

Decision No. R20-0454-I

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 SECOND MOTION FOR
EXTRAORDINARY PROTECTION AND
VACATING PROCEDURAL SCHEDULE AND HEARING**

Mailed Date: June 22, 2020

I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Background

1. Only the procedural history necessary to understand this Decision is included.

This matter concerns Public Service Company of Colorado's (Public Service or the Company) Advice Letter 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.

2. The Colorado Office of Consumer Counsel (the OCC) and the Colorado Public Utilities Commission Trial Staff (Staff) are the only interveners in this proceeding.

3. On May 27, 2020, the Administrative Law Judge (ALJ) established a procedural schedule and hearing dates on the merits of the above-captioned matter. Decision No. R20-0393-

I.

4. On June 18, 2020, Public Service filed an Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information (Second Motion).

5. On June 19, 2020, the OCC and Staff each filed Notices of Withdrawal of Interventions (Notices). The Notices both indicate that Public Service has satisfied the OCC and Staff's questions and concerns with the above-captioned advice letter, and that neither intervenor will participate further in this proceeding.

6. Also on June 19, 2020, Public Service filed a Motion to Vacate the Procedural Schedule (Motion). The Motion seeks an order vacating the procedural schedule and hearing, and for the ALJ to issue a recommended decision on the merits of this matter without a hearing.

B. Second Motion for Extraordinary Protection

7. The Second Motion seeks extraordinary protection for the Requests for Proposal (RFP) bid proposal documents, results and recommendation (collectively, the RFP package) that were included in the Company's solicitation process for a meter reading vendor in which Tru Check, Inc. (Tru Check) was awarded the contract. The RFP package is attached to the Supplemental Direct Testimony of Steven P. Berman and to the Second Motion.

8. Public Service states that the RFP package has not been publicly released, and contains commercially sensitive and proprietary pricing information specific to the RFP bidding process and that this information may endanger the security of customer information and premises as well as Company devices. 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, provide a competitive advantage to Tru Check's competitors, and harm its relationship with Tru Check. The Company argues that ultimately, releasing the highly

confidential information without extraordinary protection could adversely impact ratepayers because it negatively impacts the Company's ability to negotiate and contract with vendors concerned that Public Service will release information about their negotiations.

9. 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 and are not vendors who submitted bids within the RFP package. Second Motion at 4-5. The Company asks that individuals accessing this information be required to execute the same highly confidential non-disclosure agreement it filed on March 18, 2020 in support of its first Motion for Extraordinary Protection of Highly Confidential Information (First Motion).¹

10. In support of its Motion, the Company includes an Affidavit of Steven P. Berman (Affidavit), consistent with Commission Rule 1101(b)(VI), 4 *Code of Colorado Regulations* (CCR) 723-1. Exhibit A to Second 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. *Id.* Public Service also submitted the proposed form nondisclosure agreements for counsel and experts. Exhibit A to First Motion. The Company filed the documents alleged to be highly confidential per Rule 1101(b)(VII), 4 CCR 723-1, in a form that comports with Rule 1101(a), 4 CCR 723-1. Exhibit B to Second 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.

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

11. When the Second Motion was filed, both the OCC and Staff had not withdrawn their interventions in this matter. But, they did not oppose the Second Motion. Moreover, they are no longer interveners in this proceeding, having withdrawn their interventions on June 19, 2020. As such, the ALJ finds good cause to waive the response time to the Second Motion, and will do so. *See* Rule 1400(b), 4 CCR 723-1.

12. 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.

13. The ALJ finds that Public Service has met its burden to show that the relevant information is highly confidential and should be afforded extraordinary protection, and has met all other requirements of Rule 1101(b) to obtain extraordinary protection for the relevant 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 solicit competitive bids and negotiate favorable terms with 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. Motion to Vacate

14. As explained above, the OCC and Staff have withdrawn their interventions and objections to the above-captioned advice letter. Given this, there is no need to wait for the response time to the Motion to elapse before ruling on it. As such, the ALJ finds good cause to waive the response time to the Motion and will do so. *See* Rule 1400(b), 4 CCR 723-1.

15. Given that the advice letter in this proceeding is no longer opposed, the ALJ finds good cause to vacate the procedural schedule and evidentiary hearing and will do so.² The ALJ anticipates issuing a recommended decision in short order.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the response time to Public Service Company of Colorado's (Public Service) Unopposed Second Motion for Extraordinary Protection of Highly Confidential Information filed June 18, 2020 is waived. The Second Motion is granted.

2. Consistent with the above discussion, the response time to the Motion to Vacate the Procedural Schedule Motion is waived, and the procedural schedule and related requirements established in Decision No. R20-0393-I are vacated.

3. The August 13 and 14, 2020 hearing in this matter is vacated.

² The Motion also requests that a recommended decision be issued without a hearing. The ALJ does not anticipate the need for a hearing, but should one be appropriate, the ALJ will issue a separate order.

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