

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

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IN THE MATTER OF THE) APPLICATION OF PUBLIC SERVICE) COMPANY OF COLORADO FOR) APPROVAL OF ITS 2022–2025) RENEWABLE ENERGY COMPLIANCE) PLAN)	PROCEEDING NO. 21A-____EG
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**MOTION OF PUBLIC SERVICE COMPANY OF COLORADO FOR ISSUANCE OF
WAIVERS AND VARIANCES NECESSARY TO IMPLEMENT ITS 2022–2025
RENEWABLE ENERGY COMPLIANCE PLAN**

Pursuant to Rules 1003 and 1400 of the Colorado Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, Public Service Company of Colorado (“Public Service” or the “Company”), through its undersigned counsel, respectfully requests the necessary waivers and variances necessary to implement its 2022–2025 Renewable Energy Compliance Plan (“2022–25 RE Plan” or “Plan”). With this Motion, the Company is concurrently filing its Application for the 2022-25 RE Plan. In its Motion, the Company respectfully requests the following waivers and variances:

- Variance from Rule 3615(a)(III), so that Public Service may enter power purchase agreement(s) (“PPA”) for one or more solar resource(s) for the Company’s Renewable*Connect 2.0 (“R*C-2.0”) offering, which is described in the testimony of Company witness Mr. R. Neil Cowan. The Company anticipates that the PPA(s) will be for a term of approximately 15 years and for a capacity of up to 300 MW. The proposed R*C-2.0 program will meet

demonstrated customer demand, but it will not affect non-participating customers' rates.

- Variances from Rules 3652(ff), 3664(a), and 3878(b), to allow the Company to size retail renewable distributed generation (“DG”) to supply up to 200 percent (rather than 120 percent) of a net metering customer’s or community solar garden (“CSG”) subscriber’s reasonably expected average annual electricity consumption at all properties owned or leased by the customer within the Company’s service territory. Public Service similarly seeks the appropriate variances from its Electric tariffs to accommodate this change. These variances are needed to allow the Company to comply with the new statutory requirements recently established by Senate Bill 21-261 (“SB 21-261”) until such time as new Commission Rules are adopted to reflect these new statutory requirements.
- Waiver of Rule 3657(a), so that the Company may file for approval of this Plan separately from the filing of its electric resource plan (“ERP”). The Commission has granted such relief in the past and doing so again will allow the Commission and the Company to move forward with consideration of the 2022–25 RE Plan.
- Waiver of Rule 3661(d), so that the Company may use up to 15 percent of its Renewable Energy Standard Adjustment (“RESA”) collections to cover administrative costs. This waiver is requested as RESA collections have declined to one percent in recent years, while renewable energy programming and the associated administrative costs continues to increase as programs increase in size and complexity.

- To the extent required, partial waiver of paragraph 21 of Decision No. C20-0700¹ so that Public Service may extend the RESA at one percent.² As the Company's renewable energy programming continues to grow, RESA funding will be critical to help support these programs. Granting a waiver of this provision will promote administrative efficiency by allowing continuation of the RESA to be considered in conjunction with the renewable energy programming proposals set forth in this Proceeding.
- Any other waivers or variances deemed necessary to carry out the Company's proposals in this Proceeding and the decision points encompassed in the Commission's final decision in this Proceeding.

In support of this Motion, the Company states as follows:

I. STATEMENT REGARDING CONFERRAL

Because this Motion is being filed contemporaneously with the RE Plan Application in this proceeding, and there are no other parties yet to this Proceeding, Public Service has not formally conferred with any parties concerning this Motion.

¹ Proceeding No. 20AL-0191E, Decision No. C20-0700, at ¶ 21 (mailed Oct. 2, 2020) (providing that filing an Advice Letter to extend the RESA surcharge past December 31, 2022 will trigger a "holistic examination" and require support of revenue requirements). As explained below, Public Service believes that its proposed approach for approving extension of the RESA satisfies the substantive requirements of Decision No. C20-0700. However, if the Commission disagrees, then Public Service respectfully requests a waiver of the requirement to conduct review in an Advice Letter proceeding.

² The Company also requests any other authorization, waiver, or variance from any other Tariff, Rule or Decision that the Commission may deem necessary to grant the above-requested relief, or any other relief the Commission may deem appropriate in this proceeding.

II. BACKGROUND

In Proceeding No. 19A-0369E, the Commission approved the Company's 2020–2021 RE Plan, which is currently in effect.³ While the 2020-21 RE Plan served as a “bridge plan” with a measured increase in program sizes, Public Service proposes to build on those programs in the 2022–25 RE Plan with several additional program offerings and other proposals designed to increase customer choice and comply with new legislative mandates. As discussed in more detail in the Company's Application and testimony of six witnesses, the 2022–25 RE Plan is designed to support a vision for solar energy on the Public Service system recently articulated in the Company's 2021 Electric Resource Plan and Clean Energy Plan (“2021 ERP & CEP”) filing in Proceeding No. 21A-0141E. Additionally, the 2022–25 RE Plan seeks to obtain additional value from DERs by creating solar plus storage programs while also providing Colorado's distributed solar industry with the certainty of a four-year plan.

III. MOTION FOR WAIVERS AND VARIANCE

As noted above, in order to implement its proposed 2022-25 RE Plan, Public Service requests that the Commission grant certain waivers of Rules 3657(a) and 3661(d), and to the extent necessary, grant a waiver of paragraph 21 of Decision No. C20-0700. Public Service also requests variances from Rules 3615(a)(III), 3652(ff), 3664(a), and 3878(b), as well as associated variances from several of its Electric tariffs, as described below. Last, Public Service requests any other waivers or variances

³ Given the timing of the filing of the Application for approval of the 2022-25 RE Plan in this proceeding and the fact that the Company's 2020–21 RE Plan will expire on December 31, 2021, Public Service filed a Motion to Extend its 2020–21 RE Plan in Proceeding No. 19A-0369E on December 10, 2021, with a request that the Commission act on that Motion by January 1, 2022.

deemed necessary to carry out the Company's proposals in this Proceeding and the decision points encompassed in the Commission's final decision in this Proceeding.

Commission Rule 1003(c) provides that all waiver or variance requests shall include: (I) a citation to the specific paragraph of the rule or decision from which the waiver or variance is sought; (II) a statement of the waiver or variance requested; (III) a statement of facts and circumstances relied upon to demonstrate why the Commission should grant the request; (IV) a statement regarding the duration of the requested waiver or variance, explaining the specific date or event that will terminate it; (V) a statement whether the waiver or variance, if granted, would be full or partial; and (VI) any other information required by rule. Public Service addresses these requirements for each of the waivers (and variance) requested and explains why each of the waivers (and variance) are necessary to effectuate its 2022–25 RE Plan.

A. Variance from Rule 3615(a)(III)

Public Service respectfully requests that the Commission grant a temporary and partial variance from Rule 3615(a)(III) to allow Public Service to procure a solar resource or resources for its proposed R*C-2.0 offering. Rule 3615(a) provides for resources that do not need to be included in an approved resource plan prior to acquisition, including as provided in subpart (III): "Capacity and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for not more than a two-year term (including renewal terms) or for not more than 30 MW of capacity."⁴

Public Service proposes to enter into one or more PPA(s) with solar resource(s) for up to 300 MW of capacity to supply participating customers under the R*C-2.0

⁴ 4 CCR 723-3-3615(a)(III).

offering.⁵ Under the Commission's resource planning rules, Public Service would be required to acquire the additional resource through an ERP proceeding. However, Public Service requests that the Commission grant a variance from Rule 3615(a)(III) so that Public Service may acquire a resource greater than 30 MW and the Company anticipates the PPA (or PPAs) will be for a term of approximately 15 years. The variance would be temporary because Public Service would only need the variance for the procurement of this specific solar resource, and the variance would be partial because it would only apply to the specific resource(s) and either the 30 MW limit or the two-year limit—that is, a variance allowing for the acquisition of a resource of approximately 300 MW or for approximately 15 years.

Good cause exists to grant the requested variance. As Company witness Mr. R. Neil Cowan explains, the Company plans to procure one or more solar resources from either unselected resources that were bid into the Company's Phase II ERP in Proceeding No. 21A-0141E or from a separate solicitation. The Company anticipates that the PPA(s) will be for a term of approximately 15 years. The resource(s) will be fully supported and contained by the program and will be incremental to other resources procured from Phase II of the 2021 ERP & CEP. The resource(s) will also be required to be located in Colorado. If the R*C-2.0 offering is approved by the Commission, it is anticipated that the selection of the solar resource will be completed by the end of 2022 and begin construction sometime in 2023, to be operational by late 2024 or in 2025.

⁵ Public Service does not know what the exact capacity requirement will be at this time. The total capacity will depend on customer interest demonstrated through memorandums of understanding.

Mr. Cowan also explains that there is sufficient customer demand to justify the R*C-2.0 offering, as demonstrated by the current waitlist of over 240 MW for the existing Renewable*Connect (“R*C”) program (proposed to be re-named Renewable*Connect 1.0 in this Plan) and the 40 commercial customers that have completed a Capacity Interest Form for a new offering. The R*C waitlist and the 40 commercial customers together represent a combined total of 803 MW of unmet interest in the R*C program. The R*C-2.0 offering will help meet this demonstrated customer demand without negatively impacting customers who do not enroll. Of further benefit, the R*C-2.0 offering will also include an option for customers to purchase additional capacity that will be converted into donated subscriptions for income-qualified customers.

B. Variance from Rules 3652(ff), 3664(a), and 3878(b) and Associated Electric Tariffs

As modified by SB 21-261, which was signed into law on June 21, 2021, § 40-2-124(1)(a)(VIII), C.R.S. provides:

Except as provided in subsection (1)(c)(II)(D) of this section with respect to cooperative electric associations, “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. In addition, retail distributed generation shall provide electric energy primarily to serve the customer’s loads and shall be sized to supply *no more than two hundred percent of the reasonably expected average annual total consumption of electricity at all properties owned or leased by the customer within the utility’s service territory.*

(Emphasis added.)

At the time of filing the Company’s Application, the Commission has not yet adopted Rules to reflect the modified requirements of SB 21-261 with respect to the allowable size and off-site location of retail DG systems.

Specifically, Rule 3652(ff) currently provides, in relevant part:

“Retail renewable distributed generation” means a renewable energy resource that is located on the premises of an end-use electric consumer and is interconnected on the end-use electric consumer’s side of the meter. ... Retail renewable distributed generation shall be sized to supply no more than 120 percent of the average annual consumption of electricity by the end-use electric consumer at that site. The end-use electric consumer’s site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.⁶

Additionally, Rule 3664(a) pertaining to net metering currently provides, in relevant part:

Except as provided in paragraph 3664(i), all investor owned QRUs shall allow the customer’s retail electricity consumption to be offset by the electricity generated from retail renewable distributed generation, provided that the generating capacity of the customer’s facility meets the following two criteria: (l) the retail renewable distributed generation shall be sized to supply no more than 120 percent of the customer’s average annual electricity consumption at that site, where the site includes all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way⁷

Finally, Rule 3878(b) pertaining to CSGs currently provides, in relevant part:

Each CSG subscription shall be sized to represent at least one kW AC of the CSG’s nameplate rating and supply no more than 120 percent of the CSG subscriber’s average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. ...⁸

Commission Rule 1001 requires the Company to comply with C.R.S. Title 40 in all Commission proceedings,⁹ and both Rule 3652 (applicable to Rules 3650 through 3668) and Rule 3877 (applicable to Rules 3877 through 3883) state that “[i]n the event of a

⁶ 4 CCR 723-3-3652(ff).

⁷ 4 CCR 723-3-3664(a).

⁸ 4 CCR 723-3-3878(b).

⁹ 4 CCR 723-1-1001.

conflict between these definitions and a statutory definition, the statutory definition shall apply.”¹⁰ As stated above, the Commission has not yet promulgated new Rules to implement the new requirements contained in SB 21-261. Public Service therefore requests authorization to size retail DG systems consistent with the updated statutory provisions set forth above. Regarding Rule 3878(b) specifically, § 40-2-127(2)(b)(I)(B), C.R.S. provides that “[a] community solar garden shall constitute “retail distributed generation” within the meaning of section 40-2-124” Accordingly, the Company is including Rule 3878(b) in its requested variances together with Rules 3652(ff) and 3664(a) as both net metering systems and CSGs are impacted by the new requirements applicable to retail DG systems.

This legislative change also implicates provisions in the Company’s Electric tariffs. Notably, Net Metering Service, Schedule NM, COLO. PUC No. 8 – Electric, Sheet No. 112 references the 120 percent figure in multiple instances. In pertinent part, it provides that the Net Metering Service rate applies to “Customers with a retail Renewable Distributed Generation Resource that operates in parallel with the Company’s system, that is no larger than one hundred and twenty percent (120% of the average annual consumption of electricity by the Customer at that site).”¹¹ Other similar references include: Schedule PV (COLO. PUC No. 8 – Electric, Sheet No. 113), and Schedule SRCS (COLO. PUC No. 8 – Electric, Sheet No. 114A).

¹⁰ 4 CCR 723-3-3652, -3877.

¹¹ And See COLO. PUC No. 8 Electric Sheet No. 112A stating that “The end-use customer’s site shall include all contiguous property owned or leased by the Customer, without regard to... for purposes of calculating the one hundred and twenty percent (120%) limitation.”

The Company therefore respectfully requests partial variances from portions of Rules 3652(ff), 3664(a), and 3878(b), in addition to portions of its Schedule NM, Schedule PV, and Schedule SRCS tariffs, to comply with the new statutory definitions and requirements set forth in the amended § 40-2-124(1)(a)(VIII), C.R.S. The Company requests that these variances be permanent until such time as the Commission adopts new Rules to reflect SB 21-261's new statutory requirements and new compliance tariffs go into effect.

As stated above, the requested variances would be partial, as the Company only seeks variances from the specific language in Commission Rules and Company tariffs impacted by SB 21-261's amendments.

C. Waiver of Rule 3657(a)

Rule 3657(a) provides that utilities shall file their RES compliance plans in tandem with an ERP:

With each electric resource plan filed with the Commission under rule 3603 (every four years beginning October 31, 2015), the investor owned QRU shall file a RES compliance plan detailing how the QRU intends to comply with these rules during the resource acquisition period addressed in that rule 3603 filing. In addition to the required four-year cycle, the investor owned QRU may file an interim RES compliance plan by application at the Commission explaining the reasons and changed circumstances that justify the interim plan.¹²

Public Service respectfully requests a temporary and partial waiver of the requirement that qualifying retail utilities submit their RE Plans on a four-year cycle concurrently with the filing of their ERPs. The waiver would be temporary because Public Service would only need the waiver for the lifetime of the Plan—*i.e.*, 2022 to 2025—and

¹² 4 CCR 723-3-3657(a).

the waiver is partial because the period of the RE Plan overlaps with the Company's 2021 ERP & CEP.

The Commission has granted such relief in the past. For instance, in Proceeding No. 11A-870E, the Commission granted a request by Public Service for a waiver of the then-requirements of Rule 3657.¹³ Specifically, the Commission granted a request for alternative filing deadlines for the Company's RE Plans for 2014 and 2015 (allowing the Company to file a single plan for 2014 and 2015), which resulted in the bifurcation of the filing dates for the Company's ERP and RE Plan filings.¹⁴

The Company's 2017–19 RE Plan was also filed pursuant to the Commission's grant of requests similar to the waiver sought here.¹⁵ Ultimately, Public Service requested, and was granted, a waiver of Rule 3657 and a variance from a prior Commission decision so that Public Service could bifurcate its RE Plan submission from its ERP filing.¹⁶ The Commission also granted a partial waiver of Rule 3657(a) with Public Service's most recent 2020–21 RE Plan filing, so that Public Service could implement a two-year bridge plan that was not synched with an ERP filing.¹⁷

Granting the requested waiver of Rule 3657(a) will allow the Commission and Public Service to move forward with consideration of the 2022–25 RE Plan and enable

¹³ Proceeding No. 11A-870E, Decision No. C12-0066, at ¶ 9 (mailed date Jan. 19, 2012).

¹⁴ *Id.*, at ¶¶ 1, 5, 6. The Commission subsequently granted a petition for a waiver of the requirements established in Decision No. C12-0066 so that the Company could file a 2014 RE Plan separate from a 2015 RE Plan. Proceeding No. 13V-0085E, Decision No. C13-0275 (mailed date March 1, 2013).

¹⁵ On June 17, 2015, Public Service filed a petition for waivers and variances, seeking, among other things, (1) a waiver of then-existing deadline(s) to file its ERP and RE Plans, and (2) approval to separate the filing of the ERP and RE Plans. As relevant here, the Commission in Decision No. C15-0925 granted the first request but denied the second. Proceeding No. 14V-0188, Decision No. C15-0925 (mailed date Aug. 21, 2015).

¹⁶ Proceeding No. 14V-0188, Decision No. C16-0127 (mailed date Feb. 16, 2016) (granting a variance from Decision No. C15-0925).

¹⁷ Proceeding No. 19A-0369E, Decision No. R19-0807-I, at ¶¶ 11-12, 22-23 (mailed Oct. 1, 2019).

the Company to implement programs that accommodate the recent legislative changes in the most expeditious manner possible.

D. Waiver of Rule 3661(d)

Public Service respectfully requests a temporary waiver of Rule 3661(d). Rule 3661(d) provides: “The administrative costs of a QRU to implement these rules are capped at ten percent per year of the total annual collection. A QRU may include in its compliance plan a waiver request of this rule during the initial ramp-up stage of the QRU’s program.”¹⁸ Public Service requests authorization to use up to 15 percent of RESA collections to cover RE program administrative costs. Public Service requests that this waiver be in place for the duration of the 2022–25 RE Plan.

RESA collections were reduced from two percent to one percent as of November 1, 2020,¹⁹ while Public Service’s RES-related programs have continued to grow considerably. Increased program capacities lead to greater administrative costs, and Colorado’s robust market for DERs increases the technical and program administration complexity. This in turn has required increased spending on training, technology, and incremental labor. In response, the Company has increased its use of administration costs collected under the RESA that are used for labor, travel, technology expenses, advertising, and educational and promotional efforts to support RES programs and distributed resource growth. As Public Service continues to administer more renewable programs and address increasingly complex interconnection issues, administrative costs

¹⁸ 4 CCR 723-3-3661(d).

¹⁹ See Proceeding No. 17A-0797E, Decision No. C18-0762, ordering ¶ 4 (mailed Sept. 10, 2018). At the same time the RESA was reduced to one percent, a new rider, the Colorado Energy Plan Adjustment (“CEPA”), took effect at one percent of customers’ bills. The CEPA is projected to expire sometime in 2027.

are expected to rise. The Company has not yet run into the 10 percent limit on using RESA collections for administrative costs, but additional flexibility is needed for the 2022–2025 RE Plan given the broad scope of programming contemplated within the Plan. Going forward, Rule 3661(d)'s 10 percent cap could limit the Company's ability to effectively administer programs, which could slow the implementation of DERs. Therefore, a partial and temporary waiver of Rule 3661(d) for the duration of the Plan represents a practical approach for ensuring a sufficient margin to accommodate continuing programmatic growth. The waiver would be partial because Public Service only requests that the 10 percent limit be increased modestly up to 15 percent.

E. Potential Waiver of Decision No. C20-0700's Requirements Concerning RESA Extension Past December 31, 2022

Under Decision No. C20-0700, the RESA Tariff is currently set to expire on December 31, 2022.²⁰ Decision No. C20-0700 also provided in relevant part:

Public Service may file an advice letter to continue the RESA after December 31, 2022, where such filing will trigger a holistic examination of the RESA surcharge. Public Service is directed to support its request to continue the RESA with sufficient evidence of a revenue requirement commensurate with the proposed level of the surcharge.²¹

Public Service's Application and supporting testimony request that the Commission extend the RESA surcharge after December 31, 2022.²² While it is unclear whether a waiver is needed under the language of Decision No. C20-0700, to the extent the Commission deems one necessary, Public Service requests a determination on continuing the RESA in this proceeding rather than in a separate Advice Letter proceeding. Consistent with Decision No. C20-0700, Public Service proposes conducting

²⁰ Proceeding No. 20AL-0191E, Decision No. C20-0700, at ¶ 20 (mailed Oct. 2, 2020).

²¹ *Id.* at ¶ 21.

²² See, e.g., Hr. Ex. 103, Direct Testimony of Alexander G. Trowbridge.

a holistic examination of the RESA in this proceeding and has provided an evidentiary record surrounding its RESA collections and forecast with its Direct Case. Public Service believes that this proposed approach satisfies Decision No. 20-0700's substantive requirements to conduct a holistic review before extending the RESA. To the extent the Company's request is granted, the Company is requesting approval to implement such change *via* a compliance advice letter on statutory notice after a final written decision is issued in this Proceeding.

Conducting a holistic examination in this Proceeding is sensible and will promote administrative efficiency because the RESA is closely tied to the Company's renewable energy programming proposals in this Proceeding.

F. Other Waivers/Variances

Last, Public Service requests any other waivers or variances deemed necessary to carry out the Company's proposals in this Proceeding and the decision points encompassed in the Commission's final decision in this Proceeding.

IV. CONCLUSION

WHEREFORE, for good cause shown, Public Service respectfully requests that the Commission enter an order granting:

- (1) the requested variance from Rule 3615(a)(III);
- (2) the requested variances from Rules 3652(ff), 3664(a), and 3878(b), and associated variances from the Company's Electric tariffs;
- (3) the requested waiver of Rule 3657(a);
- (4) the requested waiver of Rule 3661(d);
- (5) to the extent necessary, the requested waiver of Decision No. C20-0700's requirement that Public Service file an advice letter with sufficient evidence of a revenue requirement so that the Commission can conduct a holistic examination of the RESA surcharge; and,

(6) any other waivers or variances deemed necessary to carry out the Company's proposals in this Proceeding and the decision points encompassed in the Commission's final decision in this Proceeding.

DATED this 20th day of December, 2021.

Respectfully submitted,

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