

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 20A-0345E

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IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF AN ECONOMIC DEVELOPMENT RATE (EDR) PROPOSAL PURSUANT TO COLORADO HB 18-1271.

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**INTERIM DECISION: (1) GRANTING MOTION TO ADOPT PROPOSED PROCEDURAL SCHEDULE AND DISCOVERY PROCEDURES; (2) EXTENDING DECISION DEADLINE UNDER § 40-6-109.5(1), C.R.S.; (3) VACATING PREHEARING CONFERENCE; AND (4) GRANTING MOTION FOR EXTRAORDINARY PROTECTION**

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Mailed Date: October 28, 2020

Adopted Date: October 28, 2020

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**I. BY THE COMMISSION**

**A. Statement**

1. By this Decision, the Commission grants the unopposed motion filed on October 23, 2020, by Public Service Company of Colorado (Public Service or Company)

requesting the Commission approve the procedural schedule and discovery procedures agreed upon by the parties to this Proceeding (Motion to Approve Procedural Schedule). The Commission vacates the prehearing conference scheduled for October 30, 2020. As discussed below, a hearing in this matter is scheduled for April 5 through 9, 2021.

2. The Commission further grants the unopposed motion filed by Public Service on October 19, 2020, requesting that the Commission issue an order granting extraordinary protection to certain claimed commercially sensitive information produced in discovery in this Proceeding (Motion for Extraordinary Protection).

3. The Commission waives response time to both of these unopposed motions.

**B. Findings and Conclusions**

**1. Procedural Schedule**

4. In the unopposed Motion to Approve Procedural Schedule, Public Service proposes the following procedural schedule:

Procedural Activity	Date
Supplemental Direct Testimony	December 11, 2020
Answer Testimony	February 8, 2021
Rebuttal & Cross-Answer Testimony	March 12, 2021
Stipulations and/or Settlement Agreements	March 22, 2021
Prehearing Motions (other than motions relating to discovery, but including dispositive motions, motions <i>in limine</i> , or motions to strike)	March 26, 2021
Corrections to Pre-Filed Testimony and Attachments	March 26, 2021
Witness Cross-Examination Matrix	March 26, 2021
Evidentiary Hearing	April 5-9, 2021
Statements of Position	April 23, 2021

5. Public Service further proposes the following discovery procedures, as set forth in detail in the Motion to Approve Procedural Schedule: Responses to discovery requests propounded on Public Service's Supplemental Direct Testimony will be due ten calendar days from the date of the request. Service of such discovery requests after 3 p.m. on a Friday, the day before a Colorado state holiday, or on days on which the Commission is not open for business, will be deemed served the next business day. All remaining discovery response times will be governed by Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405 of the Commission's Rules of Practice and Procedure. Parties will provide workpapers supporting Supplemental Direct, Answer, Rebuttal, or Cross-Answer Testimony within three business days of the testimony filing. Requests and responses will be served electronically. Responses will be provided in a single, combined document.

6. We find good cause to grant the Motion to Approve Procedural Schedule and to waive response time to the unopposed motion. We also find it necessary and appropriate to amend the proposed procedural schedule to incorporate a deadline to respond to prehearing motions of March 31, 2021, in advance of the hearing. As amended, the proposed filing deadlines are reasonable, and we schedule the hearing for April 5 through 9, 2021, as requested.

7. Pursuant to § 40-6-109.5, C.R.S., when an application is filed and accompanied by supporting testimony, together with exhibits, the Commission shall issue its decision on the application no later than 120 days after the application is deemed complete. However, if the Commission finds additional time is required, pursuant to § 40-6-109.5(1), C.R.S., it may, by separate order, extend the time for decision by an additional period not to exceed 130 days.

8. Through this Decision, in order to accommodate the parties' proposed schedule, we find that the additional time permitted in § 40-6-109.5(1), C.R.S., is required in this proceeding. We therefore extend the decision deadline in the proceeding by the permitted 130 days allowed by statute.

## **2. Motion for Extraordinary Protection**

9. Public Service requests extraordinary protection for forecasted systemwide hourly marginal cost data for 2020, which it states is a PLEXOS® modeling output used to develop its proposed EDR ECA Factor. Public Service states it has been asked in discovery to produce the modeling output data used to derive the proposed EDR ECA Factor in its direct testimony. The Company states it seeks extraordinary protection for this data provided in response to Staff of the Public Utility Commission's discovery request CPUC1-2; other systemwide, or more granular, hourly marginal cost forecasts Public Service might be asked to provide in this Proceeding; and any information that would make it possible to ascertain the highly confidential information.

10. Public Service states that producing this data in an unrestricted manner could result in significant harm to the Company and its customers. Public Service explains this data is commercially sensitive information that, if disclosed, could cause irreparable harm to the Company's trading operations, the Company's ability to solicit cost-effective resources, and ultimately, the Company's customers. Public Service explains this data is used to provide its operations personnel a projection of the next hour's cost to sell energy (incremental cost) or the projected costs that will be saved by purchasing energy instead of running the Public Service controlled generators (decremental cost). Public Service explains that, because this data is used by its system operators to try to maximize savings for customers (sell at prices over the incremental cost and buy at prices below the decremental cost), the information is commercially

sensitive, highly confidential information. Public Service explains that, for example, this data could provide a potential supplier or competitor with significant business intelligence that would hamper Public Service's trading operation to the harm of its customers.

11. Public Service requests the Commission restrict access to this claimed highly confidential information to: (1) Commissioners; (2) Commission Advisors and advisory counsel; (3) Commission Staff and its attorneys; and (3) the Colorado Office of Consumer Counsel Staff and its attorneys. Public Service states that it has concern that allowing broader disclosure poses too high a risk of inadvertent disclosure that could not be fully addressed through non-disclosure agreements.

12. Public Service states the motion is unopposed. It therefore requests a waiver of response time.

13. Pursuant to Rule 4 CCR 723-1-1101(b) of the Commission's Rules of Practice and Procedure, a party that believes information requires extraordinary protection beyond the protection afforded to confidential information, may file a motion requesting highly confidential protection. The motion must include a detailed description or representative sample of the information sought to be protected. In addition, the motion must show the information is highly confidential, that the protection afforded by the Commission's rules for confidential information is insufficient, and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection. Finally, the motion must include an exhibit containing the information sought to be protected (or show why providing the information would be overly burdensome, impractical, or too sensitive).

14. The Commission finds that Public Service has shown the need to protect the PLEXOS® modeling output as commercially sensitive information that, if disclosed, could cause

irreparable harm to the Company's trading operations, the Company's ability to solicit cost-effective resources, and ultimately, the Company's customers. We will therefore grant the motion and order the requested highly confidential protection.

15. The Commission further grants the Company's request that the protective order extend the same levels of protection for other systemwide, or more granular, hourly marginal cost forecasts Public Service may be asked to provide in this Proceeding, and for any information sufficient to ascertain the highly confidential information described in Public Service's motion, that is produced going forward or otherwise used in this Proceeding.

16. The Commission waives response time to the unopposed motion.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The unopposed motion to approve procedural schedule, vacate prehearing conference, and request to waive response time, filed by Public Service Company of Colorado (Public Service) on October 23, 2020, is granted, with modifications consistent with the discussion above. Response time to the motion is waived.

2. The procedural schedule as stated above in paragraph 4 and as modified consistent with the discussion above, is adopted.

3. The deadline for a Commission decision is extended an additional 130 days, as permitted by § 40-6-109.5(1), C.R.S.

4. The prehearing conference scheduled in this Proceeding for October 30, 2020, is vacated.

5. Discovery response time served on Public Service relating to its Supplemental Direct Testimony case shall be ten calendar days. All remaining discovery response times will

be governed by Rule 4 *Code of Colorado Regulations* 723-1-1405 of the Commission's Rules of Practice and Procedure.

6. An evidentiary hearing in this matter is scheduled as follows:

DATES: April 5 through 9, 2021

TIME: 9:00 a.m.

PLACE: By video conference using GoToMeeting at a link provided to parties by email.

7. The Commission will set procedures for a remote hearing, if necessary, by a separate decision after January 4, 2021.

8. The unopposed motion for extraordinary protection and request to waive response time, filed by Public Service on October 19, 2020, is granted. Response time to the motion is waived.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 28, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners