

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0560E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE DENVER METRO TRANSMISSION NETWORK IMPROVEMENT PROJECT, A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE LEETSDALE-ELATI TRANSMISSION PROJECT, AND ASSOCIATED FINDINGS OF NOISE AND MAGNETIC FIELD REASONABLENESS.

**INTERIM DECISION GRANTING APPLICANT'S
UNOPPOSED MOTION FOR EXTRAORDINARY
PROTECTION, SCHEDULING REMOTE
PREHEARING CONFERENCE,
REQUIRING PARTIES TO CONFER AND PUBLIC
SERVICE TO FILE A CONFERRAL REPORT, AND
REQUIRING THE INTERVENING PARTIES TO FILE A
RESPONSE TO PUBLIC SERVICE'S REQUEST TO
WAIVE CERTAIN RULES**

Issued Date: February 10, 2025

I. STATEMENT

A. Relevant Procedural Background

1. On December 20, 2024, Public Service (“Public Service or “the Company”) filed its Application seeking issuance of Certificates of Public Convenience and Necessity for the Denver Metro Transmission Network Improvement Project and the Leetsdale-Elati 230 kilovolt Underground Transmission Upgrade Project. Additionally, the Company requests the Commission make associated findings of noise and magnetic field reasonableness, approve the Company’s proposed Performance Incentive Mechanism, and approve the Company’s proposed use of an

Independent Engineer. In support of its Application, Public Service included pre-filed Direct Testimony and accompanying attachments of six witnesses.

2. Concurrent with its Application, Public Service filed an Omnibus Motion for Extraordinary Protection of Highly Confidential Information and for Waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) Regarding Noise and Magnetic Field Levels (“Omnibus Motion”).

3. The Commission issued a Notice of Application Filed on December 23, 2024. The Notice set a 30-day intervention period that ran through January 22, 2025.

4. On January 6, 2025, the Colorado Office of the Utility Consumer Advocate filed a notice of intervention of right and request for hearing.

5. On January 22, 2025, the Colorado Independent Energy Association (“CIEA”) filed a motion seeking to permissively intervene in this Proceeding.

6. On January 22, 2025, Tri-State Generation and Transmission Association, Inc. (“Tri-State”) filed a motion seeking to permissively intervene in this Proceeding.

7. On January 27, 2025, Trial Staff of the Commission (“Staff”) filed a notice of intervention of right and request for hearing.

8. On January 31, 2025, the Commission issued Decision No. C25-0074 that referred the proceeding to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ. Decision No. C25-0074 also ordered Public Service to file supplemental direct testimony on topics specified in the Decision by a deadline established by the ALJ in the context of a schedule for the entire proceeding.

B. Motions to Permissively Intervene

9. The Motions to Intervene filed by CIEA and Tri-State satisfy Rule 1401(c) of the Commission's Rules of Practice and Procedure. In addition, Public Service has not opposed the Motions to Intervene. Accordingly, the Motions to Intervene will be granted.

C. Remote Prehearing Conference

10. It is appropriate to hold a remote prehearing conference in this proceeding. Accordingly, a remote prehearing conference will be scheduled for **February 24, 2025 at 1:30 p.m.** The remote prehearing conference will be conducted over the Zoom videoconferencing platform. The ALJ or a member of Commission Staff will email the log-in information in advance of the hearing.

D. Conferral and Conferral Report

11. Public Service shall confer with the other parties in advance of the remote prehearing conference regarding a schedule for this proceeding, any discovery procedures that are inconsistent with the Commission's rules governing discovery, and the method by which the hearing should be conducted. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

12. Public Service shall file a report of the results of the conferral. If there is agreement on a schedule, including deadlines for, among other things, the filing of prehearing testimony

(including the Supplemental Direct testimony ordered by the Commission in Decision No. C25-0074), dates for the hearing, discovery procedures that are inconsistent with the Commission's rules governing discovery, and/or the method for conducting the hearing (i.e., remote, hybrid, or in-person), the report shall state as much and detail the stipulated procedural schedule, discovery procedures, and/or method for conducting the hearing. If no agreement is achieved, the report shall state as much and identify the competing schedules, discovery procedures, and/or methods for conducting the hearing proposed by the parties. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

13. The parties are urged to review the Commission's public calendar to identify suitable dates for the hearing in this proceeding and propose more than one date or consecutive dates for the hearing. The latest date on which the hearing can conclude is June 18, 2025, which assumes that the deadline for a final Commission decision will be extended 130 days pursuant to § 40-6-109.5(1), C.R.S. The ALJ will not be available for a hearing from May 21-June 5. The deadline for Public Service to file the report is **February 19, 2025**.

14. All parties must appear at the remote prehearing conference. Failure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

E. Omnibus Motion

1. Motion for Extraordinary Protection

15. Within the Omnibus Motion, Public Service requests highly confidential protection for certain documents and information pursuant to Rule 1100(b) of the Commission's Rules of

Practice and Procedure.¹ Under Rule 1100(b), 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 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.

16. Here, Public Service seeks highly confidential protection for: (a) “[t]he line item cost estimates for Engineering, Permitting, and Project Management; Land/Easements; Materials,

¹ 4 *Code of Colorado Regulations* 723-1.

and Construction identified in highly confidential Attachments NGK-1HC and NGK-4HC, as well as the more granular cost assumptions and estimates that fall within each of these cost categories;” (b) “[v]endor bids, pricing information, and product specifications obtained through bid documents or indicative pricing proposals the Company has received from vendors;” and (c) “[a]ny other information or documentation that is produced in this Proceeding that is subject to a protective order in the Company’s 2021 ERP & CEP filed in Proceeding No. 21A-0141E, or its pending JTS resource plan in Proceeding No. 24A-0442E.”²

17. Public Service argues that the information described in the first and second categories of information described above is subject to highly confidential protection because its disclosure:

could cause irreparable harm to the Company’s ability to solicit cost-effective resources needed for the projects, such as land, equipment and materials, or labor, particularly if that information was disclosed to parties with competitive interests. Disclosure to potential counterparties could harm the Company’s bargaining position when negotiating costs and terms with bidders and vendors and would likely result in increased costs for the Company’s customers.³

Public Service further asserts that the third category of information is entitled to the same highly confidential information afforded to the same information in Proceeding No. 21A-0141E.⁴

18. As to the specific relief sought, Public Service requests:

an order restricting access to the first and second categories of information for parties with competitive interests, such as transmission developers outside the Company, vendors, and potential bidders in future competitive solicitations or negotiations associated with this Application. For the remaining parties and intervenors, Public Service seeks an[] order limiting party access to the above categories of Highly Confidential Information to

² Motion at 4.

³ *Id.* at 6.

⁴ *Id.* at 7.

a “reasonable number of attorneys” and a “reasonable number of subject matter experts” representing a party to this proceeding.⁵

For the third category of information, Public Service requests that “access be limited to the same parties and individuals authorized to receive such information as approved in those proceedings, and on the same terms and conditions as authorized therein.”⁶

19. Finally, Public Service filed 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 that extraordinary protection sought for the information must remain in place “indefinitely.”⁷ Respondents did not file unredacted highly-confidential versions of the documents for which it seeks highly confidential protection because they contain highly competitive and sensitive information.⁸ However, Public Service has described the information with sufficient detail to allow the ALJ to make a judgment about the requested relief.

20. The ALJ agrees with Public Service’s conclusion that the information identified in the Motion is highly confidential. 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.

21. Based on the foregoing, and because no party has opposed the Motion for Extraordinary Protection, the ALJ finds and concludes that Respondents have satisfied their burden under Rule 1101(b). The Motion for Extraordinary Protection will be granted.

⁵ *Id.* at 4-5.

⁶ *Id.* at 5.

⁷ Motion, Pascucci Affidavit at 3.

⁸ Motion at 8.

2. Motion for Waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V)

22. In the Omnibus Motion, Public Service requests that the Commission waive: (a) Rule 3206(e)(IV)-(VI) for portions of the Daniels Park Path Upgrades, the Smoky Hill Path Upgrades, the Cherokee Area Upgrades, the Daniels Park Substation, the South Substation, the Leetsdale Substation, and the Denver Terminal Substation for the Denver Metro Project CPCN, as described in the Application; and (b) Rule 3206(f)(IV)-(V) for Circuit 5283, the Leetsdale Substation, and the Monroe Substation for the Leetsdale-Elati Project, again as described in the Application. No intervening party has filed a response to the Omnibus Motion generally, or to Public Service's requests for waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) described above. The ALJ will order each intervening party to file a response to Public Service's request for waiver of the foregoing rules by **February 19, 2025**.

II. ORDER

A. It Is Ordered That:

1. The Motions to Permissively Intervene filed by Colorado Independent Energy Association ("CIEA") and Tri-State Generation and Transmission Association, Inc. ("Tri-State") on January 22, 2025 are granted.

2. The Notices of Intervention filed by Commission Trial Staff ("Staff") and the Office of the Utility Consumer Advocate ("UCA") on January 6 and 27, 2025, respectively, are acknowledged.

3. The parties in this proceeding are Public Service Company of Colorado ("Public Service"), Staff, UCA, CIEA, and Tri-State.

4. A remote prehearing conference in this proceeding is scheduled as follows:

DATE: February 24, 2025

TIME: 1:30 p.m.

WEBCAST: Commission Hearing Room

METHOD: Join by video conference using Zoom at the link to be provided in an email from Commission Administrative Staff⁹

5. Nobody should appear in-person for the remote prehearing conference.

6. Public Service shall file the report of the conferral identified above on or before February 19, 2025.

7. Public Service's request for extraordinary protection for the information identified in the Omnibus Motion filed on December 20, 2024 is granted.

8. Each intervening party must file a response to Public Service's request for waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) contained within the Omnibus Motion stating the intervening party's position with respect to the request by February 19, 2025. If an intervening party opposes the request, the grounds therefor must be included in the response.

⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

9. 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