

Decision No. R20-0169-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19AL-0687E

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IN THE MATTER OF ADVICE LETTER NO. 1814 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT THE MODIFIED RESIDENTIAL ENERGY TIME-OF-USE SCHEDULE TO BECOME EFFECTIVE JANUARY 2, 2020.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
GRANTING PUBLIC SERVICE COMPANY OF  
COLORADO'S SECOND MOTION FOR  
EXTRAORDINARY PROTECTION**

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Mailed Date: March 12, 2020

**I. STATEMENT**

**A. Background**

1. A more comprehensive summary of the background of this proceeding is included in Decision No. R20-0121-I that issued in this proceeding on February 21, 2020. The facts relevant to this Decision are stated below.

2. By Decision No. R20-0121-I that issued on February 21, 2020, the Administrative Law Judge (ALJ), among other things, granted the Motion for Extraordinary Protection filed by Public Service Company of Colorado (PSCo) on December 27, 2019.

3. On March 9, 2020, PSCo filed its Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time (Second Motion for Extraordinary Protection).

**B. Second Motion for Extraordinary Protection**

4. In the Second Motion for Extraordinary Protection, PSCo seeks highly confidential protection for “certain PLEXOS® modeling input and output data” to be produced in response to particular discovery requests.<sup>1</sup> PSCo specifically describes seven categories of PLEXOS® modeling input data and six categories of PLEXOS® modeling output data (collectively, Highly Confidential Information).<sup>2</sup> PSCo further requests highly confidential protection for “other documents provided in the course of this proceeding, through workpapers, testimony, discovery or otherwise, that contain Highly Confidential Information, or sufficient information to ascertain it.”<sup>3</sup>

5. PSCo states that the information identified in the Second Motion for Extraordinary Protection “is used by the Company to sell and to buy wholesale energy in the short term markets in Colorado” and includes “the incremental running costs of select Company-owned generators, and independent generators that have contracted to give dispatch control to Public Service, at various points along their individual heat rate curves[,]” as well as “the most recent fuel costs, unit characteristics, and energy transaction information.”<sup>4</sup> PSCo explains that the release of this data “would provide a potential supplier to, or competitor of, Public Service with significant business intelligence, in a highly granular form, of the costs Public Service incurs for generating power under numerous system conditions[,]” which “could severely hamper Public Service’s trading operation to the harm of our customers.”<sup>5</sup>

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<sup>1</sup> Second Motion for Extraordinary Protection at 1.

<sup>2</sup> *Id.* at 6-9.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* at 10.

6. In the Second Motion for Extraordinary Protection, the seven categories of PLEXOS® modeling input data are identified in paragraph 10 as categories 10(a) through (g).<sup>6</sup> With respect to categories 10(a) through (c) of the input data, PSCo seeks to restrict party access to the following: (1) the Commissioners; (2) Commission advisors and advisory counsel; (3) the ALJ; (4) Commission Staff and its attorneys; and (5) the OCC’s staff and its attorneys (Restricted Access).<sup>7</sup> With respect to categories 10(d) through (g) of the input data, PSCo seeks to limit access to a “reasonable number of attorneys” and a “reasonable number of subject matter experts” representing parties other than Staff and the OCC in this proceeding (Limited Access).<sup>8</sup>

7. Additionally, the six categories of PLEXOS® modeling output data are identified in paragraph 11 as categories 11(a) through (f).<sup>9</sup> PSCo seeks Restricted Access for categories 11(a) and (b) of the output data and Limited Access for categories 11(c) through (f).<sup>10</sup>

### **C. Analysis**

8. Because the Second Motion for Extraordinary Protection is unopposed, the request to waive response time thereto is granted.

9. Under Rule 1100(n) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the information identified in the Second Motion for Extraordinary Protection is presumed to be a public record.

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<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7-9.

<sup>10</sup> *Id.*

Rule 1101 provides the procedure and requirements for filing and seeking the designation of such information as highly confidential. Specifically, Rule 1101(c) allows an entity or person to file a motion requesting highly confidential protection for records pursuant to Rule 1101(b). Rule 1100(d) specifies that Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

10. 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.

11. Here, as summarized above, PSCo provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. The Second Motion for Extraordinary Protection also includes a proposed form of nondisclosure agreement and 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.” While an exhibit containing the allegedly highly confidential information was not filed in accordance with the procedures in Rule 1101(a), PSCo cites Rule 1101(e)<sup>11</sup> and states that the information at issue is being provided in response to discovery requests. Finally, no party opposes the Second Motion for Extraordinary Protection.

12. Based on the foregoing, the ALJ finds and concludes that PSCo has satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, PSCo’s Second Motion for Extraordinary Protection shall be granted.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time filed by Public Service Company of Colorado on March 9, 2020 (Second Motion for Extraordinary Protection) is granted consistent with the discussion above.

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<sup>11</sup> Rule 1101(e), in relevant part, provides: “Information which is subject to highly confidential protection and that is provided in response to discovery or in response to Commission staff audit shall not be filed with the Commission.”

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CONOR F. FARLEY

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director