

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0309G

IN THE MATTER OF ADVICE LETTER NO. 949-GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REQUEST APPROVAL TO ELIMINATE THE CURRENTLY EFFECTIVE 24.19 PERCENT GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) AND PLACE INTO EFFECT REVISED BASE RATES FOR ALL GAS RATE SCHEDULES THAT WILL REPLACE AND SUPERSEDE THE CURRENTLY EFFECTIVE BASE RATES TO BECOME EFFECTIVE JULY 1, 2019.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING MOTION FOR A
PROTECTIVE ORDER AFFORDING
EXTRAORDINARY PROTECTION FOR
HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: July 31, 2019

I. STATEMENT

1. On May 31, 2019, Public Service Company of Colorado (Public Service) filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 949-Gas, accompanying tariff sheets, and supporting testimony and attachments. The proposed effective date on the filed tariffs was July 1, 2019. Public Service also requested that the Commission set a hearing on the proposed rates and tariff changes and thereby suspend the effective date of the proposed tariffs. This filing commenced Public Service’s 2019 Phase II gas rate case.

2. By Decision No. C19-0541 (mailed on June 20, 2019), pursuant to § 40-6-111(1), C.R.S. (2019), the Commission set for hearing the tariffs filed with Advice Letter No. 949-Gas and thereby suspended their effective date for 120 days from the proposed effective date, or until October 29, 2019. The Decision also referred the matter to an Administrative Law

Judge (ALJ) to set hearing dates, to rule on interventions, and to establish other procedures by separate decisions. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

3. Pursuant to § 40-6-111(1)(b), C.R.S. (2019), Decision No. R19-0622-I (mailed on July 22, 2019), the ALJ suspended the effective date of the tariff sheets filed with Advice Letter No. 949-Gas for an additional 130 days, or until March 7, 2020.

4. The procedural history of this Proceeding is set forth in Decisions previously issued herein and is repeated here as necessary to put this Decision into context.

5. Decision No. R19-0622-I acknowledged the interventions as of right filed by the Colorado Office of Consumer Counsel (OCC) on July 1, 2019, and filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on July 9, 2019. Decision No. R19-0622-I also granted the Motion to Intervene (as a permissive intervenor) filed by Energy Outreach Colorado (EOC) on July 5, 2019. Finally, Decision No. R19-0622-I scheduled a prehearing conference in this Proceeding for August 1, 2019 at 1:30 p.m.

6. Decision No. R19-0636-I (mailed on July 26, 2019) granted the motions for permissive intervention filed by Atmos Energy Corporation (Atmos) on July 11, 2019; by WoodRiver Energy, LLC (WoodRiver), on July 16, 2019; by Black Hills Colorado Gas, Inc. (Black Hills), on July 18, 2019; by Colorado Natural Gas, Inc. (CNG), on July 19, 2019; by Tiger Natural Gas, Inc. (Tiger), on July 19, 2019; and by Climax Molybdenum Company (Climax) on July 19, 2019.¹ The Parties to this Proceeding are Public Service, OCC, Staff, EOC, Atmos, WoodRiver, Black Hills, CNG, Tiger, and Climax.

¹ On July 25, 2019, Public Service filed a response to these motions for permissive intervention and stated that it did not oppose the intervention of these parties.

7. On May 31, 2019, Public Service also filed a Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information (Motion for Protective Order). While Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, allows parties 14 days to respond to motions, when Decision No. R19-0622-I was issued on July 22, 2019, no responses had been filed to the Motion for Protective Order. Therefore, Decision No. R19-0622-I extended the due date for filing responses to the Motion for Protective Order to no later than 5:00 p.m. on July 26, 2019.

8. No responses to the Motion for Protective Order were filed by the extended deadline. Pursuant to Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, “The Commission may deem a failure to file a response as a confession of the motion.” The ALJ finds that the failure of the parties, and interested persons authorized to respond by Decision No. R19-0622-I, to file responses to the Motion for Protective Order will be deemed a confession of the merits of the Motion for Protective Order, which is not opposed.

9. In the Motion for Protective Order, Public Service seeks extraordinary protection to safeguard the confidentiality of gas customer-specific information. Specifically, Public Service seeks extraordinary protection for highly confidential and proprietary customer data of individual customers who take natural gas service from Public Service and gas transportation agent-specific information, including billing, usage, and other volumetric information. Public Service advises that certain of these data are contained in Highly Confidential Attachment A to the Motion for Protective Order, which includes a portion of the highly confidential work paper of Public Service Witness, Ms. Joni H. Zich.² This excerpt from Ms. Zich’s work paper shows transportation volume and balancing information by customer and agent. Public Service

² Motion for Protective Order, at page 1.

asserts that these data constitute Highly Confidential Information; and, therefore, warrant extraordinary protection from disclosure.³

10. In the course of this proceeding, Public Service anticipates receiving discovery or audit requests seeking production of this and similar Highly Confidential Information. Public Service asserts that customer and gas transportation agent-specific information, to be provided in the course of this Proceeding through work papers, testimony, discovery, or otherwise, which contain Highly Confidential Information, warrant extraordinary protection from disclosure.⁴

11. Public Service claims that the Commission rules governing confidential information would provide insufficient protection for the Highly Confidential Information. Absent extraordinary protection, Public Service warns that any party to this Proceeding, including individuals, customer groups, gas transportation customers, agents or aggregators, who sign an ordinary confidentially non-disclosure agreement could obtain access to the billings, volumes, and other customer or agent-specific information of their competitors. Public Service asserts that the disclosure of gas customer and transportation agent-specific information can present a competitive disadvantage to the customer or agent whose information is disclosed. According to Public Service, it is in the public interest to protect highly confidential customer and agent-specific information from such disclosure.⁵

12. Public Service states that Rule 4027 of the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (2018), prohibits natural gas utilities from disclosing customer data without proper authorization. “Customer data” is generally defined to include non-public

³ *Id.*, at page 2.

⁴ *Id.*, at page 3.

⁵ *Id.*, at page 5.

customer-specific usage and billing information collected by the utility and stored in its data systems.⁶

13. Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1, sets forth the requirements for motions for protective orders seeking extraordinary protection for highly confidential information.⁷ As required by Rule 1101(b)(VI), 4 CCR 723-1, attached to the Motion for Protective Order (as Attachment D) is the affidavit of Ms. Michelle Moorman Applegate, which attests to the Highly Confidential Information for which extraordinary protection is being sought and provides a list of the categories of persons who have access to the Highly Confidential Information.

14. The ALJ finds that the Motion for Protective Order satisfies the requirements of Rule 1101(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

15. Public Service seeks to limit disclosure of the Highly Confidential Information to the Commissioners, the ALJ presiding over this Proceeding, the Commission's Advisory Staff and Advisory Attorneys, Trial Staff and its attorneys, and the OCC and its attorneys. Public Service states that it will provide any customer or authorized agent, aggregator, or customer group that is a party to this proceeding, and its counsel, with its individualized Highly Confidential Information, but not that of any other individual or entity.⁸ Public Service included proposed, draft highly confidential non-disclosure agreements (NDAs) as Attachments C (for subject matter experts) and D (for attorneys) to the Motion for Protective Order.

⁶ See Rule 4001(k) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4.

⁷ Public Service accurately summarizes those requirements in Paragraph 6 on pages 3 and 4 of the Motion for Protective Order.

⁸ Motion for Protective Order, at page 6.

16. The ALJ will grant Public Service's Motion for Protective Order. Public Service's motion strikes a reasonable balance between the need for disclosure of information, so that the attorneys for the intervenors in this proceeding can protect their clients' interests, with the needs of Public Service to protect its own interests and the interests of its gas customers and gas transportation agents and aggregators in protecting highly confidential customer-specific information.

17. The ALJ finds that the following is deemed to be Highly Confidential Information in this Proceeding: customer-specific information of individual customers who take natural gas service from Public Service and gas transportation agent (or aggregator)-specific information, including billing, usage, and other volumetric information.

18. The ALJ agrees with Public Service's assertion that in this Proceeding no customer, customer group, transportation agent, or aggregator representing gas transportation customers has any compelling need to know the information specific to another individual customer, gas transportation agent, or aggregator.

19. Therefore, access to and the disclosure of the information deemed to be Highly Confidential Information by this Decision will be limited to the following persons: the Commissioners, the ALJ presiding over this proceeding, the Commission's Advisory Staff and advisory attorneys, Staff and its attorneys, and the OCC and its attorneys. Each of the Parties, with the exception of the ALJ and the Commissioners, shall contact Public Service as to the method that person chooses to dispose of the information upon the conclusion of this Proceeding, as provided by Rule 1100(1)(I), 4 CCR 723-1.

20. Pursuant to Rule 1100(h), 4 CCR 732-1, the Commissioners, ALJs, Commission Staff, and Commission and Staff counsel are not required to sign non-disclosure agreements in

order to gain access to confidential and highly confidential information. Each Commissioner, ALJ, Commission counsel, and Commission Staff member signs an annual non-disclosure agreement that includes the requirement to “maintain and to treat information to which the Commission has granted highly confidential protection pursuant to paragraph 1101(b) in accordance with the decision granting highly confidential protection.”

21. Appendix A to this Decision is a Highly Confidential NDA to be signed by any person authorized by this Decision to have access to the Highly Confidential Information before such access can be obtained.

22. The ALJ notes that several persons have already signed and filed the Highly Confidential NDAs that were attached to the Motion for Protective Order (*e.g.*, the attorneys and subject matter experts for the OCC) or another form of Highly Confidential NDA (*e.g.*, Staff’s attorneys). If those persons are authorized by this Decision to have access to the Highly Confidential Information, the ALJ finds that their filed Highly Confidential NDA is acceptable; they **do not** need to sign and refile the Highly Confidential NDA in Appendix A. All other persons, who are authorized by this Decision to have access to the Highly Confidential Information and who have not filed a Highly Confidential NDA, should use the NDA in Appendix A attached to this Decision.

23. Any persons **not** authorized by this Decision to have access to the Highly Confidential Information, and who have already signed and filed one of the NDAs attached to the Motion for Protective Order, **will not have access to the Highly Confidential Information.** Their NDAs will be construed as ordinary confidential NDAs in this Proceeding.

II. ORDER

A. It Is Ordered That:

1. The Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information filed by Public Service Company of Colorado on May 31, 2019, is granted, consistent with the discussion, findings, and conclusions in this Decision. This Interim Decision shall constitute a Highly Confidential Protective Order.

2. Access to and the disclosure of the information deemed to be Highly Confidential Information by this Decision shall be limited to the following persons: the Commissioners, the Administrative Law Judge presiding over this Proceeding, the Commission's Advisory Staff and Advisory Attorneys, Trial Staff of the Colorado Public Utilities Commission and its attorneys, and the Colorado Office of Consumer Counsel and its attorneys.

3. Disclosure of and access to the Highly Confidential Information, as defined in this Decision, shall be granted only to those persons who have first signed and filed the Highly Confidential Non-Disclosure Agreement attached to this Decision as Appendix A, or another Highly Confidential Non-Disclosure Agreement found by the Administrative Law Judge to be acceptable.

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director