

Decision No. C20-0170

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0588E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR DISTRIBUTION GRID ENHANCEMENTS, INCLUDING ADVANCED METERING AND INTEGRATED VOLT-VAR OPTIMIZATION INFRASTRUCTURE.

**DECISION GRANTING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION AND
REVERSING DECISION NO. C20-0063**

Mailed Date: March 12, 2020

Adopted Date: March 4, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application for Rehearing, Reargument, or Reconsideration, or alternatively, a Motion for Modification (Application for RRR), of Decision No. C20-0063, issued January 29, 2020, on the Third Motion for Extraordinary Protection of Highly Confidential Information (Motion) filed by Public Service Company of Colorado (Public Service). This Decision grants the RRR request and reverses Decision. No. C20-0063.

B. Discussion

2. In this proceeding, through Decision No. C17-0556, issued July 25, 2017, the Commission approved an Unopposed Settlement (Settlement Agreement) and granted Public Service's application seeking a Certificate of Public Convenience and Necessity, as modified by the Settlement Agreement, for implementation of certain distribution grid enhancements.

3. On December 27, 2019, Public Service filed its Motion and requested the Commission grant extraordinary protection under Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, to the Highly Confidential Amended and Restated Major Supply Agreement between Itron, Inc. and Xcel Energy Services, Inc. and its regulated affiliates (collectively, Xcel Energy), in its entirety, including all accompanying exhibits and attachments (Itron Contract).

4. Public Service stated that the Itron Contract contains the following highly confidential information: (1) master advanced meter infrastructure pricing; (2) commercially sensitive and proprietary information specific to the contractual relationship between Xcel Energy and Itron; (3) technical data specific to the meter types being installed; (4) data security requirements; (5) headend applications; (6) network capabilities; (7) distributed intelligence specifications; and (8) highly sensitive cyber security detail.

5. The Company stated that the information in the Itron Contract is proprietary and commercially sensitive and asserts that the release of such information is harmful to its customers, its relationship with Itron, and to Itron if competitors access the Itron Contract. Public Service also states that the information could potentially be used to attempt cyber attacks. The Company requested that, except for the Commission, the Administrative Law Judge (ALJ), Commission Staff and its attorneys, and the 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 requested 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 to the Motion.

6. Public Service also requested that all parties and their counsel either destroy or return the highly confidential information at the conclusion of this Proceeding, as provided in Rule 1101(a)(III)(E) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

7. The Company did not file the Itron Contract as an attachment to the Motion. Public Service claimed that the Itron Contract contains over 1200 pages of commercially sensitive material, and states that it did not attach the Itron Contract for this reason. It also stated that redaction of highly confidential materials within the contract would be extensive, burdensome, and would render a public version essentially useless.

8. Public Service provided an affidavit as Attachment B 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 contended this information must remain protected as highly confidential indefinitely.

9. On January 10, 2020, Mission:data Coalition (Mission:data) and Western Resource Advocates (WRA) jointly filed a response to Public Service's Motion (Joint Response). In the Joint Response, Mission:data and WRA agreed the Itron Contract is highly confidential and stated that they are satisfied with Public Service's proposed conditions for access to review the Itron Contract.

10. By Decision No. C20-0063, issued January 29, 2020, the Commission denied Public Service's request for extraordinary protection, finding that Public Service had not met its burden in showing the relief requested in the Motion should be granted because it did not demonstrate a need for extraordinary protection in the context of a Commission proceeding.

11. On February 11, 2020, Mission:data and WRA filed the Application for RRR requesting that the Commission reconsider or modify Decision No. C20-0063. In the Application

for RRR, Mission:data and WRA state that the Decision effectively bars Mission:data and WRA from reviewing the Itron Contract. Mission:data and WRA claim that their review of the Itron Contract is in the public interest, and state that it is important for parties to have an opportunity to understand how the Itron Contract and new technology provided for in the contract may impact terms and conditions of the Settlement Agreement and how the new technology may or may not differ from technology originally contemplated by the Settlement Agreement. Mission:data and WRA also argue that they have a right to review the contract as parties to the Settlement Agreement and that Decision No. C20-0063's interpretation of Rule 1101 is overly narrow.

C. Findings and Conclusion

12. The Application for RRR explains the interests of Mission:data and WRA in ensuring that the Settlement Agreement is appropriately implemented and provides additional information regarding why Public Service, Mission:data, and WRA support a grant of extraordinary protection to facilitate review of the Itron Contract in this Proceeding. The Commission is satisfied that in these narrow circumstances, granting extraordinary protection to facilitate review of the Itron Contract is appropriate.

13. Additionally, we find that the information Public Service seeks to protect contains highly confidential and sensitive commercial, proprietary, and cyber security information and should be given extraordinary protection under our rules.

14. We therefore find good cause to grant the Motion.

15. The Commission emphasizes that this Decision should not be taken as precedential or indicative of how the Commission will decide any future requests for extraordinary protection, especially those outside a pending proceeding before the Commission.

II. ORDER**A. It Is Ordered That:**

1. The Application for Rehearing, Reargument, or Reconsideration, or alternatively, a Motion for Modification, of Decision No. C20-0063, filed by Mission:data and WRA on February 11, 2020, is granted.

2. Decision No. C20-0063 is reversed and the Third Motion for Extraordinary Protection of Highly Confidential Information filed on December 27, 2019, by Public Service Company of Colorado is granted, with the reminder that this Decision is not precedential or indicative in any way of how the Commission will decide future requests for extraordinary protection.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 4, 2020.**

(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