

Decision No. R14-1426-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0660E

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.

PROCEEDING NO. 14A-0680E

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

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING PUBLIC SERVICE'S
SIXTH MOTION FOR EXTRAORDINARY
PROTECTION, SUBJECT TO RESTRICTIONS,
AND ORDERING EXTRAORDINARY
PROTECTIONS, SUBJECT TO RESTRICTIONS**

Mailed Date: December 3, 2014

I. STATEMENT

1. The procedural history of this consolidated 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 November 26, 2014, Public Service Company of Colorado (Public Service, Company, or PSCo) filed its Sixth Motion for Extraordinary Protection (Sixth Motion).¹ In that filing, the Company seeks a determination that the following information is highly confidential:

data and calculations regarding Public Service's projected 2014 retail revenue overearnings under the Earnings Sharing mechanism approved as part of the settlement agreement in Proceeding No. 11AL-947E ... and substantially similar information consisting of the underlying cost and revenue projection inputs used in developing the Company's projected over-earnings for 2014; [and]

2013 Towers Watson Energy Industry Benefits Study that is subject to a confidentiality agreement between Public Service and Towers Watson Delaware Inc. ("Towers Watson Benefits Study") ... and substantially similar information consisting of any other third party-vendor surveys in the Company's possession regarding benefits and compensation-related information and programs at other utilities or non-utilities.

Sixth Motion at 2-3.

4. The Company asks that the Commission grant extraordinary protection to the data and calculations regarding PSCo's "projected over-earnings for 2014 *until* the actual 2014 financial results are made public through the filing of the Company's 2014 10K annual report to the United States Securities and Exchange Commission[.]" Sixth Motion at 3 (emphasis supplied); *see also* Affidavit of Scott B. Brockett (Sixth Motion at Attachment B) at ¶ 5 (projected 2014 over-earnings information "must remain protected as highly confidential ... until public disclosure in [the] United States Securities and Exchange [Commission] public filings").

5. The Company asks for no restriction on the duration of the extraordinary protections sought for the benefits and compensation-related third-party vendor surveys. Affidavit of Scott B. Brockett (Sixth Motion at Attachment B) at ¶ 5 (the benefits and

¹ The motion was filed in Proceeding No. 14AL-0660E.

compensation-related third-party vendor surveys “*must remain protected as highly confidential indefinitely*” (emphasis supplied).

6. As the bases for finding that the information pertaining to the projected over-earnings for 2014 is highly confidential, the Company states:

(a) “[t]he overearnings estimate is based upon projected expenses and revenues for the Company’s Electric Department through the end of [2014], and therefore includes forward-looking information that has not been publicly reported to the financial community. As such, this information is clearly proprietary and sensitive financial information for Public Service and includes material financial ‘insider information’ that has the potential to affect Xcel Energy’s stock price. ... [T]he Company is obligated to treat such non-public, forward-looking information as Highly Confidential and to carefully monitor and restrict even its internal distribution”

(Sixth Motion at 3-4); and

(b) in Decision No. R14-1118-I,² the ALJ found similar “material financial ‘insider information’ that has the potential to affect Xcel Energy’s stock price” to be highly confidential and ordered extraordinary protection for that information (*id.*).

7. As the bases for finding that the information in the benefits and compensation-related third-party vendor surveys is highly confidential, the Company states:

In Interim Decision No. R14-1256-I, issued October 17, 2014, the ALJ granted extraordinary protection for compensation surveys and compensation-related information pursuant to the Company’s Fourth Motion for Extraordinary Protection. This is precisely the type of information [in the Towers Watson Benefits Study:] “studies, documents, analysis, calculations or other information that was created by, performed by or for, the Company or reviewed, considered, analyzed, or rejected concerning any considerations of how to reduce pension costs.”

Our response [to the discovery request, which is the information for which extraordinary protection is sought,] ... is the 2013 Energy Industry Benefits Study prepared by Towers Watson. While [this study] is focused on benefits and not salaries, benefits are an integral part of the Company’s compensation package, and are substantially similar information. As such, the arguments cited in the Company’s Fourth Motion for Extraordinary Protection related to compensation

² This Interim Decision was issued on September 12, 2014 in this Proceeding.

information are applicable to the extraordinary protection that should apply to [the Towers Watson Benefits Study]. Given that the Commission has determined in this proceeding that compensation surveys and compensation-related information should be treated as highly confidential, it is both logical and appropriate that such protections be afforded to the benefits study ..., and any future disclosures of similar third-party vendor surveys regarding benefits and compensation-related information and programs at other utilities or non-utilities.

Sixth Motion at 4-6 (footnote omitted).³

8. If the Commission determines that the information is highly confidential, the Company requests the following extraordinary protections: (a) the information would be available to the Commission and its counsel, the Commission's Advisory Staff (Advisory Staff), the Trial Staff of the Commission (Trial Staff) and its counsel, and the Colorado Office of Consumer Counsel (OCC) and its counsel; and (b) the information would be withheld from all other parties and their counsel. The extraordinary protections would extend to the information in discovery and to "any subsequent use of the highly confidential information in any form in which it may be reused -- for example, in testimony, exhibits, discovery, pleadings, briefs, and through questioning." Sixth Motion at 6-7.

9. On September 9, 2014, by Decision No. R14-1102-I, the ALJ shortened to three business days the response time to motions for extraordinary protection.

10. The response time to the Sixth Motion has expired, and no response was filed. The Sixth Motion is unopposed. In addition, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400(d),⁴ the ALJ deems the failure to respond to be a confession of the motion.

³ Referenced Decision No. R14-1256-I was subsequently modified by Decision No. R14-1329-I, which was issued on November 4, 2014.

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

Thus, the intervenors have acquiesced to the granting of the Sixth Motion and to the extraordinary protections sought.

11. As the party seeking an order from the Commission, Public Service bears the burden of establishing that the information is highly confidential and that the requested extraordinary protections should be granted. Section 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1101(b).

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

13. The Sixth Motion states good cause to grant the relief sought, subject to restrictions. The ALJ finds that the information described in ¶ 3, within the restrictions discussed below, is highly confidential. Given the absence of objection, the ALJ finds that the requested extraordinary protections (when subject to the restrictions contained in this Interim Decision) are appropriate; are reasonable; and are consistent with Commission rules, practices, and policies. Given the absence of response to the Sixth Motion, the ALJ finds that no party will be prejudiced if the Sixth Motion is granted.

14. The ALJ will grant the Sixth Motion subject to this restriction: the data and calculations regarding PSCo's projected 2014 over-earnings are no longer confidential on the date on which "the actual 2014 financial results are made public through the filing of the Company's 2014 10K annual report to the United States Securities and Exchange Commission" (Sixth Motion at 3). PSCo requests this restriction. The ALJ finds that the restriction is reasonable and necessary because the 2014 over-earnings information will be in the public domain when the Company files its 2014 10K. It would be inappropriate to continue the highly confidential designation after the Company has made the information public.

15. The ALJ will order that access to the highly confidential information will be limited to the Commissioners, the Advisory Staff, the Commission's advisory counsel in this Proceeding, the Trial Staff, the Trial Staff's counsel in this Proceeding, the employees of the OCC assigned to this Proceeding, and the OCC's counsel in this Proceeding. Disclosure to the employees of the OCC assigned to this Proceeding, to the Assistant Attorneys General who are the Commission's advisory counsel in this Proceeding, to the Assistant Attorneys General who represent Trial 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 Sixth Motion⁵ and on the conditions set out in the Ordering Paragraphs.

II. ORDER

A. **It Is Ordered That:**

1. Consistent with the discussion above, the Sixth Motion for Extraordinary Protection, which motion was filed on November 26, 2014 by Public Service Company of Colorado (Public Service) in Proceeding No. 14AL-0660E, is granted subject to the restriction stated below.

2. Consistent with the discussion above and subject to the restriction stated below, the following information is highly confidential:

the data and calculations regarding Public Service Company of Colorado's projected 2014 retail revenue overearnings under the Earnings Sharing mechanism approved as part of the settlement agreement in Proceeding No. 11AL-947E and substantially similar information consisting of the underlying cost and revenue projection inputs used in developing Public Service Company of Colorado's projected over-earnings for 2014; and

⁵ 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 Sixth Motion.

the 2013 Towers Watson Energy Industry Benefits Study that is subject to a confidentiality agreement between Public Service and Towers Watson Delaware and substantially similar information consisting of any other third-party vendor surveys in Public Service Company of Colorado's possession regarding benefits and compensation-related information and programs at other utilities or non-utilities.

This information 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. The highly confidential designation in Ordering Paragraph No. 2 is subject to this restriction: the data and calculations regarding Public Service's projected 2014 over-earnings are no longer confidential on the date on which Public Service's actual 2014 financial results are made public through the filing of Public Service's 2014 10K annual report to the United States Securities and Exchange Commission.

4. Access to the highly confidential valuation information identified in Ordering Paragraph No. 2, as restricted in Ordering Paragraph No. 3, is limited to: the Commissioners; the Commission's Advisory Staff; the Commission's advisory counsel in this Proceeding; the Trial Staff of the Commission; the Trial Staff's counsel in this Proceeding; the employees of the Colorado Office of Consumer Counsel who are assigned to this Proceeding; and the Colorado Office of Consumer Counsel's counsel in this Proceeding.

5. Disclosure of the highly confidential valuation information identified in Ordering Paragraph No. 2, as restricted in Ordering Paragraph No. 3, to the Commission's advisory counsel in this Proceeding, to the Trial Staff's counsel in this Proceeding, to the employees of the Colorado Office of Consumer Counsel who are assigned to this Proceeding, and to the Colorado Office of Consumer Counsel's counsel in this Proceeding is conditioned on the signing and filing of the Nondisclosure Agreement attached to the Sixth Motion for Extraordinary Protection filed on November 26, 2014.

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

7. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director