

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0096E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR COLORADO’S POWER PATHWAY 345 KV TRANSMISSION PROJECT AND ASSOCIATED FINDINGS REGARDING NOISE AND MAGNETIC FIELD REASONABLENESS.

**INTERIM COMMISSION DECISION GRANTING THIRD
MOTION FOR EXTRAORDINARY PROTECTION AND
REQUEST FOR WAIVER OF RESPONSE TIME**

Mailed Date: December 23, 2022
Adopted Date: December 21, 2022

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Third Motion for Extraordinary Protection and Request for Waiver of Response Time (Motion), filed by Public Service Company of Colorado (Public Service or the Company) on December 2, 2022. Through the Motion, Public Service seeks

an order granting highly confidential treatment for competitively sensitive and highly confidential bid information included in Highly Confidential Attachment A to the contemporaneously filed Carbon Core Study. Upon review of the Motion and its attachments, we find good cause to grant the relief sought in the Motion.

B. Background

2. On March 2, 2021, Public Service filed a Verified Application requesting issuance of a Certificate of Public Convenience and Necessity (CPCN) for the Power Pathway 345 kilovolt Transmission Project (Project).

3. By Decision No. C22-0270, issued June 2, 2022, the Commission granted Public Service a CPCN for the Project. Also, by this Decision, the Commission required the Company to analyze the cost effectiveness of utilizing carbon core conductors to certain segments of the Project (Carbon Core Study).¹ Completion of the cost-effectiveness analysis in the Carbon Core Study required the Company to solicit bids from manufacturers of these conductors.

4. The Commission also directed Public Service to engage an Independent Engineer to provide oversight of the Company's management and procurement practices on behalf of ratepayers, as well as review and report to the Commission on the Carbon Core Study.²

5. On December 2, 2022, Public Service filed the Carbon Core Study and related attachments. While Public Service has made aggregated cost data and its related cost analysis based on this information publicly available in its Carbon Core Study, the manufacturers provided individual bids with highly granular pricing estimates and product specifications to Public Service

¹ See Decision No. C22-0270 at ¶¶ 119-132.

² Decision No. C22-0270 at ¶125.

on a confidential basis due to their commercially sensitive nature. Highly Confidential Attachment A to the Carbon Core Study contains this Highly Confidential Information by individual carbon core conductor product/unit.

C. Motion

6. The Motion seeks highly confidential treatment for granular vendor bids, pricing information, and product specifications obtained through confidential bids that the Company received from conductor manufacturers, steel vendors, and construction contractors in preparing the Carbon Core Study, all contained in Highly Confidential Attachment A to the Carbon Core Study and in any form substantially similar data may otherwise be requested or presented in this Proceeding going forward (Highly Confidential Information).

7. Along with its Motion, Public Service provides proposed Non-Disclosure Agreements as Attachments A and B, and an affidavit identifying all persons with access to the information and the period of time for which the information must remain subject to Highly Confidential protection as Attachment C. In accordance with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1101(b)(VII) of the Commission's Rules of Practice and Procedure, the Company filed the Highly Confidential Information as an exhibit prepared in a form that comports with Rule 1101(a).

8. Public Service request that an order limiting access to the Highly Confidential Information to the Commission, Commission advisors, and Commission advisory attorneys; Commission trial staff (Staff) and its attorneys; the Colorado Office of the Utility Consumer Advocate (UCA) and its attorneys; and the Independent Engineer for the Project. Public Service additionally requests that individuals accessing any of the Highly Confidential Information described in the Motion, except for the Commissioners, Commission counsel, and Commission

Staff, be required to execute an appropriate highly confidential non-disclosure agreement, provided as Attachment A (counsel) and Attachment B (subject matter expert) to the Motion.

9. In support of its Motion, Public Service states that the manufacturers and vendors provided the Highly Confidential Information to Public Service in response to a request for formal pricing quotes with the express understanding and expectation that their bids would remain confidential. Public Service is concerned that the failure to adequately safeguard the Highly Confidential Information could cause competitive harm to the participating manufacturers and place them at an unfair disadvantage in their future sale and bidding strategies which in turn could harm customers by reducing the Company's bargaining power moving forward. Public Service argues that Colorado statute, § 24-72-204(3)(a)(IV), C.R.S., specifically recognizes that there is no right of public inspection for "[t]rade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data." Public Service states that the relief requested in its Motion is narrow and substantively similar to competitively sensitive data protected previously by the Commission in other proceedings.

10. Public Service states no party opposes the requested relief in its Motion.³ Public Service also requests that the Commission waive response time to the Motion because it is unopposed.

D. Findings and Conclusions

11. Pursuant to Rule 4 *Code of Colorado Regulations* (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

³ Through Decision No. C21-0314-I, issued May 27, 2021, the Commission established the parties to this Proceeding.

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

12. We find that, pursuant to Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Motion appropriately designates the categories of competitively sensitive information identified in the Motion as 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 the highly confidential protections proposed by Public Service will afford sufficient protection for the Highly Confidential Information. The Commission finds Public Service has shown the need to protect Highly Confidential Information that, if disclosed, could result in harm to the participating manufacturers and vendors and ultimately the Company and its customers. We therefore find good cause to grant the Motion.

13. We deny as moot the Request for Waiver of Response Time to the Motion because the response time has run.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extraordinary Protection, filed by Public Service Company of Colorado, on December 2, 2022, is granted, consistent with the discussion above.

2. The request for waiver of response time is denied as moot.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 21, 2022.**

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director