

Decision No. R20-0011-I

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

PROCEEDING NO. 19A-0534E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF THE SALE OF STREET LIGHTING FACILITIES TO THE CITY OF GREENWOOD VILLAGE.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
GRANTING MOTION FOR  
EXTRAORDINARY PROTECTION OF  
HIGHLY CONFIDENTIAL INFORMATION**

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Mailed Date: January 7, 2020

**I. STATEMENT**

**A. Summary**

1. This Decision grants Public Service Company of Colorado's (Public Service or the Company) Motion for Extraordinary Protection of Highly Confidential Information (Motion). Only those relevant portions of the procedural history are included.

**II. BACKGROUND, RELEVANT LAW, AND FINDINGS.**

2. On November 12, 2019, Public Service filed a Motion seeking the Commission to afford extraordinary protection for highly confidential information relevant to this proceeding per Rules 1101(b) and 1400 of the Commission's Rules of Practice and Procedure. 4 *Code of Colorado Regulations* (CCR) 723-1. Motion at 1. The Motion indicates that Public Service conferred with all parties, and that "neither has stated any objection to this motion." *Id.* at 3. The response time to the Motion has long lapsed and no party has objected or otherwise responded to

the Motion. *See* Rule 1400(b) (14 days to respond), 4 CCR 723-1. Thus, the ALJ deems the Motion unopposed.

3. Any party claiming that information is highly confidential must file a motion demonstrating: that the relevant information is highly confidential; that Commission rules governing confidential information are insufficient to protect the highly confidential information; and that if the proposed extraordinary protections are adopted, they will afford appropriate protection. Rule 1101(b)(IV), 4 CCR 723-1. The motion must also: provide a detailed description of the information sought to be protected; state the specific relief sought; advise all other parties of the request and subject of the information at issue; include an affidavit identifying the people with access to the information and timeframe for extraordinary protection; include the form nondisclosure agreement sought to be executed; and include an exhibit with the highly confidential information or show why doing so is overly burdensome, impractical, or is too sensitive to file. *Id.* at (b)(I), (II), (III), (V), (VI), and (VII).

4. The Motion seeks extraordinary protection for any documents or information which may be used to determine the agreed upon per light price for the sale of street lighting facilities to Greenwood Village, as provided in Public Service's Purchase and Sale Agreement with Greenwood Village (Agreement). *Id.* at 1. Public Service asserts that such information includes: the number of street lights being sold; the distribution pole points of delivery and equipment lists that can be used to deduce the number of street lights being sold; and the conversion cost estimate provided in the Agreement. *Id.* Public Service asks that access to the highly confidential information be limited to the Commissioners, Commission advisors and advisory counsel, administrative law judges, Commission trial staff, and the Office of Consumer Counsel. *Id.* at 5.

5. Public Service does not seek extraordinary protection for information that the parties are required to disclose by law or regulation, “such as the parties to the agreement and the total sale price.” *Id.* at 3-4.

6. In support of its Motion, the Company includes Ms. Michelle Applegate’s Affidavit identifying persons within the Company with access to the information alleged to be highly confidential, and requesting that extraordinary protection for the records remain in place indefinitely. Attachment C to Motion. In addition, the Company submitted the proposed form nondisclosure agreements for counsel and experts. Attachments A and B to Motion. The Company does not provide the documents alleged to be highly confidential as required by Rule 1101(b)(VII) with its Motion, but states that copies of the relevant documents were filed under seal with the Application. *Id.* at 6.

7. Public Service asserts that the referenced information is trade secret and competitive information that can negatively impact future street light sales that the Company may negotiate. *Id.* at 2. Public Service argues that disclosure of the information would prejudice the Company by negatively impacting its negotiating position with other potential street light purchasers. *Id.* at 4. In short, the Company argues that releasing this information gives future purchasers a negotiating advantage, which negatively impacts the Company’s ability to negotiate future transactions in a way that best minimizes the impact on ratepayers. *Id.* at 5. Public Service also argues it is appropriate to grant the Motion because the Commission has granted extraordinary protection of similar information in other cases, specifically in Proceeding No. 18A-0883E, Decision No. C19-0113. *Id.* at 2.

8. Public Service protects the relevant information from public disclosure by entering into non-disclosure agreements with municipal customers with whom it engages in

confidential negotiations for the sale of street lighting facilities. *Id.* at 3. It does so to ensure that the details of one negotiation do not unduly influence the outcome of other negotiations. *Id.*

9. The ALJ finds that Public Service has met its burden to show that documents or information which may be used to determine the agreed upon per light price for the sale of street lighting facilities to Greenwood Village is highly confidential and should be afforded extraordinary protection, as required by Rule 1101(b), 4 CCR 723-1. Disclosure without additional protection beyond that provided for confidential information under Rule 1100 may have a negative cascading impact on Public Service and its ratepayers. For example, disclosure without extraordinary protection may limit the Company's ability to negotiate beneficial terms for the sale of street lighting facilities in the future, which may negatively impact ratepayers. In addition, the ALJ finds persuasive that the Commission has afforded Public Service extraordinary protection for the same type of information in a recent proceeding. *See e.g.*, Decision No. C19-0113 issued January 23, 2019 in Proceeding No. 18A-0883E.

10. The ALJ finds that Public Service has met Rule 1101(b)'s remaining requirements, discussed in ¶ 3 above for extraordinary protection of the relevant information, and will. Based on the above, the ALJ concludes that it is in the public interest to afford extraordinary protection for the relevant information, consistent with Public Service's request, and will grant the Motion.

### III. **ORDER**

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

1. Consistent with the above discussion, Public Service Company of Colorado's (Public Service) Motion for Extraordinary Protection of Highly Confidential filed on

November 12, 2019 is granted. Information which may be used to determine the agreed upon per light price for Public Service's sale of street lighting facilities to Greenwood Village is deemed highly confidential and will be afforded extraordinary protection. Such information includes: the number of street lights being sold; the distribution pole points of delivery and equipment lists that can be used to deduce the number of street lights being sold; and the conversion cost estimate provided in Public Service's Purchase and Sales Agreement with Greenwood Village.

2. Extraordinary protection for the referenced highly confidential information applies to any documents referencing the information, including testimony, discovery requests, and responses. Should the information be discussed during the evidentiary hearing on this matter, access to the hearing will be restricted consistent with the above protections.

3. The parties must comply with the procedural and filing requirements for highly confidential records in Rule 1101(a), 4 *Code of Colorado Regulations* 723-1.

4. To avoid confusion during the evidentiary hearing and in the evidentiary record, to the extent practicable, parties sponsoring exhibits or attachments including highly confidential or confidential information must ensure that the page numbers and the line numbers in the exhibit or attachment's public version align with the confidential or highly confidential version of the document.

5. If a dispute concerning disclosure of highly confidential information arises, the parties must consult and confer with each other in good faith to resolve the dispute. If the parties are unable to resolve their dispute, they may file a motion seeking relief. If the conflict rests on factual disputes, the motion must be accompanied by an affidavit.

6. 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 "Doug Dean".

Doug Dean,  
Director