

Decision No. R23-0643-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0563E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONVERSION OF PAWNEE GENERATING STATION FROM COAL OPERATIONS TO NATURAL GAS OPERATIONS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING SECOND MOTION TO MODIFY PROCEDURAL
SCHEDULE AND MOTION FOR EXTRAORDINARY PROTECTION**

Mailed Date: September 26, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision grants the Unopposed Motion to Approve Revised Procedural Schedule and For Waiver of Response Time (Second Unopposed Motion) that Public Service Company of Colorado (Public Service or the Company) filed on September 14, 2023, and grants the Unopposed Motion for Extraordinary Protection of Highly Confidential Information (Unopposed Motion or Unopposed Motion for Extraordinary Protection) filed by Public Service on September 20, 2023.

B. Procedural History¹

2. On December 20, 2022, Public Service filed the above-captioned Application (Application) with attachments seeking the Commission to grant a Certificate of Public Convenience and Necessity to convert its Pawnee Generating Station from coal operations to natural gas operations.

3. On June 6, 2023, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.² In doing so, the Commission noted that it sees “potential benefits in the ALJ adopting a procedural schedule that may appropriately enable parties to raise information in the 120-Day Report filed in Proceeding No. 21A-0141E (120-Day Report) in the presentation of their cases this proceeding.”³

4. On June 29, 2023, the ALJ scheduled an evidentiary hearing for November 7 and 9, 2023 and established a procedural schedule enabling parties to include the 120-Day Report in their presentations here.⁴

5. On August 10, 2023, the Company filed an Unopposed Motion to Approve Revised Procedural Schedule and for Waiver of Response Time (First Unopposed Motion). Because the Commission granted a request to extend the deadline to file the 120-Day Report in Proceeding No. 21A-0141E, the First Unopposed Motion sought to push back numerous evidentiary filing deadlines so the parties could have sufficient time to include information from the 120-Day Report in such filings.⁵

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. C23-0375-I at 8 (mailed June 6, 2023).

³ *Id.*

⁴ Decision No. R23-0431-I (mailed June 29, 2023).

⁵ First Unopposed motion at 3-4.

6. On August 15, 2023, the ALJ granted the First Unopposed Motion and established the following revised deadlines: a September 27, 2023 deadline for answer testimony; an October 18, 2023 deadline for rebuttal and cross-answer testimony; and an October 20, 2023 deadline for non-testimonial hearing exhibits and to correct, modify, and amend testimonial exhibits.⁶

7. On September 14, 2023, the Company filed the Second Unopposed Motion.

8. On September 20, 2023, the Company filed the Unopposed Motion for Extraordinary Protection.

9. On September 25, 2023, the Company filed Attachments A, B, and C to the Unopposed Motion for Extraordinary Protection.

II. FINDINGS AND CONCLUSIONS

A. Second Unopposed Motion

10. The Second Unopposed Motion states that Public Service conferred with the parties and no party objects to the relief sought therein.⁷ Since the Motion is unopposed, Public Service requests that the response time to it be waived. Because the Motion is unopposed, the ALJ finds good cause to waive the response time to it and does so.⁸

11. The Second Unopposed Motion explains that the Commission granted a second extension of time for Public Service to file the 120-Day Report in Proceeding No. 21A-0141 through to September 18, 2023, seven days later than the last deadline (September 11, 2023).⁹ As

⁶ Decision No. R23-0542-I (mailed August 15, 2023) at 4-5.

⁷ Second Unopposed Motion at 1.

⁸ See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁹ *Id.* at 3.

a result, the parties require more time to meet the evidentiary filing deadlines in this Proceeding so that they can consider and address the 120-Day Report in such filings.¹⁰ The Second Unopposed Motion states that the parties agree to the following modifications to the existing schedule:

Event	Existing Deadlines	Suggested Deadlines
Answer Testimony	September 27, 2023	October 4, 2023
Rebuttal and Cross-Answer Testimony	October 18, 2023	October 25, 2023
Corrections Pre-filed Testimony and Exhibits	October 20, 2023	October 27, 2023 ¹¹

12. The parties agree that above changes allow sufficient time to address the 120-Day Report while maintaining the current hearing dates and all other existing deadlines.¹²

13. The ALJ finds that the proposed changes accommodate the Commission's desire for the parties to address the Company's 120-day report in their presentations without impacting the parties' ability to prepare for the scheduled hearing. For these reasons, the ALJ finds that the Second Unopposed Motion establishes good cause to modify the procedural schedule and grants it.

14. That said, the new deadlines provide the ALJ and advisors a very limited amount of time to review the evidentiary filings in preparation for the November 7 and 9, 2023 evidentiary hearing. As such, the parties are on notice that additional requests to modify the procedural schedule to push back evidentiary filing deadlines will not be granted unless the evidentiary hearing dates are also pushed back.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

B. Unopposed Motion for Extraordinary Protection

15. The Company states that all parties have indicated that they do not oppose the relief sought in the Unopposed Motion.¹³

16. The Company seeks extraordinary protection for EnCompass files; the Current Cost Analysis Report (Report) for the Pawnee conversion project; and any documents referencing such information, including testimony and attachments thereto, discovery requests, discovery responses (including attachments) and any other associated documents.¹⁴

17. In support, the Company argues that in other proceedings, the Commission has recognized that the EnCompass files are highly confidential.¹⁵ Specifically, in the Company's 2011 Electric Resource Plan (ERP) proceeding, its 2016 ERP proceeding, and its 2021 ERP proceeding, the Commission granted a request to treat information that is substantially similar to the EnCompass files as highly confidential.¹⁶ The Company submits that as in those prior proceedings, disclosure of this information may cause irreparable harm to its trading operations, ability to solicit cost-effective resources, and ultimately, its customers.¹⁷ As such, the Company argues that access to the information should be limited as requested.¹⁸

18. The Report includes assumptions, costs estimates, and calculations used to develop the Report, which encompasses detailed assumptions and cost estimates associated with materials, supply, and equipment costs; vendor estimates and contract costs, and overhead and escalation

¹³ Unopposed Motion at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 4, citing Decision No. C11-1391 at 9 (mailed January 3, 2012) in Proceeding No. 11A-869E; Decision No. C16-0663-I at 15-16 (mailed July 15, 2016) in Proceeding No. 16A-0396E; and Decision No. C21-0343-I at 12 (mailed June 11, 2021) in Proceeding No. 21A-0141E.

¹⁷ *See id.*

¹⁸ *Id.* at 4.

costs; and risk reserve information.¹⁹ The Company asserts that the Commission has found that business information revealing input costs, assumptions, estimates, and vendor contracts is highly sensitive, and that disclosure of such information can result in unfair advantages between potential competitors, and has treated such information as highly confidential.²⁰

19. For the same reasons, the Company argues that other records containing the above highly confidential information should also be treated as such.²¹

20. The Company asks that only those who have executed a nondisclosure agreement be permitted access to the highly confidential information and that all those with access be required to destroy or return the highly confidential records when this Proceeding concludes.²² Attachments A and B are proposed form nondisclosure agreements.

21. Because the highly confidential information is voluminous, and the Company did not file the highly confidential information with its Unopposed Motion, noting that the Unopposed Motion describe the nature of the documents, and that those who sign a nondisclosure agreement will have access to the records.²³

22. In Attachment C, the Company is an affidavit explaining who has access to the highly confidential information and states that the information should remain highly confidential indefinitely.²⁴

¹⁹ *Id.*

²⁰ *see id.* at 4-5, citing Decision No. C21-0464-I at 3 (mailed July 27, 2023) in Proceeding No. 21A-0096E.

²¹ *Id.* at 5.

²² *See id.* at 6.

²³ *See id.*

²⁴ Attachment C to Unopposed Motion at 1-2.

23. Because no party objects to the relief sought in the Unopposed Motion, the ALJ waives the response time to it.²⁵

24. Rule 1101(b) of the Commission's Rules of Practice and Procedure requires that a motion seeking extraordinary protection of highly confidential information: include a detailed description of the information to be protected; state the specific relief sought and grounds therefore; advise the parties of the request and the subject matter of the information at issue; establish that the information at issue is highly confidential and that highly confidential protection is necessary because rules providing protection for confidential information offer insufficient protection; be accompanied by a proposed nondisclosure agreement and an affidavit with names of all persons who have access to the information and the timeframe for protection; and either file the highly confidential information or establish why doing so would be overly burdensome, impractical or too sensitive for disclosure.²⁶

25. The ALJ finds that the Unopposed Motion and attachments meet the requirements of Rule 1101(b) and establish that the information for which the Company seeks extraordinary protection is highly confidential. For the reasons and authorities discussed, those in the Unopposed Motion, and because the Unopposed Motion is unopposed, the ALJ grants it.

26. The ALJ reminds the parties that if they plan to file or offer into evidence the highly confidential or confidential information in this Proceeding, they must take care to follow the Commission's rules concerning filing highly confidential and confidential information, and the procedural requirements for marking and identifying confidential and highly confidential hearing exhibits.²⁷ Likewise, during the evidentiary hearing, the parties must inform the ALJ if they intend

²⁵ Rule 1401(b), 4 CCR 723-1.

²⁶ Rule 1101(b), 4 CCR 723-1.

²⁷ See Rule 1101(a)(I), 4 CCR 723-1 and Attachment B to Decision No. R23-0431-I at 9-10.

to examine witnesses on highly confidential or confidential matters so that the ALJ can ensure that the public webcast is discontinued during such testimony.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, the response time to Public Service Company of Colorado's (Public Service) Unopposed Motion to Approve Revised Procedural Schedule and For Waiver of Response Time filed on September 14, 2023 (Second Unopposed Motion) is waived, and the Second Unopposed Motion is granted.

2. Unless specifically modified by this Decision, no other deadlines or requirements in Decision R23-0431-I or Attachments A and B thereto are impacted by this Decision.

3. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by October 4, 2023.

4. **Rebuttal and Cross-Answer Testimony.** Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by October 25, 2023.

5. **Corrections, Modifications, and Amendments to Testimonial Exhibits.** The parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments) on or by October 27, 2023. The parties must review the hyperlinked spreadsheet that will be used during the hearing to present exhibits to ensure that it includes all the exhibits that the parties intend to offer into evidence during the hearing. October 27, 2023, is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B to Decision No. R23-0431-I, which

is modified to reflect this change. Such filings must comply with the specific requirements in Attachment B.

6. The response time to Public Service's Unopposed Motion for Extraordinary Protection of Highly Confidential Information filed on September 20, 2023 (Unopposed Motion) is waived and the Unopposed Motion is granted, consistent with the above discussion.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director