

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0309EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A NUMBER OF STRATEGIC ISSUES RELATING TO ITS ELECTRIC AND GAS DEMAND SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN.

**INTERIM DECISION GRANTING MOTION FOR
EXTRAORDINARY PROTECTION**

Mailed Date: November 3, 2022

Adopted Date: October 26, 2022

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Motion for Extraordinary Protection (Motion), filed by Public Service Company of Colorado (Public Service or the Company) on October 21, 2022. Through the Motion, Public Service seeks an order granting highly confidential treatment of the following categories of information: hourly pricing, energy, and emissions data contained in EnCompass input and output data either contained in or related to its workpapers or anticipated for production through the course of discovery; and any information protected by a confidentiality clause of a Power Purchase Agreement. Upon review of the Motion and its attachments, we find good cause to grant the relief sought in the Motion.

B. Procedural History

2. On July 1, 2022, Public Service initiated this matter by filing its Application and Direct Testimony requesting Commission approval of the proposals contained in the Company's Demand Side Management (DSM) and Beneficial Electrification (BE) Strategic Issues application. Public Service states, similar to previous Strategic Issues proceedings, this filing is

designed to seek Commission re-examination and approval of the overall objectives and structure of Public Service's DSM initiatives to guide the Company in designing future DSM plans. The Company states, however, this Proceeding differs for a number of reasons including the addition of BE, a greater focus on gas DSM, more focused efforts to reduce carbon emissions, and changing needs of electric DSM.

3. Through Decision No. C22-0515-I, issued September 6, 2022, the Commission established the following parties to this Proceeding: Public Service, Trial Staff of the Commission, the Office of the Utility Consumer Advocate, the Colorado Energy Office, the City and County of Denver, the City of Boulder, Climax Molybdenum Company, Colorado Energy Consumers, the Conservation Coalition, the Colorado Renewable Energy Society, the Energy Efficiency Business Coalition, Energy Outreach Colorado, the Southwest Energy Efficiency Project, and Western Resource Advocates.

4. Public Service states no party opposes the requested relief.

C. Motion

5. The Motion seeks highly confidential treatment of the following categories of information: hourly pricing, energy, and emissions data contained in EnCompass input and output data either contained in or related to its workpapers or anticipated for production through the course of discovery; and any information protected by a confidentiality clause of a Power Purchase Agreement. Public Service requests the extraordinary protection remain in place indefinitely.

6. Public Service requests access to these categories of information be limited to: (1) Commissioners; (2) Commission Advisors and Commission Advisory Counsel; (3) Commission Staff and Staff Counsel; (4) a reasonable number of subject matter experts working on behalf of an intervenor in this Proceeding that does not intend to submit a bid into a future Public Service resource or non-wires alternative solicitation or engage in certain financial

transactions with the Company, provided that the subject matter expert files the appropriate non-disclosure agreement in the form attached as Attachment B to the Motion, and the subject matter expert's curriculum vitae; and (5) a reasonable number of attorneys representing an intervenor in this Proceeding, provided those attorneys file executed non-disclosure agreements in the form attached as Attachment A to the Motion.

7. Public Service states that disclosure of the information contained in the EnCompass input and output files, including the EnCompass-calculated marginal hourly energy costs and emissions data, could cause irreparable harm to the Company's trading operations, the Company's ability to solicit cost-effective resources and, ultimately, the Company's customers. Public Service explains that inappropriate disclosure of this information could provide potential generators with competitive market pricing information that could be used to influence future contract pricing or bids or certain financial transactions unfairly or to the detriment of customers. Public Service states, additionally, the outputs would provide parties who engage in financial transactions with the Company (*i.e.*, purchasing or selling energy) with the ability to determine the financial modeling used by Public Service to conduct those trades, thereby harming Public Service and its customers.

8. With respect to the claimed highly confidential information regarding existing Power Purchase Agreements, Public Service explains, where the Company has contractually committed to keep certain terms and conditions confidential, it is bound to maintain such confidentiality, absent an order from the Commission to the contrary. Public Service states this request includes Power Purchase Agreements where, even though the agreement itself is public, Public Service has committed to the power producer to keep confidential various data with respect

to the performance by the producer under the agreement and other projects to which the producer is a party (that Public Service may have reviewed under project due diligence).

9. Public Service states the requests in the Motion are consistent with prior Commission designations, including its most recent designation in the 2021 Electric Resource Plan & Clean Energy Plan and 2022-2025 Renewable Energy Standard Plan Proceeding, Proceeding Nos. 21A-0141E and 21A-0625EG, respectively, as well as the Company's most recent Demand-Side Management Plan, Proceeding No. 20A-0287EG, and DSM Strategic Issues docket, Proceeding No. 17A-0462EG.

10. In compliance with Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, Public Service filed form highly confidential non-disclosure agreements and an affidavit containing a list of individuals at Public Service who have access to the claimed highly confidential information.

D. Findings and Conclusions

11. Public Service conferred with all the intervening parties in this Proceeding and no party opposes the motion. We therefore find good cause waive the remaining response time.

12. We find that, pursuant to Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Motion appropriately designates the categories of competitively sensitive information identified in the Motion as 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 the highly confidential protections proposed by Public Service will afford sufficient protection for the highly confidential information. We therefore find good cause to grant the Motion.

13. As requested in the Motion, access to the categories of competitively sensitive information identified in the Motion is limited to: (1) Commissioners; (2) Commission Advisors

and Commission Advisory Counsel; (3) Commission Staff and Staff Counsel; (4) a reasonable number of subject matter experts working on behalf of an intervenor in this Proceeding that does not intend to submit a bid into a future Public Service resource or non-wires alternative solicitation or engage in certain financial transactions with the Company, provided that the subject matter expert files the appropriate non-disclosure agreement in the form attached as Attachment B to the Motion, and the subject matter expert's curriculum vitae; and (5) a reasonable number of attorneys representing an intervenor in this Proceeding, provided those attorneys file executed non-disclosure agreements in the form attached as Attachment A to the Motion. Individuals accessing the protected information must comply with the approved non-disclosure agreement (Attachments A and B to the Motion), including that they may not use the information for commercial purposes, or disclose the information to any unauthorized person, including those within the intervening organization, for any reason.

II. ORDER

A. It Is Ordered That:

1. The Motion for Extraordinary Protection, filed by Public Service Company of Colorado, on October 21, 2022, is granted, consistent with the discussion above.
2. The remaining response time to the Motion for Extraordinary Protection is waived.

- 3. This Decision is effective upon its Mailed Date.
- B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 26, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners