

Decision No. C23-0227-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
THIRD MOTION FOR EXTRAORDINARY PROTECTION
AND WAIVING RESPONSE TIME**

Mailed Date: March 31, 2023

Adopted Date: March 29, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Unopposed Amended Transmission Cost Adjustment Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (“Third Motion for Extraordinary Protection” or “Motion”), filed by Public Service Company of Colorado (“Public Service” or “the Company”) on March 23, 2023. Through the Motion, Public Service requests extraordinary protection for information and

documents related to critical transmission and substation infrastructure. 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. Then, by Decision No. C23-0202-I, issued March 24, 2023, the Commission Granted Public Service's Unopposed Fourth Motion¹ for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed on March 17, 2023, and provided extraordinary protection for certain commercial information associated with Company-owned wind facilities.

4. Through the Motion, Public Service seeks extraordinary protection of detailed locational and sensitive infrastructure-related information about the Company's transmission and substation facilities. Public Service states that some of this information has already been requested in discovery in this Proceeding.

5. Public Service explains that it has a responsibility at both the state and federal level to safeguard information regarding critical infrastructure, and that physical or cybersecurity attacks on this infrastructure could cause widespread disruption to the electric grid. It notes:

Last year, the Federal Bureau of Investigation ("FBI") filed a criminal complaint in federal court against a defendant who allegedly admitted in a polygraph examination to formulating a plan to "take down" the electrical power grid in Denver. According to an FBI affidavit filed with the complaint, the defendant admitted to "studying power transmission lines and towers," including "power grid maps and blueprints found on open source websites" to "determine what weaknesses they had." The defendant "believed some type of powerful explosion would be needed to destroy them," and he "identified several key locations he believed could be disrupted [to] blackout Denver and cut 80% of power to the state of

¹ We recognize the motions were granted in a different order than they were originally filed. For simplicity's sake, we refer to the motions sequentially by the date on which the Motion (or in the case of this amended motion, the date the original motion) was filed.

Colorado.” Ultimately, the defendant did not have access to explosives, or the manpower needed to execute his plan, but this incident demonstrates how bad actors can use information to plan physical attacks on the grid.

6. The Company notes that if the critical infrastructure information it seeks to protect was released publicly it would significantly increase the risk that information regarding critical infrastructure would fall into the hands of bad actors seeking to attack the grid.

7. 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 to the Commissioners, the Commission’s advisory staff and advisory attorneys, Trial Staff, and attorneys for Trial Staff, and UCA and attorneys for UCA.

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. Berman, identifying the employees in groups with access to the highly confidential information. The affidavit requests the extraordinary protection remain in place indefinitely, and that any party provided access to the information shred or destroy it upon the conclusion of the proceeding.

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. And we waive any remaining response time because the Motion is unopposed.

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

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.

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.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Amended Transmission Cost Adjustment Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed by Public Service Company of Colorado on March 23, 2023, is granted.

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

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 29, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, 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