

Decision No. R19-0682-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0290E

IN THE MATTER OF ADVICE LETTER NO. 1798 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT SECONDARY VOLTAGE TIME-OF-USE ELECTRIC VEHICLE SERVICE TO BECOME EFFECTIVE JUNE 24, 2019.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Mailed Date: August 9, 2019

I. BY THE COMMISSION

A. Statement

1. On May 24, 2019, Public Service Company of Colorado (Public Service) filed Advice Letter No. 1798-Electric with tariff sheets establishing a Secondary Voltage Time-of-Use Electric Vehicle Service (Schedule S-EV) with Direct Testimony of witnesses Jack Ihle and Steven Wishart. The proposed effective date of the tariff filed with Advice Letter No. 1798-Electric is June 24, 2019.

2. Schedule S-EV offers an optional service that would be available to large, non-residential customers for charging their own electric vehicles or providing charging services to third parties for a fee. The tariff sheets set forth rates including a monthly service and facilities charge and a monthly demand charge, as well as per kilowatt hour charges for “On Period,” “Off Period,” and “Called Critical Peak Hours.” Public Service states that the creation of Schedule S-EV will not directly affect any other service or customer class.

3. On June 13, 2019, by Decision No. C19-0491, the effective date of the tariff sheets was suspended and Proceeding No. 19AL-0290E was referred to an Administrative Law Judge.

4. The procedural history of the above captioned proceeding is recited in Decisions previously issued in this Proceeding and is repeated here as necessary to put this Decision into context.

5. On July 23, 2019, Decision No. R19-0625-I, among other things, approved a procedural schedule and set the evidentiary hearing for September 23 and 24, 2019.

6. On August 1, 2019, Public Service filed an Unopposed Motion Requesting Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time (Motion for Extraordinary Protection).

B. Motion for Extraordinary Protection

7. In its Motion for Extraordinary Protection, Public Service seeks highly confidential designation and protection for customer specific data that does not comport with Rule 3033(b)¹ (the 15/15 Rule). Public Service specifically requests extraordinary protection for the following four documents: (1) Highly Confidential Workpaper 05- RTD Bus Charging 5.21.19; (2) Highly Confidential Workpaper 06- Public Charging Billing Data; (3) Highly Confidential Workpaper 07- CPP By Customer 2018; and (4) Highly Confidential CPUC 2-9 (CPP Analysis 2017).²

8. Public Service states that three of the documents identified above “each contains specific customer data, and in particular, individually identifiable and specific customer data

¹ Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723.3.

² Motion for Extraordinary Protection, pp. 2-3.

appropriately treated as highly confidential because the data does not satisfy Commission Rule 3033(b).”³

9. Public Service states that Highly Confidential Workpaper 05- RTD Bus Charging 5.21.19 is solely the data of the Regional Transportation District and is entitled to extraordinary protection, and limited distribution, consistent with past Commission treatment of such data.

10. Public Service requests that the Commission grant extraordinary protection to any information produced in this proceeding going forward that does not comport with the 15/15 Rule, including the data contained in Highly Confidential Attachments C through F to this Motion for Extraordinary Protection, as well as any other such similar information as may be identified during the course of this proceeding.

11. Public Service requests that access to the highly confidential information at issue be limited to the Commissioners, the Administrative Law Judge, the Commission’s Advisory Staff and advisory attorneys, the Commission’s Trial Staff and attorneys for Trial Staff, as well as the Office of Consumer Counsel and attorneys for the Office of Consumer Counsel.

12. Under Rule 1100(n) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the information referenced above is presumed to be a public record. Rule 1101 provides the procedure and requirements for filing and seeking a document to be designated as highly confidential. Rule 1101(c) governs records that are presumed to be public under Rule 1100(n) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

³ *Id.* at p. 3.

13. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential treatment:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.⁴

14. Here, as summarized above, Public Service provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. The Motion for Extraordinary Protection also includes a proposed form of nondisclosure agreement, an affidavit identifying the individuals that have access to the information and stating that extraordinary protection sought for the information must remain in place "indefinitely," and both a public version of the subject information with the allegedly

⁴ 4 CCR 723-1.

highly confidential information redacted, and an unredacted highly confidential version of those documents. Finally, no party opposes the Motion for Extraordinary Protection.

15. Public Service has satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, Public Service's Motion for Extraordinary Protection shall be granted.

II. ORDER

A. It Is Ordered That:

1. The Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed by Public Service Company of Colorado (Public Service) on August 1, 2019 is granted.

2. Access to the highly confidential information as described above shall be limited to only Commissioners, the Administrative Law Judge presiding over this matter, the Commission's Advisory Staff and advisory attorneys, the Commission's Trial Staff and attorneys for Trial Staff, the Office of Consumer Counsel (OCC) and attorneys for the OCC.

3. In order to have access to the highly confidential information, representatives of, and attorneys for, the OCC, must have signed, served, and filed the non-disclosure agreement (NDA) provided by Public Service prior to gaining access to the highly confidential information in the report at issue.

4. Members of the Commission, the Commission's Trial and Advisory Staff assigned to this proceeding, and the Attorneys General representing the Trial Staff and Advisory Staff assigned to this proceeding, must have signed and have on file with the Commission a current annual NDA in accordance with Commission Rule 4 *Code of Colorado Regulations* 723-1-1100(h) prior to gaining access to the highly confidential information.

5. All provisions enumerated above are now in effect regarding the highly confidential information is granted consistent with the discussion above.

6. This Decision is effective upon its Mailed Date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director