

Decision No. C23-0531-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0234G

IN THE MATTER OF THE GAS INFRASTRUCTURE PLAN OF PUBLIC SERVICE COMPANY OF COLORADO FILED PURSUANT TO 4 CODE OF COLORADO REGULATIONS 723-4-4552 OF THE COMMISSION'S RULES REGULATING GAS UTILITIES.

**INTERIM COMMISSION DECISION
GRANTING, IN PART, AND DENYING, IN PART,
MOTION FOR EXTRAORDINARY PROTECTION,
AND SCHEDULING TECHNICAL CONFERENCE**

Mailed Date: August 9, 2023

Adopted Date: August 2, 2023

I. BY THE COMMISSION

A. Statement

1. This Decision grants, in part, and denies, in part, the Opposed First Motion for Extraordinary Protection (Motion), filed on July 19, 2023 by Public Service Company of Colorado (Public Service or Company), consistent with the discussion below.

2. We also schedule a technical conference in this Proceeding for August 14, 2023, and provide guidance on the intended scope of the technical conference.

B. Background

3. On May 18, 2023, Public Service filed its Initial 2023-2028 Gas Infrastructure Plan (Initial GIP), consistent with the provisions in the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4-4550 to 4555. On June 8, 2023, through

Decision No. C23-0378, the Commission opened this Proceeding and established notice and intervention periods. On July 10, 2023, through Decision No. C23-0452-I, the Commission established the parties in this Proceeding and required the filing of discovery parameters. On July 28, 2023, through Decision No. C23-0497-I, and including an errata notice issued August 4, 2023, we adopted the proposed discovery parameters, directed that the Commission be provided with Public Service's workpapers, and extended the deadline for initial comments to August 10, 2023.

4. On July 19, 2023, Public Service filed its Motion requesting extraordinary protection of highly confidential information, pursuant to Rules 1101(b) and 1400, 4 CCR 723-1. Responses to the Motion were filed by the City and County of Denver (Denver), the City of Boulder (Boulder), and Tiger Natural Gas, Inc. (Tiger), on July 24, 2023.

C. Motion for Extraordinary Protection

5. In its Motion, Public Service defines two categories of highly confidential information. "Category 1" data refers to individual or aggregated customer information that does not comport with Commission Rule 4033(b), 4 CCR 724-4. This rule requires a minimum level of aggregation for the disclosure of data.¹ Public Service requests that disclosure of this highly confidential information be limited to the Commissioners, administrative law judges (ALJs), the Commission's advisory staff and advisory attorneys, Trial Staff and attorneys for Trial Staff, and the Office of the Utility Consumer Advocate (UCA) and UCA's attorneys. Public Service states that a highly confidential workpaper covers a limited, specified project area with easily

¹ Rule 4033(b) states:

At a minimum, a particular aggregation must contain at least fifteen customers; and, within any customer class no single customer's customer data or premise associated with a single customer's customer data may comprise 15 percent or more of the total customer data aggregated per customer class to generate the aggregated data report (the "15/15 Rule").

identifiable commercial customers, which does not comply with Rule 4033(b). The Company argues that without extraordinary protection, any party to this proceeding that signs an ordinary nondisclosure agreement could gain access to the confidential and competitively sensitive customer information of their competitors or other customers. The Company states that the requested protection is in line with protection granted in multiple prior proceedings.

6. “Category 2” information is a proprietary, non-public, third-party cost-benefit analysis (CBA) tool for each of the five projects that were subject to non-pipeline alternatives (NPA) analysis. The Company requests that access to the full, executable CBA tool be limited to the Commissioners, ALJs, advisory staff and attorneys, Trial Staff and its attorneys, UCA and UCA attorneys, the Colorado Energy Office (CEO) and its attorneys, and the Conservation Advocates² and their attorneys. Public Service also requests that if the Commission decides to permit other parties access to this information, it allow only in-person review to those other parties. Additionally, the Company notes that it will provide the input tab (a public and confidential version), and a CBA summary tab for each of the subject projects.

7. The Company states that it developed this CBA tool in conjunction with a third-party consultant, and it states that the tool is proprietary and a trade secret and will be used for the Company business purposes. Public Service states that disclosure of the complete CBA could harm the Company’s and/or its consultant’s competitive position. To support its request that the full CBA tool be provided to only certain parties, the Company states that it “has sought strike the appropriate balance between its own business interests and that of its consultant, the proprietary nature of the CBA, and the need to know.”³ It continues, “[w]hile not an exact

² The Conservation Advocates are: Natural Resources Defense Council, Sierra Club, Southwest Energy Efficiency Project, and Western Resource Advocates.

³ Motion, at ¶ 23.

science, Staff, UCA, and CEO are all intervenors of right, and the Conservation Advocates, as a group of policy advocates, have demonstrated a need to know this information in the context of the GIP, albeit on a highly confidential basis.”⁴ Public Service states that other parties do not have the same need to know, and points to customers and competitors that have their own interests in this proceeding.

8. In Tiger’s response, Tiger opposes the requested protections for both categories of information. To support its opposition against extraordinary protection for information that does not comply with Rule 4033(b), Tiger states that it appreciates the Commission’s policies protecting customer privacy but is concerned that Public Service uses the rule to prevent robust litigation and to silo opposition. It states that the Company’s use of the rule handicaps the parties and prevents them from identifying and conferring within similarly situated entities who may not be parties to a proceeding. Tiger proposes that attorneys for all parties be permitted to review any highly confidential information.

9. To support its opposition against the requested protection for the Category 2 information, Tiger states that Public Service fails to establish the non-public and proprietary nature of the CBA tool through, for example, a confidentiality agreement with the contractor or a patent or copyright registration. Tiger argues that Public Service fails to show why limiting disclosure to parties’ attorneys and outside experts using the proposed nondisclosure agreements would cause competitive harm, noting that these protections serve as sufficient protection for confidential business information in litigation involving trade secrets and other proprietary matters.

⁴ *Id.*

10. In their responses, Denver and Boulder generally support Public Service's request for protection of the Category 2 information, but they argue that they should be included in the parties that may access the full CBA tool. Denver and Boulder state that Public Service does not adequately justify excluding municipal governments. They claim that Public Service reduces their role in this proceeding to solely a "customer" of the Company, failing to acknowledge that Denver and Boulder advocate for their community members and have recognized climate goals and an inherent interest in the environmental aspects of policy advocacy in this proceeding, much like the Conservation Advocates. They argue that Public Service's statement that certain parties, including Denver and Boulder, may have their own interests in the proceeding is too vague to support exclusion, and that because they do not own or operate natural gas infrastructure, and because they will not need to conduct similar CBA analyses, and there is no commercial or competitive reason to exclude Denver and Boulder.

11. Denver and Boulder further state that the input and summary tabs would not be sufficient to understand and evaluate the proposed investments, noting that these documents do not identify all the benefit categories that were included in the gas infrastructure plan, or the mathematical operations used to determine the net economic benefits for non-pipeline alternatives.

12. Denver, Boulder, and Tiger also oppose Public Service's proposal for in-person review of Category 2 information, stating that such review is burdensome and leads to difficulties referring to information in filings.

13. As the party seeking a determination that the information in question is highly confidential and that extraordinary protection is required to limit access to this data as requested, Public Service bears the burden of establishing that the Commission should grant the requested

relief. § 24-4-105(7), C.R.S.; Rules 1101(b) and 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

14. We find that Public Service has satisfied the burden of establishing that both categories of information are entitled to extraordinary protection as Highly Confidential. Such information either involves sensitive, individualized customer information or a tool that was developed with a third-party consultant for the Company's future business use. Despite arguments from Tiger regarding use of Rule 4033(b) and its arguments regarding Public Service's justification for limiting access to the full CBA tool, we agree that both categories of information are highly confidential, and we find good cause to afford this information additional protections, including limiting access to certain parties.

15. However, we agree with Denver and Boulder that the Company failed to adequately support excluding municipal governments from access to the full CBA tool. Additionally, Denver and Boulder claim interests in the environmental aspects of policy advocacy in this proceeding and in advocating for their community members, much like the Conservation Advocates. We therefore direct that Denver's and Boulder's subject matter experts and attorneys be included in the group provided with access to the Category 2 information, subject to the nondisclosure agreements and other protections requested for the Category 2 information.

D. Technical Conference

16. At prior Commissioners' Weekly Meetings, we discussed holding one or more technical conferences or workshops with the Company to explore, highlight, and understand certain aspects of its Initial GIP. At the July 19, 2023 Commissioners' Weekly Meeting, we decided to schedule a technical conference for August 3, 2023. However, Public Service was not

available to participate on that date, and scheduling a technical conference through written order was therefore delayed until after additional discussion at the August 2, 2023 Commissioners' Weekly Meeting.

17. A remote technical conference is scheduled for August 14, 2023, from 9:00 a.m. to 11:00 a.m. The remote technical conference will be held using the web-hosted video conferencing service Zoom. The link and meeting ID or access code will be provided to Public Service by e-mail before the technical conference. Other parties and interested persons may observe the webcast of the technical conference through the Commission's website.

18. At the technical conference, the Commission anticipates its questions will include inquiries on the following topics:

- a) The described levels of planned safety-related investment, including any changes from the last Pipeline System Integrity Adjustment proceeding, Proceeding No. 21A-0071G, and what caused these changes;
- b) Projects that have been included the Initial GIP, including whether there are projects planned by the Company not presented in the Initial GIP;
- c) Assumptions in the Company's NPA analysis;
- d) How the Company determines questions surrounding disposal of existing infrastructure;
- e) The Existing Infrastructure Assessment Section;
- f) The Stage Gate process, and how this matches up with the level of progress of the specific projects presented; and
- g) The Hydrogen Blending Demonstration project, including the greenhouse gas impacts of the project and how the Company has projected such impacts.

19. The Commission may hold additional technical conferences or workshops, including after the filing of reply comments in this Proceeding. Any additional technical conferences or workshops will be scheduled by future written order.

II. ORDER

A. The Commission Orders That:

1. The Opposed First Motion for Extraordinary Protection of Highly Confidential Information, filed by Public Service Company of Colorado on July 19, 2023, is granted, in part, and denied, in part, consistent with the discussion above.

2. A remote technical conference is scheduled as follows:

DATE: August 14, 2023

TIME: 9:00 a.m. to 11:00 a.m.

PLACE: By video conference using Zoom at a link to be provided by email.

3. This Order 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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TOM PLANT

Commissioners