

Decision No. C22-0739

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22V-0388E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A VARIANCE FROM RULE 3615 RELATED TO MODIFYING EXISTING AGREEMENTS TO ACQUIRE MORE THAN 30 MW OF CAPACITY OUTSIDE OF AN APPROVED RESOURCE PLAN.

**INTERIM COMMISSION DECISION: (1) GRANTING
SECOND MOTION FOR EXTRAORDINARY
PROTECTION; (2) VACATING HEARING; AND (3)
PERMITTING STATEMENTS OF POSITION**

Mailed Date: November 17, 2022
Adopted Date: November 16, 2021

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission: (1) grants the request filed November 14, 2022 on behalf of Neptune Solar, LLC (Neptune) and Thunder Wolf Solar, LLC (Thunder Wolf)¹ seeking to classify certain third-party vendor and commodity pricing information as highly confidential (Second Motion for Extraordinary Protection); (2) vacates the evidentiary hearing currently scheduled for November 18, 2022; and (3) permits parties to file statements of position not to exceed five pages by November 21, 2022.

¹ Through various pleadings, Neptune and Thunder Wolf title the companies “Neptune Energy Center, LLC” and “Thunder Wolf Energy Center, LLC.” Consistent with Decision No. C22-0583-I, issued September 29, 2022, the Commission understands Neptune and Thunder Wolf to be the same companies identified and granted intervention in this proceeding.

B. Background

2. On September 2, 2022, Public Service Company of Colorado (Public Service or Company) filed a petition for partial variance or a waiver from subparagraph 3615(a)(VI) of the Commission's Electric Resource Planning (ERP) Rules, 4 *Code of Colorado Regulations* (CCR) 723-3. The Company states the partial variance is necessary to enable the addition of more than 30 MW of nameplate solar capacity to two existing Power Purchase Agreements (PPAs) originally approved by the Commission as part of the Company's Colorado Energy Plan Portfolio (CEPP).

3. Through Decision No. C22-0532-I, issued September 8, 2022, the Commission established a shortened notice and intervention period, with requests for intervention due no later than September 21, 2022. The Commission subsequently established parties to the proceeding through Decision No. C22-0583-I, issued September 29, 2022, including the Utility Consumer Advocates (UCA), Staff of the Colorado Public Utilities Commission (Staff), and Neptune and Thunder Wolf that filed jointly. Neptune and Thunder Wolf identify that they are the entities that renegotiated the PPAs that are subject of this Proceeding.

4. Through Decision No. C22-0635-I, issued October 21, 2022, the Commission adopted the proposed procedural schedule in this matter, including scheduling an *en banc* hearing on November 18, 2022. Among its determinations, the Commission also granted the Motion for Extraordinary Protection filed jointly by Neptune and Thunder Wolf on October 7, 2022. In its decision, the Commission also raised concerns regarding project details and supply, and requested that through subsequent briefing and pleadings the parties address and expand on statements made in initial pleadings.

5. Consistent with the approved timelines, parties to this proceeding filed briefs and associated attachments. Briefing and filings in this case include further information addressing the initial concerns raised in the Commission's Decision No. C22-0635-I.

6. On November 8, 2022, Neptune and Thunder Wolf jointly filed their Second Motion for Extraordinary Protection. The intervenors state that in response to the Commission's instructions requiring information addressing specific concerns, reply briefs include additional third-party vendor proprietary commodity pricing in addition to delivery plan and schedule information. Consistent with the bidding information and related sensitive information granted extraordinary protection in this proceeding, Neptune and Thunder Wolf request that the Commission classify this information as highly confidential, with permitted access to attorneys and staff representatives of UCA, Staff, and the Commission.

7. On November 14, 2022, Staff, the Company, Neptune, and Thunder Wolf provided a filing notifying the Commission of Staff's support for the Company's petition, subject to the provision of the additional information the Commission required, in addition to certain ongoing reporting requirements enumerated and described in the filing, and agreed to by Neptune, Thunder Wolf, the Company, and Staff. The filing further indicates that UCA remains opposed, but waives all cross at the scheduled November 18, 2022, hearing. Parties represent that they each stipulate that attachments are admitted into the record, and request either a short oral closing statement at hearing, or the opportunity to provide a five-page statement of position by Monday, November 21, 2022. Parties indicate that they agree that any hearing on this matter would be limited to Commissioner and advisory questions and that no live, direct testimony would be provided by any party. If the Commissioners or advisors have questions, Neptune, Thunder Wolf, Public Service, and Staff state they can provide a witness for the currently scheduled hearing.

C. Findings and Conclusions

8. We find good cause to grant the Second Motion for Extraordinary Protection. Pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1101(b) of the Commission's rules a party that believes information requires extraordinary protection beyond the protection afforded to confidential information, may file a motion requesting highly confidential protection. The motion must include a detailed description or representative sample of the information sought to be protected. In addition, the motion must show the information is highly confidential, that the protection afforded by the Commission's rules for confidential information is insufficient, and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection. Finally, the motion must include an exhibit containing the information sought to be protected (or show why providing the information would be overly burdensome, impractical, or too sensitive).

9. Neptune and Thunder Wolf make the necessary showing to demonstrate the need to protect the information identified. As requested, the Commission grants the requested extraordinary protection, consistent with prior Commission order, and limits party access as requested to: (1) the Commission; (2) Commission advisors and Commission advisory counsel; (3) Administrative Law Judges; (4) Commission Staff and its attorneys; and (5) the UCA staff and its attorneys. For clarity of these proceedings, we further clarify that the petitioner, Public Service, and its attorneys are also permitted access to information deemed highly confidential through this decision and Decision No. C22-0635-I.

10. Further, with respect to the need for a hearing in this matter, , the Commission is satisfied that the matter can be determined on the pleadings. Given that parties agree that all attachment filings are stipulated into the record, in addition to parties' representation that any

evidentiary hearing would be limited solely to Commissioner and advisory questions, we find no need for an evidentiary hearing as currently scheduled. The hearing currently scheduled for November 18, 2022, is vacated.

11. Parties are permitted to provide statements of position not to exceed five pages on or before November 21, 2022.

12. The Commission will address the merits of the petition by separate decision.

II. ORDER

A. It Is Ordered That:

1. The motion for extraordinary protection filed by Neptune Solar, LLC and Thunder Wolf Solar, LLC on November 8, 2022, is granted.

2. The remote evidentiary hearing scheduled for November 18, 2022, is vacated.

3. Parties may file statements of position not to exceed five pages by November 21, 2022.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 16, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners