

Decision No. R23-0799-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 DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING MOTION FOR EXTRAORDINARY PROTECTION
FOR HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: December 1, 2023

I. PROCEDURAL HISTORY¹

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 Decision No. C23-0746-I, the Commission, among other things, referred discovery disputes and motions for extraordinary protection of information claimed to be highly confidential to an Administrative Law Judge (ALJ) for resolution.

3. On November 28, 2023, the Company filed its Unopposed Second Motion of Public Service Company of Colorado for A Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion). With the Motion, Public Service filed the Affidavit of Jack W. Ihle (Affidavit).

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

II. FINDINGS, LEGAL STANDARD, AND CONCLUSIONS

4. The Company states that all parties have indicated that they do not oppose the relief sought in the Motion.²

5. The Company seeks extraordinary protection for proprietary, non-public, commercially and otherwise highly-sensitive executable versions of the Company's Energy and Environmental Economics, Inc. (E3) model of Clean Heat portfolios.³

6. In support of the Motion, the Company states that the Colorado Energy Office has requested a copy of the E3 Model in discovery, and that the same "contains proprietary, highly sensitive, and non-public information related to the Company's Clean Heat planning, including both the workings of the model itself, and inputs and assumptions based in whole or in part on confidential or highly confidential Company information," as well as "... the Company's and E3's proprietary, highly sensitive, and non-public intellectual property."⁴ The Company argues that the "Company's and E3's rights and competitive positions would be greatly harmed by disclosure beyond the appropriate uses in this proceeding by parties whose personnel have signed Highly Confidential Non-Disclosure Agreements"⁵ and that it is "unreasonable and impractical to create a separate, public version of the E3 model as it is Highly Confidential in its entirety."⁶

7. In the Motion, the Company requests that access to the information involving the Company's E3 model of Clean Heat portfolios be limited to "(1) the Commissioners, Administrative Law Judges, the Commission's advisory staff and advisory attorneys;

² Motion at 2.

³ *Id.* at 2 and 4.

⁴ *Id.* at 4.

⁵ *Id.* at 4-5.

⁶ *Id.* at 5.

(2) Trial Staff, the Office of the Utility Consumer Advocate, and the Colorado Energy Office, and their respective counsel; and (3) for Parties that are permissive intervenors, a reasonable number of attorneys and subject matter experts who do not represent a party who will gain an unfair competitive advantage by having this information, all of whom have signed appropriate non-disclosure agreements to access Highly Confidential information.”⁷

8. In the Motion, the Company further states that the requested limitation is would be covered by non-disclosure agreements that have already filed in this Proceeding.⁸

9. In the Affidavit, the affiant, Mr. Jack W. Ihle, the Company’s Regional Vice President of Regulatory Policy, identifies the categories of Company-related individuals who have had access to the highly confidential information for which extraordinary protection is sought in the Motion and requests that the extraordinary protection sought in the Motion remain in place indefinitely.⁹

10. Because no party objects to the relief sought in the Motion, response time to the same will be waived, as ordered below.¹⁰

11. Rule 1101(b) of the Commission’s Rules of Practice and Procedure states:

b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:

(I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;

⁷ *Id.* at 5.

⁸ *Id.*

⁹ Affidavit at 2.

¹⁰ See Rule 1308(c), 4 *Code of Colorado Regulations* (CCR) 723-1.

(II) shall state the specific relief requested and the grounds for seeking the relief;

(III) shall advise all other parties of the request and the subject matter of the information at issue;

(IV) 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;

(V) shall be accompanied by a specific form of nondisclosure agreement requested;

(VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and

(VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.¹¹

12. The ALJ finds and concludes that the Motion and Affidavit meet the requirements of Rule 1101(b), and establish that the information for which the Company seeks extraordinary protection is highly confidential. Based upon this finding and the Motion being unopposed, the ALJ will grant the Motion, as ordered below.

13. 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 follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

¹¹ Rule 1101(b), 4 CCR 723-1.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the response time to the Unopposed Second Motion of Public Service Company of Colorado for A Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion), filed by Public Service on November 28, 2023, is waived.

2. The Motion is granted consistent with the discussion above.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director