

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0287EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS ELECTRIC AND NATURAL GAS DEMAND-SIDE
MANAGEMENT (DSM) PLAN FOR CALENDAR YEARS 2021 AND 2022.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
EXTENDING STATUTORY DEADLINE, GRANTING
MOTIONS FOR EXTRAORDINARY PROTECTION AND
FOR LEAVE TO FILE SUPPLEMENTAL DIRECT
TESTIMONY, ESTABLISHING PRE-HEARING AND
POST-HEARING SCHEDULE, SETTING REMOTE
HEARING, ADDRESSING ELECTRONIC EXHIBITS,
AND VACATING PREHEARING CONFERENCE**

Mailed Date: September 18, 2020

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A. It Is Ordered That:11

I. BY THE COMMISSION

A. Background

1. On July 1, 2020, Public Service Company of Colorado (PSCo) filed: (a) a Verified Application for Approval of its Electric and Natural Gas Demand Side Management Plan for Calendar Years 2021 and 2022 (Application); and (b) a Motion for Extraordinary Protection of Highly Confidential Information (Motion for Extraordinary Protection).

2. On July 2, 2020, the Commission issued notice of the Application (Notice).

3. From July 8 to 20, 2020, Trial Staff of the Commission, the Colorado Energy Office, and the Office of Consumer Counsel filed notices of intervention by right and entries of appearance.

4. From July 20, 2020 to August 3, 2020, the City of Boulder, City of Denver, National Resources Defense Council, Sierra Club, Colorado Energy Consumers, Southwest Energy Efficiency Project, ChargePoint, Inc., Energy Efficiency Business Coalition, Energy Outreach Colorado, and Western Resource Advocates filed motions or petitions to intervene.

5. On August 12, 2020, the Commission issued a minute order deeming the Application complete and referring this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

6. On August 27, 2020, PSCo filed a Motion for Leave to File Supplemental Direct Testimony and Request for Waiver of Response Time (Motion for Leave). The supplemental

direct testimony PSCo seeks to file is that of Mr. Schoenheider and it filed the proposed supplemental direct testimony with the Motion for Leave.

7. On September 2, 2020, the ALJ issued Decision No. R20-0641-I that granted the motions and petitions for permissive intervention, scheduled a prehearing conference for September 21, 2020, and ordered the parties to confer concerning a procedural schedule for the proceeding and file a report of the conferral by September 17, 2020.

8. On September 11, 2020, PSCo filed an Unopposed Motion to Approve Procedural Schedule, Vacate Prehearing Conference, and Request for Waiver of Response Time (Unopposed Motion). In the Unopposed Motion, PSCo reports that the parties have reached agreement on a proposed procedural schedule as follows:

<u>Event:</u>	<u>Date/Deadline:</u>
Answer Testimony	October 26, 2020
Rebuttal/Cross-Answer Testimony	November 23, 2020
Stipulations, Settlement Agreement(s), and Prehearing Motions	December 11, 2020
Corrections to Testimony and Exhibits	December 14, 2020
Evidentiary Hearing	December 16-18, 2020
Statements of Position	January 13, 2021 ¹

¹ Unopposed Motion at 3-4 (¶ 6).

9. As to discovery, the parties agree that the discovery timelines and procedures in Rule 1405(b) and Rule 1405(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, shall control with the following modifications:

7. The Parties agree that the discovery timelines and procedures contained within Rules 1405(b) and (d) shall control, with the following modifications:

- a. First, discovery requests and responses will be served electronically. This modification is appropriate because it will maximize the amount of time Parties are able to respond to discovery and will promote efficiency and cost savings.
- b. Second, all responses to an individual set of discovery shall be served in a single, combined document to all Parties. In the event that responses to an individual set of discovery are not served simultaneously, Parties agree to provide all Parties with all available responses served on a given day in a single, combined document, and Parties also agree to provide a single, combined document including all responses to an individual set of discovery. This modification is appropriate because it will promote efficiency, as it is less time consuming for Parties to open one document versus multiple documents when reviewing responses.
- c. Third, all highly confidential and confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will be served only on Parties that have executed the appropriate non-disclosure agreements, and all non-confidential requests and responses will be served on all Parties. This modification is appropriate because it will promote efficiency by minimizing duplicative discovery requests.

8. Except for the modifications proposed above, 4 CCR 723-1-1405 (as modified by Decision No. C20-0375 in Proceeding No. 19R-0483ALL) will govern discovery in this proceeding, including discovery requests, data requests, and Staff audit requests.

9. The Parties also agree that 4 CCR 723-1-1100 and 723-1-1101 (as modified by Decision No. C20-0375 in Proceeding No. 19R-0483ALL) will govern the treatment of confidential information (*i.e.*, information claimed to be confidential) and information for which extraordinary protection is sought.

10. Rules 4 CCR 723-1-1101(b) and 723-1-1101(d) specify the process by which information is designated as highly confidential and extraordinary protection is granted to that highly confidential information. Pursuant to these Rules, the Parties agree that any Party that claims that information is highly confidential will file an appropriate motion in this proceeding to obtain a ruling that the information is highly confidential and a ruling on the extraordinary protection to be afforded to that highly confidential information.²

10. Finally, PSCo requests in the Unopposed Motion that the ALJ adopt the foregoing procedural schedule, agreements regarding discovery and confidentiality procedures, and vacate the prehearing conference.

B. Analysis

1. Extension of Deadline

11. As stated in the Notice, because PSCo filed testimony with the Application, the Commission is required by § 40-6-109.5(1), C.R.S., to issue its decision within 120 days of the Application being deemed complete by the Commission. Thus, the Commission's decision in this proceeding must issue by December 10, 2020. However, § 40-6-109.5(1), C.R.S., also provides that the Commission may, in its discretion and by a separate decision, extend the time for a decision by an additional 130 days.

12. Here, considering the time available, the time necessary to address other pending matters, and the need for the Commission to have adequate time to deliberate the issues presented in this matter, it is not feasible for a final Commission decision to issue by December 10, 2020. Accordingly, pursuant to § 40-6-109.5(1), C.R.S., it is necessary to extend the deadline for an additional 130 days to April 19, 2021.

² *Id.* at 4-5 (¶¶ 7-10).

2. Motion for Extraordinary Protection

13. In the Motion for Extraordinary Protection, PSCo seeks highly confidential protection for “commercially-sensitive PLEXOS® forecasted hourly pricing and energy data, including the inputs behind that data” that is included in Attachments JAP-1 and JAP-2 to the testimony of Jeremy A. Petersen.³ PLEXOS® is a computer model that PSCo uses to forecast the marginal energy cost of supplying an additional megawatt hour to the system at a given time.⁴ According to PSCo, knowledge of this information could provide an unfair competitive advantage to both bidders in future PSCo resource solicitations and entities that purchase/sell energy from/to PSCo.⁵

14. PSCo seeks to restrict party access to the claimed highly confidential information to the following: (1) the Commissioners; (2) Commission Advisors and advisory counsel; (3) Commission Staff and its attorneys; (4) a “reasonable number of subject matter experts” representing parties in this proceeding; and (5) a “reasonable number of attorneys” representing parties in this proceeding. As to the subject matter experts and attorneys, PSCo proposes to further limit disclosure to those who “do[] not intend to submit a bid into a future Public Service resource solicitation or engage in certain financial transactions with [PSCo].”⁶

15. Under Rule 1100(n) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, the information identified in the Second Motion for Extraordinary Protection is presumed to be a public record. Rule 1101 provides the procedure and requirements for filing and seeking the designation of such information as highly confidential. Specifically,

³ Motion for Extraordinary Protection at 1.

⁴ *Id.* at 3, ¶ 5.

⁵ *Id.* at 1-2

⁶ *Id.* at 5-6.

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 the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

16. 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.

17. 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 Motion for Extraordinary Protection also includes separate proposed forms of nondisclosure agreements for retained subject matter experts and attorneys, 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.” PSCo also included Attachments JAP-1 and JAP-2 as exhibits to the Motion for Extraordinary Protection. Finally, no party opposes the Motion for Extraordinary Protection.

18. 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 Motion for Extraordinary Protection shall be granted.

3. Motion for Leave

19. In the Unopposed Motion, PSCo states that the other parties either do not oppose or take no position with respect to the Motion for Leave.⁷ Accordingly, the ALJ shall grant the Motion for Leave.

⁷ Unopposed Motion at 2 (¶ 1).

4. Unopposed Motion

a. Pre- and Post-Hearing Schedule

20. The pre- and post-hearing schedule proposed by the parties is acceptable with modifications to the deadlines for prehearing motions and corrections to testimony and exhibits and the dates for the hearing,⁸ and the addition of a deadline for responses to prehearing motions. The modified schedule is as follows:

<u>Event:</u>	<u>Date/Deadline:</u>
Answer Testimony	October 26, 2020
Rebuttal/Cross-Answer Testimony	November 23, 2020
Prehearing Motions	December 7, 2020
Corrections to Testimony and Exhibits	December 10, 2020
Stipulations, Settlement Agreement(s), and Responses to Prehearing Motions	December 11, 2020
Remote Evidentiary Hearing	December 17-18, 21, 2020
Statements of Position	January 13, 2021

21. The schedule proposed by the parties, with the minor modifications noted above, is adopted. In addition, the modifications to Rule 1405, 4 CCR 723-1 proposed by the parties for the purpose of this proceeding are adopted.

b. Remote Hearing

22. As agreed to by the parties, the hearing shall be scheduled for December 17, 18, and 21, 2020. However, the hearing shall be held remotely, meaning that the participants will appear from remote locations, as provided below. Since early March 2020, Colorado State

⁸ The ALJ communicated with the parties via email regarding the change to the dates for the hearing and the parties reported that the change is acceptable.

government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by the novel coronavirus pandemic (COVID-19). These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted and it is unclear when the restriction will be lifted. Under these circumstances, the ALJ finds that holding a remote hearing is consistent with current public health advisories to prevent the spread of COVID-19. The ALJ concludes that it is in the parties' and the public interest to hold the hearing in this proceeding as a remote hearing.

c. Prehearing Conference

23. Finally, in the Unopposed Motion, PSCo's request to vacate the prehearing conference scheduled for September 21, 2020 shall be granted.

C. Instructions for Participating in, and Observing, the Remote Hearing

24. Attachment A to this Decision provides the information addressing how to use the GoToMeeting platform for participating in the remote hearing.

D. Instructions for Presenting Exhibits Electronically at the Remote Hearing

25. Attachment B to this Decision provides instructions for the presentation of exhibits electronically during the evidentiary hearing.

II. ORDER

A. It Is Ordered That:

1. For the reasons stated above, the deadline for a Commission decision on the Application filed in this proceeding is extended to April 19, 2021.

2. The Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service Company of Colorado (PSCo) on July 1, 2020 is granted.

3. The Motion for Leave to File Supplemental Direct Testimony and Request for Waiver of Response Time filed by PSCo on August 27, 2020 is granted.

4. The Unopposed Motion to Approve Procedural Schedule, Vacate Prehearing Conference, and Request for Waiver of Response Time filed by PSCo on September 11, 2020 is granted consistent with the discussion above.

5. The pre-hearing and post-hearing schedule stated in paragraph 20 above is adopted.

6. The prehearing conference scheduled for September 21, 2020 is vacated.

7. A remote hearing in this proceeding is scheduled as follows:

DATES: December 17, 18, and 21, 2020

TIME: 9:00 a.m. to 4:30 p.m.

FOR WEBCASTS: Hearing Room B

METHOD: Join by video conference at the link to be provided by an email from the Administrative Law Judge

8. Nobody should attend the remote hearing in-person.

9. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director