

Decision No. R14-1256-I

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

PROCEEDING NO. 14AL-0660E

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IN THE MATTER OF ADVICE LETTER NO. 1672 - ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (GRSA) RIDER APPLICABLE TO ALL ELECTRIC BASE RATE SCHEDULES AND REVISE THE TRANSMISSION COST ADJUSTMENT (TCA) TO REMOVE COSTS THAT HAVE BEEN SHIFTED TO BASE RATES TO BECOME EFFECTIVE JULY 18, 2014.

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PROCEEDING NO. 14A-0680E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS ARAPAHOE DECOMMISSIONING AND DISMANTLING PLAN.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING FOURTH MOTION FOR  
EXTRAORDINARY PROTECTION**

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Mailed Date: October 17, 2014

**I. STATEMENT**

1. The procedural history of this Proceeding is set out in previous Decisions and is repeated here as necessary to put this Interim Decision in context.

2. On August 28, 2014, by Decision No. C14-1043, as pertinent here, the Commission referred to an Administrative Law Judge (ALJ) motions seeking extraordinary protection of information that is found to be highly confidential.

3. On October 9, 2014, Public Service Company of Colorado (Public Service, Company, or PSCo) filed its Fourth Motion for Extraordinary Protection (Fourth Motion).<sup>1</sup> In that filing, the Company seeks a determination that the following 14 documents contain highly confidential information: (a) The Foushee Group Security & Compliance Compensation Study; (b) U.S. Mercer Benchmark Database Survey;<sup>2</sup> (c) U.S. Mercer Contact Center Survey; (d) Aon Hewitt U.S. Energy Marketing and Trading Compensation Survey; (e) Aon Hewitt Total Compensation Measurement Management & Professional Survey; (f) Dietrich Engineering, Drafting & Design, and Construction Salary Survey; (g) Towers Watson Data Services Compensation Database Energy Marketing and Trading Compensation Survey - U.S.; (h) Mercer Total Compensation Survey for the Energy Sector; (i) Aon Hewitt Independent Energy Human Resources Association Energy Industry Compensation Survey; (j) EAP Data Information Solutions Energy Technical Craft Clerical Survey; (k) Towers Watson Data Services American Gas Association Compensation Survey; (l) Towers Watson Data Services Compensation Database Energy Services Middle Management, Professional & Support Compensation Survey - U.S.; (m) The Foushee Group Environmental, Health & Safety Compensation Survey; and (n) Towers Watson Data Services Compensation Database Energy Services Executive Compensation Survey - U.S. (collectively, the 14 Highly Confidential Documents).

4. Public Service states that the 14 Highly Confidential Documents are “2013 compensation salary surveys that Xcel Energy purchased and participated in” (Fourth Motion at 2) and are responsive to the Colorado HealthCare Coordinating Council’s discovery request 2-172. As the bases for finding that the documents contain highly confidential

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<sup>1</sup> The motion was filed in Proceeding No. 14AL-0660E.

<sup>2</sup> This is a package that contains a total of seven surveys.

information, the Company asserts: (a) survey participants and vendors consider the “individual level compensation information provided in response to the survey questions ... to be extraordinarily confidential” and treat it as such (Fourth Motion at 3); (b) the identified “compensation surveys are subject to copyright protection and contain proprietary, intellectual property owned by the third party vendors” who “retain exclusive property rights to distribution of the data in the surveys, and require written permission for any further distribution (a few explicitly acknowledge that the surveys may be disclosed pursuant to court order, regulatory or other legal authority)” (Fourth Motion at 3-4); and (c) “the salary surveys have the most restrictive internal distribution [within PSCo] of any of the documents for which [the Company has] requested a Commission protective order in this” Proceeding (Fourth Motion at 5). *See also* Fourth Motion at Attachment B (Affidavit of Ruth K. Lowenthal attesting to restricted access).

5. The Company identifies the following as potential harms should the information be disclosed: (a) individual employees’ privacy interests may be jeopardized; (b) given the competition for skilled, experienced, qualified personnel within the industry nationwide, inadvertent release of the compensation information could compromise PSCo’s ability to attract and to retain necessary personnel; and (c) release of the private vendors’ proprietary copyrighted information may be a breach of PSCo’s agreements with those vendors.

6. If the Commission determines that the identified documents contain highly confidential information, the Company requests the following extraordinary protection for the information: Staff of the Commission (Staff) and its counsel and the Office of Consumer Counsel (OCC) and its counsel may have access to the information; the information may be reviewed only in hard copy and only at 1800 Larimer, Denver, Colorado; the persons with access

may take notes and must destroy the notes at the conclusion of this Proceeding; and the information shall be withheld from all other parties and their counsel.

7. The response time to the Fourth Motion has expired, and no response was filed. The Fourth Motion is unopposed. In addition, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400(d),<sup>3</sup> the ALJ deems the failure to respond to be a confession of the motion. Thus, the intervenors -- including the Colorado HealthCare Coordinating Council -- have acquiesced to the granting of the Fourth Motion and to the extraordinary protections sought.

8. As the party seeking an order from the Commission, Public Service bears the burden of establishing that the requested relief should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1101(b).

9. A motion for extraordinary protection must comply with Rule 4 CCR 723-1-1101(b). The ALJ finds that the Fourth Motion complies with that Rule.

10. The Fourth Motion states good cause to grant the relief sought. The ALJ finds that the data in the 14 identified documents are highly confidential. The ALJ finds that the requested protections are appropriate; are reasonable; and are consistent with Commission rules, practices, and policies. Given the absence of response to the Fourth Motion, the ALJ finds that no party will be prejudiced if the Fourth Motion is granted.

11. The ALJ will grant the Fourth Motion. The ALJ will order that access to the 14 Highly Confidential Documents will be limited to the Commissioners, Commission advisors, Commission counsel in this Proceeding, Staff, Staff's counsel in this Proceeding, employees of the OCC assigned to this Proceeding, and OCC's counsel in this Proceeding. Disclosure to the

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<sup>3</sup> This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

employees of the OCC assigned to this Proceeding, to the Assistant Attorneys General who represent the Commission in this Proceeding, to the Assistant Attorneys General who represent Staff in this Proceeding, and to the Assistant Attorneys General who represent OCC in this Proceeding is conditioned on the signing and filing of the Nondisclosure Agreement attached to the Fourth Motion<sup>4</sup> and on the conditions set out in the Ordering Paragraphs.

## II. **ORDER**

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

1. The Fourth Motion for Extraordinary Protection, which motion was filed on October 9, 2014 by Public Service Company of Colorado in Proceeding No. 14AL-0660E, is granted.

2. The following documents contain and are highly confidential information: (a) The Foushee Group Security & Compliance Compensation Study; (b) U.S. Mercer Benchmark Database Survey, which is a package of seven surveys; (c) U.S. Mercer Contact Center Survey; (d) Aon Hewitt U.S. Energy Marketing and Trading Compensation Survey; (e) Aon Hewitt Total Compensation Measurement Management & Professional Survey; (f) Dietrich Engineering, Drafting & Design, and Construction Salary Survey; (g) Towers Watson Data Services Compensation Database Energy Marketing and Trading Compensation Survey - U.S.; (h) Mercer Total Compensation Survey for the Energy Sector; (i) Aon Hewitt Independent Energy Human Resources Association Energy Industry Compensation Survey; (j) EAP Data Information Solutions Energy Technical Craft Clerical Survey; (k) Towers Watson Data Services American Gas Association Compensation Survey; (l) Towers Watson Data

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<sup>4</sup> Employees of the Commission sign and keep on file a nondisclosure agreement pursuant to Rule 4 CCR 723-1-1100(h). Thus, they are not required to sign the Nondisclosure Agreement attached to the Fourth Motion.

Services Compensation Database Energy Services Middle Management, Professional & Support Compensation Survey - U.S.; (m) The Foushee Group Environmental, Health & Safety Compensation Survey; and (n) Towers Watson Data Services Compensation Database Energy Services Executive Compensation Survey - U.S. The information contained in the 14 identified documents shall be treated as highly confidential information in accordance with Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 and this Interim Decision.

3. Access to the highly confidential information identified in Ordering Paragraph No. 2 is restricted to the Commissioners, Commission advisors, Commission counsel in this Proceeding, Staff of the Commission, Staff's counsel in this Proceeding, employees of the Office of Consumer Counsel who are assigned to this Proceeding, and the Office of Consumer Counsel's counsel in this Proceeding. With the exception of the Commissioners, Commission advisors, and Commission counsel in this Proceeding, access to the highly confidential information identified in Ordering Paragraph No. 2 is conditioned on the identified persons abiding by the restrictions (set out above) pertaining to viewing the documents.

4. Disclosure of the highly confidential information identified in Ordering Paragraph No. 2 to Commission counsel in this Proceeding, Staff's counsel in this Proceeding, employees of the Office of Consumer Counsel who are assigned to this Proceeding, and the Office of Consumer Counsel's counsel in this Proceeding is conditioned on the signing and filing of the Nondisclosure Agreement attached to the Fourth Motion for Extraordinary Protection filed on October 9, 2014.

5. The Parties are held to the advisements contained in the Decisions issued in this Proceeding.

6. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director