

Decision No. C21-0227-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21I-0076EG

IN THE MATTER OF THE INVESTIGATION INTO THE EXTREME WEATHER EVENT OF FEBRUARY 13-16, 2021 AND THE PLANNING ACTIVITIES ASSOCIATED WITH THE EVENT.

**INTERIM DECISION CONSTRUING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION
AS REQUEST AND APPROVING REQUEST**

Mailed Date: April 16, 2021
Adopted Date: March 24, 2021

I. BY THE COMMISSION

A. Statement

1. On March 19, 2021, the Colorado Energy Office (CEO) filed an Application for Rehearing, Reargument, or Reconsideration (RRR) of Commission Decision No. C21-0149, issued March 12, 2021, regarding the decision to designate certain information filed by Public Service Company of Colorado (Public Service) and Black Hills Colorado Gas, LLC and Black Hills Colorado Electric, Inc. (together, Black Hills) as Highly Confidential. Public Service was granted protection regarding information filed with its February Extreme Weather Event Report for February 13-16, 2021 filed on March 5, 2021. Black Hills was granted protection for information included with its Situation Report filed in response to Decision Nos. C21-0087, issued February 17, 2021 and C21-0101, issued February 24, 2021.

2. CEO requests the Commission grant it access to the Highly Confidential Information afforded to Black Hills and Public Service in this Proceeding by Decision No. C21-0149 upon execution of the required Non-Disclosure Agreements (NDAs), which CEO

has attached to this filing. CEO states it will also file NDAs to access the confidential materials provided by Colorado Natural Gas, Inc. (CNG) and Atmos Energy Corporation (Atmos). Like the Office of Consumer Counsel and Staff of the Public Utilities Commission, CEO states it is a governmental entity, and pursuant to Rule 1401(b), 4 *Code of Colorado Regulations* (CCR) 723-1, CEO may intervene in all Commission matters by right so long as it provides as the basis for its intervention its statutory duty.

3. CEO states it wishes to gain access to this information to further its statutory responsibilities and to inform its policy decisions. As a governmental entity, CEO indicates it does not have a competitive interest, and therefore access to the information should not harm the competitive positions of the utilities or jeopardize their trade secrets.

4. While CEO claims to know broadly what types of information was filed under seal, it asserts it cannot evaluate the detailed nature of that information and so cannot represent whether that information may be necessary to determine whether the costs and utility actions in response to those costs were reasonable. Because Commission Rule of Practice and Procedure 4 CCR 723-1-1100(g) establishes that a Commission determination regarding confidentiality of information applies in all future proceedings before the Commission regarding the specific information for which confidentiality or highly confidential protection was asserted, CEO is concerned that highly confidential determination in this proceeding will inhibit its ability to access this information in any future Commission proceeding where recovery of costs related to the extreme weather event may be at issue. As such, CEO maintains it seeks access through RRR given the shortened and subsequently waived response times to Black Hills' and Public Service's motions for extraordinary protection. CEO states it will take all reasonable precautions to keep the confidential information secure as required by Commission Rule 1100(j).

5. CEO also, challenges the applicability of the Highly Confidential designation granted to Black Hills to the extent such information could be summarized in a manner that would not reveal the underlying sensitive data. CEO represents it is not requesting all information be made public. Rather, CEO states it seeks transparency and accessibility through the provision of summary reporting tables similar to those provided by Public Service in its Situation Reports at Table 7-14.

II. FINDINGS

6. Rule 4 CCR 723-1-1307 of the Commission's Rules of Practice and Procedure provides that "[t]he Commission may open an administrative proceeding on its own motion at any time." Rule 1307 further provides that administrative proceedings are to be governed by the specific procedures as the Commission may order. We opened this Investigatory Proceeding under the provisions of Rule 1307 to direct Atmos, Black Hills, CNG, and Public Service to prepare and file a report in this Proceeding on or before February 24, 2021 providing the information we specified in Decision No. C21-0087.

7. Rule 4 CCR 723-1-1200(d) states that "[p]ersons participating in certain non-adjudicatory proceedings, e.g., rulemaking proceedings and administrative proceedings, are not parties. For ease of reference, such persons shall be referred to as 'participants'."

8. As an administrative proceeding, an Investigatory Proceeding such as this proceeding does not have parties. Therefore, while utilities ordered to provide information or reports may, from time-to-time appropriately file motions for extraordinary protection to protect confidential information, the Commission typically does not entertain motions from outside persons or entities in such proceedings. Notably, since this Proceeding is a non-adjudicatory

proceeding with no parties, there is no opportunity for a participant to seek RRR to a decision rendered as part of the investigation.

9. A party seeking RRR of a Commission decision is required, pursuant to § 40-6-114(1), C.R.S., to “specify with particularity the grounds upon which the applicant considers the decision unlawful.” Since the Commission, in an investigative proceeding does not make final decisions in an adjudicatory (or rulemaking) proceeding, but rather in an administrative proceeding with no parties, opened for the sole purpose of gathering information, the provisions of § 40-6-114, C.R.S., are not available to participants.

10. However, in this case, we see no prejudice or harm resulting from CEO’s RRR, which we construe as a request for the Highly Confidential Information granted to Black Hills and Public Service as set forth in Decision No. C21-0149.

11. Therefore, we approve CEO’s request for access to the Highly Confidential Information of Black Hills as set forth in Paragraph No. 12 in Decision No. C21-0149 and of Public Service as set forth in Paragraph Nos. 7 and 8 in Decision No. C21-0149 and approve that request. CEO shall be afforded the access as provided to the Colorado Office of Consumer Counsel pursuant to Decision No. C21-0149 and shall comply with the NDA requirements of Public Service and Black Hills as set out in Paragraph No. 9 and Paragraph No. 15 respectively and comply with each company’s non-disclosure requirements.

III. ORDER

A. It Is Ordered That:

1. The Colorado Energy Office’s (CEO) Application for Rehearing, Reargument or Reconsideration filed March 19, 2021, is construed as a request for access to the Highly Confidential Information granted to Black Hills Colorado Gas, Inc., Black Hills Colorado

Electric, LLC (together, Black Hills) and Public Service Company of Colorado (Public Service) by Decision No. C21-0149, issued March 12, 2021.

2. CEO’s request is approved consistent with the discussion above.

3. CEO is allowed access to the Highly Confidential Information of Black Hills as set forth in Decision No. C21-0149 similar to the access provided to the Colorado Office of Consumer Counsel.

4. CEO is allowed access to the Highly Confidential Information of Public Service as set forth in Decision No. C21-0149 similar to the access provided to the Colorado Office of Consumer Counsel.

5. CEO shall comply with the non-disclosure agreement requirements of Black Hills and Public Service as set forth in Decision No. C21-0149.

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
March 24, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners