

Decision No. R23-0857-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0392EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING MOTION FOR EXTRAORDINARY PROTECTION
FOR HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: December 21, 2023

I. PROCEDURAL HISTORY¹

1. On August 1, 2023, Public Service Company (Public Service or the Company) filed its Verified Application (Application) requesting the Commission approve the Company's 2024-2028 Clean Heat Plan.

2. By Decision No. C23-0746-I, the Commission, among other things, referred discovery disputes and motions for extraordinary protection of information claimed to be highly confidential to an Administrative Law Judge (ALJ) for resolution.

3. On December 13, 2023, the Company filed its Unopposed Third Motion of Public Service Company of Colorado for A Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion). With the Motion, Public Service filed the Affidavit of Edward P. Weinberg (Affidavit).

¹ Only the procedural history necessary to understand this Decision is included.

II. FINDINGS, LEGAL STANDARD, AND CONCLUSIONS

4. The Company states that all parties have indicated that they do not oppose the relief sought in the Motion.²

5. Through the Motion, the Company seeks extraordinary protection for Proprietary, non-public, commercially and otherwise highly sensitive pricing information submitted by respondents to a July 2023 Request for Information from potential suppliers of recovered methane.³

6. In support of the Motion, the Company states that the Colorado Energy Office requested from respondents in discovery pricing data for costs associated with recovered methane resource.⁴ The Company states that the response to such request for information (RFI) includes pricing data that is proprietary, highly sensitive, and non-public.⁵

7. The Company argues that the pricing data for which it seeks extraordinary protection “relates to the potential market for recovered methane in Colorado, in which the Company is a potential buyer in competition with other gas utilities and other entities.” The Company further argues that:

Disclosure of this pricing information beyond the appropriate uses in this proceeding by parties whose personnel have signed Highly Confidential Non-Disclosure Agreements would damage the Company as well as its customers by putting the Company at a disadvantage in the marketplace (for example, by allowing sellers to see their competitors’ bids and raise prices). The entities that responded to the RFI also consider this pricing information to be highly sensitive, and disclosure could put them at a competitive disadvantage with respect to each other.

² Motion at 2.

³ *Id.* at 2, 4 and 8.

⁴ Motion at 4

⁵ *id.*

The pricing data in the RFI responses was submitted to the requesting utilities with an expectation of confidentiality.⁶

8. The Company further states that it is unreasonable and impractical to create a separate, public version of the pricing data, and the protections afforded by the Commission's rules governing ordinary confidentiality provide insufficient protection for the information for which extraordinary protection is requested in the Motion.⁷

9. The Company requests that that access be limited to (1) the Commissioners, Administrative Law Judges, the Commission's advisory staff and advisory attorneys; (2) Trial Staff, the Office of the Utility Consumer Advocate, and the Colorado Energy Office, and their respective counsel; and (3) for Parties that are permissive intervenors, a reasonable number of attorneys and subject matter experts who do not represent a party who will gain an unfair competitive advantage by having this information, all of whom have signed appropriate non-disclosure agreements to access Highly Confidential information.⁸

10. The Company further states that the requested extraordinary protection is covered by non-disclosure agreements that have already been filed in this Proceeding.⁹

11. In the Affidavit, the affiant, Mr. Edward P. Weinberg, Xcel Energy Services, Inc.'s Senior Consultant for Strategic Asset Planning, identifies the categories of Company-related individuals who have had access to the highly confidential information for which extraordinary protection is sought in the Motion and requests that the extraordinary protection sought in the Motion remain in place indefinitely.¹⁰

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ Affidavit at 2.

12. Because no party objects to the relief sought in the Motion, response time to the same will be waived, as ordered below.¹¹

13. Rule 1101(b) of the Commission's Rules of Practice and Procedure states:

b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:

(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.¹²

14. The ALJ finds and concludes that the Motion and Affidavit meet the requirements of Rule 1101(b) of the Commission's Rules of Practice and Procedure, and establish that the

¹¹ See Rule 1308(c), 4 *Code of Colorado Regulations* (CCR) 723-1.

¹² Rule 1101(b), 4 CCR 723-1.

information for which the Company seeks extraordinary protection is highly confidential. Based upon this finding and the Motion being unopposed, the ALJ will grant the Motion, as ordered below.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the response time to the Unopposed Third Motion of Public Service Company of Colorado for A Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion), filed by Public Service Company on December 13, 2023, is waived.

2. The Motion is granted consistent with the discussion above.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director