

Decision No. C23-0168-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0530E

IN THE MATTER OF ADVICE LETTER NO. 1906 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE BASE RATE REVENUES, IMPLEMENT NEW BASE RATES FOR ALL ELECTRIC RATE SCHEDULES, AND MAKE OTHER TARIFF CHANGES, TO BECOME EFFECTIVE DECEMBER 31, 2022.

PROCEEDING NO. 22AL-0478E

IN THE MATTER OF ADVICE LETTER NO. 1902 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE THE TRANSMISSION COST ADJUSTMENT RIDER, TO BECOME EFFECTIVE JANUARY 1, 2023.

**INTERIM COMMISSION DECISION GRANTING
SECOND MOTION FOR EXTRAORDINARY
PROTECTION AND WAIVING RESPONSE TIME**

Mailed Date: March 8, 2023

Adopted Date: March 8, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Unopposed Second Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed by Public Service Company of Colorado (Public Service) on February 28, 2023 (Motion). Through the Motion, Public Service requests extraordinary protection for certain documents and categories of information related to its rate case expenses. Public Service represents that the

Motion is unopposed. Since the Motion is unopposed, we find good cause to waive the remaining response time and take up the matter expeditiously. Upon review of the Motion and its attachments, the Commission finds good cause to grant the requested relief.

B. Discussion

2. On November 1, 2022, Public Service filed Advice Letter No. 1902-Electric in Proceeding No. 22AL-0478E with tariff sheets setting forth the applicable charge for its Transmission Cost Adjustment for effect January 1, 2023. On November 30, 2022, Public Service filed Advice Letter No. 1906-Electric in Proceeding No. 22AL-0530E with tariff sheets for its base rate schedules for electric utility service provided to Colorado customers. By Decision No. C22-0833, issued December 23, 2022, we set for hearing and suspended the effective date of the tariff sheets for 120 days. By Decision No. C23-0110-I, issued February 16, 2023, the Commission established the following parties: Public Service; Staff of the Colorado Public Utilities Commission (Trial Staff); the Colorado Office of the Utility Consumer Advocate (UCA); The Kroger Company; City and County of Denver; City of Boulder; the Federal Executive Agencies; the Colorado Energy Consumers; the Coalition for Community Solar Access; Walmart Inc.; Climax Molybdenum Company; and Molson Coors Beverage Company. By Decision No. C23-0158-I, issued March 3, 2023, the Commission established the procedural schedule for this Proceeding and extended the suspension period of the tariff pages for an additional 130 days.

3. By Decision No. C23-0154-I, issued March 1, 2023, the Commission granted Public Service's first Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information, filed on November 30, 2022, and provided extraordinary protection for certain customer information.

4. In the Motion, Public Service requests extraordinary protection for certain claimed highly confidential rate case expense information related to its outside legal counsel invoices. Public Service indicates this request includes any documents discussing or identifying any of the highly confidential information including testimony, discovery responses and attachments, and any other associated documents containing such types of information provided in this Proceeding.

5. Public Service explains, consistent with its prior process, it provides to parties, on a confidential basis, outside legal counsel invoices that have been redacted to avoid disclosure of attorney-client privileged communications, confidential litigation strategy, or other privileged attorney work product. Public Service states it also redacts from this confidential version the hourly billing rates and rate-related information, as well as the time spent on each item in order to protect competitively sensitive information.

6. Public Service notes that, during discovery in its prior electric rate case, Proceeding No. 21AL-0317E, UCA requested unredacted legal invoices. Public Service explains, in that case, the Commission authorized Public Service to treat such legal invoices as highly confidential, and to limit distribution in the same way as it now requests in the Motion. See Proceeding No. 21AL-0317E, Interim Decision No. R21-0698-I, issued November 8, 2021 (granting extraordinary protection for certain invoices from outside legal counsel). Public Service anticipates similar discovery requests in this Proceeding and notes that Trial Staff has already issued a rate case expense discovery request.

7. Public Service states, to provide timely responses to this and other discovery requests, it seeks extraordinary protection to provide these legal invoices as unredacted with the rate-related and the amount of time worked on tasks designated as highly confidential. Public

Service states it will still make redactions to the invoices to avoid revealing attorney-client privileged information, confidential litigation strategy, or attorney work product. Public Service requests parties' access to these redacted highly confidential invoices be restricted to only Trial Staff and UCA. Other parties to the Proceeding would be able to receive the further redacted, confidential versions of the legal invoices if an appropriate ordinary non-disclosure agreement has been signed and filed with the Commission.

8. To support its request, Public Service states that it negotiates its rates for legal services separately with each legal service provider and thus derives a competitive advantage from maintaining the confidentiality of these rates. Public Service states the protections afforded by the rules governing ordinary confidentiality would provide insufficient protection for this competitively sensitive information. Public Service concludes the requested extraordinary protections strike the appropriate balance between the need for disclosure and the need to protect the interests of Public Service.

9. Public Service requests that access to the claimed highly confidential information be limited to the Commissioners, any assigned administrative law judge, the Commission's advisory staff and advisory attorneys, Trial Staff, and attorneys for Trial Staff, and UCA and attorneys for UCA.

10. Public Service prepared non-disclosure agreements for attorneys and subject matter experts, as required by Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Public Service also provided the affidavit of Tana K. Simard-Pacheco, identifying the employees in groups with access to the highly confidential information. The affidavit requests the extraordinary protection remain in

place until the conclusion of this Proceeding and that at that time parties destroy the highly confidential information or return it to Public Service.

11. No party filed a response opposing the relief requested in the Motion.

C. Findings and Conclusions

12. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

13. The operative language in Rule 1101(b)(IV) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which concerns motions requesting highly confidential protection, requires that the motion:

shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information

14. We find the reasoning and arguments in the Motion persuasive. The Motion states good cause to grant the relief sought under Rule 1101, 4 CCR 723-1. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules and past practice. We agree that Public Service's plan to redact certain information on the requested invoices, which would otherwise reveal confidential attorney-client communications, confidential litigation strategy, or other privileged attorney work product, is reasonable and prudent.

15. Based on the foregoing, we grant the Motion and approve the non-disclosure agreements.

16. Access to the highly confidential information shall be limited to the Commissioners, any assigned administrative law judge, the Commission's advisory staff and advisory attorneys, Trial Staff, and attorneys for Trial Staff, and UCA and attorneys for UCA.¹

17. We remind counsel and the parties that individuals permitted access to the highly confidential information may use it only for purposes of this Proceeding, consistent with the Commission's confidentiality rules. The protected highly confidential information may not be disclosed to any unauthorized persons.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Second Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed by Public Service Company of Colorado on February 28, 2023, is granted.

2. Upon the Commission's own motion, remaining response time to the unopposed motion is waived.

¹ The Commissioners, Commission advisory staff, Commission advisory counsel, administrative law judges, Trial Staff, and Trial Staff counsel sign annual non-disclosure agreements covering all confidential and highly confidential information filed with the Commission and are not required to sign separate agreements in individual cases. See Rule 1100(i) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 8, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners