

Decision No. C23-0514-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0242E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2024-2026 TRANSPORTATION ELECTRIFICATION PLAN

INTERIM COMMISSION DECISION ESTABLISHING A PROCEDURAL SCHEDULE AND DISCOVERY PROVISIONS; SCHEDULING AN EVIDENTIARY HEARING; ESTABLISHING PROCEDURES FOR EVIDENTIARY HEARING; REFERRING CERTAIN ITEMS TO AN ADMINISTRATIVE LAW JUDGE; EXTENDING DECISION DEADLINE UNDER § 40-6-109.5(1), C.R.S.; AND GRANTING THE UNOPPOSED SECOND MOTION FOR EXTRAORDINARY PROTECTION OF HIGHLY CONFIDENTIAL INFORMATION AND REQUEST FOR WAIVER OF RESPONSE TIME

Mailed Date: August 7, 2023

Adopted Date: August 2, 2023

I. BY THE COMMISSION

A. Statement

1. On May 15, 2023, Public Service Company of Colorado (Public Service or Company) filed an application (Application) to approve its proposed 2024-2026 Transportation Electrification Plan (TEP).

2. Through this Decision, we address the Response to Decision No. C23-0446-I (Response) that Public Service filed on July 11, 2023.¹ Consistent with the discussion below, we: (1) adopt the unopposed procedural schedule set forth in the Response; (2) schedule a ten-day evidentiary hearing; (3) extend the decision deadline in this Proceeding pursuant to § 40-6-109.5(1), C.R.S.; (4) adopt the proposed discovery process; (5) refer discovery disputes and future motions for extraordinary protection to an Administrative Law Judge (ALJ); and (6) establish procedures for the evidentiary hearing.

3. In addition, the Commission grants the Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time (Motion for Extraordinary Protection) that Public Service filed on July 25, 2023.

B. Response

4. In Decision No. C23-0446-I, issued July 7, 2023, we set this matter for a hearing before the Commission *en banc*, required the parties to confer on a procedural schedule, and directed Public Service to file a proposed procedural schedule by 12:00 p.m., on July 11, 2023.

5. Per Decision No. C23-0446-I, Public Service filed the Response. The Company states that it conferred with all parties and that the following proposed procedural schedule is unopposed:

¹ The Commission previously established the parties to this Proceeding through Decision No. C23-0425-I, issued June 23, 2023, and Decision No. C23-0446-I, issued July 7, 2023.

Deemed Complete	June 23, 2023
Supplemental Direct Testimony	July 14, 2023
Answer Testimony	September 29, 2023
Rebuttal and Cross-Answer Testimony	November 17, 2023
Settlement Agreement Filing Deadline	December 13, 2023
Settlement Testimony	December 20, 2023
Corrections to Pre-Filed Testimony and Exhibits; Pre-Hearing Motions	December 20, 2023
Witness List and Cross Examination Matrix	January 4, 2024
Hearing (Remote)	January 10-12, 16-19, and 22-24
Statement of Position	February 7, 2024

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6. In regards to the proposed schedule, Public Service acknowledges that the Commission lacks availability to convene a hearing in this Proceeding during December and that a “hearing in January 2024 will make it difficult for the Commission to render a final decision in this proceeding during the 250-day statutory deadline.”³ The Company states that multiple parties take the position that the Commission should find pursuant to § 40-6-109.5(4), C.R.S., that extraordinary conditions exist, and that the Commission should thus extend the statutory time limit for a period not to exceed an additional 130 days. Public Service makes clear that while it is not waiving the 250-day deadline under § 40-6-109.5, C.R.S., the Company does not oppose a finding that extraordinary conditions exist such that a limited and reasonable amount of additional time is added to the statutory deadline.

7. Additionally, Public Service notes that the Colorado Energy Office (CEO) recommends that the Commission schedule one pre-hearing conference and at least one public comment hearing. The Company states that no party opposes CEO’s proposals.⁴ In the Response, Public Service also states that discovery procedures will be governed by Commission Rule 1405.

² Response, p. 3.

³ *Id.* at 2.

⁴ *Id.* at 3

C. Findings and Conclusions regarding Procedural Schedule and Procedures for Evidentiary Hearing and Discovery

8. The Commission appreciates the conferral efforts that resulted in an uncontested proposed procedural schedule and will adopt the proposed deadlines set forth above with one modification. We will move the deadline for the witness list and cross examination matrix from January 4, 2024, to December 29, 2023. This change still works well with the other procedural deadlines,⁵ and it provides the Commission an opportunity to discuss the hearing schedule at the Commissioner's Weekly Meeting on January 3, 2024. We will adopt the remaining deadlines in the proposed procedural schedule without modification.

9. Consistent with the unopposed procedural schedule, we schedule a remote *en banc* evidentiary hearing for January 10 through 12, 16 through 19, and 22 through 24, 2024. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentation at the hearing, including guidance regarding: (1) the assignment of hearing exhibit number blocks; (2) identification of filing requirements for hearing exhibits; (3) formatting of hearing exhibits; (4) filing of executable attachments to hearing exhibits; (5) modifying, amending, or correcting a previously filed hearing exhibit before the deadline for correction; (6) modifying, amending, or correcting a previously filed hearing exhibit after the deadline for correction; and (7) procedures for confidentiality. It is important that the parties review and follow all requirements in this Decision and Attachments A and B.

⁵ For instance, the deadline for Settlement Testimony and corrections to pre-filed testimony and exhibits is on December 20, 2023.

10. Commission staff will provide the parties with a Zoom link closer to the start of the hearing.

11. We will set the dates for any public comment hearings or pre-hearing conference in a separate future decision.

12. We accept the discovery procedures set forth in the Response. The discovery rules and procedures contained in Rule 1405 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, govern discovery in this Proceeding. We remind the parties to be judicious in their discovery requests. Parties should be mindful of the cost implications of discovery, especially where—as here—there are numerous intervenors.

13. For procedural efficiencies, we refer all future discovery disputes and motions for extraordinary protection to an ALJ.⁶

14. In order to accommodate the parties' proposed schedule that the Commission adopts through this Decision, 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.

15. Regarding the proposal that the Commission should find extraordinary conditions pursuant to § 40-6-109.5(4), C.R.S., we appreciate the parties' recognition of the Commission's tight calendar. However, we will defer deciding whether extraordinary conditions exist in this Proceeding until a later date, if necessary.⁷

⁶ This referral does not include the pending Motion for Extraordinary Protection that Public Service filed on July 25, 2023.

⁷ The Response states that most of the parties support a finding of extraordinary conditions per § 40-6-109.5(4), C.R.S. The position of some parties, however, is omitted. If any party opposes a finding of extraordinary conditions, the party must file an objection by August 17, 2023.

D. Motion for Extraordinary Protection

16. In its Motion for Extraordinary Protection, Public Service requests extraordinary protection for the following two categories of information, which the Company claims are highly confidential: (1) personal information and customer data; and (2) certain commercially sensitive and proprietary third-party vendor information regarding vendor participation in the Company's dynamic charge optimization pilot.

17. Regarding the first category, Public Service argues that personal information and customer data is protected from disclosure by Commission Rules 1105 and 3027. The Company explains that its request for extraordinary protection for this category of information is not limited to any specific documents but includes any documents discussing or identifying highly confidential information, including all testimony, discovery responses (including attachments), and any other associated documents containing such types of information.⁸

18. As for the second category, the Company asserts that the report that the consultant, Guidehouse completed titled "Xcel Energy Charging Perks Pilot Evaluation" contains confidential, propriety, and commercially sensitive third-party vendor trade secret information. Public Service reasons that public disclosure of such information would likely cause substantial injury to the vendors' competitive positions and could compromise the Company's reputation and position in future discussions with similar vendors.⁹

19. For both categories of information, Public Service states the protections afforded by the rules governing ordinary confidentiality would provide insufficient protection. Public

⁸ Motion for Extraordinary Protection, pp. 2-3.

⁹ *Id.* at 3.

Service concludes the requested extraordinary protections strike the appropriate balance between the need for disclosure and the need to protect the interests of Public Service.

20. The Company requests that access to this highly confidential information be restricted to the Commissioners, any ALJ assigned to this matter, the Commission's advisory staff and advisory attorneys, Trial Staff of the Colorado Public Utilities Commission (Staff) and attorneys for Staff, and the Colorado Office of the Utility Consumer Advocate (UCA) and attorneys for UCA.¹⁰ Public Service requests that all entities who receive the highly confidential information during the course of the Proceeding destroy or return such information to Public Service at the conclusion of the Proceeding.¹¹

21. Public Service also provided the affidavit of Jack W. Ihle, identifying the employees in groups with access to the highly confidential information. The affidavit states that the extraordinary protection must remain in place indefinitely.

22. In the Motion for Extraordinary Protection, the Company states that its counsel has conferred with parties in this Proceeding and that no party has indicated opposition. Public Service thus asserts that the Motion for Extraordinary Protection is unopposed.

23. Finally, the Company asks that the Commission waive response time to the unopposed Motion for Extraordinary Protection pursuant to Rule 1308(c).

E. Findings and Conclusions regarding the Motion for Extraordinary Protection

24. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly

¹⁰ *Id.* at 4.

¹¹ *Id.* at 6.

confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

25. 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

26. We find the reasoning and arguments in the Motion for Extraordinary Protection persuasive. The Motion for Extraordinary Protection states good cause to grant the relief sought under Rule 1101, 4 CCR 723-1. The Commission further finds the requested protections are appropriate, reasonable, and consistent with the Commission's Rules and past practice. We agree that the protections afforded by the rules governing ordinary confidentiality would be inadequate to protect personal information and customer data as well as commercially sensitive vendor information regarding the Company's dynamic charge optimization pilot.

27. In addition, we grant Public Service's request to waive response time to the unopposed Motion for Extraordinary Protection.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the uncontested procedural schedule and provisions for discovery set forth in the Response to Decision No. C23-0446-I (Response) that Public Service Company of Colorado (Public Service) filed on July 11, 2023, are adopted, except

the deadline for the witness list and cross examination matrix. The deadline for the witness list and cross examination matrix shall be December 29, 2023. The parties shall submit all testimony and pleadings no later than the dates set forth in the adopted procedural schedule.

2. A remote evidentiary hearing in this Proceeding is scheduled as follows:

DATE: January 10-12, January 16-19, and January 22-24, 2024

TIME: 9:00 a.m. to 5:00 p.m., except for January 10, January 17, and January 24, 2024, when the hearing shall take place from 1:00 p.m. to 5:00 p.m.

WEBCAST: Hearing Room A

METHOD: Join by videoconference using Zoom at the link to be provided to parties by e-mail

3. The parties are responsible for sharing the link, meeting ID code, and passcode to witnesses and others participating in the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

4. The parties and witnesses are required to participate in the evidentiary hearing by video conference using Zoom. The parties must ensure that they and their witnesses are ready and able to participate in the evidentiary hearing by video conference, including presenting evidence electronically during the hearing using Zoom. All participants must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

5. Rule 1405 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 shall govern discovery in this Proceeding, and all future discovery disputes and motions for extraordinary protection are referred to an Administrative Law Judge.

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

7. If any party opposes a finding of extraordinary conditions, the party must file an objection by August 17, 2023.

8. The Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time (Motion for Extraordinary Protection) that Public Service filed on July 25, 2023, is granted, consistent with the discussion above.

9. The remaining response time to the Motion for Extraordinary Protection is waived.

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 2, 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