

Decision No. C24-0783-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24I-0394E

IN THE MATTER OF THE INVESTIGATION INTO RECENT OUTAGES ON THE PUBLIC SERVICE COMPANY OF COLORADO ELECTRIC SYSTEM.

**INTERIM COMMISSION DECISION GRANTING
MOTION FOR EXTRAORDINARY PROTECTION OF
HIGHLY CONFIDENTIAL INFORMATION AND
WAIVING RESPONSE TIME**

Issued Date: October 28, 2024
Adopted Date: October 23, 2024

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Unopposed First Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time (“Motion”) filed by Public Service Company of Colorado (“Public Service” or the “Company”) on October 15, 2024.

2. On September 16, 2024, by Decision No. C24-0668, the Commission opened this investigatory proceeding directing Commission staff to conduct an investigation into the recent spate of outages on Public Service’s electric system. The Commission directed its Staff to conduct the investigation through the full audit authority vested in the Commission by various statutory provisions contained in Title 40, Articles 1 through 7 of the Colorado Revised Statutes.¹

¹ See §§ 40-6-106; 40-6-107; 40-3-102; 40-3-110, C.R.S.; and 40-15-107, C.R.S.

B. Findings and Conclusions

3. In its Motion, Public Service requests extraordinary protection for certain proprietary, non-public, and otherwise highly sensitive information related to electric infrastructure information, including detailed geographic, technical, engineering, and design information. Specifically, the Company seeks highly confidential treatment of the following categories of information:

- Specific geographic information of electric infrastructure that is provided in tandem with detailed attribution information that is included in the Company's Geographic Information System that is non-public and proprietary;
- Information about technical details of electric facilities, including specifications, ratings, capacities, and customers served; and
- Documents, studies, or information that could be used to describe the above-described information.

4. The Company states the information includes highly confidential and sensitive detailed locational and technical infrastructure information about the Company's existing electric infrastructure and that public disclosure of the information could increase the risks of attacks by bad actors on utilities' transmission and distribution systems, causing outages and disrupting the electric grid.

5. The Company also cites to previous Commission decisions in which the Commission recognized the importance of protecting similar information and requests a finding that disclosure of the highly confidential information, without sufficient protection, may jeopardize the Company's ability to manage its system and provide safe, reliable service, and risks placing the Company at a competitive disadvantage.

6. Public Service requests access to the highly confidential information be limited to the Commissioners, administrative law judges, the Commission's Advisory Staff and advisory attorneys, and Staff and attorneys for Staff.

7. Public Service prepared Non-Disclosure Agreements ("NDA") 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.

8. For clarity's sake, we note that the granting of highly confidential protections — namely, permitting the Company to condition disclosure of the information upon a person signing an NDA — has a different effect in Rule 1004(b) administrative proceedings in which staff conducts an investigation than it does in Rule 1004(c) adjudicated proceedings. To start, in an investigation Proceeding in which Staff gathers data through its audit authority, which is afforded confidential treatment pursuant to § 40-15-107, C.R.S., that data is only available to the Commission, and any person employed by the commission in connection with an audit. Commission staff and counsel sign annual NDAs which are kept on file at the Commission, meaning they do not need to sign additional NDAs to access the protected information in this Proceeding. Additionally, because this is an administrative proceeding, there are no parties to the Proceeding that would be required to sign NDAs to access the protected information. Therefore, the highly confidential protections sought by the Company in this circumstance apply only to members of the public specifically requesting the protected information. If a member of the public should seek access to such information, the Commission does not provide requesting individuals with NDAs and does not make confidential information public absent prior written consent of the

Company or a court order issued pursuant to § 24-72-204(5), C.R.S. Any protections granted in this decision will apply only to members of the public requesting the protected information, and anyone seeking the information must request it directly from the Company, not the Commission. We also emphasize that if the outcome of the investigation should lead to an adjudicatory proceeding, Public Service will again be required to seek protection of any of the information at issue here if filed in a subsequent proceeding.

9. With these considerations in mind, we grant the Company's Motion. 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.

10. 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 ...

11. We find persuasive the reasoning and arguments in the Motion. The Motion states good cause to grant the relief sought under Rule 1101. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules and past practice. Based on the foregoing, we grant the Motion for Extraordinary Protection, approve the non-disclosure agreements, and waive any remaining response time.

12. The Commission emphasizes that it is committed to maintaining transparency throughout this Proceeding and encourages interested members of the public to submit comments regarding the Company’s outages.

II. ORDER

A. The Commission Orders That:

1. The Unopposed First Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time, filed on October 15, 2024, by Public Service Company of Colorado, is granted, consistent with the discussion above.

2. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
October 23, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director