

Decision No. C23-0202-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0530E

IN THE MATTER OF ADVICE LETTER NO. 1906 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE BASE RATE REVENUES, IMPLEMENT NEW BASE RATES FOR ALL ELECTRIC RATE SCHEDULES, AND MAKE OTHER TARIFF CHANGES, TO BECOME EFFECTIVE DECEMBER 31, 2022.

PROCEEDING NO. 22AL-0478E

IN THE MATTER OF ADVICE LETTER NO. 1902 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE THE TRANSMISSION COST ADJUSTMENT RIDER, TO BECOME EFFECTIVE JANUARY 1, 2023.

**INTERIM COMMISSION DECISION GRANTING
FOURTH MOTION FOR EXTRAORDINARY
PROTECTION, AND WAIVING RESPONSE TIME**

Mailed Date: March 24, 2023

Adopted Date: March 22, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Unopposed Fourth Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information Related to Liquidated Damages, filed by Public Service Company of Colorado (Public Service) on March 17, 2023 (Motion). Through the Motion, Public Service requests extraordinary protection for competitively sensitive and highly confidential commercial information associated with

Company-owned wind facilities. Public Service represents that the Motion is unopposed. Since the Motion is unopposed, we find good cause to waive the remaining response time and take up the matter expeditiously. Upon review of the Motion and its attachments, the Commission finds good cause to grant the requested relief.

B. Discussion

2. On November 1, 2022, Public Service filed Advice Letter No. 1902-Electric in Proceeding No. 22AL-0478E with tariff sheets setting forth the applicable charge for its Transmission Cost Adjustment for effect January 1, 2023. On November 30, 2022, Public Service filed Advice Letter No. 1906-Electric in Proceeding No. 22AL-0530E with tariff sheets for its base rate schedules for electric utility service provided to Colorado customers. By Decision No. C22-0833, issued December 23, 2022, we set for hearing and suspended the effective date of the tariff sheets for 120 days. By Decision No. C23-0110-I, issued February 16, 2023, the Commission established the following parties: Public Service; Staff of the Colorado Public Utilities Commission (Trial Staff); the Colorado Office of the Utility Consumer Advocate (UCA); The Kroger Company; City and County of Denver; City of Boulder; the Federal Executive Agencies; the Colorado Energy Consumers; the Coalition for Community Solar Access; Walmart Inc.; Climax Molybdenum Company; and Molson Coors Beverage Company. By Decision No. C23-0158-I, issued March 3, 2023, the Commission established the procedural schedule for this Proceeding and extended the suspension period of the tariff pages for an additional 130 days.

3. Previously, by Decision No. C23-0154-I, issued March 1, 2023, the Commission granted Public Service's first Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information, filed on November 30, 2022, and provided

extraordinary protection for certain customer information. Subsequently, by Decision No. C23-0168-I, issued March 8, 2023, the Commission granted Public Service's Unopposed Second Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed on February 28, 2023, and provided extraordinary protection for certain rate case expense information related to its outside legal counsel invoices.¹

4. Through the Motion, Public Service seeks extraordinary protection of information related to liquidated damages payable to the Company by Vestas-American Wind Technology, Inc. (Vestas) regarding performance of the Rush Creek and Cheyenne Ridge wind facilities, including documents or information that could be used to derive those liquidated damages. Public Service states this claimed highly confidential information has already been requested in discovery in this Proceeding.

5. Public Service explains, the claimed highly confidential information relates to closely negotiated contractual terms between the Company and Vestas. Public Service states the Commission previously has recognized that this proprietary information is highly sensitive to both the Company and its vendor (*i.e.*, Vestas), and it would cause significant competitive harm to both parties if those negotiated terms became known to competitors or potential counterparties. Public Service explains, if future potential bidders (who may themselves be customers of Vestas) had access to the terms of agreements, it would cause substantial injury to Vestas' competitive interests by jeopardizing its negotiating position in future transactions with other parties. Public Service states this would also jeopardize the Company's relationship with

¹ Public Services notes in the Motion that it also filed a motion for extraordinary protection contemporaneously with its Advice Letter No. 1902- Electric in Proceeding No. 22AL-0478E, which it intends to soon amend. The Commission will address that outstanding motion by separate order.

Vestas, and thus the Company's future ability to obtain from Vestas favorable terms, given the risk of this information being widely disclosed through the regulatory process.

6. Public Service contends that extraordinary protection is required to ensure a limited scope of disclosure for the highly confidential information. Public Service requests that access be limited as follows:

- a) the Commissioners, the Commission's advisory staff and advisory attorneys, Trial Staff, and attorneys for Trial Staff, and UCA and attorneys for UCA would have access to the highly confidential information;
- b) intervenors that do not fall into category (c) below would have access to the highly confidential information, restricted, however, to counsel and subject matter experts for such intervenors who provide executed highly confidential non-disclosure agreements; and
- c) intervenors that are developers of energy resources, competitive power producers, existing or potential wholesale customers of developers of energy resources, or entities that might otherwise bid into a future Public Service resource solicitation, as well as members of any intervenor trade association, would not have access to the highly confidential information.

7. Public Service states that, based on the intervenors to this case, counsel and subject matter experts for all intervenors who provide executed highly confidential non-disclosure agreements would receive access to the highly confidential information, except the Coalition for Community Solar Access cannot provide such information to its members.

8. Public Service states the requested extraordinary protections will strike the appropriate balance between the need for reasonable disclosure of the Highly Confidential Information for purposes of this proceeding, and the need to protect access to this information.

9. 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. Perman, 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 shred or destroy this information.

10. Public Service states the requested relief is unopposed by the parties to this Proceeding.

C. Findings and Conclusions

11. 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.

12. 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

13. 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.

14. Based on the foregoing, we grant the Motion and approve the non-disclosure agreements.

15. Access to the highly confidential information shall be limited as requested in the Motion.²

16. 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. Further, Public Service bears responsibility to ensure that parties' access is restricted consistent with the protections ordered in this Decision and that, following conclusion of this Proceeding, the information is appropriately destroyed or returned to the Company.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Fourth Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information Related to Liquidated Damages, filed by Public Service Company of Colorado on March 17, 2023, is granted.

2. Upon the Commission's own motion, remaining response time to the unopposed motion is waived.

² 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.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 22, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners