

Decision No. R14-1448-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0516G

CARESTREAM HEALTH LLC,

COMPLAINANT,

V.

XCEL ENERGY DOING BUSINESS AS PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DENYING MOTION TO COMPEL**

Mailed Date: December 8, 2014

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I. STATEMENT

1. On May 20, 2014, Carestream Health LLC (Carestream) filed a Complaint against Xcel Energy, doing business as Public Service Company of Colorado (Public Service). That filing commenced this proceeding.

2. On May 28, 2014, a hearing was set in this matter for August 11, 2014.

3. On May 28, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge.

4. On June 17, 2014, Public Service filed their Answer to the Complaint (Answer). The Answer includes both specific and general denials of the allegations in the Complaint and puts this proceeding at issue.

5. The procedural history of this proceeding is set out in previous Decisions and is repeated here as necessary to put this Decision in context.

6. On October 29, 2014, Carestream filed its Motion to Compel. Carestream seeks an order of the Commission compelling Public Service to provide a response to Carestream discovery request 1-8.

7. Carestream argues that the information is relevant since it relates to Public Service's claim that the tariff dictates the outcome in this matter and this information could show that Public Service has deviated from this practice on other occasions.

8. On November 12, 2014, Public Service filed its Response to Motion to Compel (Response). In its Response Public Service objects to the requested discovery citing a lack of relevance, privacy concerns, and states that providing this information would be unduly burdensome and oppressive.

II. DISCUSSION

A. **Applicable Law**

9. The Commission's procedural rules allow any party to initiate discovery upon any other party to discover any matter, not privileged, that is relevant to the claim or defense of a party. Relevant information need not be admissible at hearing if the discovery is reasonably calculated to lead to the discovery of admissible evidence. *See, Rule 1405 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1 and Rule 26(b)(1) of the Colorado Rules of Civil Procedure.*

10. The Colorado Supreme Court has interpreted these discovery rules to permit very broad discovery and specifically stated, "When resolving discovery disputes, the rules should be construed liberally to effectuate the full extent of their truth-seeking purpose, so in close cases the balance must be struck in favor of allowing discovery." *National Farmers Union Property and Casualty Co. v. District Court for the City and County of Denver*, 718 P.2d 1044, 1046 (Colo. 1986).

B. **The Discovery Request**

11. In Request No. 1-8, Carestream requests:

Please list all non-residential gas customers the Company has back-billed during the five years preceding the date Carestream became a gas customer through the date of this request. For each customer please indicate the amount back-billed, the amount collected, provide the reason for the back-bill, and indicate how the Company learned of the need to back bill the customer.

12. Public Service objects to the request on relevance and privilege grounds. Public Service argues that the information requested is information about "thousands" of unrelated gas customers and is unrelated to Carestream's Complaint and the information would not lead to the discovery of admissible evidence. Further, Public Service argues that the request

is unduly burdensome and oppressive¹ and that the information is privileged and implicates the Commission's data privacy rules.

13. Carestream argues that Public Service has asserted in a discovery response "that it has never collected less than the full back-bill allowed under the tariff for any billing error[.]"² Based upon this alleged discovery response, Carestream argues that it should be allowed information under what the circumstances are that Public Service has decided to discard the tariff.³

14. Contrary to the argument made by Carestream, the portion of the discovery response cited does not justify access to this information. In Request No. 2-12, Carestream requests the following:

Admit that the Company has settled other back bill disputes for less amounts than the back –bill.

15. Public Service objected to the request, but without waiving the objection provided the following response:

Public Service denies that it has charged amounts less than amounts due for known gas supply quantities provided by the Company to customers, charged as Prior Period Adjustments Settlements under the Company's Gas Transportation Service tariffs.

16. The response from Public Service does not speak to the amount "collected" only to the amount billed.

17. It is unclear what relevance this information would have in the above captioned proceeding or how this information could reasonably lead to the discovery of admissible evidence. A settlement made between Public Service and a customer concerning back billing

¹ Public Service estimates a cost of \$20,000 to configure systems to be able to retrieve the data.

² Carestream's Motion to Compel p. 1, citing to Exhibit B.

³ *Id.*

would have no precedential effect and in most cases are confidential. The negotiations and agreements in the back billing of other customers are irrelevant and inadmissible in this proceeding.

18. In addition, based upon the arguments presented by Public Service, the request is unduly burdensome and oppressive.

III. ORDER

A. It Is Ordered That:

1. The Motion to Compel is denied.
2. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge