

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0345E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2021 THROUGH DECEMBER 2021 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS RECOVERED THROUGH THE PURCHASED CAPACITY COST ADJUSTMENT FOR THE SAME PERIOD AND APPROVING OF THE CALCULATION OF 2021 SHORT TERM SALES MARGINS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING SECOND MOTION FOR HIGHLY
CONFIDENTIAL PROTECTIONS**

Mailed Date: January 20, 2023

I. STATEMENT

1. On August 1, 2022, Public Service Company of Colorado (Public Service or the Company) filed its verified application seeking approval of the following: (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2021 through December 31, 2021, that have been reflected in the Company's Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Company from January 1, 2021, through December 31, 2021; and, (3) the Company's calculation of the 2021 Short-Term Sales Margins that have been used to adjust the 2022 ECA Deferred Account Balance.

2. On August 18, 2022, the Colorado Office of Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearances.

3. On September 1, 2022, the Trial Staff of the Colorado Public Utilities Commission (Staff) filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

4. On August 31, 2022, the Colorado Independent Energy Association (CIEA) filed a motion to permissively intervene in this ECA prudence review proceeding. By Decision No. R22-0688-I, issued November 7, 2022, the Commission granted CIEA's motion to intervene.

5. Contemporaneously with its Application, on August 1, 2022, Public Service also filed its first Motion for Extraordinary Protection, seeking highly confidential status for four categories of documents it identified in its motion. Decision No. R22-0688-I granted Public Service's first Motion for Extraordinary Protections.

II. SECOND MOTION FOR EXTRAORDINARY PROTECTION OF HIGHLY CONFIDENTIAL INFORMATION

6. On December 15, 2022, the Company filed its Second Motion for Extraordinary Protection. In this Motion, Public Service asks for protection of six categories of information.

7. The first five categories pertain to data provided in the Company's Hearing Exhibit 103, Direct Testimony of Company Witness Kyle L. Williams, Attachment K LW-3, that are subject to confidentiality clauses of power purchase agreements (PPAs) to which Public Service is a party. Attachment K LW-3 "contains data on the committed, actual, and shortfall percentages of capacity factors by year from 2016 through 2021 for generators that provide energy to the Company under PPAs." The Company represents that if the capacity factor data is provided "in combination with identifying information such as the facility or contract name, the type of generator, and nameplate capacity," the Company would be in violation of the

confidentiality clauses of its PPAs. The five categories of information under the confidentiality agreement pertinent to the PPAs are:

- (1) the facility/contract name;
- (2) the type of generator;
- (3) the nameplate capacity of the facility;
- (4) the actual generation by year, from 2016 to 2021; and,
- (5) the committed energy per the PPA by year, from 2016-to 2021.

8. The sixth category of information relates to “copies of daily Public Service system supply reports” provided to the Commission during the four-month period between June 1 and September 30, 2021. Public Service represents that this sixth category of information it seeks to protect as highly confidential “is competitively sensitive as it provides real-time operational information about Public Service’s system. Disclosure of this information could cause competitive harm to the Company by negatively impacting the Company’s competitive position in the wholesale energy market.”

9. Public Service seeks an order imposing highly confidential protections for the above-listed categories of Highly Confidential Information. Based upon extraordinary circumstances, Public Service requests that access be restricted to “a reasonable number of attorneys and a reasonable number of subject matter experts for each party to this Proceeding, subject to those individuals executing a non-disclosure agreement,” including the Commission, Trial Staff, and the UCA, and attorneys representing these entities. In accordance with Rule 1101(b)(V) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the motion was accompanied by a specific form of nondisclosure agreement requested.

10. No objections to the Second Motion for Extraordinary Protection have been filed. Public Service states in the Motion that it has conferred with the all the parties to this Proceeding

and is authorized to represent that no party opposes its Second Motion for Extraordinary Protection.

11. The Company notes that highly confidential protections have been afforded similar documents that were found to be highly confidential in a prior ECA review proceeding. Specifically, Public Service points to similar protections afforded information subject to a PPA confidentiality clause in Decision Nos. C21-0343-I, issued June 11, 2021, and C22-0168-I, issued March 17, 2022. It further points out that Decision No. C21-0343-I also afforded highly confidential status to information concerning Public Service's "system operations data including unit level delivered fuel costs, hourly market price data, unit-level heat rate curves, and unit detailed maintenance schedules."

12. Under Rule 1100(b) CCR 723-1, information filed with the Commission is presumed to be a public record, including (I) annual reports; (II) rates, terms and conditions for regulated services; (III) tariffs and price lists; (V) aggregate data regarding informal consumer complain information; and (X) safety inspection reports or information filed with the Commission or compiled by Commission staff. Rule 1101 provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

13. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) 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;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

14. Public Service provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Second Motion for Extraordinary Protection also includes two proposed forms of nondisclosure agreement for legal counsel and for experts in the subject matter. It has also provided the affidavit of Jack W. Ihle, Regional Vice President, Regulatory Policy for Public Service Company of Colorado, identifying the individuals and departments within Public Service that have access to the information. Public Service has not yet provided redacted or unredacted copies of the information it seeks to protect by its Second Motion for Extraordinary Protection

because the information will be “provided in response to discovery” and therefore “shall not be filed with the Commission.” Rule 1101(e), 4 CCR 723-1

15. Public Service has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, Public Service’s Motion for Extraordinary Protection will be granted.

III. ORDER

A. It Is Ordered That:

1. The Second Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service Company of Colorado on December 15, 2022, is granted.

2. This Decision is effective immediately.



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director