

Decision No. R19-1043-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0530E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2016 ELECTRIC RESOURCE PLAN AMENDMENT REGARDING THE TARGETED 2019 SOLAR REQUEST FOR PROPOSALS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION FOR
EXTRAORDINARY PROTECTION,
VACATING PREHEARING CONFERENCE,
AND ADOPTING PROCEDURAL SCHEDULE**

Mailed Date: December 30, 2019

I. STATEMENT

1. On September 30, 2019, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application for approval of its 2016 Electric Resource Plan (ERP) Amendment Regarding the 2019 Solar Request for Proposals (Application). Specifically, Public Service seeks Commission approval to replace approximately 200 MW of solar resources with replacement solar bids. The Commission originally approved the initial bids as part of the Preferred Colorado Energy Plan Portfolio in Decision No. C18-0761 (Phase II Decision)¹ for the reasons stated in the Application.

2. Also on September 30, 2019, Public Service filed their Motion Requesting Extraordinary Protection of Highly Confidential Information.

¹ Decision No. C18-0761 was issued in Proceeding No. 16A-0396E on September 10, 2018.1.

3. On October 31, 2019, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding. The OCC listed a series of issues they wish to investigate.

4. On October 31, 2019, the Colorado Independent Energy Association (CIEA) filed its Motion to Intervene. As a non-profit corporation and trade association of independent power producer (IPP) member companies, CIEA states that its members routinely participate in requests for proposals associated with the ERP processes of public utilities to bring their projects to market in Colorado. CIEA asserts that it has an interest in monitoring the present proceeding to ensure a fair and transparent bidding and bid evaluation process. CIEA further asserts that it and its members have a specific interest in advocating for Commission decisions and rules that safeguard competitive bidding of renewable resources and market participation by IPPs. Additionally, CIEA states that this proceeding will directly and substantially impact the tangible and pecuniary interests of its IPP members because those members currently operate, or seek to operate, electric generating resources in Colorado.

5. On October 31, 2019, Western Resource Advocates (WRA) filed its Petition for Leave to Intervene. WRA states that it is a nonprofit conservation organization dedicated to protecting the land, air, and water of the West and that it was actively engaged in Proceeding No. 16A-0396E, regarding Public Service's 2016 ERP. WRA asserts that the Commission's decision in this proceeding will directly impact its tangible interest in environmental protection, and no other party will adequately represent its interests in this matter.

6. On November 4, 2019, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and

Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter.

7. On November 6, 2019, by minute order, Proceeding No. 19A-0530E was referred to an Administrative Law Judge.

8. On December 6, 2019, by Decision No. R19-0976-I, the intervention of CIEA, was granted, the intervention of WRA was denied, and a prehearing conference was scheduled for December 19, 2019.

II. MOTION FOR EXTRAORDINARY PROTECTION

9. In its Motion for Extraordinary Protection, Public Service seeks highly confidential designation and protection for the following documents and categories of information:

- Unit level delivered fuel costs;
- Hourly market price data;
- Unit level heat rate curves;
- Unit detailed maintenance schedules;
- Bid information of any sort (from the Company and/or from other entities);
- Any information protected by a confidential clause of a Purchase Power Agreement (“PPA”); and
- Strategist files

10. Public Service seeks an order limiting party access to the first five above-listed categories of Highly Confidential Information (unit level delivered fuel costs; hourly market price data; unit level heat rate curves; unit detailed maintenance schedules; and bid information of any sort (from the Company and/or other entities) to a “reasonable number of attorneys” and a “reasonable number of subject matter experts” representing a party to this proceeding, consistent

with Commission Rule 3614(b).² For the sixth category (any information protected by the confidentiality clause of a PPA), the Company is requesting to limit access to the Commission, Staff, and the OCC. For the seventh category (Strategist Files), Public Service seeks confirmation that it need not – indeed, cannot – provide this information to any party and/or person that does not hold a Strategist license.

11. Under Rule 1100(n) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the information referenced above is presumed to be a public record. Rule 1101 provides the procedure and requirements for filing and seeking a document to be designated as highly confidential. Rule 1101(c) governs records that are presumed to be public under Rule 1100(n) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with 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.

12. 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;

² Motion for Extraordinary Protection at pp. 3-4.

- (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.³

13. Here, as summarized above, Public Service 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 a proposed form of nondisclosure agreement, 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,” both a public version of the subject information with the allegedly highly confidential information redacted, and an unredacted highly confidential version of those documents. Finally, no party opposes the Motion for Extraordinary Protection.

14. Public Service has satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, Public Service’s Motion for Extraordinary Protection shall be granted.

³ 4 CCR 723-1.

III. PROCEDURAL SCHEDULE

15. In their Unopposed Motion, Public Service states the parties have agreed to the following procedural schedule:

Answer Testimony & Exhibits	February 2, 2020
Rebuttal/Cross Answer Testimony & Exhibits	March 13, 2020
Witness Order & Estimated Cross Time	April 3, 2020
Stipulations & Settlement Agreements	April 3, 2020
Deadline for Corrected Testimony	April 6, 2020
Evidentiary Hearing	April 7 & 8, 2020
Statements of Position	October 1, 2020

16. The proposed procedural schedule is acceptable and good cause is found for its adoption.

17. The prehearing conference scheduled for December 19, 2019 shall be vacated.

IV. ORDER

A. It Is Ordered That:

1. An evidentiary hearing in this matter is scheduled for the following date, at the following time, and in the following location:

DATES:	April 7 and 8, 2020
TIME:	9:00 a.m.
PLACE:	Commission Hearing Room 1560 Broadway, Suite 250 Denver, Colorado

2. The Motion for Protective Order Affording Extraordinary Protection for Highly Confidential Information filed by Public Service Company of Colorado on September 30, 2019 is granted.

3. Access to the highly confidential information shall be limited as described above in paragraph 10.

4. In order to have access to the highly confidential information, representatives of, and attorneys for, the Colorado Office of Consumer Counsel, must have signed, served, and filed the non-disclosure agreement (NDA) provided by Public Service prior to gaining access to the highly confidential information in the report at issue.

5. Members of the Commission, the Commission's Trial and Advisory Staff assigned to this proceeding, and the Attorneys General representing the Trial Staff and Advisory Staff assigned to this proceeding, must have signed and have on file with the Commission a current annual NDA in accordance with Commission Rule 4 *Code of Colorado Regulations* 723-1-1100(h) prior to gaining access to the highly confidential information.

6. All provisions enumerated above are now in effect regarding the highly confidential information and are granted consistent with the discussion above.

7. This Decision is effective upon its Mailed Date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director