

Decision No. C20-0063

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0588E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR DISTRIBUTION GRID ENHANCEMENTS, INCLUDING ADVANCED METERING AND INTEGRATED VOLT-VAR OPTIMIZATION INFRASTRUCTURE.

**DECISION DENYING MOTION FOR
EXTRAORDINARY PROTECTION OF
HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: January 29, 2020

Adopted Date: January 22, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, we deny the Third Motion for Extraordinary Protection of Highly Confidential Information (Motion) filed on December 27, 2019, by Public Service Company of Colorado (Public Service or Company). As discussed below, the relief requested in the Motion is unnecessary in these circumstances.

B. Discussion

2. On August 2, 2016, Public Service initiated this Proceeding by filing an application seeking a Certificate of Public Convenience and Necessity (CPCN) for the implementation of components of its Advanced Grid Intelligence and Security initiative to implement an advanced electric distribution grid (Application). By Decision No. C16-0845-I

issued on September 12, 2016, we set the Application for hearing and established the parties to this Proceeding.¹

3. On May 8, 2017, Public Service filed a Joint Motion to Approve the Unopposed Settlement Agreement (Joint Motion), with the Unopposed Settlement Agreement attached as Exhibit A (Unopposed Settlement), and represented that the Unopposed Settlement resolved all issues in this Proceeding. The Commission conducted a hearing on the Unopposed Settlement on May 16, 2017.

4. Through Decision No. C17-0556, issued July 25, 2017, the Commission granted the Joint Motion and approved the Unopposed Settlement. The Application and requested CPCN, as modified in the Unopposed Settlement were also granted. No party filed a request for rehearing, reargument, or reconsideration to the Commission's decision, as permitted in § 40-6-114, C.R.S.

5. The Unopposed Settlement requires that Public Service provide semi-annual reports regarding investment and deployment. These reports are comprised of updates on project milestones and scope, costs, and status of projects. In compliance with Decision No. C17-0556 approving the Unopposed Settlement, Public Service has filed the required semi-annual reports since the approval of the Unopposed Settlement. No other substantive filings have been made in this Proceeding.

6. On December 27, 2019, Public Service filed its Motion and requests the Commission grant extraordinary protection under Rule 1101(b) of the Commission's Rules of

¹ The parties to this Proceeding include Public Service, Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), the Colorado Energy Office (CEO), Southwest Energy Efficiency Project (SWEEP), the City of Boulder (Boulder), Mission:data Coalition, Inc. (Mission:data), Energy Freedom Coalition of America (EFCA), Energy Outreach Colorado (EOC), Colorado Energy Consumers (CEC), Western Resource Advocates (WRA), and the Colorado Solar Energy Industries Association (CoSEIA).

Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, to the Highly Confidential Amended and Restated Major Supply Agreement between Itron, Inc. (Itron) and Xcel Energy Services, Inc. and its regulated affiliates (collectively, Xcel Energy), in its entirety, including all accompanying exhibits and attachments (Itron Contract).

7. Public Service states that the Itron Contract contains the following highly confidential information: (1) master advanced meter infrastructure pricing; (2) commercially sensitive and proprietary information specific to the contractual relationship between Xcel Energy and Itron; (3) technical data specific to the meter types being installed; (4) data security requirements; (5) headend applications; (6) network capabilities; (7) distributed intelligence specifications; and (8) highly sensitive cyber security detail.

8. The Company states that the information in the Itron Contract is proprietary and commercially sensitive and asserts that the release of such information is harmful to its customers, its relationship with Itron, and to Itron if competitors access the Itron Contract. Public Service also states that the information could potentially be used to attempt cyber-attacks. The Company requests that, except for the Commission, the Administrative Law Judge (ALJ), Commission Staff and its attorneys, and the OCC staff and its attorneys, party access to this information be limited to a “reasonable number of attorneys” and a “reasonable number of subject matter experts” representing a party to this Proceeding. The Company requests that, with the exception of the Commission, the ALJ, and Commission Staff, these individuals execute an appropriate highly confidential non-disclosure agreement, provided as Attachment A to the Motion.

9. Public Service also requests that all parties and their counsel either destroy or return the highly confidential information at the conclusion of this Proceeding, as provided in Rule 1101(a)(III)(E) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

10. The Company did not file the Itron Contract as an attachment to the Motion. Public Service claims that the Itron Contract contains over 1200 pages of commercially sensitive material, and states that it did not attach the Itron Contract for this reason. It also states that redaction of highly confidential materials within the contract would be extensive, burdensome, and would render a public version essentially useless.

11. Public Service provided an affidavit as Attachment B to the Motion identifying all persons with access to the information and the period of time for which it must remain subject to highly confidential designation. Public Service contends this information must remain protected as highly confidential indefinitely.

12. On January 10, 2020, Mission:data and WRA jointly filed a response to Public Service's Motion (Joint Response). In the Joint Response, Mission:data and WRA agree the Itron Contract is highly confidential and state that they are satisfied with Public Service's proposed conditions for access to review the Itron Contract.

C. Findings and Conclusion

13. As the party seeking extraordinary protection for information, Public Service bears the burden of establishing that the Commission should grant the requested relief. § 24-4-105(7), C.R.S.; Rule 4 CCR 723-1-1500.

14. Rule 1101 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, applies to confidential information filed with the Commission in a proceeding. Although Decision No. C17-0556 requires ongoing reporting, Public Service does not request Commission

review of the Itron Contract in this Proceeding or otherwise state why it would file the Itron Contract in this Proceeding.²

15. At this time, we do not make findings regarding whether the Itron Contract contains highly confidential information. Rule 1101(b), 4 CCR 723-1, does not address information claimed to be highly confidential when that information will be distributed outside the context of a Commission proceeding.³ Because Public Service does not demonstrate a need to file the Itron Contract with this Commission, Public Service does not establish that protections afforded through Rule 1101(b), 4 CCR 723-1, for documents *filed in a Commission proceeding*, are necessary.⁴ We find that Public Service does not meet its burden in showing the relief requested in the Motion should be granted, and the Motion is therefore denied.

II. ORDER

A. The Commission Orders That:

1. The Third Motion for Extraordinary Protection of Highly Confidential Information filed on December 27, 2019, by Public Service Company of Colorado, is denied, as discussed above.

2. This Decision is effective upon its Mailed Date.

² The Motion states that the Itron Contract was provided to Staff pursuant to a General Audit Request on September 25, 2019, and was treated as highly confidential. Motion at 5 n.4. Public Service does not argue that provision of the Itron Contract to Staff through audit warrants granting the Motion. However, we note for clarity that information provided in connection with an audit is given confidential treatment under § 40-15-107(2)(a), C.R.S., regardless of whether confidential treatment of the same information is provided under Rule 1101, 4 CCR 723-1.

³ The Commission presumes Public Service enters into nondisclosure agreements with third parties in circumstances outside of Commission proceedings.

⁴ Public Service is not precluded from seeking highly confidential treatment of the Itron Contract if it demonstrates the information is required in this or a future proceeding.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners