

Decision No. R14-1385-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0660E

IN THE MATTER OF ADVICE LETTER NO. 1672 - ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (GRSA) RIDER APPLICABLE TO ALL ELECTRIC BASE RATE SCHEDULES AND REVISE THE TRANSMISSION COST ADJUSTMENT (TCA) TO REMOVE COSTS THAT HAVE BEEN SHIFTED TO BASE RATES TO BECOME EFFECTIVE JULY 18, 2014.

PROCEEDING NO. 14A-0680E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS ARAPAHOE DECOMMISSIONING AND DISMANTLING PLAN.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PUBLIC SERVICE'S
FIFTH MOTION FOR EXTRAORDINARY
PROTECTION, SUBJECT TO RESTRICTIONS;
AND ORDERING EXTRAORDINARY
PROTECTIONS, SUBJECT TO RESTRICTIONS**

Mailed Date: November 18, 2014

I. STATEMENT

1. The procedural history of this consolidated Proceeding is set out in previous Decisions and is repeated here as necessary to put this Interim Decision in context.

2. On August 28, 2014, by Decision No. C14-1043, as pertinent here, the Commission referred to an Administrative Law Judge (ALJ) motions seeking extraordinary protection of information that is found to be highly confidential.

3. On November 7, 2014, Public Service Company of Colorado (Public Service, Company, or PSCo) filed its Fifth Motion for Extraordinary Protection (Fifth Motion).¹ In that filing, the Company seeks a determination that the following valuation information is highly confidential:

preliminary information for valuation of the Metro Ash Disposal site as of 2013. The property estimate includes information related to comparable real property sales, and how specific factors related to use of the property as a disposal site may affect this property valuation. ...

Public Service also requests extraordinary protection for substantially similar information that may be responsive to future discovery requests. By substantially similar information, [PSCo] means estimates of the value of real property obtained or developed in connection with a possible sale or purchase. Such estimates of property values may include information related to comparable sales, commercially sensitive information related to future uses of the property, and other information that affects the value.

Fifth Motion at 2-3. PSCo describes the valuation information, generically, as “estimates of value of real property Public Service has developed or obtained in connection with a possible sale or purchase.” *Id.* at 1. The Company restricts to “as of 2013” the Metro Ash Disposal valuation information but does not put a date restriction on the “substantially similar [valuation] information.” *Id.* at 2-3.

4. In the Affidavit of Alice K. Jackson (Fifth Motion at Attachment B) at ¶ 5, Ms. Jackson states: “the [valuation] information for which Public Service seeks extraordinary protection ... *must remain protected as highly confidential indefinitely.*” (Emphasis supplied.)

5. As the bases for finding that the valuation information is highly confidential, the Company asserts: (a) “real property valuation information is inherently highly confidential, and commercially and competitively sensitive” (Fifth Motion at 3); (b) disclosure of the valuation

¹ The motion was filed in Proceeding No. 14AL-0660E.

information would “seriously compromise” PSCo’s “ability to negotiate the best prices for the purchase or sale of real property [because, for] example, release of a valuation estimate would almost certainly serve as a floor for any price a potential purchaser of property might offer” (*id.*); (c) “[i]t is not practically feasible to create a public version of property valuation estimates, given the totality of the factors used to appraise value” (*id.*); and (d) by way of analogy, both the Colorado Sunshine Act of 1972, § 24-6-402(4)(a), C.R.S.,² and the Colorado Open Records Act, § 24-72-204(2)(a)(IV), C.R.S.,³ “have exceptions to public disclosure of information related to the purchase or sale of real property” (*id.* at 4). *See also* Fifth Motion at Attachment B (Affidavit of Alice K. Jackson attesting to restricted access).

6. If the Commission determines that the valuation information is highly confidential, the Company requests the following extraordinary protections for the information: (a) the valuation information would be available to the Commission, the Commission’s Advisory Staff (Advisory Staff),⁴ the Trial Staff of the Commission (Trial Staff) and its counsel, and the Colorado Office of Consumer Counsel (OCC) and its counsel; and (b) the valuation information would be withheld from all other parties and their counsel. Fifth Motion at 3. The extraordinary protections would extend to the valuation information in discovery and “to any subsequent use of [the valuation] information in any form in which it may be reused in this proceeding” (*id.* at 1).

² As pertinent here, § 24-6-402(4)(a), C.R.S., permits a local public body to meet in executive session to discuss “[t]he purchase, acquisition, lease, transfer, or sale of any real ... property interest[.]” subject to exceptions that are not relevant here. The local public body may take no formal action during such an executive session.

³ As pertinent here, § 24-72-204(2)(a)(IV), C.R.S., permits, but does not require, the custodian of an agency’s records to deny inspection of “[t]he contents of real estate appraisals made for the state or a political subdivision ... relative to the acquisition of property or any interest in property for public use, *until such time as title to the property or property interest has passed to the state or political subdivision[.]*” subject to exceptions that are not relevant here. (Emphasis supplied.)

⁴ Presumably, this includes the Commission’s advisory counsel.

7. The response time to the Fifth Motion has expired, and no response was filed. The Fifth Motion is unopposed. In addition, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400(d),⁵ the ALJ deems the failure to respond to be a confession of the motion. Thus, the intervenors have acquiesced to the granting of the Fifth Motion and to the extraordinary protections sought.

8. As the party seeking an order from the Commission, Public Service bears the burden of establishing that the valuation information is highly confidential and that the requested extraordinary protections should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1101(b).

9. A motion for extraordinary protection must comply with Rule 4 CCR 723-1-1101(b). The ALJ finds that the Fifth Motion complies with that Rule.

10. The Fifth Motion states good cause to grant the relief sought, subject to restrictions. The ALJ finds that the valuation information, within the restrictions discussed below, is highly confidential. Given the absence of objection, the ALJ finds that the requested extraordinary protections are appropriate; are reasonable; and are consistent with Commission rules, practices, and policies. Given the absence of response to the Fifth Motion, the ALJ finds that no party will be prejudiced if the Fifth Motion is granted.

11. The ALJ will grant the Fifth Motion subject to these restrictions: (a) valuation information pertaining to real property that Public Service has sold is *not* highly confidential; (b) valuation information pertaining to real property with respect to which Public Service has made a final decision not to purchase is *not* highly confidential; and (c) the highly confidential

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

designation given to the valuation information in this Proceeding is not applicable in any other Commission proceeding.

12. The ALJ finds that the first two restrictions are reasonable and necessary because the Company's stated reasons for the highly confidential designation appear to expire with the completion of the sale of the real property or with the Company's final decision not to purchase the real property, depending on the circumstance. In addition, the first two restrictions are consistent with the provisions of § 24-72-204(2)(a)(IV), C.R.S., which treats the contents of a real estate appraisal as publicly-available information once the title to the property is transferred (*i.e.*, the property purchase is completed).

13. In the Affidavit of Alice K. Jackson (Fifth Motion at Attachment B) at ¶ 5, Ms. Jackson states: "the [valuation] information for which Public Service seeks extraordinary protection ... *must remain protected as highly confidential indefinitely.*" (Emphasis supplied.) This statement is consistent with Rule 4CCR 723-1-1100(f), which provides, as pertinent here: "Until otherwise ordered by the Commission or the information becomes publicly available, a Commission determination regarding confidentiality of information shall apply in all future proceedings before the Commission as to the specific information for which ... highly confidential protection was asserted."

14. The ALJ finds that, contrary to the Company's assertion, the valuation information should not be protected indefinitely as highly confidential. Due to the passage of time since the valuation information was created or due to changed circumstances (*e.g.*, a sale of property or a decision not to purchase), or both, the valuation information may no longer be highly confidential. Given the nature of the valuation information, the ALJ finds that the third restriction is reasonable and necessary to assure that, by operation of Rule 4 CCR 723-1-1101(f),

extraordinary protection is not afforded to information that is no longer highly confidential. The third restriction requires Public Service to file a motion for extraordinary protection in any future proceeding in which the Company seeks extraordinary protection for the valuation information.

15. The ordered restrictions do not prevent the Company from asserting that the valuation information is confidential within the meaning of Rules 4CCR 723-1-1100 and 723-1-1101.

16. The ALJ will order that access to the valuation information will be limited to the Commissioners, the Advisory Staff, the Commission's advisory counsel in this Proceeding, the Trial Staff, the Trial Staff's counsel in this Proceeding, the employees of the OCC assigned to this Proceeding, and the OCC's counsel in this Proceeding. Disclosure to the employees of the OCC assigned to this Proceeding, to the Assistant Attorneys General who are the Commission's advisory counsel in this Proceeding, to the Assistant Attorneys General who represent Trial Staff in this Proceeding, and to the Assistant Attorneys General who represent OCC in this Proceeding is conditioned on the signing and filing of the Nondisclosure Agreement attached to the Fifth Motion⁶ and on the conditions set out in the Ordering Paragraphs.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the Fifth Motion for Extraordinary Protection, which motion was filed on November 7, 2014 by Public Service Company of Colorado in Proceeding No. 14AL-0660E, is granted subject to the restrictions stated below.

⁶ Employees of the Commission sign and keep on file a nondisclosure agreement pursuant to Rule 4 CCR 723-1-1100(h). Thus, they are not required to sign the Nondisclosure Agreement attached to the Fifth Motion.

2. Consistent with the discussion above and subject to the restrictions stated below, the following information is highly confidential: (a) preliminary information for valuation of the Metro Ash Disposal site as of 2013; and (b) substantially similar information (that is, estimates of the value of real property obtained or developed in connection with a possible sale or purchase by Public Service Company of Colorado) (collectively, valuation information). The valuation information shall be treated as highly confidential information in accordance with Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 and this Interim Decision.

3. The highly confidential designation in Ordering Paragraph No. 2 is subject to these restrictions: (a) valuation information pertaining to real property that Public Service Company of Colorado has sold is not highly confidential; (b) valuation information pertaining to real property with respect to which Public Service Company of Colorado has made a final decision not to purchase is not highly confidential; and (c) the highly confidential designation in Ordering Paragraph No. 2 is not applicable in any other Commission proceeding.

4. Access to the highly confidential valuation information identified in Ordering Paragraph No. 2, as restricted in Ordering Paragraph No. 3, is limited to: the Commissioners; the Commission's Advisory Staff; the Commission's advisory counsel in this Proceeding; the Trial Staff of the Commission; the Trial Staff's counsel in this Proceeding; the employees of the Colorado Office of Consumer Counsel who are assigned to this Proceeding; and the Colorado Office of Consumer Counsel's counsel in this Proceeding.

5. Disclosure of the highly confidential valuation information identified in Ordering Paragraph No. 2, as restricted in Ordering Paragraph No. 3, to the Commission's advisory counsel in this Proceeding, to the Trial Staff's counsel in this Proceeding, to the employees of the Colorado Office of Consumer Counsel who are assigned to this Proceeding, and to the Colorado

Office of Consumer Counsel's counsel in this Proceeding is conditioned on the signing and filing of the Nondisclosure Agreement attached to the Fifth Motion for Extraordinary Protection filed on November 7, 2014.

6. The Parties are held to the advisements contained in the Decisions issued in this Proceeding.

7. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director