Decision No. R24-0294

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0371E

IN THE MATTER OF THE CITY AND COUNTY OF DENVER'S PETITION FOR DECLARATORY ORDER REGARDING COMPENSATION FOR 2020-2021 SOLAR REWARDS COMMUNITY-BASED PROJECTS.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE CONOR F. FARLEY ADDRESSING PETITION FOR DECLARATORY ORDER AND CLOSING PROCEEDING

Mailed Date: May 2, 2024

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I. BACKGROUND

A. Procedural Background

1. On July 17, 2023, the City and County of Denver (Denver) filed the Petition for Declaratory Order (Petition) that initiated this proceeding. The Petition requests direction on the application of a renewable energy credit (REC) multiplier contained in Commission Rule 3654(h)[1] to the compensation for community-based projects awarded by Public Service Company of Colorado (Public Service) pursuant to its Standard Offer process as part of Public Service's 2020-2021 Renewable Energy Compliance Plan approved by the Commission, with modifications, in Proceeding No. 19A-0369E. If the Commission agrees with Denver's interpretation of the multiplier as discussed in the Petition, Denver requests that the Commission order Public Service to compensate producers of community-based projects for the 2020 Standard Offer based on RECs supplied to Public Service, and to update producer agreements for its 2020 Solar*Rewards Community Standard Offer project on a going-forward basis.

2. On July 26, 2023, Public Service filed a Notice of Position Regarding the Petition (Notice) in which it "agree[d] with Denver that there is a controversy or uncertainty regarding the 1.5 kilowatt hour ('kWh') renewable energy credit ('REC') provision for community-based projects articulated in Rule 3654(h). Specifically, whether the 1.5 'multiplier' extends beyond RECs and applies to the dollar amount paid to developers of community-based projects."[2]

3. On August 7, 2023, the Commission issued Decision No. C23-0516-I that accepted the Petition and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry.

[1] Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3.
[2] Notice at 1.

The proceeding was subsequently assigned to the undersigned ALJ. Decision No. C23-0516-I also established a 30-day notice and intervention period that ended on September 6, 2023.

4. On August 16, 2023, Public Service filed a Notice of Intervention by Right or Alternative Motion for Permissive Intervention.

5. On September 6, 2023, Trial Staff of the Public Utilities Commission (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, and Request for Hearing.

6. On October 3, 2023, the ALJ issued Decision No. R23-0658-I that held Denver, Public Service, and Staff are the parties to this proceeding, and ordered the parties to file initial comments by December 8, 2023, and responsive comments by January 5, 2024. Decision No. R23-0658-I also scheduled an oral argument to occur on February 1, 2024.

7. After the parties filed initial and responsive comments, Denver filed a Joint Motion to Vacate Oral Argument (Joint Motion) on January 23, 2024. The ALJ issued Decision No. R24-0070-I on January 30, 2024 granting the Joint Motion and vacating the oral argument.

B. Renewable Energy Standard (RES)

8. The Renewable Energy Standard (RES), codified at § 40-2-124, C.R.S., sets deadlines for qualifying retail utilities (QRUs), including Public Service, to generate or cause to be generated a certain percentage of their retail electricity sales from "eligible energy resources" defined as "recycled energy, renewable energy resources, and renewable energy storage."[3] The RES specifies that "[e]ach kilowatt-hour of electricity generated from eligible energy resources at a community-based project must be counted as one and one-half kilowatt-hours."[4] This came to be known as the "community-based project multiplier." The RES also provides that certain

[3] § 40-2-124(1)(a), C.R.S.
[4] § 40-2-124(1)(c)(VI), C.R.S.

Community Solar Gardens (CSGs) qualify as "eligible energy resources at a community-based project."[5]

9. The Commission's rules implementing the RES reflect the foregoing statutory provisions. Commission Rule 3654(h) stated that "[f]or purposes of compliance with the RES, each kWh of eligible energy generated from a community-based project shall be counted as 1.5 kWh of eligible energy."[6] Rule 3652(f) stated that "[t]he renewable energy generated by a CSG shall constitute retail renewable distributed generation."[7]

10. In accordance with the Commission's rules implementing the RES, Public Service filed its 2020-2021 Renewable Energy Compliance Plan in Proceeding No. 19A-0369E. As part of its plan, Public Service proposed to acquire annually up to 48MW of CSG capacity through its Solar*Rewards Community program, with this capacity split among a "Request-for-Proposal" (RFP) track, a "Standard Offer" track, and Public Service-owned solar gardens.[8] The Commission ultimately set a maximum annual purchase level of 75MW of CSG capacity.[9]

C. Relevant Facts

11. In January 2021, Denver reserved approximately 3.6 MW_{ac} of Public Service's Standard Offer capacity and subsequently contracted to construct and operate ten projects within the awarded capacity.[10] In June 2022, Denver asked Public Service the following question: "For

[5] § 40-2-127(2)(b)(I)(B), C.R.S. ("A community solar garden shall constitute 'retail distributed generation' within the meaning of section 40-2-124"); § 40-2-2-124(1)(a)(VIII), C.R.S. ("'retail distributed generation' means a renewable energy resource or renewable energy storage that is located on any property owned or leased by the customer within the service territory of the qualifying retail utility and is interconnected on the customer's side of the utility meter.").

[6] Decision No. C07-0622 issued in Proceeding No. 07R-166E on July 23, 2007, Attach. A at 8. Rule 3654(g) has since been moved to Rule 3654(h).

[7] *Id*.

[8] Petition at 5 (citing Hearing Exhibit 2, Attach. JWI-1 at 29 filed in Proceeding No. 19A-0369E).

[9] Decision No. C20-0289 issued in Proceeding No. 19A-0369E on April 20, 2020 at 14 (¶ 30).

[10] Petition at 6.

the 10 projects we're building through the 2020 standard offer, shouldn't PSCo be able to apply the 1.5x multiplier to the recs we produce?"[11] In August 2022, Public Service stated that Denver's Standard Offer projects "can receive the community-based project multiplier," provided Denver (or its contractor) provided "proof that they meet the criteria per the rule 3652(d)."[12]

12. In September 2022, Denver "requested that Public Service provide updated producer agreements to reflect the producer compensation associated with the community-based project multiplier."[13] Public Service responded in January 2023 "that the projects would be considered community-based as it applies to compliance with the Renewable Energy Standard, but that they will not qualify for producer compensation scaled by the multiplier."[14] Denver contends that Public Service's January 2023 response is a "modified interpretation of how the REC-based multiplier relates to project incentives," presumably compared to its August 2022 response to Denver's June 2022 inquiry.[15]

13. During this period, Public Service chose one proposal submitted by Denver in response to Public Service's 2021 Solar*Rewards Community RFP.[16] The "producer agreement" for Denver's bid awarded pursuant to the RFP process states that:

> Public Service shall pay SRC Producer the price of $27.83 per MWh of energy generated by the PV System for the subscribed portion of Photovoltaic Energy recorded at the Production Meter, multiplied by 1.5 (such multiplier included in light of Rule 3652(d), which provides that each kilowatt-hour of solar energy generated by a Colorado community-based project is counted as generating 1.5 RECs), in full satisfaction (together with the SRC Credits) of SRC Producer's delivery of such RECs and the corresponding Photovoltaic Energy.[17]

[11] Denver's Responsive Comments, Attach. A at 4.
[12] *Id*. at 1.
[13] Petition at 6.
[14] *Id*.
[15] *Id.*
[16] *Id*. at 6-7.
[17] *Id*. at 7.

II. REQUESTED DECLARATORY ORDER

14. In the Petition, Denver asks for a declaratory order:

> 1) Reaffirming that Solar*Rewards Community incentives under the 2020-2021 Renewable Energy Compliance Plan are REC incentives;
>
> 2) Finding that the Company's failure to compensate 2020 Solar*Rewards Community Standard Offer producers for the RECs associated with community-based projects does not comply with Decision No. R20-0099;
>
> 3) Directing the Company to compensate producers of community-based projects for the 2020 Standard Offer based on RECs supplied to the Company; and
>
> 4) Ordering the Company to update Denver's producer agreements for its 2020 Standard Offer projects, applicable on a going-forward basis.[18]

In essence, the third and fourth requests involve the awarding of compensatory damages and reformation of existing contracts, respectively.

15. As noted, Public Service stated in its Notice that it "agrees with Denver that there is a controversy or uncertainty regarding the 1.5 kilowatt hour ('kWh') renewable energy credit ('REC') provision for community-based projects articulated in Rule 3654(h). Specifically, whether the 1.5 'multiplier' extends beyond RECs and applies to the dollar amount paid to developers of community-based projects."[19] Public Service reiterated its view of the dispute in its Initial Comments when it stated that "[a]t the heart of Denver's Petition is a request for the Commission to interpret Rile 3654(h)."[20] Notably, Denver has not disputed Public Service's characterization of the primary dispute in this proceeding.

[18] *Id*. at 10.
[19] Notice at 1.
[20] Public Service's Initial Comments at 3.

16. Staff agrees with Public Service's characterization of the primary dispute in this proceeding. Specifically, in its Response to Initial Comments (Staff's Response), Staff stated that "[t]he core dispute between [Denver] and Public Service concerns differing interpretations of Rule 3654(h) and the statutory provision it arises from, *i.e.*, C.R.S. § 40-2-124(1)(C)(VI)."[21] Staff recommends that "the Commission [] focus its attention exclusively on interpreting the rules, statutes, and orders governing this dispute."[22]

17. Based on the foregoing, the ALJ finds that: (a) the interpretation of § 40-2-124(1)(C)(VI), C.R.S. and Rule 3654(h) is the primary dispute in this proceeding; and (b) Denver's requests for compensatory damages and contract reformation need only be addressed if the ALJ agrees with Denver's interpretation of § 40-2-124(1)(C)(VI), C.R.S. and Rule 3654(h). In addition, there is a serious question about whether the Commission has the authority to award compensatory damages and/or reform contracts.[23] Accordingly, the ALJ will first address the interpretation of § 40-2-124(1)(C)(VI), C.R.S. and Rule 3654(h), and will then address Denver's requests for compensatory damages and contract reformation, and the Commission's authority to provide such relief, only if it agrees with Denver's interpretation of § 40-2-124(1)(C)(VI), C.R.S. and Rule 3654(h).

III. PARTIES' INTERPRETATIONS OF § 40-2-124(1)(C)(VI), C.R.S. AND RULE 3654(H)

A. Denver

18. Denver contends that Public Service inconsistently applies the community-based project multiplier to Solar*Rewards Community producer compensation. Specifically, while

[21] Staff's Response at 3.
[22] *Id*. at 9.
[23] *Id*. at 7-8.

Public Service does not apply the community-based project multiplier to the compensation provided for Denver's Standard Offer projects, it does apply the multiplier to the compensation for projects selected through the RFP process.[24] Denver argues that this disparate treatment of Standard Offer and RFP projects is inconsistent with Decision R20-0099[25] and disadvantages both Denver and other producers of community-based projects participating in the Solar*Rewards program.[26]

19. According to Denver, in Proceeding No. 19A-0369E, Public Service "explicitly and consistently refer[red] to Solar*Rewards Community producer compensation as 'REC incentives.'"[27] As support, Denver cites testimony in that proceeding that Public Service would "determine the incentive for the Standard Offer directly from the average REC price of the awarded RFP bid, plus $0.02 per kWH,"[28] and "calculate[] the 20-Year Cost Projections for community solar gardens based on 'estimated bill credits and net REC incentives provided to [community solar garden] projects." Denver contends that Public Service "clearly stated throughout [Proceeding No. 19A-0369E] that Solar*Rewards Community incentives are REC-based" and the Commission approved "REC-based Solar*Rewards Community incentives."[29] Because the "incentives" are "REC-based," Denver concludes that Public Service "should compensate producers of community-based projects for the RECs that they supply to the Company for its compliance with the Renewable Energy Standard."[30] In other words, because

[24] Petition at 7-8.
[25] Decision No. R20-0099 issued in Proceeding No. 19A-0369E on February 14, 2020.
[26] Petition at 4, 8.
[27] *Id*. at 8.
[28] *Id*. (citing Hearing Exhibit 3, Rev. 1 at 51: 6-8 (Klemm Direct Testimony) filed in Proceeding No. 19A-0369E).
[29] *Id*. at 9 (citing Decision No. R20-0099 issued in Proceeding No. 19A-0369E on Feb. 14, 2020 at 35 (¶ 74)).
[30] *Id*. at 9.

Rule 3654(h) provides that community-based projects supply 1.5 RECs for every kWh produced, the compensation for such projects should likewise be "scaled" or multiplied by 1.5 as well.

20. Denver asserts that Rule 3654(h) is consistent with its argument. In the rulemaking proceeding implementing House Bill (HB) 07-1281 by, among other things, establishing Rule 3654(h), the Commission stated "the new 1.5 multiplier included in HB 07-1281 should greatly assist those projects in the competitive solicitation process."[31] Denver argues a REC multiplier would not provide a "competitive advantage" to smaller projects without also providing the multiplier to the compensation for the RECs.[32]

21. Denver contends that not applying the 1.5 multiplier to the compensation for community-based projects fails to compensate Denver for the additional value created by Denver's projects.[33] Denver states that their projects "value-stack and provide multi-faceted benefits," such as "building projects in the communities they serve, providing guaranteed bill savings for local income-qualified community members, offering quality job training opportunities to disadvantaged residents, and being designed with the ability to support local climate and energy resilience."[34] Denver argues that without the additional compensation they seek in their Petition, the costs of delivering these additional values would unfairly burden Denver taxpayers, though it does not explain how.[35]

22. Denver further argues that an October 2, 2023 email from Public Service supports Denver's interpretation of Rule 3654(h). In that email announcing the 2021 Standard Offer to solar developers, Public Service stated, in relevant part, "Applicants who receive capacity within

[31] Decision No. C07-0622 issued in Proceeding No. 07R-166E on July 23, 2007 at 15 (¶ 40).
[32] Denver's Responsive Comments at 3-4.
[33] *Id*. at 5.
[34] *Id*. at 6.
[35] *Id*.

the [Standard Offer] program also receive a Renewable Energy Credit (REC) incentive for the production of the community solar garden."[36] Denver argues that this email unambiguously means that developers "awarded capacity will expect to be compensated at the identified incentive level for each kWh of eligible energy delivered to" Public Service.[37]

23. Finally, Denver expresses concern regarding the application of the 1.5 multiplier to future Denver community-based projects. Denver states that Public Service stated in January 2024 that the community-based multiplier would not be included in draft producer agreements for Denver's projects awarded in both the 2023 RFP and the 2021 Standard Offer processes.[38] Denver argues that this position is inconsistent with Public Service's arguments that "the 1.5 multiplier is appropriately applied when a project, such as that awarded to Denver via the 2023 SRC RFP, is specifically evaluated and awarded based on its status as a community-based project."[39]

B. Public Service's Position

24. Public Service asserts that Denver ignores important differences between the RFP and Standard Offer processes in its 2020-2021 Renewable Energy Compliance Plan, specifically that the bid evaluation criteria approved by the Commission for the RFP process are not criteria for the Standard Offer process.[40] The criteria for selecting winning bids in the competitive RFP process were: "50 percent economic; 20 percent developer experience; 10 percent subscriber diversity; 10 percent financial; site and permitting preparedness; 10 percent for additional

[36] *Id*. at 8, Attach. C at 1.
[37] *Id*. at 8.
[38] *Id*. at 7.
[39] *Id*.
[40] Public Service's Initial Comments at 13.

commitments; geographic location as a tiebreaker; and *additional weight for community-based projects*."[41]

25. In contrast, the Commission did not approve evaluation criteria for Standard Offer bids because they were intended to be awarded on a first-come first-served basis.[42] As a result, the Commission established that the prices paid for Standard Offer bids would be "calculated using the weighted average winning bid price from the annual Solar*Rewards Community RFP, plus an adder of $0.02 per kWh."[43] In so doing, the Commission rejected "REC adders" proposed by at least two intervenors in that proceeding, holding that "the preponderance of the evidence does not support a need for increased incentives (including through adders) [for Standard Offer projects], as interveners propose."[44]

26. Public Service argues that because community-based bids chosen in the RFP process were specifically evaluated and received credit for being community-based, Public Service decided to apply the REC multiplier to the compensation paid for those winning bids.[45] However, because Standard Offer projects were awarded on a first-come first-served basis and thus were not evaluated and given credit for being community-based, Public Service did not apply the community-based multiplier to the compensation for community-based Standard Offer projects. Instead, Public Service calculated the price paid using the Commission-approved formula for Standard Offer projects.[46] Public Service contends that the different application of the community-based multiplier to community-based RFP and Standard Offer projects was based on

[41] Public Service's Initial Comments at 13 (*citing* Decision No. R20-0099 at ¶ 61, 73 (emphasis added)).
[42] *See* Denver's Responsive Comments, Attach. C at 1.
[43] *Id*. at 13-14 (*citing* Decision No. R20-0099 at 30 (¶ 63), 34-35 (¶¶ 73-74)).
[44] Public Service's Responsive Comments at 2-3 (citing Decision No. R20-0099 at 35 (¶ 74)).
[45] Public Service's Initial Comments at 13.
[46] *Id*.

Decision No. R20-0099 approving, with modifications, its 2020-2021 Renewable Energy Compliance Plan and thus appropriate.[47]

27. Public Service argues that Rule 3654(h) does not require the application of the community-based multiplier to the compensation for Denver's Standard Offer projects. Public Service first notes that the Commission's RES rules contain specific multipliers for certain eligible energy resources, such as Rule 3654(h), (f), and (g). Public Service contends that the purpose of these various multipliers is to incentivize QRUs to include certain eligible energy producers or projects, like community-based projects, in their overall RES Compliance Plans. The multipliers "provide smaller projects a competitive advantage in eligible energy production"[48] by increasing each kWh of the eligible energy provided to the QRU by the smaller projects compared to projects that do not qualify for the multipliers.[49] According to Public Service, Rule 3654(h) does not guarantee CSG providers increased compensation, only that their CSGs will have an increased chance of being selected by QRUs.

28. Public Service further contends that the Commission Decision adopting Rule 3654(h) supports its interpretation of the rule. There, the Commission stated that "the 1.5 multiplier for community based projects provides a distinct bidding advantage since those projects would effectively be able to offer 20 percent more eligible energy with their bid…as compared to a non-community based project…the new 1.5 multiplier included in HB 1281 should greatly assist those projects in the competitive solicitation process."[50] According to Public Service, "competitive solicitation process" in the Commission's decision means the RFP, and not the Standard Offer,

[47] *Id*. at 14.
[48] *Id*. at 5.
[49] *Id*. at 6.
[50] *Id*. at 6 (citing Decision No. C07-0622 at 14-15 (¶ 39-40)).

process. Public Service contends that this language further supports its application of the community-based multiplier to the compensation for winning RFP projects, but not Standard Offer projects selected on a first-come, first-served basis. Public Service states that there is nothing in the language of the rule or its history indicating that the Commission intended to extend the community-based multiplier to the financial compensation for Standard Offer projects.[51]

29. Public Service states that Denver improperly conflates the "REC incentives" referred to in Decision No. R20-0099 with the community-based multiplier.[52] According to Public Service, "REC incentives" is used in Decision No. R20-0099 as a general term that applies to various REC-associated incentives for different programs under Public Service's 2020-2021 Renewable Energy Compliance Plan.[53] As support, Public Service cites a part of Decision No. R20-0099 that discusses a proposal to offer a "REC incentive" of "up to $0.05 per kWh" for Public Service-owned solar gardens for income-qualified customers.[54] According to Public Service, this "REC incentive" is not a compensation multiplier, which supports the conclusion that "REC incentive" is a general term and not a specific type of incentive, much less a specific (1.5) compensation multiplier for Standard Offer projects.[55]

30. Finally, Public Service highlights three significant financial consequences of adopting Denver's position. First, application of the 1.5 multiplier to 600, 2400, and 6000 kW_{DC} projects would increase the cost of those projects by $183,960, $735,840, and $1,839,600, respectively, without any additional energy procurement.[56]

[51] Public Service's Initial Comments at 7.
[52] Public Service's Responsive Comments at 2.
[53] *Id*. at 3.
[54] *Id*. at 3 (citing Decision No. R20-0099 at 37-38 (¶ 80)).
[55] Public Service's Responsive Comments at 3.
[56] *Id*. at 8.

31. Second, acceptance of Denver's argument would increase the difference in the average levelized cost of energy (LCOE) for a typical community solar garden compared to a utility-scale solar project. Specifically, Public Service calculates that the LCOE for a 2021 Standard Offer community solar garden is $111 MWh, while the median LCOE for utility-scale solar projects contained in Public Service's solicitation in its 2021 Electric Resource Plan and Clean Energy Plan was $32.73 MWh.[57] Denver's request to apply the 1.5 REC multiplier to the compensation for Standard Offer community-based projects would significantly exacerbate this significant cost difference.

32. Third, Denver's requested relief would apply to all RES-eligible community-based projects up to 30MW in size.[58] Application of the 1.5 multiplier to such a range of projects would have cost consequences that "could be quite substantial."[59] Public Service thus urges the Commission to consider the overall cost consequences of Denver's request in this proceeding in determining whether to grant the requested relief.

C. Staff's Position

33. Staff first notes that both Rule 3654(h) and § 40-2-124(1)(c)(VI), C.R.S. state that each kWh of electricity that is generated from eligible energy resources at community-based projects will be counted as 1.5 kWh, but make no mention of compensation, much less the application of the 1.5 multiplier to compensation.[60] Staff also asserts that Denver has not identified anything in the history of the rule or the statute indicating that the 1.5 multiplier was intended to

[57] Public Service's Initial Comments at 9 (citing Attach. A thereto (2022 All-Source Solicitation 30-Day Report)).

[58] Public Service's Initial Comments at 9.

[59] *Id*. at 10.

[60] Staff's Responsive Comments at 4. *See also* § 40-2-124(1)(C)(VI), C.R.S. ("Each kilowatt-hour of electricity generated from eligible energy resources at a community-based project must be counted as one and one-half kilowatt-hours.").

apply to compensation.[61] Staff thus finds Denver's interpretation of the 1.5 multiplier in Rule 3654(h) and § 40-2-124(1)(c)(VI), C.R.S. "rather incredible."[62]

34. Staff further states that QRUs count RECs for purposes of compliance with the RES, and the purpose of the 1.5 multiplier is to increase a community-based project's RECs and thereby make it more attractive to QRUs.[63] Staff reiterates the argument made by Public Service that the Commission previously stated that the 1.5 multiplier should assist projects in the competitive solicitation process and extending it to a project's financial compensation is beyond the statutory purpose.[64] Staff also concludes that Decision R20-0099, which Denver relies upon as support for its position, "contains little information relevant to resolving the dispute," as the 1.5 multiplier is not referenced anywhere therein.[65] Staff argues that Decision No. R20-0099 arises established plenty of incentives for community solar garden developers, just not the incentive Denver seeks in the Petition.

35. Like Public Service, Staff is concerned that Denver's preferred interpretation, if adopted by the Commission, would result in "significant" and "staggering" cost implications for community-based projects funded by the RESA, as well as for ratepayers.[66] Staff argues that the RESA will have much less "bang for the buck" when it comes to developing community-based projects, which are already heavily incentivized.[67] And, since CSG contracts have 20-year terms, ratepayers will pay the additional costs resulting from application of the 1.5 multiplier for many years to come.[68] Finally, if the contract reformation requested by Denver is granted, that decision

[61] *Id*.
[62] *Id*.
[63] *Id*.
[64] *Id*. at 4-5 (citing Public Service's Initial Comments at 6).
[65] *Id*. at 5.
[66] *Id*. at 6; 3.
[67] *Id*. at 3-4.
[68] *Id*. at 4 (citing Public Service's Initial Comments at 8 n. 15).

could be interpreted as deeming the changes to the contracts prudent, which would thus allow Public Service to increase their rates to recover the costs.[69] Staff finds this outcome "especially troubling," since Public Service ratepayers "had nothing to do with the dispute…between Denver and Public Service."[70]

IV. INITIAL QUESTION PRESENTED

36. Does the REC multiplier for community-based projects contained in § 40-2-124(1)(c)(VI), C.R.S. and Rule 3654(h)[71] extend to financial compensation for developers of Standard Offer community-based projects?

V. ANALYSIS

37. The ALJ agrees with Public Service and Staff's positions that the community-based projects multiplier contained in Section 40-2-124(1)(c)(VI), C.R.S. and Rule 3654(h) does not extend to compensation for developers of Standard Offer community-based projects. Under Colorado law, the goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.[72] Words and phrases must be given their plain and ordinary meaning.[73] Where statutory language is unambiguous, resorting to other rules of statutory interpretation is unnecessary and the language is applied as written.[74]

[69] *Id*. *See* C.R.S. § 40-2-124(1)(f)(V).
[70] *Id*.
[71] 4 CCR 723-3.
[72] *Safehouse Prog. Alliance for Nonviolence, Inc., v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).
[73] *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).
[74] *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

38. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.[75] These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute's adoption.[76] One of the best guides is the context in which the statutory provisions appear.[77] A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.[78] "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is sued, and the broader context of the statute as a whole."[79]

39. Here, § 40-2-124(1)(c)(VI), C.R.S. states in relevant part that "[e]ach kilowatt-hour of electricity generated from eligible energy resources at a community-based project must be counted as one and one-half kilowatt-hours." Similarly, Commission Rule 3654(h), which implements § 40-2-124(1)(c)(VI), C.R.S., states: "For purposes of compliance with the RES, each kWh of eligible energy generated from a community-based project shall be counted as 1.5 kWh of eligible energy." Both thus state that each kWh generated by a "community-based project" will be "counted" as 1.5 kWh towards the RES. Neither states nor suggests that the 1.5 per kWh multiplier will be applied to the compensation paid to developers of community-based projects. In fact, "compensation" and its synonyms are not mentioned anywhere in § 40-2-124(1)(c)(VI), C.R.S. or Rule 3654(h).

40. Accordingly, the ALJ concludes that the plain language of § 40-2-124(1)(c)(VI), C.R.S. and Rule 3654(h) clearly and unambiguously limits the application of the 1.5 multiplier to the counting of kilowatt-hours for purposes of compliance with the RES. Put differently, the ALJ

[75] *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).
[76] *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); Williams v. Kunau, 147 P.3d 33, 36 (Colo. 2006).
[77] *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).
[78] *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).
[79] *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

concludes that no reasonable reading of § 40-2-124(1)(c)(VI), C.R.S. and Rule 3654(h) would yield the conclusion that the 1.5 multiplier must be applied to the compensation paid to the developers of community-based projects.

41. This conclusion is supported by the history of § 40-2-124(1)(c)(VI), C.R.S. and Rule 3654(h). Decision No. C07-0622 implemented House Bill (HB) 07-1281 that, in turn, added § 40-2-124(1)(c)(VI), as well as § 40-2-124(1)(c)(III), VII), and (VIII), C.R.S.[80] Those statutory provisions stated at the time in relevant part:

> (III) Each kilowatt-hour of electricity generated from eligible energy resources in Colorado shall be counted as one and one-quarter kilowatt-hours for the purposes of compliance with this standard.
>
> . . . .
>
> (VI) Each kilowatt-hour of electricity generated from eligible energy resources at a community-based project shall be counted as one and one-half kilowatt-hours. . . .
>
> . . . .
>
> (VII) (A) For purposes of compliance with the standards set forth in subparagraph (V) [applying to cooperative electric associations and municipally owned utilities that are QRUs] of this paragraph (c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.
>
> (VIII) Each kilowatt-hour of electricity from eligible energy resources may take advantage of only one of the methods for counting kilowatt-hours set forth in subparagraphs (iii), (vi), and (vii) of this paragraph (c).

42. To implement HB 07-1281, Decision No. C07-0622 adopted Rules 3654(e), (f), (g) & (h) as follows:

> (e) For purposes of compliance with the renewable energy standard specified in rules 3654(b) and (c), for cooperative electric association QRUs and municipal QRUs, each kilowatt-hour of eligible energy generated from solar electric generation technology shall be counted as 3.0 kilowatt-hours of eligible energy, provided that the solar electric generation technology commenced producing electricity prior to July 1, 2015. . . .

[80] Decision No. C07-0622 issued in Proceeding No. 07R-166E on July 23, 2007.

(f) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible energy generated in Colorado shall be counted as 1.25 kilowatt-hours of eligible energy.

(g) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible energy generated from a community-based project shall be counted as 1.5 kilowatt-hours of eligible energy.

(h) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible energy may take advantage of only one of the compliance multipliers in rules 3654(e), (f) or (g).

In adopting these rules, the Commission found that the community-based project multiplier in then-Rule 3654(g): (a) "provides a distinct bidding advantage since those projects would effectively be able to offer 20 percent more eligible energy with their bid (a 1.5 multiplier verses a 1.25 multiplier), as compared to a noncommunity based project;"[81] and (b) "should greatly assist those projects in the competitive solicitation process."[82] As a result, in the decision adopting what is now Rule 3654(h), every reference to the 1.5 multiplier and other closely-related multipliers is as a method of counting kilowatt hours for RES compliance purposes, not for calculating financial incentives. This history supports the ALJ's conclusion that the community-based project multiplier in Rule 3654(h) is limited to the counting of kilowatt-hours for purposes of compliance with the RES.

43. Decision No. R20-0099 does not require a different result, as Denver contends. That decision specifically rejected "REC adders" proposed by the Colorado Solar and Storage Association to "increase compensation for CSGs,"[83] holding that "the preponderance of the evidence does not support a need for increased *incentives* (including through adders)."[84] Instead,

[81] Decision No. C07-0622 at 14-15 (¶ 39).
[82] *Id*. at 15 (¶ 40).
[83] Decision No. R20-0099 at 35 (¶ 74). *See also* Statement of Position of the Colorado Solar and Storage Association and the Solar Energy Industries Association filed in Proceeding No. 19A-0369E on December 20, 2019 at 16.
[84] Decision No. R20-0099 at 35 (¶ 74) (emphasis added).

Decision No. R20-0099 approved Public Service's proposal that "*incentives* for the Standard Offer be calculated using the weighted average winning bid price from the annual Solar*Rewards Community RFP, plus an adder of $0.02 per kWh."[85] In so doing, Decision No. R20-0099 held that Public Service's "proposed *REC incentives* are prudent, reasonable, and in the public interest; the ALJ approves the Company's proposed *REC incentives*."[86]

44. The precise meaning of "incentives" and "REC incentives" in Decision No. R20-0099 is not clear. However, what is clear is that the meaning of those terms includes "REC adders" that "increase compensation for CSGs" and that "REC incentives" is not limited to the community-based project multiplier contained in Rule 3654(h), particularly given that that rule is never even mentioned in the Decision. Based on the foregoing, the ALJ agrees with Public Service's argument that the term "REC incentives" in Decision No. R20-0099 is a general term referring to various REC-associated incentives for different programs and rejects Denver's proposed meaning that the community-based project multiplier must be applied to the compensation paid for Standard Offer CSG projects.

45. The ALJ similarly rejects Denver's argument that Public Service's October 2, 2023 email to solar developers can only be read as stating that Public Service would apply the community-based project multiplier to the compensation for such projects selected in the Standard Offer process. That email stated that "Applicants who receive capacity within the [Standard Offer] program also receive a Renewable Energy Credit (REC) incentive for the production of the community solar garden."[87] The ALJ concludes that the cited sentence is not

[85] *Id*. at 30 (¶ 63) (emphasis added).
[86] *Id*. at 35 (¶ 74) (emphases added).
[87] Denver's Responsive Comments at 8, Attach. C at 1.

sufficiently clear to support Denver's interpretation and, in any event, cannot override the clear and unambiguous meaning of Rule 3654(h).

46. The ALJ also disagrees with Denver's contention that it is improper for Public Service to apply a community-based project multiplier to community-based CSG projects awarded through the competitive RFP process but not to such projects selected through the Standard Offer process. The Commission-approved evaluation criteria for CSG proposals submitted in response to a Public Service RFP includes "additional weight for community based projects."[88] As a result, the fact that a project was community-based was a factor in the selection of the winning RFP bids, which is why Public Service applied the community-based multiplier to the compensation paid for winning community-based RFP bids.[89]

47. In contrast, the Commission did not approve evaluation criteria for proposed Standard Offer projects because Public Service selected those projects on a first-come, first-served basis.[90] Instead, the Commission approved the formula for calculating the compensation paid to Standard Offer community-based projects noted above.[91] It defies logic that the Commission intended the price resulting from this formula to be increased through application of the REC multiplier, but never even mentioned the REC multiplier anywhere in Decision No. R20-0099, much less in the discussion of the compensation to be paid for Standard Offer community-based CSG projects.

[88] Decision No. R20-0099 at 29 (¶ 61).
[89] *See* Public Service's Initial Comments at 13.
[90] *See* Rule 3658(f)(II) ("the standard offer to purchase RECs must be made available to all retail utility customers of the investor owned QRU on a non-discriminatory, first-come, first-served basis, based upon the date of contract execution.").
[91] *Id*. at ¶ 63.

48. Finally, Denver's argument that "[i]t is unclear how the multipliers would provide a competitive advantage to smaller projects without also providing additional financial compensation associated with the increased eligible energy production of those projects"[92] is unpersuasive. The record reflects that, by counting every kWh produced by a community-based CSG as 1.5 kWh for RES compliance purposes, the purpose of Rule 3654(h) is to incentivize QRUs to include smaller community-based projects in their RES compliance plans.

49. For these reasons, the ALJ finds and concludes that the REC multiplier for community-based projects contained in Rule 3654(h) does not extend to financial compensation for developers of Standard Offer community-based projects. As explained above, given the ALJ's interpretation of Rule 3654(h), Denver's requests to award compensatory damages, to reform Denver's producer agreements for its 2020 Solar*Reward Community Standard Offer projects, and to establish whether the Commission has the authority to award compensatory damages and/or reform contracts are denied-as-moot.

VI. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order that the City and County of Denver filed on July 17, 2023, is denied consistent with the discussion and conclusions in this Decision.

2. Proceeding No. 23D-0371E is closed.

3. 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.

[92] Denver's Responsive Comments at 3.

4. 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.

5. 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director