

Decision No. C25-0331-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0547E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2025-2029 DISTRIBUTION SYSTEM PLAN AND THE GRID MODERNIZATION ADJUSTMENT CLAUSE.

PROCEEDING NO. 25A-0061E

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF PUBLIC SERVICE COMPANY OF COLORADO'S AGGREGATOR VIRTUAL POWER PLANT PROGRAM AND TARIFF, ALONG WITH ASSOCIATED PROGRAM BUDGET AND COST RECOVERY METHODOLOGY.

**INTERIM COMMISSION DECISION GRANTING
MOTIONS FOR EXTRAORDINARY PROTECTION**

Issued Date: April 30, 2025
Adopted Date: April 16, 2025

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Motion for Extraordinary Protection filed by Public Service Company of Colorado (“Public Service” or the “Company”) concurrent with its Application for Approval of an Aggregated Virtual Power Plant (“AVPP Application”) on January 31, 2025.

2. We also grant the Motion for Extraordinary Protection filed by Public Service on April 10, 2025 in the consolidated Proceeding.

B. Background

3. Public Service filed its Distribution System Plan (“DSP”) Application pursuant to § 40-2-132, C.R.S., and Rules 3529 to 3541 of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-3, for approval of the Company’s 2025-2029 DSP as well as its proposed GMAC rider.

4. Public Service filed its AVPP Application on January 31, 2025, pursuant to § 40-2-132.5, C.R.S.

5. By Decision No. C25-0154-I, the Commission deemed the DSP Application complete and granted the requests for permissive intervention filed by Colorado Energy Consumers Group (“CEC”); the City and County of Denver (“Denver”); the Interstate Renewable Energy Council (“IREC”); Pivot Energy Inc. (“Pivot”); the Eastern Metro Area Business Coalition (the “Eastern Metro Area Business Coalition”); the City of Boulder (“Boulder”); Holy Cross Electric Association Inc. (“Holy Cross”); Western Resource Advocates (“WRA”); Tesla, Inc. (“Tesla”); the Southwest Energy Efficiency Project and Natural Resource Defense Counsel, jointly (“SWEEP/NRDC”); Mission:data Coalition, Inc. (“Mission:data”); and filing jointly, the Colorado Solar and Storage Association (“COSSA”), the Solar Energy Industries Association (“SEIA”); the Coalition for Community Solar Access (“CCSA”), and the Advanced Energy United (“AEU”) (jointly the “Associations for Clean Energy,” or “ACE”). The Commission acknowledged the notices of intervention of right filed by Trial Staff of the Commission (“Staff”), the Office of the Utility Consumer Advocate (“UCA”), and the Colorado Energy Office (“CEO”).

6. By Decision No. C25-0155-I, the Commission deemed the AVPP Application complete and granted the requests for permissive intervention filed by CEC, Pivot, Boulder, WRA, AEU, COSSA/SEIA/CCSA, Colorado Renewable Energy Society (“CRES”),

Mr. William Althouse, and Solar United Neighbors (“SUN”) and acknowledged the interventions of right of Staff, UCA, and CEO.

7. By Decision No. C25-0261-I issued on April 8, 2025, in Proceeding No. 24A-0547E and Proceeding No. 25A-0061E, the Commission consolidated the DSP Application and AVPP Application proceedings (“Consolidated Proceeding”). Pursuant to that decision, all parties to each the AVPP and the DSP Proceedings are parties to the Consolidated Proceeding and all future filings shall occur in the DSP Proceeding docket.

C. Discussion

1. Vendor Cost Data Motion for Extraordinary Protection

8. Concurrent with its AVPP Application, Public Service filed a motion which contained a request for extraordinary protection of highly confidential information pursuant to Commission Rules 1101(b) and 1400 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1. Public Service seeks an order granting highly confidential treatment of proprietary, non-public, commercially, and otherwise highly sensitive vendor pricing and cost estimates associated with the Company’s AVPP program (this includes but is not limited to workpapers supporting Attachment DEE-2 to the Direct Testimony of Company witness Deborah E. Erwin, which presents the proposed budget for the first five years of the AVPP program). Public Service requests the Commission issue an order limiting access to: (1) Commissioners; (2) Commission Advisors and Commission Advisory Counsel; (3) Administrative Law Judges; (4) Trial Staff and its counsel; (5) the UCA and its counsel; and (6) CEO and its counsel. The Company claims that the documents contain information that was prepared by third-party vendors or that relate to contracts with third-party vendors generally subject to confidentiality provisions. The Company asserts the information is highly confidential because disclosure of the information could harm the

Company's competitive position as it relates to negotiating and implementing vendor solutions for the AVPP program, potentially raising the costs of the AVPP program and, in turn, the services provided to the Company's customers.

9. By Decision No. C25-0155-I, the Commission set response time to March 10, 2025. The Commission received responses from WRA, SUN, and COSSA/SEIA/CCSA and AEU, jointly.

10. In its Response, WRA does not challenge the designation of the information as highly confidential. Instead, WRA requests only that the Commission deny the Company's specific request for relief and instead order the Company to extend access to the highly confidential information to non-government agency intervenors, including WRA, that do not operate as vendors in the virtual power plant industry and are not considered competitors of Public Service.¹ WRA argues that the information related to AVPP vendor pricing is highly relevant and cost estimates are highly relevant, so excluding access to all permissive intervenors impacts intervenors rights of due process.² WRA argues this information is necessary for it to understand the assumptions, calculations, and other information underlying the proposed budgets. WRA argues that Public Service presents no evidence to demonstrate how the existing ethical rules, and the nondisclosure agreements proposed to be executed by parties who access this information, will not protect it from being disclosed outside of this proceeding and that the Company failed to meet its burden to demonstrate why access cannot be extended to noncompetitive, non-governmental intervenors.³

¹ WRA Response, p. 2.

² *Id.* at p. 3.

³ *Id.* at p. 5.

11. SUN also opposes the Company's Motion and requests an order allowing SUN the ability to access information marked by Public Service as highly confidential. In the alternative, SUN argues the Commission should require Public Service to demonstrate, on a case-by-case basis, that information produced in this Proceeding is highly confidential to avoid unnecessary litigation and protect the due process rights of permissive intervenors.⁴ SUN argues that it does not pose the risk of harm that the Company seeks to protect against because SUN does not provide AVPP vendor services or represent such vendors. It also argues that the Company's request is overly broad and vague and as such should be required to prove on a case-by-case basis that the information is highly confidential and not be granted such a broad protection now that leaves too much discretion to the Company.⁵

12. COSSA/SEIA/CCSA and AEU each support the Response to the Company's motion filed by SUN and further state that they are concerned the motion is overly restrictive and does not provide access to authorized representatives from trade associations.⁶ They state that although some members of COSSA, SEIA, CCSA and/or AEU may have commercial interests in the outcome of this proceeding, the Commission has recognized, in allowing representatives of trade groups to access highly confidential information, that "there is also a difference between the individual members and [trade groups] as a whole."⁷

13. By Decision No. C25-0242-I, issued in the AVPP Application proceeding, the Commission determined that it needed more information before determining whether the relief sought in the motion is appropriate. Specifically, the Commission cited concerns regarding questions raised primarily by WRA. The Commission requested the Company specify why WRA

⁴ SUN Response, p. 1.

⁵ *Id.* at p. 6.

⁶ COSSA/SEIA/CCSA Response, p. 1.

⁷ *Id.* at p. 2, citing Proceeding No. 10A-905E, Decision No. C11-0029 at ¶ 11 (issued January 11, 2011).

or other similar non-competitive intervenors as well as trade associations should be barred from this information.⁸

14. On April 8, 2025, the Company filed a response in which it requests that the Commission grant the motion, but modifies its request to allow for access to the information by a “reasonable number of subject matter experts and counsel for all parties to the AVPP proceeding that are not current or potential vendors in the virtual power plant industry and are not current or future competitors of Public Service.”⁹ Public Service explains that this would allow for access to everyone but Mr. Althouse and Pivot. Public Service argues that this revised approach strikes an appropriate balance between the interests of parties in presenting their positions in the Proceeding against the customer benefits of being able to maintain confidentiality of competitively sensitive information.

2. Integral Analytics Motion for Extraordinary Protection

15. On April 10, 2025, Public Service filed a Motion for Extraordinary Protection requesting extraordinary protection for certain documents and categories of information related to a contract with Integral Analytics. The Company requests extraordinary protection for certain contract provisions on fees, liquidated damages, liability caps, and required insurance amounts designated. Staff requested that the Company produce its contracts through a discovery request.

16. The Company requests that only Staff and UCA have access to the information it seeks to designate as highly confidential. It states that remaining parties to the case have already received a confidential version of the contract with limited redactions. No parties filed a response, and Public Service states that the motion is unopposed and requests a waiver of response time.

⁸ Decision No. C25-0242-I, issued in Proceeding No. 25A-0061E, on April 1, 2025.

⁹ Public Service Response, filed April 8, 2025.

17. Public Service asserts that the information is highly confidential because these terms are negotiated with vendors and the Company derives a competitive advantage from maintaining the confidentiality of such provisions. The contract terms also require the Company to maintain the confidentiality of such competitively sensitive information. The Company states that the Commission has granted similar requests in prior proceedings.

D. Findings and Conclusions

18. 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. Rule 1101(d) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, allows the Commission to "enter a decision granting the motion and ordering the highly confidential protection which the Commission, in the exercise of its discretion, deems appropriate; may enter a decision denying the motion; or may enter any other appropriate decision."

19. 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 ...

20. We find persuasive the reasoning and arguments in the Integral Analytics Motion for Extraordinary Protection. 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 to afford extraordinary protection and approve the non-disclosure agreements. We also find good cause to waive response time to the unopposed motion.

21. We also find good cause to grant the Vendor Data Motion for Extraordinary Protection, as amended by the Company's April 8, 2025 response. 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 to afford extraordinary protection and approve the non-disclosure agreements and access restrictions as outlined in the April 8, 2025 Public Service response.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion of Public Service Company of Colorado For a Protective Order Affording Extraordinary Protection for Certain Provisions of its Contract With Integral Analytics, and Request for Waiver of Response Time filed on April 10, 2025 is granted, consistent with the discussion above.

2. The Motion for Extraordinary Protection filed by Public Service on January 31, 2025, as modified by Public Service's April 8, 2025 filing, is granted, consistent with the discussion above.

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

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 16, 2025.**

(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