

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0268E

IN THE MATTER OF ADVICE NO. 1797 - ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO IMPLEMENT RATE CHANGES EFFECTIVE ON THIRTY-DAYS' NOTICE.

INTERIM DECISION WAIVING RESPONSE TIME AND GRANTING IN PART MOTION REQUESTING EXTRAORDINARY PROTECTION

Mailed Date: August 22, 2019
Adopted Date: August 7, 2019

TABLE OF CONTENTS

I. BY THE COMMISSION 1

 A. Statement 1

 B. Response Time 2

 C. Motion 2

 D. Discussion..... 4

II. ORDER..... 5

 A. It Is Ordered That: 5

 B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 7, 2019..... 5

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider the Second Motion of Public Service Requesting Extraordinary Protection for Highly Confidential Information and Request for Waiver of Response Time (Motion) filed by Public Service Company of Colorado

(Public Service) on July 31, 2019. Ms. Glustrom, takes no position on the Motion, and no other party opposes the Motion. No party opposes the request to waive response time. We waive response time and grant the Motion consistent with the discussion below.

B. Response Time

2. No party opposes Public Service's request to waive response time to its Motion and so we grant the request to waive response time under Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

C. Motion

3. Public Service seeks extraordinary protection for a Service, Maintenance, and Warranty Agreement (Agreement) between Vestas-American Wind Technology, Inc. (Vestas) and Public Service. The Office of Consumer Counsel (OCC) has requested the Agreement pursuant to a discovery request. As described in the Motion, the Agreement covers warranty service and ten years of maintenance on wind turbines at Public Service's Rush Creek and Cheyenne Ridge wind farms. Specifically, Public Service requests that the "[Agreement] itself, the terms and conditions set forth therein, and the pricing information contained in the [Agreement] be treated as highly confidential though the course of this proceeding."¹

4. According to Public Service, the Agreement contains commercially and competitively sensitive information that would harm Public Service and Vestas in future negotiations between either of them and third parties. Public Service also contends that releasing the information would jeopardize its ability to obtain from Vestas favorable prices for customers. Additionally, Public Service points out that if the Agreement's terms and conditions were disclosed to "developers of energy resources, competitive power suppliers, or existing or

¹ Motion at ¶ 4.

potential wholesale customers of developers of energy resources, it would negatively impact [Public Service's] ability to solicit resources, negotiate beneficial terms, and obtain the best possible prices to acquire resources in the future."²

5. Public Service proposes to limit access to the Agreement as follows:
 - a. The Commission, its Advisory Staff, Commission Administrative Law Judges, members of Trial Staff, employees of the OCC assigned to this proceeding, and the Assistant Attorneys General representing the Commission, its Staff and the OCC in this proceeding will have access to the highly confidential information;
 - b. Intervenors that are developers of energy resources, competitive power producers, existing or potential wholesale customers of developers of energy resources, or entities that might otherwise bid into a future Public Service resource solicitation would not have access to the Highly Confidential Information; and
 - c. Intervenors that do not fall into category (b) above would have access to the Highly Confidential Information, restricted, however, to counsel and subject matter experts for such intervenors who provide executed highly confidential non-disclosure agreements in the form provided in Attachment A and Attachment B.³

Public Service clarifies that:

[c]onsistent with the protective order issued in Proceeding No. 18A-0905E, Public Service clarifies that for purposes of this Motion, it does not consider Colorado Energy Consumers, the Department of Energy on behalf of the Federal Executive Agencies, or Walmart Inc. to be "existing or potential wholesale customers" and is therefore not seeking to restrict counsel and subject matter experts for CEC from receiving access to the [Agreement] so long as they file the appropriate non-disclosure agreement(s).⁴

6. Public Service prepared highly confidential non-disclosure agreements for attorneys and subject matter experts, as required by Rule 1101(b)(V), and attached them to the motion as Attachment A. It also requests that the information remain subject to highly

² *Id.* at ¶ 6.

³ *Id.* at ¶ 5.

⁴ *Id.* at Footnote 2.

confidential protection for two years and that entities destroy the information or return it to Public Service at the conclusion of this proceeding.

7. Public Service also notes that the Commission granted extraordinary protection to information in the Agreement in the Cheyenne Ridge proceeding, 18A-0905E. *See* Decision No. C19-0139-I issued February 5, 2019.

D. Discussion

8. We find that it is appropriate for Public Service and Vestas to protect commercially and competitively sensitive information from public disclosure under Rule 1101. We therefore grant the relief Public Service seeks in its Motion, with a slight modification.

9. As Public Service acknowledges, we have previously granted extraordinary protection to the competitively and commercially sensitive information in the Agreement. But we did not treat the entire Agreement as highly confidential. Instead, we ordered that:

the [Best Value Employment Metrics] data listed in § 40-2-129, C.R.S., shall not be afforded extraordinary protection. We direct Public Service to work with TradeWind, the developer of the Cheyenne Ridge Wind project, to ensure that [Best Value Employment Metrics] information is made available. For example, the two companies may redact essential business pricing information (*e.g.*, regarding the cost of the turbines) from the disclosed documents, but those documents should provide sufficient detail to understand the number of jobs created and the potential economic impact, including potential tax benefits, of the Cheyenne Ridge Wind facility.⁵

10. It would make little sense to order the parties to treat as highly confidential data that we have already ordered disclosed. Therefore, consistent with our previous Decision any Best Value Employment Metrics Data contained in the Agreement will not be afforded highly confidential protection.

⁵ Decision No. C19-0139-I at ¶ 36.

II. ORDER

A. It Is Ordered That:

1. Response time is waived for the Second Motion of Public Service Requesting Extraordinary Protection for Highly Confidential Information and Request for Waiver of Response Time filed by Public Service Company of Colorado (Public Service) on July 31, 2019.

2. The Second Motion of Public Service Requesting Extraordinary Protection for Highly Confidential Information and Request for Waiver of Response Time is granted in part, consistent with the discussion above.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 7, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners