

Decision No. C23-0258-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0046E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A SHORT-TERM POWER PURCHASE AGREEMENT, AND AMENDMENTS TO OTHER SUCH AGREEMENTS, EXTENDING EXISTING GENERATION RESOURCES INCLUDING RIDGE CREST WIND, ARAPAHOE, BRUSH 2, AND BRUSH 4.

**INTERIM COMMISSION DECISION GRANTING
MOTION TO AMEND PROTECTIVE ORDER,
MODIFYING EXTRAORDINARY PROTECTIONS
ORDERED IN DECISION NO. C23-0201-I, AND
WAIVING RESPONSE TIME**

Mailed Date: April 19, 2023

Adopted Date: April 19, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, we grant the motion of Onward Energy Management LLC (Onward Energy) to amend the protective order issued in this Proceeding by Decision No. C23-0201-I (Motion to Amend) so as to permit Onward Energy to access certain limited confidential information and highly confidential information in this Proceeding that regard the Arapahoe facility that Onward Energy owns and operates.

B. Background

2. On January 26, 2023, Public Service Company of Colorado (Public Service) filed an application for approval of a short-term power purchase agreement (PPA) and for approval of amendments to three other PPAs (Application).

3. By Decision No. C23-0174-I, issued March 10, 2023, the Commission set the Application for hearing and established the following parties: Public Service; Staff of the Colorado Public Utilities Commission; the Colorado Office of the Utility Consumer Advocate; the Colorado Energy Office; Sierra Club; Onward Energy; and the Colorado Independent Energy Association.

4. By Decision No. C23-0201-I, issued March 24, 2023, the Commission granted the Motion for Extraordinary Protection of Highly Confidential Information, filed by Public Service on January 26, 2023. Public Service requested restricted access to three categories of information: (1) four short-term PPA contracts that are commercially sensitive to Public Service and the PPA counterparties; (2) affidavits of authorized representatives for three PPA counterparties of thermal resources containing commercially sensitive information, *i.e.*, commercial terms and/or commercial trade secret evaluations of the counterparties; and (3) any information protected by a confidentiality clause of an existing PPA where Public Service has contractually committed to keep certain terms and conditions confidential.

5. On April 17, 2023, Onward Energy filed the Motion to Amend. Onward Energy indicates the motion is unopposed. It further notes the Colorado Energy Office stated in conferral that it “does not oppose the request so long as this does not result in privileging Onward [Energy] relative to other independent power producers in Colorado, including but not limited to any independent power producers in Public Service’s Electric Resource and Clean Energy Plan proceeding.” Onward Energy states that it agrees with this position.

C. Requested Amendment

6. Through the Motion to Amend, Onward Energy requests the Commission amend the protective order issued by Decision No. C23-0201-I so as to allow Onward Energy limited access to confidential information and highly confidential information in this Proceeding with regard to the Arapahoe facility that it owns and operates, or the facility's PPA, upon the filing of appropriate non-disclosure agreements. Onward Energy states it does not seek access to any confidential information or highly confidential information regarding Public Service's Electric Resource Plan proceeding or solicitation.

7. Onward Energy states that Rule 1101 of the Commission's Rules of Practice and Procedure, Rule 4 *Code of Colorado Regulations* 723-1, provides the Commission latitude on the disclosure of information requiring extraordinary protection during a proceeding. Onward Energy requests the Commission exercise discretion in this instance to grant it access to protected information related to its own facility and agreement with Public Service.

8. As to good cause, Onward Energy explains that it anticipates this Proceeding may generate and involve additional confidential and highly confidential testimony, discovery, or hearing cross-examination or questioning regarding the Arapahoe facility or the Arapahoe PPA amendment at issue. Onward Energy states it requests access in order to appropriately respond to questions or testimony and contends such access will aid the Commission by providing a more complete record and avoiding potential discovery disputes or delays.

9. Onward Energy states it will work with counsel for other parties to request non-redacted excerpts of documents with confidential information or highly confidential information only with regard to the Arapahoe facility or the Arapahoe PPA amendment at issue in this Proceeding.

D. Findings and Conclusions

10. We find, given the nature of the relief sought and that the Motion to Amend is unopposed, no party will be prejudiced by waiving response time. We therefore waive the remaining response time and will take up the matter expeditiously.

11. We find the Motion to Amend states good cause and that no party will be prejudiced if the Motion to Amend is granted. We will therefore grant the Motion to Amend and modify the extraordinary protections ordered in Decision No. C23-0201-I as follows: Onward Energy is allowed limited access to confidential information and highly confidential information in this Proceeding only with regard to the Arapahoe facility or the facility's PPA, upon the filing of appropriate non-disclosure agreements.

12. Except as modified by this Decision, the extraordinary protections afforded by Decision No. C23-0201-I will remain in effect.

II. ORDER**A. It Is Ordered That:**

1. The motion of Onward Energy Management LLC to amend the protective order issued in this Proceeding by Decision No. C23-0201-I, is granted.

2. Response time to the motion is waived.

3. The extraordinary protections ordered in Decision No. C23-0201-I are modified as set out in this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 19, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners