

Decision No. R24-0706-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0296E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2025-2027 WILDFIRE MITIGATION PLAN, WILDFIRE MITIGATION ADJUSTMENT, PUBLIC SAFETY POWER SHUTOFF PLAN, AND THE RECOVERY OF ITS 2023 WILDFIRE MITIGATION PLAN DEFERRAL.

**INTERIM DECISION GRANTING APPLICANT'S
UNOPPOSED MOTION FOR EXTRAORDINARY
PROTECTION**

Mailed Date: September 27, 2024

I. STATEMENT

A. Relevant Procedural Background

1. On June 27, 2024, Public Service Company of Colorado (“Public Service”) filed an Application for approval of its 2025-2027 Wildfire Mitigation Plan and Public Safety Power Shutoff Plan.

2. On September 3, 2024, the Commission issued Decision No. C24-0687-I that, among other things, referred all discovery disputes and motions for extraordinary protection to an Administrative Law Judge (“ALJ”). The limited referral was subsequently assigned to the undersigned ALJ. According to Decision No. C24-0687-I, the parties to this Proceeding are: Public Service, Staff of the Commission, the Utility Consumer Advocate, the City of Boulder, Colorado Energy Consumers, Climax Molybdenum Company, Comcast Cable Communications Management, LLC, the Colorado Solar and Storage Association and the Coalition for Community Solar Access, the City and County of Denver, and Western Resource Advocates.

3. On September 13, 2024, Public Service filed an Unopposed Motion for Extraordinary Protection “for certain competitively sensitive and highly confidential customer-specific information protected by the Commission’s data privacy rules, including Rule 1101, *et. seq.* and Rule 3025, *et. seq.*” (“Unopposed Motion”).¹

B. Unopposed Motion

4. In the Unopposed Motion, Public Service seeks highly confidential protection for “the customer-specific information it produces in response to the City of Boulder’s Discovery Request 1-5, along with any future customer-specific information protected under the Commission’s data privacy rules, which is sought or produced as part of this proceeding.”² Boulder’s Discovery request 1-5(j) requests a list of “all critical facilities with [automatic throwover (‘ATO’)] agreements or dual-feeder service agreements that may be affected by wildfire safety operations, including [Public Safety Power Shutoff (‘PSPS’)] and [Enhanced Powerline Safety Settings (‘EPSS’)].”³ The City of Boulder acknowledges that the requested information is highly confidential.⁴

5. Public Service argues that the information described above is subject to highly confidential protection because the request seeks “the identification of specific customers with specific technological capabilities,”⁵ the disclosure of which

would violate the letter and spirit of the Commission’s data privacy rules, which were promulgated to protect customers from the unauthorized disclosure of customer-specific information. More specifically, extraordinary protection for this information is consistent with Commission Rule 1105 (addressing the disclosure of a customer’s personal information), Rule 3027 (governing the disclosure of customer data by a utility),

¹ Unopposed Motion at 1.

² *Id.* at 5.

³ *Id.* at 4.

⁴ *Id.* at 4 n.1.

⁵ *Id.* at 4.

Rule 3032 (regarding third-party access to utility data), and Rule 3033 (regarding requests for aggregated data and establishing the 15/15 Rule).⁶

Public Service requests that highly confidential protection be afforded so that access to the information will be limited to the Commissioners, the Commission's Advisory Staff and advisory attorneys, the undersigned ALJ, Trial Staff of the Commission ("Staff") and attorneys for Staff, the Colorado Office of the Utility Consumer Advocate ("UCA") and attorneys for the UCA, subject matter experts for parties, and attorneys for parties.⁷ Public Service has submitted form nondisclosure agreements for subject matter experts and attorneys for parties (other than Staff and UCA) to execute before having access to the highly confidential information.

6. Public Service's Motion is unopposed.

C. Analysis

7. Under Rule 1100(b) of the Commission's Rules of Practice and Procedure,⁸ information filed with the Commission is presumed to be a public record. Rule 1101 provides the procedure and requirements for the designation of certain documents or information as highly confidential, thus limiting access to such documents and information. Under Rule 1101(b), a motion seeking highly confidential treatment:

- (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

⁶ *Id.* at 5.

⁷ *Id.* at 2, 7.

⁸ 4 CCR 723-1.

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.

8. Here, Public Service's Unopposed Motion includes proposed forms of nondisclosure agreements for retained subject matter experts and attorneys, and an affidavit stating that a limited number of employees have access to the highly confidential information and stating that extraordinary protection sought for the information must remain in place "indefinitely."⁹ Respondents did not file unredacted highly-confidential versions of the documents for which it seeks highly confidential protection because they "contain[] highly sensitive, customer-specific information subject to the Commission's data privacy rules, and [] the information is being produced pursuant to a discovery request rather than for admission into the evidentiary record."¹⁰ However, Public Service has described the information with sufficient detail to allow the ALJ to make a judgment about the requested relief.

9. In addition, Public Service has identified the grounds for seeking highly confidential protection for the information identified in the Unopposed Motion. Specifically, Public Service has stated that the information identified in the First Motion is protectable as highly

⁹ Unopposed Motion, Attached Affidavit at 2.

¹⁰ Unopposed Motion at 7.

confidential material pursuant to Commission Rules 1105, 3027, and 3032, and 3033. The ALJ agrees with Public Service's conclusion. The ALJ also concludes that the protection afforded by the Commission's rules addressing confidential information provide insufficient protection for the highly confidential information identified by Public Service, and that, if adopted, the highly confidential protections proposed by Public Service will afford sufficient protection for the identified highly confidential information.

10. Finally, Public Service has conferred with all of the parties regarding the relief sought in the Unopposed Motion. No party opposes the Unopposed Motion.

11. Based on the foregoing, the ALJ finds and concludes that Respondents have satisfied their burden under Rule 1101(b).

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Extraordinary Protection filed by Public Service Company of Colorado on September 13, 2024 is granted consistent with the discussion above.
2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director