

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

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<b>IN THE MATTER OF ADVICE LETTER NO.</b>	)	
<b>1649—ELECTRIC FILED BY PUBLIC</b>	)	
<b>SERVICE COMPANY OF COLORADO TO</b>	)	
<b>IMPLEMENT A NEW METHODOLOGY TO</b>	)	
<b>DERIVE PAYMENT RATES APPLICABLE TO</b>	)	<b>PROC. NO. 13AL-0958E</b>
<b>QUALIFYING FACILITIES (“QFS”) WITH A</b>	)	
<b>DESIGN CAPACITY BETWEEN 10 AND</b>	)	
<b>100KW, TO BECOME EFFECTIVE</b>	)	
<b>SEPTEMBER 27, 2013</b>	)	

**RESPONSE OF PUBLIC SERVICE COMPANY OF COLORADO IN  
OPPOSITION TO VOTE SOLAR INITIATIVE’S MOTION FOR CLARIFICATION  
OR WAIVER**

Public Service Company of Colorado opposes supplying the Highly Confidential Information containing all the inputs to the Company’s Cost Calculator to Mr. Rick Gilliam, witness for Vote Solar Initiative. We are not objecting to providing Mr. Gilliam access to this information because he has 3.8 KW of solar panels on his residence making him potentially the owner of a qualifying facility. We are objecting to Mr. Gilliam because he is the Director of Research and Analysis for Vote Solar, who by his own testimony “oversees policy initiatives, development and implementation” to “remove regulatory barriers and implement key policies needed to bring solar to scale.”<sup>1</sup> He testified that he is representing the interests of the 3300 members of his organization in Colorado.

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<sup>1</sup> Gilliam Answer Testimony, page 1, line 8-14.

In its Motion to Intervene in this docket, Vote Solar explained that it “represents the interests of its members ... relating the growth of distributed generation in Colorado.”<sup>2</sup> Vote Solar also explained that it represents the interests of solar photovoltaic generators that will wish to sell power to Public Service. Vote Solar justified its intervention by claiming that the Company’s proposed tariffs would have the effect of “reducing the value of distributed generation in the form of solar QFs .. [and] would substantially impact the growth of distributed generation of solar generation in Colorado.”<sup>3</sup>

There is no question that developers of distributed generation in Colorado are direct competitors (and/or vendors) to Public Service Company of Colorado. Under C.R.S. §40-1-103(c), so-called “third party vendors” are allowed to make direct retail sales of electricity from distributed generation to Public Service’s customers. Many of these members approach Public Service’s customers with claims that they will save our customers money if our customers buy solar energy from them instead of continuing to buy electricity from Public Service. Further, to the extent that these solar generators generate excess energy and are located in Public Service’s territory, they sell their excess output to Public Service. Vote Solar has intervened in this docket because its members located in our service territory are *all* actual or potential competitors or vendors to Public Service.

By email ruling, Administrative Law Judge Jennings-Fader found that Public Service is entitled to Highly Confidential protection of the inputs to our Cost Calculator software. These inputs include the fuel costs, heat rate

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<sup>2</sup> Vote Solar Motion to Intervene at page 2.

<sup>3</sup> Vote Solar Motion to Intervene at page 4.

coefficients, start up costs, unit minimums and contract minimums, unit minimum run times, variable O&M and Tolling Costs, Cabin Creek Pumped Storage Costs, Transmission Costs and REC costs used by Public Service to conduct essential business operations. ALJ Jennings-Fader ruled:

Based on my review and the record in this Proceeding, I **find**: (1) Public Service has met its burden to establish that the information sought by the Discovery Request (*i.e.*, the "assumptions, data, calculations, and workpapers underlying" Cost Calculator, which is the data source for "annual average" for "Other" in DRB-1, Step 1) is highly confidential; thus, the information is highly confidential and will be treated accordingly; (2) in order to participate fully and meaningfully in this Proceeding, each intervenor must have access to the highly confidential information; and (3) given (a) the nature of the highly confidential information, (b) the uses to which a PSCo competitor or PSCo supplier could put the highly confidential information, and (c) the possibility of significant harm to PSCo ratepayers if the highly confidential information is disclosed, access to the highly confidential information must be limited to counsel who meet certain criteria and to subject matter experts who meet certain criteria.

We advise the ALJ that Public Service is not objecting to the Non-Disclosure Agreement filed by Ms. Tauber, counsel for Vote Solar. However, one of the criteria set by ALJ Jennings-Fader was that Subject Matter Experts seeking access to Highly Confidential Information must abide by the Commission's Rules 1100 through 1101. Rule 1101 (h) provides, in pertinent part:

(h) All confidential information made available by a party shall be given solely to the Commission, Commission staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any purpose other than for purposes of the proceeding in which the information is produced. With the exception of Commission staff, any disclosure of such information to a party's experts or advisors must be authorized by that party's counsel, and must be permitted solely for the purpose of the proceeding in which the information is produced. *No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the*

*party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed to individual members of a trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information. ...[Emphasis added]*

Mr. Gilliam is clearly, by his own admission, an employee of an organization concerned with the marketing or strategic planning of competitive products and services to the electric service provided by Public Service. He is also oversees the policy initiatives of a trade association whose members provide competitive products and services to those provided by Public Service.

In pending Commission Docket No. 13A-0836E, Public Service's 2014 RES Compliance Plan, Mr. Gilliam testified, on behalf of Vote Solar:

**Q. Does Vote Solar believe [Public Service] Company competes with alternate providers?**

A. Yes. The interest in customer-sited solar generation is proof that a portion of the Company's customers want and value energy services exhibiting a different set of characteristics more highly than the uniform PSCo offering, and such should be allowed without undue burden.

The need to protect the Highly Confidential inputs to Cost Calculator from the eyes of Mr. Gilliam and other Company competitors and vendors is extremely important, as the ALJ has already found.

Moreover, it is highly questionable whether these Cost Calculator inputs are even relevant to the issues raised by this proceeding as we explained in Public Service's response to the WCPC motion to compel :

In addition to Public Service having a significant concern about providing WCPC access to the Highly Confidential inputs in Cost Calculator, we have great difficulty understanding what possible relevancy this information would have to any issue before the Commission in this docket.

Ms. Basquez has used the hourly decremental costs calculated by Cost Calculator for a twelve month historic period. These same costs were used by the Company in conducting its trading operations and in establishing Energy Imbalance Service under Schedule 4 of the Company's FERC OATT during this historic period. While it would potentially be relevant for WCPC, if it chose to do so, to argue that some other measure (other than the decremental cost output from these historic Cost Calculator runs) should be used by the Company as the starting point for developing the Company's avoided energy cost rate for qualifying facilities, we fail to see any relevance to this docket of WCPC potentially challenging the inputs used by Cost Calculator for this twelve month historic period.

While Public Service fully understands the ALJ's ruling that the scope of permissible discovery is broader than the scope of the admissibility of evidence, Public Service maintains that the *inputs* to Cost Calculator – a tool blessed by regulators for Public Service to conduct many of our day to day business operations -- are not relevant to the issues raised in this proceeding. We do agree that the outputs from Cost Calculator for the period in question are relevant, and the hourly Confidential outputs have been provided to Vote Solar and to Mr. Gilliam.<sup>4</sup>

While we do not believe that there is any question that Mr. Gilliam should be precluded from access to Highly Confidential Information, if the ALJ believes that the information access question is a closer one than we believe, then we respectfully request that the ALJ take into account that the Highly Confidential Information in question is likely to have little or no relevance to this docket, while

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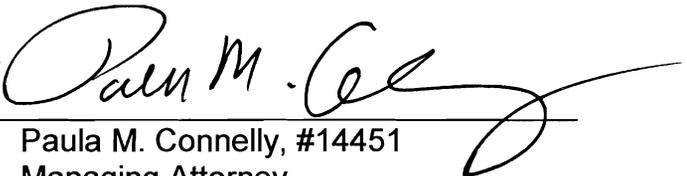
<sup>4</sup> In hindsight Public Service should probably have objected to providing Mr. Gilliam the hourly Confidential Cost Calculator *output* information. However, we do not want to compound our error by now acquiescing in providing him with the even more sensitive Highly Confidential *inputs* to Cost Calculator.

the harm to Public Service by its revelation to competitors and vendors is likely to be very great.

For all of the above reasons, Public Service Company of Colorado respectfully requests a ruling denying the Motion for Clarification or Waiver filed by Vote Solar Initiative. We further request a ruling that Mr. Gilliam is not to be provided access to Public Service's Highly Confidential Cost Calculator inputs.

Dated this 14th day of February, 2014.

Respectfully submitted,

By: 

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