

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0094E

IN THE MATTER OF ADVICE LETTER NO. 1820-ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT AN OPTIONAL SCHEDULE INTERVAL DATA METER OPTION FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS TO BECOME EFFECTIVE ON APRIL 6, 2020.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MOTION FOR
EXTRAORDINARY PROTECTION,
FURTHER SUSPENDING TARIFF SHEETS' EFFECTIVE
DATE, AND SCHEDULING PREHEARING CONFERENCE**

Mailed Date: May 8, 2020

TABLE OF CONTENTS

I.	STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS	1
A.	Background.....	1
B.	Motion for Extraordinary Protection	2
C.	Tariff Sheets' Effective Date.....	5
D.	Prehearing Conference	5
II.	ORDER.....	7
A.	It Is Ordered That:	7

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Background

1. On March 6, 2020, Public Service Company of Colorado (Public Service or the Company) filed Advice No. 1820 – Electric to implement Schedule Interval Data Meter Option in the Company's Colorado P.U.C. No. 8 – Electric tariff, Sheet Nos. 119 and 119A, to provide

an optional service rate for customers who desire to receive an alternative Interval Data Meter to the standard Advanced Meter Infrastructure meter (Advanced Metter), beginning with the commencement of the Advanced Meter roll-out in 2021, with the optional schedule becoming effective April 6, 2020. Also on March 6, 2020, Public Service filed a Motion for Approval of Alternative Form of Notice, which the Commission granted on March 20, 2020. Decision No. C20-0186-I.

2. On March 16, 2020, the Colorado Office of Consumer Counsel (OCC) filed a Protest, requesting that the matter be suspended and set for an evidentiary hearing.

3. On March 18, 2020, Public Service filed a Motion for Extraordinary Protection of Highly Confidential Information (Motion).

4. On March 26, 2020, Colorado Public Utilities Commission Trial Staff (Staff) filed a Notice of Intervention of Right, requesting a hearing.

5. During its weekly meeting on April 1, 2020, the Commission suspended the tariff sheets' effective date for 120 days per § 40-6-111(1), C.R.S., through August 3, 2020; referred the matter to an Administrative Law Judge (ALJ) for a hearing; and set an intervention deadline of 30 days from the Decision's April 7, 2020 mail date. Decision No. C20-0215 mailed April 7, 2020. As such, interventions were due by May 7, 2020.

6. On April 8, 2020, the OCC filed a Notice of Intervention of Right. And, on April 14, 2020, Staff filed an Amended Notice of Intervention, in which it continues to request a hearing.

B. Motion for Extraordinary Protection

7. No party has filed a response to the Company's Motion. As such, the ALJ deems it unopposed. Rule 1400(d), 4 *Code of Colorado Regulations* (CCR) 723-1, Commission's Rules

of Practice and Procedure. The Motion seeks extraordinary protection for the Master Pricing Schedule exhibit of the Master Maintenance, Repair and Operations Services Agreement between Tru Check, Inc. (Tru Check) and Public Service. Public Service states that the Master Pricing Schedule has not been released publicly and it contains commercially sensitive and proprietary pricing information specific to the negotiated contractual relationship between Public Service and Tru Check. It asserts that this information is highly confidential. The Company argues that releasing this highly confidential information without extraordinary protection may endanger the price protection given to customers through the Company's competitive bidding solicitation and contract negotiation, and provide a competitive advantage to Tru Check's competitors. The Company argues that ultimately, releasing the highly confidential information without extraordinary protection could adversely impact ratepayers because it negatively impacts Xcel Energy's ability to negotiate and contract with vendors concerned that Public Service will release information about their negotiations.

8. Public Service seeks an order limiting party access to the highly confidential information to a "reasonable number of attorneys' and . . . 'subject matter experts'" representing a party to this proceeding who are not Tru Check's competitors. Motion at 5. The Company asks that such individuals accessing this information be required to execute an appropriate highly confidential non-disclosure agreement.¹

9. In support of its Motion, the Company includes an Affidavit of Steven P. Berman (Affidavit), consistent with Commission Rule 1101(b)(VI), 4 CCR 723-1. Exhibit B to Motion. The Affidavit identifies Company personnel with access to the information alleged to be highly confidential, and requests extraordinary protection for the records to remain in place indefinitely.

¹ The Company's request does not encompass the Commission, its Staff and counsel, or the ALJ.

Id. Public Service also submitted the proposed form nondisclosure agreements for counsel and experts. Exhibit A to Motion. Public Service filed the documents alleged to be highly confidential per Rule 1101(b)(VII) in a form that comports with Rule 1101(a). Exhibit C to Motion. The Company requests that all parties and counsel who access the information alleged to be highly confidential during this proceeding either destroy or return the information when the proceeding concludes.

10. Any party claiming that information is highly confidential must file a motion demonstrating: that the relevant information is highly confidential; that Commission rules governing confidential information are insufficient to protect the highly confidential information; and that if the proposed extraordinary protections are adopted, they will afford appropriate protection. Rule 1101(b)(IV), 4 CCR 723-1. The motion must also: provide a detailed description of the information sought to be protected; state the specific relief sought; advise all other parties of the request and subject of the information at issue; include an affidavit identifying the people with access to the information and timeframe for extraordinary protection; include the form nondisclosure agreement sought to be executed; and include an exhibit with the highly confidential information or show why doing so is overly burdensome, impractical, or is too sensitive to file. Rule 1101(b)(I), (II), (III), (V), (VI), and (VII), 4 CCR 723-1.

11. The ALJ finds that Public Service has met its burden to show that the relevant customer information is highly confidential that should be afforded extraordinary protection, and has met all other requirements of Rule 1101(b) to obtain extraordinary protection for the relevant customer information. The ALJ finds that disclosure without additional protection may negatively impact ratepayers by presenting additional challenges and obstacles to the Company's ability to negotiate favorable terms with its vendors. As such, the ALJ concludes that it is in the

public interest to afford extraordinary protection for the referenced information, consistent with Public Service's request. The ALJ will grant the Motion.

C. Tariff Sheets' Effective Date

12. For a final Commission decision to issue before the current effective date of the tariff sheets, August 3, 2020, a hearing would have been required by the end of April 2020. Given that the intervention period did not expire until May 7, 2020, it was not possible to hold an evidentiary hearing by the end of April 2020. In order to allow time to hold an evidentiary hearing, the ALJ will suspend the effective dates of the tariff sheets by an additional 130 days, as permitted under § 40-6-111(1), C.R.S., to December 11, 2020. If no new tariffs are established by the Commission before the end of the suspension period, the tariff pages filed by Public Service may become effective.

D. Prehearing Conference

13. To move this matter forward, the ALJ will schedule a prehearing conference. At the prehearing conference, an evidentiary hearing will be scheduled, and procedural deadlines will be established.² The parties may raise other issues relevant to this proceeding at the prehearing conference, including agreements impacting this proceeding. The parties are required to confer on a hearing date and procedural deadlines prior to the prehearing conference. As part of this conferral, the parties must discuss whether they are willing and able to hold the hearing by video conference. The parties are on notice that the ALJ anticipates that the evidentiary hearing must be completed by August 20, 2020 to allow enough time for a recommended decision and final Commission decision to be issued by December 11, 2020. If the parties agree to a hearing

² This includes deadlines to file witness and exhibit lists, exhibits, post-hearing statements of position, settlement agreements and stipulations, and prehearing motions.

date and procedural schedule which allows for a hearing to be completed by August 20, 2020, the ALJ encourages them to submit a proposed hearing date and procedural schedule prior to the prehearing conference. In such a circumstance, provided that the ALJ substantially approves the proposed schedule, the ALJ will vacate the prehearing conference.

14. The prehearing conference will be held remotely using GoToMeetings. The parties will appear at the prehearing conference from remote locations by video conference or telephone. Parties may not appear in person for the prehearing conference. The ALJ encourages the parties to attend the hearing by video conference, as this will provide helpful information on appropriate next steps, including whether the evidentiary hearing may be held by video conference. Indeed, given the uncertainty created by the COVID-19 pandemic relating to future public gatherings, it is helpful for the forward movement of this proceeding to determine at or before the prehearing conference whether the parties are capable of participating in an evidentiary hearing by video conference.

15. The remote prehearing conference will be held using the web-hosted video conferencing service, GoToMeeting. Information on how to use GoToMeeting to attend the hearing by video conference is provided in Attachment A to this Decision. The web link and access code to attend by video conference are included below. Instructions to attend by telephone are also included below. The ALJ strongly encourages the parties planning to attend the prehearing conference by video conference to test their capability to use GoToMeeting before the remote prehearing conference.

16. *All parties are on notice that* failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing

parties seek. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Public Service Company of Colorado's (Public Service) Public Service's Motion for Extraordinary Protection of Highly Confidential Information filed March 18, 2020 is granted.

2. As discussed, the effective date of the tariff pages that Public Service filed on March 6, 2020, with Advice Letter No. 1820-Electric in Proceeding No. 20AL-0094E is suspended until December 11, 2020.

3. A remote prehearing conference is scheduled as follows:

DATE: May 26 2020

TIME: 1:30 p.m.

METHOD: Join by video conference online at:
<https://global.gotomeeting.com/join/238418805>
(If necessary, use 238-418-805 as the access or ID code)

OR

Join by telephone:

Dial ++1 (571) 317-3122, and

when prompted, enter access or ID code: 238-418-805

4. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director