potential for the lack of capacity at certain substations."¹² Therefore, Public Service states allowing a REC Adder is reasonable in this distinct circumstance and explains "SunShare was placed in an unprecedented circumstance because the potential for interconnection capacity limits had not been discussed prior to or during the impacted RFP bid preparation cycle."¹³

¹¹ Public Service Response to Petition, filed July 24, 2020, at p. 3.

¹² Public Service Reply, filed August 6, 2020, at p. 5.

¹³ Public Service Reply at p. 6.

25. Public Service advocates for a lower REC Adder amount than that proposed by SunShare.¹⁴ It states that its lower amount is reasonable to enable the development of the 2018 CSG Projects, and states that SunShare's projects have purportedly significant economies of scale at 5 MW per site that are not reflected in SunShare's Requested REC Adder. Public Service argues against the full inclusion of SunShare's additional costs due to delay because most CSG projects face numerous challenges during their development, and setting an expectation that REC prices may be modified for any changed condition may lead to a flood of requests from developers.

26. Staff asserts that the Commission has the authority to resolve SunShare's requests, but it argues that additional evidence is necessary for the Commission's determination. Staff states that the following information should be developed through discovery and through an evidentiary hearing: (1) a record of the events that caused the interconnections delays and the responsible party for those delays; (2) specific financial evidence supporting the magnitude of the proposed REC adder; (3) evidence as to whether a REC Adder and waiver of the creditworthiness requirement is detrimental to the competitive market for CSG facilities in Colorado; and (4) information and policy argument addressing whether ratepayers should be responsible for increased costs caused by others.

27. Staff's substantive response to the requested relief states that a REC Adder could disrupt Colorado's competitive market for CSG facilities and be unfair to other bidders. Staff questions SunShare's use in its Petition of the Lazard industry average rate of return and discount rates to calculate its discount rate, stating that use of the Lazard industry average may result in a

¹⁴ Public Service Confidential Response to Petition, filed July 24, 2020, at p. 8.

windfall to SunShare if its actual rate of return and discount rates are lower.¹⁵ Further, it states it is not convinced that Lazard Levelized Cost of energy analysis is the appropriate benchmark for isolating the pricing of CSG RECs, and it suggests that the pandemic may have resulted in lower costs not reflected in SunShare's Requested REC Adder. Additionally, Staff points to § 40-2-127(5)(IV)(C), C.R.S., which directs the Commission to encourage "[t]he development of CSGs with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers," and states that SunShare has not provided any evidence that the REC Adder will result in lower overall costs to customers.¹⁶

28. CEO states that the Commission should find that the requested relief is in the public interest because it does not detrimentally impact CSG developers, it coincides with the Commission's intent to increase CSG installation and operational capacity, and it advances state policy. It also points to SunShare's statement that approximately half of the capacity associated with the 2018 CSG RFP has been withdrawn and that SunShare's impacted projects represent more than half of the remaining 2018 capacity. CEO advocates in favor of granting a REC Adder at SunShare's requested amount, stating that "SunShare has presented a reasonable proposal to address a portion of [the costs due to delay] through a REC Adder and to absorb other expenses."¹⁷ It notes that Public Service and SunShare have both had an opportunity to add Adder at SunShare's requested amount, stating that "SunShare has presented a reasonable proposal to address a portion of [the costs due to delay] through a REC Adder and to absorb other expenses."¹⁸ It notes that Public Service and SunShare have both had an opportunity to add

¹⁵ Trial Staff Response to Petition, filed July 27, 2020, at p. 6.

¹⁶ Trial Staff Reply, filed August 6, 2020, at p. 1.

¹⁷ CEO Response to Petition, filed July 27, 2020, at p. 8.

¹⁸ CEO Response to Petition, filed July 27, 2020, at p. 8.

all necessary facts to the record and that Public Service didn't provide any additional information on its lower proposed amount.

29. The OCC recognizes that a successful CSG program is an important goal, and that construction of the 2018 CSG Projects may provide SunShare's customers with the benefits of CSGs. However, it is concerned that a REC Adder would harm ratepayers. OCC states that if a REC Adder is granted, ratepayers should not be assigned additional costs, through the Renewable Energy Standard Adjustment (RESA) or otherwise, because they played no part in the delays.

30. Pivot and Oak Leaf submitted comments stating SunShare's situation is not unique and that many developers have experienced problems with Public Service's interconnection process. Pivot and Oak Leaf claim that they have received equivalent No Capacity Notices and have suffered similar frustrations due to lack of substation and distribution capacity and Public Service's failure to provide accurate capacity maps prior to bid cycles. Pivot notes that if SunShare is successful in its Petition, other developers could file similar petitions to bolster REC prices. It requests the Commission issue clear criteria as to why and when REC prices should be adjusted. Oak Leaf requests that any accommodations offered to SunShare be applied equally to other CSG project developers who have had similar experiences.

31. In response to comments from Pivot and Oak Leaf, SunShare asserts that the standard to grant a REC Adder is a showing of unique circumstances. SunShare states that while Oak Leaf and Pivot may have experienced interconnection delays, the developers do not show that they experienced the same circumstances (*i.e.*, having no notification of the possibility of No Capacity Notices prior to submitting bids).

32. In response to arguments from Public Service and Staff on the amount of the Requested REC Adder, SunShare states that it shared its workpapers containing its assumptions and data used to create its table of cost increases (Highly Confidential Table 4) with the Parties. It highlights the fact that none of the parties, including Public Service, dispute its assumptions or calculations showing the cost increase drivers, other than Staff's argument questioning use of the Lazard industry-wide analysis. It argues that Public Service's suggested lower REC Adder amount is arbitrary and unsupported, and that Public Service's concern relating to compensating SunShare for all additional costs due to delay is unfounded because SunShare proposes to absorb a material amount of the increased costs. In response to Staff's concern, it states that its internal rate of return is higher than the Lazard assumption. Additionally, to alleviate Staff's concern, it provides a hypothetical calculation assuming a ten percent drop in blended ROR discount rate from the Lazard analysis, which would result in a REC Adder 1/10th of a cent lower than SunShare's Requested REC Adder.¹⁹

2. Creditworthiness Requirement Waiver

33. Public Service urges the Commission to reject SunShare's request for a waiver of its creditworthiness requirement. Public Service states that allowing 2/3 financing through a parent guarantee is already a compromise by the Company. The requirement for all developers since the birth of Public Service's CSG program is funding 100 percent of the upgrades within 30 business days. Public Service also states that the creditworthiness policy is universally applied, that it would be discriminatory to grant a waiver for SunShare, that a waiver would shift 2/3 of the financial risk to Public Service, and, in the event that SunShare cannot deliver on the payment, Public Service and its customers would bear that risk. Further, Public Service

¹⁹ SunShare Reply, filed August 6, 2020, at pp. 14-15.

states that its credit policy is consistent with Commission rule 3665(d)(III), which requires escrow to ensure that a project has adequate funding for construction.

34. As stated above, Staff advocates for an evidentiary hearing. Included in the topics Staff believes should be explored is whether a waiver of Public Service's creditworthiness requirement is detrimental to the competitive market for CSG facilities.

35. CEO supports granting a waiver of the creditworthiness requirement. It states that it has found no evidence the creditworthiness policies apply to Colorado CSGs, and that the waiver should be granted to expedite the construction of the 2018 CSG Projects.

36. The OCC raises concerns that if SunShare does not fulfill its upgrade cost obligations, Public Service will look to ratepayers to cover default costs. It requests that if a waiver of the creditworthiness policy is granted, the Commission find that ratepayers be held harmless in the event of default.

37. In response to Public Service's creditworthiness policy arguments, SunShare states that the policy has not been approved by the Commission, that the Commission's rules already provide for creditworthiness, and that ratepayers would not be harmed in the event of a default because Public Service already holds deposits from SunShare that could be used to defray ratepayer risks.

E. Findings and Conclusions

38. We find that the pleadings submitted in this proceeding provide ample information to resolve the issues presented in the Petition, therefore no hearing is required. Of the parties, only Staff contends that additional information, specifically an evidentiary hearing, is necessary; SunShare, Public Service, and CEO state that an evidentiary hearing is not necessary and that we may make our determinations based on the existing record, and the OCC does not

request a hearing. Staff argues an evidentiary hearing is necessary to develop a factual record regarding SunShare's interconnection issues, the appropriateness of SunShare's requested REC Adder, the impact of a REC Adder on the competitive CSG market, and whether ratepayers should be responsible for the cost of a REC Adder. We are not persuaded by Staff's argument. The parties have submitted multiple pleadings presenting information relevant to the resolution of the issues raised in the Petition and have had opportunities to review and comment on information provided by SunShare to support its proposed REC Adder amounts. Additionally, SunShare has disclosed to the parties its workpapers containing the assumptions and data underlying its Highly Confidential Table 4, and apart from one substantive argument from Staff to which SunShare responded, no party has contested SunShare's submitted information or workpapers. Therefore, we conclude that the existing record on the pleadings is sufficient to support our determination on SunShare's requested relief.

1. REC Adder

39. Public Service is authorized to reform the price paid for RECs for renewable energy production under the executed Producer Agreements for the five 2018 CSG Projects at issue in the Petition, should they continue to be viable projects. Public Service shall accept a bid amount for the five CSG Projects that reflects our award of a REC Adder in an amount equal to SunShare's proposed Lowest Viable REC Adder, as indicated in Highly Confidential Attachment A to this Decision.²⁰ We conclude that the specific circumstances of those particular bids to Public Service's 2018 RFP for CSGs warrant the acceptance of SunShare's proposed bid

²⁰ See Highly Confidential Attachment A to this Decision or SunShare's Highly Confidential Petition at ¶ 47 for the amount of the Lowest Viable REC Adder. Because SunShare's request for extraordinary protection of proposed REC Adder amounts was granted by Decision No. C20-0506-I, issued July 14, 2020, proposed REC Adder amounts are not specified in this Decision and are instead set forth in Highly Confidential Attachment A.

modifications as a means to maintain the potential viability of the projects and preserve the benefits of these CSG projects to potential subscribers and the State.

40. SunShare has demonstrated by a preponderance of the evidence that it experienced interconnection delays and difficulties obtaining site moves for its 2018 CSG Projects. Public Service awarded bids to SunShare for location-specific 2018 CSG Projects and later determined that capacity constraints at certain substations required the relocation of those projects. After unsuccessfully attempting to effectuate site moves, SunShare provided Public Service with a Notice of Dispute under our SGIP rules, the resolution of which resulted in the Settlement Agreement between SunShare and the Company. While the projects have now obtained requested site moves and the ability to obtain Interconnection Agreements, they have experienced a delay of more than one year to their contracted in-service dates, which is significant.

41. SunShare has also demonstrated that the delay facing the 2018 CSG Projects has raised costs and lowered expected revenues. It has provided information, which no party has rebutted, that the delay has forced the projects to contend with the reduction of the ITC from 30 percent to 26 percent, actions to repeal tariff exemptions on bifacial solar panels, moves to new locations with lower solar insolation, and the COVID-19 pandemic. SunShare should not bear the sole burden of these delays.

42. We find that SunShare has established unique circumstances, including delay, unexpected site moves, the reduction of the ITC, and actions to repeal tariff exemptions on

bifacial solar panels. Public Service agrees, recognizing that “the No Capacity Notices created a unique and unprecedented circumstance....”²¹

43. We acknowledge that the comments submitted by Pivot Energy and Oak Leaf Energy Partners assert SunShare’s situation is not unique. However, the potential that there are wider spread issues with interconnecting to Public Service’s system does not preclude a finding that circumstances surrounding SunShare’s five 2018 CSG Projects are unique. Public Service explains that unlike other developers, including Pivot Energy and Oak Leaf, “SunShare had no prior notice of the potential for the Company’s lack of capacity at certain substations.”²² SunShare has worked with Public Service to find a path forward for its projects, and it states that with a REC Adder, its 2810 CSG Projects are still viable. The assertions made by Pivot and Oak Leaf do not controvert the specific facts that make SunShare’s situation unique. Therefore, we conclude that no other party or commenter who has submitted bids in the 2018 CSG RFP process has indicated that it is in a similar situation.

44. SunShare states, and no party has rebutted, that nearly fifty percent of the capacity awarded in Public Service’s 2018 CSG RFP has been withdrawn, and that SunShare’s requested relief is necessary to prevent that number from increasing to above eighty percent. These projects will provide benefits to the eventual subscribers and will further the State’s greenhouse gas reduction and clean energy goals. We find that in these unique circumstances, it is in the public interest to grant SunShare’s request for a REC Adder to allow the projects a path forward.

²¹ Public Service Response to Petition, filed July 24, 2020, at p. 8.

²² Public Service Reply, filed August 6, 2020, at p. 5.

45. SunShare proposes the Requested REC Adder which accounts for certain categories of cost increases due to delay.²³ It also sets forth an amount for its Lowest Viable REC Adder, below which the projects would not be viable.²⁴ Public Service proposes a lower REC Adder amount, but it does not critique SunShare's assumptions and calculations showing its increased cost drivers. Apart from Staff's argument concerning the use of the Lazard industry-wide analysis and its assertion that the pandemic possibly resulted in lower costs, no party has disputed SunShare's Requested REC Adder or its Lowest Viable REC Adder. We allow a REC Adder in an amount equal to SunShare's proposed Lowest Viable REC Adder, as indicated in Highly Confidential Attachment A. The Lowest Viable REC Adder will allow for the construction of the projects while preventing SunShare from receiving a windfall.

2. Creditworthiness Requirement Waiver

46. We deny SunShare's request for a one-time waiver of Public Service's creditworthiness policy relating to the use of parent guarantees and alternative request that we find the creditworthiness policy does not apply in Colorado. In its original Petition, SunShare states that a waiver of the creditworthiness policy is necessary for the 2018 CSG Projects to be eligible for the 2020 ITC level of 26 percent. SunShare asserts that without a waiver, it may take an additional 1.5 months to obtain financing for interconnection upgrades after an Interconnection Agreement is executed, and that the delay may prevent projects from reaching a 2020 in-service date. In its Second Amended Petition, SunShare explains that projects with a 2021 in-service date will still be eligible for the 2020 ITC level of 26 percent, but that a waiver

²³ SunShare Highly Confidential Second Amended Petition at p. 7.

²⁴ SunShare Highly Confidential Corrected Petition at ¶ 47.

of the creditworthiness requirement may still assist projects in proceeding with construction on an expedited timeline. SunShare does not explain how a delay of 1.5 months to obtain financing will harm the projects now, since the projects will be eligible for the ITC level of 26 percent through 2022. Therefore, we find that SunShare has not adequately supported its request for a waiver, and we decline to find that the creditworthiness policy does not apply in Colorado.

II. ORDER

A. It Is Ordered That:

1. Public Service Company of Colorado (Public Service) shall allow SunShare, LLC (SunShare) to modify five of its six bids to Public Service's 2018 competitive solicitation for CSGs. Public Service is authorized to accept a bid amount for the five projects that reflects our award of an increase in the REC price per kWh in an amount equal to SunShare's proposed Lowest Viable REC Adder, as indicated in Highly Confidential Attachment A to this Decision.

2. SunShare's request for a waiver of Public Service's creditworthiness requirement relating to the use of parent guarantees is denied, and we decline to grant its alternative request to find that the requirement does not apply in Colorado.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 20, 2021.**

(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

ERIC BLANK

JOHN GAVAN

MEGAN GILMAN

Commissioners