

Decision No. R23-0737-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0392EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM COMMISSION DECISION GRANTING
MOTION FOR EXTRAORDINARY PROTECTION**

Mailed Date: November 2, 2023
Adopted Date: October 25, 2023

I. BY THE COMMISSION

A. Statement

1. On August 1, 2023, Public Service Company (Public Service or the Company) filed its Verified Application (Application) requesting the Commission approve the Company's 2024-2028 Clean Heat Plan.

2. By this Decision, the Commission grants the Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion) filed by Public Service on October 18, 2023. We also waive the remaining response time to the Motion.

B. Motion for Extraordinary Protection

3. Public Service requests extraordinary protection for certain claimed highly-confidential proprietary, non-public, commercially and otherwise highly-sensitive documentation related to hydrogen blending; including studies, infrastructure information, and engineering and design documentation (Highly Confidential Information). Public Service indicates this request

includes any documents discussing or identifying any of the Highly Confidential Information including testimony, discovery requests or responses and attachments, hearing transcripts, decisions, and any other associated documents containing such types of information provided in this Proceeding.

4. Information for which the Company requests extraordinary protection in this Motion includes, but is not limited to, Company gas-system-specific studies prepared by the Company and/or by third-party consultants, along with proprietary engineering and design documentation relating to the proposed hydrogen-blending demonstration project, which is proprietary and non-public; and which also includes detailed system and location data that may create a security, safety, or other risk if disclosed publicly.

5. The Company requests that access be limited to (1) the Commissioners, Administrative Law Judges, the Commission's advisory staff and advisory attorneys; (2) Trial Staff, the Office of the Utility Consumer Advocate, the Colorado Energy Office, and their respective counsel; and (3) for Parties that are permissive intervenors-- a reasonable number of attorneys and a reasonable number of subject-matter experts who do not represent a party who will gain an unfair competitive advantage by having this information; all of whom must have signed appropriate non-disclosure agreements to access Highly Confidential Information.

6. To support its request, Public Service states that the documents in this category of Highly Confidential Information contain detailed information regarding the Company's natural gas system, including detailed non-public data about components of the Company's infrastructure and locational data. Public Service asserts that this information is sensitive because disclosure could present security risks, and also because the information is potentially advantageous to competitors.

7. 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. In Attachment C to the Motion, Public Service provided the affidavit of A. Ray Gardner 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 parties at that time destroy the Highly Confidential Information or return it to Public Service.

8. No party filed a response opposing the relief requested in the Motion. Public Service indicates it is authorized to state that all parties that responded either took no position or did not oppose.

9. 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.

10. 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

11. 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.

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

13. Access to the Highly Confidential Information shall be limited to (1) the Commissioners, Administrative Law Judges, the Commission's advisory staff and advisory attorneys; (2) Trial Staff, the Office of the Utility Consumer Advocate, the Colorado Energy Office, and their respective counsel; and (3) for Parties that are permissive intervenors-- a reasonable number of attorneys and a reasonable number of subject matter experts who do not represent a party who will gain an unfair competitive advantage by having this information; all of whom must have signed appropriate non-disclosure agreements to access Highly Confidential Information.¹

14. We remind counsel and the parties that individuals permitted access to the H 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.

15. While we find it reasonable to grant this Motion for Extraordinary Protection to protect information related to system compatibility and hydrogen, if in the future the Company proposes a specific hydrogen project or pilot, we will need to balance the interest of public disclosure and Company needs for confidentiality. Future proposals related to hydrogen blending could have an impact on system safety, which is of significant interest to the public. We anticipate

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.

that if a specific project or pilot is presented in this Proceeding, some level of information related to the Highly Confidential Information protected here will need to be made public as part of a transparent and appropriate approval process.

II. ORDER

A. The Commission Orders That:

1. The Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information that Public Service Company of Colorado (Public Service) filed on October 18, 2023, is granted, consistent with the discussion above.

2. Remaining response time to the Motion is waived.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 25, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners