

Decision No. C23-0870-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0586E

IN THE MATTER OF ADVICE LETTER NO. 1942 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO REVISE THE CAPACITY AND ENERGY PAYMENT RATES APPLICABLE TO QUALIFYING FACILITIES, TO BECOME EFFECTIVE JANUARY 1, 2024.

**INTERIM COMMISSION GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Mailed Date: December 29, 2023

Adopted Date: December 27, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider Public Service Company of Colorado's (Public Service or the Company) May 15, 2023 Motion Requesting Extraordinary Protection of Highly Confidential Information (Motion). No party has filed a response opposing the Motion or in any other way indicated its opposition to the Motion. Having considered the Motion, we now grant it.

B. Discussion and Findings

2. On December 1, 2023, Public Service filed Advice Letter No. 1942 – Electric in which it seeks to revise the capacity and energy payment rates applicable to qualifying facilities with a design capacity of 100 kW or less in the Company’s Electric Purchase – Small Power Production and Cogeneration Facility Policy Section of its P.U.C. No. 8 – Electric Tariff.

3. Concurrent with its Advice Letter filing and the Company's Motion requesting extraordinary protection for certain PLEXOS modeling input and output data included in its filing. The claimed highly confidential information is included in attachments and documents prepared in support of the advice letter filing in this Proceeding. Regarding the input data, Public Service requests access limited to the Commissioners, advisors and advisory counsel, Administrative Law Judges, Commission Staff and attorneys, and the Office of the Consumer Advocate (UCA) and its attorneys, for the information outlined in the contract data, generation unit performance data, and market access data categories, as outlined on page 5 of its Motion. For all other categories of input data outlined in the Motion, the Company requests limiting access to "a reasonable number of attorneys" and a "reasonable number of subject matter experts" for any parties to this Proceeding in addition to the above categories. Regarding output data, Public Service seeks an order restricting access limited to the Commissioners, Advisors and Advisory Counsel, Administrative Law Judges, Commission Staff and attorneys, and the UCA and its attorneys, for the information outlined in the hourly system marginal cost and hourly generation data categories, as outlined on page 5 of its Motion. For all other categories of output data outlined in the Motion, the Company requests limiting access to "a reasonable number of attorneys" and a "reasonable number of subject matter experts" for any parties to this Proceeding in addition to the above categories.

4. There are no intervenors to this Proceeding, and no one has filed a response to the Motion.

5. Public Service asserts that this information competitively sensitive information that is used in the Company's daily trading operation and elsewhere in the Company's business operations that should not be supplied to potential vendors or competitors of Public Service.

6. The Commission has previously granted extraordinary protection for Highly Confidential information of a similar nature in Proceeding No. 22AL-0537E by Decision No. C22-0835-I, Proceeding No. 21AL-0591E by Decision No. C21-0819, Proceeding No. 20AL-0531E by Decision No. C20-0921, Proceeding No. 19AL-0687E by Decision Nos. R20-0121-I and R20-0169-I, Proceeding No. 19AL-0668E by Decision No. C19-1017, in Proceeding No. 18AL-0851E by Decision No. C18-1175, and in Proceeding No. 17AL0816E by Decision No. C17-1090.

7. Public Service prepared non-disclosure agreements for attorneys and subject matter experts, as required by Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Public Service also provided the affidavit of Steven P. Berman, identifying the employees in groups with access to the highly confidential information. The affidavit requests the extraordinary protection remain in place until the conclusion of this Proceeding and that at that time parties destroy the highly confidential information or return it to Public Service.

8. When presented with a Motion for Extraordinary Protection of Claimed Highly Confidential Information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

9. 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

10. We find the reasoning and arguments in the Motion persuasive. The Motion states good cause to grant the relief sought under Rule 1101, 4 CCR 723-1. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission’s Rules and past practice.

11. Based on the foregoing, we grant the Motion and approve the Non-Disclosure Agreements.

12. Access to the highly confidential information in the categories outlined in the Motion in paragraph 5 as a through c and in paragraph 6 as a through b shall be limited to the Commissioners, any assigned Administrative Law Judge, the Commission’s advisory staff and advisory attorneys, Trial Staff, and UCA.¹ Access to the highly confidential information in the categories outlined in the Motion in paragraph 5 as d through g, and in paragraph 6 as c through d shall be limited to the Commissioners, any assigned Administrative Law Judge, the Commission’s advisory staff and advisory attorneys, Trial Staff, and UCA, and a “reasonable number” of counsel and subject matter experts for any other parties.

13. We remind counsel and the parties that individuals permitted access to the highly confidential information may use it only for purposes of this Proceeding, consistent with the Commission’s confidentiality rules. The protected highly confidential information may not be disclosed to any unauthorized persons.

¹ The Commissioners, Commission advisory staff, Commission advisory counsel, administrative law judges, Trial Staff, and Trial Staff counsel sign annual non-disclosure agreements covering all confidential and highly confidential information filed with the Commission and are not required to sign separate agreements in individual cases. *See* Rule 1100(i) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1.

II. ORDER

A. The Commission Orders That:

1. The Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service Company of Colorado on December 1, 2023, is granted.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 27, 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