

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0668E

IN THE MATTER OF ADVICE LETTER NO. 1812 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE THE CAPACITY AND ENERGY PAYMENT RATE APPLICABLE TO QUALIFYING FACILITIES TO BECOME EFFECTIVE JANUARY 1, 2020.

**DECISION GRANTING MOTION FOR
EXTRAORDINARY PROTECTION OF
HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: December 18, 2019
Adopted Date: December 17, 2019

I. BY THE COMMISSION

A. Statement

1. By this Decision, we grant the Motion for Extraordinary Protection of Highly Confidential Information (Motion) filed on November 27, 2019, by Public Service Company of Colorado (Public Service or the Company).

B. Motion

2. On November 27, 2019, Public Service filed an advice letter proposing to revise its capacity and energy payment rates for calendar year 2020 applicable to qualifying facilities with a design capacity of 100 kW or less. As required by prior Commission decision, Public Service filed with its advice letter its PLEXOS[®] model diagnostic run for the coming calendar year (Exhibit 3) and the inputs used in the PLEXOS[®] model base case for the coming calendar year (Exhibit 2).

3. Through the Motion, Public Service seeks extraordinary protection under Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations*

(CCR) 723-1, of the information in Exhibits 2 and 3 to the advice letter filing, and any other documents referencing or related to the indicated information in this Proceeding. No parties protested the filing and no responses were filed to the Motion.

4. Public Service states the following information in Exhibits 2 and 3 is highly confidential:

- Price and performance information of generation units including, but not limited to, heat rate, variable operating costs, and fuel price; and
- Generator fuel contract information such as price, term, and transport cost, and Power Purchase Agreement (PPA) information such as price, term, and capacity.

5. Public Service asserts the generation unit price and performance information is commercially sensitive and used in the Company's daily trading and other business operations. Public Service contends, because this information is used by the Company to sell and buy wholesale energy in the short term markets in Colorado, revealing this information to vendors and competitors could severely impede the Company's trading operations to the detriment of ratepayers. Public Service requests that, except for the Commission, the Administrative Law Judge (ALJ), Commission Staff and its attorneys, and the Office of Consumer Counsel (OCC) staff and its attorneys, party access to this information be limited to a "reasonable number of attorneys" and a "reasonable number of subject matter experts" representing a party to this Proceeding. The Company requests that, with the exception of the Commission, the ALJ, and Commission Staff, these individuals execute an appropriate highly confidential non-disclosure agreement, provided as Attachment A (counsel) and Attachment B (subject matter expert) to the Motion.

6. Public Service asserts the generator fuel contract information contains similar price data, which terms are subject to confidentiality clauses in the contracts. Public Service contends releasing such contract data into the open market would likewise provide an unfair advantage to vendors and competitors. Public Service adds that attempting to obtain consent from counterparties to provide such information would be time-consuming and burdensome. Public Service requests that access to this information be limited to the Commissioners, Commission advisors and advisory counsel, the ALJ, Commission staff and its attorneys, and OCC staff and its attorneys.

7. Public Service states this is the same treatment ordered previously by the Commission in past proceedings with similar filings. Public Service contends that review of this information will still provide all parties executing a non-disclosure agreement substantial information to review regarding the proposed rates for qualifying facilities.

8. Public Service provided an affidavit as Attachment C to the Motion identifying all persons with access to the information and the period of time for which it must remain subject to highly confidential designation. Public Service contends this information must remain protected as highly confidential indefinitely.

9. Public Service requests that all parties and their counsel either destroy or return the highly confidential information at the conclusion of this Proceeding, as provided in Rule 4 CCR 723-1-1101(a)(III)(E).

C. Findings and Conclusion

10. As the party seeking determination that the information is highly confidential and extraordinary protection is required to limit access to specific individuals under stated

conditions, Public Service bears the burden of establishing that the Commission should grant the requested relief. § 24-4-105(7), C.R.S.; Rules 4 CCR 723-1-1101(b) and 4 CCR 723-1-1500.

11. We find that the information Public Service seeks to protect contains highly confidential and competitive energy pricing information and should be given extraordinary protection under our rules. We thus find Public Service has satisfied its burden of proof and we will grant the Motion.

12. At the Commissioners' Weekly Meeting on December 17, 2019, we allowed Public Service's Advice Letter No. 1812 - Electric and proposed tariff page to go into effect by operation of law on the proposed effective date of January 1, 2020. As there are no parties to this Proceeding, no persons or entities other than the Commissioners, Commission advisors and advisory counsel, and Commission Staff and its attorneys shall have access to the highly confidential information in Exhibits 2 and 3.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extraordinary Protection of Highly Confidential Information filed on November 27, 2019, by Public Service Company of Colorado, is granted.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 17, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners